

(No. 93.)



1869.

T A S M A N I A.

BALFE v. DAVIES.

PRIVILEGE CASE.

REPORT OF SELECT COMMITTEE.

Brought up by Mr. Pratt, and ordered by the House to be printed, September 23,
1869,



SELECT COMMITTEE appointed on the 9th September, 1869, to enquire whether the Agreement entered into on the 13th June, 1868, between JOHN DAVIES and JOHN DONNELLAN BALFE, both respectively Members of this House, is a breach of the Privileges of this House.

MEMBERS OF THE COMMITTEE.

MR. ARCHER.
MR. DODERY.
MR. ADYE DOUGLAS.

MR. GIBLIN.
MR. PRATT (*the Mover*).

DAYS OF MEETING.

14th, 16th, 17th, 21st, and 23rd September, 1869.

WITNESSES EXAMINED.

Mr. John Donnellan Balfe; Mr. John Davies; Mr. John W. Graves; Mr. James Gray.

REPORT.

Your Committee have the honor to inform this Honorable House that, in accordance with their instructions, they have enquired into the Agreement entered into on the 13th day of June, 1868, between Mr. John Davies, the Member for Devon, and Mr. John Donnellan Balfe, the Member for Franklin.

Your Committee have examined four Witnesses,—Messrs. Balfe, Davies, J. W. Graves, and James Gray; and the original Agreement, and the record of the Action Balfe *v.* Davies, have been produced to your Committee. The evidence of the Witnesses, together with copies of the Agreement and Record, are annexed to this Report.

Your Committee are unanimously of opinion that the Agreement is a breach of the Privileges of this Honorable House, as directly tending to fetter the freedom of vote and action of the Honorable Member for Franklin in this Honorable House.

JOSIAH C. PRATT, *Chairman*.

Committee Room, 23rd September, 1869.

MINUTES OF THE MEETING OF THE SELECT COMMITTEE.

TUESDAY, 14TH SEPTEMBER, 1869.

Present—Mr. Pratt, Mr. Giblin, Mr. Dodery.

1. On the motion of Mr. Dodery, Mr. Pratt took the Chair.
 2. Ordered, That Mr. Davies and Mr. Balfe be requested to attend in the Committee Room on Thursday next at 11 o'clock.
 3. Ordered, That Mr. Davies be requested to produce to the Committee the Agreement entered into on 15th June, 1868, between himself and Mr. Balfe.
- The Committee adjourned until Thursday next, at 11 o'clock.

THURSDAY, 16TH SEPTEMBER, 1869.

The Committee met at 11-15.

Present—Mr. Pratt (Chairman), Mr. Giblin, Mr. Dodery, Mr. Archer.

Mr. John Donnellan Balfe was called in and examined.

Mr. John Davies was called in and examined.

Mr. Gray and Mr. Graves to be summoned for to-morrow, at 10 o'clock.

The Committee adjourned to to-morrow, at 10 o'clock.

FRIDAY, 17TH SEPTEMBER, 1869.

The Committee met at 10 o'clock.

Present—Mr. Pratt (Chairman), Mr. Giblin, Mr. Dodery, Mr. Archer.

Mr. John Woodcock Graves, Solicitor, and Mr. James Gray, were called in and examined.

Mr. John Donnellan Balfe was recalled and examined.

The Committee adjourned at 12-15 to Tuesday next, at 10.

TUESDAY, 21ST SEPTEMBER, 1869.

The Committee met at 10 o'clock.

Present—Mr. Pratt, Mr. Dodery, Mr. Archer, Mr. Giblin.

Mr. John Donnellan Balfe was called in and examined.

THURSDAY, 23RD SEPTEMBER, 1869.

The Committee met at 10-15.

Present—Mr. Pratt (Chairman), Mr. Giblin, Mr. Dodery.

The Committee proceeded to consider the Report.

Resolved, that the Report be adopted.

EVIDENCE.

