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REPORT

OF A

COMMITTEE

OF THE

HONORABLE THE LEGISLATIVE COUNCIL

OF

UPPER CANADA,

APPOINTED TO SEARCH FOR

PRECEDENTS

IN A CASE OF

PRIVILEGE.



YORK;

PRINTED AT THE UPPER CANADA GAZETTE OFFICE



1821.

*REPORT of a Committee of the Honorable the
Legislative Council of Upper-Canada, appointed
to search for Precedents in a case of Privi-
lege.*



LEGISLATIVE COUNCIL,

THURSDAY 29th MARCH, 1821.

Your Committee appointed to search for precedents in case of Privilege, and if any privilege ought (under the Constitutional Act of the 31st of the late King, George the 3d) to belong to the Legislative Council of this Province, and their Officers in Session, or during the Recess, and to report such matters generally as may, in their opinion, give information on the subject,—Report that,

Deeply impressed, not only with the Constitutional importance of the matter submitted to their investigation, but with the delicate nature of the inquiry; they proceeded with as much care and attention as they were able, and present, with great deference, the result of their labours to this Honorable House.

The principal thing to be determined by your Committee, was the extent of the powers and privileges exercised by Legislative bodies similarly constituted. And here, they were naturally directed to the Mother Country, as the Constitution conferred upon this Province, was declared to be the substance of that which she has enjoyed for many ages. When the British Minister introduced the 31st of his late Majesty, King George III, he considered it a transcript of the British Constitution, and in discussing the propriety of a Legislative Council, he said

that, "he thought it proper that there should be such a Council in Canada, and which might in some degree answer to our House of Lords."

The clause enacting that, "there shall be with in each of the said Provinces respectively, a Legislative Council and an Assembly, and that His Majesty, His Heirs and Successors, shall have power, during the continuance of this Act, by and with the advice and consent of the Legislative Council and Assembly of such Provinces respectively, to make Laws for the peace, welfare, and good Government thereof, such Laws not being repugnant to this Act," establishes three distinct branches of the Legislature, in perfect accordance with the three Estates which constitute the British Parliament. An accordance which was forcibly urged by Mr. Burke in discussing the Bill. "If the bare imitation of the British Constitution," says the great statesman, "be so good, why not give them, if possible, the thing itself." It appears evident that the Legislature of this Province, so constituted, must possess all the privileges and powers necessary to discharge the important functions with which it is intrusted; for if it have no power to punish contempts or interferences tending to interrupt and stop its proceedings, it would become useless, and be itself exposed to degradation.

Your Committee, on examining the powers practised by the Parliament of Great Britain, found them particularly noticed, as they had been exercised for two hundred years, in the case of Brass Crosby, Esquire, Lord Mayor of London; Lord Chief Justice De Grey, in delivering his opinion, refers to Coke 4 Inst. 2. "In order to see whether the House has autho

rity to commit." And his Lordship affirms, that such an Assembly must certainly have such authority, and it is legal because necessary." Again his Lordship says, "this power of committing, must be inherent in the House of Commons, from the very nature of its constitution, and therefore is part of the Law of the land: they certainly always could commit in many cases; in matters of Elections, they can commit Sheriffs, Mayors, Officers, Witnesses, &c. and it is now agreed that they can commit generally for all contempts. All contempts are either punishable in the Courts contemned, or in some higher Court; now the Parliament has no superior Court; therefore the contempts against either House, can only be punished by themselves. Again, when the House of Commons adjudge any thing to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment in consequence is execution; and no Court can discharge, or bail a person that is in execution by the judgment of any other Court. The House of Commons, therefore, having an authority to commit, and that commitment being an execution, the question is what can this Court do? It can do nothing, when a person is in execution by the judgment of a Court having competent jurisdiction; in such case this Court is not a Court of Appeal."

The Lord Chief Justice further states, that the Courts never interfere with each other in commitments for contempt. If we could determine upon the contempt of any other Court, so might the other Courts in Westminster Hall, and what confusion would en-

"sue ! none of us knowing the Law by which
 "persons are committed by the Commons.
 "three persons were committed for the same
 "breach of privilege, and applied severally
 "different Courts, one Court perhaps would
 "bail, another Court discharge, and a third
 "commit."

