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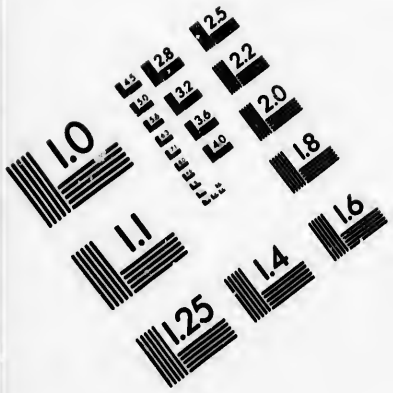

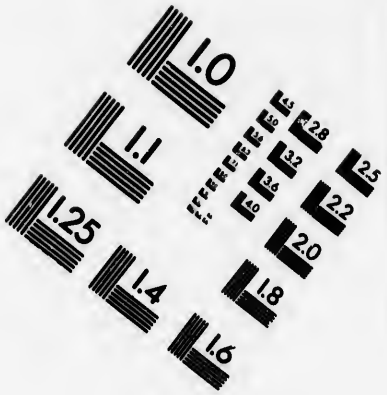

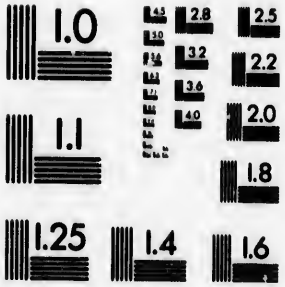

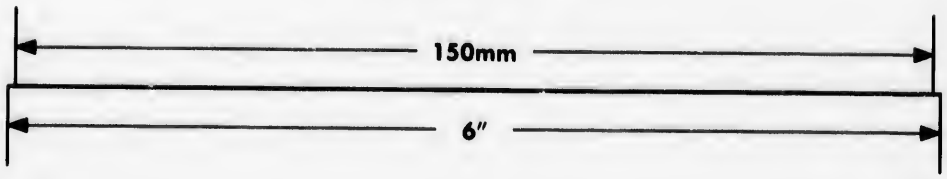

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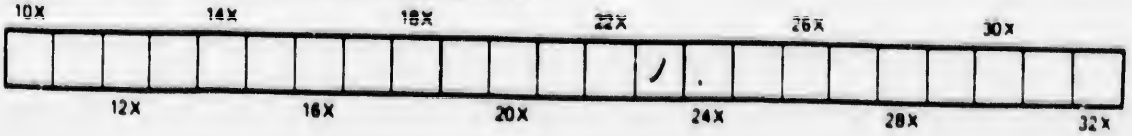

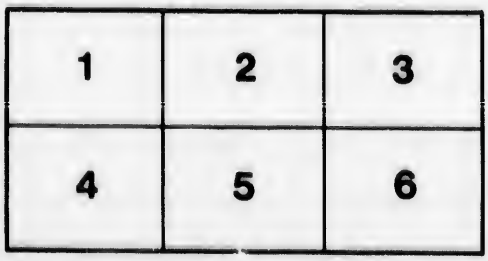

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ARGUMENT OF COUNSEL

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BEFORE THE

SELECT STANDING COMMITTEE ON PRIVILEGES AND ELECTIONS

IN THE CASE OF

J. C. RYKERT, ESQ., M. P.,

In re **Grant of certain Timber Limits in the North-West Territories to one John Adams in April, 1882.**

MR. MCDOUGALL.—I intimated to the Committee, at its last meeting, after it was announced that no further evidence would be given, that I was inclined to think I could add little, if anything, to the explanations already made under oath, and had advised my client that he could safely let his case rest upon that evidence alone; but as he was of opinion that there was some misapprehension out of doors, if not in this committee-room, as to the position and the rights and liabilities of Members of Parliament, and the judicial functions and powers of the House of Commons, and that it might be well to examine these questions before the Committee, I deemed it my duty to suggest another sitting for that purpose. I promised at the same time that I would not weary the Committee. I believe I limited myself to one hour.

