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PRC 1452

Committee of Public Accounts

Interim Report

The Committee has made progress in the matters referred to it by Order of the Dáil of 1 December 1970, and has agreed to the following interim Report:-

1. In considering the adoption of procedures to govern its proceedings, the Committee has encountered a difficulty of a fundamental nature viz. the extent of application of the provisions of sections 12 and 13 of Article 15 of the Constitution.

2. Section 12 applies privilege to all official reports and publications of the Oireachtas or of either House and to utterances made in either House wherever published. Section 13 states that members of each House shall, not, in respect of any utterance in either House, be amenable to any court or any authority other than the House itself.

3. The difficulty for the Committee was whether these sections, which are essential to the effective discharge by members of the Houses of their duties, are applicable to -

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- (a) the utterances in the Committee of the members, advisors, officials and agents of the Committee of Public Accounts;
 - (b) the utterances in the Committee of any persons sent for by the Committee to give evidence;
 - (c) the documents of the Committee and of its members prior to an order of the Dáil that they be laid before it; and
 - (d) any papers or records sent to the Committee at its request or of his own volition by any person prior to an order of the Dáil that such papers or records be laid before it.

It seemed to the Committee that if the sections of the Article did not apply, the effective conduct of the business referred to it by the Dáil might prove to be impossible, having regard to the nature of the examination which it must conduct.

4. The Committee adverted to the fact that in the report of the all-Party Committee on the Constitution it was stated that the following point had been referred to the Attorney General for examination by a legal committee under his chairmanship:-

The view was expressed that this section /section 12 of Article 15/ might not provide privilege in respect of utterances by the Public Accounts Committee and its members in the course of their duties. Privilege should be extended to the utterances and publications of all official Committees of the Oireachtas.

The opinion of the Attorney General's Committee has been made available to the Committee and is reproduced in Appendix 1. The Committee had engaged counsel to provide legal advice on some aspects of its procedure. The opinion of counsel on the point under consideration is reproduced in Appendix 2.

5. It will be seen from these documents that, although the Committee has been advised that it enjoys absolute privilege, the constitutional provisions may bear differing interpretations as to whether privilege attaches to the documents of the Committee before presentation to the House and to any papers, or records sent to the Committee at its request or of his own volition by any person prior to an Order of the Dáil for presentation and to utterances made in the Committee.

6. In the circumstances, and since it cannot adjudicate authoritatively on the issues the Committee has come to the conclusion that it would not be proper for it to proceed with the examination of the matter referred to it pending a resolution of the difficulty. Consideration of the legal opinions suggests that the matter can be resolved by legislation. Conscious of the Dáil's direction, that it should report on the matter referred to it as soon as possible, the Committee recommends the earliest adoption of this course for the favourable consideration of the Dáil.

7. During the Dáil debate on the motion referring the examination of the expenditure of the Grant-in-Aid to the Committee the question as to whether the Committee had power to compel attendance of witnesses was adverted to. No provision was made by the Dáil to settle the matter apparently on the basis that, if it transpired that lack of this power made the Committee's procedure inadequate, it would be open to the Committee to report back to the Dáil. The Dáil could then decide what action to take. Should the House now decide to take legislative action as suggested by the Committee, the Committee further suggests that the opportunity be taken to resolve this matter also.

8. In order that it may be in a position to proceed as soon as possible when the difficulties brought to attention have been resolved, the Committee has adopted a number of procedures to govern its examination. These procedures - which may of course be subject to review in the light of such action as the Dáil may see fit to take - are set out in Appendix 3. It will be noted that item (v) will require an Order of the Dáil.

Patrick Hogan

Chairman

15 December 1970.

Appendix 1

Advance extract from the report of the Attorney General's Committee on legal points referred to the Attorney General by the all-Party Committee on the Constitution.

