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HOUSE OF LORDS

BRITISH RAILWAYS BOARD AND OTHERS

v.

PICKIN

Lord Reid
Lord Morris of Borth-y-Gest
Lord Wilberforce
Lord Simon of Glaisdale
Lord Cross of Chelsea

Lord Reid

MY LORDS,

Our Railway system was built up piecemeal during the nineteenth century. Generally promoters obtained from Parliament private Acts authorising comparatively short stretches of Railway and giving compulsory powers to acquire the necessary land. Before 1845 there was no uniformity in the provision of these Acts but many, we were informed about a hundred, contained provisions to the effect that if the proposed railway was abandoned or discontinued the land acquired for it would revert to the owners for the time being of adjoining land. If the land on opposite sides of the railway had different owners each would get half of the railway land between their properties. Apparently such provisions were no longer inserted in private Bills after 1845.

The Appellants' title to a substantial amount of their railway land flows from these old pre-1845 Acts. When, some years ago, it became evident

that numerous stretches of railway would have to be closed down, they realised that some of these old reverter provisions would take effect unless they obtained new rights from Parliament. So they promoted a Bill which, on 26th July, 1968, became the British Railways Act, 1968. Chapter xxxiv, section 18, of that Act provides: —

" 18.—(1) As from the passing of this Act, the provisions to which " this section applies shall not apply to any lands vested in the Board.

" (2) This section applies to any provision in an enactment to the " effect that, if at any time after the coming into force of that pro- " vision a railway or part of a railway shall be abandoned or given " up, or if after the same shall have been completed it shall cease " (whether for a specified period or not) to be used or employed as a " railway, the lands taken for the purposes of such railway or part " of a railway, or over which the same shall pass, shall vest in the " owners for the time being of the adjoining lands, being a provision " in an enactment relating to an existing or former railway or part " of a railway comprised in the undertaking of the Board and not being " a provision for the protection or benefit of a named person or the " successors of a named person or for the protection of the owner, " lessee or occupier of specified lands."

For reasons which will appear later it would not be proper to make any decision as to the proper construction of that section. But I can say that at first sight it appears to take away without compensation all rights of adjoining owners to a reversion of land to them on the closing down of any part of our railway system.

The Respondent is interested in the preservation of railways and in order to be in a position to test the Appellants' right in court he took advantage of the closing of the Clevedon Yatton branch line in Somerset, and on 20th October. 1969, purchased for ten shillings from the owner of lands adjoining the railway

". . . ALL THAT his estate and interest in All that piece of land " and track formerly part of the Yatton to Clevedon Branch Railway " Line of British Rail Together with the fixtures and appurtenances " attached thereto including the metal rails the sleepers and the ballast " laid on the said track TO HOLD the same unto the Purchaser in " fee simple ".

Then on 23rd October, 1969, he raised the action with which we are concerned. He founds on section 259 of the Bristol and Exeter Railway Act, 1836, which is in these terms: —

" If the said Railway or any part thereof shall at any time hereafter " be abandoned or given up by the said Company, or after the same " shall have been completed shall for the space of three years cease to " be used and employed as a Railway, then and in such case the " lands so purchased or taken by the said Company for the purposes " of this Act, or otherwise the parts thereof over which the said Rail- " way or any part of such railway which shall be so abandoned or

" given up by the said Company shall pass, shall vest in the owners
" for the time being of the land adjoining that which shall be so
" abandoned or given up in the manner following; (that is to say) One
" moiety thereof in the owners of the land on the one side, and the
" remainder thereof in the owners of the land on the other side thereof."

He has two alternative grounds of action. First he says that under section 259 this piece of railway land reverted to his predecessor in title and now belongs to him because, on the facts, this section came into operation before the passing of the 1968 Act which repealed it. That is denied by the Appellants and admittedly that issue must go to trial whatever be the outcome of the present case.

The Respondent's alternative ground of action is not easy to state concisely. He appears to allege that in obtaining the enactment of section 18 of the 1968 Act in their favour they fraudulently concealed certain matters from Parliament and its officers and thereby mislead Parliament into granting this right to them.

This case arises because by Summons of 18th January, 1972, the Appellants sought an Order that part of the Respondent's pleadings be struck out under Order 18, Rule 19, on the ground that it is frivolous and vexatious and that it is an abuse of the process of the Court. Thereupon by order of the Master in Chambers of 21st February, 1972, paragraphs 3 and 4 of the Respondent's amended reply were struck out. These were the parts which raised the Respondent's alternative grounds of action. An appeal to Chapman J. was dismissed. But a further appeal to the Court of Appeal was allowed on 3rd October, 1972, and the Appellants now appeal to this House to have the order of the Master restored.

I do not think it necessary to set out these paragraphs in full because admittedly the position now is that if by amendment of these paragraphs the Respondent can plead an arguable case he is entitled to succeed and to have this issue sent to trial,

As the Respondent's case developed in argument it appeared that he seeks one or other of two methods of relief against section 18. First he says that section 18 confers a benefit on the Appellants and that if he can prove that Parliament was fraudulently misled into enacting this benefit the Court can and should disregard the section. And, secondly, he says that even if the Court cannot do that and the section has taken effect, the Court can on proof that Parliament was so misled nullify the resulting benefit to the Appellants by requiring them to hold in trust for him the benefit which the section has given to the Appellants to his detriment.

The idea that a Court is entitled to disregard a provision in an Act of Parliament on any ground must seem strange and startling to anyone with any knowledge of the history and law of our Constitution, but a detailed argument has been submitted to your Lordships and I must deal with it.

I must make it plain that there has been no attempt to question the general supremacy of Parliament. In earlier times many learned lawyers seem to have believed that an Act of Parliament could be disregarded in so far as it was contrary to the law of God or the law of nature or natural

justice but since the supremacy of Parliament was finally demonstrated by the Revolution of 1688 any such idea has become obsolete.

The Respondent's contention is that there is a difference between a public and a private Act. There are of course great differences between the methods and procedures followed in dealing with public and private Bills, and there may be some differences in the methods of construing their provisions. But the Respondent argues for a much more fundamental difference. There is little in modern authority that he can rely on. The mainstay of his argument is a decision of this House, *Mackenzie v. Stewart* in 1754.

The case is reported in Morisons Dictionary of Decisions 7443 and 15459 and in this House 1 Paton, 578, and a number of documents in connection with this case have been preserved. The facts are not altogether clear but I think I can state them in this way. In 1688 the Earl of Cromarty disponed the lands of Royston to his third son Sir James Mackenzie (who became Lord Royston) and the heirs male of his body whom failing, to his second son Sir Kenneth Mackenzie and the heirs male of his body whom failing, to other substitutes. This was a strict entail containing prohibitory irritant and resolutive clauses against altering the order of succession, contracting debts and selling or disponing the lands. The deeds contained a provision obliging Sir James and the heirs of entail to pay 20,000 Merks to Lady Anne Mackenzie. This debt appears to have been paid or discharged.

Lord Royston wanted to free himself from the fetters of the entail. To do that he had to get an Act of Parliament which authorised the sale of the lands. To get such an Act he had to shew that the lands were so burdened with debts that selling them and paying off the debts was the only or at least the best way of dealing with the situation. In fact, the lands were not burdened with any debts. So he was a party to the creation of a fictitious bond antedated to 1688 in favour of Lady Anne for 20,000 Merks and, in a manner not clear, he made it appear that a bond in favour of Lundie for 8,250 Merks was a valid burden on the lands. Further he made it appear that there were large arrears of interest on these bonds so that in all 51,350 Merks Scots or £2,852 sterling was recoverable out of the estate.