To enable me to do justice to the accused member, and keep faith with the Committee, I have collected and digested a few authorities, English and Canadian, which, as I understand them, are amply sufficient to justify an immediate dismissal of this case.

The first question which presents itself to the Committee seems to be this: What offence, if any, has the member for Lincoln and Niagara committed against the law of Parliament? The Order of Reference does not tell us; does not name or specify any breach of that law. It says "that the attention of the House has been called to certain documents, letters and statements published during the present Session in the Votes and Proceedings of this House," * * * "relating to the connection of John Charles Rykert," &c., "with a grant of certain timber limits in the North-West Territories." It is not alleged or proved that John Charles Rykert *published* these or any letters concerning or reflecting upon the House of Commons. If the private letters of a member of Parliament, concerning his own business affairs, written out of Session, and making no reference whatever to the House of Commons, past, present or future, are not *published* by him, upon what principle, according to what precedent, does the House of Commons take cognizance of such letters, and order the publication of them? Every lawyer knows that it is not the man who *writes*, but the man who *publishes*, a libel who exposes himself to an action. "In a case of libel," says Starkie, "before any evidence can be given of its contents, *prima facie* evidence must be given of a publication *by the defendant*."

The private business letters of Mr. Rykert, published by Order of the House, were never published by him, nor with his assent nor connivance, until the *Globe* newspaper made them public without his authority, in its issue of the 8th of Feb-

ruary last. Sir Richard Cartwright thereupon made his motion to hand them down to posterity in the Votes and Proceedings of the House of Commons. I submit that Sir Richard and the *Globe*, and not Mr. Rykert, are responsible for all the evil consequences of *publication*. They were private; they were personal; the subject-matter was not within the cognizance of any criminal court, and from beginning to end there is not even a reference to the House of Commons, its functions or its jurisdictions, or its possible or probable action, in the matter. I submit, therefore, that you have no constitutional or legal authority to enquire into, or pronounce judgment, upon Mr. Rykert in this case.

It is apparently assumed that the Canadian House of Commons has been endowed with authority to enquire into the private busines affairs of one of its members, and if it thinks proper, to expel him from his seat, and thereby deprive his constituents of his voice and vote in this House. I respectfully dissent from that proposition, for the following among other reasons:—

1. The Parliament of Canada is a new creation. It is not old enough to claim ancient, customary, or consuetudinary powers or privileges. It has the powers which are expressly given to to it by Statute, and those also which are necessary for the preservation of order and the proper conduct of business. In what section or clause of the British North America Act is the House of Commons endowed with power to expel, by the vote of the majority, one of its members? I have not been able to find it. You may say the power of expulsion, for adequate cause, is a necessary incident of every independent legislative body. I am disposed to assent to that proposition. But can it be pretended that private letters written out of session, by a lawyer, who happens to be a member of Parliament, to a client on private professional business, are adequate cause? I venture to assert that they are not. I venture to assert that no precedent can be found in the parliamentary history of England since the Revolution to warrant expulsion for professional and private correspondence such as this. The best authority on this subject is Sir Erskine May, and I will take the liberty of quoting two or three passages from his admirable book on Parliamentary Practice in England (pp. 60, 61 of the Edition of 1873): "No power exercised by the Commons is more undoubted than that of expelling a member from the House as a punishment for *grave offences*: yet expulsion, though it vacates the seat of a member, and a new writ is immediately issued, does not create any disability to serve again in Parliament." After referring to the cases of Wilkes and Walpole, Sir Erskine May concludes with these words: "But all of these cases can only be regarded as examples of an *excess* of their jurisdiction by the Commons; for one House of Parliament cannot create a disability unknown to the law."

If, therefore, I were to admit, which I do not, that the Canadian Parliament and the Canadian House of Commons now have, and may exercise all the powers claimed and exercised by the English Parliament and Commons in 1867, I would demand from this committee a declaration that no evidence had been produced of any "offence" cognizable by Parliament, or either House thereof, which had affected or could affect the seat of the honorable member.

