Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Doyle and others v. *Falconer, from the Supreme Court of Dominica; delivered the 15th day of December*, 1866.

Present:

LORD WESTBURY.
SIR JAMES W. COLVILE.
SIR EDWARD VAUGHAN WILLIAMS.

THE Respondent in this case, being a Member of the Lower House of Assembly of the Island of Dominica, brought an action of trespass for assault and false imprisonment against the Speaker and ten other Members of that Body. The Defendants put in two special pleas justifying the trespasses complained of, to which the Respondent demurred. Judgment on the demurrer was given in his favour by the Court below, and the present Appeal is against that Judgment.

The following are the facts set forth in the pleas, so far as it is necessary to state them.

The Respondent having, whilst addressing the House, been called to order by the Speaker and House, and having then addressed to the Speaker, when in the due execution of his office, the words, "You are a disgrace to this House," and having been called upon by the House to apologize, and having refused to do so, was declared in contempt of the said Lower House of Assembly. While so in contempt, he further interrupted and obstructed the business before the House, whereupon it was resolved that for his disorderly conduct and contempt of the House, he should be taken into the custody of the

Serjeant at Arms, and that the Speaker should issue his warrant committing him to the common jail of the Island during the pleasure of the House. In pursuance of this Resolution, the Speaker issued two warrants; the one directed to the Serjeant at Arms requiring him to take the Respondent, and to deliver him over to the keeper of the common jail; the other directed to the jailer, requiring him to receive into his custody the body of the Respondent and to keep him safely during the pleasure of the House. But each warrant bore only on the face of it that the House of Assembly had adjudged the Respondent guilty of a contempt and breach of its privileges, and had ordered that he should be for the said offence committed to the common jail of the Island during the pleasure of the House.

The questions upon which the sufficiency of the justification thus pleaded depends, are:—

1st. Does the House of Assembly possess the authority which the pleas allege did always of right belong to it, and to Legislative Assemblies in other parts of the dominions of Her Majesty, viz.: an authority to commit and punish for contempts committed, and for interruptions and obstructions given to the business of the said House of Assembly by its members or others, in its presence and during its sittings?

2ndly. Assuming the existence of this alleged authority to be established, were the warrants issued by virtue of it sufficient in law?

The first question, affecting as it does the privileges of the Legislative Assemblies in many of the dependencies of the Crown, is one of importance. When it first arose before this Committee, in the case of Beaumont *v.* Barrett (1 Moore, 59), the learned Judges then sitting decided broadly that the power of punishing contempts is inherent in every Assembly that possesses a supreme legislative authority, whether they are such as are a direct obstruction to its due course of proceeding, or such as have a tendency indirectly to produce such obstruction; and therefore that the Legislative Assembly of Jamaica had the power of imprisoning for a contempt by the publication of a libel.

Again, in America the Supreme Court of the United States, a tribunal whose judgments are entitled to the highest respect, held, in the case of

Anderson *v.* Dunn (6 Wheaton's Reports, 204), that the House of Representatives had, by necessary implication, a general power of punishing and committing for contempts, notwithstanding that the *lex scripta*, "the Constitution of the United States," had expressly conferred upon it a power limited to the punishment of contempts when committed by its own members.

It is admitted, however, that the case of Kielley *v.* Carson (4 Moore, 63), which overruled that of Beaumont *v.* Barrett, and has been followed by that of Fenton *v.* Hampton (11 Moore, 347), must here be taken to have decided conclusively that the Legislative Assemblies in the British Colonies have, in the absence of express grant, no power to adjudicate upon or punish for contempts committed beyond their walls. The case is one which, having regard to the constitution of the Committee before which it was argued for the second time, their Lordships must accept as an authority of singular weight. And if the elaborate Judgment which was then pronounced has in terms left open the question which is raised in the present case, it has stated principles which go far to afford the means of determining that question.

The privileges of the House of Commons, that of punishing for contempt being one, belong to it by virtue of the *lex et consuetudo Parliamenti*, which is a law peculiar to and inherent in the two Houses of Parliament of the United Kingdom. It cannot therefore be inferred from the possession of certain powers by the House of Commons, by virtue of that ancient usage and prescription, that the like powers belong to Legislative Assemblies of comparatively recent creation in the dependencies of the Crown.

