1955 *Present :* H. N. G. Fernando, J.

THE ATTORNEY-GENERAL, Applicant, *and* (1) E. P. SAMARAKKODY (Member of Parliament for Dehiowita), (2) W. DAHANAYAKE (Member of Parliament for Galle), Respondents

S. C. 489—In the matter of an Application by the Attorney-General under Section 23 (1) of the Parliament (Powers and Privileges) Act, No. 21 of 1953

Parliament—Offence of breach of privilege—Disrespectful conduct in the precincts of the House—Immunity of Members—Meaning and scope of expression "Proceedings in Parliament"—Jurisdiction of Supreme Court—Suspension of sitting of House—Condition of time limit—Ceylon Constitution Order in Council, 1946, s. 17 (5)—Parliament (Powers and Privileges) Act, No. 21 of 1953, ss. 3, 4, 9, 22, 23, 25, 26.

The two respondents were members of the House of Representatives. At a sitting of the House another member, X, on being suspended from the service of the House, refused to leave the House when he was ordered by the Speaker to do so. The Speaker thereupon ordered the Sergeant at Arms to remove the member from the House, stated "I suspend the sitting of the House", and vacated the Chair. The mace remained on the Speaker's table. Thereafter, and before the Sergeant at Arms removed X with Police assistance obtained upon an order from the Speaker in Chambers, the 2nd respondent proposed that the 1st respondent do take the Chair, and another member seconded that motion. The Deputy Speaker and the Deputy Chairman of Committees were not in the Chamber when the motion was moved. As no objection was taken to the motion, the 1st respondent took the Chair. Thereafter X made a speech in the Chamber and continued to speak until the Sergeant at Arms entered with the Police and removed X from the Chamber. On the entry of the Sergeant at Arms with Police officers, the 1st respondent vacated the Chair.

The Attorney-General alleged *inter alia* in the present application made under section 23 of the Parliament (Powers and Privileges) Act that the 1st respondent was guilty of disrespectful conduct in the precincts of the House (an offence specified in paragraph 7 of Part B of the Schedule to the Act) and that the 2nd respondent was guilty of abetment of the said offence of disrespectful conduct (an offence specified in paragraph 10 of Part B).

Assuming (without deciding) that the sitting of the House was validly suspended by the Speaker and that there was no occasion for the operation of section 17 (5) of the Ceylon Constitution Order in Council, 1946, which provides that in the absence of the Speaker, the Deputy Speaker and the Deputy Chairman of Committees, at a sitting of the House, a member proposed and seconded in that behalf may preside at the sitting—

Held, that the conduct of the two respondents, even if it was disrespectful, was not justiciable by the Supreme Court. It was conduct included within the scope of sections 3 and 4 of the Parliament (Powers and Privileges) Act and could not therefore be questioned or impeached in proceedings taken in the Supreme Court under section 23 of the Act. The jurisdiction to take cognisance of such conduct was exclusively vested in the House of Representatives.

Quaere, (i) whether the provisions of section 25 (2) of the Parliament (Powers and Privileges) Act preclude a respondent from challenging the validity of an application made under section 23 on the ground that the application includes charges not specified in the Report furnished by the Attorney-General under section 26.

(ii) whether, on every occasion of the suspension of a sitting of the House of Representatives, it is the duty of the Speaker to give notice of the time when the sitting will be resumed.

(iii) whether paragraph 7 of Part B of the Schedule to the Parliament (Powers and Privileges) Act covers only disrespectful conduct *in the precincts of the House*, and not such conduct in the House itself or in a Committee.

APPLICATION under section 23 (1) of the Parliament (Powers and Privileges) Act.

T. S. Fernando, Q.C., Acting Attorney-General, with *H. A. Wijemanne*, Acting Deputy Solicitor-General, *V. S. A. Pullenayegum*, Crown Counsel, and *I. F. B. Wikramanayake*, Crown Counsel, for the Crown.

Colvin R. de Silva, with *Walter Jayawardene*, and *T. W. Rajaratnam*, for the 1st respondent.

S. Nadesan, Q.C., with *Walter Jayawardene*, *J. Senathirajah* and *D. S. P. Dahanayake*, for the 2nd respondent.

At the commencement of the hearing, Counsel for the respondents submitted that they were objecting to charges (3) to (6) in the Application being entertained by the Court as these charges had not been included in the report of the Attorney-General to the Speaker under Section 26 (6) of the Parliament (Powers and Privileges) Act No. 21 of 1953.

The Attorney-General submitted that it was not competent for the Court to entertain the respondents' preliminary objection in view of the provisions of Section 25 (2) of the Parliament (Powers and Privileges) Act No. 21 of 1953.

The Court intimated that it would first hear the Attorney-General's submission.

