CASE NOTE

GOURIET v. UNION OF POST OFFICE WORKERS AND OTHERS[1]

Relator action — Attorney-General's discretion — Refusal of consent — Individual entitlement to declaratory relief and injunction.

On 13 January 1977, the general secretary of the Union of Post Office Workers (hereinafter the "U.P.W.") announced on television that his union's executive committee had resolved to call on its members not to handle mail for transmission from England and Wales to the Republic of South Africa, for the duration of the week commencing at midnight, 16 January 1977. This resolution, if it were carried out, would have been in breach of the Post Office Act 1953, s. 68 (U.K.), which provides:

> If any person solicits or endeavours to procure any other person to commit an offence punishable on indictment under this Act, he shall be guilty of a misdemeanour and be liable to imprisonment for a term not exceeding two years.

The news of this threat by the U.P.W. to break the law and bring about the interruption of postal services to South Africa annoyed John Gouriet. On the following day (14 January) he applied to the Attorney-General for the latter's consent in the institution of relator proceedings for an injunction to restrain the U.P.W. from calling the strike. For the first time on record, the Attorney-General refused his consent to the proposed relator action.[2] Quite undeterred, Gouriet brought an action in his own name (thus making himself—and not the Attorney-General—the plaintiff) against the U.P.W., seeking an injunction against the latter. Because this action would not be heard in time to prevent the imminent strike, the plaintiff applied on the same day (still 14 January) to Stocker J. (in Chambers) for an *interim* injunction matching the terms of the (final) injunction sought in the main (substantive) action. Stocker J. dismissed the application for the interim injunction because, in his view, the plaintiff had no *locus standi* to bring the main action, given the fact that the Attorney-General had refused to act as plaintiff in such an action.[3]

The Court of Appeal

The plaintiff appealed to the Court of Appeal.[4] The court, however, declined to give judgment even in these interlocutory proceedings until

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[1] [1977] 2 W.L.R. 310 (Court of Appeal) Lord Denning M.R., Lawton and Ormrod L.JJ.; [1977] 3 W.L.R. 300 (House of Lords) Lord Wilberforce, Viscount Dilhorne, Lord Diplock, Lord Edmund-Davies, Lord Fraser of Tullybelton.

[2] The Attorney-General's consent is required in a relator action because in such an action it is the Attorney-General who sues, albeit on the relation of an individual (the relator).

[3] [1977] 2 W.L.R. 310, 314.

[4] [1977] 2 W.L.R. 310. The appeal was heard on 15 January and, following an adjournment, on 18, 19, 20 and 21 January. Judgment was delivered on 27 January.

the Attorney-General (who was not then a party) was made a defendant in the proceedings. This approach was adopted because the court was anxious to hear the Attorney-General's explanation, if he were minded to give one, of his refusal to consent to the institution of the relator action. So, in order to allow the Attorney-General time to prepare his explanation, on the one hand, and to maintain the law of the land in the meantime, on the other, the court granted the plaintiff an interim injunction against the U.P.W. from 15 January to 18 January.[5] In granting the interim injunction, the Court of Appeal was reversing the decision of Stocker J.

The court also granted the plaintiff leave to amend his statement of claim so as to join another union (the Post Office Engineering Union —hereinafter the "P.O.E.U.") as second defendant. The P.O.E.U. had been reported in "The Times" newspaper as threatening to instruct its members to discontinue circuits to South Africa.[6] The claim against the P.O.E.U. was for an injunction against that union's counselling or procuring Post Office employees to delay the transmission or delivery of any message, such delay being contrary to the Telegraph Act 1863, s. 45 (U.K.).[7] As noted earlier, the Attorney-General was joined as (third) defendant. Specifically, the claim against the Attorney-General was for a declaration that the latter, in refusing his consent to the relator action proposed by the plaintiff, had acted improperly and wrongfully exercised his discretion.[8]