Article 15.12 - Privilege of Committees of the Oireachtas

The Oireachtas Committee asked if Article 15.12 gave privilege in respect of utterances by the Public Accounts Committee and its members in the course of their duties, and stated that privilege should be extended to the utterances and publications of all official Committees of the Oireachtas.

The question is of importance primarily in connection with utterances at meetings of official Committees and reports of Committees to the Oireachtas which are not approved, or before their approval, by the Oireachtas. It is clear that when a Committee's report is adopted or published by the Oireachtas it becomes privileged. An official Committee is not identified with the House for most purposes. When under Standing Orders the Dáil goes into a Committee of the House, the Committee so constituted differs from other official Committees in that it has power to take decisions. On the other hand, a committee of a House is the alter ego of that House and has no constitutional existence separate from the House. It would be odd if official committees' publications were not privileged until adopted when both utterances of each House and utterances in each House by members are privileged (Article 15.12 and 13 respectively.) It was considered therefore that Committees are part of the House establishing them for this purpose, and that their official reports and publications and utterances made in Committees are privileged.

The question of committee privilege raises the related issue of whether witnesses giving evidence before House committees, if they are not members of either House, are privileged. As Article 15.13 gives members of the two Houses privilege in respect of "any utterance in either House", it suggests that the privilege given in respect of utterances made in either House by Article 15.12 is given to non-members. It would clearly be unfair if a witness before a House committee was not privileged and the members of the Committee were. Witnesses should not have more privilege than they would have before a court, but at present they may have less. The members of the present Committee were not satisfied that the privileged position of witnesses before an official Committee is sufficiently clear.

If it is desired to make it clear that House Committees or witnesses before House Committees are privileged, this could be done by ordinary legislation - unless, of course, it was felt that this privilege should be incorporated in the Constitution itself.

The Committee discussed what is meant by "privileged" in Article 15.12, and in particular whether this refers to absolute or qualified privilege. "Privileged" (saor ar chursáí dlí) in Article 15.12 may be different from "privileged from arrest" and "not ... amenable to any court" in Article 15.13, and under the latter provision a T.D. or Senator remains subject to the authority of the House in question. It is not clear whether a non-member would be subject to the authority of either House. "Saor ar chursáí dlí" suggests that a witness before a House Committee might not be subject to a prosecution for perjury if he gave perjured evidence. If Committees do not administer an oath, this problem will not arise.

It would be irrational if the legal privilege of select committees of the Houses of the Oireachtas depended on how they were constituted under the Standing Orders of the Houses, and there is no authority for saying that it does. At present select committees have no statutory standing. They are set up under the Standing Orders of the Houses, which in turn are authorised by Article 15.10 and 15.11.3^o of the Constitution. Under the Standing Orders of the two Houses select committees can take only such decisions as they are specially authorised to take. It follows that a select committee must be regarded as either an informal gathering of T.D.'s or Senators - a view which is quite inconsistent with Standing Orders - or as the alter ego of the House by which it is established. The latter view is borne out by Dáil Standing Order 67, which provides:-

"67. The Dáil may, on motion made after notice, appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the terms of reference to the Committee, define the powers devolved upon it, fix the number of members to serve on such Committee, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil."

Standing Order 55 of the Seanad is similar.

If a select committee is for legal purposes the alter ego of the House, it should be regarded as sharing the privileges of the House, and it is the view of the Committee that it does so. However, it would be desirable to make this clear by appropriate legislation.

Appendix 2

Re: The Committee of Public Accounts

Opinion

I am told that this opinion is requested by persons who are not lawyers, so an effort must be made to keep it simple.

There is a distinction in law between absolute and qualified privilege. Where a person is protected by absolute privilege in any circumstances he can say anything however reckless or defamatory e.g. he could call another person a thief or a murderer without any evidence or without the slightest belief in its truth.

Qualified privilege arises in certain circumstances the principal being:-

- (a) Statements made by a defendant in the discharge of a public or private duty.
- (b) Statements made on a subject matter in which both the defendant and the person to whom the statements are made have a legitimate common interest.

