

*Reasons for Report of the Lords of the Judicial
Committee of the Privy Council in the
Matter of Sir Stuart Samuel, Member of
Parliament ; delivered the 11th April 1913.*

PRESENT AT THE HEARING :

THE LORD CHANCELLOR.

EARL OF HALSBURY.

EARL LOREBURN.

LORD DUNEDIN.

[DELIVERED BY THE LORD CHANCELLOR.]

His Majesty was pleased, in accordance with an humble address of the House of Commons, dated the 31st January 1913, to communicate to the Judicial Committee a Report of the Select Committee of the House of Commons, and to refer to the Judicial Committee the following question of law for their hearing and consideration, viz. : “ Whether by reason of the facts which “ have been reported by the above-named Select “ Committee of the House of Commons the said “ Sir Stuart Samuel is disabled from sitting and “ voting in the House.”

The facts which raise the question are that Sir Stuart Samuel, being a Member of the House of Commons for the Tower Hamlets, was partner in a firm which made contracts with the Secretary of State for India in Council for borrowing money upon short loans, for purchasing India Council Bills and India Treasury Bills, for subscribing to India Government loans, and for purchasing silver for the purposes of the Indian currency.

If any one of these contracts answers the description given in Section 1 of 22 Geo. III., c. 45 (1782), as to the person with whom and

the service for which it was made, then the seat was forfeited.

This Act of Parliament itself declares that it was made to preserve the freedom and independence of Parliament; and the mischief guarded against is the sapping of that freedom and independence by Members being admitted to profitable contracts. But the enacting words do not apply to all contracts. Their application is limited in two ways. In the first place the Member of Parliament must have "directly or indirectly" undertaken the contract with "the Commissioners of His Majesty's Treasury, or of the Navy or Victualling Office," or "the Master-General or Board of Ordnance" or "any one or more of such Commissioners" or "any other person or persons whatsoever."

In the second place, it must appear that the contract was made "for or on account of the public service." And it was argued that in this particular case both these limitations had the effect of taking Sir Stuart Samuel's case out of the Statute.

The meaning of the first limitation was much discussed in argument at the Bar, and must be determined by the familiar canons of construction. All the persons enumerated in the first section of this Act were servants of the Crown in 1782 (the date of the Act) holding offices in the British as contrasted with the Irish Government or any other Government of the King's dominions or dependencies beyond the seas. They were officers of the British Government, which was also the Imperial Government of the King. When therefore the first section of the Act of 1782, after enumerating these several office holders, proceeds to add the words "any other person or persons whatsoever," the doctrine of *eiusdem generis* applies. Any "other person" meant anyone who held an office in the British

Government of a similar kind to those enumerated.

The second limitation—that the contract must be one made “for or on account of the public “service”—was much relied upon by Counsel for Sir Stuart Samuel. They urged that these words meant “the public service of Great Britain” (now incorporated in the United Kingdom), and that no service could be so denominated unless it was paid for out of moneys voted by Parliament, or at all events out of British money. It does not seem to their Lordships that the public service required by the Act need be one either executed or requited within Great Britain or paid for out of any particular fund. No such language is to be found in the Act, and such an interpretation would leave applicable to the purposes of bribery all the hereditary revenues of the Crown, now for the most part received by the Exchequer under temporary Civil List Acts, together with all revenues from sources inside or outside this country which Ministers might have the power to dispose of without a vote of Parliament, such as funds derived from some dependency beyond the seas. No reason can be given for thus cutting down the scope of this Act. The source from which contracts are to be paid for is immaterial. So is the place where they are made.

It is desirable to notice an argument derived from the 4th Section of 41 Geo. III., c. 52, passed in 1801. This section disqualifies for a seat in the Parliament of the United Kingdom anyone who makes a contract with a Commissioner of His Majesty’s Treasury in Ireland or with any other person whomsoever for or on account of the public service in Ireland. This was surplusage (such is the argument) if the Act of 1782 had already made such contracts, irrespective of

place, a ground of disqualification for the British Parliament, since all persons disqualified for the British Parliament were by Section 1 of the Act of 1801 already disabled from sitting in the Parliament of the United Kingdom, at all events for British constituencies. There are several answers to this contention. It is not a conclusive argument as to the construction of an earlier Act to say that unless it be construed in a particular way a later enactment would be surplusage. The later Act may have been designed, *ex abundante cautela*, to remove possible doubts. Further, their Lordships do not consider that Section 4 of the Act of 1801 was in fact surplusage. Contracts made with a Commissioner of the Irish Treasury or with anyone in a like position for any purpose were not within the Act of 1782, because these Irish officials were not officials of the British Government. Such a contractor was therefore not disqualified by Section 1 of the Act of 1801 for a British constituency in the Parliament of the United Kingdom. He was also not disqualified for an Irish constituency, because in the legislation affecting the Irish Parliament, though certain placemen were disqualified, contractors were not. As then the Irish Treasury continued to have a separate existence after 1801, it was thought right to create a fresh disqualification in regard to contracts made with them or with other persons in a like position to them. So, the 4th Section was not surplusage. It enlarged the area of disqualification, and its presence on the Statute Book is in no way inconsistent with the construction which their Lordships put upon the Act of 1782.

