**HOUSE OF LORDS**

**GOURIET AND OTHERS, RESPONDENTS**

**AND**

**H.M. ATTORNEY-GENERAL, APPELLANT**

**AND**

**POST OFFICE ENGINEERING UNION, APPELLANTS**

**AND**

**UNION OF POST OFFICE WORKERS, APPELLANT**

**CONSOLIDATED APPEALS**

**GOURIET, APPELLANT**

**AND**

**UNION OF POST OFFICE WORKERS AND OTHERS, RESPONDENTS**

*Annotated Law Reports version at [1978] A.C. 435*

*On appeal from Gourier v. Union of Post Office Workers (Court of Appeal)*

**COUNSEL:** Samuel Silkin Q.C., A.-G., in his own behalf with John Vinelott Q.C., Harry Woolf and Peter Gibson.

Mark Saville Q.C., Ian Hunter and V. V. Veeder for the Union of Post Office Workers and the Post Office Engineering Union.

**SOLICITORS:** Treasury Solicitor; Shaen Roscoe & Bracewell; Simpson Millar; Trower, Still & Keeling.

**JUDGES:**

Lord Wilberforce, Viscount Dilhorne, Lord Diplock, Lord Edmund-Davies, Lord Fraser of Tullybelton

**DATES:** 1977 June 14, 15, 16, 20, 21, 23, 27, 28, 29, 30; July 26

 [\*472] Their Lordships took time for consideration.

**July 26, 1977. LORD WILBERFORCE**.

My Lords, these appeals relate to certain orders made by the Court of Appeal in January 1977. The Attorney-General, Mr. J. P. Gouriet, and the two Post Office unions are each appealing against portions of these orders. It is difficult to summarise at all accurately the exact issues at stake because the record is in a state of procedural confusion due to improvisations and changes of direction by the court and the parties. But, briefly, the issues which have emerged for decision by this House are:

 1. Whether, in spite of the refusal of the Attorney-General to consent to the use of his name in relator proceedings, Mr. Gouriet, as a private citizen, was entitled to come to the court and ask for an injunction against the Post Office unions from soliciting interference with the mail to or with communications with the Republic of South Africa, and/or for a declaration that it would be unlawful for the unions to take such action.

 2. Whether Mr. Gouriet’s claim against the Post Office unions to such injunctions or declarations is maintainable or ought to be struck out.

The present proceedings are interlocutory only, so that Mr. Gouriet should be allowed to go on with his action unless it is manifestly ill-founded in law. [\*473]

 The facts are that Mr. Gouriet who, though supported by an association, appears simply as a citizen, on January 13, 1977, discovered that the executive of the Union of Post Office Workers (U.P.W.) had resolved to call on its members not to handle mail from this country to South Africa during the week starting at midnight, Sunday, January 16. The general secretary of the U.P.W., Mr. Tom Jackson, appeared on television that evening (13th) and said that the legality of such action had never been tested in the courts: the relevant laws dated from Queen Anne and were more appropriate for dealing with highwaymen and footpads. On January 14 “The Times” reported the passing of the U.P.W. resolution and also reported that the Post Office Engineering Union (P.O.E.U.) had said that they would instruct their members not to provide or maintain circuits to South Africa except in a matter of “life and death.”

On January 14 (Friday) Mr. Gouriet applied to H.M. Attorney-General for consent to an action in the name of the Attorney-General at the relation of Mr. Gouriet against the U.P.W. for an injunction against soliciting or procuring any person wilfully to delay any postal package in the course of transmission between this country and South Africa. The Attorney-General refused his consent to this application in the following terms:

 “Having considered all the circumstances including the public interest relating to the application for my consent … I have come to the conclusion that in relation to this application I should not give my consent.”

Mr. Gouriet thereupon issued a writ in his own name against the U.P.W. and immediately applied for an interim injunction against it in the terms mentioned above. This application was supported by an affidavit deposing to the facts as I have stated them. After a hearing, Stocker J. dismissed the application on the ground that he had no power to make the order requested. I have no doubt that on the authorities he was perfectly correct in so doing. Mr. Gouriet appealed to the Court of Appeal which sat specially to hear the appeal on January 15 (Saturday). In the course of the argument the court expressed itself critically of the decision of the Attorney-General. Ultimately, the Court of Appeal allowed the appeal and granted an interim injunction as asked until Tuesday, January 18. Then they gave the plaintiff leave to join the P.O.E.U. as a party and granted an injunction against that union. This followed the wording of the Telegraph Act 1863, section 45, set out below. Thirdly, leave was given to add the Attorney-General as a defendant. The plaintiff did this and, following indications which had been given in the argument, claimed against the Attorney-General a declaration that in refusing his consent to the plaintiff to bring relator proceedings the Attorney-General acted improperly and wrongfully exercised his discretion – I refer to this as declaration X.

 On the resumed hearing on January 18, the Attorney-General appeared and contested the court’s right to review the exercise of his discretion. After substantial argument, the plaintiff conceded that he was not entitled [\*474] to declaration X. The Court of Appeal reserved judgment on the matters before it until January 27. On that day judgments were given in which:

1. By a majority (Lawton L.J. and Ormrod L.J.) it was held that the court had no power to review the decision of the Attorney-General in refusing consent to relator proceedings. Lord Denning M.R. held that the court had this power to review at least indirectly.

2. By a majority (as above) it was held that, consent having been refused to bring relator proceedings, the plaintiff was not entitled to a permanent injunction in the terms previously mentioned. Lord Denning M.R. dissented.

3. All three members of the court held that the plaintiff could claim declarations in the form mentioned and that, pending a decision on this claim, the court could grant interim injunctions as sought.

However, in fact, the court discharged the injunctions as being no longer necessary. The plaintiff had not, at this stage, asked for declarations, but the Court of Appeal gave leave for him to (re)amend his claim so as to do so. This he did. He also amended his claim against the Attorney-General so as to seek a declaration that notwithstanding his refusal to allow relator proceedings, the plaintiff is entitled to proceed with his claim against the unions for declarations and interim relief. The unions and the Attorney-General were then treated as having applied to the court to strike out all the plaintiff’s claims and such putative applications were dismissed. Leave to appeal to this House was then granted.

This narrative shows that the proceedings involved a high degree of improvisation, even of fiction. But this must not obscure the important real issues which underlie these hurried proceedings. These the parties to this appeal have fully and frankly argued, and our main task is to decide them. I shall make such observations as are necessary on the procedure at a later stage.

It is, first, convenient to set out the statutory provisions relevant to the working of Post Office services. These are:

(i) Post Office Act 1953, section 58 (1):

“If any officer of the Post Office, contrary to his duty … wilfully detains or delays, or procures or suffers to be detained or delayed, any … postal packet [in course of transmission by post], he shall be guilty of a misdemeanour and be liable to imprisonment [for a term not exceeding two years] or to a fine, or to both: …”

(ii) Section 68:

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

(iii) Telegraph Act 1863, section 45:

“If any person in the employment of the [Post Office] – wilfully or negligently omits or delays to transmit or deliver any message; or by any wilful or negligent act or omission prevents or delays the [\*475] transmission or delivery of any message; … he shall for every such offence be liable to a penalty not exceeding £20.”

It is necessary to say of these sections at this stage three things:

1. There is no sense in which they can be said to be obsolete. Particularly, those in the Post Office Act 1953 are of modern, indeed recent, enactment and express the intention of Parliament as recently as 1969 when the Post Office Act 1969 was passed.

2. The sections are perfectly clear as to their meaning without the need for judicial interpretation.

This being so it is surprising and, I would say, regrettable that, after Mr. Jackson’s expressed and broadcast doubts as to their applicability, opportunity was not taken for an authoritative statement that they represent the law and that the law must be obeyed. If such a course had been taken, much of the difficulty which faced the Court of Appeal could have been avoided.

3. There was no evidence before the judge of any actual breach of (a) section 58 of the Post Office Act 1953 or (b) section 45 of the Telegraph Act 1863. In any case such breach would not be by either of the defendant unions, but by some employee of the Post Office.

It is debatable whether any offence had been committed by the U.P.W. under section 68 of the Post Office Act 1953. The union may have manifested an intention to “solicit or endeavour to procure” its members to commit an offence, but it could be contended, and it was so argued, that there was no evidence that they had done this by January 14 or by January 18, 1977, and that until they did so there was no offence. These considerations are clearly relevant to the grant of injunctive relief.

I proceed now to the main issue. This cannot be resolved, or understood, unless some preliminary matters are borne in mind.

1. There is now no longer a claim that the Attorney-General’s refusal of consent to relator proceedings was improper or that it can be reviewed by the court. This issue, originally presented as one of great constitutional importance, has disappeared from the case. The importance remains, but the issue has vanished. The Attorney-General’s decision is accepted as, in the courts, unassailable. The prerogatives of his office are no longer attacked. All that Mr. Gouriet now claims is that the refusal of the Attorney-General to act does not bar him from acting. The Attorney-General and the unions contend that it does.

2. Parliament has conferred and by recent legislation reinforced a great degree of immunity from suit upon trade unions. The key provision is section 14 of the Trade Union and Labour Relations Acts 1974 and 1976 which I shall call “the Acts of 1974-1976.”

**“14. Immunity of trade unions and employers’ associations to actions in tort**

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(1) Subject to subsection (2) below, no action in tort shall lie in respect of any act –

(a) alleged to have been done by or on behalf of a trade union which is not a special register body **…**

(c) alleged to be threatened or to be intended to be done as mentioned in paragraph (a) or (b) above: against the union … in its own name, or against the trustees of the union … or against any members or [\*476] officials of the union … on behalf of themselves and all other members of the union …”

(Subsection (2) is not relevant to the present case).

It was no doubt because of the very wide immunity conferred by this subsection (which, as seems to have been overlooked, is not limited to cases where there is a trade dispute) that the plaintiff did not himself sue as a person, or attempt to bring in with himself as a plaintiff any person, who had any special interest in the transmission of mail or messages to South Africa or who was likely to suffer any special damage from non-transmission of such mail or messages. On the contrary the plaintiff has at all times disclaimed having any interest in these matters apart from the interest which all members of the public have in seeing that the law is observed.

 3. Proceedings may be brought against a trade union “for any offence alleged to have been committed by it or on its behalf” (section 2 (1) (d)), and a trade union may be sued in its own name on any cause of action other than such as are covered by section 14.

4. There are special restrictions (section 17 of the Acts of 1974 – 1976) upon the seeking of injunctions against trade unions – broadly directed against the seeking of “snap” injunctions in relation to trade disputes. I shall return to these provisions.

5. There are severe restrictions upon proceedings against the Post Office. Although the Post Office is under a (public law) general duty to provide services, section 9 of the Post Office Act 1969 which imposes this duty concludes:

“(4) Nothing in this section shall be construed as imposing upon the Post Office, either directly or indirectly, any form of duty or liability enforceable by proceedings before any court.”

And section 29 creates extensive immunity of the Post Office, its officers and servants, from proceedings in tort in relation to posts and telecommunications: see for an historical account of *Post Office legislation Triefus & Co. Ltd. v. Post Office* [1957] 2 Q.B. 352 per Hodson L.J.

To say therefore, as has been said with emphasis, that the plaintiff, or the public, “has a right” to the services of the Post Office, is a statement, which, if relevant at all in these proceedings against the unions, can only be accepted if “right” is given a reduced meaning not extending to a right capable of direct enforcement by the civil law.

In the light of these enactments, and of argument as the case has proceeded, Mr. Gouriet’s claim has been narrowed and made specific. His only claim now is that he, as all other members of the public, has an interest in the enforcement of the law which entitles him to access to the courts from which he cannot be “immunised” by the Attorney-General’s refusal to allow the use of his name. It is this claim which is at the centre of the case, and it requires first some discussion of the phrase “enforcement of the law.” The phrase is an emotive one, and one that attracts rhetoric, so we must see what it means in the context.

When Parliament decides to prohibit certain conduct (e.g. delaying the mail) it enacts legislation defining the prohibited act (e.g. Post Office Act [\*477] 1953, sections 58, 68). To violation or disregard of the prohibition it attaches a sanction – prosecution as for a misdemeanour with a possible sentence of two years’ imprisonment. Enforcement of the law means that any person who commits the relevant offence is prosecuted. So it is the duty either of the Post Office itself, or of the Director of Public Prosecutions or of the Attorney-General, to take steps to enforce the law in this way. Failure to do so, without good cause, is a breach of their duty (for a recent formulation of this duty see the statement of Sir Hartley Shawcross A.-G. (1951) in Edwards, The Law Officers of the Crown (1964), p. 223). The individual, in such situations, who wishes to see the law enforced has a remedy of his own: he can bring a private prosecution. This historical right which goes right back to the earliest days of our legal system, though rarely exercised in relation to indictable offences, and though ultimately liable to be controlled by the Attorney-General (by taking over the prosecution and, if he thinks fit, entering a nolle prosequi) remains a valuable constitutional safeguard against inertia or partiality on the part of authority. This is the true enforcement process and it must be clear that an assertion of a right to invoke it is of no help to Mr. Gouriet here. His case is not based on the committal of offence plus a refusal to prosecute, it is based on a right to take preventive action in a civil court which could have been taken but was not taken by the Attorney-General in relator proceedings. This involves consideration of the “relator action” and of the Attorney-General’s part in it.

A relator action – a type of action which has existed from the earliest times – is one in which the Attorney-General, on the relation of individuals (who may include local authorities or companies) brings an action to assert a public right. It can properly be said to be a fundamental principle of English law that private rights can be asserted by individuals, but that public rights can only be asserted by the Attorney-General as representing the public. In terms of constitutional law, the rights of the public are vested in the Crown, and the Attorney-General enforces them as an officer of the Crown. And just as the Attorney-General has in general no power to interfere with the assertion of private rights, so in general no private person has the right of representing the public in the assertion of public rights. If he tries to do so his action can be struck out.

An appeal was made to the Year Books to controvert this universally accepted proposition. Examples can be found of cases, in early times, where subjects were allowed to assert in the courts rights of the Crown (see Year Books Series Vol. XVII, Ed. II, 1314-15, Selden Society ed. W. C. Bolland). But all these cases were cases asserting, through writs of quo warranto or analogous writs, claims of a nature which in modern times came to be made by prerogative writs, or cases concerned with some proprietary right of the Crown: they were not cases of individuals asserting rights belonging to the public. No instance of this could be brought forward, whether in ancient or modern times.

The plaintiff accepted that this was so but produced a number of arguments why this form of action should be departed from or modernised. The use of the Attorney-General’s name was said to be fictional: the real claimant was the individual – who has to bear the costs. The introduction of the Attorney-General was a matter of practice and procedure, the subject [\*478] of judicial invention: what the courts have invented, the courts can change. The Attorney-General has no real part to play in these proceedings: his functions are limited to ensuring that the action is not frivolous or vexatious. It is time to discard these fictions, or at least to remould the action for use in modern times.

My Lords, apart from the fact that to accept this line of argument would mean a departure from a long, uniform and respected series of authorities, so straining to the utmost the power of judicial innovation, in my opinion it rests on a basic misconception of the Attorney-General’s role with regard to the assertion of public rights.

It can be granted that in this, as in most of our law, procedural considerations have played a part. It was advantageous to make use of the name of the King so as to gain a more favourable position in the King’s Courts and to avoid restrictions by which the King was not bound: see Robertson, Civil Proceedings by and against the Crown (1908), p. 464. Moreover it may well be true that in many types of action, and under some Attorneys-General, the use of his name was readily granted – even to the point of becoming a formality. This was particularly the case in charity cases up to the time of Sir John Campbell A.-G.: see *Shore v. Wilson* (1842) 9 Cl. & F. 355, 407.

But the Attorney-General’s role has never been fictional. His position in relator actions is the same as it is in actions brought without a relator (with the sole exception that the relator is liable for costs: see *Attorney-General v. Cockermouth Local Board* (1874) L.R. 18 Eq. 172, 176, per Jessel M.R.). He is entitled to see and approve the statement of claim and any amendment in the pleadings, he is entitled to be consulted on discovery, the suit cannot be compromised without his approval; if the relator dies, the suit does not abate. For the proposition that his only concern is to “filter out” vexatious and frivolous proceedings there is no authority – indeed there is no need for the Attorney-General to do what is well within the power of the court. On the contrary he has the right, and the duty, to consider the public interest generally and widely.

It was this consideration which led to the well known pronouncement of the Earl of Halsbury L.C. in 1902, for the suggestion was being made that the court could inquire whether, when the Attorney-General had consented to relator proceedings, the public had a material interest in the subject matter of the suit:

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

see *London County Council v. Attorney-General* [1902] A.C. 165,

per Earl of Halsbury L.C. at p. 169 and per Lord Macnaghten at p. 170.

To limit this passage to a case where the Attorney-General has given his consent (as opposed to a case where he refuses consent) goes beyond legitimate distinction: it ignores the force of the words “whether he ought to initiate litigation … or not”: see p. 168. [\*479]

It is the decision on the public interest that is binding whichever direction that takes. That a refusal is binding had never been contested; that it was so was explicitly decided in firm terms in relation to the fiat in *Ex parte Newton* (1855) 4 E. & B. 869, a case cited to but not noticed by the Court of Appeal.

