

1869.

VICTORIA.



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# REPORT

FROM THE

SELECT COMMITTEE

ON

# PRIVILEGE,

TOGETHER WITH

THE PROCEEDINGS OF THE COMMITTEE.



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*Ordered by the Legislative Assembly to be printed, 18th May, 1869.*

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By Authority:

JOHN FERRES, GOVERNMENT PRINTER, MELBOURNE.

EXTRACTED FROM THE VOTES AND PROCEEDINGS.

THURSDAY, 6TH MAY, 1869.

**PRIVILEGE.**—Mr. McCulloch moved, by leave of the Assembly, and pursuant to *amended* notice, That a Select Committee consisting of fifteen Members, be appointed to enquire into the proceedings relating to the discharge from custody of Mr. Hugh Glass, committed for a contempt and breach of the privileges of the Legislative Assembly, and to report their observations and opinion thereupon to the House, and to have power to sit during an adjournment of the House.

Question—put and resolved in the affirmative.

Mr. McCulloch moved, That the Committee consist of Mr. Casey, Mr. G. P. Smith, Mr. Higinbotham, Mr. Gavan Duffy, Capt. MacMahon, Mr. Aspinall, Mr. Macgregor, Mr. MacDonnell, Mr. MacPherson, Mr. McKean, Mr. Berry, Mr. Wilson, Mr. Mackay, Mr. Richardson, and Mr. Blair; five to be a quorum, and to have power to send for persons, papers, and records.

Debate ensued.

Question—That Mr. Casey, Mr. G. P. Smith, and Mr. Higinbotham, be members of the Committee—put and resolved in the affirmative.

Question—That Mr. Gavan Duffy be a member of the Committee—proposed.

Debate ensued.

Question—by leave withdrawn.

Mr. MacPherson moved, That Mr. Fellows be a member of the Committee.

Debate ensued.

Question—put and resolved in the affirmative.

Question—That Mr. Gavan Duffy, Captain Mac Mahon, Mr. Aspinall, Mr. Macgregor, Mr. MacDonnell, Mr. MacPherson, Mr. McKean, Mr. Wilson, Mr. Berry, and Mr. Mackay, be members of the Committee—put and resolved in the affirmative.

Mr. Francis moved, That Mr. Wrixon be a member of the Committee.

Debate ensued.

Question—put and resolved in the affirmative.

Question—That five members do form a quorum of the Committee, and that the Committee have power to send for persons, papers, and records—put and resolved in the affirmative.

APPROXIMATE COST OF REPORT.

| DETAILED PARTICULARS.         | AMOUNT. |    |    |
|-------------------------------|---------|----|----|
|                               | £       | s. | d. |
| Cost of preparation .. .. .   | 6       | 0  | 0  |
| Printing (750 copies) .. .. . | 16      | 17 | 0  |
| TOTAL .. .. .                 | £ 22    | 17 | 0  |

# R E P O R T.

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THE COMMITTEE appointed to enquire into the proceedings relating to the discharge of Mr. Hugh Glass, committed for a contempt and breach of the privileges of the Legislative Assembly, and to report their observations and opinion thereupon to the House, have the honor to report as follows :—

Your Committee find—

I. That by the 35th section of the Constitution Act power was given to the Legislature of Victoria to define the privileges, immunities, and powers to be held, enjoyed, and exercised by the Legislative Council and Legislative Assembly, and the members thereof respectively, with a proviso that they should not exceed those then (1855) held, enjoyed, or exercised by the Commons House of Parliament or the members thereof.

II. That the Legislature of Victoria did, by Act No. 1, define the privileges, immunities, and powers of the said Council and Assembly as being the same as at the time of the passing of the Constitution Act were held, enjoyed, and exercised by the Commons House of Parliament of Great Britain and Ireland, whether the same were so held, possessed or enjoyed by custom, statute, or otherwise.

This definition was called in question; but in the Judgment of the Supreme Court, given after argument of the demurrer, in the case of *Dill v. Murphy* (1 W. & W. 362), Mr. Justice Williams said—“Although at first I was inclined to the opinion that the Imperial Parliament, in giving power to the House of Assembly in Victoria to specify its privileges and immunities, provided they were not in excess of those of the House of Commons, merely purposed to clothe the Assembly with privileges incidental to a deliberative body, to protect the members during the progress of debate, and to permit them to assemble together and depart without fear of arrest or molestation; and that it was not the intention of the Imperial Parliament to confer on the House of Assembly the powers that the House of Commons enjoys as a component part of the highest court in the realm; nevertheless, on a closer investigation of the various authorities, and considering the comprehensive nature of the 35th section, ‘not exceeding the powers, privileges, and immunities of the House of Commons’—no restriction as to the House of Commons as a deliberative assembly, but of the House of Commons generally,—I am led to the conclusion that my first impression was wrong, and that the powers and privileges of the Commons House of Parliament, whether obtained by the *lex et consuetudo parliamenti* or not—whether enjoyed as a deliberative assembly or as a component part of the highest Court in the realm—are claimable by the Legislative Assembly in this colony. The powers, privileges, and immunities thus conferred on a young, and comparatively speaking, inexperienced Legislature may be great—no doubt they are—but for proper use of those powers the members are amenable to their constituents, and public



opinion will always exercise a salutary control. On both points, therefore, I consider the defendants are entitled to our judgment." And the same case having been made the subject of an appeal, it was determined, by the Privy Council, that the Act No. I 'was a due exercise of the power to define given by the Constitution Act'—*Dill v. Murphy*, 1 *Moore, Privy Council Reports (N.S.)* 487.

