Privy Council Appeal No. 55 of 1993

Richard William Prebble *Appellant*

v.

Television New Zealand Limited *Respondents*

FROM

THE COURT OF APPEAL OF NEW ZEALAND

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH JUNE 1994

Present at the hearing:-

LORD KEITH OF KINKEL
LORD GOFF OF CHIEVELEY
LORD BROWNE-WILKINSON
LORD MUSTILL
LORD NOLAN

*[Delivered by **Lord Browne-Wilkinson**]*

Article 9 of the Bill of Rights 1688 precludes any court from impeaching or questioning the freedom of speech and debates or proceedings in Parliament. It is well established that the Article prevents a court from entertaining any action against a member of the legislature which seeks to make him legally liable, whether in criminal or civil law, for acts done or things said by him in Parliament. Thus, an action for libel cannot be brought against a member based on words said by him in the House.

In this action, the position is reversed: the libel action is brought, not against, but by a member of the legislature. The defendants wish to allege that allegedly defamatory statements made by them were true and are seeking to demonstrate such truth by relying on things said and acts done in Parliament i.e. the defendants wish to use parliamentary materials not as a sword but as a shield. The question is whether Article 9 precludes such deployment of parliamentary material.

The plaintiff was Minister for State-Owned Enterprises and held other portfolios in the Fourth Labour Government of New Zealand from 1984 to 1990 (apart from a period from November 1988 to February 1990). The defendants, Television New Zealand Limited, transmitted a programme

making allegations against that Government. The plaintiff alleges that the programme carried the meanings set out in sub-paragraphs (a) to (l) of paragraph 9 of the statement of claim which read as follows:-

"(a) That the Plaintiff as a highly placed politician had secretly conspired with certain highly placed businessmen ('business leaders') and public officials, (including heads of SOE's and government departments; senior civil servants and ex-treasury officials ('public officials')) in New Zealand to promote and implement state asset sales with the object of providing the said business leaders with a once in a lifetime opportunity to dip into the 'public treasure chest' and obtain assets on unduly favourable terms to them and that this was the dark side of New Zealand politics.

(b) That these state-owned assets were so sold under this conspiracy pleaded in para 9(a) above to which the Plaintiff was a party on such favourable terms that the said business leaders actually scrambled or queued up to obtain transfers of these assets to themselves.

(c) That the motive of the Plaintiff in being party to this improper conspiracy pleaded in para 9(a) above was to provide donations to the New Zealand Labour Party from the said business leaders. Labour's return to office had been so bankrolled.

(d) That the Plaintiff acted in the manner pleaded in (a) or (b) or (c) or (sic) without any genuine belief that such sales were in the public good.

(e) That in order to promote this improper conspiracy the Plaintiff proposed 'to get rid of the chairman, Hugh Fletcher, and the Managing Director Norman Geary' and replace them 'with Merchant Banker, David Richwhite, and Bob Matthew, a Brierley representative' as he, the Plaintiff intended and was successful in bringing about that the Brierley's consortium would purchase Air New Zealand. This was an example of the manipulative and dishonest manner in which the Plaintiff went about effecting this improper conspiracy in relation to the selling of state-owned assets to big business.

(f) The sale of Air New Zealand to the Brierley and Qantas consortium was an example of the Plaintiff re-paying business friends for favours.

(g) The Plaintiff supported the Brierley lead consortium with respect to their bid for the purchase of Air New Zealand and gave Ministerial favours and improper favouritism to that consortium.

(h) That in the nights following his sacking the Plaintiff was so worried that Government documents and computer files might incriminate him in regard to this improper conspiracy over the sale of state-owned assets that he arranged for these incriminating documents and computer files to be either destroyed or deleted and that this work in shredding these documents and deleting these computer files could properly be described as 'dirty work'.

(i) That the Plaintiff was involved in the 'nights' following his 'sacking' in 'dirty work' in 'shredding' 'confidential Government information', the destruction of 'sensitive Government records' together with the deletion of such files held on computer, knowing that such actions were not in the public good.

