1877
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DAVID C. LANDERS *et al.*.....APPELLANTS;

AND

DOUGLAS B. WOODWORTH.....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Nova Scotia, Legislative Assembly of—Power of punishing for contempt—Removal of a Member from his seat by Sergeant-at-Arms—Action of trespass for assault against Speaker and Members—Damages.

W., a member of the House of Assembly of the Province of *Nova Scotia*, on the 16th of April, 1874, charged the then Provincial Secretary—without being called to order for doing so—with having falsified a record. The charge was subsequently investigated by a Committee of the House, who reported that it was unfounded. Two days after the House resolved, that, in preferring the charge without sufficient evidence to sustain it, *W.* was guilty of a breach of privilege. On the 30th April, *W.* was ordered to make an apology dictated by the House, and, having refused to do so, was declared, by another resolution, guilty of a contempt of the House, and requested forthwith to withdraw until such apology should be made. *W.* declined to withdraw, and thereupon another resolution was passed ordering the removal of the said *W.* from the House by the Sergeant-at-Arms, who, with his Assistant, enforced such order and removed *W.* *W.* brought an action of trespass for assault against the Speaker and certain Members of the House, and obtained a verdict of $500 damages.

Held, on appeal, affirming the judgment of the Supreme Court of *Nova Scotia*, that the Legislative Assembly of the Province of *Nova Scotia* has, in the absence of express grant, no power to remove one of its members for contempt, unless he is actually obstructing the business of the House; and *W.* having been removed from his seat, not because he was obstructing the

* PRESENT:—Sir William Buell Richards, Knight, C.J., and Ritchie, Strong, Taschereau, and Fournier, J.J.

business of the House, but because he would not repeat the apology required, the Defendants were liable.

Kielley v. *Carson* (1) and *Doyle* v. *Falconer* (2) commented on and followed.

APPEAL from a judgment of the Supreme Court of *Nova Scotia*, discharging a rule *nisi* to set aside verdict and for a new trial.

This was an action brought by the Respondent, a member of the House of Assembly of the Province of *Nova Scotia*, to recover $10,000 damages against the Appellants.

The Plaintiff, by his declaration, alleged:

1. "That the said Defendants, on the 30th day of April, 1874, assaulted and beat the Plaintiff, and with force and violence ejected and expelled the Plaintiff from the Legislative Assembly of *Nova Scotia*, and from his seat in the said Assembly."

2. "That the Plaintiff was and is a Member of the Legislative Assembly of *Nova Scotia*, and being lawfully in his seat in the said House of Assembly where the said Legislative Assembly meets for the transaction of business, the said Defendant assaulted and beat the Plaintiff, and with force and violence illegally ejected and expelled the said Plaintiff from the said Legislative Assembly, and from his seat therein."

3. "That being a Member of the said Assembly, as in the second count mentioned, and being in his place in said Assembly, the said Defendants, on the day and year in the second count mentioned, and on divers other days and times between that day and the commencement of this suit, assaulted and beat the Plaintiff, and caused him to be seized and illegally and wrongfully ejected and expelled from the said Assembly, and from his seat therein, and caused the said Plaintiff to be kept so ejected and expelled from thence hitherto."

(1) 4 *Moore* P. C. C. 63. (2) L. R. 1 P. C. App. 328.

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4. "That the Defendants on the day andyear aforesaid, and on divers other days and times between that day and the commencement of this suit, assaulted and beat the Plaintiff, and ejected and expelled him from the Legislative Assembly of *Nova Scotia*, of which he is and was a Member, and from his seat therein, and have kept and continued to keep the said Plaintiff ejected and expelled from the said Assembly, and have thereby prevented and hindered the Plaintiff from enjoying his rights and privileges as such Member and discharging his duty as such Member."

5th. "That the Defendants assaulted and beat the Plaintiff, and he claims $10,000 damages."

The Defendants pleaded ten pleas :

The 1, 2, 3, 4 and 5 pleas traverse each count severally.

The 6th plea traverses the severally counts generally, suggesting that they are for the same cause of action.

The 7th plea is a special plea to the whole declaration, denying the committal of the alleged trespasses, and stating "that Plaintiff, being in his seat illegally and against the lawful resolution of said Assembly, and in contempt thereof, and hindering, obstructing and delaying the business thereof, and creating a disturbance, and using violent, abusive, disorderly and unbecoming language in said Assembly on said days and divers other days, one *Angus M. Gidney*, the Sergeant-at-Arms of said Assembly, for the preservation of the order of said Assembly, requested said Plaintiff to depart from said Assembly, whereupon said Plaintiff departed voluntary from said Assembly."

The 8th plea discloses the grounds of defence, setting out the facts and circumstances under which the alleged ejection and expulsion occurred, (and which are also set out in the other pleas hereafter given), and the Defendants justification therefor.

The 9th plea is to the same effect, and adds, that the order, resolutions and proceedings of the House of Assembly, ordering that the Plaintiff be kept temporarily removed from the House by the Sergeant-at-Arms, until he should signify to the Speaker that he was prepared to make an apology required by the House, were, "according to law, custom and practice theretofore used and practised, and which might be and were necessary to be used and practised by said Assembly, and which always of right did belong to said House to remove interruptions and obstructions to the deliberations and business of said Assembly by its members and others during its sittings, and which authority had heretofore so far and further been exercised and enjoyed by said Assembly in like cases, and by legislative assemblies in other parts of the Dominion of Her Majesty the Queen."

The 10th plea is also a plea of justification, specially alleging, amongst other things, "That on the 26th April, 1874, Plaintiff, in his place in the said House of Assembly, then in session, contrary to the established rules and practice of the House, no motion or question being before said House, proceeded to speak and falsely charged the Honorable *William B. Vail*, then present in said House of Assembly, with falsifying certain public records, viz., the original map of surveys in the County of *Guysboro'*; also the only legal record of lands granted in that County;" said Plaintiff then also charged said Honorable *William B. Vail*, 'that after the grants had passed, he purposely ordered the name of *William Esson* to be expunged, and the names of other persons to be interlined in the records, and that this had been done after the grants had passed, and after the signature of Governor *Doyle* had been appended to the grants and the record.' The said Plaintiff at said time and place called for certain record books from the Crown Land

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Office, and proceeded to say that 'those books would not be safe if allowed to remain in the Crown Land Office, under the control of said Honorable *William B. Vail*,' charging and implying in his said speech that said Hon. *William B. Vail* had corruptly altered the public records, and that he would do so again; that during the said sitting, in reply to a speech of the said Honorable *William B. Vail*, the Plaintiff, after reiterating the said charge, proceeded to say that 'if it could be proved he had made it without foundation, no one would be more happy than he would be to make every apology.' That after an investigation of said charges, demanded by said Honorable *William B. Vail*, by a committee chosen unanimously by said Assembly at said meeting, a report was, on the 24th April, 1874, presented to said House then in session, as follows:—

'COMMITTEE ROOM, April 24th, 1874.

'The Committee appointed to investigate the charges made by *Douglas B. Woodworth*, Esq., member for *Kings* County, on the sixteenth day of April last past, in the House of Assembly against the Honorable Provincial Secretary, of having altered certain records in the Crown Land Office, after the same had been signed by the Governor and Provincial Secretary, beg leave to report that after having fully investigated the charges preferred, we find that said charges are altogther unfounded, and that the evidence produced has completely exculpated the Honorable Provincial Secretary therefrom.'

'DONALD ARCHIBALD, *Chairman.*
'THOMAS JOHNSON.'

"That the said report was, after debate, unanimously adopted and entered on the journals of the said House of Assembly, the said Plaintiff being present and not calling for a division on the vote thereon; that after the

unanimous reception and adoption of said report by said House of Assembly, at the same sitting, another resolution was submitted of and concerning said Plaintiff and the said charge made by him in said House, in the words following: 'Whereas *Douglas B. Woodworth*, Esq., member for the County of *Kings*, did, in his place in the House of Assembly of this Province, on the 16th day of April instant, charge the Honorable the Provincial Secretary with having altered certain records of the Crown Land Department after the same had been signed by His Honor the Lieutenant Governor, and the said Honorable Provincial Secretary and the Commissioner of Crown Lands, which said charge involved a high crime and misdemeanor. And whereas the said charge has been fully investigated by a committee of this House, and has been ascertained to be utterly unfounded, and the said Provincial Secretary has been completely exculpated therefrom, as fully appears from the report of the committee adopted by this House. And whereas, the said charge was preferred without due and proper investigation by the said *Douglas B. Woodworth*, and was accompanied by expressions tending to lead the House to believe that said charge was founded on fact and could be sustained; therefore resolved, that this House feel it to be their duty to express the opinion, that in preferring such a charge without adequate and sufficient evidence to sustain the same, or the proper and necessary preliminary investigation requisite to the formation of a correct opinion thereon, the said *Douglas B. Woodworth* has been guilty of a breach of privilege, and that he be dealt with according to the rules and practice of Parliament.'"

By this plea also the Appellants allege, that this report was adopted and entered on the Journals of the House, and, after stating what took place in the House on the 28th and 30th April, conclude by saying, that

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the Plaintiff refused to obey or comply with a resolution of the House requiring Respondent to appear at the bar of the House and apologize to the House for having preferred a charge against another member without due and sufficient consideration, "whereupon the Sergeant-at-Arms, the said *Angus M. Gidney*, and the said *James L. Griffin* him assisting, in obedience to the orders and requirements of the said Assembly, required the said Plaintiff to retire from the said Assembly, and that said *Angus M. Gidney* and said Assistant used as little force as possible in said behalf, and the said Plaintiff retired from said Assembly."

The case came on for trial at *Halifax*, on the 18th November, 1875, before Mr. Justice *Macdonald* and a jury.

The following are the material facts of the case as disclosed by the evidence.

The Plaintiff, at the time of the assault, was a Member of the Legislative Assembly of *Nova Scotia*; the Defendant *J. C. Troop* was Speaker; the Defendant *A. M. Gidney* was Sergeant-at-Arms; the Defendant, *J. S. Griffin*, was Assistant Sergeant-at-Arms; and the other Defendants were respectively members of the said Legislative Assembly.

The Honorable *W. B. Vail* was also a member, as well as Provincial Secretary of the Province.

On the 16th of April, 1874, the Plaintiff, in his place in the House, used substantially the following words: "I now, in my place in this House, publicly charge the Honorable Provincial Secretary with falsifying certain records, viz.: The original map of surveys in the County of *Guysboro'*, and the only legal record of lands granted in that County, mentioned in certain grants, containing in the whole 17,000 acres of land granted to *William Esson*. I charge the Hon. Provincial Secretary, that after the grant had passed, he purposely ordered the

name of *William Esson* to be expunged, and the names of other persons to be inserted in the records. I charge that this had been done after the grants had passed, after the signature of Governor *Doyle* had been appended to the grants and the record."

The Plaintiff was not called to order, nor were his words taken down.

