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The important case of Kieley vs. the Speaker and other members of the Assembly, on a charge of false imprisonment, and to which the public have been so long looking forward with that anxiety which such a question naturally awakened, has at length been disposed of. It will be remembered that the defendants in this action put in a plea of demurrer, grounded on privilege, on which argument was some time since had in the Supreme Court, but on which the decision of the Judges had been suspended. On Saturday (the day on which the term of the Court closed) it was announced by one of the Judges that their opinions in the case would be delivered in the course of that evening, and the Court was consequently crowded to excess, so great was the desire of the public to ascertain what the decision would be to which the learned Judges might arrive in this highly important matter. The Judgment was delivered in the order in which we may lay them before our readers—the hon. the Chief Justice and Mr. Justice Desbarres' contain antagonist opinions and views to those entertained by Mr. Justice Lilly—but, being the majority, their decision, which is confirmatory of the privileges claimed by the House of Assembly, consequently prevails.

MR. JUSTICE LILLY'S JUDGMENT.

This case is one of the greatest importance that has ever been brought under the consideration of this Court, and its intricacy concerns the liberty of the subject, and directly involves a question as to the extent of the Royal Prerogative, and the powers of the House of Assembly. I am happy to have had an opportunity of hearing the argument of counsel on both sides, in which much learning and research has been displayed, and every point which could make in favour of either party has been urged with very great ability. The question is, in a great measure, the same with one upon which I have already given my opinion, and with an earnest desire to arrive at a just conclusion, I have well weighed the arguments which have been used, and have given the matter the best consideration of which I am capable.

This was an action of trespass for assault and battery, and false imprisonment. The first count is for breaking and entering plaintiff's dwelling house, on the 6th day of August, and seizing and imprisoning him for the space of four days. The third count is for assaulting and imprisoning him generally; and the second and fourth counts for the battery. The defendants have pleaded, first, the general issue; and secondly, a special justification. That of the first defendant is to the effect—That long before and at the time when &c. a Colonial Legislature of our Sovereign Lady the Queen was held in St. John's, in the Island of Newfoundland, and was then and there in sitting, and that the defendant at the time when, &c., was, and yet is, a member of the House of Assembly of the Island aforesaid, and the Speaker thereof. That at the time when, &c., to wit, on the 6th day of August, the said House of Assembly being sitting, one John Kent, being then a member of the said House of Assembly, complained to the said House that the plaintiff on the day and year aforesaid, had made use of insulting and threatening language and gestures towards the said John Kent, so being a member of the said House of Assembly, in reference to him in his office as member of the said House. The plea then recites the proceedings of the House upon this complaint, and the resolution of the House that the Speaker should issue his warrant, &c. That the defendant, as Speaker, in pursuance of the said resolution and order, and according to the laws, customs and usages of the House of Assembly, did issue his certain warrant, in manner and form as set forth in the plea, and then states the arrest of the plaintiff under the warrant—his being brought before the House—the proceedings of the House thereon—a subsequent resolution and order, that the plaintiff, by his conduct before the House, having committed a gross impropriety and aggravation of the previous contempt, be handed over by the Serjeant-at-Arms to the Sheriff of Newfoundland, and the Gaoler of Her Majesty's Gaol for this district; and that the said defendant, as Speaker, should issue his order to the said officers as a warrant for this proceeding;—the defendant, as Speaker, as aforesaid, in pursu-

ance of the order and resolution, and according to the laws, customs and usages of the said House of Assembly, did, on the ninth day of August, in the year aforesaid, issue his certain warrant under his hand and name, as such Speaker, in the form set forth in the plea under which the plaintiff was lodged in the gaol of this district. The justification of the other defendants is the same, with the exception of their being members of the Assembly only, and excepting also the defendant Walsh, who justifies as the messenger and servant of the House, and acting under the orders of the Serjeant-at-Arms. To this justification the plaintiff has demurred generally, and the defendants have joined in demurrer.

The first and main question then which is to be considered is, whether the House of Assembly do by law possess the power of punishing summarily by a commitment for contempt, as in the nature of a breach of their privileges,—and secondly, if they do lawfully possess such a power, whether they have rightly exercised it in the present instance.

In support of the first point, and in proof of the existence in the Assembly of the power in question, it is argued that they possess it, in the first place, from analogy to the Imperial House of Commons; that because the House of Commons lawfully exercises such a power, the House of Assembly here is necessarily invested with it. A very brief consideration, however, of the nature and constitution of the Imperial Parliament, its origin and history, its powers as well of supreme jurisdiction as of supreme legislation, not only within the United Kingdom, but as fully and extensively as over the remotest portion of the British Dominions, will convince any one of the futility of analogy which the General Assembly of this Island bears to it. Parliament is governed by its own laws and customs, the *Lex et consuetudo Parliamenti*, which is not with the common law, and is part of the law of the land, and as such the Judges are bound to take judicial notice of it; but this law is peculiar to Parliament alone, and is inapplicable to any other body on earth. The powers & privileges which both Houses of Parliament possess and enjoy, have been exercised by them from time immemorial; they have been confirmed and recognized by statutes and judicial precedents for centuries. The power of the two Houses of Parliament to commit or contemn, was shown in the celebrated case of *Burdett versus Abbott*, to which so much reference has been made, to be founded on immemorial usage,—to be part of the powers and privileges of Parliament statutorily assigned to both Houses upon their separation—to be incident to Parliament as being the highest Court of Record in the Realm, and to be established and recognized by numerous precedents in all ages of our history; and although Lord Eilenborough says that such a power was essentially inherent in Parliament as the *supreme legislature of the Kingdom*, and the exercise of it in that case was held to be authorised and justified by the law of the land, and consequently that such a power was not (as was argued) in contravention of Magna Carta and the 28th of Edward the third, which declare, that no man shall be imprisoned but by the lawful judgment of his peers, or by law of the land.

The Assembly of this Island was called into existence by the King's Commission to the Governor, under which it was established only six years ago. Its authority is limited to the enacting, in conjunction with the Governor and Council, of laws and ordinances not repugnant to, but as near as may be agreeable to the laws of England. It is therefore, by no means the Supreme Legislature of this Island, for then it would exclude the authority of Parliament, which is absurd. Its jurisdiction, moreover, is circumscribed, and does not extend over the whole Island, for a late enactment, was disallowed by his Majesty, because it assumed to exercise a controul over part of the Island, not within its jurisdiction. The number of members composing the House of Assembly consists of but 15, and of these, 6 form a quorum. The qualification as well of the electors, as of the members, does not require the possession of any amount of property, real or personal, whatever. All persons who occupy for twelve months any description of dwelling, are hereby qualified to be electors; and the only qualification prescribed for members is the occupancy for two years of the same description of tenement. I do not remark upon these circumstances invidiously, but merely to shew the

inapplicability, in every respect, of the argument drawn from analogy.

The analogy here argued to exist between our House of Assembly and the British House of Commons, has also been invariably denied in the most express terms by every authority upon the subject which I have met with. Mr. Chitty, in his able treatise upon the Prerogative of the Crown, and the relative duties and rights of the subject, says, "With respect to the Colonial Assemblies, it is most important that any idea that they stand on the same footing as the English House of Commons, should be excluded from consideration. The principles upon which the English Parliament rests its rights, powers and privileges, cannot be extended to a provincial Assembly. Parliament stands on its own laws, the *lex et consuetudo Parliamenti*, which are founded on precedents and immemorial usage. The plantation Assemblies derive their energies from the Crown, and are regulated by their respective charters and usages, and by the common law of England."

It is therefore quite out of the question to appeal to the law and custom of Parliament as the rule by which we are governed in this case, and there is therefore no weight in the argument that upon the establishment of a General Assembly here, under the King's Commission, the *lex et consuetudo Parliamenti*, which is peculiar to Parliament alone, thereby necessarily comes into force here. So far was this from being allowed or admitted by the late Majesty that His Majesty was advised to withhold his assent from certain Acts of the Assembly, for the reason that they contained the words "*In Colonial Parliament assembled*." In Canada, it is true, the Legislature is styled a Parliament, but it is by the words of an express Act of the Imperial Parliament, under which the Legislature was erected, and all Acts there run in the name of the Queen, by and with the advice and consent of the Legislative Council and Assembly.