My Lords, the propositions stated above, usually regarded as elementary, are supported by too many authorities for citation to be possible. But I must deal briefly with some of the cases cited contra.

*Attorney-General of the Duchy of Lancaster v. Heath* (1690) Prec.Ch. 13 was clearly not a case of a public right: the briefly reported holding that “the King’s name is only made use of by the form of the court … the suit is not for the King’s duty, but the relator’s interest” have no application to such a case. *Shore v. Wilson*, 9 Cl. & F. 355 was a charity case and contains two points of interest. The Attorney-General (Sir John Campbell) said, at p. 407:

“When there are private relators who wish to file an information in respect of a charity, the Attorney-General cannot with propriety refuse the use of his name, if there be an arguable question to be submitted to a court. The practice which I have followed, and which has been, I believe, adopted by all my predecessors, has been, upon a certificate by a gentleman at the bar saying that there is some question that may fairly be submitted to the court, not to stop inquiry, but to give the sanction of our name.”

The Attorney-General in fact appeared separately as counsel for defendants – Lord Brougham’s comment on this (apposite in a case about Unitarians) “We distinguish the persons; you need not trouble yourself.” Whether this was the correct view was later debated in *Attorney-General v. Ironmongers’ Co*. (1840) 2 Beav. 313, where Lord Langdale M.R. said, at p. 328, that:

“he did not recognise the relator as distinct from the Attorney-General; that the suit was the suit of the Attorney-General, though at the relation of another person upon whom he relied and who was answerable for costs; and that he could only recognise the counsel for the relator as the counsel for the Attorney-General, and could hear them only by his permission; that the suit was so entirely under the control of the Attorney-General that he might desire the court to dismiss the information, and that if he stated that he did not sanction any proceeding, it would be instantly stopped.”

The Attorney-General (Sir John Campbell) referred to *Shore v. Wilson*, 9 Cl. & F. 355 and apparently maintained his position, but it is certainly clear from Lord Langdale’s judgment that, apart from the question of appearance by counsel, the Attorney-General and not the relators remains totally in control of the suit. *Attorney-General v. Sheffield Gas Consumers Co.* (1853) 3 De G. M. & G. 304, is invoked for this passage, at p. 309:

“Although the name of the Attorney-General is used, it is quite clear that he has never been consulted, and that any advantage from [\*480] these litigations to the public is the last thing which those who have set it on foot have thought of.”

But this was argument by counsel and all that Lord Cranworth L.C. said at p. 313 was that agreeing that the case was in two parts, one of public nuisance the other private nuisance:

“In substance, however, I cannot but come to the conclusion, that the Attorney-General, and the public here, are a mere fiction, and that the real parties concerned are only those that were parties to the first suit.”

Note the words “and the public”: what is “fictional” is the alleged public interest not the right of the Attorney-General to enforce a real public interest.

Lastly, of English authorities, there is the confusing case of *London Association of Shipowners and Brokers v. London and India Docks Joint Committee* [1892] 3 Ch. 242. The Peninsular and Oriental Steam Navigation Co. one of the plaintiffs, not asserting any public right, and so not using the Attorney-General’s name, was bound to prove special damage and was unable to do so. It had failed to establish its alleged rights and so its appeal was dismissed but nevertheless the court made a declaration of right in favour of the P. & O. The decision, and the observation of the Lords Justices, gave clear support to the distinction between private and public rights and to the necessity for the latter to be enforced by, or through, the Attorney-General. Whether the court, having dismissed the appeal, ought to have granted declaratory relief, whether, indeed, it would have done so if it had not had all the parties before it and if concessions and admissions had not been made at the Bar (see per Bowen L.J. at p. 266), may be debatable, but the case throws no light on the nature of relator actions.

Lord Denning M.R., in his judgment, invoked two cases from overseas, *Thorson v. Attorney-General of Canada (No. 2)* (1974) 43 D.L.R. (3d) 1 and *Flast v. Cohen* (1968) 392 U.S. 83. The first of these recognises the English law on enforcement of public rights, but distinguishes it where constitutionality of legislation is involved. The second turns wholly upon the position under the U.S. Constitution and has no discussion of English authorities. These are unimpressive support.

In contrast with these inconclusive passages I will cite one of many in which the contrary has been affirmed. In the *Stockport District Waterworks Co. v. Manchester Corporation* (1862) 9 Jur.N.S. 266 Lord Westbury L.C. said, at p. 267:

“… those are a few of the reasons which might be assigned, showing how desirable it is not to allow any private individual to usurp the right of representing the public interest. The only arguments which I am disposed to accept from those which I have heard today, are arguments founded upon the public interest, and the general advantage of restraining an incorporated company within its proper sphere of action. But, in the present case, the transgression of those limits inflicts no private wrong upon these plaintiffs; and although the plaintiffs, in common with the rest of the public, might be interested [\*481] in the larger view of the question, yet the constitution of the country has wisely intrusted the privilege with a public officer, and has not allowed it to be usurped by a private individual.”

That it is the exclusive right of the Attorney-General to represent the public interest – even where individuals might be interested in a larger view of the matter – is not technical, not procedural, not fictional. It is constitutional. I agree with Lord Westbury L.C. that it is also wise.

From this general consideration of the nature of relator actions, I pass to the special type of relator action with which this appeal is concerned. It is of very special character, and it is one in which the predominant position of the Attorney-General is a fortiori the general case.

This is a right, of comparatively modern use, of the Attorney-General to invoke the assistance of civil courts in aid of the criminal law. It is an exceptional power confined, in practice, to cases where an offence is frequently repeated in disregard of a, usually, inadequate penalty see *Attorney-General v. Harris* [1961] 1 Q.B. 74; or to cases of emergency – see *Attorney-General v. Chaudry* [1971] 1 W.L.R. 1614. It is one not without its difficulties and these may call for consideration in the future.

If Parliament has imposed a sanction (e.g., a fine of £1), without an increase in severity for repeated offences, it may seem wrong that the courts – civil courts – should think fit, by granting injunctions, breaches of which may attract unlimited sanctions, including imprisonment, to do what Parliament has not done. Moreover, where Parliament has (as here in the Post Office Act 1953) provided for trial of offences by indictment before a jury, it may seem wrong that the courts, applying a civil standard of proof, should in effect convict a subject without the prescribed trial. What would happen if, after punishment for contempt, the same man were to be prosecuted in a criminal court? That Lord Eldon L.C. was much oppressed by these difficulties is shown by the discussions in *Attorney-General v. Cleaver* (1811) 18 Ves. Jun. 210.

These and other examples which can be given show that this jurisdiction – though proved useful on occasions – is one of great delicacy and is one to be used with caution. Further, to apply to the court for an injunction at all against the threat of a criminal offence, may involve a decision of policy with which conflicting considerations may enter. Will the law best be served by preventive action? Will the grant of an injunction exacerbate the situation? (Very relevant this in industrial disputes.) Is the injunction likely to be effective or may it be futile? Will it be better to make it clear that the law will be enforced by prosecution and to appeal to the law-abiding instinct, negotiations, and moderate leadership, rather than provoke people along the road to martyrdom? All these matters – to which Devlin J. justly drew attention in *Attorney-General v. Bastow* [1957] 1 Q.B. 514, 519, and the exceptional nature of this civil remedy, point the matter as one essentially for the Attorney-General’s preliminary discretion. Every known case, so far, has been so dealt with: in no case hitherto has it ever been suggested that an individual can act, though relator actions for public nuisance which may also involve a criminal offence, have been known for 200 years. [\*482]

There are two arguments put forward for permitting individual citizens to take this action.

The first points to the private prosecution. All citizens have sufficient interest in the enforcement of the law to entitle them to take this step. Why then should this same interest not be sufficient to support preventive action by way of injunction – subject it may be, to ultimate control by the Attorney-General? At one time I was attracted by this argument. But I have reached the conclusion that I cannot accept it.

The Attorney-General’s right to seek, in the civil courts, anticipatory prevention of a breach of the law, is a part or aspect of his general power to enforce, in the public interest, public rights. The distinction between public rights, which the Attorney-General can and the individual (absent special interest) cannot seek to enforce, and private rights, is fundamental in our law. To break it, as the plaintiff’s counsel frankly invited us to do, is not a development of the law, but a destruction of one of its pilllars. Nor, in my opinion, at least in this particular field, would removal of the distinction be desirable. More than in any other field of public rights, the decision to be taken before embarking on a claim for injunctive relief, involving as it does the interests of the public over a broad horizon, is a decision which the Attorney-General alone is suited to make: see *Attorney-General v. Bastow* [1957] 1 Q.B. 514.

This brings me to the second argument. Surely, it is said, since the whole matter is discretionary it can be left to the court. The court can prevent vexatious or frivolous, or multiple actions: the court is not obliged to grant an injunction: leave it in the court’s hands. I cannot accept this either. The decisions to be made as to the public interest are not such as courts are fitted or equipped to make. The very fact, that, as the present case very well shows, decisions are of the type to attract political criticism and controversy, shows that they are outside the range of discretionary problems which the courts can resolve. Judges are equipped to find legal rights and administer, on well-known principles, discretionary remedies. These matters are widely outside those areas.

It is said that the Attorney-General can always be joined as a party – as he was here – and so can represent the public interest. There are clear objections to making him a defendant: if he were so joined, he, and through him all members of the public, would be bound by the decision. But even if he appears as amicus curiae, what is gained? His presence as, presumably, a hostile or at least a non-supporting party cannot legitimise the plaintiff’s otherwise illegitimate claim to represent the public. Moreover, when he is there, either he objects to the proceeding in the public interest without giving reasons, in which case (unless the court overrules him) nothing has been achieved beyond his refusal to allow relator proceedings: or he is obliged to state his reasons for objection and the court is able to review them. But this is contrary to the whole nature of his office and to the general principle that the court cannot review.

There remain certain other arguments for the plaintiff’s case which need consideration.

1. Attention was drawn to the procedure of applying for prerogative writs. These are often applied for by individuals and the courts have allowed them liberal access under a generous conception of locus standi. [\*483]

It was argued that analogy requires a similar and equally liberal right to bring relator actions. But the analogy is imperfect. The correct comparison is not between the court to which application is made for the writ and a court before which an individual seeks to enforce a public right, but between the court exercising the prerogative power of controlling an abuse of authority or jurisdiction and the Attorney-General under prerogative power considering whether the public interest will be served by a relator action. To allow unrestricted access of individuals – to any judge of the High Court – seeking enforcement of a public right would be to depart from analogy not to apply it.

2. In so far as reliance was placed on observations of Lord Denning M.R. (concurred in by Lawton L.J.) in Attorney-General ex. rel. *McWhirter v. Independent Broadcasting Authority* [1973] Q.B. 629, 649, these were dicta in proceedings in which ultimately, the Attorney-General consented to relator proceedings. The court in fact held that an individual could not apply for an injunction against a breach of the law except with the fiat of the Attorney-General. Lord Denning M.R. went on to express the opinion obiter that an individual member of the public can apply for an injunction “if the Attorney-General refuses leave in a proper case, or improperly or unreasonably delays in giving leave, or his machinery works too slowly”: see p. 649. There is no authority for this proposition and in my opinion it is contrary to principle. In any event none of the stated hypotheses apply in the present case.

 3. The majority of the Court of Appeal sought, in effect, to outflank the refusal of the Attorney-General to relator proceedings by allowing declaratory relief to be claimed and by permitting this to be used as a basis for granting an interim injunction. This produced the remarkable result that the plaintiff was more successful at the interim stage than he could possibly be at the final stage – for it was accepted that no final injunction could be claimed. This argument was based, as such arguments invariably are, upon the very wide words used in R.S.C., Ord. 15, r. 16 (formerly Ord. 25, r. 5) and upon wide expressions extracted from different contexts (e.g., Viscount Radcliffe in *Ibeneweka v. Egbuna* [1964] 1 W.L.R. 219, 224). Since, as I understand, others of your Lordships intend to deal fully with this argument and with the authorities, I shall content myself with saying that, in my opinion, there is no support in authority for the proposition that declaratory relief can be granted unless the plaintiff, in proper proceedings, in which there is a dispute between the plaintiff and the defendant concerning their legal respective rights or liabilities either asserts a legal right which is denied or threatened, or claims immunity from some claim of the defendant against him or claims that the defendant is infringing or threatens to infringe some public right so as to inflict special damage on the plaintiff.

The present proceedings do not possess the required characteristic. The case on which so much reliance was placed by the plaintiff – *Dyson v. Attorney-General* [1912] 1 Ch. 158, was one where a person was affected in his private rights: if the issue of the form had been proceeded with, and a penalty levied, the levy would have been wrongful and Mr. Dyson would have had a right to recover it. A right is none the less a right, or a wrong any the less a wrong, because millions of people have a similar right or may suffer a similar wrong. On the other hand, the case [\*484] in this House of *London Passenger Transport Board v. Moscrop* [1942] A.C. 332 is clear and strong authority that where there is no interference with a private right and no personal damage, declaratory relief cannot be sought without joining the Attorney-General as a party (s.c. as relator) – see pp. 344-345 per Viscount Maugham. In my opinion the law is clear, and rightly so, that only the Attorney-General – either ex officio or ex relatione can apply to the civil courts for injunctive relief against threatened breaches of the law. The present proceedings are misconceived and should have been struck out.

Finally there is the case of the P.O.E.U. This union was ordered to be joined as a defendant on January 15, 1977, and an interim injunction ex parte was granted at once, without any notice having been given to it. There was no evidence of any breach of the law having been committed, Mr. Jackson’s statement was not made on its behalf, and there was no evidence of any intention except a hearsay statement, made without ascription of source, by the labour correspondent of “The Times” newspaper. No request was made to the Attorney-General for the use of his name in relator proceedings against this union. No regard was paid to section 17 (1) of the Trade Union and Labour Relations Act 1974 (as amended by the Employment Protection Act 1975) which requires that if, in the opinion of the court, the union would be likely to claim that it acted in contemplation or furtherance of a trade dispute, no injunction may be granted unless the court is satisfied that all reasonable steps had been taken to secure that notice of his application had been given. This section, an important one in this context, was disposed of by the Court of Appeal in a brief discussion, after the injunction had been granted, by saying that this has nothing to do with a trade dispute. That may be a debatable question.

Complaint was made of this procedure by counsel for the P.O.E.U. before this House, and I must say, with all respect, that I think it was justified. Given the need for expedition, the granting of injunctions is a serious matter, and the purpose of section 17 is precisely to prevent hasty and ex parte applications being granted without the union in question being heard.

I would allow the appeals of the Attorney-General and of the two union defendants. I would dismiss the appeal of the plaintiff. The plaintiff should pay the costs of the union defendants in this House. The costs below were ordered to be costs in the cause, and consequent on the plaintiff’s claims being struck out will fall to be paid by the plaintiff.

**VISCOUNT DILHORNE.**

My Lords, the announcement that the executive Council of the Union of Post Office Workers (U.P.W.) had resolved to call upon its members to interfere with the passage of mail in the course of transmission between England and Wales and South Africa was made by the B.B.C. in the 9 o ‘clock news on television on Thursday January 13, 1977. Immediately thereafter Mr. Jackson, the General Secretary of the union, was interviewed. He said that the legality of the proposed action which was to start at midnight on Sunday January 16, had not been tested [\*485] in the courts and that the laws relating to it dated from Queen Anne and were more appropriate for dealing with highwaymen and footpads.

“The Times” the next day stated that the 31 members of the Executive had unanimously decided to brave possible legal action under the Post Office Act and to boycott all telephone calls, mail and telegrams to South Africa the next week. Their action, “The Times” said, was taken in response to a call for “international solidarity” from the International Confederation of Trade Unions in the hope of influencing apartheid policy in South Africa. “The Times” referred to action being taken by other unions and reported that the Post Office Engineering Union (P.O.E.U.) had said that it would instruct its members not to provide or maintain circuits to South Africa except in a matter of “life and death.”

The respondent, Mr. Gouriet, does not claim to have any special interest in the passage of mail to and from South Africa. He does not assert that he would have suffered any loss or damage by the projected interruption of communications. His rights, if any, and interest were those enjoyed by every member of the public.

Perhaps because he thought that Mr. Jackson’s challenge should be taken up and the legality of the proposed action tested in the courts, Mr. Gouriet applied to the Attorney-General for his consent to the institution of an action in his name, a relator action, against the U.P.W. seeking an injunction to restrain the U.P.W. its servants or agents from soliciting or endeavouring to procure any person wilfully to detain or delay any postal packet in the course of transmission between this country and South Africa.

During the afternoon of Friday January 14, the Attorney-General gave his decision. He refused his consent to the application, stating that he had considered all the circumstances, including the public interest.

