THE FUNCTIONS OF AN ENGLISH SECOND CHAMBER

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BY

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LONDON: GEORGE ALLEN & UNWIN LTD.
RUSKIN HOUSE, 40 MUSEUM STREET, W.C.1

Printed in Great Britain by
UNWIN BROTHERS, LIMITED, LONDON AND WOKING
First published in 1926

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CHAPTER I

INTRODUCTION

THE question of the Reform of the House of Lords, so long a subject of apathy, is again coming to the fore in the political world, and signs are not wanting that sooner or later an attempt will be made to finally determine this great question. The difficulty to-day is no less than when the powers of the House of Lords were diminished by a Liberal Administration in 1911. Since those days of bitter party strife, however, there has been time for calm reflection, deep study, and serious thought, and, whilst it cannot be said that the many points at issue have been satisfactorily agreed, the way is clear for equitable compromise.

When the time comes for reform to be considered, the main question to be decided will be, not is a reform necessary, but is a Second Chamber necessary. There are still two schools of opinion :

one believing a Second Chamber to be useful and necessary, the other regarding it as a useless complexity which hinders and upsets the course of good government in a State. Government to be good must be simple and intelligent. There is naturally less complexity to be found in a Single Chamber type of government, but the question is whether good government depends upon functions which can be performed with the greatest benefit by a Second Chamber. The first question, then, to be decided is whether a two-chamber type of government is necessary. In order to come to a conclusion as to the necessity for a Second Chamber, a relative valuation of the advantages to be derived from the two forms of government must be made.

The justification for a Second Chamber for this country has been attempted on many grounds; some sound, some ingenious, and others merely frivolous, dictated by party spirit. To deal with all the arguments which have been put forward would be too large a task, but some of those which carry the greatest weight must receive attention.

THE APPEAL TO HISTORY.

It has been attempted to justify bi-cameralism in this country by an appeal to history. One authority, having described the experiences of England under a Single Chamber type of government, states that "the experiment seems to

suggest that parliamentary institutions, in England, at any rate, are workable only with a legislature genuinely bi-cameral in structure, and under the ægis of a constitutional but hereditary monarchy." [1] History is a potent weapon. In the following pages it is proposed to go briefly into the circumstances of the experiment referred to, and show the objections to the above conclusion.

The experiment in question was the setting up of a Single Chamber Government by the Rump of the Long Parliament, when, following upon the success of the Cromwellian Army, the Monarchy and the House of Lords were abolished. On January 4, 1649, the Rump by vote declared " that the people are, under God, the original of all just power, and that whatever is enacted or declared for law by the Commons hath the force of a law, and all the people of this nation are concluded thereby, although the consent and concurrence of the King or the House of Peers be not had thereto." [2] In spite of this declaration, the House of Lords still continued to sit, and they even appointed a Committee to confer with the Commons on " the settlement of the Government of England and Ireland." [3] The House of Commons refused to receive the Committee's messengers. On March 19, 1649, the Commons resolved without a division, " that the

[1] Marriott, *Second Chambers*, p. 45.
[2] Commons Journals, vol. vi. p. 3.
[3] Lords Journals, vol. x. p. 649.

House of Peers in Parliament is useless and dangerous, and ought to be abolished: and that an Act be brought in for that purpose." [1] Two days previously it had declared, "that the office of the King is unnecessary, burdensome and dangerous to the liberty, safety, and public interest of the people." [2]

Having rid itself of the King and the House of Lords, the Rump now turned to itself. Not content with having established Single Chamber Government in so arbitrary a fashion—and it must be remembered that during the Civil War many declarations had been made by the Commons concerning its intention to respect the rights of the Peers, a number of whom had been on the side of Cromwell—"it proceeded to render itself independent of the electorate and perpetuate its own power." [3] During the next few years, the Rump, which had a membership of eighty, governed the country in a despotic and arbitrary manner. So tyrannic was its rule that "by 1652 there was a clamorous demand for a settlement of the kingdom." [4] Cromwell had by this time overcome the Royalists, and had more time to give to constitutional matters. "The victorious army had now leisure to quarrel among themselves. Petitions poured in from the army praying for reforms—long delayed in law and justice, for the establishment of a Gospel Minis-

[1] Commons Journals, vol. vi. p. 132.
[2] *Ibid.*, vol. vi. p. 133.
[3] Marriott, *Second Chambers*, p. 28.
[4] *Ibid.*, p. 31.

try."[1] In December, 1643, Cromwell dissolved the Rump, and in so doing described it as "the horridest arbitrariness that ever existed on earth." Thus ended the four years of Rump rule.

