

Acts regulating the law of bankruptcy, the privilege of freedom from arrest belonging to peers of Parliament was specially reserved. But this special reservation was unnecessary for, said Lord Hatherley, in *Duke of Northumberland v. Morris* (1870), L.R. 4 H.L. 661, 671, "It is not because, ex majori cautela, several Acts of Parliament have thought it necessary specially to reserve that privilege that it is held to be abolished and annihilated in every other Act of Parliament in which it is not expressly reserved."

The view which I take of the construction of the Canada Evidence Act appears to be in accordance with well established rules of construction. At p. 123 of *Hardeastle* it is observed:—

"In *re Cuno* (1883), 43 Ch. D. 12. 17. Bowen, L.J., said: 'In the construction of statutes you must not construe the words so as to take away rights which already existed before the statute was passed unless you have plain words which indicate that such was the intention of the legislature.'"

And at p. 124:—

"Therefore, rights, whether public or private, are not to be taken away or even hampered by mere implication from the language used in a statute, unless as Fry, J., said in *Mayor, etc., of Yarmouth v. Simmons* (1878), 10 Ch. D. 518, 527, 'the legislature clearly and distinctly authorize the doing of something which is physically inconsistent with the continuance of an existing right.'"

*Hardeastle* continues:—

"In *Gray v. R.* (1844), 11 Cl. & F. 427, the question arose whether the right of a person tried for felony to challenge peremptorily twenty of the jurors summoned to try him extended to a new felony created by the Treason Felony Act, 1842. It was held that it did. 'A prisoner,' said Tyndall, C.J., at p. 480, 'is not to be deprived by implication of a right of so much importance to him given by common law and enjoyed for many centuries, unless such implication is absolutely necessary for the interpretation of the statute.'"