



## HOW FREE IS PARLIAMENT?

**L**IKE labels which endure long after they have ceased to be descriptions, privileges often are enjoyed long after they have ceased to be deserved. Privilege is part of the law of the land, yet to a certain extent it is an exemption from the ordinary law, for it is the sum of the peculiar rights enjoyed by each House collectively and by its members individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or persons. An example of these rights peculiar to members is that of saying in the House what would be actionable if spoken outside. The corollary is that they are not answerable in a court of law, which, once privilege is established, would stop further proceedings.

### Privilege and Function

The word function is important. Privilege was claimed and is retained to enable Parliament to perform its proper function. A third ingredient is necessary—disciplinary powers to enforce its privileges. Power to punish for a breach of privilege or contempt is the prerogative of a court. The British Parliament in its beginning developed as the High Court of Parliament. Colonial legislatures were however created by statute. It has been held that they are not courts. Under the common law they as legislative bodies are endowed of necessity with powers and privileges similar to those enjoyed by the British legislature, but not the power to punish for contempt. This

*HAS the broadcasting of proceedings in Parliament affected the protection to members afforded under privilege for words spoken in debate? The question has recently been raised, and with it several other questions about the privileges enjoyed by members of the Legislature—some of them now legendary. To get the broad principles elucidated, and some popular errors dispelled, we asked T. D. H. HALL, a former Clerk of the House, to explain the purpose and extent of privilege and of the factors to be taken into consideration in deciding what action if any Parliament must take to meet the new situation.*

power has however been taken by express enactment (Legislature Act, 1908).

Privilege is claimed under the law and custom of Parliament, that is, it is claimed as having existed from time immemorial. Some have been confirmed by statute, but it follows that one House of its own motion cannot claim a new privilege.

### Each House Has Privileges

Each House enjoys its own privileges independently of the other, though the privileges of both are part of the common law of Parliament. There are certain privileges, such as the sole right of the lower House to initiate money bills, which some authorities prefer to call constitutional powers. They will not be dealt with further in this article. The privileges affecting members, which most people are interested in are those mentioned in the ancient claim made by the Speaker of the House of Commons when presenting himself to the King for confirmation of his election as Speaker. They are freedom of speech, freedom from arrest, right of access to

the Crown, and the right to have a favourable construction placed on their proceedings. The two last have ceased to have any practical importance to-day.

### Qualified Freedom from Arrest

Freedom from arrest was originally due to the success of the King in controlling the more powerful of his subjects. Members of the Commons lawfully summoned to Parliament were not to be prevented by some charge brought before a local court. They were to enjoy the King's peace. Later the privilege was invoked by the Commons against the King. Later still it was used for the more mundane purpose of preventing the arrest or securing the release of a member unable to pay his debts. It was never available to a member who committed a crime. The privilege ceased to be of importance when imprisonment for debt was abolished. A subsidiary privilege prevented a member being called as a witness or being summoned as a party in a civil action. This is seldom invoked to-day. The tendency is to grant leave of ab-

sence. The privilege is only available when Parliament is sitting and for a brief period before and after the session.

### Two Parts in Freedom of Speech

Freedom of speech though claimed at an early date was won only after a long struggle. It was the right of members called on to provide part of the national finance to criticise national policies and administration without fear of reprisals from the King. Parliament also claimed the essential subsidiary privilege of controlling the publication of debates. In early days total prohibition was necessary. The right to control publication still exists, as witness the prohibition of the publication of debates in secret sessions, but to-day the widest of publicity is thought necessary in the interest of democracy. There are thus two parts in the privilege of freedom of speech. There is the privilege attaching to words spoken within the walls of Parliament, and, from the time publication was freely allowed, there is the question of the protection afforded when members' speeches are published outside either in print or now by broadcasting. Freedom of speech was confirmed by the Bill of Rights, the wording of which governs the extent of the privilege. It is worth noting that when the battle against the King was practically won a majority of the House of Commons used their right to control publication to prevent the public learning what was being done in the House. The Letters of Junius did a great deal to arouse public opinion against this abuse of privilege.

(continued on next page)