T. S. Fernando, Q.C., Acting Attorney-General.—Section 25 (2) of the Parliament (Powers and Privileges) Act No. 21 of 1953 enacts that "the making of an Application under Section 23 by the Attorney-General in any case shall constitute *conclusive evidence* that the Application has been duly made in accordance with the preceding provisions of this Section." It is therefore not competent for the Court to go behind the Attorney-General's Application to determine whether the Application has been duly made. Similar provisions in various statutes

have been consistently interpreted by the Courts in this manner, vide *The Queen v. Levi* [1] (Bankruptcy Act) ; *Oakes v. Turquand* [2] (Companies Act) ; *Ex parte Learoyd in re Foulds* [3] (Bankruptcy Act) ; *Ladies Dress Association Ltd. v. Pulbrook* [4] (Companies Act) ; *Kerr v. John Mottram* [5] (Companies Act) ; *Rex v. Agricultural Land Tribunal (South Eastern area) Ex parte Hooker* [6] (Agriculture Act).

Colvin R. de Silva, in reply, cited *In re National Debenture and Assets Corporation* [7] and *Attorney-General v. Mayor of Bournemouth* [8].

Colvin R. de Silva, showing cause on behalf of the 1st respondent, submitted that the conduct of the respondents was not disrespectful as they were acting in terms of Section 17 (5) of the Ceylon Constitution Order in Council which provided that in the absence of the Speaker, Deputy Speaker, and Deputy Chairman of Committees at a sitting, a member who is proposed and seconded in that behalf may preside at the sitting. The House had not been validly suspended as no time had been named by the Speaker—vide Standing Order 86.

The respondents were members of the House and Sections 3 and 4 of the Parliament (Powers and Privileges) Act, No. 21 of 1953, conferred immunity upon them in respect of their conduct in the House.

S. Nadesan, Q.C., for the 2nd respondent, adopted the arguments of Counsel for the 1st respondent and further submitted that if the 2nd respondent *bona fide* formed the view that there was no valid suspension, his subsequent conduct does not become justiciable merely because the suspension is subsequently held by the Court to be valid.

T. S. Fernando, Q.C., Acting Attorney-General, in reply.—The immunity conferred by Sections 3 and 4 of the Parliament (Powers and Privileges) Act, No. 21 of 1953, upon the members of the House was only in respect of " Proceedings in the House ".

> " What is done or said by an individual member becomes entitled to protection when it forms part of the proceedings of the House in its technical sense, i.e. the formal transaction of business with the Speaker in the Chair or in a properly constituted committee. " (May's Parliamentary Practice, 15th Edition, page 63).

In this case, the Speaker having suspended the sitting there could be no valid transaction of Parliamentary business. No immunity therefore attaches to the members in respect of things said or done during such suspension.

As to the meaning of the term " proceedings in Parliament " vide May's Parliamentary Practice, 15th Edition, pages 61 to 66, and *Rivlin v. Bilainkin* [9].

There was a valid suspension of the House although no time was specifically named. The purpose of naming a time is to give notice to the

[1] *(1865) L. J. M. C. 174*
[2] *(1867) 2 H. L. 325 at 354.*
[3] *(1878) 10 Ch. D. 3.*
[4] *(1900) 2 Q.B. 376.*
[5] *(1910) Ch. 657 at 660.*
[6] *(1952) 1 Q. B. 1 Divl. Ct.*
[7] *(1891) 2 Ch. 505.*
[8] *(1902) 2 Ch. 714.*
[9] *(1953) 1 Q. B. 485.*

members as to when they should again re-assemble to continue the transaction of parliamentary business. In this case, having regard to the circumstances which immediately preceded the suspension, it would have been obvious to any reasonably intelligent member of the House that the Speaker intended to resume the transaction of parliamentary business when the member for Moratuwa who had been "named" by the Speaker had been removed from the House.

The inference is irresistible that the conduct of the respondents constituted a deliberate defiance of the authority of the Speaker.

Cur. adv. vult.

December 2, 1955. H. N. G. FERNANDO, J.—

In this case of first instance under the Parliament (Powers and Privileges) Act, No. 21 of 1953, the Attorney-General made an application for notices on two members of the House of Representatives calling on them to show cause why they should not be punished for offences of breach of privilege of Parliament. Being satisfied (in terms of the relevant section) on perusal of the application and of the evidence on affidavit furnished therewith that the members *appeared* to have committed the offences in question, I caused notices to show cause to be served on them returnable on October 14, 1955. My attention was thereafter drawn to certain defects in the form of the notices, and, although counsel for the respondents did not propose to rely on those defects, fresh notices were served on that day returnable on November 21, 1955, being also the day fixed for the inquiry.

I propose first to refer to the manner in which jurisdiction has been conferred on this Court to entertain proceedings for breaches of privilege of Parliament.