But, Mr. Chairman, it will be my duty to point out in this case some important distinctions between the English House of Commons, and our Canadian House in the matter of "privileges, immunities and powers." Theirs are to be found in the decisions and precedents of former Parliaments; ours are conferred by an Act of the Imperial Parliament, passed in 1867, as amended by the same authority in 1875. This amendment was made to remove doubts as to the power of the Canadian Parliament, even to pass a Statute, to define its "privileges, powers or immunities." The following is the law as it stands to-day, and no English precedents from the time of the Stuarts, or even the Georges, will over-ride the letter of this law. The new section in the Act of 1875 reads as follows;—

"The privileges, immunities and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are *from time to time defined by Act of Parliament of Canada*, but so that any Act of the Parliament of Canada, defining such privileges, immunities

and powers shall not confer any privileges, immunities or powers exceeding those at the passing of such Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof."

Now, I submit that this Imperial enactment is, in form and effect, prospective in its operation. It declares that the powers, &c., of the House of Commons shall be such as are from time to time defined by Act of the Parliament of Canada—not such as may have been assumed to exist in the past, or such as may have been "defined" by any former Act. It contemplates the passing of an Act for the purpose of "defining," for it limits these powers and privileges to such as may be held, &c., by the "Commons House of Parliament" of England. I am not aware that the Canadian Parliament has passed any Act since 1875, "defining" the powers of the House of Commons, and conferring upon that body the power of expelling a member for acts or transactions in his profession or business, permissable in the eye of the law, and entirely outside of the parliamentary arena.

As a matter of fact no Act has since been passed by this Parliament defining the powers and privileges of the House of Commons. I am told by one authority that the Revised Statutes of 1886 meet the objection. I submit that there is no "definition" in the Revised Statutes of "privileges, immunities and powers to be held," &c., which are not to *exceed* those held and enjoyed by the English House of Commons. There is simply a revision or digest of the Act of 1868 (31 Vic., c. 23, s. 1).

The section reads as follows:—

"The Senate and the House of Commons, respectively, and the members thereof, respectively, shall hold, enjoy and exercise such and the like privileges, immunities and powers as, at the time of the passing of 'The British North America Act, 1867,' were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom, and by the members thereof, so far as the same *are consistent with and not repugnant to the said Act* (the B. N. A. Act of 1867), and also such privileges, immunities and powers as are from time to time defined by Act of the Parliament of Canada not exceeding those at the time of the passing of such Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof, respectively." (R. S. C. cap. 11, s. 3.)

It is to be observed that this revision, if we are to treat it as a "defining" Act, was passed subsequently to the amendment by the Imperial Parliament, of 1875, and, therefore, under the authority and subject to the provisions of that Imperial Act. I submit that section 3 of the revision of 1886 is not, and does not assume to be a *definition* of powers, privileges, &c., under the authority of the Imperial Act of 1875. The Act of Parliament "defining" the powers and privileges of the Canadian House of Commons is yet to be passed.

But I am content to argue this case upon the hypothesis that the Canadian House of Commons has the same power in respect to the expulsion of its members as those now claimed and exercised by the English House of Commons.

I submit, then, upon the authority of the latest case, that of James Sadlier, that a "grave offence," to use the definition of Sir Erskine May, must be charged, and proved against a member before his seat can be attacked.

In the case of James Sadlier, then member for Tipperary, which is the latest precedent supplied to us by the English House of Commons, Mr. Fitzgerald, then Attorney-General for Ireland, laid down the rule of procedure in such cases as follows:

"There was before the House proper evidence of the following facts—that on the 4th July informations were sworn before a magistrate against James Sadlier, and that the offence sworn against him was not felony or a misdemeanor, but that of conspiring, with his deceased brother, John Sadlier, to cheat and defraud the public by means of false representations, &c. They had also this evidence, that on the 4th July, in consequence of this sworn information, a warrant was issued against James Sadlier," &c., "that bills of indictment were presented against him to the Grand Jury, and on the evidence of three witnesses a true bill was found against him, and

that on that bill of indictment so found against James Sadlier, the Judge of Assize issued a bench warrant for his apprehension, &c." (See English *Hansard* of 1856, Vol. CXLIII.)

