

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Our Sovereign Lady the Queen v. Macpherson, from New South Wales, delivered July 7th, 1870.*

Present:—

LORD CAIRNS.

SIR WILLIAM ERLE.

SIR JAMES W. COLVILLE.

IN this case their Lordships are of opinion that the Appeal ought to be allowed, that the Judgment which has been entered in the Colony for the Defendants should be reversed, and that the demurrer of the Defendant should be overruled, and their Lordships will humbly report to Her Majesty to this effect. Beyond that their Lordships do not proceed. They leave it to the Attorney-General to take such steps as he may think fit, if he should desire to take further steps with reference to the Judgment in the Colony.

Their Lordships read the information in this case as an information which states in fit and apt terms that an assault was committed by the Defendant upon the person named in the information, viz. Benjamin Lee; they read it as alleging that "the defendant in and upon the said Benjamin Lee did make an assault, and him, the said Benjamin Lee, did then beat, wound, and ill-treat;" words which, in all respects, are apt words for the purpose of describing a common assault. They find, then, that added to those words there are some further words, viz. "in contempt of the said assembly, in violation of its dignity, and to the great obstruction of its business." Their Lordships cannot read these words as an allegation of a further or of a separate offence, but simply as the statement of a consequence resulting from that

common assault which is described in the earlier words. Whether that consequence did or did not result from the common assault, whether that consequence ought or ought not to be considered as an aggravation of the common assault, is to the mind of their Lordships immaterial. The words do not alter the character, or the allegations with regard to the character, of the offence which is charged. They may be surplusage; but if surplusage, they do not in any way injure or take away from the effect of the earlier averments. Their Lordships are perfectly satisfied with the reasons upon this head, which have been given by the Chief Justice in the Colony. They desire to express their concurrence with those reasons; and it is upon those grounds their Lordships have arrived at the conclusion which has been already intimated.