Section 22 (sub-sections (1) and (2)) of the Act declares each of the acts and omissions specified in both Parts of the Schedule to the Act to be a breach of the privileges of Parliament and to be an offence punishable by the Supreme Court under the provisions "hereinafter contained in that behalf". Sub-section (3) of the same section declares every breach of privilege specified in Part B of the Schedule to be an offence punishable by the appropriate House of Parliament. It will be seen therefore that the offences in Part A are punishable exclusively by the Supreme Court, while both this Court and the Houses have a concurrent jurisdiction over the offences specified in Part B. A comparison of Part A and Part B of the Schedule indicates that the latter includes (*a*) what may be called contempts of the authority of Parliament, such as the refusal to obey orders or resolutions under the Act, the refusal to produce documents or to give evidence and prevarication or other misconduct on the part of any witness, (*b*) assaults, insults or obstruction of members or officers of Parliament committed in any House or within its precincts, and (*c*) disturbances likely to interrupt proceedings of Parliament and disrespectful conduct within the precincts of either House. Part A on the other hand deals, generally speaking, with acts or omissions committed outside Parliament, such as assault, insult or obstruction

of members coming to or going from either House, compulsion or inducement of members by force, threats or bribes, and the publication of false or perverted accounts of Parliamentary proceedings or of defamatory statements reflecting either on the proceedings or character of either House or on the conduct of members.

It would appear from this comparison that Parliament has thought fit to reserve for each House only the right to deal with misbehaviour in either Chamber or its precincts and conduct which interferes with the transaction of Parliamentary business. It must be noted also that even in these cases, the only punishment which either House may inflict is admonition or removal from the precincts of the House as well as suspension for one month in the case of a member (section 28). On the other hand the Supreme Court has power in the case of any offence to impose a sentence of imprisonment for not more than two years, or a fine not exceeding Rs. 5,000 or both imprisonment and fine.

The jurisdiction of the Supreme Court is created by section 22 of the Act, but is not exercisable except upon an application by the Attorney-General made in pursuance of an express resolution of the House concerned. The mode in which the Attorney-General is moved to make the appropriate application is prescribed in sections 26 and 25 of the Act. Section 26 (1) provides that the Speaker may refer to the Attorney-General for report any case of an alleged offence under Part II, the reference being made by the Speaker either upon a complaint made to him in Chambers by a member or upon a resolution of the House. Sub-section (2) of the same section provides for the recording of the statement of a member making a complaint and of other relevant statements which are transmitted to the Attorney-General at the time of the reference. Sub-section (6) requires the Attorney-General to report to the Speaker whether there is in his opinion sufficient evidence " to warrant the taking of further steps under this Act in respect of an alleged offence under this Part ".

Section 25 then provides that an application to the Court for the issue of a notice to show cause under section 23 may be made by the Attorney-General, only if he has furnished a report that there is sufficient evidence to warrant the further taking of steps under the Act and if the House after consideration of the report has by resolution required the Attorney-General to make the application. Section 23 provides for the making of the application to this Court by the Attorney-General, the issue of notice to show cause and the punishment in case no cause or no sufficient cause is shown.

It is convenient at this stage to summarize the facts which give rise to the present application.

(i) At the sitting of the House of Representatives on April 6, 1955, the Speaker " named " the member for Moratuwa, and in terms of Standing Order 82 the House thereupon passed a motion of the Leader that the member for Moratuwa be suspended from the service of the House.

(ii) On being thereafter ordered by the Speaker to leave the House the member for Moratuwa refused to comply with the order.

(iii) The Speaker thereupon ordered the Serjeant at Arms to remove the member from the House, stated "I suspend the sitting of the House", and vacated the Chair. The mace remained on the Speaker's table.

(iv) Thereafter, and before the Serjeant at Arms removed the member for Moratuwa with Police assistance obtained upon an order from the Speaker in Chambers, the 2nd respondent, the member for Galle, proposed that the 1st respondent, the member for Dehiowita, do take the Chair, and the member for Kotte seconded that motion.

(v) The Deputy Speaker and the Deputy Chairman of Committees were not in the Chamber when the motion was moved.

(vi) There being no objection taken to the motion, the 1st respondent took the Chair.

(vii) Thereafter the member for Moratuwa made a speech in the Chamber and continued to speak until the Serjeant at Arms entered with the Police and removed that member from the Chamber.

(viii) On the entry of the Serjeant at Arms with Police officers, the 1st respondent vacated the Chair.

The Attorney-General alleges in his application that the 1st respondent is guilty of disrespectful conduct in the precincts of the House (an offence specified in paragraph 7 of Part B of the Schedule to the Act) and that the 2nd respondent is guilty of abetment of the said offence of disrespectful conduct (an offence specified in paragraph 10 of Part B). He also alleges that the 1st respondent is guilty of creating a disturbance in the Chamber while the House was sitting knowing or having reasonable grounds to believe that the proceedings of the said House were or were likely to be interrupted (an offence set out in paragraph 6 of Part B) and that the 2nd respondent was guilty of abetment of that offence; and lastly that the 1st respondent is guilty of the offence of joining in such a disturbance created by the member for Moratuwa (also an offence specified in paragraph 6 of Part B) and that the 2nd respondent was guilty of abetment of the latter offence.

