

a supposed statutory assignment, to none of which the House of Assembly could lawfully claim. LORD ELMENDORGH in his judgment in *Burdett v. Abbott*, no doubt asserts that when the Houses of Lords and Commons began to sit apart, they each had the same privileges as the two together possessed before, and that these were statutable assigned to each, and he argues that—each having the privileges of the whole, and these privileges being included in the Law and custom of Parliament, and the Law and custom of Parliament being part of the Law of the Land—the provisions of *Magna Charta*, which says that no man shall be imprisoned but by the lawful judgment of his Peers or by the Law of Land, were not violated when a person was imprisoned by the latter alternative and without trial by Jury. But though his Lordship states this prescriptive right in the Commons, he distinctly affirms that independently of any privilege or recognized practice, such a Body must a priori be armed with competent authority to enforce the free and independent exercise of its own proper functions and to remove impediments and obstructions and to protect itself from indignity and insult, wherever offered, by punishing those who offer it. And again he says, "the power of the House to commit for contempt stands upon the ground of reason and necessity, independent of any positive authorities on the subject."

It is true, when his Lordship speaks of such a Body, he is speaking of the House of Commons, and not of a Colonial Legislative Assembly, which, though supreme in its sphere, must be admitted not to be equal but subordinate to the British Parliament, and subject to its control, if it chooses to exercise it; but, if this was a sufficient distinction to remove the authority of his words from the present case, then would the Privy Council, through the mouth of Mr. BARON PARKE, not have decided that "they were very apposite to the inquiry as to the powers of a Colonial Assembly." The Assembly in question was that of Jamaica; and its privileges were examined and acknowledged in the case of *Beaumont v. Barrett* by its own Judges whose decision was confirmed by the Privy Council. 1 Mohr Rep. Privy Council, p. 59. (June 1836.) The Journals of the Assemblies of New Brunswick, Nova Scotia, and P. E. Islands whose Legislative Assemblies can boast of no great antiquity and who own no higher powers than that of Newfoundland, show the exercise of such a privilege, and not only do the Journals of Jamaica furnish similar examples, but that Island supplies a very recent instance in the case above cited of the Privilege of a Colonial Assembly being exerted, being disputed, being examined into, being scrutinized on appeal, and being confirmed. The House of Assembly of Jamaica is certainly of older origin than that of Newfoundland; but the decision does not turn upon antiquity or usage, and the House of Assembly here has Legislative powers at least as great as those of the House of Assembly in Jamaica, inasmuch as in Jamaica the Acts of the Legislature were directed by its Royal Founder to be (as nears conveniently may be) agreeable to the Law and Statutes of England, and in this Island they are to be "not repugnant" to the same. The House of Assembly of Jamaica indeed possessed precedents of Commitments for contempt previous to the commitment of Mr. BEAUMONT, and there had been an act passed by the whole Legislature in 1728 adopting such laws of England as had been in use in that Island, amongst which was certainly the power of imprisoning persons for contempt of this House of Assembly. "On this ground" (says Mr. BARON PARKE) "the legality of the power in question might be supported, if it did not belong" (adds his Lordship) "to the Assembly, as well" (namely, the Judicial Committee of the Privy Council) "think it did by Law, as a necessary incident to its Legislative character."

His Lordship goes on to remark that such a power may have been occasionally abused, and to express his belief that the wholesome control and influence of public opinion will prevent the revival of such an evil, and to point out one circumstance attending a Colonial Legislature, which does not belong to the Imperial Parliament, viz: that "if they do carry their power to the extent of interfering with the rights and liberties of the Queen's subjects, and to objects which do not fairly come within their province, the Supreme Legislative authority in England may repress or put an end to it."

2d.—It seems to me that this Court can inquire into the circumstances attending the exercise of such power, in order to learn and ascertain whether there be a question of Privilege or not; for, if it could not do this, a mere suggestion of Privilege on the Record in any case might oust it of its jurisdiction and a Plaintiff of his remedy, where in reality after all no legitimate privilege of the House was involved: and for this course the case of *Stockdale v. Hansard* decided by LORD DENHAM affords an authority.

