Works.[6] Extracts from four cases only are given to illuminate the complexities of the doctrine of *ultra vires*. Nothing at all is provided on such important grounds of judicial review as jurisdictional error, or error of law. Nothing is included on mandamus, or on the public law applications of the injunction or the declaratory judgment.

So, the first principal drawback concerns the selection of materials. As far as it goes, it is good, but there are too many important matters which are not covered adequately, or are not covered at all. No teacher of Constitutional and Administrative Law in England could rely on this book alone as the sole source of materials for his students, not, at any rate, if he wanted to give any reasonable account of Administrative Law.

The second principal drawback is a purely local matter. The book is a useful selection of materials in regard to law and convention in England. But for Australian purposes its usefulness is quite limited. Apart from the improvements one might hope to see in a second edition of the work, it would need, for local purposes, to be supplemented by a separate book dealing in a similar fashion with the law and practice in Australia.

On this note I return to Wilson's "notable virtue". I think his approach to the subject succeeds, even though his selection of materials is not, at this stage, fully adequate. It would certainly be worth the while of any Australian writer planning a case book on Constitutional and Administrative Law to follow Wilson's method of combining legal and non-legal materials while, perhaps, (if only for reasons of space) leaving most of the basic English materials to Wilson himself.

GARTH NETTHEIM*

Parliamentary Privilege in Australia, by Enid Campbell, Sir Isaac Isaacs Professor of Law, Monash University, Melbourne, Melbourne University Press, 1966. 218 pp. ($6.00 in Australia).

This is a valuable book and will be an essential acquisition for the book shelves of Members and officers of Parliament, journalists and others whose work brings them into any relationship with Parliament.

The main source material on parliamentary privilege has always been Erskine May's treatise on *The Law, Privileges, Proceedings and Usage of Parliament*; in addition, useful articles on applications of privilege appear regularly in *The Table—The Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments*. Only the latter has included references to Australian precedents. Now, thanks to Professor Campbell's industry, we have a work which not only expounds the origin of privilege, with references to British cases, but a work which covers the field of the law and application of privilege in Australia, at federal, State and territorial levels.

The matters selected for comment in this review are freedom of speech, Parliament's power to fine, and the question of the delegation to the courts of the power of Parliament to deal with certain contraventions of its privileges.

Parliamentary privilege means the special rights attaching to Parliament, its Members, and others, necessary for the discharge of the functions of Parliament. Undoubtedly, the best known privilege is that of freedom of speech, which is absolutely essential to a free Parliament's discharge of its functions.

[6] (1863) 14 C.B. (N.S.) 180; 143 E.R. 414.

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Any statement made by a Member in the course of the proceedings of Parliament is absolutely privileged. While conceding that freedom of speech in Parliament may be one of the cornerstones of democracy, Professor Campbell points out that it may lend itself to grave abuse. Perhaps this may have happened, but Professor Campbell went on to make the point—so often not known or not mentioned—that Members who abuse their right of freedom of speech are subject to the discipline of the House. That discipline could be censure, suspension or even expulsion. Federal parliamentarians, certainly, have generally shown a high regard for their responsibilities and when it has been demonstrated that they have erred they have made proper withdrawals. On a visit to Australia some years ago, Lord Campion (a former Clerk of the House of Commons) was asked by a journalist how the Commons view attacks made by Members, under cover of privilege, on persons outside the House. He replied:

> Attacks on private individuals are very severely frowned on, and, fortunately, they are quite rare. The member who made the attack would be challenged, not only by other members, but probably in the press, too, to repeat his statement outside. If he refused to do this he would be looked upon as a low down sort of chap. But a member is entitled to pillory public abuses, even if it involves naming individuals.
>
> The misuse of privilege for private spite is regarded in the Commons as a bit blackguardly. The Speaker would probably point out that freedom of speech had its responsibilities. He might say that the honorable member was using his right of free speech to the detriment of someone who could not reply.

While Members of Parliament have responsibilities in the exercise of their privileges, so on the other hand have people outside Parliament to respect the privileges of Parliament. Amongst other things, it is a high breach of privilege to utter, or publish, words slandering either House of the Parliament, its proceedings or its Members. The principle is that such acts tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them. Intimidation of Members and bribery are other examples of breaches of privilege. An offender may be admonished, reprimanded, or committed to gaol. Professor Campbell notes that certain States may impose fines. The federal Parliament, however, although it may declare its penal powers, still relies on section 49 of the Constitution which adopts *in toto* the powers, privileges and immunities of the House of Commons. Professor Campbell explains that, prior to 1666, the House of Commons exercised the power of imposing fines. She questions, and I think rightly, the efficacy of imprisonment as a form of punishment and suggests that "when the offender is a corporate body, which is mostly the case when newspapers are cited, fine rather than imprisonment is the only possible penalty". Standard works on the subject suggest that there is some doubt as to whether the Commons, and therefore the Australian federal Parliament as matters stand, possess the power to impose fines. But the authorities seem reluctant to say as a fact that the House of Commons does not possess the power to fine. As Dr. H. V. Evatt remarked in the House of Representatives during the debate on the Browne-Fitzpatrick case of 1955:

> That, however, does not, in itself prove that the power does not exist. It has fallen, as lawyers would say, into disuse or desuetude. But I do not agree that it has necessarily gone, and I say that if the Parliament is of the opinion that it is desirable, it could declare that there is power to inflict a fine.

Professor Campbell's criticism of imprisonment as a form of punishment for breach of privilege may well stimulate some review and declaration of Parliament's power to fine.