III. That the practice of the Superior Courts of Westminster, in respect to enquiries into the validity of the instruments by which the orders of either House of Parliament have been carried into execution, has for centuries been uniform, viz. : that where the Warrant declares that the person committed to custody has been "guilty of a contempt"—"of a contempt and breach of privileges"—"of a breach of privilege"—or "of a high crime and misdemeanor"—without averring in what act any such offence consisted, the Judges have invariably refused to inquire into the causes of the contempt.

In Lord Shaftesbury's case (1675), Lord C. J. Rainsford said, "He is in execution of the judgment given by the Lords for contempt—this Court has no jurisdiction of the cause and therefore the form of the return is inconsiderable."

In Brass Crosby's case (1771), De Grey, C.J., said, "When the House of Commons adjudge anything to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment in consequence an execution, and no court can discharge or bail a person that is in execution by the judgment of any other court."

In Flower's case (1779), Lord Kenyon said, "We were bound to grant this *Habeas corpus*, but, having seen the return to it, we are bound to remand the defendant to prison, because the subject belongs 'ad aliud examen.'"

In the case of *Burdett v. Abbott* (1810), 14 East 147, Lord Ellenborough said, "I agree with Wright and Dennison, Justices (giving their decision in Lord Shaftesbury's case), in thinking that it need not appear what the contempt was." And again, p. 150 : "If a commitment appeared to be for a contempt of the House of Commons generally I would, neither in the case of that Court, nor of any other of the Superior Courts, inquire further."

More recently, in *Hobhouse's case* (1819), Lord C. J. Abbott said, "It is incompetent for this Court to question the privileges of the House of Commons on a commitment for an offence which they have adjudged to be contempt of those privileges. We cannot inquire into the forms of the commitment even supposing it to be open to objection on the ground of informality."

In the case of the Sheriff of Middlesex (1840): The judges were unanimously of opinion that the return—setting out a warrant declaring the offence to be a contempt and breach of the privileges of the House of Commons—was good, and that they could not inquire into the matter of the contempt.

And again in the case of *Gosset v. Howard*, 2nd February, 1847, Mr. Baron Parke, in delivering the judgment of the Court of Exchequer Chamber, on the validity of the Speaker's Warrant which recited only that the House of Commons had ordered that Thomas Burton Howard be sent for in custody of the Serjeant-at-Arms, and which

the Court of Queen's Bench had held to be insufficient, said, "The House had an undoubted right to order the plaintiff into custody, and to have him brought to the bar, and had also as much right over its own forms as any other Court has; it must be presumed that this is the right form, being that which it has chosen to adopt."

IV. That as respects the forms and usages to be adopted by your Honorable House in its proceedings—Your Committee would refer to the 34th section of the Constitution Act which provides that the Legislative Council and Legislative Assembly shall prepare and adopt standing rules and orders for providing for the manner in which such Council and Assembly shall be presided over, in case of the absence of the President or Speaker respectively, and for the mode in which such Council and Assembly shall communicate (*then follow provisions solely relating to legislation*); and for the due publication of all proposed proceedings in such Council and Assembly, and generally for the conduct of all business and proceedings in the said Council and Assembly severally and collectively, such rules being approved by the Governor shall become binding, and of force; and until such standing rules shall be adopted, resort shall be had to the rules, forms, and usages, of the Imperial Parliament of Great Britain and Ireland, which shall be followed so far as the same may be applicable to the proceedings of the said Council and Assembly respectively.

In execution of the power given by this section, the Legislative Assembly adopted Standing Rules and Orders which, on the 28th July 1857, were approved by His Excellency the Governor; and by the 285th of these Standing Rules and Orders it is declared "that, in all cases not herein provided for, resort shall be had to the Rules, Forms, Usages, and Practice of the Commons House of Parliament of Great Britain and Ireland, which shall be followed so far as the same may be applicable to this Assembly and not inconsistent with the foregoing Rules."

That it would appear from the occasions to which some of the Standing Orders were meant to apply that they are not restricted to, or adjuncts of, legislation solely, but relate to the privileges which the Legislature were by section 35 empowered to claim; and on this construction it would follow that the Legislative Assembly possesses the same forms and usages for carrying out its decisions and enforcing obedience to its orders, as those possessed by the House of Commons.

V. That on the 11th March last a Committee was appointed by your Honorable House to inquire into and report upon certain charges made public on the occasion of the trial in the Supreme Court of *Alexander v. Jones*, so far as it related to the conduct and character of members of your Honorable House; this Committee, on the 6th of April last, brought up a report finding that an association had been formed for the purpose of promoting the interests of the holders of land under certificates, which adopted as one of its modes of action (of which some of its members were cognizant) the bribing and undue influencing of Members of Parliament, and that Mr. Hugh Glass, and Mr. John Quarterman, being so cognizant, actively aided in the administration of the fund of such association. These resolutions were adopted by your Honorable House on the 27th of April last, and thereupon your Honorable House adjudged that Hugh Glass and John Quarterman were guilty of a contempt and breach of the privileges of the House, and ordered that they be taken into the custody of the Serjeant-at-Arms, in order that they might be brought to the Bar of your Honorable House on the following day, and that Mr. Speaker should issue his warrant accordingly. On the 28th April, Mr. Hugh Glass and Mr. John



Quarterman were brought to the Bar, and, having been heard, were ordered to retire in custody of the Serjeant-at-Arms; and on the 29th April, your Honorable House resolved that Hugh Glass and John Quarterman, having been guilty of a contempt and breach of privileges of the House, be for their said offence committed to Her Majesty's gaol, Melbourne, and that Mr. Speaker should issue his warrant accordingly. The form of warrant used was that employed by the House of Commons in the case of the Sheriff of Middlesex.

