

REPORT

OF THE

SELECT COMMITTEE ON PRIVILEGE;

TOGETHER WITH THE

EVIDENCE AND THE APPENDIX TO THE REPORT.

ORDERED TO BE PRINTED, 13TH AUGUST, 1869.

WELLINGTON.

—
1869.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

WEDNESDAY, 21ST JULY, 1869.—*Ordered*, “That a Select Committee be appointed to inquire whether a certain Letter from the Honorable William Fox to Charles Brown, a Member of this House, is a Breach of the Privileges of this House.” (*Mr. Brown.*)

WEDNESDAY, 28TH JULY, 1869.—*Ordered*, “That the Select Committee on Privilege ordered by this House on the 21st instant consist of the Honorable Mr. Fox, Mr. Carleton, Mr. Curtis, Major Heaphy, V.C., Mr. Jollie, Mr. Main, Mr. O’Rorke, Mr. Reynolds, Mr. Tancred, and the Mover. Five to be a Quorum, and to report this day week. (*Mr. Brown.*)

4TH AUGUST.—Time for bringing up Report enlarged to 11th August.

REPORT OF THE PRIVILEGES COMMITTEE.

THE Committee to whom was referred the question whether a certain letter written by the Hon. Mr. Fox to Charles Brown, a Member of the House, is a breach of privilege, have the honor to report—

That they have not been able to discover any precedents or authorities to lead them to the conclusion that the letter written to Major Brown by the Hon. Mr. Fox is a breach of the privileges of Parliament.

HENRY JOHN TANCRED,
Chairman.

13th August, 1869.

MINUTES OF PROCEEDINGS.

THURSDAY, 29TH JULY, 1869.

PRESENT:

Major Brown, Mr. Carleton, Mr. Curtis, Hon. Mr. Fox, Major Heaphy, V.C.,		Mr. Jollie, Mr. Main, Mr. Reynolds, Mr. Tancred.
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Mr. Fox moved, That Mr. Tancred do take the Chair.

Agreed to.

The Committee then adjourned until Tuesday, the 3rd August, at 10 a.m.

TUESDAY, 3RD AUGUST, 1869.

PRESENT:

Major Brown, Mr. Carleton, Mr. Curtis, Hon. Mr. Fox, Major Heaphy, V.C.,		Mr. Jollie, Mr. Main, Mr. O'Rorke, Mr. Reynolds.
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Mr. Tancred in the Chair.

Orders of reference read, and minutes of previous meeting read and confirmed.

Major Brown, M.H.R., and Major Campbell, Clerk of the House of Representatives, examined.

WEDNESDAY, 4TH AUGUST, 1869.

PRESENT:

Major Brown, Mr. Carleton, Mr. Curtis, Hon. Mr. Fox, Major Heaphy, V.C.,		Mr. Jollie, Mr. Main, Mr. Reynolds, Mr. O'Rorke.
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Mr. Tancred in the Chair.

The minutes of the previous meeting read and confirmed.

The notice of Colonel Whitmore's appointment as Commander in the Province of Taranaki (as it appears in the *Government Gazette*, No. 18-69, page 171), read.

The Hon. Mr. Fox's letter to Major Brown referred to in the Order of Reference of the 21st day of July, 1869, was laid before the Committee, and ordered to be entered on the minutes. (*Vide Evidence*.)

Mr. Carleton moved,—“That such precedents and authorities and documents in regard to this matter as may be adduced, be read by the Clerk and entered upon the minutes, unless it shall be decided by the Committee that any such precedents, authorities, or documents are irrelevant.”

Agreed to.

On the motion of Mr. Carleton, the following Resolutions were proposed, and copies ordered to be printed for the use of the Committee:—

- (1.) That the question is not between two servants of the Crown, namely, Major Brown and Mr. Fox, but between the Crown and the House.

REPORT OF THE SELECT

- (2.) That all questions regarding the position of Major Brown in the service are irrelevant.
- (3.) That there is no question, and never was, of the power of the Crown to dismiss from the command.
- (4.) That the Disqualification Act implies freedom of speech to those servants of the Crown who are not thereby disqualified.
- (5.) That what is said in Parliament is supposed to be unknown elsewhere, and cannot be noticed without a breach of privilege.
- (6.) That notice has been taken elsewhere of what was said in Parliament by Major Brown.
- (7.) That the offer of the alternative proposed by Mr. Fox's letter to Major Brown, namely, to resign his command or his seat in the House, amounted to a threat.
- (8.) That such a threat, coming from a Responsible Adviser of the Crown, is an infringement of liberty of speech, and therefore a breach of the privilege of this House.

Major Brown further examined ; and Colonel Whitmore examined.

The Committee then adjourned until Friday, the 6th instant, at 10 o'clock.

FRIDAY, 6TH AUGUST, 1869.

PRESENT :

Major Brown,	Mr. Jollie,
Mr. Carleton,	Mr. Main,
Mr. Curtis,	Mr. O'Rorke,
Hon. Mr. Fox,	Mr. Reynolds.
Major Heaphy, V.C.,	

Mr. Tancred in the Chair.

Minutes of previous meeting read and confirmed.

Major Brown said,—I wish to state, in addition to what I said yesterday, in reply to Major Heaphy as to how I was first appointed when a superior officer to me was in the district, that I was appointed under the 14th clause of "The Militia Act, 1865," which states as follows:—"To each district an Officer shall be appointed of such rank as the Governor may deem fit, who shall command the Militia in such district."

Major Brown and Colonel Whitmore further examined.

The Committee then adjourned until Tuesday, the 10th instant, at 11 o'clock.

TUESDAY, 10TH AUGUST, 1869.

PRESENT :

Major Brown,	Mr. Jollie,
Mr. Carleton,	Mr. Main,
Mr. Curtis,	Mr. O'Rorke,
Hon. Mr. Fox,	Mr. Reynolds.
Major Heaphy, V.C.,	

Mr. Tancred in the Chair.

Minutes of previous meeting read and confirmed.

