

## SESSIONAL PAPER No. 29c

as there is a total absence of every thing which, by law, we are permitted to receive as evidence of the fact upon which this claim of exemption is entirely built, we must necessarily, for this defect alone, reject the motion. I should be sorry, however, to have it supposed that this Court concedes what has been argued, viz., "That there is privilege of Parliament against arrest for treasonable practices," or to have it believed that we should hold ourselves bound by law, in any future instance, to admit a claim of privilege against arrest under circumstances similar to the present. The circumstances to which I allude, (assuming all facts to be as they have been stated,) are the arrest of Mr. *Bedard* eighteen days after the dissolution of the last Parliament and his Election to the new Parliament during his confinement. If Mr. *Bedard* was entitled to privilege upon the day of his arrest, (the 19th of March,) it is evident, (as he was not elected for the County of Surrey until the 27th day of March,) that his right to it must be solely founded on the fact of his having been a Member of the last House of Assembly; and if he was not entitled to privilege upon the day of his arrest, then, it is equally evident, that his claim to privilege must be entirely founded upon his election to the new Parliament. In England, the privilege from arrest is claimed and allowed to every Member of the House of Commons, "*veniendo, morando, et exinde ad propria redeundo*," (a) and extends to forty days after every prorogation, and to forty days before the next appointed meeting. (b) But although, to the effect which has been stated, there are several legal decisions, yet it does not appear that any precise period, for the duration of this privilege after a dissolution, has been fixed. *Prynne* is of opinion, that it continues for the number of days during which (after a dissolution) a Member formerly received wages; (c) and those wages were in proportion to the distance between his residence and the place where the Parliament was held. (d) Upon this principle, in the case of *Holiday v. Pitt*, (e) which has been cited at the bar, it was held by all the Judges that this privilege extends only to a convenient time after a dissolution, that is, to a sufficient time to enable the Member, with convenience, to return home. Now, the last Provincial Parliament met in Quebec, in the very place for which Mr. *Bedard* was returned a Member, and in which he resides; and as, therefore, it is impossible to say that he had not a convenient time for his return home, for transporting himself from one, to another, part of Quebec, between the first and the nineteenth day of March, it is clear that the day on which he was arrested was not within the period to which the privilege of the last Parliament extended.

Let us now examine whether this claim can be supported under the privilege of the new Parliament. There is certainly a material difference between the election of an individual who is at large, and the election of one already in confinement, which is the present case. In the former instance, the electors, having chosen a free man, are without blame, and ought not to be deprived of his services by any act of his, to which the privilege of Parliament extends; in the latter they make choice of one who visibly is not in a situation to perform the services which they require of him, and they have, therefore, only themselves to blame if they are deprived of them. In England, again, upon these principles, it has been decided that the privilege of a Member of the House of Commons from arrest, commences at his election, (a) unless he has been arrested, or be in execution before his election, in which case it has also been decided, that he is not entitled to privilege. (b) Freedom from arrest, in all cases to which privilege legally extends, may be considered to be as indispensably necessary to the existence of a Provincial House of Assembly, as to an English House of Commons. But there is no principle upon which it should be admitted in this Province, under circumstances which are held in England to be such as must exclude

(a) 4. Ins. 46. folio edition.

(d) Stat. 35. Hen. 8. c. 11.

(b) 2. Lev. 72.

(e) Strange 985, and Fort. 159.

(c) 4. Parl. Writs. 68.

(a) 4. Bacon, fol. ed. 233.

(b) 2. Siderfin 42. R. in Parl. 12th March, 1592.