THURSDAY, 16TH SEPTEMBER, 1869.

MR. JOHN DONNELLAN BALFE *called in and examined.*

I AM a Member of the House of Assembly, and was so on the 13th day of June, 1868. An Agreement was entered into on that day between me and Mr. John Davies, who was then and is now a Member of the House of Assembly. I produce the original,—a duplicate. Under this Agreement I entered into Mr. Davies's service as Political Writer, and remained so until the 24th September, 1868. I was under the impression when the draft was presented to me that it was prepared by Mr. Davies's Solicitor. Upon reading it over I objected to the fifth clause as in the draft as it originally stood. It was that I bound myself to support in Parliament the views propounded in the *Mercury*. Mr. James Gray, of the Public Works Department, was present when I made this objection: no other person. Mr. Davies remarked, "It will never do for you to write one thing in my paper, and then go down to the House of Assembly and speak and vote against what you had written yourself. It will be known in a small place like this that you are the Editor, and your inconsistency will damage my paper." Then I referred him to the first clause, in which he was to have supreme control over the paper and all the articles that appeared in it; that under that clause he could reject all my articles, or alter them, or put in the articles of others, and that then by the fifth clause, as it was then worded, I should be obliged to vote for measures or things I did not approve of. I then said: "We will make the matter simple: I will resign my seat in Parliament." Either Mr. Gray or Mr. Davies remarked, "I think you would be a fool to do that, for we can alter it." Mr. Davies said, "Well, I will leave you the draft until to-morrow." I replied, "I will give it to Mr. Gray; he is a better lawyer than I am, and perhaps he will make some alterations in this clause that will carry out our views." Mr. Gray came next morning with the draft, with the two words "by him" inserted in pencil in the fifth clause. Mr. Davies at once consented to it. There was some general conversation about introducing those two words. My interpretation of the clause, with these two words inserted, is this,—that if Mr. Davies altered one word in an article of mine it ceased to be my article, and I was not responsible for it. This was the interpretation understood between me and Mr. Davies,—in fact, this is the general understanding between newspaper Editors and Proprietors. I considered that the insertion of these two words sufficiently protected my freedom of action as a Member of the House of Assembly, as by their insertion I merely bound myself to support my own views. While I was in Mr. Davies's service a Session of Parliament took place. During that Session Mr. Davies never sought to interfere in any way with my vote,—never even asked me how I was going to vote. I several times voted in opposition to him, of which he never complained. There was never any understanding during that Session as to how we should vote on any question. If I had written an article in the *Mercury* (say) on insufficient information, and had reason subsequently to change my views, I would have voted in accordance with my changed opinion, and I would have felt myself at liberty to do so. The Agreement was terminated by Mr. Davies for an alleged breach of the first clause, and I disputed the legality of the termination as I considered the grounds insufficient. I took legal advice, and sued Mr. Davies in the Supreme Court to recover damages for a breach of the Agreement. Then for the first time I learned that Mr. Davies said the Agreement was worth nothing,—that it was against public policy. Mr. Davies, by his Attorney Mr. Graves, put in as one of his pleas the following:—"And for a second plea the Defendant says that the Plaintiff at the time of the making of the said Agreement was and has ever since been and now is a Member of the House of Assembly of this Colony, and that the consideration for the promises of the Defendant in the Declaration mentioned in part consists of terms and conditions in the Agreement in the declaration set forth which interfere with and affect the free exercise of the Plaintiff's right to vote as a Member of such House of Assembly." Believing, however, that I had sufficiently protected myself by inserting the words "by him," I proceeded with the action. I was further induced to do so by an article which appeared in the *Tasmanian Times* to the effect that I had sold my votes to Mr. Davies for £5 a week, and because I had been informed that Mr. Davies had openly stated that he had bought me body and soul. The cause went to trial, and the Jury found for the Defendant, being directed by the Judge so to do if they believed the Agreement was opposed to public policy. The legal rules of evidence precluded my producing Mr. Gray as a witness to show under what circumstances the Agreement was entered into. If the Committee desire it, I can point out all the articles I wrote in the *Mercury* to show my consistency throughout.

