

# THE



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The MONTHLY LAW MAGAZINE for March, has an interesting article under the head "Newfoundland Legislative Assembly, breach of Privilege," in which the important case KYELLEY against the members of the Assembly, argued in the last terms of the Supreme Court is ably reviewed. After detailing the history of the case which we need not repeat here, the writer proceeds to observe:—

The arguments principally relied on for the plaintiff were, that the Newfoundland House of Assembly being not quite seven years old and this being the first case of the kind, no usage or custom could be contended for; that there was no analogy between the origin, constitution, or jurisdiction of the House of Assembly and that of the House of Commons; that the House of Assembly was not a court; that on the 5th of December, 1837, that House having summoned the two puisne judges of the Supreme Court to attend and give evidence before a Committee, they flatly refused and that no further proceedings were taken against them; and lastly, that the pretended warrant was not set under seal, not setting forth that it was made by the authority of the House, and not fixing any period during, or until which the plaintiff was to be kept in custody. Lord Denman's judgment in *Stockdale vs. Hansard* was also quoted.

On behalf of the defendants it was contended that all the cases establishing the power of the House of Commons to commit for breach of privilege were directly in point; that many other Colonial Assemblies possessed and constantly exercised the same power; that it was a power inherent in every superior legislative body, and absolutely necessary to the due performance of its functions; that it must be intended that the House of Assembly was invested with this power on its creation; and the cases of *Burdett v. Abbott* and *Leaumont v. Barrett* were relied upon.

Chief Justice Bourne, in giving judgment for the defendants, relied entirely on the Baron Parke's judgment in *Leaumont v. Barrett*; he did not allude to the defects of the warrant, but he thought that the justification pleaded set out sufficiently the facts, from which it appeared that the proceedings had been in accordance with the forms of the House.

Mr Justice Desbarres did not notice the defects of the warrant; he grounded his judgment upon the analogous cases in other colonies, upon the necessity for such a power being inherent in every legislative assembly, and laid much stress upon the Act of

the Imperial Parliament, by which the various courts of Newfoundland are erected, directing those courts to administer the law of England.

Mr. Justice Lilly thought that no argument could be drawn from the practice of the House of Commons, Parliament being the highest court of the realm, and this power supposed to have belonged to it before its separation into two houses, and to be thus (as Lord Ellenborough observed in *Burdett v. Abbott*) part of the common law of the land. He remarked, that the House of Assembly had not jurisdiction over the whole of the colony; that, so far from being "supreme," it could only, with the assent of the Governor and Council, make laws "agreeable to the laws of England," that it had only existed six years; and that his late Majesty had been advised to withhold his assent from some of its acts, because they contained the words "in colonial parliament assembled." He further remarked, that the laws or usages of other colonies could be of no authority in Newfoundland; that the House of Assembly had not been established as a court, nor had it ever received any authority to use or enjoy any of the privileges of Parliament; he thought, if it had a right to imprison the plaintiff, it might lawfully imprison him (as it had assumed to do), and all the judges, for any judicial act; that the warrant was bad; only a constructive attempt appeared on the face of it; that the imprisonment not being justified by any "statute usage or precedent," was wrongful, and that the plaintiff ought to have judgment on the demurrer.

Such is an outline of the judgment delivered in this remarkable case; we confess that to our apprehension, Mr. Justice Lilly's reasons are completely unanswered by those of his brethren, that he is most clearly right in his view of the subject, and we hope the case may be brought by appeal before the Judicial Committee of the Privy Council.

The great objection, as it strikes us, to the applicability of the cases of *Burdett v. Abbott* and *Leaumont v. Barrett* to the present case is, that in each of those cases the party committed was guilty of a contempt towards the whole House in its collective capacity, not, as in the present case, to a single member, such member not even being at the time engaged in the discharge of his duties.— This is an objection which goes to the principle of the thing; we say nothing as to the warrant, the objections to the form of which were not even noticed by the two judges who gave judgments for the defendants, and which we apprehend are obviously fatal to its validity. Our space will not allow us to pursue this part of the subject further. With respect to the proceedings after the discharge of the plaintiff, the arrest and imprisonment of a judge, merely for the discharge

of judicial duty; and the arrest and imprisonment of the sheriff for obeying, as he was bound to do, the order of the judge; they are so outrageous and disgraceful, that we apprehend, even Chief Justice Bourne and Mr. Justice Desbarres will find it difficult to support them when brought under their judicial notice, as we conclude they shortly must be.— Committing a judge for doing a judicial act is a piece of tyranny from which even the former Irish and the present American "domestic legislatures" would shrink—it is unknown to the most despotic government of Europe and its perpetration must reflect an indelible stain upon these Newfoundland "six years old" legislatures. A few more such atrocities must necessarily lead to the employment of force; the liberty of every respectable man in the colony will not be tamely surrendered to the tender mercies of these fifteen gentlemen nominated by two or three priests, nor will such judgments as those of the Chief Justice, and Mr. Desbarres, evading the principal difficulties of the case, and not attempting to answer the objections pressed against them, induce the people quietly to submit to the violation of their dearest rights. The very notion, however, of fifteen men principally employed on what Lord Darbham calls "Parish business," under a limited local authority which has not existed seven years, voting the majesty of their own persons so sacred that to address any one of them uncivilly in the street, on private business, is a "breach of privilege," subjecting the offender to an indefinite term of imprisonment, is so infinitely ridiculous, that even the authority of Mr. Chief Justice Bourne, and Mr. Justice Desbarres would scarcely have rendered it worthy of refutation in our pages, had it not been for the serious results to which it may (under the fostering care of the Marquis of Normandy) ultimately lead.