Mr. *Vail*, having asked for a committee to investigate the charges, the House adopted a resolution appointing a committee of three members for that purpose. The committee sat and heard evidence, in the presence of the parties and their counsel, and on the 24th of April the committee, (one member refusing to concur and submitting a separate report) reported to the House their finding upon the said charge as follows: "The committee, appointed to investigate the charges made by *Douglas B. Woodworth*, Esq., member for the County of *Kings*, on the 16th day of April last past, in the House of Assembly, against the Hon. the Provincial Secretary, of having altered certain records in the Crown Land office after the same had been signed by the Lieutenant-Governor and Provincial Secretary, beg leave to report that after having investigated the charges preferred, we find that such charges are altogether unfounded, and that the evidence produced has completely exculpated the Honorable Provincial Secretary therefrom,"

This report was received and adopted by the House, and thereupon the following resolution was moved and seconded:

"Whereas, *Douglas B. Woodworth*, Esq., member for the County of *Kings*, did, in his place in the House of Assembly of this Province, on the 16th of April, instant, charge the Honorable the Provincial Secretary with having altered certain records of the Crown Land Department after the same had been signed by his

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Honor the Lieutenant Governor and the Hon. Provincial Secretary, and the Commissioner of Crown Lands, which said charge involved a high crime and misdemeanor;

"And Whereas, the said charge has been fully investigated by a committee of this House, and has been ascertained to be utterly unfounded, and the said Provincial Secretary has been completely exculpated therefrom, as fully appears from the report of a committee adopted by this House;

"And Whereas, the said charge was preferred without due and proper investigation by the said *Douglas B. Woodworth*, and was accompanied by expressions tending to lead the House to believe that the said charge was founded in fact, and could be sustained;

"THEREFORE RESOLVED, That this House feel it to be their duty to express the opinion, that in preferring such a charge, without adequate and sufficient evidence to sustain the same on the proper and necessary preliminary investigation requisite to the formation of a correct opinion thereon, the said *Douglas B. Woodworth* has been guilty of a breach of privilege, and that he be dealt with according to the Rules of Practice of Parliament."

This resolution was passed by the House on the 28th April, and on the same day the House, on motion of the Attorney General,

"*Resolved*, That Mr. *Woodworth* do appear at the Bar of the House, and with the doors open, make the following apology:

'Being convinced, that in making the charge, I did so without sufficient evidence to authorize me in my place in Parliament to accuse a member of this House of so serious an offence, I do now apologize therefor to this House, and trust to be excused by the House for having

preferred such a charge without sufficient and due consideration.'"

Mr. *Woodworth* (the Plaintiff) having stated, in his place in the House, that he did not intend to make such an apology, on the 30th of April, on motion of the Attorney General, it was

"*Resolved*, That this House is of opinion that Mr. *Woodworth*, in making the charge against the Hon. Provincial Secretary, on the 16th April, inst., viz.: of having altered certain records of the Crown Land Office, after the same had been signed by the Governor and Hon. Provincial Secretary, did so without foundation, and without sufficient evidence to justify him in making so grave an accusation, and, therefore, that Mr. *Woodworth* do appear at the Bar of the House, and with the doors of the House open, make the following apology, viz.: Being convinced, that in making the charge, I did so without sufficient evidence to authorize me in my place in Parliament to accuse a member of so serious an offence, I do now apologize therefor to this House, and trust to be excused by this House for having preferred such a charge without sufficient and due consideration; and Mr. *Woodworth*, in his place in the House, having declined to make the apology dictated in that resolution, the following resolution was adopted by the House:

"*Resolved*, That the refusal of Mr. *Woodworth*, the member for the County of *Kings*, to make the apology dictated by this House, is a contempt of this House:

"*Resolved further*, that this House cannot consistently with its dignity, admit Mr. *Woodworth* to take his seat until he comply with the order of this House, and, therefore, he be required forthwith to withdraw from this House until such apology be made."

The Speaker then and there, having enquired if he,

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Mr. *Woodworth* (the Plaintiff), was prepared to withdraw, and the Plaintiff having declined to do so, the following resolution was adopted:

"*Douglas B. Woodworth*, Esq., member for the County of *Kings*, having this day taken his seat without having made the apology dictated by this House in the resolution of the twenty-eighth day of April, inst., and having refused to withdraw from the House in obedience to the resolutions just passed by the House;"

Therefore Resolved, That the said *Douglas B. Woodworth* be forthwith removed from this House by the Sergeant-at-Arms, and be excluded therefrom until he shall have signified to his Honor the Speaker that he is prepared to make the apology required by this House.

Mr. *Woodworth* was then, in pursuance of such resolution, removed by the Sergeant-at-Arms and his Assistant.

The rules for the regulation of the House of Assembly of *Nova Scotia* were also put in evidence. The 12th, 13th and 32nd were the only rules referred to in support of Appellant's contention, and are as follows:

"RULE XII.—Whenever any disorderly words have been used by a member in debate, notice should be immediately taken of the words objected to; and if any member desire that they may be taken down, the Speaker or Chairman, if it be the pleasure of the House, or Committee, will direct the Clerk to take them down; and they shall be noticed in the House before any other member has spoken, or other business intervened: or otherwise, he who is offended may move at any time during the same day, and before such offending person go out of the House, that such member may not go out of the House till he gives satisfaction in what was by him spoken; and in case he desire, or the House command him, to explain himself, he is immediately so to

do, standing in his place, which, if he refuses to do, or if the House be not satisfied with his explanation, then he is to be subject to the censure of the House."

"XIII. Though freedom of speech in debate be the undoubted privilege of the House, yet, whatsoever is spoken in the House is subject to the censure of the House."

"XXXII. In all cases, not herein otherwise provided, the House shall be guided by the usage and forms of the Imperial Parliament."

The learned judge, in his charge to the jury, after explaining the nature of the action and the pleadings, and what the law was, in his opinion, on the powers of Provincial Assemblies, made use of the following words:

"As the matter stands, you are to consider whether, on the one hand, turning the Plaintiff out at the time and in the manner proved was, in point of fact, necessary on the ground that he was an obstruction to the business of the House, in which case he would have no right of action; or, on the other hand, whether or not he was removed, not because he was such an obstruction, but merely for a contempt in refusing to make an apology for a past offence. If you find the latter to be the case, that is, that the exacting of the apology was a penalty for a past offence, and that the Plaintiff was turned out merely because he would not repeat that apology, though not obstructing the business, you ought to give him a verdict."

The jury rendered a verdict for the Plaintiff, with $500 damages.

On the 1st December, 1875, the Defendants moved to set aside the verdict, and for a new trial, on the grounds that the verdict was contrary to law and evidence; for the erroneous admission of evidence; for the erroneous

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rejection of evidence; for the mis-direction of the learned judge, and on the points taken at trial. After argument, the Supreme Court of *Nova Scotia* discharged the rule, *Wilkins*, J., dissenting.

The question submitted for the opinion of the Supreme Court of *Canada* was, whether the House of Assembly of *Nova Scotia* has the inherent power, in dealing with one of its members in relation to his conduct within it, to punish him for contempt?

Mr. *Walker* and Mr. *A. F. McIntyre* for the Appellants:

The main question raised by this appeal is, whether or not the privilege claimed by the House of Assembly of the Province of *Nova Scotia* to punish for contempt existed, and if so, whether they had power to remove the Respondent. The Court below proceeds, on the supposition, that at the time of the removal there was no offence, and that it was a punishment for a past offence.

His *delictum* was continuing at the moment of his removal. It has always been treated as a *continuous* contempt. The resolution for removing the Respondent was, not only for taking his seat without making the apology, but also for refusing to comply with an order of the House; the manner in which this refusal was made is a subject for the Court to enquire into. The resolutions were passed in the following order:

1st. Declaring Respondent guilty of a *breach of privilege.*

2nd. Requiring Respondent *in his place in the House* to answer charge and then *withdraw* till question determined;

3rd. Requiring charge read, *Respondent to reply*, and *withdraw* till question determined;

4th. Reciting previous resolutions, and requiring Respondent to *withdraw* till question determined;

5th. Requiring apology *to the House* at the Bar of the House ;

6th. Requiring Respondent to *withdraw* until apology made ;

7th. Reciting refusal to *withdraw* and refusal to apologize, and ordering Respondent's removal.

Now, the House of Assembly of *Nova Scotia* has Supreme legislative authority in the Province, and has, when sitting, the inherent right of protecting itself from insult and indignity, when offered in its presence, and of ejecting and expelling a member guilty thereof, or of a breach of privilege. The evidence in this case clearly established the fact that the Respondent was guilty of disorderly conduct, and refused to obey the orders of the House. The House had, therefore, the inherent right to make and pass the resolutions and orders above referred to, in vindication of their privileges from wrong and insult.

Burdett v. *Abbot* (1) ; *Beaumont* v. *Barrett* (2) ; *Fenton* v. *Hampton* (3) ; *Anderson* v. *Dunn* (4) ; *Cushing* on Leg. Assemblies (5).

The following authorities clearly show that the House of Assembly of *Nova Scotia* has the power to deal summarily with contempts :

Stockdale v. *Hansard* (6) ; *Stockdale* v. *Hansard* (7) ; *In re The Sheriff of Middlesex* (8) ; *Gossett* v. *Howard* (9) ; *Hensman* on the Constitution (10); *Amos* on the Constitution (11); *Fulton's* Constitutional History (12); *Thomas's* Cases Constitutional Law (13) ;*Brougham's* British Con-

(1) 14 East 1.
(2) 1 Moore P. C. C. 59.
(3) 11 Moore P. C. C. 347.
(4) 6 Wheaton 204.
(5) Pp. 217, 246, 250.
(6) 9 A. & E., Pp. 113, 114, 129, 150, 169, 185, 189, 195, 228, 229, 243.
(7) 11 A. & E., Pp. 253, 297.
(8) 11 A. & E., Pp. 289, 290, 291, 295.
(9) 10 Q. B., Pp. 411, 451, 456, 458
(10) Pp. 153, 154.
(11) Pp. 38, 39.
(12) Pp. 119, 124.
(13) Pp. 25, 35.

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stitution (1); *Cox's* British Commonwealth (2); *Cox's* Institution of British Government (3); *Bowyer's* Constitutional Law (4); *Fischel* on the English Constitution (5); *Tiffany* on Constitutional Law (6); *Pomeroy's* Constitutional Law (7); *Kent's* Com. (8); *May* on Parliamentary Practice (9); Lex Parliamentaria (10).

Moreover, there are cases decided here which favor Appellant's contention, that it has been the practice of Houses of Assembly in other British North American Colonies to consider the House the sole and exclusive judge of its own privileges and what is a breach thereof, and its action is conclusive upon Courts of Law. See *May* on Parliamentary Practice (11); *The Speaker of Victoria* v. *Glass* (12); *McNab* v. *Bidwell* (13); *Lavoie's* Case (14); *Cuvillier's* Case (15); *Monk's* Case (16); *Tracey's* Case (17); and the recent case of *Ex-parte Dansereau* (18).