The power of commitment for contempt is contended for, in the second place, upon the ground that a like power is exercised by the Assemblies of other colonies. To prove this, references have been made in the Journals of those Assemblies to instances of commitment for contempts. It would, however, have been more satisfactory to my mind if some legal adjudication upon the subject of the exercise of such a power had been cited; we should then have seen the origin and nature of it, and whether founded, as it is not unlikely, on some local enactment, or supported upon usage recognized by the Courts of Law,—for whether this practice prevailing in those Colonies be conformable to law or not, cannot clearly appear, unless it be shewn to be recognized by judicial precedent. The instances which have been referred to are also all of very recent occurrence, in colonies where Legislatures have existed for half a century and upwards. In some of the colonies, I am aware that an Act for the trial of disputed elections, in imitation of the Grenville Act, is in force, and the power of compelling the attendance of parties and witnesses, is given by such Act. But whether the usages of such Assemblies be legal or not in the colonies where they prevail, they are clearly not binding here, and have no legal force whatever in this country. As well might the House of Assembly here claim to exercise the power of electing the members of the Council, because other Assemblies have had power by their Charters to do so, or prescribe to appoint certain officers who, in other colonies, are by usage appointed by the Assembly. No local Act in force in such colonies can have any validity in this country, neither can the peculiar usage and practice of their legislatures be set up as having any bearing upon this case.

A third argument in support of the power of the Assembly to punish summarily for contempt by imprisonment, is drawn from the King's Commission, and the Royal Instructions accompanying it, under which the Local Legislature was erected.

This Commission was issued in the year 1832, and empowers the Governor, by and with the consent of the Council and House of Assembly, to make laws for the good government of the Colony, not repugnant to, but as near as may be agreeable to the laws of England. But there are no terms in this Commission or the Royal Instructions which confer upon the House of Assembly

like powers and privileges with those enjoyed by the House of Commons, or such as are exercised by the Assemblies of other Colonies; neither is there any grant contained therein, that they are to be governed by the law and custom of Parliament. No powers of jurisdiction are conferred upon the Council and Assembly conjointly or severally, and no appeal lies to either of them from this Court, or any other Court in the Island. But if the terms of the Charter were even more express in favour of the power claimed by the Assembly, still the King cannot, in virtue of his prerogative, take away any of the rights of his subjects by common law. The King cannot change or dispense with the common law, by his Charter, so he cannot dispense with Magna Carta, which is incorporated into the common law.—*2nd Rolls Reports*, 115. The King cannot by his grant alter the law in any respect, as he cannot give power to any to oust another of his land.—*2nd Rolls Reports*, 164. The King cannot erect a new Court, with a new jurisdiction, without an Act of Parliament, and if it be erected, the jurisdiction ought to be expressed, for nothing omitted will be within such jurisdiction.—*4th Institute*, 200.—nor can he by Charter or Commission alter the common law.—*Com. Digest. Prerogative*.—If the King, as the fountain of Justice, grant to a Court power to fine and imprison, it shall be a Court of Record.—*1 Salheld*, 200;—but the King has not granted to the House of Assembly the power to fine and imprison, and it clearly is not a Court of Record, nor is it any where called a Court at all.

As to the argument which was used, that the Assembly is a Court of Record, for that the Journal or Book of the Clerk is a Record, it is laid down *Hobbes* 110 as to what shall be an Act of Parliament, that if the Journal of Parliament be variant from the Record, it shall not prejudice, for that is no record.—*Com. Digest. Title Parliament*—which militates somewhat with the dictum of my Lord Coke, that the book of the Clerk of the House of Commons is a Record, as it is affirmed by the Statute 6, Henry 8.—but that Statute merely requires that a Member departing from the Parliament, shall have his license to depart recorded in the Clerk's Book. The House of Commons, however, is part of a Court of Record and of the highest Court of Record in the Kingdom, upon somewhat better authority than the Statute 6, Henry 8.

In the special plea of justification it is alleged, that the Defendant issued his Warrant in pursuance of the order of the House of Assembly, and for the execution thereof, and according to the laws, usages and customs of the said House of Assembly. This seems to be the essence of the justification. Now as to the laws, usages, and customs of the House of Assembly, if any such exist and have the force of law, this Court would certainly be bound to recognise them,—but it has not been shewn to us in what "Rolls," "Records," and "Precedents," these laws, usages, and customs, are to be found, and I have not been so fortunate as to meet with any treatise in which they are contained.

It is admitted, however, by the Counsel for the Defendants, that there is no Statute or Charter which in terms grants to the House of Assembly the power of imprisonment; and as to the laws, usages, and customs, mentioned in the plea, no such things are pretended to be set up; for that the Assembly has been only 6 years in existence and that this is the very first instance, in which they have ever assumed to exercise the power of imprisonment. In the case of *Crane, v. Ramsey*—*2 Ventris* 7—the Court of Common Pleas in pronouncing judgment, unanimously agreed that "that which there is neither practical custom, judicial precedent, or Act of Parliament to warrant, may well be judged to be against law"—and each any thing be more opposite when applied to the present case.

The only remaining ground then upon which this power of commitment by the Assembly is contended for, as lawful, is that of reason and necessity. When we speak, however, of necessity as being a lawful justification of a proceeding which is not only in open variance with the known and established laws of the land and the ordinary course of justice, but which deprives the subject of his freedom, in direct contravention of the Magna Carta and the 28 Edward 3, those great bulwarks of the liberties of Englandmen, whereby it is en-

ted that no man shall be imprisoned but by the lawful judgment of his peers, or by the laws of the land, and that no man shall be taken or imprisoned without being brought in to answer by due process of the law, it must be such a strict legal necessity as, in the absence of all other modes of redress, and to prevent a failure of justice, will warrant the dispensing with the established laws of the land. But if by the term necessity is intended that such powers are fit and expedient and in the ordinary sense of the word necessary, it may, perhaps, afford a good reason why they should be made the subject of a legislative enactment, but does not meet the necessity here set up. Our duty is to declare what the law is, not what it ought to be, *judicere non jus dare*, and I trust the day may never come when British Courts of Justice will sanction any infraction of the positive laws of the land, from motives or arguments of expediency.—We have indeed reason to rejoice that the rights and liberties of Englishmen are secured by laws fixed and certain, and defined by landmarks well known and established,—that they do not rest upon such an uncertainty as would justify any man or body of men in tampering with those rights and liberties whenever they might think it fit and expedient for them so to do. The argument used by Lord Ellenborough in *Burdett vs. Abbott*, (and which has been used here) that independent of recognised precedents, the power of commitment is essentially inherent in parliament from its very nature and constitution, is applicable to Parliament alone, and we must bear in mind that the Court there did not decide the question before them upon this ground, but upon Law as ancient and binding upon *Magna Carta*—upon precedent and usage, recognised and practised, time out of mind.

If however it be conceded that the House of Assembly do by lawful authority possess the power of punishing summarily by imprisonment for contempt, as in the nature of a breach of their privileges, and as exercised in the manner complained of in this action;—whether they possess it as a Court of Record, or as inherent in them by analogy to the House of Commons—it would seem to be a necessary consequence that this Court cannot interfere in any manner with the exercise of such a power. That although the facts which constitute the alleged contempt should be set forth on the Record, this Court is entirely precluded from determining whether those facts do or do not amount to a breach of their privileges.—In short, that they are the sole and only judges of their privileges and of what shall be a breach of them. That this is part of the power which the Assembly consider to belong to them, is evidenced by the fact of their having arrested and imprisoned myself, as being guilty, in their opinion, of a contempt and breach of their privileges, for having in the performance of my duty as a Judge of this Court, discharged the present Plaintiff when brought before me under a *Habeas Corpus*, and to which circumstance I now allude for this purpose only.—It follows then that this Court, which is styled the *Supreme Court*, and is the highest Court of Judicature in the Island—which by the express words of an Act of the Imperial Parliament possesses within this government all the powers of the Courts of Queen's Bench, Common Pleas, Exchequer, and High Court of Chancery in England,—from which no appeal lies to any other body in this Island, but only to the Queen in Council—the jurisdiction of which is more extensive than that of the Assembly, and which was erected and established years before the Assembly came into existence is not, in any case where the Assembly may construe a particular transaction to be a breach of their privileges, and such transaction may come incidentally before the Court upon a plea of justification, to exercise any judgment whatever upon the question whether the facts set forth in the justification amount to a breach of the privileges of the Assembly or not.—It amounts to this, that the Assembly may construe any thing which they consider a breach of their privileges, to be such, and punish for the same by imprisonment, and that the matter shall be wholly unappealable and unredressable in any other court or place.