In the course of the judgment he delivered on January 27 Lord Denning M.R. said that sections 58 and 68 of the Post Office Act 1953 were so clearly worded that he could see no reason for anyone to require the position to be tested in the courts. I agree. Though there may have been similar provisions in the days of Queen Anne, no sensible person could think that these sections passed in such a recent Act were either spent or obsolete; nor could anyone reading section 58 (which applies only to officers of the Post Office) and section 68 have seriously thought that they were directed at highwaymen and footpads. Any doubts about the scope of these sections felt by Mr. Jackson would have been speedily dispelled if he had sought the advice of any lawyer. If, when he gave his decision on the Friday, the Attorney-General had made a statement that if Mr. Jackson or anyone solicited or endeavoured to procure any officer of the Post Office to detain or delay a postal packet, a criminal offence would be committed, that should have sufficed to dispel Mr. Jackson’s doubts and any doubts which had arisen in the minds of members of the U.P.W. in consequence of Mr. Jackson’s statements on television.

 That same afternoon Mr. Gouriet started in his own name an action against the U.P.W. seeking an injunction in the same terms and applied to Stocker J. in chambers for an interim injunction in the same terms. His application was refused, Stocker J. holding that he had no jurisdiction to [\*486] grant it when the Attorney-General had refused his consent to a relator action. Mr. Gouriet promptly appealed and his appeal was heard by the Court of Appeal the next day, Saturday January 15.

In the course of the judgments delivered that day Lord Denning M.R. said that he thought that a breach of the criminal law was impending “directed, encouraged or procured by the executive” of the union; Lawton L.J. said that there was ample evidence that by its resolution the union had committed an offence under section 68 of the Post Office Act and Ormrod L.J. held that the union was guilty of an offence under that section and that future breaches were threatened. Whether or not an offence had been committed by the passage of the resolution and its communication to the media with the result that members of the union would be informed of it in time to take action at midnight on the Sunday, it is not necessary to decide. If a member of the executive was indicted in respect of that, the question would fall to be decided by the jury. But there is no doubt that breaches of section 58 were clearly threatened.

At the hearing on the Saturday Lawton L.J. said that he could see no good legal reason for the Attorney-General’s refusal of consent though he could conceive of many political reasons for his decision. He went on to say that until there was some explanation of his refusal “then on the face of it, his failure to do so must have been for some reason which was not a good reason in law.”

The court adjourned the hearing until the following Tuesday to enable the Attorney-General to be present and granted an interim injunction in the terms sought against the U.P.W.

After judgment was given on the Saturday, Mr. Newman, counsel for Mr. Gouriet, asked and was given leave to join the P.O.E.U. as a defendant, and the statement of claim was amended to include a claim for an injunction to restrain the P.O.E.U. its servants or agents from counselling, procuring or inciting any person in the employment of the Post Office to do any of the acts made offences by section 45 of the Telegraph Act 1863. An interim injunction in these terms was made against the P.O.E.U.

Mr Saville, who appeared for both unions, contended that this injunction should not have been granted. The affidavit sworn by Mr. Gouriet in support of his application for an interim injunction against the U.P.W. exhibited the extract from “The Times” which stated what the P.O.E.U. was going to instruct its members to do. He contended that there was insufficient material before the court to entitle it in the exercise of its discretion to grant the injunction.

While I agree there was little information before the court for it to act on, I am not prepared to say that in all the circumstances it was insufficient. The question is now of little importance. Mr. Saville also took the point that the Court of Appeal had failed to comply with section 17 of the Trade Union and Labour Relations Act 1974 which is in the following terms:

“Where an application for an injunction … is made to a court in the absence of the party against whom the injunction … is sought or any representative of his, and that party claims, or in the opinion of the court would be likely to claim, that he acted in contemplation [\*487] or furtherance of a trade dispute, the court shall not grant the injunction … unless satisfied that all steps which in the circumstances were reasonable have been taken with a view to securing that notice of the application and an opportunity of being heard with respect to the application have been given to that party.”

The court held that this section did not apply as there was no trade dispute falling within the definition in section 29 (1) of the Act. Section 29 (3), as amended by paragraph 6 of Part III of Schedule 16 to the Employment Protection Act 1975, provides that “There is a trade dispute for the purposes of this Act even though it relates to matters occurring outside Great Britain” and Mr. Saville at the hearing the following week asserted that there was a dispute between the Government of South Africa as employers and other employers with trade unions in South Africa which came within the statutory definition of “trade dispute.”

The application of section 17 (1) does not depend on whether there is in fact a trade dispute. It depends on whether in the opinion of the court it is likely that a party will claim that what was proposed was in contemplation or furtherance of a trade dispute. Here the only information before the court was that the action proposed was in response to a call for international solidarity in the hope of influencing policy on apartheid. I see no reason for concluding that in the light of this information the court should have formed the opinion that there would be a claim that the action proposed was in furtherance of a trade dispute. I therefore reject the contention that the court failed to comply with section 17 (1).

On the Saturday the statement of claim was also amended to include a claim for a declaration that the Attorney-General had acted improperly in refusing his consent to relator proceedings and had wrongly exercised his discretion. At the hearing the following Tuesday the Attorney-General’s refusal to give his reasons for withholding his consent was regarded by Lord Denning M.R. as a direct challenge to the rule of law, a statement with which I feel I must express my complete dissent.

In the course of his judgment on January 27 Lord Denning M.R. said that he accepted that the court could not inquire into the giving of consent by the Attorney-General to the institution of a relator action but in his opinion his refusal of consent could be reviewed by the courts. Lawton L.J. and Ormrod L.J. did not agree. On the last day of the hearing Mr. Gouriet abandoned his contention that the courts had power to review the Attorney-General’s exercise of his powers, but in view of Lord Denning’s observations and those of Lawton L.J. on the Saturday to which I have referred and the importance of the question, I feel I should say something with regard thereto.

The Attorney-General has many powers and duties. He may stop any prosecution on indictment by entering a nolle prosequi. He merely has to sign a piece of paper saying that he does not wish the prosecution to continue. He need not give any reasons. He can direct the institution of a prosecution and direct the Director of Public Prosecutions to take over the conduct of any criminal proceedings and he may tell him to offer no evidence. In the exercise of these powers he is not subject to direction by his ministerial colleagues or to control and supervision by the courts. [\*488]

If the court can review his refusal of consent to a relator action, it is an exception to the general rule. No authority was cited which supports the conclusion that the courts can do so. Indeed such authority as there is points strongly in the opposite direction. In 1902 in *London County Council v. Attorney-General* [1902] A.C. 165 Lord Halsbury L.C. said, at pp. 168-169:

“My Lords, one question has been raised, though I think not raised here – it appears to have emerged in the court below – which I confess I do not understand. I mean the suggestion that the courts have any power over the jurisdiction of the Attorney-General when he is suing on behalf of a relator in a matter in which he is the only person who has to decide those questions. It may well be that it is true that the Attorney-General ought not to put into operation the whole machinery of the first law officer of the Crown in order to bring into court some trifling matter. But if he did, it would not go to his jurisdiction; it would go I think, to the conduct of his office, and it might be made, perhaps in Parliament, the subject of adverse comment; but what right has a court of law to intervene? If there is excess of power claimed by a particular public body, and it is a matter that concerns the public, it seems to me that it is for the Attorney-General and not for the courts to determine whether he ought to initiate litigation in that respect or not … In a case where as a part of his public duty he has a right to intervene, that which the courts can decide is whether there is the excess of power which he, the Attorney-General, alleges. Those are the functions of the court; but the initiation of the litigation, and the determination of the question whether it is a proper case for the Attorney-General to proceed in, is a matter entirely beyond the jurisdiction of this or any other court. It is a question which the law of this country has made to reside exclusively in the Attorney-General. I make this observation upon it, though the thing has not been urged here at all, because it seems to me to be very undesirable to throw any doubt upon the jurisdiction, or the independent exercise of it by the first law officer of the Crown.”

In the same case Lord Macnaghten said, at p. 170, that he entirely concurred in these observations. Although obiter, they nevertheless have great authority and in my opinion the view that refusal of consent to a relator action is an exception to the general rule and is subject to review by the courts must be rejected. It is because I think it undesirable that any judicial observations suggesting that the exercise by the Attorney-General of these functions and duties is subject to control, supervision and review by the courts should be left unanswered that I have ventured to make these observations.

Mr. Gouriet’s contention now is that the Attorney-General can only refuse his consent to the institution of a relator action if it is frivolous, vexatious or oppressive and that as the action for which he sought the Attorney-General’s consent did not fall under any of these heads, the Attorney-General had acted improperly. The ancient cases to which we were referred show that there was a time when Attorneys-General freely gave their consent to such actions but since the days of Lord Eldon, [\*489] Attorneys-General have exercised considerable control. The figures with which we were supplied show that over the last 25 years or so the number of applications for the Attorney-General’s consent has increased, and while a good percentage of them are refused, the number of such actions has also increased. A relator action is not something to be regarded as archaic and obsolete. The courts have power to dismiss an action which is frivolous, vexatious or oppressive If indeed the only purpose of requiring an application for the Attorney-General’s consent was to give him the opportunity of saying in advance of the courts that an action was frivolous, vexatious or oppressive, this function of his would serve little useful purpose. Again in my opinion this contention for which no authority was cited must be rejected. The Attorney-General did not in my opinion act improperly as now suggested on behalf of Mr. Gouriet.

“there is no greater nonsense talked about the Attorney-General’s duty,” said Sir John Simon in 1925, “than the suggestion that in all cases the Attorney-General ought to decide to prosecute merely because he thinks there is what the lawyers call ‘a case. ‘ It is not true, and no one who has held that office supposes it is.” (See Edwards, The Law Officers of the Crown, p. 222.)

However clear it appears to be that an offence has been committed, it is, as Sir Hartley Shawcross then Attorney-General said in 1951, the Attorney-General’s duty

“in deciding whether or not to authorise the prosecution, to acquaint himself with all the relevant facts, including, for instance, the effect which the prosecution, successful or unsuccessful as the case may be, would have upon public morale and order.”

(See Edwards, p. 223).

This approach which the Attorney-General should make when considering whether a prosecution should be started, is in my opinion the kind of approach he should have made to the question of giving his consent to Mr. Gouriet’s application.

In deciding whether or not to prosecute “there is only one consideration which is altogether excluded,” Sir Hartley Shawcross said, “and that is the repercussion of a given decision upon my personal or my party’s or the Government’s political fortunes.” (See Edwards, pp. 222-223.) In the discharge of any of the duties to which I have referred, it is, of course, always possible that an Attorney-General may act for reasons of this kind and may abuse his powers. One does not know the reasons for the Attorney-General’s refusal in this case but it should not be inferred from his refusal to disclose them that he acted wrongly. For all one knows he may have attached considerable importance to the fact that the injunction sought did no more than repeat the language of the sections of the Post Office Act 1953. On the Friday he may indeed have thought that to start proceedings so speedily for an injunction which did no more than that was not likely to serve any useful purpose and might indeed exacerbate the situation. Instances of applications by Attorneys-General to the civil courts for aid in enforcing the criminal law are few in number and exceptional in character. In the Court of Appeal a number of observations were made as to the inability of the courts to “enforce the [\*490] law” if the Attorney-General refused his consent to an application for such an injunction. A breach of the law was impending according to Lord Denning M.R. “Are the courts to stand idly by?” was the question he posed on the Saturday. On January 27 he said [1977] Q.B. 729, 761:

“If he” (the Attorney-General) “does not act himself – or refuses to give his consent to his name being used – then the law will not be enforced. If one Attorney-General after another does this, if each in his turn declines to take action against those who break the law – then the law becomes a dead letter.”

With great respect the criminal law does not become a dead letter if proceedings for injunctions to restrain the commission of offences or for declarations that certain conduct is unlawful are not brought. The criminal law is enforced in the criminal courts by the conviction and punishment of offenders, not in the civil courts. The jurisdiction of the civil courts is mainly as to the determination of disputes and claims. They are not charged with responsibility for the administration of the criminal courts. The question “Are the courts to stand idly by?” might be supposed by some to suggest that the civil courts have some executive authority in relation to the criminal law. The line between the functions of the executive and the judiciary should not be blurred.

There are a number of statutory offences for the prosecution of which the consent of the Attorney-General or of the Director of Public Prosecutions is required but apart from these offences, anyone can if he wishes start a prosecution without obtaining anyone’s consent. The enforcement of the criminal law does not rest with the civil courts or depend on the Attorney-General alone.

An enactment by Parliament defining and creating a criminal offence amounts to an injunction by Parliament restraining the commission of the acts made criminal. If the injunction in the Act is not obeyed – and in these days it frequently is not – the statute normally states the maximum punishment that can be awarded on conviction. If in addition to the enactment, an injunction is granted in the civil courts to restrain persons from doing the acts already made criminal by Parliament, an injunction which does no more than embody the language of the statute, has that any greater potency than the injunction by Parliament contained in the Act? An injunction in the terms sought when the application in this case was made to the Attorney-General does not appear to me to be one that can with any accuracy of language be regarded as “enforcing the law.” Repetition is not enforcement. The granting of such an injunction merely imposes a liability to fine or imprisonment for contempt additional to the maximum Parliament has thought fit to prescribe on conviction for the same conduct.

Great difficulties may arise if “enforcement” of the criminal law by injunction became a regular practice. A person charged, for instance, with an offence under section 58 or 68 of the Post Office Act 1953 has the right of trial by jury. If, before he commits the offence, an injunction is granted restraining him from committing an offence under those sections and he is brought before the civil courts for contempt, his guilt will be decided not by a jury but by a judge or judges. If he is subsequently [\*491] tried for the criminal offence, might not the finding of guilt by a judge or judges prejudice his trial? This question is not to my mind satisfactorily answered by saying that juries can be told to ignore certain matters. It was suggested that this difficulty might be overcome by adjourning the proceedings for contempt until after the conclusion of the criminal trial. If that was done, the question might arise then as to the propriety of imposing a punishment in the contempt proceedings additional to that imposed on conviction for the same conduct in the criminal court.

Such considerations may have been present to the mind of the Attorney-General when he considered Mr. Gouriet’s application on the Friday and may have provided valid grounds for his refusal of consent. Whether they did so or not, one does not know but I have mentioned them as they seem to me to suffice to show that even if good legal reasons for his decision were not immediately apparent, the inference that he abused or misused his powers is not one that should be drawn.

An Attorney-General is not subject to restrictions as to the applications he makes, either ex officio or in relator actions, to the courts. In every case it will be for the court to decide whether it has jurisdiction to grant the application and whether in the exercise of its discretion it should do so. It has been and in my opinion should continue to be exceptional for the aid of the civil courts to be invoked in support of the criminal law and no wise Attorney-General will make such an application or agree to one being made in his name unless it appears to him that the case is exceptional.

One category of cases in which the Attorney-General has successfully sought an injunction to restrain the commission of criminal acts is where the penalties imposed for the offence have proved wholly inadequate to deter its commission: see *Attorney-General v. Sharp* [1931] 1 Ch. 121; *Attorney-General v. Premier Line Ltd*. [1932] 1 Ch. 303; *Attorney-General v. Bastow* [1957] 1 Q.B. 514 and *Attorney-General v. Harris* [1961] 1 Q.B. 74 where the defendant had been convicted on no less than 142 occasions of breaches of the Manchester Police Regulation Act 1844.

In *Attorney-General v. Chaudry* [1971] 1 W.L.R. 1614 an injunction was granted at the instance of the Attorney-General in a relator action to restrain the defendant from using a building as a hotel without a certificate under the London Building Acts. There was a serious fire risk and it was not possible to secure the early hearing of a summons charging the defendant with a criminal offence in so using the building without a certificate. In those circumstances an interlocutory injunction was granted prohibiting the use of the building as a hotel until the necessary certificate was granted.

I do not wish to suggest that the cases to which I have referred are the only types of cases in which the civil courts can and should come to the aid of the criminal law by granting injunctions at the instance of the Attorney-General but they, I think, serve to show that the exercise of that jurisdiction at the instance of the Attorney-General is exceptional.

As after the hearing on the Saturday the proposed action by members of the unions was called off, there was no occasion when the hearing was [\*492] resumed for the grant of injunctions. The Court of Appeal allowed the statement of claim to be amended to add claims for declarations. I do not propose to spend time considering the terms of the declarations sought against the unions. It suffices to say that they were that it would be unlawful for the unions their servants and agents to do the acts made criminal by sections 58 and 68 of the Post Office Act 1953 and section 45 of the Telegraph Act 1863. The question for decision is not whether in the exercise of their discretion the Court of Appeal should have declared that what Parliament had made criminal was unlawful but whether the court had any jurisdiction to entertain Mr. Gouriet’s application.

That is the main question to be decided in this appeal and the main thrust of Mr. Gouriet’s contention, which was it appears to me, accepted by the Court of Appeal, was that it was wrong in principle that the Attorney-General should by the refusal of his consent to a relator action, be able to block recourse to the civil courts when a widespread breach of the criminal law was threatened. There were frequent references in the course of the argument to the courts being “immunized” by his refusal. It has been asserted that the Attorney-General stands between members of the public and the courts and by his refusal can deny access thereto. This would appear to be the basis for Lord Denning M.R.’s observation that his refusal of consent in this case was a direct challenge to the rule of law.

