[HIGH COURT OF AUSTRALIA.]

WILLIS AND CHRISTIE . . . . APPELLANTS;
DEFENDANTS,

AND

PERRY . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1912.

SYDNEY, *April* 19.

Griffith C.J., Barton and Isaacs JJ.

Parliament—Powers of Speaker of the Legislative Assembly of New South Wales—Arrest of member outside Chamber and bringing him into it.

The Legislative Assembly of New South Wales having only protective and self-defensive powers, and no punitive powers, the Speaker has no authority to cause a member who has been disorderly in the Chamber, and has left it in a disorderly manner, to be arrested outside the Chamber and brought back into it. An allegation that the Speaker reasonably believed that the bringing back of the member was necessary to prevent further disorder in the Chamber is irrelevant.

Decision of the Supreme Court: *Perry* v. *Willis and Christie*, 11 S.R. (N.S.W.), 479, affirmed.

APPEAL from the Supreme Court of New South Wales.

John Perry, a member of the Legislative Assembly of New South Wales, brought an action in the Supreme Court against Henry Willis, the Speaker, and William Sydney Christie, the Serjeant-at-Arms, for assault and false imprisonment. The defendants pleaded "not guilty" and the following plea:—

"2. And for a second plea the defendants say that before and at the time of the trespasses declared upon the defendant Willis

was Speaker of the said Assembly and the plaintiff was a member thereof, and in the course of a certain sitting of the said Assembly for the transaction of business certain members thereof were guilty of disorderly and unseemly conduct, which disorderly and unseemly conduct was tending to increase, and it became and was necessary for the preservation of order and seemly conduct in the said Assembly during the then sitting thereof that the defendant Willis, as such Speaker, should immediately intervene and check any case of disorder or unseemly conduct, and it was then and there reasonably probable that unless the defendant Willis, as such Speaker, so intervened and checked any such case as aforesaid that members so guilty of such disorder or unseemly conduct, and other members of the said Assembly, would be misled and incited to further and other acts of disorder and unseemly conduct during the said sitting by reason of the defendant Willis, as such Speaker, not having immediately intervened and checked such disorder or unseemly conduct in its inception; and the defendants say that the plaintiff was then and there taking part in the said disorderly and unseemly conduct in the said Assembly, and while the defendant Willis, as such Speaker, was addressing him and calling him to order did not listen in silence, and remained standing and persisted in the said disorder, and while the defendant Willis, as such Speaker, was on his feet and calling the plaintiff and the House to order, shouted to the said members to follow him out of the said chamber, and left the chamber of the said Assembly with his hat on, and without making obeisance to the Chair, all of which said acts of the plaintiff were contrary to the Standing Orders and procedure of the said Assembly; and the defendants say that the plaintiff committed the said and other acts of disorder in order to cause further disorder during the said sitting, and with the intent to make it impossible to continue the said sitting by reason thereof, and with the intent to cause the authority of the defendant Willis, as such Speaker, to be disregarded by the said members who were so guilty of the said disorderly conduct, and to prevent him from restoring or maintaining order, and from ensuring obedience to the said directions of the defendant Willis, and to the said Standing Orders and procedure on the part of the plaintiff

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and of the said other members, and immediately thereupon the defendant Willis, as such Speaker, in order to enforce the observance of the said Standing Orders and to restore and maintain order in the said Assembly during the rest of the said sitting, and to prevent similar and further acts of disorder and breaches of the said Standing Orders by the plaintiff and other of the said members during the rest of the said sitting, and not otherwise, directed the defendant Christie, as such Serjeant-at-Arms—he being the proper Officer appointed to assist the Speaker in maintaining order—to bring the plaintiff back into the said chamber; and the defendants say it was then and there necessary for the purpose of preventing the spread of disorderly and unseemly conduct during the rest of the then sitting, and for the purpose of securing obedience during the rest of the said sitting to a certain Standing Order of the said Asssembly which requires that a member of the said Assembly shall be uncovered and make obeisance to the Chair when leaving the Assembly, that the plaintiff should be brought back into the said chamber forthwith; and the defendants further say that unless such course had been followed, it was then and there reasonably probable, and the defendant Willis, as such Speaker, believed that the existing disorder as aforesaid would so increase that the then sitting of the said Assembly could not further be continued by reason thereof, but would terminate in disorder, and immediately thereupon the defendant Christie, in pursuance of the said direction of the defendant Willis, within the precincts of the said chamber then and there gently laid his hand on the plaintiff and conducted him into the same chamber, doing no more than was necessary in that behalf, and the plaintiff was, when so conducted by the defendant Christie, then and there admonished and cautioned by the defendant Willis, as such Speaker, for his misbehaviour aforesaid, with the purpose of preventing the further spread of disorder during the then sitting, and the discontinuance and breaking up of the said sitting by reason thereof, and not otherwise, which are the alleged trespasses."

