Overview | **[1974] AC 765**, | [1974] 1 All ER 609, | [1974] 2 WLR 208, | 118 Sol Jo 134

BRITISH RAILWAYS BOARD APPELLANTS AND PICKIN RESPONDENT [On appeal from PICKIN v. BRITISH RAILWAYS BOARD] [1974] A.C. 765

[HOUSE OF LORDS]

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

1973 Oct. 23, 24, 25, 29, 30, 31; Nov. 1; 1974 Jan. 30

Statute — Validity — Local or private Act — Plea that private Act obtained by fraud and misleading of Parliament — Application to strike out plea as frivolous — Whether litigant able to impugn validity of statute — British Railways Act 1968 (c. xxxiv), s. 18 (1)

By section 259 of a private Act of Parliament of 1836 setting up a railway line it was provided that, if a line should be abandoned, the lands acquired for the track should vest in the owners for the time being of the adjoining lands. The section was incorporated in another private Act of Parliament of 1845 under which further lands were acquired for a branch line. Subsequently the lines became vested in the British Railways Board, who promoted an unopposed Bill which became the British Railways Act 1968, a private Act. The effect of section 18 of the Act of 1968 was to cancel the effect of section 259 of the Act of 1836 and to vest in the board the lands over which the abandoned track of lines, one of which was that laid under the Act of 1845, passed.

The plaintiff, who had purchased from the owner of a piece of land adjoining that track all his estate and interest in the railway land and the track, brought an action against the board claiming that by virtue of section 259 he was the owner of that land to mid-track. The board claimed that under section 18 of the Act of 1968 the land had vested in the board and at the claim was invalid. By his reply the plaintiff pleaded in paragraphs 3 and 4 that the board had misled Parliament by means of a false recital in the preamble to the Act of 1968 in reference to the deposit of requisite documents, and in obtaining the passage of the Bill as unopposed; and that the board could not rely on section 18 which was ineffective to deprive him of his title.

The board applied to have paragraphs 3 and 4 struck out under R.S.C., Ord. 18, r. 19, as frivolous, vexatious and an abuse of the process of the court. Master Elton, whose decision was affirmed by Chapman J., struck them out. The Court of Appeal reversed his decision.

On appeal to the House of Lords:-

Held, allowing the appeal, that the function of the court was to consider and apply the enactments of Parliament, and accordingly, in the course of litigation, it was not lawful to impugn the validity of a statute by seeking to establish that Parliament, in passing it, was misled by fraud or otherwise, nor might a litigant seek to establish a

claim in equity by showing that the other party, by fraudulently misleading

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Parliament had inflicted damage on him (post, pp. **787G-H**, **788B-C**, **H - 789B**, **792A**, **C-D**, **796B-C**, **798E**, **802C-E**); any investigation into the manner in which Parliament had exercised its function would or might result in an adjudication by the courts, bringing about a conflict with Parliament (post, pp. **787H - 788B**, **790C-E**, **796G-H**, **798E**).

Mackenzie v. Stewart (1752) 9 Mor.Dic. 7443; (1754) 1 Pat.App. 578, H.L.(Sc.) explained.

Edinburgh and Dalkeith Railway Co. v. Wauchope (1842) 8 Cl. & Fin. 710, H.L.(Sc.) and *Lee v. Bude and Torrington Junction Railway Co.* (1871) L.R. 6 C.P. 576 applied.

Decision of the Court of Appeal [1973] Q.B. 219; [1972] 3 W.L.R. 824; [1972] 3 All E.R. 923 reversed.

The following cases are referred to in their Lordships' opinions:

Biddulph v. Biddulph (1790) 5 Cru.Dig., 4th ed. (1835) Tit. 33, s. 53, p. 26.

Bradlaugh v. Gossett (1884) 12 Q.B.D. 271, D.C.

Burdett v. Abbot (1811) 14 East 1.

Dangle v. Associated Newspapers Ltd. [1960] 2 Q.B. 405; [1960] 2 W.L.R. 430; [1960] 1 All E.R. 294.

Dumbarton Magistrates v. Glasgow Magistrates (1771) 1 Hailes' Decisions (Brown) 446; 34 Mor.Dic. 14769.

Edinburgh and Dalkeith Railway Co. v. Wauchope (1842) 8 Cl. & Fin. 710; 1 Bell 252, H.L.(Sc.).

Green v. Mortimer (1861) 3 L.T. 642, C.A.

Hoani Te Heuheu Tukino v. Aotea District Maori Land Board [1941] A.C. 308; [1941] 2 All E.R. 93, P.C.

Labrador Co. v. The Queen [1893] A.C. 104, P.C.

Lee v. Bude and Torrington Junction Railway Co. (1871) L.R. 6 C.P. 576.

McCormick v. Grogan (1869) L.R. 4 H.L. 82, H.L.(I.).

Mackenzie v. Stewart (1752) 9 Mor.Dic. 7443; 18 Mor.Dic. 15459; (1754) 1 Pat.App. 578, H.L.(Sc.); 5 Cru.Dig. 4th ed. (1835) Tit. 33, s. 51, p. 23; (1756) Monboddo 5 Bro.Supp. 849.

Shrewsbury (Earl) v. Scott (1859) 6 C.B.N.S. 1.

Stead v. Carey (1845) 1 C.B. 496.

Waterford, Wexford, Wicklow and Dublin Railway Co. v. Logan (1850) 14 Q.B. 672.

The following additional cases were cited in argument:

Chapman v. Brown (1765) 3 Burr. 1626.

Chub v. Salomons (1852) 3 Car. & Kir. 75.

Church of Scientology of California v. Johnson-Smith [1972] 1 Q.B. 522; [1971] 3 W.L.R. 434; [1972] 1 All E.R. 378.

Dawson v. Paver (1847) 5 Hare 415.

Donald v. Anderston Magistrates (1832) 11 Shaw 119.

Forbes v. Samuel [1913] 3 K.B. 706; 29 T.L.R. 544.

Great Northern, Piccadilly and Brompton Railway Co. v. Attorney-General [1909] A.C. 1, H.L.(E.).

Howard v. Earl of Shrewsbury (1874) L.R. 17 Eq. 378.

Mangles v. Grand Collier Dock Co. (1840) 9 L.J.Ch. 177.

Pylkington's Case (1455) Y.B. Pas. 33 Hen. 6 ff. 17-18, pl. 8.

River Wear Commissioners v. Adamson (1877) 2 App.Cas. 743, H.L.(E.).

State at the relation of *Hindman v. Reed* (1797) 4 Harr. & M'H. 6.

Stockdale v. Hansard (1839) 9 Ad. & E. 1.

Threshie v. Gordon (1841) 3 Dunlop 450.