It was also urged that if, as is undoubtedly the case, any person can start a prosecution for a criminal offence without, save in those cases where the consent of the Attorney-General or the Director of Public Prosecutions is required by statute, the consent of anyone, why should not any member of the public be entitled to apply to the civil courts for an injunction in an endeavour to prevent the commission of an offence? Why when the Attorney-General is not the only person who can start a prosecution, should he be the only person who can apply for such an injunction?

The reply to this made on behalf of the Attorney-General and the unions was that Mr. Gouriet was not qualified to act on behalf of the public to prevent injury to public rights and the courts had not jurisdiction to entertain his claim.

Mr. Gouriet does not as I have said assert a private right of any kind. He does not claim that he would have suffered any loss or damage by reason of the interruption of postal services to and from South Africa. If he had suffered any such loss or damage, he would have no cause of action against the Post Office or in tort against the unions and their members: see the Post Office Act 1969, sections 9 (4) and 29 (1).

It is not necessary therefore to consider the long line of cases dealing with the rights of individuals to secure injunctions and declarations when their private rights are threatened though it is not without interest to note that in *Springhead Spinning Co. v. Riley* (1868) L.R. 6 Eq. 551 it was held that an injunction could be granted at the instance of a person to prevent the commission of a crime if, but only if, that person would be damaged thereby. In that case Malins V.-C. said, at p. 558:

“if these acts amount to the commission of a crime only, it is clear [\*493] that this court has no jurisdiction to restrain them. In the celebrated case of *Gee v. Pritchard* (1818) 2 Sw. 402, 413 the object of which was to restrain the publication of letters written by the plaintiff to the defendant, Lord Eldon says ‘The publication of a libel is a crime, and I have no jurisdiction to prevent the commission of crimes, excepting, of course, such cases as belong to the protection of infants where a dealing with an infant may amount to a crime – an exception arising from the peculiar jurisdiction of this court ‘ … The jurisdiction of this court is to protect property, and it will interfere by injunction to stay any proceedings, whether connected with crime or not, which go to the immediate, or tend to the ultimate, destruction of property, or to make it less valuable or comfortable for use or occupation.“

In London Association of *Shipowners and Brokers v. London and India Docks Joint Committee* [1892] 3 Ch. 242, it was held that the plaintiff company, the Peninsular and Oriental Steam Navigation Co., who had brought an action for a declaration that regulations made by the defendants in the purported exercise of statutory powers were invalid, had, to succeed, to show that they had suffered special damage by reason of the regulations. Lindley L.J. said, at p. 257:

“The Peninsular and Oriental Company, if aggrieved by the defendants’ regulations, have a clear locus standi as plaintiffs in an action brought to have its grievances redressed. At the same time the Peninsular and Oriental Company is not like the Attorney-General, and is not entitled to sue on behalf of the public for the purpose of preventing the defendants from exceeding their statutory powers irrespective of any particular injury to any particular individual. The Peninsular and Oriental Company must show that it is itself aggrieved before it is entitled to any declaration or relief in an action brought by itself. Had this action been an information by the Attorney-General, there would be no difficulty in declaring the regulations complained of not to be binding on the public, and in granting an injunction to restrain the Joint Committee from enforcing them; …”

Despite these observations and similar observations by the other members of the court and despite the fact that the appeal from the dismissal of the plaintiff’s action was dismissed, the court somewhat surprisingly granted a declaration, it would seem by consent.

*In Cutler v. Wandsworth Stadium Ltd.* [1949] A.C. 398 Lord Simonds, referring to the Betting and Lotteries Act 1934, observed, at p. 408:

“the sanction of criminal proceedings emphasises that this statutory obligation, like many others which the Act contains, is imposed for the public benefit and that the breach of it is a public not a private wrong.”

So here in my opinion the sanction of criminal proceedings in sections 58 and 68 of the Post Office Act 1953 and in section 45 of the Telegraph Act 1863 was imposed for the public benefit and breach of them is a public and not a private wrong. [\*494]

That the Attorney-General can, if he thinks it in the public interest to do so, take proceedings to prevent the commission of a public wrong is not disputed. As Professor Edwards said at p. 286 in his book The Law Officers of the Crown this aspect “*of the Attorney-General’s role as protector of public rights [is] of great antiquity.”*

An instance of its exercise is to be found in *Attorney-General v. Bastow* [1957] 1 Q.B. 514 where Devlin J. said that a relator action was one over which the Attorney-General retains complete control. I venture to think that no one who has held the office of Attorney-General would agree with the view expressed by Ormrod L.J. in the present case that there is a fictional element in relator actions. While it is true that the conduct of the proceedings in such an action is left in the hands of the relator, it is in his hands as agent for the Attorney-General and its conduct is always under his control and direction.

In that case Devlin J. cited the following observation of Jessel M.R. in *Attorney-General v. Cockermouth Local Board*. L.R. 18 Eq. 172, 176:

“Except for the purposes of costs, there is no difference between an ex officio information and an information at the relation of a private individual. In both cases the Sovereign, as parens patriae, sues by the Attorney-General.”

No useful purpose would I think be served by my referring to all the cases cited in argument. While the contention that if a private individual can start a prosecution, he should be able to take steps directed to preventing the commission of a crime appears at first sight attractive and logical, I do not find anything to support it in the decided cases. *Dyson v. Attorney-General* [1911] 1 K.B. 410 is not a case where the plaintiff was asserting a public right or the existence of a public wrong. He was seeking to protect himself. *Ellis v. Duke of Bedford* [1899] 1 Ch. 494 also was not a case where the plaintiffs were asserting a public right. They were growers who alleged that they had special rights under the Act relating to Covent Garden. The question for decision in that case was not that in this There the only question was whether they could properly join as plaintiffs in one action. The granting of the declaration in the *London Association of Shipowners* case [1892] 3 Ch. 242 which appears to have been by consent, does not assist Mr. Gouriet.

The conclusion to which I have come in the light of the many authorities to which we were referred is that it is the law, and long established law, that save and in so far as the Local Government Act 1972, section 222, gives local authorities a limited power so to do, only the Attorney-General can sue on behalf of the public for the purpose of preventing public wrongs and that a private individual cannot do so on behalf of the public though he may be able to do so if he will sustain injury as a result of a public wrong. In my opinion the cases establish that the courts have no jurisdiction to entertain such claims by a private individual who has not suffered and will not suffer damage.

If these conclusions are right, then when the Attorney-General gives his consent to a relator action, he is enabling an action to be brought which an individual alone could not bring. When he refuses his consent, he is not denying the right of any individual and barring his access to the courts [\*495] for the courts have no jurisdiction to entertain a claim by an individual whose only interest is as a member of the public in relation to a public right. Consequently, any suggestions that his refusal constitutes a challenge to the rule of law appears to me to be entirely misconceived, and though views may differ as to where the balance of public interest lies, it should not be lightly assumed that his refusal of consent in a particular case was unjustified and not grounded on considerations of public interest.

There are a few other matters with which I desire to deal. I do not think that there is any true analogy between the giving of consent to relator actions and the issue of prerogative writs and we are not therefore in my opinion called upon to express views upon the correctness of the observations made as to the issue of mandamus in *Reg. v. Commissioner of Police of the Metropolis, Ex parte Blackburn* [1968] 2 Q.B. 118.

In *Attorney-General ex rel. McWhirter v. Independent Broadcasting Authority* [1973] Q.B. 629 Lord Denning M.R. made some obiter observations to the effect that a member of the public can apply to the court when the Attorney-General refuses leave in a proper case for the institution of relator proceedings. It follows from what I have said that these obiter observations do not in my opinion correctly state the law. The courts cannot review the Attorney-General’s decision and they have no jurisdiction to entertain an application by a member of the public which he alone can make, either ex officio or in a relator action.

The majority of the Court of Appeal thought that the court had jurisdiction to make the declarations sought by virtue of R.S.C., Ord. 15, r. 16 which is in the same terms as Ord. 25, r. 5 made in 1883. It reads as follows:

“No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether or not any consequential relief is or could be claimed.”

It does not provide that an action will lie whenever a declaration is sought. It does not enlarge the jurisdiction of the court. It merely provides that no objection can be made on the ground only that a declaration is sought. In my opinion it provides no ground for saying that since 1883 the courts have had jurisdiction to entertain an action instituted by a person other than the Attorney-General who does not claim that any personal right or interest will be affected and who is seeking just to protect public rights.

In my opinion the Attorney-General was right in his contention that the court had no jurisdiction to grant the interim injunctions. It had no jurisdiction to grant declarations or a final injunction in this suit by Mr. Gouriet.

In conclusion, as I see it, we were asked not just to extend the existing law but to override a mass of authority and to say that long established law should no longer prevail. That is a question for the legislature to consider and in the light of what I have said about the exceptional character of requests by the Attorney-General to the civil courts to come to the aid of the criminal law and of the occasions when that has been given, I must confess to considerable doubt whether it would be in the public interest [\*496] that private individuals such as Mr. Gouriet should be enabled to make such applications in cases where such interest as they have is in common with all other members of the public and when the object is the enforcement of public rights.

For these reasons in my opinion the appeals of the Attorney-General and the unions should be allowed and that of Mr. Gouriet dismissed. His claim should be struck out and, the Attorney-General not seeking costs in this House, Mr. Gouriet should pay the unions’ costs here in addition to the costs in the courts below which were ordered to be costs in cause.

**LORD DIPLOCK.**

My Lords, at the heart of the issues in these appeals lies the difference between private law and public law. It is the failure to recognise this distinction that has in my view led to some confusion and an unaccustomed degree of rhetoric in this case.

As the facts that have been narrated by my noble and learned friend Lord Wilberforce disclose, on Friday January 14, 1977 the Union of Post Office Workers (“U.P.W.”) was threatening to instruct its members to refuse to handle during the ensuing week any postal packets in course of transmission between England and the Republic of South Africa. That such conduct by the postal workers would constitute a criminal offence punishable upon indictment by imprisonment or a fine is, as Lord Wilberforce’s citation of the relevant section of the Post Office Act 1953 shows, plain beyond argument. It is no less plain that if the U.P.W. were to carry out its proposal to instruct its members to “black” South African mail, the union would itself commit a criminal offence punishable by indictment. So the situation on that Friday was that a powerful trade union was threatening to defy the criminal law and to endeavour to procure its members to do likewise in such a way as would result in inconvenience and, it may be, in some cases serious financial loss, to those members of the public who during the coming week might want to make use of the postal services between England and South Africa for the purpose of their business or personal affairs.

It is understandable that, in the face of such a threat and the nationwide publicity that it had been accorded, the question should be put rhetorically, as it was by Lord Denning M.R. in his interlocutory judgment of January 17: “Are the courts to stand idly by?”

Courts of justice do not act of their own motion. In our legal system it is their function to stand idly by until their aid is invoked by someone recognised by law as entitled to claim the remedy in justice that he seeks. Courts of justice cannot compel anyone to invoke their aid who does not choose to do so; nor can they demand of him an explanation for his abstention. That is why it is now conceded that the Attorney-General cannot be called upon to disclose his reasons for refusing on January 14 to authorise the bringing of proceedings in his name against the U.P.W. when so requested by Mr. Gouriet.

So, Mr. Gouriet if he wanted to achieve his purpose of preventing the U.P.W. from carrying out its threatened defiance of the criminal law had to proceed alone. The remedy originally sought by him was an injunction against the U.P.W. to restrain their threatened conduct. This [\*497] was expressed in terms which followed closely the actual wording of section 68 of the Post Office Act 1953. I will for the time being leave out of account the subsequent amendments and additions of fresh defendants to which Lord Wilberforce has referred; for, in my opinion, the answer to the question. “Had the High Court jurisdiction to grant this relief upon the application of a private citizen?”, is decisive of this appeal; though later I shall deal briefly with the question whether the majority of the Court of Appeal were right in holding that the substitution of a claim for declaratory relief in place of the original claim for an injunction could make all the difference.

Mr. Gouriet does not base his claim to either form of relief upon the ground that any private legal right either of his own or of any other individual would be infringed if the Post Office were to suspend for a week transmission of postal packets between England and South Africa. The Post Office, its officers and servants enjoy a special immunity from liability in private law. So long as the Post Office continued to be a department of government, carriage by post of packets entrusted to the Post Office by subjects was not undertaken pursuant to any contract. Acceptance for transmission to the addressee gave rise to no contractual rights. *Triefus & Co. Ltd. v. Post Office* [1957] 2 Q.B. 352. This exclusion of contractual liability is preserved by section 9 (4) of the Post Office Act 1969. Until 1947 the Post Office enjoyed the Crown’s immunity from liability in tort and this immunity in respect of anything done or omitted to be done in relation to a postal packet was expressly preserved by section 9 of the Crown Proceedings Act 1947. When, by the Post Office Act 1969 the Post Office ceased to be a department of state and became a separate public authority invested with statutory powers and duties, the same immunity from liability in tort was conferred upon it and upon its employees by section 29. So even apart from the comprehensive immunity from actions in tort that is conferred upon trade unions as such by section 14 of the Trade Union and Labour Relations Act 1974, there were insuperable obstacles in the way of Mr. Gouriet’s asserting that the kind of conduct by post office workers that the U.P.W. was threatening to procure would result in the infringement of any right of his own (or of any other individual) that was enforceable in private law. The conduct would be criminal; it would cause great public inconvenience and harm, but it would not be in breach of any duty in contract or quasi-contract owed by the Post Office to the sender or addressee of any postal packet; nor would it give rise to any cause of action in tort. For the harm it caused there would be no remedy available in private law.

The ordinary way of enforcing criminal law is by punishing the offender after he has acted in breach of it. Commission of the crime precedes the invocation of the aid of a court of criminal jurisdiction by a prosecutor. The functions of the court whose aid is then invoked are restricted to (1) determining (by verdict of a jury in indictable cases) whether the accused is guilty of the offence that he is charged with having committed and, (2) if he is found guilty, decreeing what punishment may be inflicted on him by the executive authority. In English public law every citizen still has the right, as he once had a duty (though of imperfect obligation), to invoke the [\*498] aid of courts of criminal jurisdiction for the enforcement of the criminal law by this procedure. It is a right which nowadays seldom needs to be exercised by an ordinary member of the public, for since the formation of regular police forces charged with the duty in public law to prevent and detect crime and to bring criminals to justice, and the creation in 1879 of the office of Director of Public Prosecutions, the need for prosecutions to be undertaken (and paid for) by private individuals has largely disappeared; but it still exists and is a useful constitutional safeguard against capricious, corrupt or biased failure or refusal of those authorities to prosecute offenders against the criminal law.

Mr. Gouriet could have initiated a private prosecution against the U.P.W.; but he would have had to wait until an offence under section 68 of the Post Office Act 1953 had been committed; and it is doubtful whether that could be proved until the officials of the union had acted on the resolution by actually sending out to its members instructions to “black” all South African mail.

So much for the ordinary way of enforcing the criminal law. There are, however, two procedures by which the aid of a court of justice may be anticipatively invoked before any crime, even inchoate, has actually been committed. Both these procedures are exceptional and in some respects anomalous. Of the first, the power of a magistrate to bind over a person to be of good behaviour, I need say very little. It has its origin in the Justice of the Peace Act 1361 when the distinction between the executive and the judicial functions of these dignitaries was still blurred. The power was extended to all courts of criminal jurisdiction by the Administration of Justice Act 1969, but it is debatable whether it should properly be classified as appertaining to criminal or to public law.

The second exceptional procedure is that which has given rise to these appeals: the application to a court of civil jurisdiction for an injunction to restrain a potential offender from doing something in the future which although if done it would give the applicant no right to redress in private law, would nevertheless be a criminal offence.

My Lords, there is ample authority already cited by Lord Wilberforce that this procedure is undoubtedly available if applied for by the Attorney-General either ex officio or ex relatione; but it is no less anomalous than that of binding over to be of good behaviour a person who has not been proved to have committed any offence. It is in my view appropriate to be used only in the most exceptional of cases. It is not accurate to describe it as preventive justice. It is a deterrent and punitive procedure; but this is characteristic too of the enforcement of criminal law through the ordinary courts of criminal jurisdiction. The very creation by Parliament of a statutory offence constitutes a warning to potential offenders that if they are found guilty by a court of criminal jurisdiction of the conduct that is proscribed, they will be liable to suffer punishment up to a maximum authorised by the statute. When a court of civil jurisdiction grants an injunction restraining a potential offender from committing what is a crime but not a wrong for which there is redress in private law, this in effect is warning him that he will be in double jeopardy, for if he is found guilty by the civil court of committing the crime he will be liable to suffer [\*499] punishment of whatever severity that court may think appropriate, whether or not it exceeds the maximum penalty authorised by the statute and notwithstanding that he will also be liable to be punished again for the same crime if found guilty of it by a court of criminal jurisdiction. Where the crime that is the subject matter of the injunction is triable on indictment the anomalies involved in the use of this exceptional procedure are enhanced. The accused has the constitutional right to be tried by jury and his guilt established by reference to the criminal standard of proof. If he is proceeded against for contempt of court he is deprived of these advantages.

