Contempt of Court - Contempt of Parl.

THE PENAL JURISDICTION OF AUSTRALIAN HOUSES OF PARLIAMENT

For centuries now each of the Houses of the British Parliament has assumed and has been recognized in law to have power to hear and determine complaints of breach of their privileges and contempt of Parliament and to punish the same by imprisonment or else (though the legality of this sanction is now disputed) by fine. There was a time when colonial assemblies, whether they be established by the Crown in exercise of the royal prerogative or by or under authority of the Imperial Parliament, were assumed to enjoy like powers and privileges as the House of Commons.[1] However, since the Privy Council's decision in *Kielly* v. *Carson*[2] in 1842 this view is no longer tenable. In that case the Board advised that the *lex et consuetudo Parliamenti* was not part of that body of English law received in settled colonies possessing local assemblies and that the constitution of a colonial assembly imported a grant only of such powers and privileges as were reasonably necessary for its self-protection and the effective discharge of the functions entrusted to it by the Crown or the Imperial Parliament.[3] Notwithstanding that reasonable necessity also had been advanced as the ultimate foundation upon which the powers and privileges of the House of Commons rests,[4] the Privy Council has made it amply clear that without prior legislative authorisation, colonial assemblies do not possess penal jurisdiction. The principle of reasonable necessity nevertheless allows a colonial assembly or its presiding officer to order the removal and exclusion from the legislative chamber of persons disrupting proceedings,[5] or the suspension of disorderly members for a fixed period, or possibly even the expulsion of delinquent members.[6] But punishment by fine or committal, it has been held, is beyond its competence.[7]

In deciding as it did in *Kielly* v. *Carson*, the Privy Council probably was mindful not only of the arbitrariness which had attended the exercise of penal jurisdiction by the assemblies of colonial America but also of recent events in Britain, events demonstrating that in the final analysis the power of committal for contempt of Parliament could be invoked to over-ride the law of the land as declared by the ordinary courts of law. Only a short time before the Privy Council's decision of 1842, the House of Commons had committed the two officers then acting jointly as the Sheriff of Middlesex for executing a judgment

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[1] This was the assumption on which American colonial assemblies proceeded (A. B. Keith, *Constitutional History of the First British Empire* (1930) 240-1). Further in *Beaumont* v. *Barrett* (1836) 1 Moo. P.C. 59, the first case on parliamentary privileges in the colonies considered by the Judicial Committee of the Privy Council, it was conceded that the exercise of penal jurisdiction by colonial assemblies could have a prescriptive foundation. On the other hand, advice tendered by the Law Officers to the Privy Council in the 18th century questioned the exercise of punitive powers by the American assemblies (J. H. Smith, *Appeals to the Privy Council from the American Plantations* 646-9).

[2] (1842) 4 Moo. P.C. 63.

[3] This principle was affirmed by the Board in *Fenton* v. *Hampton* (1858) 11 Moo. P.C. 347 and *Doyle* v. *Falconer* (1866) L.R. 1 P.C. 328.

[4] *Stockdale* v. *Hansard* (1837) 3 St. Tr. (N.S.) 736 at 881, 893, 922 and 928.

[5] *Doyle* v. *Falconer* (1866) L.R. 1 P.C. 328. See also *Toohey* v. *Melville* (1892) 13 L.R. (N.S.W.) 132.

[6] *Barton* v. *Taylor* (1866) 11 App. Cas. 197.

[7] *Kielly* v. *Carson* (1842) 4 Moo. P.C. 63; *Fenton* v. *Hampton* (1858) 11 Moo. P.C. 347.

of the Court of Queen's Bench against the firm of Hansard.[8] The House's action had followed the Court's celebrated decision in *Stockdale* v. *Hansard*[9] in which it had been held (a) that despite the Commons' assertions to the contrary, the Houses of Parliament were not the sole judges of their privileges, and (b) that notwithstanding that the firm of Hansard had been directed by the Commons to print and publish the reports complained of by Stockdale, they were not for that reason protected by parliamentary privilege and accordingly might be held liable in defamation. Although the committal of the Sheriff of Middlesex clearly defied the Court's assumption of jurisdiction to rule on the limits of parliamentary privilege, the House's power of committal for unspecified causes had gone unchallenged for so long that it was now too late to be called into question. But neither judicial precedent nor prescription stood in the way of the Privy Council's questioning of the punitive powers of colonial assemblies. In result, the analogy presented by the House of Commons was rejected and the penal jurisdiction of that House explained as a survival of the judicial powers of the High Court of Parliament, an institution peculiar to England.

The considerations underlying the Privy Council's ruling in *Kielly* v. *Carson* have no less relevance today than they had in the 19th century. Although the House of Commons has never since 1840 defied the ordinary courts of law as it did in the case of the Sheriff of Middlesex, its penal jurisdiction nevertheless offends against several fundamental postulates concerning the exercise of judicial power. In the first place, in adjudicating complaints of breach of privilege and contempt of Parliament, the House sits as judge in its own cause. Moreover, from its decisions there is no appeal whether on grounds of law or fact or because of procedural irregularities. Neither want of impartiality on the part of the House nor denial to the offender of opportunity to be heard in his defence can render the House's decision any the less final.

It is one thing to acknowledge that breaches of privilege and contempt of Parliament ought to be punished, another to say who ought to determine whether an occasion has arisen for the application of penal sanctions. In the following pages it is proposed to review the development of Australian law and practice in regard to parliamentary penal jurisdiction and to consider the problem of how the law might be brought more into accord with present-day needs and expectations.

Legislation on Privilege

Despite their lack of inherent jurisdiction to punish contempts of Parliament, colonial assemblies may exercise penal jurisdiction wherever there is legislative authority for so doing. Where the legislature is invested with plenary power to legislate for the peace, welfare and good government of the colony, that of itself seems ample authority both for the adoption of the Commons' privileges *in toto* or else the adoption of specific privileges. In some instances, the Imperial Parliament has specifically granted power to legislate on parliamentary privileges. Such was the case with the Imperial legislation granting responsible parliamentary government to the colonies of Victoria and Western Australia. In both cases the local Parliaments were given express power to declare and define the powers, privileges and immunities of the Houses of Parliament, their members and committees, providing that the powers, privileges and immunities so defined or declared did not exceed those of the House of Commons, its members and committees at the time the

[8] *Case of the Sheriff of Middlesex* (1840) 11 Ad. & E. 273.
[9] (1837) 3 St. Tr. (N.S.) 736.

particular Constitution Act came into force.[10] The Commonwealth Constitution, s.49, gave like power to the federal Parliament, the only significant difference being that no limitation as to the nature and extent of the privileges to be adopted was imposed. Section 49 provided that until the federal Parliament acted, the powers, privileges and immunities of the Houses, their members and committees, should be the same as those of the House of Commons, its members and committees at the time the Commonwealth was established, that is, 1st January, 1901.

