

## DIVISION COURTS ACT.

We publish this Act as passed last Session. It is a specimen of legislation that will not, we hope, be taken as a model for imitation. We object to the wholesale allowance of any one to appear as an Advocate in a Division Court; but even leaving that out of the question for the present, and turning to the second section, it would seem scarcely possible to find an objectionable enactment more absurdly guarded against. Under what circumstances would "justice appear to require" a person to be "prevented from appearing at the trial as agent or advocate for any party to a cause" in these courts?

## ARE TELEGRAMS PRIVILEGED?

We notice that this question arose before a select committee of the Ontario Parliament, appointed to investigate charges in connection with the election for the South Riding of Grey. An officer of the Montreal Telegraph Company was subpoenaed to produce certain despatches, and the following is a report of what occurred, taken from the columns of the *Toronto Globe* of the 22nd February last:

"The Select Committee on the charges against Mr. Blake, in reference to the late election in the township of Proton, for the South Riding of the county of Grey, met again yesterday morning. Present — Messrs. Rykert (Chairman), Prince, Galbraith and Pardee.

Mr. Lauder proceeded with his case by recalling Mr. H. P. Dwight, who said he begged to decline giving any information whatever in regard to the messages referred to in his subpoena. He thought it unnecessary to give his reasons; but, on being pressed, gave the same reason as he had at the previous sitting, viz., that the law prohibited his communicating the contents of telegrams.

The Chairman said the law only prohibited his communicating the contents of messages to any person other than a court of law, or a court of enquiry appointed by the Legislature. The law would not screen him in this case.

Witness said he had been advised that it would. He had been advised by counsel. He did not object to producing the telegram from Mr. Kerr to Mr. Oliver at the last session, because both the sender and the receiver consented to that production. He should decline to produce the register of messages, because he did not think it right that the affairs of all their customers should be exposed. He declined to say who had advised him in this matter. He had not seen Mr. Kerr since the last sitting. He had the sanction of the

President of his Company for the course he was taking."

Subsequently, it appears, some of the telegrams were produced, with the consent of all parties interested, and thereafter the committee reported to the House. No action was taken, although it was discussed whether the House had power to enforce production, or to punish as for a contempt. The general understanding seemed to be, that colonial Parliaments had no such power. With this we have no concern at present, though it does strike one as an absurd condition of affairs that this high chamber of Parliament is more powerless than the barrister who holds a Division Court in some backwoods village of Ontario, or the most illiterate magistrate who ever scrawled J.P. after his name.

We simply consider the legal question, whether privilege was properly claimed for the documents required. We take it that parties testifying before a select committee of the House are entitled to no greater privileges than persons testifying in ordinary courts of justice. They have the same immunity from arrest, *eundo, morando et redeundo*, as other witnesses: May's Parliamentary Prac. 147. They are also protected, by privilege, from the consequences, by way of threat or action, of any statements made by them in giving evidence. True it is that the Chamber in Ontario, equally with the House of Commons of England, has no inherent power to administer oaths to witnesses. By consequence neither has a committee of the local House. The English House of Commons has the inherent power of punishing, as for a breach of privilege, persons who give false evidence, who refuse to answer proper questions, and who decline for insufficient reasons to produce documents in their possession, custody or power, even when such misbehaviour occurs before a select committee: see May, pp. 405-6.

Assuming, then, that the officer of the Montreal Telegraph Company, who refused to produce the telegrams asked for, was entitled to the same protection as if he had been before any court of justice (which is indeed held in *Burnham v. Morrissey*, 14 Gray, 226), the question is, whether his plea of privilege was valid. It was clearly insufficient. No doubt all the acts of incorporation of these companies provide, in terms more or less explicit, against the disclosure by the company or its officers of the contents of any private mes-