Mr. Balfe withdrew.

MR. JOHN DAVIES *called in and examined.*

I AM a Member of the House of Assembly, and was so on the 13th June, 1868. On that day I entered into an agreement with Mr. John Donnellan Balfe, who was also a Member of the House of Assembly. I produce the agreement, and I wish to state that this is the first time I have been called upon to produce it. Until the Attorney-General stated in the House that he had applied to my Solicitor for the agreement, I was not aware such an application had been made, or I should have instructed him to give it

up. By that agreement I engaged Mr. Balfe as political writer for the *Mercury* for a period of 12 months to conduct the same, subject in all matters to my supervision and approval. My interpretation of the agreement is this, that Mr. Balfe was bound to support in his place in Parliament the whole of the views propounded in the *Mercury*. There could be no difference between us, as we were as one on all political subjects except direct taxation, which was a subject never mooted in the *Mercury* at the time. Mr. Balfe did not agree with me on one point,—he did not like the Ministry; but the *Mercury* then, as now, pursued an independent course, regardless of who were the men composing the Ministry; and therefore he could be in no way compromised by that. In consideration of complying with all the terms of the agreement he was to receive £4 a week in cash, fuel, water, house-rent, &c., and no taxes to pay,—altogether I consider equal to £7 a week. I discharged Mr. Balfe for not being a total abstainer, thereby breaking the first Clause of the agreement. He sued me in the Supreme Court for a breach of the agreement. There were two pleas entered on my behalf by my Attorney; one was that Mr. Balfe had not been a total abstainer; the other was that the agreement was contrary to public policy;—in fact, that it interfered with, and affected the free exercise of, Mr. Balfe's right to vote as a Member of the House of Assembly. I now desire to say I drew the agreement myself; and I was not aware until proceedings were commenced by Mr. Balfe, and I handed the agreement to my Solicitor, that the agreement was an illegal one, and my Solicitor said was not worth a straw, and contrary to public policy. I then, for the first time, knew it was an improper agreement, and an infringement of the privileges of the House. It was some time after Mr. Balfe was discharged that the illegality of the agreement was made known to me. When I instructed my Solicitor to defend the action I handed him the agreement, and told him I could prove Mr. Balfe had violated the temperance clause of the agreement. I also desired him to defend it upon the ground that it was an unjust claim against me. I then freely talked about the case to any one who spoke to me upon the matter,—saying I thought it would never go into Court,—that no man would go into Court in face of such an agreement;—and I never thought the case would be tried until Mr. Graves came into my Office one day to ask me the names of my witnesses, and what they could prove. At this time the whole of the pleadings were upon record, and I was not aware even then of their nature, nor was I ever consulted in the slightest manner upon the subject by my Solicitor. Mr. Graves has since said to me that I gave him the agreement, and he simply said he did what he considered was his duty to his client. The cause was tried, and a verdict given for me, the Defendant. I dare say I said in the Town that I had bought Mr. Balfe body and soul; but this was after he left my service; I said it frequently, no doubt. I positively state I never said so before the agreement was broken.

