Supreme Court of Canada

Payson *v.* Hubert (1904) 34 SCR 400

Date: 1904-02-16

W. W*.* Payson (Defendant)

Appellant

and

Annabella Hubert (Plaintiff)

Respondent

1903: Dec. 11; 1904: Feb. 16.

Present:—Sir Elzéar Taschereau C. J. and Sedgewick, Davies, Nesbitt and Killam JJ.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Constitutional law—Legislative Assembly—Powers of Speaker—Precincts of House—Expulsion.

The public have access to the Legislative Chamber and precincts of the House of Assembly as a matter of privilege only, under license either tacit or express which can be revoked whenever necessary in the interest of order and decorum.

The power of the Speaker and officers of the House to preserve order may be exercised during the intervals of adjournment between sittings as well as when the House is in session.

A staircase leading from the street entrance up to the corridor of the House is a part of the precincts of the House and a member of the public who conducts himself thereon so as to interfere with the discharge by members of their public duties may lawfully be removed.

Judgment of the Supreme Court of Nova Scotia (36 N. S. Rep. 211) reversed and a new trial ordered.

Appeal from a decision of the Supreme Court of Nova Scotia[[1]](#footnote-1) maintaining, by an equal division of the judges, the verdict for the plaintiff at the trial.

The following statement of facts is taken from the judgment of the Chief Justice of the Supreme Court of Nova Scotia:

"This is an action to recover damages for alleged assault and battery on the plaintiff. The defendant was, during the session of 1902, the chief messenger of the House of Assembly of the province. The plaintiff

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during that session frequented the House and its corridors in the promotion of a petition which she had presented to the House, in the previous session of 1901, and which had not been dealt with or disposed of by the House or the Government. For reasons which appear from the evidence, the defendant in the alleged discharge of his duty as an officer of the House, and by the direction of the Speaker, requested the plaintiff to retire from the House and its corridors. This direction the plaintiff refused to obey and defendant thereupon removed her with no more force than was necessary. The House was not, at the time of plaintiff's removal, in session, but had been adjourned in the usual course from the previous sitting. The defendant's eighth plea appears to embrace his grounds of defence. It is as follows:

"'8. The defendant says he is the chief messenger of the House of Assembly, and that one of his duties is to preserve order and decorum in the House of Assembly, and about the precincts and corridors thereof, and that the plaintiff at the times alleged in the statement of claim was creating a disturbance in the House of Assembly, in the committee rooms thereof, and in the corridors of the said House, and that the defendant, after he had requested the plaintiff to cease making such disturbance and to leave the said house, committee room and corridors, and after the plaintiff had refused to leave the said house, committee rooms or corridors, or desist from creating a disturbance in said house, committee rooms or corridors, gently laid hands upon the plaintiff and removed her from said house, committee rooms and corridors thereof, using no more force than was necessary, and this is the assault complained of in the statement of claim herein.' The question then appears to be, assuming as the defendant alleges that at

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the times alleged in the statement of claim the plaintiff was creating a disturbance in the House of Assembly, in the committee rooms, and in the corridors of the said House, whether or not the defendant could, after requesting her to retire, legally remove her from the precincts of the House, although the House was not in formal session with the Speaker in the chair. Was the conduct of the plaintiff, before and at the time she was requested to retire from the corridors of the House, such as to justify the language of the plea that "the plaintiff was creating a disturbance in the House of Assembly, in the committee rooms thereof, and in the corridors of the House?

"The evidence of the plaintiff relates first to the occurrences during the session of 1901 which, for the reasons stated by the learned trial judge, have no relation to the question to be decided in this appeal. As to the occurrences during the session of 1902, when the alleged assault was committed, the plaintiff says:

"'I attended again at the session of 1902, 28th February. I was in the hall near the glass door. I met some of the members. Defendant there assaulted me. He took me by the shoulders and violently shook me and pushed me. He pushed me and tried to throw me down stairs. He had been drinking. I could smell liquor on his breath. I said to him—'If you will leave me alone I will go out.' He did not leave me alone. I was afraid of him and when he went to open the door on Granville Street I ran out the other way to get rid of him. I was so much afraid of his treatment that I never went there again.'

