Parliamentary Privilege: Reasons of Mr Justice Hunt—An Analysis*

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On 17 March 1986 in proceedings in the Supreme Court of New South Wales before the commencement of the second trial of Mr Justice Murphy, counsel instructed by the President of the Senate submitted that in the course of the trial the court should not allow witnesses or the accused to be cross-examined on statements which they made to Senate committees. This submission was based upon an assertion that the judgement of Mr Justice Cantor on 5 June 1985 to the contrary was in error.[1]

After hearing this submission Mr Justice Hunt gave a judgement on 8 April 1986 rejecting the submission and the principal judgements on which it was based, and providing a new interpretation of article 9 of the Bill of Rights in its application to the houses of the Australian Parliament under s.49 of the Constitution. This judgement concludes that article 9, notwithstanding its broad language, 'That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament', has the limited effect of preventing what has been said and done in the course of parliamentary proceedings from being the actual subject of criminal or civil actions. It does not, in the judge's view, prevent proceedings in Parliament being used as evidence of an offence

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1 *R v Murphy: Submissions of Amicus Curiae instructed by the President of the Senate*. See also H. Evans, 'Parliamentary privilege: reasons of Mr Justice Cantor—an analysis', *Legislative Studies*, Autumn 1986, pp. 24–6.

committed elsewhere, to support a cause of action or to establish motive or intention. It follows from this reading down of article 9 that witnesses and an accused in court proceedings may be cross-examined on statements which they made to parliamentary committees and those statements may be used to impeach their credit and to invite a court or jury to draw inferences or conclusions.

There are three notable features of this judgement: it does not follow the reasoning of Mr Justice Cantor, but provides an entirely different line of reasoning; unlike Mr Justice Cantor's judgement it expressly repudiates the judgements on which the Senate's submission relied; but it supports the use which was actually made of the Senate committee evidence before Mr Justice Cantor.

The reasons of Cantor J rested upon the proposition of a new test of breach of article 9: the test of adverse effect upon parliamentary proceedings. Cantor J's reasons also referred to the need to 'balance' the prohibition contained in article 9 against the requirements of court proceedings. These matters are nowhere to be found in the judgement of Hunt J. By implication that judgement repudiates them, and substitutes a different test of breach of article 9.

Cantor J's reasons made some attempt to reconcile the test which they proposed and the conclusion which they supported with the cases upon which the Senate submission mainly relied. Hunt J's judgement expressly repudiates the judgements in those cases (*Church of Scientology of California v Johnson-Smith* (1972) 1QB 522, *R v Secretary of State for Trade and others, ex parte Anderson Strathclyde plc*, (1983) 2 All ER 233, *R v Wainscot* (1899) 1 WALR 77, *Comalco Ltd. v Australian Broadcasting Corporation* (1983) 50 ACTR 1). It was clear that what happened in the first trial could not be reconciled with those cases.

Apart from indicating that witnesses could be cross-examined on their parliamentary evidence, Cantor J's judgement gave little guide as to what it would allow or disallow. That became apparent only in the course of the first trial. Witnesses and the accused were extensively and intensively examined on their statements to the committees, the truth of those statements was questioned, and on the basis of that questioning the statements were used to attack them in addresses to the jury.[2] The judgement of Hunt J would allow this use of the committee evidence. The judgement therefore operates to validate, as it were, the use which was made of the Senate committee evidence in the first trial, without adopting the reasons underlying the judgement in the first trial.

Hunt J has not adverted to a distinction which was clearly drawn in the President's submissions (at p. 5) between evidence as to parliamentary proceedings being given for a legitimate purpose which does not violate article 9 as hitherto interpreted and such evidence being given for a purpose contrary to article 9. The President's submissions stressed that evidence of proceedings in Parliament may be used to prove material facts, such as the fact that a particular statement was made at a particular time. Such facts may be relevant in court proceedings in many ways; the example given in the submissions was the examination of parliamentary debates in order to establish whether a press report the subject of a defamation action was a fair and accurate report of the debates. In his reasons Hunt J implies that this use of evidence

[2] See references to the transcripts of the trial in the above submissions.

of parliamentary proceedings would not be permitted by the previously established interpretation of article 9. He states (judgement, p. 11) that it was submitted to him in the President's submissions that even to ask a witness whether he has made a particular statement to a parliamentary committee would be to impeach or to question that statement and would be in breach of article 9.