If the Legislative Assembly of the Province of *Quebec* can exercise that right, surely it cannot be denied to the Legislative Assembly of *Nova Scotia*. Moreover, this case is distinguishable from the cases of *Kielley* v. *Carson* (19), and *Doyle* v. *Falconer* (20). The House, in this case, did not attempt to punish for the contempt by committal, which is a judicial power, but merely exercised their power of removal.

The Appellants contend also, that the Judge at the trial mis-directed the jury in charging them that expulsion was a punishment for a past offence, and that

(1) Pp. 256, 260.
(2) P. 82.
(3) Pp. 203, *et. seq.*, 219.
(4) Pp. 51, 53, 54, 82.
(5) Pp. 447, 449, *et. seq.*
(6) P. 153.
(7) P. 139.
(8) 12th Ed., vol. 1, 235 *et. seq.*
(9) 4th Ed., Pp. 113, 114, 300, 308, 309, 310, 317, 319, 320, 321.
(10) P. 136 *et. seq.*
(11) 4th Ed., 157 *et. seq.*
(12) L. R. 3 P. C. C. 573.
(13) Draper's Reports (U.C.) 144.
(14) 5 L. C. R., Pp. 95, 125.
(15) 4 L. C. R. 146.
(16) Stuart's Rep. 120
(17) Stuart's Rep. 478.
(18) 19 L. C. Jur. 210.
(19) 4 Moore P. C. C. 63.
(20) L. R. 1 P. C. C. 328.

when removed Respondent was not misbehaving or obstructing business, and that the House had no right to exact an apology as a condition to his remaining in his seat.

The learned counsel also cited the following authorities:

As to practice of Congress and Houses of Representatives in the *United States*, and in the several States forming the Federal Union—

Potter's Dwarris on Statutes and Constitutions (1); *Hough* on American Constitutions (2).

As to the Constitution of *Nova Scotia* prior to Confederation—

Clarke's Colonial Law (3); *McGregor's* British America (4); *Howard's* Laws of British Colonies (5).

As to Tenth Plea being proved—a sufficient justification not being demurred to—

Edwards v. *Walter, et al*, (6).

Mr. *Cockburn*, Q. C., for Respondent:—

There was no breach of privilege in publicly charging the Provincial Secretary with falsifying certain records. The charge was preferred in Respondent's undoubted right as a member of the Legislature—a right established and recognized by the law of Parliament. In strict parliamentary practice, when a statement by a member has been adopted as the ground of a proceeding by the House, any irregularity in it is waived. If, on the other hand, the charge could, by any possibility, have been treated as a breach of privilege, it should have been exclusively dealt with under Rule 12 of the Rules of the *Nova Scotia* House of Assembly. Now,

(1) Pp. 566, 567, 569, 571, 576, 608, *et. seq.*
(2) Vol. 2, Pp. 632, 633.
(3) Pp. 454—457.
(4) Vol. 2, p. 59.
(5) Vol. 1, Pp. 312, 314, *et seq.*
(6) 3 Starkie 7.

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in this case, the Respondent was not called to order, nor were the words alleged to have been spoken immediately taken down, according to the practice; but, after a reference to a committee had been ordered, and a report had been made, to the effect that the charges were unfounded, the House proceeded to pass several resolutions, and finally to order that the Respondent do appear *at the Bar*, and there make an apology; all of which is contrary to English precedents and the rules of the House of Assembly. Moreover, there are no instances in which it can be shown that a Member has ever been ordered to apologize from the Bar of the House, it having been authoritatively laid down that no Member shall appear at the Bar unless as a criminal. See *May's* Parliamentary Practice (1), *Bourke's* Precedence (2).

It is contended, that a resolution of the House is binding, and that the Courts cannot enquire into the facts. This brings us to discuss the question of the sovereignty of a Colonial Legislative Assembly within its own walls. The state of the law in relation to the House of Commons in England is, that the House has the sovereign power to decide what is a contempt of its own authority, and if the ground of such decision is not stated, the adjudication is not open to be reviewed by a Court of Law; but, if the grounds are given, Courts of Law have power and jurisdiction to examine into questions of breach of parliamentary privilege and of contempt, and to determine whether or not the pretension is supported by the proceedings that have taken place. *Gossett* v. *Howard* (3); *Harrison* v. *Wright* (4); *Stockdale* v. *Hansard* (5); *Potter's Dwarris* on Stat. (6).

But the House of Assembly of *Nova Scotia*, established by chap. 4, *R. S. of N. S.*, 4th series, has no such

(1) 107; 10 Com. Jour. 46.
(2) 123.
(3) 10 Q. B. 411.
(4) 13 M. & W. 816.
(5) 9 A. & E. 107.
(6) 567 *et seq.*

authority as to the punishment of contempt and breaches of privilege as the House of Commons possesses.

Keilley v. *Carson* (1), overruling *Beaumont* v. *Barrett* (2); *Doyle* v. *Falconer* (3), on which case Respondent principally relies.

One branch of the Legislature has no power to increase its own powers and jurisdiction such as rule 32 of the *Nova Scotia* House is contended to confer.

See *May* on Parliamentary Practice (4) ; Chap. 22 of the Acts of the Legislature of *Nova Scotia*, 1875. Also despatch of Minister of Justice, as to partial allowance of same.

The exercise of the powers of the House in this case was a judicial act, which required lengthy investigation and the examination of witnesses to ascertain whether the charge preferred by the Respondent was sustained or not, and its alleged falsity (as so found by the committee) was what the House resolved to be a breach of privilege, not the mere making of the charge. The House, in requiring an apology, was adjudicating on a past offence ; but Colonial Legislatures have no such power, according to the clearly expressed opinion of Baron *Parke* in *Kielley* v. *Carson*, cited above.

The cases cited by Appellants are not applicable to this case, for here the charge is against a responsible Minister of the Crown. See the Parliamentary Debates in the English House of Commons in the following cases, in which grave charges having been preferred against Ministers, they were investigated and either affirmed or negatived ; but no attempt was ever made to punish the Member who had preferred the charge. In fact, such a course would be a direct invasion of our system of Parliamentary and Responsible Government.

(1) 4 Moore P. C. C. 84.
(2) 1 Moore P. C. C. 59.
(3) L. R. 1 P. C. App. 329.
(4) P. 65.

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Case of Mr. *Daniel O'Connell*, 26th February, 1838 (1); Case of Mr. *Ferrand* (2); see Sir *Robt. Peel's* speech thereon (3); Case of Mr. *Cobbett* (4); Case of Col. *Davies* (5); Charges against Lord *Melville* in 1805; Duke of *York*, 1809; Earl of *Chatham*, 1810; Lord *Eldon*, 1825; Earl *St. Vincent*, 1826; Sir *James Graham*, 1844; Lord *Stanley*, 1845; Lord *Palmerston*, 1850; Lord *Westbury*, 1865, and many others.

THE CHIEF JUSTICE:—

All my early reading, historical, political and legal, led my mind to give a ready assent to the doctrine, that it is one of the incidents to the possession of supreme legislative power, however limited the sphere for the exercise of that power (and though controlled by the Legislature of the Empire), that the Legislature exercising such power should have the right to punish parties for contempt. If they cannot do so, they are shorn of much of their dignity, and, in many respects, their influence and usefulness will be much impaired.

No doubt there have been occasions on which, before the beginning of this century, the right of the House of Commons to the possession of all the privileges and powers claimed by them has been questioned by the Courts; and Lord *Holt's* well known resistance to their claims, when unreasonable, has challenged the admiration of the Bar, wherever respect is had for judicial integrity and firmness.

Nevertheless, though some of the rights and privileges claimed have been defined by Act of Parliament, other important ones have not been given up. In the important case of *Burdett* v. *Abbot* (6), which was ex-

(1) 93 Com. J. 307.
(2) 99 Com. J. 235.
(3) Hansard, Vol. 74, Pp. 236, 302, 306.
(4) Mirror of Parlt., 1833, May 16, Pp. 1809, 1822.
(5) Mirror of Parlt., 1830, p. 487.
(6) 14 East 1.

haustively argued, Lord *Ellenborough*, C. J., gave an elaborate judgment, affirming the right of the House of Commons to commit for contempts.

In one part of his judgment, his Lordship used these words:

I have already said, that *a priori*, if there were no precedents upon the subject, no legislative recognition, no practice, or opinions in the courts of law recognizing such an authority, it would still be essentially necessary for the houses of parliament to have it; indeed, that they would sink into utter contempt and inefficiency without it. Could it be expected, that they should stand high in the estimation and reverence of the people, if, whenever they were insulted, they were obliged to wait the comparatively slow proceedings of the ordinary course of law for their redress? That the Speaker, with his mace, should be under the necessity of going before a grand jury to prefer a bill of indictment for the insult offered to the house? They certainly must have the power of self vindication and self protection in their own hands; and if there be any authenticity in the recorded precedents of parliament, any force in the recognition of the legislature and in the decisions of the courts of law, they have such power.

In another part of the judgment he uses these words:

The necessity of the case would, therefore, upon principles of natural reason, seem to require that such bodies, constituted for such purposes, and exercising such functions as they do, should possess the powers which the history of the earliest times shews that they have in fact possessed and used.

I make but one further quotation from the concluding part of his judgment:

It is made out that the power of the House of Commons to commit for contempt stands upon the ground of reason and necessity, independent of any positive authorities on the subject; but it is also made out by the evidence of usage and practice, by legislative sanction and recognition, and by the judgments of the courts of law, in a long course of well established precedents and authorities.

This judgment was pronounced in 1811, and similar doctrines and principles were laid down and acted upon by the courts and the legislatures of different colonies; reference was made to these cases in the argument

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before us. It does not appear that the right of colonial legislatures to commit for contempt was, after that, successfully resisted. It was questioned in *Beaumont* v. *Barrett* (1), decided in the year 1836, on appeal from *Jamaica*. It was argued that the Legislative Assembly of that island had no power to commit for contempt. The appellant had, by order of the Legislative Assembly, been committed for contempt in publishing a libellous article in a newspaper. The action was trespass, and the defendant justified under the warrant and resolution of the Assembly. On the arguments in the Courts of *Jamaica* two points were made: 1. Whether the Assembly possessed the power of committing for any contempt which was not an immediate obstruction to the due course of its proceedings; 2. Whether, if they possessed the power, it had been shown by the pleas to have been properly exercised. The question was also expressly raised, whether the House of Assembly of *Jamaica* possessed the power to commit for an alleged breach of their privileges. The opinion of the Judicial Committee of the Privy Council was delivered by *Parke*, Baron, affirming the right of the House of Assembly to commit for contempt.

The Lords of the Council present, when the matter was argued before the committee, were *Parke*, B., *Bosanquet*, J., and the Chief Judge in Bankruptcy (*Erskine*).