The affidavits filed by the respondents contain averments that the report furnished by the Attorney-General under section 26 of the Act only stated that there was in the opinion of the Attorney-General sufficient evidence to warrant the taking of further steps in respect of the offence of disrespectful conduct specified in paragraph 7 of Part B of the Schedule and that there was no report from the Attorney-General in respect of any other offence nor any resolution passed by the House requiring him to make an application in respect of any other offence. Counsel for the 1st respondent has raised two preliminary objections based on these allegations of the respondents :—

(*a*) That the Attorney-General had no power to make an application to this Court in respect of any offence other than the offence referred to in his report, namely, disrespectful conduct in the

precincts of the House; and that therefore the Court had no jurisdiction to call upon the respondents to show cause in respect of the other alleged offences referred to in paragraphs (iii) to (vi) of the Attorney-General's application; and

(*b*) That the application being invalid upon the ground already stated, the invalidity affects the entirety of the application and that the Court has therefore no jurisdiction to entertain even the charge of disrespectful conduct which was in fact specified in the report of the Attorney-General.

The Attorney-General has raised a counter objection to the right of the Court to entertain these objections as to the validity of his application. He relies on the following provision in section 25 (2) of the Act :—

"The making of an application under section 23 by the Attorney-General in any case shall constitute conclusive evidence that the application has been duly made in accordance with the preceding provisions of this section".

Upon the authority of several cases in which the expression "conclusive evidence" has been interpreted by the English Courts, the Attorney-General has argued that this Court is bound to assume that all the conditions antecedent to the making of a due application have been complied with, and that his Report to the House or the Resolution of the House cannot be utilised to displace that assumption.

At a later stage of the argument, counsel for the 1st respondent conceded that the application of the Attorney-General, in so far as it alleged the commission of the offences of disrespectful conduct and abetment thereof, was duly made, and that he could properly take objection only to the other charges, namely those numbered (iii) to (vi) in the application. All the charges being based on the same acts of the respondents, it appeared to me that the Court could not reach a finding against either of the respondents on charges (iii) to (vi) without also finding against them on those of disrespectful conduct, and that any additional finding on any of the last four charges would make no difference to the measure of punishment. The Attorney-General therefore agreed to my suggestion that the charges (iii) to (vi) be regarded as withdrawn. In these circumstances I am not called upon to give a ruling upon the first preliminary objection to the application which has been taken on behalf of the respondents. I need only make the observation that since the Attorney-General's Department will now be aware of the nature and scope of the objections which can be formulated against the inclusion in an application under section 23 of the Act of charges not specified in the Report under section 26, it is unlikely that in any future case a respondent to such an application will have occasion to raise such objections.

The second preliminary objection not being maintainable, the first two charges set out in the Attorney-General's application now require consideration.

The charge against the 1st respondent of disrespectful conduct within the precincts of the House is based on only one allegation of fact, namely

that he took the Chair of the House on the occasion referred to in the application ; and the charge of abetment against the 2nd respondent is again based on one allegation of fact, namely that he moved the motion that the 1st respondent do take the Chair. The conduct of the respondents would not necessarily or even ordinarily be improper, for section 17 (5) of the Ceylon Constitution Order in Council, 1946, provides that in the absence of the Speaker, the Deputy Speaker and the Deputy Chairman of Committees at a sitting of the House, a member proposed and seconded in that behalf may preside at the sitting. The argument of the Attorney-General was however that, the sitting of the House having been suspended by the Speaker, no business could be transacted in the House until the sitting was again resumed after the period of suspension. It was accordingly his argument that when a sitting is suspended there would be no occasion for the operation of section 17 (5) of the Constitution. But, argued counsel for the respondents :—

(*a*) the act of the Speaker on April 6, 1955, namely his statement "And I suspend the sitting of the House", and his vacation of the Chair, did not in law constitute a suspension of the sitting ; and *alternatively*

(*b*) assuming that there was a valid suspension, the conduct of the two respondents, even if it constituted disrespectful conduct is not justiciable by this Court.

The first of the two arguments just mentioned is based on the omission of the Speaker to specify the period of the suspension of the sitting. Although the only provision in the Standing Orders of the House which refer to a suspension is Standing Order 86 :—

> "*In case of grave disorder* arising in the House Mr. Speaker may, if he thinks it necessary to do so, adjourn the House without question put *or suspend the sitting for a time to be named by him*",

the Clerk of the House has stated in an affidavit that "It is the practice of the House of Representatives for the Speaker to suspend sittings of the House as occasion demands without a resolution by the House" ; and it is conceded that according to the practice of the House sittings are occasionally suspended by the Speaker in circumstances other than those contemplated in Standing Order 86. But the Attorney-General does not contest the position that on every occasion of a suspension for whatever cause, it is customary for the Speaker to give notice to members of the time when the sitting will be resumed. It is apparent that such notice is necessary, for without it members would not know when they should return to the House for attendance at the resumed proceedings. I will assume for the purposes of this argument that the specification of a named time would not be the only means of giving notice, and that it would suffice for the Speaker to suspend the sitting for a named period or until the happening of a specified event.