The President's submissions were quite to the contrary; the admission of evidence of parliamentary proceedings to establish a material fact might well involve just such a question as the judge postulates. Such a question in itself would not offend against article 9 in the interpretation put by the President. In order to determine whether the admission of particular evidence of parliamentary proceedings is in breach of article 9 it is necessary to have regard to the purpose for which the evidence is being given. Inherent in the President's submission is the presumption that the cross-examination of witnesses as to their parliamentary evidence would be for the purpose of attacking the credit of those witnesses, and this is obviously so in the context of the trial. If it were relevant for the purposes of the trial to establish simply the fact that witnesses or the accused had given evidence before a Senate committee and the witnesses and the accused were questioned to establish this fact, this would not be contrary to article 9.

The judge has therefore not accurately represented the interpretation of article 9 which was put to him. His first two rulings, to the effect that a witness in the trial may be asked whether he made a particular statement to a Senate committee and that the fact that a witness made such a statement may be proved, are not inconsistent with the hitherto established interpretation of article 9. By purporting to overthrow an interpretation which was not in fact put before him, Hunt J's judgement does a disservice to the proper understanding of the issues involved in the interpretation of article 9.

Another distinction which was carefully drawn in the President's submissions and which was not adverted to by Hunt J is the distinction between the principle regulating the use of evidence of parliamentary proceedings contained in article 9 on the one hand, and on the other the question of whether evidence of parliamentary proceedings may be admitted at all without the permission of the house concerned. At pages 11, 12 and 16 of his judgement, Hunt J refers at some length to the fact that it was previously thought to be a rule that no evidence as to parliamentary proceedings could be given without the consent of the house concerned, and this rule was repudiated by the courts and by him in one of his earlier judgements. That there is any such rule was not submitted in the President's submission, and it was pointed out that this question related to the production of evidence rather than the use to which it may be put.

The question of whether evidence of parliamentary proceedings may be admitted in court without the approval of the house concerned has nothing to do with the proper interpretation of the restriction contained in article 9. The President's submissions refer to the practice of the British and Australian houses of granting permission for evidence of their proceedings to be given in court, and in reality it was no more than that: a practice which was no doubt designed to support article 9 but which was not part of the principle contained in article 9. This was made clear in the report of the Select Committee of the British House of Commons which recommended that the

practice be abolished.[3] That recommendation was based on the care taken by the courts to see that evidence of parliamentary proceedings is not admitted contrary to article 9.

In his discussion of the matter, however, Hunt J implies a belief that the so-called rule that evidence of parliamentary proceedings could not be given without the consent of the house concerned is an inherent part of the previously established interpretation of article 9. If he did not have such a belief it is not clear why he should have spend so many words in his judgement discussing this matter when it was not submitted to him. The judge seems to think that, once the courts had determined that the permission of the house concerned was not necessary to admit evidence as to its proceedings, the previously established interpretation of article 9 was undermined. He appears to believe that his judgement is a continuation of that inroad upon the conventional interpretation of article 9. He goes so far as to suggest (p. 26 of his judgement) that the finding of the court in the *Scientology* case in part depended upon this so-called rule as to the requirement for the consent of the house. A careful reading of the judgement in that case and of the submissions made by the Attorney-General indicates that the judgement did not depend upon the so-called rule as to the consent of the house, and clearly recognised the distinction drawn here.[4] That is why the judgement was followed by the court in the *Anderson Strathclyde* case, which occurred after the House of Commons had abandoned the practice of giving permission for evidence of its proceedings to be admitted, a fact which is recorded by Hunt J at page 32 of his judgement but which is not given its proper significance.

In failing to distinguish between the practice of the houses and the principle contained in article 9, Hunt J's judgement has further clouded the issue involved in the interpretation of article 9.

At pages 17 to 19 of his judgement Hunt J gives great weight to a matter which also impressed Cantor J: the possibility that the interpretation of article 9 submitted by the President might have some application to criticism of parliamentary proceedings in the media and elsewhere other than in court. Both judges reasoned as follows: the conventional interpretation of article 9 would prevent critical comment on parliamentary proceedings in the media and in public discussion, since article 9 uses the expression 'any court or place out of Parliament'. The fact that such critical pubic discussion of parliamentary proceedings constantly occurs with impunity indicates a fatal flaw in the accepted interpretation of article 9, which, if applied to court proceedings, would have the effect of disallowing in court what constantly occurs in other places. This reasoning fundamentally confuses the nature of article 9, the nature of parliamentary privilege and the powers of Parliament.

