

In the Privy Council.

No. 72 of 1894.

UNIVERSITY OF LONDON
W.C.1

19 OCT 1956

INSTITUTE OF ADVANCED
LEGAL STUDIES

11624

ON APPEAL
FROM THE SUPREME COURT OF NOVA SCOTIA.

BETWEEN

FIELDING AND OTHERS - - - - - *Appellants*

AND

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

RECORD OF PROCEEDINGS.

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RECORD OF PROCEEDINGS.

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In the Privy Council.

No. 72 of 1894.

ON APPEAL
FROM THE SUPREME COURT OF NOVA SCOTIA.

BETWEEN

FIELDING AND OTHERS - - - - - *Appellants,*
AND
DAVID J. THOMAS - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

A. No. 4857.

In the Supreme Court.

1892.

Between

David J. Thomas - - - - - Plaintiff,
and

Alfred F. Haliburton, Honorable Michael J. Power,
Honorable William S. Fielding, Honorable J.
Wilberforce Longley, Honorable Charles E. Church,
Honorable Thomas Johnson, Honorable Daniel
McNeil, Honorable Colin F. McIsaac, Forman
Hatfield, Arthur Drysdale, Alfred P. Welton, George
Clarke, Frederick A. Lawrence, Christopher P.
Chisholm, John McKinnon, James D. McGregor,
Ambrose M. Comeau, Albert M. Hemeon, John A.
Fraser, Joseph Matheson, Richard Hunt, Angus J.
McDonald, Joseph McPherson, Abram A. Le Blanc,
William Law, William Roche, Eliakim E. Tupper,
John D. Sperry, Thomas A. Chambers, and Nicholas
Power - - - - - Defendants.

RECORD.

No. 1.
Statement of
Claim, dated
10th May
1892.

Writ issued the 27th day of April 1892.

30

20

RECORD.

Statement of Claim.

No. 1.
Statement of
Claim, dated
10th May
1892—con-
tinued.

The Plaintiff says:—

1. That he was at the time of the trespasses hereinafter alleged the Mayor of the Town of Truro.

2. That the Defendants on the 22nd day of April, 1892, at Belmont in the county of Colchester, assaulted and beat the Plaintiff.

3. That the Defendants on the 22nd day of April 1892, at Belmont in the county of Colchester assaulted and beat the Plaintiff and unlawfully imprisoned him for the space of four days.

4. That the Defendants on the said 22nd day of April at Belmont in the county of Colchester assaulted and beat the Plaintiff and unlawfully imprisoned him and conveyed him by force to Truro, and there imprisoned him for the space of three hours: to wit, until the hour of six o'clock or thereabouts in the afternoon of said day, when the Defendants took him by force to the Intercolonial Railway at Truro aforesaid, and there assaulted and beat him, and with force and violence put him on board a railway train and conveyed him to Halifax aforesaid, and there confined and imprisoned him in the Albion Hotel till nine of the clock in the evening of the 23rd day of April aforesaid, when the said Defendants forcibly conveyed him to the House of Assembly of Nova Scotia at Halifax aforesaid and there unlawfully imprisoned him till about the hour of half-past twelve of the clock at midnight when the Defendants, with the assistance of others forcibly and illegally conveyed the Plaintiff to the common gaol of the county of Halifax, and there falsely and illegally imprisoned him for the space of two days until he was discharged from said custody by an order of the Supreme Court made herein on the 25th day of April aforesaid.

5. That the Defendants Alfred F. Haliburton and Nicholas Power, acting by the orders and directions of all the other Defendants herein, save Thomas A. Chambers, did and committed all the acts and trespasses set forth in paragraph 4.

The said Thomas A. Chambers acting by the orders and directions of all the other Defendants unlawfully received the Plaintiff into his custody at the said gaol at Halifax at or about midnight on the said 23rd day of April and there unlawfully detained and imprisoned the said Plaintiff for the space of two days until the Plaintiff was discharged from the said custody by order of the Supreme Court aforesaid.

6. In consequence of the illegal acts set out in the foregoing paragraphs, to wit,—Numbers 2, 3, 4, and 5 the Plaintiff suffered great pain in mind and body and was injured in his credit, person and circumstances.

Particulars of Damages.

To costs and expenses incurred in obtaining release under Habeas Corpus	-	-	-	-	\$500	00
To loss of time and business	-	-	-	-	100	00
To cash disbursed, expenses incurred, etc.	-	-	-	-	50	00
					<u>650</u>	<u>00</u>

RECORD.

No. 2.
Particulars
of Damages,
dated 10th
May 1892.

The Plaintiff claims fifty thousand (\$50,000) dollars damages.

Place of trial—Truro, in the county of Colchester.

Delivered this 10th day of May, 1892.

10

WILLIAM McDONALD,
Solicitor for Plaintiff.

Defence of the Defendants other than Alfred F. Haliburton, Michael J. Power,
Thomas A. Chambers, Nicholas Power and J. W. Longley.

No 3.
Defence
of certain
Defendants,
dated 24th
May 1892.

1. These Defendants admit the allegations contained in the first paragraph of the Statement of Claim.

2. As to the second paragraph these Defendants deny that on the 22nd day of April, 1892, or at any other time, they assaulted or beat the Plaintiff at Belmont in the county of Colchester, or elsewhere.

20 3. As to the third paragraph, these Defendants deny that on the 22nd day of April, 1892, or at any other time, at Belmont, aforesaid, or elsewhere, they assaulted or beat the Plaintiff, or imprisoned him for the space of four days, or at all.

30 4. As to the fourth paragraph of the Statement of Claim, these Defendants deny that on the 22nd day of April, 1892, or at any other time, at Belmont, aforesaid, or elsewhere, they assaulted or beat the Plaintiff, or imprisoned him, or conveyed him to Truro or elsewhere, or imprisoned him for the space of three hours, or at all. And they deny that they took the Plaintiff to the Intercolonial Railway at Truro, aforesaid, or elsewhere, and they deny that they there, or elsewhere, assaulted or beat the Plaintiff; and they deny that they put him on board a railway train, and they deny that they conveyed him to Halifax, aforesaid, or elsewhere, and they deny that they conveyed the Plaintiff to the House of Assembly at Halifax or to any other place; and they deny that they imprisoned the Plaintiff till about the hour of half-past twelve of the clock at midnight or at all, and they deny that they conveyed the Plaintiff to the Common Jail of the county of Halifax, or elsewhere, and they deny that they imprisoned the Plaintiff in the said county jail, or elsewhere, for the space of two days, or at all; and they deny that the Plaintiff was discharged from custody by an order of the Supreme Court.

RECORD.

5. As to the fifth paragraph they say that they deny each and all of the statements contained therein.

No. 3.

Defence
of certain
Defendants,
dated 24th
May 1892—
continued.

6. These Defendants as to all the paragraphs of the Plaintiff's Statement of Claim say :—

(a) That under and by virtue of Chapter 3 of the Revised Statutes, fifth series, entitled, "Of the Composition, Powers and Privileges of the House" and under, and by virtue of Section 20 of said chapter, the House of Assembly of the Province of Nova Scotia holds, enjoys and exercises such and the like privileges, immunities and powers as are held, enjoyed and exercised by the House of Commons of Canada and by the House of Commons of the United Kingdom of 10
Great Britain and Ireland.

(b) That a session of the Legislature of Nova Scotia was held in the year 1892, which said session began in the month of February, 1892, and ended on the 30th day of April, 1892, and these Defendants were then members of said House of Assembly.

(c) That during the said session of the said Legislature, the Plaintiff David J. Thomas wrote and printed and published a libel upon and reflecting on the Members of the said House of Assembly and printed the same and delivered the same to a member of the said House of Assembly, and caused the same to be printed and delivered to members of the said House of Assembly for the 20
purpose of being read in and presented to the said House of Assembly.

(d) The said libel was so written, printed and published of, and concerning Frederick A. Laurence, who then was, and still is a member of the said House of Assembly, and of and concerning other members of the said House, and the said libel was and is an insult to the said Frederick A. Laurence and the other members of the said House of Assembly, and was so printed and published by the said David J. Thomas and was sent and delivered by the said David J. Thomas to the said members of the said House during the said session of the Legislature. The said libel is in the words and figures following :—

"After the Council had, by corporate resolution, fixed the salaries of 0
Recorder, and Stipendiary Magistrate of the said town at \$50 per annum for the year 1891, the said F. A. Laurence (meaning the said Frederick A. Laurence) wilfully, wrongfully and in contempt of the said Council and Corporation, promoted, introduced and passed, or caused to be promoted, introduced and passed, laws and statutes (meaning laws and statutes of the Province of Nova Scotia) or conspired with others (meaning the members of the said House of Assembly) for said purpose, whereby the salaries of said Recorder and Stipendiary Magistrate were fixed at the sum of at least \$200 each, thereby wrongfully attempting to deprive said Council and Corporation of \$350 per annum.

"After the said Council and Corporation had by corporate resolutions, as 40
it was their duty and lawful right to do, fixed the salary of H. T. Laurence, the Inspector of License of Truro aforesaid for 1891 at \$75 per annum the said F. A. Laurence, (meaning the said Frederick A. Laurence) wilfully, wrongfully and in contempt of said Council and Corporation, promoted, introduced and passed, or procured to be promoted, introduced and passed or conspired with others (meaning the members of the said House) for said purpose, laws and statutes (meaning laws and statutes of the Province of Nova Scotia) whereby

the salary of the said Inspector of Licenses was sought to be fixed at the sum of at least \$200, thereby, wrongfully attempting to deprive the said Council and Corporation of the sum of \$125 per annum."

(e.) That on the 14th day of April, 1892, such proceedings were duly had before the House of Assembly, that the said House of Assembly made and passed the following resolution of and concerning the said David J. Thomas in respect of the said printing and publication by him of the said libel, which said printing and publication were a breach of the privileges of the said House of Assembly and for which resolution these Defendants voted.

RECORD.

No. 3.

Defence
of certain
Defendants,
dated 24th
May 1892—
continued.

10 "Whereas David J. Thomas, of Truro, in the County of Colchester, with other persons has caused to be published a libel reflecting on a number of members of this House by having the same printed and delivered to a member of this House, for the purpose of having the said libel read in or presented to this honourable House.

"Therefore resolved that the said David J. Thomas of Truro, aforesaid having caused the said libel reflecting on a member or members of this House to be printed and delivered to a member of this House for the purpose of being read in or presented to this honourable House is guilty of a breach of the privileges of this House.

20 "Ordered that the said David J. Thomas be summoned to attend at the bar of this House on Monday the 18th day of April instant at the sitting of this House on that day."

(f) That therefore the Speaker of the said House of Assembly in pursuance of the said resolution duly issued his summons to the said David J. Thomas commanding him to attend at the bar of the said House of Assembly on Monday the 18th day of April at the sitting of the said House of Assembly on that day and the said summons was duly served upon the said David J. Thomas.

30 (g) On the said 18th day of April instant the said David J. Thomas appeared at the bar of the said House of Assembly and asked for delay to answer the said charges until Wednesday, April the 20th 1892, which said delay was granted.

(h) On the said 20th day of April, 1892, the said David J. Thomas again appeared at the bar of the said House of Assembly and admitted the publication and printing of the said libel and was then ordered by the said House to withdraw and remain in attendance awaiting the pleasure of the said House and the said David J. Thomas then accordingly withdrew and remained in attendance.

(i) That thereafter on the same day the said House of Assembly duly made and passed the following resolution:—

40 "That this House while fully cognizant of its own authority and prepared to exercise it when necessary, does not deem the offence of Mr. Thomas of sufficient gravity to call for any exercise of such authority. That therefore David J. Thomas be reprimanded for his conduct and that such reprimand be given by the reading of this resolution to him by Mr. Speaker. The Defendants voted for the said resolution."

(j) That the said last named resolution was thereupon by order of the House communicated to the said David J. Thomas within the precincts of the said House by the Sergeant-at-Arms of the said House and the said David J. Thomas then being and remaining in attendance upon the said House under the

RECORD.
 ———
 No. 3.
 Defence
 of certain
 Defendants,
 dated 24th
 May 1892—
continued.

order of the said House and within the precincts of the said House was directed and ordered by the said House to return to the bar of the said House in order that the said David J. Thomas should be reprimanded by the Speaker in pursuance of the said last named resolution.

(k) The said David J. Thomas so remaining in attendance upon the said House under its said order, and being then and there within the precincts of the said House, wilfully in contempt of the said House, refused to obey the said order and resolution of the said House and to remain further in attendance, or to return to the bar of the said House, and in wilful defiance of the said order and resolution, left the precincts of the said House and thereby became and was guilty of a contempt of the said House. 10

(l) On the same day, upon due proof to the said House of the said contempt so committed by the said David J. Thomas, the said House passed and made the following resolution:—

“ That on Thursday the 14th day of April instant, this House passed a certain resolution adjudging David J. Thomas, of Truro, in the county of Colchester, guilty of having published a libel upon a member or members of this House during the session of the Legislature.

“ That the said David J. Thomas, was ordered to appear at the bar of the House on Monday the 18th day of April instant. 20

“ That on the said 18th day of April, the said David J. Thomas appeared at the bar of the House in obedience to the said order and asked that time be granted to him to make a statement to the House.

“ That the House thereupon ordered the said David J. Thomas to appear at the bar of the House on Wednesday, the 20th day of April, instant.

“ That the said David J. Thomas appeared at the bar of the House this day in obedience to the said order of the House and made a statement respecting said libel.

“ That after making such statement, the said David J. Thomas was ordered by the House to withdraw and remain in attendance. 30

“ That the House thereupon proceeded to consider the statement of the said David J. Thomas and came to a certain resolution thereon and in respect of the said libel.

“ That the Sergeant-at-Arms was thereupon directed by the House to call the said David J. Thomas to the bar of the House.

“ That the Sergeant-at-Arms communicated the said order to the said David J. Thomas and the said David J. Thomas, in contempt of the House, refused to obey such order, and left the precincts of the House.

“ That the said David J. Thomas be taken into the custody of the Sergeant-at-Arms attending this House and that Mr. Speaker do issue his warrant accordingly.” The Defendants voted for the said resolution. 40

(m) The Speaker of the said House of Assembly thereafter in accordance with the said resolution, issued a warrant, directed to the Sergeant-at-Arms of the said House, for the arrest of the said David J. Thomas, and the said Defendant, Nicholas Power, by the command and direction of the said Speaker, and of the said Sergeant-at-Arms and under the authority of the said warrant,

arrested the said David J. Thomas at Belmont, aforesaid, and brought him to the bar of the said House.

(n) The said Defendant Nicholas J. Power then was a constable and police officer in the city of Halifax aforesaid and as such was required by the Speaker of the said House and by the said Sergeant-at-Arms to so assist in the execution of the said warrant.

(o) On the 22nd day of April, 1892, the said David J. Thomas having been duly arrested under the said warrant appeared at the bar of the said House in custody of the said Sergeant-at-Arms and admitted his said disobedience and contempt of the said resolution of the said House on the 20th day of April, 1892.

(p) The said House then resolved that the said David J. Thomas should withdraw in custody of the said Sergeant-at-Arms and that he be retained in such custody and be brought to the bar of the said House at half-past nine o'clock p.m. on the 23rd day of April being more than 24 hours after the time of the passing of the said resolution. The Defendants voted for the said resolution.

(q) The said David J. Thomas accordingly withdrew in the custody of the Sergeant-at-Arms and was brought to the bar of the House in the custody of the said Sergeant-at-Arms at the time mentioned in the said last-mentioned resolution, whereupon the said David J. Thomas still persisted in his contempt and in his refusal to explain or apologize therefor and the said House accordingly made and passed the following resolution, for which the Defendants voted:—

“Whereas, David J. Thomas on Wednesday last the 20th day of April instant, whilst in attendance on the House was guilty of a contempt of the House, committed in the face of the House.

“Resolved that the said David J. Thomas for his said offence he committed to the common jail of the county of Halifax, in the city of Halifax for the space of 48 hours.

“Provided, however, that in the event of this Legislature being prorogued prior to the expiration of said term of 48 hours the said term of imprisonment shall on such prorogation forthwith terminate.

“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.”

(r) In pursuance of the said last named resolution the Speaker of the said House did on the said 23rd day of April 1892 make and issue his warrant under his hand and seal in the words and figures following:—Directed to Alfred F. Haliburton who is the Sergeant-at-Arms of the said House and to the Defendant Thomas A. Chambers who is the keeper of the common jail at Halifax aforesaid.

“Province of Nova Scotia.

“House of Assembly.

“To Alfred F. Haliburton, Sergeant-at-Arms of said House, and to Thomas Chambers, the Keeper of the common jail of the city and county of Halifax.

p. 3926.

B

RECORD.

No. 3.
Defence
of certain
Defendants,
dated 24th
May 1892—
continued.

RECORD.

No. 3.
Defence
of certain
Defendants,
dated 24th
May 1892—
continued.

“Whereas, David J. Thomas, of Truro, in the county of Colchester, was by resolution of the said House of Assembly, passed this day, adjudged guilty of a contempt of the said House, committed in the face of the said House, and for said offence was adjudged to be committed to the common jail of the county of Halifax, in the city of Halifax, for the space of 48 hours, provided, however, that in the event of the Legislature of Nova Scotia being prorogued prior to the expiration of said term of 48 hours, imprisonment should in such prorogation determine.

“And whereas, I, the said undersigned Speaker of the House of Assembly was, by said resolution, directed to forthwith issue my warrant of commitment accordingly. 10

“These are, therefore, to command you, the said Alfred F. Haliburton, Sergeant-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 there to deliver him up unto 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 into said jail for the space of 48 hours, provided however, that in the event of the Legislature of Nova Scotia being prorogued prior to the expiration of the said term of 48 hours, you shall on such prorogation forthwith discharge the said David J. Thomas and for so doing, this shall be your sufficient warrant. 20

“Given under my hand and seal at the City of Halifax, in the county of Halifax, aforesaid, this 23rd day of April. A.D., 1892.”

(Sgd.) MICHAEL J. POWER.
Speaker of the House of Assembly,
Nova Scotia. (Seal.)

(s) In pursuance of the said warrant, and in the execution thereof, the said Defendant, Nicholas Power, by the command of, and acting as the assistant of the said Sergeant-at-Arms, and under and in pursuance of the said warrant, and having been so required by the said Speaker and the said Sergeant-at-Arms, did convey the said David J. Thomas to the common jail of the county of Halifax and the said Defendant Thomas A. Chambers, who was, and is the keeper of the said common jail, did receive and detain the said David J. Thomas, under, and in obedience to the said warrant, which are the trespasses complained of in the Plaintiff's Statement of Claim. 30

(t) The said David J. Thomas is the Plaintiff in this action.

7. These Defendants further say that under and by virtue of Sections 29, 30, and 33, and the other sections of said Chapter 30 of the Revised Statutes, fifth series, the said House of Assembly is a Court of Record, and has all the rights and privileges of a Court of Record for the purpose of summarily inquiring into, and after the lapse of twenty-four hours punishing any insult to or assault upon or libel upon any member of the said House during the session of the Legislature, and has all such powers and jurisdiction as are necessary for inquiring into, judging, and pronouncing upon the commission or doing of any such act, matter, or thing, and awarding and carrying into execution the punishment thereof, and that the determination of the said House upon such 40

proceeding is final and conclusive, and the said House as such Court of Record has full power, jurisdiction and authority to punish any contempt of or disobedience of any rule, order or resolution of such House, and these Defendants allege that at all the times mentioned in the last preceding paragraph the said House was sitting at such Court of Record, and these Defendants repeat all the sub-paragraphs except sub-paragraph (a) of the last preceding paragraph of this Defence.

RECORD.
No. 3.
Defence
of certain
Defendants,
dated 24th
May 1892—
continued.

8. These Defendants also say that they repeat all the statements contained in paragraph 6 of this Defence except sub-section (a) thereof.

10 That said House of Assembly is by virtue of said Chapter 3 of the Revised Statutes a Court of Record, and as such had the inherent right and power to so arrest and imprison the said David J. Thomas for his said contempt.

9. These Defendants also say that they repeat all the statements contained in paragraph 6 of this Defence, except sub-section (a) thereof.

That said House of Assembly is by virtue of said Chapter 3 of the Revised Statutes, a Court of Record.

That these Defendants were in respect of the alleged trespasses acting as the judges of and within the powers of such Court, and no action lies against them in respect of anything said or done by them as such.

29 10. These Defendants also say that they deny all the statements contained in paragraph 6 of this Defence except sub-section (a) thereof.

And that by Section 26 of said Chapter 3 of the Revised Statutes it is enacted that no member of such House of Assembly shall be liable to any civil action or prosecution, arrest, imprisonment or damages by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before such House.

Delivered this 24th day of May 1892.

J. W. LONGLEY,
Atty.-General and Solicitor for said Defendants.

30 Defence of the Defendant J. W. Longley.

No. 4.
Defence of
Defendant
J. W.
Longley,
dated 24th
May 1892.

1. This Defendant admits the allegations contained in the first paragraph of the Statement of Claim.

2. As to the second paragraph this Defendant denies that on the 22nd day of April, 1892, or at any other time he assaulted or beat the Plaintiff at Belmont in the county of Colchester, or elsewhere.

3. As to the third paragraph, this Defendant denies that on the 22nd day of April, 1892, or at any other time, at Belmont aforesaid, or elsewhere, he assaulted or beat the Plaintiff, or imprisoned him for the space of four days, or at all.

40 4. As to the fourth paragraph of the Statement of Claim, this Defendant denies that on the 22nd day of April, 1892, or at any other time, at Belmont, aforesaid, or elsewhere, he assaulted or beat the Plaintiff, or imprisoned him, or conveyed him to Truro, or elsewhere, or imprisoned him for the space of

RECORD.

No. 4.
Defence of
Defendant
J. W.
Longley,
dated 24th
May 1892—
continued.

three hours, or at all. And he denies that he took the Plaintiff to the Inter-colonial Railway at Truro, aforesaid, or elsewhere, and he denies that he there, or elsewhere, assaulted or beat the Plaintiff; and he denies that he put him on board a railway train, and he denies that he conveyed him to Halifax, aforesaid, or elsewhere, and he denies that he confined or imprisoned the Plaintiff in Halifax, aforesaid, or elsewhere; and he denies that he conveyed the Plaintiff to the House of Assembly at Halifax or to any other place; and he denies that he imprisoned the Plaintiff till about the hour of half-past twelve of the clock at midnight or at all, and he denies that he conveyed the Plaintiff to the common jail of the county of Halifax or elsewhere, and he denies that he imprisoned the Plaintiff in the said county jail, or elsewhere, for the space of two days, or at all; and he denies that the Plaintiff was discharged from custody by an order of the Supreme Court. 10

5. As to the fifth paragraph he says that he denies each and all of the statements contained therein.

6. This Defendant as to all the paragraphs of the Plaintiff's Statement of Claim, says:—

(a) That under and by virtue of Chapter 3 of the Revised Statutes, Fifth Series, entitled, "Of the Composition, Powers and Privileges of the House," and under and by virtue of Section 20 of said Chapter, the House of Assembly of the Province of Nova Scotia holds, enjoys and exercises such and the like privileges, immunities and powers as are held, enjoyed and exercised by the House of Commons of Canada and by the House of Commons of the United Kingdom of Great Britain and Ireland. 20

(b) That a session of the Legislature of Nova Scotia was held in the year 1892, which said session began in the month of February 1892, and ended on the 30th day of April 1892, and this Defendant was then a member of said House of Assembly.

(c) That during the said session of the said Legislature, the Plaintiff David J. Thomas wrote and printed and published a libel upon and reflecting on the members of the said House of Assembly and printed the same and delivered the same to a member of the said House of Assembly and caused the same to be printed and delivered to members of the said House of Assembly for the purpose of being read in and presented to the said House of Assembly. 30

(d) The said libel was so written, printed and published of and concerning Frederick A. Laurence, who then was, and still is a member of the said House of Assembly, and of and concerning other members of the said House, and the said libel was and is an insult to the said Frederick A. Laurence and the other members of the said House of Assembly, and was so printed and published by the said David J. Thomas and was sent and delivered by the said David J. Thomas to the said members of the said House during the said session of the Legislature. The said libel is in the words and figures following:— 40

"After the Council had, by corporate resolution, fixed the salaries of Recorder and Stipendiary Magistrate of the said town at \$50 per annum for the year 1891, the said F. A. Laurence (meaning the said Frederick A. Laurence) wilfully, wrongfully, and in contempt of the said Council and

Corporation, promoted, introduced and passed, or caused to be promoted, introduced and passed laws and statutes (meaning laws and statutes of the Province of Nova Scotia), or conspired with others (meaning the members of the said House of Assembly) for said purpose, whereby the salaries of said Recorder and Stipendiary Magistrate were fixed at the sum of at least \$200 each, thereby wrongfully attempting to deprive said Council and Corporation of \$350 per annum.

RECORD.

No. 4.
Defence of
Defendant
J. W.

Longley,
dated 24th
May 1892—
continued.

“After the said Council and Corporation had by corporate resolution as it was their duty and lawful right to do, fixed the salary of H. T. Laurence, the
10 Inspector of License of Truro aforesaid, for 1891 at \$75 per annum, the said F. A. Laurence (meaning the said Frederick A. Laurence) wilfully, wrongfully and in contempt of said Council and corporation, promoted, introduced and passed, or procured to be promoted, introduced and passed, or conspired with others (meaning the members of the said House) for said purpose, laws and statutes (meaning laws and statutes of the Province of Nova Scotia) whereby the salary of the said Inspector of Licenses was sought to be fixed at the sum of at least \$200, thereby wrongfully attempting to deprive the said Council and Corporation of the sum of \$125 per annum.”

(e) That on the 14th day of April 1892 such proceedings were duly had
20 before the said House of Assembly, that the said House of Assembly made and passed the following resolution of and concerning the said David J. Thomas in respect of the said printing and publication by him of the said libel, which said printing and publication were a breach of the privileges of the said House of Assembly and for which resolution this Defendant voted.

“Whereas, David J. Thomas, of Truro, in the county of Colchester, with other persons has caused to be published a libel reflecting on a number of members of this House by having the same printed and delivered to a member of this House, for the purpose of having the said libel read in or presented to this honourable House.

30 “Therefore resolved that the said David J. Thomas of Truro aforesaid having caused the said libel reflecting on a Member or Members of this House to be printed and delivered to a Member of this House for the purpose of being read in or presented to this honourable House is guilty of a breach of the privileges of this House.

“Ordered that the said David J. Thomas be summoned to attend at the bar of this House on Monday the 18th day of April instant at the sitting of this House on that day.”

(f) That therefore the Speaker of the said House of Assembly in
40 pursuance of the said resolution duly issued his summons to the said David J. Thomas commanding him to attend at the bar of the said House of Assembly on Monday the 18th day of April at the sitting of the said House of Assembly on that day and the said summons was duly served upon the said David J. Thomas.

(g) On the said 18th day of April instant the said David J. Thomas appeared at the bar of the said House of Assembly and asked for delay to answer the said charges until Wednesday, April the 20th 1892, which said delay was granted.

RECORD.

No. 4.
 Defence of
 Defendant
 J. W.
 Longley,
 dated 24th
 May 1892—
continued.

(h) On the said 20th day of April 1892, the said David J. Thomas again appeared at the bar of the said House of Assembly and admitted the publication and printing of the said libel and was then ordered by the said House to withdraw and remain in attendance awaiting the pleasure of the said House and the said David J. Thomas then accordingly withdrew and remained in attendance.

(i) That thereafter on the same day the said House of Assembly duly made and passed the following resolution:—

“That this House while fully cognizant of its own authority and prepared to exercise it when necessary, does not deem the offence of Mr. Thomas of sufficient gravity to call for any exercise of such authority. That therefore David J. Thomas be reprimanded for his conduct and that such reprimand be given by the reading of this resolution to him by Mr. Speaker. The Defendant voted for the said resolution.”

(j) That the said last named resolution was thereupon by order of the House communicated to the said David J. Thomas within the precincts of the said House by the Sergeant-at-Arms of the said House and the said David J. Thomas then being and remaining in attendance upon the said House under the order of the said House and within the precincts of the said House was directed and ordered by the said House to return to the bar of the said House in order that the said David J. Thomas should be reprimanded by the Speaker in pursuance of the said last-named resolution.

(k) The said David J. Thomas so remaining in attendance upon the said House under its said order, and being then and there within the precincts of the said House, wilfully in contempt of the said House, refused to obey the said order and resolution of the said House and to remain further in attendance, or to return to the bar of the said House, and in wilful defiance of the said order and resolution, left the precincts of the said House and thereby became and was guilty of a contempt of the said House.

(1) On the same day, upon due proof to the said House of the said contempt so committed by the said David J. Thomas, the said House passed and made the following resolution:—

“That on Thursday the 14th day of April, instant, this House passed a certain resolution adjudging David J. Thomas, of Truro, in the county of Colchester, guilty of having published a libel upon a member or members of this House during the session of the Legislature.

“That the said David J. Thomas was ordered to appear at the bar of the House on Monday the 18th day of April, instant.

“That on the said 18th day of April, the said David J. Thomas appeared at the bar of the House in obedience to the said order and asked that time be granted to him to make a statement to the House.

“That the House thereupon ordered the said David J. Thomas to appear at the bar of the House on Wednesday, the 20th day of April, instant.

“That the said David J. Thomas appeared at the bar of the House this day in obedience to the said order of the House and made a statement respecting said libel.

“That after making such statement, the said David J. Thomas was ordered by the House to withdraw and remain in attendance.

“ That the House thereupon proceeded to consider the statement of the said David J. Thomas and came to a certain resolution thereon and in respect of the said libel.

“ That the Sergeant-at-Arms was thereupon directed by the House to call the said David J. Thomas to the bar of the House.

“ That the Sergeant-at-Arms communicated the said order to the said David J. Thomas and the said David J. Thomas, in contempt of the House, refused to obey such order, and left the precincts of the House.

10 “ That the said David J. Thomas be taken into the custody of the Sergeant-at-Arms attending this House and that Mr. Speaker do issue his warrant accordingly.” The Defendant voted for the said resolution.

(*m*) The Speaker of the said House of Assembly thereafter, in accordance with the said resolution, issued a warrant, directed to the Sergeant-at-Arms of the said House, for the arrest of the said David J. Thomas, and the said Defendant, Nicholas Power, by the command and direction of the said Speaker, and of the said Sergeant-at-Arms and under the authority of the said warrant, arrested the said David J. Thomas at Belmont, aforesaid, and brought him to the bar of the said House.

20 (*n*) The said Defendant Nicholas J. Power then was a constable and police officer in the city of Halifax aforesaid and as such was required by the Speaker of the said House and by the said Sergeant-at-Arms to so assist in the execution of the said warrant.

(*o*) On the 22nd day of April, 1892, the said David J. Thomas having been duly arrested under the said warrant appeared at the bar of the said House in custody of the said Sergeant-at-Arms and admitted his said disobedience and contempt of the said resolution of the said House on the 20th day of April, 1892.

30 (*p*) The said House then resolved that the said David J. Thomas should withdraw in custody of the said Sergeant-at-Arms and that he be retained in such custody and be brought to the bar of the said House at half-past nine o'clock p.m. on the 23rd day of April being more than 24 hours after the time of the passing of the said resolution.

