REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

DELIVERED THE 7TH MAY, 1958

IN THE MATTER OF THE PARLIAMENTARY PRIVILEGE ACT, 1770

AND

IN THE MATTER OF THE FIFTH REPORT FROM THE COMMITTEE OF PRIVILEGES, SESSION 1956–57

Present at the Hearing:

VISCOUNT SIMONDS
LORD GODDARD
(LORD CHIEF JUSTICE OF ENGLAND)
LORD MORTON OF HENRYTON
LORD REID
LORD RADCLIFFE
LORD SOMERVELL OF HARROW
LORD DENNING

[*Delivered by* VISCOUNT SIMONDS]

The following question has been referred to the Judicial Committee of the Privy Council under section 4 of the Judicial Committee Act, 1833, " whether 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."

A few words of introduction are necessary. On the 8th February, 1957, the Right Honourable G. R. Strauss, a member of the House of Commons, wrote a letter to the Paymaster General in which he called his attention to certain conduct of the London Electricity Board. The Paymaster General being of opinion that the question related to a matter of day to day administration replied to Mr. Strauss that the responsibility lay with the Board not with the Minister and he had arranged for his officials to bring the views of Mr. Strauss to the attention of the Board's Chairman as a matter of urgency. An interview was accordingly held between the Chairman and Mr. Strauss and some of his associates, after which the Chairman wrote to Mr. Strauss demanding the unqualified withdrawal of the latter's statements in his letter of the 8th February which he regarded as casting grave reflections on the integrity of the Board's personnel and on the Board's attitude towards its public duty. Receiving no satisfactory reply to this or a subsequent letter he then put the matter into the hands of the Board's solicitors who wrote to Mr. Strauss demanding a withdrawal and an apology and stating that, if these were not forthcoming, they were instructed to issue a writ for libel against him. To this letter the solicitors for Mr. Strauss replied that it appeared to them that the letter in question was written on an occasion of qualified privilege and that they were prepared to accept service of any proceedings on his behalf.

No writ had in fact been issued when on the 6th April, 1957, Mr. Strauss called the attention of the House of Commons to the letters that had passed between himself and the Board and its solicitors and claimed that the threats of an action for libel in those letters were a breach of

the privilege of Parliament. The Speaker of the House of Commons ruled that the threats constituted a prima facie case of breach of privilege and the House resolved to refer the matter to its Committee of Privileges. On the 30th October, 1957, that Committee reported. They pointed out that the answer to the question whether these threats constituted in themselves a breach of privilege depended in the main on the meaning of Article 9 of the Bill of Rights, but, having had their attention called to the possible impact of the Parliamentary Privilege Act, 1770, upon the question, came to the following conclusions:—

(*a*) In writing the letter of 8th February, 1957, to the Paymaster General of which the London Electricity Board complain, Mr. Strauss was engaged in a "proceeding in Parliament" within the meaning of the Bill of Rights of 1688.

(*b*) The London Electricity Board in threatening by the letters from themselves and their Solicitors to commence proceedings for libel against Mr. Strauss for statements made by him in the course of a proceeding in Parliament are threatening to impeach or question the freedom of Mr. Strauss in a Court or Place outside Parliament, and accordingly the London Electricity Board and their Solicitors have acted in breach of the Privilege of Parliament.

(*c*) The opinion of the Judicial Committee of the Privy Council should be sought on the question whether the House 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.

On the 4th December, 1957, the House of Commons presented a humble address to Her Majesty in accordance with conclusion (*c*) of the Committee and on the 13th December an Order in Council was made accordingly.

Their Lordships now turn to the question referred to them. They point out at the outset that this question is a very narrow one. It is independent of the conclusions (*a*) and (*b*) above set out. Upon them their Lordships are required to express, and express, no opinion. Before considering the text of the 1770 Act and certain other Acts with which it is inseparably connected, it is only necessary to observe that the words "in respect of a speech or proceeding by him in Parliament" refer (though not quite accurately) to that part of the Bill of Rights by which, after reciting that "the late King James the Second by the assistance of divers evil Counsellors Judges and Ministers employed by him did endeavour to subvert and extirpate the Protestant religion and the laws and liberties of this Kingdom" by the divers means therein set out, "the Lords Spiritual and Temporal and Commons pursuant to their respective letters and elections being now assembled in a full and free representative of this nation . . . do in the first place (as their ancestors in like case have usually done) for the vindicating and asserting their ancient rights and liberties declare . . .