On 18 January, the Attorney-General appeared with the other two defendants (U.P.W. and P.O.E.U.) to *continue* the litigation of the interlocutory appeal. So, although there was only *one* defendant (U.P.W.) when the interlocutory appeal commenced, there were *three* defendants at the resumption of the hearing. The Attorney-General submitted that he had no duty to explain to the court the grounds of his refusal to consent to the proposed relator action. He further submitted that the court did not have jurisdiction to grant the interim injunctions because only he, the Attorney-General, would have had the necessary standing to sue on behalf of the public. The Attorney-General asserted that the interim injunctions had been granted in error because the plaintiff did not have the capacity to represent the public at large.[9]

Of the three members of the Court of Appeal, Lord Denning M.R., and his Lordship alone,[10] supported the plaintiff's contention that even

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This appeal was, of course, an interlocutory appeal. The subsequent decision of the House of Lords made the main action a dead letter.

[5] *Id.* 319, 320, 321.

[6] *Id.* 316.

[7] *Id.* 321. It appears to be implicit that an interim injunction—similar to that granted against the U.P.W.—was also granted against the P.O.E.U.

[8] *Id.* 322.

[9] *Id.* 322, 328, 333.

[10] It is noteworthy that of all the nine judges who heard this case at its various stages, only Lord Denning assented to the plaintiff's submission that a private citizen could have the right to sue on behalf of the general public to prevent a

a private citizen was entitled to sue on behalf of the general public in respect of those actions in which the Attorney-General's consent to sue on the relation of such a citizen had been sought by, and refused to, the citizen. His Lordship was plainly perturbed by the Attorney-General's submission that only he, the Attorney-General, enjoyed the right to sue for the prevention of a public wrong. He described this submission as "a direct challenge to the rule of law".[11] He was alarmed by the view that a court of law had no jurisdiction to override the effect of a refusal of consent by the Attorney-General, even where such a refusal might have been based on corrupt motives or bad faith.[12] He was also alarmed, but apparently less so, by the submission of the Attorney-General that the latter could not be prevented from refusing his consent for party political reasons.[13]

Pronouncing upon the Attorney-General's discretion in regard to the matter of consent, Lord Denning said:[14]

> It can be reviewed by the courts. If he takes into account matters which he ought not to take into account, or fails to take into account matters which he ought to take into account, then his decision can be overridden by the courts. Not directly, but indirectly. If he misdirects himself in coming to his decision, the court can say: "Very well then. If you do not give your consent, or your reasons, we will hear the complaint of this citizen without it."

His Lordship was not quite bereft of authority for his view that the private citizen was not helpless in the face of the Attorney-General's refusal to consent. His Lordship was able to refer to a similar observation made—*obiter*—by himself in an earlier decision.[15]

Concluding, Lord Denning said that he would be prepared to grant the plaintiff a declaration to the effect that the latter was entitled to proceed in his action against "the trade union"[16] for an injunction, notwithstanding the refusal of consent by the Attorney-General to the institution of relator proceedings.[17]

In regard to the interim injunctions against the defendant unions, Lord Denning, in common with the other members of the court, discharged them on the ground that, there being no longer a threat to

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threatened public wrong. At no stage in the litigation did the plaintiff even faintly suggest that he was suing to protect a private right or to prevent a personal injury.

[11] [1977] 2 W.L.R. 310, 328.

[12] *Id.* 328.

[13] *Ibid.*

[14] *Id.* 328. For a somewhat less sedate version of the same view, see 332-333.

[15] *Attorney-General ex. rel. McWhirter* v. *Independent Broadcasting Authority* [1973] Q.B. 629, 649.

[16] Presumptively, the U.P.W.