It is apparently not unusual in the House of Commons for the House to be suspended without a time for the resumption being named. For

instance on August 4th, 1919 there was a suspension the nature of which was made known to the House in the following remarks :—

> Sir Donald Maclean : "In view of the general desire of the House to view the River Pageant this afternoon, may I respectfully ask you, Sir, whether you have any suggestion to make to the House to meet that desire ?
>
> Mr. Speaker : The House will, no doubt, be desirous of doing what it can to salute the representatives of the Mercantile Marine as they pass. Probably it will be best if I quite informally suspend the sitting of the House for a reasonable interval. When I resume the Chair I shall have the bells rung, so that hon. Members may be aware of the fact ".

Again on 17th September, 1940, Mr. Speaker suspended a sitting in the following terms :—

> "I am informed that an air raid is now considered to be imminent and I will accordingly suspend the sitting ".

There follows a statement in Hansard that the House resumed after an interval of 22 minutes. Subsequently a special Standing Order was passed to the effect that the Speaker would suspend a sitting on being informed of the imminence of an air raid and that in that event the House would resume after the " danger past " signal was received.

The Attorney-General argues that in the context of the events of April 6th, 1955, the Speaker did (though not in so many words) give notice to the House that the sitting would be suspended until the member for Moratuwa had been removed from the Chamber and that every member should have been and was in fact aware that the suspension was being ordered with a view to resumption after the removal of the member for Moratuwa. If of course the Speaker had made the statement " I suspend the sitting until the member for Moratuwa is removed from the House " or even " I suspend the sitting in order that the member for Moratuwa be removed from the House ", there would have been a clear and adequate indication that the House would resume forthwith after the removal of the member for Moratuwa, and that indication would in my opinion have been substantial and effective (though not literal) compliance with the requirement that a time should be named. But it is argued for the respondents that the mere knowledge that the sitting was suspended consequent upon a disturbance created by the member for Moratuwa was not sufficient to fix members with the knowledge that proceedings would be resumed after the removal of the cause of the disturbance. It was argued also that the question whether there was a valid suspension is one of law and the omission of the Speaker to name a time rendered his purported suspension ineffective. There is I think something to be said for the view that if the Speaker, who is the representative of the House, failed duly to give effect to his intention to suspend members would be entitled to take advantage of his omission and to proceed with business despite his defective expression of intention. But in view of the opinion which I have formed on the second point relied upon by the respondents, namely that their conduct on this occasion is not justiciable by this Court, I can assume (without deciding) that the suspension was valid and effective.

In order to consider the second point it is necessary to refer to sections 3 and 4 of the Parliament (Powers and Privileges) Act No. 21 of 1953 :—

Section 3 :—" There shall be freedom of speech, debate and proceedings in the House and such freedom of speech, debate or proceedings shall not be liable to be impeached or questioned in any court or place out of the House ".

Section 4 :—" No member shall be liable to any civil or criminal proceedings, arrest, imprisonment, or damages by reason of anything which he may have said in the House or by reason of *any matter or thing which he may have brought before the House by petition, bill, resolution, motion or otherwise* ".

The argument for the respondents based on section 3 of the Act, which is an adaptation of Article 9 of the Bill of Rights, is that their conduct was part of the proceedings of the House and cannot therefore be impeached or questioned except by the House itself. It is interesting also to notice that section 4, more or less in amplification of section 3, protects a member from liability to civil or criminal proceedings " by reason of any matter or thing which he may have brought before the House by petition, bill, resolution, motion or otherwise ", and that section 9 requires the Courts to take judicial notice of the privileges of the House. The first question which arises is whether the immunity conferred by sections 3 and 4 for *proceedings* in the House are in any way qualified by Part II of the Act. It is true that section 22 appears on its face to confer on the Supreme Court jurisdiction over all offences specified in the Schedule and that section 23 contemplates the possibility that the Court can convict a *member* of an offence under the Act. But does this contemplation amount to an expression of intention by the Legislature that the Court will have power to convict a member even in a case where his conduct would otherwise be protected by the freedom of speech, debate and proceedings conferred in Part I ? I give without hesitation a negative answer to this question, and I am supported in that answer by the qualified concession made by the Attorney-General. There are many well-recognised modes by which the Legislature ordinarily expresses its intention that some right, benefit or immunity conferred by one provision of law must be regarded as taken away by another. It suffices to point out that no such recognised mode has been employed in the Powers and Privileges Act. Moreover, it must be borne in mind that when sections 22 and 23 read with the Schedule to the Act contemplate the possibility of a member being convicted by the Supreme Court, that is not a mere idle contemplation. Of the large number of acts which are declared by the Schedule to be offences, there are several which *if committed by a member* would not fall within the scope of the immunities conferred in Part I and this is specially true in regard to nearly all the offences specified in Part A which are declared to be punishable only by the Supreme Court. To hold therefore that some of the acts mentioned in the Schedule will, if committed by a member, not be justiciable by the Court is not to any appreciable extent to nullify the effect of sections 22 and 23. Those sections can be interpreted and applied perfectly consistently with the view that the freedom of speech, debate and proceedings

