CONTEMPT OF PARLIAMENT IN A COMMONWEALTH STATE

In any modern legislature, as in the House of Commons, there are three privileges of inevitable importance, namely:

1. The individual privilege of freedom of speech enjoyed by members.

2. The collective privilege of control of the assembly over its own proceedings.

3. The power to commit for contempt.

In connection with the last named it is never easy to distinguish between acts or conduct constituting breach of privilege *simpliciter* and those constituting contempt irrespective of breach of privilege being the cause. There may be general agreement that any disorderly, contumacious or disrespectful conduct committed in the presence of the Assembly or any committee thereof, will constitute a contempt. In this respect a member is on the same footing as a stranger.[1] The incident which has prompted this article arose in the Legislative Assembly of the State of Singapore in December 1960, and involves a discussion of all three privileges. A member of the Assembly, Mr. Ong Eng Guan, used his privilege of freedom of speech in the Assembly, so it was alleged, as a cloak for spreading malicious falsehoods to the injury of innocent persons who included two members of the Assembly holding ministerial office, namely the Prime Minister and the Minister for Labour and Law. The alleged falsehoods related to allegations made by Mr. Ong Eng Guan that the reasons for certain appointments to the public services were close relationship to one or other of the Ministers concerned.

Before discussing the events which ensued when these allegations were challenged in the Assembly, it is necessary to consider how far privileges, including the power to commit for contempt, which are well established in the House of Commons, apply in other legislatures within the Commonwealth, and in particular in the State of Singapore. The general rule is that the privileges of the House of Commons if they are to be claimed by any Commonwealth Assembly, must be expressly conferred under the constitution or assumed by later legislation. There is no inherent power, as there is in the House of Commons, for other legislatures to condemn or to suspend their members. Sometimes as in

1. Erskine May, *Parliamentary Practice,* 16th edition, Chapter 8.

the case of the Commonwealth of Australia,[2] pending the definition of its privileges, a Commonwealth Assembly may be empowered to exercise all the privileges of the House of Commons for the time being. In the case of the State of Singapore, the Legislative Assembly (Powers and Privileges) Ordinance, 1955, declares and defines certain powers and privileges and immunities of the Legislative Assembly and its members, as well as protecting persons employed in the publication of papers issued by Orders of the Assembly. This Ordinance by section 3 confers upon members the right of freedom of speech in modern language which is equivalent to the guarantee of freedom of speech conferred by the Bill of Rights, 1689, upon members of the Parliament of the United Kingdom. It also deals with the conduct of members, and in particular in section 20 defines a contempt of the Assembly by a member. The four offences covered by the section, each of which is deemed to constitute contempt of the Assembly, do not however include the sort of conduct of which the Assembly complained in the case of Mr. Ong Eng Guan. Section 24 (1) (d) which applies to the conduct of any person (not only members) provides that: "any person who . . . publishes any false or scandalous libel on any member touching his conduct as a member" shall be guilty of a criminal offence. Mr. Ong Eng Guan could not, however, be prosecuted under this section because of the protection afforded to his speeches in the Assembly by section 3 of the Ordinance (the general immunity of a member for words spoken before the Assembly).

The Standing Orders of the Assembly provide by No. 3 (e) for a motion for the suspension of a member, and by No, 56 for the question being put without discussion if the alleged offence to which the motion relates has been committed in the Assembly itself. With regard to the contents of speeches Standing Order No. 46 (6) provides: "no member shall impute improper motives to any other member". On December 14th, 1960, the Deputy Prime Minister gave notice of a motion condemning the offending Member for his dishonourable conduct in abusing his privilege in the Assembly and further proposed his suspension from the service of the Assembly until such time as he had:

(1) Apologised to the Assembly for his dishonourable conduct;

(2) Unreservedly withdrawn his allegations against the two Ministers;

(3) Assured the Assembly that he would in future refrain from abusing his privilege in this manner or be prepared when challenged to repeat outside the Assembly the charges he makes inside the Assembly.

After consideration the Speaker ruled the next day that since the motion did not relate *simpliciter* to suspension, but also condemned the

2. Commonwealth of Australia Act, 1900, s.49. Again the South Africa Act, 1909, s.57, made special provision for the Union Parliament to exercise the powers and privileges of the Cape Parliament until such time as the former enacted its own Powers and Privileges of Parliament Act in 1911.

