

9,1958

In the Privy Council.UNIVERSITY OF LONDON
W.C.1.-2 FEB 1959 IN THE MATTER of a Reference under the Judicial 3 & 4 Will 4 c. 41.
Committee Act, 1833, Section 4INSTITUTE OF ADVANCED
LEGAL STUDIES

AND

IN THE MATTER of the Parliamentary Privilege Act, 10 Geo. 3 c. 50.
1770

AND

52230

IN THE MATTER of the Fifth Report from the
Committee of Privileges, Session 1956/57.**10 Case for the London Electricity Board.**

The submission of the London Electricity Board in support of the view that the House of Commons would be acting contrary to the Parliamentary Privilege Act, 1770, if it treated the issue of a Writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its privileges.

1. By Order in Council dated the 13th of December, 1957, Her Majesty by and with the advice of the Privy Council was pleased to refer to the Judicial Committee for their hearing and consideration the question of law whether the House of Commons
20 would be acting contrary to the Parliamentary Privilege Act, 1770, if it treated the issue of a Writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its privileges.

2. The circumstances giving rise to the said reference are as follows :—

(a) The London Electricity Board regularly has for disposal quantities of obsolete electric cable, commonly known as scrap cable. During 1952 and 1953 the Board introduced throughout its area of supply an altered system
30 for the disposal of such scrap cable. Since 1954, the National Association of Non-Ferrous Scrap Metal Merchants has made a number of representations, both to the Board and to the British Electricity Authority (as it then was), that this system should be abandoned.

(b) By letter dated the 8th February, 1957, the
40 Right Honourable G. R. Strauss, M.P., who was then, as was his wife, a substantial shareholder in the firm of A. Strauss & Co. Limited, metal brokers and merchants (which Company has a controlling interest in J. B. Garnham & Sons Limited, dealers in scrap metal, a Director of which Mr. G. B. Garnham takes a prominent part in the affairs of the Council of the National Association of Non-Ferrous Scrap Metal Merchants) wrote to Her Majesty's Paymaster-General criticising the policy of the Board in the disposal of its scrap cable, and, it will be submitted, making and intending to make an allegation that Mr. S. C. Alden-Brown, who was at all times the Board's Purchasing Officer, had been bribed by the "one or two firms" referred to in the enclosure to the letter. App., p. 1

(c) So far as the Board is aware none of the scrap metal merchants in question was a constituent of Mr. Strauss.

(d) The subject-matter of the said letter was a matter of day to day administration of the Board and was not in any way the responsibility of Her Majesty's Paymaster-General.

p. 4 (e) Her Majesty's Paymaster-General replied to Mr. Strauss's letter pointing out to him the facts stated in the preceding paragraph.

(f) The Board, who considered that the said letter 10 contained statements defamatory of itself and its Purchasing Officer, after a meeting between the Chairman and Mr. Strauss with Mr. Elton and Mr. Garnham—both members of the Council of the National Association of Non-Ferrous Scrap Metal Merchants—at which the true facts were explained to them, including the fact that no less than eleven firms had submitted tenders for scrap cable, wrote on the 28th February requesting Mr. Strauss to withdraw the allegations which he had made in his letter of the 8th February, 1957, to the Paymaster-General. 20

p. 9 (g) On the 4th March, 1957, Mr. Strauss replied, not only refusing to withdraw his allegations, but repeating them, and accordingly on the 27th March Messrs. Sydney Morse & Company, Solicitors to the Board, informed Mr. Strauss by letter that unless a withdrawal of the allegations was made, the Board and its Purchasing Officer would commence proceedings against him in the High Court of Justice in respect of the said statements, that is to say those contained in the said two letters. 20

p. 13 (g) On the 4th March, 1957, Mr. Strauss replied, not only refusing to withdraw his allegations, but repeating them, and accordingly on the 27th March Messrs. Sydney Morse & Company, Solicitors to the Board, informed Mr. Strauss by letter that unless a withdrawal of the allegations was made, the Board and its Purchasing Officer would commence proceedings against him in the High Court of Justice in respect of the said statements, that is to say those contained in the said two letters. 20

p. 14 (h) By letter dated the 2nd April, 1957, Messrs. Kenneth 30 Brown Baker Baker, Solicitors for Mr. Strauss, informed Messrs. Sydney Morse & Company, that they were prepared to accept service of any proceedings Messrs. Sydney Morse might be instructed to begin.

(i) On the 8th April, 1957, the matter was raised in the House of Commons by Mr. Strauss and was referred to the Committee of Privileges.