(*q*) The said David J. Thomas accordingly withdrew in the custody of the Sergeant-at-Arms and was brought to the bar of the House in the custody of the said Sergeant-at-Arms at the time mentioned in the said last-mentioned resolution, whereupon the said David J. Thomas still persisted in his said contempt and in his refusal to explain or apologise therefor and the said House accordingly made and passed the following resolution, for which the Defendant voted:—

40 “ Whereas, David J. Thomas on Wednesday last the 20th day of April, instant, whilst in attendance on the House was guilty of a contempt of the House, committed in the face of the House.

“ Resolved that the said 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 48 hours.

“ Provided, however, that in the event of this Legislature being prorogued prior to the expiration of said term of 48 hours the said term of imprisonment shall on such prorogation forthwith terminate.

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No. 4.

Defence of
Defendant
J. W.Longley,
dated 24th
May 1892—
continued.

RECORD.

No. 4.
Defence of
Defendant
J. W.
Longley,
dated 24th
May 1892—
continued.

“ 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.”

(*r*) In pursuance of the said last-named resolution the Speaker of the said House did on the said 23rd day of April, 1892, make and issue his warrant under his hand and seal in the words and figures following:—directed to Alfred F. Haliburton who is the Sergeant-at-Arms of the said House and to the Defendant Thomas A. Chambers who is the keeper of the common jail at Halifax aforesaid.

“ Province of Nova Scotia. 10

“ House of Assembly.

“ To Alfred F. Haliburton Sergeant-at-Arms of said House, and to Thomas Chambers the keeper of the common jail of the city and county of Halifax.

“ Whereas David J. Thomas of Truro, in the county of Colchester was by resolution of the said House of Assembly passed this day, adjudged guilty of a contempt of the said House, committed in the face of the said House, and for such offence was adjudged to be committed to the common jail of the county of Halifax, in the city of Halifax, for the space of 48 hours, provided however, that in the event of the Legislature of Nova Scotia being prorogued prior to the expiration of the said term of 48 hours such imprisonment should in such 20
prorogation determine.

“ And whereas, I, the said undersigned Speaker of the said House of Assembly was, by said resolution, directed to forthwith issue my warrant of commitment accordingly.

“ These are, therefore, to command you, the said Alfred F. Haliburton, Sergeant-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, 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 into said jail for the space of 48 hours, provided however, 30
that in the event of the Legislature of Nova Scotia being prorogued prior to the expiration of the said term of 48 hours, you shall on such prorogation forthwith discharge the said David J. Thomas, and for so doing, this shall be your sufficient warrant.

“ Given under my hand and seal at the city of Halifax, in the county of Halifax, aforesaid, this 23rd day of April, A.D. 1892.”

(Sgd.) MICHAEL J. POWER,
Speaker of House of Assembly,
Nova Scotia. (Seal.)

(*s*) In pursuance of the said warrant, and in the execution thereof, the said Defendant, Nicholas Power, by the command of, and acting as the assistant of the said Sergeant-at-Arms and under and in pursuance of the said warrant, and having been so required by the said Speaker and the said Sergeant-at-Arms, did convey the said David J. Thomas to the common jail of the county of Halifax, and the said Defendant Thomas A. Chambers, who was, and is the 40

keeper of the said common jail, did receive and detain the said David J. Thomas, under and in obedience to the said warrant which are the trespasses complained of in the Plaintiff's Statement of Claim.

(*t*) The said David J. Thomas is the Plaintiff in this action.

7. This Defendant further says that under and by virtue of sections 29, 30 and 33 and the other sections of said Chapter 3 of the Revised Statutes, fifth series the said House of Assembly is a Court of Record, and has all the rights and privileges of a Court of Record for the purpose of summarily inquiring into, and after a lapse of twenty-four hours punishing any insult to or assault upon or libel upon any member of the said House during the session of the legislature, and has all such powers and jurisdiction as are necessary for enquiring into, judging, and pronouncing upon the commission or doing of any such act, matter or thing and awarding and carrying into execution the punishment thereof, and that the determination of the said House upon such proceeding is final and conclusive, and the said House as such Court of Record has full power, jurisdiction and authority to punish any contempt of or disobedience of any rule, order or resolution of such House, and this Defendant alleges that at all the times mentioned in the last preceding paragraph of the said House was sitting as such Court of Record, and this Defendant repeats all the sub-paragraphs except the sub-paragraph (*a*) of the last preceding paragraph of this defence.

8. This Defendant also says that he repeats all the statements contained in paragraph 6 of this Defence except sub-section (*a*) thereof.

That said House of Assembly is by virtue of said Chapter 3 of the Revised Statutes a Court of Record, and as such had the inherent right and power to so arrest and imprison the said David J. Thomas for his said contempt.

9. This Defendant also says that he repeats all the statements contained in paragraph 6 of this Defence, except sub-section (*a*) thereof.

That said House of Assembly is by virtue of said Chapter 3 of the Revised Statutes a Court of Record.

That this Defendant was in respect of the alleged trespasses acting as the Judge of and within the powers of such Court and no action lies against him in respect of any thing said or done by him as such.

10. This Defendant also says that he repeats all the statements contained in paragraph 6 of this Defence except sub-section (*a*) thereof.

And that by Section 26 of said Chapter 3 of the Revised Statutes it is enacted that no member of such House of Assembly shall be liable to any civil action or prosecution, arrest, imprisonment or damages by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before such House.

W. B. Ross,
Solicitor for Defendant, J. W. Longley.

Delivered this 24th day of May, 1892.

RECORD.
—
No. 4.
Defence of
Defendant
J. W.
Longley,
dated 24th
May 1892—
continued.

RECORD.

No. 5.
 Defence of
 Hon. M. J.
 Power
 and A. F.
 Halliburton,
 dated 24th
 May 1892.

Defence of Honourable Michael J. Power and Alfred F. Haliburton,
 two of the above-named Defendants.

Paragraphs 1 to 7 inclusive of the defence of the members of the House of Assembly are repeated.

8. The Defendants repeat the whole of the last named paragraph numbered 7, and further say that the charge of libel preferred against the Plaintiff in the said House and which was investigated and dealt with as in said paragraph mentioned, was a libel actually published by the Plaintiff upon Frederick A. Laurence and other members of the House of Assembly, whilst the Legislature was in session, and during the same session in which it was investigated and dealt with as aforesaid, such libel being a statement under the hand of the Plaintiff, circulated and published in which the Plaintiff stated and charged that the said Frederick A. Laurence is a member of said House of Assembly, had amongst other things been guilty of misconduct as such member, and as such member had conspired with others to pass laws and statutes for his, the said Laurence's own benefit to the injury of others, and that said Laurence and others had been guilty of conspiracy in wrongfully and improperly passing laws and statutes and these Defendants say that the Plaintiff was guilty of publishing said libel during the said session of the Legislature and was found guilty thereof by the said House upon proper investigation and proof, and the determination of said House therein was, and is final and conclusive.

9. That the House of Assembly for the Province of Nova Scotia during the session of the Legislature was engaged in enquiring into a charge made and preferred in the said House against the Plaintiff of having during the said session of the legislature published a libel upon members of said House. That after the Plaintiff had been summoned to appear before the bar of the said House to answer and be examined in respect to the said charge, and after being heard at the bar of the said House in respect of the said charge then under investigation, and whilst in attendance upon the said House, and whilst the said charge was being considered and adjudicated upon the Plaintiff wilfully in the face of the House and in contempt of the House and in defiance of the orders and resolutions of the House made and communicated to him in the House, departed from the said House of Assembly, and was guilty of contemptuous conduct committed by him in the course of such inquiry. That for such contemptuous conduct the Plaintiff was arrested and brought to the bar of the said House of Assembly, his said contemptuous conduct inquired into and adjudicated upon, and the Plaintiff found guilty of wilful contempt of the House, committed in the House in the course of said inquiry, and for his said contempt was adjudged by the said House to be imprisoned in the common jail at Halifax for the space of 48 hours. That in pursuance of such judgment and order of the House the Plaintiff was committed to the common jail at Halifax. That the Defendant, Michael J. Power, as Speaker of the said House of Assembly, and the Defendant, Alfred F. Haliburton, as the Sergeant-at-Arms of the said House, in the arrest of the Plaintiff, simply obeyed the orders and resolutions of the House and carried the same into effect, and the acts of the

Defendants as Speaker and Sergeant-at-Arms respectively in carrying out the said orders and resolutions of the said House are the matters and grievances complained of. RECORD.

No. 5.
Defence of
Hon. M. J.
Power and
A. F.
Haliburton,
dated 24th
May 1892—
continued.

10. That during the session of the Legislature of Nova Scotia, which assembled for the despatch of business on the 3rd day of March, 1892, and continued in session until after the matters and things complained of herein occurred, the House of Assembly during said session was sitting as a Court of Record, and inquiring into a charge preferred and made in the said House against the Plaintiff of having during the said session published a libel upon
10 Members of the House of Assembly during the said session. That whilst so sitting as such Court and inquiring into said charge the Plaintiff appeared at the bar of the said House of Assembly, and whilst the said charge was being considered and investigated, wilfully committed a contempt of the said House in the face of the House, and wilfully in the presence of the House disobeyed the orders of the House, and was guilty of contempt committed in the face of the House. That for his said conduct and disobedience of the orders of the House committed in the face of the House, whilst the said House was sitting as a Court of Record and inquiring into his conduct in the matter of the said libel, the Plaintiff was by said House adjudged guilty of contempt, and for his
20 said contempt was directed to be imprisoned in the common jail at Halifax for a period of 48 hours. That in pursuance of the judgment and order of the said House, the Defendant Michael J. Power, as the Speaker of the said House and the Defendant Alfred F. Haliburton, as the Sergeant-at-Arms of the said House, in obedience to the orders of the House, caused the Plaintiff to be arrested and taken to the common jail at Halifax, which are the grievances complained of.

11. That during the session of the Legislature, which commenced on the 3rd day of March, 1892, the Plaintiff was by the House of Assembly, whilst sitting as a Court of Record, adjudged and found guilty and was guilty of
30 contempt of the said House of Assembly, whilst so sitting as a Court of Record, committed in the face of the House, and for his contempt was by the House ordered to be arrested and imprisoned in the common jail, at Halifax, for the space of 48 hours. That the Defendant, Power, as the Speaker of the said House of Assembly, and the Defendant, Haliburton, as the Sergeant-at-Arms of the said House, in obedience to the orders and judgments of the said House, whilst so sitting as aforesaid, caused the Plaintiff to be arrested and conveyed to the common jail, at Halifax, and the said arrest and imprisonment are the grievances complained of.

12. That by an Act of the Legislature of the Province of Nova Scotia
40 passed on the 30th day of April, 1892, entitled, "An Act to amend Chapter 3 of the Revised Statutes of the Composition, Powers and Privileges of the House," the Defendants, Michael J. Power and Alfred F. Haliburton, are exonerated from any liability of any action in respect to the matters and things complained of in the Statement of Claim herein. That under and by reason of Sections 1, 2 and 3 of said Acts, these Defendants are exonerated from any liability in respect to the matters and things herein complained of.

13. That the Defendant, Michael J. Power, at the time of the alleged

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No. 5.
Defence of
Hon. M. J.
Power and
A. F.
Halliburton,
dated 24th
May 1892—
continued.

grievance complained of, was a member of the House of Assembly for the county of Halifax, and that any act done by him in or towards the arrest detention or imprisonment of the Plaintiff, was done by him as a member of, the said House whilst the said House was in session, in his place in the House, in the course of the business of the House, that by virtue of Chapter 3, Section 26 of the Revised Statutes, said Defendant is exonerated from any liability or from any action or prosecution in respect of the matters and things complained of.

14. That the Defendant, Michael J. Power, in so far as he directed the arrest detention or imprisonment of the Plaintiff, was acting as a Judge or member of a Court of Record, and whilst in office in his capacity as Judge or member of the said Court, whilst said Court was in session and in the course of business carried on and conducted by the said Court within its jurisdiction. 10

Delivered May 24th, 1892.

No. 6.
Defence of
Thomas A.
Chambers
and Nicholas
Power, dated
24th May
1892.

1892. A. No. 4857.

In the Supreme Court.

Between

David J. Thomas - - - Plaintiff,

and

Alfred F. Halliburton *et al.* - - - Defendants. 20

Defence of Thomas A. Chambers and Nicholas Power.

1. These Defendants admit the allegations contained in the first paragraph of the Statement of Claim.

2. As to the second paragraph these Defendants deny that on the 22nd day of April 1892 or at any other time they assaulted or beat the Plaintiff at Belmont in the county of Colchester or elsewhere.

3. As to the third paragraph these Defendants deny that on the 22nd day of April 1892 or at any other time at Belmont aforesaid or elsewhere they assaulted or beat the Plaintiff or imprisoned him for the space of four days or at all. 30

4. As to the fourth paragraph of the Statement of Claim these Defendants deny that on the 22nd day of April 1892 or at any other time at Belmont aforesaid or elsewhere they assaulted or beat the Plaintiff or imprisoned him or conveyed him to Truro or elsewhere or imprisoned him for the space of three hours or at all. And they deny that they took the Plaintiff to the Intercolonial Railway at Truro aforesaid or elsewhere and they deny that they there or elsewhere assaulted or beat the Plaintiff, and they deny that they put him on board a railway train, and they deny that they conveyed him to Halifax aforesaid or elsewhere, and they deny that they confined or imprisoned the Plaintiff in Halifax aforesaid or elsewhere, and they deny that they conveyed 40 the Plaintiff to the House of Assembly at Halifax or to any other place, and

they deny that they imprisoned the Plaintiff till about the hour of half-past twelve of the clock at midnight or at all and they deny that they conveyed the Plaintiff to the common jail of the county of Halifax or elsewhere, and they deny that they imprisoned the Plaintiff in the said county jail or elsewhere for the space of two days or at all, and they deny that the Plaintiff was discharged from custody by an order of the Supreme Court.

5. As to the fifth paragraph of the Statement of Claim they deny that the said Nicholas Power did or committed either or any of the acts or trespasses set forth in paragraph four of the Statement of Claim, and they deny that the
10 Defendant Thomas A. Chambers received the Plaintiff into his custody at the said jail at Halifax or elsewhere on the said 23rd day of April or at any other time and they deny that the said Defendant Thomas A. Chambers there or elsewhere detained or imprisoned the Plaintiff for the space of two days or at all.

6. These Defendants as to all the paragraphs of the Plaintiff's Statement of Claim say :—

(a) That under and by virtue of Chapter 3 of the Revised Statutes Fifth Series entitled "Of the composition powers and privileges of the House," and under and by virtue of Section 20 of said Chapter the House of
20 Assembly of the Province of Nova Scotia holds, enjoys and exercises such and the like privileges, immunities and powers as are held, enjoyed and exercised by the House of Commons of Canada and by the House of Commons of the Kingdom of Great Britain and Ireland.

(b) That a session of the Legislature of Nova Scotia was held in the year 1892, which said session began in the month of February 1892 and ended on the 30th day of April 1892.

(c) That during the said session of the said Legislature the Plaintiff
30 David J. Thomas wrote and printed and published a libel upon and reflecting on the members of the said House of Assembly and printed the same and delivered the same to a member of the said House of Assembly and caused the same to be printed and delivered to members of the said House of Assembly for the purpose of being read in and presented to the said House of Assembly.

(d) The said libel was so written printed and published of and concerning
40 Frederick A. Lawrence who then was and still is a member of the said House of Assembly and of and concerning other members of the said House and the said libel was and is an insult to the said Frederick A. Lawrence and the other members of the said House of Assembly and was so printed and published by the said David J. Thomas and was sent and delivered by the said David J. Thomas to the said members of the said House during the said session of the Legislature. The said libel is in the words and figures following :—

"After the Council had by corporate resolution fixed the salaries of Recorder and Stipendiary Magistrate of the said town at \$50.00 per annum for the year 1891 the said F. A. Lawrence (meaning the said Frederick A. Lawrence) wilfully, wrongfully and in contempt of the said Council and Corporation, promoted, introduced and passed laws and statutes (meaning laws and statutes of the Province of Nova Scotia) or conspired with others (meaning the members of the said House of Assembly) for said purpose, whereby the

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 Chambers
 and Nicholas
 Power, dated
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 tinued.

salaries of said Recorder and Stipendiary Magistrate were fixed at the sum of at least \$200. 00 each, thereby wrongfully attempting to deprive said Council and Corporation of \$350. 00 per annum.

“ After the said Council and Corporation had by corporate resolutions, as it was their duty and lawful right to do, fixed the salary of H. T. Lawence, the Inspector of License of Truro aforesaid, for 1891, at \$75. 00 per annum the said F. A. Lawrence (meaning the said Frederick A. Lawrence) wilfully, wrongfully and in contempt of said Council and Corporation, promoted, introduced and passed, or procured to be promoted, introduced and passed or conspired with others (meaning the members of the said House) for said purpose laws and statutes (meaning laws and statutes of the Province of Nova Scotia) whereby the salary of the said Inspector of Licenses was sought to be fixed at the sum of at least \$200. 00 thereby wrongfully attempting to deprive the said Council and Corporation of the sum of \$125. 00 per annum.” 10

(e) That on the 14th day of April 1892 such proceedings were duly had before the said House of Assembly that the said House of Assembly made and passed the following resolution of and concerning the said David J. Thomas in respect of the said printing and publication by him of the said libel which said printing and publication were a breach of the privileges of the said House of Assembly :—

“ Whereas David J. Thomas, of Truro, in the county of Colchester, with other persons has caused to be published a libel reflecting on a number of members of this House, by having the same printed and delivered to a member of this House, for the purpose of having the said libel read in or presented to this Honourable House. 20

“ Therefore resolved, that the said David J. Thomas of Truro aforesaid, having caused the said libel reflecting on a member, or members of this House to be printed and delivered to a member of this House for the purpose of being read in or presented to this Honourable House is guilty of a breach of the privileges of this House. 30

“ Ordered that the said David J. Thomas be summoned to attend at the bar of this House on Monday the 18th day of April instant at the sitting of this House on that day.”

(f) That therefore the Speaker of the said House of Assembly in pursuance of the said resolution duly issued his summons to the said David J. Thomas commanding him to attend at the bar of the said House of Assembly on Monday the 18th day of April 1892 at the sitting of the said House of Assembly on that day, and the said summons was duly served upon the said David J. Thomas.

(g) On the said 18th day of April instant the said David J. Thomas 40 appeared at the bar of the said House of Assembly and asked for delay to answer the said charge until Wednesday April the 20th 1892 which said delay was granted.

(h) On the said 20th day of April 1892 the said David J. Thomas again appeared at the bar of the said House of Assembly and admitted the publication and printing of the said libel and was then ordered by the said House to withdraw and remain in attendance awaiting the pleasure of the said House

and the said David J. Thomas then accordingly withdrew and remained in attendance.

(i) That thereafter on the same day the said House of Assembly duly made and passed the following resolution :—

“ That this House, while fully cognizant of its own authority, and prepared to exercise it when necessary, does not deem the offence of Mr. Thomas of sufficient gravity to call for any exercise of such authority. That therefore D. J. Thomas be reprimanded for his conduct and that such reprimand be given by the reading of this resolution to him by Mr. Speaker.”

10 (j) That the said last-named resolution was thereupon by order of the House communicated to the said David J. Thomas within the precincts of the said House by the Sergeant-at-Arms of the said House and the said David J. Thomas then being and remaining in attendance upon the said House under the order of the said House and within the precincts of the said House was directed and ordered by the said House to return to the bar of the said House in order that the said David J. Thomas should be reprimanded by the Speaker in pursuance of the said last-named resolution.

20 (k) The said David J. Thomas so remaining in attendance upon the said House under its said Order and being then and there within the precincts of the said House wilfully in contempt of the said House refused to obey the said order and resolution of the said House and to remain further in attendance or to return to the bar of the said House and in wilful defiance of the said order and resolution left the precincts of the said House and thereby became and was guilty of a contempt of the said House.

(l) On the same day upon due proof to the said House of the said contempt so committed by the said David J. Thomas the said House passed and made the following resolution :—

30 “ That on Thursday the fourteenth day of April instant this House passed a certain resolution adjudging David J. Thomas of Truro in the county of Colchester guilty of having published a libel upon a member or members of this House during the Session of the Legislature.

“ That the said David J. Thomas was ordered to appear at the bar of the House on Monday the eighteenth day of April instant.

“ That on the said eighteenth day of April the said David J. Thomas appeared at the bar of the House in obedience to the said order and asked that time be granted to him to make a statement to the House.

“ That the House thereupon ordered the said David J. Thomas to appear at the bar of the House on Wednesday the twentieth day of April instant.

40 “ That the said David J. Thomas appeared at the bar of the House this day in obedience to the said Order of the House and made a statement respecting said libel.

“ That after making such statement the said David J. Thomas was ordered by the House to withdraw and remain in attendance.

“ That the House thereupon proceeded to consider the statement of the said David J. Thomas and came to a certain resolution thereon and in respect of the said libel.

RECORD.

No. 6.
Defence of
Thomas A.
Chambers
and Nicholas
Power, dated
24th May
1892—con-
tinued.

RECORD.

No. 6.
Defence of
Thomas A.
Chambers
and Nicholas
Power, dated
24th May
1892—con-
tinued.

“ That the Sergeant-at-Arms was thereupon directed by the House to call the said David J. Thomas to the bar of the House.

“ That the Sergeant-at-Arms communicated the said Order to the said David J. Thomas and that the said David J. Thomas in contempt of the House refused to obey such order and left the precincts of the House.

“ That the said David J. Thomas be taken into the custody of the Sergeant-at-Arms attending this House and that Mr. Speaker do issue his warrant accordingly.”

(*m*) The Speaker of the said House of Assembly thereafter in accordance with the said resolution issued a warrant directed to the Sergeant-at-Arms of the said House for the arrest of the said David J. Thomas and the said Defendant Nicholas Power by the command and direction of the said Speaker and of the said Sergeant-at-Arms and under the authority of the said warrant arrested the said David J. Thomas at Belmont aforesaid and brought him to the bar of the said House. 10

(*n*) The said Defendant Nicholas Power then was a constable and police officer in the city of Halifax aforesaid and as such was required by the Speaker of the said House and by the said Sergeant-at-Arms to so assist in the execution of the said warrant.

(*o*) On the 22nd day of April 1892 the said David J. Thomas having been duly arrested under the said warrant appeared at the bar of the said House in custody of the said Sergeant-at-Arms and admitted his said disobedience and contempt of the said resolution of the said House on the 20th day of April 1892. 20

(*p*) The said House then resolved that the said David J. Thomas should withdraw in custody of the said Sergeant-at-Arms and that he be detained in such custody and be brought to the bar of the said House at half-past nine o'clock p.m. on the 23rd day of April 1892 being more than twenty-four hours after the time of the passing of the said resolution.

(*q*) The said David J. Thomas accordingly withdrew in the custody of the Sergeant-at-Arms and was brought to the bar of the House in the custody of the said Sergeant-at-Arms at the time mentioned in the said last-mentioned resolution whereupon the said David J. Thomas still persisted in his said contempt and in his refusal to explain or apologise therefor and the said House accordingly made and passed the following resolution :— 30

“ Whereas, David J. Thomas, on Wednesday last, the 20th day of April instant, whilst in attendance on the House was guilty of a contempt of the House, committed in the face of the House.

“ Resolved, that the said 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 48 hours. 40

“ Provided, however, that in the event of this Legislature being prorogued prior to the expiration of said term of 48 hours the said term of imprisonment, shall on such prorogation forthwith terminate.

“ 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.”

(r) In pursuance of the said last-named resolution the Speaker of the said House did on the said 23rd day of April 1892 make and issue his warrant under his hand and seal in the words and figures following: Directed to Alfred F. Halliburton who is the Sergeant-at-Arms of the said House and to the Defendant Thomas A. Chambers who is the keeper of the common jail at Halifax aforesaid.

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—
No. 6.
Defence of
Thomas A.
Chambers
and Nicholas
Power, dated
24th May
1892—*con-
tinued.*

“ Province of Nova Scotia,
“ House of Assembly.

“ To Alfred F. Halliburton, Sergeant-at-Arms of said House and to
40 Thomas Chambers the keeper of the common jail of the city and county of
Halifax.

“ Whereas, David J. Thomas of Truro in the county of Colchester was by resolution of the said House of Assembly passed this day adjudged guilty of a contempt of the said House committed in the face of the said House, and for said offence was adjudged to be committed to the common jail of the county of Halifax, in the city of Halifax for the space of 48 hours, provided however that in the event of the Legislature of Nova Scotia being prorogued prior to the expiration of said term of 48 hours imprisonment should in such prorogation determine.

20 “ And whereas I the said undersigned Speaker of the said House of
Assembly was by said resolution directed to forthwith issue my warrant of
commitment accordingly.

“ These are therefore to command you the said Alfred F. Haliburton,
Sergeant-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, 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 into said jail for the space of 48 hours, provided however
30 that in the event of the Legislature of Nova Scotia being prorogued prior to
the expiration of the said term of 48 hours you shall on such prorogation
forthwith discharge the said David J. Thomas and for so doing this shall be
your sufficient warrant.

“ Given under my hand and seal at the city of Halifax in the county of
Halifax aforesaid this 23rd day of April A.D. 1892.

“ Signed, MICHAEL J. POWER,

“ Speaker of House of Assembly,

“ Nova Scotia.” (Seal).

(s) In pursuance of the said warrant and in the execution thereof the said
Defendant Nicholas Power by the command of and acting as the assistant of the
40 said Sergeant-at-Arms and under and in pursuance of the said warrant and having
been so required by the said Speaker and the said Sergeant-at-Arms did convey
the said David J. Thomas to the common jail of the county of Halifax and the
said Defendant Thomas A. Chambers who was and is the keeper of the said
common jail did receive and detain the said David J. Thomas under and
in obedience to the said warrant, which are the trespasses complained of in the
Plaintiff's Statement of Claim.

(t) The said David J. Thomas is the Plaintiff in this action.

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 Defence of
 Thomas A.
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 and Nicholas
 Power, dated
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 1892—con-
 tinued.

7. These Defendants further say that under and by virtue of Sections 29 10
 30, and 33 and the other Sections of said Chapter 3 of the Revised Statutes
 Fifth Series the said House of Assembly is a Court of Record and has all the
 rights and privileges of a Court of Record for the purpose of summarily
 inquiring into and after the lapse of twenty-four hours punishing any insult to
 or assault upon or libel upon any member of the said House during the session
 of the legislature and has all such powers and jurisdiction as are necessary for
 inquiring into, judging and pronouncing upon the commission or doing of any
 such act, matter or thing, and awarding and carrying into execution the
 punishment thereof and the determination of the said House upon such
 proceeding is final and conclusive, and the said House as such Court of Record
 has full power, jurisdiction and authority to punish any contempt of or
 disobedience of any rule, order or resolution of such House and these
 Defendants allege that at all the times mentioned in the last preceding
 paragraph the said House was sitting as such Court of Record and these
 Defendants repeat all the sub-paragraphs except sub-paragraph "a" of the
 last preceding paragraph of this Defence.

8. These Defendants repeat the last preceding paragraph and further say
 that in and by an Act of the Legislature of the Province of Nova Scotia passed 20
 on the 30th day of April 1892 entitled "An Act to Amend Chapter 3, Revised
 Statutes of the Composition, Powers and Privileges of the House." After
 reciting the proceedings set forth in the last preceding section it was among
 other things enacted that the Defendant Thomas A. Chambers and the
 Defendant Nicholas Power should be indemnified and exonerated from all
 liability for any damages or other responsibility and from any suit, demand or
 judgment, which may have been or might thereafter be brought or rendered
 against them with respect of or in relation to or arising out of the preparation
 or issue of said warrant or the execution or carrying into effect thereof or with
 respect to or in relation to or arising out of the preparation or issue of any
 other warrant against the said Plaintiff issued by the authority of the said 30
 House or in respect of or in relation to the execution or carrying into effect
 thereof or in respect of or in relation to the carrying out or enforcing any order
 of the House of Assembly made or directed against the said Plaintiff, and that
 the said Act should be an absolute bar and discharge to any such action, suit
 or proceeding then pending or which might thereafter be brought against these
 Defendants from the matters and causes of action set forth in the Plaintiff's
 Statement of Claim and the said Acts warrants and proceedings of the said
 Speaker were thereby ratified and confirmed and it was thereby declared that
 these Defendants were and should be free from all actions at law of every kind
 in all Courts within the Province by reason of or on account of the matters set 40
 forth in the Statement of Claim and that the said Act should be a bar to all
 such actions suits or other proceedings.

9. These Defendants further say that they repeat the allegations contained
 in the 6th and 7th paragraphs of this Defence, and they further say that the
 said acts done by them were acts done under the authority of the said House
 of Assembly and under and by virtue of warrants issued under the authority of
 the said House of Assembly and that by Section 25 of said Chapter 3 of the

Revised Statutes Fifth Series it is enacted that no person shall be liable in damages or otherwise for any such acts and that under and by virtue of said Section 25 these Defendants were required and obliged to act in aid and assistance of the said Sergeant-at-Arms in the execution of the said warrants and that the said Defendant Nicholas Power is a constable in and for the city and county of Halifax and that the said Thomas A. Chambers is the keeper of the common jail in and for the said county of Halifax.

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tinued.

10 10. These Defendants further say that the Defendant Thomas A. Chambers is the same Thomas A. Chambers mentioned in Section I of the Act of the
“Act to amend Chapter 3 Revised Statutes of the Corporation Powers and
“Privileges of the House,” and that the Defendant Nicholas Power was and is
a person who aided and assisted in the execution of the warrant referred to in
the preamble of the said Act and that the causes of action set forth in the
Statement of Claim are the causes of action referred to in the said Act and that
the Plaintiff's said alleged causes of action herein are barred by the said Act.

20 11. That the House of Assembly for the Province of Nova Scotia during a
Session of the Legislature was engaged in inquiring into a charge made and
preferred in the said House against the Plaintiff of having during the said
Session of the Legislature published a libel upon members of the said House.
That after the Plaintiff had been summoned to appear before the bar of the
said House to answer and be examined in respect to the said charge and
after being heard at the bar of the said House in respect of the said
charge then under investigation, and whilst in attendance on the said House,
and whilst the said charge was being considered and adjudicated upon the
Plaintiff wilfully, in the face of the House and in contempt of the House
and in defiance of the orders and resolutions of the House made and com-
municated to him in the House departed from the said House of Assembly,
and was guilty of contemptuous conduct committed by him in the course
30 of such inquiry. That for such contemptuous conduct the Plaintiff was
arrested and brought to the bar of the said House of Assembly, his said
contemptuous conduct inquired into and adjudicated upon, and the Plaintiff
found guilty of wilful contempt of the House committed in the House in the
course of the said inquiry and for his said contempt he was adjudged by the
said House to be imprisoned in the common jail at Halifax for the space of
forty-eight hours and the Speaker of the said House issued his warrant
accordingly. That in pursuance of such judgment and order of the House the
Plaintiff was committed to the common jail at Halifax. That the Defendant
Nicholas Power as a constable and police officer and the Defendant Chambers
40 as keeper of the said common jail in the arrest and detention of the Plaintiff
simply obeyed the orders and resolutions of the House and the said warrant of
the Speaker and carried the same into effect, and the acts of the Defendants
as such police officer and constable and as such keeper of the common jail
respectively in carrying out the said orders and resolutions of the said House
are the matters and grievances complained of.