VI. That Mr. Glass and Mr. Quarterman were, under such warrant, conveyed to the gaol, at Melbourne, by the Serjeant-at-Arms, and delivered to the custody of the keeper. On the 30th April, a writ of *Habeas Corpus* was issued on behalf of Mr. Glass, returnable before His Honor the Chief Justice on the following day, when, after argument, and being assisted by Mr. Justice Barry and Mr. Justice Williams, the Chief Justice decided that the Legislative Assembly are exercising limited powers, and upon that ground, and upon that ground alone, he considered that the warrant should contain averments, or state the grounds which show that the powers had not been exceeded, and declared the prisoner was entitled to his discharge. On the 6th May, Mr. Quarterman was also released from custody by Mr. Justice Barry on a return to a Writ of *Habeas Corpus* obtained by him on the day previous, no appearance having been made in support of the return.

VII. That the point thus decided appears to be that in the exercise and enforcement of the powers possessed alike by the House of Commons and the Legislative Assembly, the latter are not entitled to use the same form of process as the former. In other words, that the Speaker's warrant, in the case of a commitment by the House of Commons for contempt and breach of privilege, is treated as emanating from a Superior Court, while in the case of a commitment by the Legislative Assembly for the same offence it is treated otherwise.

VIII. That your Committee, therefore, find as a fact, that not only the power of commitment for contempt, but also the ancillary power of proceeding in cases of commitment by means of a Warrant in general terms, has been exercised by the House of Commons as one of its undoubted privileges down to the year 1847. Your Committee contend that this privilege now belongs, together with the other powers and privileges of the Commons House of Parliament, to the Legislative Assembly of Victoria.

Your Committee are of opinion that the possession and the uncontrolled exercise of these powers and privileges are conditions essential to the usefulness as well as the honor of a Parliament charged, as ours is, with the function of making laws for Victoria, in all cases whatsoever. "I think," said Sir Robert Peel, speaking of the rights of the House of Commons, "the possession of these privileges goes to the essence of our power to render public service." Upon another occasion the same statesman observed with reference to one of the privileges of the House of Commons: "If the House of Commons cannot possess this privilege" (free publication) "without being held liable to be questioned or controlled by a court of law, not only would I retire from the performance of my public duties as a member of this House, but I think the House of Commons would take a fitting course in closing its doors rather than by continuing with maimed and mutilated powers to hold out the semblance of a popular institution without the power of discharging any one of the functions which belong to such an Assembly." These observations, in which your Committee fully concur, apply with equal force to the Legislative Assembly of Victoria, as it is constituted by our fundamental law.

IX. Your Committee are unable to recommend your Honorable House to abandon the exercise of any of these high and necessary powers, in deference to the recent decision of His Honor the Chief Justice of the Supreme Court. They have considered the advisability of re-arresting the two persons who have been discharged, pending an appeal to the Privy Council, but have arrived at the conclusion that as the difficulty now raised depends on the proper construction of an Act of Parliament, they are unable to recommend your Honorable House at present to assert the privilege of arresting on a warrant in general terms—essential as, in the opinion of your Committee, such a privilege is to the proper independence of Parliament. And bearing in view the remarkable moderation and forbearance which the House of Commons has shown in modern times, in avoiding an open conflict with the Courts of Law in vindication of its privileges while another resource was available, your Committee are of opinion that your Honorable House might wisely refrain from asserting that privilege till such time as the judgment of the Chief Justice shall have been subjected to review by the ultimate court of appeal.

X. And your Committee recommend that the necessary steps be forthwith taken for obtaining such review.

Committee-room,  
18th May, 1869.



# PROCEEDINGS OF THE COMMITTEE.

FRIDAY, 7TH MAY, 1869.

*Members present :*

Mr. Higinbotham,  
Mr. Gavan Duffy,  
Mr. Mackay,  
Mr. Casey,  
Mr. MacPherson,  
Mr. Wrixon.

Mr. Wilson,  
Mr. Macgregor,  
Mr. G. P. Smith,  
Capt. Mac Mahon,  
Mr. MacDonnell,  
Mr. McKean.

Mr. Higinbotham moved—That Mr. Casey do take the chair. •

Question—put and resolved in the affirmative.

Committee deliberated as to its course of proceeding.

Committee adjourned until Monday next at four o'clock.

MONDAY, 10TH MAY, 1869.

*Members present :*

MR. CASEY, in the Chair ;

Mr. Higinbotham,  
Mr. Macgregor,  
Mr. G. P. Smith,  
Mr. MacPherson,  
Mr. Wilson,  
Mr. Gavan Duffy,

Capt. Mac Mahon,  
Mr. Berry,  
Mr. Fellows,  
Mr. McKean,  
Mr. Wrixon.

Committee further deliberated.

Committee adjourned until to-morrow at two o'clock.

TUESDAY, 11TH MAY, 1869.

*Members present :*

MR. CASEY, in the Chair ;

Mr. Higinbotham,  
Mr. Macgregor,  
Mr. MacPherson,  
Mr. Berry,  
Mr. Gavan Duffy,

Mr. G. P. Smith,  
Capt. MacMahon,  
Mr. Wilson,  
Mr. Fellows.