[17] [1977] 2 W.L.R. 310, 332. However, as Lord Denning was dissenting on this issue no declaration to this effect was made by the court. Although the point is by no means clear, it may be surmised that the declaration envisaged by Lord Denning would have been made not only against the Attorney-General, but also against the other two defendants.

cause an interruption of the postal services to South Africa, there was no longer any need for these injunctions to be renewed.[18]

The proposition that the plaintiff was entitled to maintain an action for an injunction in his own right was, on the other hand, rejected by Lawton and Ormrod L.JJ.[19] Both their Lordships also emphatically acknowledged that the Attorney-General could not be compelled either to give his consent to a relator action, or to disclose his reasons for refusing such consent.[20] However, their Lordships stopped short of saying that the plaintiff was completely remediless. Their Lordships feared that if the Attorney-General's inaction were allowed to preclude the plaintiff from having any recourse to the courts, then the method of enforcing the criminal law through the civil courts would be enfeebled.[21] A similar, but more floridly expounded, anxiety was alluded to by Lord Denning in his judgment.[22]

The Lords Justices discovered themselves in a dilemma. They were at one with Lord Denning in wishing to forestall the debilitation of the law enforcement process by a recalcitrantly inert Attorney-General, but they eschewed Lord Denning's solution of affording to the private citizen the right to represent the general public in an action to prevent the threatened commission of a public wrong. The Lords Justices sought to free themselves from this quandary by ruling that the plaintiff, whilst not entitled to claim final injunctions in the main action, would nonetheless be entitled to claim, in the main action, some form of declaratory judgment.[23]

However, when a plaintiff seeks a declaratory judgment he is asking for a declaration of a *private* right or immunity enjoyed by him against the person against whom the declaratory relief is sought. In the instant case the plaintiff was not asserting a private, but a public, right. So, if the plaintiff were to claim declaratory relief in the main action, he would have to be asking the court to grant him relief in respect of a general, public right. That a private citizen is not entitled to claim declaratory relief in respect of a public right was made perfectly clear by Viscount Maugham in *London Passenger Transport Board* v. *Moscrop*.[24] In that case, Viscount Maugham said:[25]

> My Lords, I cannot call to mind any action for a declaration in which (as in this case) the plaintiff claims no right for himself, but seeks to deprive others of a right which does not interfere with his liberty or his private rights.

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[18] *Id.* 332; 340; 346. Although the members of the Court of Appeal gave the impression that only *one* interim injunction had been granted (against the U.P.W.), it is clear from a reading of the speeches in the House of Lords that an interim injunction had also been granted against the P.O.E.U. [1977] 3 W.L.R. 300, 306, 318, 335, 353.

[19] *Id.* 337-338, 346.

[20] *Id.* 335, 337, 340.

[21] *Id.* 340, 344-345.

[22] *Id.* 329, 330, 331.

[23] *Id.* 339, 345.

[24] [1942] A.C. 332.

[25] *Id.* 344.

Viscount Maugham concluded:[26]

> He, therefore, could not sue without joining the Attorney-General.

Viscount Maugham's observations were noted by both of their Lordships, but were adjudged to be inapposite to the facts in the instant case because the plaintiff here was asking the court "to restrain . . . a breach of the criminal law which will take away *his own right* to use the facilities of the Post Office".[27] With respect, it is one thing to suggest that the plaintiff, as a member of the public, shared with other members of the public a common access to the facilities of the Post Office; but it is a totally different thing to assert, as their Lordships appeared to be doing, that the plaintiff's membership of the public gave him a *private* right to the facilities of the Post Office. It is submitted that their Lordships failed to distinguish Viscount Maugham's ruling from the facts in the instant case.

However, given that the majority of the Court of Appeal held that the plaintiff was entitled to *claim*[28] declaratory relief, against whom, and, furthermore, in what form, was such relief being sought? The Court of Appeal's interlocutory judgment was given in the form of directing certain *further* amendments to be made to the plaintiff's already amended statement of claim. So, the interlocutory judgment took the form of an approval of the plaintiff's re-amended statement of claim. The plaintiff was given leave to bring actions against the U.P.W. and the P.O.E.U. for declarations that the courses of action previously threatened by these unions were unlawful, and to bring against the Attorney-General an action for a declaration that, notwithstanding the latter's refusal of consent to the proposed relator proceedings, the plaintiff was entitled to apply for the declarations against the unions in the form approved by the court.[29] Additionally,[30] the plaintiff was given leave to claim for a declaration[31] that, pending the final determination of the declaratory actions against the two unions, the plaintiff was entitled to interim injunctions against the unions.[32] It is to

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[26] *Id.* 345.