The next time the question came up in the Privy Council was in 1842, in the case of *Kielley* v. *Carson* (2). The case was twice argued, and when finally decided, there were present Lord Chancellor *Lyndhurst*, Lord *Brougham*, Lord *Denman*, Lord *Abinger*, Lord *Cottenham*, Lord *Campbell*, *Shadwell*, V. C., *Tindall*, C. J., *Parke*, Baron, *Erskine*, J., and Dr. *Lushington*. The

(1) 1 Moore P. C. C. 59. (2) 4 Moore P. C. C. 63.

opinion of their Lordships was delivered by Baron *Parke*, who had pronounced the judgment in *Beaumont* v. *Barrett*. It was held, virtually reversing *Beaumont* v. *Barrett*, that the House of Assembly of *Newfoundland* had no power to commit the plaintiff for contempt for having used threatening language to a Member of the House for what he had said, in his place in the House, respecting the plaintiff. The following language is used in deciding the matter before the Judicial Committee :

> The question, therefore, whether the House of Assembly could commit by way of punishment for a contempt in the face of it, does not arise in this case. Their lordships are of opinion, that the House of Assembly did not possess the power of arrest with a view to adjudication on a complaint of contempt committed out of its doors, and consequently, that the judgment of the Court below must be reversed.

In another part this language is used :

> To the full extent of every measure which it may be really necessary to adopt to secure the free exercise of their legislative functions, they are justified in acting by the principle of the common law; but the power of punishing any one for past misconduct as a contempt of its authority, and adjudicating upon the fact of such contempt, and the measure of punishment as a judicial body irresponsible to the party accused, whatever the real facts may be, is of a very different character, and, by no means, essentially necessary for the exercise of its functions by a local legislature, whether representative or not. All these functions may be well performed without this extraordinary power, and with the aid of the ordinary tribunals to investigate and punish contemptuous insults and interruptions.

Another quotation :

> They are a local legislature, with every power reasonably necessary for the proper exercise of their functions and duties, but they have not what they have erroneously supposed themselves to possess, the same exclusive privileges which the ancient law of *England* has annexed to the House of Parliament.

It will be observed, that this case was decided after

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the decision in *Stockdale* v. *Hansard* (1), and *The Sheriff of Middlesex* Case (2), by the Court of Queen's Bench, cases in which the right to the privileges claimed by the Houses was discussed with great power and ability.

Looking at the time this decision was made, 1842, we find, that the question as to the powers and privileges of the House of Commons in *England* had been raised and discussed under circumstances which seemed at one time, to be likely to lead almost to a collision between the Judges of the Court of Queen's Bench and the House of Commons. The Court of Queen's Bench, notwithstanding the strong opinions expressed by some of the leading statesmen of all parties, and the report of a Committee of the House of Commons, adopted by the House, affirming the privilege contended for in *Stockdale* v. *Hansard*, decided against those privileges, and affirmed the right of the plaintiff to maintain an action for libellous matter contained in parliamentary documents printed and sold by the defendants, by the order and permission of the House of Commons. Lord *Campbell's* argument for the defendant, on the demurrer to the plea setting up the privilege, as reported in 9 *A.* & *E.*, occupies nearly 100 pages.

The matter was again brought to the consideration of the Court, on an application to compel the Sheriff to pay over the money made under a writ of *venditioni exponas*, issued in another suit of *Stockdale* v. *Hansard* (3), and in the case of *The Sheriff of Middlesex* (4), brought before the same Court, on a writ of *habeas corpus*. The Sheriff had been brought to the Bar of the House and examined, touching the execution of the writs of *fieri facias* and *venditioni*

(1) 9 A. & E. 1.
(2) 11 A. & E. 273.
(3) 11 A. & E. 253.
(4) 11 A. & E. 273.

exponas, in the last named suit of *Stockdale* v. *Hansard*, and on the 21st of January, 1840, the House resolved, that the execution had been levied in contempt of the privileges of the House, and that the Sheriff should be ordered to return the amount. After that, and after they had again appeared at the Bar, and after the resolutions had been communicated to them, the House resolved:

That *William Evans*, Esq., and *John Wheelton*, Esq., having been guilty of contempt and breach of the privileges of this House, be committed to the custody of the Sergeant-at-Arms attending this House, and that the Speaker do issue his warrant accordingly.

They were thereupon taken into custody for not returning the money in obedience to the order of the House. The resolutions of the House affirmed that the power of publishing such of its reports, votes and proceedings, as it might deem necessary, was an essential incident to the constitutional functions of Parliament, more especially of that House as the representative portion of it; that, by the law and privileges of Parliament, the House had the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges, and that the institution, or prosecution of any action, suit or other proceeding, for the purpose of bringing them into discussion, or decision, before any Court, or Tribunal, elsewhere than in Parliament, was a high breach of such privilege, and rendered all parties concerned therein amenable to its just displeasure and to the punishment consequent thereon. Other resolutions were passed, having reference to a report published by Messrs. *Hansard*, under the orders of the House, respecting the islands of *New Zealand*, and declared that to bring, or assist in bringing, any action against the Messrs. *Hansard* for such publication, would be a breach of the privileges of the House. They also directed Messrs. *Hansard* not to defend an action

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with which they were threatened, for publishing the report.

These resolutions are referred to in the case of *The Sheriff of Middlesex* (1), having been passed on the 30th May, 1837, and the 1st of August, 1839.

To get over the difficulty, an Act was passed on the 14th April, 1840, 3 & 4 Vic., Chap. 9.

The privileges and powers contended for by the House of Commons, and the refusal of Lord *Denman* and the Court of Queen's Bench to yield assent to these pretensions, naturally attracted the attention of the leading legal minds in *England*, and when the case of *Kielley* v. *Carson* came on for discussion and consideration before the Committee of the Privy Council in 1842, the great lawyers before whom the case was then argued, were, no doubt, fully prepared to consider it in all its bearings, and pre-eminently qualified to decide it, from their high legal attainments, and most of them having also been members of the House of Commons.

Fenton v. *Hampton*, in 1858 (2), was an appeal to the Queen in Council from a decision of the Supreme Court of *Van Dieman's Land*. Present: Lords Justices *Knight Bruce*, *Turner*, *Pemberton Leigh*, and L. C. Baron *Pollock*. The opinion of the committee was delivered by *Pollock*, C.B. The case was for the committal for contempt of a person not a member of the Legislative body (the Comptroller-General of Convicts in the Island), for refusing to give evidence before a committee, and to attend at Bar when ordered. The committal was by the Legislative Council of the Island, the only legislative body in the Colony, and which had been created by Statute. The Chief Justice in the Island (*Fleming*) held, that the Council had no power to commit for contempt, and that the warrant, being general, was bad. *Horne*, J., held, that the law of Parliament

(1) 11 A. & E. 273. (2) 11 Moore P. C. C. 347.

was introduced as part of the law of *England*, and that there was power to commit for contempt; but he also held the warrant was bad, as the plaintiff had had no opportunity of defence, it not appearing he had been called to the Bar to show cause why he should not be punished for contempt. The leading counsel, in arguing the case before the Committee, were *Thesiger* and *Kelly*, Q. C.'s. *Pollock*, C. B., in giving the opinion of the Committee, directly repudiated Mr. Justice *Horne's* position, that the *Lex et consuetudo Parliamenti* had been introduced by the Statute introducing the Law of *England*, and also rejected the ground that it was an incidental power, and said there was no distinction between that Legislature created by Imperial Statute and those of *Jamaica* and *Newfoundland* created by the Crown. He said:

> If the Legislative Council of *Van Dieman's Land* cannot claim the power they have exercised on the occasion before us, as inherently belonging to the supreme legislative authority which they undoubtedly possess, they cannot claim it under the Statute as part of the common law of *England* (including the *Lex et consuetudo Parliamenti*), transferred to the Colony by the 9 Geo. 4, chap. 83, sec. 24. The *Lex et consuetudo Parliamenti* apply exclusively to the Lords and Commons of this country, and do not apply to the supreme Legislature of a Colony by the introduction of the common law therein.

This case seems applicable to the extent of approving of *Kielley* v. *Carson*, and shewing *Beaumont* v. *Barrett* not supportable on the grounds of usage or statute.

Dill v. *Murphy* (1) was an appeal from the Supreme Court of *Victoria* to the Privy Council. Present: Lords *Cranworth* and *Chelmsford*, and Lords Justices *Knight Bruce* and *Turner*, February, 1864. The case arose on a committal for contempt in publishing a libel on a member of the House of Assembly. The statute of the

(1) 1 Moore P. C. C. N. S. 487; S. C. 10 L. T. N. S. 170.

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Imperial Parliament, establishing the Legislative Assembly in *Victoria*, authorized the Legislature, by an act, to define the privileges, immunities and powers of the members. The Colonial Legislature passed an Act declaring:

> That the Legislative Council and Legislative Assembly of *Victoria* respectively, and the committees and members thereof respectively, should hold, enjoy and exercise such and the like privileges, immunities and powers as, and the privileges, immunities and powers of the said Council and Assembly respectively, and of the committees and members thereof respectively, were thereby defined to be the same as, at the time of the passing of the Constitution act, were held, enjoyed and exercised by the Commons House of Parliament of *Great Britain* and *Ireland*, and by the committees and members thereof, so far as the same were not inconsistent with the Constitution act, whether such privileges, immunities or powers were so held, possessed or enjoyed by custom, statute, or otherwise.

By the same act, printed copies of the Journals of the House of Commons were made *prima facie* evidence upon any inquiry touching such privileges, immunities, &c.

That act received the Royal assent in 1857, before committing of the trespasses complained of in the suit. The question raised under the pleadings on demurrer was, whether by the statute referred to, the privileges contended for were sufficiently defined by the words used. The opinion of the Committee was delivered by Lord *Cranworth*, holding that under the words of the act, the Colonial Legislature had the same power to commit that the House of Commons had in *England*. *Kielley* v. *Carson*, and *Fenton* v. *Hampton* were referred to in argument, and their authority not in any way questioned.

Doyle v. *Falconer* (1)—before the judicial Committee of the Privy Council; present: Lord *Westbury*, Sir *James William Colville*, and Sir *Edward Vaughan Wil-*

(1) L. R. 1 P. C. App. 328.

liams—is the next case in the order of time before that tribunal, and is very important. It was an appeal from the Court of Common Pleas of *Dominica*. The action was brought by the plaintiff (the respondent), a member of the House of Assembly of *Dominica*, against the appellant, the Speaker, and two members of the House.

