SUSPENSION OF MEMBERS OF COMMONWEALTH PARLIAMENTS

In the previous issue of this journal[1] Professor E. C. S. Wade considered some of the legal issues raised by the motion of the Deputy Prime Minister of the State of Singapore on December 19, 1960, that the member for Hong Lim be suspended from the service of the Legislative Assembly for conduct alleged to be in abuse of the honourable member's privilege of freedom of speech and debate.[2] While acknowledging that the alleged misconduct of the member did not fall within the classes of offences for which under section 20 of the Legislative Assembly (Powers and Privileges) Ordinance, 1955, a member is liable to suspension, Professor Wade expressed the opinion that the power of suspension sought to be exercised in this case is possessed by the Legislative Assembly.

The principal reasons given for this conclusion were :

(a) that the misconduct alleged, namely the uttering of malicious falsehoods concerning the conduct of certain Ministers of State, was itself prohibited by Standing Order 46(10) forbidding "reference to the personal conduct of Members of the Assembly in course of debate except upon a substantive motion moved for the purpose."[3]

(b) And "since the allegations were made in a field where the jurisdiction of the High Court to punish for contempt was admittedly excluded, it was perfectly right and proper for the Assembly to exercise its own powers of punishment."[4]

What Professor Wade has left unsaid but which may be inferred from his analysis is, to this writer, worthy of close examination. One of the assumptions upon which his opinion would appear to be based is that the Legislative Assembly must be presumed to have power to punish its members for any misconduct committed in their capacity as members whenever the misconduct is neither actionable nor punishable by a court of law. Immunity from legal liability may well be an important

1. Wade, "Contempt of Parliament in a Commonwealth State", (1961), 3 *Univ. of Malaya L.R.*, 1–7.
2. 14 Singapore, Legis. Ass. Deb., 776.
3. Wade, *op.cit.*, 6.
4. *Id.*, 7.

consideration in determining whether or not the power to punish *ought* to exist, but it is not conclusive of the question whether in point of law such power does exist.

A further assumption emerging from Professor Wade's opinion is that the Legislative Assembly possesses power to suspend its Members for conduct offending against the Standing Orders, irrespective of whether the penalty of suspension is expressly attached to infractions of the rules governing the internal procedures of the House.

The objects of this article are to explore several problems which, it is felt, bear directly on the question whether the motion of December 19, 1960, if carried, would have operated so as to exclude the member for Hong Lim from the Assembly until fulfilment of the conditions for re-admission stipulated in the motion. These problems may be stated briefly as follows:

(1) Whether the power of assemblies, such as the Singapore Legislative Assembly, to suspend their members is limited in respect of causes.

(2) Assuming the power is so limited, can the causes for which a member may be suspended be enlarged by Standing Orders adopted under a rule making power such as that expressed in section 48 of the Singapore (Constitution) Order in Council, 1958.

(3) Whether — and if so, to what extent — a court may inquire into a resolution for suspension passed in purported exercise of an acknowledged power of suspension.

(4) Whether a resolution for suspension is invalidated or rendered inoperative by virtue of :

   (a) the length of time for which a member is declared suspended;

   (b) failure to stipulate the time for which a member shall be suspended;

   (c) the fact that the member's re-admission is expressed to be conditional on his performance of or abstention from certain acts.

II

Before dealing with these matters a few preliminary remarks are in order concerning the pertinence of British law and practice. According to Standing Order 103(1) of the Singapore Legislative Assembly —

> In cases of doubt the Standing Orders of the Assembly shall be interpreted in the light of the relevant practice of the Commons House of Parliament of Great Britain and Northern Ireland.

Obviously this provision only allows for reference to Commons' practice and precedents in connexion with local Standing Orders modelled after the Standing Rules and Orders of the House of Commons. It has no relevance whatsoever in ascertaining the powers, privileges and immunities of the Legislative Assembly. These fall to be determined by reference to those general principles of common law enunciated by Commonwealth courts concerning the powers, privileges and immunities of assemblies established by or under authority of Imperial legislation, and also by reference to local statute.

Although the Singapore (Constitution) Order in Council, 1958, confers on the Legislative Assembly authority to adopt *in toto* the powers and privileges of the House of Commons, at the time the motion to suspend the member for Hong Lim was introduced, the Assembly had adopted only *some* of the Commons' powers and privileges. The Legislative Assembly (Powers and Privileges) Ordinance, 1955, does not, however, fulfil the description of an exhaustive code on the subject, and simply because it defines certain offences for which a member is liable to suspension it cannot be presumed that the Assembly has thereby deprived itself of the power of suspension which it enjoys at common law.

III

It is now indisputable that the House of Commons and all assemblies to which the powers, privileges and immunities of that House apply by statute, have power to suspend their members not only for breaches of the Standing Rules and Orders but also for any conduct which the particular House resolves to be in contempt of Parliament.[5] While this power has never been expressly acknowledged by British courts, it may be regarded as implicit in any one of the following judicially acknowledged powers: the power of the House to control its own internal proceedings,[6] its power to provide for its own proper constitution[7] and its power to punish contempt. In each of these spheres the House has exclusive jurisdiction in the sense that any resolution or action taken pursuant thereto cannot be impugned in any court of law.

For well over a century now it has been established and unquestioned law that in the absence of express grant a colonial assembly enjoys only such powers, privileges and immunities as are reasonably necessary for

5. Erskine May, *Parliamentary Practice,* 16th ed.; 1957, 104-5.

6. *Bradlaugh* v. *Gossett* (1884) 12 Q B.D. 271.