Draft Report read by the Clerk.

Mr. Higinbotham moved—

1. That Your Committee, therefore, find as a fact, that not only the right of commitment for contempt, but also the auxiliary right of proceeding in cases of commitment by means of a Warrant, in general terms, has been exercised by the House of Commons as one of its undoubted powers, down to the year 1845.

2. Your Committee conclude that this right now belongs, together with the other powers and privileges of the Commons House of Parliament, to the Legislative Assembly of Victoria.

3. Your Committee are of opinion that the possession and the uncontrolled exercise of these powers and privileges are conditions essential to the usefulness as well as the honor of a Parliament charged, as ours is, with the function of making laws for Victoria, in all cases whatsoever. "I think," said Sir R. Peel, speaking of the rights of the House of Commons, "the possession of these privileges goes to the essence of our power to render public service." Upon another occasion the same statesman observed with reference to one of the privileges of the House of Commons: "If the House of Commons cannot possess this privilege" (free publication) "without being held liable to be questioned or controlled by a court of law, not only would I retire from the performance of my public duties as a member of this House, but I think the House of Commons would take a fitting course in closing its doors rather than by continuing with maimed and mutilated powers to hold out the semblance of a popular institution without the power of discharging any one of the functions which belong to such an Assembly." These observations in which your Committee fully concur, apply with equal force to the Legislative Assembly of Victoria, as it is constituted by our fundamental law.

4. Your Committee are unable to recommend your Honorable House to suspend the exercise of any of these high and necessary powers, in deference to the recent decision of His Honor the Chief Justice of the Supreme Court. On the contrary, your Committee respectfully advise your Honorable House at once to assert its lawful authority, by re-committing and retaining in custody the two persons who have been improperly discharged, and by checking, if necessary, by force, on the present and any future occasion, any attempt to interfere with, or defeat the right of the Legislative Assembly to imprison for contempt at its own discretion unquestioned and unquestionable by any inferior tribunal.

5. Provided the powers and privileges of the Legislative Assembly are preserved by exercise in undiminished force, your Committee would not recommend that any person should be prohibited by your Honorable House from bringing an action in a Court of Law with the view of obtaining the decision of a Court of Appeal upon the question of the right of the Legislative Assembly to commit upon a warrant in general terms. The Legislative Assembly might, in accordance with certain precedents in the history of the House of Commons, allow a Court of Law to judge of this privilege, and if such were the pleasure of your Honorable House, Her Majesty might be requested, by petition, to refer the question to the Judicial Committee of the Privy Council, by whose decision, if it should be adverse, the Legislative Assembly, would, in that event, be, of course, bound.



Mr. Macgregor moved as an amendment—That all the words after the word "Law," at the end of the third paragraph, be omitted, with a view to insert instead thereof the words: "While however, in the opinion of your Committee, your Honorable House should not admit the right of any Court of Law in the Colony to decide without appeal on the propriety of those forms of warrants of commitment which your Honorable House through its highest officer may, from time to time, in accordance with the practice of the House of Commons, in the year 1855, think proper to use, your Committee would venture to suggest that your Honorable House should now, in the public interest, abstain from adopting any measures that might probably result in a conflict with the Supreme Court; and your Committee therefore respectfully recommend that, with the view of asserting and defending the privileges of your Honorable House, the question raised in the case of Mr. Hugh Glass as to the proper form of commitment by your Honorable House should as speedily as practicable be made the subject of appeal to the ultimate legal tribunal available to the Colony.

Debate ensued.

Committee adjourned until to-morrow at half-past one o'clock.

WEDNESDAY, 12TH MAY, 1869.

Members present:

Mr. CASEY, in the Chair;

Mr. Gavan Duffy  
Mr. Macgregor  
Mr. MacPherson  
Mr. Higinbotham  
Mr. Wilson  
Mr. Fellows

Mr. G. P. Smith  
Mr. Berry  
Mr. Mackay  
Capt. MacMahon  
Mr. McKean.

Draft Report again read—paragraph by paragraph.

Paragraph I. read.

I. That by the 35th section of the Constitution Act power was given to the Legislature of Victoria to define the privileges, immunities, and powers to be held, enjoyed, and exercised by the Legislative Council and Legislative Assembly, and the members thereof respectively, with a proviso that they should not exceed those then (1855) held, enjoyed, or exercised by the Commons House of Parliament or the members thereof.

Question—That paragraph I. stand part of the Report—put and resolved in the affirmative.

Paragraph II., as follows, read.

II. That the Legislature of Victoria did, by Act No. 1, define the privileges, immunities, and powers of, the said Council and Assembly as being the same as at the time of the passing of the Constitution Act were held, enjoyed, and exercised by the Commons House of Parliament of Great Britain and Ireland, whether the same were so held, possessed or enjoyed by custom, statute, or otherwise.

