

In the Privy Council.

44626

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

BETWEEN 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. LAURENCE, 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. LEBLANC, WILLIAM LAW, WILLIAM ROCHE, ELIAKIM E. TUPPER and JOHN D. SPERRY - - APPELLANTS,

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AND

20 DAVID J. THOMAS - - - - - RESPONDENT.

RESPONDENT'S CASE.

Case

OF THE RESPONDENT.

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1. This is an Appeal from the Judgment of the Supreme Court of Nova Scotia, affirming a decision of Townshend J., by which the Respondent recovered \$200 damages, against all the Appellants (who were sued, together with Alfred F. Haliburton, Michael J. Power, Thomas A. Chambers and Nicholas Power, which latter were held to be specially indemnified by an Act passed subsequently to the beginning of this Action), for the Respondent's arrest and committal to the common gaol of the County of Halifax, for his alleged contempt of the House of Assembly, in disobeying an order of the said House. The Respondent at the time of the transactions which form the subject matter of this Action, was Mayor of the Town of Truro, in the County of Colchester. Frederick A. Laurence was Recorder and Stipendiary Magistrate of the Town of Truro and also a

member of the House of Assembly for the County of Colchester. A Bill entitled "an Act to enable the Town of Truro to borrow certain money," was prepared by the Town Council of Truro early in the Session of 1891, and forwarded to Laurence to be introduced by him to the House of Assembly. It is alleged that before introducing this Bill to the Assembly, Laurence inserted two clauses therein increasing his own salary as said Stipendiary Magistrate, and the salary of his brother as Chief Inspector of Licenses of the Town of Truro. The Bill was enacted as 54 Vict., Chapter 119. During the Session of the Legislature in 1892, the Town Council prepared and forwarded to George Clarke, a second member of the House of Assembly for the County of Colchester, a Petition signed by the Respondent as Mayor, and by the other members of the said Town Council, praying for the repeal by the Legislature of the clauses of the said Act, which had been inserted therein without their knowledge before the said Bill was introduced to the House. There was attached as an exhibit to this Petition, a copy of certain articles of complaint preferred against Laurence in certain proceedings then pending, for the removal of the said Laurence from his office as Recorder of the said town.

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2. Subsequently to its transmission but before the Petition was presented to the House, the informality of attaching an exhibit thereto, and a doubt as to the exhibit being proper in substance, was brought to the attention of the Respondent, and he thereupon at once requested Clarke to return the Petition. Instead of complying with this request, Clarke gave the Petition to Laurence, who laid it upon the table of the House of Assembly. Thereupon the House of Assembly without inquiry and in the absence of the Respondent passed a resolution setting forth that the Respondent, having caused a libel reflecting upon a member of the House to be printed and delivered to a member of the House, for the purpose of being read in or presented to the House, was guilty of a breach of the privileges of the House, and the Respondent was thereupon summoned to appear at the Bar of the House. The Respondent accordingly appeared at the Bar of the House on April 18th, 1892, and having asked that the consideration of the case should be postponed until he had the assistance of counsel, was directed to appear at the Bar of the House on April 20th. The Respondent did appear at the Bar of the House on April 20th, and thereupon demurred to the jurisdiction of the House, and stated that the acts which formed the subject of the complaint against him were done by him in good faith in his capacity as Mayor of Truro, and were not libellous, and that on being informed that there was doubt whether the Petition, with the document attached thereto, conformed with the rules of the House or parliamentary practice, he had caused it to be withdrawn. He then requested to be excused from further attendance.

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3. The Respondent was then orally requested by the Speaker to withdraw, and remain in attendance. He withdrew and under the advice of counsel returned to Truro. No further order was served upon him or communicated to him. For his action in withdrawing from the precincts of the House he was by resolution of the House adjudged guilty of contempt.

Rec., pp. 84-88.

Rec., pp. 78-83.

Rec., pp. 62-63.

Rec., p. 65.

Rec., p. 66.

Rec., p. 86.

4. Later on the same day, April 20th, by resolution of the House the Speaker was ordered to issue a warrant for his arrest. On April 22nd the Respondent was arrested and subsequently while under arrest was brought to the Bar of the House. On April 23rd the House by resolution ordered the Speaker to issue his warrant for the committal of the Respondent to the common gaol of the County of Halifax. The Appellants are members of the House who voted in favour of the resolutions ordering the arrest and the subsequent committal of the Respondent to the said common gaol.

Rec., pp. 66-67.

Rec., pp. 71-72.

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5. On April 25th the Respondent was brought before the Supreme Court under a Writ of *habeas corpus* and released by Order of said Court on the ground that the said warrant was defective.

