

19 OCT 1956

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF **44625**
NOVA SCOTIA.

BETWEEN

HONOURABLE WILLIAM S	FIELDING,
HONOURABLE J W	LONGLEY,
HONOURABLE CHARLES E	CHURCH,
HONOURABLE THOMAS JOHNSON, HONOURABLE DANIEL McNEIL, HONOURABLE COLIN F McISAAC, FORMAN HATFIELD, ARTHUR DRYSDALE, ALFRED P WILTON, GEORGE CLARKE, FREDERICK A LAWRENCE, CHRISTOPHER P CHISHOLM, JOHN McKINNON, JAMES D McGREGOR, AMBROSE M CORNEAU, ALBERT M HEMMON, JOHN A FRASER, JOSEPH MATHESON, RICHARD HUNT, ANGUS J McDONALD, JOSEPH McPHERSON, ABRAM A LEBLANC, WILLIAM LAW, WILLIAM ROCHE, ELIAKIM E TUPPER, and JOHN D SPERRY - - - - -	<i>Appellants</i>

AND

DAVID J THOMAS - - - - - *Respondent.*

CASE OF THE APPELLANTS.

1. This is an Appeal from an Order of the Supreme Court of Nova Scotia, dated the 2nd day of December, 1893, dismissing the Appellants' application for an Order that the Verdict and Judgment entered for the Plaintiff in the action might be set aside, and that Judgment should be entered for the Appellants.

APPELLANTS' CASE.

2. There was little or no dispute at the trial as to the material facts, which were as follows:—Before and at the time of the matters complained of, the Respondent was Mayor of the town of Truro, in the Province of Nova Scotia. The Appellant, Frederick A Lawrence, was a member of the House of Assembly of Nova Scotia, and was and had for some six years been Recorder and Stipendiary Magistrate of the said town. While the Appellant, Frederick A Lawrence, was such Recorder and Stipendiary Magistrate, the Legislature of the said province had passed certain Acts whereby, amongst other things, his salary as such Recorder was increased. Thereupon the Town Council of the said town exhibited Articles of Complaint against the said Appellant, Frederick A Lawrence, charging him with misbehaviour in his said office of Recorder, and in his capacity of a member of the Legislature of Nova Scotia, and in particular, amongst other things, charging him with having promoted, introduced, and passed, or caused to be promoted, introduced, or passed, laws and statutes, or conspired with others for such purpose, whereby the salaries of the said Recorder and Stipendiary Magistrate were sought to be fixed at the sum of at least \$200 each.

The said Articles of Complaint were dated 8th March, 1892.

3. The Respondent afterwards caused or suffered to be printed a Petition of the said Town Council, dated the 5th April, 1892, and signed by the Respondent as Mayor, and by certain other members of the said Town Council, addressed to the Honourable the Members of the said House of Assembly, which Petition contained statements reflecting strongly upon the conduct of the Appellant, Frederick A Lawrence, as such Recorder, and in his capacity of a member of the said Legislature, and to such Petition a copy of the said Articles of Complaint were annexed. The Respondent, under such circumstances as to make him responsible for the publication thereof, and during the Session of the said House of Assembly, caused or suffered the said Petition, with the said Articles of Complaint annexed thereto, or copies thereof, to be forwarded to a member or members of the said House of Assembly for the purpose of being presented to the said House.

4. The said Petition having been so forwarded and published in manner aforesaid, the Appellant, Frederick A Lawrence, on the 13th April, 1892, moved in the said House a resolution that the Respondent, by such printing and delivery of the said Petition as aforesaid, had been guilty of a breach of the privileges of the said House, and that the Respondent should be summoned to attend at the Bar of the said House on the 18th April following. The said resolution was, after a debate thereon, agreed to on the next day, the 14th April, and a Summons, dated the 14th April, under the hand of the Defendant, Michael J Power, the Speaker of the said House, requiring the Respondent to attend at the Bar of the said House on 18th April, was served on the Respondent on the 16th April.