7. Sir William Anson, *The Law and Custom of the Constitution,* Vol. I: Parliament, 5th ed.; 1922, 178–81.

its self-preservation and the effective discharge of its legislative functions.[8] In the leading case of *Kielly* v. *Carson* (1842)[9] the Judicial Committee of the Privy Council ruled that punitive powers, and in particular the power to fine or commit for contempt, were not powers of this kind. The power to punish, it was said, is essentially a judicial power, a power enjoyed by the House of Commons by virtue of ancient usage and by virtue of the fact that the modern House is the lineal descendant of the High Court of Parliament.

In characterizing the power to punish a stranger for contempt committed outside the assembly as unnecessary for the preservation of the assembly, it is apparent that the Judicial Committee in *Kielly* v. *Carson* was not unmindful of the dangers implicit in a situation which permits a legislative institution to act in the joint capacity of prosecutor, judge and gaoler. Moreover, it was pointed out that if the assembly needed to vindicate its dignity and authority, the investigation and punishment of contemptuous insults and interruptions by strangers could be left to the ordinary courts of law.[10] Of course, where the contempt alleged is also a criminal offence, the assembly may request (and in some jurisdictions, direct) the Attorney-General to prosecute the offender, but there is no general rule by which alleged contempts of Parliament are triable by ordinary tribunals.

Whether the power to suspend a member is in itself, and irrespective of either the cause for its exercise or the period of suspension, penal in character the Judicial Committee has never decided conclusively.[11] *Barton* v. *Taylor* (1886)[12] generally is regarded as authority for the proposition that colonial assemblies do have power to suspend their members, albeit a limited power.

On a strict analysis all *Barton* v. *Taylor* decided was that where it is resolved that a member be suspended from the service of the assembly for persistently and wilfully obstructing the business of the House, in contravention of the Standing Rules and Orders, and where no time is specified as to the period during which the resolution is to operate, either

8. The word "colonial" in this context imports nothing as to the constitutional status of the legislature. "Colonial assembly" here means all those legislative assemblies created by or under authority of Imperial legislation. No distinction is made between legislatures deriving their authority from the Crown and legislatures deriving their authority from the Imperial Parliament (*Fenton* v. *Hampton* (1858), 11 Moo. P.C.C. 347).

9. 4 Moo. P.C.C. 63; affirmed in *Fenton* v. *Hampton, loc. cit.*, and *Doyle* v. *Falconer* (1866), L.R. 1 P.C. 328.

10. 4 Moo. P.C.C. at 88-9.

11. May, *loc. cit.*, speaks of suspension as a form of punishment.

12. (1886), 11 App. Cas. 197.

in the resolution itself or in the Standing Rules and Orders, the resolution is incapable of operating beyond the sitting during which the offence was committed. The resolution in question in that case had failed to nominate any period during which the respondent was to be excluded from the House. For the appellant, the Speaker of the Legislative Assembly of New South Wales,[13] it was argued that the period for which the respondent was excluded was ascertainable by reference to the Standing Rules and Orders of the House of Commons which by Order 1 of the Assembly's Standing Orders had been declared applicable in all cases not specifically provided for in the Standing Orders. However, the particular Commons' Standing Order [14] under which specific periods for suspension had been prescribed, had not been in existence at the time the Assembly's Standing Order 1 had been approved, and in the opinion of the Judicial Committee, Standing Order 1 refererd only to those "rules, forms and usages of the Imperial Parliament" in existence at the time it was approved.[15]

For the Committee, the Earl of Selborne went on to say that in the absence of express grant there is no inherent power in colonial assemblies to protect themselves against obstruction, interruption or disturbance by members in the course of proceedings. But in the interests of self-protection the assembly must be deemed to have power to exclude offending members for a time sufficient to allow for "the subsidence of heat and passion, and for reflection on his own conduct by the person suspended ... " [16]

Whether the necessities of self-preservation justify a power of suspension for any cause the assembly nominates, the Committee did not say. Its attention was directed primarily towards conduct calculated to disrupt proceedings or to lower the tone of debate. Although it cannot fairly be supposed that the interest of self-preservation requires a power of discipline so nebulous as to allow for suspension on any pretext, it may be that it does justify a power to discipline a member whose conduct (as a member) tends to bring the legislature into disrepute or to lower its dignity and authority. On this view, the making of wild and unfounded allegations of improprieties on the part of other members might warrant suspension.

Although liability for suspension for utterances adjudged to be in contempt derogates from the freedom of speech which members of Parliament (whether they be members of the House of Commons or of

13. The Speaker, Edmund Barton, was later to become the first Prime Minister of the Commonwealth of Australia.

14. Standing Order No. 22, adopted in February, 1880. See May, *op. cit.*, 105, 471.

15. (1886), 11 App. Cas. at 202.

16. *Id.*, 204.

colonial assemblies[17]) are supposed to enjoy, it is important to bear in mind that this so-called freedom means primarily immunity from suit or prosecution in a court of law in respect of words uttered in the course of parliamentary proceedings. It does not, in short, imply absolute immunity in the sense that the House itself is denied power to regulate debate and to impose sanctions on members who would regard their privilege as a "legal monopoly in slander."[18] As a rule, the Standing Orders of Commonwealth Parliaments do set limits upon a member's right to speak and it is a well recognised function of Speakers to play the part of censor of "unparliamentary" language. Certainly standards of fair debate vary from one Parliament to another,[19] but the essential thing is that adherence to certain standards is acknowledged as fundamental to the workings of the parliamentary institution.