I mention these matters, obvious though they may be, for two reasons. First, in justice to the Attorney-General against whom it has been hinted that there could be no reasons that were not partizan for his refusal to authorise the bringing of a relator action against the U.P.W. when asked to do so by Mr. Gouriet on January 14. The matters I have referred to are juristic considerations proper to be taken into account, no doubt with others of a less juristic character, in determining whether the public interest was likely to be best served by resorting to this exceptional and anomalous procedure for the enforcement of the criminal law.

The second reason why they are important is that they are relevant to the distinction between an injunction in restraint of crime simpliciter and an injunction to restrain conduct which, although amounting to a crime, would also infringe some right belonging to the plaintiff who is applying for the injunction, which is enforceable by him in private law. The super-cession of private revenge for wrongs by remedies obtainable from courts of justice and enforceable by the executive authority of the state lies at the common origin both of the criminal law and of the civil private law of tort. So from the outset there have been many crimes which at common law were private wrongs to the person who suffered particular damage from them as well as public wrongs; and the policy of the law has been not to deprive the victim of a private wrong of his redress in civil private law against the wrongdoer merely because the wrongdoer is subject also to punitive sanctions under the criminal law for the same conduct; although until the recent abolition of the distinction between felonies and misde-meanours if the facts relied upon by the plaintiff as constituting a private wrong amounted also to the graver crime, a felony, the plaintiff was barred from proceeding with his civil remedy until after the wrongdoer had been prosecuted in a criminal court.

In modern statutes whose object is to protect the health or welfare of a section of the public by prohibiting conduct of a particular kind, it is not infrequently the case that the prohibited conduct is made both a criminal offence and a civil wrong for which a remedy in private law is available to any individual member of that section of the public who has suffered damage as a result of it. So it creates a private right to be protected from loss or damage caused by the prohibited conduct.

For the protection of the private right created by such a statute a court of civil jurisdiction has jurisdiction to grant to the person entitled to the private right, but to none other, an injunction to restrain a threatened breach of it by the defendant. Upon the application for the injunction [\*500] the issues are neither technically nor actually the same as they would be upon a subsequent prosecution for the criminal offence once the threat had been translated into action. They would still not be technically the same upon an application to the civil court to commit the defendant for contempt of court for breach of the injunction; though proof of commission of an offence would be a necessary step in the proof of the contempt where the only civil wrong involved was conduct prohibited by the penal provisions of the statute. This is a consideration that it would be proper for the court to bear in mind in exercising its discretion whether or not to grant an injunction in this type of case; but however sparingly it should be exercised, where the court is satisfied that grave and irreparable harm would otherwise be done to the plaintiff’s private rights for which damages could not provide adequate compensation, it has undoubted jurisdiction to grant one.

The words italicised in the last paragraph are important words for they draw attention to the fact that the jurisdiction of a civil court to grant remedies in private law is confined to the grant of remedies to litigants whose rights in private law have been infringed or are threatened with infringement. To extend that jurisdiction to the grant of remedies for unlawful conduct which does not infringe any rights of the plaintiff in private law, is to move out of the field of private into that of public law with which analogies may be deceptive and where different principles apply.

There is nothing that I desire to add to what my noble and learned friends Lord Wilberforce and Viscount Dilhorne have already said about the exclusive right of the Attorney-General to represent the public interest in litigation, or about the development of the practice of his seeking ex officio or ex relatione a civil remedy by injunction against unlawful conduct that would cause public harm. I do desire, however, to comment briefly upon the exercise of the jurisdiction to grant a remedy by injunction on the application of the Attorney-General in cases where what makes conduct sought to be restrained unlawful as well as harmful is because it constitutes a criminal offence. Resort to this jurisdiction is of respectable antiquity. It was first used in cases of public nuisance as a more effective and expeditious remedy than was provided by indictment or criminal information. Nevertheless the extension of its use to statutory offences is modern, and has hitherto been confined by the consistent practice of successive Attorneys-General to statutes whose objects are to promote the health, the safety or the welfare of the public and to particular cases under such statutes either where the prescribed penalty for the summary offence has proved to be insufficient to deter the offender from numerous repetitions of the offence, as in *Attorney-General v. Sharp* [1931] 1 Ch. 121; *Attorney-General v. Premier Line Ltd.* [1932] 1 Ch. 303 and *Attorney-General v. Harris* [1961] 1 Q.B. 74; or where the defendant’s disobedience to the statutory prohibition may cause grave and irreparable harm, as in *Attorney-General v. Chaudry* [1971] 1 W.L.R. 1614. The use of this procedure for the reasons I have already given ought not in my view to be extended beyond those limits.

Finally I turn to the two propositions accepted by the majority of the Court of Appeal. The first was that despite the court’s lack of jurisdiction [\*501] to grant a final injunction otherwise than at the suit of the Attorney-General, it could none the less grant in a suit by Mr. Gouriet alone, a declaration that the conduct threatened by the U.P.W. would be unlawful. The second was that pending the making or refusal of the declaration the court had jurisdiction to restrain the threatened conduct by interlocutory injunction. This second proposition was, however, dealt with extremely briefly in the judgments on January 27. An interlocutory injunction had previously been granted. It was not then renewed and nothing in the arguments addressed to this House has persuaded me that there is any ground on which the proposition can be supported.

Authorities about the jurisdiction of the courts to grant declaratory relief are legion. The power to grant a declaration is discretionary; it is a useful power and over the course of the last hundred years it has become more and more extensively used – often as an alternative to the procedure by way of certiorari in cases where it is claimed that a decision of an administrative authority which purports to affect rights available to the plaintiff in private law is ultra vires and void. Nothing that I have to say is intended to discourage the exercise of judicial discretion in favour of making declarations of right in cases where the jurisdiction to do so exists. But that there are limits to the jurisdiction is inherent in the nature of the relief: a declaration of rights.

The only kinds of rights with which courts of justice are concerned are legal rights; and a court of civil jurisdiction is concerned with legal rights only when the aid of the court is invoked by one party claiming a right against another party, to protect or enforce the right or to provide a remedy against that other party for infringement of it, or is invoked by either party to settle a dispute between them as to the existence or nature of the right claimed. So for the court to have jurisdiction to declare any legal right it must be one which is claimed by one of the parties as enforceable against an adverse party to the litigation, either as a subsisting right or as one which may come into existence in the future conditionally on the happening of an event.

The early controversies as to whether a party applying for declaratory relief must have a subsisting cause of action or a right to some other relief as well can now be forgotten. It is clearly established that he need not. Relief in the form of a declaration of right is generally superfluous for a plaintiff who has a subsisting cause of action. It is when an infringement of the plaintiff’s rights in the future is threatened or when, unaccompanied by threats, there is a dispute between parties as to what their respective rights will be if something happens in the future, that the jurisdiction to make declarations of right can be most usefully invoked. But the jurisdiction of the court is not to declare the law generally or to give advisory opinions; it is confined to declaring contested legal rights, subsisting or future, of the parties represented in the litigation before it and not those of anyone else.

The most direct authority of this House on the point is to be found in *London Passenger Transport Board v. Moscrop* [1942] A.C. 332 which Lord Wilberforce has already cited. In *Dyson v. Attorney-General* [1912] 1 Ch. 158 the legal nature of the right that was in dispute between Mr. Dyson and the Inland Revenue Commissioners was not discussed; but on [\*502] analysis the case is no exception to the rule I have stated. Mr. Dyson was not asserting a public right. He had been threatened by the commissioners with what he claimed would be an unlawful demand for payment of money by way of a penalty if he failed to fill up a form. If in consequence of an unlawful demand he had paid the penalty he would have had a cause of action against the commissioners to recover the amount of the penalty as money illegally demanded colore officii: see *Morgan v. Palmer* (1824) 2 B. & C. 729 and *Steele v. Williams* (1853) 8 Exch. 625.

*Dyson v. Attorney-General* was an example of a case where a large number of individuals in similar circumstances to those of Mr. Dyson would also have had the same private right as he had in respect of money demanded illegally under colour of office. There are other cases which were relied on by counsel for Mr. Gouriet in which declarations of a private legal right to which many people were separately entitled were made at the suit of one of the individuals entitled to it. I need not refer to them by name, they do not assist Mr. Gouriet. Apart from some obiter dicta in the *McWhirter* case [1973] Q.B. 629 to which Lord Wilberforce has already referred, there is no authority that the court has jurisdiction at the suit of a private individual as plaintiff to make declarations of public rights as distinct from rights in private law to which the plaintiff claims to be entitled. The court has jurisdiction to declare public rights but only at the suit of the Attorney-General ex officio or ex relatione, since as my noble and learned friends Lord Wilberforce and Viscount Dilhorne have demonstrated he is the only person who is recognised by public law as entitled to represent the public in a court of justice.

In my view the High Court has no jurisdiction to make any of the declarations now sought in the amended statement of claim. It should be struck out.

LORD EDMUND-DAVIES. My Lords, section 45 of the Telegraph Act 1863 provides:

“If any person in the employment of the company …” – which embraced the Post Office – “wilfully or negligently omits or delays to transmit or deliver any message; or by any wilful or negligent act or omission prevents or delays the transmission or delivery of any message; … he shall for every such offence be liable to a penalty not exceeding £20.”

Section 58 of the Post Office Act 1953, enacts that:

“(1) If any officer of the Post Office, contrary to his duty … wilfully detains or delays, or procures or suffers to be detained or delayed, any … postal packet [in course of transmission by post], he shall be guilty of a misdemeanour and be liable to imprisonment [for a term not exceeding two years] or to a fine, or to both: …”

And by section 68 of the same Act:

“If any person solicits or endeavours to procure any other person to commit an offence punishable on indictment under this Act, he shall [\*503] be guilty of a misdemeanour and be liable to imprisonment for a term not exceeding two years.”

During the British Broadcasting Corporation’s television news relay on the evening of January 13 last, it was reported that the Executive Council of the Union of Post Office Workers (“U.P.W.”) had resolved that day to call upon its members to interfere with the passage of mail in the course of transmission by post between the Republic of South Africa and England and Wales. The accuracy of that report has never been challenged, and it clearly indicated a threat by the U.P.W. that its members would be called upon to commit breaches of section 58, as anyone who stopped for one moment to think should have realised. Certainly, the contrary has at no time been submitted to this House. Nevertheless, the news report was immediately followed by a televised interview with the general secretary of that union, who, on being asked whether the action his executive council had resolved to take was unlawful, replied that the matter had never been tested in the courts, and that the relevant laws dated from Queen Anne and were more appropriate for dealing with highwaymen and footpads.

This remarkable pronouncement led to prompt action in the High Court on Friday, January 14, by a private citizen, Mr. John Prendergast Gouriet, who is the secretary of an organisation calling itself “The National Association for Freedom.” Before then, there had appeared in “The Times” that morning a report (the accuracy of which has again never been challenged) ending: “The Post Office Engineering Union instructed its members not to provide or maintain circuits to the country [South Africa] except in a matter of ‘life or death ‘.” It has to be said that the proposed action of the last-named trade union (“P.O.E.U.”) constituted with equal clarity a threat to solicit or procure its members to commit breaches of section 45 of the Telegraph Act 1863.

Notwithstanding the wide dissemination through the public media of these pronouncements, no statement emerged from Government sources to dispel any doubts regarding their illegality. In these circumstances, at 12.45 p.m. that same Friday Mr. Gouriet asked the Attorney-General to consent to a relator action being brought in the courts against the U.P.W. because of its proposed breach of sections 58 and 68 of the Act of 1953. (We were told that no action was initially taken against the P.O.E.U. because the Telegraph Act 1863 was at that time overlooked). In the draft writ and statement of claim accompanying Mr. Gouriet’s application to the Attorney-General he claimed against the U.P.W.:

“An order that the defendant by itself its servants or agents or otherwise be restrained from soliciting or endeavouring to procure any person wilfully to detain or delay any postal packet in the course of transmission between England and Wales and the Republic of South Africa.”

At 3.32 p.m. the Attorney-General replied:

“Having considered all the circumstances including the public interest relating to the application for my consent …, I have come to the [\*504] conclusion that in relation to this application I should not give my consent.”

Mr. Gouriet thereupon promptly issued his writ and applied ex parte to Stocker J. in chambers for an interim injunction against U.P.W. in the terms of the permanent injunction. Stocker J. expressed regret that he could not accede in the absence of authority establishing his jurisdiction to do so after the Attorney-General had refused his consent to a relator action. Mr. Gouriet appealed, and at a special meeting of the Court of Appeal on Saturday, January 15, leave was granted to him to add the P.O.E.U. as second defendant and the Attorney-General as third defendant. Interim injunctions (to run until Tuesday, January 18) were granted against U.P.W. and P.O.E.U., and the statement of claim was amended to add a prayer for a declaration against the Attorney-General -

“…. that in refusing his consent to the plaintiff to bring the above relator proceedings the third defendant acted improperly and wrongly exercised his discretion.”

Having sat on January 18 and two successive days, the Court of Appeal delivered their final judgments with commendable promptitude on January 27. They unanimously found that prima facie evidence had been adduced of an offence contrary to section 68 of the Act of 1953 and that offences contrary to section 58 of that Act and section 45 of the Act of 1863 were about to be committed. They also held unanimously that, notwithstanding the Attorney-General’s refusal of consent to a relator action, the court had jurisdiction to make certain declarations against all three defendants; and, although none had been sought when the Attorney-General was approached, the matter has proceeded before your Lordships as if his consent had also been sought and refused in relation to such declaratory relief. The court also granted interim injunctions against the trade unions in support of the declarations, but Lawton and Ormrod L.JJ. held that they lacked jurisdiction to grant the final injunctions sought whereas Lord Denning M.R. was for granting them.

The Court of Appeal at the same time dismissed applications by each of the trade unions that the plaintiff’s suit be dismissed under R.S.C., Ord. 18, r. 19, as disclosing no reasonable cause of action. They also dismissed a similar application by the Attorney-General in relation to an amended declaration sought that, notwithstanding his refusal to consent to relator proceedings, “… the plaintiff is entitled (a) to proceed with his aforesaid applications and (b) pending the final determination of his aforesaid applications to obtain relief by way of interim injunction.”

In the present proceedings before your Lordships’ House, (A) the two trade unions are appealing against the rejection of their applications to strike out the statement of claim and against the declarations and interim injunctions granted against them, and they do so on the twofold grounds (i) that the Court of Appeal had no power to grant them save in a relator action, which this is not, and (ii) that Mr. Gouriet’s suit constituted an action in tort and, as such, was prohibited by section 14 (1) of the Trade Union and Labour Relations Act 1974; (B) the Attorney-General is appealing against the dismissal of his application to strike out the statement of claim, [\*505] and this on the ground that the Court of Appeal had no jurisdiction to grant any declarations or interim injunctions save in relator proceedings; finally, (C) Mr. Gouriet appeals against the Court of Appeal’s refusal by a majority to grant him a final injunction against the two trade unions.

During the 10 days’ hearing of these appeals in your Lordships’ House a vast area has been covered, several scores of decisions have been cited and we have been taken back to the Year Books and to other ancient authorities. If at times the topics discussed seemed of a distinctly peripheral character, this is not surprising, for this House has been engaged in considering constitutional issues of great importance, and learned counsel have understandably explored every avenue and turned every stone in their anxiety to ensure that the justice of the case, as each side sees it, is convincingly demonstrated. I desire to pay tribute to their zeal and ability and to the assistance which they have rendered, certainly to me.

Relator proceedings

The first, and main, issue arising in these proceedings was stated by the Attorney-General in this way:

“In what circumstances (if any) is a person who has no interest in the subject matter of proposed proceedings, other than that general interest which every member of the community has in seeing that its laws are obeyed, competent to bring proceedings to restrain by permanent injunction other persons from disobeying those laws which the Attorney-General has been asked to give (and has declined to give) his consent to relator proceedings seeking such a permanent injunction?”

One prefatory topic can, despite its basic importance, be disposed of with comparative brevity. It raises the question whether the courts are at liberty to inquire into the manner in which an Attorney-General has responded to an application to consent to a relator action being brought, and it will be recalled that in the instant case Mr. Gouriet originally claimed (but later revoked) his request for a declaration that the Attorney-General “… in refusing his consent … acted improperly and wrongfully exercised his discretion.” Lawton and Ormrod L.JJ. held that the court had no right to inquire into such matter and at some stage Mr. Gouriet conceded this. Lord Denning M.R., on the other hand, concurred only where the Attorney-General had consented. But he held [1977] Q.B. 729, 758, that where, as here, consent is refused it is competent to the court to inquire into the acceptability of the Attorney-General’s decision. But the legal position is otherwise, and it is difficult to understand what possible basis there can be for holding that the courts cannot investigate the propriety of the Attorney-General’s saying “Yes,” but that they are free to scrutinise and adjudicate upon the propriety of his saying “No.” And the point was long ago authoritatively dealt with in *London County Council v. Attorney-General* [1902] A.C. 165, where Lord Halsbury L.C. repudiated, at pp. 168-169:

“the suggestion that the courts have any power over the jurisdiction of the Attorney-General when he is suing on behalf of a relator in a [\*506] matter in which he is the only person who has to decide,” and added: “It may well be that it is true that the Attorney-General ought not to put into operation the whole machinery of the first law officer of the Crown in order to bring into court some trifling matter. But if he did, it would not go to his jurisdiction; it would go, I think, to the conduct of his office, and it might be made, perhaps in Parliament, the subject of adverse comment; but what right has a court of law to intervene? If there is excess of power claimed by a particular public body, and it is a matter that concerns the public, it seems to me that it is for the Attorney-General and not for the courts to determine whether he ought to initiate litigation in that respect or not … the initiation of the litigation, and the determination of the question whether it is a proper case for the Attorney-General to proceed in, is a matter entirely beyond the jurisdiction of this or any other court. It is a question which the law of this country has made to reside exclusively in the Attorney-General.”