Then he succeeded in 1739 in obtaining the Act 12 Geo. II, chap. vii. The Act in a long preamble narrated the existence of those debts and stated that it would be for the advantage of all concerned that the lands should be sold and the debts paid. Then it enacted that the land should be sold

and

> " that the Monies arising by such Sale or Sales, should be vested in,
> " and settled upon, and the same were thereby vested in the said Trustees,
> " or any two or more of them, or the Survivor, or any two or more of
> " them, should and would, immediately after such Sale or Sales, or as
> " soon after as conveniently might be, apply and dispose of the Monies
> " arising by such Sale or Sales, in the first Place, for paying and defray-
> " ing the Charges and Expenses attending the passing this Act; and
> " afterwards, and in the next place, to pay off and discharge the said

" Sum of 51.350 Merks Scots, or 2852. 15s. 6d. Sterling with which the
" said Premises stood then charged and incumbered as aforesaid, with
" the Arrears of Interest; and should, with the like Privity and Consent.
" lay out the Residue and Surplus of the Money arising by such Sale,
" in the Purchase of other Lands and Hereditaments in Fee Simple ;
" and which said other Lands and Hereditaments so to be purchased.
" should immediately after such Purchase or Purchases as aforesaid,
" be settled, disponed, and provided to and for the Use and Behalf of the
" said *Sir James Mackenzie* of *Royston,* and the other surviving Heirs
" of Entail, according to the different Rights and Interests, and in the
" same Order and Course of Succession, secured, ascertained, and estab-
" lished to and for them respectively in and by the said Deed of Tailzie,
" as far as the same might be capable of taking Effect, with the Powers.
" and subject to the Restrictions and Limitations therein contained ; and
" in the mean time, until such Purchase could be made, to place out
" such Residue or Surplus at Interest upon real or other sufficient
" Security."

Lord Royston had so contrived matters that the beneficial interest in these supposed debts had vested in himself. So when the lands were sold he simply put the purchase price in his own pocket.

Some time after Lord Royston's death, Sir Kenneth Mackenzie who would have been the heir of entail in possession if the lands had not been sold brought an action against Stewart the grandson and heir of Lord Royston requiring him to account for the money which Lord Royston had wrongfully obtained. In the Court of Session Stewart did not attempt to dispute these facts. His plea was that Parliament had found the facts narrated in the preamble to be true and that it was incompetent for any Court to reopen the matter. Mackenzie's plea was that the Act did not require these debts to be paid whether due or not.

" Had the Act of Parliament said, that these Sums should be paid
" to the nominal Creditors, whether they were Creditors or not, the
" Pursuer would not pretend to dispute the Authority of Parliament.
" But the Act has neither said so, nor was it so intended by the
" Legislature."

1 quote from the Information, a written pleading submitted to the Court of Session.

It is rare to find any reasons reported for decisions of that period and there is no report of anything except the Interlocutor of the Court of Jst July, 1752.

" The Lords found. That those debts that, by act of Parliament,
" are appointed to be paid out of the price of the estate of Royston
" must be stated to exhaust the said price; and that, the price of the
" estate being exhausted by those debts, there is no ground for a further
" count and reckoning."

We have the Cases submitted by the parties when the case was appealed to this House. They are not so clear as the pleadings in the Court of Session but they appear to me to raise the same arguments.

The Journals of the House of Lords of 14th March, 1754. state that the case was argued in two days and set out the Order of the House.

> " It is ORDERED and Adjuged, by the Lords Spiritual and Temporal
> " in Parliament assembled. That the said Interlocutor complained of
> " in the said Appeal be, and the same is hereby, reversed ; and that the
> " Interlocutor of the Lord Ordinary, of the 20th of *January* 1747, be,
> " and the same is hereby, affirmed: And it is hereby further ORDERED,
> " That the Court of Session in *Scotland* do proceed thereupon, accord-
> " ing to Justice and the Rules of that Court, without Prejudice to any
> " Question that may hereafter arise, concerning the Relief to which
> " the Appellant may be entitled, and against what Persons or Subjects
> " such Relief (if any) ought to be extended."

The Interlocutor of the Lord Ordinary referred to allowed Mackenzie to prove that the debts narrated in the Act were fictitious.

At that period there were no contemporary reports of Scots appeals in this House. It would seem that quite often no other peer with legal experience sat with the Lord Chancellor and it seems to me to be probable that frequently no formal speech giving reasons was made at the conclusion of the argument. In comparatively few cases there have been preserved observations made in the House: sometimes these appear to have been observations made in the course of the argument. In the present case we have a note made by Lord Kames in his Select Decisions reported in Morison at p. 7445:

> " The Lord Chancellor, in delivering his opinion, expressed a good
> " deal of indignation at the fraudulent means of obtaining the act; and
> " said, that he never would have consented to such private acts, had he
> " ever entertained a notion that they could be used to cover fraud."

Lord Kames' Select Decisions cover the earlier period of his long tenure of office as a judge. We do not know how he came to add this passage at the end of his report of the case in the Court of Session. He must have got it, perhaps at second hand, from someone present during the arguments: so these observations may have been made during the argument or in a speech. Lord Hardwicke was, I think, Lord Chancellor both in 1754 and in 1739 when the Act was passed, so he may have had some part in passing the Act. In any case I do not read his observations as indicating the ground of decision but rather as a comment on what took place when the Act was passed.

I must notice some other comments in the case made within a few years after its decision. Lord Elchies in an appendix to a work on Tailzie says with regard to the case (No. 46): " *vide* Lord Chancellor's speech with the " cases by which it seems that notwithstanding such private acts fraud either

" in obtaining them or in the execution may be tried as well as in private " contracts ". Again, we do not know what information Lord Elchies had about the case. The facts must have been generally known but no detailed account of proceedings in this House would have been available.

We were also referred to some observations by the judges who took part in the *Magistrates of Dumbarton* v. *Magistrates of Glasgow* (1771) M. 14769. Lord Hailes in his Reports at p. 446 gives short notes of the opinions of the judges who sat with him in hearing the case. Lord Kames is reported as saying:

> " In the case of *Royston* an Act of Parliament said that debts were " true debts. The Courts here would not find the contrary. But this " judgment was reversed upon Lord Hardwick's opinion "

and the Lord President is reported as saying:

> " The case of *Roystoun* is not in point; for there was a private Act " of Parliament upon a false narrative. The heir of entail was found " to have right to the value of the subject, because the debts of the " entailer were fictitious. Yet still the Court could not have stopped " the execution of the Act of Parliament because it proceeded upon a " false narrative."

I do not think that any of these observations can be relied on as indicating what was Lord Hardwicke's ground of judgment.

My noble and learned friend, Lord Wilberforce, has dealt with Blackstone's comments on the case. He gives no citation except the Journal of this House and it is impossible to get from the entry which I have quoted any indication of the grounds of the judgment.

It appears to me that far the most probable explanation of the decision is that it was a decision as to the true construction of the Act. The operative provision was " to pay off and discharge the said sum of 51,350 Merks Scots " or £2.582 Sterling with which the said premises stood then charged and "encumbered as aforesaid with the arrears of interest." This is I think easily susceptible of the construction that if there were no sums with which the premises were encumbered then there was nothing to pay off. There was no direction to pay off anything except encumbrances and if there were no encumbrances the direction had no operative effect. That was the argument for Mackenzie and it seems to me much more likely that Lord Hardwick adopted it than that he laid down some new constitutional principle that the Court had the power to give relief against the provision of a statute.