(j) For some reason, which is not known to the Board, the Committee of Privileges do not appear to have considered the question whether the issue of a Writ claiming damages 40 for libel in respect of statements made by Mr. Strauss in the letter of the 4th March, 1957, would or might be a breach of privilege of Parliament.

3. It is submitted that :—

(a) The issue of a Writ against a Member of Parliament in the High Court of Justice, in respect of a speech or proceeding by him in Parliament, never was and is not in any circumstances a breach of the privileges of Parliament.

(b) Even if the issue of a Writ, or the threat of the issue of a Writ, against a Member of Parliament in respect of a speech or proceeding by him in Parliament is a breach of the privileges of the House of Commons, the Parliamentary Privilege Act, 1770, prevents that House taking cognizance of the said breach. 50

Donne v. Walch
1 Hatsells
Precedents 41.

Hodges v. Moor
(1626) Latch 15.

Benyon v. Evelyn
(1664) O. Bridgeman
324.

Stockdale v. Hansard
(1839) 9 A. & E. 1.

4. Parliamentary privilege stems from the prerogative of the Crown who protected from molestation those of their Subjects whom they summoned to advise them in Council. What had arisen from the special protection of the Crown began, by the reign of Henry IV, to be claimed by Parliament as customary rights or privileges, and in the early part of the 17th century the House of Commons asserted these privileges as against the Crown itself. In 1689 Parliament enacted their privileges into law by embodying them in the Bill of Rights, 1688, the relevant article of which reads :— pp. 23-33

“ That the freedom of speech and debate or proceedings in Parlyament ought not to be impeached or questioned in any Court or place out of Parlyament.”

5. It is submitted that the Bill of Rights in no way derogated from the ancient and inalienable right of the Subject to seek to have recourse to the Courts of the country in order to seek justice according to law.

6. The privilege of Parliament is part of the law of England and as such the Courts of England have cognizance of it and jurisdiction to determine as a matter of law whether conduct of which a member of the public complains falls within the ambit of Parliamentary privilege. The member of the public, therefore, who issues a Writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament is not directly calling the freedom of speech or proceedings in Parliament into question, but is merely asserting that the Member of Parliament's conduct is not covered by Parliament's admitted privileges. If the Courts are of opinion that the Member's conduct is covered by Parliamentary privilege they can and will take effective steps to protect the Member against any further prosecution of the action.

7. It is submitted that the Courts, who in such cases have the opportunity of hearing argument on both sides of the question, are better able to do justice between a member of the public and a Member of Parliament than the House of Commons, who, of necessity, must be not only Prosecutor, and Judge, but Executioner as well ; and who are not bound to hear the member of the public concerned, and, as in this case, do not normally do so.

8. The word “ impeach ” in Article 9 of the Bill of Rights cannot refer only to the procedure of impeachment before the House of Lords. As used in 1690 it meant “ to impede, hinder, prevent.” If the conduct of a Member of Parliament, against whom a Writ was issued, came within the ambit of Parliamentary privilege there could be no question of that Member being impeded or hindered in the doing of his duty in a speech or proceeding in the House of Commons because the Courts themselves not only would afford no assistance to the person who issued the Writ but would prevent him from prosecuting it further.

9. The relevant provisions of the Parliamentary Privilege Act, 1770, 10 Geo. 3 c. 50, are as follows :— pp. 55-57

Section 1. “ From and after the twenty-fourth day of June one thousand seven hundred and seventy, any person or persons shall and may at any time commence and prosecute any action or suit in any court of record or court of equity or

of admiralty, and in all causes matrimonial and testamentary, in any court having cognizance of causes matrimonial and testamentary, against any peer or lord of Parliament of Great Britain, or against any of the knights, citizens, and burgesses, and the commissioners for shires and burghs of the House of Commons of Great Britain for the time being, or against their or any of their menial or any other servants, or any other person intitled to the privilege of Parliament of Great Britain ; and no such action, suit, or any other process or proceeding thereupon shall at any time be impeached, stayed, or delayed 10 by or under colour or pretence of any privilege of Parliament.”

Section 2. “ Provided nevertheless . . . that nothing in this Act shall extend to subject the person of any of the knights, citizens, and burgesses, or the commissioners of shires and burghs of the House of Commons of Great Britain for the time being, to be arrested or imprisoned upon any such suit or proceedings.”

10. The preamble to the Act of 1770 recites that the laws previously made for limiting the privilege of Parliament with respect to actions commenced and prosecuted when Parliament 20 is not sitting have not been sufficient to obviate the delay of suits by reason of privilege of Parliament, whereby the parties have often lost the benefit of several terms and further recites that the purpose of the Act was to prevent all delays the King or his subjects may receive in prosecuting their several rights, titles, debts, dues, demands or suits for which they have cause.