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APPEAL from the Court of Appeal [1973] Q.B. 219.

This was an appeal by have of the House of Lords given on March 7, 1973, from an order of the Court of Appeal (Lord Denning M.R., Edmund Davies and John Stephenson L.JJ.) dated October 3, 1972, allowing an interlocutory appeal from a decision of Chapman J. dated June 1, 1972, dismissing an appeal from Master Elton dated February 21, 1972, striking out paragraphs 3 and 4 of the amended reply of the respondent, George William Leonard Pickin (the plaintiff in the action), on the ground that they were frivolous and vexatious and an abuse of the process of the court. The action concerned the respondent's interests in land acquired in the 19th century by the Bristol and Exeter Railway Co. for a railway line between Yatton and Clevedon in the county of Somerset. The appellants, the British Railways Board (the first defendants in the action), were successors in title of the company.

The respondent, by his amended statement of claim, claimed to be the owner or alternatively the equitable tenant in common of a piece of land representing half the width of the former Clevedon to Yatton line, deriving title through section 259 of the Bristol and Exeter Railway Act 1836 (6 & 7 Will. 4 c. xxxvi), a local Act of Parliament. By their defence the appellants relied on section 18 of the British Railways Act 1968, also a private Act of Parliament. Paragraphs 3 and 4 of the respondent's annexed reply were as follows:

> "3. Further or in the alternative if the [Act of 1968] purports to bar this action then it falsely recites in the preamble that plans of the lands authorised to be acquired or used by this Act and a book of reference to such plans containing the names of the owners and lessees and of the occupiers of the said land were duly deposited as there sheet. Such recital drafted by the first defendants was false (as the first defendants well knew) in that no such plans or book of reference was made or prepared in respect of the plaintiff's land nor deposited with the clerk to the Somerset County Council in which county the said land is situate. Furthermore there is no other recital in the preamble specifically referring to the subject matter of section 18. Furthermore no notice was given to the owners, occupiers or lessees of the said adjacent lands (including the plaintiff) nor was any public notice given of the said intended compulsory acquisition although at the time the Bill was before Parliament the first defendants were well aware that the railway (if not already abandoned given up or ceased to be employed as such) was about to be abandoned given up or ceased to be employed as such. By reason of the matters aforesaid section 18 does not upon its true construction have the effect of barring this action or of depriving the plaintiff of his interest in land without compensation.
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> "4. If section 18 on its trail construction bars this action either by depriving the plaintiff of his interest in land without compensation or otherwise the first defendants as promoters of the said Bill, have broken the standing orders of Parliament and have failed to comply with the same and have included a misleading preamble and have misled Parliament and the said local Act being solely for the benefit

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> of the first defendants and obtained ex parte as an unopposed Bill is ineffective to deprive the plaintiff of his land or proprietary rights and the first defendants cannot rely on the same."

The Bristol and Exeter Railway Co. was incorporated by the Act of 1836 whereof section 259 provided as follows:

> "That if the said railway or any part thereof shall at any time hereafter be abandoned or given up …, 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 railway 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 one side, and the remainder thereof in the owners of the land on the other side thereof."

The facts are stated in their Lordships' opinions.

John Rankin Q.C. and ***Gordon Hodgson*** for the appellants. One begins by assuming hypothetically the facts alleged by the respondent. The allegations are serious, that the appellants knowingly drafted and included a false statement in a Bill, that Parliament was deliberately misled by the appellants and that they broke the Standing Orders of Parliament. The appellants, of course, deny the truth of this. The question for determination is whether once a Bill has been agreed by both Houses of Parliament and has received the royal assent it can be impeached in the courts on the grounds (a) that its introduction or passage through Parliament was attended by some irregularity or (b) that it was procured by fraud. The question is limited to Private Acts.

The appellant's predecessors built a railway in Gloucestershire, Somerset and Devon under the Bristol and Exeter Railway Acts 1836 and 1845 on terms that if the railway were abandoned or given up the land should revert to the adjoining landowner. By the British Railways Act 1968, a private Act of Parliament, the appellants secured the repeal of the legislation imposing this term.

The respondent, having purchased the interest of an adjoining landowner, claims to have become the owner of the land, over which the railway ran, on its discontinuance. He has sued the appellants in trespass; and when met with a plea that he has no title because of the Act of 1968 pleads in his amended reply that the Act of 1968 does not bind him because its passage was secured by a fraud of Parliament. The main point depends on section 259 of the Act of 1836 which imposed the term. Section 18 of the Act of 1868 was designed to repeal those reverter provisions in the old Railway Acts. It is alleged that there has been a breach of paragraph 19 of the Standing Orders of the House of Commons (Private Business).

The appellants are concerned to have paragraphs 3 and 4 of the

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Parliament, the passing of the Act would be the end of the matter. As to the preamble of a statute, even if it states matters which are untrue the courts may disregard them, but they cannot disregard the enacting words. If the words are clear and unambiguous the court must give effect to them. The remedy for a fraud on Parliament is to bring it to the attention of Parliament.

My section 9 of the Interpretation Act 1889 every Act shall be a public Act unless the contrary is

expressly provided. The Act of 1868 is a local and personal Act but it is not a private Act. There is a procedural distinction between public and private Acts.

The preamble to the Act of 1968 refers to acquiring land, but there the appellants are not acquiring land, since they already have the land in question. Further, there was no abandonment or cesser of use before the Act came into force. The respondent's case is based on an allegation of deceit and that is what is sought to strike out. For the respondent the escape from the effect of section 18 is fraud and nothing else. On its ordinary interpretation section 18 precludes the respondent from claiming this land or an interest in it.

It is not the law that section 18 cannot stand because it was passed through Parliament by deception. A fraud on Parliament is a breach of parliamentary privilege.

Paragraph 4 of standing orders relates to the bringing in of a private Bill: see also paragraphs 10 (2) (c), 13, 17 and 82. As to the formal validity of statutes, see *Halsbury's Laws of England*, 3rd ed., vol. 36 (1961), p. 378, para. 560 (citing Edinburgh and *Dalkeith Railway Co. v. Wauchope* (1842) 8 Cl. & Fin. 710, 735 and *Shrewsbury (Earl) v. Scott* (1859) 6 C.B.N.S. 1, 160) and clause 1 (9) of the Bill of Rights 1689.

The relevant authorities are the *Edinburgh and Dalkeith Railway case*, 8 Cl. & F. 710, 713, 715, 718, 720 (Lord Brougham), 723-724 (Lord Campbell); *Lee v. Bude and Torrington Junction Railway Co*. (1871) L.R. 6 C.P. 576, 582; the *Shrewsbury case*, 6 C.B.N.S. 1, 156 et seq. 160; *Waterford, Wexford, Wicklow and Dublin Railway Co. v. Logan* (1850) 14 Q.B. 672; *Stead v. Carey* (1845) 1 C.B. 496, 514-515, 522 (Tindal C.J. and Coltman J.); *Labrador Co. v. The Queen* [1893] A.C. 104, 123 and *Hoani Te Heuheu Tukino v. Aotea District Maori Land Board* [1941] A.C. 308, 322-323.