This definition was called in question; but in the Judgment of the Supreme Court, given after argument of the demurrer, in the case of *Dill v. Murphy* (1 *W. & W.* 362), Mr. Justice Williams said—"Although at first I was inclined to the opinion that the Imperial Parliament, in giving power to the House of Assembly in Victoria to specify its privileges and immunities, provided they were not in excess of those of the House of Commons, merely purposed to clothe the Assembly with privileges incidental to a deliberative body, to protect the members during the progress of debate, and to permit them to assemble together and depart without fear of arrest or molestation; and that it was not the intention of the Imperial Parliament to confer on the House of Assembly the powers that the House of Commons enjoys as a component part of the highest court in the realm; nevertheless, on a closer investigation of the various authorities, and considering the comprehensive nature of the 35th section, 'not exceeding the powers, privileges, and immunities of the House of Commons'—no restriction as to the House of Commons as a deliberative assembly, but of the House of Commons generally—I am led to the conclusion that my first impression was wrong, and that the powers and privileges of the Commons House of Parliament, whether obtained by the *lex et consuetudo parliamenti* or not—whether enjoyed as a deliberative assembly, or as a component part of the highest court in the realm—are claimable by the Legislative Assembly in this colony. The powers, privileges, and immunities thus conferred on a young and comparatively speaking inexperienced Legislature may be great—no doubt they are—but for proper use of those powers the members are amenable to their constituents, and public opinion will always exercise a salutary control. On both points, therefore, I consider the defendants are entitled to our judgment." And the same case having been made the subject of an appeal, it was determined by the Privy Council that the Act No. 1 "was a due exercise of the power to define given by the Constitution Act." *Dill v. Murphy*, 1 *Moore, Privy Council Reports (N.S.)* 487.

Question—That paragraph II. stand part of the Report—put and resolved in the affirmative.

Paragraph III., as follows, read.

III. That the practice of the Superior Courts of Westminster, in respect to enquiries into the validity of the instruments by which the orders of either House of Parliament have been carried into execution, has for centuries been uniform, viz.: that where the Warrant declares that the person committed to custody has been "guilty of a contempt"—"of a contempt and breach of privileges"—"of a breach of privilege"—or "of a high crime and misdemeanor"—without averring in what act any such offence consisted, the Judges have invariably refused to inquire into the causes of the contempt.

In Lord Shaftesbury's case (1675), Lord C. J. Rainsford said, "He is in execution of the judgment given by the Lords for contempt—this Court has no jurisdiction of the cause and therefore the form of the Return is inconsiderable."

In Brass Crosby's case (1771), De Grey, C.J., said, "When the House of Commons adjudge anything to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment in consequence an execution, and no court can discharge or bail a person that is in execution by the judgment of any other court."

In Flower's case (1779), Lord Kenyon said, "We were bound to grant this *Habeas corpus*, but, having seen the return to it, we are bound to remand the defendant to prison, because the subject belongs *ad aliud examen*."

In the case of Burdett v. Abbott (1810), 14. East 147, Lord Ellenborough said, "I agree with Wright and Dennison, Justices (giving their decision in Lord Shaftesbury's case), in thinking that it need not appear what the contempt was." And again, p. 150: "If a commitment appeared to be for a contempt of the House of Commons generally I would, neither in the case of that Court, nor of any other of the Superior Courts, inquire further."

More recently, in Hobhouse's case (1819), Lord C.J. Abbott said, "It is incompetent for this Court to question the privileges of the House of Commons on a commitment for an offence which they have adjudged to be contempt of those privileges. We cannot enquire into the forms of the commitment even supposing it to be open to objection on the ground of informality."

In the case of the Sheriff of Middlesex (1840): The judges were unanimously of opinion that the return—setting out a warrant declaring the offence to be a contempt and breach of the privileges of the House of Commons—was good and that they could not enquire into the matter of the contempt.

And again in the case of *Gosset v. Howard*, 2nd February, 1847, Mr. Baron Parkc, in delivering the judgment of the Court of Exchequer Chamber on the validity of the Speaker's Warrant, which recited only that the House of Commons had ordered that Thomas Burton Howard be sent for in custody of the Serjeant-at-Arms, and which the Court of Queen's Bench had held to be insufficient, said, "The House had an undoubted right to order the plaintiff into custody, and to have him brought to the bar, and had also as much right over its own forms as any other Court has; it must be presumed that this is the right form, being that which it has chosen to adopt."

Question—That paragraph III., as verbally amended, stand part of the Report—put and resolved in the affirmative.

Paragraph IV., as follows, read.

IV. That as respects the forms and usages to be adopted by your Honorable House in carrying out its decisions and orders—Your Committee would refer to the 34th section of the Constitution Act, which enacts that the Legislative Council and Legislative Assembly shall prepare and adopt standing rules and orders, for providing for the manner in which such Council and Assembly shall be presided over, in case of the absence of the President or Speaker respectively, and for the mode in which such Council and Assembly shall communicate (*then follow provisions solely relating to legislation*); and for the due publication of all proposed proceedings in such Council and Assembly, and generally for the conduct of all business and proceedings in the said Council and Assembly severally and collectively, such rules being approved by the Governor shall become binding, and of force; and until such standing rules shall be adopted, resort shall be had to the rules, forms, and usages, of the Imperial Parliament of Great Britain and Ireland, which shall be followed so far as the same may be applicable to the proceedings of the said Council and Assembly respectively.

In execution of the power given by this section, the Legislative Assembly adopted Standing Rules and Orders which, on the 28th July, 1857, were approved by His Excellency the Governor; and by the 285th of these Standing Rules and Orders it is declared "that in all cases not herein provided for, resort shall be had to the Rules, Forms, Usages, and Practice of the Commons House of Parliament of Great Britain and Ireland, which shall be followed so far as the same may be applicable to this Assembly and not inconsistent with the foregoing Rules."

That it would appear from the occasions to which some of the Standing Orders were meant to apply that they are not restricted to, or adjuncts of, legislation solely, but relate to the privileges which the Legislature were by section 35 empowered to claim; and on this construction it would follow that the Legislative Assembly possesses the same forms and usages for carrying out its decisions and enforcing obedience to its orders as are possessed by the House of Commons.

