

*Question of Privilege*

does not extend to deciding the question of substance whether a breach of privilege has in fact been committed—a question which can only be decided by the house itself.

On Thursday, June 4, without restating here the question of privilege, I said:

I am going to make a personal appeal to the right hon. Leader of the Opposition to withdraw those words or take other steps which will amount to a withdrawal . . .

I must confess that this might not have been the exact procedure which is usually followed. At that time I was thinking of another quotation of Beauchesne which is found in paragraph 5 of the same citation, 104:

(5) As a motion taken at the time for matters of privilege is thereby given precedence over the prearranged program of public business, the Speaker requires to be satisfied, both that there is a prima facie case that a breach of privilege has been committed, and also that the matter is being raised at the earliest opportunity.

When the leader of the New Democratic party rose on a question of privilege it was normal for the Speaker to assume, as the matter had taken place outside the house, that a motion would be made where the Speaker might have decided if there was a prima facie case of privilege. The usual proceedings would then have followed. This is in accordance with what is stated in the parliamentary dictionary by Abraham and Hawtrey at page 41:

If the Speaker decides that the member has made out a prima facie case, the member must make some motion in reference to the matter. He usually moves that the matter of the complaint be referred to the committee on privileges but he may content himself with moving a resolution to the effect that the act of which he complains constitutes a breach of privilege.

In other words, what the Speaker has then to decide is whether, assuming that the facts are as stated, the conduct complained of could be reasonably held to be a breach of privilege; and here I might in passing refer to what Abraham and Hawtrey say on page 40:

To constitute a breach of privilege a statement reflecting on the conduct of a member in his capacity as a member need not be untrue but it must tend to lower the house in the eyes of the public.

In other words, as stated by Bourinot in his third edition, at page 152:

To constitute a breach of privilege such libels must concern the character or conduct of members in that capacity.

Parliament being the highest court in the land, Bourinot also writes in his fourth edition, at page 38, in relation to privileges:

Their extent and nature have frequently been subjects of controversy, but in the main they are [Mr. Speaker.]

decided by the legislature itself and its decisions, speaking generally, cannot be called into question by any other court or authority.

Among the Canadian precedents in relation to alleged breaches of privileges or contempts committed outside of the house and dealt with by the house itself are the following cases, which I need not examine in detail: the Elie Tassé case in 1873; the Cinq-Mars case in 1906; the Miller case in 1913; a case in February, 1914, where Mr. Law rose on a question of privilege regarding newspaper statements; two other cases on the 8th and 15th of April, 1915; also on February 3, 1916, where a member complained of an article in the *Toronto Star* being incorrect in reporting him; then the Spear's case in 1920; and finally, the Sperry and Hutchinson Company case in 1960. There would be no great advantage in reviewing these cases at the moment.

Now to come back to our second point, that is that these matters are to be decided by the house itself; I must say that on Thursday last, the hon. member for Burnaby-Coquitlam having raised the question of privilege and not having concluded by making a motion, I was put in the position where it was normal that I should allow the right hon. Leader of the Opposition to make an answer. Other members then rose on the question of privilege, among them the member for Winnipeg North Centre, the member for Ville-neuve, the member for Quebec-Montmorency, the member for Nanaimo-Cowichan-The Islands, the member for Parry Sound-Muskoka; and it was at that stage that I did make a personal appeal to the Leader of the Opposition that he might, and I quote, "help us out of a very difficult situation at the moment".

I will now deal with the procedure on a breach or alleged breach of privilege and refer to Bourinot, fourth edition at page 63, where he states:

When the offence is contained in a newspaper, the latter must be brought up and read at the table unless the extracts are of an inordinate length and then the member must conclude with a motion founded on the allegation that he has brought forward. It is irregular to make such a complaint unless the member intends to conclude with a motion.

In consequence, the only obligation of the Speaker is and should be that, before putting the motion, he would decide if there is a prima facie case of a breach of privilege. If he does find a prima facie case then the house, as stated by Bourinot, at page 62:

Will consider whether the member has excused himself or whether he is guilty of the offence. If