"Cross-examined by *Mr. Drysdale.*—'It is true that formerly, on another occasion, I had called the Attorney General a thief. I had a quarrel with him. (Here the witness got much excited.) Before I was assaulted

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the last time, one of the members from Cumberland told me to wait and I could then see the members. Defendant said I could not speak to the members. On all occasions of my visits to the House I was there about my property and my petition. I had formerly been told by the Speaker that I must have justice done me.'

"It was with difficulty that the statements of the plaintiff in cross-examination could be understood on account of her rapid utterance. She volunteered many statements not touching the issue with respect to her petition, and the subject of that petition, which I was obliged to prevent.

"During the cross-examination I learned that the first assault of which the plaintiff had given evidence without objection was barred by the statute which was pleaded.

"This was the evidence for the plaintiff.

"The defendant was then called and testified as follows:

"'In 1901 plaintiff met the Attorney General and called him a rogue, thief and liar. Mr. Longley then ordered me to put her out. She refused to go and I took her by the arm and led her down stairs and she went out. I did not use more force than was necessary. I did not shake her, as she says. She frequently came to the corridors twice a day, and every day sometimes. This was at both sessions. She intercepted the members and talked very loud sometimes. She screamed and on different occasions I had to stop it. The Speaker sent a message to me in the smoking room. The House was not in session at the time I put her out After the message I got from the Speaker from his room, in the smoking room—(All evidence of messages from the Speaker, or directions from the Speaker or members is objected to.)—I asked her to go

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out and she went outside in the hall. The Speaker then sent for me to his room and then I undertook to use force. The Speaker had said 'Go and put her out!' She came back the next day after the second assault. She had talked quite loudly and at first when I had orders from the Speaker refused to go, but afterwards went. She was in the hall when I first took hold of her.'

"Cross-examined.—'This is not the first person I had heard talking loudly I had heard members talk loudly while the House was not in session. I had the orders, in 1902, of the Speaker's messenger from the Speaker's private room to remove plaintiff when I first touched her, and then after that she broke away from me. The Speaker sent for me. I was eight or ten feet away from her when plaintiff talked loudly. Could not say whether Speaker heard her. 1 was acting on the Speaker's instructions in 1902. She struggled a little. I put the same lady out in 1900 and 1901. Persons having business with members went where she had gone. The House was not sitting, nor was there any committee sitting when I put plaintiff out in 1902, and the Speaker was in his own room away from the place where the plaintiff was.'

"The Hon. Mr. Longley, the Attorney General of the province, and a member of the House of Assembly, testified as follows:

"'I am Chairman of Committee on Law Amendments and was at the time of the affair in 1901. I was in my own office and going to my desk to get papers to take to committee room, Sitting at the desk plaintiff called out,—'thief, scoundrel, rogue.' I paid no attention to this on this day, and plaintiff was not molested. On the next day when I went to my desk I paid no attention at first to the plaintiff, but on my way to the committee room she followed me and kept

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shouting and I told the messenger: he must preserve order. He just quietly removed her. There seemed to be no difficulty—(Objected to as the statute is pleaded to above.)—In 1902 session I was not present at plaintiff's removal, but she frequented the committee in the same way. She was obviously crazy. Became necessary to have plaintiff permanently removed. She was in the corridor and around the House of Assembly continuously and became an intolerable nuisance. Talked wildly and loudly and in an excited state. This continued till the time of the last removal.'

"Cross-examined.—'I am a member of the Government of Nova Scotia. The plaintiff's petition referred to in the resolution in the journals in 1901 was before the Government and we took no action on it.'