The material facts were set out in the pleas of the defendants, and were to the following effect, that the plaintiff, when debating a question before the House contrary to its established rules and practice, was called to order by the Speaker, persisted in his speech, and addressed insulting words to the Speaker, which, pursuant to motion, were noted down as follows: "Who the devil are you to call me to order? You are a disgrace to the House." It was thereupon resolved, that the plaintiff had been guilty of a high contempt of the House, and that he should be held in such contempt until he should have apologized. The defendant (the Speaker), therefore called on him to apologize. He refused to do so, saying he had said nothing requiring an apology, and continued to address the House. The Speaker again called on the plaintiff for an apology, when he replied: "You may tell me that I am in contempt one hundred times if you like, but I will speak. You may move it one hundred thousand times. I repeat what I have said: you are a disgrace to the House, you were expelled from the House for robbery; the minutes of 1845 can shew it." The House, by resolution, referred to what had before taken place, and to the fact, that whilst he was in contempt he interrupted and obstructed the business before the House, and it was thereupon resolved, that the plaintiff, for his disorderly conduct and contempt of the House, be taken into the custody of the Sergeant-at-Arms, and that the Speaker do issue his warrant committing the plaintiff to the common gaol during the pleasure of the House;

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whereupon the defendant *Doyle* issued his warrant to the Sergeant-at-Arms, who arrested him under it, and delivered him to the custody of the Keeper of the gaol, who, under another warrant issued by the defendant *Doyle*, reciting the same matter, detained him under its authority. The pleas were demurred to and issue also joined on them. On argument of the demurrer, judgment was given in favor of the plaintiff. The case was afterwards tried before the Chief Justice, in July, 1864, when a verdict was rendered for the plaintiff, with £770 damages. Exceptions were taken to the ruling of the Judge and admission of evidence, and a rule *nisi* obtained to set aside the verdict, and for a new trial, on the exceptions taken, and on the ground of excessive damages. The rule was argued, but subsequently abandoned, the learned counsel intimating his intention to appeal from the judgment on the demurrer as well as the refusal to non-suit, to Her Majesty in Council. Whereupon judgment was entered against the defendant, and execution awarded. The appeal came on for hearing. The material question raised on the appeal was against the judgment of the Court on the demurrer, and that alone was argued.

Mr. *Mellish*, Q. C., and Mr. *MacNamara* were for the appellants; and Sir *Roundell Palmer* and Mr. *Leith* for the respondent.

The appellant's Counsel, in argument, stated, that two questions were raised by the pleadings: First, had the Lower House of Assembly in the Island power to commit one of its members, by way of punishment, for contempt committed against it in its presence; and, secondly, assuming the existence of this power, are the pleas which set forth the several facts sustainable. They contended that, assuming that it had been decided by the cases of *Kielley* v. *Carson* and *Fenton* v. *Hampton*, that the House of Assembly had no power to

punish for a contempt committed out of the House, this was a different question, the contempt and obstruction which the House had proceeded to punish had been committed by one of its member in the presence of the Assembly itself. They referred to the language of Baron *Parke*, in giving judgment in *Kielley* v. *Carson*, to show that the question under consideration in *Doyle* v. *Falconer*, did not arise in that case, but that he assented to the proposition that "an Assembly had the right to protect itself from all impediments to the due course of its proceedings. To the full extent of every measure which it might be really necessary to adopt, to secure the free exercise of their legislative functions, they are justified in acting, by the principles of the Common Law." They then contended, the power exercised was incident to the House of Assembly as necessary to its independence and security as a Legislative body.

The respondent's counsel contended, even if Colonial Assemblies are entitled to protect themselves from all impediments to the due course of their proceedings, and therefore to remove obstructions offered to their deliberations, that that is a different thing from assuming to punish by imprisonment, which can only be done by a Court of Record, or by the Imperial Parliament by the *Lex Parliamenti*. They referred to *Kielley* v. *Carson*, *Fenton* v. *Hampton*, and *Dill* v. *Murphy*, to show that no such power was possessed by Colonial Legislatures, and *in re Brown* (1) to show that the House of Kings in the *Isle of Man* had not, merely from its being endowed with legislative functions, the power to commit for contempt.

Sir *James W. Colville*, in giving the judgment of the Committee, refers to *Kielley* v. *Carson*, as deciding conclusively that the Legislative Assemblies in the British

(1) 33 L. J. Q. B. 193.

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Colon s have, in the absence of express grant, no power to adjudicate upon or punish for contempt committed beyond their walls. He speaks of the constitution of the Committee before whom it was argued for the second time, as making that case an authority of singular weight, and says, if the elaborate judgment then pronounced had, in terms, left open the question in the case (they were called on to decide), it had stated principles which went far to afford the means of determining that question.

He refers to the privileges of the House of Commons, and says that the power of punishing for contempt belongs to it by virtue of the *Lex et consuetudo Parliamenti*, a law peculiar to and inherent in the two Houses of Parliament of the *United Kingdom*.

That there was no resemblance between a Colonial House of Assembly, being a body which has no judicial functions, and a Court of Justice, being a Court of Record. There was no ground for saying that the power of punishing for contempt, because it is admitted to be inherent in the one, must be taken by analogy to be inherent in the other. He then proceeds to discuss the question, whether the power to punish and commit for contempts committed in its presence is necessary to the existence of such a body as the Assembly of *Dominica*, and the proper exercise of the functions which it was intended to execute. He then proceeds:

It is necessary to distinguish between a power to punish for a contempt, which is a judicial power, and a power to remove any obstruction offered to the deliberations or proper action of a legislative body during its sitting, which last power is necessary for self preservation. If a member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting, he may be removed, or excluded for a time, or even expelled; but there is a great difference between such powers and the judicial power of inflicting a penal sentence for the offence. The right to remove for self security is one thing; the right to inflict punishment is

another. The former is, in their lordships' judgment, all that is warranted by the legal maxim that has been cited, but the latter is not its legitimate consequence. If the good sense and conduct of the members of the Colonial Legislatures prove, as in the present case, insufficient to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person offending from the place of meeting and to keep him excluded. The same rule would apply, *a fortiori*, to obstructions caused by any person not a member. And whenever a violation of order amounts to a breach of the peace, or other legal offence, recourse may be had to the ordinary tribunals.

He then refers to the argument that the dignity of an Assembly exercising Imperial Legislative authority in a colony, and the importance of its functions, require more efficient protection than what had been indicated. That it was unseemly and inconvenient to subject the proceedings of such a body to examination by the local tribunals, and that it is but reasonable to concede to it a power which belongs to every inferior Court of Record. He also refers to the objection made to such a power being possessed by these Legislatures,—it is a power of a high and peculiar character, in derogation of the liberty of the subject, and carries with it the anomaly of making those who exercise it Judges in their own cause, from whom there is no appeal, and that, if it might be safely intrusted to magistrates who would all be personally responsible for the abuse of it to some higher authority, it might be very dangerous in the hands of a body which, from its very constitution, is practically irresponsible. He added, that their lordships were not at liberty to deal with considerations of this kind; suggested the possibility of enlarging the existing privileges of the Assembly by an act of the Local Legislature, passed with the consent of the Crown; referred to the case of *Dill* v. *Murphy*, as showing that extraordinary privileges of the kind, when regularly acquired, would be duly recognized, and concludes:

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But their lordships, sitting as a Court of Justice, have to consider not what privileges the House of Assembly of *Dominica* ought to have, but what by law it has. In order to establish that the particular power claimed is one of those privileges, the appellants must show that it is essential to the existence of the Assembly, an incident *sine quo res ipsa esse non potest.* Their lordships are of opinion that it is not such an incident.

In the case of *The Speaker of the Legislative Assembly of Victoria* v. *Glass* (1), decided in 1871, *Kielley* v. *Carson*, *Beaumont* v. *Barrett*, *Fenton* v. *Hampton*, *Doyle* v. *Falconer*, and *Dill* v. *Murphy*, are cited, and the authority of the later cases is not in any way questioned. The case affirms *Dill* v. *Murphy*, and holds that a general warrant, reciting that a person had been adjudged by the House of Assembly to have been guilty of a contempt and breach of privilege, without setting forth specific grounds of such contempt, is good.

The case of *Anderson* v. *Dunn* (2), decided in the Supreme Court of the *United States*, in 1821, followed *Burdett* v. *Abbot* (3), holding that the House of Representatives had, by necessary implication, a general power of punishing and committing for contempts, and was referred to in *Doyle* v. *Falconer*, but the Judicial Committee did not consider themselves at liberty to follow that case, after the decisions of that tribunal in *Kielley* v. *Carson*, and *Fenton* v. *Hampton*.

In many of the States of the American Union, the Legislature have asserted the right to punish for contempts as a power incident to, and necessary to be possessed by, those bodies, in order to the proper and efficient exercise of the powers possessed by them.

In fact, the practice and principles laid down by, and acted on, in the British House of Commons in reference to its privileges, seem to have been instinctively (if I may use the term) adopted by all legislative bodies

(1) L. R. 3 P. C. C. 561. (2) 6 Wheaton 204.
(3) 14 East 1.

modelled on the English system possessing supreme legislative authority, however limited its sphere, as incidental and necessary to the exercise of their high functions; and, I must confess, that it is with the greatest reluctance I recede from the opinion which prevailed so universally and for so long a time, and was sustained by such high authorities. I, nevertheless, feel compelled to yield to the high authority of *Kielley* v. *Carson*, decided by Judges of such very great acumen, on due consideration, and after so full an argument, and followed and approved of, as it has been, by the Privy Council in all the cases brought before that tribunal in which the question has been raised, and by the judicial decisions in all the Colonies that I am aware of, except in the case of *Ex-parte Dansereau* (1), in the Province of *Quebec*, where the decision of the Court of Queen's Bench seems fully warranted by the terms of the provincial statute.

I may mention, that in the case of *The Queen* v. *Gamble* and *Boulton* (2), it was held, that a member of the Provincial Parliament was privileged from arrest in civil cases, and that the period for which the privilege lasted was the same as in *England*, and the learned Judge, who delivered the opinion of the Court, said:

> And while, apart from our own statutes and judicial decisions, I see nothing in the decisions in *Beaumont* v. *Barrett et al*, or the more recent case of *Kielley* v. *Carson*, at variance with the assertion and enjoyment of this privilege by our own Legislature, I am confirmed in my own opinion of its existence by our general adoption of the law of *England*, by the provision for suits against privileged parties contained in our Statute of 1822, and in the Statutes of Canada, 12 Vic., chap. 63, secs. 22 & 23; 13 & 14 Vic., chap. 55, sec. 96; and by the uniform decisions of our Courts since the former act, and also, as I am informed, before it.

He then refers to the conflicting decisions in the

(1) 19 L. C. Jur. 210. (2) 9 U. C. Q. B. 546.

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Court of Queen's Bench in *Montreal*, in the case of *Cuvillier* v. *Monro* (1).

The Legislatures of *Ontario* and *Quebec* seem to have conferred on the House of Assembly in these Provinces extensive powers to enable them effectively to exercise their high functions and discharge the important duties cast on them. It may be necessary still further to extend their powers. The Legislatures of the other Provinces will probably consider it desirable to take the same course, and in that way unmistakably place these tribunals in the position of dignity and power, which it is desirable they should possess.

Looking at the facts of the case before us, the question arises, what was the Defendant doing at the time he was forcibly removed from his seat in the House that justified the use of the force and violence to which he was subjected?