Mr. Carleton proposed the following Resolution to be placed between Nos. 3 and 4 of his former Resolutions:—"That there is no exception to the rule under which, by the law and custom of Parliament, freedom of speech is secured to the Members thereof."

Major Brown then proceeded to quote precedents from May's "Parliamentary Practice," 1859, page 108 ; and from Dwaris's "Treatise on Statutes," page 126, relating to Haxey's case.

The Hon. Mr. Fox moved,—“That the above case is not relevant to the case referred to the Committee.”

And the question being put, the Committee divided, the names being taken down as follows :—

Ayes, 5.	Noes, 4.
Hon. Mr. Fox,	Major Brown,
Major Heaphy, V.C.,	Mr. Carleton,
Mr. Main,	Mr. Curtis,
Mr. O'Rorke,	Mr. Jollie.
Mr. Reynolds.	

So it was resolved in the affirmative.

Major Brown then proceeded to quote Strode's case from May's "Parliamentary Practice," 1859, page 110.

The Hon. Mr. Fox moved,—“That the above case is not relevant to the case referred to the Committee.”

And the question being put, the Committee divided, the names being taken down as follows :—

Ayes, 5.	Noes, 4.
The Hon. Mr. Fox,	Major Brown,
Major Heaphy, V.C.,	Mr. Carleton,
Mr. Main,	Mr. Curtis,
Mr. O'Rorke,	Mr. Jollie.
Mr. Reynolds.	

So it was resolved in the affirmative.

Major Brown proceeded to quote from May's "Parliamentary Practice," 1859, page 111, relating to the Protestations of the Commons in 1621.

Mr. Reynolds moved,—“That the above case is not relevant to the case referred to the Committee.”

Mr. O'Rorke moved that the following words be added—"Because, in the opinion of this Committee, no precedents are relevant to the question under its consideration which simply refer to the freedom of speech of Members in Parliament, and do not also cover the right of the Government to deal with its officers as it may think proper."

COMMITTEE ON PRIVILEGE.

5 F.—No. 4.

The Chairman decided that such an addition could not be put, as it would be a limitation of the Resolution already agreed to, under which certain Resolutions previously proposed by Mr. Carleton had been refused to be put as inconsistent with the terms of the Resolution already decided upon defining the course of proceeding to be adopted by the Committee.

The original question being put, the Committee divided, the names being taken down as follows:—

Ayes, 5.	Noes, 4.
Hon. Mr. Fox,	Major Brown,
Major Heaphy, V.C.,	Mr. Carleton,
Mr. Main,	Mr. Curtis,
Mr. O'Rorke,	Mr. Jollie.
Mr. Reynolds,	

So it was resolved in the affirmative.

The Committee then adjourned until Wednesday, the 11th instant, at 11 o'clock.

WEDNESDAY, 11TH AUGUST, 1869.

PRESENT:

Major Brown,	Mr. Jollie,
Mr. Carleton,	Mr. Main,
Mr. Curtis,	Mr. O'Rorke,
Hon. Mr. Fox,	Mr. Reynolds.
Major Heaphy, V.C.,	

Mr. Tancred in the Chair.

Minutes of previous meeting read and confirmed.

Major Brown then proceeded to read May's "Parliamentary Practice," p. 112, relating to the case of Sir J. Elliot and others.

The Hon. Mr. Fox moved, "That the above case is not relevant to the case before the Committee."

And the question being put the Committee divided, the names being taken down as follows:—

Ayes, 5.	Noes, 3.
Hon. Mr. Fox,	Major Brown,
Major Heaphy, V.C.,	Mr. Carleton,
Mr. Main,	Mr. Jollie.
Mr. O'Rorke,	
Mr. Reynolds.	

So it was resolved in the affirmative.

Mr. Carleton then proceeded to read the following extracts as to precedents from Professor Hearn, on the Government of England, p. 246, sec. 4. (*Vide Appendix A.*)

The Hon. Mr. Fox proceeded to read the following extracts from Professor Hearn, on the Government of England, p. 250, sec. 5. (*Vide Appendix B.*)

The Hon. Mr. Fox proceeded to read the following extract from the Annual Register of 1839, p. 311, beginning at the words "At about the same period," down to the words "of his profession," p. 313. (*Vide Appendix C.*)

Mr. Jollie proceeded to read the following extract from "Elements of the Law and Practice of Legislative Assemblies in the United States of America," by Luther Stearns Cushing, 2nd edition, 1859, p. 242, secs. 601, 602. (*Vide Appendix D.*)

Mr. Jollie then proceeded to read the 607th sec., p. 245, from "Elements of the Law and Practice of Legislative Assemblies in the United States of America," by Luther Stearns Cushing, 2nd edition, 1859.

The Hon. Mr. Fox moved, "That the above case is not relevant to the case before the Committee."

And the question being put, the Committee divided, the names being taken down as follows:—

Ayes, 5.	Noes, 4.
Hon. Mr. Fox,	Major Brown,
Major Heaphy, V.C.,	Mr. Carleton,
Mr. Main,	Mr. Curtis,
Mr. O'Rorke,	Mr. Jollie.
Mr. Reynolds.	

So it was resolved in the affirmative.

The Committee then adjourned until Thursday, the 12th instant, at 11 o'clock.

THURSDAY, 12TH AUGUST, 1869.

PRESENT:

Major Brown,	Mr. Jollie,
Mr. Carleton,	Mr. Main,
Mr. Curtis,	Mr. O'Rorke,
Hon. Mr. Fox,	Mr. Reynolds.
Major Heaphy, V.C.,	

Mr. Tancred in the Chair.

Minutes of previous meeting read and confirmed.

Mr. Main read the correspondence between Mr. Stafford and Mr. Crawford, from the Appendix to the Journals of the Legislative Council. (Correspondence between the Government and certain Members of the Legislative Council, Nos. 8, 9, and 10.)

REPORT OF THE SELECT

No. 8.—The Hon. J. C. Crawford to the Hon. E. W. Stafford.

MY DEAR STAFFORD,—

Hobson Street, 6th October, 1867.

