

Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of The Speaker of the Legislative Assembly of Victoria v. Hugh Glass, from the Supreme Court of the Colony of Victoria, delivered 31st January, 1871.

Present :

LORD CAIRNS.

SIR WILLIAM ERLE.

SIR JAMES W. COLVILLE.

JUDGE OF THE HIGH COURT OF ADMIRALTY.

SIR JOSEPH NAPIER.

THEIR Lordships have heard this case very fully argued, not from any doubt which at any period of the argument they entertained as to the advice which they should humbly tender to Her Majesty upon this Appeal, but from the respect which they feel for the Court from which the Appeal proceeds.

On the 1st of May, 1869, the Respondent Glass was in the custody of the keeper of Her Majesty's gaol at Melbourne, and a Writ of Habeas Corpus was obtained in the usual way, for the purpose of submitting to the Court the grounds upon which he was so detained. The return to that Writ set out a Warrant issued by the Appellant as Speaker of the Legislative Assembly to the Serjeant at Arms of the Assembly, and to the Keeper of Her Majesty's Gaol at Melbourne. That Writ commenced by stating that the Legislative Assembly of Victoria had, on the 27th of April, resolved that Glass was guilty of a contempt and breach of the privileges of the Legislative Assembly, and it proceeded to direct the Serjeant at Arms to take the Respondent into custody, to deliver him to the Keeper of the Gaol, and the Keeper of the Gaol in the usual way to detain him. On that return being made, and on reading that return and the Writ, the Respondent was discharged from custody. The

full Court, a *rule nisi* to set aside this order having been obtained, refused to discharge the order; and it is from those decisions that the Appeal comes.

The Warrant upon the face of it states that the Legislative Assembly had resolved that the Respondent was guilty of a contempt, and a breach of privilege of the Assembly. There cannot be any doubt entertained, and it was not disputed in argument, that if a Warrant in this form had been issued by the Speaker of the House of Commons in this country, it would have been a sufficient answer to a Writ of Habeas Corpus, and that such a Warrant would be perfectly good and sufficient, stating simply that a contempt had been committed, and that the prisoner was to be taken under the Warrant, in consequence of that contempt. The question arises, is a Warrant in a similar form in the Colony sufficient?

By the Imperial Statute, the 18th and 19th of the Queen, chapter 55, power was given to Her Majesty to assent to a Bill of the Legislature of Victoria, to establish a constitution in and for the Colony of Victoria; and the assent of the Crown was accordingly given to that Bill. The Bill is contained in the schedule to the Imperial Act, and the 35th Clause in the Bill, which now has the force of an Act of Parliament, runs thus: "It shall
 " be lawful for the Legislature of Victoria by any
 " Act or Acts to define the privileges, immunities
 " and powers to be held, enjoyed, and exercised by
 " the Council and Assembly, and by the Members
 " thereof respectively; provided that no such privi-
 " leges, immunities, or powers shall exceed those
 " now held, enjoyed, and exercised by the Com-
 " mons House of Parliament or the Members
 " thereof." Their Lordships pause at this section for the purpose of saying that they do not entertain any doubt that the word "respectively" is to be read distributively with reference to all that goes before, and is to apply to the Council and the Assembly, and the Members of the Council and of the Assembly. Acting in the execution of the power thereby given, the Legislature of Victoria passed the Statute on the 25th of February, 1857, which, after reciting the Imperial Act, or the Act scheduled to the Imperial Act, proceeded by the first section to enact in these words:—"The Legislative Council and Legislative

" Assembly of Victoria respectively, and the Com-
 " mittees and Members thereof respectively, shall
 " hold, enjoy, and exercise such and the like
 " privileges, immunities, and powers as, and the
 " privileges, immunities, and powers of the said
 " Council and Assembly respectively, and of the
 " Committees and Members thereof respectively,
 " are hereby defined to be the same as at the time
 " of the passing of the said recited Act were held,
 " enjoyed, and exercised by the Commons House
 " of Parliament of Great Britain and Ireland, and
 " by the Committees and Members thereof, so far
 " as the same are not inconsistent with the said
 " recited Act, whether such privileges, immunities,
 " or powers were so held, possessed, or enjoyed by
 " custom, statute, or otherwise."