5. On the 18th April the Respondent attended at the Bar of the said House pursuant to the said Summons, and after certain clauses of the Petition

had been read, the said Speaker intimated to the Respondent that he was prepared to hear what the Respondent had to say in his defence. Record, p. 64.

The Respondent thereupon asked that the hearing of his case might be postponed, and that he might have the assistance of Counsel. It was then resolved that the Respondent should appear at the Bar of the said House on the 20th April to answer the charge that had been made against him, and that the question of his having Counsel did not require to be determined at that time. The Respondent was then called in and informed by the Speaker of the said resolution. Record, p. 65.

10 6. On the 20th April, the Respondent attended and was called in to the Bar of the said House, and was asked by the Speaker what he had to say with respect to the charges preferred against him. He replied that he desired to be heard and appear by Counsel. He was then ordered to withdraw, and remain in attendance. The House then resolved "That David J Thomas, having
" been allowed time to consult Counsel as to his position, be now required to
" answer the charge read to him on Monday, 18th inst., and that the House after
" hearing his answer will consider his application for permission to have Counsel
" at the Bar of the House." Record, p. 65.
Record, p. 65, l. 22-26.

20 7. The Respondent was then called in a second time, and upon the said resolution being read to him, he read his answer as follows:—

" While respectfully protesting against the jurisdiction of this Honourable House and the procedure therein, I appear in accordance with the terms of the summons served upon me on Saturday last, the 16th inst., and the Order of this House passed on Monday last, the 20th inst., directing me to appear here to-day. Record, p. 65, l. 38
to p. 66, l. 10.

" The acts which form the subject of the complaint contained in the said summons, were done by me in good faith in my capacity as mayor of the town of Truro, and are not libellous.

30 " Upon being informed that there was some doubt as to whether the Petition in question with the documents attached to it conformed to the rules of parliamentary practice, I caused it to be withdrawn.

" I am advised, and believe that I am not chargeable with any conduct which would justify interference on the part of this Honourable House with my liberty or other rights, and I respectfully beg to be forthwith excused from further attendance."

He was then ordered to withdraw and remain in attendance, and he withdrew.

8. The said House then passed the following resolution:—

40 " That this House while fully cognizant of its own authority, under which David J Thomas has appeared at the bar of the House, and prepared on all proper occasions to exercise it, does not deem the offence committed by Mr. Thomas of sufficient gravity to call for any large exercise of authority, that, therefore, Mr. Thomas be reprimanded for the breach of privilege which he has committed, and that such reprimand be given by the reading of this resolution to Mr. Thomas by the Speaker." Record, p. 66, l. 18-25.

8. Upon a further resolution of the said House, the Speaker then ordered that the Respondent should be again called in by the Sergeant-at-Arms (who was the Defendant A F Halliburton).

Record, p. 66, l. 34.

The Sergeant-at-Arms accordingly communicated such order to the Respondent who still remained in attendance, but he refused to obey such order, and left the precincts of the House.

Record, p. 67.

Upon the Respondent's said refusal and leaving being communicated to the Speaker by the Sergeant-at-Arms, the House resolved and ordered that the Respondent should be taken into the custody of the Sergeant-at-Arms, and that the Speaker should issue his warrant accordingly.

10

Record, pp. 75, 76.

9. On the following day, the 21st April, the Speaker issued his warrant, under his hand and seal, commanding the Sergeant-at-Arms forthwith to apprehend and take into custody the Respondent, and to bring him before the Bar of the said House to be further dealt with.

Record, p. 37.

