

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Laurence Joseph Harnett v. William Patrick Crick, from the Supreme Court of New South Wales; delivered the 28th July 1908.

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

SIR J. H. DE VILLIERS.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

The question in this case lies in a narrow compass. The Respondent, a member of the Legislative Assembly of New South Wales, brought an action against the Appellant, the Serjeant-at-Arms of the Assembly. The Declaration stated that the Defendant assaulted the Plaintiff, ejected him from the House, and kept him ejected therefrom, whereby the Plaintiff (as it was alleged) was prevented from attending to his duties, lost the benefit he would have derived from attendance, suffered pain of mind, and was injured in his good name and reputation. The Declaration ended by claiming 2,000*l.* by way of damages. The Defendant put in a plea justifying his conduct. To this plea the Plaintiff demurred.

The matters stated in the plea are shortly these:—The Plaintiff was Secretary for Lands in the State of New South Wales. A Royal Commission on the Administration of the Lands Department found him guilty of misconduct in

his office. On the publication of the Report of the Royal Commission a Resolution was moved in the Legislative Assembly in the words following:—

“That this House do now proceed to consider
 “ so much of the Report of the Royal Commissioner
 “ on the administration of the Lands Department as
 “ contains findings of misconduct against William
 “ Patrick Crick, Esq., now sitting as Member of the
 “ Legislative Assembly for the electoral district of
 “ Blayney.”

The Speaker ruled that the Assembly could not proceed on the matter, because the Plaintiff might thereby be prejudiced in certain criminal proceedings founded on the Report of the Royal Commission in which he was charged with corruption in his office by taking bribes from applicants for lands. Thereupon the House passed the following Standing Order, which was duly laid before the Governor and approved by him:—

“Whenever it shall have been ruled or decided
 “ (whether before or after the approval of the Standing
 “ Order) that the House may not proceed on a matter
 “ which has been initiated in the House affecting the
 “ alleged misconduct of a Member, because thereby the
 “ said Member may be prejudiced in a criminal trial
 “ then pending on charges founded on such misconduct,
 “ the House may suspend such Member from the service
 “ of the House until the verdict of the jury has
 “ been returned, or until it is further ordered.”

After the Standing Order had been approved, the House passed a Resolution to the effect that the Plaintiff should be suspended from the service of the House until the verdict of the jury in the criminal trial then pending should be returned or until further Order.

Notwithstanding this Resolution the Plaintiff persisted in attending the House and claimed to take part in its proceedings. The Speaker called upon him to withdraw. He refused to comply with the Speaker's order. And then, by

the Speaker's direction, the Defendant removed him from the House.

In pursuance of an order of the Court that the issues of law be tried first, the Demurrer came on to be heard before the Supreme Court in February 1907. On the 15th of March following, the Supreme Court by a majority of two Judges to one ordered judgment to be entered for the Plaintiff.

The only question argued before the Supreme Court, and the only question argued before this Board, was the validity of the Standing Order under which the Plaintiff was suspended. The Standing Order was made in pursuance of powers vested in the Legislative Assembly by section 15 of the Constitution Act, No. 32 of 1902, which is a reproduction of section 35 of 17 Vict., No. 41. The section, so far as material, is in the following words: "The . . . Legislative Assembly shall, as there may be occasion, prepare and adopt . . . Standing Rules and Orders regulating the orderly conduct" of the Assembly. "Such Rules and Orders shall . . . be laid before the Governor, and being by him approved shall become binding and of force."

The learned Chief Justice, in whose opinion Cohen, J., concurred, gave judgment allowing the Demurrer. Pring, J., was for upholding the plea.

The learned Chief Justice summed up the question under consideration in the following sentence :—

"Has the Assembly, under the power given to it to prepare and adopt standing rules 'regulating the orderly conduct of the Assembly,' power to prepare and adopt a Standing Order, in the case of a Member charged with an offence, which is to give the House power to pass a Resolution to suspend such Member from the service of the House until a verdict has

“ been returned, or until it is otherwise ordered—
 “ in other words, to make an order for indefinite
 “ suspension ? ”

In the result his Honour was of opinion—

“ That the fact that a criminal charge is pending
 “ against a Member of the Legislature in no way
 “ affects the course of business of the Chamber, is not
 “ in itself an obstruction to such business, and in no
 “ way affects or has any relation to the orderly
 “ conduct of the House.”

Pring, J., thought it difficult to see how the Standing Order in question could have any reference to the orderly conduct of the Assembly. So far he agreed with the learned Chief Justice. But his view was that the Governor's approval gave to the Standing Order the force of law and operated to prevent the Court from inquiring into its validity.

Their Lordships are not prepared to accept the reasoning on which Pring, J., founded his judgment. They think that the provision in the Act as to the Governor's approval was not intended to have the effect of giving Standing Orders passed by the Assembly a validity which otherwise they would not have possessed. It seems rather to be a limitation on the powers of the Assembly, making the Governor's approval necessary for the validity of any Standing Order passed by that body under section 15.

Their Lordships, however, think that the Supreme Court has not given sufficient weight to the peculiar circumstances of this case. No one probably would contend that the orderly conduct of the Assembly would be disturbed or affected by the mere fact that a criminal charge is pending against a member of the House. But in the present case there seem to be special circumstances which cannot be disregarded. And their Lordships feel compelled to take a different view of the situation from

that which commended itself to the majority of the Supreme Court and to Pring, J., so far as he was in agreement with the majority.

Two things seem to be clear: (1) that the House itself is the sole judge whether an "occasion" has arisen for the preparation and adoption of a Standing Order regulating the orderly conduct of the Assembly, and (2) that no court of law can question the validity of a Standing Order duly passed and approved, which, in the opinion of the House, was required by the exigency of the occasion, unless, upon a fair view of all the circumstances, it is apparent that it does not relate to the orderly conduct of the Assembly.

The case was this:—A Member of the Assembly, a Minister of the Crown holding high office in the State, is charged by a Royal Commission with bribery and corruption. No graver charge can be made against a public man in his public capacity. The higher the position of the accused, the ranker the offence and the greater the scandal. The House proposes to deal with the matter, and to deal with it at once. The Member incriminated had already been arrested and committed for trial on the charge laid against him by the Royal Commission. The Speaker interposes, and rules that while the criminal charge is pending the Assembly cannot proceed to consider the Report of the Royal Commission. With great forbearance the House acquiesces in the Speaker's ruling. The forbearance of the House meets with a return which was hardly to be expected. The accused insists on appearing in the House and taking part in the proceedings of the Assembly. It is not for this Board or any court of law to pass an opinion on the line of action which the Plaintiff chose to adopt. It may have proceeded from consciousness of rectitude and a singular devotion to the rights and

interests of his constituents. It may have been a deliberate insult and challenge to the whole House. It is open to either construction. If the House itself has taken the less favourable view of the Plaintiff's attitude, and has judged that the occasion justified temporary suspension, not by way of punishment, but in self-defence, it seems impossible for the Court to declare that the House was so wrong in its judgment, and the Standing Order and the Resolution founded upon it so foreign to the purpose contemplated by the Act, that the proceedings must be declared invalid. The suspension (it may be observed) is not, as the Chief Justice appears to think, a suspension for an indefinite period. It enures only until a verdict be given in the criminal case or the House determines sooner to remove the suspension.

Their Lordships will humbly advise His Majesty that the Appeal should be allowed, the Demurrer overruled, and the action dismissed with costs.

The Respondent will pay the costs of the Appeal.