12. That during the session of the Legislature of Nova Scotia which
assembled for the despatch of business in the month of February 1892 and

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continued in session until after the matters and things complained of herein occurred the House of Assembly during said session was sitting as a Court of Record and enquiring into a charge preferred and made in the said House against the Plaintiff of having during the said session published a libel upon members of the House of Assembly during the said session. That whilst so sitting as such Court and enquiring into said charge the Plaintiff appeared at the bar of the said House of Assembly and whilst the said charge was being considered and investigated wilfully committed a contempt of the said House in the face of the House, and wilfully in the presence of the House disobeyed the orders of the House and was guilty of contempt committed in the face of 10 the House. That for his said conduct and disobedience of the orders of the House committed in the face of the House, whilst the said House was sitting as a Court of Record and enquiring into his conduct in the matter of the said libel the Plaintiff was by the said House adjudged guilty of contempt and for his said contempt was directed to be imprisoned in the common jail at Halifax for a period of forty-eight hours. That in pursuance of the judgment and order of the said House the Defendant Michael J. Power as the Speaker of the said House issued the warrant set forth in sub-paragraph (r) of paragraph 6 hereof and the Defendant Nicholas Power by the command of the said Speaker and of the Sergeant-at-Arms of the said House and by virtue of the said warrant 20 and in obedience to the orders of the said House and being a police officer and constable arrested the Plaintiff and took him to the common jail at Halifax and the Defendant Chambers being the keeper of the said common jail received and detained the Plaintiff by the like command and authority for the space of forty-eight hours which are the grievances complained of.

13. The Defendants further repeat all the sub-paragraphs of paragraph 6 hereof except sub-paragraph (a) thereof.

Delivered the 24th May 1892.

R. L. BORDEN,
Solicitor of the said Defendants Thomas A.
Chambers and Nicholas Power.

30

No. 7.
Reply to
Defence of
certain
Defendants,
dated 27th
May 1892.

Reply.

The Plaintiff, as to the defence of the Defendants, other than Alfred F. Haliburton, Michael J. Power, Thomas A. Chambers, Nicholas Power and J. W. Longley, says that :—

1. He joins issue.
2. The Plaintiff will object :—

(a) That the said Sections, 20, 26, 29, 30 and 33, and the other Sections referred to of Chapter 3 of the Revised Statutes, Fifth Series, entitled "Of 40 the Composition, Powers and Privileges of the House" are *ultra vires* and

the said Legislature of the Province of Nova Scotia had no power to pass the same, or any of them.

(b) That the summons referred to in paragraph 6 (f) of said Defence was insufficient in law, and was irregular and void and was not authorized by law, and the said House had no jurisdiction to issue the same.

(c) That the warrant referred to in paragraph 6 (m) of said defence was insufficient in law, and was irregular and void, and was not authorized by law, and the said House had no jurisdiction to issue the same.

10 (d) That said warrant did not state and set forth on the face thereof, or at all, the nature of the offence, or any offence at all, for which the said Plaintiff was to be arrested.

(e) That the warrant referred to in paragraph 6 (r) of said defence was insufficient in law, and was irregular and void, and was not authorized by law, and the said House had no jurisdiction to issue the same.

(f) That the said warrant did not succinctly and clearly state and set forth on the face thereof, or at all, the nature of the offence of which the said Plaintiff was adjudged to be guilty and for which he was to be committed.

20 (g) That all the said proceedings of said House of Assembly were made and had without jurisdiction, inasmuch as the said Plaintiff was prevented by said House from making full answer and defence and having Counsel to assist him therein.

(h) That the said House of Assembly had no jurisdiction to adjudicate upon the said libel, and that all the proceedings of the said House thereon, and in connection therewith, were and are void.

(i) That the said House of Assembly had no jurisdiction to commit the Plaintiff to the common jail of the county of Halifax.

30 3. As to paragraphs 7 and 8 of said Defence, the Plaintiff says:—That said House of Assembly was not sitting as a Court of Record at the time of the passing of any of the resolutions or the issue of any of the warrants or other papers mentioned and referred to in said Defence, nor were any such summons or warrants issued by the said House as a Court of Record, or under seal.

4. As to paragraph 6 (g) the Plaintiff says:—That on the 20th day of April instant when he appeared at the bar of said House he denied the jurisdiction of said House in the premises.

5. As to paragraph 6 (c) and 6 (d) of said Defence, he says:—

(a) That the said Frederick A. Laurence was Recorder and Stipendiary Magistrate of the town of Truro for the five years last past.

40 (b) That whilst he was such Recorder and Stipendiary Magistrate as aforesaid, he promoted, introduced and passed or caused to be promoted, introduced and passed certain Acts or Statutes of the said Legislature, whereby the salary of the said Recorder and Stipendiary Magistrate was fixed at the sum of two hundred (\$200) dollars each after the Council of the said town of Truro

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No. 7.

Reply to
Defence of
certain
Defendants,
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 Reply to
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 certain
 Defendants,
 dated 27th
 May 1892—
continued.

had by corporate resolution fixed the salary of said Recorder and Stipendiary Magistrate at fifty (§50) dollars for the year 1891, and also by said Acts or Statutes caused the salary of H. T. Laurence, a brother of said Frederick A. Laurence, Inspector of Licenses for the town of Truro aforesaid, which had been fixed by said Council for the year 1891 at seventy-five (§75) dollars to be increased to the sum of two hundred (§200) dollars.

(c) That in consequence of the aforesaid and other acts of the said Frederick A. Laurence the said town Council of the said town exhibited Articles of Complaint against the said Frederick A. Laurence for misbehaviour in his said office of Recorder. 10

(d) That a hearing before the said Town Council was duly had thereon, after due notice to the said Frederick A. Laurence, and after a full investigation thereof the said Frederick A. Laurence was dismissed from the said office of Recorder of the town of Truro.

(e) That the said Town Council being desirous of obtaining a repeal of the aforesaid Statutes and other Acts which the said Frederick A. Laurence had procured to be passed by said Legislature hostile to the interests of the said town of Truro by corporate resolution directed that a petition to the said Legislature asking for the repeal of the said Acts should be drawn up and presented by or on behalf of the said town. 20

(f) That said petition was duly drawn up in obedience to said corporate resolution and the Plaintiff as and being the Mayor of the said town of Truro signed the same, and caused the same to be forwarded to a member of the said Legislature for presentation, but the same never was presented to said Legislature but was withdrawn by said Plaintiff.

(g) That annexed to the said petition and forming part thereof was a copy of the said Articles of Complaint exhibited by the said town of Truro against the said Frederick A. Laurence as aforesaid.

(h) That the said alleged libel formed a part of the said Articles of Complaint so exhibited and annexed to said petition as aforesaid. 30

(i) That the words complained of were and are true in substance and in fact, and were not libellous.

(j) That the said words do not bear the meaning placed upon them by said Defendant.

(k) That the alleged words "conspired with others" do not mean that the said Frederick A. Laurence conspired with the members of said House of Assembly, but mean and were intended to mean that said Frederick A. Laurence conspired with the said H. T. Laurence and other beneficiaries or proposed beneficiaries under said Act.

(l) That the said alleged libel was never published by the Plaintiff, but if the same ever was published it was so published by the said Frederick A. Laurence. 40

(m) That the drawing up, signing and forwarding of said petition to a member of the Legislature as aforesaid was privileged.

6. As to paragraph 6 (e) of said Defence, he says:—

That the said House of Assembly adjudicated upon and found the said Plaintiff guilty of the printing and publishing of the said alleged libel and of a breach of the privileges of the said House *ex parte* and without notice to said Plaintiff.

Delivered this 27th day of May, A.D., 1892.

WILLIAM McDONALD,
Solicitor for Plaintiff.

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No. 7.
Reply to
Defence of
certain
Defendants,
dated 27th
May 1892—
continued.

Reply.

10 The Plaintiff as to the defence of the Defendant J. W. Longley, says that,—

1. He joins issue.
2. The Plaintiff will object:—

(a) That the said Sections, 20, 26, 29, 30 and 33, and the other Sections referred to of Chapter 3 of the Revised Statutes, Fifth Series, entitled "Of the Composition, Powers and Privileges of the House" are *ultra vires* and the said Legislature of the Province of Nova Scotia had no power to pass the same, or any of them.

20 (b) That the summons referred to in paragraph 6 (f) of said Defence was insufficient in law, and was irregular and void and was not authorized by law, and the said House had no jurisdiction to issue the same.

(c) That the warrant referred to in paragraph 6 (m) of said Defence was insufficient in law, and was irregular and void, and was not authorized by law, and the said House had no jurisdiction to issue the same.

(d) That said warrant did not state and set forth on the face thereof, or at all, the nature of the offence, or any offence at all, for which the said Plaintiff was to be arrested.

30 (e) That the warrant referred to in paragraph 6 (r) of said Defence was insufficient in law, and was irregular and void, and was not authorised by law, and the said House had no jurisdiction to issue the same.

(f) That the said warrant did not succinctly and clearly state and set forth on the face thereof, or at all, the nature of the offence of which the said Plaintiff was adjudged to be guilty and for which he was committed.

(g) That all the said proceedings of said House of Assembly were made and had without jurisdiction, inasmuch as the said Plaintiff was prevented by said House from making full answer and defence and having counsel to assist him therein.

40 (h) That the said House of Assembly had no jurisdiction to adjudicate upon the said libel, and that all the proceedings of the said House thereon, and in connection therewith, were and are void.

(i) That the said House of Assembly had no jurisdiction to commit the Plaintiff to the common jail of the county of Halifax.

3. As to paragraphs 7 and 8 of said Defence, the Plaintiff says:—That said House of Assembly was not sitting as a Court of Record at the time of the

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Defence of
Defendant
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Defence of
Defendant
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Longley,
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continued.

passing of any of the resolutions, or the issue of any of the warrants or other papers mentioned and referred to in said Defence, nor were any such summons or warrants issued by the said House as a Court of Record, or under seal.

4. As to paragraph 6 (a) the Plaintiff says:—That on the 20th day of April instant, when he appeared at the bar of the said House, he denied the jurisdiction of said House in the premises.

5. As to paragraph 6 (c) and 6 (d) of said Defence he says:—

(a) That the said Frederick A. Laurence was Recorder and Stipendiary Magistrate of the town of Truro for the five years last past.

(b) That whilst he was such Recorder and Stipendiary Magistrate as afore- 10
said, he promoted, introduced and passed or caused to be promoted, introduced and passed certain Acts or Statutes of the said Legislature whereby the salary of the said Recorder and Stipendiary Magistrate was fixed at the sum of two hundred (\$200) dollars each after the Council of the said town of Truro had by corporate resolution fixed the salary of said Recorder and Stipendiary Magistrate at fifty (\$50) dollars for the year 1891, and also by said Act caused the salary of H. T. Laurence, a brother of said Frederick A. Laurence, Inspector of Licenses for the town of Truro aforesaid, which had been fixed by said Council for the year 1891 at seventy-five (\$75) dollars to be increased to the sum of two hundred (\$200) dollars.

(c) That in consequence of the aforesaid and other acts of the said Frederick A. Laurence the said Town Council of the said town exhibited Articles of Complaint against the said Frederick A. Laurence for misbehaviour in his said office of Recorder. 20

(d) That a hearing before said Town Council was duly had thereon, after due notice to the said Frederick A. Laurence, and after a full investigation thereof the said Frederick A. Laurence was dismissed from the said office of Recorder of the town of Truro.

(e) That the said Town Council being desirous of obtaining a repeal of the aforesaid Statutes and other Acts which the said Frederick A. Laurence had 30
procured to be passed by said Legislature hostile to the interests of the said town of Truro by corporate resolution directed that a petition to the said Legislature asking for the repeal of the said Acts should be drawn up and presented by or on behalf of the said town.

(f) That said petition was duly drawn up in obedience to said corporate resolution and the Plaintiff as and being the Mayor of the said town of Truro signed the same, and caused the same to be forwarded to a member of the said Legislature for presentation, but the same never was presented to said Legislature but was withdrawn by said Plaintiff.

(g) That annexed to the said Petition and forming part thereof was a copy 41
of the said Articles of Complaint exhibited by the said town of Truro against the said Frederick A. Laurence as aforesaid.

(h) That the said alleged libel formed part of the said Articles of Complaint so exhibited and annexed to said Petition as aforesaid.

(i) That the words complained of were and are true in substance and in fact, and were not libellous.

(j) That the said words do not bear the meaning placed upon them by said Defendant.

(k) That the alleged words "conspired with others" do not mean that the said Frederick A. Laurence conspired with the members of said House of Assembly, but mean and were intended to mean that the said Frederick A. Laurence conspired with the said H. T. Laurence and other beneficiaries or proposed beneficiaries under said Act.

(l) That the said alleged libel was never published by the Plaintiff, but if the same ever was published it was so published by the said Frederick A. Laurence.

(m) That the drawing up, signing and forwarding of said Petition to a
10 Member of the Legislature as aforesaid was privileged.

6. As to paragraph 6 (e) of said Defence, he says:—

That the said House of Assembly adjudicated upon and found the said Plaintiff guilty of the printing and publishing of the said alleged libel and of a breach of the privileges of the said House *ex parte* and without notice to said Plaintiff.

Delivered this 27th day of May, A.D. 1892.

WILLIAM McDONALD,
Solicitor for Plaintiff.

Reply.

20 The Plaintiff as to the defence of the Defendants, Michael J. Power and Alfred F. Haliburton, says that:—

1. He joins issue.
2. The Plaintiff will object.

(a) That the said Sections 20, 26, 29, 30 and 33, and the other sections referred to of Chapter 3, of the Revised Statutes, Fifth Series, entitled, "Of the Composition Powers and Privileges of the House" are *ultra vires* and the said Legislature of the Province of Nova Scotia has no power to pass the same or any of them.

(b) That the summons referred to in paragraph 7 of said Defence was
30 insufficient in law and was irregular and void and was not authorized by law and the said House had no jurisdiction to issue the same.

(c) That the warrants referred to in paragraph 7 of said Defence were and each of them was insufficient in law and was and were irregular and void, and was and were not authorized by law and the said House had no jurisdiction to issue the same.

(d) That said warrant, first therein referred to, did not state and set forth on the face thereof or at all the nature of the offence or any offence at all, for which the said Plaintiff was to be arrested.

(e) That the said warrant last therein referred to did not succinctly and
40 clearly state and set forth on the face thereof or at all, the nature of the offence of which the said Plaintiff was adjudged to be guilty and for which he was to be committed.

(f) That all the said proceedings of said House of Assembly were made
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Reply to
Defence of
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No. 9.
Reply to the
Defence of
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M. J. Power
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RECORD. and had without jurisdiction inasmuch as the said Plaintiff was prevented by said House from making full answer and defence and having counsel to assist him therein.

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M. J. Power
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continued.

(g) That the said House of Assembly had no jurisdiction to adjudicate upon the said libel and that all the proceedings of the said House thereon, and in connection therewith were and are void.

(h) That the said House of Assembly had no jurisdiction to commit the Plaintiff to the common jail of the county of Halifax.

3. As to paragraphs 10, 11 and 14, of said Defence, the Plaintiff says:—

That said House of Assembly was not sitting as a Court of Record, nor was said Michael J. Power sitting or acting as a Judge of a Court of Record at the time of the passing of any of the resolutions or the issue of any of the warrants or other papers mentioned and referred to in said Defence, nor were any such summons or warrants issued by the said House as a Court of Record or under seal. 10

4. As to paragraphs 7, 8, 9 and 10 the Plaintiff says:—

That on the 20th day of April inst., when he appeared at the bar of said House he denied the jurisdiction of the said House in the premises.

5. As to paragraphs 7, 8, 9 and 10 of said Defence he says:—

(a) That the said Frederick A. Laurence was Recorder and Stipendiary Magistrate of the town of Truro for the five years last past. 20

(b) That whilst he was such Recorder and Stipendiary Magistrate as aforesaid, he promoted, introduced and passed or caused to be promoted, introduced and passed certain Acts or Statutes of the said Legislature whereby the salary of said Recorder and Stipendiary Magistrate was fixed at the sum of two hundred (\$200) dollars each after the Council of the said town of Truro had by corporate resolution fixed the salary of said Recorder and Stipendiary Magistrate at fifty (\$50) dollars for the year 1891, and also by said Acts or Statutes caused the salary of H. T. Laurence, a brother of said Frederick A. Laurence, Inspector of License for the town of Truro aforesaid which had been fixed by said Council for the year 1891 at seventy-five (\$75) dollars to be increased to the sum of two hundred (\$200) dollars. 30

(c) That in consequence of the aforesaid and other acts of said Frederick A. Laurence the said Town Council of the said town exhibited Articles of Complaint against the said Frederick A. Laurence for misbehaviour in his said office as Recorder.

(d) That a hearing before the said Town Council was duly had thereon, after due notice to the said Frederick A. Laurence and after a full investigation thereof the said Frederick A. Laurence was dismissed from the said office of Recorder of the town of Truro. 40

(e) That the said Town Council being desirous of obtaining a repeal of the aforesaid Statutes and other Acts which the said Frederick A. Laurence had procured to be passed by said Legislature hostile to the interests of the said town of Truro by corporate resolution directed that a petition to the said Legislature asking for the repeal of the said Acts should be drawn up and presented by or on behalf of the said town.

That said petition was duly drawn up in obedience to said corporate resolution and the Plaintiff as and being the Mayor of the said town of Truro, signed the same, and caused the same to be forwarded to a member of the said Legislature for presentation—but the same never was presented to the said Legislature but was withdrawn by said Plaintiff.

(g) That annexed to the said petition and forming part thereof was a copy of the said Articles of Complaint exhibited by the said town of Truro against the said Frederick A. Laurence as aforesaid.

10 (h) That the said alleged libel formed a part of the said Articles of Complaint so exhibited and annexed to the said petition as aforesaid.

(i) That the words complained of were and are true in substance and in fact, and were not libellous.

(j) That the said words do not bear the meaning placed upon them by said Defendant.

(k) That the alleged words "conspired with others" do not mean that the said Frederick A. Laurence conspired with the members of said House of Assembly, but mean and were intended to mean that said Frederick A. Laurence conspired with the said H. T. Laurence and other beneficiaries or proposed beneficiaries under said Act.

20 (l) That the said alleged libel was never published by the Plaintiff, but if the same ever was published, it was so published by the said Frederick A. Laurence.

(m) That the drawing up, signing and forwarding of said petition to a member of the Legislature as aforesaid was privileged.

6. As to paragraphs 7, 8, 9 and 10 of said Defence, he says:—

That the said House of Assembly adjudicated upon and found the said Plaintiff guilty of the printing and publishing of the said alleged libel and of a breach of the privileges of the said House *ex parte* and without notice to said Plaintiff.

Delivered this 27th day of May, A.D. 1892.

30

Reply to Defence of Thomas A. Chambers and Nicholas J. Power is similar to that to the Defence of Honourable Michael J. Power and Alfred F. Haliburton above printed.

In the Supreme Court, 1892.

Between

David J. Thomas - - - - - Plaintiff,

and

A. F. Haliburton *et al.* - - - - - Defendants.

40 The Court opened at half-past nine o'clock on this Thursday morning, June 15th, 1892, when the trial of this action was begun before Mr. Justice Townshend, with a jury. Messrs. Henry, Q.C., Gourley and Harding, appeared

RECORD.

No. 9.

Reply to the Defence of Defendants M. J. Power and A. F. Haliburton, dated 27th May 1892—*continued.*

No. 9A.

Reply to the Defence of Thomas A. Chambers and Nicholas Power (as preceding).

No. 10.

Evidence of David J. Thomas.

RECORD. for the Plaintiff, and the Defendants were represented by the Attorney-General, W. B. Ross, Q.C., and Drysdale. W. B. Wallace was sworn as official stenographer.

No. 10.
Evidence of
David J.
Thomas—
continued.

Mr. H. S. Harding opens on behalf of Plaintiff.

Mr. Borden, on behalf of Defendants, Thomas Chambers and Nicholas Power, contends that these two Defendants are entitled to judgment. He refers to Chapter 42, of the Acts of the Legislature of Nova Scotia, for the year 1892, entitled an Act to amend Chap. 3, R. S., 5th Series.

Mr. Drysdale, made a similar motion on the same ground, on behalf of Hon. M. J. Power and A. F. Haliburton.

10

David J. Thomas, sworn, testified as follows :—

Examined by Henry, Q.C.—Question. You are the Plaintiff?

Answer. Yes.

Q. You are at present the Mayor of Truro?

A. Yes.

Q. How long have you been Mayor of Truro?

A. This is my second year. I was Mayor last year. I was sworn in about the 4th February, 1891, and have been Mayor of Truro since. I remember being served with a summons to attend at the bar of the House of Assembly, of Nova Scotia. I received that summons on a Saturday morning, on April 16th. I attended at the bar of the House in compliance with the terms of that summons, on Monday, the 18th, at half-past three.

Q. State what took place when you so attended at the bar of the House?

A. When called in I asked for Counsel,—to be allowed to have Counsel to represent me and to extend the time for answering the charge. I think I asked until Thursday or Friday, and they granted me until Wednesday at half-past three. *(The printed record of the proceedings in the House of Assembly, as contained in the Journals of the House of Assembly was here tendered by Mr. Henry, and by consent read by the Prothonotary.)

**Vide*
Record of
Proceedings,
&c., printed
post pp. 62—
74.

I returned to Truro in the meantime, and again attended on Wednesday, at half-past three. I retained legal assistance in Halifax, on Monday, the 18th. When I appeared on Wednesday, the 20th, at half-past three, I made a further application to be allowed to have assistance of Counsel. That privilege was refused then. (Mr. Ross objects to this evidence because of the existence of the official record.)

Q. State what took place on Wednesday?

A. I was sitting down in a kind of little room when the House was working on this question of mine, and of course I knew nothing of what was going on. My Counsel came out and advised me to go out on the side walk and stay there until he would call me.

In the meantime the Sergeant-at-Arms came out and he said something. I did not understand what he said to me, but I thought that I heard my Counsel speaking to him. Of course the Sergeant-at-Arms was speaking to me, and he followed me about half way towards the library, but I never said a word to him, but simply went away, under advice of my Counsel.

40

This took place after I had been previously in and was requested to withdraw.

Q. The Sergeant-at-Arms told you that you were wanted in the House?

A. Yes, I would suppose that, I did not catch it exactly. There was no written document exhibited to me or any warrant of any kind on that day. I went out and shortly afterwards took a train and came to Truro. I went down to the hotel first. Nothing happened about this matter again until Friday, the 22nd. On Friday, the 22nd, I went to De Bert, which is about 15 miles from Truro, and on my way back I came to Belmont and had dinner there, at the house of my brother-in-law, Lockhart Crowe. I was arrested on that day. I had just finished my dinner, it was a few minutes before 3 o'clock, and a carriage drove up the side door of the house, and of course I took the hint in a moment, although I was hurrying very much to come back to Truro at the time. My brother-in-law went out to the door to see what they wanted, and I stayed in the front room. Mr. Crowe came in and said that Detective Power and the Sergeant-at-Arms were there. I told Mr. Crowe to send the Sergeant-at-Arms into the house. I was sitting down, in a chair, and he, Mr. Haliburton, walked up. He came alongside of me. He says, "I have got a Speaker's warrant here to take you," or something of that nature. I said, "Have you authority to take me from here?" He said, "Yes, that that warrant was sufficient to take me, dead or alive." I said, "Have you got a copy of it to hand me?" He said, No, he had no copy. He turned it up and showed me the Speaker's name. He said, "Here it is, it is the Speaker's warrant, which can take you anywhere." "Well," I said, "I suppose I can drive to Truro with my wife?" "Well," he said, "you have got to go with me." I said, "I don't know if that is just right?" He said, "Some one else might drive your horse." I think I asked him if I could not get bonds to appear on Saturday or Monday before the House. He said he did not know about that. He called Mr. Power in about this, because I wanted to know, as I had considerable business to look after. Detective Power came in and sat down opposite me, and I told him the request I would like to make—was to allow me to appear before the House on Monday, I think I said "Monday," and give bonds in the meantime to appear on Monday. He said he could not do that, I would have to go and they would use me like a gentleman. He said, "There is no doubt about that, they will use you like a gentleman." I don't know that I answered that. I consented. I said that I wanted to drive with my wife. Power consented. I promised to be at the station before six o'clock to meet the train for Halifax. I drove to my house at Truro and got ready as soon as I could and we started off again. Mrs. Thomas was with me. She said "I should not go alone that she would go on to Halifax." She and I went down to the station and we met these gentlemen there according to contract or agreement. They kept their word all right, and I kept mine. I understood that there was a detective walking up and down near my house in the meantime. I saw him. When I got at the station Power and Haliburton were there.

Q. At the station were you taken into the actual custody and taken hold of by any of these men?

RECORD.

No. 10.
Evidence of
David J.
Thomas—
continued.

RECORD.

No. 10.
Evidence of
David J.
Thomas—
continued.

A. Yes, by Detective Power and the Sergeant-at-Arms, each taking an arm, and leading me to the car for Halifax. I was taken down by them in the car to Halifax. When I arrived at the North Station, in Halifax, I was taken to the Albion Hotel in a cab. That was a little after 8 o'clock. I don't think I got supper there. About 10 minutes after I arrived at the Albion Hotel the Sergeant-at-Arms came after me to take me before the bar of the House. He said I was wanted before the bar of the House. He would hardly give me time to get my coat on.

Q. Do you remember any difficulty about getting an opportunity to read over the warrant in the Albion Hotel?

10

A. Yes.

Q. What occurred with regard to the warrant?

A. I got no copy of it. I was met there by Counsel, according to arrangement by telegram.

Q. Do you remember your Counsel having a difficulty about the warrant before you were taken to the House?

A. Yes, refusing him to look at it, to read it. Finally some opportunity was given of perusing the warrant, just walking along hurriedly while I was being taken away. From there I was taken to the bar of the House. The Sergeant-at-Arms took me in and the Speaker asked me what I had to say, and I think the answer was, that I had nothing to say.

Q. Did you say anything about counsel?

A. Yes.

Q. You renewed your request to be represented by counsel?

A. Yes.

Q. On that occasion, or any occasion, did you make any admission before the House, to the effect that you had been guilty of contempt of the House?

A. No. I don't remember of anything like that. I don't think the question was ever asked me.

Q. Of course it was admitted that you had disobeyed whatever order Mr. Haliburton had given you?

A. Yes.

Q. I suppose, as regards the rest, the record states it correctly?

A. Yes, I was ordered to withdraw, and I was taken back by the Sergeant-at-Arms and Power to the Albion Hotel, and kept there under arrest and under watch until the next evening.

Q. Who were watching you there besides Detective Power and the Sergeant-at-Arms?

A. I learned that Mr. Tanner was one. The other man I do not know. There was a fourth man employed there watching me. It was a man I believed to be Harry Wright, a dark complexioned, low-sized man, thick-set. The Albion Hotel is a pretty good size. It accommodates a good many guests. There were a good number of people there.

Q. You were never at liberty at any time you were there?

A. No. If I would go into my dinner one of them would follow me in. I suppose this work of watching me was divided between these four men. There

40

was always one of them on hand. Whenever I would move I would see one or two of them around.

Q. Was the supervision of your movements and restriction of your liberty observable by the guests of the hotel generally ?

A. Yes, I understood it was more so than by myself.

Q. Where were you keeping most of this time, in different rooms, sometimes in the sitting-room, and sometimes in a room of your own ?

A. Yes.

Q. And your meals were taken in the dining-room ?

10 A. Yes.

Q. And when you were in your own room there was a man at the door ?

A. Yes.

Q. Within easy access ?

A. Yes.

Q. That you observed throughout ?

A. Yes.

Q. And this occurred night and day, so far as your waking hours indicated ?

A. Yes ; I suppose the detective was carrying out his promise to me, to use me like a gentleman. On the next evening I was taken to the bar of the
 20 House again at half-past nine, in the custody of the Sergeant-at-Arms and Power. There were a good many others there. There were extra policemen on duty. On that occasion there was a very large crowd of people in the halls building and about the lobby. And I was taken by these officials through that crowd in custody and taken into the lobby of the House—that is into the hallway or entry between the door leading into the bar of the House, and the next door coming out. I remained there some little time before being taken up to the bar of the House. I remember having a brief interview with Counsel in the lobby. I was supplied with a paper by somebody—a small written document—
 30 about that time. I have it here. (Witness produces a slip of paper.) This paper was given to me for the purpose of being read to the House. I believe that was the intention. I did not read it to the House. I was taken to the bar and was asked if I had anything further to say, and I said that I did not know that I had anything more to say. I think that is all I said. I was told to withdraw, and did so. Then I was taken back again and an order for my imprisonment, which is transcribed in the Journals of the House was made and communicated to me. I remained a considerable time in the lobby during a debate on this matter. I remained about an hour and a half or two hours. Then shortly before 12 o'clock I was removed from the House, in the custody of
 40 the Sergeant-at-Arms, Detective Power and others. They took me out through the crowd—a very large audience of members and policemen, and I was taken up to the jail in a cab and given in charge of the jailor. On Monday, I think, I was taken to the court-house, at three o'clock, in custody. I remained there in custody until an order was granted by the Court, at nearly seven in the evening, to discharge me. It was after argument before the Full Court. On Monday, the 20th, I read a paper as an answer, and that paper is the one which is transcribed in the journals. I employed Counsel in Halifax to advise me throughout in the matter, and also in connection with my application to the

RECORD.

No. 10.
 Evidence of
 David J.
 Thomas—
 continued.

RECORD. Supreme Court, to be released from custody. I also retained Counsel in Truro. I did so before I retained Counsel in Halifax, and was advised throughout in Truro as well. My Counsel in Truro was in Halifax on several occasions in connection with this matter.

No. 10.
Evidence of
David J.
Thomas—
continued.

Cross-examined by the Attorney-General.—Question. You forwarded this document—the petition—to Mr. Cummings, of the Legislative Council and to Mr. Clarke, one of the members for the county of Colchester?

Answer. No.

Q. It purported to be forwarded by you?

A. I signed it. It was told to me the next day after this was sent that they had used my name—the committee did—and also the signing of the telegram, and I said it was all right.

Q. You took no steps to let any person know that you disapproved of it?

A. No.

Q. On the contrary you endorsed their action?

A. Yes.

Q. Who was it that took the responsibility of using your name?

A. I think it was Mr. Harding. He was one of the committee appointed to draw up the petition.

Q. You had seen this document before it was forwarded to the House? 10

A. Yes, I saw it and signed it.

Q. Do you know who drew it up?

A. No, except the committee, from amongst them. The committee appointed by the Town Council drew it up.

Q. But I am referring to the exhibit, the articles of complaint, the charges, who drew them up?

A. I think it was Mr. Gourley.

Q. At all events you did not draw it up?

A. No.

Q. Do you know who drew up this petition of the Town Council to forward it to the House? 30

A. Mr. Harding was one of the Committee. I think the records will show who the Committee were. I think it was Mr. Patterson and Mr. Harding. I don't know that there was another man. I don't remember whether Mr. Bligh was on the Committee. He might possibly be.