No case has yet arisen in which a court of law has had to determine whether or not a member of a colonial assembly may be suspended for contempt *simpliciter.* He cannot be punished by fine or imprisonment for contempt committed in the presence of the assembly,[20] nor having left the chamber after committing contempt can he be brought back into the chamber against his will for the purpose of admonition and caution.[21] *Dictum* in *Doyle* v. *Falconer* (1866) suggests that he may, however, be suspended "to secure order and decency of debate."[22]

17. See Art. 9 of the English Bill of Rights, 1689. It is doubtful whether this Article is applicable in the State of Singapore by virtue of the general principle regarding application of English law in settled colonies. The Legislative Assembly (Powers and Privileges) Ordinance, 1955, s.3, probably reproduces only the principle enunciated in *Gipps* v. *McElhone* (1881), 2 L.R. (N.S.W.) 18 and affirmed in *Chenard and Co.* v. *Arissol,* [1949] A.C. 127, that a member incurs neither civil nor criminal liability for words spoken in the assembly. The Bill of Rights, on the other hand, establishes a broader principle in that it also provides that evidence of what has been said in Parliament is inadmissible in a court of law and cannot be received by an extra-parliamentary body of inquiry, such as a Royal Commission, without infringement of privilege (*Plunkett* v. *Cobbett* (1804), 5 Esp. 136; *Chubb* v. *Salmons* (1852), 3 Car. & Kir. 75). In Singapore this principle is incorporated in s.23 of the Legislative Assembly (Powers and Privileges) Ordinance, 1955. *Cf. Kahn* v. *Time Inc. and Another* (1956) (2) S.A.L.R. 580.

18. *Per* Coleridge, J. in *Stockdale* v. *Hansard* (1839), 9 Ad. & E. at 242. See also *Gipps* v. *McElhone* (1881), 2 L.R. (N.S.W.) at 24.

19. Considerable variation also exists in the degree of tolerance shown by different Parliaments to press criticisms. Although the House of Commons rarely exercises its power to punish contemptuous criticisms by strangers, it nevertheless maintains greater vigilance over newspaper attacks than some other Commonwealth Parliaments. Possibly there is a connexion between tolerance of press criticism and the established standards of parliamentary conduct: political prudence, at any rate, would discourage any move to censure the press if to do so would savour of the pot calling the kettle black.

20. (1866), L.R. 1 P.C. 328.

21. *Willis and Christie* v. *Perry* (1912), 13 C.L.R. 592.

22. (1866), L.R. 1 P.C. at 340.

Although the power to suspend for contempt may itself be abused by a parliamentary majority bent more on censorship of the embarrassing backbencher than on upholding the dignity and authority of the institution, it is not improbable that the doctrine of self-protection would be held to justify a power to suspend for utterances calculated to bring the whole institution into disrepute. This view by no means implies a power of suspension unlimited with regard to the grounds on which an assembly might lawfully suspend its members; indeed it is to be doubted whether present authority provides a sufficiently firm basis for assuming that this is in fact the case.

IV

It is not without significance that in almost all of the litigated cases of suspension by colonial assemblies, the exclusion of the complaining member has been defended by reference to Standing Rules and Orders proscribing the conduct for which he has been suspended.[23] Moreover, in a few, the legality of the exclusion has been challenged on the ground that the particular Standing Orders under which action was taken were themselves *ultra vires*.[24] The question then arises whether by Standing Orders a colonial assembly can invest itself with powers of suspension which it would not otherwise possess in virtue of the doctrine of self-preservation and also whether by denominating in the Standing Orders certain offences as liable to punishment by suspension, the assembly thereby excludes its power of suspension at common law.

The Houses of most Commonwealth Parliaments (other than the British Parliament) are invested expressly by statute with power to adopt Standing Rules and Orders for the orderly conduct of business. Under the Singapore (Constitution) Order in Council, 1958, section 48, the Singapore Legislative Assembly is empowered to "make... Standing Orders for the regulation and orderly conduct of its own proceedings and the despatch of business." Such statutory enactments clearly confer limited law-making powers and Standing Orders adopted in purported exercise of these powers must be treated in the same way as any other forms of subordinate legislation. If the Assembly wishes to accomplish ends which are not authorised by the enabling Act, it must have recourse to statutory processes. Even in the United Kingdom where the power

23. Reasonable necessity has been held to warrant the exclusion of an obstructing member by order of the presiding officer even though no resolution for exclusion has been passed and even though no provision is made in the Standing Orders for the course to be followed on disorder arising (*Toohey* v. *Melville* (1892), 13 L.R. (N.S.W.) 132).