(j) The Plaintiff entered into understandings with business leaders to promote policies that he would not otherwise have espoused so as to obtain donations from those business leaders for election campaigns.

(k) As Minister for State Owned Enterprises and a member of Cabinet the Plaintiff promoted and implemented the sale of state assets because of an understanding he had with business leaders to repay them for campaign donations.

(l) He acted in the manner pleaded in (j) or (k) above without any genuine belief that such policies and actions were for the public good."

The amended defence denies that the programme carried any of the defamatory meanings alleged by the plaintiff. Paragraph 16 of the defence alleges that, if the programme did carry those meanings, the meanings pleaded in paragraph 9 (other than sub-paragraphs (c), (f), (g), (h) and (i)) of the statement of claim were true. Paragraph 16 of the defence then addresses each of those meanings in turn, first giving a summary of the defendants' case in justification of that meaning and then giving detailed particulars in relation to each meaning. The amended defence is a very long and complex document running to some 104 pages. Most of the defence consists of some 476 particulars of justification which rely on statements and actions which did not take place in the House of Representatives and therefore are not the subject matter of parliamentary privilege.

There are two types of allegation in the particulars which might infringe parliamentary privilege. First, there are allegations that the plaintiff and other Ministers made statements in the House which were misleading in that they suggested that the Government did not intend to sell off state-owned assets when in fact the spokesman

was, it is alleged, conspiring to do so. The second type of allegation is that the conspiracy was implemented by introducing and passing legislation in the House.

As an example of the first type of allegation, paragraph 16 of the defence pleads to the meaning alleged in paragraph 9(a) of the statement of claim (the allegation of conspiracy) by summarising the justification as follows:-

> "In summary, the Defendant alleges that the Plaintiff (as part of a wider programme) proceeded to implement a policy of selling state-owned assets in circumstances from which it can be inferred that he was party to a conspiracy of the kind he (sic) described.
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> Those circumstances include the fact that such a policy was contrary to the manifestos on the basis of which the Plaintiff campaigned in 1984 and 1987; public statements he made and assurances he (and other senior politicians) gave prior to and during the initial implementation of the policy; the opposition to such a policy by his own electorate, the New Zealand Labour Party ('NZLP') and the public; his conduct in suppressing opposition to such a policy; and his attempts to remove from office those he perceived to be opposed to his views; the appointments he promoted in furtherance of the policy; the fact that the policy reflected the views and resulted from the influence of such businessmen and public officials; his association with Roger Douglas and their personal friendship with highly placed businessmen and public officials; the use of consultants on the sale of SOE's where such consultants had a potential financial interest in the implementation of such policies; the size and circumstances of donations made to the 1987 Campaign Committee of the NZLP; the cessation of sizeable donations to the NZLP from businessmen when they perceived the policy and the wider programme no longer being pursued by the Government of which the Plaintiff was a member; the restoration of the Plaintiff to Cabinet as Minister of State-Owned Enterprises in January 1990 and the consequent resurgence of the policy; and the announcement of the economic package on 20 March 1990 designed to signal the further implementation of the policy and of the wider programme, and to elicit donations from businessmen for the re-election of the Labour Government in 1990."

This summary is followed by detailed particulars of allegations under 8 heads. The particulars given under head 8 (which contains all but one of the allegations said to infringe parliamentary privilege) contain particulars of "the matters from which it can be inferred that the conspiracy was secret". Paragraph 8.2 of those particulars alleges that the sale of state-owned assets was "contrary to assurances given by the Plaintiff and other highly placed politicians of the Fourth Labour Government". Amongst the "assurances" relied upon are statements made in the House

by the plaintiff (particulars 8.2.10) and by the Prime Minister (particulars 8.2.14). It is clear therefore that if permitted to pursue allegations of this kind the defendants are going to suggest that the statements in the House were calculated to mislead the House or were otherwise improperly motivated.

