

ARE TELEGRAMS PRIVILEGED?

ments 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 message, under penalties more or less severe. The provision of our statute runs thus: "Any operator of a telegraph line, or any person employed by a telegraph company, divulging the contents of a private despatch, shall be guilty of a misdemeanor, and on conviction shall be liable to a fine not exceeding one hundred dollars, or to imprisonment for a period not exceeding three months, or both, in

the discretion of the court before which the conviction is had:" Con. Stat. Can. c. 67, s. 16.

Mr. Justice Willes made short work of the objection in a case before him at *Nisi Prius*. A telegraph clerk having refused, under instructions from his superior officer, to produce private telegrams, or to answer questions concerning them, his Lordship said, "The only persons who can refuse to answer questions are attorneys, and of course counsel, who would stand on the same footing for a stronger reason. I do not enter into any question, whether another class is or is not privileged; I do not choose to introduce matter that is doubtful; but, with the exception, perhaps, of people in government offices as to matters of state, and counsel and attorneys, I do not know of any class that is privileged. It is quite clear that telegraph companies are not privileged." And then, addressing the witness, he proceeded: "If you did not produce those papers, everybody connected with the telegraph company, who could lay his hand on them, would be subject to be brought here, and to be punished for not producing them." The telegram was then read: *Ince's Case*, 20 Law Times, N. S. 421, May, 1869. Another case, to the same effect, of colonial authority, being the decision of the Chief Justice of Newfoundland, is to be found in 8 Jur. N. S. Part ii. p. 181. The Chief Justice, after referring to an analogous case of *Lee qui tam v. Birrell*, 3 Camp. 337, said: "I do not entertain a doubt that the communications or messages through the telegraph offices are not in law privileged communications; and that when the operators are compelled to attend a judicial proceeding, they are bound to disclose the contents of such messages; and that in so doing, they do not violate any oath of secrecy they have taken (that they will not wilfully divulge, &c.), or subject themselves to any prosecution under the statute." The rule is the same in the United States: *Henisler v. Freedman*, 2 Parsons, 274; as well as in the Province of Quebec: *Leslie v. Harvey*, 15 L. C. Jur. 9, where it was also held that such messages are not privileged. In truth, the wonder is that any one should ever have supposed that a disclosure of telegraphic messages by a witness in a court of justice, should expose him to a penalty under the statute for divulging the secrets of the office.