After the dissolution of the Rump, a Council of State was formed, and a new Parliament of one hundred and thirty-nine persons from constituencies in England, Scotland, and Ireland was summoned. This Parliament, known as "the little" or "Barebones" Parliament, was in existence for only six months, when it resigned all its powers to Cromwell. The Council then set about to get together a new constitution, and drew up the famous Instrument of Government. The chief provisions of the Instrument were: (*a*) Legislative authority was to reside in one person, and the people assembled in Parliament; (*b*) the style of the "person" was to be Lord Protector; (*c*) a Council of twenty-one persons was to be formed to assist the Protector.[2] The Instrument further provided that each Bill required the Protector's consent before it became law. If the Protector did not consent to a Bill within twenty-one days after its presentation to him, "or give satisfaction to the Parliament within the time limited, then upon the declaration of the Parliament that the Lord Protector hath not consented nor given satisfaction" such Bills were to become law, provided they did not go

[1] Marriott, *Second Chambers*, p. 31.
[2] See Whitelock's *Memorials*, p. 571.

against any term in the Instrument.[1] Sir J. Marriott described the Instrument as "an honest attempt to regain the path of constitutional decorum, to clothe the military dictatorship with the form of law."

The Single Chamber elected in pursuance of the Instrument commenced at once to attempt to alter the provisions of the Instrument. The first point to be debated was whether "the Government should be in one single person and Parliament." From this, it passed to other terms in the Instrument. The debate on the Instrument proved to be interminable. Each day we read: "The House, according to former Order, took into Debate the Matter of Government." To assist in the work, sub-committees were appointed to make a special study of certain of the provisions. So busy was Parliament debating the Instrument, that the normal business got neglected. On October 4, 1654, the question was propounded, "That the Speaker do take the chair two days in every week, upon other business."[2] Not only were the Grand Committees sitting daily, but leave was asked, and granted, for the sub-committees to sit daily. After debating whether "the Government should be in one single person and a Parliament," and having resolved that Legislative Authority "is and doth reside in one person and the people assembled," and having added the proviso, "that this vote

[1] Instrument, Clause xxiv.

[2] Commons Journals, vol. vii. p. 382.

shall not be prejudicial to any further Debate or Resolution touching the remainder of the forty-two Articles," the Single Chamber turned its attention to the office of Protector and the Council. It made the former elective, and resolved, "That the Manner of electing the Protecting in the Vacancy of a Protector, sitting the Parliament, shall be such as the Parliament shall think fit." [1] If Parliament were not sitting when the vacancy occurred, the Protector was to be elected by the Council according to the rules made for its guidance. The Council was made more dependable on Parliament. For on December 2, 1654, Parliament resolved, "That the persons who shall be of the Council shall be such as shall be nominated by the said Lord Protector and approved by the Parliament." [2] It was further provided on the following day, "That no person shall continue to be of the Council longer than forty days after the Meeting of each succeeding Parliament without a new appropriation by the Parliament." [3]

These alterations to the fundamentals of the Constitution gave Cromwell much annoyance. A matter which also caused him and his army much vexation was the setting up of a committee to make a particular "Enumeration of Heresies." [4] Twenty Articles of Faith were drawn up by this committee, and received the approval of Parlia-

[1] Commons Journals, vol. vii. p. 393.
[2] *Ibid.*, vol. vii. p. 394. [3] *Ibid.*, vol. vii. p. 393.
[4] Firth's *Cromwell*, p. 412.

ment. On December 15, 1654, Parliament resolved, "That, without the Consent of the Lord Protector and Parliament, no law or statute be made for the Restraining of such tender Consciences as shall differ in Doctrine, Worship, or Discipline, for the publick profession aforesaid; and shall not abuse this Liberty to the civil injury of others, or the Disturbance of the publick Peace; Provided that such Bills as shall be agreed upon by the Parliament for the Restraining of Atheism, Blasphemy, damnable Heresies, to be particularly enumerated by this Parliament, Popery, Prelacy, Licentiousness, or Profaneness; or such as shall preach, print, or avowedly maintain anything contrary to the fundamental Principles of Doctrine held forth in the publick Profession, which shall be agreed upon by the Lord Protector and the Parliament; or shall do any overt or Publick Act, to the Disturbance thereof; shall pass into, and become Laws, within twenty days after their Presentation to the Lord Protector, although he had not given his consent thereto." [1] Thus, the religious toleration which had been granted by the Instrument was destroyed.