I think it right to give you some explanation of the reasons for my vote on the Consolidation of Loans Bill, because, for many reasons, I regret having had to consider it advisable to vote against a Government Bill.

When I attended the second reading of the Bill, I had previously paid but little attention to its principle or details, and it at once appeared to me that the absolute declaration of Colonial liability for Provincial loans was a mistake. I therefore voted in Committee for the amendments, with a hope that in a conference more satisfactory terms might be arrived at. I did not then perceive that there was hardly any compromise possible between the original Bill and the amendments.

The more I think of it the less I like the declaration of absolute liability. I don't think the Colony is liable any more than the Central Government of the United States is liable for Pennsylvania or Mississippi bonds; and I think that, instead of an absolute liability, we should have guarded ourselves by stating that we agreed to accept the liability on equitable terms.

In the one case we might claim a character for generosity; in the other, we give up our vantage ground, and entitle the bondholders to demand their pound of flesh. I don't think that we ought to follow the tactics of the Directors of the Caledonian Railway in 1850 (which I dare say you may remember). The Railway was ruined by high rentals to branch lines. The Directors managed to get matters as low as possible, got the branch lines to take a lower rate of payment, got the price of shares down to £8, went to Parliament to get this agreement ratified, and soon afterwards the shares rose from £8 to £80 or £90.

I don't think we ought to follow these tactics, but I think we might have reserved our declaration of absolute liability.

Believe me, &c.,

JAMES C. CRAWFORD.

P.S.—McLean has just been talking to me. I will see Major R. at latest when the Council meets.

No. 9.—The Hon. E. W. Stafford to the Hon. J. C. Crawford.

MY DEAR SIR,—

Wellington, 12th October, 1867.

I have received your note of the 6th instant, relative to your voting against the financial policy of the Government. I did not reply to it while the question to which it referred was undecided, and there is now no object to be attained in discussing the subject. As, however, an opinion has been very generally expressed, that on Constitutional grounds there are too many officers of Government in the Legislative Council, it is desirable that you should let me know whether you would prefer to retain your offices or your seat in the Legislative Council.

The Hon. J. C. Crawford.

I have, &c.,

E. W. STAFFORD.

No. 10.—The Hon. J. C. CRAWFORD to the Hon. E. W. STAFFORD.

SIR,—

Wellington, 18th October, 1867.

In reply to your letter of the 12th instant, in which you inform me that an opinion has been very generally expressed, that on Constitutional grounds there are too many officers of Government in the Legislative Council, and that it is desirable that the Government should be informed whether I should prefer to retain my offices or my seat in the Legislative Council, I have the honor to inform you that, whenever the two seats are held to be incompatible, I shall elect to retain my offices.

If, therefore, you will do me the honor of intimating to me what action the Government desires me to take, I shall be prepared to give to such intimation my respectful and immediate consideration.

I have, &c.,

J. C. CRAWFORD.

The Hon. the Colonial Secretary.

Mr. Curtis then proceeded to read from *Hansard*, No. 8, p. 23, 4th line from the top of the 1st column, from the words "in the first place," down to the words "active service," 35th line, as follows:—"In the first place, I did not initiate the correspondence at all, nor had I any communication, verbally or in writing, with Mr. Crawford, or with any other person, with reference to the subject of his vote, nor did I or any of my colleagues have any communication with him, or interfere in the least, so long as the question in respect to which his vote could be given was pending. I waited until the whole Session was over before I answered his note. Mr. Crawford originated the correspondence in a private letter, and I did not make any communication to him, or allow any person to do so on the part of the Government, but waited until the Session was over, when I announced to him, at the same time that I announced to two other Members in the same week, and exactly in the same terms, that there was an opinion growing up and had been expressed by Members of the Legislative Council, that they were beginning to have too many paid officers of the Government in that branch of the Assembly. Now, at the same time that I wrote those letters, there was in the Legislative Council Captain Baillie, commanding the Marlborough Militia, drawing pay, and another Militia officer also drawing pay, but I did not write to them, because I considered that they were in an altogether different position from the permanent officers of the Government, as they were merely temporarily paid because the troops in their district were for the time being on active service."

The Hon. Mr. Fox proceeded to read from *Hansard*, No. 8, p. 19, 1st column, 28th line, from the words "Another transaction," down to the word "office," 5th line, 2nd column, as follows:—"Another transaction occurred last year, with regard to a vote given in another place, a proceeding somewhat of the character of that to which I have just alluded. It was a transaction which meant much more than really appears on the records. There was a Bill in another place in the agony of uncertainty as to whether it would pass or not, and the fate of the Ministry depended upon it. Every means were taken to bring honorable Members from remote places to give their votes at that time. An honorable Member on that occasion, who voted against the Bill, found himself in such a position after having done so that it became necessary for him to write a private note to the honorable Member for Timaru in explanation,

and apologizing to him for the vote he had given on that occasion. The correspondence was further continued, and the honorable Member the ex-Premier, without imputing the smallest blame, takes this course: he writes to the honorable Member thus:—

MY DEAR SIR,—

Wellington, 12th October, 1867.

I have received your note of the 6th instant, relative to your voting against the financial policy of the Government. I did not reply to it while the question to which it referred was undecided, and there is now no object to be attained in discussing the subject. As, however, an opinion has been very generally expressed that, on Constitutional grounds, there are too many officers of Government in the Legislative Council, it is desirable that you should let me know whether you would prefer to retain your offices or your seat in the Legislative Council.

I have, &c.,

E. W. STAFFORD.

Well, Sir, I think the honorable Member managed that affair very adroitly. The House and the country knew at the time that Mr. Crawford was Resident Magistrate, and it is only by the light of other events in contemporary history that the real character of that affair is known. Substantially, Mr. Crawford was compelled to resign because he had voted against the Government under which he held a paid office."

The following Resolutions, as previously proposed by Mr. Carleton, were then considered:—

"That the question is not between two servants of the Crown, namely, Major Brown and Mr. Fox, but between the Crown and the House.