11. The Act of 1770 followed three previous Acts :—

12 & 13 Will. III
c. 3.
pp. 35-39

(a) An Act for Preventing any Inconveniences that may Happen by Privilege of Parliament.

2 & 3 Anne c. 18.
pp. 41-43

(b) An Act for the Further Explanation and Regulation 30 of the Privilege of Parliament in Relation to Persons in Publick Offices.

11 Geo. 2 c. 24.
pp. 45-49

(c) The Parliamentary Privilege Act, 1737.

The first of these Acts enacted that any person might commence and prosecute actions against any Peer or Member of Parliament or their servants or others entitled to privilege in the Court at Westminster and the Duchy Court of Lancaster immediately after a dissolution or prorogation until the next meeting of Parliament and during any adjournment for more than fourteen days ; and that during such times the Court might give judgment and award 40 execution.

The second Act enacted that no action, suit, process, proceeding, judgment or execution against privileged persons, employed in the Revenue, or any office of public trust for any forfeiture, penalty, etc., should be stayed or delayed by or under colour or pretence of any privilege of Parliament.

By the Parliamentary Privilege Act, 1737, all actions in relation to real and personal property were allowed to be commenced and prosecuted in the recess and during adjournments of more than fourteen days in any Court of Record. 50

12. It is clear from an examination of the circumstances existing between the passing of the Bill of Rights in 1688 and the passing of the Parliamentary Privilege Act, 1770, that the occasion

for the passage of the 1770 Act was the gross abuse of the privilege of Parliament by Members to prevent their creditors from instituting or continuing claims for debt against them. Besides this, there existed the even greater abuse of treating alleged civil wrongs committed by members of the public against Members of either House and their servants as breaches of Parliamentary privilege. In this connection the London Electricity Board will crave leave to refer to Hatsell's Precedents, Vol. 1 ; Porrit's Unreformed House of Commons, Vol. 1, pp. 567-571 ; Holdsworth's History of English Law, Vol. 10, 545 F ; Cobbett's Parliamentary History, Vol. 16, 974 ; Parliamentary Debates, 1768-71, 191 ; Lecky's History of England, Vol. 3, 226-227 ; May's Constitutional History of England, Vol. 2, 73-74.

13. It is submitted that the Act of 1770 did not alter but merely enacted the existing law which until then had from time to time been ignored by Members of Parliament ; and Parliament had, moreover, by the showing of an aggressive attitude towards persons who questioned the scope of its privileges, discouraged the Judges from an attitude of vigorous independence.

20 14. It is further submitted that whatever might have been the law which existed before the 1770 Act the words of that Act are clear and unambiguous in their meaning and provide in unequivocal terms that it would be contrary to that Act to treat the issue of a Writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its privileges.

30 15. The Act of 1770 in the submission of the Board does not detract from the privileges accorded to Members of Parliament by the Bill of Rights, but declares that the right of any person to assert in a Court of Law that a Defendant's conduct is not protected by Parliamentary privilege shall not be impeded. Furthermore such declaration protects the position of Solicitors as officers of the Court whose professional duty on behalf of their clients may require them to invoke the jurisdiction of the Court. It is submitted that the Bill of Rights deals with jurisdiction and the Act of 1770 deals with procedure.

40 16. The words " proceedings in Parliament " in the Bill of Rights have never been judicially defined and are capable of both a limited and of an extended meaning. They may mean only a proceeding within the Parliament Chamber itself or include activities outside the Parliament Chamber which are related to a Member's functions as a Member of Parliament, but which may or may not later lead to some step within the Parliament Chamber itself.

50 17. It is submitted that it is the former of these two meanings which was intended in the Bill of Rights. But, because by 1770 the activities of Parliament had widened and the scope of the duties of Members of Parliament had increased, the Parliamentary Privilege Act, 1770, declared that the Courts might determine whether an action arose out of a proceeding in the Parliament Chamber and was, therefore, privileged, or whether an action arose from a proceeding incidental only to the Member's duties in Parliament and was therefore not privileged, and was, as well, intended to prevent Members of Parliament from sheltering from actions, suits or other process under colour or pretence of having been engaged in a proceeding in Parliament.

18. In view of the matters hereinbefore set out the contentions in paragraph 3 are repeated and it is respectfully submitted that the House of Commons would be acting contrary to the Parliamentary Privilege Act, 1770, if it treated the issue of a Writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its privileges.

GERALD GARDINER.

CONOLLY H. GAGE.

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Case

FOR THE LONDON ELECTRICITY BOARD.

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