24. *Browne* v. *Cowley* (1895), 6 Q.L.J.R. 234, 254. See also *Harriett* v. *Crick,* [1908] A.C. 470.

to make rules governing the procedure of the Houses of Parliament is not spelt out by Statute, and where as a result, no *vires* problem arises, it is clear that neither by resolution nor by Standing Orders can either House alter the common law or statute law.[25]

No case has yet arisen in which the Judicial Committee of the Privy Council has held a colonial Standing Order to be *ultra vires.* In *Harriett* v. *Crick* (1908)[26] it was contended that a Standing Order adopted by the Legislative Assembly of New South Wales solely for the purpose of excluding a particular member, was not an Order for the orderly conduct of business. Despite the retrospective character of the Standing Order, the Judicial Committee rejected the plaintiff's contention, at the same time emphasising that it was the duty of the court to satisfy itself that the Order truly pertained to the orderly conduct of business. For the Committee, Lord Macnaughten said:[27]

> Two things seem to be clear: (1) That the House itself is the sole judge whether an "occasion" has arisen for the preparation and adoption of a standing order regulating the orderly conduct of the Assembly, and (2) that no Court of law can question the validity of a standing order duly passed and approved, which, in the opinion of the House was required by the exigency of the occasion, unless upon a fair view of all the circumstances it is apparent that it does not relate to the orderly conduct of business.

The Standing Order impugned in *Harnett* v. *Crick* was one providing that—

> whenever it shall have been ruled or decided (whether before or after the approval of this Standing Order) that the House may not proceed on a matter which has been initiated in the House affecting the alleged conduct of a member because thereby the said member may be prejudiced in a criminal trial then pending on charges founded on such misconduct the House may suspend such member from the service of the House until the verdict of the jury has been returned or until it is further ordered.

Despite the apparent reluctance of the Judicial Committee to question the judgment of the House as to what is conducive to the orderly conduct of business, it is doubtful whether a court of law would go so far as to say that merely because certain misconduct is defined by Standing Orders as *disorderly,* the Standing Orders must therefore be deemed to relate to orderly conduct of business. Moreover, it cannot be inferred from the rule-making power that an assembly may adopt

25. *Bradlaugh* v. *Gossett* (1884), 12 Q B.D. 271. The House of Commons could not, for example, obtain new powers, privileges or immunities under guise of Standing Orders.

26. [1908], A.C. 470. For the background of this case see Cyril Pearl, *Wild Men of Sydney,* 1958, 186-7, 190.

27. [1908], A.C. at 475-6.

Standing Rules and Orders giving itself punitive powers not possessed by it at common law.

Yet in *Barton* v. *Taylor* it was said that the power granted to the Legislative Assembly under the New South Wales Constitution Act "to prepare and adopt such Standing Rules and Orders as shall appear to the ... Assembly ... best adopted for the orderly conduct of such ... Assembly" was "not limited by the principles of common law applicable to those inherent powers which must be implied (without express grant) from mere necessity. . . . . "[28] Accordingly it was further held that the Assembly had power to adopt the Standing Rules and Orders of the House of Commons and by implication that it could also adopt Standing Orders giving itself power to punish members.

Whether the issues for decision in *Barton* v. *Taylor* required the Judicial Committee to pronounce an opinion on the propriety of Standing Orders conferring power to punish is debateable. The only Standing Orders of the House of Commons, the application of which to the Legislative Assembly were in question, were first an Order to the effect that a member persistently and wilfully obstructing the business of the House was liable to suspension for such period as it should name or until it should give further directions, and secondly, the later Order of 1880, fixing periods of suspension. As regards the first, the Committee took the view that although it was properly incorporated by reference in the Standing Orders of the Legislative Assembly, it did not enable the Assembly to suspend a disorderly member for an indefinite time. As regards the second, it was held that it had not in fact been adopted as a Standing Order of the Assembly, but the implication was that it was within the competence of the Assembly to adopt an Order of this kind.

Assuming that the controlling consideration is whether the impugned Standing Order is related to the orderly conduct of business, can it be that the orderly conduct of business requires greater penalty than temporary exclusion from the legislative chamber? Certainly there is nothing either in *Barton* v. *Taylor* or in any subsequent judicial decision to justify the conclusion that the rule-making power provides adequate basis for a power of punishing a member by fine or imprisonment, or for that matter, a power to suspend for an unlimited period. In *Browne* v. *Cowley* (1895),[29] *Barton* v. *Taylor* was cited by the Queensland Supreme Court as authority for the proposition that the rule-making power enables adoption of the Standing Rules and Orders of the House of Commons, but even here the Court did not direct its attention specifically to the possibility that the rules of the House of Commons might impose penal sanctions on members other than exclusion. As in *Barton* v.

28. (1889), 11 App. Cas. at 207.

29. *Browne* v. *Cowley* (1895), 6 Q.L.J.R. 234, 254.

Taylor, the Court in *Browne* v. *Cowley* was interested only in a Standing Order providing for the suspension of a member for disorderly conduct — in this instance, persisting in noise and disturbance after being cautioned and warned by the presiding officer. The period for which a member might be suspended was fixed by reference to a Standing Order of the House of Commons adopted in 1880 which had been adopted for the local assembly in virtue of a general Order declaring that in all cases not specifically provided for, the rules, forms and usages of the Commons should apply. In ruling that the Legislative Assembly was competent to adopt this Standing Order of the Commons, the Court cannot be held to have established beyond all doubt the legality of adoption of all Standing Orders which the House of Commons has passed or may in the future adopt. Either authority for suspension must be found in statute and in the general principles of common law, or in valid Standing Orders.

One matter which appears not to have been faced squarely by the courts but which may be of particular importance in determining the nature of the authority conferred on the Singapore Legislative Assembly by the Singapore (Constitution) Order in Council, 1958, section 48, is the unlikelihood that where in the one instrument authority is conferred on the legislature to declare powers, privileges and immunities exceeding those enjoyed at common law, and power is also given to its constituent parts to make rules governing their internal procedure, it should be intended that the constituent parts of the legislature, in exercise of the rule-making power, might confer on themselves punitive powers or indeed any powers not possessed at common law.