It is not doubted that he had the right to occupy a seat in the House, and the judgments referred to decide that he could not be deprived of that right, unless he was offering some obstruction to the deliberations or proper action of that body during its sitting. The only obstruction that he offered to their deliberations or proper action, and the only disorderly conduct in the House at the time he was removed from it to which the resolutions point, is that he refused to make an apology dictated by the House.

What, then, had the plaintiff done to cause him to be considered as guilty of a breach of the privileges of the House? On the 16th of April he charged a member of the House, who filled the office of Provincial Secretary, with altering certain records of the Crown Lands Department after the patents recorded had been signed by the Lieutenant Governor and the Commis-

(1) 4 L. C. R. 146.

sioner of Crown Lands. If he believed the charge to be true, and had reasonable grounds for such belief, it was his duty to bring the matter to the consideration of the House that it might be enquired into, and applying the same rule that would prevail even in an action for a malicious prosecution, he would be justified in making the charge if he had reasonable and probable cause for doing so. The facts brought out on the trial and enquiry before the committee appointed clearly established, that, in truth, the Hon. Provincial Secretary did not alter the records referred to after they were signed by the Lieutenant-Governor. On the contrary, the alterations were made before being signed, and were not made by the gentleman charged, but, in consequence of his refusal to sign the documents as they were originally prepared; and the alterations were made in the book where the deeds were recorded, at the suggestion of an officer of the department, so as to make them, as registered, correspond with the conveyances as actually issued. The plaintiff's attention had been in some way directed to the matter, and he examined the book and papers in the Crown Lands Office, and saw that the name of Mr. *Esson*, the gentleman who was the grantee in many of the deeds, had been erased and other names written over the erasure. The object originally of inserting the name of Mr. *Esson* in the deeds was, that he might not be obliged to get conveyances from the parties who were the original applicants for the land, but who had transferred their rights to him. The Provincial Secretary would not sign the grants, unless the names of the parties originally applying were inserted.

The grants, as originally drawn up, were destroyed, new ones prepared, and they were the only ones ever perfected by having the great seal affixed to them, or the Governor's signature, or the signature of the Provincial Secretary. The alterations were made

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in the record book, as already mentioned, at the suggestion of an officer of the department, to avoid having the leaves taken out of it, they being numbered; and so the name of the party originally applying for the grant of land was inserted in the place from whence Mr. *Esson's* name was erased. From the evidence, the reasonable inference is, that the Provincial Secretary was aware of this being done, and was an assenting party to it.

Without going into the matter whether the plaintiff did receive information at the Crown Lands Office which went to the extent of affirming that the signature of the Lieutenant-Governor was affixed to the grant on the 20th December, which was, undoubtedly, a considerable time before the name of *Esson* was erased from the record of it in the book, it is obvious, that the documents in the office which he did see gave grounds for believing that something irregular had taken place, and he may have honestly believed that the alterations had been made in the grant after it had been signed by the Lieutenant-Governor, and, if so believing, he would naturally think it was his duty to call the attention of the House to the matter with a view of having it investigated. He was not at that time considered as in any way violating the rules of the House, or entrenching on its rights and privileges. In fact, it was thought necessary to enquire into the matter, and the result of the enquiry clearly shewed, that the grave charge of altering the record of grants after they had received the signature of the Lieutenant-Governor was not correct. After that, it would not be unreasonable to suppose, that the gentleman making the charge would express his satisfaction that the enquiry had shown that it was not well founded, though, at the time he made it, he believed it to be true, and considered he had reasonable grounds for such belief. He does not appear to

have taken this course, which, perhaps, would have satisfied the House, and the difficulty that followed might have been avoided.

But a statement or complaint made by a member of the legislature, in his place in the house, with a view of having an enquiry in any matter in which the public have an interest, or, I apprehend, in which even a private person feels aggrieved, takes higher ground of privilege than an ordinary complaint made in a matter in which a party has an interest, asking to have his complaint legally investigated.

When the member makes his statement, he exercises the right of freedom of speech, and, in making charges against gentlemen holding official positions, very great latitude is allowed in the use of vituperative language. If the language used is unparliamentary, it may be taken down, and the House decides upon it. If not called to order, and the House considers it necessary for its own dignity to enquire into the matter, it takes the initiative and appoints a committee, or institutes an enquiry, as the case may be. The member has only exercised his right of freedom of speech in bringing the matter to the attention of the House. If that body is to be considered as the grand inquest of the Province, who are to devise the means of correcting abuses and insuring good government in matters within their control, it must be the right and privilege of all parties, whether members of the legislature, or private citizens, to place their grievances, or the public wrongs complained of, before the body properly authorized to investigate them and grant redress. The member of the legislature, exercising his right of speech, makes a complaint. If the subject matter of his complaint turns out on an enquiry not to be true, we have not been shewn any authority or precedent where a member can be charged with being

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guilty of a breach of the privileges of the house for so doing. If the house thinks the enquiry ought not to be made, and refuses to take it up, and the member persists in bringing it forward, so as to obstruct the business of the house, it may be that he might then become liable to the censure of the house, and, if he persisted in the interruptions unreasonably, he might, to quote the words used in *Doyle* v. *Falconer*, "be removed or excluded for a time, or even expelled." But the house, having thought it was a matter which required their attention, took it up and ordered an investigation, and, after that, I fail to see how they could properly declare, that what the member had done was a breach of their privileges. It seems to me, therefore, the very foundation of the other proceedings fails, and what was subsequently done cannot justify the expulsion of the plaintiff from the seat which he had a right to occupy. Even in *England*, the courts will see whether what the House of Commons declares to be its privileges really are so, the mere affirmance by that body that a certain act is a breach of their privileges will not oust the courts from enquiring and deciding whether the privilege claimed really exists. That, I understand, is the effect of *Stockdale* v. *Hansard* (1). Lord *Denman* said, at p. 147:—

In truth, no practical difference can be drawn between the right to sanction all things under the name of privilege, and the right to sanction all things whatever, by merely ordering them to be done. The second proposition differs from the first in words only. In both cases, the law would be superseded by our assembly; and, however dignified and respectable that body, in whatever degree superior to all temptations of abusing their power, the power claimed is arbitrary and irresponsible, in itself the most monstrous and intolerable of all abuses. * * * When the matter falls within their jurisdiction, no doubt we cannot question their judgment; but we are now enquiring whether the subject matter does fall within the juris-

(1) 9 A. & E. 1.

diction of the House of Commons. It is contended, that they can bring it within their jurisdiction by declaring it so. To this claim, as arising from their privileges, I have already stated my answer. It is perfectly clear, that none of these Courts could give themselves jurisdiction by adjudging that they enjoy it.

Taking the resolutions as the ground of the action of the assembly, I fail to see how the matter put forth by them was a breach of the privileges of the house. We must, as the law is now decided to be, examine the validity of the grounds put forth (1).

Under the practice in the English Parliament, or in the Legislature of *Nova Scotia*, as far as I am informed, the making, by one member against another, of an unfounded charge which has been inquired into by the house, does not constitute a breach of privilege. The cases referred to on the argument of Mr. *Dunscomb's* charge against Sir *James Graham*, and Mr. *Cobbett's* against Sir *Robert Peel*, shew the length to which vituperative charges are sometimes made in the House of Commons in *England*, and how they are dealt with; and the recent case of Mr. *Plimsoll* may have some bearing on the subject. But if the house yields to the charge, so far as to order an enquiry, then the matter is pursued by them, and it seems to me that after that they cannot properly say the party giving the information has been guilty of a breach of their privileges. And in the present case none can doubt that it was a matter which properly called for enquiry, though the charge, as made by the plaintiff in reference to it, was not sustained. It would be laying down a very unsatisfactory rule, to make the contingency of a report of a committee being favorable or unfavorable to a charge the ground of declaring a member of the house guilty or not guilty of a breach of its privileges. One of the first and greatest of its privileges is free speech, and one of the advan-

(1) *In re Sheriff of Middlesex*, 11 A. & E. 293, 294.

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tages of free legislative bodies is the right of exposing and denouncing abuses by means of such free speech.

The House, having declared the plaintiff guilty of a breach of its privileges, in making the charge referred to, required him to appear at the bar of the House, with the doors open, and make the following apology, which was dictated by the house, viz.:

> Being convinced that in making the charge I did so without sufficient evidence to authorize me, in my place in parliament, to accuse a member of so serious an offence, I do now apologize therefor to this House, and trust to be excused by this House for having preferred such a charge without sufficient and due consideration.

What right had they to require him to make this apology? Was it necessary to do so in order to go on with the public business? He had made the charge several days before that, so that the offence, if it were an offence at all, had been committed in a way apparently not interfering with the proper action of that body; so there would be no pretence that he was to apologize for that. Then the other alternative is, that this was a punishment inflicted on him by the House for the offence they had declared him guilty of, viz.: a breach of the privileges of the House. *Doyle* v. *Falconer* declares they have no power to punish even for a contempt; therefore, I think it clear they have no such power by resolving that a party had been guilty of a breach of their privileges, when, in truth, they failed to show that any privilege which they possessed had been interfered with. It may be here observed, that many persons would consider being compelled to make an apology of the kind here dictated a greater punishment than being sent to prison for the remainder of the session, and it can hardly be said, that being compelled to make such an apology by order of the House is not a punishment.

They followed up the order requiring an apology,

the plaintiff having declined to make it, with a further resolution, that such refusal was a contempt of the House; that the House could not, consistent with its dignity, admit the plaintiff to take his seat until he complied with the order of the House, and that he be required forthwith to withdraw from the House until the apology was made. He having taken his seat without making the apology, it was resolved, that he be forthwith removed from the House by the Sergeant-at-Arms, and excluded therefrom until he signified to the Speaker that he was prepared to make the apology required by the House; and thereupon the plaintiff was removed from the House by the Sergeant-at-Arms and his assistant, two of the defendants.

It cannot be pretended, that on his removal from the House on the 28th of April, he was then obstructing their deliberations by the charge he had made on the 16th of April, twelve days before, and they do not, in any way, by their resolutions so assert. If he was removed as a punishment for his contempt in not obeying the order of the House as to making the apology dictated, the decided cases show they had not the power to punish for such a contempt, though in the face of the House, as his refusal did not necessarily interfere with or interrupt the business of the House; or, if it did, the interruption arose from the act of the House, and not of the plaintiff.

If it be admitted that the making of the charge, no exception being taken to it at the time, was not a violation of the privileges of the House, it would seem strange indeed, if a refusal to make an apology, based on the ground of the plaintiff having been guilty of such a breach of privilege, could properly be declared a contempt.

It seems to me to be a subtilty and refinement not

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warranted by the facts to hold, that the order excluding him from his seat was not in the nature of punishment, either for the alleged breach of the privileges of the House, or the alleged contempt in not obeying the order of the House to make the apology. If he signified his willingness to make the apology, he would be purged from his contempt.