The plaintiff demurred to the second plea and the demurrer was heard by the Full Court, who ordered that judgment should be

entered for the plaintiff on the demurrer : *Perry* v. *Willis and Christie* (1).

From this decision the defendants now by leave appealed to the High Court.

Wise K.C. and *Armstrong*, for the appellants. The Speaker's powers for the preservation of order are co-extensive with his duties. His powers are much larger than those of the chairman of a public meeting because his duties are quite different: *Barton* v. *Taylor* (2); *Kielley* v. *Carson* (3). A sitting of the Assembly is continuous and the Speaker has no power to suspend or adjourn it. It is therefore the duty of the Speaker to see that the sitting comes to an end in a proper manner and to prevent it from being broken up in disorder. He therefore has power to take what steps are necessary to prevent the sitting being brought to an end by disorder. He has power, like the chairman of a public meeting, to call up a disorderly member and admonish him: *Lucas* v. *Mason* (4). The power of the Speaker, much arise out of, and in character depend upon, the emergencies that arise. The belief of the Speaker that a certain action on his part is necessary in order to enable the sitting to be continued is, if not conclusive, at any rate evidence, that that action was necessary. If a jury thought that the Speaker's action did prevent the spread of disorder in the chamber and enable the sitting to be continued, and that his action was necessary for that purpose, their finding could not be challenged. The facts alleged show that the respondent's conduct in the chamber and after he left it was one continuous act of disorder. He remained in the precincts of the chamber, to which the Speaker's authority extends, and his object was to cause further disorder. His conduct was part of an organized attempt to break up the sitting. If the Speaker has power to expel from the precincts of the chamber a man who is interfering with the business in the chamber, he has power to bring that man into the chamber and admonish him. The whole question is was the action of the Speaker necessary and that is a question for a jury.

(1) 11 S.R. (N.S.W.), 479.
(2) 11 App. Cas., 197 at p. 204
(3) 4 Moo. P.C., 63 at p. 88.
(4) L.R. 10, Ex. 251.

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Knox K.C. (with him *Mitchell*), for the respondent. The facts alleged do not show that there is a power in the Speaker to bring back a member who has left the chamber and the mere allegation of that power cannot aid: *Seymour* v. *Maddox* (1). The limits of the power are defined by the Privy Council in *Barton* v. *Taylor* (2). [Counsel were not further called upon.]

GRIFFITH C.J. The appeal in this case was not brought by special leave, the grant of which suggests a doubt as to the correctness of the decision of the Supreme Court, but as the decision, although in form an interlocutory judgment, practically deprives the defendant of any defence, this Court, in pursuance of its usual practice, granted the leave as a matter of course. For my part, I have had difficulty in treating the arguments for the defendants with becoming gravity. The complaint is that the defendant Willis directed the other defendant to arrest the plaintiff, a member of Parliament, while he was outside the legislative chamber, and to bring him into the chamber, there to be admonished by the Speaker. The plea alleges towards the end of it that "the defendant Willis, as such Speaker, believed that the existing disorder as aforesaid would so increase that the then sitting of the said Assembly could not further be continued by reason thereof, but would terminate in disorder, and immediately thereupon the defendant Christie, in pursuance of the said direction of the defendant Willis, within the precincts of the said chamber then and there gently laid his hand on the plaintiff and conducted him into the said chamber," etc. Immediately before that the plea contained the allegation that "it was then and there necessary for the purpose of preventing the spread of disorderly and unseemly conduct during the rest of the then sitting, and for the purpose of securing obedience during the rest of the said sitting to a certain Standing Order of the said Assembly, which requires that a member of the said Assembly shall be uncovered and make obeisance to the Chair when leaving the Assembly, that the plaintiff should be brought back into the said chamber forthwith." It appears from other portions of the plea that the plaintiff, shortly before he

(1) 16 Q.B., 326. (2) 11 App. Cas., 197, at p. 204.

left the chamber, had been guilty of disorderly conduct, and that when leaving it he did not make obeisance to the Chair and kept his hat on his head.

