LCC/78/191

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COPY NO. 28

REPORT OF THE RAWLINSON COMMITTEE

Introduction

In May 1978 I was invited to chair a small committee to make recommendations upon Party policy towards reform of the law of libel and contempt of Court and the law concerning Official Secrets. The Committee consisted of The Rt. Hon. Sir Michael Havers, QC, MP, Sir Edward Pickering, David Howell, MP, Leon Brittan, QC, MP, Peter Temple-Morris, MP and Julian Gibson-Watt.

The recommendations of the Committee have been kept purposely short.

During the period of the Conservative Government 1970-74 the Heath Administration established three Committees to study these subjects. These three Committees exhaustively considered the matters and reported respectively: the Franks Committee on Official Secrets in September 1972 (Cmnd. 5104); the Phillimore Committee on Contempt of Court in December 1974 (Cmnd. 5794); and the Faulks Committee on Defamation in March 1975 (Cmnd. 5909).

The Committee of which I have been Chairman now have examined together and discussed those Reports, and generally (with exceptions and reservations set out herein) recommend adoption as party policy of all those three reports. We have deliberately not sought to discuss in our present report all the points of detail, but we have broadly dealt with those parts of each Report where we disagree with the findings and (on certain subjects) made alternative recommendations.

Reform of Section 2 of the Official Secrets Act 1911

1. We recommend that Section 2 of the Official Secrets Act 1911 should be repealed and replaced by a new Official Information Act as recommended by the Franks Committee.

2. The new Act should follow, in general, the proposals in the Franks Report. We recommend, however, some major alterations to the Franks recommendations with the object of providing an independent review of classification of official information.

3. We agree, as recommended by the Franks Report, that the Secretary of State should be empowered to make regulations concerning the classification and de-classification of documents. But we recommend that such regulations should be kept under continuous review by a Select Committee of the House of Commons and subject to the affirmative procedure of Parliament.

4. Further, we reject the idea that review of the classification of information allegedly disclosed should be the responsibility of the Minister of the Department concerned. Instead, we recommend that before a prosecution can be instituted for the disclosure of classified information, there must be an examination of the information allegedly disclosed without authority, to rule whether or not it was classified information. This would be done not by the Minister but by an independent permanent Committee. This Committee should consist of two Privy Councillors presided over by a Lord of Appeal in Ordinary. Before the institution of any prosecution but upon notice

of intended prosecution, the Committee must be satisfied that the information alleged to have been disclosed was so classified at the date of disclosure. If so satisfied, the Committee must so certify, and any such certificate would be conclusive evidence for a Court of the fact that the information alleged to have been disclosed was classified within the meaning of the new Act. Thereafter upon prosecution, all other ingredients of the offence must be proved by evidence. If the Committee were not satisfied that the information was correctly classified, they must refuse their certificate and no prosecution could follow. The proposed defendant would have the right to make representations to the permanent Committee.

Reform of the Law of Contempt of Court

1. We recommend the law of Contempt of Court should be reformed in general accordance with the recommendations of the Phillimore Committee. In particular we recommend, in agreement with the Phillimore Committee, that strict liability for contempt of Court in relation to publications should not be applicable until (a) in criminal cases a charge has been preferred; (b) in civil cases the case has been set down for trial, or a date has been fixed for the hearing.

2. Thereafter, there should be freedom to publish any fair and accurate report of Court proceedings subject to certain safeguards set out below.

3. We recommend that the restrictions on reporting (or the powers to restrict publication) which presently exist in the following classes of proceedings should continue to apply and, where necessary, should be incorporated in the proposed legislation to codify the law of Contempt:

(i) Criminal committal proceedings before the Magistrates;

(ii) Identification of complainants in rape offences;

(iii) Certain domestic proceedings and any matters relating to children;

(iv) Indecent evidence and evidence in matrimonial proceedings;

(v) Matters which may affect national security or secret processes;

4. In addition, we recommend that it should be an absolute offence to publish the name of or otherwise identify a witness in any trial in which the Court has directed that his identity should not be published. The Court should only have power to make such a direction on the grounds (a) of national security, or (b) of danger to the witness, or (c) where the disclosure would be likely to impede the prevention or detection of offences or the apprehension or prosecution of offenders.

5. In relation to trials by Jury only, we recommend that it should be an absolute offence to publish before a final verdict a report of (a) any part of the proceedings during which the Jury was not present in Court or (b) any matter on which the Judge has given a specific direction restricting publication until after the final verdict.

6. The Attorney General should be given statutory power to apply for an injunction to restrain any likely repetition of any breach of the above provisions.

Reform of the Law of Defamation

1. We recommend that broadly the law of libel should be reformed in accordance with the recommendations of the Faulks Committee.

2. We support in particular the Faulks recommendation that there should be substantial extensions to the categories of report enjoying qualified privilege. We consider however that special problems arise relating to the legitimate reporting of events overseas, and we therefore favour the implementation of the Minority Report of Mr. Farmer on this. This would accordingly provide that the fair and accurate report of events occurring in publications issued overseas which, had they occurred or been issued in the United Kingdom, would have absolute or qualified privilege, should enjoy qualified privilege under the law of the United Kingdom.

3. We consider that there is no justification for any body or corporation to be exempt from the operation of the law of libel in respect of libels committed by it or on its behalf, and we do not believe that any such body or corporation would wish for such exception. We therefore consider that Section 14 of the Trades Union and Labour Relations Act 1974 should be amended, so that Trade Unions no longer enjoy immunity from actions for libel in respect of publications for which they are responsible.

4. We do not support the recommendation of the Faulks Committee that for a period of five years beginning with the date of death certain near relatives of the deceased person should be entitled to sue the person responsible for the publication of a statement defamatory of the deceased. We do, however, support the recommendation that the cause of action for defamation should survive against the estate of the person responsible for the publication and that where a person who has been defamed dies, his personal representatives should be entitled to continue the action.

5. We do not share the view of the Faulks Committee that the law relating to criminal libel should be amended. We favour its total abolition, with the single exception of libels upon the Sovereign personally. The justification for this exception is simply that the Sovereign cannot take civil action in her own courts.

6. We disagree in part with the Faulks Committee recommendation concerning the right to trial by jury. In our opinion the right to trial by jury in actions for defamation should remain, but we support the proposal that on the question of the quantum of damages the role of the jury should be limited to deciding whether damages to be awarded should be substantial, moderate, nominal or contemptuous, and that the Judge should thereupon assess the quantum of damages in accordance with the decision and classification decided upon by the jury.

Conservative Research Department,
24 Old Queen Street, London, SW1.

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