

*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.