In *Mackenzie v. Stewart* (1752) 9 Mor.Dic. 7443; 18 Mor.Dic. 15459; (1754) 1 Pat.App. 578; 5 Cru.Dig. 4th ed. (1835) Tit. 33, s. 51, p. 23 all the House of Lords were doing was construing a private Act of Parliament. The first reason in the respondent's printed case on appeal to the House of Lords in *Mackenzie's case* was as follows:

> "That the debts and encumbrances specified by the Act of Parliament must be taken, as they are recited between the parties to the Act; for though a saving clause is inserted for the rights of those who were not parties, yet it is binding law to those who were. The Act directs the money arising by the sale of the lands and barony of Roystoun, to be applied in payment of the debts (the amount of which is particularly stated) and the surplus, only, to be laid out in the purchase

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> of land to be settled in the order and guise of succession, provided by the entail."

The third reason was as follows:

> "That it was improper and immaterial to lay before the court that evidence, which satisfied the legislature of the truth of the allegations contained in that petition, which was the occasion of the Act. So much is clear, that the adjudication laid at the instance of Roderick Mackenzie, on Lady Anne's bond of provision, November 28, 1688, and conveyed to Roderick Mackenzie, with the consent of the Earl of Cromartie, the grantor of the bond, and maker of the entail, with the interest due upon the same, was an encumbrance affecting the lands of Roystoun, at the time when the Act passed; and although the said adjudication might possibly subsist in the person of Roderick Mackenzie, as a trust for Sir James Mackenzie, the tenant in tail, yet there was no ground in law, or reason, to say, that Sir James Mackenzie hailed not have the benefit of it for himself, as a trust, though he was liable to discharge it, as heir of entail. …"

The passage in *Blackstone's Commentaries on the Laws of England*, 16th ed. (1825), Book 2, Chapter 21, pp. 344-346 is limited to a law affecting only the parties to a Bill, which "is looked

upon rather as a private conveyance than as a solemn act of the legislature." There is no authority for the principles supposed to be laid down there.

Biddulph v. Biddulph (1790) 5 Cru.Dig., 4th ed. (1835) Tit. 33, s. 53, p. 26 is cited as confirming the doctrine supposed to have been laid down by Blackstone but it too was decided on a doctrine of construction.

Green v. Mortimer (1861) 3 L.T. 642 does not support the respondent's case. It appears that Lord Campbell L.C. was looking at section 46 of Carew's Estate Act 1857, the private Act of Parliament there in question, and was not going behind it but was acting within the power of the Court of Chancery.

The Court of Appeal in the present case took a view of *Mackenzie's case*, 9 Mor.Dic. 7443; 18 Mor.Dic. 15459, which endorsed it with the authority of a legal principle, whereas it is merely a case of construction, like *Biddulph's case* and *Green's case*. The reference to *Mackenzie's case* by Shadwell V.-C. in *Mangles v. Grand Collier Dock Co*. (1840) 9 L.J.Ch. 177, 180 was only made in the course of argument; it confined the supposed principle to private Acts of Parliament.

As to the classification of Acts of Parliament into public or private, general or local and personal, see *Craies on Statute Law*, 7th ed. (1971), pp. 55-57. On the basis that the Court of Appeal in the present case was right in distinguishing between public and private Acts of Parliament it is submitted, (1) that in modern times no distinction is to be drawn between them so far as their validity is concerned; the difference is between Bills and that is only procedural; (2) alternatively, that *Mackenzie's case*, 9 Mor.Dic. 7443; 18 Mor.Dic. 15459, only authorised the courts to investigate the parliamentary process within the limits of the type of private Act of Parliament to which that case applied. The Court of Appeal's distinction between public and private Acts of Parliament is too rough hewn.

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As to (1), by section 9 of the Interpretation Act 1889 "Every Act … shall be a public Act … unless the contrary is expressly provided by the Act." *Holdsworth, A History of English Law* (1938), vol. XI, pp. 354 et seq. deals with the historical distinction between public and private Acts of Parliament. *Craies on Statute Law*, p. 589, deals with restraint by the courts of petitioners to introduce private Bills. At p. 578 it is suggested that strangers to a private Act are not bound. *Dawson v. Paver* (1847) 5 Hare 415, 434 is cited there. It suggests that on construction of the Act strangers may be held to be bound. *Halsbury's Laws of England*, 3rd ed., vol. 28 (1959), p. 466, para. 914, n. (1), pp. 464-465, para. 911, seems to suggest that in all cases it is Parliament which enforces its own procedure. As to the question whether a private Act can amend a public Act, see *Erskine May's Parliamentary Practice*, 18th ed. (1971), pp. 836-837. As to hybrid Bills see pp. 833 et seq. Private Bills are dealt with by paragraph 191 A of the Standing Orders of the House of Commons (Private Business). The correct conclusion is that the distinction between public Acts and private Acts was too broadly stated by the Court of Appeal in the present case.

Difficulties would arise if the courts adopted a different approach to private Acts from that for which the appellants contend. An inquiry into the propriety of an Act of Parliament would of necessity involve an examination of the Standing Orders of Parliament to see whether the particular Act had been properly classified in its passage as a public, private, opposed or

unopposed Bill. It might involve a conflict between the courts and Parliament. If the court found that the Act had been improperly obtained it could place the court in the dilemma of having to choose between referring the matter to Parliament for action to be taken or refusing to give effect to the Act.

Reliance is placed on the *Edinburgh case*, 8 Cl. & Fin. 710, 725. As to the principles to be applied and the scope of parliamentary proceedings, see *Erskine May's Parliamentary Practice*, pp. 81-82, 84-85.

What is involved in the allegation of misleading? In a case of fraud one has to establish that someone has been misled. It is hard to see how that could be established in the context of a parliamentary Bill and how far such proceedings should go. See paragraph 74 A of the Standing Orders and *Erskine May's Parliamentary Practice*, p. 81, as to the protection of witnesses in parliamentary proceedings.