was intended to be preserved intact. If therefore the conduct of the respondents of which complaint is made in the application falls within the scope of "speech, debate or proceedings in the House" within the meaning of section 3 of the Act, then clearly this Court has no jurisdiction to question that conduct.

It is urged on behalf of the respondents, on various grounds, that their acts namely the motion of the 2nd respondent that the 1st respondent do take the Chair and the act of the 1st respondent in taking the Chair after the motion was passed, are covered by the immunity conferred by these sections of the Act. May in his *Parliamentary Practice* (14th Ed pp 59 et seq) discusses Article 9 of the Bill of Rights under the topic of the "Right to exclusive cognisance of proceedings in Parliament" and refers to three principal matters involved in the statement of law contained in that Article—

(1) The right of each House to be the judge of the lawfulness of its own proceedings;
(2) The right to punish its own members for their conduct in Parliament;
(3) The precise meaning of the term "proceedings in Parliament".

In regard to the first of these matters, May (at p. 60) makes the general observation that "the House is not responsible to any external authority for following the rules (of procedure) it lays down for itself, but may depart from them at its own discretion". This right of the House holds good even where the procedure is laid down by statute, and for such purposes (i.e. in regard to procedure) the House can "practically change or supersede the law"— Coleridge C.J. in *Bradlaugh v. Gossett* [1]. In the same case Mr. Justice Stephen made the following observations :—

> "Suppose that the House of Commons forbids one of its members to do that which an Act of Parliament requires him to do, and in order to enforce its prohibition, directs its executive officer to exclude him from the House by force if necessary, is such an order one which we can declare to be void and restrain the executive officer of the House from carrying out? In my opinion we have no such power. I think that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statute law which has relation to its own internal proceedings" (p. 278).
>
> "It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly" (pp. 280–281).
>
> "The House of Commons is not a Court of Justice; but the effect of its privilege to regulate its own internal concerns practically invests it with a judicial character when it has to apply to particular cases the provisions of Acts of Parliament. We must presume that it discharges this function properly and with the due regard to the laws in the making

[1] *12 Q. B. D. 273-274.*

of which it has so great a share. If its determination is not in accordance with law, this resembles the case of an error by a judge whose decision is not subject to appeal" (p. 285).

Mr. Justice Stephen found much support for his views from statements of the judges who decided *Stockdale v. Hansard*, the case in which the Courts asserted in the strongest way their right to question the legality of a resolution of the House of Commons where such legality arises incidentally in an action between party and party.

I pass now to the meaning of the term "proceedings in Parliament". The Attorney-General has relied on statements and citations in May to the effect that proceedings mean "the transaction of Parliamentary business", or what a member may "say or do within the scope of his duties in the course of Parliamentary business" or "a part of a proceedings of the House in its technical sense i.e. the formal transaction of business with the Speaker in the Chair or in a properly constituted Committee". Obviously Article 9 of the Bill of Rights was intended to include within its scope business of the nature referred to in these citations. But was that all which was intended to be included? Was it not intended to include such acts as a giving of notice of a motion? Standing Order 24 of the House of Representatives requires notices of motion to be given in writing and to be handed to the Clerk when the House is sitting, or to be sent to or left at the Clerk's office at any time. Is not then the handing or delivery to the Clerk of a written notice of motion a proceeding covered by the immunity? Moreover, I take it that the Standing Orders contemplate the possibility that a member may not be able to write out his own motion and that he may therefore dictate his notices to a confidential stenographer or secretary. In my opinion such dictation, being an ordinary and even necessary mode by which busy men usually have documents prepared, would equally be covered by the immunity. To take a further example a member would not ordinarily give notice of some important motion in the House without first assuring himself that some other member will second the motion, and it would seem that a bona fide communication of the subject of his motion made to another member for this purpose will be protected as being a matter or thing brought before the House by motion—(Section 4 of the Act). May (at p. 65) refers to a statement made in this connection by the Select Committee on the Official Secrets Act that, "cases may easily be imagined of communications between one Member and another or between a Member and a Minister, so closely related to some matter pending in, or expected to be brought before the House, that, although they do not take place in the Chamber or a committee room, they form part of the business of the House, as, for example, where a Member sends to a Minister the draft of a question he is thinking of putting down, or shows it to another Member with a view to obtaining advice as to the propriety of putting it down or as to the manner in which it should be framed".