If the decision was only as to the construction of a statutory provision that would explain why the case has received little attention in later cases. I do not think it necessary to refer to the few later references to the case which have been unearthed by the researches of counsel. And I shall not repeat what is said by my noble and learned friends about other cases relied on by the Respondent. If *Mackenzie* v. *Stewart* is found to afford no support to the Respondent's argument the rest of the authorities are negligible.

In my judgment the law is correctly stated by Lord Campbell in *Edinburgh and Dalkeith Railway Co. v. Wauchope* (1842) 8 Cl. & F. 710; 1 Bell 252. Mr. Wauchope claimed certain wayleaves. The matter was dealt with in a private Act. He appears to have maintained in the Court of Session that the provisions of that Act should not be applied because it had been passed without his having had notice as required by Standing Orders. This contention was abandoned in this House. Lord Brougham and Lord Cottenham said that want of notice was no ground for holding that the Act did not apply. Lord Campbell based his opinion on more general grounds. He said:

> " My Lords, I think it right to say a word or two before I sit down,
> " upon the point that has been raised with regard to an act of Parliament
> " being held inoperative by a court of justice because the forms, in
> " respect of an act of Parliament, have not been complied with. There
> " seems great reason to believe that notion has prevailed to a consider-
> " able extent in Scotland, for we have it here brought forward as a
> " substantive ground upon which the act of the 4th and 5th William
> " the Fourth could not apply: the language being, that the statute of
> " the 4th and 5th William the Fourth being a private act, and no
> " notice given to the pursuer of the intention to apply for an act of
> " Parliament, and so on. It would appear that that defence was
> " entered into, and the fact was examined into, and an inquiry, whether
> " notice was given to him personally, or by advertisement in the
> " newspapers, and the Lord Ordinary, in the note which he appends
> " to his interlocutor, gives great weight to this. The Lord Ordinary
> " says ' he is by no means satisfied that due parliamentary notice was
> " ' given to the pursuer previous to the introduction of this last act.
> " ' Undoubtedly no notice was given to him personally, nor did the
> " ' public notices announce any intention to take away his existing
> " ' rights. If, as the Lord Ordinary is disposed to think, these defects
> " ' imply a failure to intimate the real design in view, he would be
> " ' strongly inclined to hold in conformity with the principles of Donald,
> " ' 27th November, 1832, that rights previously established could not
> " ' be taken away by a private act, of which due notice was not given
> " ' to the party meant to be injured.' Therefore, my Lord Ordinary
> " seems to have been most distinctly of opinion, that if this act did
> " receive that construction, it would clearly take away the right to
> " this tonnage from Mr. Wauchope, and would have had that effect if
> " notice had been given to him before the bill was introduced into
> " the House of Commons ; but that notice not having been given, it
> " could have no such effect, and therefore the act is wholly inoperative.
> " I must express some surprise that such a notion should have prevailed.
> " It seems to me there is no foundation for it whatever; all that a
> " court of justice can look to is the parliamentary roll; they see that an
> " act has passed both Houses of Parliament, and that it has received
> " the royal assent, and no court of justice can inquire into the manner
> " in which it was introduced, or what passed in parliament during the
> " various stages of its progress through both Houses of Parliament. I
> " therefore trust that no such inquiry will hereafter be entered into in

" Scotland, and that due effect will be given to every act of Parliament,
" both private as well as public, upon the just construction which appears
" to arise upon it."

No doubt this was *obiter* but so far as I am aware no one since 1842 has doubted that it is a correct statement of the constitutional position.

The function of the Court is to construe and apply the enactments of Parliament. The Court has no concern with the manner in which Parliament or its officers carrying out its Standing Orders perform these functions. Any attempt to prove that they were misled by fraud or otherwise would neces sarily involve an enquiry into the manner in which they had performed their functions in dealing with the Bill which became the British Railways Act, 1968.

In whatever form the Respondent's case is pleaded he must prove not only that the Appellants acted fraudulently but also that their fraud caused damage to him by causing the enactment of section 18. He could not prove that without an examination of the manner in which the officers of Parliament dealt with the matter. So the Court would, or at least might, have to adjudicate upon that.

For a century or more both Parliament and the Courts have been careful not to act so as to cause conflict between them. Any such investigations as the Respondent seeks could easily lead to such a conflict, and I would only support it if compelled to do so by clear authority. But it appears to me that the whole trend of authority for over a century is clearly against permitting any such investigation.

The Respondent is entitled to argue that section 18 should be construed in a way favourable to him and for that reason I have refrained from pronouncing on that matter. But he is not entitled to go behind the Act to shew that section 18 should not be. enforced. Nor is he entitled to examine proceedings in Parliament in order to shew that the Appellants by fraudulently misleading Parliament caused him loss. I am therefore clearly of opinion that this appeal should be allowed and the judgment of Chapman J. restored.

Lord Morris of Borth-y-Gest

My lords,

The question which is before us is whether paragraphs 3 and 4 of the Amended Reply should be struck out in accordance with the Order made by the Master and affirmed by the Judge. There are certain issues of fact in the action which are not affected by those paragraphs. The Plaintiff asserts that the provisions of section 259 of the Bristol and Exeter Railway Act. 1836, were applicable to the track of the Clevedon-Yatton Railway line and that the Railway was abandoned or given up or for three years had ceased to be used and that as a consequence a very small part of the

track came into the ownership of a Mr. Keevill who for a consideration of ten shillings sold that part to the Plaintiff on the 20th October, 1969. If certain issues of fact are decided adversely to the Plaintiff then he will be in great difficulty if, as the British Railways Board assert, the provisions of section 259 ceased to apply to the track as from the 26th July, 1968, as a result of the enactment on that date of the British Railways Act, 1968. Section 18(1) of that Act is in the following terms :-

" As from the passing of this Act, the provisions to which this
" section applies shall not apply to any lands vested in the Board."

Subsection (2) appears to describe such provisions in such a way as to include section 259.

In their defence to the Plaintiff's claims in the action British Railways Board have pleaded that in so far as the Plaintiff's purported ownership of the piece of land in question was alleged to rest on the provisions of section 259 his claim to ownership was invalid by reason of the provisions of section 18 of the Act of 1968. It was in order to meet the prospect of defeat by reason of those provisions that paragraphs 3 and 4 of the Reply were drafted.

In my view, it is beyond question that the substance of the plea advanced by the two paragraphs is that the Court is entitled to and should disregard what Parliament has enacted in section 18. The question of fundamental importance which arises is whether the Court should entertain the proposition that an Act of Parliament can so be assailed in the Courts that matters should proceed as though the Act or some part of it had never been Passed. I consider that such doctrine would be dangerous and impermissible. It is the function of the Courts to administer the laws which Parliament

has enacted. In the processes of Parliament there will be much consideration whether a Bill should or should not in one form or another become an enactment. When an enactment is passed there is finality unless and until it is amended or repealed by Parliament. In the Courts there may be argument as to the correct interpretation of the enactment: there must be none as to whether it should be on the statute book at all.