9. That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament".

The Bill of Rights was enacted in 1688. In 1700 the first of the group of Acts was passed which fall for their Lordships' consideration. They are clearly of opinion and it appeared to be common ground between the parties that the ambit of the later Acts was no greater than that of the earlier. This Act must therefore be closely examined. It is the Act 12 & 13 Will. III c. 3 and is entitled "An Act for preventing any inconveniences that may happen by privilege of Parliament". Its opening words which can hardly be called a preamble are significant. "For the preventing of all delays the King or His subjects may receive in any of His Courts of Law or Equity and for their ease in the recovery of their rights and titles to any lands tenements or hereditaments and their debts or other dues for which they have cause of suit or action"—here is the declared purpose of the Act, which goes on to enact that from and after the 24th June, 1701, any persons may commence and prosecute any action or

suit in any of His Majesty's Courts of Record or other Courts therein enumerated against any peer of this Realm or Lord of Parliament or against any of the Knights Citizens and Burgesses of the House of Commons for the time being or against any of their menial or other servants or any other person entitled to the Privilege of Parliament at any time from and immediately after the dissolution or prorogation of any Parliament until a new Parliament shall meet or the same be reassembled and from and immediately after any adjournment of both Houses of Parliament for above the space of 14 days until both Houses shall meet or reassemble, and that the said respective Courts shall and may after such dissolution prorogation or adjournment proceed to give judgment and to make final orders decrees and sentences and award execution thereupon, any Privilege of Parliament to the contrary notwithstanding.

It is convenient to pause at these words which conclude the first section of the Act and to ask what is its scope. It is not in doubt that its language is comprehensive. It is apt to cover any suits, including suits for defamation whether in or out of Parliament, and in every case to bar the plea of any Privilege of Parliament. It should therefore prima facie be read in this sense. But there are considerations, which will be strengthened by later sections, pointing to a necessary limitation of its meaning. In the first place, as has already been noted, the declared purpose of the Act is to prevent delay in the bringing of those actions to which the Act relates. The Members of both Houses had long notoriously abused their privileges in respect of immunity from civil actions and arrest, which by ancient usage extended during the sitting of Parliament and for forty days after every prorogation and forty days before the next appointed meeting. It was to curtail this delay in the commencement and prosecution of suits that the Act was avowedly passed, and by clear implication it referred only to those suits which, subject to delay, were ultimately enforceable. But there was no right at any time to impeach or question in a Court or place out of Parliament a speech, debate or proceeding in Parliament. No question of delay or ultimate enforceability could arise in regard to that privilege which demanded that a member should be able to speak without fear or favour in Parliament in the sure knowledge that neither during its sitting nor thereafter would he be liable to any man for what he said and that Parliament itself would protect him from any action in respect of it either by the Crown or by a fellow subject. Here then is a strong reason for limiting the meaning of the general words which have been quoted.

In the second place the section empowers not only the subject to " commence and prosecute any action or suit " but the Court " to proceed to give judgment and to make final orders decrees and sentences and award execution thereon ". The last words of the section " any privilege of Parliament to the contrary notwithstanding " must apply equally to all the preceding words. If then the Act is read so to have any application to speeches made in Parliament, the effect is substantially to repeal the ninth Article of the Bill of Rights. It is not a question of a writ being issued in a Court of Law and the defendant then making a plea in bar or a plea to the jurisdiction on the ground of privilege of Parliament. Final orders, decrees, sentences, and execution may follow the commencement and prosecution and no plea of privilege is to be available. It appears to their Lordships that a consideration of this consequence supports the view that the Act applies only to proceedings against members of Parliament in respect of their debts and actions as individuals and not in respect of their conduct in Parliament as members of Parliament, and does not abridge or affect the ancient and essential privilege of freedom of speech in Parliament. The conclusion that this privilege solemnly reasserted in the Bill of Rights was within a few years abrogated or at least vitally impaired cannot lightly be reached.

The following sections of the Act of 1700 support, or at least do not militate against, the same view. The second section provides that the Act shall not extend to subject the person of any of the Knights Citizens and Burgesses of the House of Commons or any other person entitled

to the privilege of Parliament to be arrested "during the time of privilege"—a significant phrase. Section 3 again emphasises the temporal aspect of the impediment to a plaintiff pursuing his proper remedy by providing that, if he shall by reason of Privilege of Parliament be stayed or prevented from prosecuting any suit by him commenced, he shall not for that reason be barred by any Statute of Limitation or non-suited, dismissed, or his suit discontinued, but shall from time to time upon the rising of the Parliament be at liberty to proceed to judgment and execution. Section 4 makes special provision in regard to actions against the King's original and immediate debtors and other persons therein mentioned which do not appear to call for comment. Section 5 provides that neither that Act nor anything therein contained shall extend to give any jurisdiction power or authority to any Court to hold plea in any real or mixt action in any other manner than such Court might have done before the making of that Act. Of this section it may be safely said that it does not touch the question of the privilege of freedom of speech in Parliament.

The Act of 1700 having been closely examined, the succeeding Acts can be briefly dealt with. An Act of 1703 (2 & 3 Anne c. 18) entitled "An Act for the further explanation and regulation of Privilege of Parliament in relation to persons in public offices" throws no additional light on the scope of the earlier Act, nor does an Act of 1738 (11 Geo. II c. 24) which purported to do no more than amend the Act of 1700 by further curtailing the so-called time of privilege. An Act of 1763 (4 Geo. III c. 33) sufficiently indicates its purpose and effect by its title "An Act for preventing inconveniences arising in cases of merchants and such other persons as are within the description of the Statutes relating to bankrupts being entitled to privilege of Parliament, and becoming insolvent". It is in no way relevant to the question that has to be determined. Finally comes the Act of 1770, the immediate subject of reference, and little remains to be said about it, for it is clear, as has already been stated, that it did not extend the ambit of section 1 of the Act of 1700 and that its only relevance is that it altogether abolished the time of privilege during which suits might not be commenced or prosecuted against members of Parliament.