Mr. Gavan Duffy moved—That this paragraph stand part of the Report.

Debate ensued.

Paragraph agreed to with verbal amendments.

Paragraph V. read.

V. That on the 11th March last a Committee was appointed by your Honorable House to inquire into and report upon certain charges made public on the occasion of the trial in the Supreme Court of Alexander v. Jones, so far as it related to the conduct and character of members of your Honorable House; this Committee, on the 6th of April last, brought up their report finding that an association had been formed for the purpose of promoting the interests of the holders of land under certificates, which adopted as one of its modes of action (of which some of its members were cognizant) the bribing and undue influencing of Members of Parliament, and that Mr. Hugh Glass and Mr. John Quarterman, being so cognizant, actively aided in the administration of the said fund. These resolutions were adopted by your Honorable House on the 27th of April last, and on the same day your Honorable House adjudged that Hugh Glass and John Quarterman were guilty of a contempt and breach of the privileges of this House, and ordered that they be taken into the custody of the Serjeant-at-Arms, in order that they might be brought to the Bar of your Honorable House on the following day, and that Mr. Speaker should issue his warrant accordingly. On the 28th April, Mr. Hugh Glass and Mr. John Quarterman were brought to the Bar, and, having been heard, were ordered to retire in custody of the Serjeant-at-Arms; and on the 29th April, your Honorable House resolved that Hugh Glass and John Quarterman, having been guilty of a contempt and breach of privileges of this House, be for their said offence committed to Her Majesty's goal, Melbourne, and that Mr. Speaker should issue his warrant accordingly. The form of warrant used was that employed by the House of Commons in the case of the Sheriff of Middlesex.

Agreed to with verbal amendments.

Paragraph VI., as follows, read.

VI. Mr. Glass and Mr. Quarterman were, under such warrant, conveyed to the gaol, at Melbourne, by the Serjeant-at-Arms, and delivered to the custody of the keeper.

On the 30th April, a writ of *Habeas Corpus* was issued on behalf of Mr. Glass, returnable before His Honor the Chief Justice on the following day, when, after argument, and being assisted by Mr. Justice Barry and Mr. Justice Williams, His Honor the Chief Justice decided that the Legislative Assembly are exercising limited powers, and upon that ground, and upon that ground alone, he considered that the warrant should contain averments, or state the grounds which show that the powers have not been exceeded, and declared the prisoner was entitled to his discharge.

On the 6th May, Mr. Quarterman was also released from custody by Mr. Justice Barry on a return to a Writ of *Habeas Corpus* obtained by him on the day previous, no opposition being made thereto.

Mr. Gavan Duffy moved—That the words "no opposition being made thereto," be omitted.

Question—That the words proposed to be omitted, stand part of the paragraph.  
Committee divided.

Ayes, 2.  
Capt. Mac Mahon  
Mr. Macgregor

Noes, 6.  
Mr. Gavan Duffy  
Mr. Berry  
Mr. Mackay  
Mr. Wilson  
Mr. G. P. Smith  
Mr. Higinbotham.



And so it passed in the negative.

Mr. Macgregor moved—That the following words be inserted in the place of the words omitted, viz.: "no appearance having been made in support of the Return."

Question—That the words proposed to be inserted in the place of the words omitted be so inserted—put and resolved in the affirmative.

Paragraph, as amended, agreed to.

Paragraph VII. read.

VII. The point thus decided is, that in the exercise and enforcement of the powers possessed alike by the House of Commons and the Legislative Assembly, the latter are not entitled to use the same form of process as the former. In other words, that the Speaker's warrant, in the case of a commitment by the House of Commons for contempt and breach of privilege, is treated as emanating from a Superior Court, while in the case of a commitment by the Legislative Assembly for the same offence it is treated otherwise.

Mr. Higinbotham moved as an amendment that the word "is" be omitted from line one, with a view to insert instead thereof the words "appears to be."

Question—That the word proposed to be omitted stand part of the paragraph—put and negatived.

Question—That the words proposed to be inserted in the place of the word omitted be so inserted—put and resolved in the affirmative.

Paragraph, as amended, agreed to.

Mr. Fellows here took his seat.

Question proposed—Paragraph VIII.

1. Your Committee, therefore, find as a fact, that not only the right of commitment for contempt, but also the auxiliary right of proceeding in cases of commitment by means of a warrant, in general terms, has been exercised by the House of Commons as one of its undoubted powers down to the year 1845.

2. Your Committee conclude that this right now belongs, together with the other powers and privileges of the Commons House of Parliament, to the Legislative Assembly of Victoria.

3. Your Committee are of opinion that the possession and the uncontrolled exercise of these powers and privileges are conditions essential to the usefulness as well as the honor of a Parliament charged, as ours is, with the function of making laws for Victoria, in all cases whatsoever. "I think," said Sir R. Peel, speaking of the rights of the House of Commons, "the possession of these privileges goes to the essence of our power to render public service." Upon another occasion the same statesman observed with reference to one of the privileges of the House of Commons: "If the House of Commons cannot possess this privilege" (free publication) "without being held liable to be questioned or controlled by a court of law, not only would I retire from the performance of my public duties as a member of this House, but I think the House of Commons would take a fitting course in closing its doors rather than by continuing with maimed and mutilated powers to hold out the semblance of a popular institution without the power of discharging any one of the functions which belong to such an Assembly." These observations, in which your Committee fully concur, apply with equal force to the Legislative Assembly of Victoria, as it is constituted by our fundamental law.