To Mr. Giblin.—My object in inserting the fifth clause was, that Mr. Balfe's votes in Parliament should accord with the politics of my paper, the *Mercury*. My interpretation of the fifth clause was, that Mr. Balfe should support in Parliament the views propounded by me in the columns of the *Mercury*. I am the Editor of the *Mercury*, and was so in June, 1868. Leading matter appearing in the *Mercury* I consider to be "views propounded by me." I do not believe that Mr. Balfe said before the agreement was signed that it was "nugatory and frivolous." He did not use the expression in reference to the agreement that it was a *nudum pactum*. I did not say it was a reasonable restraint imposed upon him; nothing was said about his constituents; I never thought of them, and I do not believe he did either. Mr. Balfe never offered to resign his seat for Franklin; quite the contrary. I assert most positively that nothing of the kind took place. At none of the interviews between Mr. Balfe and myself were his constituents mentioned, nor did he offer to resign his seat. This engagement lasted through one Session of Parliament. I never directly or indirectly attempted to control Mr. Balfe's vote; never spoke to him on the subject of his vote. I never insinuated directly or indirectly how I would wish him to vote on any question. The necessity for controlling it never arose. Whether articles written by Mr. Balfe were altered by me or not, I expected him to support their views in Parliament. That was the object of the agreement. Articles written by others in the *Mercury*, on questions before the House, I should have expected Mr. Balfe to support in Parliament by his vote. No occasion for me to control Mr. Balfe's vote ever arose, but if it had I should have insisted upon it. I must say this was before I knew it was an improper agreement.

To Mr. Dodery.—The words "by him" in the fifth clause were inserted at Mr. Balfe's request; but they did not seem to me to alter the sense of the clause. They were not inserted in my presence. Mr. Balfe gave me no reason for inserting them. I had no conversation with him on the subject.

Mr. Davies withdrew.

FRIDAY, 17TH SEPTEMBER, 1869.

JOHN WOODCOCK GRAVES *called in and examined.*

I AM an Attorney of the Supreme Court of Tasmania. I remember the action tried in the Supreme Court, *Balfe v. Davies*, on the 14th and 15th of January last. As the Attorney of Mr. Davies I drew the pleadings. I did not specially draw those pleadings from Mr. Davies's instructions,—merely from general instructions to defend: I used my own judgment. I entered two pleas. I have my client's permission to produce the record showing those pleas, which I now produce. I cannot say if Mr. Davies was made aware of those two pleas before the case went to trial, but he might have inferred the nature of the second plea from conversation which took place between us when he exhibited the agreement to me. I certainly had no instructions not to exhibit such a plea or any other. I was simply instructed to defend according to my judgment. As soon as Mr. Davies got notice of Action he sent for me to his office, and there for the first time showed me the agreement between himself and Mr. Balfe. I then told him that the Deed was void; that it was opposed to public policy; that Mr. Balfe had stolen the franchise of his constituents, and he had received it; and that he, Mr. Davies, stood in the same relation to Mr. Balfe that the receiver

did to the thief. I endeavoured, unsuccessfully, to settle the matter between the parties. The trial resulted in a verdict for the defendant on both issues. Any professional man receiving that document—the agreement—as part of his instructions would act as I did.

To Mr. Giblin.—I am not aware who drew the deed of agreement. I would not have drawn such a deed. Had I thought that the second plea would have been distasteful to Mr. Davies, I would have consulted him. I did not think it was so, and did not consult him. The plea was settled by counsel. I cannot say whether or not I showed Mr. Davies the plea after it was settled by counsel. He was in the habit of coming to my office almost daily: if he had come in during that interval it is likely I read it to him.

To Mr. Archer.—In entering the second plea, I considered only the material upon which I had to work, without considering any ulterior effect upon my client. I entered it merely as a lawyer. When I showed Mr. Davies the effect of the deed he seemed surprised. He seemed to be aware of the provisions of the deed of agreement, but was apparently surprised to find it was void because it was opposed to public policy.

Mr. Graves withdrew.