The first Australian legislature to enact legislation on parliamentary privilege was the Victorian Parliament which in 1857 passed an Act which adopted for both Houses the powers, privileges and immunities of the House of Commons as they stood on 1st July, 1855, so far as the same were not inconsistent with the Constitution Act, 1855, or any other Victorian Act.[11] South Australia and Tasmania followed suit in the following year, but in each case the legislation specifically enumerated the contempts punishable by the Houses.[12] In 1872 the South Australian Act of 1858 was repealed and replaced by another Act modelled closely after the Victorian Act.[13]

The Parliamentary Privileges Act, 1891, in Western Australia has been based partly on the Victorian Act and the Queensland privileges legislation (which in turn was based on the Tasmanian Act). In common with the Victorian Act, it provides in s.1 that the Houses shall have the same powers and privileges as the House of Commons, not, however, as of 1891, but "for the time being". The words "for the time being" give the section a potentially wider ambit than the enabling section in the Imperial Act. Nevertheless, to the extent that there is or may be a conflict between the two, it is submitted that the provision in the local Act must be taken to have amended the enabling section.[14]

By s.8 of the Parliamentary Privileges Act, 1891, the Houses are empowered to punish by fine and imprisonment enumerated contempts. This, read together with the proviso in s.1, presumably restricts the penal jurisdiction of the Houses. The proviso states that with respect to the powers enumerated in the Act, the provisions of the Act shall prevail.

To date the New South Wales, Queensland and Tasmanian Parliaments have not taken the step of adopting *in toto* for their Houses the powers and privileges of the House of Commons. The Tasmanian Parliamentary Privilege Act, 1858—enacted shortly after the Privy Council ruling in *Fenton* v. *Hampton*[15]—sought principally to define the Houses' penal jurisdiction. Its framers obviously did not intend it to be an exhaustive declaration of the law of privilege for it was expressly provided that nothing in the Act was to "be deemed or taken or held or construed, directly or indirectly, by implication

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[10] 18 & 19 Vic. c. 55, Schedule s.35 (Victorian Constitution); 53 & 54 Vict. c. 26, Schedule s.36 (Western Australian Constitution).

[11] 20 Vict. No. 1. See now Constitution Act Amendment Act, 1958, ss.12 and 13 (Vic.).

[12] Parliamentary Privileges Act, 1858.

[13] Act No. 14 of 1872. See now Constitution Act, 1934-1959, s.38.

[14] In *Re Dill* (1862) 1 W. & W. (L.) 171 at 191, Chapman, J. held that 18 and 19 Vic. c. 55, Schedule s.35 prevented the Victorian Parliament from conferring on the Houses of the Parliament powers and privileges greater than those enjoyed by the House of Commons at the date the Constitution Act came into force. This opinion was affirmed by Stawell, C.J. in *Dill* v. *Murphy* (1862) 1 W.W. & a'B. (L.) 342. The Imperial Acts containing the original Constitutions of the Australian States conferred on the State Parliaments plenary powers to amend those Constitutions and their powers in this respect have been confirmed by the Colonial Laws Validity Act, 1865. The better view now would appear to be that those provisions respecting parliamentary privilege in the Imperial legislation referred to in note 10 *supra* may be amended by the local legislature by ordinary legislative process. See *McCawley* v. *The King* [1920] A.C. 691; *Clayton* v. *Heffron* (1960) 105 C.L.R. 214; A. B. Keith, 1 *Responsible Government in the Dominions*, 2 ed. rev. (1928) 368; A. B. Keith, *The Dominions as Sovereign States* (1938) 361.

[15] (1858) 11 Moo. P.C. 347.

or otherwise, to affect any power or privilege possessed by either House of Parliament" before 1858.[16] Thereby all common law privileges were saved.

Although there are some differences in detail, Queensland's[17] and Western Australia's legislation on privilege closely resembles Tasmania's legislation, and on the matter of penal jurisdiction the provisions are almost identical. The only State in which the Houses of Parliament have not been empowered to punish contempt by fine or imprisonment is New South Wales. On five different occasions between 1856 and 1912 Bills on privilege, all of them investing limited punitive powers on the Legislative Assembly and Legislative Council, were introduced. None, however, passed into law.[18]

A Note on Terminology

What do the punitive powers of a House of Parliament comprehend? Imprisonment and fine are, by any test, forms of punishment,[19] but does punishment in this context also include suspension and expulsion of members of Parliament? What the Privy Council has had to say about suspension of members of colonial legislatures suggests that suspension *per se* is not punitive but that it may become punitive depending on whether the period of suspension is definite or indefinite.[20] Exclusion of a suspended member from rooms or premises set aside for use by members also has been held by the Supreme Court of Queensland in *Barnes* v. *Purcell*[21] to be in the nature of punishment. It was on this basis that at least one of the judges of the Court justified judicial review of the Legislative Assembly's construction of its Standing Orders. "There is no authority," E. A. Douglas, J., said, "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."[22] This pronouncement, it should be noted, was made with reference to an assembly whose punitive powers are not as extensive as those of the Commons. If, as the Queen's Bench Division ruled in *Bradlaugh* v. *Gossett*[23] the House of Commons is the sole interpreter of that part of the statute law which governs rights exercisable by members within Parliament and only within Parliament, it surely follows that it is also the sole interpreter of its Standing Rules and Orders, whether they relate to punishments or not. It may be assumed, therefore, that *Barnes* v. *Purcell* is relevant only in jurisdictions in which the punitive powers of the Houses of Parliament are circumscribed.

The same, however, is not necessarily true in the kind of situation posed by *R.* v. *Dickson; Ex p. Barnes*.[24] In that case the issue before the Queensland Supreme Court was whether it was open to the Legislative Assembly to deprive a member of his salary during the period he had been suspended from the service of the House. No such power had been conferred by the Standing

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[16] The Act of 1858 has been amended by No. 25 of 1885 and No. 79 of 1957 (Tas.). See also the Parliamentary Privilege Act, 1898 (amended by 4 Edw. 7 No. 24 (1904) (Tas.).