In paragraph 3 of the Amended Reply there is an allegation that a recital in the preamble was false. Whether on a fair reading of the whole Act this is arguable has not now to be decided. There follows an allegation of fraud (i.e. that the British Railways Board knew that there was a false recital) and an allegation that no notice was given of " intended compulsory " acquisition ". Whether or not it is apt to describe the effect of section 18 as compulsory acquisition does not now arise. But whether or not there are any points of construction of the Act that can be formulated, what paragraph 4 of the Amended Reply proceeds to assert is (a) that the British Railways Board broke the standing orders of Parliament and (b) failed to comply with the standing orders of Parliament and (c) included a misleading preamble and (d) " misled Parliament " and (e) obtained *ex parte* as an unopposed Bill an Act which was solely for their benefit, and that as a result " the Act is ineffective to deprive the Plaintiff of his land and proprietary

" rights " and furthermore that the British Railways Board " cannot rely " on the Act.

Though here and there in the two paragraphs there occurs the word " construction " I do not think that it can be doubted that the effect and the purpose of the two paragraphs is to assert that the Courts could and should for the reasons which I have set out under (a) to (e) above disregard certain enacting provisions of the Act which is cited as the British Railways Act, 1968, and which as is recited in the Act was "enacted by the Queen's most " Excellent Majesty, by and with the advice and consent of the Lords " Spiritual and Temporal, and Commons, in this present Parliament " assembled, and by the authority of the same." While any legitimate point may be taken as to the proper construction of what Parliament has enacted I have no doubt that paragraphs 3 and 4 of the Amended Reply should not be allowed to stand inasmuch as they assert and claim the exercise by the Courts of a power to disregard what Parliament has enacted.

There is a clear distinction between recitals to an Act which are mere recitals and the enacting provisions of an Act. The recitals may be examined when the enacting provisions are being construed but even if in some particular instance the recitals to an Act were thought to be faulty that would give no warrant for disobeying or ignoring or varying the clear enacting provisions of an Act.

Nor, in my view, should any redrafted pleading be allowed which revives in altered form an attack upon the validity of the enacting provisions of an Act of Parliament. Nor, in my view, should the same attack be allowed in shrouded form by asserting that if the Act is effective and if as a consequence some rights were taken away from some people, British Railways Board should hold their lands subject to some style of burden or equity on the basis that Parliament ought not to have enacted as it did and only did so enact as a result of what the two paragraphs of the Amended Reply alleged.

We are not in the present case concerned with any question as to any possible personal rights resulting from some contract or arrangement made between parties in relation to or in connection with some prospective legislation.

The conclusion which I have reached results, in my view, not only from a settled and sustained line of authority which I see no reason to question and which I should think be endorsed but also from the view that any other conclusion would be constitutionally undesirable and impracticable. It must surely be for Parliament to lay down the procedures which are to be followed before a Bill can become an Act. It must be for Parliament to decide

whether its decreed procedures have in fact been followed. It must be for Parliament to lay down and to construe its standing orders and further to decide whether they have been obeyed: it must be for Parliament to decide whether in any particular case to dispense with compliance with such orders. It must be for Parliament to decide whether it is satisfied that an Act should be passed in the form and with the wording set out in the Act. It must be

for Parliament to decide what documentary material or testimony it requires and the extent to which Parliamentary privilege should attach. It would be impracticable and undesirable for the High Court of Justice to embark upon an enquiry concerning the effect or the effectiveness of the internal procedures in the High Court of Parliament or an enquiry whether in any particular case those procedures were effectively followed.

Clear pronouncements on the law are to be found in a stream of authorities in the 19th century. In *Edinburgh Railway Co.* v. *Wauchope* in (1842) 8 Cl. & F. 710 points of construction called for decision but in the course of the proceedings a point was taken to the effect that a private Act which affected a vested right could not be made applicable to a person who had had no notice served upon him of the introduction of the Bill. Though the point was abandoned in this House Lords Brougham, Cottenham and Campbell felt that it was important to make it clear that any such doctrine was wholly without foundation. Lord Campbell expressed his surprise that such a notion should ever have prevailed.

> " There is no foundation whatever for it. All that a Court of
> " Justice can do is to look to the Parliamentary roll: if from that it
> " should appear that a bill has passed both Houses and received the
> " Royal Assent, no Court of Justice can inquire into the mode in
> " which it was introduced into Parliament, nor into what was done
> " previous to its introduction, or what passed in Parliament during its
> " progress in its various stages through both Houses. I trust, therefore,
> " that no such inquiry will again be entered upon in any Court in
> " Scotland, but that due effect will be given to every Act of Parliament,
> " private as well as public, upon what appears to be the proper
> " construction of its existing provisions ".

In pursuance of that pronouncement were the words of Cockburn C.J.

when in 1859 in *The Earl of Shrewsbury* v. *Scott* 6 C.B. (N.S.) 1 he said

(at p. 160)—

> " These observations illustrate the question which is now before us.
> " and make it clear that, if an act of parliament, by plain, unambiguous,
> " positive enactment, affects the rights even of parties who were not
> " before the House (those parties being clearly pointed out by the bill,
> " and expressly excepted from the saving clause), it is not for a court
> " of law to consider whether the forms of parliament have been pursued,
> " whether those provisions which the wisdom of either House of
> " Parliament has provided for the prevention of any deception on itself.
> " or of injury to the rights of absent parties, have been followed: it is
> " enough for us if the provisions of the act are clear, express, and
> " positive: if they are, we have only to carry the act into effect."

In the earlier case of *Waterford Railway Company* v. *Logan* 14 Q.B. 672 the Court disallowed a plea that an Act of Parliament was obtained by the fraud of the Plaintiffs.

Of equal clarity was the passage in the judgment of Willes J. in 1871 when in *Lee* v. *Bude and Torrington Junction Railway Co.* L.R. 6 C.P. 576 (in

which case it was alleged that Parliament had been induced to pass an Act by fraudulent recitals) he said (at p. 582)—

" Are we to act as regents over what is done by parliament with
" the consent of the Queen, lords and commons? I deny that any such
" authority exists. If an Act of Parliament has been obtained
" improperly, it is for the legislature to correct it by repealing it: but,
" so long as it exists as law. the Courts are bound to obey it. The
" proceedings here are judicial, not autocratic, which they would be if
" we could make laws instead of administering them."

In *Labrador Company v.. The Queen* [1893] A.C. 104 Lord Hannen in delivering the Judgment of the Privy Council said (at p. 123):

" Even if it could be proved that the legislature was deceived, it would
" not be competent for a court of law to disregard its enactments. If
" a mistake has been made, the legislature alone can correct it."

This statement of principle was accepted and applied in the Judgment of the Privy Council in *Tukino* v. *Aotea District Maori Land Board* [1941] A.C. 308 (see p. 322) where Viscount Simon L.C. in delivering the Judgment of the Board further said—

" It is not open to the court to go behind what has been enacted by
" the legislature, and to inquire how the enactment came to be made.
" whether it arose out of incorrect information or, indeed, on actual
" deception by someone on whom reliance was placed by it. The court
" must accept the enactment as the law unless and until the legislature
" itself alters such enactment, on being persuaded of its error."

Unless the authority of these pronouncements is for some reason to be eroded there cannot be a triable issue in the Courts whether an Act of Parliament was improperly obtained.