"Clifford Marriot, sworn:

"'I am the Speaker's messenger. During the last four sessions. I was present in 1902 at the place where the affair occurred between plaintiff and defendant. Plaintiff was in the smoking room before I saw her or defendant went to her. The Speaker had been in the smoking room when plaintiff was present and several members also. The House was not in session. After a while the Speaker went out of that room and went to his own room. He beckoned to me to follow him to his room. The Speaker gave me a message.—(All evidence of what Speaker said objected to.)—The Speaker said: 'Tell Payson that woman must go out. I can't have her bothering the members.' I went and told Payson and he spoke to her. She was in the corridor. He said 'the Speaker says you must go out.' She said 'how dare you order me out?'Payson put his hand on her arm and she went quietly until she reached the hall. She then resisted and Payson let go immediately. When Speaker was

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in the smoking room plaintiff was talking loudly. This was previously. After Payson let go and came into the corridor I went to the Speaker and he said 'is that woman out?' I said 'she is in the hall.' He said 'why is she not out?I said 'she would not go.' He told me to tell Payson to come to him. He said 'I want to see him.'

"Cross-examined.—'I can't say that the first order was more than that she must go out. Plaintiff had documents in her hands when in the smoking room.'

"Frank Greenough sworn:

"'I was present when defendant put plaintiff out. I saw them go down the first stone steps. The Speaker's messenger said—(objected)—then to Payson that the Speaker had given orders to put her out. He said 'I got orders from the Speaker to have you put out.' She had been between the two doors. He took her by the arm. One hand on her arm the other on her shoulder, and they went down together. I did not see Payson shake the plaintiff.'

"Cross-examined.—'I did not see Payson attempt to put her out on two occasions. I did not see the occasion when she broke away. I did not see her go down the steps.'

"Mr. O'Connor objects (as the Attorney General had given evidence) that he should address the jury. I thought it was a question for the Attorney General himself.

"The Attorney General addresses the jury in closing for defendant. Mr. O'Connor closed for plaintiff.

"All this evidence appears to lead to the inevitable conclusion that the language used by the Attorney General to describe the conduct of the plaintiff while frequenting the precincts of the House is not in any degree exaggerated. According to the contention of counsel for the plaintiff there is no remedy for this

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kind of thing unless the House be in session and the Speaker in the chair, and until the House be thus clothed with formal authority, anyone so disposed may invade the House and its committee rooms with impunity, till a formal resolution can be passed to commit the offender for contempt.

"Chapter 20 of the Revised Statutes, (N.S.) sec. 18, subsection *b.* enacts:

"'That the House and committees and members thereof respectively shall hold, enjoy and exercise such and the like privileges, immunities and powers as are from time to time held, enjoyed and exercised by the House of Commons of Canada, and by the committees and members thereof respectively, and such privileges and immunities shall be a part of the general public law of Nova Scotia and taken notice of judicially.'

"And section 25, sub-section 5, makes assaults upon or interference with officers while in the execution of their duty a violation of the Act and punishable accordingly."

At the trial a verdict was entered for the plaintiff and the damages assessed at $500. On appeal to the full court, the Chief Justice was of opinion that the verdict should be set aside and judgment entered for the defendant while Mr. Justice Graham was in favour of ordering a new trial. The other two judges, Townshend and Meagher JJ. agreed with the trial judge, and there being an equal division of opinion, the verdict for the plaintiff stood.

*Newcombe K.C.* and *McInnis* for the appellant referred to May on Parliamentary Practice (10 ed.) pp. 63, 69, 187 and 332 *n*; Comyn's Dig. (5 ed.) vol. 5 p. 275; *Bradlaugh* v. *Gossett[[2]](#footnote-2)*

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*Lovett* and *Glyn Osier* for the respondent, cited Bourinot on Parliamentary Procedure and Practice p. 157; *Landers* v. *Woodworth[[3]](#footnote-3)*.

THE CHIEF JUSTICE and SEDGEWICK J. were of opinion that the appeal should be allowed and a new trial granted.