[17] Parliamentary Privileges Act, 1861 (Q.). The provisions of this Act are now incorporated in the Constitution Act, 1867, ss.41-56 (Q.).

[18] 1 *V. & P. (L.A.), 1856,* 62, 106; 1 *V. & P. (L.A.), 1878-9,* 74, 114, 318, 405, 454; *29 L.C. Jo. 1878-9,* 111, 174, 199, 220; 1 *V. & P. (L.A.), 1901,* 290; 1 *V. & P. (L.A.), 1911-12,* 283; 1 *V. & P. (L.A.), 1912,* 214. See Parliamentary Evidence Act, 1901, and the Public Works Act, 1912-1925, s.22 (N.S.W.).

[19] P. H. Winfield, *Province of the Law of Tort* (1931) Chap. VIII.

[20] *Barton* v. *Taylor* (1886) 11 App. Cas. 197.

[21] (1946) S. R. Qd. 87.

[22] *Id.* at 103.

[23] (1884) 12 Q.B.D. 271.

[24] (1947) S.R.Qd. 133.

Orders of the Assembly and under the Constitution, the only circumstance in which a member was disentitled from receiving his salary was where his seat had been declared vacant by the Legislative Assembly. According to Macrossan, C.J.:

> 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.[25]

Given that to deprive a member of Parliament of his salary is to punish him, the correctness of Macrossan, C.J's. assumption that had the Standing Orders authorised the House to deprive a suspended member of his salary, the House's resolution would have been valid, is open to question. Even in Britain, the courts have recognized that the House of Commons may impose only the sanctions of fine and imprisonment, and in the case of members, suspension and expulsion as well. Since, technically, the Queensland Legislative Assembly is a colonial assembly, prior legislative authority, it is submitted, should be required for the imposition of the sanction of deprivation of a parliamentary salary.

The writer elsewhere has considered the limits of the powers of colonial assemblies to suspend their members,[26] and attention here will be confined to those forms of punishment for breach of privilege and contempt which are equally applicable to members and to strangers, that is, fine and imprisonment. But what are these offences for which an individual may be fined or committed by the Houses of Parliament?

"Breach of privilege" and "contempt of Parliament" are terms which often are used interchangeably. Strictly speaking they refer to distinct classes of offences: the former to infringements of specific privileges and immunities (for example, breach of members' freedom of speech, impeachment of parliamentary proceedings outside Parliament, arrest of members in civil cases); the latter to those offences which prejudicially affect the dignity and authority of the Houses of Parliament (for example, misconduct of witnesses, members or strangers in the presence of a House of Parliament; libellous reflections on the Houses and their members, and disobedience to the rules and orders of the Houses).[27] Some acts which have been held to be in contempt of Parliament are also criminal offences either at common law or by statute (or both), for example, offering of bribes to members of Parliament and receipt of bribes by members.

Punishment by Fine or Imprisonment

The House of Commons, whose powers, privileges and immunities have been adopted *in toto* for the Houses of the federal, Victorian and South Australian Parliaments, has power to punish breaches of privilege and contempts of Parliament by imprisonment not exceeding the duration of the current session.[28] Punishment by fine is also claimed as within the competence of the

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[25] *Id.* at 137.

[26] "Suspension of Members of Commonwealth Parliaments" (1961) 3 *Univ. of Malaya L.R.* 267.

[27] *May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 16 ed. (1957), Chap. VIII, Part A.

[28] The power of committal has long been recognized by the courts. See *R.* v. *Paty* (1704) 2 Ld. Raym. 1105, *per* Holt, C.J. (dissenting); *Murray's Case* (1751) 1 Wils. 199; *Brass Crosby's Case* (1771) 3 Wils. 188; *Burdett* v. *Abbott* (1811) 14 East 1; the case of the *Sheriff of Middlesex* (1840) 11 Ad. & E. 273. There has been much controversy about

House, but it has now fallen into disuse.[29]

The power of the Houses of the federal Parliament to commit for contempt was considered by the High Court in *R.* v. *Richards; Ex p. Fitzpatrick & Browne*.[30] There it was contended that the power to punish for contempt was a judicial power and that since the federal Constitution had provided that the judicial power of the Commonwealth could validly be exercised only by the High Court, federal courts and State courts invested with federal jurisdiction, s.49 of the Constitution, which invested the Houses of Parliament with the powers, privileges and immunities of the House of Commons, could not be taken to have invested judicial powers in the Houses of Parliament. Dixon, J. (as he then was) conceded that the power to commit for contempt was judicial in character (a view consistent with the earlier opinion of the Privy Council in *Kielly* v. *Carson*) but he thought the wording of s.49 so clear and unambiguous that it must be taken to have conferred all the powers, privileges and immunities of the House of Commons—judicial and non-judicial—on the federal Houses.

In Queensland, Tasmania and Western Australia the Houses of Parliament are authorised to commit, and in Queensland and Western Australia to fine for specified contempts.[31] In Queensland and Western Australia persons adjudged guilty of contempt must first be given the opportunity of paying a fine. A warrant for their arrest and committal can be issued only in the event of their failure to pay the fine immediately. The period of imprisonment in these States is limited to the duration of the existing session, or in Queensland and Western Australia, until the fine is paid. The contempts declared to be so punishable are as follows:—

(i) Disobedience to any order of a House or any committee authorised in that behalf to attend or produce documents before the House or such committee. Express statutory authority is given to the Houses (and any committee authorised by the House to send for persons and papers) to order attendance before the House or its committees and to order production of any document in the possession of such person.[32]

In Tasmania joint committees of both Houses, when so authorised by both Houses, have all the powers of committees of either House and the provisions regarding contempt of the committees of either House also apply to contempts of joint committees. Contempt of a joint committee is punishable by the House initiating the appointment of the committee, but no order of such House for committal is operative until it has received the concurrence of the other House.[33]

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the basis of this power. On the one hand it has been contended (notably by Coke in 4 *Inst.* 23) that the power derives from the House's status as a court of record. There is no clear judicial authority holding that the House is such a court (see *e.g.*, Lord Mansfield's doubts in *Jones* v. *Randall* (1774) 1 Cowp. 17). In *Burdett* v. *Abbott*, Lord Ellenborough, C.J. thought the power rested on its necessity for the maintenance of the House's dignity. He did not, it should be noted, go so far as to say that it rested on self protection or that was a necessary incident to the exercise of legislative functions. See 1 *Anson's Law and Custom of the Constitution*, 5 ed. (1922), 188-90 and C. H. McIlwain, *The High Court of Parliament* (1910) 234-6.