The Bill of Rights was concerned to prevent abuses which had occurred in the organs of the State, abuses perpetrated by the Crown and in the royal courts. Article 9 is concerned with restraining the organs of the State, the bodies which exercise real power, and so it refers explicitly to the courts. The phrase 'or place out of Parliament' cannot be taken to refer to discussions in hotels as Hunt J suggests, but should be read

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3 First Report of the Committee of Privileges, Session 1978–79: Reference to Official Report of Debates in Court Proceedings, H.C. 102, 1978–79.

4 See the remarks of the Attorney-General at p. 525C and 527G, and of Browne J. at p. 531C and F.

as meaning 'other authorities of the State'. Because both judges attached such great significance to the expression, it was suggested in the President's submission that it may have been intended to refer to bodies of the type of the Court of Star Chamber. Hunt J dismisses this suggestion by pointing out that that body was abolished in 1641, but that is no reason to suppose that the Parliament of 1688 did not wish to guard against the activities of such royal extra-judicial bodies, and in fact the Bill of Rights refers to another such State organ, the Court of Commissioners for Ecclesiastical Causes, the use of which by James II was one of the grievances of the Parliament in 1688. The contention that the phrase 'or place out of Parliament' refers to the Crown and its agencies is supported by a modern historian who has published an exhaustive and scholarly study of the Bill of Rights.[5] It is to be noted in passing that, while the phrase 'or place out of Parliament' is important in Hunt J's attack on the conventional interpretation of article 9 in this thesis about criticism in the media, his interpretation of article 9 would render the phrase meaningless.

If the Parliament of 1688 had wished to prevent criticism of parliamentary proceedings in public discussion, it would have done so by means of a criminal statute attaching penalties to such criticism. This was not its purpose in the Bill of Rights, which was concerned with the conduct of government. In fact, subsequent to 1688 the British Parliament *did* attempt to stifle criticism of its proceedings in the press by use of its power to punish contempts or 'breaches of privilege'. That it did not do so by any attempted enforcement of article 9 through the courts illustrates the second confusion underlying Hunt J's thesis.

This confusion arises from the ambiguity of the term 'breach of privilege'. This term is used in two different senses: it refers to breaches of the privileges or immunities of Parliament established by law, such as the immunity contained in article 9, and it also refers to acts which are regarded by the houses as contempts and which may be visited with punishment, acts such as refusing to give evidence or tampering with witnesses.[6] A 'breach of privilege' in the first sense occurs when a body of the State, such as the courts, ignores or violates an established immunity of the houses. The remedy for such a breach of privilege lies in the proper application of the law. Parliament previously regarded public criticism of its proceedings as a 'breach of privilege' in the second sense, that is, as a contempt which would be visited with punishment. The history of the attempts by Parliament, principally in the 18th century, to publish its critics and the abandonment of those attempts is well known. Hunt J's thesis essentially rests on the proposition that what is not a breach of privilege in public discussion cannot be a breach of privilege in the courts. The fact that Parliament no longer treats public criticism of its proceedings as a contempt, however, has nothing to do with the immunity contained in article 9 and its proper interpretation. This confusion between the powers of the houses to punish contempts and their statutory immunities has bedevilled much of the discussion of parliamentary privilege,[7] and it is not surprising that it should occur here to obscure the interpretation of article 9.

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5 L.G. Schwoerer, *The Declaration of Rights 1689*. Baltimore, John Hopkins University Press, 1981, p. 84.

6 This historical confusion is discussed in the Report of the Select Committee on Parliamentary Privilege, H.C. 34, 1967, pp. 89–90.

7 ibid.

At pages 20 to 22 of his reasons Hunt J refers to some of the historical background of article 9 in order to establish that the mischief which it was intended to remedy was simply the prosecution of members of Parliament because of their parliamentary activities. The judge quotes the preamble to the Bill of Rights, which refers to 'prosecutions … for matters and causes cognizable only in Parliament', and he recites four notorious cases before 1688 of proceedings taken against members of Parliament for their conduct in Parliament. He thereby concludes that article 9 was intended only to prevent such prosecutions and proceedings.