Lord Denning M.R. was unfortunately mistaken in his view that Lord Halsbury L.C. had in mind only cases where the Attorney-General had granted consent, as the italicised words show. Nor is this the only decision on the matter, for, in relation to the closely analogous topic of the refusal of the Attorney-General’s fiat to prosecute in criminal matters Lord Campbell C.J. held in *Ex parte Newton*, 4 E. & B, 869, which was cited to the Court of Appeal, that the courts have no jurisdiction to review the Attorney-General’s decision.

In any event, for my part I see no grounds for questioning the propriety of the Attorney-General’s decision in the present case, and such expressions in the Court of Appeal judgments as disclose a different conclusion seem to me regrettable. Indeed, the observations of my noble and learned friend, Viscount Dilhorne, speaking from experience as a former principal law officer which has been shared by no other judge called upon to deal with this unhappy case, has demonstrated to my satisfaction that the Attorney-General may well have been fully justified in concluding that he ought not to give his consent.

The point of cardinal importance that nevertheless remains is: assuming that the Attorney-General was entitled to decide as he did, does that preclude others who take a different view from seeking relief in the courts? For this purpose, we have to suppose that Mr. Gouriet’s private legal rights have not been threatened or breached, and that although a public right is involved he has not suffered, and does not apprehend, any special damage over and above that sustained by the public at large. (If the circumstances are other than those predicated, a private citizen can sue in his own name and needs no consent from anyone before doing so: *Springhead Spinning Co. v. Riley*, L.R. 6 Eq. 551.) No right over and above that of the general public was asserted by Mr. Gouriet in his statement of claim or in the Court of Appeal, and even had the threatened disruption of the postal services arisen, the legal position is that, while section 9 of the Post Office Act 1969 lays down the general duties of the Post Office in relation to the efficient conveyance of postal packets and the provision of adequate telephone services, subsection (4) thereof provides that: [\*507] “Nothing in this section shall be construed as imposing upon the Post Office, either directly or indirectly, any form of duty or liability enforceable by proceedings before any court.”

Nevertheless, in Mr. Gouriet’s printed case to this House it is submitted (para. 23) that the nationwide threat to prevent breaches of sections 58 and 68 of the Post Office Act 1953 operated to confer upon all citizens a sufficient interest to bring the facts before the court, and, furthermore (para. 24):

“… apart from his interest as a private citizen … [Mr. Gouriet] had a sufficient interest as a member of the public entitled to use the services provided by the Post Office Corporation as and when he so desired and for whose protection the relevant criminal provisions of the statutes in point were designed.”

Although section 9 (4) is clearly inconsistent with the existence of any “right” in this matter, Mr. Gouriet does undoubtedly possess the same “interest” as that of all citizens in the postal services being properly maintained, and, furthermore, in the upholding of the rule of law if it is subjected to threats of widespread criminal conduct. In such circumstances, there are those who, mistakenly or otherwise, would recall with something like yearning the words of Abinger C.B., who said in *Deare v. Attorney-General* (1835) 1 Y. & C. Ex. 197, 208:

“it has been the practice, which I hope never will be discontinued, for the officers of the Crown to throw no difficulty in the way of any proceeding for the purpose of bringing matters before a court of justice, where any real point of difficulty that requires judicial decision has occurred.”

But in the circumstances had the court jurisdiction to entertain Mr. Gouriet’s claim to any relief, whether by way of final injunctions, interim injunctions, declarations, or in any other manner? Stern language has been used to describe the sort of situation which it was said could arise were that question answered in the negative. Lord Denning M.R. [1977] Q.B. 729, 760C said that it meant that the Attorney-General and his predecessors and successors “can, one after another, suspend or dispense with the execution of the laws of England.” This sounds most alarming, but it has to be said that Attorneys-General have for generations possessed and exercised that very power in relation to criminal prosecutions, notwithstanding which the heavens have not fallen and the stars stay in their courses. That the Attorney-General could well have acted is beyond doubt; he could have acted ex officio or, as Mr. Gouriet asked, ex relatione. And since, as was held in *Attorney-General v. Harris* [1961] 1 Q.B. 74, he can act on his own account to prevent breaches of a criminal law which has proved ineffective in the past, he can surely also take steps of his own volition to prevent widespread breaches or to avert dire danger: *Attorney-General v. Chaudry* [1971] 1 W.L.R. 1614. And if, for reasons which are wholly unknown to the apprehensive public, he declines, ought not one or more of their number to be entitled to take in the civil courts the salutary steps which he declines to take? It is true that any citizen can [\*508] institute a private prosecution. But since that presupposes that a crime has already been committed, it affords no relief to those seeking to prevent its commission. So why deny the private citizen the right to do that which the Attorney-General refuses to do?

So runs one argument advanced on Mr. Gouriet’s behalf. But what is inescapable is that in truth he is seeking to bring what is essentially a relator action without the Attorney-General’s consent. And that he cannot do. The law is so firmly established as to form what Mr. Christopher French described as a “mould,” but one which he invited your Lordships to reshape or, failing that, to break. Can we do so? And, if so, ought we?

It is certainly of considerable antiquity. In his seminal work (The Law Officers of the Crown, pp. 286-295) Professor John Edwards discussed the ancestry of the modern relator action and the suggestion that it originated from the procedure whereby the Attorney-General, representing the Crown as parens patriae, would proceed by way of information to enforce rights of a charitable nature for the benefit of interested persons. Nowadays, he says, at p. 288:

“In effect, a relator’s action in form is simply a suit brought by the Attorney-General at the relation, or instance, of some other person. Although the Attorney-General is the nominal plaintiff in the action, in reality the action is brought by the complainant. Once the consent of the Attorney-General is obtained, the actual conduct of the proceedings is entirely in the hands of the relator who is responsible for the costs of the action.”

These features led Ormrod L.J. [1977] 2 W.L.R. 310, 344D to say that, “… there is a fictional element in these relator actions.” But the reality is that, having consented, the Attorney-General nevertheless remains dominus litis. Contrary to certain observations in *Attorney-General v. Sheffield Gas Consumers Co.*, 3 De G.M. & G. 304, the Attorney-General not only can, but does, scrutinise and criticise draft pleadings, and directs what interlocutory steps should be taken. And it is undoubted law that he can continue relator proceedings even though the relator has died, and that no compromise can be arrived at without his concurrence. His role is, accordingly, far from purely fictional, and it is not easy to see why Ormrod L.J., described the relator procedure as “obsolete.” On the contrary, it remains a well nurtured, vigorous and useful plant.

My Lords, it has long been established that no citizen can of his own initiative sue in our courts on his own behalf save to assert and protect his private rights, or to repel a right asserted against him by another. No advantage would be served by referring to more than a small fraction of the many cases cited to your Lordships which demonstrate that such is the law, and most of them will be found usefully discussed in S. A. de Smith, Judicial Review of Administrative Action, 3rd ed. (1973), p. 400 et seq. In *Stockport District Waterworks Co. v. Manchester Corporation*, 7 L.T. 545, where a company incorporated for supplying Stockport with water filed a bill against a rival company, alleging that they were acting ultra vires and contrary to the public interest, but alleging no private injury, the bill was held demurrable, and Lord Westbury L.C. said, at p. 548: [\*509]

“I cannot see any private right which this incorporated Stockport company has in the matter. I do not see how the overleaping of their limits by the Manchester Corporation inflicts any amount of private injury upon the plaintiffs so as to entitle them to seek redress in a court of justice. … But to the plaintiffs [the Manchester Corporation] are certainly not responsible. The plaintiffs have no interest in their action so as to maintain a complaint against them. The plaintiffs are not qualified to represent the rights and interests of the public, and in one of these two capacities the bill of the plaintiffs, if it can be maintained, must be supported.”

Lord Westbury L.C. remarked on “… how desirable it is not to allow any private individual to usurp the right of representing the public interest,” and concluded:

“The only arguments which I am disposed to accept … are arguments founded upon the public interest, and the general advantage of restraining an incorporated company within its proper sphere of action. But in the present case the transgression of those limits inflicts no private wrong upon these plaintiffs, and although the plaintiffs in common with the rest of the public might be interested in the larger view of the question, yet the constitution of the country has wisely entrusted the privilege with a public officer, and has not allowed it to be usurped by a private individual. I must therefore allow the demurrer …”

Again, in *Attorney-General v. Bastow* [1957] 1 Q.B. 514, 519, Devlin J. described the Attorney-General as “the only authority who has a right to bring a civil suit upon the infringement of public rights.”

As against the foregoing, in *Attorney-General ex rel. McWhirter v. Independent Broadcasting Authority* [1973] Q.B. 629, Lord Denning M.R. expressed obiter the view that, in the last resort, if the Attorney-General refused leave in a proper case or unreasonably delayed in dealing with a request for leave, a member of the public could apply for a declaration, at least, and, in a proper case for an injunction, joining the Attorney-General, if need be, as a defendant. Something must later be said about the acceptability of that novel qualification of the general rule.

But it is submitted for Mr. Gouriet that, whatever be the general rule, the true legal position is (and should now be declared to be) markedly different where the private citizen is seeking injunctive relief in a civil court to prevent the commission of crimes. The argument advanced may be thus summarised: (1) The private citizen, no less than the Attorney-General, can institute a private prosecution when a crime has been committed; (2) the Attorney-General can, in a proper case, obtain an injunction to restrain the commission of crime where the defendant’s behaviour has revealed the inadequacy of the criminal law or where the situation is one of dire emergency, and such preventive remedy is more valuable than the purely punitive remedy of prosecuting after crimes have been committed; (3) where widespread crime is threatened and the public interest requires that speedy steps be taken to check this, the private citizen must be able to obtain an injunction for that purpose if the Attorney-General for no discernible reason refuses to intervene. [\*510]

I have to say that none of the grounds advanced on behalf of the Attorney-General and trade unions have satisfied me that in the circumstances predicated it must necessarily be in the public interest to deny such a claim by a private citizen. For example, it was urged that any change in the present law would open what were called the “floodgates to a multiplicity of claims by busybodies. But it is difficult to see why such people should be more numerous or active than private prosecutors are at the present day, and they are few and far between, though this fact may be attributable in part to the power of the Attorney-General to enter a “nolle prosequi” in any criminal case or to order the Director of Public Prosecutions to take it over and then to offer no evidence. It was also urged that the granting of an injunction could prejudice the subsequent jury trial of the wrongdoer, turning as it would upon a different standard of proof than that applied in the civil proceedings, and that great complications could arise if (an injunction having been granted, the breach of which could lead to a committal for contempt and might, indeed, already have done so) the defendant was later tried and acquitted of the criminal charge. But exactly the same observations can be made at the present time in, for example, cases of public nuisances (which are crimes), in relation to which the Attorney-General not infrequently seeks and secures injunctions. And it would always be open to the Attorney-General himself to intervene and make representations in civil proceedings brought by a private individual if he considered that the public interest required him to do so.

Be that as it may, there is nevertheless a massive body of law supporting the proposition that only the Attorney-General can seek and obtain injunctive relief in relation to criminal acts, whether threatened or committed, which do not also involve the invasion of private rights of person or property, though it is clearly desirable that he should take extreme care before deciding to exercise it. In *Attorney-General v. Sharp* [1931] 1 Ch. 121, 133, where the defendant had deliberately and persistently committed breaches of the Manchester Police Regulation Act 1844 in relation to the licensing of hackney carriages and had been fined 60 times in consequence and it was plain that he intended to pursue his illegal course of conduct, it was held that the court had jurisdiction to grant an injunction to the Attorney-General to restrain such conduct, Lawrence L.J. saying, at pp. 133-134:

“[Defence counsel] contended that as the Act created a new liability and prescribed the remedy and as no interference with any right of property was involved, the court had no jurisdiction to grant an injunction The cases relied upon in support of this contention, such as *Cooper v. Whittingham* (1880) 15 Ch.D. 501, *Stevens v. Chown* [1901] 1 Ch. 894 and *Institute of Patent Agents v. Lockwood* [1894] A.C. 347 are cases in which the action was brought, not by the Attorney-General suing on behalf of the public, but by some individual person or body aggrieved by the breach of the statutory obligation. In such cases, no doubt, the proposition relied upon by [defence counsel] has an important bearing on the question whether the court has jurisdiction to grant an injunction, but in my opinion it has no [\*511] application to a case where the Attorney-General is suing on behalf of the public. There is a large body of authority showing the distinction between the two classes of cases … it is firmly established that the court has jurisdiction to restrain an illegal act of a public nature at the instance of the Attorney-General suing on behalf of the public, although the illegal act does not constitute an invasion of any right of property and although the Act imposing the new liability prescribes the remedy for its breach.”

In truth, the exclusive authority of the Attorney-General to sue in the civil courts in such cases derives from the public interest that the criminal law is respected and not flouted and is thus simply an illustration of the more general rule regarding the unique role of the Attorney-General, acting on behalf of the Crown as parens patriae. So it is that in *Attorney-General v. Harris* [1961] 1 Q.B. 74, Pearce L.J. said, at pp. 92, 95:

“It is now firmly established that where an individual or public body persistently breaks the law, and where there is no person or no sufficient sanction to prevent the breaches, these courts in an action by the Attorney-General may lend their aid to secure obedience to the law. They may do so whether the breaches be an invasion of public rights of property or merely an invasion of the community’s general right to have the laws of the land obeyed … the Attorney-General represents the community, which has a larger and wider interest in seeing that the laws are obeyed and order maintained.”

Although the majority of the Court of Appeal in the instant case accepted that they had no right to review the Attorney-General’s refusal of consent to a relator action, they inconsistently held that where the proposed civil action aims at upholding the criminal law they can review such refusal and are free to express the view, for example, that “there is no discernible reason why threatened breaches of the criminal law should not be declared illegal and possibly restrained” (per Lawton L.J. [1977] Q.B. 729 at p. 771F), and, having done so, to allow the private citizen to proceed. Such a conclusion strikes at the roots of the Attorney-General’s unique role, and it is backed by no more authority than that available to support the view expressed obiter in McWhirter’s case [1973] Q.B. 629 that a private citizen may act if the Attorney-General unreasonably delays in giving his consent or refuses it in what was there described as “a proper case.” It should be added that none of the circumstances there predicated have been shown to exist in the present case. And the trouble about opening that particular door is that it involves proceeding upon the basis that the Attorney-General is in no better position than any other citizen to decide what is best in the public interest. That is a mistake, as Pearce L.J. demonstrated in *Attorney-General v. Harris* [1961] 1 Q.B. 74, 92, for he frequently has sources of information not generally available and must bear in mind considerations which may be undervalued when one considers injury to the public merely in terms of immediate injury: see also Edwards, The Law Officers of the Crown, pp. 222-223.

The law being perfectly clear, does the public interest require that it be changed? All three members of the Court of Appeal sternly condemned [\*512] the Attorney-General’s conduct. He had acted “contrary to the whole spirit of the law of England,” and, by refusing to explain his refusal, he had made “a direct challenge to the rule of law.” So said Lord Denning M.R. [1977] Q.B. 729, at pp. 753A and 758G, quoting Baggallay L.J., who had said in *Attorney-General v. Great Eastern Railway Co*.(1879) 11 Ch.D. 449, 500, that:

“It is the interest of the public that the law should in all respects be respected and observed, and if the law is transgressed or threatened to be transgressed … it is the duty of the Attorney-General to take the necessary steps to enforce it, nor does it make any difference whether he sues ex officio, or at the instance of relators.”

But it is not the law that every criminal act must lead to a prosecution (*Buckoke v. Greater London Council* [1971] Ch. 655, per Lord Denning M.R., at p. 668D-H), and, even if it were, the Attorney-General is unquestionably entitled to halt prosecutions in the manner already indicated. In other words, it is ultimately a matter for his unfettered discretion. The Court of Appeal regarded the manner of its exercise in the present case as so inexplicable that, in the words of Lawton L.J., at p. 739:

“… until such times as there is some explanation as to why the Attorney General did not intervene, then on the face of it his failure to do so must have been for some reason which was not a good reason in law.”

