

P R I V I L E G E C A S E

STATEMENT BY THE PRIME MINISTER, MR. MENZIES.

MONDAY, JUNE 13, 1955.

TO MEMBERS: This is forwarded with the
compliments of the Prime Minister. He trusts
it will be helpful and that you will make use
if it.

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PRIVILEGE CASE

June 13, 1955.

The Prime Minister, Mr. Menzies, today made the following observations on the privilege case dealt with by the Commonwealth Parliament last week:-

QUESTION: Who gave Parliament the right to deal with breaches of parliamentary privileges?

ANSWER: The Commonwealth Constitution did, by Section 49, which reads:-

'The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.'

Parliament has not thought it necessary to declare any new powers, privileges and immunities, but has been content to rest upon those already well-established by the House of Commons over the course of centuries.

QUESTION: What is the most important of these privileges from a public point of view?

ANSWER: The privilege to speak freely in Parliament on behalf of the electors without fear or favour. This is the greatest of the Parliamentary privileges, for without it Parliament would become ineffective. The privilege does not exist as a sort of personal property of the individual member nor is he guilty of a selfish action when he seeks to defend it. The privilege is that of the people speaking through their institution of Parliament. It must not be forgotten that the vital conflict in the 17th century was between the power and privilege of the King and the power and privilege of the Parliament. It is only because that struggle was won by Parliament that modern democracy has become possible. If a member of Parliament can be threatened into silence on matters which, otherwise, he would think it his duty to lay before Parliament, then the most important of the people's democratic rights has been taken away and the true function of Parliament threatened.

QUESTION: But why should Parliament act as the judge in the matter when a breach of privilege is alleged?

ANSWER: In the United Kingdom and in Australia and, as I believe, in all other British countries, the Parliament always has been the judge; for the very good reason that it is constitutionally the expressed custodian of its own rights and privileges, which, as I have said, are the rights and privileges of the electors.

QUESTION: Could Parliament, on this occasion, by some existing procedure, have delegated its authority to a Court?

ANSWER: No. Assuming that it could properly make such a law (as to which I offer no opinion) Parliament would have had to legislate to define an offence and to invest some Court with the jurisdiction to investigate that offence. Clearly, any such law could not be made to apply to the case of Browne and Fitzpatrick except by retrospective operation; which would have been contrary to one of our most deeply-held principles of criminal jurisprudence.

QUESTION: Were these men denied a fair hearing?

ANSWER: All the facts are to the contrary. They appeared before the Committee of Privileges - which, I stress, is an all-party Committee - and, thereafter, fully and frankly admitted what they had done and the reasons why they had done it. In a substantial sense they pleaded guilty. This is made manifest by the unanimous report of the Committee which was unanimously agreed with by the House. I do not want to re-state all the facts in the report but those who read it will see that Fitzpatrick agreed that the idea in printing the newspaper articles about Mr. Morgan was to intimidate him and to prevent him saying things in Parliament.

This statement was made by Fitzpatrick on several occasions. When asked by one member of the Committee whether he realised that the documents would affect Mr. Morgan's reputation very seriously, Fitzpatrick replied that that was why it was put out.

So far as Browne was concerned, Fitzpatrick stated quite openly the reason why he had employed Browne - 'I told him to get stuck into him (Morgan). That is what I employed him for'.

The witness, Browne, admitted to being the author of the articles and to having been paid for writing them. No attempt was made to prove the

charges against Mr. Morgan. In answer to the Committee. Mr. Browne said that he did not have the proof with him, nor did he possess the proof at the time the article was written. Mr. Fitzpatrick, when asked : 'Have you any personal evidence of any charges against Mr. Morgan', replied: 'No'.

The Committee found, as it was bound to find on the undisputed evidence, that a deliberate attempt had been made to misrepresent Mr. Morgan and that both Fitzpatrick and Browne had been guilty of a serious breach of privilege by publishing articles intended to influence and intimidate a member (the Honourable Member for Reid) in his conduct in the House and in deliberately attempting to impute corrupt conduct as a Member (Mr. Morgan) for the express purpose of discrediting and silencing him.

There is, so far as I know, nothing in the general principles of the law which prevents somebody accused of an offence from pleading guilty and being dealt with accordingly.