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. There is therefore no ground for saying that the power of punishing for contempt, because it is admitted to be inherent in the one, must be taken by analogy to be inherent in the other.

If, then, the power assumed by the House of Assembly cannot be maintained by analogy to the privileges of the House of Commons or the powers of a Court of Record, is there any other legal

foundation upon which it may be rested? It has not, as both sides admit, been expressly granted. The learned Counsel for the Appellant invoked the principles of the common law, and as it must be conceded that the common law sanctions the exercise of the prerogative by which the Assembly has been created, the principle of the common law which is embodied in the maxim, "*Quando lex aliquid concedit, concedere videtur et illud, sine quo res ipsa esse non potest,*" applies to the body so created. The question, therefore, is reduced to this: "Is the power to punish and commit for contempts committed in its presence one necessary to the existence of such a Body as the Assembly of Dominica, and the proper exercise of the functions which it is intended to execute?" It is necessary to distinguish between a power to punish for a contempt, which is a judicial power, and a power to remove any obstruction offered to the deliberations or proper action of a Legislative Body during its sitting, which last power is necessary for self-preservation. If a member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting, he may be removed, or excluded for a time, or even expelled; but there is a great difference between such powers and the judicial power of inflicting a penal sentence for the offence. The right to remove for self-security is one thing, the right to inflict punishment is another. The former is, in their Lordships' judgment, all that is warranted by the legal maxim that has been cited, but the latter is not its legitimate consequence. To the question, therefore, on which this case depends, their Lordships must answer in the negative. If the good sense and conduct of the members of Colonial Legislatures prove, as in the present case, insufficient to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person offending from the place of meeting, and to keep him excluded. The same rule would apply *à fortiori* to obstructions caused by any person not a member. And whenever the violation of order amounts to a breach of the peace, or other legal offence, recourse may be had to the ordinary tribunals.

It may be said that the dignity of an Assembly exercising supreme legislative authority in a Colony,

however small, and the importance of its functions, require more efficient protection than that which has just been indicated; that it is unseemly or inconvenient to subject the proceedings of such a body to examination by the local tribunals; and that it is but reasonable to concede to it a power which belongs to every inferior Court of Record. On the other hand, it may be urged, with at least equal force, that the power contended for is of a high and peculiar character; that it is in derogation of the liberty of the subject, and carries with it the anomaly of making those who exercise it Judges in their own cause, and Judges from whom there is no appeal; and that if it may be safely intrusted to Magistrates, who would all be personally responsible for any abuse of it to some higher authority, it might be very dangerous in the hands of a body which, from its very constitution, is practically irresponsible.

Their Lordships, however, are not at liberty to deal with considerations of this kind. There may or may not be good reasons for giving by express grant to such an Assembly as this privileges beyond those which are legally and essentially incident to it. In the present instance this possibly might have been done by the instrument creating the Assembly; since Dominica was a conquered or ceded Colony, and the introduction of the law of England seems to have been contemporaneous with the creation of the Assembly. It may also be possible to enlarge the existing privileges of the Assembly by an Act of the Local Legislature passed with the consent of the Crown, since such an Act seems to be within the 3rd section of the recent statute, 28 and 29 Vict., cap. 63. That extraordinary privileges of this kind, when regularly acquired, will be duly recognized here, is shown by the recent case of Dill *v.* Murphy (1 Moore, N. S. 487). But their Lordships, sitting as a Court of Justice, have to consider not what privileges the House of Assembly of Dominica ought to have, but what by law it has. In order to establish that the particular power claimed is one of those privileges, the Appellants must show that it is essential to the existence of the Assembly, an incident "*sine quo res ipsa esse non potest.*" Their Lordships are of opinion that it is not such an incident.

This being their Lordships' Judgment, the foun-

dation of the justification pleaded fails; and it is unnecessary for them to consider at any length the subordinate question of the sufficiency of the warrants.

They have, however, no doubt that the warrants having been issued by virtue of an alleged authority which, if it existed, was confessedly a limited one, ought to have shown on the face of them that the alleged contempt was committed in the presence of the House, and so fell within the limits of that authority.

Their Lordships, therefore, conceiving that the Judgment of the Court below was right upon both points, and that the costs of the Appeal should, according to the ordinary rule, follow its result, will humbly recommend Her Majesty to dismiss this Appeal, with costs.