In summary: (1) The law is correctly stated in *Halsbury's Laws of England*, 3rd ed., vol. 36, p. 378, para. 360 that if a Bill has been passed by both Houses and has received the Royal Assent it cannot be impeached on the ground that its introduction or passage was attended by irregularity or obtained by fraud. It is an accepted principle of constitutional law and applies equally to public and private Acts: see clause 1 (9) of the Bill of Rights 1689; the *Edinburgh case*, 8 Cl. & Fin. 710, 724; *Lee's case*, L.R. 6 C.P. 576, 592; the *Waterford case*, 14 Q.B. 672; the *Labrador case* [1893] A.C. 104 and *Hoani's case* [1941] A.C. 308. (2) There is no rule of law or practice which directs a court how to conduct an inquiry into whether or not an Act of Parliament has been properly obtained or that states what evidence is relevant or admissible in such an inquiry or that lays down what action a court is to take if such a finding is made. (3) All

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rule already stated that it applies only to public Acts. The only authorities which suggest such a qualification, *Mackenzie*, 9 Mor.Dic. 7443; 18 Mor. Dic. 15459; *Biddulph*, 5 Cru.Dig., 4th ed., Tit. 33, s. 53, p. 26; Green, 3 L.T. 642 and the passage already cited from Blackstone, are distinguishable (a) because the cases were decided on construction and (b) because the subject-matter of all of them was limited to private personal interests. Blackstone was referring only to Acts affecting such matters and the passage is limited to a law affecting the parties to the Bill, which may be construed contra proferentem. The present Act, though passed by the private Bills procedure, affects the public as third parties and interests beyond those of parties to the Bill. If the principles laid down by *Blackstone* were not limited it would create anomalous situations. To bring such matters as are suggested before a court would of necessity involve a breach of privilege, since the umbrella of parliamentary privilege is wide.

Leolin Price Q.C. and ***John Tackaberry*** for the respondent. The respondent does not seek a ruling against section 18 of the Act of 1968 on any such wide-ranging doctrine as the appellants suggest. He only relies on a limited doctrine justifying relief in the circumstances shown on the face of the statute where there is material which justifies him in saying that the court should not allow the promoter of the Bill relief on the statute as it affects him. The doctrine only touches the promoter of a Bill and the persons affected. The respondent does not seek to call as a witness any officer of either House of Parliament, or seek production of any document in the custody of

an officer of either House. The matter is simpler than the appellants have represented it. The matter is clearly indicated in the pleadings.

The sixth recital to the Act of 1968 recited that

> "plans of the lands authorised to be acquired or used by this Act, and a book of reference to such plans containing the names of the owners and lessees … and of the occupiers of the said lands were duly deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons and with … the clerk of the county council of the county … within which … the said lands are situated, …"

Section 18 of the Act authorised the land now in question to be acquired but no plans or book of reference were lodged in respect of any of the lands to which section 18 applied. Assuming that the procedure of Parliament was followed as indicated in the Standing Orders, the recital must have been taken at its face value so that it must have been assumed that Parliament had before it a full set of plans.

The expression "land" is defined in section 3 of the Interpretation Act 1889 as including hereditaments of any tenure. The right to which the respondent was entitled was a hereditament. Part III of the Act of 1968, in which section 18 occurs is headed "Lands." Section 13, the first section in Part III, confers power to acquire lands. So does section 18, which confers power to acquire what for the purposes of statutory interpretation is "land." Section 259 of the Act of 1836 indicates what is the nature of the right of reversion. The railway company acquired thereby

less than the whole fee simple. Its right was not alienable and it was determinable. It acquired a very limited interest in the land and the whole remainder of the fee simple was still vested in the adjoining owners. The Act of 1968 authorised the acquisition of the site of the railway line from the adjoining owners. Parliament must have believed that the plans, etc. had been deposited, as recited, in respect of the land affected by section 18. There was nothing in the preamble or in section 18 to indicate that the railway lines were excepted from the requirement. It is the normal practice in the case of such a Bill as this that plans should be deposited in the case of compulsory acquisitions proposed by the Bill.

In the case of a private Act of Parliament, if it is shown that a state of facts has been presented to Parliament, which exercised its legislature function on the basis of them, and that those alleged facts were untrue, it has thereby been established that Parliament has been misled, because the true facts were not presented to Parliament. This appears from the very words used in the Act of 1968. In these circumstances it would be unfortunate if the applicability of *Mackenzie's case*, 9 Mor.Dic. 7443; 1 Pat.App. 578, were not arguable now.

The plans referred to in the preamble to the Act of 1968 are not confined to the case of the lands referred to in Schedule 2 to the Act. See section 13 (1) of the Act. Subsection (2) would be differently phrased if only the lands referred to in it were within subsection (1).

The respondent's pleadings should not be struck out under R.S.C., Ord. 18, r. 19. In the *Supreme Court Practice* 1973, vol. 1, p. 301 it is said that a pleading ought not to be struck out "unless it is not only demurrable but something worse than demurrable" and the rule "ought not to be applied to an action involving serious investigations of ancient law and questions of general importance." Here there is room for substantial argument. There is a point of some

substance in the question whether section 13 (1) can properly be taken to refer to all the lands, including those affected by section 18, and not only to those referred to in section 13 (2): see paragraph 13 of the Standing Orders and Appendix A relating to plans and books of reference.

The appellants did not refer to the lands affected by clause 18 of the Bill, although the parcels of such lands must have been very great, since a very great number of railway lines were proposed to be extinguished under the Beeching plan. The compulsory acquisition proposed was to be on a massive scale. The preamble represented that plans had been deposited in respect of all the lands affected by clause 18, and preambles assume a very great importance in private legislation. This preamble was used to obtain parliamentary sanction for compulsory acquisition of land by the operation of section 18 of the Act, which, on the interpretation submitted by the respondent in this application, is of staggering scope and breadth. Notice cannot have been given to the owners.

Compliance with the Standing Orders relating to the contents of a notice is not something into which a committee on a private Bill should inquire: see paragraph 139 of the Standing Orders.

The promoters of the Bill should have realised that the plans should have referred to all the lands to be compulsorily acquired. They have broken the Standing Orders and have failed to comply with them and have

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included a misleading preamble, misleading Parliament. They have obtained ex operetta an unopposed Bill. They were in effect taking a statutory conveyance of the land in question.

At this point the House of Lords does not have to distinguish between confiscation and compulsory purchase. If the appellants get the land under section 18, the provisions relevant to compulsory purchase still remain in force.

The correct approach to this matter is that set out in *Holdsworth, A History of English Law*, vol. XI, pp. 354-359 where reference is made to *McCormick v. Grogan* (1869) L.r. 4 H.L. 82, 97.