### A BIT OF THE MARVELLOUS.

(From Scenes and Characters from Life, at Out and Heed Quarters.)

Between thirty and forty years ago, you could not pass through Holborn, during a certain portion of the year, without observing a string of carriages drawn up near a large house, the upper floors of which appeared magnificently furnished; and the groups of well-dressed people seen going in and coming out could not, if you had a grain of Eve's curse in your composition, but make you ask who it was that received so many fashionable visitors in such a dingy district.

You were informed that the celebrated Mrs. Williams, the renowned caster of nativities and teller of fortunes, honoured Holborn by residing in it; and if you were lucky enough to meet amongst your male friends one who had paid the lady a visit, you heard that she was a very handsome, though somewhat dark woman. Her females differed on the subject of her beauty, influenced, doubtless, by the good or ill fortune foretold to them.

Amongst the numerous applicants to this dusky Lilly in petticoats, she had the honour of numbering the Prince of Wales; and, although his Royal Highness endeavoured to preserve a strict incognito, he was hailed by his title on entering the abode of astrological research. The Prince did not scruple to tell the result of visit.

"The lady informs me that I shall live to be King, although my stars decree that I am not to be crowned."

In the autumn Mrs. Williams usually visited the various resorts of fashion, Bath, Clifton, Hot-wells, Brighton, &c.; and it was during her sojourns at the two former places that what I am about to relate occurred.

No sooner was her arrival known in the city of Bath, than her doors were besieged by persons of all classes; as it

had been duly announced that a similar consultation was within the reach of the humblest, whilst an examination of the heavenly bodies to ascertain whether or not your star was in the ascendant must be remunerated by a price too exorbitant for the superstitious in the middle walks of life.

Amongst the first who found themselves confronted with this awful personage were two young ladies of family; the largest douceur was tendered; and one Cassandra commenced turning over the leaves of the mystic volume. Suddenly the book was closed, and she started abruptly from her chair. Then, leading one of the girls aside, she said impressively to her—

"I am too ill to take any trouble for that poor dear child to-day; you must leave me now, but only on this condition, that you, and she grasped the hand of her auditor, whilst her dark eyes seemed almost lit up by supernatural fire, "you must solemnly promise to come to me to-morrow, let what will have chanced.— 'Tis well, how go!"

Faithful to her word, the terrified girl returned the next day.

"I ask not for your companion of yesterday," exclaimed Mrs. Williams, "she is dead."

A burst of tears from the afflicted friend confirmed the fatal sentence.

The late Countess of M— conceived it possible by a simple artifice to puzzle the conjurer; and accordingly attired herself in humble garb, taking with her the well-dressed governess, on whose finger her ladyship had placed her own wedding ring. A guinea was tendered by Mrs. Williams, whilst her mistress, trying to assume a respectability of manner, dropped courtesy, and offered a crown-piece. Their separate guineas were scrutinised by Mrs. Williams, who, after a brief investigation, turned to the matron, saying—

"Why do you suffer that woman to wear your ring? is it not enough that she has already usurped your rights? Ay, blush and tremble, girl!"

Mrs. Williams was right.

An elderly maiden lady lost many articles of plate, jewellery, and wearing apparel. The unaccountable disappearance had caused the most serious uneasiness to her housekeeper, a trusty creature, who never left the house, except on a Sunday evening to attend Lady Huntingdon's chapel; but whose stay-at-home habits were broken through by the sudden determination of her lady to visit Mrs. Williams, in the hopes of obtaining some information respecting the missing property. The pious domestic talked about tampering with Satan's Son, and the Witch of Endor, in vain.

Mrs. F— had made up her mind to go; and, what was more, to take her good Sally with her, as spokeswoman on the occasion; the excellent spinster being of a nervous and timid temperament. They reached the dwelling of the Sibyl; Sally gave the fee, and a list of the lost articles, adding—

"We shall be happy to pay you twice as much if you will assist us in finding them."

"We and us, woman!" said Mrs. Williams. "I wonder how you ventured to come to me," then turning to the alarmed mistress she continued, "there stands the thief."

Down dropt Sally on her knees, confessed the fact; and in consequence of this information, the house of the peopener of her favourite chapel was searched, the property found, and restored.

The Hot-well was the next scene of action.

Mr. O— was a young man, certainly ten years younger than the handsome woman who strangely forbade him her presence and he was withal a nervous man. Apprehending the sickness or death were to befall him, he besought to know the worst at once.

"Neither ill health nor dissolution is threatened; enough that disgrace, misfortune, and misery hang over you, unless you fly this moment, and pursue not till you have placed half the world's distance between us."

"Why, what have I to fear from you, gentle and beautiful as you are?" demanded O—. "Leave me, leave me," replied the equally agitated fair, "and for once defy the malign influence of the stars, whose aspects now threaten destruction to both of us."

"At least inform me what shape the impending evil assumes," I will not quit you till you have so far satisfied me."

"Listen, then, and tremble! All last night I engaged in casting your nativity; in vain I endeavoured to persuade myself that I had miscalculated a most important event. Still there it was, as plainly written by the hand of Fate as was your birth and mine; and thus it stood—that before the moon waned you were to become my husband!"

Her prediction was fulfilled. In three days Mr. O— was married to the widow, and, in

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