[29] The last occasion on which the House of Commons imposed a fine was in 1660 (see May, *op. cit.*, 102). In *R.* v. *Pitt* and *R.* v. *Mead* (1762) 3 Burr. 1335, Lord Mansfield said that the House lacked power to fine.

[30] (1955) 92 C.L.R. 157.

[31] Parliamentary Privilege Act, 1858, s.3 (Tas.); Constitution Act, 1867, s.45 (Q.); Parliamentary Privileges Act, 1891, s.8 (W.A.). For provisions regarding fines see S.R. & O. of the L.A. (1953), r.320 (Q.); S.R. & O. of the L.A. (1952), rr.77 and 78 (W.A.).

[32] Parliamentary Privilege Act, 1858, s.1 (Tas.); Constitution Act, 1867, s.41 (Q.); Parliamentary Privileges Act, 1891, s.4 (W.A.).

[33] Act No. 79 of 1955.

(ii) Refusal to be examined or to answer any lawful or relevant question put by the House or by a committee of the House authorised to take evidence. In Queensland and Western Australia parliamentary witnesses are not compelled to answer questions or produce documents where the question or document "is of a private nature and does not affect the subject of the enquiry".

(iii) Assaulting, obstructing or insulting any member in his coming to or going from the House or on account of his behaviour in Parliament, or endeavouring to compel any member by force, insult or menace to declare himself in favour of or against any proposition or matter depending or expecting to be brought before the House.

(iv) Sending to a member (or, in Tasmania, publishing) any threatening letter on account of his behaviour in Parliament.

(v) Sending a challenge to fight a member.

(vi) Offering a bribe or attempting to bribe a member.

(vii) Creating or joining in any disturbance in the House or in the vicinity of the House. In Queensland and Western Australia, such acts are not in contempt unless they are done while the House is sitting and they are of such a nature that proceedings in Parliament may be interrupted.

(viii) In Tasmania disobedience of a summons issued by either House or its committees to the Controller of Prisons or any gaoler to bring imprisoned persons before the House or its committees is also a punishable contempt.[34]

The offences enumerated above by no means exhaust the offences which the House of Commons has ruled to be contempts of Parliament. A notable omission is libellous reflections on the Houses or their members, one of the most common forms of contempt. It is of interest to note that under the Western Australian privileges legislation, the publication of false and scandalous libels of any member of Parliament touching his conduct as a member by any person other than another member of Parliament, is a misdemeanour, prosecution of which may be *directed* by either House.[35]

Procedure for Committal

The procedure to be followed in the hearing of complaints of breach of privilege or contempt may fairly be characterised as something pertaining to the internal proceedings of Parliament and therefore within the exclusive province of the Houses of Parliament.[36] By statute, Australian Houses of Parliament are expressly empowered to make standing rules and orders for the orderly conduct of business. This power undoubtedly confers sufficiently wide authority for the Houses to regulate the manner in which the power of committal is to be exercised. The standing rules do not always lay down detailed rules of procedure for such cases but in the absence of rules, recourse is had to the practice and procedure of the House of Commons.[37]

Since the power of committal is a judicial power,[38] one would expect the procedure for its exercise to approximate that required by law of a tribunal

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[34] 49 Vict. No. 25 (1885).
[35] Parliamentary Privileges Act, 1891, s.14.
[36] *Bradlaugh* v. *Gossett* (1884) 12 Q.B.D. 281.
[37] S.R. & O. of the L.C. (1951), r.2 (N.S.W.); S.R. & O. of the L.A. (1951) r.2 (N.S.W.); S.R. & O. of the L.A. (1951), r.333 (Q.); S.O. of the L.C. (1957), r.1 (Tas.); S.R. & O. of the H.A. (1955), r.1 (Tas.); S.O. of the L.C. (1949), r.308 (Vic.); S.R. & O. of the L.A. (1935), r.285 (Vic.); S.R. & O. of the L.A. (1952), r.1 (W.A.); S.O. of the L.C. r.1 (S.A.).
[38] *Kielly* v. *Carson* (1842) 4 Moo. P.C. 63.

invested with powers of a judicial or quasi-judicial character. In theory, however, the Houses of Parliament are at liberty to proceed howsoever they please, for no matter how far they disregard the so-called principles of natural justice, no court of law is competent to review their actions. What this means is that, legally, a person may be committed without being acquainted with the charge against him or without being given opportunity to defend himself. In practice, individuals against whom complaints are made are in fact informed of their alleged offence and are not denied opportunity to answer their accusers, but whether sufficient regard is had to the interests of the accused and the prerequisites of a fair hearing is another matter.

The only House of Parliament in Australia whose Standing Rules and Orders specifically require that the accused be informed of the charge is the Queensland Legislative Assembly. Rule 317 provides that—

> Where it is made to appear to the House that any person has committed any of the offences enumerated in the forty-fifth section of the "*Constitution Act* of 1867", a Motion shall be made, and Question put, that such person be ordered to attend at the Bar of the House, on a day and at an hour to be named, and if the Question passes in the Affirmative, a copy of the Order of the House, specifying the nature of the offence, in the words of the Act or in similar words, and requiring the attendance of such person, and certified by the Clerk, shall be served on him either personally or by prepaid post letter addressed to him at his usual or last known place of abode in Queensland.

If the person charged appears on the set day, then according to Rule 318 the "Speaker shall inform him of the nature of the charge, and he shall be heard in his defence, either personally or by counsel, after which the House may adjudge him to be guilty of the offence charged against him, or may direct that he be discharged." It is not clear whether under this Rule the person charged has a right to counsel. In the House of Commons representation by counsel may be allowed, but permission seldom is given.[39] On the last occasion on which persons were committed for contempt by the federal Parliament, request was sought by the accused for counsel to appear and represent them at the privileges committee hearing. The committee, however, allowed counsel only for the purpose of argument on whether there was a right to counsel. Having satisfied themselves there was no such right, the committee refused the request.[40]

Nowadays complaints of breach of privilege or contempt frequently are referred to parliamentary committees for enquiry and report. Since 1944 the federal House of Representatives has had a Standing Committee on Privileges. Amendments to the Standing Rules of the Tasmanian Legislative Council and House of Assembly in 1956 and 1955 respectively also provided for establishment of Standing Committees of Privileges.[41] Neither a standing nor a select committee on privileges may enquire into a matter of privilege unless authorised to do so by resolution of the House affected. Specific authority also is required to empower the committee to send for persons and papers. If such authority has been given, disobedience to the committee's summons is itself punishable as contempt.[42]

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[39] May, *op. cit.*, 139.