Mackenzie's case, 9 Mor.Dic. 7443; 18 Mor.Dic. 15459; 1 Pat.App. 578, is not to be considered as a case in which the plain operation of the statute in question was construed away. The remainder man was given relief against a clear provision of the Act: see the printed case on the appeal to the House of Lords, in particular the information (written pleadings) from Sir Kenneth Mackenzie, pp. 4, 7-8 and the information for John Stewart pp. 4, 8, and the report of the proceedings in Scotland after the decision of the House of Lords: *Mackenzie v. Stewart* (1756) Monboddo 5 Bro. Supp. 849. See also the brief notes of the case in Eyelashes' Tailzie No. 46, and Elchies Notes No. 46. Reliance is also placed on *Dumbarton Magistrates v. Glasgow Magistrates* (1771) Hailes' Decisions (Brown), vol. 1, 446, 448; 34 Mor.Dic. 14769 relating to the Clyde Navigation Act 1770.

The ground of the decision in *Mackenzie v. Stewart* was that, though the Act was not upset, a party should not be allowed to benefit by his fraud. The question was whether the debts referred to in the Act of Parliament being charged on the estate were indeed so charged. It was held that they were not. The case was not dealt with as a matter of construction. The question was raised

whether the court could go behind an Act of Parliament to investigate the circumstances in which it was passed, and the reports indicate that the courts were entitled to do so and to find to what extent there was a charge on the estate. It would depend on who were the parties to the action in which the matter was raised. Thus the trustees would have been in a better position than John Stewart to rely on the Act because they were not the promoters of it. The effect of the decision is that the promoters of the Act or the person who stands in their shoes must be made accountable for any fraud. The House of Lords must have had regard to the propositions in the respondents' printed case, particularly as Lord Hardwicke L.C. expressed indignation at the fraudulent means by which the passing of the Act had been obtained. Parliament in passing the Act had dealt with the debts in a certain way. The person who benefited from that and who was responsible for it was held to be responsible despite the enacting provisions.

The appellants have relied on the *Edinburgh and Dalkeith Railway case*, 8 Cl. & Fin. 710; see pp. 713-715, 718-720, 723-724; see also the report in 1 Bell 252, 274 (Lord Brougham and Lord Cottenham) and 278 (Lord Campbell). The observations relied on were made on a point which had not been fully argued and this weakens their impact. *Mackenzie v. Stewart*, 1 Pat.App. 578, was not brought to the notice of the House.

In the case of the British Railways Act 1968 ex facie there cannot have been notice. Even if the courts will not consider evidence whether the

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of the fact that from the recitals it appears that no notice has been given. It is not sought to call an officer of Parliament as a witness or to obtain discovery of a document in the custody of Parliament. Reliance is placed on the fact that on the face of the Act it is misleading. If an Act of Parliament recorded that there was a debt owing to John Smith and it could be shown that it was not owing, it would appear, without further evidence, that there had been a misstatement to Parliament. The starting point must be something on the face of the Act. Relief can be given because it appears that Parliament must necessarily have been misled.

Lee's case, L.R. 6 C.P. 576, 581-582, the point was excluded from argument and so it was not necessary to refer to *Mackenzie v. Stewart*, 1 Pat.App. 578. The pronouncement made by Willes J. was not made in the light of the learning which would have been available if the point had been argued out. There may have been no circumstances which would have made the principle in *Mackenzie v. Stewart* operate. There was no one before the court to argue that point.

In the *Shrewsbury case* 6 C.B.N.S. 1, 155-158, the observations of Cockburn C.J. were made without any suggestion of fraud having been put forward.

The *Waterford case*, 14 Q.B. 672, 676-677, 679, was simply a decision on whether leave should be given to plead in a certain manner.

In the *Mangles case*, 9 L.J.Ch. 177, the question was whether a particular person was liable on a call in respect of certain shares. What Shadwell V.-C. said at p. 180 is not consistent with the view that he regarded himself as debarred from considering whether there had been a fraud practiced on the legislature. The benefit which the promoter of a Bill has obtained is something

which equity will make him account for. In the present case it is sought to make the appellant liable for having dispossessed the respondent of his rights.

In *Stead v. Carey*, 1 C.B. 496, 515, 519-520, 521, 522, 523, what was granted was granted equally against all the world, but in the present case section 18 of the Act of 1968 was in the nature of a private conveyance.

In the *Labrador case* [1893] A.C. 104, 123 the statute in question was a public Act of Parliament. Further, it was a Privy Council decision which does not bind the House of Lords.

In the *Hoani case* [1941] A.C. 308, 322-323 there was no reference to *Mackenzie v. Stewart*, 1 Pat.App. 578. It related to a public Act of Parliament and there was no question of fraud.

In the present case the benefits were received only by misleading Parliament and it is apparent that Parliament was misled. This is not an action for damages but depends on equity and the law of trusts. It may be that under the law of trusts it may not be necessary to prove fraud in order to succeed. In the proceedings in Parliament the appellants knew what they were doing. It is apparent on the face of the Act of 1968 itself, without going into the discussions in Parliament that there was a mistake in the mind of Parliament induced by the promoters of the Act. The courts will not deny the operation of the Act of Parliament, or that section 18 took effect, but the appellants held the benefit accruing in trust for the respondent and the other adjoining owners. Parliament would never have given a

benefit like that to the appellants if it had realised the true facts. Such a thing cannot have been intended to operate against people who had not been told about it. The courts are entitled to have regard to the fact that the Bill was unopposed and that the parties affected were not notified. It was for the officers of Parliament to consider whether notice had been given and one is entitled to allege that they have been misled.

The respondent's rights are based on equitable fraud, misleading through carelessness or recklessness. In so far as the property has not been sold he is entitled to have it back; in so far as it has been sold, e.g., the rails, he is entitled to the proceeds. The question is whether the conditions for relief are present.

Mackenzie v. Stewart, 1 Pat.App. 578, was never lost sight of: see *Howard v. Earl of Shrewsbury* (1874) L.R. 17 Eq. 378, 387, 393 and *Chapman v. Brown* (1765) 3 Burr. 1626, 1628, 1631, 1632-1633, 1635 cited there. The latter case is only authority for the proposition that a recital in a private Act of Parliament is not binding even as a statement of fact.

In considering the possibility of relief against a private Act of Parliament, see *Threshie v. Gordon* (1841) 3 Dunlop 450, 457n., 460, 461, 462. In *Donald v. Anderston Magistrates* (1832) 11 Shaw 119, 122 Lord Meadowbank was evidently contemplating some sort of relief in the event of fraud.

As to relief against a statute obtained by fraud, see *Hardcastle on Statutory Law*, 3rd ed. (1901), pp. 505-508. The passage is not favorable to the respondent's contentions, but it shows that

Mackenzie v. Stewart, 1 Pat.App. 578, was not forgotten. There is a citation of *Green v. Mortimer*, 3 L.T. 642, which does not help either way. *Biddulph v. Biddulph*, 5 Cru.Dig. 4th ed. (1835) Tit. 33, s. 53, p. 26, is an example of fraud in obtaining an Act of Parliament being relieved against. The principle is also found in the United States: see *State at the relation of Hindman v. Reed* (1797) 4 Harr. & M'H. 6, 9, 10 and *Corpus Juris Secundum*, vol. 82, paras. 89-91, indicating that the concept of fraud affecting the validity of an Act of Parliament is present in the United States as in Britain.