10. On the 22nd April the Respondent was arrested by the Sergeant-at-Arms, and the Defendant Power, who was a constable at a place called De Bert, near Truro, and was thence taken by the Sergeant-at-Arms in his custody to the Bar of the said House, when certain questions were put and answers made by him. Ultimately the said House resolved that the Respondent should withdraw in custody of the Sergeant-at-Arms, and should be detained in such custody, and should be brought to the Bar of the said House at 9.30 p.m. on 23rd April to be there dealt with as the House should direct, and the Speaker ordered the Sergeant-at-Arms to act accordingly.

Record, pp. 67-70.

20

Record, pp. 70, 71.

Record, pp. 38, 39.

11. The Respondent was detained in custody by the Sergeant-at-Arms until 9.30 p.m. on the 23rd April, when he was again brought by the Sergeant-at-Arms to the Bar of the said House. He was then asked whether he had any statement to make before the House proceeded to adjudicate upon the charge of contempt against him then pending before the House, and replied in the negative.

Record, p. 71.

Record, p. 71, l. 37.

He was then ordered to withdraw, and the House resolved "that the said 30
" David J Thomas for his said offence be committed to the common jail
" of the county of Halifax, in the City of Halifax, for the space of forty-eight
" hours.

" Provided, however, that in the event of this Legislature being prorogued
" prior to the expiration of said term of forty-eight hours, the said term of
" imprisonment shall on such prorogation forthwith determine.

" That Mr. Speaker do forthwith issue his warrant accordingly, and in the
" meantime the said David J Thomas remain in the custody of the
" Sergeant-at-Arms."

Record, p. 72.

The Repondent was then again brought to the Bar of the House by the 40
Serjeant-at-Arms, and such resolution was read to him, and he was then
ordered to withdraw in custody of the Serjeant-at-Arms. The Speaker on the
same day issued, pursuant to the said resolution, another warrant under his

Record, p. 73.

hand and seal commanding the said "Alfred F Halliburton, Serjeant-at-Arms as aforesaid, to forthwith convey the said David J Thomas, unto the said common jail of the County of Halifax, in the City of Halifax, and there to deliver him up into the custody of the keeper thereof, and to command you, the said Thomas Chambers, the said keeper to receive and detain the said David J Thomas in the said jail for the space of forty-eight hours. Provided, however, that in the event of the Legislature of Nova Scotia being prorogued prior to the expiration of the said term of forty-eight hours, you shall on such prorogation forthwith discharge the said David J Thomas, and for so doing this shall be your sufficient warrant."

13. Pursuant to the said warrant, the Respondent was accordingly conveyed by the Serjeant-at-Arms to the said common jail, and was there detained by the said Thomas Chambers (a Defendant) the keeper thereof, until 25th April, when he was discharged upon a Writ of Habeas Corpus, issued by the Supreme Court of the said province.

14. The Appellants respectively were present at the passing of and voted for each of the resolutions above referred to.

15. The action was commenced by the Respondent as Plaintiff on the 27th April, 1892, against the Appellants, and the said Alfred F Halliburton, the Honourable Michael J Power, Thomas A Chambers and Nicholas Power. By his Statement of Claim, the Respondent set out the arrest and imprisonments hereinbefore described, and claimed to recover damages in respect thereof, as for trespass, assault and unlawful imprisonment.

The Defendants severed in their Defences. Four several Defences were put in, viz. :—(1) by the Appellants other than the said J W Longley (2) by the said J W Longley (3) by the said Honourable Michael J Power and Alfred F Halliburton (4) by the said Thomas A Chambers and Nicholas Power.