DAVIES J.—This action was one brought to recover damages for an assault alleged to have been committed by the defendant the chief messenger of the Legislative Assembly of the Province of Nova Scotia in removing, pursuant to the order of the Speaker, the plaintiff from the smoking room and corridor of the House, and from the stair-case leading up to the corridor. At the time the plaintiff was so removed the House was not in actual session, having adjourned for a short interval, and the fact seems to have had much influence in leading the learned trial judge and at least one of the judges sitting in banc to the conclusions they reached. It is much to be regretted that the report of the trial and of the judge's charge to the jury are so meagre. Sufficient facts however appear to enable a conclusion to be reached as to the legal rights of the respective parties.

The plaintiff appears to be an an excitable and rather erratic person who, in the years 1900 and 1901 prior to the year 1902 when the alleged assault tried in this action was committed, had been forcibly removed from the precincts of the House of Assembly in the interest of order and decorum. In 1901 she had violently and apparently without provocation attacked the Attorney General while he was engaged as Chairman of Committee on Law Amendments, calling him a "thief, scoundrel, rogue" and the defendant, the

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chief messenger, had, at the Attorney General's request, removed her from the building. In giving his evidence in the present action the Attorney General, after referring to this incident, stated that

she was obviously crazy. Became necessary to have plaintiff permanently removed. She was in the corridor and around the House continuously and became an intolerable nuisance. Talked wildly and loudly and in excited state. This continued till the time of the last removal.

There was no cross-examination of the Attorney General on these points and no evidence was offered by the plaintiff calling in question the learned gentleman's statement. They stand uncontradicted and the opinion as to the mental condition of the plaintiff which they are calculated to make on the reader is confirmed by the learned trial judge who in a note to the plaintiff's cross-examination reported:

It was with difficulty that the statements of the plaintiff in cross-examination could be understood on account of her rapid utterances. She volunteered many statements not touching the issue with respect to her petition and the subject of that petition which I was obliged to prevent.

The statement of claim in the action, which was obviously prepared by herself and so stated in argument, goes still further to confirm the impression to be gathered from the evidence and the judge's notes that she was, to say the very least, an extremely erratic and excitable personnage possessed with the impression that she was the victim of some cruel wrong done to her in respect of an estate which she claimed and supposed she had been deprived of in the Island of Cape Breton by, as she alleged, the robbery of the Attorney General and others. On appeal to the Supreme Court of Nova Scotia from the judgment entered by the trial judge for the plaintiff on the verdict of $500 given by the jury, the court was equally divided, the Chief

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Justice and Mr. Justice Graham being in favour of judgment being entered for the defendant or a new trial being granted, while Mr. Justice Townshend and Mr. Justice Meagher were in favour of maintaining the judgment. Under these circumstances the judgment of Weatherbe J. stood confirmed.

The legal questions in dispute are complicated by being mixed with questions of fact, and as the jury were not asked any questions but gave a general verdict merely, it is somewhat difficult to determine precisely some facts with reference to the House of Assembly rooms, corridors and precincts, which it is desirable if not absolutely necessary to know.

From the statement of counsel at the Bar and from the record, however, it is plain that the House of Assembly occupies the first floor to the eastward of the staircase leading from the ground floor of the Provincial Building, while the Legislative Council occupies the western end of the same flat. A long corridor runs from one chamber to the other and the legislative library runs between both chambers and their rooms and is common to both. I should not have supposed it open to reasonable doubt that the corridor and all the rooms adjoining used and occupied by the members of the House as committee rooms and offices as well as the Chamber itself were part of the precincts of the House and equally so that the staircase leading up to this corridor and up and down which members and the public generally had to go to reach or leave the House and the committee rooms, was a part of such precincts. I cannot think that any one or number of people could gather either in this corridor or on this staircase and so conduct themselves as to hinder if not prevent the carrying on of public business and justify themselves on the ground that they were not within the precincts of the House. I gather from the