On construction reliance is placed on *Craies on Statute Law*, 7th ed., pp. 578-579. The principles of construction applying to a private Act of Parliament are freer than in the case of a public Act of Parliament. The principle is that for which the respondent contends in paragraph 3 of the reply. The courts will lean against construing such an Act against a person in the position of the respondent.

In *Mackenzie v. Stewart*, 1 Pat.App. 578, fraud operated on the approach of the House to the case. The matters relevant on construction include fraud. Fraud in the misleading of Parliament is a relevant consideration on construction: see *River Wear Commissioners v. Adamson* (1877) 2 App.Cas. 743, 765-766. One can look at the recitals to find the purpose of the legislation and they may be taken into account in construing section 18. The reference there to parts of the railway that are to be abandoned must be linked with the reference in the recital to lands "to be acquired." Section 18 constitutes an immediate confiscation (note the words "as from the passing of this Act" in section 18 (1)). "Land" includes an interest in land. Such a confiscatory provision is not to be expected in that position in the Act. But section 18 (2) catches section 259 of the Act of 1836 unless the reference in the section as a whole to "lands" can be

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interpreted restrictively by reference to the general framework of the Act: see *Great Northern, Piccadilly and Brompton Railway Co. v. Attorney-General* [1909] A.C. 1.

It is for Parliament and not for the subject to claim parliamentary privilege but the courts are entitled to construe the Standing Orders, since they are entitled to look at them and to take judicial notice of them. So far it is unresolved what course should be taken if the courts and Parliament took a different view of their construction. The court should not stay every remedy because there is a possibility of such a conflict. The Interpretation Act is incorporated in Standing Orders. Here the courts are merely being asked to look at Standing Orders and give them an interpretation according to the law of the land.

In this case a great and rich corporation has purported to confiscate property rights of great value. It is not submitted that this Act had no effect because Standing Orders were not complied with. It is only submitted that Parliament cannot have understood that more compulsory acquisition was intended than it had been led to believe. Parliament was faced with a Bill providing for confiscation and, according to Standing Orders, there should have been plans referring to all the confiscations. The fact that it regarded Standing Orders as having been complied with implies that there was a misconception that there were no such additional confiscations. If Parliament had known this, it must, under Standing Orders, have insisted on notice being given to all the persons concerned. It is inconceivable that the Bill would have been left as an unopposed Bill. Here there was projected an immensely important acquisition of land,

giving to British Railways, who had no interest at all, a valuable interest. There should have been plans and an index in respect of it. The persons interested were the adjoining owners at the relevant time. The lines were about to be closed under the Beeching plan and the closures were suspended until the Act got through Parliament.

The mere possibility or fear of coming into conflict with Parliament hailed not be allowed to deprive interested parties of their remedy. The court might adjourn the case to allow one of the parties to petition Parliament. Or the court might intimate that it would transmit the papers to them Speaker. Under paragraphs 3 and 4 of the reply there is ground for argument at the trial and the respondent ought not to be shut out at this stage.

A hybrid Bill which does not require a promoter would probably not attract the principle on which the respondents are relying. But the principally in *Mackenzie v. Stewart*, 1 Pat.App. 578, should not be restricted to estate Bills. There would be no logic in that.

It is submitted: (1) the citizen should not be deprived of his property without compensation save by the clearest words negativing his claim. That is a constitutional principle which should not be swept aside in this case. The respondent should not be deprived of the opportunity of making his claim; (2) in such a situation as this it might be possible to refer the matter back to Parliament: see 93 House of Commons Journal (1843), p. 20, as to the procedure for dealing with public petitions, and *Pylkington's Case* (1455) Y.B. Pas. 33 Hen. 6 ff. 17-18, pl. 8, *per* Fortescue C.J., a case of a doubt as to an Act of Parliament. (3) The statutory obligations do not survive

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the running of the railway so that the respondent's right arose when the running ceased.

Sir Michael Havers Q.C., S.-G., ***Raymond Kidwell Q.C.*** and ***Gordon Slynn*** as emcee curiae. The Crown's submissions will be confined to parliamentary privilege.

The Standing Orders of both Houses regulate the way in which private business is to be conducted. Their creation, change and continuance, the need to comply with them and the power to dispense with them are entirely a matter for both Houses. The origin of this power starts with the privilege of Parliament and rests on a twofold necessity, (1) the absolute freedom of speech in Parliament and (2) the position of Parliament as sole judges of its own proceedings: see the Bill of Rights and the *Edinburgh case*, 8 Cl. & Fin. 710, 724. The privilege belongs to Parliament as a whole and not to the individual members. It was reviewed in detail in *Bradlaugh v. Gossett* (1884) 12 Q.B.D. 271, 275, 278-279, 280-281, 284-285. The courts cannot investigate what is done in Parliament. If it could be shown that an officer of Parliament was acting absolutely outside his instructions the courts might investigate that, but, without evidence of that, the court will assume that he is acting for the House and is in a privileged position. As to the procedure in the case of controverted elections, see *Erskine May's Parliamentary Practice*, p. 30. When error arises in parliamentary proceedings it must be for Parliament to correct it: see *Church of Scientology of California v. Johnson-Smith* [1972] 1 Q.B. 522, 528, 530 and *Stockdale v. Hansard* (1839) 9 Ad. & E. 1.

When a private Bill is lodged there is no formal first reading. When the examiner has looked at it

the parliamentary agent appears before him. The examiner reports to the House of Commons. There is a second reading on which a member may force a debate. The chairman of ways and means moves the second reading. If the Bill is unopposed the committee which considers it would consist of the Speaker and the chairman of ways and means; the parliamentary agent attends. The onus is on the promoter to convince the committee of the need for the Bill. The Bill can be amended in committee and a clause can be deleted. The hearing in the House of Lords is usually before the chairman and his counsel is present. In the case of unopposed Bills he sits by himself assisted by his counsel. On the third reading no amendment can be made. See Standing Orders, paragraphs 103, 111 (2), 132, 135, 163, 178.

There would be no point in a court looking at the Standing Orders unless it could construe them. But it is for the Standing Orders Committee to construe them. One cannot have two different constructions put on them.

The House, dealing with a private Bill, goes through not one stage but a series of stages. As to the division of Bills between the House of Lords and the House of Commons, see Standing Orders, paragraphs 74 and 81. As to notices by advertisement see paragraph 4.