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6. The Writ of summons in the cause was issued on April 27th, and immediately served on the Defendants. On April 30th an Act was passed to indemnify the Speaker and other officers of the House of Assembly who assisted in the preparation and execution of the warrant of April 23rd, which directed the Sergeant at Arms to commit the Respondent to the common gaol of the County of Halifax.

7. The Statement of Claim will be found at pp. 4 and 5 of the Record, the Defences of the various Defendants in the cause at pp. 5 to 28 of the Record, and the several replies thereto at pp. 28 to 35 of the Record.

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8. The cause was tried at Truro, in the County of Colchester, on June 15th, 16th, 17th and 18th, 1892, before Townshend, J., and a Jury, the Judge directed the Jury to find a verdict for the Plaintiff against all the Defendants who voted in the House of Assembly for the resolutions of April 20th and 23rd, which resolutions ordered the Speaker to issue the warrants of April 20th and 23rd respectively, under which the Respondent was arrested and committed to the common gaol of the County of Halifax. The Judge held that Sections 20, 26, 29, 30 and 33 of Chapter 3 of the Revised Statutes, 5th series, on which the Defendants relied as justifying the proceedings complained of by the Respondent were *ultra vires* of the Provincial Legislature. The Jury awarded the Plaintiff \$200 damages. The Judge dismissed the Action as against the Defendants Alfred F. Haliburton, Hon. Michael J. Power, Thomas A. Chambers and Nicholas Power. The charge of the Judge to the Jury will be found at pp. 53 to 58 of the Record.

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9. The Plaintiff appealed from the judgment, dismissing the Action as against the four Defendants named above, and moved for a new trial on the ground of misdirection of the Jury by the Judge, on the question of damages.

Rec., p. 61.

10. The now Appellants moved by way of Appeal for an order to set aside the verdict or judgment entered for the Plaintiff, and to enter judgment for them.

Rec., pp. 58-60

11. The Appeal came on for hearing before the Supreme Court of Nova

Scotia, on February 7th, 1893, the Judges being McDonald, Chief Justice ; Graham, Equity Justice ; and Justices Weatherbe and Ritchie, who then reserved judgment, and subsequently on December 2nd, 1893, ordered judgment to be entered in favor of the Respondent.

12. Graham, E. J., Mc Donald, C. J. concurring, held that the Sections of Chapter 3, R.S., under the provisions of which the House of Assembly assumed the power to try and punish the Respondent for contempt, were *ultra vires* of the Local Legislature, and that the members of the House of Assembly were not indemnified against this Action by Section 26 of said Chapter 3. The reasons for the said judgment will be found at pp. 89 to 95 of the Record. 10

13. Weatherbe, J., held that Section 29 of said Chapter was *intra vires* of the Provisional Legislature, and that the House of Assembly has power to imprison or otherwise punish for disobedience to its orders during the session. The reasons given by Weatherbe, J., will be found at pp. 95 to 98 of the Record.

14. Ritchie, J., also held among other things that the members of the House who took part in these proceedings were indemnified by Section 26 of the said Chapter of the Revised Statutes. The reasons given by Ritchie, J., will be found at pp. 88 and 89 of the Record. 20

15. From the judgment entered by the Supreme Court of Nova Scotia in favour of the Respondent, this appeal is brought by the Defendants who were members of the House of Assembly of Nova Scotia.

The Respondent submits that the order or judgment appealed from ought to be affirmed and this appeal dismissed, for among others the following 30

REASONS.

1. Because the Respondent did not commit a breach of the privileges of the House of Assembly of Nova Scotia.
2. Because the Respondent was not guilty of a contempt committed in the face of the House of Assembly of Nova Scotia or otherwise.
3. Because the House of Assembly of Nova Scotia had no power, jurisdiction or authority to order the arrest of the Respondent or his committal to the common gaol of the County of Halifax for disobeying the order of the said House that he should remain in attendance. 40
4. Because the power to arrest and imprison in such a case is not a power which is necessary for the discharge of the functions of the House of Assembly of Nova Scotia.

5. Because the said House of Assembly is not a Court of Record.
6. Because Sections 20, 26, 29, 30, 33 and other Sections of the said Chapter 3 Revised Statutes of Nova Scotia, 5th series relied upon by the Appellants are *ultra vires* of the Legislature of the Province of Nova Scotia.
7. For the reasons given in the Judgment of Graham, E. J.

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EDWARD BLAKE.
TYRRELL T. PAINE.

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NOVA SCOTIA.

BETWEEN

HONORABLE WILLIAM S. FIELDING and Others
Appellants,

AND

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

Respondent's Case.

PAINES, BLYTH & HUXTABLE,
14, St. Helens Place,
E.C.,
Respondent's Solicitors.