"That all questions regarding the position of Major Brown in the service are irrelevant.

"That there is no question, and never was, of the power of the Crown to dismiss from the command.

"That there is no exception to the rule under which, by the law and custom of Parliament, freedom of speech is secured to the Members thereof.

"That the Disqualification Act implies freedom of speech to those servants of the Crown who are not thereby disqualified.

"That what is said in Parliament is supposed to be unknown elsewhere, and cannot be noticed without a breach of privilege.

"That notice has been taken elsewhere of what was said in Parliament by Major Brown.

"That the offer of the alternative proposed by Mr. Fox's letter to Major Brown, namely, to resign his command or his seat in the House, amounted to a threat.

"That such a threat, coming from a Responsible Adviser of the Crown, is an infringement of liberty of speech, and therefore a breach of the privilege of the House."

And the question being put thereon, Mr. O'Rorke moved, That the question be amended by the omission of all the words after the word "That" and the insertion of the following words in lieu thereof:

"That this Committee has not been able to discover any precedents or authorities to lead it to the conclusion that the letter written to Major Brown by the Hon. Mr. Fox is a breach of the privileges of Parliament."

The question being put, That the words proposed to be omitted stand part of the question, the Committee divided, the names being taken down as follows:—

Ayes, 4.

Major Brown,
Mr. Carleton,
Mr. Curtis,
Mr. Jollie.

Noes, 5.

Hon. Mr. Fox,
Major Heaphy, V.C.,
Mr. Main,
Mr. O'Rorke,
Mr. Reynolds.

So it passed in the negative.

On the question, That the words proposed to be inserted be so inserted, Mr. Curtis moved, by way of amendment, That the following words be added:—

"That the Committee is nevertheless of opinion that the option given to Major Brown to resign his command or his seat in the House of Representatives, on the express ground that he had given a vote against the Government, amounts to intimidation, and is therefore inconsistent with the free action of the Representatives of the people, and a breach of the Privilege of the House."

And the question being put, the Committee divided, the names being taken down as follows:—

Ayes, 4.

Major Brown,
Mr. Carleton,
Mr. Curtis,
Mr. Jollie.

Noes, 5.

Hon. Mr. Fox,
Major Heaphy, V.C.,
Mr. Main,
Mr. O'Rorke,
Mr. Reynolds.

So it passed in the negative.

Mr. Carleton then moved, as a further amendment, That the following words be added:—

"But that even were no precedent discovered, intimidation exercised towards a Member in regard to his speech is none the less a breach of the privilege of Parliament, and that there could be no precedent affecting the first exercise in any Parliament of intimidation."

And the question being put, the Committee divided, the names being taken down as follows:—

Ayes, 4.

Major Brown,
Mr. Carleton,

Noes, 5.

Hon. Mr. Fox,
Major Heaphy, V.C.,

REPORT OF THE SELECT

Mr. Curtis,
Mr. Jollie.

Mr. Main,
Mr. O'Rorke,
Mr. Reynolds.

So it passed in the negative.

Then the amended question being put, the Committee divided, the names being taken down as follows:—

Ayes, 5.
Hon. Mr. Fox,
Major Heaphy, V.C.,
Mr. Main,
Mr. O'Rorke,
Mr. Reynolds.

Noes, 4.
Major Brown,
Mr. Carleton,
Mr. Curtis,
Mr. Jollie.

So it was resolved in the affirmative,

Resolved—"That this Committee has not been able to discover any precedents or authorities to lead it to the conclusion that the letter written to Major Brown by the Hon. Mr. Fox is a breach of the privileges of Parliament."

On the motion of the Hon. Mr. Fox,

Resolved—"That the Chairman draw up a Report embodying the above Resolution, and present it to the House."

On the motion of Mr. Carleton,

Ordered—"That the Chairman be directed to place the minutes of the Committee upon the Table of the House."

The Committee then adjourned.

MINUTES OF EVIDENCE.

TUESDAY, 3RD AUGUST, 1869.

Major Brown in attendance, and examined.