Member for his conduct as an elected representative, it could not be proceeded with forthwith under Standing Order No. 56 but required requisite notice. This ruling was accepted, and the motion set down for hearing four days later, (December 19th) when it was moved by the Deputy Prime Minister who referred in the course of his speech to Chapter 8 of Erskine May, and in particular to precedents given of imputations against members of corruption in the execution of their duties which have been held to be breaches of privilege. These cases seem to relate to Members' conduct in the execution of their parliamentary duties, whereas Mr. Ong Eng Guan's allegations reflected upon the conduct of members in their ministerial capacity. Erskine May does, however, refer to *Bittleston's* case, 1834, where it was held to be contempt to cast reflections upon the conduct of the Lord Chancellor in the discharge of his judicial duties. The Deputy Prime Minister enumerated no less than twelve precedents from the Reports of the Committee of Privileges of the House of Commons between the years 1834 and 1936. He remarked that for 200 years in the House of Commons it had never been necessary to suspend a member for false or malicious allegations against fellow members because, when confronted, offending members have either withdrawn or substantiated their allegations. He might, however, have referred to *Allighan's* case,[3] where the Committee of Privileges reported to the House that unfounded imputations in regard to the conduct of members involved an affront to the House, albeit the allegations were made in regard to private proceedings at party meetings held within the precincts of the Palace of Westminster. The sequel to this case was the expulsion of the Member by the House. Mr. Ong Eng Guan on this occasion obtained the adjournment of the House until December 29th on which day, however, he resigned his seat, and accordingly the complaints ceased to be dealt with by the Assembly or a Committee thereof as a matter of misconduct by a member.

Two days later the Head of State, (the Yang di-Pertuan Negara) appointed a Commission of Inquiry under the Inquiry Commissions Ordinance (Cap. 52). The inquiry which was conducted by a Commissioner, the Hon. Mr. Justice F. A. Chua and reported on February 14th, 1961, resulted in a finding that there was no truth at all in any of the three allegations made by Mr. Ong Eng Guan, and that the allegations were groundless and recklessly made, and that there was no justification for making any of them. In other words, apart from the privileged occasion on which they were uttered, the allegations against the two Ministers were probably defamatory.

An inquiry under the Ordinance seems closely to resemble similar inquiries in the United Kingdom held under the Tribunals of Inquiry (Evidence) Act, 1921, except that in the case of the United Kingdom the appointment of the tribunal by the Queen is in pursuance of a resolution

3. H.C. 138, (1947).

of both Houses of Parliament, and is limited to inquiring into a matter of urgent public importance. In the case of the Singapore Ordinance the Head of State may issue a commission appointing one or more Commissioners to inquire *(inter alia)* into any matter in which an inquiry would in his opinion be for the public welfare. Inquiries of this type are not entirely satisfactory. The appointment, which is usual, of a Judge to preside suggests that the proceedings are in the nature of a trial; there are, however, no accused persons, but legal representation is allowed to witnesses who are thus enabled to cross-examine one another, but since there is no accused the normal facilities for answering the accusation are not readily available. However, in the case under discussion both the Prime Minister and the Minister of Labour and Law appeared as witnesses, and therefore had the opportunity of rebutting the allegations made against them. There was thus no risk on this occasion of tribunal procedure resulting in the condemnation of parties who had not been called upon to meet a charge, albeit the charge was not a formal one in either case. The procedure seems to have succeeded in removing the suspicion of discreditable conduct. This is of general interest because a common criticism of such tribunals in the United Kingdom is that the procedure is of questionable value and lacks the safeguards which are available to meet a formal charge in a court of law. Having regard to the privileged occasion on which the allegations were made there was no opportunity of the findings of the Inquiry resulting in civil or criminal proceedings in the ordinary courts against the Member who was found by the Inquiry to have made them without any justification.

The debates in the Legislative Assembly on December 19th and December 23rd, 1961, when the motion of the suspension of Mr. Ong Eng Guan were debated are of considerable interest, even though in the end the motion was never put to the Assembly by reason of his resignation after the second adjournment. In the first place, the Deputy Prime Minister who moved the motion relied almost entirely on precedents from the House of Commons upon which to base the condemnation of the Member for his conduct, and the punishment proposed, *i.e.,* suspension. He did, however, fail to distinguish between punishment for breach of privilege, and punishment as a mode of enforcing discipline among Members. Dishonourable conduct by a Member of Parliament is not necessarily a breach of privilege, though it is conduct of which the House is entitled to disapprove and in exercise of its collective privilege of suspension to deal with by an appropriate penalty. In other words, the penal jurisdiction of a legislative assembly which follows the Westminster practice is not limited to dealing with breaches of privilege, but extends over any conduct which is unbecoming a Member. This is part

of the undoubted right of the House of Commons to exercise exclusive control over its own proceedings which in itself is a privilege which the Courts concede as exclusive of their own jurisdiction.[4]

