

9, 1958

~~GAZ. G. 33~~

In the Privy Council.

UNIVERSITY OF LONDON
V.C.I.

-2 FEB 1959

INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE MATTER of a Reference under the Judicial
Committee Act, 1833, Section 4 [3 & 4 Will. 4 c. 41]

AND

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

AND

IN THE MATTER of the Fifth Report from the
Committee of Privileges, Session 1956/57.

52224

10 **Case for Her Majesty's Attorney-General.**

The submission of Her Majesty's Attorney-General 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 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 of the said reference are as follows :— App. Folder

(i) On the 8th April, 1957, Mr. G. R. Strauss, the Member of Parliament for Vauxhall, drew the attention of the House of Commons to communications between himself and the Paymaster-General, the London Electricity Board and the Solicitors for the Board.

30 Mr. Strauss stated that the Board by letter to him of the 8th March, 1957, and by letters from the Solicitors to the Board dated the 27th March, 1957, and the 4th April, 1957, threatened to institute against him proceedings for libel in respect of statements made by him in a letter written by him on the 8th February, 1957, to the Paymaster-General.

The letters are set out in the Appendix hereto.

App., pp. 1-15

40 (ii) Mr. Strauss complained that those threats were a breach of privilege of Parliament. Mr. Speaker ruled that the threats constituted a *prima facie* case of breach of privilege and the House resolved to refer the matter to the Committee of Privileges.

(iii) That Committee in its Report expressed the view that three questions arose, namely :—

“ (a) Was the letter written on the 8th February, 1957, to the Paymaster-General by Mr. Strauss (in which the statements complained of by the Board were made) part of ‘ a proceeding in Parliament ’ ?

(b) Is the threat to institute proceedings for libel in respect of a speech, debate or proceeding in Parliament an interference with the freedom of Members of Parliament so as to amount to an impeachment or questioning of that freedom in a Court or Place out of Parliament and is thus a breach of privilege ?

(c) If the answers to (a) and (b) are in the affirmative, would the House 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 ? ” 10

The phrase “ a proceeding in Parliament ” in question (a) is a reference to Article 9 of the Bill of Rights 1689 (1 Will. & Mary Sess. 2 c. 2) which reads as follows :—

“ The freedom of speech and of proceedings in Parlyament ought not to be impeached in any Court or Place out of Parlyament.”

Question (b) also relates to this Article.

(iv) The Committee of Privileges by its Report dated the 30th October, 1957 (a copy whereof is placed in the folder 20 in the Appendix) gave an affirmative answer to the first two of those three questions and recommended that the opinion of the Judicial Committee of the Privy Council should be sought on the third question.

(v) On the 4th December, 1957, the House of Commons resolved that a humble Address be presented to Her Majesty praying that Her Majesty will refer to the Judicial Committee of the Privy Council the question above referred to and on the 13th day of December, 1957, Her Majesty was graciously pleased to make the Order in Council referred to in paragraph 1 30 hereof, the terms of which are reproduced in the Appendix.

10 Geo. 3 c. 50.
51 Vic. c. 3.
11 & 12 Geo 6 c. 53.
pp. 55-63
pp. 67-73

3. The relevant provisions of the Parliamentary Privilege Act, 1770, as amended by the Statute Law Revision Acts of 1888 and 1948 read as follows :—

“ An Act for the further preventing Delays of Justice by reason of Privilege of Parliament. Whereas the several laws heretofore made for restraining the privilege of Parliament with respect to actions or suits commenced and prosecuted at any time from and immediately after the dissolution or prorogation of any Parliament until a new Parliament should meet, or the same be reassembled, and from and immediately after an adjournment of both Houses of Parliament for above the space of fourteen days, until both houses should meet or assemble, are insufficient to obviate the inconvenience arising from the delay of suits by reason of privilege of Parliament, whereby the parties often lose the benefit of several terms ; For the preventing 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, be it enacted by the King’s most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that . . . 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 40 50

10 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 by or under colour or pretence of any privilege of Parliament.

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.

20 5. AND . . . obedience may be enforced to any rule of his Majesty's courts of King's Bench, Common Pleas, or Exchequer against any person intitled to privilege of Parliament by distress infinite, in case any person or persons entitled to the benefit of such rule shall chuse to proceed in that way."

4. It is respectfully submitted that the words of Section 1 of this Act are clear and unambiguous and that there is no compelling reason in the preamble or remainder of the statute for restricting their generality. It is submitted that this section sanctions the institution and prosecution of any proceedings against a Member of Parliament at any time in any Court of record and in any of the other Courts mentioned in the section, and provides that no such action, suit or any other process or proceeding thereupon is at any time to be impeached, stayed or delayed by or under colour or pretence of any privilege of Parliament.

It is accordingly submitted that by virtue of this Act since 1770 any person may commence and prosecute an action for libel against a Member of Parliament at any time.