1. *Hon. Mr. Fox.*] What is your rank in the Militia?—My rank is Major in the Taranaki Militia. *Major Brown.*
3rd August, 1869.
2. How long have you held that rank?—I think since November, 1864.
3. Are you senior Major by actual length of service, or have you been promoted over the heads of men of equal service?—I have not been promoted over the heads of any officer. I have longer service in the Militia than any other officer. I do not hold my command at Taranaki as senior officer there. Colonel Lepper is my senior officer, and there are two others, Majors Baddeley and Atkinson, senior to me.
4. What is your appointment as Commander of the Forces at Taranaki, and how was that appointment conferred?—When the Militia was called out for active service they called upon an officer to command the force that was put on duty, selecting whom they pleased for it. Before I received the command, a junior Captain (Kelly) was appointed to the then force of fifty men, to the exclusion of senior Captains to himself. When I was appointed, the Government considered it necessary to have an officer of higher rank, and appointed me, the senior Major then in the Province. I understood likewise that I was recommended to Colonel Haultain by Major Atkinson for the appointment. The Government anticipating hostilities in the Province in December last, sent me a letter giving me the command, which was enclosed to His Honor the Superintendent on the 10th December. On the 12th December His Honor told me that he had considered the matter further, and had come to the conclusion that the exigencies of the Province did not justify my being put on pay at the expense of the Colony, and asked me to return the letter of appointment from Colonel Haultain that he had handed to me on the 10th. I accordingly returned it, and ceased to hold the command. When in Auckland in February last, where I had gone with some intention of making arrangements for leaving Taranaki, I received a letter from the Defence Office, dated I think, the 7th February last, asking me to assume the command. It reached Auckland at the same time as the news of the murders at the White Cliffs. I accepted it, and returned by first opportunity to New Plymouth, and assumed the command in the latter part of February. The Government has power to suspend or remove me from my command at any time, and, I believe, to cancel my commission.
5. What rate of pay are you entitled to as Major?—Nineteen shillings per day, and three shillings per day for forage for one horse, and one shilling and sixpence ration allowance when in the field.
6. What pay are you entitled to as Commander of the Forces?—Nothing more. Under former regulations I should have been entitled to three shillings per day as Officer Commanding, but this has been discontinued in the Colonial Service.
7. Are you engaged in the conduct of private business?—Yes; which I have been obliged to hand over to other hands to manage while I have been in command. I am also an actual partner in a commercial firm in which I take no part of the management.
8. Does the firm of which you are a member supply any commodities to the forces of which you are commander?—I believe so, in common with other firms. For instance, in the case of the removal of a block-house at Te Arai, the carpenter appointed by the Superintendent to do the work asked me if he was to obtain such materials as would be necessary from the firm in which I had an interest, when I informed him he was to get them where he could do so best and cheapest, irrespective of where they might be got.
9. Has your firm been in the habit of supplying spirits to the public-houses or canteens resorted to by the forces under your command?—Yes, in some cases; and for that very reason, when the power was given to me of licensing these canteens, I refused the license of one who I understood had been dealing with me, and granted it to a Mr. W. Black, who I had every reason to suppose did not deal with my firm. In all other cases I granted the licenses to those persons who had been previously licensed by the Provincial Government.
10. Did Mr. Black deal with you after granting him the license?—No, I believe not. I have informed Mr. Watkins, who manages that part of the business, that I did not wish to know who dealt with the firm in spirits, and not to give credit in any case. I would say, further, as bearing on the question, that I have recommended the Government to stop the whole system of canteens, and to take the purchase and issue of spirits to the Colonial Forces into its own hands.
11. *Major Heaphy, V.C.*] Having regard to the extent of the force under you, was your command a Major's or Colonel's?—A Major's command.
12. *Mr. Carleton.*] Am I to understand that in raising this question of privilege you in any way question the right of the Crown to remove you from the command?—No, I do not.
13. Admitting the distinction sought to be raised during your examination, between your position as a Colonial officer and that of an officer in the Imperial Service, and with that distinction presented to your mind, would you still have raised the question of privilege?—Yes.
14. *The Chairman.*] Who makes the appointment as Officer Commanding a District?—His Excellency the Governor.
15. *Major Heaphy, V.C.*] By what instrument?—By notice in the *Government Gazette*.

16. *The Chairman.*] Did not you state that Colonel Haultain gave you your command?—Yes; and Colonel Haultain wrote on the margin directing me to assume the command without waiting for the Government *Gazette* notice.

Major Campbell.

3rd August, 1869.

Major Campbell, Clerk to the House of Representatives, was then called in and examined.

17. *The Chairman.*] You were in Her Majesty's Service?—Yes, I was.

18. *Mr. Curtis.*] Is it now, or was it not the practice, for the Colonels in command of regiments in the Imperial Service, to supply clothing and accoutrements to those regiments, to their own personal profit?—It is not now the practice; formerly they had a profit out of the clothing of their regiments. I think the custom was abolished after the inquiry that was instituted during the Crimean war.

19. Are you aware if the clothing was supplied at a fixed rate?—The Colonels were allowed a fixed rate, and they called for tenders for the supply of clothing for their regiments; the clothing was then subject to the approval of a regimental Board of Officers.

20. Were these full Colonels, or Lieutenant-Colonels actually commanding?—Colonels, who are almost invariably General officers.

Major Campbell then withdrew.

The examination of Major Brown resumed.

Major Brown.

3rd August, 1869.

21. *Mr. Carleton.*] Do I understand you to mean that the Crown makes the appointment, though by the agency and under the advice of an Officer of State?—Yes.

22. Are not your instructions given to you by His Excellency's command?—My instructions are from the Defence Minister, through the Under Secretary of the Department. When Colonel Whitmore came into my district I was no longer Officer Commanding, and I received my instructions from him, and I have also received them since from him in Wellington.

23. *Mr. Jollie.*] Have you a commission as Major signed by the Governor?—Yes.

24. Did you get a fresh commission under the hand of the Governor as Commanding Officer of the District?—No. I was appointed by notice in the Government *Gazette* (No. 11-69) to the command of the Taranaki District of Militia and Volunteers.

25. *Major Heaphy, V.C.*] When Colonel Whitmore was commanding in your district, was he appointed to that command by Government *Gazette*?—I believe he was.

The Committee then adjourned until Wednesday, the 4th August, at 10 a.m.

WEDNESDAY, 4TH AUGUST, 1869.

Major Brown in attendance and further examined.

Major Brown.

4th August, 1869.

25. *The Chairman.*] How did it happen that after Colonel Whitmore was in command, you afterwards assumed the command?—He did not interfere with the internal economy of the Militia and Volunteers; he merely ordered the movements and distribution of that force.

26. Did Colonel Whitmore take the supreme command?—Yes, and he did so before the *Gazette* notice reached Taranaki; but when he left the district I corresponded direct with the Government, but still obeyed his orders.

27. *Mr. Carleton.*] By whose direction was Colonel Whitmore appointed to the command of the Taranaki Militia District in March, 1869?—By His Excellency the Governor.

28. Through whose pleasure were you appointed to command the Militia and Volunteers in the Taranaki Militia District in February, 1869?—By His Excellency the Governor.

29. *Mr. Reynolds.*] Do you consider that in such appointments His Excellency is entirely guided by his Ministry, or does he make the appointments upon his own responsibility?—He makes them by the advice of his Ministers.

30. *Major Heaphy, V.C.*] How was it that, after Colonel Whitmore left your district, you again assumed the command of the district, a senior officer, Lieut.-Colonel Lepper, being there?—I did so because I had previously held it, and Colonel Lepper did not offer to assume it. If he had done so, I should have considered him entitled to the command, until, at any rate, the question could have been referred to Government. I will add, moreover, that I had no reason to anticipate that Colonel Lepper would assume the command, as I took it from Lieut.-Colonel St. John, who was junior to Lieut.-Colonel Lepper, and I had also received a note from Colonel Lepper, expressing his pleasure that I had been appointed to the command. I may say that I have understood that Lieut.-Colonel Lepper's impaired state of health precluded his taking the command.