In my judgment the question at the root of the case is whether the Speaker of the Legislative Assembly of New South Wales has power to arrest a member not in the chamber and bring him into it against his will. In the case of *Barton* v. *Taylor* (1), which was an appeal from the Supreme Court of New South Wales brought by my brother *Barton* who was then Speaker, Lord *Selborne*, in delivering the judgment of the Judicial Committee, after referring to the cases of *Kielley* v. *Carson* (2) and *Doyle* v. *Falconer* (3) said (4):—"It results from those authorities that no powers of that kind are incident to or inherent in a Colonial Legislative Assembly (without express grant), except 'such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute' (5). Whatever, in a reasonable sense, is necessary for these purposes, is impliedly granted whenever any such legislative body is established by competent authority. For these purposes, protective and self-defensive powers only, and not punitive, are necessary." A little further on he said, quoting from *Doyle* v. *Falconer* (6):—"'If a member of a Colonial House of Assembly is guilty of disorderly conduct in the House while sitting, he may be removed or excluded for a time, or even expelled. . . . . The right to remove for self-security is one thing, the right to inflict punishment is another. . . . . If the good sense and conduct of the members of Colonial Legislatures prove insufficient to secure order and decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person excluded from the place of meeting, and to keep him excluded.' . . . The principle on which the implied power is given confines it within the limits of what is required by the assumed necessity. That necessity appears to their Lordships to extend as far as the whole duration of the particular meeting or sitting of the Assembly in the course of which the offence may

(1) 11 App. Cas., 197.
(2) 4 Moo. P.C. 63.
(3) L.R. 1 P.C. 328.
(4) 11 App. Cas., 197 at p. 203.
(5) 4 Moo. P.C. 63 at p. 88.
(6) L.R., 1 P.C. 328 at p. 340.

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have been committed. It seems to be reasonably necessary that some substantial interval should be interposed between the suspensory resolution and the resumption of his place in the assembly by the offender, in order to give opportunity for the subsidence of heat and passion, and for reflection on his own conduct by the person suspended; nor would anything less be generally sufficient for the vindication of the authority and dignity of the assembly." I think that this judgment authoritatively expresses the law applicable to the present case, and the question is whether it can be called defensive action on the part of the Legislative Assembly of New South Wales to arrest a member who is out of the chamber and bring him back into it. The only purpose can be to punish him. The plea contains the extraordinary allegation that the plaintiff having been disorderly in the chamber had gone out of it and that, in order to prevent disorder from continuing in the chamber, it was necessary to bring him back. That is self-contradictory. While absent from the chamber he certainly could not contribute to disorder in the chamber. In my opinion the Speaker had no more authority over the plaintiff when he was outside the chamber than he had over a person who was not a member. The Speaker undoubtedly has power when any person who is outside the chamber is conducting himself in such a manner as to interfere with the orderly conduct of proceedings in the chamber to have that person removed, and for that purpose to obtain the aid of the police. But that is quite a different thing from arresting a person and bringing him into the chamber. The only object of such action is to punish him, or, as *Ferguson* J. said, "that the example made might be effective as a deterrent." The appeal must therefore be dismissed.

BARTON J. I am of the same opinion. The case is so abundantly clear that I am not justified in adding many words to what has been said by the Chief Justice. The Speaker is merely the mouthpiece of the House of Assembly. He exercises for it powers which it possesses, but the exercise of which is placed in his hands, subject to its control, for reasons of necessity or convenience. Now the Assembly does not possess power to punish for breaches of order. Still less has it power to punish