It was admitted that Mr. Sadlier had not been arrested and had not appeared to answer the charge; in fact, he fled to France, and never returned to Ireland. The Attorney General among other things argued that the House could not "act upon any thing before them," "that the House had already by statute with respect to seats affected by election petitons, denuded itself, to a great extent, of the power which it once exercised and in some cases abused; had confined that power within narrow limits, and had decided that in its proceedings it ought to be guided by something like legal evidence. In the case of Mr. Sadlier, his opinion was, that having regard to the constitution, the House ought not to pronounce a judgment without a proper preliminary enquiry—without either a confession of guilt or an amount of legal evidence tantamount to it."

This doctrine was concurred in by the English Attorney General, and endorsed by Lord Palmerston, then Premier, and an experienced and admitted authority on the law and practice of Parliament. The previous question was moved by Lord Palmerston, and the case was dismissed for that session. In the course of the Attorney General's argument he read with approval the doctrine of Mr. Grenville in the Wilkes case, as follows:—

"Whenever this House has expelled any member it has invariably assigned some particular offence as a reason for such expulsion. By the fundamental principles of this constitution the right of judging upon the general propriety or unfitness of their representatives is entrusted with the electors; and when chosen, this House can only exclude or expel them for some disability established by the law of the land or for some specific offence alleged and proved."

In the next session a true bill having been found against Sadlier for fraud, and the officers of the law being unable to apprehend him, he was expelled as having fled from justice.

Now, there is not even a pretence that the accused member in the present case has committed any *crime*, or "grave offence" in writing private letters to his client, Adams. Parliament, by taking notice of this private business correspondence, out of session, and, as well as I remember, containing no reference, from beginning to end, to the action of Parliament, or the position or influence of the writer by reason of his seat in the Commons, is clearly usurping a power and a function which the constitutional Acts have not assigned to it. Property and civil rights and the administration of justice are Provincial and not Federal, and generally all matters of a merely local or private nature in the Province are *ultra vires* of this Parliament.

The attempt to establish a censorship over the private correspondence of those whom we entrust with the high function of representing us in the national council, where our general laws are made, and our federal taxes levied and expended, is surely a very bold, a very dangerous innovation.

I submit that this enquiry is *ultra vires* of this House for another reason. The alleged "grave offence" was committed before Mr. Rykert became a member of this Parliament. Moreover, all the letters complained of were written and made public before this Parliament was born. They were reprinted by his opponents, and scattered broadcast over his constituency, and with full knowledge of their existence and character, the electors returned him to Parliament with a larger majority than on any former occasion. Are we to have a Wilkes case in Canada? Our parliamentary annals furnish us with two or three precedents. The expulsions of Christie and McKenzie are instructive, especially that of McKenzie. He lived to see most of his persecutors under ground, and those who survived out of Parliament. Persecution, especially in the form of expulsion, gave him popularity and influence that he would never have attained by his personal attractiveness, or political merits. From these and other precedents I could mention, I venture to predict, that expulsion, or even censure, in the present case, will send your victim back to these halls with a majority, not of five hundred, but much greater.

My learned friend the chairman makes the suggestion that the attention of the Committee has not been directed to the evidence adduced before the Committee upon the alleged corrupt practice in the Department. It has been abundantly proven, I think, that there is no foundation for that allegation. The evidence given before the Committee, by the Heads of Departments, by the Ministers, and by Mr. Rykert himself, as taken down and printed by this Committee, wholly displaces, as it seems to me, the charge or suspicion that there was anything improper or corrupt on the part of Mr. Rykert, or affecting his position as a member of Parliament in all these transactions. It has been abundantly proved that there was no undue influence used by him; that no special favour was extended to him; that no law was violated in securing, as he did, these timber limits in the North-West Territories for his client Adams. I cannot see, for my own part, that there is evidence anywhere to establish a charge of that kind, and I submit that the evidence before the Committee has displaced it completely. It requires no argument to enforce that view, if you believe the sworn testimony of the witnesses.