[40] House of Representatives, "Report from the Committee of Privilege relating to Articles published in the *Bankstown Observer*" (*C'wlth. Parl. Papers, 1954-55*, H. of R. No. 2) at 5.

[41] S.O. of the L.C. (1957), r.228 (Tas.); S.R. & O. of the H. of A. (1955), r.408 (Tas.).

[42] On the procedure for compelling attendance see "Reprimand & Admonition" *infra.*

When enquiring into alleged breaches of privilege, contempts or any other matter, the Houses of Parliament and their committees do not have power to take evidence on oath unless by statute they are authorised to do so. In Britain the necessary power was conferred by the Parliamentary Witnesses' Oaths Act, 1871. This Act presumably applies to the federal Houses of Parliament by virtue of s.49 of the federal Constitution and to the Houses of the Western Australian Parliament by virtue of the Parliamentary Privileges Act, 1891, s.1. In Victoria and New South Wales also both Houses and their committees may administer oaths or affirmations to witnesses.[43] The Tasmanian Evidence Act, 1910, s.23, on the other hand, only empowers the examination of parliamentary witnesses on solemn declaration. South Australia and Queensland apparently do not possess legislation on this matter.

If after enquiry the committee to whom the matter of privilege or contempt has been referred decides that the charge is well founded, the House will usually accept the report and proceed to pronounce its judgment. Often it will not deem the offence befits punishment and will, instead, resolve upon reprimand and admonition. If punishment is merited, it is formally resolved that the offender be committed to the custody of one of Her Majesty's prisons and the Speaker (or President, as the case may be) issue his warrant to the Serjeant at Arms (or Usher of the Black Rod, as the case may be) directing that the offender be taken into custody and delivered to the keeper of the prison. It may also be resolved that the governor of the prison be directed by warrant to receive the offender and keep him in custody.

It is the practice of the House of Commons that the Speaker's warrant should also contain a direction to constables and other law-enforcement officers to aid and assist in the execution of the warrant. Of this practice, May writes as follows: "Both Houses consider every branch of the civil government as bound to assist, when required, in executing their warrants and orders, and have repeatedly required such assistance".[44] No case appears to have arisen in Australia concerning the powers of police officers to arrest persons committed for contempt or breach of privilege. The common law powers of arrest do not seem sufficiently wide and it may be that in order to justify an arrest, a warrant specifically directing that constables aid and assist the Serjeant at Arms would be necessary. In Tasmania, Queensland and Western Australia any doubts on this score have been resolved by the statutory duty imposed on police officers to assist in the execution of warrants.[45]

Conclusiveness of Warrant for Committal

Except in Queensland, Tasmania and Western Australia, the law does not prescribe any form for warrants for committal. In those States warrants for the apprehension or imprisonment of persons adjudged guilty of contempt of Parliament are required to state that the person or persons named in the warrant have been held in contempt and the nature of their offence, either in the words of the statute or in words of like import.[46] What is the effect of the latter requirement?

[43] Constitution Act Amendment Act, 1958, s.392 (Vic.); Parliamentary Evidence Act, 1901, s.10 (N.S.W.).

[44] May, *op. cit.* 97. See also 1 *Proc. & Papers of Parliament, 1911-12* (L.C.), 181, 189 (S.A.).

[45] Parliamentary Privilege Act, 1858, ss.8 and 9 (Tas.); Constitution Act, 1867, ss.49 and 50 (Q.); Parliamentary Privileges Act, 1891, ss.12 and 13 (W.A.).

[46] Parliamentary Privilege Act, 1858, s.7 (Tas.); Constitution Act, 1867, s.48 (Q.); Parliamentary Privileges Act, 1891, s.11 (W.A.). It should be noted that there is one offence punishable as contempt for which a person may be taken into custody on the verbal order of the presiding officer of the House. This is creating or joining in any disturbance in the House (or, in Tasmania, in the immediate vicinity of the House) during its actual sitting. See Parliamentary Privilege Act, 1858, s.6 (Tas.); Constitution Act, 1867, s.47 (Q.); Parliamentary Privilege Act, 1891, s.10 (W.A.).

It is clear that at common law wherever a warrant issued by the Speaker of the House of Commons is expressed in general terms, that is to say, states merely that a person has been committed for contempt or breach of privilege, no court of law can enquire into the circumstances of the committal. Such warrants are accepted as sufficient returns to writs of *habeas corpus* and may also be pleaded in justification to actions in trespass for assault or false imprisonment.[47] If, however, the warrant states the cause for committal, then according to Lord Ellenborough, C.J., in *Burdett* v. *Abbott*, the court may properly determine whether or not the matter stated "can be considered as a contempt of the House committing . . .".[48]

Where by statute the Houses of a colonial legislature are invested with the powers and privileges of the House of Commons, the position is exactly the same as that outlined above.[49] Under the Tasmanian Parliamentary Privilege Act, 1858, s.10, it is expressly stated that it shall not be lawful for the Supreme Court or a judge thereof to enquire into the propriety of any warrant issued in accordance with the statutory requirements. The corresponding sections in the Queensland and Western Australian legislation omit this clause; however, the omission probably does not mean that the validity of a warrant in proper form can be impeached in a court of law.[50] Lord Ellenborough's *dictum* in *Burdett* v. *Abbott* does not go as far as to suggest that when the cause of committal is stated the courts may rehear the case or decide whether the evidence before the House was sufficient to justify its decision. All his Lordship said was that if the warrant sets out the ground of committal, the court may determine for itself whether the conduct complained of constitutes contempt. This is purely a question of law—a question of delimiting the offences punishable as contempt of Parliament. Similarly in Queensland and Western Australia, if the warrant specifies the cause of committal as being one or more of the offences for which the House may lawfully commit, the court must surely treat it as valid.