It has, however, been contended that the firm rule that the Courts must accept and give full binding effectiveness to an Act of Parliament relates only to public general Acts and that this results from a consideration of the case of *McKenzie* v. *Stewart.* The various accounts and reports of that case were very fully examined in the course of the submissions made in the present case. Though much documentary material exists there is no record of any reasons which may have been expressed in this House. Though Blackstone stated somewhat ambiguously that a private Act obtained upon fraudulent suggestions had "been relieved against". I do not think that the decision in the case involved that any departure had been made from the enacting provisions of the Act in question. I have had the advantage of reading and considering the speech of my noble and learned friend, Lord Reid, with its lull examination of the case and I am in entire agreement with the conclusions expressed. The case gives no basis for any suggestion that there is any limitation to public general Acts of the rule that the Courts must give full binding effectiveness to the enacting provisions of an Act of Parliament. As was said in 1842 in *Edinburgh Railway Co.* v. *Wauchope (supra)* due

effect must be given to every Act of Parliament " private as well as public " upon what appears to be the proper construction of its existing provisions. The case of *Green v. Mortimer* (1865) 3 L.T. 642 is no authority to the contrary. An Act had included a provision which the Lord Chancellor described as " quite absurd " because it purported to give the court power to do that which was quite impossible.

In the result I have not been persuaded that any doubt has been cast upon principles which are soundly directed as being both desirable and reasonable and which furthermore have for long been firmly established by authority.

1 would allow the appeal and restore the order made by the learned judge.

Lord Wilberforce

MY LORDS,

The nature and history of Mr. Pickin's claim in this action, and its legal foundation, have been stated by my noble and learned friend, Lord Reid. Clearly this claim to a few yards of one railway line, under an Act of 1836, acquired for 10s. by a private citizen, against the British Railways Board, fortified by an Act of Parliament of 1968 which can make claims invalid, which is the very stuff of which constitutional law is made. But I regret—and I use the word because it is legitimate to admire a courageous assertion of individual right—that Mr. Pickin has no case in this respect. The idea, which seems to have had some currency, mainly in Scotland, that an Act of Parliament, public or private, or a provision in an Act of Parliament, could be declared invalid

or ineffective in the Courts on account of some irregularity in Parliamentary procedure, or on the ground that Parliament in passing it was misled, or on the ground that it was obtained by deception or fraud, has been decisively repudiated by authorities of the highest standing from 1842 onwards. The remedy for a Parliamentary wrong, if one has been committed, must be sought from Parliament, and cannot be gained from the Courts. The law in my opinion is correctly summed up in Halsbury's Laws of England 3rd Ed. vol. 36 p. 378 in these words:

> " If a Bill has been agreed .to by both Houses of Parliament, and
> " has received the Royal Assent, it cannot be impeached in the Courts
> " on the ground that its introduction or passage through Parliament,
> " was attended by any irregularity or even on the ground that it was
> " obtained by fraud."

The authorities on which this paragraph is based include *Edinburgh & Dalkeith Railway Co.* v. *Wauchope* (1842) 8 Cl. & F. 710, *Stead* v. *Carey* (1845) 1 C.B. 496, 516, *Waterford Railway Co. v. Logan* (1850) 14 Q.B. 672, *Lee* v. *Bude & Torrington Railway* L.R. 6 C.P. 576, 592 per Willes J.. *Labrador Co.* v. *The Queen* [1893] A.C. 104, 123, *Hoani Te Heokeu* v. *Actea District Maori Land Board* [1941] A.C. 308. I do not quote from these authorities passages which are well enough known, but I would note that

between them they expressly negative the admissibility in law of every allegation made by the Respondent in the two relevant paragraphs of his reply. It is to be noticed that in so far as a distinction is sought to be made between public and private Acts, on which I shall comment later, the first four of those cited were concerned with private legislation ; that an allegation of a false recital was involved in *Lee's* case : that in the same case the allegation was that the recital was false to the knowledge of the plaintiffs who procured the Act, that an allegation that the Act was obtained by fraud was disallowed in the *Waterford* case as well as in *Tukino's* case and a similar allegation as to *suppressio veri* or *suggestio falsi* was repudiated in *Stead* v. *Carey:* that alleged irregularity of procedure was not admitted in *Wauchope's* case.

In this state of authority, it is not surprising that an application was made by the Board to strike out from Mr. Pickin's pleading (sc. Reply) the two paragraphs attacking the validity or effect of section 18 of the 1968 Act, nor that the application should be granted by the Master and by the judge in chambers. But their decision was reversed by the Court of Appeal who considered that the issue on this point should go to trial. It is clear that the consequence of allowing the trial to proceed on the basis of the law as stated by the Court of Appeal would be to require the Court to embark on far-reaching enquiries as to the proceedings in Parliament which led to the enactment of

the 1968 Act. For this reason it was, exceptionally, necessary for this House to review the matter at the present stage.

My Lords, the basis on which the Court of Appeal thought that it was possible to reopen what would generally be thought to be settled law was that of one case—a Scottish 18th century appeal which came to this House, i" which, as was usual at the time, no reasons were given for the House's decision. This case is *McKenzie* v. *Stewart.* [I do not overlook that two other cases were cited but these are of no value. *Biddulph* v. *Biddulph* (I790) Cruise Digest, Private Act s. 51, p. 28 is clearly an *application* of an Act, not "relief" against an Act. *Green* v. *Mortimer* 1865 (13 L.T. 642) was a case Where the Court was directed to make an estate inalienable so far as its jurisdiction allowed—which it did not allow—a case of no value for the present purpose.) Even if this case. *McKenzie* v. *Stewart,* contained a clear *ratio decidendi,* it would be difficult to sustain it against the chain of explicit later decisions from 1842 to 1943. The so-called *per incuriam* doctrine, to which appeal has been made several times recently, looks even more sickly when invoked against Lord Cottenham, Lord Brougham, Lord Campbell, Willes J. and Viscount Simon L.C. But the case itself does not resist examination. Your Lordships were treated to an exhaustive and certainly

interesting scrutiny of *McKenzie* v. *Stewart* in all its stages, through digests, differing reports, subsequent comments and citations. We examined the parties' contentions in the Court of Session and in this House. None of this material in the least persuaded me that it will bear the weight sought to be put upon it, or indeed any weight, or that it justifies a new look at the law. The Act in question (12 Geo. II c. vii) was an estate Act, the object of which, as stated in the long title, was to enable entailed lands to be sold for

payment of debts and incumbrances affecting them: a type of Act similar, as Blackstone explains, to a private assurance (see Bl. Comm: 4th Ed. vol. 2 p. 345 ff.). The result arrived at after lengthy court proceedings was simply to decide that, there being money in the hands of Lord Royston, arising from the sale, which ought to have been applied in payment of debts, this money, when it appeared that the debts were fictitious, must be applied in the purchase of lands, as the residue was directed by the Act to be applied. One may ask of this, what else should be done? Should Lord Royston be allowed to put the money—which incidentally should have been paid to his trustees and not to him at all—in his own pocket? My noble and learned friend, Lord Reid, has discussed the case more fully and I am happy to accept his conclusions. Like him I quite fail to understand how this case, with, I repeat, no reported judgment in this House, can be regarded as any authority for invalidating an Act of Parliament or any provision in an Act of Parliament. The indignation of Lord Hardwick L.C., reported by Lord Kames, at the " fraudulent means of obtaining the Act" is understandable enough, and so Lord Royston's estate had to account for the money, but that is all.