This is a doctrine to which I by no means subscribe; but, if it could be established, the imprisonment of one or all of the Judges of this Court, for any judicial act of theirs, which the Assembly might construe to be a contempt, would be just as much within the scope of their authority as the imprisonment of any private individual.

In the present case the Plaintiff, who is not a Member of the Assembly, was in the first instance arrested for a constructive contempt only. The Warrant set out in the pleadings does not positively recite his having been adjudged guilty of a contempt, but his having been guilty of certain violent acts and expressions the tendency of which were to deter, &c. The individual Member of the Assembly aggrieved, if he sustained any wrong, was clearly capable of obtaining the most ample redress in the ordinary Courts of Law, and there was not, in fact, any necessity whatever for the Assembly taking the law into their own hands, and determining what punishment should be inflicted upon the party.

As to the Warrant which is said, in the pleadings, to have been issued according to the laws, customs, and usages of the House of Assembly, but which however forms its own precedent, I am of opinion it is invalid. It is not, I think, entitled to be considered as the process of a Court of Justice, and as it does not happen to be the Warrant of the Speaker of the House of Commons, I know not by what rule of reason it can be claimed to come under the law applicable, peculiarly to the

Imperial Parliament—2d Inst. 52, 591, H. P. C. 94. It is the first instance of the exercise of such an authority by a novel and limited jurisdiction, and as it operates to deprive a subject of his liberty, it must be construed strictly.

The Counsel for the Defendants has argued throughout, not so much what the powers, or rather to use the words of the plea, what the laws, usages, and customs of the House of Assembly are, as what they ought to be; but the province of this Court is to pronounce the law not to supply its deficiency. It is said the Assembly cannot be presumed capable of assuming or exercising any privileges or powers, which are not reasonable or proper, but I say, that if the principle be once admitted that they can, without the sanction of a sufficient law or usage, assume the right of exercising any one power which is contrary to the common law, then are they equally entitled to dispense at pleasure with every established law for the protection of the liberties and properties of her Majesty's subjects. The language of Lord Denman in the case of *Stockdale vs. Hansard*, 7 Car. & P., in which the House of Commons attempted to justify the exercise of a privilege which might be prejudicial to the character and reputation of individuals, is very strong, and as it is quite applicable to the present case, I cannot do better than quote it. Denying to the House of Commons the lawful right to exercise any such privilege, he proceeds "and I wish to say so now most emphatically and distinctly, because I think that if on the first opportunity that arose in a Court of Justice, on a point of this kind being stated, the points were left unsatisfactorily explained, the Judge who sat in that Court might become an accomplice to the destruction of the liberties of the country, and expose every individual in it to a tyranny to which no man ought to be called upon to submit." The law gives no authority to apprehend any one upon the command of the King, even though it be in the King's presence, 2 Inst. 180, and there are in the state very many bodies, politic and corporate, from the Sovereign downwards, of equal importance with the House of Assembly, but not one of them can justifiably do any act by which the liberty, reputation, or property of the poorest subject in the realm may be restrained or injured, without the clear and express authority of Law,—and I do not see how the House of Assembly is to be excepted from the general rule. It is not because the House of Assembly is a component part of a subordinate Legislature that it is for that reason entitled to usurp the functions of the Courts of Law and to dispense at pleasure with the established forms, and set at nought the settled course of justice.

Nothing is so abhorrent to the spirit of our Constitution and Laws, as arbitrary and undefined power, and when for the first time such a power as deprives the subject of his liberty,—of his birthright, trial by jury,—and of the benefit of appeal, is claimed to be exercised in hostility to *Magna Carta* and the Common Law, so I say with Mr. Hargrave, in speaking of the exercise of a like power by the House of Lords "the legal existence of such power should be made to appear by proofs, and sanctions of the most irrefragable kind."

I am far from denying to the House of Assembly, relatively with the other branches of the Legislature, the existence of certain privileges, as incident to their condition, but surely if it be deemed desirable or expedient that they should possess further powers and privileges, and especially vindictive ones, they have in their own hands the means of legally acquiring them. It is quite competent for the Assembly, by an enactment in which the different Branches of the Legislature may concur to define and establish by law such powers and privileges; and in doing so, regard could be had to the peculiar constitution of our Legislature, and the vast difference between it and the Imperial Parliament, and the Legislatures of other Colonies, founded upon a very different franchise.—The laws and rules of Parliament as modified by the exigency of the case might then, in the terms of the recommendation of the Secretary of state, be adopted for the conduct of the Council and Assembly. I see nothing derogatory to the Assembly in this course, for many of the highest privileges of Parliament have from time to time been established, defined, and confirmed, and others again abolished by Legislative Enactments;—and it is very probable that a great part of their peculiar powers originated in statutes or ordinances having the force of law, but of which all traces have long since been lost. Wilkins *Laws Anglo Saxon* Dwaris 105 and 106.

But as respects the case under consideration, since the power assumed by the Assembly is not claimed to be exercised upon the foundation of any statute, usage, or precedent,—since it is in direct opposition to the Common Law, and the process by which it has been carried into effect is in my judgment invalid, I am of opinion that the plea of justification has not been made out and that the Plaintiff should have judgment on the demurrer.

MR. JUSTICE DESBARRES' JUDGMENT.

This is an action of Trespass and False Imprisonment. This case, therefore, comes before the Court for Judgment in the like points as the case of *Burdett and Abbott*, reported in 14 East.

First—Whether the House of Assembly of this Colony in General Assembly convened has any authority to commit in case of contempt as for a Breach of Privilege?

Secondly—Whether (supposing the House to have such authority in general) that authority has been well

executed by the authority in question?—that is, whether the warrant stated in the plea of the defendants discloses a sufficient ground of commitment in this instance?

And thirdly—Whether the means which have been used for the execution of the Speaker's warrant are in law justifiable?

The remaining points raised on the record, as regards certain of the defendants being subordinate to and controlled by the same principle of law, will therefore be observed upon hereafter.

It appears to me quite unnecessary at present to enter largely into the luminous report of the case of *Burdett vs. Abbott*, and *Brass Crosby's* case, decided in Easter Term, 11. Geo. 3d, after the very able comments made by the Counsel at the Bar on the language of the Learned Judges who presided on those occasions. The Judgment which followed in the case of *Burdett vs. Abbott* recognises the principle therein contended for—That the House of Commons in Parliament convened had power to commit for contempt as for Breach of Privilege, and that the Speaker's warrant in that form, unattended with certain common law ceremonial, was admitted to be a sufficient authority in a Court of Law. After carefully perusing that important case, I have to express my unqualified concurrence in the then Judgment of the Court. The question to be determined at present is—Does the House of Assembly of this Colony possess the power to imprison for contempt as for a breach of privilege?

In the course of the argument used by Lord Ellenborough in the case of *Burdett and Abbott*, and Lord de Grey and the Judges in *Brass Crosby's* case, I find some very cogent reasoning concerning the privileges necessary to and inherent in such a body as the House of Commons, and that of imprisoning for contempt being one;—and Coke, 4 In. 23, mentions the power of committing by such a Body (as the House of Commons) to be legal. Now, by investigating into the constitution and functions of the House of Assembly, we may discover whether there be any analogy between it and the House of Commons, and what attributes are essential to enable it to work that part which is assigned to it as a co-ordinate Branch of the Legislature.