This problem was not raised in any of the cases discussed earlier, indeed could not have arisen insofar as none of the Constitutions involved contained a clause granting power to legislate on powers, privileges and immunities. Such power undoubtedly may be spelt out from the general power to make laws for the peace, order and good government of the colony. Where the Colonial Laws Validity Act, 1865, is applicable, a power to legislate on the collective powers and privileges may also be found in the power to make "laws respecting the constitution, powers and procedure" of the legislature.[30] But where the power to legislate on privilege and the power to make Standing Orders are contained in the same instrument, it may be that the latter power will be interpreted more restrictively than has hitherto been the case.

Although the absence of judicial authority does not permit any firm conclusions, to this writer it is not improbable that section 48 of the Singapore (Constitution) Order in Council, 1958, would be interpreted as authorizing the Legislative Assembly to make Standing Orders regulating the power of suspension enjoyed at common law and under

30. *Chenard & Co.* v. *Arissol,* [1949] A.C. 127.

the Ordinance of 1955, but not as authorizing the adoption of Standing Orders conferring any wider powers of suspension. On this reasoning, the validity of the suspension proposed in the Deputy Prime Minister's motion of December 19, 1960, would depend primarily on whether the power of suspension sought to be exercised was justified by the doctrine of reasonable necessity. Whether the member had been guilty of infraction of the Standing Orders would be a secondary issue only. Possibly the doctrine of reasonable necessity allows for suspension of members who act in disregard of valid Standing Orders, but here again, the cases are inconclusive.

V

During debate in the Singapore Legislative Assembly some of the members speaking to the motion seemed to be of opinion that Standing Order 56(5) authorised suspension of a member for any cause resolved upon by the Assembly. In the context of Standing Order 56 this construction is dubious. Standing Order 56(1) prescribes the *procedure* to be followed —

> Whenever a member has been named by the Speaker or by the Chairman immediately after the commission of the offence of disregarding the authority of the Chair, or of persistently and wilfully obstructing the business of the Assembly by abusing the rules of the Assembly, or otherwise . . .

This provision, it is submitted, relates only to the manner of exercise of the power of suspension. Standing Order 56(5) saves to the Assembly power to suspend a member in a manner other than that laid down in Standing Order 56(1). It provides that —

> Nothing in this Standing Order shall be taken to deprive the Assembly of the power of proceeding against any member according to any resolution of the Assembly.

Thus even if a member has not been named as provided under Standing Order 56(1), it is competent for the Assembly under Standing Order 56(5) to resolve that he be suspended.

But nothing in Standing Order 56 can be interpreted as extending the Assembly's power of suspension beyond the power it already has by common law and under the Ordinance of 1955, nor can the application of House of Commons' practice under Standing Order 103(1) take the matter any further. Commons' practice is surely relevant only in aid of interpretation of local Standing Orders; there is not even provision whereby the rules and usages of the House of Commons are declared applicable in cases not provided for by the local Standing Orders.

Although it is possible that the misconduct alleged against the member for Hong Lim might be regarded as an infraction of Standing Order 46(10) which forbids reference to the personal conduct of members "except upon a substantive motion moved for that purpose," that of itself cannot be conclusive of the question whether the member might have been suspended for such misconduct. Either it must be established that there is a general principle of common law that colonial assemblies have power to suspend their members for breach of rules relating to the orderly conduct of business, or else it must be established that colonial assemblies have power to suspend for contempt and that the member's conduct in this instance was tantamount to contempt.

VI

The correctness of the position taken here with regard to the extent of the power of suspension turns not only on the implications of the doctrine of self-protection, but also on the question whether courts of law require to be satisfied that a resolution for suspension is expressed, or may be interpreted, to be passed in pursuance of a decision by the House that a member has committed misconduct which may lawfully be penalised by suspension. If, as has been suggested, the power of suspension is limited in respect of causes, it must follow that the legality of a suspensory resolution depends on proof that the member affected has been held guilty of an offence for which the House has power to suspend.

But if the resolution states on its face that the member has been held guilty of such an offence, is it open to a court of law to, as it were, sit in judgment as a court of appeal and rule the resolution invalid for the reason that the circumstances justifying the exercise of the power had not arisen? As far as the Houses of the British Parliament are concerned the position is quite clear. They are acknowledged to be the sole interpreters of such part of the law as relates to their internal proceedings, including such statute law as relates to rights exercisable only within the walls of Parliament.[31]

The right to sit and vote in Parliament is undoubtedly a right exercisable only in Parliament, and whether it is regulated by statute or otherwise, the Houses of the British Parliament have exclusive jurisdiction to determine whether or not the right may be exercised in the sense that no court of law will presume to impugn the correctness of decisions made by the Houses themselves. To date, the Judicial Committee of the Privy Council has not had occasion to consider whether the same principle applies to colonial assemblies. If, as has been suggested, colonial assemblies have power to suspend only for limited causes, it would not be unreasonable to assume that the legality of a

31. *Bradlaugh* v. *Gossett* (1884) 12 Q.B.D. 271.

suspensory resolution depends on the actual commission by the suspended member of an offence for which he may be suspended, and that the courts should at least satisfy themselves that there was evidence to support the judgment of the House that the member had committed such offence.