I do not suppose it is pretended, that if the House ordered the removal of a member from his seat, without assigning any cause therefor other than that the House had ordered him not to appear again in the House, or to occupy his seat, and yet he was in his seat, that that would be a justification for the trespass and force used in removing him from the place which, but for the order, he would have a right to be in, and where it was his duty to attend. So here, the matter suggested as a justification for the plaintiff's removal, according to the principle of the last decided cases, no more authorises it than the disobedience of the order not to appear in his seat would justify it in the case above supposed.

As to the extraneous matter referred to, not recited in the resolutions of the House of Assembly, as the ground on which the plaintiff was removed from his seat, I will only say, that the language used by the plaintiff on several occasions seems to have been peculiarly offensive, but the attention of the House does not appear to have been drawn to it, and I fail to see how that could be a justification of the trespass complained of, and it is not stated in the resolutions as a ground for directing his removal from his seat.

The learned judge who tried the cause left it to the jury to say whether the plaintiff was removed because he obstructed the business, or as a punishment for a contempt in refusing to apologize for a past offence. I quote the following paragraph from his charge:

As the matter stands, you are to consider, whether, on the one hand, turning the plaintiff out at the time and in the manner proved was in point of fact necessary, on the ground that he was an obstruction to the business of the house, in which case he would have no right of action; on the other hand, whether, or not he was removed, not because he was such an obstruction, but merely for a contempt in refusing to make an apology for a past offence. If you find the latter to be the case, that is, that the exacting the apology was a penalty for a past offence, and that the plaintiff was turned out merely because he would not repeat that apology, though not obstructing the business, you ought to give him a verdict.

I think the law thus laid down is correct, and that the finding of the jury ought to be sustained. The jury having found that the plaintiff was removed from his seat, because he would not repeat the apology for the past offence, and not because he was obstructing the business of the house, and as I consider that, in that view of the facts, the plaintiff has made out his case, and in law is entitled to retain his verdict, the tenth plea seems of little consequence. It would seem absurd to send down an issue to be tried when it must fail, either as to the facts or the law. It was stated on the argument, and not denied, as I understood it, that by the practice in *Nova Scotia* pleas may be withdrawn from the consideration of a jury by a judge at the trial, and that an issue so withdrawn from the jury is never sent down for another trial when the facts contained in it have been in effect passed upon by the jury.

I think the appeal should be dismissed with costs.

RITCHIE, J.:—

I think a series of authorities, binding on this Court, clearly establish that the House of Assembly of *Nova Scotia* has no power to punish for any offence not an immediate obstruction to the due course of its proceedings and the proper exercise of its functions, such power not being an essential attribute, nor essentially neces-

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sary, for the exercise of its functions by a local legislature, and not belonging to it as a necessary or legal incident; and that, without prescription or statute, local legislatures have not the privileges which belong to the House of Commons of *Great Britain* by the *Lex et consuetudo Parliamenti.* In this case, to afford a good defence, defendants were bound to allege, and prove, all the circumstances which made it right and proper for them to interfere with the Plaintiff at the time they caused him to be removed from his place in the House of Assembly,—such interference being *primâ facie* against right. The allegations and circumstances shown in this case afford, in my opinion, no justification for Plaintiff's removal; he was not then guilty of disorderly conduct in the House, or interfering with, or in any way obstructing, the deliberations or business, or preventing the proper action of the House, or doing any act rendering it necessary, for self-preservation or maintenance of good order, that he should be removed.

The Defendants cannot condemn and punish for one offence, and justify for another. We cannot look at what the Plaintiff may have said or done on previous occasions. It is possible there may have been occasions when his language and conduct may have been such as would, with a view to the preservation of good order, decorum, and the efficient discharge by members of their legislative duties, have justified action being taken by the House; but whether this may have been so or not cannot affect the present enquiry. The simple question now is, were Defendants justified in removing plaintiff for the avowed cause for which he was removed? The misconduct Plaintiff was charged with was having preferred a charge against the Provincial Secretary "without adequate and sufficient evidence to sustain the same, or the proper or necessary preliminary

investigation requisite to the formation of a correct opinion thereon," and for doing which the House resolved, Plaintiff "had been guilty of a breach of privilege," and adjudged Plaintiff to appear at the Bar of the House, and, with the doors of the House open, make a certain dictated apology; which Plaintiff having declined to do the House then resolved, that it could not, consistently with its dignity, admit Plaintiff to take his seat until he complied with the order of the House, and that he be required forthwith to withdraw from the House until such apology be made. Plaintiff having declined to withdraw, the House then resolved, that Plaintiff be forthwith "removed from the House by the Sergeant-at-Arms and be excluded therefrom, until he shall have signified to the Speaker that he is prepared to make the apology required by the House," and the Plaintiff, in pursuance of such resolution, was removed from the House by the Sergeant-at-arms and his assistant, two of the Defendants.

It appears that rumors were afloat relative to the Crown Land Office, and Plaintiff, as a member of the Legislature, went there for information, and, in consequence of what he there heard and discovered, in his place in the House of Assembly made the charge. If the Plaintiff believed, and had reasonable grounds for believing, the charge to be true, or honestly and fairly believed the public interests demanded that it should be investigated, and, in the *bonâ fide* discharge of his public duty, brought the matter in a decorous and proper manner under the consideration of the House, he was, no doubt, acting in the proper discharge of his duty as an independent representative of the people, and not open to reproach, still less punishment. When the charge was so made the House do not appear to have taken exception to the manner or language in which it

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was made (which under the circumstances might, and very possibly ought, to have been done), nor did the House require the Plaintiff to present a *primâ facie* case, nor require to be stated any ground on which the charge was based, nor was the Plaintiff required to satisfy the House that there was reasonable or probable ground for the charge, nor did the House in any way resolve that the Plaintiff in making the charge, either as to manner or matter, was out of order; but, on the contrary, ordered the charge to be investigated by a committee, which committee, after investigation, found, and no doubt properly found, the charge unfounded, and that the evidence completely exculpated the Provincial Secretary. But a minority report stated reasons which, in the opinion of the member signing it, justified Plaintiff in demanding the investigation which had just then taken place. It is clear, that the mere fact that the evidence did not sustain the charge could not be a breach of privilege. If there were reasonable grounds for making the charge, then the Plaintiff performed but a public duty in laying it before the Legislature. Before the committee the Plaintiff appears to have offered evidence to show the information he received at the Crown Land Office, and which, he alleged, justified him in putting forward the charge and bringing it under the notice of the House; but this evidence a majority of the committee appear persistently and determinately to have refused to permit to be given, and the House, without further evidence or trial, or even calling on Plaintiff for an explanation, as Lord *Denman* expresses it, "with one voice, accused, condemned and executed" the plaintiff in this proceeding.

I can see nothing whatever to justify this action of the House. They undertook to exercise judicial functions they clearly, under the authorities, did not possess. They had no power, for the cause alleged, to adjudge

Plaintiff guilty of a contempt, or breach of privilege, and subject him to the galling punishment of making a most humiliating apology, not as a member in his place in the House, but as a culprit at the bar of the House, with the doors of the House open; still less ought this to have been done without calling on Plaintiff for any explanation, and without any evidence, trial or investigation whatever of the offence of which they adjudged him guilty.

I think the verdict and judgment of the Court below right, and the damages, under the circumstances, moderate.

Strong and *Fournier*, J. J., concurred.

TASCHEREAU, J.:—

I must acknowledge the singularity of the position I occupy in the present case. If I decide in favor of the Appellants, I am consistent with myself, and I can safely say that my opinion is supported: 1st. By numerous judgments rendered in the same sense for the last seventy years without interruption in the Province of *Lower Canada*, now the Province of *Quebec*, by the highest court of law; 2nd. By several judgments rendered in *England* by the highest tribunal of the land; 3rd. By the judgments of the Supreme Court of the *United States of America* (1).

If, on the contrary, and on the strength of several judgments rendered in *England* overruling those hinted at by me as English decisions, I change my opinion, and am induced to reject the present appeal, I consider it would amount to a declaration on my part, that all our decisions in the Province of *Quebec*, as well as all the previous judgments rendered in *England* in the

(1) See *Anderson* v. *Dunn*, 6 Wheaton 204.

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same sense, were against law. This proposition I cannot admit willingly.

A short reference to the cases in which these judgments were rendered will certainly account for my fears of inconsistency with myself.

There were in February, 1832, at the city of *Quebec*, the two cases of the *Queen* v. *Tracey* and *Duvernay* (1), in which the Court of King's Bench unanimously decided, that the legislature of the then Province of *Lower Canada* possessed the power of committing for contempt in a case of libel by the press, and that this power was incident to that branch of the legislature (the Legislative Council) *ex necessitate rei*; that it had in itself the elements of its own preservation, did, in fact, possess those rights which are inherent to similar bodies, and without which it would be constantly exposed to contempt and destruction.

The same decisions as to the Province of *Quebec*, then *Lower Canada*, are to be found in the following cases as reported: 1st. *Exparte Louis Lavoie*, (2); 2nd. *Exparte Monk*, in the year 1817 (3); 3rd. The case of Mr. *Young*, in 1793; 4th. The case of *exparte Dansereau*, in 1875, in which case I sat as a member of the Court of Appeals of the Province of *Quebec* (4).

As to the English cases, I quote *Burdett* v. *Abbot* (5), and *Beaumont* and *Barrett* (6). But these last English cases were, to a certain extent, overruled by the decision of the Privy Council in the case of *Kielley* v. *Carson*, (7).

I, for one, have the greatest respect for all the decisions of the highest court of *England*, and should consider myself bound by the judgment in *Kielley* v.

(1) Stuart's Rep. 478.
(2) 5 L. C. R. 99.
(3) Stuart's R. 120.
(4) 19 L. C. Jur. 210.
(5) 14 East 1.
(6) 1 Moore P. C. C. 59.
(7) 4 Moore P. C. C. 63.

Carson, as one of the last leading decisions, were it not for a material difference I observe between that and the present case, which was one of contempt committed within the House, and during its sittings, and not one merely of contempt committed outside of the House. I infer this difference from the summary of the report and the reasons of Baron *Parke* in *Kielley* v. *Carson*, above mentioned.

The contempt complained of in the present case was committed within the House, and during its sittings. It was incumbent on the House, I apprehend, to notice the contempt, and it was accordingly done. The words made use of by the Respondent on the occasion in question were uttered by him as a member of the House, and were of such a character as to be derogatory to the honor of the House, and particularly to that of one of its members, who was accused by the Respondent of no less a crime than that of forgery. The House could at once pass a sentence of condemnation against him for using such language, so derogatory to its dignity, and so offensive to one of its members, and so calculated to disturb the proceedings of the assembly and to create disorder; but the House thought it more fitting to challenge the accusation by appointing a committee to enquire into and report on the circumstances of the case. The committee reported that the respondent had no grounds whatever to justify such an accusation, and ordered him to make an apology to the House, which, it is true, was a written one, and on his refusal to make the apology he was expelled from the House. Now, I do not think, that should our decision be against the Respondent, it would be contrary to that of the Privy Council in *Kielley* v. *Carson*, which was, as I said, for a contempt outside of the House. Had the House allowed this conduct of the Respondent to pass unchallenged, it would have exposed itself to the mockery of the public,

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it would have been a cruel treatment of one of its members, and exposed the future legislation of the Province to such a danger as to deter candidates for parliamentary honors from coming forward. The sentence of expulsion was not for a past or condoned offence, but for a continuing offence from the first moment of the Respondent's utterance of an unfounded accusation. It was a necessity for the House to resent the charge, and protect one of its members, after enquiry, which was, in fact, due to the Respondent himself, and to the member against whom it was preferred. So far, it seems evident to me, that the case of *Kielley* v. *Carson*, far from being adverse to the pretensions of the appellants, does, in fact, support them.