The polity of this Colony is composed of a Governor, Council, and House of Assembly, a form of Government for many years in operation in other of Her Majesty's Colonies. The Legislature is convoked by Royal Authority. The power of enacting Laws for their own government is recognised by the Imperial Parliament by the Act of 2 & 3 Wm. the 4th, cap. 78. The Act of the Colonial Legislature passed accordingly, altering and amending the last mentioned Act. In regard to the general exercise of the Legislative functions by the Assembly, so constituted, it is only necessary to look into the important volume of Colonial Enactments which are almost hourly cited in our Courts of Law. The House of Assembly claims the exclusive right to adjudicate in cases of disputed elections, &c. Blackstone, (Com. 103,) in describing the polity of H. M. Colonies, observes, "The form of Government in most of them is borrowed from that of England;" and describes their House of Assembly as "their House of Commons."

I feel I cannot express my sentiments with more satisfaction to myself, in regard to such a Body as the House of Commons, than by adopting the following passages from Lord Ellenborough's Judgment in the case of *Burdett vs. Abbott*:—"The privileges that belong to them accrue at all times to have been, and necessarily must be, inherent in them; independent of any precedent it was necessary that they should have the most complete personal security; to enable them freely to meet for the purpose of discharging their important functions, and also that they should have the right of self-protection,—I do not mean merely against acts of individual wrong, for poor and impotent indeed would be the privilege of Parliament if they could not also protect themselves against injuries and affronts offered to the aggregate body, which might prevent or impede the full and effectual exercise of their Parliamentary functions." And again,—“The right of self protection implies as a consequence a right to use the necessary means for rendering such self-protection effectual. Independently, therefore, of any precedent or recognised practice on the subject, such a body must, a priori, be armed with a competent authority to enforce the free and independent exercise of its own proper functions, whatever those functions might be. On this ground it has been, I believe, very generally admitted in argument that the House of Commons must be and is authorized to remove any immediate obstruction to the due course of its own proceedings. But this mere power of removing actual impediments to its proceedings would not be sufficient for the purposes of its full and effectual protection; it must also have the power of protecting itself from insult and indignity, whenever offered, by punishing those who offer it.” And again:—"And is not the degradation and disparagement of the two Houses of Parliament in the estimation of the Public, by contemptuous libels, as such an impediment to their efficient acting with regard to the Public as the actual obstruction of an individual Member by bodily force in his endeavour to resort to the place where Parliament is holden; and would it consist with the dignity of such bodies, or, what is more, with the immediate and effectual exercise of their important functions, that they should wait the comparative tardy result of a prosecution in the ordinary course of Law for the vindication of their privileges from wrong and insult? The necessity of the case would, therefore, upon principles of natural reason, seem to require that such bodies constituted for such purposes and exercising such functions as they do, should possess the powers which the history of the earliest times shews that they have in fact possessed and used."

In corroboration of these sentiments my attention has been drawn to the recent and not unfrequent exercise of the power of committal, as for a Breach of Privilege, by the Houses of Assembly of New Brunswick, Canada and Prince Edward Island. These Colonies have the same form of Government as Newfoundland, and their Representative Branches are of course correspondingly constituted; yet their power of committing under such circumstances has never been declared illegal, nor even questioned in a Court of Law, and which would not likely be the case, particularly at New Brunswick, where we may be found as numerous, respectable, and talented a Bar as in any of Her Majesty's Colonies. I am therefore of opinion that such Bodies—which I understand to mean Bodies constitutionally exercising Supreme Legislative functions of the nature of the British House of Commons, and convoked by Royal Authority—must have the power of committing as for a

Breach of Privilege necessarily inherent in them independent of any precedent. General conveniency must always outweigh partial inconvenience. If it be warranted by Common Law it cannot be shewn to be illegal by any consequences drawn from *Magna Charta*, and I will now examine into the law on the subject.

It has been argued at the Bar, that the House of Assembly cannot claim by prescription or immemorial custom any power of Commitment, and that no act of Parliament has expressly given it to them, and that therefore it cannot legally belong to them. It is quite unnecessary for me to follow the argument of Counsel as to the discovery and settlement of this Colony by English subjects, and to decide, according to his view, what laws shall be admitted and what rejected—at what time and under what circumstances. The fact that the general Common Law of England does operate throughout this Colony, is clearly manifested by reference to the proceedings of our Supreme Court, where may be learned that the Laws of the Land are liable to frequent and most sudden changes in their course from analogous points adjudicated differently in the superior Tribunals of England, and to which our Colonial Tribunals are required to conform. In the present case, for example, where the Counsel at the Bar argued for ten hours at least upon adjudicated cases in England, it would have been unnecessary trouble, had not the principle or Common Law of England extended to the Colony. Notwithstanding so much care and attention has been bestowed upon this important case, the strongest and most advantageous position, in my humble opinion, yet remains unnoticed. By an Act of the Imperial Parliament, now in force, this Court is made to determine according to the *Laws of England*, so far as the same can be applied. I must now occupy a few minutes in offering some observations on the applicability of the Statute Law of England to the subject under consideration.

By the 32d Geo. 3d, cap. 46, His Majesty, under the Great Seal, may institute a Court of Criminal and Civil Jurisdiction at Newfoundland. This Act describes the Jurisdiction and manner of proceeding of the Court in Criminal cases to be "in the same manner as plea is holden of crimes and misdemeanors in that part of Great Britain called England." And also with "full power and authority to hold plea, as hereinafter mentioned, of all suits and complaints of a civil nature arising within the Island of Newfoundland, and in the Islands and Seas aforesaid, and on the Banks of Newfoundland; which Court shall determine such suits and complaints of a civil nature according to the Law of England, as far as the same can be applied to suits and complaints arising in the Islands and places aforesaid." The 2d Section empowers the Governor, with the advice of the Chief Justice, to institute Surrogate Courts, with full power, &c., which Courts shall respectively be Courts of Record, and shall determine according to the *Law of England*, as far as the same can be applied to suits and complaints arising in the Islands and places aforesaid. The 3rd Section describes the mode of proceeding in the Supreme and Surrogate Courts. The next Act is the 49 Geo. 3rd, cap. 27, entitled "An Act for establishing Courts of Judicature in the Island of Newfoundland" &c., has reference to the Act passed 32d Geo. 3rd, cap. 46, which by subsequent acts was continued until the 25th March, 1809; states it is expedient that the provisions of the said act should be amended, and like Courts of Judicature made perpetual;—enacts that His Majesty by Commission under the Great Seal, may institute a Court of Criminal and Civil Jurisdiction to be called the Supreme Court of Judicature of the Island of Newfoundland. Pleas of all crimes and misdemeanors committed, &c., in the same manner as plea is holden of such crimes and misdemeanors in that part of Great Britain called England; and also with full power and authority to hold plea in a summary way of all suits and complaints of a civil nature arising within the Island of Newfoundland, &c.; which Court shall determine such suits and complaints of a civil nature according to the *Law of England*, as far as the same can be applied to suits and complaints arising in the Islands and places aforesaid.

2d Sec.—The Governor may appoint Courts of Civil Jurisdiction called Surrogate Courts, to be Courts of Record, and shall determine according to the *Law of England*, as far as the same can be applied to suits and complaints arising in the Islands and places aforesaid.—The next, 5 Geo. 4, cap. 67, entitled "An Act for the better administration of Justice in Newfoundland and for other purposes." By virtue of this Act, the Royal Charter constituting the present Supreme Court issued the 19th Sept., 1825. The Act sets out,—“Whereas it is expedient to make further provision &c.”

Sec 21st—Repeals so much of the Act passed in the 49 Geo. 3, as relates to the Courts thereby instituted, &c., and directs all the records, &c., [That part of the act 49, Geo. 3, which directs all suits and complaints of a civil nature shall be determined according to the Law of England, is left in operation.]

The act of the 5 Geo. 4, cap. 67, is continued by 10 Geo. 4, cap. 17.

Continued by 5 Geo. 4, cap. 67—5 Geo. 4, cap. 68.—10 Geo. 4, cap. 17—which are continued in force by the 2d and 3d Wm. 4, cap. 78, containing the following enactment:—"Whereas it is expedient the said Acts be further continued in force until the same shall be repealed, altered or amended by any act or acts that may for that purpose be made by His Majesty, with the advice and consent of any House or Houses of General Assembly which His Majesty may at any time see fit to convoke within the said Colony of Newfoundland."