MR. JAMES GRAY *called in and examined.*

I RESIDE in Hobart Town. I was present when the terms upon which Mr. Balfe was to take the Editorship of the *Mercury* was discussed between him and Mr. Davies. Nothing took place on that occasion as to the buying or selling of a vote; I don't think the subject of his vote was discussed or mentioned. Subsequently a draft of the agreement was submitted to me by Mr. Balfe. I read the agreement hurriedly over. Mr. Balfe pointed me out the fifth clause. Mr. Davies was not present. Mr. Balfe objected to the clause in its then state, and said, "I would rather resign my Seat." Mr. Balfe pointed out to me that the effect of that clause would be to bind him to support in his place in Parliament all views propounded in the *Mercury* no matter by whom. I said the matter could be easily remedied by the insertion of the words "by him," and there would be no occasion to resign; and that it was only reasonable that the matters propounded by himself in the *Mercury* should not be opposed by him in Parliament. I inserted the words "by him" in the draft agreement for the express purpose of protecting Mr. Balfe's freedom of action in the Assembly. From my knowledge of the arrangement I am satisfied neither Mr. Davies nor Mr. Balfe had any corrupt intention as regards the purchase and sale of Mr. Balfe's vote; and that the clause was merely inserted as a reasonable restraint for the protection of the property of the proprietor of the *Mercury*.

To Mr. Archer.—I had no conversation with Mr. Davies on the subject of the fifth clause, or of the alteration in it.

Mr. Gray withdrew.

MR. JOHN DONNELLAN BALFE *called in and re-examined.*

HAVING heard Mr. Gray's statement before the Select Committee this morning, I believe it to be substantially correct. The conversation with reference to the fifth clause took place at the Public Works Office, and I now remember Mr. Davies was not present. I had a conversation with Mr. Davies on the subject of the insertion of the words "by him." Mr. Davies, I now remember, was not present when I offered to resign my Seat, in Mr. Gray's office. I very frequently spoke to Mr. Davies on the subject of resigning my Seat. I am quite clear on that point. This was before signing the Agreement.

Mr. Balfe withdrew.

TUESDAY, 21ST SEPTEMBER, 1869.

MR. JOHN DONNELLAN BALFE *called in and re-examined.*

(The Chairman read that portion of Mr. Balfe's cross-examination before the Supreme Court on the 13th January last, published in the *Mercury* of 14th January last, referring to his position as a Member of the House of Assembly.) The report is correct, except the answer in which I am reported as having sworn that I did not propound my own views on all subjects in my writings in the *Mercury*. I did always propound my own views in the *Mercury*. Also the last answer, in which the word "not" is inserted. It should read, "That was the only part that I looked upon as a *nudum pactum*." When in my evidence I said the Agreement was nugatory and frivolous, I was referring only to the fifth clause. I was not aware then that that clause, being nugatory, vitiated the whole Agreement. I never before acted as Editor of a paper under a written agreement. I have been Editor of a paper before, but not under a written Agreement. Mr. Davies told me the Agreement was in the usual form, with the exception of the additions of Clauses 1 and 5.

Memorandum of Agreement between JOHN DAVIES, proprietor of the *Hobart Town Mercury* newspaper, and JOHN DONNELLAN BALFE, both of Tasmania, whereby the said John Donnellan Balfe agrees to serve the said John Davies as Political and General Writer for his Newspaper the *Hobart Town Mercury*, and to conduct the same, subject in all matters to the supervision and approval of the said John Davies, for the term of Twelve Months commencing from Monday next, the fifteenth day of June, one thousand eight hundred and sixty-eight, on Conditions and Terms as follows:—

First.—The said John Donnellan Balfe shall remain a total abstainer from all intoxicating liquors in the strictest sense of the word during the said term.

Secondly.—The said John Donnellan Balfe shall write at least one leading article daily, or two if required, for the *Hobart Town Mercury* newspaper.

Thirdly.—The said John Donnellan Balfe shall write all the matters connected with the Monthly Summary for Europe of the *Hobart Town Mercury*, in accordance with the custom and usage of the *Mercury* Office, and furnish Copy at all times to the Overseer or Overseers of the said John Davies, so as to prevent the said John Davies being put to any additional expense for wages or gas by keeping the mechanical part of the Establishment of the said John Davies waiting for Manuscript and Copy.