3d.—The Pleas of Justification seem to me sufficient to raise this question of "Privilege or no Privilege," and to show in the present instance that the power was duly exercised, so far as to bar this Court from further inquiry. The Justification states that the House was sitting, that one of the Members made complaint to the House of insulting and threatening language and gestures used towards him by the Plaintiff in reference to his office as member of the House, that the House entertained the complaints, examined Witnesses and adjudged Plaintiff guilty of a breach of Privilege likely to deter Members from acting freely and independently, that the House resolved that the Speaker should issue his Warrant to the Sergeant-at-arms to bring Plaintiff to the Bar of the House, that the Speaker did so issue his Warrant, that the Sergeant-at-arms did so bring Plaintiff, that Plaintiff was required to apologize, refused, and was committed, &c. All these proceedings are set out at great length, and seems quite sufficient to show that the power in this instance was regularly exercised, according to the forms of the House of Assembly. Those forms this Court cannot prescribe, nor can it direct its process. On the principle that *compe majore, continet in se minore*, if this House, has inherent in it the same power of committing that the House of Commons

has, it has the like right to adjudicate upon Contempts, and is not to be obliged, any more than the House of Commons first to pray the aid of a Court of Law to investigate the alleged Contempt, and then itself resume the case into its own hands, and commit. On this point also, as well as on the main question the case of *Beaumont v. Barrett*, where a Colonial Assembly examined and adjudicated on a breach of its own privileges appears perfectly applicable. Judgment for Defendants.

PROPERTIES OF GLOWWORMS.
The glowworm possesses the curious property of causing its light to cease at will. Dr. Burmeister mentions the curious fact, that while catching some of the flying species in his, but, they have so suddenly and entirely ceased to shine that he has fancied that they must have escaped. When disturbed these insects emit a bright but frequently interrupted light; and when laid upon their backs they shine without intermission, in consequence of the continual motion in the endeavours of the insect to regain its position.

(From the Morning Herald, Dec. 5)

It now becomes a question whether Lord Durham was acquainted with the progress of the preparations for Rebellion during his administration of the affairs of Canada, or not? That all the arrangements for the renewal of the civil war were going on since *Jung* last we have the high authority of Sir JOHN COLBORNE. We had ourselves previously expressed our opinion that such must have been the case, inasmuch as a wide-spread rebellion cannot be organised in a moment; but we certainly did not impute to Lord Durham a knowledge of what was going on. To our great astonishment, however, some of the advocates of Lord Durham's government, and the sympathisers with his sorrows, have chosen to set up his knowledge of the preparations for the present insurrection as the defence of his past conduct! The defence is as extraordinary as the conduct itself has been.

Our readers are aware that the ex-High Commissioner, in making a foolish speech in answer to a radical address at Devonport, spoke what has been set down in the following terms:—

"So far as it seemed to me imperatively necessary, in order to allay the most alarming irritation and excitement in the Canadas, and to lead men's minds from the contemplation of present evils to the prospect of future remedies, I have already explained the nature and scope of the policy which I pursued as Governor-General. Upon that subject I shall, when Parliament meets, be prepared to make a representation of facts wholly unknown here, and disclosures of which the parliament and people of this country have no conception; and I shall then fearlessly demand from the assembled legislature that justice which neither they nor the people of England ever will deny to a public servant who has faithfully and honestly discharged the duties assigned to him."

In reference to the passage quoted the *Standard* says:—"It is scarcely possible to doubt that the mysterious circumstances referred to thus darkly by Lord Durham are connected with the conspiracy exposed by Sir John Colborne." As our evening contemporary, in its former most zealous but very unsuccessful attempts to justify Lord Durham, on the ground that his despotic ordinances were perfectly legal, did not hesitate to accuse the whole conservative party, including, of course, the Duke of Wellington and Lord Lyndhurst, of "pettifogging liberalism" in supporting the act of indemnity, which would not have been necessary if they had not been illegal, we cannot suppose that by an *ironical* defence it means to expose the ex-High Commissioner to more bitter condemnation than any which has yet been passed on him. No. We must believe the *Standard* to be serious when it imputes a knowledge of the rebellious preparations under his government to Lord Durham, and then in what situation does it place the derelict functionary.