16th April, 1890.

Since the last meeting of the Committee my attention has been directed to an important discussion in the English House of Commons on the subject of *privilege*. It is the latest expression of the tribunal whose decisions on "privileges, immunities and powers," fix and determine those of the Canadian Parliament—in other words, they determine the bounds or limits which we may not "exceed." I directed your attention at your last sitting to the case of James Sadlier. I now beg to add the case of Mr. Parnell, discussed and decided in the English House of Commons so late as the 12th of February last.

The following motion was proposed by Sir William Harcourt in an able and lengthy speech:

"That the publication in the *Times* newspaper of April 18th, 1887, of a letter, falsely alleged to have been written by Mr. Parnell, a member of this House, and the comments thereon in the said newspaper, is a false and scandalous libel, and a breach of the privileges of this House."

It was not denied that the *Times* had published the letter; it was not denied that it was false and scandalous; it was not denied that it was a breach of the privileges of the House, but it was held after full discussion, that it ought not to be deemed a breach of privilege, because the House had allowed nearly three years to go by without making it the subject of a motion.

The Attorney-General, Sir J. Gorst, replying to Sir Wm. Harcourt, made an able speech, the following passage from which is sufficient for my present purpose:

"When the Right Honorable gentleman must have known that the question of time was a very important one, when he was warned by the Speaker that that was the difficulty he had to surmount, he should not only have referred to that list, but he ought to have cited one or two examples in support of his position. It is quite true that breaches of privilege in one Parliament have been punished in successive Parliaments, but these have been cases in which there has been no earlier opportunity for the punishment of the breaches of privilege. Will the Right Honorable gentleman or any of his learned friends cite a single precedent in which Parliament has lain by for nearly three years, and then entertained a motion such as that of the Right Honorable gentleman? Let them quote one such precedent on this point, and then I shall be happy to examine it. (Hear, hear.) Let me remind the House of what has happened. The libel which was the subject of the motion was published on the 18th of April, 1887. It was referred to in debate on the same day by the honorable member for Cork. It was then denounced by him as a falsehood and forgery. (Opposition cheers.) There is no Parliamentary principle more firmly settled—and I believe the Right Honorable gentleman will not contradict it—than that procedure for breach of privilege should be prompt and immediate. If the Honorable member for Cork, or if the Right Honorable gentleman himself, in his zeal for the honor and dignity of the House, had thought that this language was a breach of

privilege, the 18th of April, 1887, was the proper day upon which notice should have been taken."

The Attorney-General moved an amendment in the following terms:—

"That the House declines to treat the publication in the *Times* newspaper of the 18th April, 1887, of a (forged) letter purporting to have been written by Mr. Parnell, and the comments thereon, as a breach of privilege."

After a vote on the main motion, which was defeated by a majority of forty, the amendment was adopted without a division, the word "forged" being inserted at the demand of the Opposition.

This is the latest English precedent I am able to produce. I will merely add that if the English House of Commons, after full discussion, has declared that the procedure for breach of privilege must, in the words of the Attorney-General of England, be "prompt and immediate," and if a delay of three years has just been solemnly held to be a fatal delay, I submit that the Imperial Act of 1875, amending section 18 of the British North America Act, inhibits you from exceeding that limit. Mr. Rykert's alleged offence whether you call it a breach of privilege, or of the unwritten law of Parliament, occurred more than three years ago; was made public through the newspapers; discussed and used against him at the polls, but has been entirely ignored by the House of Commons, of which he was and is a member, for a period of more than three years. The unanimous resolve of the House of Commons in the Parnell case on 12th February last, shows us that this attack upon the member for Lincoln and Niagara has been too long postponed.