If it is shown that the House has been deceived it can proceed against the promoter for contempt. The type of inquiry suggested by Lord Denning M.R. in the Court of Appeal would be impracticable and a departure from accepted practice.

All that *Mackenzie v. Stewart*, 1 Pat.App. 578, dealt with was the

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construction of the private Act then in question. It is no authority for interference with an Act said to have been obtained by fraud. No speeches having been reported, there is no room for a misunderstanding of the ground of the decision.

When a public Bill affects private rights the ordinary course of a public Bill may be adjudged. Personal Bills in number average about one per cent. of the whole.

As to privilege, the House is generous in waiving it but it reserves the right to judge for itself whether to do so. But in the case of proceedings in respect of documents and evidence before select committees privilege would rarely be waived. The House may reverse the Committee of Privileges.

Price Q.C. in reply to the Solicitor-General. The sweeping claim to Parliamentary privilege based on *Bradlaugh v. Gossett*, 12 Q.B.D. 271, 284, 285, is not justified. That is contradicted lain *Anson's Law and Custom of the Constitution*, 5th ed. (1922), vol. 1, pp. 193, 196, dealing with that case. The courts will not be deterred from inquiring whether an officer of Parliament did or did not act with the authority of Parliament.

As to giving evidence of the practice of the House of Commons, see *Forbes v. Samuel* (1913) 29 T.L.R. 544, 548. The courts should not stop proceedings in limine on the ground that questions of privilege might arise, since Parliament might waive the privilege. *Chub v. Salomons* (1852) 3 Car. & Kir. 75, 77n. (a) is a case of waiver of privilege. Here if Parliament were asked

whether reference could be made to documents in the possession of the appellants which had been deposited pursuant to Standing Orders it is improbable that the House of Lords or the House of Commons would refuse to waive the privilege, if it extended that far.

When it has been proved that no plans etc. were produced, the question of intention to mislead arises. The respondent will then have made his case and the onus will shift to the appellants. The difficulties are not as great as the Solicitor-General suggests: see *Bradlaugh v. Gossett*, 12 Q.B.D. 271, 274, where the matter turned on whether a resolution had been made. The respondent would be asked to establish whether there had been a resolution of the House dispensing with Standing Orders: see paragraphs 105 and 163 (2). The resolution of the House can be found, if it exists. As a matter of probability one would expect that leave would be given to show whether there had in fact been any waiver of Standing Orders. See also *Clifford's Private Bill Legislation* (1885), vol. 1, p. 257. Proof that the matters referred to in the preamble had been observed used to be by affidavit.

If the House of Lords allowed this appeal it should be left open to the respondent to make any request relating to matters in respect of which he ought to have discovery in a way which was unobjectionable.

Rankin Q.C. in reply. In the schedule in support of the summons for discovery of particular documents the documents referred to were set out as all material placed before Parliament by the appellants for the purpose of obtaining the Act. If the respondent's reply was amended there would be no need for this sort of discovery. As to the necessity for leave for production in a court of law of evidence given before the House, see *Erskine May's Parliamentary Practice*, pp. 85-86. *Compare Chubb v.*

---------- ***[1974] A.C. 765 at 780***

Salomons, 3 Car. & Kir. 75, 77. The procedure is the same today as formerly.

As to paragraph 3 of the respondent's amended reply the appellants do not concede that they failed to give public notice of clause 18 in the national press, though it is true that no notice was given in a locally published Somerset newspaper.

One must bear in mind the circumstances in which such an Act as this is passed. Many of the old Acts covered by section 18 embrace what are now main lines, and, if the respondent is right, the appellants would be obliged to lodge plans in an enormous number of cases in which there was no conceivable chance of the line being discontinued. There is a strong element of public interest present and this may have been in the minds of those considering the Bill.

- A new case has been made in the House of Lords. The validity of section 18 is not challenged, as it was in the Court of Appeal. It is said that the appellants obtained the Act by fraudulent misrepresentation and so acquired the respondent's interest in the land, so that they hold it in trust for him. The House of Lords must be satisfied that there is an arguable case on the matter now put forward. But it is not arguable that section 18 authorised the appellants to acquire anything. Their position after the passing of section 18 is that the lands are vested in them without their doing anything.

There is no such equitable doctrine as the respondent contends for: see *McCormick v. Grogan*, L.R. 4 H.L. 82, 97, which is far removed from the present case. The passage in *Holdsworth, A History of English Law*, vol. XI, pp. 354-359, relied on for the respondent depended on his reading of *Mackenzie v. Stewart*, 1 Pat.App. 578. If that reading is wrong the whole operation of his doctrine falls to the ground.

As to costs, this appeal was brought on terms that the appellants should pay their own and the respondent's costs in the House of Lords in any event.

Their Lordships took time for consideration.

January 30, 1974. LORD REID. My Lords, our railway system was built up piecemeal during the 19th 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 provisions 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

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they obtained new rights from Parliament. So they promoted a Bill which, on July 26, 1968, became the British Railways Act 1968 (ch. xxxiv). Section 18 of that Act provides:

> "(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 provision 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 October 20, 1969, purchased for 10 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 October 23, 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 railway 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 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 Act of 1968, 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 Act of 1968 in their favour they fraudulently concealed certain matters from Parliament and its officers and thereby misled Parliament into granting right to them.

This case arises because by summons of January 18, 1972, the appellants sought an order that part of the respondent's pleadings be struck out under R.S.C., Ord. 18, r. 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 February 21, 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 October 3, 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 Morison's Dictionary of Decisions 7443 and 15459 and in this House (1754) 1 Pat.App. 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 despond 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 show 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. 2, c. 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, shall and will, immediately after such Sale or Sales, or as soon after as conveniently may be, apply and dispose of the Monies arising by such Sale or Sales, in the first Place, for paying and defraying 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 2,852. 15*s.* 6*d.* Sterling, with which

the said Premises stand now charged and encumbered as aforesaid, with the Arrears of Interest; and shall, 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, shall immediately after such Purchase or Purchases as aforesaid, be settled, despond, and provided to and for the Use and Behalf of the said Sir James Mackenzie of Roystoun, and the other surviving Heirs

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of Entail, according to the different Rights and Interests, and in the same Order and Course of Succession, secured, ascertained, and established to and for them respectively in and by the said Deed of Tailzie, as far as the same may 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 can be made, to place out such Residue or Surplus and 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."