Accordingly the case of Sir Stuart Samuel falls within this Act if the Secretary of State for India in Council is a person answering to the statutory description, and the contracts which he has made

were "for or on account of the public service," that is to say, any service of the Crown anywhere.

It is obvious that these contracts were made for the public service of the Crown in India, and the point remaining for consideration is whether the Secretary of State for India in Council falls within the description to be found in the 1st Section of 22 Geo. III., c. 45. This was strenuously contested.

By the Act of 1858 the Government of India, which had theretofore been carried on by the East India Company on behalf of the Crown, under divers Acts of Parliament, was transferred to the direct control of the Crown, acting through officers whose duties were prescribed by the Act. One of these officers is a Secretary of State. In early times there was one English Secretary of State. Then, there were two British Secretaries of State, and before 1858 the number was increased to four. The Act of 1858 created a fifth, who is paid out of the revenues of India. To him are in practice allotted the duties of transacting that part of the business relating to India which requires the intervention of a Secretary of State, and he is commonly called the Secretary of State for India. But he is in fact one of His Majesty's five Principal Secretaries of State, and as such can discharge most, if not all, of the duties of the other four, as they can discharge most, if not all, of his duties. He is an officer of the British Government in the fullest sense.

A Secretary of State would certainly have come within the description of the Act of 1782, and Members of the British Parliament in 1782 would have been disabled from sitting in the Parliament of Great Britain by reason of contracting with him within that Act. This disability was continued so as to affect members of the Parliament of the United Kingdom by

41 Geo. III., c. 52, which enacts that "all
 " persons disabled from, or incapable of, being
 " elected, or sitting and voting in the House of
 " Commons of any Parliament of Great Britain,
 " shall be disabled from, and be incapable of,
 " being elected or sitting and voting in the
 " House of Commons of any Parliament of the
 " United Kingdom, as Knights, Citizens, or
 " Burgesses for any County, Stewartry, City,
 " Borough, Cinque Port, Town, or Place, in that
 " part of the United Kingdom called Great
 " Britain." It follows, therefore, that to contract
 with a Secretary of State after the union with
 Ireland has the same effect upon the seat of a
 British member of Parliament (which Sir Stuart
 Samuel is) as it would have had in 1782 before
 that union. Sir Stuart Samuel is disabled if
 the firm, of which he was a member, did in
 fact make the contracts in question with the
 Secretary of State.

Now the contracts were expressed to be made
 with the Secretary of State in Council, pursuant
 to the Act of 1858 for the better government of
 India, and were made with the concurrence of a
 majority of the Council, to be paid for out of the
 revenues of India as required by that Act, and
 without any personal liability on the Secretary of
 State. And by Section 65 of that Act, "the
 " Secretary of State in Council shall and may
 " sue and be sued as well in India as in England
 " by the name of the Secretary of State in Council
 " as a body corporate." It was urged that it was
 not with the Secretary of State at all that the
 firm contracted, but with a corporation. Their
 Lordships cannot take this view. A contract is
 none the less made with the Secretary of State
 that he has to obtain the concurrence of others
 before making it, and that he and they are
 designated by this Statute as liable to be sued or
 to sue on it as a corporate body. He and they

have distinct functions prescribed by the Statute which enables them to bind their successors, and this provision affords facilities for litigation which are not afforded by a Petition of Right. But this is merely machinery; the personality of the Secretary of State is not merged in any Corporation by the Statute nor is that of the Council. In some particulars they can check him or he can override them. They and he remain with separate and possibly conflicting responsibilities, though for purposes of litigation they can be treated as though they were one legal personality. These contracts were made with one of His Majesty's Principal Secretaries of State and with his Council, or with the concurrence of a majority of his Council, it matters not which, for they were made at all events with him.

Under these circumstances, though no suggestion has been made of any improper motive, and though the construction placed upon the Statutes by Sir Stuart Samuel finds some countenance in former proceedings before Committees of the House of Commons, their Lordships are obliged to answer the question of law referred to them as follows. They will humbly advise His Majesty that by reason of the facts which have been reported by the above-named Select Committee of the House of Commons, the said Sir Stuart Samuel was disabled from sitting and voting in the House.

In the Privy Council.

Re SIR STUART SAMUEL, MEMBER
OF PARLIAMENT.

[DELIVERED BY
THE LORD CHANCELLOR.]

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