16. The Defence of the Appellants, other than the said J W Longley, was in substance as follows :—By the first five paragraphs, they traversed the several acts of assault and trespasses complained of. By the 6th paragraph, they pleaded the facts as or to the effect hereinbefore set out, and that under and by virtue of a Statute of Nova Scotia Revised Statutes, 5th Series, Chapter 3, the said House of Assembly held, enjoyed, and exercised the like privileges, immunities, and powers, as were enjoyed by the House of Commons, of Canada, and by the House of Commons, of the United Kingdom of Great Britain and Ireland. By the 7th paragraph, they pleaded that under and by virtue of Sections 29, 30, and 33, and other sections of the said statute, the said House of Assembly was a Court of Record, and had the rights and privileges of a Court of Record to punish insults to or libels upon members of the said House during the Session of the Legislature, and that the acts and matters complained of were done by the said House of Assembly in the exercise of such rights and privileges as aforesaid. By the 8th paragraph, they pleaded

that the acts and matters complained of, were done by the said House of Assembly in its inherent right and power as a Court of Record, to punish for such contempt as aforesaid. By the 9th paragraph, they pleaded their privilege as judges of the said Court of Record, so constituted under the said Statute. And by paragraph 10, they pleaded Section 26 of the said Statute, whereby a member of the said House of Assembly is exempt from, *inter alia*, any civil action or damages for any matter or thing brought by him by petition, bill, resolution, motion or otherwise, before such House.

Record, p. 11.

The defence of the Appellant, J W Longley, was similar to that of the other Appellants. 10

Record, pp. 18,20.

17. The other two Defences contained, amongst other things, in favour of the Defendants Michael J Power and Alfred F Halliburton, and in favour of the Defendants Thomas A Chambers and Nicholas Power, a plea of an Act of the Legislature of the Province of Nova Scotia, passed on the 30th April, 1892, entitled "An Act to amend Chapter 3 of the Revised Statutes of the Composition, Powers and Privileges of the House," whereby the Defendants above in this paragraph referred to were exonerated from any liability in respect of the acts and matters complained of in the action.

Record, p. 28.

18. The Plaintiff delivered four several Replies to the said four Defences. By his Reply to the Defence of the Appellants, other than the Appellant Longley, the Respondent joined issue, and objected that the several sections of the statute, in the said Defence referred to were *ultra vires*; that the said Summons dated the 14th April, and the said Warrant dated the 21st April, and the said Warrant dated the 23rd April, were respectively insufficient in law, and irregular and void, and not authorised by law, and issued without jurisdiction; that the said Warrants respectively did not disclose the offence, or any offence for which the Respondent was to be arrested; that the said House acted without jurisdiction because the Respondent was prevented from making a full answer, and from having counsel to assist him; that the said House had no jurisdiction to adjudicate upon the said libel or to commit the Respondent to the said common jail. He further denied that the said House was sitting or acting as a Court of Record, and he alleged that on the 20th April he denied the jurisdiction of the said House. He also stated the circumstances under which the alleged libel was published, and justified the said libel, alleging, at the same time, that it was not published by him; that the meaning was not as alleged; and that the occasion was privileged. And he lastly alleged that the said House had adjudicated upon the matters referred to *ex parte*, and without notice to him. 30

Record, p. 35.

19. The action came on for trial before Mr. Justice Townshend with a Jury on the 15th June, 1892, and following days, when the facts were proved substantially as above stated. 40

Record, p. 52.

Before the close of the trial, the learned Judge ruled that the action must be dismissed as against the Defendants M J Power, A F Halliburton, T Chambers, and Nicholas Power, in consequence

of the said act of the Legislature of Nova Scotia exonerating them from liability. As against the Appellants, the learned Judge, after much hesitation, ruled that the provisions of the said Statute, under which the Appellants claimed to have proceeded (Revised Statutes, 5th series, ch. 3), were not within the competency of the Legislature of Nova Scotia, and he left to the Jury the question only of the amount of damages, which the Jury assessed at \$200, and Judgment was accordingly entered for the Respondent for that sum and costs.

Record, p. 56.

Record, p. 58.

The charge of the learned Judge to the Jury will be found in the Record.

Record, pp. 53-58.

20. The Appellants afterwards moved the Supreme Court of Nova Scotia in banco, for an Order setting aside the said verdict and Judgment, and for an Order that Judgment should be entered for the Appellants, and the action dismissed with costs. The grounds of such Appeal will be found stated in the Notice of Appeal.