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judgment of Mr. Justice Townshend that it was largely if not altogether founded upon the ground that the plaintiff at the time she was forcibly removed by the defendant was in "the general hall of the Provincial Building" and not "within the actual precincts of the House" The learned judge goes on to say:

The alleged assault having taken place outside of that portion of the provincial building exclusively assigned to and occupied during the sessions by the members of the House of Assembly, it would seem quite clear that neither the Speaker nor chairman of any committees nor yet any member of the House had any authority as such to interfere with plaintiff in entering or remaining in the halls leading to the Assembly Chamber.

So far as "the halls" which lead to and from the public offices of the province and places other than the Assembly room are concerned, this may well be so, but it cannot be so and is not, in my opinion, so, as regards the staircase leading from the entrance on Granville street up to the corridor of the House. If a person was of such eccentric violent habits and conduct as made her presence an "intolerable nuisance" which ought to be removed from the Assembly Room or the working or Committee Rooms and their corridors, can it be for a moment contended that she could safely take her position at the head of the staircase up and down which members must pass on going to or from their Legislative Chamber or Committee Rooms and so placed set alike the House and its officers at defiance? As the necessary if not the sole immediate access to the House of Assembly quarters I am of the opinion that this staircase is a part of the precincts of the House and just as much so as the corridor to which it leads and from which and upon which the Assembly Chamber and Committee Rooms open.

The learned judge appears entirely to ignore the forcible removal of the plaintiff from the smoking room which was charged as part of the assault and

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which was left to the jury without any specific instructions as to its being part of the precincts of the House or as to the control which the Speaker could rightly exercise there as against mere strangers. I am unable to gather from the judge's charge to the jury whether they were instructed on either of these points. The question would appear to have been left entirely at large.

Mr. Justice Meagher, who concurred in supporting the judgment entered upon the verdict, seems to base his judgment upon the *right* of the public as distinct from the privilege or liberty of access to the Legislative Chamber and the Committee Rooms, which right was not, in his opinion, to be

subject to the arbitrary whim or caprice of the Speaker or messenger of the House, and so long as the public did not unduly interfere with the freedom of public duties of Members or Committee.

But the defendant, while admitting that the public have such access as a matter of license or privilege, contends that it is a license or privilege merely conceded by the House expressly or tacitly and capable of being withdrawn or refused as occasion requires. It is not contended by him that such right or privilege of access is to be "exercised subject to the arbitrary whim or caprice of the Speaker or messenger of the House." Nor was it argued at the Bar that in ordering the removal of the plaintiff the Speaker acted from any arbitrary whim or caprice. On the contrary it seemed to be admitted that whether he acted legally or otherwise his orders were given *bonâ fide* and after he had personally seen and heard the plaintiff in the smoking room and in the exercise of what he honestly believed to be alike his right and his duty. The true rule which must guide the Speaker and the officers of the House in the exercise of their duty of preserving order and decorum is, in my judgment, correctly stated

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by Mr. Justice Graham in his able and clear judgment. His reasoning and the authorities he cites in support of it are conclusive as shewing that the public have access to the Legislative Chamber and to the precincts of the House as a matter of privilege only, and under either express or tacit license, which can at any time be withdrawn or revoked when in the interest of order and decorum it is judged to be necessary. That withdrawal of license can either be general as regards the whole public or special with respect to individuals who make themselves so offensive as to prejudice the proper conduct of public affairs committed to the Assembly or its Committees. It can *ex necessitate* be exercised by the Speaker or officers of the House in proper cases as against individuals offending against the rules of order and decorum or interfering with the proper discharge of their duties by members in the intervals of the adjournments of the House between its sessions, as well as by the House when actually sitting. Any other rule would leave the Assembly rooms, the meetings of committees or the work of the members carried on during the adjournment at the mercy of any individual or body of men who might obtrude themselves into the Chamber or its Committee Rooms and prevent the public business being carried on. Of course I do not refer to any arbitrary or capricious or malicious action on the part of the Speaker or his officers, but one which was a *bonâ fide* exercise of what I consider to be a necessary power. In this case, as I before said, Mr. Speaker's order was not alleged to be malicious, and in my judgment cannot be said to be either arbitrary or capricious. The evidence as to its having been well founded is to me overwhelming. The plaintiff who had been several times previously ejected from the precincts of the House obtruded herself into the smoking room where