Qualified privilege can only be defeated if the plaintiff can move that the defendant was not using the occasion honestly for the purpose for which the law gave it to him but was actuated by some indirect motive not connected with the privilege e.g. malice in the popular acceptance of the term.

Under Article 15(12) and (13) of the Constitution official reports and publications of the Oireachtas or of either house thereof and utterances made in either house wherever published shall be privileged. The privilege conferred is absolute.

I am asked if similar privilege attaches to:-

1. The utterances of the members of the Committee of Public Accounts in the committee.
2. The utterances of persons sent for by the Committee and made to the Committee.
3. The documents of the Committee prior to an order of the Dáil that they be laid before it.
4. Any papers or records sent to the committee at its request or at the volition of any person prior to order of the Dáil that they be laid before it;

None of the foregoing could be classed as "utterances made in either House" nor could they be classed as "official reports or publications of the Oireachtas or of either House." However one strained the language of the Article it could not be said to extend absolute privilege to any of these matters.

We must now look outside the Constitution to see if ordinary substantive law would grant relief.

In Goffin v. Donnelly (1881) 6 Q. B. P.307 a defendant in a slander action pleaded that the statements complained of were part of the evidence given by him in the character of a witness before a Select Committee of the House of Commons. It was held that the statements were protected by absolute privilege. In the course of his judgment Field, J. stated:-

"It may be a hardship on individuals that statements of a defamatory nature should be made concerning them, but the interests of the individual are subordinated by the law to a higher interest, viz., that of public justice, to the administration of which it is necessary that witnesses should be free to give their evidence without fear of consequences".

This decision is cited with approval in the modern text books and I see no reason why it should not be followed in this country. The article in the Constitution ought not, in my opinion, be held to be comprehensive. I think, therefore, that on the reasoning of the decision, the four matters referred to me would be covered by absolute privilege.

Even if I were wrong in this, qualified privilege would clearly apply provided, of course, that the utterances or statements in documents or other papers were relevant to the purpose for which the Committee was set up and were not actuated by malice or some indirect motive not connected with the privilege.

15th December, 1970.

S. F. Egan.

Houses of the Oireachtas

Appendix 3

Procedures adopted by the Committee

- (i) The Committee will sit in public during the taking of evidence by it but, in consideration of the nature of the matter to be examined, it has empowered the Chairman at his discretion to exclude persons during the taking of certain evidence.
- (ii) The evidence of all persons examined before the Committee will be taken on oath or, for good reason, by affirmation.
- (iii) The Committee will allow witnesses to be accompanied, solely for the purpose of consultation, by counsel, solicitors or advisors as may be determined by the Committee in each relevant case. Such counsel, solicitors or advisors will not, however, be permitted to examine any witness nor to address the Committee.
- (iv) A request by a witness for good reason that his name be not published will be favourably considered.
- (v) After each sitting of the Committee the evidence taken and relevant documents will be published in unrevised form as soon as possible. (This will require an order for printing by the Dáil).
- (vi) The unrevised minutes of his evidence will be supplied to each witness, but if he desires to submit any corrections in it he must apply to the Committee who may re-examine him.
- (vii) Witnesses will be summoned by letter delivered to them personally or by registered post.
- (viii) Witnesses will be invited to furnish preliminary statements. They will also be requested to furnish in advance or if this is not practicable to bring with them to the Committee all relevant documents in their possession, power or procurement.
- (ix) Witnesses will be repaid their actual and necessary travelling expenses. They will also be paid subsistence allowances and allowance for loss of earnings in accordance with appropriate regulations. Expenditure incurred by witnesses arising from their being accompanied by counsel, solicitors or advisors will not be reimbursed to them.
- (x) The Comptroller and Auditor General will be invited to attend the Committee in an advisory capacity.
- (xi) Each person sent for will be supplied in advance with a copy of the interim report.