If Lord DURHAM really knew that, under the shadow of his government, a new rebellion for the employment of her MAJESTY'S troops during the present winter was in preparation, he stands chargeable with the high and grievous offence of having fled from his post at the very crisis when the explosion was about to take place! To have thrown down the ensigns of authority, and have fled to the shores of England, under such circumstances, would have laid him deservedly open to the charge of either rank cowardice or treachery to the interests of his SOVEREIGN and country. His crime would have been worse than that of a BYRO or a WHITELOCK, though we should

be sorry that, even then, his punishment should be the same as that of the former delinquent officer, who was convicted of having, through "an error of Judgment," not done his utmost to sink, burn, and destroy the ships of the enemy, and shot for the same. BYRO did not fly before the enemy, but, vain of displaying his skill as a tactician, he thought hard fighting only fit for men who could not manoeuvre as well as he could. But what is to be said of a "Captain-General," who, knowing that rebels organised under his own eyes are about to challenge the authority of his Sovereign, firlock and pike in hand, throws up his office, and avoids the necessity of placing himself at the head of the troops, to vindicate against traitors the supremacy of the British crown?

But then the *Standard* supposes he wrote home to ministers a full and true account of the rebellious preparations, and that ministers concealed the whole of that alarming intelligence from parliament, which would have "justified his ordinances and much stronger measures." But let us give the statement in the words of our contemporary:—

"Giving Lord Durham credit—however, no more credit than to believe him willing to discharge his most ordinary duties, when his doing so was for his own safety and advantage—we must believe that he had communicated to ministers those facts occurring under his government which would fully justify his ordinances, and much stronger measures—but facts preserved in such profound secrecy that even now 'the parliament and people of this country have no conception of them'; and if Lord Durham had communicated these facts to the ministers, in what position do the ministers stand before the noble earl, and before the country?"

We do not entertain, as is known, a very high opinion of the wisdom or the virtue of her MAJESTY'S ministers, but we must require better evidence than the dark and mysterious allusions of Lord DURHAM to believe that they have acted with the egregious folly, the extravagant wickedness thus imputed to them. It was said by that depraved old diplomatist, TALLEYRAND, that "a blunder was worse than a crime," but in what is imputed to ministers on this occasion criminality and blundering are so mixed up together, that it is difficult to say which predominates. The scandalous iniquity of the proceeding would be capable of such easy detection, that even if we suppose the Whig ministry to be *monstrum nulla virtute redemptum*, still, as long as we believe a single ray of reason or sane understanding falls through any chink upon the deliberations of the cabinet, we cannot consider such an accusation credible. To attempt to mortify and harass Lord Durham in the way supposed would be to give him the means and power of utterly ruining them whenever he pleased.

But, whatever the ministry may have done or omitted to do at home, it was the obvious duty of Lord Durham, who boasted of having received his high office personally from his Sovereign, to take care that the commonwealth received no detriment. "Into whatever hands," said the gallant and patriotic Admiral Blake, "the government of our country may fall, it is our duty not to be fooled by the foreigner." But Durham, though a "vice-admiral" as well as "Captain-General," gave the rebel and the "foreigner" the opportunity which they wished, by abandoning his post at the moment of danger—throwing the government of the colony, as far as he could, into confusion most favourable to rebellious designs, and issuing a seditious proclamation against his own government in which, be it remembered, he made the following announcement:—"No impediment exists to the return of the persons who had made the most distinct admissions of guilt, or who had been excluded by me from the province on account of the danger to which its tranquillity would have been exposed by their presence."