QUESTION: Did the House of Representatives act hastily in this matter?

ANSWER: It did not. The unanimous report of the Committee was tabled during the evening session on Wednesday, June 8th. Consideration of it was deferred until next day, so that members might have an opportunity of reading it. I, myself, though much pressed with work, devoted several hours to studying the report and past Parliamentary practice. The matter, in fact, did not come on for discussion until the afternoon of Thursday, June 9th., when, as Prime Minister, I moved that the house agree with the report of the Committee. This was discussed for some time and the motion was then unanimously carried.

I then proposed a motion that Fitzpatrick and Browne be notified to attend the House at 10 a.m. on Friday June 10th. They attended and they were heard one of them Browne at considerable length. It was necessary that they should be both seen and heard in a matter of such gravity.

When Browne's speech was concluded. I suggested a suspension of sittings so that members could consider the material put before them.

I immediately had a discussion with my Cabinet. because it will be agreed that a Government should be prepared to give some lead in such a matter. I then had a meeting of a few minutes with the Government parties in which I told them what I was proposing to do. There was no question of action on party lines. Members were obviously going to exercise a judicial function and could make their own decisions. But at the same time. my general impression was that. at any rate. most Government supporters agreed with the Government's view. I understand (I may have been misinformed) that the Executive of the Opposition also had discussions.

The debate was resumed on a motion by myself for the imposition of a term of imprisonment and an amendment by Dr. Evatt favouring the imposition of very substantial fines. It will be observed that we both thought a serious offence had been properly proved, and deserved serious punishment. The only difference was as to the nature of the penalty. The debate continued on a high and responsible level, with the possible exception of one rather unfortunate and intemperate speech, with the final decision not being reached until almost the end of the afternoon session. The vote of the House was overwhelmingly in favour of imprisonment, members of all four parties forming part of the majority.

QUESTION Would a reprimand have been an adequate punishment in this case?

ANSWER: Having regard to what I have explained as the nature of the offence and of the finding made by the Committee, and unanimously approved by the House, a mere reprimand would have been farcical. It would have amounted to a statement by the House of Representatives that a conspiracy to silence a member of Parliament was a trifling matter. It should not be forgotten that the freedom of Parliament and of every member in it is vital to the continuation of free self-government.

QUESTION: Would not a fine have been preferable to committal to prison for contempt?

ANSWER: Under the disclosed circumstances, which indicated that Browne had been employed to do what he did, it is in the highest degree unlikely that any fine imposed upon him would have been paid by him. Indeed, Fitzpatrick had, before the Committee, declared that he assumed full responsibility for the whole matter. To impose a fine would, therefore, have meant that no punishment would have been inflicted upon Browne at all, while, so far as Fitzpatrick was concerned, even a substantial fine would not have caused him any notable inconvenience.

I should add that the power of the House to impose a fine is extremely doubtful, having been denied by several leading constitutional authorities. As the Constitution points out, the powers are those of the House of Commons. The House of Commons has not imposed a fine for breach of privilege since 1666 but has invariably proceeded, either by committal to custody or by reprimand, in appropriate cases. In one of the most recent cases - only a few years ago - where a Member of Parliament was found guilty of a serious breach of privilege, the House of Commons actually expelled him from his seat in the House.

QUESTION: Are the privileges and immunities of Parliament inconsistent with, or a threat to, the freedom of the Press?

ANSWER: No. the simple historic fact is that the modern protection of the freedom of Parliament and the equally modern freedom of the press have gone hand in hand. One cannot exist adequately without the other. Parliament makes no challenge to the right of newspapers or citizens to criticise Members of Parliament, closely or even bitterly. We are in a position to be attacked, and to accept as well as to use free speech. No Parliament seeks to restrain such freedom.

But the case is different when an attempt is made to prevent free speech on the part of a people's representative in Parliament. No reputable newspaper either demands or expects the right to silence a Member of Parliament speaking in his place in the House.

QUESTION: Having regard to the great public interest in this matter, should Parliament address itself to a review of the machinery for declaring and enforcing its privileges?

ANSWER: There could be no possible objection to this course. Indeed, I would welcome it, and will promote, in co-operation with the Opposition, the fullest consideration of it during the next sittings. But it should be understood that no future law ought to be made to operate retrospectively.