I must refer now to the case of *Rivlin v. Bilainkin* [1] which was relied on by the Attorney-General. In an action for slander and libel the defendant in that case was restrained by an interim injunction from

[1] *(1953) 1 Q. B. D. 485.*

repeating the alleged libels and slanders. While the injunction was in force, the defendant went to the House of Commons and handed to the messenger of the House five communications for delivery to named members of the House, which communications repeated the slanders. In accordance with the rules of the House of Commons, the messenger accepted one of the communications for delivery to a member of Parliament and the defendant posted the other four in the Post Office within the precincts of the House. The plaintiff in the case thereupon applied for an order committing the defendant to prison for breach of the injunction ordered by the Court. The argument for the defendant that the Court had no jurisdiction to make the order for committal since the publication occurred in the precincts of the House and was connected with an attempt to obtain Parliamentary redress for an alleged grievance was rejected by the Court. McNair J. relied particularly on the fact that the publication was not connected in any way with the proceedings in the House. I do not think that the ground of decision taken in a case where a stranger had made a communication to a member would be available against a member who makes a necessary communication regarding a proposed motion to another member or to his own secretary. I notice also that McNair J. formed his opinion upon a variety of reasons, and that one reason relied on by counsel in the case was that where a Court has once made an order affecting a private person and not affecting Parliament's own proceedings, the Court will not be deterred from enforcing its own order because of a claim of Parliamentary privilege. At best the case is only an authority for the proposition that if some person has already been prohibited by Court from making a particular statement, it is no answer for him to say that he made the statement to a member of Parliament.

The Standing Orders also contain provisions which contemplate that members do move motions which are out of order. For instance Standing Order 17 provides that where there is a motion (called a dilatory motion) for the adjournment of a debate, the Speaker, if he is of opinion that the motion is an abuse of the rules of the House, may nevertheless put the question thereupon from the Chair.

Again there is Standing Order 95 which declares that when a question for debate has been proposed, debated and disposed of, it should not be competent to any member, without the leave of Mr. Speaker, again to propose such question in the same session. Suppose for instance that a motion for the removal from office, of some office holder removable by vote of Parliament, on the ground that he is a bribe taker has been debated and negatived in a session. Suppose then that a member in the same session again seeks to introduce the same motion and hands a notice of motion to the Clerk, adding thereto an application for the leave of Mr. Speaker to propose that motion. Will the fact that the Speaker subsequently refuses to grant leave, render the motion one which is not protected by the immunity, or will it not instead be the position that since the motion is capable of being debated if the necessary leave is granted, it will be considered *ab initio* as being a motion, notice of which is given as part of the proceedings of Parliament ?

I have referred to what appear in my opinion to be matters protected by Article 9 of the Bill of Rights, although they may not to a purist be thought to fall within the scope of the express words within the Article. It would have required both an extraordinary power of anticipation on the part of the framers of the Article, as well as an extraordinarily fine capacity of expression, for them to write that Article in terms which would have stated *beyond the possibility of argument* the true intended scope of the immunity. And I think that the citations already made from the case of *Bradlaugh v. Gosset* as to the right of the House to control its own proceedings and procedure make it sufficiently clear that the judge of an English Court would not examine the Article from the standpoint of a purist. The terms of section 9 of our Act, in my opinion, require a Judge to pose to himself not the question " is the act of a member outside the scope of the immunity ? ", but rather the question " is not the act of a member within the scope of the immunity ? ". In other words, sections 3 and 4 must receive a liberal construction wherever possible in favour of the plea of immunity.

The reason why I have referred to possible acts or conduct of members which in my opinion are covered by the immunity, even though they do not strictly form part of proceedings in the House with the Speaker in the Chair, is that it seems to me that the question whether any particular act or conduct forms part of " the proceedings " contemplated by sections 3 and 4 though one of law is nevertheless one of degree ; and I find those instances of assistance when I come to consider whether the conduct complained of in this case is not covered by the immunity.

Let me first take a genuine and unquestionable case of the application of section 17 (5) of the Constitution. May (at p. 237) refers to the practice of the House of Commons in the event of the absence of the Speaker : the Serjeant at Arms enters the House and places the mace on the table and the Clerk then informs the House of the absence of the Speaker and if necessary of the Chairman of Ways and Means ; the Chairman of Ways and Means or in his absence the Deputy Chairman then takes the Chair. Assuming that a similar practice is followed in our House of Representatives (although there is no evidence of it) a member would ordinarily propose another to the Chair under section 17 (5) only if the Clerk has first announced the absence of the Speaker, the Deputy Speaker and the Deputy Chairman of Committees ; but I do not see how the failure of the Clerk to announce the absence of the three designated officers can invalidate a motion that some member take the Chair, if in fact those officers are not present. The motion would then be moved at a stage when the Chair is in fact unoccupied, and such a motion would surely be a proceeding in the House despite the fact that neither the Speaker nor any other member is in the Chair at the time the motion is moved. So that the presence of the Speaker or some other presiding member is not an essential pre-requisite to rendering the motion a part of the proceedings of the House. It would appear, therefore, that there can be a valid *proceeding in the House* even though no person is for the time being presiding. This can only be so, on the legal ground that, when the mace is placed on the table at the time appointed by Standing Orders for the commencement of a sitting, the

business of the sitting can commence ; and if the Speaker be then absent, the first business is that some other member takes, or is voted to, the Chair under section 17 (5) of the Constitution.

