

(No. 3.)



1857.

T A S M A N I A.

FENTON & FRASER *v.* HAMPTON.

CASE FOR APPELLANTS.

Presented by Mr. Speaker, and ordered by the House to be printed, 20 October,
1857.

Page 4, line 70.

Page 4, line 71, to
page 5, line 9.

Page 5, line 10 to 23.

Page 5, line 23.

Page 7, line 50.

Page 7, line 70, to
page 8, line 36.

excuse, wholly neglected and refused to do so, and disregarded the said order. That thereupon, the Council, before the wrongs complained of, resolved that, the Respondent having failed to appear at the bar of the Council's House, in obedience to the Council's resolution in that behalf, and the Speaker's summons, was guilty of contempt; and that, thereupon, the Speaker issue his Warrant for the apprehension of the Respondent, to be held in the custody of the Sergeant-at-Arms during the pleasure of the Council. That, in pursuance of such last-mentioned Resolution and Order, and for the execution thereof, and before the alleged wrongs, the Appellant, Michael Fenton, so being and as such Speaker, did make and issue his Warrant, under his hand and name directed to the Appellant, James Fraser, the Sergeant-at-Arms attending the Council, in and by which Warrant—reciting that the Legislative Council of the Island of Van Diemen's Land did, on the 11th day of December then instant, resolve that the Respondent was on that day guilty of a contempt of the said Legislative Council, and that he be committed to the custody of the Sergeant-at-Arms, to whom the Warrant was directed—the said James Fraser was directed to take into his custody the body of the Respondent, and him safely keep during the pleasure of the Legislative Council. That this Warrant was delivered to James Fraser, and by him duly executed. That the Respondent remained in his custody, as such Sergeant-at-Arms, under the Warrant, until the Council was prorogued by the Governor of the Island; whereupon the Respondent was liberated. That such arrest and imprisonment are the alleged wrongs complained of in the declaration, and that at the times, and during all the time in the pleas mentioned, the said Legislative Council was sitting at Hobart Town, in the Island of Van Diemen's Land.

To these pleas there were general demurrers, and joinders therein.

After argument, the said Supreme Court, on the 27th of November, 1855, gave judgment on the demurrers for the Respondent (the Plaintiff below), holding that the pleas of justification above stated are not sufficient in law.

By orders of the said Supreme Court, respectively dated the 6th of March, 1856, an Appeal to Her Majesty, in the Privy Council, from the said Judgment was allowed, and taxation on the said Judgment was suspended during such appeal; and accordingly—

The Appellants now humbly appeal to the Queen's Most Excellent Majesty in Council, and submit for the decision of the Judicial Committee, that the Judgment of the Supreme Court of the Island of Van Diemen's Land, on the said Demurrers, is wrong, and ought to be reversed, for the following amongst other

REASONS.

1. Because the Pleas above stated are not, as is alleged in the Demurrers, bad in substance, but disclose facts which, if true, amount to justification of the wrongs mentioned in the Declaration to which they are pleaded.
2. Because the Legislative Council of the Island of Van Diemen's Land, established under the authority of the statute 13 and 14 Vict., c. 59, is a Representative Assembly, lawfully exercising in that Island the functions of a Legislature, and possesses every power necessary to the existence of such a body, and the proper exercise of those functions. That the inquiry mentioned in the Pleas, by a Select Committee of its members, being a matter within the functions of the Council, it had the right of protecting itself from all impediments to the due course of that inquiry, to the extent of every measure (including a committal for contempt of a person contemptuously disobeying its Order) it might be necessary to adopt in order to secure the full and free exercise of such functions.
3. Because the law and custom of Parliament is a law in force within the realm of England, within the meaning of the statute 9 Geo. 4, c. 83, s. 24; and therefore, so far as it can be applied, is in force in Van Diemen's Land, and binding upon the Supreme Court there. Therefore that Court ought to have decided the Demurrers upon the law of Parliament applicable to the facts alleged in the Pleas, and ought to have held the Pleas sufficient.
4. Because, there being a charge against the Respondent of contempt and breach of the privileges of the Council, and an Order of the Council for him to attend at the bar of the Council's House, and a wilful disobedience of that Order; and the Council having thereupon lawfully resolved that the Respondent was in contempt, and having, for his contemptuous conduct, lawfully ordered him into custody during the pleasure of the Council, his arrest and detention by the Sergeant-at-Arms was justified by the Speaker's Warrant, issued as, and in the form, alleged in the Pleas.

FRED. THESIGER.

FRANCIS TOWERS STREETEN.