31. Did you ever hear of a case in the Imperial service of a junior assuming the command over his senior without direct authority?—I am not well enough acquainted with the practice of the Imperial service to answer the question.

The Hon. Mr. Fox's letter read—

SIR,—

Wellington, 15th July, 1869.

The Government has been made aware that on Tuesday last, when the House of Representatives divided on a resolution proposed by the Government, and involving a fundamental principle of its policy, your vote was recorded against the Government.

The Government has taken into its consideration the constitutional question of the propriety of its own officers voting against it in the Legislature, and has arrived at the conclusion that it is not consistent with the exercise of Responsible Government.

I have therefore to request that you will inform me whether you prefer to retain your seat in the House of Representatives, or the office of Commander of the Forces at Taranaki.

I am, &c.,

WILLIAM FOX.

Charles Brown, Esq., M.H.R.

32. *Mr. Jollie.*] Would you state to the Committee whether anything passed between Colonel Haultain and yourself with regard to a pair on the occasion of your being appointed to co-operate against Titokowaru in June last?—Yes.

33. What passed?—Colonel Haultain said he thought it was my duty to record my vote on the question of want of confidence then before the House, and that if I voted against the Government they would find me a pair, but that if I was going to vote for the Government they might not be so well able to obtain a pair for me. I then stated that there was a question of Mr. Fox's policy that he advocated last Session which would cause me to vote for his motion if he would still state it to the House as part of his policy. I allude to the distribution of that portion of the Consolidated Fund that goes to the Provinces, which Mr. Fox proposed last year to alter from the present mode to a capitation allowance.

34. Did you see Mr. Fox after your interview with Colonel Haultain; and if so, what took place?—I saw Mr. Fox, and asked him for that information as to his policy upon the point I have named, when he informed me that he did not propose to make any statement of policy on his motion then before the House on that point. I then determined to vote for the then Government; being absent, I paired off.

Colonel Whitmore in attendance and examined.

35. Have the Colonels in the Imperial Service any profit from the supply of clothing and other articles?—When I first entered the service the Colonels were paid mainly by so-called off-reckonings. Their actual pay was between £300 and £400 per annum, but their income was about £1,000. It fluctuated according to whether the regiment was abroad or at home. After the Crimean Inquiry, this was done away with. Colonel Whitmore.
4th August, 1869.

36. Were these full Colonels of regiments or Lieutenant-Colonels commanding?—Full Colonels, who are General Officers, and not generally present with the regiment.

37. Are there any other sources of profit in the Army beyond the pay?—Yes; Captains of Cavalry in India receive profit upon head and heel ropes, and officers of Engineers for letting grazing upon ramparts.

38. *Hon. Mr. Fox.*] Are the emoluments to which you allude analogous to private trade with a name in a firm?—No.

39. Are Commanding Officers allowed to engage as traders or actual partners in a mercantile firm at the time when they are on actual service?—Their time belongs to the Government; but in regard to their private incomes, they may invest them in business, and they do. I think if the Horse Guards knew that any officer's name appeared, they would object. There was a regiment known as the "Trades Union" (the King's Dragoon Guards), on account of the number of traders in it. Major Gunter is the actual proprietor of the celebrated confectioner's firm in London.

40. *Mr. Main.*] Would Captain Steel, of the firm of Flint and Steel, bootmakers, be allowed to take command of his regiment?—He would, decidedly.

41. Is there any regulation excluding persons engaged in trade holding a commission?—None whatever, except as regards his time.

42. *Mr. Jollie.*] Would the same answers that you have given to Mr. Fox apply equally to Militia officers?—Yes; with greater force. The Militia are often avowedly engaged in trade at home. With regard to the Queen's troops, they feel a social objection to acknowledge their connection with trade.

Colonel Whitmore then withdrew.

FRIDAY, 6TH AUGUST, 1868.

Major Brown in attendance and further examined.

43. *Major Heaphy, V.C.*] Were you on pay during the time you were attending Parliament?— Major Brown.
Yes; on full pay.

44. Would that include the forage and ration allowances?—Yes, so far as regards forage allowance; but my horse is at the disposal of the Government. The field ration allowance I do not draw whilst away from my command, as I do not consider I am entitled to it, not being actually in the field. 6th August, 1869.

Colonel Whitmore in attendance and further examined.

45. Do you know of any regulation against an officer engaging in trade?—No; and I have since last attending the Committee consulted other officers who have served Her Majesty, and they state the same. There is nothing in the Queen's Regulations against it. It is quite understood that Commissariat Officers and Paymasters are forbidden by their Code of Regulations to engage in trade. Colonel Whitmore.
6th August, 1869.

46. *Mr. Fox.*] Have you ever known instances of officers being compelled to leave the service by inheriting trading property?—Yes; by the action of their brother officers, in the case of an officer of the Guards.

47. Is there anything incompatible in an officer holding a commission and engaging in trade?—No; and there is nothing in the Queen's Regulations against it. I know instances of their doing so.

The Committee then adjourned until Tuesday, the 10th instant, at 11 o'clock.

APPENDICES.

APPENDIX A.

Extract from "The Government of England," by Professor Hearn.

I HAVE already observed that during the last century the rules of Ministerial discipline were much less exact than they now are. In like manner, although in a less degree, the present practice as to the permanent tenure of non-political officers was not always observed. On more than one occasion the misconduct of some subordinate officers, or the violence of their superiors, very nearly led to the establishment of dangerous precedents. During the reign of Queen Anne, the Whig Ministry complained bitterly of the impediments which they experienced from Tory officials. Lord Godolphin declared that there was not a Tory in any Ministerial office who did not require to be spoken to ten times over before he would execute anything that had been ordered, and then it was done with all the difficulty and slowness imaginable.