The second type of allegation said to infringe parliamentary privilege (the implementation of the conspiracy by procuring the necessary legislation) can again be illustrated by the particulars given in support of the plea of justification of the conspiracy referred to in paragraph 9(a) of the statement of claim. Paragraph 8.4 of the particulars is headed "The implementation of the policy for the sale of state-owned assets". They allege (inter alia) the enactment of the State-Owned Enterprises Act, 1986 (particulars 8.4.1) and of the State Sector Act 1988. It is therefore clear that the defendants intend to allege that the actions of the plaintiff and others in procuring the passage of this legislation was part of the alleged conspiracy and as such dishonest and improper.

When the defence was amended to plead justification, the plaintiff after consulting the parliamentary authorities applied to strike out those particulars which it was thought infringed parliamentary privilege. The application came before Smellie J. who, in addition to the parties, heard submissions from the Attorney General representing the interests of the House. In a careful, detailed and closely argued judgment, Smellie J. identified all the allegations which, if allowed to stand, might impeach or question proceedings in Parliament. He held that, even though such allegations were made in defence of proceedings brought by a member of the House, they infringed Article 9 and should be struck out. The defendants appealed to the Court of Appeal which, after hearing the parties and the Attorney General, unanimously upheld the judge's decision. However, the Court of Appeal itself raised the question whether, in view of the inability of the defendants to deploy all the relevant evidence in support of the plea of justification, it was just to allow the plaintiff to continue with his action. They held, McKay J. dissenting, that it would be unjust and ordered a stay of the plaintiff's action unless and until privilege was waived by the House of Representatives and by any individual member or former member whose words or actions are questioned in the defence.

The Privileges Committee of the House of Representatives thereafter considered the question of waiver but held that the House had no power to waive the privileges protected by Article 9.

The plaintiff appeals to the Board against the order staying his action. On the hearing of the appeal the defendants, although they had not served any cross-notice challenging the judgment of Smellie J. (upheld by

the Court of Appeal), sought to challenge such decision. No objection was raised by either the plaintiff or the Attorney General (whom their Lordships had the great advantage of hearing). There are therefore two questions for decision:

(a) Would the allegations, if pursued, infringe Article 9 of the Bill of Rights?

(b) If so, should a stay of the action have been ordered by the Court of Appeal?

Article 9

Article 9 of the Bill of Rights 1688 provides as follows:-

> "Freedom of Speech - That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament."

It is common ground that Article 9 is in force in New Zealand by virtue of section 242 of the Legislature Act 1908 and the Imperial Laws Application Act 1988.

If Article 9 is looked at alone, the question is whether it would infringe the Article to suggest that the statements made in the House were improper or the legislation procured in pursuance of the alleged conspiracy, as constituting impeachment or questioning of the freedom of speech of Parliament.

In addition to Article 9 itself, there is a long line of authority which supports a wider principle, of which Article 9 is merely one manifestation, viz. that the courts and Parliament are both astute to recognise their respective constitutional roles. So far as the courts are concerned they will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges: *Burdett v. Abbot* (1811) 14 East 1; *Stockdale v. Hansard* (1839) 9 Ad. and E. 1; *Bradlaugh v. Gossett* (1884) 12 Q.B.D. 271; *Pickin v. British Railways Board* [1974] A.C. 765; *Pepper v. Hart* [1993] A.C. 593. As Blackstone said in his Commentaries (17th ed. (1830)), volume 1, page 163:-

> "The whole of the law and custom of Parliament has its original from this one maxim, 'that whatever matter arises concerning either House of Parliament ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere'."

According to conventional wisdom, the combined operation of Article 9 and that wider principle would undoubtedly prohibit any suggestion in the present action (whether by way of direct evidence, cross-examination or submission) that statements were made in the House which were lies or motivated by a desire to mislead. It would also prohibit any suggestion that proceedings in the House were

initiated or carried through into legislation in pursuance of the alleged conspiracy. However, it is the defendants' case that the principle has a more limited scope. The defendants submit, first, that the principle only operates to protect the questioning of statements made in the House in proceedings which seek to assert legal consequences against the maker of the statement for making that statement. Alternatively, the defendants submit that parliamentary privilege does not apply where it is the member of Parliament himself who brings proceedings for libel and parliamentary privilege would operate so as to prevent a defendant who wishes to justify the libel from challenging the veracity or *bona fides* of the plaintiff in making statements in the House.