Such guidance as can be drawn from past judicial experience indicates that where a Commonwealth court is not as a matter of law bound to treat a legislative assembly on precisely the same footing as the House of Commons, it will nevertheless, as a matter of policy, take the course of least resistance in conceding to the assembly exclusive jurisdiction in determining whether an occasion has in fact arisen for the exercise of an acknowledged suspensory power. But beyond this, analogy with British practice ceases. In the actual penalties which the assembly seeks to impose on delinquent members, Commonwealth courts have consistently adhered to the view that the disciplining body is not the sole arbiter.

Well over half a century ago, Griffith, C.J. of the Queensland Supreme Court (himself no stranger to the parliamentary arena) expressed a point of view which represents an attitude not necessarily peculiar to his age or political *milieu.* As trial judge in *Browne* v. *Cowley* (1895),[32] Griffith, C.J. ventured the opinion that when a legislative assembly "is discharging functions analogous to those of the House of Commons … the same respect should be paid to it, and the same effect given to its decisions, as in the case of the House of Commons."[33] Whether the circumstances warranted suspension of a member was for the assembly alone to decide.

> I am of opinion that when the Legislative Assembly was empowered to make standing orders for preserving order and for imposing the punishment of exclusion upon offending members, it also had conferred upon it all authorities necessary to give effect to those powers, and without which the powers themselves would be idle and nugatory. From the necessity of the case the fact of an offence must be ascertained and adjudged before the penalty can he inflicted. The penalty is to be inflicted instanter, so as to remove the obstruction, and enable the business of the House to be proceeded with. If, then, the House itself is not itself to be intrusted with the power of adjudication, the pretended power of punishment would be a mere mockery and insult. For the validity of the punishment would depend not upon the facts as they appeared to the authority which is called upon to inflict it, but as they afterwards appear to some court of law.[34]

Griffith, C.J. thought it inconceivable that power should be given by statute to the Assembly to make rules for the orderly conduct of business without power also to determine finally the meaning and proper application of those rules. It was inconceivable, he said, because in

32. (1895), 6 Q.L.J.R. 234, 254.
33. *Id.*, 240.
34. *Id.*, 239-40.

most respects colonial assemblies are analogous to the Houses of the British Parliament and because —

> . . . the dignity of a colonial Parliament, acting within its limits, requires no less than that of the Imperial Parliament that any tribunal to whose examination its proceedings are sought to be submitted for review should hesitate before it undertakes the function of examining its administration of the law relating to its internal affairs.[35]

The inference so drawn from the statutory rule-making power is imaginative to say the least, but in this writer's submission, it is less so than that drawn by the Full Court in *Browne* v. *Cowley.* In affirming the judgment of Griffith, C.J., the Full Court chose to regard *Bradlaugh* v. *Gossett* as the controlling and binding precedent in the matter, by reason of Standing Order 335. According to Standing Order 335 the "rules, forms and usages of the Houses of Commons" were adopted for the Queensland Legislative Assembly, so far as applicable and in all cases not expressly provided for by the Standing Orders. In the opinion of the Full Court, the effect of this was that so much of the House of Commons' "privilege of regulating its internal concerns as related to orderly conduct... are part of the Standing Orders of the Assembly."[36] On this line of reasoning Standing Order 335 might also be construed as conferring on the Legislative Assembly more than merely exclusive jurisdiction over internal proceedings.

It is difficult to appreciate how "rules, forms and usages" can refer to anything more than the rules and procedures adopted by the House of Commons itself for the regulation of internal proceedings. The principle expressed in *Bradlaugh* v. *Gossett* on the other hand is not a rule to be applied in the regulation of internal proceedings; rather it is an expression of judicial policy, a principle to be applied by courts of law in dealing with issues arising out of parliamentary proceedings. If a Commonwealth court elects to adopt the principle also, it is not because of the necessary inferences of the grant of power to make Standing Orders, nor by reason of the application of English law (except of course where the powers, privileges and immunities of the House of Commons are expressed by statute to apply), but simply by virtue of its own assessment of the merits of such a principle.

Without qualifying in any way the correctness of *Browne* v. *Cowley* two more recent pronouncements of the Queensland Supreme Court point towards a more restrictive conception of what pertains to internal proceedings and what is therefore within the exclusive jurisdiction of the Houses of Parliament, than is implicit in *Bradlaugh* v. *Gossett.*

35. *Id.*, 236.

36. *Id.*, 256.

The plaintiff in *Barnes* v. *Purcell* (1946)[37] and the prosecutor in *R.* v. *Dickson, Ex parte Barnes* (1947)[38] was a member of the Queensland Legislative Assembly representing the country electorate of Bundaberg. Between 1941 when he was elected and the end of 1945, he had been suspended no less than five times. On the last occasion steps were taken to exclude him from premises known as "the Lodge" situated within the grounds of Parliament House and which had been set aside as a residence for country members. Under the Standing Rules and Orders it was provided by Order 125 that suspended members should be excluded "from all rooms set apart for the use of members". Although the Assembly had resolved in 1938 that the Lodge did not fall into the category of rooms set aside for members, apparently this interpretation was not regarded as binding. When it was reported that the member had refused to vacate his room, the Assembly thereupon resolved that he was in contempt and that the Serjeant at Arms should see that the Standing Rules and Orders were duly observed and that he do all things requisite and necessary to execute Order 125. Eventually the Serjeant at Arms had to obtain from the Speaker authority to forcibly evict the member and to that end to enlist the assistance of police officers.