And yet lip-service was paid to the proposition that the Attorney-General’s exercise of his discretion cannot be reviewed by the courts. For my part, I venture to reiterate by way of a contrast the striking fact that my noble and learned friend, Viscount Dilhorne, has expressed the affirmative view that the Attorney-General may well have acted in the public interest in withholding his consent. This highlights the undesirability of making the matter one of disputation in the courts, instead of in Parliament.

Accepting as I do that the Attorney-General’s discretion is absolute and non-reviewable, there was accordingly, in my judgment, no basis upon which the plaintiff should have been granted the final injunction he sought. It remains to be considered whether he should have been granted any relief or whether, as the three defendants submit, the proceedings should have been dismissed as showing no reasonable cause of action. I accordingly turn to the question of whether Mr. Gouriet established his right to declaratory relief or to interim injunctions.

Declaratory relief

Although he failed to get his final injunction, the Court of Appeal, on its own initiative, granted Mr. Gouriet the following relief:

Against the first defendant (U.P.W.): “A declaration that it would be unlawful for the 1st defendant by itself, its servants, agents or otherwise to solicit or endeavour to procure any person wilfully to detain or delay any postal packet in the course of transmission between England and Wales and the Republic of South Africa.”

Against the second defendant (P.O.E.U.): “A declaration that it [\*513] would be unlawful for the 2nd defendant by itself its servants or agents or otherwise to counsel or procure or incite in any way whatsoever any person in the employment of the Post Office wilfully or negligently to omit or delay to transmit or deliver any message in the course of transmission between England and Wales and the Republic of South Africa or by any wilful or negligent act or omission to prevent or delay the transmission or delivery of any such message.”

Against the third defendant (the Attorney-General): “A declaration that notwithstanding the refusal of the 3rd defendant to his consent to relator proceedings the plaintiff is entitled (a) to proceed with his aforesaid applications for declarations and (b) pending the final determination of his aforesaid applications to obtain relief by way of interim injunction.”

It was said during the hearing of these appeals that the first and second declarations were pointless, in that they merely repeated the wording of section 68 of the Post Office Act 1953, and section 45 of the Telegraph Act 1863 and that their sole effect, accordingly, was to declare that “The law is the law.” But that is not to say that, even so, they served no useful purpose in a situation where the general secretary of the first defendant had cast doubt upon the meaning and applicability of current statutes and where no contrary indication was given.

But the primary question is: Had the court jurisdiction to make them? The answer given by the Attorney-General may be simply stated and has a familiar ring: Whenever public rights are in issue, the general rule is that relief may be sought only by, and granted solely at the request of, the Attorney-General. There are certain exceptions to the general rule, but none of them applies here. For example, there are statutory exceptions, such as section 222 of the Local Government Act 1972 which enables a local authority to institute civil proceedings for the promotion or protection of the interests of the inhabitants of their area: see *Solihull Metropolitan Borough Council v. Maxfern Ltd.* [1977] 1 W.L.R. 127. And there are the familiar common law exceptions to the general rule, dealt with by Buckley J. in *Boyce v. Paddington Borough Council* [1903] 1 Ch. 109, 114, where a private right has also been invaded or special damage suffered.

For the plaintiff, it is urged that the power of the court to grant declaratory relief is extremely wide. Although the power was granted to the Court of Chancery by the Court of Chancery Procedure Act 1852, it was R.S.C., Ord. 25, r. 5, which in 1883 for the first time enabled declaratory relief to be granted whether or not any consequent relief was sought or could have been granted. Although the power was at first exercised sparingly, it was recognised no later than 1899 that it was an “innovation of a very important kind”: see per Lindley M.R. in *Ellis v. Duke of Bedford* [1899] 1 Ch. 494, 515. The decision of this House in *Institute of Patent Agents v. Lockwood* [1894] A.C. 347 that it had no power to make the declaration sought in that case is no authority on the jurisdiction conferred on the English courts by Ord. 25, r. 5, and the identically worded Ord. 15, r. 16, which succeeded it. The availability of declaratory (as also, indeed, of injunctive) relief should be approached on the footing that they are remedies, analogous to prerogative orders, which are governed by no fixed [\*514] technical rules as to locus standi or jurisdiction, the question being left solely to the discretion of the court. And it is clearly entitled to make a declaration notwithstanding that the issue on which it is asked to adjudicate is (as here) the construction and effect of a criminal statute. Thus, in outline, ran the general submissions for Mr. Gouriet on this aspect of the case.

In considering it, one may usefully begin with *Dyson v. Attorney-General* [1911] 1 K.B. 410; [1912] 1 Ch. 158, the case most strongly relied upon for Mr. Gouriet. Professor de Smith regarded the decision as the turning point in the development of declaratory relief (see p. 428) a remedy which Atkin L.J. once described as “one of the most valuable contributions that the courts have made to the commercial life of this country”: see *Spettabile Consorzio Veneziano di Armamento e Navigazione v. Northumberland Shipbuilding Co. Ltd.* (1919) 121 L.T. 628, 635. Mr. Vinelott Q.C. for the Attorney-General, on the other hand, stigmatised Dyson as a “red herring” introduced into these proceedings. Shortly stated, the facts were that the Inland Revenue Commissioners issued to Dyson (a taxpayer) a form and a notice requiring him under penalty to submit certain particulars. Relying on R.S.C., Ord. 25, r. 5, he sued the Attorney-General for declarations that the requisition was unauthorised and that he was under no obligation to comply with it inasmuch as it was ultra vires the Finance Act. The Court of Appeal granted the declarations sought, and Professor de Smith commented (Judicial Review of Administrative Action, 3rd ed., p. 492):

“… this was a case in which the plaintiff had no ‘cause of action ‘ that would have entitled him to any other form of judicial relief; the threat to his interests created by the unlawful demand that had been made upon him could be directly averted only by the award of a binding declaration.”

But it is noteworthy that the defendant against whom a declaration was sought was none other than the Attorney-General himself, concerning whom Cozens Hardy M.R. said [1911] 1 K.B. 410, 415:

“I start with this proposition, that the penalty which is threatened to be enforced against the plaintiff is one which the Attorney-General must sue for in this court: Inland Revenue Regulations Act 1890, sections 21 and 22. This suggests that the Attorney-General ought to be liable to an action in so far as he threatens to enforce a penalty based upon non-compliance with an unauthorised notice.”

The fact is that, as Mr. Vinelott rightly submitted, Mr. Dyson (though only one among a very large number) had been threatened with penalties if he refused to comply with an invalid demand. He therefore had a special interest and thus a locus standi to institute what were, in effect, quia timet proceedings to protect his private rights, and this nonetheless because the different private rights of many others were similarly threatened. *Dyson v. Attorney-General*, in my judgment, does not justify the declaration granted on the Court of Appeal’s initiative to Mr. Gouriet.

While he is entitled to assert, on the authority of such further cases as *Guaranty Trust Co. of New York v. Hannay & Co*. [1915] 2 K.B. 536 *and Eastham v. Newcastle United Football Club Ltd*. [1964] Ch. 413 that [\*515] declaratory relief may be granted whether or not the plaintiff has a cause of action which might entitle him to consequential relief, the further submission advanced on Mr. Gouriet’s behalf that every member of the public has a locus standi to apply for declarations through his public interest in having the law enforced is unsupported by any case cited to your Lordships, save the previously cited observation of Lord Denning M.R. in McWhirter’s case [1973] Q.B. 629. On the contrary, of the three decisions quoted in Mr. Gouriet’s printed case in support of his submissions, in *Simmonds v. Newport Abercarn Black Vein Steam Coal Co. Ltd*. [1921] 1 K.B. 616 a mineworker successfully sought a declaration that he was entitled to have delivery of the statement containing detailed particulars of how his wages had been computed which under the Coal Mines Act 1911 mine-owners were obliged to deliver at the peril of being fined in the event of defaulting; in *Brownsea Haven Properties Ltd. v. Poole Corporation* [1958] Ch. 574 the owners of a hotel adjoining a certain road sought a declaration that an order made by the defendant corporation making it a “one-way” street was ultra vires; and *Thames Launches Ltd. v. Trinity House Corporation (Deptford Strond)* [1961] Ch. 197 related to declarations that on the true construction of the Pilotage Act 1913 the plaintiff company was entitled to navigate its vessels in the Port of London. In other words, in each case a declaration was sought in relation to a private right asserted by the suppliant for relief.

*London Passenger Transport Board v. Moscrop* [1942] A.C. 332 is a conclusive authority against Mr. Gouriet’s entitlement to declaratory relief. Mr. Moscrop, an employee of the London Passenger Transport Board, sought a declaration that certain conditions of his employment were unlawful. Rejecting that claim, Viscount Maugham said, at pp. 344-345:

“My Lords, I cannot call to mind any action for a declaration in which (as in this case) the plaintiff claims no right for himself, but seeks to deprive others of a right which does not interfere with his liberty or his private rights.. It has been stated again and again, and also in this House, that the jurisdiction to give a declaratory judgment should be exercised ‘with great care and jealousy ‘ … What special interest has the respondent to enable him to bring this action? We are not here concerned with anything but his civil right, if any, under the section. I think it plain that there has been no interference with any private right of his, nor has he suffered special damage peculiar to himself from the alleged breach …”

Lawton L.J., said that the weighty opinions in Moscrop bore heavily upon him. But he concluded [1977] Q.B. 729, 770, that they did not apply to the instant case, on the ground that: “What the plaintiff has asked this court to restrain is a breach of the criminal law which will take away his own right to use the facilities of the Post Office.” But as no such “right” exists, in my judgment the ratio decidendi of Moscrop applies in full force to this case. It was a decision of this House in complete conformity with a large body of long-established law, and it impels me to the conclusion that the plaintiff was entitled to none of the declarations granted and that his last-minute request for them should have been dismissed. [\*516]

Towards the end of a very long judgment, I seek to deal with this topic briefly. The stand taken in this regard by Lord Denning M.R., was surely the only logical one; that is to say, if the plaintiff was entitled to injunctive relief at all, it should have been in a final form, failing which it should have been denied him in toto. Lawton L.J. apparently considered that section 14 of the Trade Union and Labour Relations Act 1974 prohibited the court from granting a final injunction, but proceeded at p. 770: “If this court has jurisdiction to grant the declaratory judgment for which the plaintiff asks I can see no difficulty about granting an interim injunction,” and Ormrod L.J. expressed himself similarly at p. 778A-B.

The reliance by both learned Lord Justices on section 45 (1) of the Supreme Court of Judicature (Consolidation) Act 1925 was, however, misplaced, and created the startling situation that Mr. Gouriet was better off at the interlocutory stage than he could possibly have been at the conclusion of the proceedings. The provision by section 45 (1), replacing section 25 (8) of the Judicature Act 1873 and enabling the High Court to grant an injunction “by an interlocutory order in all cases in which it appears to the court to be just and convenient so to do,” dealt only with procedure and had nothing to do with jurisdiction. In *North London Railway Co. v. Great Northern Railway Co.* (1883) 11 Q.B.D. 30, Cotton L.J. said, at p. 39:

“If it was intended to give the enormously increased power which it is contended is given by this section,” – section 25 (8) of the Act of 1873 – “it is remarkable that it empowers it to be done by interlocutory order. It is said if it can be done by interlocutory order, of course it can be done by a final order at the hearing of the cause or judgment; no doubt that is true; but when the section only refers to interlocutory orders and not to orders for injunction to be made at the hearing of the cause, is not the prima facie presumption that it did not intend to give the right to an injunction to parties who before had no legal right whatever, but simply to give to the court, when dealing with legal rights which were under its jurisdiction independently of this section, power, if it should think it just or convenient, to superadd to what would have been previously the remedy … so that where there is a legal right the court may, without being hampered by its old rules, grant an injunction where it is just or convenient to do so for the purpose of protecting or asserting the legal rights of the parties.”

But the plaintiff having no legal right recognisable by the courts it follows that, however “convenient” to him the interim injunctions were (and, indeed, despite their effectiveness, as events demonstrated), it has to be said that it was not “just” to grant them. The Court of Appeal was powerless in the matter, and erred in coming to the conclusion it did.

Mr. Saville Q.C. urged that, in any event and even assuming the existence of a general power to grant interim injunctions in such circumstances as those prevailing here, the second defendant (P.O.E.U.) was in a special position and that by virtue of section 17 of the Trade Union and Labour Acts, 1974 and 1976, the court had no power to grant against them any interlocutory injunction. This peripheral matter is being dealt with by others of your Lordships and I restrict myself to saying that I incline to [\*517] accede to Mr. Saville’s submission on this point and hold that for this additional reason also no interlocutory injunction should have been granted against the P.O.E.U. when the court sat on January 15.

This point naturally leads one to the final topic canvassed:

The special position of trade unions

Were it the case that Mr. Gouriet had, in general, a right to apply for the relief sought, the ultimate question is whether, even so, he would find himself barred by the special position of trade unions under our law. The Trade Union and Labour Relations Act 1974 provides by section 14:

“(1) … no action in tort shall lie in respect of any act – (a) alleged to have been done by or on behalf of a trade union which is not a special register body … against the union … in its own name, or against the trustees of the union … or against any members or officials of the union … on behalf of themselves and all other members of the union …”

Section 29 of the Post Office Act 1969 further provides that no proceedings in tort shall lie against the Post Office, its officers and servants in relation to posts and telecommunications. It is hardly necessary to point out (a) that these provisions are not restricted to proceedings arising from or relating to a trade dispute, and (b) that they leave unaffected any liability of individual trade union members or officials to be proceeded against in relation to alleged breaches of the criminal law. Accordingly, had Mr. Gouriet proceeded by way of private prosecutions, the foregoing statutory provisions would have been irrelevant.

Even were it the law that, despite the clear wording of section 9 (4) of the Post Office Act 1969 Mr. Gouriet possessed that “right to the facilities provided by the Post Office” erroneously considered by Lawton and Ormrod, L.JJ. to exist, any action to protect it or redress its breach is as much an “action in tort” as that brought in *Ashby v. White* (1703) 1 Smith L.C., 13th ed. (1929) 253 for interference with the plaintiff’s right to vote at a Parliamentary election. It matters not that Mr. Gouriet, acting on legal advice, prudently abstained from adding a claim for damages to the relief sought, for in such cases “the law presumes damage”: see per Lord Wright M.R. in *Nicholls v. Ely Beet Sugar Factory Ltd*. [1936] Ch. 343, 350.

Conclusion

The plaintiff is confronted by insurmountable difficulties. For either(a) he is asserting a public right, which (since no private rights were invaded and he neither feared nor suffered any special damage in consequence) he cannot do without the concurrence of the Attorney-General in a relator action; or (b) he is asserting a private right by means of an action in tort and that is barred against the defendant trade unions by section 14 of the Trade Union and Labour Relations Act 1974 and section 29 of the Post Office Act 1969.

So clear and well-established is the law that those who regard it as ill serving the public interest must seek the aid of Parliament to remedy the [\*518] position, for the massive and fundamental revision involved before such plaintiffs as Mr. Gouriet can be granted relief is beyond the proper capacity of your Lordships’ House. We accordingly cannot accede to Mr. French’s supplication to break the “mould.”

For these reasons, I hold that the appeals of the Attorney-General and the two trade unions should be allowed and that of Mr. Gouriet dismissed.

LORD FRASER OF TULLYBELTON. My Lords, these appeals raise a question of some constitutional importance as to whether the English courts have jurisdiction to entertain an action at the instance of a private person for an injunction to restrain threatened conduct because, and only because, it would constitute a criminal offence. The Attorney-General refused his consent to relator proceedings and the action has therefore been brought by the plaintiff, Mr. Gouriet, in his own name as a member of the public at large, not averring that the threatened conduct would cause him special damage or affect him in any way differently from any other private citizen who might wish to use the postal services between England and South Africa. He claims to be entitled to an injunction, or to a declaration, or to both, because he shares with every other citizen the right not to have those services interfered with by conduct that would be criminal. I shall assume for the moment that the plaintiff and other members of the public have a legal right to the services of the Post Office, although for reasons to be mentioned later I do not think that is correct.

There are many reported decisions more or less adverse to Mr. Gouriet’s contentions although we were referred to no decision that dealt exactly with the question that arises here. The general rule is that a private person is only entitled to sue in respect of interference with a public right if either there is also interference with a private right of his or the interference with the public right will inflict special damage on him – *Boyce v. Paddington Borough Council* [1903] 1 Ch. 109. And in *Stockport District Waterworks Co. v. Manchester Corporation*, 9 Jur.N.S. 266, Lord Westbury L.C. referred, at p. 267, in a passage already quoted by my noble and learned friend Lord Wilberforce to the reasons why it is desirable “not to allow any private individual to usurp the right of representing the public interest.” There is also high authority to the effect that the Attorney-General’s decision whether or not to give his consent to relator proceedings in matters concerning the public is not subject to review by the courts: see *London County Council v. Attorney-General* [1902] A.C. 165, 168, per Lord Halsbury L.C. But if the court were to entertain an application for an injunction or a declaration in a matter of public interest, after the Attorney-General had refused his consent, it would be overruling his decision at least by implication, and if eventually it were to grant the application the overruling would be even plainer. The majority in the Court of Appeal accepted that Lord Halsbury’s statement meant that the courts have no jurisdiction over the discretion of the Attorney-General whether he exercises it by giving or by withholding consent to relator proceedings. That view of the law was not challenged in this House, and I think it is correct. It appears to me to provide strong support for the Attorney-General’s contention [\*519] in these appeals that he alone is entitled to represent the public interest.