2d Sec.—And whereas by virtue of divers acts of Parliament divers duties are now payable to His Majesty within the said Island of Newfoundland.

Be it therefore enacted that when or so soon as any House or Houses of General Assembly shall have been convoked by His Majesty from among the Inhabitants of the said Colony, and shall have actually met for the despatch of the Public business thereof, &c.

I will now conclude with a few observations on our present Judicature Act. By the 5th Geo. 4th, Cap. 67, his Majesty may institute a Supreme Court of Judicature, which shall be a Court of Record, and shall have all Criminal and Civil Jurisdiction whatever in Newfoundland, "as fully and amply to all intents and purposes as his Majesty's Court of King's Bench, Common Pleas, Exchequer, and high Court of Chancery in England have, or any of them hath." In this manner the Jurisdiction of the Supreme Court is given to it by analogy. Now as the Court of King's Bench can take no cognizance of a co-

of Commons for a breach of its privileges, it appears to me the Supreme Court of Newfoundland can take no cognizance of a commitment by the House of Assembly for a breach of its privileges. There is no Writ suitable to such a contingency, there is no Writ in the King's Bench, for it has no Jurisdiction to enter into the merit of a commitment by the House of Commons for Contempt, as for breach of its Privilege.

I am of opinion that the warrant in this case discloses sufficient ground of commitment, and an order to these officers to execute it, the justification for the persons acting under it, is made out.

I am also of opinion that an action would not be against the members of the House of Assembly for anything done as such,—and that the Speaker in issuing the warrant which he has done by order of the House, did so act in the character of a member of the House—judgment must be entered accordingly for defendants.

MR. CHIEF JUSTICE BOURNE'S JUDGMENT.

In the able and elaborate arguments on this Demurrer not only the great leading case of *Burdett v. Abbott* and all the numerous authorities on Parliamentary Privileges therein cited and comprehended, with numerous others to be found in *Hargrave*, *Hatsell*, and the Reports, were passed in review before us, but the Journals of other Colonial Assemblies were resorted to, to exemplify their practice, and First Principles were discussed to elucidate the nature of Legislative Bodies in general. Speculative opinions may vary as to the comparative advantage or danger of endowing Legislators with the power to imprison without having recourse to the medium of the ordinary Legal Tribunals; whilst some may consider this necessary, (especially to the Representatives of the People,) for their self-protection, their freedom of Debate, their full ability to inquire and collect facts and materials previous to discussion; others may feel alarm that any body of men, (even though elected and trusted by a majority of their constituents,) should be the arbiters in their own case, and may fear lest so vast a power should not on all occasions be exercised in a manner sufficiently discreet and temperate. Leaving topics like these to be weighed by those who make and can alter Laws, Judges, (who can do neither) have only to consider and interpret what the Law is.

The Arguments addressed to us, and the Pleadings, as they appear on the Demurrer-book, present in substance three propositions for our consideration.

1st.—Has the House of Assembly of Newfoundland the power to arrest and to commit for contempt or for any insult and obstruction offered to any of its members?

2d.—How far can this Court inquire into the circumstances attending the exercise of such power?

3d.—Do the Pleas of Justification sufficiently show that this power was regularly exercised?

The first is the main and essential question: for, unless the House is entitled to such a privilege, no caution in the mode of applying it nor care in pleading it could avail.

The privilege of the House of Commons of Great Britain to commit for contempt must be acknowledged to be completely established by the case of *Burdett v. Abbott*, 14, East, and indeed this was conceded by the Plaintiff's Counsel in his argument; but he contended that the House of Commons possessed this power by reason of its high antiquity, its supreme authority, and its right founded on a supposed statutable assignment, to none of which the House of Assembly lay any claim. LORD ELLENBOROUGH in his judgment in *Burdett v. Abbott*, no doubt asserts that when the Houses of Lords and Commons began to sit apart, they each had the same privileges as the two together possessed before, and that these were statutablely assigned to each, and he argues that each having the privileges of the whole, and these privileges being included in the Law and customs of Parliament, and the Law and customs of Parliament being part of the Law of the Land, that the provisions of Magna Charta, which says that no man shall be imprisoned but by the lawful judgment of his Peers or by the Law of the Land, were not violated when a person was imprisoned by the latter alternative and without trial by Jury. But though his Lordship states this prescriptive right in the Commons, he distinctly affirms that independently of any privilege or recognized practice, such a Body must *a priori* be armed with competent authority to enforce the free and independent exercise of its own proper functions and to remove impediments and obstructions and to protect itself from indignity and insult, wherever offered, by punishing those who offer it. And again he says, "the power of the House to commit for contempt stands upon the ground of reason and necessity, independent of any positive authorities on the subject."

It is true, when his Lordship speaks of such a Body, he is speaking of the House of Commons, and not of a Colonial Legislative Assembly, which, though supreme in its sphere, must be admitted not to be equal but subordinate to the British Parliament, and subject to its controul, if it chooses to exercise it: but, if this was a sufficient distinction to remove the authority of his words from the present case, then would the Privy Council, through the mouth of Mr. BARON PARKE, not have decided that "they were very opposite to the inquiry as to the powers of a Colonial Assembly." The Assembly in question was that of Jamaica; and its privileges were examined and acknowledged in the case of *Beaumont v. Barrett* by its own Judges, whose decision was confirmed by the Privy Council. 1 Moore Rep. Privy Council, p. 59. (June 1835.) The Journals of the Assemblies of New

Brunswick, Nova Scotia, and P. E. Islands, whose Legislative Assemblies can boast of no great antiquity and who own no higher powers than that of Newfoundland, show the exercise of such a privilege, and not only do the Journals of Jamaica furnish similar examples, but that Island supplies a very recent instance in the case above-cited of the Privilege of a Colonial Assembly being exerted, being disputed, being examined into, being scrutinized on appeal, and being confirmed. The House of Assembly of Jamaica is certainly of older origin than that of Newfoundland: but the decision does not turn upon antiquity or usage, and the House of Assembly here has Legislative powers at least as great as those of the House of Assembly in Jamaica, inasmuch as in Jamaica the Acts of the Legislature were directed by its Royal Founder to be (as near as conveniently may be) agreeable to the Law and Statutes of England, and in this Island they are to be 'not repugnant' to the same.—The House of Assembly of Jamaica indeed possessed precedents of commitments for contempt previous to the committal of Mr. BEAUMONT, and there had been an act passed by the whole Legislature in 1728 adopting such laws of England as had been in use in that Island, amongst which was certainly the power of imprisoning persons for contempt of the House of Assembly. "On this ground" (says Mr. BARON PARKE) "the legality of the power in question might be supported, if it did not belong" (adds his Lordship) "to the Assembly, as we" (namely, the Judicial Committee of the Privy Council) "think it did by Law, as a necessary incident to its Legislative character."

His Lordship goes on to remark that such a power may have been occasionally abused, and to express his belief that the wholesome controul and influence of public opinion will prevent the revival of such an evil, and to point out one circumstance attending a Colonial Legislature, which does not belong to the Imperial Parliament, viz: that "if they do carry their power to the extent of interfering with the rights and liberties of the Queen's subjects, and to objects which do not fairly come within their province, the Supreme Legislative authority in England may repress or put an end to it."

2d.—It seems to me that this Court can inquire into the circumstances attending the exercise of such power, in order to learn and ascertain whether there be a question of privilege or not: for, if it could not do this, a mere suggestion of Privilege on the Record in any case might oust it of its jurisdiction, and a Plaintiff of his remedy, where in reality there is no legitimate privilege of the House was invaded: and for this course the case of *Sackville v. Lezard* decided by LORD DENMAN affords an authority.