Reprimand and Admonition

Where the power to punish by fine or imprisonment is limited to specified contempts, there can be little objection to the House resolving that such-and-such misconduct (which is not punishable) is in contempt and that the offender be summoned to the Bar of the House for reprimand and admonition.[51] The only problem is whether, to secure the offender's attendance, the House may order that he be brought to the Bar in custody.

In *Gossett* v. *Howard*, the Court of Exchequer Chamber stated that: "If there be a charge of contempt and breach of privilege, and an order for the

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[47] *Lord Shaftsbury's Case* (1675) 6 St. Tr. 1269; 1 Freem. 153; 1 Mod. Rep. 144; *Murray's Case* (1751) 1 Wills. at 200; *Sheriff of Middlesex* (1840) 11 Ad. & E. 273.

[48] (1811) 14 East. 128 at 147. See also *per* Lord Holt in *R.* v. *Paty* (1704) 2 Ld. Raym. 1105; *per* Lord Denman in *Stockdale* v. *Hansard* 3 St. Tr. (N.S.) at 856 and in *Sheriff of Middlesex* (1840) 11 Ad. & E. 273.

[49] *Dill* v. *Murphy* (1864) 1 Moo. P.C. (N.S.) 487; *Speaker of the Legislative Assembly* v. *Glass* (1871) L.R. 3 P.C. 560; *R.* v. *Richards; Ex p. Fitzpatrick and Browne* (1955) 92 C.L.R. 157.

[50] *Cf.* the speech of Attorney-General J. P. Boucat in the South Australian House of Assembly on the second reading of the Parliamentary Privileges Bill, 1872. This Bill was expressed to repeal the former Parliamentary Privileges Act, 1858, which had declared in detail the powers and privileges of the Assembly and which specifically provided (s.9) that warrants of committal should state that the person named therein had been adjudged guilty of contempt and of what contempt. The Attorney-General expressed the opinion that because the warrant had to state the cause of committal the courts could enquire into its validity. See *S.A. Parl. Deb. 1872*, 119 *et seq.*; G. D. Combe, *Responsible Government in South Australia* (1957) 104-5.

[51] See generally May, *op. cit.*, 103.

person charged to attend and answer it, and a wilful disobedience to that order, the House has undoubtedly the power to cause the person charged to be taken into custody, and to be brought to the Bar to answer the charge . . .".[52] It should be noted that the Court did not say that the person charged might, in the first instance, be ordered to be taken into custody without being given opportunity to attend on summons. Thus it may be that arrest is justified only if the person arrested has failed to appear on summons.

Queensland, Tasmania and Western Australian law uniformly gives to the Houses of Parliament power to order the attendance of persons before the House.[53] Disobedience of such orders is punishable as contempt.[54] If it be resolved that a person adjudged guilty of contempt be summoned to the Bar and the offender does not attend on summons, the only course which appears to be open to the House to compel attendance is first to resolve that the offender is in contempt for disobedience of its order to attend and that the Speaker or President, as the case may be, issue his warrant for his apprehension.

Prosecutions for Contempt

Some offences which rank as contempt of Parliament are also offences cognizable by the ordinary courts of law. In such cases the House of Commons may, in addition to or in substitution for its own proceedings, direct the Attorney-General to prosecute the offender.[55] Presumably the federal Houses of Parliament and the Houses of Parliament in Victoria and South Australia possess the same power. However, in the case of the federal Houses it is doubtful whether directions of this nature may properly be issued to State Attorneys-General. Such action would seem to amount to an unwarranted interference with the governmental functions of the States.

The privileges legislation in Tasmania, Queensland and Western Australia deals expressly with directions to prosecute. The Tasmanian Parliamentary Privilege Act, 1858, s.11 provides as follows:—

> Each House of Parliament shall have the like power of directing the Attorney-General to prosecute for any offence cognizable by the Supreme Court, committed against either of the said Houses or any Member thereof, as is possessed by the Commons House of the Imperial Parliament of directing the Attorney-General of England to prosecute for offences against the said Commons House of Parliament or any Member thereof; and every person convicted of any such offence before the said court shall be liable to such offence for two years, or to a fine of two hundred pounds and imprisonment until such fine be paid, or to both such punishments.

One problem arising from this section concerns its relation with the Criminal Code, 1924. The Code nowhere deals with prosecutions directed by the Houses of Parliament, yet the sentencing provisions are at variance with the Parliamentary Privilege Act, 1858, s.11. In the event of a prosecution being brought on the direction of either House in respect of an offence defined by the Code, is the Court to be guided by the sentencing provisions in the Code or by s.11 of the Act? The governing principle here is stated by Viscount Haldane in *Blackpool Corporation* v. *Starr Estate Co.*[56]

> Wherever Parliament in an earlier Statute has directed its attentions to an

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[52] (1845) 10 Q.B. 411 at 451.

[53] Parliamentary Privilege Act, 1858, s.1 (Tas.); Constitution Act, 1867, s.41 (Q.); Parliamentary Privileges Act, 1891, s.4 (W.A.).

[54] Parliamentary Privilege Act, 1858, s.3 (Tas.); Constitution Act, 1867, s.45 (Q.); Parliamentary Privileges Act, 1891, s.8 (W.A.).

[55] May, *op. cit.*, 104.

[56] [1922] A.C. 27 at 36; see also *Sarris and Guise* v. *Penfolds Wines Pty. Ltd.* [1962] N.S.W.R. 801.

> individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent Statute the legislature lays down a general principle that general principle is not to be taken as meant to rip up what the legislature had before provided for individually, unless an intention to do so is specially declared.

It may be argued that the presumption against repeal is here rebutted by the fact that the later Act is a codifying Act. This argument is reinforced by the absurdity of the situation which would arise if the presumption were held not to be rebutted. If not rebutted it would mean that an offender's liability to punishment would depend on the fortuitous circumstance of whether the Crown had taken the initiative or had received a direction to prosecute from the House concerned.

In Queensland and Western Australia it is lawful for the Houses to direct the Attorney-General to prosecute before the Supreme Court persons "guilty of any other contempt against the House which is punishable by law".[57] The words "any other contempt" do not, it is submitted, limit the power to direct prosecution to offences for which the Houses lack power to punish. In each case, the immediately preceding section (which in Queensland has now been repealed) deals with prosecutions by direction for publication of false or scandalous libels on members. The words "any other contempt" presumably mean any contempt other than the publication of libels on members.