[27] [1977] 2 W.L.R. 310, 339 (italics added); Ormrod L.J. concurred (345).

[28] In the House of Lords, Lord Edmund-Davies—[1977] 3 W.L.R. 300, 343—gave the distinct impression that the Court of Appeal had actually granted the plaintiff declaratory relief. With respect, such relief had *not* been given by the Court of Appeal. What the Court of Appeal did was no more than to give leave to the plaintiff to amend (for the second, and final, time) his statement of claim, so that his claim became nothing but an *application* for declaratory relief. [1977] 2 W.L.R. 310, 347.

[29] [1977] 2 W.L.R. 310, 347.

[30] *Ibid.*

[31] *Ibid.* This portion of the declaratory judgment sought against the Attorney-General is problematical. Of their nature, interim injunctions can only operate *before* the final determination of the main action. What, then, is the explanation for granting a declaration *after* the main action to the effect that *interim* injunctions could have been granted *before* the date of such a declaration?

[32] In the House of Lords, Lord Edmund Davies—[1977] 3 W.L.R. 300, 335—stated that, at the conclusion of the interlocutory proceedings before the Court of Appeal, the latter had actually *granted* the plaintiff interim injunctions against the two unions. With respect, *no* injunction of any kind was granted against *either*

be noted that the plaintiff's previous contention that the Attorney-General's refusal of consent had been improper and wrongful[33] was abandoned in the final version of his statement of claim against the Attorney-General. Finally, given the majority decision that the plaintiff did not have the necessary standing to sue on behalf of the public to prevent the commission of a public wrong, his application for final injunctions against the two unions was struck out from his statement of claim.[34] Leave was given to all the parties to appeal to the House of Lords.

None of the interlocutory orders made by the Court of Appeal should be allowed to conceal *the fact that every single one of the plaintiff's original claims against each of the three defendants was firmly rejected by a majority of the court.* In regard to the plaintiff's original claims against the various defendants, the latter emerged completely victorious. Indeed, it was precisely because all of the plaintiff's claims were bad that it became necessary for the majority of the Court of Appeal to suggest to him that he ought to apply for declaratory judgments instead of the final injunctions which he had initially sought. It was because the plaintiff realised that the solution offered by the majority of the court amounted to a repudiation of his original claims that he saw fit to appeal against the very form of relief that the court had devised for him.

The plaintiff's task before the House of Lords was no more than[35] to persuade the House to endorse Lord Denning's position in the Court of Appeal, whereas the common task of all three defendants was to invite the House to reject both the majority and minority opinions of the Court of Appeal. Seemingly, no one was anxious to defend the majority opinion of that court.

The House of Lords[36]

The House of Lords addressed itself principally to the task of refuting the plaintiff's claim (as espoused by Lord Denning in the Court of Appeal) that because he was as entitled to act in the public interest in the prevention of a threatened crime as the Attorney-General, so he should be able to apply for a final injunction to restrain the commission of such a crime as the Attorney-General would be able to do.

It must be repeated that at no stage in the proceedings did the plaintiff suggest that he had any interest in bringing the action apart from the very general interest which any member of the public would have in seeing that the law is observed.[37] On the contrary, "the rights of

union at this stage. Indeed, the interim injunctions granted against the unions on 15 January 1977 had expired on the resumption of the hearing on 18 January 1977. These interim injunctions were *not* renewed when the Court of Appeal gave (interlocutory) judgment on 27 January 1977; [1977] 2 W.L.R. 310, 346.