Now, in the case of *Dell v. Murphy*, by the
 Order of Her Majesty in Council, following the
 advice of this Committee, it has been already deter-
 mined that the exercise in the Colony of the power
 given by the Imperial Statute has been a good
 exercise of that power, and has sufficiently carried
 over to the Council and Legislative Assembly of the
 Colony, the powers which are compendiously de-
 scribed in this Section that I have read as "the like
 " privileges, immunities, and powers as were held,
 " enjoyed, and exercised by the Commons House
 " of Parliament of Great Britain and Ireland, and
 " by the Committees and Members thereof;" and
 that it was not necessary to specify in detail those
 powers, and that it was sufficient to refer to them
 as the powers of the House of Commons. That
 same decision, if not expressly, at least inferentially,
 has also determined this, that the privileges of the
 House of Commons must be taken notice of judi-
 cially, and it follows from this that the powers and
 privileges of the House of Commons in the year
 1855, must also be taken notice of judicially, for it
 is of the essence of any judicial notice of those
 powers and privileges that the Court taking notice
 of them should know at what time they were exer-
 cised by the House of Commons.

Beyond all doubt, one of the privileges, and
 one of the most important privileges of the House
 of Commons, is the privilege of committing for
 contempt; and incidental to that privilege, it

has, as has already been stated, been well established in this country that the House of Commons have the right to be the judges themselves of what is contempt, and to commit for that contempt by a Warrant, stating that the commitment is for contempt of the House generally, without specifying what the character of the contempt is. It would, therefore, almost of necessity follow, that the Legislature of the Colony having been permitted to carry over to the Colony the privileges and powers of the House of Commons, and having in terms carried over all the privileges and powers exercised by the House of Commons at the date of the statute which has been read, there was carried over to the Legislative Assembly of the Colony the privilege or power of the House of Commons connected with contempt,—the privilege or power, namely, of committing for contempt, of judging itself of what is contempt, and of committing for contempt by a Warrant stating generally that a contempt had taken place. It has, however, been argued before us that the privilege is the privilege of committing for contempt merely; that the judging of contempt without appeal, and the power of committing by a general warrant are mere incidents or accidents applicable to this country, and not transferred to the Colony. Their Lordships are entirely unable to accede to this argument. They consider that there is an essential difference between a privilege of committing for contempt such as would be enjoyed by an inferior Court,—namely, privilege of first determining for itself what is contempt, then of stating the character of the contempt upon a warrant, and then of having that warrant subjected to review by some superior tribunal, and running the chance of whether that superior tribunal will agree or disagree with the determination of the inferior Court,—and the privilege of a body which determines for itself, without review, what is contempt, and acting upon the determination, commits for that contempt, without specifying upon the warrant the character or the nature of the contempt. The privileges, their Lordships think, as thus stated, are essentially different. The latter of the two privileges is a higher and more important one than the former. The ingredients of judging the contempt, and committing by a general warrant,

are perhaps the most important ingredients in the privilege which the House of Commons in this country possesses; and it would be strange indeed if under a power to transfer the whole of the privileges and powers of the House of Commons, that which would only be a part, and a comparatively insignificant part, of this privilege and power were transferred.

Their Lordships are of opinion that the full privilege and power has been transferred to the Colony entire, and that the Warrant in this case has followed the possession of that privilege and power, and is a sufficient answer to the Writ of Habeas Corpus.

Their Lordships, therefore, upon these grounds will humbly advise Her Majesty that the Orders of the Court in the Colony should be reversed.

In the present case their Lordships understand that special leave was given to the Speaker of the Assembly to appeal, upon the ground that the question raised was one of public and general importance, and was not merely a question between the Assembly and the particular Respondent in the present case. Under those circumstances, their Lordships take it for granted that no application will be made by the Appellant for costs, and they think that no order for the costs of the Appeal ought to be made.