The first point which must be made about this is that it remains to be explained why the Parliament of 1688 adopted the broad phrases 'freedom of speech and debates or proceedings' and 'impeached or questions' if all it intended was to prevent these sorts of prosecutions. As will be seen from the discussion below, that general language had precedents and a background to it.

The second point to be made is that the judge's account of the history of article 9 is a very incomplete account. A more comprehensive examination of the history of freedom of speech in the British Parliament and of the Bill of Rights explains the phraseology of article 9 and does not support the judge's narrow interpretation of it.

It is quite true that the British Parliament, and the House of Commons in particular, had to insist upon the immunity of its members from punishment because of their parliamentary activity, but this immunity was in issue as early as the 14th century and first appeared in the statutory law in 1512.[8] In that year the Act in Strode's case voided the penalties inflicted upon Strode and others, and went on to declare that members should not be 'vexed or troubled' for their parliamentary activities.[9] By the 17th century a much more militant House of Commons was going much further than claiming the mere immunity of its members from prosecution. It was asserting, as in the case of Sir John Eliot and others, the complete immunity of its own proceedings from any examination by any other body, including the House of Lords and the Crown, its own exclusive jurisdiction over its own proceedings and freedom from any form of interference in its members' parliamentary activities.[10] The protestation of the House of Commons of 1621 claimed 'that every member of the said House hath like freedom from all impeachment, imprisonment and molestation (other than by censure of the House itself)'.[11] The Treason and Treasonable Practices Act of 1661 referred to Parliament's 'just ancient freedom and privilege of debating any matters of business' and the right of the houses to 'the same freedom of speech' as they had long enjoyed.[12]

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8 *Erskine May's Treatise on the Law, Privileges, Proceedings, and Usage of Parliament*, 20th edn, ed. C. Gordon, London, Butterworths, 1983, pp. 78–9.

9 G.B. Adams and H.M. Stephens (eds), *Select Documents of English Constitutional History*. New York, Macmillan, 1901, p. 224.

10 Erskine May, *op. cit.*, p. 80.

11 G.W. Prothero (ed.), *Select Statutes and other Constitutional Documents Illustrative of the Reigns of Elizabeth and James I*. 2nd edn, Oxford, Clarendon Press, 1898, p. 314.

12 D. Pickering (ed.), *The Statutes at Large From the 12th Year of King Charles II to the Last Year of King James II Inclusive*. 1763, vol. 8, pp. 4–5.

The part of the preamble to the Bill of Rights referring to prosecutions quoted by Hunt J itself contains an assertion that the courts should not have even examined the matters brought before them. Moreover, as has been pointed out by a modern scholar of the Bill of Rights,[13] James II, whose sins are recounted in the preamble, had not initiated any prosecutions against members. The reference to prosecutions was originally inserted in a draft document drawn up by the Commons to support an intended attack on the use of informations to initiate all kinds of prosecutions, an attack which was dropped in the amendment of the draft,[14] leaving the paragraph in the preamble as something of an anomaly in the context of the whole bill. The oft-quoted statement by Sir George Treby, a member of the Commons, that a provision was inserted 'for the sake of … Sir William Williams, who was punished out of Parliament for what he had done in Parliament' referred not to article 9, as is supposed, but to the paragraph in the Commons document before it was amended, referring to prosecutions by informations. When it was suggested that the clause should be amended to refer only to informations laid for 'what is done in Parliament', Treby protested: 'This will be declaring that Magna Charta is Magna Charta, redressing what was never violated'.[15] In other words, the immunity from prosecution for things said and done in the course of parliamentary proceedings was already beyond question and it was an absurdity to declare merely that again. Notwithstanding Treby's protest, the clause was amended to refer to prosecutions for causes cognisable only in Parliament. This history makes it clear that the paragraph in the preamble is not a good aid in interpreting article 9.

The conclusion that the framers of the bill were seeking merely to deal with the specific cases of prosecutions of members in the past, the most important of which, the judgement against Sir John Eliot and others, had already been reversed, is therefore not justified. They were asserting a principle of wider application.