[33] [1977] 2 W.L.R. 310, 322.
[34] *Id.* 347.
[35] No less than?
[36] [1977] 3 W.L.R. 300.
[37] *Id.* 309.

the public are vested in the Crown, and the Attorney-General enforces them as an officer of the Crown".[38]

In repudiating Lord Denning's view, four of the Law Lords[39] specifically relied upon an *obiter* observation by the Earl of Halsbury L.C. in *London County Council* v. *Attorney-General*.[40] In that case, Lord Halsbury had rejected the suggestion that the court could in any way impugn the exercise by the Attorney-General of his discretion whether or not to give his consent to the institution of relator proceedings.[41] Lord Halsbury said:[42]

> the initiation of the litigation, and the determination of the question whether it is a proper case for the Attorney-General to proceed in, is a matter entirely beyond the jurisdiction of this or any other Court. It is a question which the law of this country has made to reside exclusively in the Attorney-General.

So much for the plaintiff's assertion that he enjoyed a *locus standi* comparable to that of the Attorney-General. But even the tenuous support given to the plaintiff by the majority of the Court of Appeal was denied to him by the House. In simple, but not sympathetic, terms the House told the plaintiff that there was no authority to support his claim that he had sufficient standing to obtain a declaration in regard to a public wrong *simpliciter*. The plaintiff must ask for this kind of declaration in the name of the person—the only person—entitled to apply for such a declaration, namely, the Attorney-General.[43] As Lord Fraser of Tullybelton incisively remarked:[44]

> So far as these declarations are concerned, I cannot see how the court could have jurisdiction to make them when it does not have jurisdiction to grant the injunctions.[45] The objection to the jurisdiction in respect of the injunctions is not based upon the nature of the order that is sought but upon the fundamental fact that Mr Gouriet lacks any title to represent the public interest. He must be just as much a usurper when he asks, in the public interest, for a declaration as when he asks for an injunction.

Then, to complete the vindication of the defendants' central contention that the plaintiff had no right to relief in any form whatsoever, their Lordships tersely, but correctly, told the plaintiff that his incompetence to ask for final injunctions was conclusive against his competence to ask for interim injunctions.[46] Indeed, two of their Lordships critically

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[38] *Id.* 310 *per* Lord Wilberforce.

[39] *Id.* 311 *per* Lord Wilberforce; 320 *per* Viscount Dilhorne; 336-337 *per* Lord Edmund-Davies; 348 *per* Lord Fraser of Tullybelton.

[40] [1902] A.C. 165.

[41] *Id.* 168-169. A full quotation of Lord Halsbury's dictum can be found in the speech of Viscount Dilhorne; [1977] 3 W.L.R. 300, 320.

[42] *Id.* 169.

[43] [1977] 3 W.L.R. 300, 316 *per* Lord Wilberforce; 327 *per* Viscount Dilhorne; 333 *per* Lord Diplock; 345 *per* Lord Edmund-Davies; 353 *per* Lord Fraser of Tullybelton.

[44] *Id.* 351-352.

[45] *I.e.* final injunctions.

[46] [1977] 3 W.L.R. 300, 316 *per* Lord Wilberforce; 327 *per* Viscount Dilhorne; 332 *per* Lord Diplock; 346 *per* Lord Edmund-Davies; 353 *per* Lord Fraser of Tullybelton.

observed that to give the plaintiff the right to ask for interim injunctions whilst at the same time denying him the right to ask for final injunctions would be to give the plaintiff a better right at the interlocutory stage of the proceedings than any he could obtain at the final stage.[47] Such a result struck Lord Wilberforce as "remarkable"[48] and appeared "startling"[49] to Lord Edmund-Davies.

Thus the three defendants were completely victorious in a House of Lords which could discern no cause of action in the plaintiff's twice-amended statement of claim.

Apart from the main thrust of their Lordships' opinions, however, there were also a number of pregnant observations in their elaborate speeches. These observations will now be noted, although they will not be made to appear in any particular sequence.