An attempt to inject authority into *McKenzie* v. *Stewart* was made by references to Blackstone and Sir W. Holdsworth. I have already referred to Blackstone who first commented on it in his 4th edition (1771). (His first edition (1766) though published well after the House of Lords decision makes no reference to it.) But he deals with the Act—under a title Alienation by Record—in these words:

> " Acts of this kind are however at present carried on, in both houses, " with great deliberation and caution ; particularly in the house of lords " they are usually referred to two judges to examine and report the facts " alleged, and to settle all technical forms. Nothing also is done with- " out the consent, expressly given, of all parties in being, and capable " of consent, that have the remotest interest in the matter: unless such " consent shall appear to be perversely and without reason withheld. " And, as was before hinted, an equivalent in money or other estate " is usually settled upon infants, or persons not *in esse,* or not of capacity " to act for themselves, who are to be concluded by this act. And a " general saving is constantly added, at the close of the bill, of the right " and interest of all persons whatsoever; except those whose consent is " so given or purchased, and who are therein particularly named ; though " it hath been holden, that, even if such saving be omitted, the act shall " bind none but the parties. (Co. 138)
>
> " A law, thus made, though it binds all parties to the bill, is yet " looked upon rather as a private conveyance, than as the solemn act of " the legislature. It is not therefore allowed to be a *public,* but a mere " private statute ; it is not printed or published among the other laws " of the session ; it hath been relieved against when obtained upon " fraudulent suggestions; *(Richardson v. Hamilton.* Cane. 8 Jan. 1973 " *McKenzie* v. *Stuart.* Dom. Proc. 13 Mar. 1754). It hath been holden " to be void if contrary to law and reason (4 Rep. 12); and no judge or " jury is bound to take notice of it, unless the same be specially set " forth and pleaded to them. It remains however enrolled among the

" public records of the nation, to be for ever preserved as a perpetual
" testimony of the conveyance or assurance so made or established."

The words " it hath been relieved against" are not precise and must be related to what was done: they are no warrant for a proposition that the Act in any respect was declared or treated as invalid. Blackstone limits what he says to " estate Acts " regarded as comparable with private assurances;

it would be surprising if he had not. having regard to his generally strong views as to the sovereignty of Parliament.

Professor Holdsworth follows his Vinerian predecessor in a more extended passage (Vol. xi. pp. 354 ff) and treats *McKenzie* v. *Stewart* in a similar manner. But he does continue with a passage of some interest in which he refers to the principle applied by courts of equity of imposing a trust upon rights obtained at law where any undue or unconscientious advantage has been obtained by the legal owner. He quotes a passage from a speech of Lord Westbury in *McCormick* v. *Grogan* L.R. 4 H.L.—97, in the following terms:

" the Court of Equity has, from a very early period decided that even
" an Act of Parliament shall not be used as an instrument of fraud;
" and if in the machinery of perpetrating a fraud an Act of Parliament
" intervenes, the Court of Equity, it is true, does not set aside this Act
" of Parliament, but it fastens on the individual who gets a title under
" that Act, and imposes on him a personal obligation, because he applies
" the Act as an instrument for accomplishing a fraud. In this way the
" Court of Equity has dealt with the Statute of Frauds, and in this
" manner, also, it deals with the Statute of Wills."

This is widely expressed and the context must be understood; the references, though general, to an Act of Parliament are references to the Wills Act or the Statute of Frauds—public Acts—and to such equitable doctrines as secret trusts or part performance. The doctrine may well be admitted that equity, when faced with an appeal to a regulatory public statute, which requires compliance with formalities, will not allow such a statute (assumedly passed to prevent fraud) to be used to promote fraud and will do so by imposing a trust or equity upon a legal right. Moreover, it is settled and wholesome law that, if circumstances are shown which give rise to an equitable claim by one person against another, by reason of fraudulent or unconscientious behaviour of that other, equity may impose a trust, or personal obligation, even when that other has a title at law, or by statute. The first of these propositions, which Lord Westbury was asserting, has no relevance here. And acceptance of the second goes no way towards the invalidation, on account of fraud or otherwise, of what Parliament has enacted, if what is relied upon as founding an equity claim consists of action by way of misleading Parliament into the passing of the Act. An attack at law is firmly excluded by the basic authorities and this cannot be remounted by reframing the attack in equitable terms. There is no warrant in authority, or, in my opinion, in principle, for allowing a person against the provisions of a statute to achieve in equity a result which, on the same facts, he cannot achieve at law. I therefore consider

that Mr. Pickin, in paragraphs 3 and 4 of his reply, has no maintainable or arguable case.

Before I deal specifically with the pleading there are some matters which merit perhaps some brief supplementary comments. First, I must say that, though for the present purpose, we are called upon to assume the truth of any facts alleged, I am far from convinced, as a matter of construction, that there is any substance whatever in the contention that the 5th recital of the 1968 Act was false or misleading in any way. The recital is in the common form of private Acts which are designed to confer powers to acquire land compulsorily and there seems to be an obvious distinction between those provisions in the Act which concern " lands authorised to be acquired " and used " (I quote from the recital), namely, sections 13-17, and section 18 which is not so concerned and to which, on the face of it, the recital does not refer. For my part, I have grave doubt whether the necessity to assume the truth of pleaded facts extends so far as to require the acceptance of an unconvincing argument on construction. But assuming the contrary, I do not understand how the courts can enquire whether Parliament was misled by this recital into enacting section 18. How can we know how Parliament understood the recital—who is " Parliament" for this purpose—the members of both Houses or of either House—the members of the Committee on Private Bills—the Counsel who advise the Chairmen of these committees—the officials whose business it is to look at recitals and at the Bill? We know

nothing; and by no process short of summoning some or all of these persons and examining their records can we find out on what view of the facts or on what consideration of policy section 18 was enacted: yet the plaintiff, in undertaking to show that the recital was false, and that Parliament was mislead and (presumably) would not have enacted the section had it known the facts and realised what it was doing, must commit the Courts to the process described. This analysis of what the plaintiff's contentions involve demonstrates, in my opinion, and validates, the reasons for the Courts' firm refusal to embark on any enquiry of this kind. To do so involves them both in a potential clash with Parliament and in a series of steps which can lead to no result.

Secondly, as to the nature of the Act of 1968. This was a private Bill promoted by the British Railways Board and enacted through Private Bill Procedure. Private Bills have a long history: in early times they were more numerous than Public Acts. They represented the response of the King in Parliament to petitions of his subjects, either for relief against some general law, or for the authorisation to dispose of property by tenants in chief under the feudal system (these categories are not exhaustive).

At the present time there are various categories some of which, personal bills, concern the rights of individuals, estate bills being effectively the only survivors ; others affect, in various degrees, the interests of the public, inasmuch as they authorise the execution of works or the acquisition of land, or confer general powers (cf. *Stead* v. *Carey p.* 522 per Coltman J.). Because of the pressure on Parliamentary time, a number of modern private bills, promoted by public undertakings, are not confined to provisions of local

application, such as the execution of specified works, or the acquisition of specified lands, but contain legislation of general application: for example, Railway Bills have been passed dealing generally with level crossings. The present Act is of this character; it contains much of a local character; but in addition it presents, in section 18; an enactment in general terms dealing with a large number of pre-existing Acts and affecting railway lines all over the country. It may be questioned whether the procedure of putting such a clause into a private Bill is desirable or whether, on the contrary, such a provision ought to be brought in through a public bill, and so exposed to debate and amendment on the floor of either House. The Courts cannot enter into this debate. But it is open to them to notice that, even though the Private Bill procedure may, in principle, be inappropriate, the procedure laid down in Standing Orders of both Houses embodies extensive safe-guards, which, if properly used, can prevent any use of that procedure which may be detrimental to the interest of individuals or of the public.