Action for assault subsequently was brought against one of the police officers who had assisted the Serjeant at Arms in enforcing the Order. No attempt was made to challenge the validity of the resolution under which the member for Bundaberg had been suspended and the plaintiff's case was based mainly on the contention that the Lodge was not covered by Order 125 and that therefore any forcible eviction therefrom was not within the competence of the Assembly to authorise. For the defendant it was submitted that if the Assembly thought the Lodge was among the rooms set aside for members, no court of law could review the correctness of that interpretation.

Macrossen, Acting C.J., in line with the other judges, apparently thought that the Assembly was not the final arbiter of the meaning of the Order; however being satisfied that the assault complained of took place outside the boundaries of the grounds of Parliament, it was unnecessary for him to decide whether or not the Lodge did come within the Order. (Nevertheless he did offer the opinion that the Lodge was a room set aside for members and that any trespass committed in the course of the eviction from the Lodge was justifiable.) The other judges, approached the problem somewhat differently.

For his part, E. A. Douglas, J. said that it was for the court to determine the true meaning of Order 125 and that in his opinion the Lodge was not a room set aside for the use of members. He had no quarrel with the proposition that administration of the rules governing

37. (1946), S.R.Q. 87.
38. (1947), S.R.Q. 133.

suspension was a matter within the exclusive cognizance of the Assembly. A resolution for suspension, on his view, would be unreviewable by a court. But there is a difference, his Honour said, between a resolution that a member be suspended and the punitive consequences which the Standing Orders attach to suspension.

> There is no authority for the proposition that Parliament has the exclusive right to construe the standing orders to determine the punishment which may be inflicted upon a member when he has been suspended by the House. I think it is not within the exclusive power of Parliament to determine such punishment by its own construction of standing orders.[39]

Philp, J. appears to have equated the Standing Orders with subordinate legislation. He had no doubt that Order 125 was truly an order made "for the orderly conduct of business" but it was penal in character and therefore should be construed restrictively. Being a statutory enactment it must be construed as if the Court were applying it the day after its promulgation. At that time the Lodge was not in being, therefore it could not now be brought within the rooms set aside for the use of members.[40]

The issue for determination in *R.* v. *Dickson, Ex parte Barnes*[41] was whether by resolution, the Assembly could deprive a member his salary during the period of his suspension. There was nothing in the Standing Rules and Orders conferring such a power on the Assembly. According to Macrossen, C.J. :[42]

> The deprivation of a member of his salary is in the same category as the imposition of a monetary fine. It is punitive and as the standing orders of the Legislative Assembly confer no express power on the Assembly to deprive a member of his salary by resolution, the resolutions of the Assembly now in question were inoperative so far as they purported to deprive the prosecutor of his salary.

The entitlement of Members of the Assembly to salaries was fixed by the Queensland Constitution and the only circumstance in which it was provided that a member should be disentitled was upon his seat being declared vacant by the Assembly.

39. (1946), S.R.Q. at 103.

40. Philp, J. also held the resolution of the Assembly adjudging the member for Bundaberg to be in contempt, void on the grounds that under the Queensland Constitution Act, 1867, only specified offences were punishable as contempt, and for such offences the only punishments authorized were, in the first instance, fine, and should the fine be not paid, imprisonment. Here the resolution neither alleged nor proved any contempt, imposed neither fine nor imprisonment.

41. (1947), S.R.Q. 133.

42. *Id.*, 137.

Neither of the two cases examined above conflicts directly with *Bradlaugh* v. *Gossett,* for if rights exercisable within the walls of Parliament comprise only the rights of sitting and voting, then it cannot be said that the Queensland Supreme Court was passing judgment on whether those rights validly had been denied. In *Barnes* v. *Purcell,* the only right at issue was a member's right of access to an amenity provided for a certain class of members, whilst in *R.* v. *Dickson, Ex parte Purcell* the right in issue was that of entitlement to an allowance authorized by statute. How English courts might have dealt with these problems is highly speculative. If the sale of alcoholic beverages within the precincts of Parliament is assimilated with internal proceedings such that its legality is a matter upon which a court of law regards itself as incompetent to pass judgment,[43] it is doubtful whether an English court would regard itself as competent to pass opinion on the correctness of a ruling concerning the rooms from which a suspended member might lawfully be excluded.

Although the Queensland Supreme Court did not find it necessary to reconcile its intervention with the principle that the Assembly has exclusive jurisdiction in matters of internal concern, the practical effect of the decisions is to withdraw from the Assembly's sphere of exclusive jurisdiction, all disciplinary action against a member other than exclusion from the legislative chamber itself. Merely because the person proceeded against is a member does not mean that the proceedings against him are internal proceedings. By misinterpreting Standing Orders, the Assembly cannot impose any sanction it feels appropriate, neither may it impose a sanction which is not authorized by law. In view of what has been said previously, nor is it permissible for the assembly, in exercise of its power to make rules for the orderly conduct of business, to make Standing Orders prescribing sanctions without limit as to their nature or duration.

VII

With regard to the period or periods of time during which a member may lawfully be excluded from the legislative chamber, *Barton* v. *Taylor* provides sure guidance on three points only, These may be summarised thus:

(1) An assembly invested by statute with power to make Standing Rules and Orders for the orderly conduct of business may adopt Standing Orders fixing the periods for which a member shall be suspended so long as the periods so prescribed do not extend beyond the end of the sitting during which the member is suspended.

43. *R.* v. *Graham-Campbell, ex p. Herbert,* [1935] 1 K.B. 594; (1935) 104 L.J.K.B. 244.