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the Speaker and other members were (see the evidence of Marriott the Speaker's messenger) and the Speaker give orders that she should be removed. The defendant, the chief messenger, in giving his evidence says:

She (the plaintiff) frequently came to the corridors twice a day, and every day sometimes. This was at both sessions. She intercepted the members and talked very loud sometimes. *She screamed and on different occasions I had to stop it.* The Speaker sent a message to me in the smoking room. The House was not in session at the time I put her out. After the message I got from the Speaker from his room, in the smoking-room. \* \* \* (All evidence of messages from the Speaker, or directions from the Speaker or members, are objected to.) I asked her to go out, and she went outside in the hall. The Speaker then sent for me to his room and then I undertook to use force. The Speaker had said: "Go and put her out." She came back the next day after the second assault. She had talked quite loudly and at first when I had orders from the Speaker refused to go, but afterwards went. She was in the hall when I first took hold of her.

The jury should have been told that if they believed the facts to be as related by the Attorney General and the officers of the House and the other witnesses for the defence the action of the Speaker and of the chief messenger was justifiable. The plaintiff had no right to remain in the smoking-room or the corridors when ordered to leave, nor, in my opinion, had she any right to remain against orders at the head of the staircase and so obstruct and interfere with and annoy members while going to and from the Chamber or the rooms. I think also the trial judge was wrong in refusing to instruct the jury when asked by counsel for defendant to do so

that if the plaintiff was creating a disturbance in the smoking-room the Speaker or any other member then there had a right to order her removal.

At present and under the charge given to the jury it cannot be ascertained for what the damages were awarded, whether for expulsion from the

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smoking-room and the corridor, which were beyond any doubt within the precincts of the House, or merely for expulsion from the head of the stairway. I do not think the learned trial judge was right in putting the arbitrary limitation he did upon the powers and duties of the chief messenger so far as they related to the preservation of order and decorum in the House and its precincts as pleaded in the 11th paragraph of the defence. "This" he said

refers to a disturbance while the House and Committees were in session which was not the case as to the last assault and therefore not applicable.

There is no law or reason justifying any such limitation. The powers and duties of the officers of the House with respect to the preservation of order and decorum within its precincts are as applicable to the intervals of time of adjournments between the sessions as to the sessions themselves. Since the decision of the Judicial Committee in the case of *Fielding* v. *Thomas[[4]](#footnote-4)*, affirming the constitutionalty of the Provincial Legislation affecting the powers and privileges of the Legislature of the Province of Nova Scotia contained in ch. 3 of the R. S. N. S., 5th series, many judicial doubts upon these points formerly held have been removed. The 20th section so far as it relates to the assembly of the Province is as follows:

In all matters and cases not specially provided for by this chapter or by any other statute of the Province the House of Assembly and the Committees and members thereof respectively shall at any time hold, enjoy and exercise such and the like privileges, immunities and powers as shall for the time being be held, enjoyed and exercised by the House of Commons of Canada and by the respective Committees and members thereof, and such privileges, immunities and powers shall be deemed to be and shall be part of the general and public law of Nova Scotia and \* \* \* be taken notice of judicially.

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Now the powers, privileges and immunities of the House of Commons in Canada are practically the same as those of the House of Commons in Great Britain, although the distribution of the different powers of maintaining order and decorum may be relegated to different officials from those in England. Mr. May in the Parliamentary Practice, 10th ed. 199, while defining the duties of the Sergeant-at-Arms, says they are *inter alia* the maintenance "of order in the lobby and passages of the House," and at page 190

upon information that a man had assaulted a member in the lobby? the Speaker directed the sergeant to take the offender into custody.