Let me now take a case which, however improbable in practice, can legitimately be said to be possible in theory and to be comparable with the facts of the present case. Suppose that a Speaker out of sheer caprice or perversity or some more permanent mental defect suspends the sitting of the House without any reason, stated or apparent, for a period of four hours. Suppose that the business of the day includes the consideration of the 2nd and 3rd readings of a bill already passed by the other House, the enactment of which is urgently required in the public interest. Suppose that on such an occasion the Leader of the House, after the Speaker vacates the Chair, proposes that the Deputy Speaker should preside in order that the business of the day be transacted ; that the Deputy Speaker presides accordingly and that thereafter the Bill in question is debated and passed. If that Bill be presented for the Royal assent and assent be given, will it be open for any authority, judicial or otherwise, to declare the Bill to be invalid on the ground that the Chair was improperly taken by the Deputy Speaker ? In my opinion the principle referred to by May, that it is a *collective right* of the House to settle its own code of procedure and to depart from that code at its own discretion, will preclude any Court from questioning the validity of the Bill. The only appropriate means, if any, by which proceedings so taken with the Deputy Speaker in the Chair can be rendered invalid is by a successful motion in the House itself that the proceedings be expunged from the Journal and Minutes of the House.

It is important to note in this connection that there is no Standing Order which prevents a member from moving a motion like that moved in the present case, on the ground that the Speaker had suspended the sitting. It is the contention on both sides that despite the vacation of the Chair by the Speaker on April 6th, 1955, the House was still technically sitting, the mace remaining on the table. The admitted facts therefore render the circumstances of the occasion almost parallel to the circumstances of the two other occasions to which I have already referred, namely the announced absence of the Speaker at the commencement of a sitting or a causeless suspension.

The apparent object of the 2nd respondent in moving his motion was to secure if possible that the House should continue to sit and transact business despite the order of suspension. I cannot think of a motion which can be said to be more directly referable to a desire to carry out the duties and functions of membership than one moved for the purpose of proceeding with the business of a sitting sooner than the Speaker may have contemplated. It may be true in fact that the 2nd respondent had an additional motive in mind, namely that by proceeding to transact business the House would flout the Speaker's order of suspension. If there was present that additional motive, then perhaps he would, though acting in his capacity as a member, yet be guilty of disrespectful conduct, but if such had been the case, it would not be different from a case where a member while speaking in debate in actual proceedings in the House refers to the Speaker by a dirty name. Conduct of the latter kind,

however disrespectful, would clearly not be justiciable by this Court, for the reason that it would be protected by the immunity conferred by sections 3 and 4 of the Act.

The view which I take of the matter does not have the consequence that a member can be disrespectful with impunity. I have already referred to the principle involved in Article 9 of the Bill of Rights that the House has the right to punish its own members for their conduct in Parliament. May (at p. 429) refers to cases where members of the British Parliament have been committed to the custody of the Serjeant or even sent to the Tower for the use of treasonable or seditious language, and to the power to punish a member for disrespect of the House itself. So far as the Houses in Ceylon are concerned, there are the powers of naming and suspension referred to in Standing Orders 82–87 as well as the powers of admonition, removal and suspension declared by sections 22, 27 and 28 of the Powers and Privileges Act.

The conclusion which I reach for these reasons is that assuming the suspension to have been valid, and assuming an intention on the part of the respondents to be disrespectful, their conduct, being conduct included within the scope of sections 3 and 4 of the Act, cannot be questioned or impeached in proceedings taken in this Court under section 23 of the Act. The jurisdiction to take cognisance of such conduct was exclusively vested in the House of Representatives. The respondents are accordingly discharged from the notices served on them.

There is one observation which I consider it necessary to make, even though it be *obiter*. It has been argued that, having regard to the phraseology employed in Part B of the Schedule to the Act, paragraph 7 in that Part will cover only disrespectful conduct *in the precincts of the House*, and not such conduct in the House itself or in a Committee. If, as one might reasonably expect, the intention of Parliament was to include disrespectful conduct on the part of members and strangers whether in the Chamber or the precincts, it may be advisable to supply by an amendment the omission of the draftsman to give unambiguous expression to that intention.

Application dismissed.