The contemporary debates are replete with statements by members of Parliament and others which indicate that freedom of speech in 1688 was a part of the freedom of proceedings from all improper interferences. Thus Sir Edward Seymour, a former Speaker, warned the House of Commons against exposing itself to undue outside pressure on the issue of the disposal of the Crown: 'If your debates are not free, there is an end of all your proceedings … What comes from you is the result of reason, and no other cause. As your debates must be free, so must your resolutions upon them …'[16]

Contemporary and near-contemporary commentary supports the contention that article 9 was regarded as meaning much more than mere immunity from prosecution. Blackstone stated that 'whatever matter arises concerning either House of Parliament ought to be examined, discussed and adjudged in that House to which it relates and not elsewhere'.[17] The judge in the *Scientology* case quoted these words with approval,

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13 Schwoerer, *op. cit*., p. 81.

14 A. Grey, *Debates of the House of Commons from the Year 1667 to the Year 1694*, vol. 9, London, 1763, pp. 42–4, 81–2; Schwoerer, *op. cit*., pp. 84–6.

15 Grey, *op. cit*., pp. 81–2; Schwoerer, *op. cit*., p. 86.

16 Grey, *op. cit*., p. 45.

17 *Commentaries on the Laws of England*. 1st edn, Oxford, Clarendon Press, 1765, pp. 58–9.

attached due weight to the broad language of article 9, and made it clear that he was relying upon a long-established and traditional interpretation of article 9.[18]

The suggestion that the victorious revolutionary Parliament of 1688, having vanquished the Stuart monarchy and asserted its supremacy in the State, would have countenanced the use of its proceedings in any way against its members in the courts is therefore difficult to accept.

It should be noted in passing that in relation to the provision in the Constitution of the United States which is the equivalent of article 9, and which provides that 'The Senators and Representatives … for any Speech or Debate in either House … shall not be questioned in any other place' (article 1, section 6), it has been held that the provision prevents any inquiry into anything said or done in the course of Congressional proceedings and into the motivation for such acts, and prevents the admission in a prosecution of any evidence relating to any legislative act of a member of Congress.[19]

In order to support his conclusion that article 9 does not prevent proceedings in Parliament being 'used against' participants in those proceedings in the broadest sense, Hunt J resorts to the Aristotelian philosophy of causation (judgement, pages 30 to 31, 37 to 38). The essence of this argument is that the use of parliamentary proceedings as evidence of an offence or to establish a civil liability does not mean that the participant in those proceedings who is punished or held to be civilly liable is suffering because of the parliamentary proceedings; the latter are not the 'real cause' of that person's adversity. A member of Parliament or a parliamentary witness may not have been convicted or held civilly liable but for their participation in parliamentary proceedings, but this is of no consequence so long as the parliamentary proceedings are not the actual subject of the criminal charge or the civil suit.

Such a conclusion reduces article 9 almost to a merely procedural guarantee. A member or a witness may be attacked in a criminal or civil action which could not be maintained for a moment, far less succeed, in the absence of an attack upon their participation in parliamentary proceedings, so long as there is something outside those proceedings which can be made the formal cause of the action. Under Hunt J's judgement this could be so even where an essential element of the offence or the civil liability itself is established only through evidence of the parliamentary proceedings. The malice necessary for a successful suit for defamation may be established by reference to those proceedings (this is explicitly referred to at page 37 of the judgement), and presumably *mens rea* in respect of an act done outside the Parliament may be established by a reference to what has occurred within it.

Given the ingenuity of counsel in putting actions together this could easily lead to a great number of attacks in the courts upon members, attacks motivated by their activities in Parliament. The possibility of such actions against members is well illustrated by two recent cases in Britain in which actions against members were based on their extra-parliamentary activities but appeared to have regard to their

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18 At p. 530 B.

19 *U.S. v Johnson* (1966) 383 US 169; *U.S. v Brewster* (1972) 408 US 501; *U.S. v Helstoski* (1979) 442 US 477.

participation in parliamentary proceedings.[20] In the second of these cases the Privileges Committee observed that a threat by solicitors to use a member's speech in the House against him in an action for words spoken outside Parliament could not be carried out. Under Hunt J's judgement the threat would be a real one. The distinction which the judgement would draw between participation in parliamentary proceedings being the actual cause of an action and being the foundation, perhaps the essential foundation, of the action, is a distinction without substance.