The first of those submissions is based on the decision in the New South Wales Supreme Court *R. v. Murphy* (1986) 5 N.S.W.L.R. 18. In that case a judge was being prosecuted for an alleged offence. The principal crown witness had previously given evidence to a Select Committee of the Senate relating to matters in issue in the trial. The question arose whether, in the course of the criminal trial, the witness's earlier evidence to the Select Committee could be put to him in cross-examination with a view to showing a previous inconsistent statement. Hunt J. held that Article 9 did not prohibit such cross-examination, even if the suggestion was made that the evidence given to the Select Committee was a lie. He further held that the statements of the Select Committee could be used to draw inferences, could be analysed and be made the basis of submissions. Almost immediately Commonwealth legislation, the Parliamentary Privileges Act, 1987, made it clear that *R. v. Murphy* did not represent the law of the Commonwealth. Section 16 of that Act provides "for the avoidance of doubt" in relation to proceedings of the Parliament of the Commonwealth as follows:-

> "(3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of -
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> (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
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> (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
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> (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament."

That Act, therefore, declares what had previously been regarded as the effect of Article 9 and sub-section (3) contains what, in the opinion of their Lordships, is the true principle to be applied.

It is, of course, no part of their Lordships' function to decide whether, as a matter of Australian law, the decision of Hunt J. was correct. But Article 9 applies in the United Kingdom and throughout the Commonwealth. In their Lordships' view the law as stated by Hunt J. was not correct so far as the rest of the Commonwealth is concerned. First, his views were in conflict with the long line of dicta that the courts will not allow any challenge to what is said or done in Parliament. Second, as Hunt J. recognised, his decision was inconsistent with the decision of Browne J. in *Church of Scientology of California v. Johnson-Smith* [1972] 1 Q.B. 522 (subsequently approved by the House of Lords in *Pepper v. Hart*) and *Comalco Limited v. Australian Broadcasting Corporation* (1983) 50 A.C.T.R. 1, in both of which cases it was held that it would be a breach of privilege to allow what is said in Parliament to be the subject matter of investigation or submission.

Finally, Hunt J. based himself on a narrow construction of Article 9, derived from the historical context in which it was originally enacted. He correctly identified the mischief sought to be remedied in 1688 as being, inter alia, the assertion by the King's Courts of a right to hold a member of Parliament criminally or legally liable for what he had done or said in Parliament. From this he deduced the principle that Article 9 only applies to cases in which a court is being asked to expose the maker of the statement to legal liability for what he has said in Parliament. This view discounts the basic concept underlying Article 9, viz. the need to ensure so far as possible that a member of the legislature and witnesses before Committees of the House can speak freely without fear that what they say will later be held against them in the courts. The important public interest protected by such privilege is to ensure that the member or witness <u>at the time he speaks</u> is not inhibited from stating fully and freely what he has to say. If there were any exceptions which permitted his statements to be questioned subsequently, at the time when he speaks in Parliament he would not know whether or not there would subsequently be a challenge to what he is saying. Therefore he would not have the confidence the privilege is designed to protect.

Moreover to allow it to be suggested in cross-examination or submission that a member or witness was lying to the House could lead to exactly that conflict between the courts and Parliament which the wider principle of non-intervention is designed to avoid. Misleading the House is a contempt of the House punishable by the House: if a court were also to be permitted to decide whether or not a member or witness had misled the House there would be a serious risk of conflicting decisions on the issue.