3d.—The Pleas of justification seem to me sufficient to raise this question of 'Privilege or no Privilege,' and to show in the present instance that the power was duly exercised, so far as to bar this Court from further inquiry. The Justification states that the House was sitting, that one of the Members made complaint to the House of insulting and threatening language and gestures used towards him by the Plaintiff in reference to his office as member of the House, that the House entertained the complaint, examined Witnesses and adjudged Plaintiff guilty of a breach of Privilege likely to deter Members for acting freely and independently, that the House resolved that the Speaker should issue his Warrant to the Sergeant-at-arms to bring Plaintiff to the Bar of the House, that the Speaker did so issue his Warrant, that the Sergeant-at-arms did so bring Plaintiff, that Plaintiff was required to apologize, refused, and was committed, &c. All these proceedings are set out at great length, and seem quite sufficient to show that the power in this instance was regularly exercised, according to the forms of the House of Assembly. Those forms this Court cannot prescribe, nor can it direct its process. On the principle that *omne ius in se minus*, if this House has inherent in it the same power of committing that the House of Commons has, it has the like right to adjudicate upon Contempts, and is not to be obliged, any more than the House of Commons first to pray the aid of a Court of Law to investigate the alleged Contempt, and then itself resume the case into its own hands, and commit. On this point also, as well as on the main question, the case of *Beaumont v. Barrett*, where a Colonial Assembly examined and adjudicated on a breach of its own privileges appears perfectly applicable. Judgment for Defendants.

Arrived on Tuesday, the Brigs Mary and Porcia from Hamburg, Juno from Cadiz, and Ann Johnston from Leghorn, yesterday.

Departures—In the Amanda, for Cork, Mr. Stabb, Mr. and Mrs. Goodridge, Mr. Wheatly. In the Amity, for Cork, Mr. Morris, Mr. M. Stewart, Mr. Edward Morris.

DR. CARSON begs to inform Speculators in Grist Mills, Breweries, Distilleries, &c. &c., that there are several convenient spots at either side of the river running through his lands of Billies for such Establishments, not more than a mile from the flourishing town of St. John's, to the centre of which there is an excellent road. The command of water is powerful, plenty of superior building stone convenient, and a contract may be made for an adequate supply of PEAT COAL, on moderate terms.

Billies, January 1.
ALL Persons having claims against the FACTORY are requested to leave their Accounts with the SUPERINTENDENT, at the Establishment of J. JENNINGS, Secretary.

ON SALE.

BY
Baine, Johnston & Co.
Ex Brig ANN JOHNSTON from Leghorn:—
500 Barrels Superfine Flour
1200 Bags fine Biscuit
330 Half do. do. do.

January 3.

A few sets of Exchange,
Payable in London,—apply to
SAMUEL CODNER.

January 3.

Provisions.

JUST RECEIVED
Per Brigs MARY and PORCIA from Hamburg,
And for Sale at the Stores of
Lawrence O'Brien,

Bread, 1st 2d and 3d quality
Pork, Butter, Flour
Oatmeal, Gritts

Also,
25,000 Brick which will be sold reasonable from the above Vessels.
January 3.

A FEW HUNDRED POUNDS
Exchange on London
For Sale by
LAWRENCE O'BRIEN.

January 3.

PROVISIONS.

THOS. & J. BROCKLEBANK
OFFER FOR SALE,
The Cargo of the ARIEL from Hamburg,

500 Barrels superfine Silesian Flour
warranted of superior quality
789 Bags Biscuit, 1st & 2d quality
100 Barrels prime Mess Pork.
January 3.

BY
EWEN STABB,

1000 Sacks prime Hamburg Barley & Oats.
50 Firkins do. do. Butter
100 Barrels Oatmeal & Pease
12 Do. English Hams 1 cwt, in each
Superfine Flour
Souchong Tea
4000 Lbs. Butt & Shoulder Leather
Deck Boots, Shoes
Tar, Tinware
Paints, Red Lead, Blue &c. &c.
January 3.

BY
M'BRIDE & KERR,

Per Cora and Olinda from Copenhagen,
3400 BAGS Bread, No. 1, 2, & 3
1600 Barrels Superfine Flour
50 Half-barrels Ditto Ditto
300 Firkins Butter
50 Barrels prime Beef
40 Ditto ditto Pork.

Per Avalon, from DEMERARA,
64 Puncheons very prime Molasses;
Per Jane, from NEW YORK,
100 Barrels prime Pork.
ALSO,
60 Casks fresh Porter.
November 15.

FOR SALE,

The fine, fast-sailing
Schr. Margaret,
5 years old; Burthen per Register
66 Tons; well found in Sails,
Rigging, &c.—Apply to
Messrs. NEWMAN & Co.
November 15.

For Charter.

To any port in the Mediterranean,
The fine coppered British built
BRIG
MARY,
S. GUNTON, master, Burthen 170 Tons.—Apply to
LAWRENCE O'BRIEN.
January 3.

TO BE LET.

On a Building Lease for 31 Years.
A PIECE of GROUND, measuring in front
383 feet, immediately in rear of the Cot-
tage lately occupied by Judge Brenton. For par-
ticulars apply to
MICHAEL MEEHAN.
October 10.

ON SALE.

THE SUBSCRIBER

Offers for Sale
THE FOLLOWING ARTICLES,
PRINCIPALLY IN BOND,
And in Barter, for either Large Shore Cullage
Fish, Cod Oil, or Blubber, at Market Prices,
or Cash in June next.—Credit, over £50
to approved Purchasers,

300 Very prime Westphalia Hams
50 Dozen Champagne, pink and pale
45 Ditto old brown Sherry Wine, in barrels and
cases of 3 dozen each
20 Pipes French and Spanish Red Wines
14 Hhds. ditto ditto
12 Pipes Marsella and Teneriffe Wines
14 Qr.-Casks ditto
20 Hhds. Cognac Brandy
2 Qr.-casks ditto
2 Hhds. Hollands Geneva.
N. B.—Purchasers wishing to let any part of
the above articles lie over in bond until next
Spring, can do so, at their risk, free of Ware-
house Rent.

Dec. 27.

JOHN HOWLEY.

Just Received

Per LADY TURNER from GREENOCK,
AND FOR SALE BY
McKellar & McWilliam,
Sroch Fresh Porter in Tierres
Ditto do. Ale in hlds. & do.
ALSO ON HAND,
Hamburg Prime Butter
Ditto first quality Bread
Copenhagen Superfine Flour.
Dec. 20. 3w.

AT THE STORES OF
Parker & Gleeson,

Ex AGNES, THOMAS BAKER, and MEDIUM from
Hamburg,
1500 BAGS 1st, 2d, and 3d quality
BREAD
300 Bls. & Half-bls. OATMEAL & GRITTS
150 Do. do. do. Superfine and Fine FLOUR
100 Barrels PEASE
10 Barrels Pot BARLEY
5 Barrels Pearl BARLEY
10 Barrels Split PEASE
300 Firkins Prime BUTTER.
A few Barrels prime Hamburg Beef
10,000 Bricks,
And, a few Cases Glassware.
ALSO,
30 Puns. best retailing MOLASSES.
AND IN BOND,
30 Hhds. Fayal Madeira Wine
20 Almudes London Particular
20 Qr.-Casks Bronte Madeira (which can be
recommended as a very superior Table Wine)
1000 Hogsheads COALS.
October 25.

Eligible investment for Capital in
Freehold Property.

THE Premises situated in Duckworth Street,
opposite the Stone Buildings, in the occu-
pancy of Michael Murphy and others, will be sold
if applied for before 20th November next.—Con-
ditions and terms can be known on application to
BULLEY, JOB & Co.
October 18.

NOTICES.

THE Partnership subsisting between the un-
designated, since the First day of January
1837, under the Firm of JAMES FERGUS & Co.
has this day been dissolved by mutual consent,
JAMES FERGUS having withdrawn. All debts due
to and by the above late firm will be received and
paid by THOMAS GLEN and EUGENIUS HARVEY,
who will continue the Business on the same Pre-
mises, under the firm of GLEN & HARVEY.
JAMES FERGUS,
THOMAS GLEN,
EUGENIUS HARVEY.
(Signed.)

Witnesses,
KENNETH MCLEA,
WALTER GRIEVE.
St. John's, Newfoundland,
17th December, 1838.