Witnesses before parliamentary committees, according to Hunt J, are more likely to tell the truth if they know that they may be questioned in court and their credibility and reputation attacked on the basis of their evidence (p. 33 of the judgement). Presumably he considers that members of Parliament are likely to speak more carefully if they know that they may be assailed in the courts for their speeches. Such a conclusion flies in the face of experience. A person who has the choice between telling a lie or remaining silent on the one hand, and on the other telling a truth which may show him in an unfavourable light or subsequently be used to his detriment, will almost always choose the first course. Some encouragement is necessary to make a person tell the awkward or dangerous truth. In parliamentary and other forms of inquiry this encouragement takes the form of an indemnity against future punishment or liability in consequence of evidence given; hitherto the indemnity offered to parliamentary witnesses has been thought to be absolute. It is a common experience in the conduct of parliamentary inquiries, and a matter of importance to those who have had much to do with them,[21] that a reluctance on the part of witnesses to give evidence and to tell all they know is frequently overcome by an assurance of the absolute protection contained in the Bill of Rights, and the assurance of the protection contained in the standing orders and the resolutions of the houses (an assurance which the judges in the *Wainscot* case felt bound to uphold). The judgement of Hunt J does not address the question of witnesses giving evidence in camera with the expectation that it will not be produced elsewhere.

The effect of Hunt J's interpretation of article 9 would be to encourage witnesses to take the easy course of not giving evidence or telling only the convenient parts of the truth, and also to cause members of Parliament to hesitate before they speak out against abuses in public and private affairs.

At page 31 of his judgement Hunt J suggests that his conclusion might be otherwise where a witness is under compulsion and without the usual privilege against self-incrimination. This does not accord with the way in which parliamentary committees work and the basis on which they conduct their inquiries. Most witnesses who give evidence before parliamentary committees do so on invitation.[22] Very few are summoned, but very many witnesses give evidence on invitation knowing that they may be compelled if they hesitate. It is somewhat unrealistic to say that a witness who gives evidence before a parliamentary committee without being summoned has done so voluntarily. This was very forcefully put by one of the judges in the *Wainscot*

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20 Reports of the Committee of Privileges, H.C. 246, 1974, H.C. 233, 1981–82.

21 See, e.g. Senator P.E. Rae, *The Rights of the Individual Appearing Before Senate Select Committees*. Law Society of W.A. Summer School, 1972, pp. 35–7.

22 J.R. Odgers, *Australian Senate Practice*. 5th edn, Canberra, AGPS, 1976, pp. 499–500.

case.[23] As for the privilege against self-incrimination, it is not and never has been acknowledged by parliamentary inquiries: a witness before a parliamentary committee may be excused from answering a question in a self-incriminating way, but it is not a right of the witness.[24] Moreover, a parliamentary witness is liable to punishment under the powers to deal with contempts of the House concerned for giving any false evidence or for refusing to answer a question.[25] Every witness before a parliamentary committee must therefore be regarded as under compulsion.

Hunt J refers to the 'primary function' of the courts of ascertaining the truth, and implies that nothing must be allowed to impede this function (p. 28 of the judgement). In fact, the law erects a number of barriers to the ability of the courts to pursue the truth without impediment: the law of legal professional privilege, the law of what used to be called crown privilege, now called public interest immunity, and the very laws of evidence themselves, which impose rules, such as the hearsay rule, which are often ignored in royal commissions and other forms of inquiry because they impede the diligent pursuit of the truth. These barriers are erected because it is considered there are considerations of public policy behind them which must lead to the modification of the otherwise wide power of the courts to obtain evidence.

Behind the prohibition contained in article 9 of the Bill of Rights, as it has hitherto been interpreted, is also a great consideration of policy: the necessity for the Parliament as the legislature and 'grand inquest of the nation' to be able to discuss and to conduct inquiries utterly without fear of the consequences for members of Parliament or for witnesses.[26] Hunt J's judgement would so restrict that essential parliamentary freedom to debate and to inquire as to virtually destroy it. If the judgement were allowed to stand Parliament would be in danger of becoming a cowed institution.

23 At p. 83.

24 Odgers, *op. cit*., p. 540.

25 ibid., pp. 537, 540.

26 cf. the statement of Gibbs ACJ in *Sankey v Whitlam* (1978) 142 CLR 1 at 35, a statement which Hunt J. reads narrowly (judgement, p. 34).