4. Your Committee are unable to recommend your Honorable House to "suspend" the exercise of any of these high and necessary powers, in deference to the recent decision of His Honor the Chief Justice of the Supreme Court. "On" the contrary, your Committee respectfully advise your Honorable House at once to assert its lawful authority, by re-committing and retaining in custody the two persons who have been improperly "discharged," and by checking, if necessary, by force, on the present and any future occasion, any attempt to interfere with or defeat the right of the Legislative Assembly to imprison for contempt at its own discretion unquestioned and unquestionable by any inferior tribunal.

5. Provided the powers and privileges of the Legislative Assembly are preserved by exercise in undiminished force, your Committee would not recommend that any person should be prohibited by your Honorable House from bringing an action in a Court of Law with the view of obtaining the decision of a Court of Appeal upon the question of the right of the Legislative Assembly to commit upon a warrant in general terms. The Legislative Assembly might, in accordance with certain precedents in the history of the House of Commons, allow a Court of Law to judge of this privilege, and if such were the pleasure of your Honorable House, Her Majesty might be requested, by petition, to refer the question to the Judicial Committee of the Privy Council, by whose decision, if it should be adverse, the Legislative Assembly would, in that event, be, of course, bound.

First, second, and third clauses read and agreed to with verbal amendments.

These clauses to form one clause.

Mr. McKean took his seat.

Clause four be omitted with a view to insert instead thereof the words—

"While, however, in the opinion of your Committee, your Honorable House should not admit the right of any Court of Law in the Colony to decide without appeal on the propriety of those forms of warrants of commitment which your Honorable House through its highest officer may, from time to time, in accordance with the practice of the House of Commons, in the year 1855, think proper to use, your Committee would venture to suggest that your Honorable House should now, in the public interest, abstain from adopting any measures that might probably result in a conflict with the Supreme Court; and your Committee respectfully recommend that with the view of asserting and defending the privileges of your Honorable House, the question raised in the case of Mr. Hugh Glass as to the proper form of commitment by your Honorable House should as speedily as practicable be made the subject of appeal to the ultimate legal tribunal available to the Colony."

Mr. Gavan Duffy moved as a further amendment—That the word "suspend" be omitted from line 1, clause 4, with a view to insert thereof the word "abandon."

Debate ensued.

Question—That all the words in line 1 to the word "suspend," proposed to be omitted, stand part of the clause—put.

Committee divided.

Ayes, 6.

Mr. Gavan Duffy,  
Mr. Berry,  
Mr. Mackay,  
Mr. Higinbotham,  
Mr. McKean,  
Mr. G. P. Smith,

Noes, 5.

Mr. Macgregor,  
Mr. MacPherson,  
Mr. Wilson,  
Mr. Fellows,  
Capt. MacMahon.

And so it was resolved in the affirmative.

Question—That the word "suspend," proposed to be omitted, stand part of the clause—put.

Committee divided.

Ayes, 3.

Mr. Higinbotham,  
Mr. G. P. Smith,  
Mr. Berry.

Noes, 8.

Mr. MacPherson,  
Mr. Macgregor,  
Mr. Wilson,  
Mr. McKean,  
Mr. Fellows,  
Capt. MacMahon,  
Mr. Mackay,  
Mr. Gavan Duffy.

And so it passed in the negative.

Question—That the word proposed to be inserted in the place of the word omitted be so inserted—put and resolved in the affirmative.

Committee adjourned until to-morrow, at two o'clock.

THURSDAY, 13TH MAY, 1869.

*Members present :*

MR. CASEY, in the Chair ;

Mr. Higinbotham,  
Mr. Gavan Duffy,  
Mr. MacPherson,  
Mr. Macgregor,  
Mr. Berry,  
Mr. Wrixon,  
Capt. MacMahon,

Mr. MacDonnell,  
Mr. Mackay,  
Mr. Fellows,  
Mr. G. P. Smith,  
Mr. Aspinall,  
Mr. McKean,  
Mr. Wilson.

Mr. MacPherson moved—That all the words from “On” in line 3 to “discharged” in line 5 be omitted.

Question—that the words proposed to be omitted stand part of the clause—put.

Debate ensued.

Committee divided.

Ayes, 4.

Mr. Higinbotham,  
Mr. Berry,  
Mr. McKean,  
Mr. Mackay.

Noes, 9.

Mr. G. P. Smith,  
Mr. Macgregor,  
Mr. MacPherson,  
Mr. Aspinall,  
Mr. Wilson,  
Capt. MacMahon,  
Mr. Fellows,  
Mr. MacDonnell,  
Mr. Gavan Duffy.

And so it passed in the negative.

Mr. Wrixon took his seat.

Mr. G. P. Smith moved, That the following words be inserted in the place of the words omitted—“Your Committee have considered the advisability of re-arresting the two persons who have been discharged, pending an appeal to the Privy Council but have arrived at the conclusion “that” such proceeding would bring the matter within the prohibition contained in the sixth section of the *Habeas Corpus Act 31 Car. 2 C. 2.*”

Mr. Fellows moved, as an amendment—That all the words after the word “that” in line 3 of the proposed amendment, be omitted, with a view to insert instead thereof the words “as the question is one of law and depends entirely on the proper interpretation of Acts of Parliament, it is the duty of all persons to submit to the decision until it is reversed in due course of law.”

Debate ensued.

Question—That the words proposed to be omitted stand part of the proposed amendment—put.

Committee divided.

Ayes, 7.