5. This Act followed four earlier Acts, namely :—

	12 & 13 Will. 3 c. 3 (1700).	pp. 35-39
	2 & 3 Anne c. 18 (1703).	pp. 41-43
40	11 Geo. 2 c. 24 (1738).	pp. 45-49
	4 Geo. 3 c. 33 (1763).	pp. 51-53

50 Each of these Acts related *inter alia* to the institution of proceedings against, among others, Members of Parliament. The Act of William III was passed to prevent "any Inconveniences that may happen by Privilege of Parliament" by preventing delays in actions or suits in certain Courts against persons entitled to the Privilege of Parliament. It made it permissible to institute such actions or suits in the period between the dissolution or prorogation of Parliament until a new Parliament met or Parliament re-assembled, and in the period immediately after the adjournment of Parliament for more than 14 days until Parliament met again, any privilege of Parliament to the contrary notwithstanding.

The Act of Anne made it possible to bring actions against persons employed in offices and places of Public Trust and provided that such actions were not to be impeached, stayed or delayed by or under colour or pretence of any privilege of Parliament.

The Act of George II extended the operation of the Act of 1700 to actions or suits in all Courts.

The Act of George III made it possible to make *inter alios* Members of Parliament bankrupt despite privilege of Parliament.

6. If it be permissible to refer to these Acts for the purpose of construing Section 1 of the Act of 1770, there is, it is submitted, nothing in them which makes it necessary so to restrict the generality of the words of the section that it is not to apply to the issue of a writ claiming damages for libel against a Member of Parliament. 10

7. The privilege of Parliament referred to in the Act of William III was, it is submitted, the privilege of freedom from arrest and from being impleaded for forty days after every prorogation and forty days before the next appointed meeting, which, as Blackstone stated in his Commentaries Vol. I at p. 165, was therefore "in effect as long as the Parliament subsists, it seldom being prorogued for more than fourteen days at a time."

8. This privilege is of great antiquity. It was regarded as essential to the Court of Parliament so as to secure that the Members who compose it "should not be prevented by trifling interruptions 20 from their attendance on this important duty, but should for a certain time be excused from obeying any other call not so immediately necessary for the great services of the nation." (1 Hatsell pp. 1-2.)

9. The privilege from being impleaded was, it is submitted, enforced, in cases where judgment could not be obtained in default of appearance, by the Judges on receipt of a letter from Mr. Speaker or by a warrant of the House committing for contempt the Plaintiff who sought to arrest the defendant in order to secure his appearance, and, in those cases where judgment 30 could have been obtained in default of appearance, by the issue of writs of supersedeas.

10. This privilege, which was restricted by the four Acts mentioned in paragraph 4 hereof, are clearly abolished by the Act of 1770, which in terms applied to any privilege of Parliament, the privilege of freedom from arrest alone being expressly preserved. Since 1770 as Erskine May states (10th Edition p. 76) it is submitted, correctly, "Members of Parliament may be coerced by every legal process except the attachment of their bodies."

1 Will. & Mary 2 c. 2.
pp. 23-33

11. The Bill of Rights, so far as it is relevant, recites that— 40

"Whereas the late King James the Second by the assistance of diverse evill councillors judges and Ministers employed by him did endeavour to subvert and extirpate the Protestant religion and the lawes and liberties of this Kingdome . . .

by prosecutions in the Court of King's Bench for matters and causes cognizable onely in Parlyament and by diverse other arbitrary and illegall courses . . ."

and declared and enacted in Article 9—

"that the freedome of speech and debates or proceedings in 50 Parlyament ought not to be impeached or questioned in any court or place out of Parlyament."

12. It is submitted that the Act of 1770 should not be given a restricted meaning in consequence of Article 9 of the Bill of Rights and it is respectfully submitted that there is no conflict between the enacting words of Section 1 of the Act of 1770 and this Article. It is submitted that on its true construction this Article prohibits, not any act of a party instituting proceedings, but the exercise of jurisdiction by any court or tribunal other than Parliament in respect of the matters referred to therein.

13. It is submitted that the issue of a writ, however indorsed, ^{pp. 75-76}
 10 does not constitute any exercise of the jurisdiction of a court or tribunal but is an act of the party instituting proceedings in the Court and antecedent to the exercise of any jurisdiction by the Court.

14. It is further submitted that the application of Article 9 of the Bill of Rights to legal proceedings instituted in a Court is a matter exclusively within the competence of the Courts.

15. In the alternative it is submitted that, if it is held that Article 9 of the Bill of Rights extends to prohibit acts of the parties antecedent to but leading to the exercise of its jurisdiction by
 20 any court out of Parliament, its terms were to that extent amended and repealed by Section 1 of the Act of 1770.

16. In conclusion it is submitted that the mere issue of a writ, however indorsed and whether or not with the statement of claim attached thereto, is an act of the party issuing it without any legal consequence other than the commencement of proceedings for the purposes of the Acts relating to the limitation of actions.

Accordingly it is respectfully submitted that—

30 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.

REGINALD MANNINGHAM BULLER.

RODGER WINN.

In the Privy Council.

IN THE MATTER of a Reference under
the Judicial Committee Act, 1833,
Section 4 [3 & 4 Will. 4 c. 41]

AND

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

AND

IN THE MATTER of the Fifth Report
from the Committee of Privileges,
Session 1956/57.

Case

FOR HER MAJESTY'S ATTORNEY-GENERAL.

TREASURY SOLICITOR,
3 Birdcage Walk,
St. James's Park,
London, S.W.1.