Whether in any particular case, or in this case, these safeguards were made use of, whether the attention of Parliament, its committees or officers, was called to the provision in question, or what decisions (right or wrong) were taken, are not matters into which the Courts can enquire. Private Acts, such as the Act of 1968, as the authorities already cited show, are as fully Acts of Parliament as public Acts, and compel acceptance by the Courts,

On the legal foundations so established it is necessary to deal with the pleading. It should be made clear that there are issues and contentions raised in the action which are perfectly legitimate and which may properly go to trial. This appeal is only concerned with paragraphs 3 and 4 of the Amended Reply. The relevant allegations can be stated as the following:

1. The Act of 1968 contains a false recital, drafted by the British Railways Board, as promoters, which was known by the Board to be false.

2. Notice was given to adjoining owners of lands which might be effected by section 18*;* and no public notice was given of the Board's intended " compulsory acquisition ".

3. For the reasons stated in (1) and (2), section 18 does not in its true construction bar this action or deprive the plaintiff of his interest in land without compensation.

4. Alternatively, the Board as promoters have broken the Standing Orders of Parliament and included a misleading preamble and misled Parliament: accordingly, this Act is ineffective to deprive the plaintiff of his land or proprietary rights and the Board cannot rely on it.

The whole of this is upon the clearest authority which I have stated impermissible, and unless capable of amendment must be struck out.

In this House, for the first time, a fresh series of possible amendments was produced in draft which, it was claimed, showed a maintainable case even if the existing pleading did not. In my opinion, they are no more sustainable in law than the paragraphs they would replace. The proposed

new paragraph 3 introduced, in support of an argument as to construction, the same matters, all bearing upon the proceedings in Parliament leading to the enactment of section 18 of the 1968 Act, as were previously raised. For the reasons already stated, they cannot be regarded as stating a maintainable case. The proposed new paragraph 4 adduced, in support of a claim to equitable relief against the Board as promoter of the Bill, the same matters, all related to the proceedings in Parliament which led to the enactment of section 18, as have already been set out in new paragraph 3. It was admitted that the only support in law for these contentions was provided by *McKenzie* v. *Stewart.* For the reasons discussed above, I am of the opinion that *McKenzie* v. *Stewart* is no authority for the granting of any such relief, and that no other ground exists for allowing the case so proposed to be stated to proceed.

I would allow the appeal and restore the judgment of Chapman J.

Lord Simon of Glaisdale

Mv lords,

I have had the advantage of reading in draft the speeches prepared by my noble and learned friends, with which I entirely agree—except that I would prefer to be taken as indicating no opinion whatever on any question of construction that might hereafter arise in this action.

The system by which, in this country, those liable to be affected by general political decisions have some control over the decision-making is parliamentary democracy. Its peculiar feature in constitutional law is the sovereignty of Parliament. This involves that, contrary to what was sometimes asserted before the 18th century, and in contradistinction to some other democratic systems, the courts in this country have no power to declare enacted law to be invalid. It was conceded before your Lordships (contrary to what seems to have been accepted in the Court of Appeal) that the courts cannot directly declare enacted law to be invalid. That being so, it would be odd if the same thing could be done indirectly, through frustration of the enacted law by the application of some alleged doctrine of equity.

A second concomitant of the sovereignty of Parliament is that the Houses of Parliament enjoy certain privileges. These are vouchsafed so that Parliament can fulfil its key function in our system of democratic government. To adapt the words of Lord Ellenborough in *Burdett* v. *Abbott* (1811) l4 East, 1152:

> " they [the Houses] would sink into utter contempt and inefficiency " without [them]."

Parliamentary privilege is part of the law of the land (see *Erskine May's Parliamentary Practice,* 18th ed., 1971, ch. v). Among the privileges of the Houses of Parliament is the exclusive right to determine the regularity of their own internal proceedings *(Erskine/May,* pp. 176, 195, 197).

> " What is said or done within the walls of Parliament cannot be " enquired into in a court of law. On this point all the judges in the " two great cases which exhaust the learning on the subject—

" *Burden v. Abbott* and *Stockdale* v. *Hansard* [(1839) 9 Ad. *&* E. 1]
" are agreed and are emphatic."

(Lord Coleridge C.J. in *Bradlaugh* v. *Gossett* (1884) 12 Q.B.D. 271, 275). The rule, indeed, is reflected in the Bill of Rights, 1688, art. 9, s.l., of which I italicise the words which are relevant to this appeal:

" That the freedom of speech and debates or *proceedings in Parliament*
" *ought not to be impeached or questioned in any place out of*
" *Parliament".*

I have no doubt that the Respondent in paragraphs 3 and 4 of his Reply (even as sought to be amended) is seeking to impeach proceedings in Parliament, and that the issues raised by those paragraphs cannot be tried without questioning proceedings in Parliament.

It is well known that in the past there have been dangerous strains between the law courts and Parliament—dangerous because each institution has its own particular role to play in our constitution, and because collision between the two institutions is likely to impair their power to vouchsafe those ' constitutional rights for which citizens depend on them. So for many years Parliament and the courts have each been astute to respect the sphere of action and the privileges of the other—Parliament, for example, by its *sub judice* rule, the courts by taking care to exclude evidence which might amount to infringement of parliamentary privilege (for a recent example, see *Dingle* v. *Associated Newspapers Ltd.* [1960] 2 Q.B. 405). The Respondent to the instant appeal claimed that he could discharge the onus of proving the allegations in paragraphs 3 and 4 of the Reply merely by reliance on presumptions, so that proceedings in Parliament need not, so far as he was concerned, be forensically questioned. Even if this were so, it would still leave unanswered how the Appellant could proceed in rebuttal without calling parliamentary proceedings in question. I am quite clear that the issues would not be fairly tried without infringement of the Bill of Rights and of that general parliamentary privilege which is part of the law of the land.

The Respondent claims, however, that, whatever may be the position as regards a public Act of Parliament, it is open to a litigant to impugn the validity (or, at least, by invoking jurisdiction in equity, nullify the operation) of an enactment in a private Act of Parliament. But the considerations of parliamentary privilege to which I have referred would undoubtedly seem to extend to Private Bill procedure ; and the authorities to which my noble and learned friends have adverted are clearly contrary to the Respondent's submissions. What was said in *Edinburgh & Dalkeith Railway Co. v. Wauchope* (1842) 8 Cl. *&* F. 710 seems to me to be particularly apposite and authoritative: even though counsel there did not finally venture to argue that the validity of a provision in a private Act could be impugned on the ground that it had been obtained by fraud, the point was formally before the House; nor is it possible to conceive that Lord (Tottenham, Lord Brougham and Lord Campbell were all entirely oblivious to what had appeared in later editions of Blackstone.

Moreover, the distinction that the Respondent sought to draw between public and private Acts of Parliament breaks down when one considers that there is a third, intermediate, class of proceedings in Parliament between PuDlic and Private Bills—namely, Hybrid Bills. These are Public Bills some provisions of which affect private rights. Those particular provisions are subject to the procedure of Private Bill legislation; though the Bills finally emerge as public Acts. For the purpose of his argument counsel for the Respondent sought to distinguish a Hybrid Bill from a Private Bill on the ground that only the latter had a promoter on whom a constructive trust could be imposed arising from his having misled Parliament. But it is difficult to see how the position of a Minister in relation to the Private Bill procedures applicable to a Hybrid Bill differs from that of the ordinary promoter of a Private Bill.