Mr. G. P. Smith  
Mr. Macgregor  
Mr. MacPherson  
Mr. Wrixon  
Mr. Wilson  
Capt. MacMahon  
Mr. Gavan Duffy.

Noes, 7.

Mr. Higinbotham  
Mr. Mackay  
Mr. Aspinall  
Mr. Fellows  
Mr. McKean  
Mr. MacDonnell  
Mr. Berry.

And the numbers for the Ayes and for the Noes being respectively 7, or equal, Mr. Casey gave his vote for the noes, and declared the question to be negatived.

Question—That the words proposed by Mr. Fellows to be inserted in the place of the words omitted, be so inserted—put and negatived.

Mr. Wrixon then moved—That the following words be inserted in the place of the words omitted, viz. :—

“As the difficulty now raised depends entirely on the proper construction of an Act of Parliament, they are unable to recommend your Honorable House to, at present, assert the privilege of arresting on a warrant in general terms—essential as is, in the opinion of your Committee, such a privilege to the proper independence of Parliament. And bearing in view the remarkable moderation and forbearance which the House of Commons has shown in modern times in avoiding an open conflict with the courts of law in vindication of its privileges, while another resource was available, your Committee are of opinion that your Honorable House might wisely refrain from asserting that privilege till such time as the judgment of the Chief Justice shall have been subjected to review by the ultimate court of appeal.”

Question—That the words proposed by Mr. Wrixon to be inserted in the place of the words omitted, be so inserted—put.

Committee divided.

Ayes, 9.

Mr. G. P. Smith,  
Mr. Macgregor,  
Mr. MacPherson,  
Mr. Aspinall,  
Mr. Wrixon,  
Mr. Wilson,  
Mr. Fellows,  
Mr. MacDonnell,  
Capt. MacMahon.

Noes, 4.

Mr. Higinbotham,  
Mr. Gavan Duffy,  
Mr. Berry,  
Mr. McKean.

And so it was resolved in the affirmative.

Question—That the words “Your Committee have considered the advisability of re-arresting the two persons who have been discharged, pending an appeal to the Privy Council, but have arrived at the conclusion that as the difficulty now raised depends entirely on the proper construction of an Act of Parliament, they are unable to recommend your Honorable House to, at present, assert the privilege of arresting on a warrant in general terms,—essential as is, in the opinion of your Committee, such a privilege to the proper independence of Parliament. And bearing in view the remarkable moderation and forbearance which the House of Commons has shown in modern times in avoiding an open conflict with the courts of law in vindication of its privileges while another resource was available, your Committee are of opinion that your Honorable House might wisely refrain from asserting that privilege till such time as the judgment of the Chief Justice shall have been subjected to review by the ultimate court of appeal—stand part of clause 4 of Mr. Higinbotham’s motion—put and resolved in the affirmative.

That your Committee are unable to recommend your Honorable House to abandon the exercise of any of these high and necessary powers, in deference to the recent decision of His Honor the Chief Justice of the Supreme Court.

Your Committee have considered the advisability of re-arresting the two persons who have been discharged, pending an appeal to the Privy Council, but have arrived at the conclusion that, as the difficulty now raised depends entirely on the proper construction of an Act of Parliament, they are unable to recommend your Honorable House to, at present, assert the privilege of arresting on a warrant in general terms—essential as is, in the opinion of your Committee, such a privilege to the proper independence of Parliament. And bearing in view the remarkable moderation and forbearance which the House of Commons has shown in modern times in avoiding an open conflict with the courts of law in vindication of its privileges, while another resource was available, your Committee are of opinion that your Honorable House might wisely refrain from asserting that privilege till such time as the judgment of the Chief Justice shall have been subjected to review by the ultimate court of appeal, stand as paragraph IX. of the Report—put and resolved in the affirmative.

Capt. Mac Mahon moved—That all the words after the word “and,” in the 6th line of clause 4, to the end of the clause be omitted.

Question—That the words proposed to be omitted stand part of the Report—put and negatived.  
Committee adjourned until Tuesday next, at two o'clock.

TUESDAY, 18<sup>TH</sup> MAY, 1869.

*Members present :*

MR. CASEY, in the Chair ;

Mr. Berry,  
Mr. Gavan Duffy,  
Mr. Aspinall,  
Mr. G. P. Smith,  
Mr. Higinbotham,

Mr. MacPherson,  
Mr. MacDonald,  
Mr. Wilson,  
Mr. Macgregor,  
Mr. Fellows.

Mr. Macgregor moved, as a further amendment, That clause 5 of Mr. Higinbotham's motion be omitted with a view to insert instead thereof the words—

X. Your Committee therefore recommend that the necessary steps be promptly taken for a reference of the question to the Judicial Committee of the Privy Council.

Question—That the words proposed to be omitted stand part of the question—put and negatived.

Debate ensued.

Mr. Macgregor, by leave, withdrew his amendment.

Mr. Fellows moved, That the words “and your Committee recommend that the necessary steps be forthwith taken for obtaining such review.

Question—That the words proposed to be inserted be so inserted—put.

Debate ensued.

Committee divided.

Ayes, 8.  
Mr. Macgregor,  
Mr. MacPherson,  
Mr. Wilson,  
Mr. Aspinall,  
Mr. Fellows,  
Capt. MacMahon,  
Mr. MacDonnell,  
Mr. Gavan Duffy.

Noes, 2.  
Mr. Higinbotham,  
Mr. Berry.

And so it was resolved in the affirmative.

Resolved—That the Chairman report to the House.