Fourthly.—That the said John Donnellan Balfe shall not under any circumstances attempt to introduce religious discussion into the columns of the *Hobart Town Mercury*, nor make any personal reflections upon any individual, either in a private or public capacity, without consultation with the said John Davies.

Fifthly.—That the said John Donnellan Balfe binds himself whilst connected with the Newspaper establishment of the said John Davies to support in his place in Parliament the views propounded by him in the columns of the *Hobart Town Mercury* Newspaper.

Sixthly.—That the said John Donnellan Balfe shall conform to the Rules of the said *Mercury* Office with regard to attendance, and shall not absent himself from the said Office, excepting when upon his Parliamentary duties, without express leave of absence from the said John Davies, nor write for any other Tasmanian Journal during the said term without the consent of the said John Davies be first obtained.

Seventhly.—That, in addition to writing for the said *Hobart Town Mercury* Newspaper, the said John Donnellan Balfe shall assist, when required, in the compilation of the same, and shall, in fact, act as it is always customary and expected of an Editor of a daily Newspaper to do.

Eighthly.—That the said John Donnellan Balfe shall bring Mrs. Balfe and family to Hobart Town, to reside with him upon the premises hereafter specified during the term of this Agreement.

In consideration of the above Conditions being faithfully kept and performed on the part of the said John Donnellan Balfe, the said John Davies hereby agrees to pay or cause to be paid to the said John Donnellan Balfe during the term as aforesaid the sum of Four Pounds per Week, and in addition to give, for the use and occupation of the said John Donnellan Balfe and his family, the whole of the upper part of the house adjoining the *Mercury* Office aforesaid, the use of the yard at the rear of the same, and a sufficient supply of Firewood, Coal, and Water, free of all Taxes and Rates of any kind whatsoever.

And Lastly.—In the event of the said parties mutually agreeing after the expiration of the term aforesaid to continue this engagement, then the said John Davies shall pay or cause to be paid to the said John Donnellan Balfe an additional Pound per Week,—that is to say, the sum of Five Pounds per Week,—but on precisely the same covenants as above detailed; an addenda to this Agreement being in that case considered by the aforesaid parties sufficient to express their willingness to continue the term of the same.

Dated this thirteenth day of June, one thousand eight hundred and sixty-eight.

JOHN DAVIES.
J. D. BALFE.

Witness—R. J. ROGERS.

IN THE SUPREME COURT }
OF }
TASMANIA. }

The Nineteenth day of December, in the Year of Our Lord One thousand eight hundred and sixty-eight.

TASMANIA }
(TO WIT.) }

JOHN DONNELLAN BALFE, by VERNON WILLIAM HOOKEY his Attorney, sues JOHN DAVIES, who has been summoned to answer the said John Donnellan Balfe, by virtue of a Writ issued on the eleventh day of November, one thousand eight hundred and sixty-eight, out of this Honorable Court: for that by a certain Memorandum of Agreement under the hands and seals of the Plaintiff and Defendant, made on the thirteenth day of June, one thousand eight hundred and sixty-eight, whereby the Plaintiff agreed to serve the Defendant as political and general Writer for his Newspaper, *The Hobart Town Mercury*, and to conduct the same, subject in all matters to the supervision and approval of the Defendant, for the term of Twelve months, commencing from the fifteenth day of June, one thousand eight hundred and sixty-eight, on the Conditions and Terms as follows:—

First.—That the Plaintiff should remain a total abstainer from all intoxicating liquors in the strictest sense of the word during the said term.

Secondly.—That the Plaintiff should write at least One leading Article daily, or Two if required, for *The Hobart Town Mercury* Newspaper.

Thirdly.—That the Plaintiff should write all the matters connected with the monthly Summary for Europe of *The Hobart Town Mercury*, in accordance with the custom and usage of the *Mercury* Office; and furnish Copy at all times to the Overseer or Overseers of the Defendant, so as to prevent the Defendant being put to any additional expense for wages of the Establishment of the Defendant waiting for Manuscript and Copy.