In the Court of Appeal, Lord Denning had voiced his concern that law enforcement would become a dead letter if a private citizen was to be powerless to act whenever the Attorney-General either refused to act himself or refused to consent to the use of his name in relator proceedings.[50] In the House of Lords, their Lordships deprecated Lord Denning's profession of anxiety. Lord Wilberforce said:

> Enforcement of the law means that any person who commits the relevant offence is prosecuted. . . . This is the true enforcement process and it must be clear that an assertion of a right to invoke it is of no help to Mr Gouriet here. His case is not based on the committal of offence plus a refusal to prosecute, it is based on a right to take preventive action in a civil court which could have been taken but was not taken by the Attorney-General in relator proceedings.[51]

Viscount Dilhorne said:

> With great respect the criminal law does not become a dead letter if proceedings for injunctions to restrain the commission of offences or for declarations that certain conduct is unlawful are not brought. The criminal law is enforced in the criminal courts by the conviction and punishment of offenders, not in the civil courts. The jurisdiction of the civil courts is mainly as to the determination of disputes and claims. They are not charged with responsibility for the administration of the criminal courts.[52]

Lord Fraser of Tullybelton spoke in similar vein, saying:

> One argument relied on by the plaintiff, and accepted by Lord Denning M.R. in the Court of Appeal, was that where the Attorney-General will not take proceedings to obtain an injunction either *ex proprio motu* or *ex relatione* then, unless a member of the public can take proceedings himself, the courts are powerless

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[47] *Id.* 315 *per* Lord Wilberforce; 346 *per* Lord Edmund-Davies.
[48] *Id.* 315.
[49] *Id.* 346.
[50] [1977] 2 W.L.R. 310, 330.
[51] [1977] 3 W.L.R. 300, 309-310.
[52] *Id.* 322.

> to enforce the law. In my opinion this argument is fallacious because it overlooks the fact that the ordinary and primary means of enforcing the criminal law is by prosecuting an offender after he has committed an offence, and that the power of prosecution is in no way affected by the Attorney-General's refusal of consent to relator proceedings. The civil courts may indeed be powerless, in the absence of the Attorney-General's consent, to prevent or attempt to prevent, the law from being broken, but the criminal courts retain their ordinary power to punish offenders.[53]

Again, three of their Lordships were disposed to think that, even in a case where the Attorney-General did give his consent to relator proceedings, an application to a civil court for an injunction to restrain a threatened breach of the criminal law would be an exceptional procedure. Lord Wilberforce said:

> This is a right, of comparatively modern use, of the Attorney-General to invoke the assistance of *civil courts* in aid of the *criminal law*. It is an exceptional power confined, in practice, to cases where an offence is frequently repeated in disregard of a, usually, inadequate penalty—see *Attorney-General* v. *Harris* [1961] 1 Q.B. 74; as to cases of emergency—see *Attorney-General* v. *Chaudry* [1971] 1 W.L.R. 1614.[54]

With equal emphasis, Viscount Dilhorne said:

> It has been and in my opinion should continue to be exceptional for the aid of the civil courts to be invoked in support of the criminal law and no wise Attorney-General will make such an application or agree to one being made unless it appears to him that the case is exceptional.[55]

The point being made is, of course, that the criminal law should naturally and normally be administered by courts of criminal jurisdiction, and that courts of civil jurisdiction should only intervene with injunctive relief where exceptionally flagrant threats are being made against the operation of the criminal law. The exceptional character of such a procedure would be obscured if it was open to common invocation by members of the general public.