New South Wales statute law is silent on prosecutions for contempt of Parliament. It was assumed, however, by the Privy Council in *Kielly* v. *Carson* that colonial legislatures possessed the same power in this respect as the House of Commons.[58]

There have been few cases in Australia in which prosecutions for contempt have been directed. In most instances the contempt complained of was a newspaper publication of a false and scandalous libel on members.[59]

Proposals for Reform

There have been surprisingly few occasions on which Australian Houses of Parliament have chosen to exercise their powers to commit or fine for breach of privilege or contempt of Parliament.[60] In the vast majority of cases, apology on the part of the offender has been accepted or else the House has decided that no action beyond reprimand and admonition is merited. This apparent reluctance to impose sanctions possibly stems in part from a realisation that

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[57] Constitution Act, 1867, s.52 (Q.); Parliamentary Privileges Act, 1891, s.15 (W.A.).

[58] (1842) 4 Moo. P.C. 63.

[59] See *S.A. Parl. Deb. 1870-1*, 209-14, 250-61; *V. & P. (L.A.), 1883-84*, 115 (Q.); 1 *V. & P. (L.A.), 1898*, 350 (W.A.); *V. & P. (L.C.), 1917*, 198 (Q.).

On 1st August, 1861, the Queensland Legislative Council resolved that an article in the *Moreton Bay Courier* (30th July, 1861) was highly libellous and calculated to bring the House into contempt in the public estimation and that a communication to this effect be sent to the Attorney-General requesting him to take the steps necessary to make the author or publisher responsible (*V. & P. (L.C.), 1861*, 100). Subsequently a prosecution was instituted for seditious libel on the House in its collective capacity. In his charge to the jury, Lutwyche, J. expressed grave doubts whether this was a common law offence. Though by 60 Geo. III and 1 Geo. IV, c.8 (1817) a libel tending to bring into hatred or contempt either House of Parliament was seditious libel, his Honour thought that the statute had no application in Queensland (*R.* v. *Pugh* (1862) 1 Q.S.C.R. 63). Following the acquittal of the accused the Attorney-General requested that the Governor solicit from the Secretary of State for the Colonies the opinion of the Law Officers on certain points arising out of Lutwyche, J.'s direction. The Law Officers advised that in their opinion by common law a seditious libel might be published of either House of the British Parliament and also of the Queensland Legislative Council (4 *Jo. of the L.C., Session, 1862*, Paper No. 6).

[60] The cases are as follows:—

the power to punish for contempt is an extraordinary power and one which "should be exercised with extraordinary care".[61]

What makes the penal jurisdiction of the Houses of Parliament so extraordinary is, firstly, the nebulous quality of the offence of contempt.[62] Except in New South Wales, Queensland, Tasmania and Western Australia, the Houses of Parliament are at liberty to regard any conduct they choose as contempt and to punish the misdoer for the same. Secondly, there is the fact that in the exercise of their penal jurisdiction the Houses of Parliament are both accusers and judges from whose rulings there is no appeal. And, finally, there is no legal guarantee that persons charged and whose personal liberty is at stake will be accorded a fair hearing. In particular, there is no guarantee that the person charged will be:—

(i) fully informed of the charge against him;
(ii) given time to prepare his defence;
(iii) given opportunity to address the House or any committee thereof in answer to the charge;
(iv) allowed to be present at the hearing of evidence against him and to cross-examine witnesses.

In regard to the last point it should be noted that any committee investigations may be held *in camera* and that there is no legal obligation on the House

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(i) *Case of Browne and Fitzpatrick* (1955—House of Representatives). Browne and Fitzpatrick were committed for three months for writing (in the case of Browne) and publishing (in the case of Fitzpatrick) newspaper articles "intended to influence and intimidate a Member" and "deliberately attempting to impute conduct as a Member against the honourable Member for Reid, for the express purpose of discrediting him and silencing him". See *C'wlth. Parl. Deb.* (11th Parl. 1st Sess., 2nd Period), H. of R., 352-5, 1617, 1625-64; *C'wlth. Parl. Papers, 1954-55*, H. of R.2 ("Report from the Committee of Privileges relating to Articles Published in the *Bankstown Observer*"); (1955) 24 *The Table*, 83-92; *R.* v. *Richards; Ex p. Fitzpatrick & Browne* (1955) 92 C.L.R. 157; *The Times*, 15th July, 1955 (leave to appeal to the Privy Council refused).

(ii) *V. & P. (L.A.), 1882*, 285, 289 (Q.). A member was committed for one day for disorderly conduct and continual interruption of proceedings.

(iii) *Case of Serjeant-Major McBride* (1870—L.C. of S.A.). McBride was committed for one week for sending an abusive letter to a member. See *S.A. Parl. Deb. 1870-1*, 760-1, 837-9.

(iv) *Case of Hampton* (1855-8—L.C. of Tas.). Hampton disobeyed a summons to appear before a Select Committee, but his committal was held to be unlawful. See *Fenton* v. *Hampton* (1858) 11 Moo. P.C. 347.

(v) *Case of Dobson and Mitchell* (1877—L.C. of Tas.). Dobson and Mitchell were committed for one hour for publishing an insulting letter respecting the conduct of certain members. See *V. & P. (L.C.), 1877*, 70.

(vi) *Case of Dill* (1862-5—L.A. of Vic.). Dill was committed for one month for publication of a libel on a member respecting his conduct as a member. See *V. & P. (L.A.), April 1862*. See also *In re Dill* (1862) 1 W. & W. (L.) 171; *Dill* v. *Murphy* (1862) 1 W. & W. (L.) 342; (1864) 1 Moo. P.C. (N.S.) 487; *Vic. Parl. Papers, 1862-23*, No. 125.

(vii) *Case of George* (1866—L.A. of Vic.). George was committed for publication of libel on the House. See *V. & P. (L.A.), 1866* (1st Sess.), 49-51.

(viii) *Case of Glass and Quarterman* (1869-71—L.A. of Vic.). Both individuals were committed for actively aiding in the administration of a fund of an association which sought to bribe and influence members of Parliament. See 1 *V. & P. (L.A.), 1869*, 97-8; *Vic. Parl. Papers, 1869*, No. D7; *Speaker of the Legislative Assembly* v. *Glass* (1871) L.R. 3 P.C. 560; *Vic. Parl. Papers, 1871*, No. A5.

(ix) *Case of McKean* (1876—L.A. of Vic.). A member was committed for one week for publishing libels on the House. See 1 *V. & P. (L.A.), 1875-6* 255-7, 260-1; *Vic. Parl. Papers, 1876*, No. D1.