If then the supposition of the *Standard* be correct, Lord DURHAM, knowing that a rebellion was then nearly organised, invited back the expatriated traitors to complete the preparations for civil war, he determining at the same time to run away from the post of danger, and leave others to bear the brunt of the approaching conflict!—he, too, having at the time the power to proclaim martial law if necessary, as Sir JOHN COLBORNE has since done, and to take all the steps, civil and military, that rebellion might render expedient. No, we cannot believe this. We look upon Lord Durham as a vain, weak, conceited, and superficial sort of personage; but we don't believe him to be either a coward or a traitor, and we must suppose him to be either one or the other if we thought he knew that the preparations for a rebellion had been made under his government, and fled when

those preparations were nearly completed, throwing before his departure an additional firebrand, in the shape of a seditious proclamation, among a combustible people. We believe he acted in ignorance—a most culpable ignorance, no doubt, of which that silly and mischievous proclamation seems to furnish abundant proof.

RUSSIA—THE CONSPIRACY—WHAT THE VICTORIES IN CIRCASSIA COST.

They write from Posen, Nov. 25:—"We have letters from St. Petersburg, which announce that it is not only amongst the officers of the imperial guard in that capital that arrests have taken place, but that a great number of officers have been arrested in various parts of the empire. In the governments of Little Russia, and in the military colonies the number of arrests exceed 600; in the city of Odessa alone 26 officers were arrested, and immediately sent to the fortress of Orel. It appears, therefore, that this conspiracy had ramifications throughout the entire army. It is asserted that it was the cavalry general, Count de Witt, who first revealed its existence to the Czar."

"I have learned from an authentic source that the Autocrat is exceedingly discontented at the spirit which reigns amongst the Russian troops in Poland; that he has determined to replace these troops by others, and that he has written to Field Marshal Paskewitch an autograph letter, in which he reproaches him in the bitterest terms with having allowed pernicious doctrines to penetrate into the barracks. It is even said that, immediately after the marriage of the Duke of Leuchtenberg, M. de Paskewitch will be deprived of the Governor-generalship of Poland, and candidates for this high dignity are already named; these are the Generals Thiells, Karjenick, and Benkendorf. It is not probable that the choice of Nicholas would fall upon the latter, because he is of foreign origin, or at least extraction."

Even before the receipt of the present letter, the German journals will have already apprised you that the Russian General Rajewski has gained a victory over the Circassians, and taken from them the fortress of Sochia; but these papers will not have told you that this victory has been the most disastrous that can be imagined, or, to express myself more clearly, it has been a great disaster for the Muscovites, and a no victory. The Russian troops attacked the fort five times, and were five times repulsed with considerable loss.

"After experiencing these checks, and having had in the whole nearly 3000 men killed and wounded, General Rajewski wished to try another attack; but his troops were so discouraged, so demoralized, that not a single man would march forward. The general then brought up five battalions of marines, who, after having exacted and obtained a promise that the fortress should be abandoned to them to pillage, consented to make the assault. This attack took place during the night. The marines climbed nimbly up the ramparts; they cleared the parapets and entered Sochia without a blow, or meeting resistance or obstacle. But what did they find? Nothing but thirty guns spiked or broken, and a hundred dead bodies lying on the ramparts and in the streets. The Circassians had left the fortress some hours before the last attack, and, before abandoning it, had destroyed every thing they could not carry off.—Such is the capture of the fortress of Sochia by the Russians."

The *Courier* says—"The following letter, which has been addressed to us from St. Petersburg, throws some light on the situation of Russia:—"The Government has stifled all the report of conspiracy which have been circulated at Moscow and St. Petersburg; but the arrests, which it has been impossible to conceal, show that the reports were not without foundation. It is clear that no one will be tried, because the officers and other persons arrested are sent to Siberia. What they fear more than a well defined plot is the permanent conspiracy which exists in the hearts of the members of the associations, and which, spite of the cleverness of the police, which uses every means, leaves the Government still in the dark. The Emperor feels more than any one this danger, and is more disposed to exaggerate it than lose sight of it, and this influences his whole life. A suspicion, from which

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