In the note to page 332 he says:

The area within the walls of the Palace of Westminster compose the Parliamentary precincts.

Applying these general principles and rules to the case before us I cannot have any doubt that it was the duty of the trial judge to have charged the jury that the Speaker was within his rights when, after having had an opportunity of forming a judgment upon the manner in which the plaintiff conducted herself on the occasion of the alleged assault in the smoking-room of the House in 1902, and with his knowledge of her previous history in offending against the order and decorum of the Assembly, over which he presides, he ordered the officials to remove her beyond the precincts of the House. That it did not matter whether the person to whom he instructed the carrying out of his orders was the Sergeant-at-Arms, the chief messenger or an ordinary messenger or doorkeeper. That the question whether the Speaker acted maliciously or capriciously in giving his order might perhaps in some cases be raised, but that in this case there was no evidence on which they could find either malice or caprice. That the precincts of the House embraced as well the smoking-room and the corridor and staircase leading

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to it and the Assembly Room as the latter room itself, and that the powers of the officials of the House could be exercised as well for the preservation of order in the adjournments between the sessions as during the sessions, in all cases of course the question of *bona fides* being pre-supposed but being open to adjudication, and, lastly, that the question whether the officer had been guilty of excess in discharging his orders was one peculiarly for them to decide.

I do not think that if the jury had been properly charged upon these points they could under the evidence have found for the plaintiff. I have not deemed it necessary to call attention again to the several authorities collected and reviewed by Mr. Justice Graham in his judgment. I think they fully sustain the position he took that the liberty of access which the public has to attend the proceedings of the House of Assembly and its Committees and to visit the precincts and rooms of the House is not a *right* but a *license* or *privilege* capable of being revoked, and when properly revoked as to any one leaving him or her a trespasser and liable to expulsion as such. I fully agree alike with his reasoning and his conclusion but being of opinion that directing a judgment to be entered for the defendant would be inconsistent with what must have been the necessary findings of the jury in reaching their general verdict I think the appeal should be allowed with costs in this court and in the court appealed from and a new trial granted, the costs of the first trial to abide the event.

NESBITT J. concurred in the judgment allowing the appeal and ordering a new trial.

KILLAM J.—In my opinion this appeal should be allowed and a new trial granted.

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I concur in the reasoning of Mr. Justice Graham as to the plaintiff having no legal right to enter and remain with the precincts of the Legislature. *Primâ facie* she would be there by license only. The evidence establishes clearly that the place in which the alleged assault took place was within those precincts and that the acts complained of were done in removing the plaintiff therefrom.

While not prepared to say that in no case would a member or messenger of the House of Assembly have authority, *mero motu,* to remove an intruder behaving in a disorderly manner or so as to endanger the peace or safety of the members or officers of the Assembly, I prefer to base my conclusion, in this instance, upon the ground taken by the learned Chief Justice of Nova Scotia. I think that the speaker, though not in the chair, had the implied authority to direct the removal of any person not having an absolute right to insist on being within the precincts, whose conduct appeared to him to be a disturbance of the peace, order or comfort of those having such a right. And I think that this authority was sufficiently pleaded.

As, however, there was some evidence of unnecessary violence, there was a case to go to a jury under proper direction, and the action could not properly have been dismissed.

Appeal allowed with costs.

The appellant in person.

Solicitor for the respondent: F. B. Scott.

1. 36 N. S. Rep. 211. [↑](#footnote-ref-1)
2. 12 Q. B. D. 271. [↑](#footnote-ref-2)
3. 2 Can. S. C. R. 153. [↑](#footnote-ref-3)
4. [1896] A. C. 600. [↑](#footnote-ref-4)