The defendants' second submission (that the rules excluding parliamentary material do not apply when the action is brought by a member of Parliament) is based on the decision of the Supreme Court of South Australia in *Wright and Advertiser Newspapers Limited v. Lewis* (1990) 53 S.A.S.R. 416. In that case the plaintiff was a member of the South Australia House of Assembly. The plaintiff made an allegation in the House that the first defendant, Wright, had obtained an advantage as a result of his close association with a former Government. Wright wrote a letter to the second defendant, a newspaper, which published it. The letter accused the plaintiff of abusing his parliamentary privilege and of cheap political opportunism. The plaintiff sued alleging that the letter was libelous. The defendants pleaded justification, qualified privilege and fair comment. The case was one therefore in which the plaintiff's integrity in making statements in the House was determinative of the action: the letter was plainly defamatory and unless the defendants could challenge the truthfulness of what the plaintiff had said in Parliament, they had no defence. King C.J. (at pages 421-2) with justification described the result of allowing the action to proceed without such evidence being admissible as follows:-

> "It must be observed at the outset that if the view argued for by counsel for the Attorney-General and the plaintiff is correct, the result is remarkable. A Member of Parliament could sue for defamation in respect of criticism of his statements or conduct in the Parliament. The defendant would be precluded, however, from alleging and proving that what was said by way of criticism was true. This would amount to a gross distortion of the law of defamation in its application to such a situation. Defamation in law is by definition an *untrue* imputation against the reputation of another. ... If the defendant were precluded from proving the truth of what is alleged, the Member of Parliament would be enabled to recover damages, if no other defence applied, for an imputation which was perfectly true. Moreover the defence of fair comment would often be unavailable, as in the present case, because it would not be permissible to prove the factual foundation for the expression of opinion. The defence of qualified privilege might be seriously inhibited because the defendant would be prevented from answering an allegation of express malice by proving the facts as known to him. If this is the true legal position, it is difficult to envisage how a court could apply the law of defamation in a rational way to an action by a Member of Parliament in respect of an imputation relating to his statements or conduct in the House, or could try such an action fairly or adjudicate upon it justly.
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> If on the other hand such an action is not justiciable, other difficulties and injustices arise.

> ... A Member of Parliament would be deprived of the ordinary right of a citizen to obtain damages for defamation in such circumstances notwithstanding, the privilege being that of the Parliament not of the member, that he might be quite willing to have all the ordinary defences put forward and adjudicated upon by the court."

The South Australian Supreme Court solved the dilemma pointed out by the Chief Justice by holding that the privilege does not extend to prevent challenges to the truth or *bona fides* of statements made in Parliament where the maker of the statements himself initiates the proceedings. The court considered at page 426 that such a limitation on normal parliamentary privilege would not inhibit the member from exercising his freedom of speech "because he would be aware that his actions and motives could not be examined in court unless he instituted the proceedings which rendered such examination necessary".

Although their Lordships are sympathetic with the concern felt by the South Australian Supreme Court, they cannot accept that the fact that the maker of the statement is the initiator of the court proceedings can affect the question whether Article 9 is infringed. The privilege protected by Article 9 is the privilege of Parliament itself. The actions of any individual member of Parliament, even if he has an individual privilege of his own, cannot determine whether or not the privilege of Parliament is to apply. The wider principle encapsulated in Blackstone's words quoted above prevents the courts from adjudicating on issues arising in or concerning the House viz. whether or not a member has misled the House or acted from improper motives. The decision of an individual member cannot override that collective privilege of the House to be the sole judge of such matters.

In reaching its conclusion, the South Australian Supreme Court did not advert to the Parliamentary Privileges Act 1987, presumably because that is a Commonwealth statute which does not regulate the privileges of the South Australian State legislature. They relied on two earlier authorities. In the first, *Adam v. Ward* [1917] A.C. 309, the plaintiff was a member of Parliament who had alleged in the House of Commons that X, an army officer, had been guilty of improper conduct. The Army Council thereafter conducted an inquiry in which they exonerated X. The Army Council sent their findings (which included unfavourable comments on the plaintiff) to the press, which published them. The plaintiff then sued the Army Council for libel. Qualified privilege was pleaded. The House of Lords upheld the claim to privilege and the speeches contained stringent criticisms of the plaintiff's conduct. At no stage was the question of parliamentary privilege raised. The only legal issue in relation to which parliamentary privilege could have arisen was whether the publication by the Army Council of its findings to the whole world was so wide as to go beyond the qualified privilege to which those

findings were entitled. For this purpose it was held that the fact that the words had been uttered by the plaintiff in the House fully justified the publication by the Army Council through the press. Therefore there was no issue in that case which questioned the truth or propriety of what had been said in Parliament: the only material point was the fact that the allegation against X had been made in Parliament. Therefore the decision provides no basis for an argument that statements in the House can be questioned where the plaintiff is the Member of Parliament.