A further practical consideration is that if there is evidence that Parliament may have been misled into an enactment, Parliament might well-indeed, would be likely to—wish to conduct its own inquiry. It would be

unthinkable that two inquiries—one parliamentary and the other forensic—should proceed concurrently, conceivably arriving at different conclusions; and a parliamentary examination of parliamentary procedures and of the actions and understandings of officers of Parliament would seem to be clearly more satisfactory than one conducted in a court of law—apart from considerations of Parliamentary privilege.

For the foregoing reasons, as well as for those set out in the speeches of my noble and learned friends, I would allow the appeal. If the Respondent thinks that Parliament has been misled into an enactment inimical to his interests, his remedy lies with Parliament itself, and nowhere else.

Lord Cross of Chelsea

MY LORDS,

The pleas in paragraphs 3 and 4 of the Amended Reply proceed on the assumption that the rights of reverter which were extinguished by section 18 of the British Railways Act, 1968, were " lands " which the Act authorised the Board to acquire. That being assumed to be so, it is said that the sixth recital in the preamble was false since no plans of the lands in respect of which the rights of reverter existed had been deposited as there alleged. It is further alleged that the Board knew that the recital was false in this respect, that they broke the Standing Orders of Parliament and that they misled Parliament. It emerged in the course of argument that what was meant by this was that by inserting the false recital they induced Parliament to think that Orders 13 and 27 of the House of Commons Standing Orders relating to Private Business, which provide that where by a Bill it is proposed to authorise the acquisition of any land, notice in writing of the proposal shall be given to the persons affected and plans of the lands in question deposited, had been complied with whereas in fact they had not been

complied with. To my mind, the basic assumption is unjustified. The Act draws a distinction between the lands and easements referred to in sections 13 and 14 which the Board is authorised to acquire compulsorily if it wishes to do so (though under section 16 the powers of compulsory acquisition cease on 31st December, 1971, if not previously exercised) and the rights of reverter which are automatically extinguished under section 18 on the passing of the Act. The Act does not give to the Board authority to acquire these rights of reverter so that they would be extinguished if the Board chose to exercise their power to acquire them but would remain in existence if the Board chose not to acquire them. The Act simply destroys the rights of reverter, and I cannot believe that those whose duty it was to consider the Bill in its passage through Parliament could have thought that the lands referred to in the sixth recital in the preamble included the interests in land constituted by the rights of reverter or that the servants or agents of the Board who were responsible for drafting the Bill and representing the Board in its passage through Parliament—however anxious they may have been to secure that the rights of reverter should be extinguished without notice to those entitled to them—entertained the hope that anyone would read the sixth recital as relating to the rights of reverter as well as to the lands referred to in sections 13 and 14. The Court might, I think, have well been justified in striking out paragraphs 3 and 4 of the Amended Reply on the ground that they contained allegations of fraud which were based on a false hypothesis and were patently misconceived. But as this point has not hitherto been taken we must deal with the appeal on the footing that in enacting section 18 of the Act Parliament was misled by fraudulent misrepresentations made by the Board through its servants and agents.

Even if one makes that assumption I am clearly of opinion that the paragraphs in question should be struck out. The sheet anchor of the Respondent's argument is, of course, the decision of this House in *Mackenzie* v. *Stewart* (Morison's Dictionary 7443). That case and the cases of *Biddulph*

v. *Biddulph* (5 Cruise Digest, Tit. Private Act, section 53) and *Green v. Mortimer* (3 L.T. 642) which were also relied on by the Respondent, all related to Estate Acts. Such Acts—dealing with the property of private individuals—were common in the 18th and 19th centuries but have now become rare owing to the powers to deal with settled estates given to limited owners by the Settled Land Acts and to the powers now given to the Court by the Variation of Trusts Act, 1958. To-day such Acts are only called for where the property in question has been itself settled by Act of Parliament. The provisions contained in such an Act, obtained at the instance of some of those interested in the Settled Estate, are obviously analogous to those contained in a disposition *inter partes* and if it were the law that, as Blackstone suggests (see Vol. 2, p. 345) a Personal Act can be " relieved against when " obtained upon fraudulent suggestions ", it would not follow in the least that such an Act as the British Railways Act, 1968, could be " relieved " against" just because it happened to be a private and not a public Act. But I agree with your Lordships that the rule laid down in such cases as *Edinburgh and Dalkeith Railway Company* v. *Wauchope* 8 C. & F. 710 and *Lee* v. *Bude and Torrington Railway* L.R. 6 C.P. 576 is applicable to

all Acts of Parliament including Estate Acts. I also agree with all that has been said by my noble and learned friend. Lord Reid, with regard to *McKenzie* v. *Stewart.* We do not know what were the reasons for the decision : the case could easily have been decided on construction ; and it should be treated as having been so decided. I would say the same of *Biddulph* v. *Biddulph. Green* v. *Mortimer* does not touch the present problem at all. Parliament could have empowered the Courts to make the life estate inalienable ; but what it did do was to empower the Courts to make it inalienable " so far as the rules of law and equity and the jurisdiction " and the authority of the Court admit". That, as Lord Campbell pointed out, was absurd since the rules of law and equity and the jurisdiction and authority of the Court did not give the Court any such power.

Before us Counsel for the Respondent submitted that even if section 18 on its true construction extinguished the rights of reverter and the Courts were not entitled to " go behind the Act " but were bound to accept that as a result of it the Board as from the date of its passing held the legal estate in fee simple in the lands in question free from the right of reverter yet any adjoining owner who chose to do so could, on proof of the facts alleged in paragraphs 3 and 4 of the Reply, obtain a declaration that the Board held the legal estate in the strip of line adjoining his land on trust for him. This argument adopts the explanation of *McKenzie* v. *Stewart* given by Holdsworth History of English Law Volume XI pages 354-358. Equity, Holdsworth says, while accepting that the Private Act, although obtained by fraud, gave the promoter the legal estate in the property in question will not permit it to be used as an instrument of fraud and will force the promoter to hold the advantage which he has gained by deceiving Parliament on trust for the person defrauded. To accept this argument would enable the Respondent when he has been refused entry by the front door to get in by the back. In order to establish the personal equity he would have to prove the same facts as to the misleading of Parliament as he would have to prove if a direct attack on the Act were open to him, and the objections which are fatal to a direct attack on the Act—namely, that the Court will not enquire into what passed in the course of the passage of the Bill through Parliament—must be equally fatal to any attempt to establish the alleged personal equity. I agree entirely with everything which has been said by my noble and learned friend, Lord Wilberforce, on this aspect of the case.

Paragraph 3 of the Amended Reply professes to relate only to construction, but the fact that it is struck out because the matters alleged in it are not admissible in considering the true construction of the Act will not preclude the Respondent from advancing any arguments on construction which are legitimately open to him; the striking out of paragraphs 3 and 4 does, however, entail the consequence that the application for discovery made on 8th December, 1971, should be dismissed.

I would add in conclusion that the fact that I think, as I stated at the beginning of this speech, that the allegations of fraud made by the Respondent are misconceived does not mean that I also think that his sense of grievance

that Parliament should by a Private Act have summarily deprived the adjoining owners of their rights to reverter without notice to them is necessarily wholly unjustified. We do not and cannot know whether the question of giving him notice was raised during the passage of the Bill. It may have escaped attention ; on the other hand, Parliament may have addressed its mind to the point and decided that in all the circumstances the giving of notice was not necessary. That is a matter into which it is impossible for us to enquire. I would allow the appeal.