I 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 July 1, 1752 (18 Mor.Dic. 15459, 15460):

"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 March 14, 1754, state that the case was argued on two days and set out the order of the House:

"It is ordered and Adjudged, 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 January 20, 1747, be and the same is hereby, affirmed: And it is hereby further ordered, That the Court of Session in Scotland do proceed thereupon, according to Justice and the Rules of that Court, without Prejudice to any Question

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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 (1 Pat.App. 578, 583):

> "The Lord Chancellor, in delivering his opinion, expressed a good deal of indignation at the fraudulent means of obtaining the Act; and sage 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 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 on 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 abstentions by the judges who took part in *Dumbarton Magistrates v. Glasgow Magistrates* (1771) Mor.Dic. 14769. Lord Hailes in his Reports, vol. 1, 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, at p. 447:

> "In the case of Roystoun, an Act of Parliament said that debts were true debts. The court here would not find the contrary. But this judgment was reversed upon Lord Hardwicke's opinion."

And the Lord President is reported as saying, at p. 448:

> "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 antler 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. 15*s.* 6*d.* Sterling, with which the said Premises stand now 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 Hardwicke L.C. 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 erectly 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 heaving 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, 1 Bell 252, 278-279:

> "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 (sic) notion has prevailed to a considerable 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, November 27, 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 into Parliament, what was done previously to its being 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 necessarily involve an inquiry into the manner in which they had perfumed 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

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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 favorable 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 show that section 18 should not be enforced. Nor is he entitled to examine proceedings in Parliament in order to show 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 10 shillings sold that part to the plaintiff on October 20, 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 July 26, 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

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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 think should 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 ampleness 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 inquiry concerning the effect or the effectiveness of the internal procedures in the High Court of Parliament or an inquiry 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 and Dalkeith Railway Co. v. Wauchope*, 8 Cl. & Fin. 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, at p. 725:

> "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

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> 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 *Earl of Shrewsbury v. Scott*, (1859) 6 C.B.N.S. 1, 160 he said:

> "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, Wexford, Wicklow and Dublin Railway Co. v. Logan* (1850) 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*. (1871) 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 Co. 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 *Hoani Te Heuheu Tukino v. Aotea District Maori Land Board* [1941] A.C. 308, where Viscount Simon L.C. in delivering the judgment of the Board further said, at p. 322:

> "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."

[1974] A.C. 765 at 792

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 *Mackenzie v. Stewart*, 1 Pat.App. 578. 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 (*Commentaries on the Laws of England*, 4th ed. (1876), vol. 2, p. 300) 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 full 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 and Dalkeith Railway Co. v. Wauchope*, 8 Cl. & Fin. 710, 725 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* (1861) 3 L.T. 642, 643 is no authority to the contrary. An Act had included a provision which Lord Campbell L.C. 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.

I 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 10*s.* by a private citizen, against the British Railways Board, fortified by an Act of Parliament of 1968, which, or parts of which, Mr. Pickin claims to be invalid, 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 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 (1961), p. 378, para. 560 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 and Dalkeith Railway Co. v. Wauchope*, 8 Cl. & Fin. 710; *Stead v. Carey* (1845) 1 C.B. 496, 516; *Waterford, Wexford, Wicklow and Dublin Railway Co. v. Logan*, 14 Q.B. 672; *Lee v. Bude and Torrington Junction Railway Co.*, L.R. 6 C.P. 576, 592; per Willes J.; *Labrador Co. v. The Queen* [1893] A.C. 104, 123; *Hoani Te Heuheu Tukino v. Aotea 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 these 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 Act of 1968 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 in the Court of Appeal, would be to require the court to embark on far-reaching inquiries as to the proceedings in Parliament which led to the enactment of the Act of 1968. 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, in which, as was usual at the time, no reasons were given for the House's decision. This case is *Mackenzie v. Stewart*, 1 Pat.App. 578. (I do not overlook that two other cases were cited but these are of no value. *Biddulph v. Biddulph* (1790) 5 Cru.Dig., 4th ed. (1835) Tit. 33, Private Act, s. 53, p. 28, is clearly an *application* of an Act, not "relief" against

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an Act. *Green v. Mortimer* (1861) 3 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, *Mackenzie 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 *Mackenzie 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 payments of debts and incumbrances affecting them: a type of Act similar, as Blackstone explains, to a private assurance (see *Blackstone's Commentaries*, 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 Hardwicke 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 *Mackenzie v. Stewart* was made by references to Blackstone and Sir William Holdsworth. I have already referred to Blackstone who first commented on it in his 4th edition (1770) (Commentaries, vol. 2, pp. 345-346). (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 Matter of 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 without 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 any reason

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> 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 has been held, that even if such saving be omitted, the Act shall bind none but the parties. (Co. 138) …
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> "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. Canc. 8 Jan*. 1733 *McKenzie v. Stuart. Dom. Proc. 13 Mar*. 1754); and it has been held to be void if contrary to law and reason (4 Rep. 12): 1876 ed.] 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 (*History of English Law* (1938) vol. XI, pp. 354 et seq.) and treats *Mackenzie 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 by the legal owner. He quotes (at p. 357) a passage from a speech of Lord Westbury in *McCormick v. Grogan* (1869) L.R. 4 H.L. 82, 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 the 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 sixth recital of the Act of 1968 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 or used" (I quote from the recital), namely, sections 13 to 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 inquire 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 misled 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 inquiry 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. *Steal v. Carey*, 1 C.B. 496, 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 safeguards, 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 inquire. 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. No 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 on its true construction bar this action or deprive the plaintiff of his interest in land without compensation.

---------- ***[1974] A.C. 765 at 798***

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 Act of 1968, 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 *Mackenzie v. Stewart*. For the reasons discussed above, I am of the opinion that *Mackenzie 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. My 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 C.J. in *Burdett v. Abbot* (1811) 14 East 1, 152: "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.

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(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, *Burdett v. Abbot* (1811) 14 East 1 and *Stockdale v. Hansard* (1839) 9 Ad. & El. 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. 1, 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 court or 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 and Dalkeith Railway Co. v. Wauchope*, 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

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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 Cottenham, 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 public 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 - quite 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

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(though under section 16 the powers of compulsory acquisition cease on December 31, 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*, 1 Pat.App. 578. That case and the cases of *Biddulph v. Biddulph*, 5 Cru.Dig., Tit. 33, s. 53, p. 28, 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. Today 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 Co. v. Wauchope*, 8 Cl. & F. 710 and *Lee v. Bude and Torrington Junction Railway Co*., L.R. 6 C.P. 576is 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 *Mackenzie 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

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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 *Mackenzie v. Stewart* given by *Holdsworth, A History of English Law*, vol. XI, pp. 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 inquire 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 December 8, 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 of reverter without notice to them is necessarily wholly unjustified. We do not and cannot know whether the question of giving them 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

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circumstances the giving of notice was not necessary. That is a matter into which it is impossible for us to inquire. I would allow the appeal.

Appeal allowed.

Solicitors: *Evan Harding; Field, Fisher & Martineau for Tanner, Vowles & Cheshire, Bristol; Treasury Solicitor*.

F. C.

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