Record, pp. 58, 59, 60.

There was also a cross Appeal by the Respondent.

21. On the 2nd December, 1893, the Supreme Court (McDonald, C. J., and Graham, E. J., dissentientibus Ritchie, J., and Weatherbe, J.,) made an Order dismissing the Appeal with costs.

The Judgment of Graham, E. J. (in which McDonald, C. J., concurred), was to the effect that the said provisions of the Statute Revised Statutes, 5th series, ch. 3, were *ultra vires* the Provisional Legislature, and that the indemnity clause, section 26, did not apply. Ritchie, J., was for allowing the Appeal, on the ground that the said Statute was not *ultra vires*, and further, that the said House was sitting as a Court of Record, trying a matter within its jurisdiction, and that the members accordingly could not be sued for acts done by them in their judicial capacity. Weatherbe, J., thought that the said Statute should be construed as empowering the said House to deal with charges of crime only as an incident of protecting members in their proceedings; that, so construed, it was not *ultra vires*, and was applicable to the proceedings in question.

Record, p. 89.

Record, p. 97.

22. Afterwards, on the 7th August, 1894, Her Majesty in Council was pleased, upon the Petition of the Appellants, to grant to them special leave to enter and prosecute the present Appeal.

23. The Appellants submit that the Judgment of the said Court is erroneous, and that the verdict of the 15th June, 1892, should be set aside, and a verdict entered for the Appellants, and that the final Judgment or Order of the Supreme Court, dated the 2nd December, 1893, should be set aside, and that Judgment should be entered for the Appellants, for the following amongst other reasons.

REASONS.

1. Because the said Assembly has power to commit for contempt committed in face of the Assembly, and the Respondent was guilty of such contempt.

2. Because the provisions of the Revised Statutes of Nova Scotia, chapter 3, sections 20 to 40, inclusive, are not *ultra vires* of the Legislature of Nova Scotia.
3. Because, even apart from the said Statute, the House of Assembly has the powers necessary for carrying on its business as such, including the powers of punishing for contempt committed in face of the Assembly.
4. Because the said Legislature has all the privileges, immunities, and powers of the House of Commons of Canada, and of the House of Parliament of the United Kingdom 10 of Great Britain and Ireland.
5. Because, by the Statute of the Imperial Parliament, 28 & 29 Vic. C. 63, sec. 5, the right of representative Colonial Legislatures to make laws respecting their own constitution and powers was distinctly conferred upon them, and such right has not been taken away from them by the Statute of the Imperial Parliament, 30 Vic., C. 3.
6. Because by section 92 of the said Statute of the Imperial Parliament, 30 Vic., ch. 3, exclusive right is conferred on the Provincial Legislature to amend the constitution of 20 the province, to make laws affecting property and civil rights in the Province, and to impose punishment for enforcing any law of the province made in relation to any matter enumerated in sec. 92 of the said Statute.
7. Because sections 20 to 40 of chapter 3 of the Revised Statutes of Nova Scotia, fifth series, are amendments of the constitution of the province within the meaning of section 92 of the said Statute 30 Vic. c. 3.
8. Because the right of the said House of Assembly to pass laws enabling it to commit for contempt, and its powers to 30 commit for contempt are preserved by section 129 of the Statute of the Imperial Parliament, 30 Vic. c. 3.
9. Because the Judgment of the Supreme Court is wrong and the verdict of the Jury should be set aside, and Judgment should be entered for the Appellants.

R. B. FINLAY.

J. C. LEWIS COWARD.

In the Privy Council.

*On Appeal from the Supreme Court of Nova
Scotia.*

BETWEEN

FIELDING & OTHERS - *Appellants*

AND

DAVID J THOMAS - *Respondent.*

APPELLANTS' CASE.

HILL, SON & RICKARDS,

40, Old Broad Street, E.C.,

Solicitors for the Appellants.