When the Tories were in power and their triumph seemed to be secured by the momentary victory of Bolingbroke, it was their intention, as the baffled Minister himself acknowledged, to fill all the employments of the kingdom, down to the meanest, with their partisans. Sir Robert Walpole, when smarting under the defeat of his Excise Bill, not only dismissed civil officers with seats in Parliament, whom we should now consider as bound to support the measures of their chief, but deprived of their commissions several officers in the army. Nor was this the only occasion on which the great Whig Minister exercised for political reasons towards military Members of Parliament the prerogative of dismissal. Three or four years afterwards he tried, though very unsuccessfully, by this means to muzzle that "terrible Cornet of Horse" whose fiery eloquence was then beginning to fulmine over England. Walpole, indeed, asserted in Parliament that he should think any man a most pitiful Minister who should be afraid of advising His Majesty to cashier an officer who habitually opposed the measures of the Government. He added that, by his dismissal of Lord Cobham and the Duke of Bolton, he should leave it as a legacy to all future Ministers that upon every occasion it is their duty to advise their master that such an officer is unfit to have any command in the army. This view of Walpole's as to the similarity of civil and military officers so far as their political duties were concerned, although it is not countenanced by the Act of Queen Anne, was accepted both by George the Third and Mr. Grenville. When the great question of general warrants was discussed in Parliament, Colonel Barrè and Colonel A'Court were deprived of their commands in consequence of their votes in the House of Commons; and a little afterwards, by the King's express directions, the same measure was adopted in the case of one of the principal Whig leaders, General Conway. But the public feeling on this subject has been so strong, and the impropriety of punishing a soldier for other than a soldier's offences so manifest, that this precedent has not been followed. No example since the dismissal of General Conway has occurred of any military Member of Parliament being required to support the Government.

A much more serious innovation, however, was attempted a few years before the affair of General Conway. We meet from time to time, under the later Administrations of George the Second and the earlier ones of his grandson, with complaints against what were termed proscriptions. Most of these acts were merely what we should now regard as ordinary political changes. But a true proscription occurred in 1763, under the auspices of Lord Bute and the elder Fox. Not merely were the chiefs of the opposite party subjected to unseemly and almost unprecedented affronts, but the rage of the victors did not spare the subordinates. Excisemen and tidewaiters were dismissed because they had been recommended by some Member of Parliament who voted against the Government on the negotiations for peace. Several old servants of the Duke of Newcastle who had obtained subordinate places were hunted out, and deprived of their bread. A Sussex yeoman who had been rewarded with an office for his bravery in a conflict with smugglers was dismissed because he was an adherent of the Duke of Grafton. The widow of an Admiral, who had for many years held in lieu of a pension an appointment of housekeeper at one of the public offices, lost her situation for no other reason than that she bore the name of Cavendish. But this bad precedent has been universally reprobated. The restoration of the proscribed was one of the first conditions for which the Rockingham Ministry on their accession to office in 1765 stipulated. Charles Fox, a few years afterwards, was shocked and grieved at the mention of his father's cruelty. At the present day no Minister could attempt such a course. The tendency is perhaps towards the opposite extreme. A German writer has remarked with not unnatural surprise, the fact that on one occasion the dismissal of a letter-carrier led to the presentation to Parliament of 2,160 folio pages of evidence. Little has occurred during the present century in respect of this subject to require notice. Complaints have sometimes been made that some official has taken a prominent part in some contested election or other political proceeding, and an intimation has been given that a continuance in such conduct would induce the Government to advise Her Majesty to dispense with that officer's services. Such instances are infrequent, and merely serve to illustrate the principle which is involved.

That principle also receives illustration from two remarkable cases. In 1812 the Prince Regent had caused negotiations to be opened with Lords Grenville and Grey for the formation of a Ministry. It was proposed that the officers of the Royal Household should be considered as included within the

new Ministerial arrangement. Lord Moira, who acted for the Regent, refused to allow any such change. Lords Grenville and Grey contended that the change they proposed was essential as a public proof of the Royal confidence and support. On this issue the negotiations were broken off. Subsequently, however, these offices were usually treated as political; and in a Minute of the Cabinet in opposition to Sir Robert Peel's views on the Bed-Chamber question, it was admitted to be "reasonable that the great offices in the Court, and the situations held in the Household by Members of Parliament, should be included in the political arrangements made upon a change of Administration." The other case to which I have referred was the extension by Sir Robert Peel of this principle to the offices held by the ladies in the Court of a Queen Regnant. Although, when the question first arose in 1839, Lord Melbourne's Ministry denied that such offices were political, the practice for which Sir Robert Peel contended was adopted in 1841, and has since that time been followed. The Mistress of the Robes and the Ladies of the Bed Chamber, when they are closely connected with the outgoing Ministry, are regarded as holding political offices. But when the Ladies of the Bed Chamber belong to families not occupying any prominent political position, no objection is made by the new Ministry to their continuance in office.

APPENDIX B.

Extract from "The Government of England," by Professor Hearn.

THESE examples indicate the true principles upon which disqualifications arising from office depend. They are not penal measures towards individuals, and should be regarded not as conveying any slight or degradation, but as based upon sound public policy. Whatever may have been their origin, these disabilities cannot now be considered as securities against an overgrown prerogative. They are not the props and appliances by which the weakness of Parliamentary virtue is supported. They are not the safeguards against the ignorance or imbecility of electors. All these reasons have indeed been urged in their defence, and some of them, if not all, were once true. But the reason for which a law was passed is not necessarily a reason for its continuance. In the present state of the Royal authority its influence is perhaps less than we should desire. With the present constitution of Parliament, under the present conditions of publicity, and with the present increasing tendency in England to elect none but wealthy representatives, there is little danger that Members will be directly bribed with places or by any other direct means. In the present state of public intelligence, and with the present means of forming and enlightening the public opinion, electors do not require protection against themselves. But under the existing system of Parliamentary control, enforced by Ministerial changes, and guarded by an official profession, with a fluctuating body of chiefs and a permanent body of subalterns, a seat in Parliament and a permanent official position are irreconcilable. It is a case of inconsistent offices. It would not conduce to official discipline if an officer were in the evening to denounce those instructions which during the morning he had been engaged in carrying into effect. Nor could any cordial co-operation be expected between a Minister and the subaltern who, the night before, had been striving to drive him from his office. On the other hand, if friendly Parliamentary relations existed between the Minister and his subalterns, two other difficulties would arise. There would be the temptation to fill, and to keep filled, the public offices with men whose qualification was steady voting and not official aptitude; and there would be the certainty that the qualities which were the highest merit in the eyes of one Minister would appear intolerable defects to his successor. Thus the number of officers liable to change would be unduly increased, and the efficiency of the service would be proportionately injured.