On the same occasion, Justice Gould, in delivering his opinion observed, that "this Court
 "hath no cognizance of contempts or breach
 "privilege of the House of Commons ; they are
 "the only Judges of their own privileges." As
 Justice Blackstone remarked, "that all Courts
 "by which I mean to include the two Houses
 "Parliament, and the Courts of Westminster
 "Hall, can have no controul in matters of con-
 "tempt. The sole adjudication of contempt
 "and the punishment thereof, in any manner
 "belongs exclusively and without interfering
 "each respective Court. Infinite confusion
 "and disorder would follow, if Courts could
 "by Writs of Habeas Corpus, examine and de-
 "termine the contempts of others. This power
 "to commit, results from the first principle
 "of Justice ; for if they have power to decide
 "they ought to have power to punish. It is
 "confidence that may with perfect safety and
 "security, be reposed in the Judges and the
 "Houses of Parliament."

Much more might be quoted from this and
 other cases respecting the privileges of Parli-
 ment, which are very large and indefinite, but
 your Committee presume that their necessity,
 importance and existence, as regards the British
 Parliament, are sufficiently made out.

Your Committee sensible of the vast difference
 in degree and dignity between the Legi-

ture of this Province and that of the Mother country, and aware that objections on this point might be raised against your assumption of like powers and privileges, were anxious to discover a Legislative body similar in dependence on the Imperial Parliament—what privileges such a body claimed and exercised. The history of Ireland presents your Committee with an example in point. The Parliament of that country, though dependant on the British Legislature till 1782, and possessing much less power within Ireland, than the Legislature has over this Province, nevertheless appears to have claimed and exercised all the privileges of the Parliament of Great Britain.

Hargrave
Vol. 1

Your Committee next turned their attention to the Colonial Governments existing in America, before the Civil War, and those which are still in force in the West India Islands, and find that the proceedings of their Houses of Assembly and Councils, were conducted, and their journals kept, in a manner much conformed to those of the two Houses of Parliament." "Provincial Parliaments, or Colonial Assemblies, (it matters not by what name they are called,)" says the historian of the West Indies, "being thus established and recognized, we shall find that in their formation, mode of proceeding, and extent of jurisdiction, within their own circle, they have constantly copied and are required to copy as nearly as circumstances will admit the example of the Parliament of Great Britain. The freeholders are assembled in each town or parish respectively, by the King's Writ;—their suffrages are taken by an Officer of the Crown; and the persons elected are after-

Stokes

Edwards
History of
the West In-
dies, Vol. 2
page 343 c.
4 quarto.

“wards commanded by Royal Proclamation
 “meet together at a certain time and place
 “the proclamation named, to frame Statutes
 “and Ordinances for the public safety ; when
 “met, the oaths of allegiance, &c. are admini-
 “tered unto each of them, and a Speaker being
 “chosen and approved, the Session opens by
 “a Speech from the King’s Representative
 “The Assembly then proceed as a Grand Pro-
 “vincial Inquest, to hear grievances and to cor-
 “rect such public abuses as are not cogniz-
 “able before inferior tribunals. They commit
 “for contempts, and the Courts of Law have
 “refused, after solemn argument, to discharge
 “persons committed by the Speaker’s warrant
 “They examine and control the accounts of
 “the public Treasurer. They vote such sup-
 “plies, lay such taxes, and frame such Laws,
 “Statutes, and Ordinances, as the exigencie
 “of the Province or Colony require. Jointly
 “with the Governor and Council, they exer-
 “cise the highest acts of Legislation ; for the
 “penal laws, which the judges are sworn to
 “execute, extend even to life—many persons
 “having suffered death under Laws passed in
 “the Colonies, even before they had received
 “the Royal Assent. On the whole, subject to
 “the restriction that their Trade Laws are not
 “repugnant to those of Great Britain, there are
 “no concerns of a local and Provincial nature
 “to which the authority of the Colonial Law
 “does not extend”.

Your Committee have thus found, that not
 only the Imperial Parliament of the Mother
 Country, on which this Province depends, and
 the Parliament of Ireland before the Union
 were the sole judges of their own privileges

but that even the Legislatures of the Colonial Governments constituted and appointed with less power and solemnity than the Legislature of Upper Canada, have enjoyed and exercised, and still enjoy and exercise, powers and privileges of a most extensive and important nature, fully sufficient to secure their dignity and independence.

From all which, your Committee, with deference, are of opinion, that the Legislative Council will assume no new or arbitrary rule of proceeding, by maintaining and asserting their jurisdiction in matters of privilege and contempt.

ON MOTION, made and seconded, ORDERED that the above report be adopted, and it was

RESOLVED, That, forbearing any notice of what is passed; the arresting and imprisoning during the Session, any Officer or Assistant of this House, not being charged criminally, for High Treason, Felony, or breach of the Peace, is a contempt of and a high breach of the Privileges thereof.

April 2d, 1821.

On Motion, made and seconded, ORDERED that Fifty Copies of the foregoing Resolution and the Report of the Committee of Privileges, be printed.

JNO. POWELL,
C. L. C.