Q. Don't you think that Mr. Gourley drew up the petition also?

A. I don't know anything about that.

Q. At all events you signed your name to it, and it was forwarded to the Legislative Council, to Mr. Cummings, and Mr. Clarke in your name?

A. Yes. That was what I understood.

Q. You say that Mr. Gourley prepared this exhibit which is annexed—the articles of impeachment? 40

A. Yes, I think so.

Q. You were in constant consultation about it?

A. I could not say. The matter was before the Town Council, and I was familiar with it. The matter was being discussed from time to time.

Q. This charge that you sent down to the Legislature declared that Mr. Laurence had wilfully, wrongfully and in contempt of the Council promoted and caused to be introduced, certain laws and statutes, and conspired with others?

RECORD.
—
No. 10.
Evidence of
David J.
Thomas—
continued.

A. Well, that alluded to affairs of the town of Truro altogether. We were showing the reason why the exhibit was sent down,—giving the reason why that exhibit was sent down,—giving the reason why we wanted these Acts repealed.

Q. What did you mean when you stated that he “conspired with
10 others”?

A. I think “with others” was his friends here in Truro.

Q. Those are the persons you think he was conspiring with?

A. Yes.

Q. What friends in Truro?

A. These friends that were supposed to get the positions—Mr. Laurence’s friends.

Q. Name them?

A. I would not mention any names in a case like that, because at that time we hardly knew who they were. It never meant members of the House
20 of Assembly at all. I am perfectly clear about that. It was never thought of in the council.

Q. When you say he was “conspiring” there must have been some person he was conspiring with. Who was it?

A. I would not be clear on that.

Q. But you had no hesitation in going down to the House of Assembly and informing them that this man—one of the members of the Legislature—had entered into a conspiracy?

A. Some one else might explain that.

Q. But this is your signature?

A. Yes.

Q. “A. E. Mackay, H. T. Harding, W. E. Bligh, — Kent, A. A. Archibald.” Those are the signatures, are they not?

A. I think they are. I am not familiar with their writing.

Q. Then, when you were sending down this document to the Legislature, charging a member of the Legislature for this county with all sorts of heinous acts, and charging him with conspiring with others, you did not know who he was conspiring with, but just sent it down in an off-hand manner?

A. Well, we had reasons.

(The Court here took recess for an hour.)

Q. Do you now finally say that you cannot give the names of any person
40 whom Mr. Laurence was supposed to have conspired with?

A. Well, you are pressing the names, are you?

Q. Yes?

A. Of course I don’t want to give them, but of course, we meant those that were in positions like himself and his brother and the newly appointed one now—I suppose it would be Mr. Crowe.

RECORD.

No. 10.
Evidence of
David J.
Thomas—
continued.

Q. What did you know when you sent that, about what had passed between Mr. Laurence and his brother and Mr. Crowe?

A. We knew that we never asked for these Acts to be passed.

Q. I am talking about a conspiracy which took place between Mr. Laurence and his brother and Mr. Crowe?

A. I don't know what took place between them.

Q. You don't know anything about that?

A. No.

Q. You don't know anything that took place between them?

* *Sic.* A. No, I can't say I do; only the appearance and looking* of the Act going 10 through.

Q. Do you know that there ever was a word passed between Mr. Laurence and his brother?

A. No, not to my knowledge.

Q. And you did not know it when you sent the petition down?

A. No.

Q. Did you ever take the pains to verify the statements in that petition by personally investigating the accuracy of the statements?

A. We did inquire.

Q. Did you investigate personally? 20

A. No, not personally.

Q. And you sent this down, charging conspiracy, without any investigation?

A. I had no personal evidence.

Q. But what did you know?

A. Well, the Act was passed and it was never asked for.

Q. There was no request to have these Acts passed. Where does the conspiracy come in?

A. I know of nothing except just the way it was done.

Q. You don't know whether Mr. Laurence conspired with anybody or 30 not?

A. No, not personally.

Q. But do you know anything about it?

A. Well, the way it was done, without being asked for. There was no request by any of the Council or by resolution.

Q. What was the original salary of the Stipendiary Magistrate of Truro five years ago?

A. The Stipendiary and Recorder I think \$200.

Q. Was it not \$400?

A. No. 40

Q. What was it ten years ago?

A. I think about \$200.

Q. Was not the salary of the Stipendiary and Recorder combined \$400?

A. Not of late years.

Q. Ten years ago?

A. I don't think. I would not say never. It might have been 10 or 12 years ago \$400. It was ultimately cut down to \$50. I understood he held

office during good behaviour and could not be turned out. I was on the Council when it was reduced. I was Mayor. I voted for the reduction. There was a division of opinion in the Council about it. **RECORD.**

N. 10.

Evidence of
David J.
Thomas—
continued.

Q. How came you to vote upon it?

A. I had the casting vote.

Q. Why didn't you make it fifty cents?

A. I hadn't the putting of the salary. I could not make it fifty cents.

Q. I suppose you would have voted if it had been 50 cents?

A. I would not say that I would. I don't think I would, because I
10 afterwards voted to put the salary at \$200,—at the end of the year.

Q. Did you ever pay that \$200?

A. He refused to take it.

Q. Was it not \$400 prior to that?

A. I think not.

Q. Of course you regarded \$50 as a proper salary for the Recorder and Stipendiary Magistrate of a town like Truro?

A. Well, the statement was made that he did not attend to his duties, and it was on that ground. I knew very little about the work. A statement to that effect was made, and, of course, I had good reason to give a casting
20 vote.

Q. If an officer holds salary during good behaviour, and you reduce the salary low enough, the effect of that would make him resign?

A. It might, possibly.

Q. You knew nothing, of your own knowledge, of any conspiracy between Mr. Laurence and others, except "appearances"?

A. That is so.

Q. And you had no personal knowledge of any conspiracy when the matter was sent to the Legislature?

A. No.

30 Q. You know what it means to "conspire"?

A. Yes.

Q. It is a nice thing to conspire, is it?

A. No.

Q. You sent down to the House of Assembly a statement declaring that Mr. Laurence had conspired with other people?

A. No, I did not. Not directly.

Q. You took a general survey of the situation and you thought the appearances looked that way, and you accordingly sent it to the Legislature?

A. Yes. We had good reason to do so.

40 Q. When did you come to the conclusion that this was a wrong thing to send to the Legislature?

A. I got an acknowledgment from Mr. Clarke in connection with it, and I received a letter from him, and on receiving the letter I read it and went down to Mr. Harding, showed him the letter and asked him to go down and find out if there was anything wrong in the matter. Of course, we never intended to interfere with the members of the House, or the rules and regulations of the House, and I asked him to go down and look into the matter, and

RECORD. withdraw it if he thought proper. He went down under my directions, as Mayor, to withdraw it. That was the last I heard of it until afterwards.

No. 10.
Evidence of
David J.
Thomas—
continued.

Q. Then you came to the conclusion that it was not a proper document to submit to the Legislature?

A. I knew nothing about that. I told him to look into the matter and withdraw it. I took it for granted from the letter I received from Mr. Clarke that there might be doubt in it.

Q. You had no doubts about it when you sent it?

A. I never thought that it was interfering with the privileges of the House. When that document was gotten up it was dealing with the affairs of the town of Truro. 10

Q. But you were seeking legislation from the House?

A. Yes, for borrowing money.

Q. You were seeking something else from the House?

A. Yes,—repealing these acts.

Q. Then you sent this document down in furtherance of that?

A. Yes. It was left in the hands of the committee.

Q. But you sent it?

A. Well,—it was left in the hands of the committee.

Q. But you endorsed it?

A. Yes,—after it was sent. 20

Q. You have already stated that you were not able to certify of your personal knowledge as to whether it was accurate or not?

A. Well,—I was not a lawyer.

Q. It does not require a lawyer to know whether the facts existed or not?

A. Sometimes it does.

Q. Your summons was served on you on Saturday, the 16th?

A. Yes. I consulted Counsel in regard to the matter before I went to Halifax,—on Saturday night. I consulted Mr. Gourley. I came to Halifax on Monday morning, and Mr. Gourley accompanied me. 30

Q. And during the forenoon on Monday you consulted Mr. Henry in addition?

A. Yes.

Q. After these consultations with Counsel you went before the bar of the House on Monday afternoon?

A. Yes.

Q. Your Counsel was in the vicinity of the room when you were called in?

A. Yes.

Q. The House made an order for you to withdraw and remain in attendance,—on Monday? 40

A. Yes.

Q. And you obeyed that order?

A. Yes.

Q. And then came back on Monday when the Sergeant-at-Arms desired your attendance at the House?

A. Yes.

Q. And then the matter was postponed and you went on to Truro?

A. Yes.

Q. And you still had access to counsel on Tuesday?

A. No.

Q. Your counsel were fully advised as to the case?

A. Yes, but they were in Halifax and I was in Truro.

Q. But on Wednesday you came back again?

A. Yes.

10 Q. And you were present when the resolution was put—moved by the Provincial Secretary—that you withdraw and remain in attendance, after you had read this statement?

A. Yes.

Q. You were in the house when that resolution was moved and put?

A. Yes, I think I was.

Q. And the Speaker communicated to you that you should withdraw and remain in attendance?

A. I think he did. I know he said something.

Q. That is what the record says, you don't dispute the record?

A. No.

20 Q. You don't know what transpired in the House while you were out?

A. No.

Q. And if your counsel had not been there, and the Sergeant-at-Arms had stated to you that the House desired you to return, you would have done so?

A. Well, I suppose I would, because I was innocent of anything that was going on. I was kept in the dark.

Q. You knew that when you were reading the statement one of your counsel was sitting in the House?

A. I did not know that then.

Q. Mr. Henry came out suddenly and met you in the lobby?

30 A. Yes, I was standing in the lobby by a table.

Q. You did not know whether it was right to obey the House or not, you trusted your counsel entirely?

A. Yes, and Mr. Fielding advised me to be directed by my counsel.

Q. He told you to consult fully with counsel?

A. Yes. I told him who my counsel was and he said, "You are fully under the instruction of counsel," and I said "Yes."

Q. You did not take any responsibility in the matter, you did not say that you would not go back?

40 A. I would not say that. I went down to the Halifax hotel after I left the House. After I went out I walked up and down the side walk expecting that I would be brought back. I waited until the audience came out. I did not see my counsel or anybody else, but I met Mr. Harding at the hotel and I afterwards went home.

Q. That was on Wednesday evening?

A. Yes. The next forenoon I sent my little girl down to get a paper. She brought me up a "Chronicle," and I saw the House had made a move in connection with my affair.

RECORD.

No. 10.
Evidence of
David J.
Thomas—
continues.

Q. You saw the resolution, that the House had ordered your arrest?

A. Yes.

Q. And you had reason to believe that sooner or later the Sergeant-at-Arms would be after you?

A. Yes; it stated he would be up that day, and I was ready to go to De Bert at that moment, and I stayed home all that day.

Q. You stayed home all that day in order to be ready to go to Halifax?

A. Yes. I went down on Friday and took my wife with me. I called at McCallum's house and told him I would be back that evening. When these people drove up at the house at Belmont I did not know what answer my 10 friends who went to the door made to those men.

Q. Did they say that you were not there?

A. I don't know. I think Lockhart Crowe, my brother-in-law, went to the door.

Q. Do you know whether the Sergeant-at-Arms or any person with him had any conversation with Mrs. Thomas before they saw you?

A. Yes, I think she went out too. I don't think she told them, just to try them. It would be quite natural for her not to tell them. I don't think we need jump into the arms of a detective. There was not much hiding done.

Q. You don't mean to say that the officers of the House behaved otherwise 20 than with the utmost civility?

A. I have not much complaints about them. Power was acting under the Sergeant-at-Arms. I was allowed to visit my own house on my personal word that I would be at the station afterwards. They laid hands on me.

Q. There was no violence?

A. No.

Q. Mrs. Thomas accompanied you in the train and remained with you in the Albion Hotel?

A. Yes.

Q. You and she stayed together on the train?

A. Yes. 30

Q. At the hotel you had a nice room?

A. Nice enough.

Q. No one intruded in your room?

A. No, not directly.

Q. And when you chose you went down to the parlor?

A. Yes.

Q. You saw your counsel when you chose?

A. Yes.

Q. You had latitude?

A. Yes, they would follow me, of course. 40

Q. You and Mrs. Thomas dined at the hotel together?

A. Yes.

Q. None of these people sat at the same dining table with you?

A. No.

Q. You afterwards came up to the House and opportunities were given

you by the House on Friday evening, to say anything you had to say in explanation of what you had done? **RECORD.**

A. Yes.

Q. You saw your counsel on Saturday, and any friend that wanted to go up to your room to consult with you in regard to the case, and at a later hour in the evening quite a number of friends from Truro called on you? **No. 10.
Evidence of
David J.
Thomas—
continued.**

A. Yes, I had about 15 minutes to see them.

Q. You had no reason to doubt that they were good warm friends?

A. Yes. Some of them used to be my enemies.

10 Q. You went over to the House on Saturday evening and your friends were about in the galleries and lobbies of the House?

A. You ought to know better than to ask me a question like that when I had no privilege to see anyone.

Q. You did not know that they were about?

A. I understood that they were going there, but I could not see them. While the debate was going on pending the passage of the resolution, I sat in a room where there were desks and chairs. Mrs. Thomas was with me part of the evening. She was admitted by the courtesy of somebody. I think she left when they were about ready to take me to prison. She stayed there as long as
20 she wished. I was taken to a cab and driven up to the jail. I had a room there.

Q. It was a nice house?

A. It was just like an ice house.

Q. There was a room with a bed in it?

A. Yes. The following day I had friends in to see me all the time during the day. A great many leading citizens called.

Q. Therefore you had not a very disagreeable day?

A. Well, it is not a very nice place.

Q. Mrs. Thomas came to see you?

30 A. Yes. She dined with me, we dined alone. Others came in, some in the afternoon and some in the forenoon.

Q. And then on Monday you came up before the Judges and listened to the argument in the Court house?

A. Yes. I was released by order of the Judges a little before seven. I then went back to the jail to pay the jailor \$2.00 for my food. I then went to the Halifax Hotel. Mrs. Thomas went to the Halifax Hotel on Saturday night. I remained there on Monday night. The first train leaves on Monday morning about 8 o'clock from Halifax. I did not go up in that train. The next train possibly leaves about 2.10 in the afternoon. I did not go in that train.

40 Q. Why did you linger in Halifax?

A. I was just talking with my counsel, making arrangements for everything.

Q. Were there any other reasons?

A. Well, I had some friends to see. I thought that I was badly used and thought I had a right to see my counsel, to see what I could do.

Q. You stayed down there to prepare for this conflict?

A. Yes.

RECORD.

No. 10.
Evidence of
David J.
Thomas—
continued.

Q. You had no other object in staying there ?

A. No.

Q. You say you had no other reasons for remaining ?

A. Nothing particular.

Q. Did you have any other reason for remaining for that late train ?

A. No.

Q. Did you have any communication from Truro that day or the previous night ?

A. The previous night I had a telephone from the foundry, I think, asking the decision of the judges. 10

Q. Was there anything said to you about it being better for you to delay until the evening train in order that there might be proper arrangements made for your reception ?

A. No, but there was a talk of it, in Halifax. I got no direct communication or I would own up to it in a minute. I had heard talk that there was going to be a little demonstration.

Q. It would be a convenient time when the train arrived to begin the performance ?

A. I don't know. I did not enjoy it very much.

Q. There was some performance on your arrival. Did you hear the 20 melody of a local band ?

A. I heard it was an Amherst band.

Q. I suppose it was paid for ?

A. I don't know.

Q. There was a torch-light procession and carriages ?

A. Yes.

Q. And you were in one of the carriages ?

A. Yes.

Q. And some of the leading citizens rode in state through the streets with you ? 30

A. Yes.

Q. And at some central point there was an address presented of a complimentary character ?

A. Yes. I forget who presented the address.

Q. You have retired from active business ?

A. I am working hard every day.

Q. You were formerly actively engaged in mining ?

A. Yes.

Q. You are not actively engaged in mining now ?

A. Not much ! I look after them. I did business as a merchant in Truro, 40 and afterwards sold out, and since that time I have not been engaged in active business, but I have in active work.

Q. Who has the sole responsibility of this present suit ?

A. I have.

Q. No promises of assistance ?

A. Not a dollar.

Q. Any person ever suggested assistance ?

A. No, because I brought it on before I saw any of my friends. It was understood on Tuesday, the day after I was relieved from jail. RECORD.

Q. Did any person suggest or advise that you bring this action?

A. My Counsel did. Of course he and I consulted together, and of course I was advised by him.

No. 10.
Evidence of
David J.
Thomas—
continued.

Re-examined by Henry, Q.C.—Question. As to this paper which you produced in your direct examination, where did you get it?

Answer. At the Albion Hotel, on Saturday night.

Q. About what time?

10 A. A little while before we went to the house.

Q. From whom did you get it?

A. From Mr. Clarke.

Q. What did he say?

A. I don't know what he said.

Q. What did he ask you to do with it?

A. He said, there are a few lines you can make use of in the House. He asked me to read this in the House.

Q. Did he tell you if you read it, it would be the end of the whole business?

20 A. Yes.

Q. Did he tell you who wrote it?

A. No.

Q. You don't know who wrote it?

A. No.

Re-cross-examined by Ross, Q.C.—Question. Do you know that Mr. Clarke when he got this paper—got it purporting to be an envoy from you—got it by asking on your behalf?

Answer. No.

Q. Had not you a previous conversation with him?

30 A. Yes, about an hour before.

Q. He told you that he was going to see the Attorney General or some member of the Government?

A. Yes.

Q. Did you tell him not to go and see any member of the Government?

A. No, I do not know where this paper came from. It was after he told me that he was going to see the Government that he brought this paper back.

Q. And he told you that if you read that paper before the House that would be the end of the whole matter?

A. Yes.

40 Q. And you refused to read it?

A. Yes.

Q. Did not Mr. Clarke tell you distinctly that if you read that before the House that would be an end of the whole matter, and that he had authority to say so?

p. 3926.

G

RECORL. A. I think he said something of that nature. I don't recollect just exactly what it was.

No. 10.
Evidence of
David J.
Thomas—
continued.

(The paper in question is here marked T. I. It is admitted that this paper is in the handwriting of the Attorney-General.)

Re-examined by Henry, Q.C.—I saw Mr. Clarke about an hour before he brought this paper. I saw him at the Albion, he came to see me upstairs. He gave me to understand when he came to see me on Saturday evening that he had been speaking with some members of the Government on that subject, and he said he would go and see them again. He said that he had never met me before, and he said he was sorry for me, he wanted to meet me all day, and he would like to know what he could do. I said "I don't know what you could do." I said, "Why don't you read the reprimand to me?" "Well," he said, "would that do you?" He said, "I will go and see Mr. Fielding about reading that to you," and this is the paper he afterwards brought back to me. I understood that he came to me after seeing members of the Government and was going to see them again. He did not tell me who wrote that paper. I remember being visited by Mr. Goudge. I felt the confinement keenly. 10

This concluded the testimony of the witness.

No. 11.
Evidence of
C.E. Bentley.

C. E. Bentley, sworn, and testified as follows:—

Examined by Mr. Gourley.—I live in Truro and have lived here about 11 years. I am a merchant. I am a member of the firm of Blanchard, Bentley & Co. I recollect the day Mr. Thomas was arrested. I saw him arrested at the Truro depôt. There was a large number of people there. It was rumoured in town that the Mayor was going to be arrested. That was the thing that took me there. I heard that the Mayor of Truro was to be arrested and I immediately went to see him. I found him coming from his house towards the depôt. When he arrived at the station there was quite a crowd of people there, and I asked detective Power if the Mayor of Truro was under arrest, and he said he was. I said "by what authority?" He said, "the Speaker's warrant." "Well," I said, "we shall want to see it." He then invited us to step inside, and I said, No, we should have to see it here in the presence of the citizens. He then fetched the Sergeant-at-Arms and he produced a document supposed to be a Speaker's warrant. I then said, even then in order to arrest the Mayor of Truro, unless with his consent, there is not power enough to take him. 20 30

This concluded the testimony of the witness.

Lockhart Crowe, sworn, testified as follows :—

RECORD.

Examined by Mr. Gourley.—I live at Belmont. I recollect the time when Detective Power went down and arrested the Mayor at my house. Mr. Thomas had been at my house about an hour and a half. The Sergeant-at-Arms and Mr. Power came to the house about 2 o'clock. Two other people were with them. They said they had a warrant from the Speaker of the House of Assembly to arrest Mr. Thomas and take him to the bar of the House. They arrested him. I saw them. When I went into the room the Sergeant-at-Arms was reading the warrant and put his hands on him and said he was his prisoner.
10 He went away with him afterwards.

No. 12.
Evidence of
Lockhart
Crowe.

Alfred Haliburton, sworn, testified as follows :—

Examined by Henry, Q.C.—I am one of the Defendants, I carried out the expedition which resulted in the capture of the Mayor of Truro. The facts stated by Mr. Thomas and Mr. Crowe, with regard to the arrest and detention of Mr. Thomas are substantially true. I arrested Mr. Thomas under the authority of the Speaker's warrant. I am not positive as to who delivered the warrant to me, but I think the Speaker was present. This is the warrant. (The warrant is here tendered and received in evidence and marked T 2.)

No. 13.
Evidence of
Alfred
Halliburton.

Question. What did you say to Mr. Thomas on Wednesday, the 20th
20 of April, on the occasion when he left the precincts of the House of Assembly?

Answer. I said to Mr. Thomas that he was required before the bar of the House again. I simply communicated the message of the House to Mr. Thomas in the ante-room.

Q. What did you say to him?

A. I said to him that his presence was required at the bar of the House again.

Q. You remember that somebody else was present on that occasion?

A. Yes, I remember that you came out. I remember you speaking to
30 Mr. Thomas. You told him to go. You said that he would not go before the bar of the House without force and I had no warrant.

Q. You did not hear what else I said to him?

A. You said, I order you to go, Mr. Thomas.

Q. You think I said the word "order"?

A. I heard it, I am sure.

Q. Did you hear me say anything else?

A. No.

Q. Then you went back to the House and told the House that he would
not come?

A. I reported the fact.

Q. Were you on duty all the period covered by Mr. Thomas' confine-
40 ment in the hotel and until he went to jail?

RECORD.
 No. 13.
 Evidence of
 Alfred
 Halliburton
 —continued.

A. Pretty nearly. I had Nicholas Power and Tanner and Wright for assistants. It was the first time I saw Harry Wright. I think he was recommended by Mr. Power. I had no other assistance that I am aware of. I had only Mr. Power and Tanner most of the time and subsequently Wright. There were only the two of us here. I got my meals at the hotel and slept there at the time. I was relieved from duty at the House. I have a deputy there. Mr. Thomas never used any great violence during this period. I gave Mr. Thomas in charge of the jailor on Saturday night.

This concluded the testimony of the witness.

Paper marked No. 3 is put in by consent as the warrant under which Plaintiff was committed to jail. Summons marked No. 4 is admitted in evidence by consent of counsel. It is admitted that this is the summons under which Plaintiff was originally summoned to the bar. The record of the proceedings in the House of Assembly tendered by Mr. Henry, is put in by consent as evidence of the facts that actually took place. Mr. Gourley tenders the orders of the Supreme Court discharging Mr. Thomas from custody under the warrant of commitment, marked T 4. The Attorney-General objects to its reception. His Lordship declines to receive it. It is admitted that the same Defendants voted for the first resolution as voted for the other. The vote on this first resolution is not in the printed journals. This resolution is on page 152 of the Exhibit in evidence.

The Plaintiff rests.

Mr. Drysdale moves for judgment on behalf of the four Defendants, M. J. Power, Sergeant-at-Arms Haliburton, Thomas Chambers, and Nicholas Power. Mr. Drysdale read the Act passed last session in the House of Assembly in relation to these four Defendants.

Mr. Borden contended that these four Defendants were released from any liability by virtue of Section 25, of Chapter 3, Fifth Series, R.S.

His Lordship rules that the action must be dismissed in respect to these four Defendants, in view of the Act passed during the last session of the House.

Mr. Borden moved for judgment for the other Defendants, and in his argument dealt with the constitutionality of the Act of the Local Legislature, Chapter 3, R.S.

Mr. Henry, in reply, contended that the Act was *ultra vires*.

The Court adjourned.

Saturday, June 18, 1892.

The Court opened at half-past nine o'clock this morning. The argument of counsel was resumed and concluded. Mr. Henry tenders the whole of the petition from the Town Council which had been forwarded to the Legislature.

The Attorney-General objects to the reception of any portions of the petition except the paragraphs contained in the printed record already in evidence.

His Lordship admits the petition which is marked T. E.

Mr. Gourley addressed the jury on behalf of Plaintiff.

The Attorney-General addresses the jury on behalf of the Defendants.

RECORD.

No. 13.

Evidence of
Alfred
Halliburton
—continued.

Charge of Mr. Justice Townshend.

Gentlemen of the jury. This is a case of considerable importance, as you must have observed from the mode in which it has been fought out during the last two days. It involves independently altogether of the peculiar sufferings and grievances complained of by the Plaintiff—the rights and privileges of the Legislature of Nova Scotia. It demands, at your hands, the most attentive and serious consideration, and I therefore take the opportunity, at the outset, of cautioning you against exhibiting any bias or partiality in the matter. There has been considerable feeling no doubt aroused, not only in this town of Truro, but throughout the province, due to the peculiar questions here in controversy. Now, I may add, without expressing, at the present moment, an opinion on the case of the Plaintiff, that it is your duty and mine, in every possible way, to respect and uphold the rights, privileges and dignity of the Legislature of Nova Scotia. So far from disparaging it or doing anything which would bring it into contempt, it is your duty, as it is mine, and the interest of every law abiding citizen to uphold the rights of that legislative body. And why? You must remember that the Local Legislature of Nova Scotia is the supreme law making House in the province. It deals with all civil rights, with our property and our personal liberty. You have, therefore, every motive to sustain the Local Legislature in their proceedings, unless they transgress their rights and bring themselves into such a position as to call for the interference of the courts. You send your representatives to parliament to represent your interests. It is, therefore, of the greatest importance that you should send men worthy of the position, and when they go there surround them with all the protection necessary that they should have in order to perform the high duties they are entrusted with. The result of this suit must eventually settle a grave constitutional question not hitherto presented to the courts under the same circumstances now before us. The particular question to be fought out in this case, and probably in the courts of appeal so far as I understand it, has never come up before in our courts. For this reason, it will be incumbent upon me at some length to explain to you the legal principles which will govern me in giving you instructions upon which you will be called to act later on. The constitutional question is beset with difficulties, and I confess to you that my mind is by no means free from doubt as to the correct interpretation of the laws on the subject. The duty, however, devolves upon me to indicate to you my opinion upon the relative position of the parties in point of law. After the very brief time in which I have been able to give attention to the question

No. 14.
Charge of
Mr. Justice
Townshend.

RECORD. before us, I am unable to do this to my own satisfaction. I have been assisted very much by the arguments of the learned counsel on both sides, and it is because of the ability with which those arguments have been presented by both the learned gentlemen who addressed me, that I have been left in greater doubt than before I entered upon the case. So far as you are concerned, you must adopt the instructions that I will give you as to the law. Happily, if I am wrong in this respect, there are courts of appeal to which this case can be taken, where any errors I may make in the course of my directions to you, can be corrected.

No. 14.
Charge of
Mr. Justice
Townshend
←continued.

T.R., 50.

Now, gentlemen, let me briefly review the facts of this case as presented 10 to the court. Fortunately there is little dispute as to the facts. What are they? In the first place the Plaintiff forwarded to a member of the House of Assembly a petition asking for the repeal of an Act of the Legislature respecting the Town of Truro. I do not intend to go into the merits of that question at all. Every subject has the right to petition the Legislature, and if a reflection has not been made upon one of the members there would be no difficulty about this matter; but there was attached to this petition a paper, which is the alleged libel which led to these proceedings, for which this action is brought, being taken. By alleged libel, or to put it in more popular language, slanderous statement in writing, the Plaintiff referred to Mr. Laurence, 20 one of the members of the Legislature (but denied that he referred to any other members), as having committed acts as a member which rendered him unfit and unworthy to sit in that body. On that being presented the House passed a resolution adjudging it was a libel, and being a libel upon one of their members made by Mr. Thomas, as he sent it there, they immediately summoned him before the House to know what defence he had to make. I do not intend to go into the regularity of the procedure of the Defendants in this matter. Whether it was right or wrong is very immaterial to the considerations I am going to present to you. They summoned the Plaintiff, and he came to the bar of the House in obedience to that summons. He was asked what he 30 had to say and requested time to consult with counsel. Two days were given him and he appeared again at the bar and after denying that they had the right to summon him he refused to say anything. He was then directed to withdraw and remain in attendance within the precincts of the House of Assembly until the House deliberated what they should do. In disobedience of that order he went away, and that is the contempt on which the subsequent action of the House of Assembly was based. He then came back to Truro. The House deliberated on his conduct and decided to have him arrested. They sent the Sergeant-at-Arms and a policeman; they arrested him, took him to Halifax, and brought him before the bar of the House again. He was then asked what 40 he had to say and he declined to say anything. The result was that the House finally passed an order that he should be imprisoned in the county jail for forty-eight hours. Now, gentlemen, these are in brief the facts of the case. It has been proved that the Defendants were members of the House and voted for this resolution, and I instruct you that having voted for that resolution every man who did so is responsible for what the officers did under it.

Was this arrest in Truro and the taking of the Plaintiff to Halifax and

his detention in the Albion Hotel and subsequent imprisonment illegal or not? If it was illegal the Plaintiff is clearly entitled to damages at your hands; and on the other hand, if it was within the competence of the House to pass that order and take these proceedings then he is not entitled to any damages at your hands. Now, gentlemen, whether this action of the House of Assembly in arresting and imprisoning Mr. Thomas was illegal or not depends on the question whether the Local Legislature is clothed with the power of arresting and punishing persons guilty of offences not committed in the face of the House. It is clear law that the House may make any order, rules and regulations, or pass any law which is necessary to the carrying on of their own proceedings in the House. They can, without legislation, make any rules to prevent the obstruction of their business. If any person went into the House of Assembly from outside and created a disturbance there is not the slightest doubt that the House could turn that man out and punish him, and if a member of the House obstructs the business they may suspend or even expel him. The Local Legislature has all the powers reasonably necessary for the exercise of their functions and duties. But it has also been decided that without an express statute or some express power given to a Local Legislature it has no power to adjudicate upon or punish a contempt beyond the walls of the House. I have taken that from a case which came up from the Legislature of Nova Scotia—the Woodworth Case. (His Lordship here quotes the opinion of Ritchie, J., of the Supreme Court of Canada, in the Woodworth Case on this point. *Landers v. Woodworth*, 2 S. C. C. 158.)