APPENDIX C.

Extract from "The Annual Register," 1839.

AT about the same period, the presence of the Colonel and Officers of the 20th Regiment at another dinner of the Conservative Association of Ashton-under-Lyne, where very intemperate speeches of a similar nature were delivered, attracted the notice, and eventually severe censure, of the Horse Guards. By order of the Commander-in-Chief, the Adjutant-General, Sir John Macdonald, was instructed to forward to Colonel Thomas, on the 3rd of November, an extract of "expressions most insulting and disrespectful towards the Queen," which were reported in the *Times* to have been used by Mr. Roby on that occasion, and to beg him to acquaint the writer, for Lord Hill's information, whether Colonel Thomas heard them, and whether, if they reached his ears, he expressed immediately his disapprobation of those sentiments. "I am to add," said Sir John, "that it is most painful to Lord Hill to know that officers of the army were present on such an occasion, but that his Lordship will refrain from passing any opinion on the case until you shall have furnished such explanation relative thereto as you may be prepared to submit for his consideration."

Colonel Thomas acknowledged the receipt of the letter on the following day. Without pretending to answer for the accuracy of the isolated passages taken from the newspapers, he stated in reply, that as no expression uttered by Mr. Roby conveyed to his mind that the slightest disrespect, much less insult, was intended by that gentleman for the Queen, there appeared to be no ground for manifesting any disapproval. "I had flattered myself," continued the gallant officer, "that my long and painful services of upwards of one-and-forty years might have assured Lord Hill that I would not have been wanting had such an impression been received by me."

"I have to lament that the knowledge of officers having been present on such an occasion should be painful to Lord Hill. With reference to myself, I was honoured with an invitation as a Member of Parliament to meet Sir Francis Burdett, which I could have no hesitation in accepting."

The Horse Guards were not satisfied with this explanation, and desired Colonel Thomas to restrict his answer to "the simple denial or admission required of him in their first communication."

Colonel Thomas replied, that after the assertion made in his first answer, and the further statement subsequently given in a letter of the 14th instant, in which he denied having heard the particular expressions quoted, and gave his opinion that the extract was "a garbled report" of

the words which actually fell from Mr. Roby, he had no further explanation to make—nothing more either to retract or admit; and he stood upon his character as a soldier, and his birthright as a gentleman, which he could not but feel had been reflected upon by most unmerited suspicion.

The last document in this transaction is a communication from Sir J. Macdonald to the Commander of the Northern District, Sir Charles Napier. After recapitulating the circumstances of the case, Sir John goes on to say, with reference to the above proceedings,—

“It is most painful to Lord Hill to observe that, upon their own showing, Colonel Thomas and the other officers in question have placed themselves in the mortifying predicament of being obliged to confess that they lent their presence to a meeting of a strong party character, at which expressions were uttered which they are unprepared to prove the propriety of towards the person of their Sovereign.

“In this state of a case, on every account very distressing to him, it remains for Lord Hill but to order that you convey to Colonel Thomas, and to every other officer belonging to the forces now serving under your command who was present upon the above occasion, the expression of His Lordship's most pointed and decided displeasure, reminding them that, as military servants, they are bound to confine themselves to their military duties, and that when they thus venture to connect themselves with any party association, under any circumstances or upon any pretence whatsoever, they incur a heavy responsibility, and expose themselves to the heaviest blame.

“In Colonel Thomas's first letter to the Adjutant-General upon this unpleasant subject, he states that he was invited by this Conservative Association ‘as a Member of Parliament.’ In reference to that part of the Colonel's statement, I have it specially in command to declare that, whilst Lord Hill yields to no one in respect for the privileges of a Member of Parliament, His Lordship will not suffer any officer of the Army to build his justification upon them when he thinks fit to resort to a measure calculated to compromise the character and discipline of his profession.”

APPENDIX D.

Extract from “Law and Practice of Legislative Assemblies,” by L. S. Cushing.

FREEDOM of speech and debate has always been enjoyed by the members of both Houses of the British Parliament, as one of their most ancient and necessary rights and privileges, and entirely essential to the free and independent exercise of their functions. This privilege, though originally intended as a protection against the power of the Crown, has always been equally effectual to protect the Members against the attacks of their fellow-subjects. After many controversies between the two Houses themselves, or one of them and some other Court or authority, it was finally settled at the Revolution, and expressly declared by the Bill of Rights, as one of the fundamental liberties of the people, that “the freedom of speech and debates, and proceedings in Parliament, ought not to be impeached or questioned in any Court or place out of Parliament.”

In this country, this privilege has been expressly declared by Constitution in favour of the members of all our Legislative Assemblies, except those of Virginia, North Carolina, South Carolina, Mississippi, Iowa, Texas, and California, in substantially the same form as above stated, and with the same legal effect, though, in general, somewhat more tersely expressed, the language being, for the most part, that “for any speech or debate, in either House, Members shall not be questioned in any other place.” In the States above mentioned there does not appear to be any provision of Constitution on this subject; but the Constitutions of Mississippi and Iowa, after conferring certain specified powers and privileges upon the Houses of their Legislative Assemblies, contain a general grant to them of all other necessary powers; and in South Carolina, the existence of the privilege, as a constitutional one, is only to be inferred from its being therein made a punishable offence to threaten harm to any Member for anything said or done in the House of which he is a member. There can be no doubt, however, that according to the principles already laid down, the privilege of freedom of speech and debate exists in these States as fully and effectually as if it had been expressly provided.