(x) *Case of Drayton* (1904—L.A. of W.A.). Drayton was fined (and subsequently imprisoned for non-payment of the fine) for refusal to testify before a Select Committee. See 1 *V. & P. (L.A.), 1904*, 161-2, 182, 193, 216, 307, 308.

[61] See *V. & P. (H. of A.), 1953*, 50 (Tas.). In the *Drayton Case* (see n. 60(x) *supra*) the offender was committed to prison on failure to pay the fine imposed upon him. Almost a month after he had been committed the House resolved that the authority of Parliament had been fully vindicated and "that this being the first offence of its kind, the great power of Parliament does not need to be enforced to exact the full penalty". Subsequently it was resolved that Drayton be released from custody and be granted "a free pardon".

[62] For examples of misconduct adjudged to be in contempt see May, *op. cit.*, Chap. VIII.

appointing the committee to publish in full the minutes of evidence taken before the committee.[63]

The anomalies of parliamentary penal jurisdiction were aptly summed up by the Judicial Committee of the Privy Council in *Doyle* v. *Falconer*. The power to commit for contempt, the Committee said,[64] "is in derogation of the liberty of the subject and carries with it the anomaly of making those who exercise it judges in their own cause, and judges from whom there is no appeal, . . . it might be very dangerous in the hands of a body which from its very constitution is practically irresponsible". The dangerous potential of the power has not been unappreciated by parliamentarians. However, very little has come of the few isolated attempts to remedy the situation through legislative enactment.

In October, 1878, a Bill was passed by the Legislative Assembly of New South Wales which invested the Houses of Parliament with the same powers and privileges as the House of Commons but which, with two exceptions, transferred penal jurisdiction to the Supreme Court. Offences against the privileges of Parliament committed by members or within the precincts were to be punishable summarily by the House concerned. In all other cases, offences against privilege were triable in the Supreme Court and punishable as misdemeanours either by fine or imprisonment or both. The Houses were expressly empowered to direct the Attorney-General to prosecute. As a result of disagreement between the Assembly and the Legislative Council the Bill failed to become law.[65] A Bill in almost identical terms was introduced in 1901 but it lapsed on the prorogation of Parliament.[66]

Proposals for reform in federal law on parliamentary privilege have met with no greater success. In 1908 a Joint Select Committee was appointed "to inquire into and report as to the best procedure for the trial and punishment of persons charged with the interference with or breach of the powers, privileges or immunities of either House of Parliament or the Members or Committees of each House". The Committee reported as follows:[67]

> The ancient procedure for punishment of contempts of Parliament is generally admitted to be cumbersome, ineffective, and not consonent with modern requirements in the administration of justice. It is hardly consistent with the dignity and functions of a legislative body which has been assailed by newspapers or individuals to engage within the Chamber in conflict with the alleged offenders, and to perform the duties of prosecutor, judge and gaoler.

Accordingly it was recommended that the High Court be invested with jurisdiction to try and determine certain contempts, namely, the printing or publication of any false, malicious or defamatory statements calculated to bring either House or its members or committees into hatred, ridicule or contempt, and attempting to interfere improperly with or unduly influence, or obstructing or bribing or attempting to bribe members of Parliament in the discharge of their duties. On complaints of libel or slander against Parliament, the only defence should be truth of the statements in dispute. Prosecutions should, in the Committee's opinion, be instituted by complaint of the Attorney-General pursuant to the resolution of the House concerned authorising prosecution. Hearings before a single Judge of the High Court should be public and the

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[63] The "Report from the Committee of Privileges relating to Articles in the *Bankstown Observer*" (*C'wlth. Parl. Papers, 1954-55*, H. of R. No. 2), for example, contains only extracts from the transcript of evidence.

[64] (1866) L.R. 1 P.C. 328 at 340-1.

[65] 1 *V. & P. (L.A.), 1878-9*, 74, 114, 318, 405, 454; 29 *Jo. of the L.C., 1878-9*, 111, 174, 199, 220 (N.S.W.).

[66] 1 *V. & P. (L.A.), 1901*, 290.

[67] *C'wlth. Parl. Papers*, 1907-8, No. S.6.

Judge should have power to impose fines not exceeding £500 or imprisonment not exceeding twelve months.

Nothing seems to have come of these recommendations until 1934 when, at the instigation of the Standing Orders Committee of the House of Representatives, the Attorney-General (the Hon. J. G. Latham) drafted a Bill incorporating the suggested provisions. There is no record of this Bill ever having been laid before the House.[68] Similarly nothing seems to have emerged from the intimation given by the Prime Minister in June, 1955 that he would willingly co-operate with the Opposition in a general review of the federal machinery for protection of parliamentary privilege.

Precedents for comprehensive declaratory legislation on parliamentary privilege already exist in other parts of the British Commonwealth. In most instances this legislation has been fashioned along the lines of the South African Powers and Privileges of Parliament Act, 1911. This, however, preserves the penal jurisdiction of the Houses of Parliament. Whether or not legislation on privileges is expressed to define exhaustively the powers, privileges and immunities of the Houses, their members and committees, there is one matter on which definitive enactment is urgently called for, that is, the offences punishable as contempt. Even if Parliaments prefer not to relinquish their penal jurisdiction, some improvement on the present situation would be effected by legislation limiting the punitive powers of its Houses to precisely delineated offences in much the same way as has been done in Queensland, Tasmania and Western Australia.

But the important question remains: should the "dangerous" power of committal be removed entirely from legislative chambers so that the accusing and judicial functions are separated? On grounds of expediency and convenience much is to be said for reserving to the Houses power to deal summarily with persons who by their misconduct disturb the orderly conduct of proceedings. No more seems to be required here than power to remove and to exclude (forcibly if necessary) persons creating disturbances in the House or in its vicinity, and power to suspend or expel members guilty of disorderly conduct or wilful interruption of proceedings. Except in regard to offences of this kind, transfer of parliamentary penal jurisdiction to the ordinary courts of law is, in this writer's opinion, imperative if the accepted standards for administration of justice are to be satisfied.

ENID CAMPBELL *

[68] J. R. Odgers, "Australian Senate Practice" (1953) in *C'wlth. Parl. Papers, 1951-3*, No. 230. Under this draft Bill the maximum penalties were to be two years' imprisonment or a fine of £500.

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