ALL Persons having claims for as-
sistance rendered in saving the
Schooner HOPE on the 25th November
ast, are hereby requested to send in their
accounts to
M. STEWART & Co.
December 20.



Poets' Corner.

STANZAS.

ON CONTEMPLATING THE HEAVENS AT MIDNIGHT.

BY MRS. CORNWELL, BARON WILSON.

Tell me, ye brightly burning orbs of night,
Now sailing down on our terrestrial sphere,
Into our realms the spirit takes its flight
When it throws off its mortal covering here?
Does it take wing and to the skies aspire,
And breathe forth songs in heaven to some melodious lyre?

Tell me, fair Moon, that sail'st in ether's space,
Art thou some world, peopled with creatures freed,
Where sunder'd spirits shall meet face to face,
Lifting the veil of immortality?
Shall we there know, ev'n as on earth we're known,
And shall Affection clasp hearts made again its own?

Tell me, ye clouds, that o'er the azure heaven
Float like the streamers of some bridal vest,
When by the breeze of midnight ye are driven,—
Say, do ye canopy some place of rest,
Some peaceful bourn to which the spirit flies
To join the lost of earth, and re-unite its ties?

Ye cannot answer! and it is not meet
Such mysteries should I be sol'd us. Why should man,
With blinded gaze and travel-wearied feet,
Attempt to penetrate what angels scan
With heavenly eyes but dimly?—let him bend,
Adoring what nor sense nor sight can comprehend!

THE CLOCKMAKER.

The Clockmaker; or, the Sayings and Doings of Samuel Slick, of Slickville.

[SECOND SERIES.]

The former publication of Sam Slick taught us to expect a volume in which sound sense and great information should be commingled with much original humour and striking national characteristics. And we are fortunately not disappointed, as a good many bursts of laughter extorted from us whilst reading these pages, and a sense that we have reaped much instruction from them now that we have finished, bear that testimony which we wish to convey to others. Of the Clockmaker, the author truly says—"I have sketched him in every attitude and in every light, and I carefully note down all our conversations, so that I flatter myself, when this tour is completed, I shall know as much of America and Americans as some who have even written a book on the subject."

But we shall leave the more political views for graver consideration, and endeavour to illustrate the work by examples, which are as entertaining as they are intelligent. The present tour is presumed to be from Windsor to Shelburne, and so along the coast to Halifax; and during its continuance the Clockmaker is made to make good use of the time by communicating his pertinent and dry remarks to his fellow traveller, on the voluntary system, elective councils, slavery, smuggling, Canada, sham-pooping the English, and twenty other matters of no small interest, which though often treated jocularly, are always treated significantly and ably.

The chapter on the voluntary system is capably illustrated by the opposed characters and practices of a hypocritical pontiff and a truly religious pastor; and Slick shines in all his glory as a sketcher of the first, who happens to be an old schoolfellow of his, whom he finds most comfortably and luxuriously "located" in one of the new cities lately built in Alabama. He prefaces the story of his visit with an axiom of general application.

"Whoever has the women is sure of the men you may depend-squire; openly or secretly, directly or indirectly, they do contrive, somehow or another, to have their own way in the end, and though the men have the reins, the women tell 'em which way to drive. Now, if ever you go for to canvas for votes, always canvas the wives, and you are sure of the husbands."

Having introduced himself to Ahab Meldrum's richly furnished and beautiful house the following narrative describes the rest:—

"I was most darned to sit down on the chairs they were so splendid, for fear I should spile 'em. There was mirrors and vases, and lamps, and pictures, and crinkum crankums and notions of all sorts and sizes in it. It looked like a bazar a'most it was fill'd with such an everlastin' sight of curiosities. The room was considerable dark, too, for the blinds was shot, and I was skaid to move for fear o' doin' mischief. Presently in comes Ahab, slowly sailin' in, like a boat droppin' down stream in a calm, with a pair o' purple slippers on, and a figured silk dressin' gown, a carryin' a'most a beautiful-bound book in his hand. May I presume, says he, to inquire who I have the onexpected pleasure of seeing this mornin'? If you'll gist throw open one of them are shutters, says I, I guess the light will save us the trouble o' axin' names. I know who you be by your voice any how, tho' its considerable softer than it was ten years ago. I'm Sam Slick, says I,—what's left o' me at least. Verily, said he, friend Samuel, I'm glad to see you; and how did you leave that excellent man and distinguished scholar, the Rev. Mr. Hopewell, and my good friend your father?

Is the old gentleman still alive? If, so he must now be ripe full of years as he is full of honours. Your mother, I think I heerd, was dead—gathered to her fathers—peace be with her!—she had a good and a kind heart. I loved her as a child; but the Lord taketh whom he loveth. Ahab, says I, I have but a few minutes to stay with you, and if you think to draw the wool over my eyes, it might perhaps take you a longer time than you are at thinking on, or than I have to spare;—there are some friends you've forgot to inquire after tho',—there's Polly Bacon and her little boy. Spare me, Samuel, spare me my friend, says he, open not that wound afresh, I beseech thee. Well, says I, none o' your nonsense then; shew me then into a room where I can spit, and feel to home, and put my feet upon the chairs without admagin' things, and I'll sit and smoke and chat with you a few minutes; in fact, I don't care if I stop and breakfast with you, for I feel considerable peckish this mornin'. Sam says he, atakin' hold of my hand, you were always right up and down, and as strait as a shingle in your dealin's. I can trust you, I know, but mind,—and he put his fingers on his lips,—mum is the word;—by gones are by gones,—you would'nt blow an old chum among his friends, would you? I scorn a nasty, dirty, mean action, says I, as I do a nigger. Come, foiler me, then, says he; and he led me into a back room, with an uncarpeted painted floor, furnished plain, and some shelves in it, with books, and pipes, and cigars, pig-tail, and what not. Here's liberty-hall, said he, chew or smoke, or spit as you please; do as you like here; we'll throw off all resarve now; but, mind that cursed nigger; he has a foot like a cat and an ear for every keyhole—don't talk too loud. Well, Sam, said he, I'm glad to see you too, my boy; it puts me in mind of old times. Many's the lark you and I have had together in Slickville, when old hunks—(it made me start, that he meant Mr. Hopewell, and it made me feel kinder dandry at him, for I wouldn't let any one speak disrespectful of him afore me for nothin', I know.)—when old hunks thought we was abed. Them was happy days—the days o' light heels and light hearts. I often think on 'em and think on 'em, too, with pleasure. Well, Ahab says I, I don't gist altogether know as I do; there are some things we might gist as well a'most have left alone, I reckon; but what's done is done, that's a fact. Ahem! said he, so loud, I looked round and I seed two niggers bringin' in the breakfast, and a grand one it was,—tea, and coffee, and Indgian corn, and cakes, and hot bread, and cold bread, fish, fowl, and flesh, roasted, boiled, and fried; preserves, pickles, fruits; in short, every thing a'most you could think on. You needn't wait, said Ahab, to the blacks; I'll ring for you when I want you; we'll help ourselves. Well, when I looked round and seed this critter alivin' this way, on the fat o' the land, up to his knees in clover like, it did pose me considerable to know how he worked it so cleverly, for he was thought always, as a boy, to be rather more than half under-baked, considerable soft-like. So says I, Ahab, says I, I calculate your'e like the cat we used to throw out of minister's garret winder, when we was aboardin' there to school. How so, Sam? said he. Why, says I, you always seem to come on your feet somehow or another. You have got a plaguy nice thing of it here; that's a fact and no mistake (the critter had three thousand dollars a-year); how on airth did you manage it? I wish in my heart I had taken up the trade o' preachin' too; when it does hit it does capitally, that's sartin. Why, says he, if you'll promise not to let on to any one about it, I'll tell you. I'll keep dark about it, you may depend, said I. I'm not a man that can't keep nothin' in my gizzard, but go right off and blart out all I hear. I know a thing worth two o' that I guess. Well, says he, it's done by a new rule I made in grammar—the feminine gender is more worthy than the neuter, and the neuter more worthy than the masculine: I gist soft sawder the women. It taint every man will let you tickle him; and if you do, he'll make faces at you enough to frighten you into fits; but tickle his wife, and it's electrical—he'll laugh like any thing. They are the forred wheels, start them and the hind ones foller of course. Now it's mostly women that tend meetin' here; the men-folks have their politics and trade to talk over, and what not, and ain't time; but the ladies go considerable regular, and we have to depend on them, the dear critters. I gist lay myself out to get the blind side o' them, and I sugar and gild the pill so as to make it pretty to look at and easy to swallow. Last Lorin's day, for instance, I preached on the death of the widder's son. Well, I drew such a pictur of the lone watch at the sick bed, the patience, the kindness, the tenderness of women's hearts, their forgiving dispositions—(the Lord forgive me for sayin' so, tho', for if there is a created critter that never forgives, it's a woman; they seem to forgive a wound on their pride, and it skins over and looks all heal'd up like, but touch 'em on the sore spot ag'in, and see how cute their memory is)—their sweet temper, soothers of grief, dispensers of joy, ministerin', angels.—I make all the virtues of the feminine gender always.—then I wound up with a quotation from Walter Scott. They all like poetry, do the ladies, and Shakespere, Scott and Byron, are amazin' favourites; they go down much better than them old-fashioned staves o' Watts.