In the Court of Appeal Ormrod L.J. had spoken of the "essentially fictional character of relator proceedings"[56] because in his view the relator was "the real plaintiff"[57] while the Attorney-General was no more than "the nominal plaintiff".[58] In the House of Lords, this disparagement of the Attorney-General's role was denounced by three of their Lordships. Lord Wilberforce said:

> But the Attorney-General's role has never been fictional. His position in relator actions is the same as it is in actions brought without a relator (with the sole exception that the relator is liable

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[53] *Id.* 349.
[54] *Id.* 313.
[55] *Id.* 323. See also Lord Diplock's comment 331-332.
[56] [1977] 2 W.L.R. 310, 342, 344.
[57] *Ibid.*
[58] *Ibid.*

> for costs . . .). He[59] is entitled to see and approve the statement of claim and any amendment in the pleadings, he is entitled to be consulted on discovery, the suit cannot be compromised without his approval; if the relator dies, the suit does not abate. For the proposition that his only concern is to "filter out" vexations and frivolous proceedings, there is no authority—indeed, there is no need for the Attorney-General to do what is well within the power of the court. On the contrary he has the right, and the duty, to consider the public interest generally and widely.[60]

One of the plaintiff's arguments, thought by Lord Fraser of Tullybelton to be the "most substantial argument"[61] advanced on his behalf, was to the effect that just as a private citizen had sufficient interest to bring a prosecution to punish those who have actually broken the criminal law, so also the same citizen should not be said to lack standing to apply for an injunction to *prevent* the threatened commission of crime. Four[62] of the Law Lords expressly rejected the plaintiff's analogy but, it is suggested, did so unconvincingly. Viscount Dilhorne, whilst conceding that the plaintiff's analogical point was "at first sight attractive and logical",[63] ultimately forsook the blandishments of logic because he could "not find anything to support it in the decided cases".[64] Lord Edmund-Davies, in similar vein, reminded the plaintiff that there was "a massive body of law"[65] against him. Lord Wilberforce appeared content to assert that the decision whether or not to apply for injunctive relief against a threatened criminal act was one which the Attorney-General alone was suited to make, noting that such a decision involved the interests of the public over a broad horizon.[66] Lord Fraser of Tullybelton turned the plaintiff's argument on its head, and said that just as the Attorney-General had the right to stop a private prosecution, so also the need to obtain his consent to relator proceedings was "the means of enabling the Attorney-General to exercise an equivalent control in the public interest over a private application for injunctions against crimes".[67] Thus their Lordships were unable to combat the rational thrust of the plaintiff's analogy with any show of a logical counterpoint; however, they sought, and found, refuge behind the ramparts of previous judicial observations.

Finally, three of the Law Lords even had reservations about the Attorney-General's own undoubted power of resorting to the civil courts for the enforcement of the criminal law. Thus Lord Wilberforce said:

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[59] *I.e.* the Attorney-General.

[60] [1977] 3 W.L.R. 300, 311. See also 325, *per* Viscount Dilhorne, and 339, *per* Lord Edmund-Davies.

[61] *Id.* 350.

[62] *Id.* 314 *per* Lord Wilberforce; 324, 326, *per* Viscount Dilhorne; 340, *per* Lord Edmund-Davies; 350, *per* Lord Fraser of Tullybelton.

[63] *Id.* 326.

[64] *Ibid.*

[65] *Id.* 340.

[66] *Id.* 314.

[67] *Id.* 350.

If Parliament has imposed a sanction (*e.g.*, a fine of £1), without an increase in severity for repeated offences, it may seem wrong that the courts—civil courts—should think fit, by granting injunctions, breaches of which may attract unlimited sanctions, including imprisonment, to do what Parliament has not done. Moreover, where Parliament has (as here in the Post Office Act 1953) provided for trial of offences by indictment before a jury, it may seem wrong that the courts, applying a civil standard of proof, should in effect convict a subject without the prescribed trial. What would happen if, after punishment for contempt,[68] the same man were to be prosecuted in a criminal court?[69]

DENNIS ONG*

[68] *I.e.* for disregarding the injunction issued by the courts of *civil* jurisdiction.

[69] [1977] 3 W.L.R. 300, 313-314; 322, *per* Viscount Dilhorne; 329-330, *per* Lord Diplock. But Lord Edmund-Davies was not similarly troubled, 340.

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