There is no doubt that the allegations made by the offending Member were uttered under cover of privilege, and therefore could not attract legal proceedings unless the allegations were repeated outside the course of Parliamentary proceedings. Another point which emerges from the speech of the Deputy Prime Minister is that the Prime Minister and the Minister for Labour and Law felt themselves precluded from speaking on the motion on the ground that they should not be prosecutors in their own case. It will be noted that no such scruple could arise when the matter came to be investigated by the independent tribunal of inquiry where the position of the two Ministers more closely resembled that of accused persons than of prosecutors. When Mr. Ong Eng Guan came to answer the motion for his suspension, the Speaker reminded him that he was in the position of an accused person. As a preliminary point he referred to the fact that, although there had been instances of Members of the House of Commons being suspended, these cases had all related to disregarding the authority of the Speaker or persistently and wilfully obstructing the business of the House. He pointed out that such action has always been initiated by the Speaker, and not as in his case by members of the Government. There is some slight confusion here because, although the House of Commons practice is for an offending Member to be named by the Speaker or the Chairman at the time of the alleged offence, the actual motion is invariably proposed by a member of the Government Front Bench present at the time. A similar procedure is prescribed by S.O. 56 of the Standing Orders of the Singapore Legislative Assembly. The reason for this procedure is clear. The motion is normally one which cannot be debated or made subject to an amendment or an adjournment, but the motion under discussion did not relate simply to suspension but also condemned the Member for his conduct, and therefore, as we have seen, required requisite notice to enable it to be answered.

When the Assembly resumed discussion of the motion on December 23rd, Mr. Ong Eng Guan moved the rescission of the Speaker's ruling admitting the motion of the Deputy Prime Minister, on the ground that the Assembly had no jurisdiction to deal with the matters raised therein. He first complained that a principal daily paper had discussed a matter which was *sub judice* in making reference in advance to the

4. *Bradlaugh* v. *Gossett* (1884), 12 Q.B.D. 271. This is a strong case because the court declined to intervene in a case where the plaintiff tried to challenge the interpretation which the House of Commons put upon a statute.

current day's debate. In this he was unsuccessful in obtaining a further delay, as the Speaker undertook to give his ruling at a later date without prejudice to the motion before the House. On the main issue he argued first that the Assembly did not possess the same inherent powers as the House of Commons. This was, however, common ground, as has already been seen. Mr. Ong Eng Guan then attempted, again unsuccessfully, to maintain that the definition "contempt of the Assembly" contained in section 20 of the Legislative Assembly (Powers and Privileges) Ordinance 1955, was all embracing, and that as his conduct did not come within any of the three types of conduct there specified he could not have been guilty of contempt. The rest of his argument was mainly concerned with the construction of the relevant Singapore legislation and standing orders upon which he was answered in the lines already described in this article by the Deputy Prime Minister who had moved the motion on the first day.

After disposing of the arguments based on the interpretation of local legislation the Deputy Prime Minister showed by reference to precedents from the Judicial Committee of the Privy Council that the Legislative Assembly, even if it was regarded as a Colonial Legislature, *i.e.,* irrespective of the effect of the grant of independence, possessed the power of suspending a member not only for obstruction or disorderly conduct but also until such time as an apology had been submitted by the offender.[5] These precedents do not, however, seem to be conclusive, and indeed Lord Selborne in *Barton* v. *Tylor*[6] after stating that the power of suspension for obstruction or disorderly conduct was undoubted, continued "and it may well be that the same doctrine of reasonable necessity would authorise a suspension until submission of apology by the offending Member." There was thus some justification for challenging the extension of the power of suspension to a case of false allegations against a Member which did not involve either obstruction or disorderly conduct. At this stage attempts were made to adjourn the debate in order that opinions might be obtained from the State Advocate-General or Sir Ivor Jennings or other experts from overseas.

The main argument for including the power of suspension beyond the cases of contempt expressly referred to in section 20 of the Power and Privileges Ordinance is based upon Standing Order 46 (10) which forbids reference to the personal conduct of Members of the Assembly in course of debate except upon a substantive motion moved for the purpose. Against this it could be argued that what was being alleged against the

5. *Calvin* v. *Castle* (1844), 4 Moo. P.C.C. 63.

6. (1886), 11 App. Cas. 197, at p. 204.

Members concerned did not relate to their personal conduct as Members of the Assembly, but in connection with their public duty as Ministers. The allegations of nepotism brought against both the Prime Minister and the Minister for Labour and Law were in relation to alleged abuses of patronage which they did not exercise as Members of the House. The question may well be asked: Is it possible to distinguish between conduct of members of the Assembly inside and outside the Chamber, particularly when membership of the Assembly is a necessary qualification for office?

The conclusion of the matter would seem to be that, 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.

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