The other authority relied upon in *Wright's* case was *News Media Ownership v. Finlay* [1970] NZLR 1089. In that case the plaintiff, a Member of Parliament, brought libel proceedings against a newspaper in respect of an article appearing in the newspaper which alleged that the plaintiff had been acting improperly and for purposes of personal profit in making statements in the House. The defendants sought to justify these allegations. No question of parliamentary privilege is adverted to in the judgment and the point never seems to have been raised. In their Lordships' view, the defendant newspapers should not have been allowed to "question" the plaintiff's conduct in the House.

Their Lordships are acutely conscious (as were the courts below) that to preclude reliance on things said and done in the House in defence of libel proceedings brought by a member of the House could have a serious impact on a most important aspect of freedom of speech viz. the right of the public to comment on and criticise the actions of those elected to power in a democratic society: see *Derbyshire County Council v. Times Newspapers Limited* [1993] A.C. 534. If the media and others are unable to establish the truth of fair criticisms of the conduct of their elected members in the very performance of their legislative duties in the House, the results could indeed be chilling to the proper monitoring of members' behaviour. But the present case and *Wright's* case illustrate how public policy, or human rights, issues can conflict. There are three such issues in play in these cases: first, the need to ensure that the legislature can exercise its powers freely on behalf of its electors, with access to all relevant information; second, the need to protect freedom of speech generally; third, the interests of justice in ensuring that all relevant evidence is available to the courts. Their Lordships are of the view that the law has been long settled that, of these three public interests, the first must prevail. But the other two public interests cannot be ignored and their Lordships will revert to them in considering the question of a stay of proceedings.

For these reasons (which are in substance those of the courts below) their Lordships are of the view that parties to litigation, by whomsoever commenced, cannot bring into question anything said or done in the House by

suggesting (whether by direct evidence, cross-examination, inference or submission) that the actions or words were inspired by improper motives or were untrue or misleading. Such matters lie entirely within the jurisdiction of the House, subject to any statutory exception such as exists in New Zealand in relation to perjury under section 108 of the Crimes Act 1961.

However, their Lordships wish to make it clear that this principle does not exclude all references in court proceedings to what has taken place in the House. In the past, Parliament used to assert a right, separate from the privilege of freedom of speech enshrined in Article 9, to restrain publication of its proceedings. Formerly the procedure was to petition the House for leave to produce *Hansard* in court. Since 1980 this right has no longer been generally asserted by the United Kingdom Parliament and their Lordships understood from the Attorney General that in practice the House of Representatives in New Zealand no longer asserts the right. A number of the authorities on the scope of Article 9 betray some confusion between the right to prove the occurrence of parliamentary events and the embargo on questioning their propriety. In particular, it is questionable whether *Rost v. Edwards* [1990] 2 Q.B. 460 was rightly decided.

Since there can no longer be any objection to the production of *Hansard*, the Attorney General accepted (in their Lordships' view rightly) that there could be no objection to the use of *Hansard* to prove what was done and said in Parliament as a matter of history. Similarly, he accepted that the fact that a statute had been passed is admissible in court proceedings. Thus, in the present action, there cannot be any objection to it being proved what the plaintiff or the Prime Minister said in the House (particulars 8.2.10 and 8.2.14) or that the State-Owned Enterprises Act 1986 was passed (particulars 8.4.1). It will be for the trial judge to ensure that the proof of these historical facts is not used to suggest that the words were improperly spoken or the statute passed to achieve an improper purpose.