More complex than the question of Parliament's power to impose fines is Professor Campbell's contention that the power to impose criminal sanctions for certain breaches of privilege and contempts of Parliament should be transferred to the ordinary courts of law. This question got a good airing in the press in 1955 when the House of Representatives sent R. E. Fitzpatrick and F. C. Browne to gaol for three months for publishing articles intended to influence and intimidate a Member in his conduct in the House, and for deliberately attempting to impute corrupt conduct as a Member against him, for the express purpose of discrediting and silencing the Member. The House was criticised on the grounds that the accused were tried by interested parties, that they were not allowed legal representation, that the hearing was not open to press or public, that they were gaoled without right of appeal, that the punishment did not fit the crime, and that their punishment should have been determined in a court of law.

In reply, let it be said first that the history of parliamentary privilege is the history of the fierce and bloody struggle—in which a number of brave men lost their heads—to win the rights and freedoms which are enjoyed today and which are now part of our heritage. When people speak of handing over the custody of these great rights and freedoms to Crown appointed tribunals, it is timely to pause and remember our history. Parliament won its greatest fight for freedom when it resisted the armed raid on the Commons in 1642 by Charles I. in an attempt to arrest five Members who had been conspicuous in opposing Charles' arbitrary authority. The courts could not have helped then and never can when great issues of freedom are concerned. What must be remembered is that Parliament is the people and issues of freedom and the conduct of representative government can only be satisfactorily resolved by the people in Parliament assembled. Certainly Parliament may legislate to regulate and limit the powers of a court in matters of privilege, but the point is made that privilege and its custody form a special kind of law—there are issues of profound constitutional importance and symbolic meaning, of which Parliament is the trustee. Even if Parliament abused its trust, and it does not, the remedy would never be in some sort of weak surrender to the courts, but in the electoral sanction. Parliament in its beginnings functioned as a court of law and it is a nice reminder of its origin and struggles that in matters affecting the principles of freedom Parliament is still supreme.

A reasonable criticism of the foregoing comment is, well, if Parliament is the proper authority to deal with breaches of its privileges, why does it inquire into such matters in a way which was described during the Browne-Fitzpatrick affair as "Star Chamber" secrecy? Professor Campbell's view is that such committee hearings should be held in public and the evidence published in full. She is, I think, quite right. How can one argue otherwise? Closed meetings of parliamentary committees, except when the committees are deliberating, are indefensible and they set a bad example to other agencies of government. Parliament itself is conducted in the open and, leaving aside questions of national security, it is difficult to find support for closed committee hearing, which after all are proceedings in Parliament. And in the words of a distinguished United States Senator: "Congress is the people's branch and has a responsibility to the people to act as far as possible in a goldfish bowl".

But whether privilege inquiries by Parliament should be conducted in the open, whether counsel should be allowed, whether the evidence should be published in full, are matters of procedure. Professor Campbell presents a strong affirmative case and she is probably right. But whether Parliament should hand over its consideration of questions of privilege to the courts is a great issue of principle. It is my strong conviction that Parliament should

be its own arbiter. To pronounce on matters of privilege one needs to know Parliament: it is not something which can be taught or learned from books and statutes. One needs to live amongst it, to breathe the atmosphere of Parliament, to be steeped in its history, traditions and meaning. Let the courts look after their contempts and Parliament after theirs. When dignity is assailed—and that is what privilege is all about—it is best resolved by the parties to the indignity.

Support is found for this view in Lord Campion's *An Introduction to the Procedure of the House of Commons*:

> Breach of privilege is contempt of the High Court of Parliament, and the power to punish the commission of it rests, as in the case of the courts, upon the inherent power of an authority to do all that is necessary to maintain its own dignity and efficiency. The courts do not check each other in committing for contempt, and on the whole the accepted doctrine is that they do not interfere with the action of either House in this matter.[1]

For her scholarly work we are much indebted to Professor Campbell, not only for her factual account of the law of privilege, but also for her criticisms, which whether one agrees with them or not represent a valuable contribution to thought on a complex subject of public importance.

J. R. ODGERS*

Moss: Sale of Land and Conveyancing Costs in New South Wales, by E. A. Francis, Sydney, Butterworth & Co. (Aust.) Ltd., (4 ed.) 1967. 663 pp. ($12.75 in Australia).

Some 104 years after the introduction of the Torrens System of title in New South Wales, conveyancing is still becoming an increasingly complex art. The current legislation to bring old system titles under the Real Property Act automatically, highly desirable as it is, will only slightly simplify the practice of the conveyancer.

In recent years legislation has introduced a new form of title (Conveyancing (Strata Titles) Act 1961) and has regulated certain sales of land on terms (Land Vendors Act 1964). In addition, legal restriction on the use of land and statutory charges on land for rates and taxes have become more complex thus multiplying the number of enquiries and searches which the conveyancer must make before a completion of a purchase.

As well as being familiar with all these matters, the competent conveyancer must appreciate the detail of the rules of contract law particularly applicable to contracts for the sale of land.

As a result of all these factors, the conveyancer has become concerned with much more than the procedure for vesting the vendor's title in the purchaser. This tendency is reflected in the latest edition of *Moss on Sale of Land* which lives up to the reputation acquired by the previous editions as a valuable manual of conveyancing practice.

The Fourth Edition of *Moss* takes account of the revised form of contract of sale prepared for the Law Society of New South Wales and the Real Estate Institute of New South Wales and contains detailed notes on the provisions of that form. It also includes a discussion of the Land Vendors Act, an

[1] 2 ed. (1947) at 70-71.

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