Now, I need say no more to you on that point, that without a statute the Local Legislature has no power to do as it has done in this instance. But that leaves unanswered the difficult question, Has the Legislature of Nova Scotia been given that power? The principal ground on which the Defendants rely as justification for their action is a statute of this Province, which I may explain to you was passed after the case of *Woodworth v. Landers*. The proceedings in the Thomas case were taken by virtue of an Act passed by the Legislature of Nova Scotia in 1876. (His Lordship here read the sections of Chap. 3, R. S., 5th Series, which had been referred to by Mr. Borden.) Section 26 of that chapter presents a great difficulty which the Plaintiff has to contend with in this case. If the Local Legislature had the power to make the law as contained in these sections of Chapter 3, then the Defendants in this case are completely justified and are entitled to walk out of Court without damages against them. Under ordinary circumstances, in the absence of any judicial deliverance on the validity of this statute, I, as a Judge on circuit, would not take the responsibility of instructing a jury that these clauses were unconstitutional, however strong my own opinion might be on the subject. Sitting here with little opportunity of consulting the authorities I would not pretend, under ordinary circumstances, to decide that a law passed by the Legislature was unconstitutional unless there could be no reasonable doubt on the subject. I can only regret that it has become my duty as the Judge in this case to deal with such a question—a question which has exercised the intellects of some of the greatest lawyers and Judges in Canada and the old country. Now, gentlemen, had I determined to take one view of the case it

RECORD.

No. 14.
 Charge of
 Mr. Justice
 Townshend
 —continued.

would have been my duty at the conclusion of the Plaintiff's case, when the learned Counsel for the Defendants moved for judgment, to have withdrawn it from you altogether. But it was mainly because I thought it best for the purpose of getting an end to this case, and to prevent it coming back here again, that I have adopted the course I am now taking in treating this Act as not within the powers of the Local Legislature of Nova Scotia. The learned Counsel for the defence has argued with great ability that the power in question is conferred upon the Local Legislature by the Imperial Parliament, and his argument has produced a strong impression upon me, but nevertheless, he has not so far impressed me that I feel justified in taking the decisive course of withdrawing the case from you altogether. If the Local Legislature assumed to make a law which is beyond their powers, it is hardly necessary to tell you that any such law would be of no effect. Now, the Nova Scotia Legislature, is not the only Legislature in Canada which passed an Act such as the chapter in question. The Legislature of Ontario, Quebec, Manitoba, and I think British Columbia, have passed Acts of a similar kind. The Act passed by Ontario came before two of the most eminent men in Canada on the subject of constitutional law, and these two gentlemen the late Sir John Macdonald and Hon. Edward Blake, both put on record emphatically their opinions upon this legislation. After reading attentively the opinions expressed by them, and which I intend to read to you, I feel that their view so clearly and unmistakably expressed, affords to a large extent, a justification of the course I am taking now. Sir John Macdonald says:—

(His Lordship here quoted from Sir John Macdonald's report upon the Ontario Act.) (Provincial Legislation, p. 48.)

What Sir John Macdonald says there in plain language is that while the Parliament of Canada is specially given power by the Imperial Parliament, under the Confederation Act, to make a statute such as this, yet the Imperial Parliament did not give such power to the Provincial Legislatures. That Ontario Act was afterwards disallowed by the Dominion Government, but I believe was passed again. There is a very able report of the Attorney-General of Ontario on the question (Provincial Legislation, p. 54), which it is not necessary for me to read to you. Then comes the report of the Hon. Mr. Blake on this Act which we are now considering. This is what Mr. Blake says:—

(His Lordship here quoted from Mr. Blake's report upon the Nova Scotia Act.) (Provincial Legislation, p. 136.)

I am not bound, nor are the Courts bound, to accept the views of these two distinguished men. There are no judicial decisions on the point at all. But I cannot help attaching great weight to the opinions of two such eminent constitutional lawyers. The matter went before higher authority than these two gentlemen. It was sent to the law officers of the Crown of England, Sir Robt. Collier and Lord Coleridge, and they took the same view as was expressed by Sir John Macdonald and Mr. Blake. (Provincial Legislation, p. 50.) According to the view of these four eminent men this Act is unconstitutional and my instructions to you are that it must be so regarded,—that it must be treated as not within the competency of the Legislature of Nova

Scotia. I have not been able to satisfy myself that I should differ from the view expressed by these four eminent men, although the argument of Mr. Borden this morning has shaken very considerably the view which I had when I came into Court to-day, but at the same time not so much as to change it completely.

Now I have said to you all that is necessary as to the law, except on the question of damages. I wish to say to you at the outset that it is not a case for extravagant damages. Heavy damages are given—may be given sometimes where a party has been illegally imprisoned—where a Defendant has, in bold defiance of the law and with insulting words and acts, seized and imprisoned a man. If a man arbitrarily arrests you without a legal warrant—arrests you under circumstances such as make it an outrage—such a person should be visited with exemplary or heavy damages. But gentlemen, that is not the case—not by a thousand miles I was going to say—to use a homely expression. In the first place the Plaintiff does not pretend that he was harshly treated or grossly abused. There is nothing of that kind here. It is the case of the House of Assembly acting with *bona fides*—that is acting under the impression, though wrong, that it had a perfect right to do what it did. They did it believing they had the power to compel the Plaintiff to obey the order which they conceived to be lawful, but which I have told you I consider not lawful. Therefore, I caution you against getting away up into the thousands. The learned Counsel for the Plaintiff ran up to \$25,000 or \$30,000. Now, gentlemen, in the interests of the Plaintiff and as a matter of justice to the Defendants, I must caution you against mulcting the Defendants in damages to that extent. It would be absurd. What he ought to get you should fix within moderate bounds. As he was, as I have told you, illegally taken to Halifax, he must get damages to a reasonable amount. There was a certain kind of insult, but yet not great in degree in this case, and he had to pay some expenses, he tells you, to get out of prison. I cannot say to you just what the damages ought to be because that is within your peculiar functions, but I hope you will not be carried away with any such idea as that this is one of those cases so dreadfully outrageous that nothing short of thousands of dollars can compensate him. Nor do I want to mislead you on the other hand into giving an inadequate sum. I want you to come within reasonable bounds. He ought to get something to mark your sense of the wrong that has been done to him and to repay what it cost him to get clear. Nearer than that I cannot say. There is no exact rule. I was going to mention the damages given in a similar case, but perhaps I had better leave that altogether to you, trusting that your own good sense will lead you to bring in a proper verdict. I am asked by the learned Counsel for the Defendants to say that the Defendants were justified. I have said the opposite. I cannot say there is no evidence against the Defendants. I have said the opposite. As to Mr. Laurence, he is out of the case now. I have already instructed you and I repeat it that the Plaintiff is not entitled to exemplary damages. I am requested to charge you that the Defendants were acting *bona fide*. I have told you that already and also that they were acting under a mistaken belief as to what the law was. Mr. Ross asks that I might also state that the Plaintiff did appear there (at p. 3926.

RECORD. the bar of the House) in the first instance voluntarily, but I must also tell you that he denied the jurisdiction when he went down on the second occasion.
 No. 14. Now, these observations are all I need make. I hope you will not take
 Charge of long to decide. There is one simple question to decide, that is, what
 Mr. Justice amount of damages you think should be given to Mr. Thomas under the
 Townshend circumstances?
 —continued.

No. 15.
 Verdict.
 Plaintiff for
 Damages
 \$200.

Verdict.

We find a verdict for Plaintiff. Damages \$200.

ALEXANDER McNUTT, Foreman.

This verdict of seven jurors taken by consent in place of waiting four hours.

E. W. HAMILTON, Prothy.

Rendered June 18th, 1892.

I, E. W. Hamilton, Prothonotary of the Supreme Court for the County of Colchester, certify the above writing to be a true copy of the findings and verdict of the jury in the cause of David J. Thomas *vs.* Haliburton *et al.*, on file in this office.

E. W. HAMILTON, Prothy.

Prothonotary's Office, Truro, Dec. 11th, 1892.

No. 16.
 Notice and
 Grounds of
 Appeal of
 Defendants,
 dated 25th
 June 1892.

1892. A—No. 4857.

20

In the Supreme Court.

Between

David J. Thomas - - - - Plaintiff,

and

A. F. Haliburton *et al.* - - - - Defendants.

Take notice, that on Tuesday, the 13th day of December, 1892, at ten o'clock in the forenoon, or so soon thereafter as Counsel can be heard at the County Court House, in the city of Halifax, the Defendants, Honorable William S. Fielding, Honorable J. Wilberforce Longley, Honorable Charles E. Church, Honorable Thomas Johnson, Honorable Daniel McNeill, Honorable Colin F. McIsaac, Forman Hatfield, Arthur Drysdale, Alfred P. Welton, George Clarke, Christopher P. Chisholm, John McKinnon, James D. McGregor, Ambrose M. Comeau, Albert M. Hemeon, John A. Fraser, Frederick A. Laurence, Joseph Matheson, Richard Hunt, Angus J. McDonald, Joseph McPherson, Abram A. Le Blanc, William Law, William Roche, Eliakim E.

Tupper, and John D. Sperry, will by Counsel, move the Supreme Court in banco, for an order setting aside with costs, the verdict or judgment entered for the Plaintiff in this action and for an order that judgment be entered for the said Defendants, against the said Plaintiff for their costs of defence herein, including the costs of this motion and application, and that this action be dismissed with costs to be paid by the said Plaintiff to the said Defendants, and that the Plaintiff recover nothing against the said Defendants herein upon the following grounds :—

RECORD.

—
No. 16.
Notice of
Appeal of
Defendants,
dated 25th
June 1892—
continued.

1. Because the said verdict is against law and evidence.
- 10 2. Because the said verdict is against the weight of evidence.
3. Because of misdirection by the learned Judge who tried this action.
4. Because the learned Judge improperly instructed the jury that Sections 20 to 33, inclusive, of Chapter 3, of the Revised Statutes, Fifth Series, are *ultra vires* of the Legislature of Nova Scotia.
5. Because the said learned Judge improperly instructed the jury that Sections 20, 26, 29 and 30 of said Chapter 3 are *ultra vires* of the Legislature of Nova Scotia.
6. Because the said learned Judge improperly instructed the jury to find a verdict for the Plaintiff herein.
- 20 7. Because the said learned Judge improperly instructed the jury that these Defendants had not made out the justification pleaded by them in this action.
8. Because the said learned Judge failed and refused to instruct the jury that the acts of the Defendants complained of in the Statement of Claim were justified by and were within the powers conferred upon them by Section 20 of said Chapter 3.
9. Because the said learned Judge failed and refused to instruct the jury that the acts complained of in the Statement of Claim were acts for which under the provisions of Section 26 of said Chapter 3 these Defendants are not
- 30 liable, and that under the provisions of said Section 26 the Plaintiff is not entitled to maintain an action against these Defendants in respect thereof.
10. Because the said learned Judge failed and refused to instruct the jury that the House of Assembly of the Province of Nova Scotia, is a Superior Court of Record under the provisions of Sections 20 and 30 and of the other Sections of said Chapter 3, and that the said wrongful acts complained of were done by the Defendants as Judges or Members of said Court of Record in respect of matters within the jurisdiction of such Court of Record, and that these Defendants are not liable to the Plaintiff in respect of the said acts.
- 40 11. Because the said learned Judge failed and refused to instruct the jury that this action has been brought against the Defendants in respect of acts done by them as judges or members of an inferior court of record while sitting and acting as such in respect of the matters within their jurisdiction as such, and that these Defendants are not liable to the Plaintiff in respect of their said acts.
12. Because these Defendants, other than the Defendant J. Wilberforce Longley, have proved the allegations contained in paragraph 6 of their State-

RECORD. ment of Defence herein, and the said allegations constitute a good defence to this action.

No. 16.
Notice of
Appeal of
Defendants,
dated 25th
June 1892—
continued.

13. Because the said last-named Defendants have proved the allegations contained in paragraphs 7, 8, 9 and 10 of their Statement of Defence herein, and because the said allegations and facts constitute a good defence to this action.

14. Because the Defendant J. Wilberforce Longley, has proved the allegations contained in paragraphs 6, 7, 8, 9 and 10 of his defence herein, and the said allegations and facts constitute a good defence to this action.

15. Because these Defendants are not liable for, or by reason of any matter or thing brought by them, or either of them, before the House of Assembly by petition, bills, resolution, motion or otherwise, or for anything said by them, or either of them, before said House.

16. Because these Defendants are not liable by reason of any defect in the warrant set forth in paragraph 6 of their defence herein, or for any defect appearing upon the face of such warrant.

17. Because the said warrant has been made and declared valid by Chapter 42 of Acts of the Legislature of Nova Scotia for the year 1892, entitled, An Act to amend Chapter 3, Revised Statutes, of the composition, powers and privileges of the House.

18. Because the said House of Assembly has all the privileges, immunities and powers of the House of Commons of Canada and of the House of Parliament of the United Kingdom of Great Britain and Ireland.

19. Because all the sections of said Chapter 3 of the Revised Statutes, Fifth Series are *intra vires* of the said Legislature.

20. Because the several resolutions of the said House of Assembly, directing warrants to issue for the arrest and imprisonment of the Plaintiff, were resolutions within the powers and authorities of the said House.

21. Because the several warrants issued in pursuance of the said respective resolutions were good, sufficient and valid, and were within the powers and jurisdiction of the said house.

22. Because the said learned Judge should have directed the jury to find a verdict for the Defendants.

23. Because there was no question of fact for the said jury, and the learned Judge should have given judgment for these Defendants upon the evidence put in by the Plaintiff.

24. Because the said verdict is against the evidence, and because there was no evidence to support the said verdict.

Halifax, June 25th, 1892.

J. W. LONGLEY,
Attorney-General and Solicitor for Defendants
other than J. W. Longley.

W. B. ROSS,
Solicitor for Defendant J. W. Longley.

To the Plaintiff or his Solicitor.

1892. A—No. 4857.
In the Supreme Court.

RECORD.

No. 17.
Notice of
Appeal of
Plaintiff,
dated 9th
July 1892.

Between
David J. Thomas - - - - Plaintiff,
and
Alfred F. Haliburton *et al.* - - - - Defendants.

Take notice, that the Plaintiff hereby appeals from the judgment or decision of Mr. Justice Townshend, given herein, on the 17th day of June, last past, in favour of the Defendants, Alfred F. Haliburton, Honorable Michael J. Power, Thomas Chambers and Nicholas Power, and dismissing this action as against them to the Supreme Court at Halifax, and that the said Court will be moved by Mr. Macdonald on behalf of the said Plaintiff on the 13th day of December next, at eleven o'clock in the forenoon, or so soon thereafter as counsel can be heard, that the said decision be set aside and reversed, and a new trial granted, or that judgment for the Plaintiff be entered with costs.

Further take notice, that the said Court will be moved at the same hour and place that the verdict of the jury, given herein, for the Plaintiff for \$200 damages on the 18th day of June aforesaid, against all the other Defendants, except Alfred F. Haliburton, Hon. Michael J. Power, Thomas Chambers, Nicholas Power and Frederick A. Laurence, be set aside and reversed, and a new trial of this action be granted upon the following among other grounds:—

Because of the mis-direction of the learned Judge.

Because the learned Judge directed the jury that the damages should not be exemplary, because the Defendants had acted *bonâ fide*.

Because the damages assessed were inadequate and insufficient.

Because the learned Judge instructed the jury "That this was not a case for exemplary damages, not by a thousand miles."

Because the learned Judge directed the jury that the damages to be assessed should not be heavy.

30 Dated at Truro, this 9th day of July, 1892.

WILLIAM MACDONALD.

To the Defendants or their solicitors.

In the Supreme Court.

Between
David J. Thomas - - - - Plaintiff,
and
Alfred F. Haliburton *et al.* - - - - Defendants.

No. 18.
Agreement
as to Case
for Appeal
by both
parties.

It is agreed that the foregoing matter shall constitute the printed case on the appeals of both the Plaintiff and Defendants herein, with liberty to both

RECORD. parties, to refer to any of the original papers, or any of the papers used on the trial hereof and not printed.

No. 18.
Agreement
as to Case
for Appeal
by both
parties—con-
tinued.

S. E. GOURLEY,
Counsel for Plaintiff,
W. B. ROSS,
Counsel for Defendants.

No. 19.
Extracts
from Record
of the
Proceedings
in the House
of Assembly
(referred to
at page 36,
line 27).

Resolution
moved
by Mr.
Laurence.

Record of the Proceedings in the House Assembly.

(Referred to at page 36 line 27.)

Wednesday 13th April 1892.

House met at 3 o'clock.

Mr. Laurence, pursuant to leave given, moved the following resolution :

19

Whereas, David J. Thomas, of Truro, in the county of Colchester, with other persons, has caused to be published a libel reflecting on a number of members of this House, by having the same printed and delivered to a member of this House, for the purpose of having the said libel read in or presented to this Honourable House.

Therefore resolved, That the said David J. Thomas, of Truro, aforesaid, having caused the said libel reflecting on a member or members of this House to be printed and delivered to a member of this House, for the purpose of being read in or presented to this Honourable House, is guilty of a breach of the privileges of this House.

Ordered, That the said David J. Thomas be summoned to attend at the bar of this House on Monday, the 18th day of April instant, at the sitting of this House on that day.

Debated.

Which, being seconded, and a debate arising thereon, after some time spent in such debate.

Debate
adjourned.

On motion,

Resolved, That the debate be adjourned, and the consideration of such resolution be adjourned, and be placed first on the order of the day for to-morrow, April 14th.

30

Thursday, 14th April 1892.

House met at three o'clock.

On motion,

Mr. Lau-
rence's
Resolution.

Resolved, That the adjourned debate on the resolution moved by Mr. Laurence, respecting the Petition of David J. Thomas and others, be now resumed.

M.L.
27. 7. 95-

Mr. Cahan moved, in amendment to such resolution, the following amendment:—"That all the words after that be struck out, and the following substituted therefor, 'That the documents laid on the table of the House, by the Honourable Member for Colchester, Mr. Laurence, be referred to a Special Committee of five members, to inquire and report whether David J. Thomas has been guilty of a breach of the privileges of this House.'"

Which amendment, being seconded and put, was negatived on 10 division.

The original resolution being then put was agreed to.

Amendment. RECORD.

No. 19.
Extracts
from Record
of the
Proceedings
in the House
of Assembly
(referred to
at page 36,
line 27)—
continued.

Division.

Resolution
agreed to.

Monday 18th April 1892.

The order of the day for the attendance at the bar of the House of David J. Thomas, being read.

Mr. Speaker informed the House that in obedience to the order of this House, passed on the fourteenth day of April instant, he had issued his summons for the attendance of David J. Thomas at the bar of this House, and he had received an affidavit from Leander J. Crowe, Sheriff of Colchester, setting forth that he had 20 served the said David J. Thomas personally with a copy of such summons.

Mr. David J. Thomas being in attendance was called in.

Mr. Speaker then read the resolution of the House under which Mr. Thomas was in attendance.

On motion,

Resolved, That the several clauses in the petition presented by the said David J. Thomas to a member of this House for presentation to the House, and laid upon the table of the House on the 13th day of April instant, be now read.

30 Accordingly the several clauses of the petition was then read by the Clerk, and are as follows: "Articles of complaint of the Town Council and Corporation of the Town of Truro, a body corporate, against F. A. Laurence, Esquire, the Recorder of the said town.

3. Because, after the Council had by corporate resolution fixed the salaries of Recorder and Stipendiary Magistrate of the same town at \$50. 00 per annum for the year 1891, the said F. A. Laurence wilfully, wrongfully, and in contempt of said Council and Corporation promoted, introduced and passed, or caused to be 40 promoted, introduced and passed, laws and statutes, or conspired with others for said purpose, whereby the salaries of said Recorder and Stipendiary Magistrate were sought to be fixed at the sum of

Attendance
of D. J.
Thomas.

Called in.

Clauses read.

Articles of
Complaint.

1.

RECORD.

No. 19.
Extracts
from Record
of the
Proceedings
in the House
of Assembly
(referred to
at page 36,
line 27)—
continued.

2.

at least \$200. 00 each, thereby wrongfully attempting to deprive the said Council and Corporation of \$350. 00 per annum.

(5) Because after the said Council and Corporation had by corporate resolutions, as it was their duty and lawful right to do fixed the salary of H. T. Laurence, the Inspector of Licenses of Truro, aforesaid, for 1891, at \$75. 00 per annum, the said F. A. Laurence wilfully, wrongfully, and in contempt of said Council and Corporation, promoted, introduced and passed, or caused to be promoted, introduced and passed, or conspired with others for said purpose, laws and statutes and whereby the salary of the said 10 Inspector of Licenses was sought to be fixed at the sum of \$200. 00 thereby wrongfully attempting to deprive the said Council and Corporation of the sum of \$125. 00 per annum.

Mr. Thomas
interrogated.

Mr. Speaker then said to Mr. Thomas that he was prepared to hear what he, Mr. Thomas, had to say in his defence.

Mr. Thomas
answers.

Mr. Thomas then said that the charge against him being a grave one, and he being merely a representative of the town of Truro, he would like to have the assistance of counsel, and asked that the consideration of his case might be postponed till Thursday or Friday next. 20

Directed to
withdraw.

Mr. Thomas was then directed to withdraw and remain in attendance.

The Hon. Provincial Secretary then moved that Mr. David J. Thomas be directed to appear at the bar of this House on Wednesday, the 20th day of April, instant, at half past three of the clock on that day, to answer the charge that has been made against him.

Which motion being seconded,

Resolution.

Mr. Cahan moved in amendment to the motion that the following words be added: 30

“And that the said David J. Thomas be allowed to appear by counsel.”

Debated.

Which amendment being seconded, and a debate arising thereon, after some time spent in debate,

Amendment
to Amend-
ment.

The Hon. Attorney-General moved in amendment to the amend-ment that—

“All the words after that in the amendment be struck out, and the following be substituted:—‘The question of having counsel does not require determination at this time.’”

Division.

Which being seconded, and the House dividing thereon, there 40 appeared for the amendment to the amendment, 12; and against it, 6.

So it passed in the affirmative.

Resolution
agreed to.

The original resolution as now amended was then put and agreed to by the House.

On motion of the Hon. Provincial Secretary,
Mr. Thomas was again called in and informed by Mr. Speaker
of the resolution agreed to by the House.
Mr. Thomas was then directed to withdraw.

Mr. Thomas
again
called in.

RECORD.

No. 19.
Extracts
from Record
of the
Proceedings
in the House
of Assembly
(referred to
at page 36,
line 27)—
continued.

Wednesday 20th April 1892.

The order of the day being read for the attendance this day at
the bar of this House of Mr. David J. Thomas,

Order of
Day.
Attendance
of D. J.
Thomas.

On motion of the Hon. Provincial Secretary, seconded by the
Hon. Attorney-General.

10 Ordered, That Mr. David J. Thomas be called in.

Ordered to
Attend.

Mr. Thomas was then called in.

Mr. Speaker then asked Mr Thomas what he had to say with
respect to the charges preferred against him.

Speaker
Interrogates.

To which Mr Thomas replied that he desired to appear and be
heard by counsel.

Reply.

On motion of the Hon. Provincial Secretary, seconded by the
Hon. Attorney-General, Mr. David J. Thomas was ordered to
withdraw and remain in attendance.

Ordered to
withdraw.

Mr. Thomas withdrew.

20 The Hon. Provincial Secretary then moved the following
resolution, seconded by the Hon. Attorney-General.

Resolution,
Hon.
Provincial
Secretary.

“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 the 18th instant, and that the House, after hearing
his answer, will consider his application for permission to have
Counsel at the bar of the House.”

Which motion being put was agreed to upon division.

Agreed to.
Thomas
called in.

Mr. Speaker thereupon ordered that Mr. Thomas be again
called in.

30 Mr. Thomas being again called in, the resolution of the Hon.
Provincial Secretary, that he be now required to answer the charge
read to him on Monday the 18th instant, and that the House after
hearing his answer would consider his application for permission
to have Counsel at the bar of the House, was read to him by
Mr. Speaker, and again by the Clerk of the House.

Resolution
read.

Mr. Thomas thereupon read the following answer to such
charges:—

Answer.

40 “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.

No. 19.
Extracts
from Record
of the
Proceedings
in the House
of Assembly
(referred to
at page 36,
line 27)—
continued.

Ordered to
Withdraw
and remain in
Attendance.

Resolution,
Hon.
Provincial
Secretary.

Agreed to.

Mr. Thomas
called in.

Sergeant-at-
Arms
Report.

Resolution
of Hon.
Provincial
Secretary.

Resolution.

“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.

“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.” 10

On motion of the Hon. Provincial Secretary, seconded by the Hon. Attorney-General, it was resolved that David J. Thomas be ordered to withdraw and remain in attendance, which order was conveyed to him by Mr. Speaker.

Mr. Thomas then withdrew.

The Hon. Provincial Secretary then moved, seconded by the Hon. Attorney-General, the following resolution:

“That this House, while fully cognizant of its own authority under which D. J. Thomas has appeared at the bar of the House, and prepared on all proper occasions to exercise it, does not deem 20 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.”

Which resolution, being put, was unanimously agreed to by the House.

The Hon. Provincial Secretary then moved, seconded by the Hon. Attorney-General, that Mr. Thomas be again called to the bar of the House. 30

Which motion, being put, was agreed to by the House.

And thereupon Mr. Speaker ordered, that Mr. Thomas be again called in by the Sergeant-at-Arms.

The Sergeant-at-Arms then reported to Mr. Speaker that he had communicated the order of the House to David J. Thomas, and that he, Mr. Thomas, had refused to obey the order of the House, and had left the precincts of the House.

The Hon. Provincial Secretary then moved, seconded by the Attorney-General, the resolution following:

That on Thursday, the fourteenth day of April, instant, this House 40 passed a certain resolution adjudging David J. Thomas, of Truro, in the county of Colchester, guilty of having published a libel upon a member or members of this House during the session of the Legislature;

That the said David J. Thomas was ordered to appear at the bar of the House on Monday, the eighteenth day of April instant;

That on the said eighteenth day of April the said David J. Thomas appeared at the bar of the House in obedience to the said order and asked that time be granted to him to make statement to the House ;

That the House thereupon ordered the said David J. Thomas to appear at the bar of the House on Wednesday, the twentieth of April instant ;

That the said David J. Thomas appeared at the bar of the House this day in obedience to the said order of the House, and made a
10 statement respecting the said libel ;

That after making such statement the said David J. Thomas was ordered by the House to withdraw and remain in attendance ;

That the House thereupon proceeded to consider the statement of the said David J. Thomas, and came to a certain resolution thereon and in respect of the said libel ;

That the Sergeant-at-Arms was thereupon directed by the House to call the said David J. Thomas to the bar of the House ;

That the Sergeant-at-Arms communicated the said order to the said David J. Thomas, and that the said David J. Thomas in con-
20 tempt of the House refused to obey such order and left the precincts of the House ;

That the said David J. Thomas be taken into the custody of the Sergeant-at-Arms attending this House, and that Mr. Speaker do
Division. issue his warrant accordingly,

Which being put, and the House dividing thereon, there appeared for the motion, 25 ; and against the motion, 6.

So it passed in the affirmative.

Ordered accordingly.

Friday 22nd April 1892.

8 o'clock p.m.

30

House resumed.

Mr. Speaker announced that, in pursuance of the order of the House passed on the twentieth day of April instant, he had issued a warrant for the arrest of David J. Thomas, who was now in attendance in custody of the Sergeant-at-Arms.

The Hon. Provincial Secretary then moved, seconded by the Hon. Attorney-General, that David J. Thomas be brought to the Bar of the House by the Sergeant-at-Arms.

40 Which motion being put, was agreed to by the House.

Mr. Speaker accordingly ordered the Sergeant-at-Arms to bring Mr. Thomas to the Bar of the House.

House resumed.
Speaker announces Issue of Warrant.

Motion that D. J. Thomas be brought to Bar.

Agreed to. Ordered.

RECORD.

No. 19.

Extracts from Record of the Proceedings in the House of Assembly (referred to at page 36, line 27)—
continued.

RECORD. Question put
by Speaker.
No. 19.
Extracts
from Record
of the
Proceedings
in the House
of Assembly
(referred to
at page 36,
line 27;—
continued.

The following question was then put to Mr. Thomas by the Hon. Provincial Secretary :

Whether he desired to offer any explanation of the circumstances under which he refused to obey an order of this House on Wednesday last past after he had been summoned to the bar of the House, and had been directed to withdraw and remain in attendance.

Answer.

Mr. Thomas, in answer, said that he was advised to do so by counsel.

Question by Hon. Provincial Secretary.

The Hon. Provincial Secretary then asked Mr. Thomas if he had any further explanation to give. 10

Answer.

Mr. Thomas, in answer, said he had no further explanation to give.

Answer.

Question by Mr. Drysdale.

Mr. Drysdale then asked Mr. Thomas the following question :

Question.

Did the Sergeant-at-Arms communicate to you the order of the House, that you appear at the bar of the House prior to your leaving the House ?

Answer.

Mr. Thomas in answer, said that the Sergeant-at-Arms had said something to him as he was leaving, and his counsel came along and shoved him out.

Question by Mr. Drysdale.

Mr. Drysdale asked Mr. Thomas whether he understood he was ordered to enter the House, and why he had left the precincts of the House after being ordered to remain in attendance on the last occasion he was here. 20

Objection.

Objection having been taken to this question by Mr. Webster,

Mr. Drysdale then proposed a question in writing, and thereupon,

Resolution.

The Hon. Provincial Secretary moved, seconded by the Hon. Attorney-General, the following resolution :

Amendment.

That the question proposed by Mr. Drysdale, viz., " Why did you leave the precincts of the House after being ordered to remain in attendance on the last occasion you were here." 30

Mr. Cahan moved in amendment, seconded by Mr. Webster, that all the words after that be left out, and the following substituted therefor :—" That D. J. Thomas having appeared at the bar of this " House in the custody of the Sergeant-at-Arms, be allowed the " assistance of counsel at the bar."

Division.

Which amendment being put, and the House dividing thereon, there appeared for the amendment, 9 ; and against it, 21.

Names for.

For the Amendment.

Against the Amendment.

Names against.

Mr. Cahan.
" William Cameron.
" Webster.
" Bethune.
" Grant.
" Oxley.
" Forrest.

The Hon. Provincial Secretary.
" Attorney-General. 40
The Hon. Com. Works and
Mines.
The Hon. Mr. Johnson.
" " McNeil.
" " McIsaac.

Mr. A. F. Cameron.
 „ Morrow.

Mr. Hatfield.
 „ Drysdale.
 „ Welton.
 „ Clark.
 „ Chisholm.
 „ McKinnon.
 „ McGregor.
 „ Comeau.
 „ Hemeon.
 „ Fraser.
 „ Matheson.
 „ Hunt.
 „ McDonald.
 „ McPherson.
 „ LeBlanc.

RECORD.
 —
 No. 19.
 Extracts
 from Record
 of the
 Proceedings
 in the House
 of Assembly
 (referred to
 at page 36,
 line 27)—
continued.

10

So it passed in the negative.

Negatived.

The original motion being then put, and the House dividing thereon, there appeared for the motion, 21; and against the motion, 9.

Original
 Motion put.

Division.

Names for.

Names
 against.

20

For.

Against.

The Hon. Provincial Secretary.
 The Hon. Attorney-General.
 The Hon. Com. Works and Mines.
 The Hon. Mr. Johnson.
 „ Mr. McNeil.
 „ Mr. McIsaac.

Mr. Cahan.
 „ Webster.
 „ Wm. Cameron.
 „ Bethune.
 „ Grant.
 „ Oxley.
 „ Forrest.
 „ A. F. Cameron.
 „ Morrow.