in anticipation of disorder. It can protect itself against existing disorder on the part of a member by removing him and in other ways, but if he desists from disorder it cannot punish him for what has ceased. In the plea it is not even alleged of the plaintiff that while he was outside the chamber he was doing anything which created disorder inside the chamber. Had such been the case, different considerations might possibly have been applicable. The utmost that is said is that the plaintiff intended to cause further disorder. To bring him back into the chamber was in no sense an exercise by the Speaker of the self-protective power of the Assembly. Order in debate is necessary to the proper performance of the functions of a branch of the legislature, and the power to preserve order belongs to it as a necessary consequence. But the Speaker's action went outside the necessity of the case when he ordered the plaintiff to be brought back. It is pleaded that the defendant had failed to take off his hat and to make an obeisance to the chair, and that in other respects he had been guilty of gross disorder while in the chamber, and for the purposes of his demurrer the defendant admits all the misconduct alleged. Such misconduct might be ample warrant for bringing a member back and punishing him where there is power to punish. But where there is no punitive power, conduct such as that of the plaintiff, outrageous as it may be, does not warrant the Speaker, or an officer of the House under his orders, in arresting a member and bringing him back into the chamber. Such action is beyond the legal power of the Speaker in New South Wales, and in view of his position under the law his action was totally unjustified, and the plea is therefore bad. Judgment must therefore pass for the plaintiff on the demurrer.

ISAACS J. I quite agree. The Legislative Assembly of New South Wales has assigned to it very high constitutional functions and it is an implied part of the grant of those functions, there being a corresponding duty to perform them, that it is not to permit itself to be impeded or obstructed in discharging these functions. But it has only the common law implication to depend upon and so has no punitive power at all. Of course, if

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the House has no punitive power, its officer, "who has no eyes to see, or ears to hear or mouth to speak with except as the House directs him"—as was said on a great historical occasion—has no further power. The limit of this implied power, which is one of necessary implication, is the necessity of the circumstances. As put by Lord *Selborne* in *Barton* v. *Taylor* (1):—"The principle on which the implied power is given confines it within the limits of what is required by the assumed necessity."

Then the question is, what is the assumed necessity? That is laid down in *Kielley* v. *Carson*, by *Parke* B., who said (2):—"Their Lordships see no reason to think, that in the principle of the common law, any other powers are given them, than such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute. These powers are granted by the very act of its establishment, an act which on both sides, it is admitted, it was competent for the Crown to perform. This is the principle which governs all legal incidents. '*Quando lex aliquid concedit, concedere videtur et illud, sine quo res ipsa esse non potest.*' In conformity to this principle we feel no doubt that such an Assembly has the right of protecting itself from all impediments to the due course of its proceeding. To the full extent of every measure which it may be really necessary to adopt, to secure the free exercise of their legislative functions, they are justified in acting by the principle of the common law."

Now the facts relied on in this case by the defendants to establish the necessity are shortly these :—That the plaintiff was guilty of very disorderly conduct while in the chamber and of very disrespectful conduct in leaving it. But, having left it, there is not a single allegation against him of any other disorderly act, or even intended disorderly act, and yet it is said that his arrest outside the chamber, whether in the precincts of the chamber or not, but at all events in a place where he was not in a position to interfere with the legislative functions within the chamber, and his forcible re-introduction into the chamber were justified on the ground that other members would probably repeat his conduct if he were not brought back. The simple

(1) 11 App, Cas., 197, at p. 204. (2) 4 Moo., P.C., 63, at p. 88.

answer is that those other members had not done so, and if they had, they could have been dealt with and could have been removed from the House, and in law there could not be a necessity to bring the plaintiff back into the chamber in order to prevent other possible disorder on the part of other members from arising. The facts as alleged therefore do not, in my opinion, amount to any possible justification.

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Appeal dismissed with costs.

Solicitor, for the appellants, *J. V. Tillett*, Crown Solicitor for New South Wales.

Solicitors, for the respondent, *Minter, Simpson & Co.*

B. L.

[HIGH COURT OF AUSTRAILA.]

BEDINGFELD . . . . . APPELLANT;
INFORMANT,

AND

KEOGH . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

Health—Pure Food—Authority to Prosecute—"Enforcing" the provisions of the Act—Pure Food Act 1908 (*N.S.W.*) (*No.* 31 *of* 1908) *secs.* 9, 40—*Fines and Penalties Act* 1901 (*N.S.W.*) (*No.* 16 *of* 1901) *sec.* 4—*Public Health Act* (1902) (*N.S.W.*) (*No.* 30 *of* 1902) *sec.* 108.

A prosecution for an offence against the provisions of the *Pure Food Act* 1908 may be instituted by any person under the general authority given

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SYDNEY, *April* 25.

Griffith C.J. and Isaacs J.