It is clear that, on the pleadings as they presently stand, the defendants intend to rely on these matters not purely as a matter of history but as part of the alleged conspiracy or its implementation. Therefore, in their Lordships' view, Smellie J. was right to strike them out. But their Lordships wish to make it clear that if the defendants wish at the trial to allege the occurrence of events or the saying of certain words in Parliament without any accompanying allegation of impropriety or any other questioning there is no objection to that course.

Stay of Proceedings

The Court of Appeal, whilst upholding the decision of Smellie J. to strike out the allegations in the defence which infringed Article 9, stayed the plaintiff's action unless and

until the privilege was effectively waived both by the House itself and by any individual member concerned. The House of Representatives has taken the view that it cannot waive the privilege. Therefore the stay effectively prevents the plaintiff from establishing, if he can, that he has been most seriously defamed. Their Lordships were told that it was no part of the defendants' case before the Court of Appeal that there should be such a stay: the suggestion of a stay originated from the court itself. Before their Lordships, the plaintiff's counsel suggested that he had not been allowed sufficient opportunity to address the Court of Appeal on the point and that as a result they had fallen into error as to the importance of the allegations struck out relative to the main issues in the case.

The majority of the Court of Appeal took the view that the allegations struck out were "very close to the core of this highly political case" (per Sir Robin Cooke P.) and that without regard to such allegations the court could not adequately "consider a substantial plea of justification or ... properly quantify damages" (per Richardson J.). Therefore the dispute was, in their view, incapable of being fairly tried and should be stayed. McKay J. took the view that the allegations struck out would not be determinative of the defence of justification and would have refused a stay.

Their Lordships are of the opinion that there may be cases in which the exclusion of material on the grounds of parliamentary privilege makes it quite impossible fairly to determine the issue between the parties. In such a case the interests of justice may demand a stay of proceedings. But such a stay should only be granted in the most extreme circumstances. The effect of a stay is to deny justice to the plaintiff by preventing him from establishing his good name in the courts. There may be cases, such as the *Wright* case, where the whole subject matter of the alleged libel relates to the plaintiff's conduct in the House so that the effect of parliamentary privilege is to exclude virtually all the evidence necessary to justify the libel. If such an action were to be allowed to proceed, not only would there be an injustice to the defendant but also there would be a real danger that the media would be forced to abstain from the truthful disclosure of a member's misbehaviour in Parliament, since justification would be impossible. That would constitute a most serious inroad into freedom of speech.

But their Lordships do not agree that the present case falls into that extreme category. Mr. Galbraith, for the plaintiff, submitted, and Mr. Tizard, for the defendants, had difficulty in denying, that the allegations struck out were comparatively marginal. The burden of the libel relates to acts done by members of the Government out of the House to which questions of parliamentary privilege have no application. There were six matters upon which

the defendants were seeking to rely and which consisted of statements made in the House. Those allegations relate to the plea that the alleged conspiracy was kept secret. Apart from these six allegations, there is a large number of other matters relied upon in the defence in support of the allegation of secrecy e.g. statements made outside Parliament to the same effect as those made in the House. Although the defendants will be handicapped on this aspect of the case by the exclusion of matters stated in the House, the impact on their case will only be limited. As to the allegations that certain parliamentary processes were done in implementation of the alleged conspiracy, although the defendants will be precluded from alleging that the necessary legislation was improperly procured, the actual sales of the state-owned assets and all other allegations relating to the impropriety of the transactions remain open and can be ventilated in court.

For these reasons, their Lordships are unable to agree with the majority of the Court of Appeal that the interests of justice demand a stay. Although (as in all cases where parliamentary privilege is in issue) the court will be deprived of the full evidence on these issues, the plaintiff is entitled to have his case heard and the defendants are able to put forward the overwhelming majority of the matters upon which they rely in justification of the alleged libel.

Their Lordships will humbly advise Her Majesty that the appeal against that part of the order of the Court of Appeal which ordered a stay of proceedings should be allowed but the remainder of such order should be affirmed. The respondents must pay the appellant's costs before their Lordships' Board and in the courts below.