Their Lordships have already expressed their views upon the Act of 1700 and it follows that they must answer the question referred to them by saying that the House would not 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. It is proper however that they should mention certain arguments that were addressed to them.

It is a commonplace in the interpretation of Statutes that the Court may be assisted by a consideration of the existing law at the time of the passing of the Statute under review and of the evil which it was designed to remedy. Accordingly the Attorney General, as he was well entitled to do, invited their Lordships to consider what was the law in regard to the issue of a writ against a member of Parliament at the relevant date, which by common consent was the year 1700. Sir Frank Soskice, who assisted their Lordships by contending that the Act did not affect the privilege of freedom of speech, in effect made the same plea, for he opened his speech by asking that it should be decided, first, whether, if the 1770 Act and the earlier Acts had not been passed, the issue of a writ would in the circumstances mentioned in the reference be a breach of privilege, and, secondly, if the answer was in the affirmative, whether it was the effect of those Acts to prevent the issue of such a writ being any longer a breach. As a result of this approach to the construction of the Act of 1700 and accordingly of the Act of 1770 the argument on both sides ranged widely over the field of Parliamentary privilege. In particular their Lordships were reminded of the manner in which from the earliest times the right of freedom of speech had been asserted. Strode's Act passed in the fourth year of Henry VIII was recalled, by which it was declared that all suits and proceedings against Richard

Strode and against every other member of the present Parliament or of any Parliament thereafter "for any bill, speaking, or declaring of any matter concerning the Parliament to be communed and treated of, be utterly void and of none effect". Nor was there any doubt that, though the form was new, this was but the assertion of an ancient privilege.

Then their Lordships were invited to examine and examined a large number of cases through the 17th and following centuries in which many aspects of privilege were discussed, but it did not appear to them that there was any authority relevant to the only question referred to them—viz. the meaning of the Act of 1770. For even, if it is assumed as the Attorney General contended (and their Lordships do not pronounce upon it) that the mere issue of a writ for defamation in respect of a speech in Parliament is not a breach of privilege, the assumption does not assist his argument that the Act of 1770 is to be construed so as to cover suits against members of Parliament in respect not only of their actions as individuals but also of their speeches in Parliament. Nor can it be relevant first to determine, as Sir Frank Soskice invited their Lordships to do, what would have been the state of the law if the Act of 1770 and the related Acts had not been passed. The single question is whether "the House 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". This question can for the reasons already given be answered by saying "No", without embarking upon a general consideration of Parliamentary privilege.

Their Lordships repeat that they answer this and no other question. It was referred to them and it became their duty to answer it. But they do not intend expressly or by implication to pronounce upon any other question of law. In particular they express no opinion whether the proceedings referred to in the introductory paragraph were "a proceeding in Parliament", a question not discussed before them, nor on the question whether the mere issue of a writ would in any circumstances be a breach of privilege. In taking this course they have been mindful of the inalienable right of Her Majesty's subjects to have recourse to Her Courts of Law for the remedy of their wrongs and would not prejudice the hearing of any cause in which a plaintiff sought relief. As was justly observed by the Select Committee of the House of Commons appointed in 1810 to consider the famous case of *Burdett* v. *Abbott* (see Hatsell's Parliamentary Precedents Vol. I at p. 293). "It appears that in the several instances of actions commenced in breach of the privileges of this House, the House has proceeded by commitment not only against the party but against the Solicitor and other persons engaged in bringing such actions, but your Committee think it right to observe that the commitment of such party, solicitor, or other persons would not necessarily stop the proceedings in such action." This is an aspect of the matter which cannot be ignored, for in the words of Erskine May, Parliamentary Practice, 16th Ed., page 172, "The House of Commons . . . claims to be the absolute and exclusive judge of its own privileges and that its judgments are not examinable by any other Court or subject to appeal. On the other hand the Courts regard the privileges of Parliament as part of the law of the land, of which they are bound to take judicial notice. They consider it their duty to decide any question of privilege arising directly or indirectly in a case which falls within their jurisdiction and to decide it according to their own interpretation of the law. The decisions of the Courts are not accepted as binding by the House in matters of privilege nor the decisions of the House by the Courts. Thus the old dualism remains unresolved." An example of this dualism may be seen in the case of *Stockdale* v. *Hansard* 9 A. & E. 1 and the subsequent case of the *Sheriff of Middlesex* 11 A. & E. 273, which are part of history.

In accordance with the views expressed above their Lordships humbly report to Her Majesty that the question referred to them should be answered in the negative.

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In the Privy Council

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