But a new feature, and, I may say, a great complication, has been brought into the case by the judgment of the Privy Council in *England* in the case of *Doyle* v. *Falconer* (1), which judgment is to the effect, that the Legislature of *Dominica* did not possess the power of punishing a contempt, even if committed in its presence and by one of its members. I am forced to submit to this judgment of the highest tribunal of *England* in *Doyle* v. *Falconer*. This judgment being the last on the subject is binding on this court, as much as the ruling in *Kielley* v. *Carson*, before its overruling by *Doyle* v. *Falconer* (2), would have been. I, therefore, declare, though most unwillingly, in favor of a confirmation of the judgment appealed from.

HENRY, J.:—

Whilst agreeing with the general conclusions arrived at by my learned brethren, but holding views in some respects different, I have considered it right to express them. The Law of Parliament is defined by

(1) L. R. 1 P. C. App. 328. (2) L. R. 1 P. C. App. 328.

Coke (1) and *Blackstone* (2), those eminent legal authorities, thus: "As every Court of Justice hath laws and customs for its direction, some the civil and canon, some the common law, others their own peculiar laws and customs; so the High Court of Parliament hath also its own peculiar law, called the *Lex et consuetudo Parliamenti.*" "This law," says *May*, in his treatise on the law, privileges, proceedings and usage of Parliament (3), "is admitted to be part of the unwritten law of the land, and as such, is only to be collected, according to the words of Sir *Edward Coke*, 'Out of the rolls of Parliament and other records, and by precedents and continued experience.'"

"The only method," says *Blackstone* (4), "of proving that this or that maxim is a rule of the common law, is by showing, that it hath always been the custom to observe it,' and "it is laid down as a general rule that the decisions of Courts of Justice are the evidence of what is common law." After quoting the foregoing, *May* says: "The same rule is strictly applicable to matters of privilege and to the expounding of the unwritten law of Parliament;" and adds, "but although either House may expound the law of parliament, and vindicate its own privileges, it is agreed that no new privilege can be created." As far back as 1704 it was resolved and agreed by the House of Lords and House of Commons:

> That neither Houses of Parliament have power, by any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of Parliament (1).

The *Lex et consuetudo Parliamenti*, by all the late decisions, have limits. They cannot be added to and *new* cases of privilege adjudged, even by the House of Com-

(1) 4 Ins. 14.
(2) 1 Bl. Com. 163.
(3) 3rd Ed., p. 60.
(4) 1 Com. 58, 71.
(2) 8 Grey's debates, 232.

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mons of *England*. If that body punished for an offence, not one by the law and custom of Parliament, and thereby created a new privilege, is it to be said that there is at the present day no judicial tribunal to give relief, and that the resolution of the House of Commons should be above judicial enquiry? I cannot so think, for such would be contrary to the principles laid down by several learned judges in *England*, and now generally accepted as the rule and law. If the warrant of a Speaker, under an order of the House for the arrest of a member, or other party, disclosed on the face of it the nature of an alleged contempt, all the later decisions of the judges in *England* insist upon the right of the courts to inquire whether the grievance was or was not a contempt under the law and customs of Parliament, and such decisions, most pointedly expressed, have been long submitted to by the House of Commons. Lord *Denman* and other eminent judges held this doctrine, and it is not now questioned, and in one of his highly learned and exhaustive judgments on this point, he says there is no power in *England* above the law. If, therefore, the House of Commons has jurisdiction as a court *only from the law and custom of Parliament, and the right to commit for a contempt is held to rest solely thereon*, whence came the right of the Local Legislature of a Province to try and adjudicate upon a matter of alleged contempt? It cannot be claimed, that what the House of Commons, after centuries of political contests, with the voice of the nation to back it, found it necessary to assume in the peculiar relations existing, in the shape of judicial functions, which the nation ratified as necessary to curb and control judges more immediately under the control of despotic sovereigns, should be at all necessary or proper in regard to Provincial Legislatures. Involved in the latest and most learned decisions of the judges in *England* may be

fairly assumed is the proposition, that the House of Commons depends solely on the law and custom of Parliament for its right to adjudicate for a contempt, and that, as a new privilege, it could not now be assumed. In the one case, the life of the Constitution of the country was often endangered, and might have been wholly lost, but for the assumption of this power by the House of Commons of *England*; in the other, no such consequences could arise. The Constitutions of the Provincial Legislatures were never subject to such perils. Derived from "Orders in Council" and "Instructions" to Lieutenant-Governors, and, of later years, from acts of Parliament, and the Provincial Judges being from the earliest times felt to be independent of executive interference, the same necessity never existed, as it did formerly in *England*, for a legislative balancing power over them.

It is claimed, as necessary to the proper discharge of their functions, that the Provincial Local Legislatures should have the right to adjudicate in regard to cases of alleged contempt in relation to those bodies; and the jurisprudence of the *United States* is referred to as a fitting guide to us; but the reasons that might be sound in regard to Congress and the State Legislatures do not at all justify the adoption of the same power by the Provincial Legislatures. While under the Constitution of the *United States* the General and State Legislatures are each, in its proper sphere, paramount, and have inherent constitutional rights and privileges, the Provincial Legislatures are now the creatures of an act of Parliament by which their functions are comparatively limited and confined to certain subjects, and which, by other acts of Parliament, may be abridged or altered, from time to time.

I cannot discover how any Provincial Assembly could obtain any right to exercise judicial functions, unless

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by legislation; for there are no laws or customs peculiar to each which would give the right by which an alleged contempt could be tried. Without receiving by legislation the same power as is exercised by the House of Commons, and without law or custom of Parliament of their own to warrant such a trial, how did they get it? I have tried in vain for any source from which it could have come.

It is, however, contended, that the power to try one of its own members, or others, for a contempt, is necessary to the due exercise of its functions by a Provincial Assembly. I confess I cannot see it. It is admitted on all sides that such Legislative Assembly can exercise the right of ejection of a member from the legislative hall, if necessary to the carrying on of debate or business, and may continue to exclude him so long as his presence is an obstacle to the exercise of the functions of the body. The body can, for like cause, remove every other impediment to its legitimate business, and if proceedings should be taken to recover damages for such ejection or removal, the justification will depend on the necessity. It is objected, however, that a member may *continue to obstruct*, and it would, therefore, be necessary to have him expelled or ejected for a given time. It is true, that such a contingency might arise, but the same might be apprehended to arise in other bodies where obstruction would be relatively as injurious as in a Provincial Assembly. In the numerous civic organizations throughout the Dominion it is not less necessary that obstructions by members, or otherwise, should be prevented, and the same may be said of church and other meetings where order is to be preserved. In none of these does the right exist to try a member, or another, for a contempt, and still there is no complaint that the functions of any of those bodies have been obstructed in consequence of the absence of

that power. The comparatively few cases that are found in Provincial and Imperial records as to Provincial cases would be a strong argument against the necessity for the exercise of the power to adjudicate upon charges of contempt. One of the most important principles underlying the successful and proper administration of justice is, that those who pass upon the facts, and those who expound the law, should be without interest or prejudice; and how, then, are such principles maintained when the same excited (it might be political) majority occupied at the same time the position of accusers and judges. I am told such is the case in the House of Commons in *England*; but I answer, first, that a body like the latter, numbering hundreds, drawn from the first-class men of the kingdom, actuated by the highest aspirations, and supported, resting on and reflecting, day by day, the *highest toned public opinion*, is not to be compared with a Provincial Assembly, drawn, as a rule, not from the ranks of first-class public men, and whose numbers, being comparatively small, may be expected to become more bitterly excited by political squabbles, and whose supporters on both sides, out of the Legislature, would, in many cases, subordinate their judgments to their political proclivities, and thus a suitable controlling public opinion could not safely be relied on. It is well understood that it is an anomalous power that is exercised by the House of Commons in *England*. It obtained it through the exigencies of stirring political events, running over centuries, no parallel to which can ever arise in any Province under the British Crown, and for which, therefore, neither a preventive or remedy, through a Provincial Assembly, will ever be necessary. The trial of contested elections has, after centuries, been withdrawn from Parliament in *England*, and also in *Canada*,

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and transferred to the ordinary legal tribunals because of the difficulty in obtaining in the former a disinterested and reliable tribunal. The parliamentary records of all countries exhibit ample proof of this. Those records exhibit, however, glaring cases of arbitrary and high-handed injustice to individuals whose humiliation it suited the interest of partizan majorities to procure. Public opinion in *England* long ago frowned down such proceedings, but, I fear, such a public feeling would be found totally inadequate therefor in many Provinces of the Empire for many years to come. I am, from these considerations, strongly of opinion, that to deny to Provincial Assemblies the power to adjudicate on cases of alleged contempts would be, if an evil, a much less one than might result from admitting it.

The case of *Kielley* v. *Carson* (1), referred to by the learned Chief Justice, to my mind, virtually settles this point. It is founded on principles previously expounded and approved, and which have continued to be approved and acted on ever since. I could not, if I would, run in the face of that judgment and the subsequent decisions in conformity with its principles. We might, under the law as now administered in *England*, consider the *nature* of the alleged contempt; and, I must confess, that were the *jurisdiction* of the Assembly sufficient, I would experience great difficulty in coming to the conclusion that the cause assigned was a sufficient one. I can hardly agree to the propositions that a member making, in his place, a charge against another member who is a public officer—even, if by accident a member of a Local Government—but failing in sustaining it before a tribunal selected at the instance of the accused to try it, would be guilty of a breach of privilege because of such failure; or, that the House,

(1) 4 Moore P. C. C. 63.

or a majority of it, composed as it might be of the political friends of the accused, on the report of two of a committee of three, which formed the tribunal before mentioned, resolving that such charge was made without sufficient inquiry, could legally require the accuser to adopt, and, at the bar of the House, read and make an apology to the House in certain words and terms prescribed; or, that his refusal to do so was a contempt of the House, and that he should be ejected from and kept out thereof until he informed the Speaker of the House that he was prepared to make that apology. A great deal might possibly be urged on both sides of the propositions just mentioned, but they are subordinate to the question of jurisdiction raised, and our decision as to that renders anything further respecting them unnecessary. I, therefore, agree that the appeal herein be dismissed with costs.

Appeal dismissed with costs.

Solicitor for Appellants: *Robert L. Weatherbe.*

Solicitor for Respondent: *Samuel E. Rigby.*