Fourthly.—That the Plaintiff should not, under any circumstances, attempt to introduce religious discussion into the columns of *The Hobart Town Mercury*, nor make any personal reflections upon any individual, either in a private or public capacity, without consultation with the Defendant.

Fifthly.—That the Plaintiff bound himself, whilst connected with the Newspaper Establishment of the Defendant, to support in his place in Parliament the views propounded by him in the columns of *The Hobart Town Mercury*.

Sixthly.—That the Plaintiff should conform to the rules of the said *Mercury* Office with regard to attendance; and shall not absent himself from the said office, excepting when upon his Parliamentary duties, without express leave of absence from the Defendant; nor write for any other Tasmanian Journal during the said term without the consent of the Defendant was first obtained.

Seventhly.—That, in addition to writing for *The Hobart Town Mercury*, the Plaintiff should assist, when required, in the compilation of the same; and should, in fact, act as is always customary and expected of an Editor of a Daily Newspaper to do.

Eighthly.—That the Plaintiff should bring Mrs. Balfe and Family to Hobart Town to reside with him upon the premises hereinafter specified during the term of this Agreement.

And, in consideration of the above Conditions being faithfully kept and performed on the part of the said Plaintiff, the said Defendant thereby agreed to pay, or cause to be paid, to the said Plaintiff, during the term aforesaid, the Sum of Four Pounds per week; and, in addition, to give, for the use and occupation of the said Plaintiff and his Family, the whole of the upper part of a certain house therein mentioned, with the use of a yard at the rear of the same, and a sufficient supply of firewood, coal, and water, free of all rates and taxes whatsoever. And the Plaintiff entered into the said service in the capacity and on the terms aforesaid, and so continued therein for a part of the said term of Twelve months until the breach of the said Agreement hereinafter alleged; and was always ready and willing to continue in the said service, and to perform and fulfil all things by the said Agreement on his part to be performed and fulfilled, during the remainder of the said term of Twelve months, whereof the Defendant always had notice. And although the Plaintiff, from the time of making the said Agreement, had duly performed and fulfilled all things therein on his part to be performed and fulfilled, yet the Defendant, before the expiration of the said term of Twelve months, dismissed the Plaintiff from the said service; and refused to retain the Plaintiff therein for the remainder of the said term; to pay him the said Sum of Four Pounds per week; or to give him the use and occupation of the said portion of the said house or yard; or to supply him with firewood, coal, and water, in accordance with the terms of the said Agreement: whereby the Plaintiff was deprived of the wages and profits which he would have derived from being retained in the said service; and remained for a long time unemployed, and otherwise sustained damage. And the Plaintiff claims Five hundred Pounds.

The Thirtieth day of December, in the Year of Our Lord One thousand eight hundred and sixty-eight.

THE DEFENDANT, by JOHN WOODCOCK GRAVES his Attorney, says—That during the said term of Twelve months mentioned in the Agreement set forth in the Declaration, and before the alleged breach, the Plaintiff did not totally abstain from all intoxicating liquors in the strictest sense of the word, in accordance with the Condition in that behalf contained in the said Agreement: wherefore the Defendant dismissed the Plaintiff from the said service, and refused to retain him therein, which is the alleged breach.

And, for a second Plea, the Defendant says—That the Plaintiff, at the time of his making of the said Agreement, was, and has ever since been, a Member of the House of Assembly of this Colony; and that the Considerations for the Promises of the Defendant, in the Declaration mentioned, in part consist of Terms and Conditions in the Agreement in the Declaration set forth which interfere with and affect the free exercise of the Plaintiff's right to vote as a Member of such House of Assembly.

The Thirty-first day of December, in the Year of Our Lord One thousand eight hundred and sixty-eight.

THE PLAINTIFF joins issue on the Defendant's first and second Pleas. And the DEFENDANT joins issue on the Plaintiff's Replication to the Defendant's first and second Pleas.