'Oh woman, in our hour o' ease,
Uncertain, coy, and hard to please,
And variable as the shade
By the light quivering aspen made;
When pain and anguish wring the brow,
A ministering angel thou.'

If I didn't touch it off to the nines it's a pity. I never heerd you preach so well, says one, since you was located here. I drew it from natur', says I, a squeezein' of her hand. Nor never so touchin', says another. You know my moddle, says I, lookin' spooney on her. I fairly shed tears, said a third; how often have you drawn them from me? says I. So true, says they, and so natural, and truth and natur' is what we call eloquence. I feel quite proud, says I, and considerable elated, my admired sisters,—for who can judge so well as the ladies of the truth of the description of their own virtues? I must say I felt somehow kinder, inadequate to the task, too, I said,—for the depth and strength and beauty of the female heart passes all understandin'. When I left 'em I heerd 'em say, ain't he a dear man, a feelin' man, a sweet critter, a'most a splendid preacher; none o' your mere moral lecturers, but a rael downright genuine gospel preacher. Next day I received to the tune of one hundred dollars in cash, and fifty dollars produce, presents from one and another. The truth is, if a minister wants to be popular, he should remain single, for then the galls all have a chance for him; but the moment he marries he's up a tree; his flint is fixed then; you may depend it's gone goose with him arter that; that's a fact. No, Sam; they are the pillars of the temple, the dear little critters. And I'll give you a wrinkle for your horn, perhaps you ain't got yet, and it may be some use to you when you go down atradin' with the benighted colonists in the outlandish British provinces. The road to the head lies through the heart. Pocket, you mean, instead of head, I guess, said I; if you don't travel that road full chisel it's a pity. Well, says I, Ahab, when I go to Slickville I'll gist tell Mr. Hopewell what a'most a precious, superfine, superior darn'd rascal you have turned out; if you ain't No. 1, letter A, I want to know who is, that's all. You do beat all, Sam, said he; it's the system that's vicious, and not the preacher. If I didn't give 'em the soft sawder they would neither pay me nor hear me; that's a fact. Ave you so soft in the horn now, Sam, as to suppose the galls would take the trouble to come to hear me tell 'em of their corrupt natur' and fallen condition; and first thank me, and then pay me for it? Very entertainin' that, to tell 'em the worms will fatten on their pretty little rosy cheeks, and that their sweet plump flesh is nothin' but grass, flourishin' to-day, and to be cut down, withered, and rotten to-morrow, ain't it? It ain't in the natur' o' things; if I put them out o' conceit of themselves, I can put them in conceit o' me; or that they will come down handsome, and do the thing ginteel, its gist impossible. It warn't me made the system, but the system made me. The voluntary don't work well. System or no system, said I, Ahab, you are Ahab still, and Ahab you'll be to the end o' the chapter. You may deceave the women by the soft sawder, and yourself by talkin' about systems, but you won't walk into me so easy, I know. It ain't pretty at all. Now, said I, Ahab, I told you I wouldn't blow you, nor will I. I will neither speak o' things past nor things present. I know you wouldn't, Sam, said he; you were always a good feller. But it's on one-condition, says I, and that is, that you allow Polly Bacon a hundred dollars a-year; she was a good gail and a decent gail when you first know'd her, and she's in great distress now to Slickville, I tell you. That's onfair, that's onkind, Sam, said he; that's not the clean thing; I can't afford it; it's a breach o' confidence this; but you got me on the hip, and I can't help myself; say fifty dollars, and I will. Done, says I, and mind you're up to the notch, for I'm in earnest—there's no mistake. Depend upon me, said he. And Sam, said he, a shakin' hands along with me at partin', excuse me, my good feller, but I hope I may never have the pleasure to see your face ag'in. Ditto, says I; but mind the fifty dollars a-year, or you will see me to a sartinty—good b'ye."

PAGANINI'S FOURTH STRING.

In order to refute the many tales and rumours relative to the occasion which induced the celebrated virtuoso to acquire such a wonderful power of execution on the fourth string of the violin, an Italian publication has lately given the following particulars, professedly in the words of the great master himself:

"At Lucca I always led the orchestra whenever the reigning family attended the opera. I was also frequently sent into the Court circle, and I gave a grand concert every fortnight. The Princess Eliza (Bacciocchi Napoleon's sister) always retired before the conclusion, because the harmonic notes of my instrument affected her nerves too powerfully. A very amiable lady, whom I had long since secretly adored, was frequently present at these parties, and I soon perceived that a pleasing secret attracted her also to me. Our mutual passion imperceptibly gained strength. One day I promised in the next concert to surprise her with a musical piece of gallantry, which should have a reference to the terms upon which we stood. At the same time I caused the Court to be apprised that I meant to perform a new composition, with the title of 'A Love Scene.' General curiosity was excited; but what was the amazement of the company when I entered with a violin which had but two strings! I had left only the G and the E string. The latter was intended to express all the feelings of a young female; the former to imitate the voice of a despairing lover. In this manner I executed a kind of impassioned dialogue, in which the tenderest tones succeeded expressions of jealousy. At one time they were caressing—another, tearful accents, cries of anger and of rapture,

of pain and of felicity. A reconciliation formed the close; the lovers, more enamoured than ever of each other, performed a *pas de deux*, which terminated in a brilliant coda. This 'Scene' was highly applauded. I say nothing of the delighted looks which the lady of my thoughts cast upon me. The Princess Eliza, after loading me with praises, said to me, flatteringly, "You have done the impossible on two strings; would not a single one be enough for your talent?" I promised immediately to make the trial. This idea flattered my imagination, and in a few weeks I composed for the fourth string a sonata entitled *Napoleon*, which I performed on the 25th of August, before a numerous and brilliant court. The success surpassed my expectations. From that time dates my predilection for the G string. People were never tired of listening to my pieces composed for that string. As one keeps learning from day to day, so I gradually attained that proficiency, in which there ought now to be nothing astonishing."

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Shore Fish in October.

August 23.

Notices.

SPB 7 B O S P D A I P D.

CENTRAL DISTRICT,
St. John's, to wit.

BY virtue of an order of Her Majesty's Justices of the Peace for this District, in Sessions assembled, I, the High Constable, am thereby required to collect a rate or assessment of Ten Shillings Currency in the Hundred Pounds, on the value of all Houses, Lands, and Tenements in this District—to be applied to the purposes of remunerating parties who have sustained damage under the operations of the Acts 4th Wm. 4. Cap. 4, and 5th Wm. 4, Cap. 5, commonly called the Road Acts.

Notice is therefore hereby given, to all Landlords and Tenants possessing any interest in the Houses, Lands, and Tenements, situate in the said District, forthwith to pay to me, the said High Constable, the said rate of Ten Shillings in the Hundred Pounds on the value of their respective interests.

Given under my hand, the 24th day of September, 1838.

J. FINLAY, High Constable.

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JAMES DOYLE.

Carbonear, September 25, 1838.

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