30

Mr. Hatfield.
 „ Drysdale.
 „ Welton.
 „ Clark.
 „ Chisholm.
 „ McKinnon.
 „ McGregor.
 „ Comeau.
 „ Hemeon.
 „ Fraser.
 „ Matheson.
 „ Hunt.
 „ McPherson.
 „ McDonald.
 „ LeBlanc.

40

So it passed in the affirmative.

RECORD. Question put
by Speaker.
No. 19.
Extracts
from Record
of the
Proceedings
in the House
of Assembly
(referred to
at page 36,
line 27)—
continued.

Reply.

Resolution.

Division.

Mr. Speaker then put the following question to Mr. Thomas :
Why did you leave the precincts of the House, after being ordered to remain in attendance, on the last occasion you were here ?

To which question Mr. Thomas replied that he left by order of counsel.

The Hon. Provincial Secretary then moved, seconded by the Hon. Attorney-General, that David J. Thomas do now withdraw in the custody of the Sergeant-at-Arms, and be detained in such custody, and be brought to the bar of the House at half-past nine o'clock p.m. on Saturday, the 23rd day of April instant, to be there dealt with as the House direct.

Which motion being put, and the House dividing thereon, there appeared for the motion, 21 ; and against the motion, 9.

So it passed in the affirmative.

Names for.
Names
against.

For the Motion.

Against the Motion.

The Hon. Provincial Secretary.

Mr. Caban.

The Hon. Attorney-General.

„ Webster.

The Hon. Com. Works and Mines.

„ Wm. Cameron.

The Hon. Mr. Johnson.

„ Grant.

„ Mr. McNeil.

„ Bethune.

„ Mr. McIsaac.

„ Oxley.

Mr. Hatfield.

„ Forrest.

„ Drysdale.

„ A. F. Cameron.

„ Welton.

„ Morrow.

„ Clark.

„ Chisholm.

„ McKinnon.

„ McGregor.

„ Comeau.

„ Hemeon.

„ Fraser.

„ Matheson.

„ Hunt.

„ McDonald.

„ McPherson.

„ LeBlanc.

So it passed in the affirmative.

Mr. Thomas
withdraws.

Mr. Speaker then ordered the Sergeant-at-Arms to withdraw with Mr. Thomas, and to detain Mr. Thomas in custody, and bring him again to the bar of the House at half-past nine of the clock p.m. on

Saturday the 23rd day of April instant, to be then dealt with as the House might direct.

The Sergeant-at-Arms then withdrew with Mr. Thomas.

Saturday, 23rd April 1892.

It being then half-past nine of the clock, Mr. Speaker said the order of the day now is that David J. Thomas be brought to the bar of the House.

The Hon. Provincial Secretary moved, seconded by the Hon. Attorney-General, that David J. Thomas be brought by the
10 Sergeant-at-Arms to the bar of the House.

Which motion being put, was agreed to by the House.

Mr. Speaker ordered the Sergeant-at-Arms to bring Mr. David J. Thomas to the bar of the House.

The Sergeant-at-Arms thereupon brought Mr. David J. Thomas to the bar of the House.

The Hon. Provincial Secretary then said :—

Mr. Speaker, I desire to present to Mr. Thomas a question, which I now ask through you : “ Mr. Thomas, have you any state-
20 “ charge of contempt against you, now pending before the House ?”

Mr. Thomas then said :

Mr. Speaker and Gentlemen of the House of Assembly, I do not know that I have anything to say.

The Hon. Provincial Secretary then moved, seconded by the Hon. Attorney-General, that David J. Thomas withdraw and remain in attendance in the custody of the Sergeant-at-Arms.

Which motion being put was agreed to by the House.

Mr. Speaker thereupon ordered the Sergeant-at-Arms to withdraw with Mr. Thomas, and to keep him in his custody.

30 The Sergeant-at-Arms withdrew with Mr. Thomas in his custody.

The Hon. Provincial Secretary then moved the following resolution :

Whereas, David J. Thomas, on Wednesday last, the 20th day of April, instant, whilst in attendance on the House, was guilty of a contempt of the House committed in the face of the House ;

Resolved, that the said 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.

40 Provided, however, that in the event of this Legislature being prorogued prior to the expiration of said term of forty-eight hours,

RECORD.

No. 19.

Extracts from Record of the Proceedings in the House of Assembly (referred to at page 36, line 27)—
continued.

Order of *re*
D. J.
Thomas.

Motion that D. J. Thomas be brought to Bar of House.

Agreed to.

Ordered.

Mr. Thomas brought to the Bar.

Question by Hon. Provincial Secretary.

Answer by Mr. Thomas.

Motion of Hon. Provincial Secretary.

Order.

Mr. Thomas withdraws.

Resolution of Hon. Provincial Secretary.

Proviso.

RECORD.

No. 19.
 Extracts
 from Record
 of the
 Proceedings
 in the House
 of Assembly
 (referred to
 at page 36,
 line 27)—
continued.

Amendment
 to Resolution.

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.

Which motion being seconded by the Hon. Attorney-General,

Mr. Cahan moved in amendment that all the words after that in the resolution be struck out, and the following substituted therefor :

“That an order of the House do issue to the Sergeant-at-Arms 10 to deliver David J. Thomas, Mayor of Truro, from his custody forthwith.”

Debated.

Which amendment, being seconded by Mr. Webster, and debated.

Division.

After some time spent in such debate,

The House dividing thereon,

There appeared for the amendment, 8; against the amendment, 25.

Negatived.

So it passed in the negative.

Names for.

For the Amendment.

Against the Amendment.

Names
 against.

Mr. Cahan.

The Hon. Provincial Secre- 20
 tary.

„ Webster.

The Hon. Attorney-General.

„ William Cameron.

The Hon. Com. Works and
 Mines.

„ Bethune.

„ Oxley.

The Hon. Mr. Johnson.

„ Forrest.

„ Mr. McNeil.

„ A. F. Cameron.

„ Mr. McIsaac.

„ Morrow.

Mr. Law.

„ Roche.

„ Hatfield. 30

„ Drysdale.

„ Welton.

„ Clark.

„ Chisholm.

„ McKinnon.

„ McGregor.

„ Comeau.

„ Hemeon.

„ Tupper.

„ Sperry. 40

„ Fraser.

„ Matheson.

„ Hunt.

„ McDonald.

„ McPherson.

„ LeBlanc.

The original motion being then put from the chair, and the House dividing thereon,

There appeared for the motion, 25 ; and against the motion, 8.
So it passed in the affirmative.

For the Motion.

Against the Motion.

- | | | |
|----|--------------------------------|------------------|
| | The Hon. Provincial Secretary. | Mr. Cahan. |
| | The Hon. Attorney-General. | „ Webster. |
| | The Hon. Com. Works and | „ Wm. Cameron. |
| 10 | Mines. | „ Bethune. |
| | The Hon. Mr. Johnson. | „ Oxley. |
| | „ Mr. McNeil. | „ Forrest. |
| | „ Mr. McIsaac. | „ A. F. Cameron. |
| | Mr. Law. | „ Morrow. |
| | „ Mr. Roche. | |
| | „ Hatfield. | |
| | „ Drysdale. | |
| | „ Welton. | |
| | „ Clark. | |
| 20 | „ Chisholm. | |
| | „ McKinnon. | |
| | „ McGregor. | |
| | „ Comeau. | |
| | „ Hemeon. | |
| | „ Tupper. | |
| | „ Sperry. | |
| | „ Fraser. | |
| | „ Matheson. | |
| | „ Hunt. | |
| 30 | „ McDonald. | |
| | „ McPherson. | |
| | „ LeBlanc. | |

The Hon. Provincial Secretary then moved, seconded by the Hon. Attorney-General, the following resolution :

That David J. Thomas be brought to the bar of the House to hear the adjudication, and that Mr. Speaker do read to him the resolution just passed.

Which motion, being put, was agreed to by the House.

Accordingly, Mr. Thomas was again brought to the bar of the House by the Sergeant-at-Arms.

Mr. Speaker then read to Mr. Thomas the foregoing resolution passed on division.

The Hon. Provincial Secretary then moved, seconded by the Hon. Attorney-General, that Mr. Thomas do now withdraw in custody of the Sergeant-at-Arms.

Original Motion put.

Division Carried.

Names for. Names against.

RECORD.

No. 19.
Extracts from Record of the Proceedings in the House of Assembly (referred to at page 36, line 27)—
continued.

Resolution of Hon. Provincial Secretary.

Agreed to. Mr. Thomas brought to Bar.

Resolution read.

Resolution, Hon. Provincial Secretary.

RECORD.

No. 19.
Extracts
from Record
of the
Proceedings
in the House
of Assembly
(referred to
at page 36,
line 27)—
continued.

Mr Thomas
withdraws in
custody.

Which motion, being put, was agreed to by the House.
Mr. Thomas then withdrew in custody of the Sergeant-at-Arms.

Monday, 25th April 1892.

House met at three o'clock.

Prayers.

Reading of Journals.

Sergeant-at-Arms Report
of Speaker.

Mr. Speaker reported to the House that the Sergeant-at-Arms had reported that he had been served with a writ of habeas corpus, requiring him to bring David J. Thomas before the Supreme Court this day. 10

The Hon. Provincial Secretary moved, seconded by Mr. Laurence, the following resolution :

Resolution
permitting
Return to
Writ of
Habeas
Corpus.

Resolved, that the House will permit the Sergeant-at-Arms to make a return to the writ of habeas corpus, issued out of the Supreme Court in the case of David J. Thomas, and directs him to make such return.

Which motion, being put, was agreed to by the House.

On motion.

Mr. Laurence
Name added
to Division
List.

Resolved, that the name of Mr. Laurence be added to the list of those voting against Mr. Cahan's amendment on Saturday, the twenty-third day of April, instant, that David J. Thomas be delivered from the custody of the Sergeant-at-Arms, and to the list of those voting for the resolution of the Hon. Provincial Secretary, that David J. Thomas be committed to the common gaol at Halifax for forty-eight hours. 20

No. 20.
Exhibit T/1.
Paper
submitted to
Plaintiff.

T/1.

That he left entirely under advice of counsel and not intending to commit a contempt of the House.

T/2.

1892.

Province of Nova Scotia.

House of Assembly.

To Alfred F. Haliburton, Esquire, Sergeant-at-Arms of the House of Assembly
of Nova Scotia.

RECORD.

No. 21.
Exhibit T/2.
Warrant to
arrest
Plaintiff.

Whereas by an order of the House of Assembly of the Province of Nova Scotia dated on the fourteenth day of April A.D. 1892, David J. Thomas of Truro in the county of Colchester was summoned to attend at the bar of the
10 said House of Assembly on Monday the 18th day of April 1892 to answer for having published a libel upon a member or members of the said House during the present session of the Legislature and to be then and there dealt with as the said House of Assembly might see fit.

And whereas the said David J. Thomas in obedience to said summons did attend at the bar of the said House of Assembly at the day and time appointed in said summons and asked for delay, whereupon it was ordered by the said House of Assembly that the said David J. Thomas do again attend at the bar of the said House of Assembly on Wednesday the twentieth day of April
20 A.D. 1892, at which time the said David J. Thomas again attended at the bar of the said House of Assembly and after hearing a statement from him, he the said David J. Thomas was ordered to withdraw and remain in attendance to abide the further order of the said House of Assembly.

And whereas the said House of Assembly on the said twentieth day of April 1892, came to the following resolution, viz. :

Resolved, 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 such authority. That therefore Mr. Thomas be reprimanded for the breach of privilege which
30 he has committed and that such reprimand be given by the reading of this resolution to Mr. Thomas by the Speaker.

Whereby it was adjudged that the said David J. Thomas was guilty of the said offence, and that the said David J. Thomas be called to the bar of the said House of Assembly, and that he be reprimanded by the Speaker of the said House of Assembly for his said offence.

And whereas the Sergeant-at-Arms of the said House of Assembly communicated the order of the said House of Assembly to the said David J. Thomas, and the said David J. Thomas disobeyed the order of the said House of Assembly and left the precincts thereof and refused to remain in attendance on
40 the said House of Assembly in contempt of the order of the said House of Assembly.

And whereas the said House of Assembly came to the following resolution.

“ That on Thursday the fourteenth day of April instant this House passed a certain resolution adjudging David J. Thomas of Truro in the county of

RECORD. Colchester guilty of having published a libel upon a member or members of this House during the session of the Legislature.

No. 21.
Exhibit T/2.
Warrant to
arrest
Plaintiff—
continued.

“ That the said David J. Thomas was ordered to appear at the bar of the House on Monday the eighteenth day of April instant.

“ That on the said eighteenth day of April the said David J. Thomas appeared at the bar of the House in obedience to the said order and asked that time be granted to him to make a statement to the House.

“ That the House thereupon ordered the said David J. Thomas to appear at the bar of the House on Wednesday the twentieth day of April instant.

“ That the said David J. Thomas appeared at the bar of the House this 10 day in obedience to the said order of the House and made a statement respecting the said libel.

“ That after making such statement the said David J. Thomas was ordered by the House to withdraw and remain in attendance.

“ That the House thereupon proceeded to consider the statement of the said David J. Thomas and came to a certain resolution thereon and in respect of the said libel.

“ That the Sergeant-at-Arms was thereupon directed by the House to call the said David J. Thomas to the bar of the House.

“ That the Sergeant-at-Arms communicated the said order to the said 20 David J. Thomas and that the said David J. Thomas in contempt of the House refused to obey such order and left the precincts of the House.

“ That the said David J. Thomas be taken into custody of the Sergeant-at-Arms attending this House and that Mr. Speaker do issue his warrant accordingly.”

These are therefore to command you the said Alfred F. Haliburton Sergeant-at-Arms of the said House of Assembly forthwith to apprehend and take into your custody the said David J. Thomas and to bring him before the bar of the said House of Assembly to be further dealt with.

Given under my hand and seal at the city of Halifax in the county of 30 Haxlifax this twenty-first day of April A.D. 1892.

(Sgd.) MICHAEL J. POWER,
Speaker of the House of Assembly of
Nova Scotia.

(L.S.)

T/3.

Province of Nova Scotia.

House of Assembly.

To Alfred F. Haliburton, Sergeant-at-Arms of said House and to Thomas Chambers, the keeper of the common jail of the county of Halifax in the city of Halifax.

Whereas David J. Thomas of Truro in the county of Colchester was by a resolution of the said House of Assembly passed this day, adjudged guilty of

40

No. 22.
Exhibit T/3.
Warrant of
Commit-
ment, dated
23rd April
1892.

a contempt of the said House committed in the face of the said House, and for said offence was adjudged to 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 the Legislature of Nova Scotia being prorogued prior to the expiration of said term of forty-eight hours, the said term of imprisonment should on such prorogation forthwith determine.

And whereas I, the undersigned Speaker of the said House of Assembly was by said resolution directed to forthwith issue my warrant of commitment accordingly. These are therefore to command you the said Alfred F. Haliburton, Sergeant-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 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.

Given under my hand and seal at the city of Halifax in the county of Halifax, aforesaid, this 23rd day of April A.D. 1892.

(Sgd.) MICHAEL J. POWER,
Speaker, House of Assembly, Nova Scotia.
(L.S.)

T/4.

1892.

Province of Nova Scotia.

In the House of Assembly, Halifax, April 14th, 1892.

To David J. Thomas, of Truro in the county of Colchester, Esquire.

Whereas in the House of Assembly on this 14th day of April, A.D. 1892 the preamble and resolution following were agreed to, to wit:—

“Whereas David J. Thomas of Truro in the county of Colchester with other persons, has caused to be published a libel reflecting on a member or members of this House, by having the same printed and delivered to a member of this House, for the purpose of having the said libel read in or presented to this Honourable House.

“Therefore resolved that the said David J. Thomas of Truro aforesaid having caused the said libel reflecting on a member or members of this House to be printed and delivered to a member of this House, for the purpose of being read in or presented to this Honourable House is guilty of a breach of the privileges of this House.

Exh.
Warra.
Commit.
ment, date.
23rd April
1892—con-
tinued.

No. 23.
Exhibit T/4.
Summons to
Plaintiff,
dated 14th
April 1892.

A.C.

RECORD.

No. 23.
Exhibit T/4.
Summons to
Plaintiff,
dated 14th
April 1892
—continued.

K

And whereas in pursuance of such resolution, it was ordered by the House that you, the said David J. Thomas, be summoned to appear at the Bar of this House, on Monday the 18th day of April instant at the sitting of this House on that day.

You are therefore, in obedience to such resolution and order hereby summoned and required to be and appear in your own proper person, at the bar of this House, on Monday the 18th day of April instant, at half-past three of the clock on that day to be then and there dealt with, as the House may see fit.

Dated this 14th day of April, A.D. 1892.

MICHAEL J. POWER, Speaker.

10

In the Supreme Court.

Crown Side.

This is the paper writing marked "A" referred to in the affidavit of David J. Thomas sworn before me this twenty-fifth day of April A.D. 1892.

H. W. C. BOAK,
A Commissioner of the Supreme and County Court
for the County of Halifax.

T/E.

"A."

20

No. 24.
Exhibit T/E.
Articles of
Complaint
and Petition
of the Town
Council, &c.,
dated 8th
March 1892.

Articles of Complaint of the Town Council and Corporation of the town of Truro, a body corporate, against F. A. Laurence Esquire, the Recorder of the said town.

The Town Council of the town of Truro and the town of Truro, a body corporate allege and say,

That F. A. Laurence is and has been guilty of misbehaviour in his office as Recorder of the town of Truro in the following among other respects:—

1. Because of wilful contempts, neglects, abuses, breaches of duty, misbehaviour and other misdemeanours.

2. Because he did not for long periods attend the meetings of the Council as it was his duty to do as such Recorder although duly summoned for that purpose.

3. Because after the Council had by corporate resolutions fixed the salaries of Recorder and Stipendiary Magistrate of the said town at \$50 per annum for the year 1891 the said F. A. Laurence wilfully wrongfully and in contempt of said Council and Corporation promoted, introduced and passed or caused to be promoted, introduced and passed laws and statutes or conspired with others for said purpose, whereby the salaries of said Recorder and

26-7-95

\$50

Stipendiary Magistrate were sought to be fixed at the sum of at least \$200 each thereby wrongfully attempting to deprive the said Council and Corporation of \$350 per annum.

4. Because he wrongfully attempted to cause his own salary and that of his brother H. T. Laurence to be increased and fixed at a greater sum than the said Council desired and had by corporate acts determined upon in contempt of said Council and to the great loss and damage of said Council and Corporation.

10 5. Because after the said Council and Corporation had by corporate resolutions, as it was their duty and lawful right to do, fixed the salary of H. T. Laurence, the Inspector of Licenses of Truro aforesaid for 1891 at \$75 per annum the said F. A. Laurence wilfully, wrongfully and in contempt of said Council and Corporation promoted, introduced and passed or caused to be promoted, introduced and passed or conspired with others for said purpose, laws and statutes, whereby the salary of the said Inspector of Licenses was sought to be fixed at the sum of at least \$200 thereby wrongfully attempting to deprive the said Council and Corporation of the sum of \$125 per annum.

20 6. Because the said F. A. Laurence wrongfully and in contempt of said Council and Corporation promoted, introduced and passed, or caused to be promoted, introduced and passed statutes and laws seeking to deprive and to take from the said Council and Corporation the powers and rights long exercised and enjoyed, to wit,—

- (a) The power and right of appointment of the Stipendiary Magistrate of the said Corporation.
- (b) The power to combine the offices of Stipendiary Magistrate and Recorder upon one salary.
- (c) The power and right of fixing the salary of the Stipendiary Magistrate and of increasing and decreasing the same at pleasure.
- 30 (d) The power and right of fixing the salary of the Recorder and of increasing and decreasing the same at pleasure.
- (e) The sole right and power to control the expenditure of the said Corporation and dispose of its revenues by vote.

7. Because the said F. A. Laurence has wrongfully and in contempt of said Council and Corporation promoted, introduced and passed, or caused to be promoted, introduced and passed, Acts and laws seeking to take away from or to deprive the said Council and town of valued privileges, powers, franchises, and corporate rights.

40 8. Because the said F. A. Laurence has wrongfully and in contempt of said Council and town promoted, introduced and passed, or caused to be promoted introduced and passed statutes or laws seeking to deprive the said Council and Corporation of the protection of the general statutes of the Province and to subject them to local and special statutes passed for the special benefit and personal profit of the said F. A. Laurence and H. T. Laurence and others.

9. Because the said F. A. Laurence had wrongfully and wilfully and in contempt of said Council and Corporation promoted introduced and passed or

RECORD.

No. 24.

Exhibit T/E.
Articles of
Complaint
and Petition
of the Town
Council, &c.,
dated 8th

March 1892
—continued.

RECORD.

No. 24.
Exhibit T/E.
Articles of
Complaint
and Petition
of the Town
Council, &c.,
dated 8th
March 1892
—continued.

caused to be promoted introduced and passed statutes and laws whereby the said Council and Corporation were sought to be made liable for large sums of money and for costs, charges and expenses due and owing by H. T. Laurence Esquire individually which the said Council and Corporation had never authorised or incurred and for which they were not in any way legally liable.

10. Because the said F. A. Laurence wrongfully and wilfully and in contempt of said Council and Corporation promoted, introduced and passed, or caused to be promoted, introduced and passed *ex post facto* laws whereby the said Council and Corporation were sought to be made liable for large sums of money for costs, charges and expenses, liabilities and other unjust and illegal burdens which they had never authorised or incurred and which the said Council and Corporation were never legally liable to pay. 10

11. Because the said F. A. Laurence Esquire secretly and without notice to the said Council and Corporation promoted, introduced and passed or caused to be promoted, introduced and passed said statutes and laws or portions of said Acts to the great injury of the said Council and Corporation and in contempt thereof.

12. Because it was the duty of the said F. A. Laurence to have brought said Acts to the notice of the said Council and Corporation and to have obtained their consent to the introduction and passage thereof as had been the custom and practice heretofore. 20

13. Because it was his duty as Recorder of the said town to have advised and informed his clients the said Council and Corporation of the nature and effect of the said statutes and laws and to have obtained their consent to the promotion and introduction of the same.

14. Because the said F. A. Laurence Esquire should not have promoted, introduced and passed or caused to be promoted, introduced and passed said Acts or any of them, or any portion thereof without the express direction and authority of the said Council and Corporation.

15. Because the said F. A. Laurence has wrongfully and wilfully used his said position as Recorder and Legal Adviser of the said Council and Corporation thwart the will and harass the said Council and Corporation and to bring the said Council and Corporation into contempt. 30

16. Because the said F. A. Laurence Esq. has wilfully disobeyed and opposed the well-known wishes and commands and corporate acts of the said Council and Corporation.

17. Because the said F. A. Laurence has sought to annul and make void the solemn resolutions and corporate acts of the said Council and Corporation.

18. Because the said F. A. Laurence has threatened to have further and other Acts or laws passed to coerce the said Council and Corporation in reference to their corporate duties and to compel them to adopt and act upon the views of the said Recorder in relation to the discharge of their corporate duties; or to cancel and annul any corporate Acts not in accordance with the views of the said Recorder. 40

19. Because he has attempted to obtain money from the said town and Corporation wrongfully and in excess of his salary for work and services covered by his said salary.

20. Because he has wrongfully advised the Council and Corporation in his own behalf and to his own pecuniary interest, that they were liable to pay for such work and services in excess of his salary as Recorder.

21. Because he has harassed the said Council and Corporation with actions and suits for said pretended claims and caused the said Council and Corporation much expense in retaining solicitors and counsel to defend themselves whereupon said actions and suits would be discontinued by the said F. A. Laurence.

10 22. Because the said F. A. Laurence has colluded with the said H. T. Laurence Inspector as aforesaid for the purpose of collecting costs and charges from the said Council and Corporation to which he was not entitled; the costs and charges, if any, being a personal debt of the said H. T. Laurence, or, if not, then covered by the said F. A. Laurence's salary as Recorder.

23. Because he has wrongfully and wilfully sought to have the funds of the said Council and Corporation wrongfully converted to the use of himself the said H. T. Laurence and others.

20 24. Because the said F. A. Laurence has unjustly and wrongfully and against his duty as Recorder aforesaid sought to compel the said town of Truro to pay him and others large sums of money to which he and others were not entitled.

25. Because the said F. A. Laurence has accepted office and held and holds positions and offices inconsistent with the proper discharge of his duties as Recorder and in conflict therewith and with the interest of this Corporation.

30 26. Because the said F. A. Laurence has brought discredit upon his said office of Recorder and of the Council and Corporation aforesaid by contravening the etiquette and dignity of said position by hearing the preliminary examinations of persons accused of crimes, committing them for trial, and subsequently appearing as Crown Counsel to prosecute them when tried at the Supreme Court or the County Court, Judges' Criminal Court.

27. Because he has neglected his duties as Recorder and failed to discharge the same in an efficient and proper manner and with due diligence and honesty and has refused to attend and obey the Council in reference to the same.

28. Because the said F. A. Laurence has thwarted and opposed the said Council and Corporation and acted in contempt and in disobedience of the said Council in the discharge of his duties as Recorder, aforesaid.

40 29. Because the said F. A. Laurence has for long periods absented himself from the Council meetings and failed to advise the said Council and Corporation at its said meetings and at other times and generally to perform his duties as Recorder in a satisfactory manner.

30. Because the said F. A. Laurence has for long periods absented himself and now absents himself from the town of Truro without the consent of the said Council and Corporation and without making any agreement with reference to the discharge of his duties as Recorder in his absence.

31. Because the said F. A. Laurence resigned the office of Stipendiary Magistrate and attempted to coerce the Council into appointing a nominee of his own to fill the vacancy created thereby but finding the Council would

RECORD.
 —
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 Articles of
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 —continued.

appoint another, and not his nominee, he withdrew his resignation and promoted the passing of the acts before referred to depriving the Council and Corporation of the said appointment for the purpose of thrusting his said nominee upon the said Council and Corporation against their will and to the great injury and damage of the said Council and Corporation.

32. Because the said F. A. Laurence refused to aid and assist the Council in drafting and settling an Act for passage through the Legislature of Nova Scotia enabling them to borrow money for municipal purposes which it was the design and duty of the Council to have done unless paid therefor in addition to his said salary. 10

33. Because he wilfully and wrongfully advised and urged the said Council and Corporation to assume illegal and unjust burdens and financial obligations in reference to public works and bridges contrary to his duty as such Recorder.

34. Because in many respects he acted against the interests of his said clients the town of Truro, and to his own profit and advantage.

35. Because he negligently and wrongfully advised the Committee of the town of Truro called the "License Committee" that they had authority and control in and about the regulation of the sale of intoxicating liquors within this Corporation and that such duty was charged upon them by law, by reason of which advice said Committee were induced to commence actions and prosecutions against divers persons for infringing said laws to the great damage of the said Committee and Council while the authority and control of said Committee and Corporation had been taken away long previous thereto by public statute. 20

36. Because in consequence of the misbehaviour of the said F. A. Laurence suitors have been deterred and prevented prosecuting actions and suits at the Municipal Court of the said town whereby the said Council and Corporation were greatly damaged by loss of revenue which heretofore had arisen and would continue to arise from said Courts and suits and actions but for said misconduct and misbehaviour. 30

37. Because the said F. A. Laurence as and being a representative of the county of Colchester at the present time for some years immediately precedent hereto in the Local Legislature of Nova Scotia introduced, voted for and otherwise assisted to pass laws and statutes intended to humiliate, degrade and bring into contempt said Council and Corporation.

38. Because the said F. A. Laurence did not oppose the passage of the said Acts as it was his duty to do.

39. Because after the said Council and Corporation has especially retained a Solicitor to draft and settle the borrowing Act herein-before referred to, and caused the same to be transmitted to the said F. A. Laurence for introduction and passage through said Local Parliament the said Act was altered and changed by said F. A. Laurence without the knowledge of the said Council and Corporation by the introduction or insertion of clauses depriving the said Council of valued privileges, powers and franchises, to wit: the power of fixing the salary of the said Recorder and Stipendiary Magistrate among others, a breach of the duty of the said Recorder and in contempt of the said Council. 40

The said Council and Corporation make all the said charges and complaints of misbehaviour against the said F. A. Laurence as well with reference to his conduct towards the said Council and Corporation as a member of the Legislature of Nova Scotia as otherwise and all the said charges and complaints are to be understood and read as if repeated against him in his said capacity as a member of the said Local Legislature wherein he ought to have protected and conserved the interests and rights of the said Council and Corporation and not to have laboured to strike down and take away from the said Council and Corporation said rights.

RECORD.
—
No. 24.
Exhibit T/E.
Articles of
Complaint
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dated 8th
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—continued.

10 The said Council and Corporation reserve the right to add further and other charges and complaints at any time during the investigation and hearing of which due notice is given.

Dated this 8th day of March 1892.

“ B. ”

In the matter of the Articles of Complaint of the Town Council and Corporation of the Town of Truro against F. A. Laurence Esquire the Recorder of the said Town and the proposed motion of the said Recorder.

20 Take notice that you are required to appear, if you desire to do so, before the Town Council of the said town of Truro at a meeting thereof in their Council Chamber in Truro in the county of Colchester on Saturday the 12th day of March 1892 at 8 o'clock in the evening on the hearing of the charges contained in the Articles of Complaint exhibited against you by said Council a copy of which is herewith served upon you and such other charges as may be duly preferred and to answer the same or to shew cause, if any you have, why you should not be amoved from the said office of Recorder of the said Town.

Notice to
appear, &c.,
dated 8th
March 1892
annexed.

Dated this 8th day of March 1892.

(Sgd.) The Town Council of the Town of Truro by
GOURLEY & MACDONALD, their Solicitors.

To F. A. Laurence, Esq.,
Recorder of the town of Truro.

30

“ C. ”

An Act authorising a Loan for the town of Truro.

Be it enacted by the Governor Council and Assembly as follows :—

1. The town of Truro is authorised to borrow on the credit of this Act and of the said town the sum of eight thousand dollars to pay off existing liabilities of the said town.

2. The said town shall issue debentures for said sum in the form in Schedule A. to this Act redeemable in twenty years with interest payable half yearly which debentures shall be for such amounts as the Mayor and Town

An Act
authorizing
a loan, &c.,
annexed.

RECORD.
 No. 24.
 Exhibit T/E.
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 March 1892
 —continued.

Council shall determine and which shall be signed by the Mayor and Town Clerk and sealed with the seal of the town and shall bear interest at a rate not exceeding four and one half per centum per annum.

3. The money borrowed under this Act shall be paid over to the Town Treasurer to be by him applied to the purpose set forth in the first section of this Act.

To the Honourable the Members of the House of Assembly for the Province of Nova Scotia now in Session, convened.

The petition of the Town Council of the town of Truro, humbly sheweth :

1. That F. A. Laurence Esquire has acted as Recorder and Stipendiary 10
 Magistrate of the town of Truro for the six years last past.

2. That on or about the 15th day of March 1892, the said F. A. Laurence was by said Council unanimously amoved from his said office of Recorder, for misbehaviour.

3. That hereto annexed, marked Exhibit A., is a true copy of the Articles of Complaint exhibited by your petitioners against the said F. A. Laurence as Recorder aforesaid.

4. That hereto annexed, marked Exhibit B., is a true copy of the notice of trial or hearing of said charges duly served upon the said F. A. Laurence previous to said trial. 20

5. That a copy of said articles was duly served with the said notice and at the same time upon the said F. A. Laurence.

6. That the said F. A. Laurence did not appear to answer to said articles.

7. That at the time and place named in said notice your petitioners proceeded with the hearing and trial of said Articles of Complaint upon sworn testimony adduced before them.

