

1857.

TASMANIA.

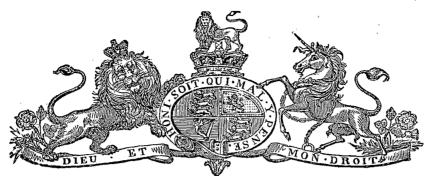
FENTON & FRASER v. HAMPTON.

CASE FOR APPELLANTS.

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

(No. 3.)

(No. 3.)



In the Priby Council.

ON APPEAL FROM THE SUPREME COURT OF VAN DIEMEN'S LAND, NOW CALLED TASMANIA.

Between { MICHAEL FENTON and JAMES FRASER, Appellants; JOHN STEPHEN HAMPTON, Respondent.

CASE for the Appellants.

The following Case, on behalf of the Appellants, is submitted for the Judgment of Reference to the the Judicial Committee of Her Majesty's Most Honourable Privy Council :---

In the year 1855 an action was brought in the Supreme Court of Van Diemen's Land by the Respondent (the Plaintiff below), John Stephen Hampton, the Comptroller-General of Convicts in that Island, against the Appellants (the Defendants below), Michael Fenton, the Speaker, and James Fraser, the Sergeant-at-Arms, of the Legislative Council of Van Diemen's Land,

The Declaration, which was filed on the 27th of September, 1855, complained Page 3. that the Appellants assaulted, seized, and imprisoned the Respondent.

The Appellants severed in their defences, but respectively pleaded special pleas Pages 3-5. of justification, setting forth the following material facts :-

That before and during the alleged wrongs, a Session of the Legislative Council of the Island of Van Diemen's Land was being holden at Hobart Town, in that Island. That the Appellant, Michael Fenton, was a Member and the Page 3, line 15. Speaker of the Council. That the Appellant, James Fraser, was a member and the rage 5, line 45, Arms attending the Council. That on the 14th day of August, 1855, it was resolved by the Council that a Select Committee of certain of its members should, in accordance with the standing rules and orders of the Council, be appointed to Page 3, line 20, to inquire into and ascertain the truth of certain alleged abuses in the Convict Department, the same being matters within the province of the Council to inquire into and ascertain by means of such Select Committee. That on that day the Select Page 4, line 12. Committee was duly appointed in pursuance of the resolution. That before the wrongs, in the declaration alleged, it was resolved by the Council that the Select Committee should have leave to send for persons in reference to the inquiry. That Page 4, line 18. Thomas George Gregson, a member of the Council, was duly appointed and elected Chairman of the Select Committee. That the Respondent was a material and Page 4, line 22. necessary witness in the inquiries, and that he had notice of all the premises. That Page 4, line 25, the Chairman duly summoned the Respondent personally to appear before the Page 4, line 30. Select Committee, at a certain place and time, to be examined as a witness on the subject of the inquiry. That the summons was duly served. That the Respondent wilfully and without reasonable excuse wholly refused and neglected to appear. That, in consequence, the Select Committee was obstructed in the inquiries, and Page 4, lines 36 to 44. the Council prevented obtaining a report thereon. That during the Session, and before the wrongs complained of, the Council were informed of the premises; and thereupon resolved that the Respondent be desired to attend at the bar of the Page 4, lines 44 to 51. Council's House, at Hobart Town, on a day and hour named. That in pursuance thereof, the attendance of the Respondent was in due form required accordingly. That the Respondent was duly served with, and had notice, of the Summons, but Page 4, lines 52 to 64. did not nor would obey the Summons, and did not nor would appear as required, or at any other time, but wilfully and contemptuously, and without reasonable

page 4, line 10.

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.

JAMES HARNARD, GOVERNMENT PRINTER, TASMANIA.