(2) Where no such Standing Orders exist, the assembly may resolve that a member be suspended for a definite period of time not exceeding the end of the current sitting, and a resolution for suspension expressing no such period will be construed as operating no further than the end of the current sitting.

(3) For repeated offences a member may be suspended sitting after sitting, but in such cases a fresh resolution is required for each sitting.

The questions unresolved by this decision and which still remain to be determined are :

(1) Whether, if valid Standing Orders prescribing the periods for suspension exist, the assembly may resolve in a particular instance that the member be suspended for different periods. This matter could well be concluded by a saving clause in the Standing Rules and Orders reserving to the assembly power to suspend for other and different periods, but in the absence of such a clause it may well be that a court of law would regard departure from the Standing Rules and Orders as "misinterpretation" and therefore suspension beyond the prescribed period as inoperate.

(2) Whether an assembly may suspend a member conditionally and if so, whether upon any conditions it chooses to nominate.

On the latter issue, the observations of the Earl of Selborne in *Barton* v. *Taylor* are of a tentative character. His Lordship said that—[44]

> … it may well be, that the . . . doctrine of reasonable necessity would authorise a suspension until submission or apology by the offending member; which if he were refractory, might cause it to be prolonged (not by the arbitrary discretion of the Assembly, but by his own default) for some further time.

Having regard to the stress previously laid by his Lordship on the want of power to suspend beyond the current sitting, one may infer that even if conditional suspension is permissible, refractoriness on the part of the member would not dispense with the need for passing a fresh resolution on the commencement of the next sitting. For the present it cannot be stated with any confidence that colonial assemblies do have power to suspend on condition. Certainly it cannot be supposed that if such power exists it allows for suspension on any condition the assembly chooses to nominate. Should an assembly suspend on unreasonable conditions it may be that the suspensory resolution would be construed by a court as inoperative; on the other hand it might be interpreted as a

44. (1889) 11 App. Cas. at 204-5.

resolution for suspension *simpliciter* which upon reference to the Standing Rules and Orders will operate only for the period or periods there stipulated.

Once the stage has been reached when the courts reserve to themselves power to inquire into the legality of action taken, or authorised to be taken, against a member whose conduct is adjudged to merit suspension, little ingenuity would be needed to so enlarge the function of judicial review that the court would be required to be satisfied that there was evidence supporting the decision of the assembly. While it may be doubted whether any court now would appropriate to itself the function of ascertaining whether as a matter of fact circumstances for the exercise of the power of suspension had arisen, it could well be that to satisfy itself of the legality of the resolution, the court would require proof that the member had been adjudged guilty of misconduct for which the assembly had power to suspend. Whether or not it could (or even should) satisfy itself that there was evidence supporting the judgment of the assembly is linked with the further question whether evidence of what has taken place in the assembly is admissible in a court of law. In England the matter is concluded by Article 9 of the Bill of Rights, and in the State of Singapore by section 23 of the Legislative Assembly (Powers and Privileges) Ordinance, 1955. The latter provides (*inter alia*) that no evidence of debates or other proceedings in the Assembly shall be admissible in proceedings in a court of law or before any person authorised by law to take evidence unless the permission of the Speaker has been obtained. Thus, unless permission were to be given for the taking of evidence concerning what the member had said or done in the House, the court would automatically be precluded from examining the evidence upon which the Legislative Assembly's resolution was based.

VIII

The main conclusions reached in the foregoing pages may be restated briefly as follows :—

(1) The powers of the Singapore Legislative Assembly to suspend its members are derived from two sources, the general principles of common law determining the powers, privileges and immunities of colonial assemblies, and from the Legislative Assembly (Powers and Privileges) Ordinance, 1955, section 20.

(2) The Singapore (Constitution) Order in Council, 1958, empowers the Legislative Assembly to extend its powers of suspension beyond the powers possessed at common law, but only in exercise of its power to define and declare its powers and privileges — not in exercise of its power to adopt Standing Orders.

(3) Since the misconduct alleged against the member for Hong Lim clearly did not fall within the offences declared by the Ordinance of 1955, section 20, to be contempts for which a member is liable to suspension, the question whether he might lawfully be suspended depends on the existence at common law of, either a power of suspension for infraction of valid Standing Orders, or a power of suspension for contemptuous utterances. Although the relevant authorities are inconclusive, it may fairly be predicted that a court of law would accept the argument that the doctrine of self-protection justifies suspension for either of these causes.

(4) Although the existence of circumstances justifying the exercise of an acknowledged power of suspension will not be inquired into by a court of law, an otherwise valid suspensory resolution is inoperative so far as it purports :

a) to impose on the suspended member a penalty other than exclusion from the legislative chamber;

b) to exclude a member from the legislative chamber for an indefinite period, or possibly for a period other than that prescribed in the Standing Orders;

c) to exclude a member from the legislative chamber until such time as he complies with certain conditions. (This conclusion is based simply on the absence of certain judicial authority rather than on speculation on what attitude a court of law might be prepared to adopt.)

In these situations the resolution may not be devoid of effect; they may, however, be held operative only to the extent of excluding a member from the chamber for the period prescribed by statute or Standing Orders, or if no such period is prescribed, for a period not exceeding the current sitting.

(5) In all cases, a court is entitled to be satisfied that the member suspended has been resolved to have committed an offence for which the assembly has power to suspend.

ENID CAMPBELL.*

* Senior Lecturer in Law, University of Sydney.