There have been a few cases in recent years in which the Attorney-General has obtained injunctions from the civil courts with the object of preventing criminal offences from being committed. In those cases the Attorney-General was acting to assert the interests of the public at large in seeing that Acts of Parliament are obeyed and the civil courts, at his invitation, came to the aid of the criminal courts for that purpose. Examples of such cases are *Attorney-General v. Sharp* [1931] 1 Ch. 121, *Attorney-General v. Premier Line Ltd.* [1932] 1 Ch. 303, *Attorney-General v. Harris* [1961] 1 Q.B. 74 and *Attorney-General v. Bastow* [1957] 1 Q.B. 514. In all these cases the offenders had been repeatedly convicted of breaches of statutory provisions and they had continued their illegal conduct undeterred by the comparatively trivial penalties fixed by the statutes that is to say the criminal law was being persistently and deliberately flouted. The position of the Attorney-General as representing the public interest was emphasised by the court and in *Attorney-General v. Bastow* Devlin J. said, at p. 519, that an injunction for breach of a public right could be granted by the court, “if the suit be by the Attorney-General, who is the only authority who has a right to bring a civil suit upon the infringement of public rights” (my italics). In the *Premier Line* case [1932] 1 Ch. 303 Eve J. thought that if the action, which was for an injunction, had been commenced and prosecuted by the relator without the concurrence of the Attorney-General it was “pretty clear” that he could not have succeeded. A case of a rather different type was *Attorney-General v. Chaudry* [1971] 1 W.L.R. 1614 where an injunction was granted in a relator action because of the urgent necessity of preventing the continued use of dangerous premises. In that case Lord Denning M.R. said, at p. 1624:

“Whenever Parliament has enacted a law and given a particular remedy for the breach of it, such remedy being in an inferior court, nevertheless the High Court always has reserve power to enforce the law so enacted by way of an injunction or declaration or other suitable remedy. The High Court has jurisdiction to ensure obedience to the law whenever it is just and convenient so to do.”

If those words were intended to mean that the High Court had jurisdiction even in an action to which the Attorney-General was not a party, they were not necessary for a decision in that case, and in my opinion they were erroneous.

Notwithstanding the authorities to which I have referred, it was argued on behalf of Mr. Gouriet that the court had jurisdiction to entertain an action such as this and that it ought now to exercise the jurisdiction for the first time. One argument relied on by the plaintiff, and accepted by Lord Denning M.R. in the Court of Appeal, was that where the Attorney-General will not take proceedings to obtain an injunction either ex proprio motu or ex relatione then, unless a member of the public can take proceedings himself, the courts are powerless to enforce the law. In my opinion this argument is fallacious because it overlooks the fact that the [\*520] ordinary and primary means of enforcing the criminal law is by prosecuting an offender after he has committed an offence, and that the power of prosecution is in no way affected by the Attorney-General’s refusal of consent to relator proceedings. The civil courts may indeed be powerless, in the absence of the Attorney-General’s consent, to prevent, or attempt to prevent, the law from being broken, but the criminal courts retain their ordinary power to punish offenders.

Moreover it cannot be assumed that an injunction, still less a declaration, will necessarily be obeyed when the penalties of the criminal law have failed or are thought likely to fail. On Saturday January 15, 1977, when the present case first came before the Court of Appeal, Lord Denning M.R. thought that a breach of the law was “impending” [1977] Q.B. 729, 737E, while Lawton L.J. at p. 738G and Ormrod L.J. at p. 740C, thought that offences had already been committed. It is immaterial for the present purpose which of those views were correct; whichever it was, there was no question of a repeated flouting of the law in defiance of convictions and the case is not in the same class as *Attorney-General v. Harris* [1961] 1 Q.B. 74 and the others I have mentioned. As it happened the temporary injunction issued by the Court of Appeal on January 15 proved effective but it might not have done so. It did so probably because the threat to interfere with the mails had been accompanied by a statement by Mr. Tom Jackson, the General Secretary of the Postal Workers Union, that the law against interference dated from Queen Anne and had never been tested in the courts, the clear implication being that it was antiquated and of doubtful effect. Both the statement and the implication were plainly wrong and they were of course corrected by the Court of Appeal by reference to the Post Office Acts of 1953 and 1969 and the Telegraph Act 1863. But it was not necessary to invoke the machinery of the courts to correct the statement; any person in authority could have clarified the legal position without difficulty. The temporary orders that were made on January 15 merely repeated the words of the Acts of Parliament, but it seems to me that an order which merely does that, without directly relating the words to the facts of the case, is not one that the court should pronounce. In the present case I recognise that it may have served a useful purpose by publicly and emphatically drawing attention to the terms of the Act but that is not the function of the courts. The only legal effect of the temporary injunction was to add the penalty for contempt of court to the penalty already existing under the Post Office Act 1953 for breach of section 68. I shall return in a moment to consider how far that is desirable. The present point is that the increased penalties could not guarantee that the law would be obeyed.

The most substantial argument on behalf of the plaintiff was based upon an analogy between the alleged right of the private citizen to sue for an injunction and the well established right of the private citizen to prosecute. Just as the Attorney-General’s right and duty to prosecute after a crime has been committed does not exclude the private person’s right to prosecute, so, it was said, his right to obtain an injunction to prevent a crime should not exclude the private person’s right to an injunction. But the analogy is not exact because a private prosecution is always subject to the control [\*521] of the Attorney-General through his power to enter a nolle prosequi, or to call in any private prosecution and then offer no evidence. By the exercise of these powers the Attorney-General can prevent the right of private prosecution being effectively exercised in any particular case. The need to obtain the Attorney-General’s consent to relator proceedings is the means of enabling the Attorney-General to exercise an equivalent control in the public interest over a private application for injunctions against crimes. In relator proceedings the Attorney-General is dominus litis; his right of control is not a fiction but it can be made effective at any stage of the proceedings: see *Attorney General v. Cockermouth Local Board*, L.R. 18 Eq. 172, 176. Accordingly this argument for the plaintiff which at first seemed formidable is in my opinion not well founded.

Even if the analogy between private injunctions and private prosecutions had been closer than it is, I would have been reluctant to accept the argument for the plaintiff. The use of injunctions to prohibit conduct, solely because it is criminal, is quite a recent development and it is one which is not without its dangers. The effect of an injunction issued in such circumstances is to add a discretionary penalty for contempt of court to the criminal penalty, which in the case of a statutory offence will have been fixed by Parliament. Further, breach of an injunction will be dealt with in the civil court by the judge alone, whereas in the criminal court the accused may be entitled to be tried by a jury. In a case that attracts publicity, punishment for breach of interdict might prejudice a subsequent jury trial. Conversely, if an injunction were to be refused because the civil court considered that the threatened conduct would not be a criminal offence, a subsequent prosecution for the same conduct might be inhibited although it would have been justified on its merits. There are thus powerful reasons of a procedural nature for keeping injunctions against criminal conduct as such within narrow limits.

It was submitted on behalf of the plaintiff that the absolute discretion of the Attorney-General was limited to applications which were frivolous, vexatious or oppressive and that in any case not falling into one of those classes his discretion could be overruled by the courts. There is no authority for such severe limitation of his discretion, and in fact it would leave him no real discretion at all since the courts would in any event be bound to refuse such applications. It was faintly suggested that the jurisdiction of the court in such matters was comparable to the jurisdiction of the Court of Justiciary in Scotland which can allow private prosecution without the concurrence of the Lord Advocate where such concurrence has been refused: see *J. & P. Coats Ltd. v. Brown*, 1909 S.C. (J.) 29. But there is no analogy, because the essential basis of the High Court’s jurisdiction is that the crime alleged is a wrong towards the private prosecutor: see per Lord Justice-Clerk at p. 34. The only case in which jurisdiction has been asserted to entertain an action for injunction or declaration in the public interest by a private person without the concurrence of the Attorney-General seems to be *Attorney-General ex rel. McWhirter v. Independent Broadcasting Authority* [1973] Q.B. 629. In my opinion there was no jurisdiction to grant the temporary injunction in that case, because at the stage when the temporary injunction was granted the Attorney-General had not given his consent to relator proceedings. For the reasons that I have [\*522] given, I think that the majority of the Court of Appeal (Lawton L.J. and Ormrod L.J.) were right in holding, as they did, that the court had no jurisdiction to make orders for final injunctions as claimed in these proceedings. But all the members of the Court of Appeal held that they had jurisdiction to make declaratory orders dealing with the same issues as had originally been raised in the claims for the injunctions. It is therefore necessary to consider whether there is any relevant difference between injunctions and declarations. Before turning to the declarations sought against the trade union defendants, I should mention that which was added by amendment against the Attorney-General. I doubt whether it is properly described as being “against” the Attorney-General, but as he has taken no objection to the form of the declaration it is unnecessary to consider it further. At least it has served a useful purpose in facilitating his appeal to this House. The form of the declarations claimed against the trade union defendants in the amended pleadings was also criticised on the ground that they did no more than repeat the words of the Post Office Act 1953, section 68, and the Telegraph Act 1863, section 45. This criticism was in my opinion justified and I do not think that declarations in the terms claimed could have been made. But the real objection to them rests on grounds more fundamental than their form.

So far as these declarations are concerned, I cannot see how the court could have jurisdiction to make them when it does not have jurisdiction to grant the injunctions. The objection to the jurisdiction in respect of the injunctions is not based upon the nature of the order that is sought but upon the fundamental fact that Mr. Gouriet lacks any title to represent the public interest. He must be just as much a usurper when he asks, in the public interest, for a declaration as when he asks for an injunction. There is of course no doubt that when private rights are in issue the courts have very wide power to make declarations defining the parties’ rights: see *Guaranty Trust Co. of New York v. Hannay & Co*. [1915] 2 K.B. 536, *and Ibeneweka v. Egbuna* [1964] 1 W.L.R. 219, 225, where Lord Radcliffe accepted that the power of the court in such matters was “almost unlimited.” But that wide power cannot avail the plaintiff in these proceedings because his action is not concerned with defining his private rights; if it were, the action would be in my opinion an action in tort and as it is directed against a trade union it would fail by reason of section 14 of the Trade Union and Labour Relations Act 1974. For that reason the plaintiff has expressly disclaimed any special interest and has sued simply as a member of the public. In the field of public rights I find confirmation in several of the cases that were cited to us for my view that there was no difference in the extent of the court’s jurisdiction in actions by private persons according to whether the action claims an injunction or a declaration. Thus in *London Passenger Transport Board v. Moscrop* [1942] A.C. 332, which began as an action for a declaration and an injunction, but in which the Court of Appeal had made only a declaration, this House did not distinguish between the remedies when it held that the plaintiff could not sue without joining the Attorney-General: see especially Viscount Maugham at p. 345. Similarly, in *Institute of Patent Agents v. Lockwood* [1894] A.C. 347 the pursuers were held not entitled to bring the action and no [\*523] distinction was drawn between the conclusions for declarator and interdict. Nor was any such distinction made in the Stockport District Waterworks case, 9 Jur. N.S. 266.

The case of London Association of *Shipowners and Brokers v. London and India Docks Joint Committee* [1892] 3 Ch. 242, might at first sight appear to support a wider power to make declarations but that is not really so. All the learned judges who took part in the decision thought the plaintiffs would only be entitled to a declaration if their private rights were being injured or threatened: see Lindley L.J. at pp. 258-259, Bowen L.J. at p. 261 and Kay L.J. at p. 273 The only member of the court who thought that private rights had been infringed was Kay L.J. and the other two Lords Justices dismissed the action and made a declaration only because they considered that it would be useful to set out concessions made by the defendants. Except for that rather special case, all the cases cited to us where declarations concerned with public rights were made at the instance of private parties suing alone were cases in which either their private rights were affected or they had suffered special damage by the infringement of the public rights. In *Dyson v. Attorney-General* [1911] 1 K.B. 410 that is less obvious than in some other cases but the true basis of the action is I think stated by Cozens-Hardy M.R. at p. 414 in the first paragraph of his judgment. The plaintiff claimed that a notice had been served upon him by the Inland Revenue Commissioners requiring him to deliver certain returns within 30 days subject to a penalty. The plaintiff’s case was that the requirement in the form was illegal and unauthorised and he claimed “a declaration that he is not under any obligation to comply with the notice.” No doubt other taxpayers could have made the same claim but the plaintiff was merely asserting his own right, and he did not purport to be acting on behalf of the public. The contrast with the Scottish case of *Duke of Athol v. Torrie* (1852) 1 Macq. 65 is instructive. The pursuers were three members of the public who asserted a public right of way. It was held in the Court of Session and in the House of Lords that they had a title to sue the action just because the law of Scotland, unlike the law of England, provided no other way in which the matter could be brought to trial – see per Lord Ordinary at p. 66 and Lord St. Leonards L.C. at p. 73. So far as it is relevant at all to the instant appeals it therefore tends to support the Attorney-General’s case.

The result is that in my opinion the plaintiff’s main case both on the injunctions and the declarations fails. The failure of his case on the declaration implies also that the interim injunction should not have been granted. He could only succeed if your Lordships were disposed to embark upon an extensive re-shaping of relator procedure and, even if that would be within our judicial powers, I would be against doing anything of the sort. It seems to me entirely appropriate that responsibility for deciding whether to initiate preventive proceedings for injunction or declaration in the public interest should be vested in a public officer, and for historical reasons that officer is the Attorney-General. It is well established that he is not bound to prosecute in every case where there is sufficient evidence, but that when a question of public policy may be involved the Attorney-General has the duty of deciding whether prosecution [\*524] would be in the public interest, see the statement by Sir Hartley Shawcross in 1951 quoted in Edwards, The Law Officers of the Crown, p. 223. It seems even more necessary that similar consideration should be given to the public interest before initiating preventive procedure for injunction or declaration. Enforcement of the criminal law is of course a very important public interest, but it is not the only one, and may not always be the predominant one. There may be even more important reasons of public policy why such procedure should not be taken at a particular moment, and it must be proper for the Attorney-General (acting of course not for party political advantage) to have regard to them. He may have information that there is a good prospect of averting the threatened illegal conduct by negotiation. Or he may know that the time would be particularly inopportune for a confrontation. Or he may regard it as essential to leave the way clear for subsequent prosecution before a jury. The information before him may be confidential and, even if it is not, it may not be widely available to the public. For reasons of that sort I would be against stretching the law to allow a member of the public to launch preventive proceedings without the consent of the Attorney-General. If the Attorney-General were to commit a serious error of judgment by withholding consent to relator proceedings in a case where he ought to have given it, the remedy must in my opinion lie in the political field by enforcing his responsibility to Parliament and not in the legal field through the courts. That is appropriate because his error would not be an error of law but would be one of political judgment, using the expression of course not in a party sense but in the sense of weighing the relative importance of different aspects of the public interest. Such matters are not appropriate for decision in the courts.

I wish to refer to two other matters. The first is the propriety or otherwise of the interim injunction that was granted on January 15, 1977, against the Post Office Engineering Union. That union was not originally a defendant when the matter came before the Court of Appeal on that date, and no application had been made to the Attorney-General to consent to the relator proceedings against it. No intimation of the proceedings had been given to the P.O.E.U. The affidavits did not depose to any threatened offence by it and the only reason for bringing it in seems to have been a reference to it in an article from “The Times” which was produced with Mr. Gouriet’s affidavit. In that state of circumstances the information was not in my opinion sufficient to justify the order for an interim injunction against the P.O.E.U. I reach this opinion without relying at all upon section 17 of the Trade Union and Labour Relations Act 1974. That section provides that in certain circumstances the court shall not grant an injunction against a party in his absence unless satisfied that all reasonable steps have been taken to give notice to the party. The circumstances, so far as material, are that the absent party claims “or in the opinion of the court would be likely to claim, that he acted in contemplation or furtherance of a trade dispute …” I appreciate that the defendant unions are now claiming that their action was in contemplation of a trade dispute, but on the facts as they were known to the Court of Appeal I do not think that the court ought to have anticipated that such a claim would [\*525] be made, even having regard to the wide definition of a trade dispute in section 29 of the Act of 1974 as extended by the Trade Union and Labour Relations (Amendment) Act 1976, section 1 (1).

The other matter is that the plaintiff has in my opinion no legal right enforceable by proceedings before any court to enjoy the services of the Post Office. That seems to me to follow from the provisions of sections 9 (4) and 29 (1) and (2) of the Post Office Act 1969.

For these reasons I would allow the appeals of the Attorney-General and of the trade unions.

Appeals of H.M. Attorney-General and of the Post Office unions allowed.

Appeal of the plaintiff dismissed.