8. After hearing oral and documentary testimony, the Council unanimously found the said charges or Articles of Complaint sustained and unanimously passed the following resolution :—

Resolved : “ That in the opinion of this Council F. A. Laurence, Recorder 30
 “ of the town of Truro, has been guilty of offences charged against him
 “ in the Articles of Complaint preferred against him by this Council, and
 “ we therefore find the said F. A. Laurence guilty of the acts of mis-
 “ behaviour charged therein.”

Further resolved : “ That the said F. A. Laurence be amoved from his
 “ said office of Recorder of the town of Truro for such misbehaviour,
 “ and he is hereby amoved from the said office.”

Further resolved : “ That the said office be, and the same is now vacant.”

9. That the Canada Temperance Act had by proclamation of the Governor-General in Council dated the 18th day of November A.D. 1882, been declared 40
 in force in and through the county of Colchester, and no proceedings to repeal the same had ever been had.

10. That while said Canada Temperance Act was in force as aforesaid the Liquor License Act of 1886 was passed by the Legislature of Nova Scotia.

11. That notwithstanding said Canada Temperance Act was in force as aforesaid, the said F. A. Laurence advised the town of Truro that said Liquor License Act of 1886 was also in force in said county of Colchester and that it was the duty of the said Town Council to nominate an Inspector for said Town of Truro, under Section 4 of said Liquor License Act of 1886.

12. That on the 27th day of January 1888, a resolution was passed by the said Town Council in the following words :

Moved: "That Mr. H. T. Laurence be the Inspector under the Liquor License Act of 1886, Laws of Nova Scotia."

13. That said nomination was duly approved by the Lieutenant-Governor in Council.

14. That no Licenses under said Liquor License Act of 1886 were ever granted in the said town of Truro.

15. That the said H. T. Laurence thereupon without the direction or authorisation of a resolution of the said Town Council but by his own motion commenced several prosecutions against citizens of Truro for the alleged violation of the provisions of said Liquor License Act of 1886, before the said F. A. Laurence as Stipendiary Magistrate aforesaid and other Justices of the Peace.

16. That said H. T. Laurence failed in some of said prosecution to secure convictions, but in a large number of them did secure convictions.

17. That sixteen of the said convictions were removed at the instance of the Defendants to the Supreme Court of Halifax by certiorari.

18. That a large number of the said convictions were quashed with costs against said Inspector.

19. That the said Inspector after said costs were taxed against him asserted that the town of Truro was legally liable to pay such costs, and demanded payment of the same from the said town, although they had never directed or authorized the commencement of the said prosecution.

20. That the said town of Truro was thereupon advised by the said F. A. Laurence, that it was liable for said costs and charges and must pay the same.

21. That the said town of Truro acting upon such advice paid \$1110. 26 for said costs.

22. That the said H. T. Laurence had employed Solicitors and Counsel to appear for him in the said prosecutions before said Stipendiary Magistrate and other Justices of the Peace, and before the Supreme Court, and on the application for the Defendant's orders of certiorari granted as aforesaid, and to oppose the application to quash the convictions removed into the Supreme Court.

23. The said H. T. Laurence thereupon demanded large sums of money to pay the costs and charges of his said Solicitors and Counsel, amounting as this Counsel is advised to thousands of dollars.

RECORD.

No. 24.

Exhibit T/E,
Articles of
Complaint
and Petition
of the Town
Council, &c.,
dated 8th
March 1892
—continued.

RECORD.

No. 24.
 Exhibit T/E.
 Articles of
 Complaint
 and Petition
 of the Town
 Council, &c.,
 dated 8th
 March 1892
 —continued.

24. That the town of Truro thereupon was advised by the said F. A. Laurence that the said town was liable for all such expenses, costs and charges, so incurred by the said Inspector, although it had never authorized or instructed the said H. T. Laurence to employ or retain any of the said Solicitors or Counsel on its behalf.

25. That thereupon several ratepayers of the town of Truro notified the said Town Council not to pay any further sums for or on account of said Inspector's costs or expenses, and that if further sums were paid the right of the Council to do so would be tested in the Supreme Court.

26. Thereupon the Town Council directed D. H. Muir the then Mayor of 10
 Truro, to obtain the opinion of Counsel others than the said F. A. Laurence, as to the liability of said town for such costs and charges.

27. That the opinion of Counsel was sought and thereupon the town of Truro declined to pay any further sums of money or to acknowledge liability in any way for said costs and charges, leaving the said H. T. Laurence to seek redress in the Courts if he have any legal claim against said town of Truro.

28. No such claim was sought to be enforced in the Courts, but Section 9 of Chapter 18 of the Acts of 1890 was passed, whereby all said liabilities were sought to be imposed and fastened on the said town of Truro. 20

29. That the latter part of said Section in the original bill on file with the clerk of the House of Assembly is in the handwriting of the said F. A. Laurence, as your petitioners are informed and verily believe.

30. That although said amendment referred to in paragraph 28 of this petition sought to fasten liabilities on the town of Truro which otherwise did not exist, no notice of such intended legislation was given to the said town, nor had they any knowledge thereof, nor was any opportunity given to said town to appear and oppose said amendment, nor of taking any steps they might have been advised to be necessary in order to protect their interest in connection with the same. 30

31. That the said H. T. Laurence, Chief Inspector as aforesaid, is a brother of said F. A. Laurence and upon the argument of said convictions, serious doubts arose as to the legality of said convictions owing to the relationship of the said H. T. Laurence the prosecutor, and the said F. A. Laurence who acted as Stipendiary Magistrate.

32. That thereupon one W. D. McCallum instituted and carried on several prosecutions for alleged violations of the said Liquor License Act of 1886.

33. That several of said prosecutions were dismissed, but several convictions were obtained which were removed into the Supreme Court at the instance of the Defendants upon certiorari and were quashed and thereupon the costs incurred and taxed against the said W. D. McCallum, who was and is the Town Clerk of the town of Truro, were claimed from the said town by the said W. D. McCullum. That said prosecutions were not directed or authorized by the said town of Truro, and no liability for payment of said costs existing on their part within Section 9 of Chapter 18 of the Acts of 1890, the said town refused to pay the same, but payment of said liabilities were after- 40

wards sought to be imposed upon the said town by an amendment to said last mentioned Act, contained in Chapter 27 of the Acts of 1891.

RECORD.

No. 24.
Exhibit T/E.
Articles of
Complaint
and Petition
of the Town
Council, &c.,
dated 8th
March 1892
—continued.

34. That although said Chapter 27 of the Acts of 1891 seriously affects the rights of the said town of Truro by imposing upon them liabilities which otherwise did not exist, and which they were not legally bound to assume, no notice of such intended legislation was even given to the said town of Truro, nor had they any knowledge thereof, and for want of such notice they were prevented from taking such steps as they might have been advised to be necessary in order to protect their interests in connection with such amend-
10 ment.

35. That at the beginning of the municipal year of 1891 the Town Council of the town of Truro fixed the salary of the said F. S. Laurence as Recorder and Stipendiary Magistrate at the sum of \$50 for said year, and the salary of H. T. Laurence as Chief Inspector as aforesaid at the sum of \$75 for said year, as they had a right to do under the "Town's Incorporation Act of 1888" and by virtue of their byelaws adopted and approved in accordance with said Act.

36. That the ratepayers of said town of Truro having duly authorized the said Council of said town to procure the passage or an Act enabling said town
20 to borrow the sum of \$8,000. 00 for the public uses of said town, the said Act was drawn by Hugh McKenzie, Esquire, a Solicitor residing in said town, who was retained by the town for that purpose.

37. That said Act was drawn and settled by said Hugh McKenzie, and approved of by the said Town Council, and was transmitted to the said F. A. Laurence for introduction and passage into law.

38. That said proposed Act when transmitted to the said F. A. Laurence, was entitled "An Act authorizing a Loan for the Town of Truro," and consisted of sections relating only to the borrowing of the said sum of \$8,000. 00 and contained no other clauses whatsoever.

39. That hereto annexed marked exhibit "C" is a true copy of said draft
30 Act so transmitted to said F. A. Laurence.

40. That Sections 1, 2 and 3 of said Act were interpolated into or added to said Act, its title struck out and a new title added, to wit: "An Act relating to the Town of Truro" after the same had been transmitted as aforesaid and without the knowledge, consent or approval of the said Town Council.

41. That all of said changes and interpolations are, as your petitioners are informed and verily believe in the handwriting of said F. A. Laurence.

42. That all said interpolations and additions were hostile to the financial
40 interests of said town of Truro and derogatory of their corporate Acts and powers long enjoyed and exercised by said town of Truro, under their original charter of incorporation and amendments thereto and subsequently confirmed and enlarged by the "Town's Incorporation Act of 1888."

43. That although said Act being Chapter 119 of the Acts of 1891, sought to fasten liabilities on the town of Truro, which did not exist, no notice of such intended legislation was given to the said town, nor had they any knowledge thereof, nor was any opportunity given to said town to appear and

RECORD.
 No. 24.
 Exhibit T/E.
 Articles of
 Complaint
 and Petition
 of the Town
 Council, &c.,
 dated 8th
 March 1892
 —continued.

oppose said amendment nor for taking any steps they might have been advised to be necessary to protect their interest in connection with the same.

Your petitioners therefore pray that your Honourable House may see fit to repeal or annul the Sections, Clauses and Acts referred to in the foregoing petition, that is to say, Section 9 of Chapter 18 of the Acts of 1890; Chapter 27 of the Acts of 1891; Sections 2 and 3 of Chapter 119 of the Acts of 1891, in so far as the said Sections, Clauses and Acts refer or relate to the town of Truro, saving and excepting the rights of all parties to a certain suit now pending in the Supreme Court at Truro, in which the said Henry T. Laurence is Plaintiff, against the said town of Truro commenced on the eleventh day of 10 August A.D. 1891.

And your petitioners as in duty bound will ever pray, &c., &c.

Dated the 5th day of April A.D. 1892 at Truro aforesaid.

(Signed) D. J. THOMAS, Mayor.
 W. D. McCALLUM, Town Clerk.
 A. E. MCKAY,
 H. T. HARDING,
 W. E. BLIGH,
 JAMES SMITH,
 A. A. ARCHIBALD,
 C. A. KENT, } Town Councillors.

(L.S.)

20

JUDGES' REASONS.

Thomas v. Haliburton et al.

1893, December 2nd.

Ritchie, J.



No. 25.
 Judgment of
 Mr. Justice
 Ritchie,
 dated 2nd
 Dec. 1893.

M.

It is in my opinion within the power of the Local Legislature to enact that no civil action for damages shall be brought against any particular person or persons including members of the Legislature.

In the proceedings against the Plaintiff for contempt the House of Assembly was sitting as a court of record trying a matter within its jurisdiction, if the Act which gives it that power is within the authority of the Local Legislature. In such case, upon well established principles, the members who were judges of that court cannot be sued for their proceedings in such judicial capacity.

If that part of the Act which makes the House of Assembly a Court and gives it the jurisdiction to try contempt is *ultra vires*, then the proceedings took place before the House of Assembly sitting as such, and the Defendants, the members of that House who took part in the proceedings are indemnified by Section 26 of Chapter 3 of the Revised Statutes which enacts that "no member either House shall be liable to any civil action or prosecution, arrest, imprisonment, or damages by reason of any matter or thing brought by him

40

“ by petition, bill, resolution, motion, or otherwise, or said by him before such **RECORD.**
“ House.”

For these reasons the judgment should, in my opinion, be set aside, and judgment entered for the Defendants with costs.

Graham, E. J.

No. 25A.
Judgment of
Mr. Justice
Graham.

This is an action for damages for assault and imprisonment.

The Plaintiff, who was the Mayor of the town of Truro, during the Session of 1892, presented a petition to the House of Assembly of the Province of Nova Scotia praying for the repeal of legislation affecting that town. That legislation had the effect of increasing the salary of Mr. Laurence, the Recorder of the town. In that petition there was a reference to Mr. Laurence, who was also a member of the House of Assembly, which that House deemed libellous. It charged him with promoting the legislation which had this effect upon his salary.

On the 14th April 1892 the House passed a resolution in the following terms:—

“ Whereas David J. Thomas of Truro in the county of Colchester with other persons, has caused to be published a libel reflecting on a number of members of this House, by having the same printed and delivered to a member of this House for the purpose of being read or presented to this honourable House.

“ Therefore resolved that the said David J. Thomas of Truro aforesaid having caused the said libel reflecting on a member or members of this House to be printed and delivered to a member of this House for the purpose of being read in or presented to this honourable House is guilty of a breach of the privileges of this House.

“ Ordered tht the said David J. Thomas be summoned to attend at the bar of this House on Monday the 18th day of April instant at the sitting of this House on that day.”

On the 18th of April, in obedience to the summons of the Speaker, the Plaintiff attended and obtained time until the 20th, and on the 20th, when he again appeared, he was ordered by the House to withdraw and remain in attendance.

The House then passed the following resolution:—

“ That this House while fully cognizant of its own authority and prepared to exercise it when necessary, does not deem the offence of Mr. Thomas of sufficient gravity to call for any exercise of such authority. That therefore David J. Thomas be reprimanded for his conduct, and that such reprimand be given by the reading of this resolution to him by Mr. Speaker.”

The Defendants voted for this resolution. This resolution was communicated to the Plaintiff, but instead of coming to the bar to receive the reprimand he went to Truro.

RECORD.

No. 25A.
 Judgment of
 Mr. Justice
 Graham—
continued.

The House thereupon passed the following resolution :—

“ The Hon. Provincial Secretary then moved, seconded by the Attorney-General the resolution following :

“ That on Thursday the 14th day of April instant, this House passed a certain resolution adjudging David J. Thomas of Truro in the county of Colchester guilty of having published a libel upon a member or members of this House during the session of the Legislature ;

“ That the said David J. Thomas was ordered to appear at the bar of the House on Monday the eighteenth day of April instant ;

“ That on the said eighteenth day of April the said David J. Thomas appeared at the bar of the House in obedience to the said order, and asked that time be given him to make a statement to the House ;

“ That the House thereupon ordered the said David J. Thomas to appear at the bar of the House on Wednesday the twentieth day of April instant ;

“ That the said David J. Thomas appeared at the bar of the House this day in obedience to the said order of the House, and made a statement respecting the said libel ; that after making such statement the said David J. Thomas was ordered by the House to withdraw and remain in attendance ;

“ That the House thereupon proceeded to consider the statement of the said David J. Thomas, and came to a certain resolution thereon and in respect of the said libel ;

“ That the Sergeant-at-Arms was thereupon directed by the House to call the said David J. Thomas to the bar of the House ;

“ That the Sergeant-at-Arms communicated the said order to the said David J. Thomas, and that the said David J. Thomas, in contempt of the House, refused to obey such order, and left the precincts of the House ;

“ That the said David J. Thomas be taken into the custody of the Sergeant-at-Arms attending this House, and that Mr. Speaker do issue his warrant accordingly ;

“ Which being put, and the House dividing thereon, there appeared for the motion, 25, and against the motion, 6.

“ So it passed in the affirmative.

“ Ordered accordingly.”

He was brought in custody to the bar when the following resolution was passed :—

“ Whereas David J. Thomas on Wednesday last the 20th day of April instant, while in attendance on the House, was guilty of a contempt of the House, committed in the face of the House.

“ Resolved that the said 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 the said term of forty-eight hours, the said term of imprisonment shall on such prorogation forthwith terminate.

“ 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."

The warrant under which he was imprisoned was in the following terms :—

" Province of Nova Scotia,
" House of Assembly.

" To Alfred F. Haliburton, Sergeant-at-Arms of the said House, and to Thomas Chambers, the keeper of the common jail of the city and county of Halifax.

10 " Whereas David J. Thomas, of Truro, in the county of Colchester, was by resolution of the said House of Assembly, passed this day, adjudged guilty of a contempt of the said House committed in the face of the said House, and for said offence was adjudged to 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 the Legislature of Nova Scotia being prorogued prior to the expiration of said term of forty-eight hours, imprisonment should in such prorogation determine.

20 " And whereas I, the undersigned Speaker of the said House of Assembly was, by said resolution, directed to forthwith issue my warrant of commitment accordingly.

" These are, therefore, to command you, the said Alfred F. Haliburton, Sergeant-at-Arms, as aforesaid, to forthwith convey the said David J. Thomas into 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 said prorogation, forthwith discharge the said David J. Thomas, and for so doing this shall be your sufficient warrant.

" Given under my hand and seal at the city of Halifax in the county of Halifax, aforesaid, this 23rd day of April A.D. 1892.

30 " (Sgd.) MICHAEL J. POWER,
" Speaker of the House of Assembly,
" Nova Scotia. (Seal)."

The Defendants were concerned either as members of the House of Assembly voting for the resolutions or as officials with the carrying out of the resolutions.

40 The Plaintiff has a verdict for \$200 damages against all of the Defendants except four, viz., Messrs. M. J. Power, the Speaker, Mr. Haliburton the Sergeant-at-Arms, Chambers the jailor, and Nicholas Power the police constable. The learned Judge at the trial ordered judgment to be entered for them in consequence of an indemnity act specifically indemnifying them, passed by the Legislature after the transaction which formed the subject of this action.

It will thus be seen that the House of Assembly has (1) attempted to adjudicate upon and to punish for the crime of libel. (2) To punish the Plaintiff in this case as for a contempt in not submitting to the sentence imposed by the House in respect to that crime.

RECORD.

No. 25A.
Judgment of
Mr. Justice
Graham—
continued.

RECORD.

No. 25A.
 Judgment of
 Mr. Justice
 Graham—
continued.

(1) Section 29 of Chapter 3 R. S. N. S. purports to deal with libels, forgery, tampering with witnesses and other offences. Section 30 constitutes the House of Assembly a court and appoints its members judges for adjudicating upon such crimes, and Section 31 provides for the imprisonment of an offender. In my opinion the British North America Act 1867 provides that crimes of this character, and the procedure in regard to them, shall be dealt with by the Parliament of Canada and that Parliament only. It has dealt with them. That excludes the Provincial Legislature from passing laws in regard to them. While the Provincial Legislature may legislate in regard to its privileges I think it cannot seize the right to adjudicate upon a crime indictable at common law merely because that offence touches its privileges. 10

In the case of the *Queen vs. Lawrence* 43 U. C. Q. B. 164 it appeared that the Provincial Legislature of Ontario, while legislating in regard to licenses and the enforcement of penalties for infringement of the law, made a provision that any person who, in any prosecution under the Act, tampered with a witness or by money or threats induced him to absent himself or swear falsely should be guilty of an offence under the Act and liable to a penalty of fifty dollars. It was held, affirming the judgment of Mr. Justice Gwynne, that this provision was *ultra vires* for the acts were criminal offences at common law and within the exclusive jurisdiction of the Dominion Legislature. 20

Harrison C. J. at page 174 says:—

“It never could have been the design of the Imperial Legislature as manifested by the language which it has used in The B. N. A. Act to permit any legislative body, under the pretence of exercising only its own exclusive legislative powers, to cover ground which in truth by the constitution belongs to another. The whole domain of crime and criminal procedure is the exclusive property of the Dominion Parliament, and to allow the Parliament of a province to declare that an act which by the general law is a crime tryable and punishable as a crime, with the ordinary safeguards of the constitution affecting procedure as to crime, shall be something other or less than a crime, and so tryable before and punishable by magistrates as if not a crime, would be destructive of the checks provided by the general law for the constitutional liberty of the subject.” 30

I also think that it was the intention of the British North America Act that crimes of this nature should be tried by Judges appointed and paid by the Federal Authorities and not by the appointees of the Provincial Legislatures. That it is an usurpation of jurisdiction which if allowed in this case may be delegated to municipal bodies by the same Legislature.

Regina vs. Joland 22 Ont. 505 citing *Regina v. Boucher Cassels Digest* 181. 40

If the legislation fails there was no power to try or to punish for libel and there is therefore no contempt in not submitting to the sentence. That an action will lie when the legislation is *ultra vires* and where there is no jurisdiction as a matter of law. See *Jonas v. Gilbert* 5 Supreme Court of Canada Reports 356 overruling 20 N. B. Reports 54, *Holden vs. Smith* 14 Q.B. 841.

(2) Further as to the contempt, Section 29 provides that the refusal or failure of any member or officer of either house or other person to obey any rule, order, or resolution of such House shall be deemed an infringement of the Act. Section 31 provides that the nature of the offence shall be succinctly and clearly stated and set forth on the face of the warrant issued for the commitment under this section.

RECORD.

No. 25A.
Judgment of
Mr. Justice
Graham—
continued.

One of the learned Counsel who so ably argued this case for the Defendants contended that the sections to which I have just referred did not apply. This was no doubt done with a view to bringing to his aid Section 20 which then would have an operation. That also would get rid of any difficulty caused by the statute requiring the statement of an offence on the face of the warrant. There seems to me to be a serious question involved in bringing into operation Section 20, a general section, and, by inference, the powers of the English House of Commons to punish for contempt when there are specific provisions in respect to contempt contained in Sections 29, 30 and 31. Perhaps this depends upon whether or not these sections are *ultra vires*. However assuming the contention to be good I propose to deal with the power of the Provincial Legislature to confer upon the House of Assembly the power to punish by imprisonment for contempt. It is admitted that without legislation the House would have no such power.

In *Barton v. Taylor* 11, App. Cas., 203, it is said, "It results from these authorities that no powers of that kind are incident to or inherent in a Colonial Legislative Assembly (without express grant) except such as are necessary to the existence of such a body and the proper exercise of the functions which it is intended to execute. Whatever in a reasonable sense is necessary for these purposes is impliedly granted whenever any such legislative body is established by competent authority. For these purposes, protection and self-defensive powers only and not punitive are necessary." It is contended however that it was competent for the Provincial Legislature to pass an Act giving the House of Assembly such powers and that it has done so in the revised statutes of Nova Scotia chap. 3 Section 20.

That section provides in general terms that the House of Assembly shall have the privileges immunities and powers of the House of Commons of Canada. That House admittedly has the power to punish for contempt. It obtained the power to legislate in respect to this subject under an express provision in the British North America Act.

Section 18 of that Act provides as follows:—"The privileges immunities and powers to be held enjoyed and exercised . . . by the House of Commons and by the members thereof . . . shall be such as are from time to time defined by Act of the Parliament of Canada but so that the same shall never exceed those at the passage of this Act held enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the members thereof."

No similar provision exists in that Act enabling the Provincial Legislature to define or create the privileges immunities and powers of the House of Assembly. Where did it get the power?

In the *Bank of Toronto v. Lamb* 12 App. Cases 587 it is said:—"And it

RECORD. " has been suggested that the Provincial Legislatures possess powers of legislation
 No. 25A. " either inherent in them or dating from a time anterior to the Federation Act
 Judgment of " and not taken away by that Act They (their Lordships) adhere to
 Mr. Justice " the view which has always been taken by this committee that the Federation
 Graham " Act exhausts the whole range of legislative power and that whatever is not
 continued. " thereby given to the Provincial Legislatures rests with this Parliament."

It was contended that this power to legislate so as to obtain power to punish
 for contempt was conferred by Section 5 of the Colonial Laws Validity Act,
 passed in 1865 two years before the British North America Act. That section
 provides that, " every representative legislature . . . shall 10
 " have full power to make laws respecting the constitution powers and procedure
 " of such legislature."

If that is to be construed as conferring power to legislate in this way, then,
 while the Parliament of Canada may not by its legislation confer powers on the
 House of Commons of Canada exceeding the powers of the House of Commons
 of the United Kingdom, the Provincial Legislatures may do so. That construc-
 tion ought not to prevail. The letter of that section does not I think enable the
 legislature to confer these powers upon the House of Assembly. But at any
 rate I think these specific provisions of the British North America Act upon the
 subject displace the application of that section. In the absence of any judicial 20
 decision I think it is not at all out of place to attach weight to the opinions of
 three of the Ministers of Justice of the Dominion of Canada and also to that of
 two former law officers of the Crown in England denying the power of the
 Provincial Legislature to enact such a provision.

Then reliance is placed by the Defendants upon an indemnity clause,
 section 26. It provides that:—"No member of either House shall be liable to
 " any civil action or prosecution arrest imprisonment or damages by reason of
 " any matter or thing brought by him by petition bill resolution, motion or other-
 " wise, or said by him before such house, and the bringing of any such action
 " or prosecution, the causing or effecting any such arrest or imprisonment and 3)
 " the awarding of any such damages shall be deemed violations of this chapter."
 I think this section does not help the matter. If the legislature could not pass
 a law to enable the House of Assembly to punish a man for contempt, or to
 punish a man for not submitting to its sentence in a criminal matter, I think it
 could not get around the difficulty by incorporating in the Act a section
 indemnifying the members, if he was so punished at their instance. In other
 words this section is not to be construed as applying to such a case. That
 section was no doubt passed to secure the members of the legislature freedom
 of speech. This was secured to members of the Imperial Parliament by the
 Bill of Rights, 1, W. & M. St. 2, C. 2. It has a very proper application in 40
 preventing actions and prosecutions against members for defamatory matter
 written or spoken in the Legislature. Voting for legislation injurious to the
 rights of others would no doubt by this section be rendered remediless in the
 courts. Indeed I can conceive that in legislative proceedings such a section
 should not have a strict construction. But having an application in that way
 I see no reason for extending it to members of the House of Assembly sitting
 in another capacity, viz : as a judicial tribunal and trying a person for a crime

and punishing for contempt without, as I have endeavoured to show, power or jurisdiction. The Judicial Committee in *Doyle v. Faulkner*, 1, P. C. 339, said:—"Again there is 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." That a general section of that character will not be applied where there is nullity or want of jurisdiction, see *Endlitch on Statutes*, s. 385.

In my opinion the Plaintiff's motion to set aside the verdict should be dismissed with costs.

RECORD.

No. 25A.
Judgment of
Mr. Justice
Graham—
continued.

10 McDonald C. J.

I have read that opinion and concur in it.

No. 25B.
Concurrence
of.
McDonald,
C.J.,

Thomas v. Haliburton et al.

Weatherbe, J.

No. 25c.
Judgment of
Mr. Justice
Weatherbe.

This is an action brought against the Honourable W. S. Fielding, Premier and others, members of the Executive Government and House of Assembly of Nova Scotia in all 23 members—a majority—for votes given by them in the House.

The votes given were in the affirmative on resolutions for taking Plaintiff into custody of the Sergeant-at-Arms for refusing to obey an order of the House and for committing Plaintiff to jail for 48 hours for refusing to apologize.

These resolutions grew out of proceedings against Plaintiff before the House of Assembly on account of his having presented a petition charging members during the session of the House with improper and most unworthy conduct.

I suppose there can be no doubt this petition was an insult to members and was intended to reflect on their conduct and intended to influence members in voting to repeal an Act of the Legislature.

If the proper proceedings had been taken it will be admitted that Plaintiff could have been punished under undoubted and unimpeached clauses of Cap. 3 of the Revised Statutes respecting the powers and privileges of the Houses of Legislature.

It is obvious that though the truth of the charges against members could have been investigated it could not have been inquired into by means of the petition which clearly was not intended as a means of investigation but was an indisputable violation of law to interfere with the action of the House which if followed up would interfere with the freedom of discussion and legislation

RECORD.

Plaintiff on being summoned before the House attended and after investigation this resolution was passed by the House :—

No. 25c.
Judgment of
Mr. Justice
Weatherbe
—continued

“That this House while fully cognisant of its own authority and prepared to exercise it when necessary does not deem the offence of Mr. Thomas of sufficient gravity to call for any exercise of such authority. That therefore David J. Thomas be reprimanded for his conduct, and that such reprimand be given by the reading of this resolution to him by Mr. Speaker.”

Plaintiff being within the precincts of the House in obedience to the summons of the Speaker at the time of the passage of the resolution refused to obey the order of the House to come to the bar and in defiance of the direction 10 of the members left the House.

The defence is made out unless some of the clauses of Cap. 3 R. S. (5th Series) which have been impeached are *ultra vires* the Provincial Legislature to pass. There has been no decision on the points raised but some remarks of ministers of justice in political returns in Blue Books were referred to. I have long ago read some of them uttered 15 or 20 years since. To the able men—the authors—they would sound very strange and crude in the light of subsequent discussions and authoritative legal decisions respecting the distribution of powers of the Dominion and the Provinces.

It is not now pretended so far as I am aware and after a very exhaustive 20 discussion of the various clauses of the Act before us that the House of Assembly has not power to imprison or otherwise punish for disobedience of its orders during the session.

Nor is it disputed that the Provincial Legislature has power to make a law to indemnify members against any action by reason of any proceedings of theirs in the Houses of the Legislature.

Section 29 of Cap. 3 enacts that certain things are prohibited and shall be deemed infringements of the chapter and by a subsequent clause—31—imprisonment is authorised as a punishment for infringement of the chapter.

There are eight sub-sections to clause 29 specifying what are “infringe- 30 ments.” The first forbids “insults to or assaults or libels upon members of either House during the session of the Legislature. By the third sub-section the refusal of any person to obey a rule order or resolution of the House is ordained an infringement of the chapter.

The only question as I understand the matter in this case is whether forbidding anyone to libel a member of the House is not beyond the powers of the Provincial Legislature to pass.

The argument is that while that Legislature may forbid anyone to insult a member resort must be had to the Dominion Legislature to prevent libel because libel is a criminal matter. In other words it is contended that while 40 the Provincial Legislature has exclusive power to deal with all subjects touching the constitution and organization of the Provincial Houses of Legislature the freedom of debate and decorum and while it may pass laws to prevent obstructions to the business that whenever it contemplates an obstruction which amounts to a crime the Province is powerless to legislate. The Province may punish a man for insulting the members but may not forbid an assault on



members. I suppose the contention is that inasmuch as to the Dominion Parliament is assigned the duty of making laws relating to crimes except the penalties to be imposed for breach of Provincial Acts it would be *ultra vires* the Provincial Legislature to forbid libel in every case directly or indirectly and therefore I understand the alleged difficulty to be that this being the case though the words of the Indemnity Act are pretty clear it cannot be imagined that indemnity legislation would be resorted to to prevent the recovery of damages for votes given by members under a mistake of their powers.

RECORD.

No. 25c.

Judgment of
Mr. Justice
Weatherbe—
continued.

10 I suppose this short answer would be sufficient to meet such an objection, namely, that the province having the undoubted power to prevent obstructions to the business of legislation could prevent everything that was an obstruction or interference as such whether that interference was so violent as to amount to criminal conduct or whether it was conduct less violent. Such legislation by the Province I think is not an interference with Dominion legislative power dealing with and defining crime. It is not denied that the Dominion Parliament could make all insults criminal and all manner of acts which might constitute obstructions to the Provincial Legislation crimes.

20 I cannot help thinking it will be admitted that if the impeached clause of cap. 3 had said "Any person interfering with members while in the discharge of their duties by insulting assaulting or otherwise obstructing them may be punished by order of the House for such obstruction" it would have been held within the power of the legislature to pass it.

In obstructing the business of the House if a stranger were to commit a serious crime by the use of fire-arms for example it does not follow I think that under Provincial Legislation he may not be restrained and removed and punished for the obstruction in addition to the punishment to be imposed for the violation of the Dominion law forbidding the use of fire-arms. There are the two things to be dealt with, the insulting or obstructing of members in their business and violating the general statute in relation to criminal matters.

30 If Section 29 can be construed to signify power in the House to deal substantively with any charge of crime or try or punish for the same except as an incident of protecting the members in their proceedings—if it can be so construed to any extent it is *ultra vires* the Provincial Legislature. I need not say now that we have become familiar with these questions that an Act may be only in part *ultra vires* and that it may be construed nevertheless to operate to the extent of the power properly exercised under it.

40 An assault with the intention of influencing a member of the House constitutes an offence—not that the assault is the gist of the offence—but because of the animus towards forcing or influencing or intimidating a member.

If it be competent to protect members from insult while in the discharge of their duties it will not avail the aggressor that the insult was conveyed by reflecting on him by means of a libel.

With the limitation suggested I think it ought to be admitted Cap. 3 is not *ultra vires* the Provisional Legislature.

No doubt the insult or libel reflecting on a member aimed at is not intended
p. 3926. N

RECORD. to be created an offence except during the session and only an offence in so far as it interferes with the proper exercise of legislative action.

No. 25c.
Judgment of
Mr. Justice
Weatherbe—
continued.

If these Defendants are liable as a matter of fact they are liable to voting for arrest and detention as punishment for disobeying a resolution with respect to the proceedings of the House.

The Plaintiff was not found to have committed the offence charged in the first instance and assuming the charge could not be maintained I am unable to follow the reasoning that even because the act or a portion of the act under which the proceedings began must be held *ultra vires* that there was no jurisdiction to try that question and there was no power to pass resolutions as to where the Plaintiff should stand and when he should leave during the proceedings. 10

It is not claimed to be *ultra vires* to make orders of this kind or to dismiss or modify the complaint in view of the powers conferred by the statute.

There may therefore be another view of this subject without refining too much. We are familiar with that class of cases where Courts have been held to have been without jurisdiction in giving the judgment attacked though such Courts were held to have had jurisdiction to enter upon the investigation which resulted in the wrong judgment. Assuming therefore the House of Assembly was wrong in coming to the conclusion that the Plaintiff could be in any measure punished for his conduct in relation to the petition in the first instance it must be observed that the imprisonment complained of was not awarded as punishment for the substantive offence but for refusal to attend the House during the investigation. At any rate if the tribunal had ordered his attendance on the occasion of his absenting himself for the purpose of dismissing the complaint against him for want of jurisdiction there can I think be no doubt he would be bound to attend and the contention now raised would in any view fall. 20

I am of opinion however that Section 29 of chapter 3 is *intra vires* and that it would be a strained construction of the British North America Act to hold that the Provincial Legislature may not punish interference with the proceedings of that Chamber because that interference took the shape and form of criminal conduct as defined by the general laws of the Dominion Parliament and therefore I think the House had jurisdiction over the Plaintiff. 30

No. 26.
Petition for
leave to
appeal to
Her Majesty
in Council.

1892 A. No. 4857.

In the Supreme Court.

Between

David J. Thomas - - - - Plaintiff,

and

Alfred F. Haliburton and others - - - - Defendants.

To the Honourable the Supreme Court of Nova Scotia *in banco*. 40

The petition of the Honourable William S. Fielding Honourable J. Wilberforce Longley Honourable Charles E. Church Honourable Thomas



RECORD.

No. 26.
Petition for
leave to
appeal to
Her Majesty
in Council
—continued.

Johnson Honourable Daniel McNeil Honourable Colin F. McIsaac Forman
Hatfield Arthur Drysdale Alfred P. Welton George Clarke Christopher P.
Chisholm John McKinnon James D. McGregor Ambrose M. Comeau Albert
M. Hemeon John A. Fraser Frederick A. Laurence Joseph Matheson Richard
Hunt Angus J. McDonald Joseph McPherson Abram A. Le Blanc William Law
William Roche Eliakim E. Tupper and John D. Sperry Defendants herein
humbly sheweth—

1. That this is an action brought against Alfred F. Haliburton, Honourable
Michael J. Power, Honourable William S. Fielding Honourable J. Wilberforce
10 Longley Honourable Charles E. Church Honourable Thomas Johnson
Honourable Daniel McNeil Honourable Colin F. McIsaac Forman Hatfield
Arthur Drysdale Alfred P. Welton George Clarke Frederick A. Laurence
Christopher P. Chisholm John McKinnon James D. McGregor Ambrose M.
Comeau Albert Hemeon John A. Fraser Joseph Matheson Richard Hunt
Angus J. McDonald Joseph McPherson Abram A. Le Blanc William Law
William Roche Eliakim E. Tupper John D. Sperry Thomas A. Chambers and
Nicholas Power Defendants herein for damages alleged to have been suffered
by the Plaintiff in consequence of the alleged assault upon beating and false
and illegal imprisonment of the Plaintiff by the Defendants at Belmont in the
20 county of Colchester at Truro in said county and at Halifax in the county of
Halifax on the 22nd day of April 1892 and at other times.

2. That this cause was tried before the Honourable Mr. Justice Townshend
with a jury at Truro on the 17th and 18th days of June 1892. The said
learned Judge dismissed the action as against the said Defendants Alfred F.
Haliburton Michael J. Power Thomas A. Chambers and Nicholas Power and
ordered judgment to be entered for the said last-named Defendants.

The learned Judge held that the Plaintiff was entitled to recover against
the other Defendants and so instructed the jury and a verdict was accordingly
given in favour of the Plaintiff for the sum of \$200.00 against your said petitioners
being the said Defendants Honourable William S. Fielding Honourable J.
30 Wilberforce Longley Honourable Charles E. Church Honourable Thomas
Johnson Honourable Daniel McNeil Honourable Colin F. McIsaac Forman
Hatfield Arthur Drysdale Arthur P. Welton George Clarke Christopher P.
Chisholm John McKinnon James D. McGregor Ambrose M. Comeau Albert
M. Hemeon John A. Fraser Frederick A. Laurence Joseph Matheson Richard
Hunt Angus J. McDonald Joseph McPherson Abram A. Le Blanc William Law
William Roche Eliakim E. Tupper and John D. Sperry.

3. Your said petitioners on the 25th day of June 1892 gave notice that
they would apply to the Supreme Court *in banco* for an order setting aside
40 with costs the said verdict or judgment entered for the Plaintiff in this action
and for an order that judgment should be entered in favour of your said
petitioners against the Plaintiff and that this action should be dismissed with
costs.

4. The said motion and application came on to be heard before the
Honourable Court on the seventh day of February 1893 and was argued on
the 7th 8th 9th 10th and 11th days of February 1893 before the Honourable
the Chief Justice Mr. Justice Weatherbe Mr. Justice Ritchie and Mr. Justice
p. 3926. O

RECORD.
 No. 26.
 Petition for
 leave to
 appeal to
 Her Majesty
 in Council
 —continued.

Graham. The Court reserved judgment which was afterwards pronounced on the 2nd day of December 1893 when the Court were equally divided in opinion the Honourable the Chief Justice and Mr. Justice Graham being of opinion that the said motion and application of your said petitioners should be dismissed and Mr. Justice Weatherbe and Mr. Justice Ritchie being of opinion that it should be allowed and that this action should be dismissed.

5. Your petitioners are advised and believe that under the practice of this Honourable Court their said motion and application stands dismissed the Court being equally in opinion divided thereon.

6. Your petitioners desire to obtain leave to appeal from the said judgment or decision of the Supreme Court of Nova Scotia *in banco* dismissing the said motion and application of your petitioners to Her Majesty her heirs and successors in her and their Privy Council for the purpose of having such judgment or decision reversed and judgment entered herein for your petitioners for their costs of this action.

And your petitioners will ever pray.

WILLIAM S. FIELDING	by J. W. Longley his Attorney.	
ANGUS J. McDONALD	” ” ”	
CHRISTOPHER P. CHISHOLM	” ” ”	
CHARLES E. CHURCH.	” ” ”	20
ABRAM A. LE BLANC	” ” ”	
AMBROSE M. COMEAU	” ” ”	
DANIEL McNEIL	” ” ”	
WILLIAM ROCHE	” ” ”	
GEORGE CLARKE	” ” ”	
JOHN MCKINNON	” ” ”	
JOSEPH MCPHERSON	” ” ”	
JAMES D. MCGREGOR	” ” ”	
THOMAS JOHNSON	” ” ”	
WILLIAM LAW	” ” ”	30
ALBERT M. HEMION	” ” ”	
COLIN F. McISAAC	” ” ”	
JOHN A. FRASER	” ” ”	
FORMAN HATFIELD	” ” ”	
JOHN D. SPERRY	” ” ”	
JOSEPH MATHESON	” ” ”	
RICHARD HUNT	” ” ”	
ELIAKIM E. TUPPER	” ” ”	
FREDERICK A. LAURENCE	” ” ”	
ARTHUR DRYSDALE	” ” ”	40
ALFRED P. WELTON	” ” ”	
J. W. LONGLEY.	by W. B. Ross his Attorney.	

1892. A. No. 4857.
In the Supreme Court.

RECORD.

No. 27.
Affidavit of
R. L. Borden,
16th Dec.
1893.

Between
David J. Thomas - - - - Plaintiff,
and
Alfred F. Haliburton *et al.* - - - Defendants.

I Robert L. Borden of the city and county of Halifax barrister-at-law, make oath and say as follows:—

1. That I am of Counsel with the Defendants Honourable William S. Fielding Honourable J. Wilberforce Longley Honourable Charles E. Church Honourable Thomas Johnson Honourable Daniel McNeil Honourable Colin F. McIsaac Forman Hatfield Arthur Drysdale Alfred P. Welton George Clarke Christopher P. Chisholm John McKinnon James D. McGregor Ambrose M. Comeau Albert M. Hemcon John A. Fraser Frederick A. Laurence Joseph Matheson Richard Hunt Angus J. McDonald Joseph McPherson Abram A. Le Blanc William Law William Roche Eliakim E. Tupper and John D. Sperry herein.

2. I produce herewith marked Exhibit "A" to this my affidavit a petition of the said last named Defendants for leave to appeal to Her Majesty in Her Privy Council from the judgment of this Honourable Court delivered herein on the 2nd day of December 1893 and I say that the facts set out in the petition are true and correct.

3. That I produce herewith marked Exhibit "B" to this affidavit a true copy of the printed case on the motion or application to the Supreme Court of Nova Scotia *in banco* mentioned and referred to in said petition and I produce herewith marked Exhibit "C" to this affidavit a true copy of the judgments of the Supreme Court of Nova Scotia *in banco* dismissing said motion or application as furnished to me by the reporter of this Honourable Court.

30 (Signed) ROBERT L. BORDEN.

Sworn to at Halifax in the county of Halifax on the 16th day of December 1893 before me. (Signed) F. H. Bell a Commissioner of the Supreme Court for the county of Halifax.

1892. A. No. 4857.
In the Supreme Court.

No. 28.
Order
granting
leave to
Appeal,
dated 1th
Feb. 1894.

Between
David J. Thomas - - - - Plaintiff,
and
Alfred F. Haliburton and others - - - Defendants.

40 On hearing read the petition of the Defendants herein Honourable William S. Fielding Honourable J. Wilberforce Longley Honourable Charles

RECORD. E. Church Honourable Thomas Johnson Honourable Daniel McNeil
 Honourable Colin F. McIsaac Forman Hatfield Arthur Drysdale Alfred P.
 Welton George Clarke Christopher P. Chisholm John McKinnon James
 D. McGregor Ambrose M. Comeau Albert M. Hemeon John A. Fraser
 Frederick A. Laurence Joseph Matheson Richard Hunt Angus J. McDonald
 Joseph McPherson Abram A. Le Blanc William Law William Roche
 Eliakim E. Tupper and John D. Sperry bearing date this day and the
 affidavit of Robert L. Borden sworn herein on the 16th day of December
 1893 and the Exhibits thereto and upon hearing Mr. Borden Q.C. for the
 Defendants and upon reading the printed case herein on the motion or **10**
 application of the said Defendants to the Supreme Court of Nova Scotia
in banco to set aside the verdict of the jury on the trial of this cause before
 Mr. Justice Townshend with a jury and to dismiss this action and to enter
 judgment for the said Defendants above named and upon reading the judg-
 ment of this Honourable Court upon the said motion or application and on
 motion of Counsel of the above named Defendants made before this Honourable
 Court on the 16th day of December A.D. 1893.

No. 28.
 Order
 granting
 leave to
 appeal,
 dated 17th
 Feb. 1894—
continued.

It is ordered that the said above named Defendants have leave to appeal
 and an appeal is hereby allowed to Her Majesty her heirs or successors in
 her or their Privy Council from the final judgment of this Honourable Court **20**
in banco pronounced and delivered on the second day of December 1893
 dismissing and refusing the motion and application of the above-named
 Defendants herein to set aside the verdict or judgment for the Plaintiff
 herein and to dismiss this action and to enter judgment for the said
 Defendants.

And it is further ordered that the said above-named Defendants the
 Appellants on the said appeal shall give security to the Plaintiff Respondent
 on said appeal in the sum of five hundred pounds sterling to be approved of
 by the Court or a Judge within twenty-eight days from this date under the
 Rules and Order in Council in that behalf made and prescribed for the **30**
 prosecution of said appeal and for the payment of such costs as may be
 awarded by Her Majesty her heirs and successors or by the Judicial Com-
 mittee of Her Majesty's Privy Council to the said Plaintiff the Respondent on
 such appeal.

Dated at Halifax this 17th day of February 1894.

By the Court.

(Signed) S. H. HOLMES, Prothy.

1894. A. No. 4857.

In the Supreme Court.

Between

David J. Thomas - - - Plaintiff,

and

Alfred F. Haliburton *et al.* - - - Defendants.

RECORD.

No. 29.
 Receipt of
 Deposit as
 Security,
 dated 13th
 March 1894.

Received from W. B. Ross, Esq., Q.C., the sum of five hundred pounds (sterling) being twenty-four hundred and thirty-three and one-third dollars Canadian currency deposited as security pursuant to the terms of the order made herein and dated the 17th day of February A.D. 1894 granting leave to the Defendants therein named to appeal from the verdict or judgment herein to Her Majesty in Council.

Dated at Halifax this 13th day of March A.D. 1894.

(Signed) S. H. HOLMES,
 Prothonotary of the Supreme Court at Halifax.

1892. A. No. 4857.

In the Supreme Court.

Between

David J. Thomas - - - Plaintiff,

and

Alfred F. Haliburton *et al.* - - - Defendants.

No. 30.
 Order
 approving
 Security,
 dated 17th
 March 1894.

Before His Lordship the Chief Justice in Chambers.

Upon reading the order made herein and dated the 17th day of February A.D. 1894 granting leave to the Defendants Honourable William S. Fielding Honourable J. Wilberforce Longley Honourable Charles E. Church Honourable Thomas Johnson Honourable Daniel McNeil Honourable Colin F. McIsaac Forman Hatfield Arthur Drysdale Alfred P. Welton George Clarke Christopher P. Chisholm John McKinnon James D. McGregor Ambrose M. Comeau Albert M. Hemeon John A. Fraser Frederick A. Laurence Joseph Matheson Richard Hunt Angus J. McDonald Joseph McPherson Abram A. Le Blanc William Law William Roche Eliakim E. Tupper and John D. Sperry to appeal to Her Majesty in Council herein and upon reading the receipt of the Prothonotary of the Supreme Court at Halifax for 500% deposited as security for the prosecution of said appeal and for payment of such costs as may be ordered to be paid the Plaintiff the Respondent of such appeal and upon hearing Mr. MacKay for said Defendants and on motion.

It is ordered that the said deposit of 500% sterling with the Prothonotary at Halifax as aforesaid be and it is hereby approved as the security required by

RECORD. the said order of the 17th day of February 1894 granting leave to appeal herein and the said Defendants above named be at liberty to prefer proceed and prosecute their said appeal from this Court to Her Majesty her heirs or successors in her or their Privy Council.

Dated at Halifax this 17th day of March A.D. 1894.

(Sgd.) S. H. HOLMES, Prothy.

No. 31.
Certificate of
Protho-
notary,
dated 11th
June 1894.

1892. A. No. 4857.

In the Supreme Court.

Between

David J. Thomas - - - Plaintiff, 10

and

Alfred F. Haliburton *et al.* - - - Defendants.

I Simon H. Holmes of the city and county of Halifax in the province of Nova Scotia Esquire Prothonotary of the Supreme Court of Nova Scotia at Halifax do hereby certify that the foregoing and annexed papers from page 1 to page 89 both inclusive contain and are a true and correct copy of all evidence proceedings judgments decrees and orders had or made in the above cause so far as the same have relation to the matters of appeal herein and also of the reasons given by the said Supreme Court for the judgment or determination appealed against. 20

In witness whereof I have hereunto subscribed my hand and affixed the seal of the said Supreme Court at Halifax aforesaid this 11th day of June in the year of our Lord one thousand eight hundred and ninety-four.

(Seal.)

S. H. HOLMES, Prothonotary.

IN THE PRIVY COUNCIL.

No. 72 of 1894.

ON APPEAL
FROM THE SUPREME COURT OF NOVA SCOTIA.

BETWEEN
FIELDING AND OTHERS
AND
THOMAS.

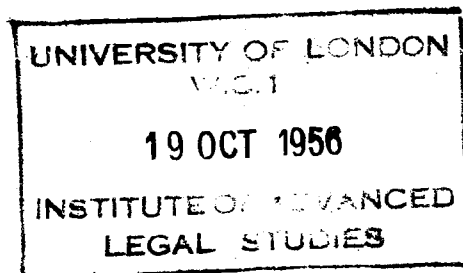
RECORD OF PROCEEDINGS.

MESSRS. HILL, SON, AND RICKARDS,
40, Old Broad Street, E.C.,
for Appellants,
PAINES, BLYTH AND HUXTABLE,
14, St. Helen's Place, E.C.
for Respondents.

p. 3926.

Judgment
→

30787



Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Fielding and others v. Thomas, from the Supreme Court of Nova Scotia ; delivered 28th July 1896.

Present :

The LORD CHANCELLOR.
LORD HERSCHELL.
LORD WATSON.
LORD MACNAGHTEN.
LORD MORRIS.
LORD DAVEY.
SIR RICHARD COUCH.

[Delivered by the Lord Chancellor.]

This is an appeal from an order of the Supreme Court of Nova Scotia dismissing the application of the Appellants for an order that the verdict and judgment entered for the present Respondent at the trial of the action before Townshend, J., might be set aside and judgment should be entered for the Appellants. By the verdict and judgment in question the Appellants were found to have unlawfully assaulted and imprisoned the Respondent. The Supreme Court were equally divided. McDonald, C.J., and Graham, E.J., were in favour of confirming the judgment whilst Ritchie, J., and Weatherbe, J., held that judgment should be entered for the Appellants. The judgment of Townshend, J., therefore stood confirmed.

The Respondent was summoned to attend at the Bar of the House of Assembly to answer a

breach of the privileges of the House in having published a libel reflecting on a member or members of the House (in connection with their conduct as members of the House). He attended on two occasions and on the second occasion was ordered to withdraw and remain in attendance during the debate which took place. On being called in by the Sergeant-at-Arms by order of the Speaker he refused to obey the order and left the precincts of the House.

It is not denied that the Respondent intentionally disobeyed the order of the House. He was thereupon arrested by order of the House and on being brought to the Bar was adjudged to have been guilty of a contempt of the House committed in the face of the House and was committed to the Common Jail of Halifax for 48 hours. Upon this he brought an action for assault and imprisonment and it is from the judgment in that action that the present appeal is brought. The Appellants are sought to be made liable by reason of their having voted as members of the House of Assembly for the imprisonment of the Respondent.

The acts complained of were justified under Sections 20, 29, 30, 31 of ch. 3 of the Revised Statutes of Nova Scotia fifth series. The Appellants also relied on the indemnity given to members of the House of Assembly by Section 26 of the same Statute.

These sections are as follows:—

“ 20. In all matters and cases not specially provided for
 “ by this chapter, or by any other statute of this Province, the
 “ Legislative Council of this Province and the committees and
 “ members thereof respectively, shall at any time hold, enjoy
 “ and exercise such and the like privileges, immunities and
 “ powers as shall be for the time being held, enjoyed and
 “ exercised by the Senate of the Dominion of Canada, and by
 “ the respective committees and members thereof, and the
 “ House of Assembly and the committees and members thereof,
 “ respectively, shall, at any time, hold, enjoy and exercise such
 “ and the like privileges, immunities and powers as shall for
 “ the time being be held, enjoyed and exercised by the House

“ of Commons of Canada, and by the respective committees
 “ and members thereof; and such privileges, immunities and
 “ powers, of both houses, shall be deemed to be and shall be
 “ part of the general and public law of Nova Scotia, and it
 “ shall not be necessary to plead the same, but the same shall
 “ in all courts of justice in this Province, and by and before
 “ all justices and others, be taken notice of judicially.

“ 26. No member of either house shall be liable to any civil
 “ action or prosecution, arrest, imprisonment or damages, by
 “ reason of any matter or thing brought by him by petition,
 “ bill, resolution, motion or otherwise, or said by him before
 “ such house; and the bringing of any such action or prosecu-
 “ tion, the causing or effecting any such arrest or imprisonment
 “ and the awarding of any such damages, shall be deemed
 “ violations of this Chapter.

“ 29. The following acts, matters and things are prohibited,
 “ and shall be deemed infringements of this Chapter:—

“ 1. Insults to or assaults or libels upon members of either
 “ house during the session of the legislature.”

The other provisions of the section are im-
 material to the present purpose.

“ 30. Each house shall be a court of record, and shall have
 “ all the rights and privileges of a court of record for the
 “ purpose of summarily inquiring into and (after the lapse of
 “ twenty-four hours) punishing the acts, matters and things
 “ herein declared to be violations or infringements of this
 “ Chapter; and for the purposes of this Chapter each house
 “ is hereby declared to possess all such powers and jurisdiction
 “ as may be necessary for inquiring into, judging and pro-
 “ nouncing upon the commission or doing of any such acts,
 “ matters or things, and awarding and carrying into execution
 “ the punishment thereof provided for by this Chapter, and
 “ amongst other things each house shall have power to make
 “ such rules as may be deemed necessary or proper for its
 “ procedure as such court as aforesaid.

“ 31. Every person who shall be guilty of an infringement
 “ or violation of this Chapter shall be liable therefor (in
 “ addition to any other penalty or punishment to which he
 “ may by law be subject) to an imprisonment for such time
 “ during the session of the legislature then being held, as may
 “ be determined by the house before whom such infringement
 “ or violation shall be inquired into. The nature of the offence
 “ shall be succinctly and clearly stated and set forth on the face
 “ of any warrant issued for a commitment under this section.”

It should be mentioned that by an Act (Revised
 Statutes of Canada 49 Vict. c. 11) the Dominion
 Parliament had already conferred on themselves
 the privileges, immunities, and powers of the
 House of Commons of the United Kingdom.

If it was within the powers of the Nova Scotia Legislature to enact the provisions contained in Section 20 and the privileges of the Nova Scotia Legislature are the same as those of the House of Commons of the United Kingdom as they existed at the date of the passing of the British North America Act 1867 there can be no doubt that the House of Assembly had complete power to adjudicate that the Respondent had been guilty of a breach of privilege and contempt and to punish that breach by imprisonment. The contempt complained of was a wilful disobedience to a lawful order of the House to attend.

The authorities summed up in *Burdett v. Abbot* 14 East 1. and followed in the case of *The Sheriff of Middlesex* 11 Adol. and Ellis 273, establish beyond all possibility of controversy the right of the House of Commons of the United Kingdom to protect itself against insult and violence by its own process without appealing to the ordinary Courts of Law and without having its process interfered with by those Courts.

The Respondent however argues that the Act of the Provincial Legislature which undoubtedly creates the jurisdiction and further indemnified Members of it against any proceedings for their conduct or votes in the House by the ordinary Courts of Law is *ultra vires*.

According to the decisions which have been given by this Board there is now no doubt that the Provincial Legislature could not confer on itself the privileges of the House of Commons of the United Kingdom or the power to punish the breach of those privileges by imprisonment or committal for contempt without express authority from the Imperial Legislature. By Section 1 of 38 & 39 Vict. c. 38 which was substituted for Section 18 of the British North America Act 1867

it was enacted that the privileges immunities and powers to be held enjoyed and exercised by the Dominion House of Commons should be such as should be from time to time defined by the Act of the Parliament of Canada but so that any Act of the Parliament of Canada defining such privileges immunities or powers should not confer any privileges immunities or powers exceeding those at the passing of such Act held enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof. There is no similar enactment in the British North America Act 1867 relating to the House of Assembly of Nova Scotia and it was argued therefore that it was not the intention of the Imperial Parliament to confer such a power on that Legislature. But it is to be observed that the House of Commons of Canada was a Legislative Body created for the first time by the British North America Act and it may have been thought expedient to make express provision for the privileges immunities and powers of the body so created which was not necessary in the case of the existing Legislature of Nova Scotia. By Section 88 the constitution of the Legislature of the Province of Nova Scotia was subject to the provisions of the Act to continue as it existed at the Union until altered by authority of the Act. It was therefore an existing Legislature subject only to the provisions of the Act. By Section 5 of the Colonial Laws Validity Act (28 and 29 Vict. c. 63) it had at that time full power to make laws respecting its constitution powers and procedure. It is difficult to see how this power was taken away from it and the power seems sufficient for the purpose.

Their Lordships are however of opinion that the British North America Act itself confers the power (if it did not already exist) to pass Acts

for defining the powers and privileges of the Provincial Legislature. By Section 92 of that Act the Provincial Legislatures may exclusively make laws in relation to matters coming within the classes of subjects enumerated *inter alia*, the amendment from time to time of the constitution of the Province, with but one exception, namely, as regards the office of Lieutenant Governor.

It surely cannot be contended that the independence of the Provincial Legislatures from outside interference, its protection, and the protection of its members from insult while in the discharge of their duties, are not matters which may be classed as part of the constitution of the Province or that legislation on such matters would not be aptly and properly described as part of the Constitutional Law of the Province.

It is further argued that the order which the Respondent disobeyed was not a lawful order or one which he was under any obligation to obey. The argument seems to be that the original cause of complaint was a libel; that though the particular breach of the Act complained of was the disobedience to the orders of the House yet as those orders were issued in reference to a certain petition presented to the House the contents of which were alleged to be libellous and during the investigation of the question who was responsible for its presentation, and as it must be assumed that a libel is a matter beyond the jurisdiction of the House to be inquired into inasmuch as libel is a criminal offence and the Criminal Law is one of the matters reserved for the exclusive jurisdiction of the Dominion Parliament the whole matter was *ultra vires* and both the members who voted and the officers who carried out the orders of the House are responsible to an ordinary action at law.

Their Lordships are unable to acquiesce in any

such contention. It is true that the Criminal Law is one of the subjects reserved by the British North America Act for the Dominion Parliament but that does not prevent an inquiry into and the punishment of an interference with the powers conferred upon the Provincial Legislatures by insult or violence. The Legislature has none the less a right to prevent and punish obstruction to the business of legislation because the interference or obstruction is of a character which involves the commission of a criminal offence or brings the offender within reach of the criminal law. Neither in the House of Commons of the United Kingdom nor the Nova Scotia Assembly could a breach of the privileges of either body be regarded as subjects ordinarily included within that Department of State Government which is known as the Criminal Law.

The effort to drag such questions before the ordinary Courts when assaults or libels have been in question in the British Houses of Legislature have been invariably unsuccessful and it may be observed that 1 Will. and Mary, Sess. II. c. 2. s. 1, sub-section 9, "That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any Court or place out of Parliament," is declaratory and not enacting.

Their Lordships are therefore of opinion that the 20th section of the Provincial Act is not *ultra vires* and affords a defence to the action. It may be that Sections 30, 31 of the Provincial Act if construed literally and apart from their context would be *ultra vires*. Their Lordships are disposed to think that the House of Assembly could not constitute itself a Court of Record for the trial of criminal offences. But read in the light of the other sections of the Act and having regard to the subject matter with

which the Legislature was dealing their Lordships think that those sections were merely intended to give to the House the powers of a Court of Record for the purpose of dealing with breaches of privilege and contempt by way of committal. If they mean more than this or if it be taken as a power to try or punish criminal offences otherwise than as incident to the protection of members in their proceedings Section 30 could not be supported.

It is to be observed that in the case of *Barton v. Taylor* 11 L.R. App. Cases Privy Council 197, referred to by one of the learned Judges below is no authority in favour of the contention here. No statute was there relied upon but the Legislative Assembly itself in that case had in pursuance of statutory powers adopted certain Standing Rules or Orders for the orderly conduct of the business of the Assembly. The trespasses complained of were adjudged by this Board not to be justifiable under the Standing Orders. It was then sought to justify the acts in question as being within a power incident to or inherent in a Colonial Legislative Assembly. This Board refused to adopt that contention, but their Lordships expressly added:—

“ They think it proper to add that they cannot
 “ agree with the opinion which seems to have
 “ been expressed by the Court below, that the
 “ powers conferred upon the Legislative Assembly
 “ by the Constitution Act do not enable the
 “ Assembly ‘ to adopt from the Imperial Parlia-
 “ ‘ ment, or to pass by its own authority, any
 “ ‘ Standing Order giving itself the power to
 “ ‘ punish an obstructing member, or remove
 “ ‘ him from the Chamber, for any longer period
 “ ‘ than the sitting during which the obstruction
 “ ‘ occurred.’ This, of course, could not be done
 “ by the Assembly alone without the assent of
 “ the Governor. But their Lordships are of

“ opinion that it might be done with the
 “ Governor’s assent; and that the express powers
 “ given by the Constitution Act are not limited
 “ by the principles of common law applicable to
 “ those inherent powers, which must be implied
 “ (without express grant) from mere necessity,
 “ according to the maxim, *Quando lex aliquid*
 “ *concedit, concedere videtur et illud, sine quo*
 “ *res ipsa esse non potest.* Their Lordships’
 “ affirmance of the Judgment appealed from is
 “ founded on the view, not that this could not
 “ have been done, but that it was not done, and
 “ that nothing appears on the record which can
 “ give the Resolution suspending the Respondent
 “ a larger operation than that which the Court
 “ below has ascribed to it.”

But independently of these considerations the provisions of Section 26 of the Act of the Provincial Legislature would in their Lordships’ opinion form a complete answer to the action even if the act complained of had been in itself actionable. Their Lordships are here dealing with a civil action and they think it sufficient to say that the Legislature could relieve members of the House from civil liability for acts done and words spoken in the House whether they could or could not do so from liability to a criminal prosecution.

No such question as that which arose in *Barton v. Taylor* arises here. All these matters—the express enactment of the privileges of the House of Commons of the United Kingdom—the express power to deal with such acts by the Provincial Assembly—the express indemnity against any action at law for things done in the Provincial Parliament are all explicitly given and the only arguable question is that which their Lordships have dealt with namely,—whether it was within the power of the Provincial Legislature to make such laws.

For these reasons their Lordships will humbly recommend to Her Majesty that the Judgment in this case should be reversed and judgment entered for the Appellants here [the Defendants below] with costs. The Respondent must pay the costs of this appeal.