Altogether, "the Single Chamber showed no disposition to accept the fundamentals of the Instrument." [2] On September 12, 1654, Cromwell, "being acquainted that the debates in Parliament grew high touching the new Govern-

[1] Commons Journals, vol. vii. p. 401.
[2] Marriott, *Second Chambers*, p. 35.

ment," [1] had sent for the members and informed them "that there were certain things in the Government fundamental, and could not be altered, the first of which was Government by one person and a Parliament." [2] Each member had been constrained to sign a document containing an acknowledgment of himself as Lord Protector, and an undertaking not to commit a breach of this "fundamental." Yet, notwithstanding Cromwell's reminder, the Parliament, as we have seen, continued to discuss the Instrument, amending and rejecting its provisions as it pleased, and in a manner most offensive to Cromwell.[3] At length, weary of their talk, on January 22, 1655, Cromwell dissolved Parliament.

For the next eighteen months England was under a form of military dictatorship, and was "governed in an arbitrary manner that would not have been possible under the Tudors. Money was raised without authority, men were sentenced to death or imprisonment by illegal tribunals. . . ." [4] As the year 1656 advanced, the Protector found himself in need of money for the Spanish War, and he was obliged to summon another Parliament. The elections went against him, and he made use of a clause in the Instrument, which made the Council's approval of a member a condition precedent to his being allowed to take his seat in Parliament, to exclude

[1] Whitelock's *Memorials*, p. 605. [2] *Ibid.*, p. 605.
[3] Commons Journals, vol. vii. cols. 375–421.
[4] See Spalding, *Reform of the House of Lords*, p. 40.

as many as one hundred irreconcilables.[1] The first business of his new Parliament was to pass a Bill annulling the title of the Stuarts to the throne. Having done this, it proceeded to pass a Bill which had as its object the security of the Protector's person. With these Bills out of hand, it began to concern itself with the making of a new Constitution. This took the form of a "Remonstrance" addressed to the Lord Protector. The Remonstrance later became known as "The Humble Petition and Advice." One of the first clauses was, "That your Highness will be pleased to assume the style, dignity, and office of King."[2] The Republicans and the officers of the army were strongly against his accepting such an honour, and voiced their objections in no uncertain language. "We cannot," they said, "but spread before your Highness our deep resentment of and heart bleedings for the fearful apostasy which is endeavoured by some to be fastened upon you."[3] "Policy required that he should not break with the power of the sword," and Cromwell refused the crown.[4] Another clause requested "That your Highness will for the future be pleased to call Parliaments consisting of two Houses." The fifth clause described how the Second Chamber was to be constituted. A writ of summons was to be issued to "such persons as your Highness shall think fit to sit

[1] Marriott, p. 35.
[2] Commons Journals, vol. ii. p. 496.
[3] Firth's *Last Years of the Protectorate*, vol. i. p. 555.
[4] Marriott, p. 38.

and serve in the other House of Parliament." Cromwell, his officers, and the lawyers, were in favour of restoring the Second Chamber, and indeed had by secret plotting done all they could to bring one into existence. "I tell you," said Cromwell, "that unless you have some such thing as a balance we cannot be safe." [1] Thus, after only five years of Single Chamber Government, the Single Chamber itself asked Cromwell to call a Second Chamber.

Parliament was adjourned to January 20, 1658, to enable the Second Chamber to be summoned. Altogether, some sixty persons received writs to attend. "The task of selection was no easy one, but Cromwell took enormous pains to perform it faithfully." [2] Amongst those selected were "divers noblemen, knights, and gentlemen of ancient families, and good estates; and some colonels and officers of the army." [3] Others were summoned to the Second Chamber to prevent them from making mischief in the House of Commons.

On January 20, 1658, the new Parliament of two Houses assembled. The Protector found he had still to reckon with the bitter and pedantic Republicans in the House of Commons. Two days after the opening of Parliament, the Lords sent a message by two of their members, Mr. Justice Wyndham and Mr. Baron Hill, to the Commons. The message was delivered by Mr. Justice Wynd-

[1] Firth, *ibid.*, pp. 137–8. [2] Marriott, p. 42.
[3] Whitelock's *Memorials*, pp. 665, 666.

ham, "I am commanded by the House of Lords," he said, "to desire of this House, That you will join their Lordships in an humble Address to his Highness the Lord Protector, That he will be pleased to appoint a Day of Publick Humiliation throughout the Three Nations of England, Scotland, and Ireland." [1] The House of Commons received this message coldly, and the messengers were informed by the Speaker that an answer would be returned by the Commons' messenger. The House of Commons was next treated to a long political sermon by Lord Commissioner Fiennes, who was a Member of the other House, in the course of which he said, "Among the manifold and various dispensations of God's Providence of late years, this is one, and it is a signal and remarkable providence that we see this day in this place—a chief magistrate and two Houses of Parliament." [2] How long the "signal and remarkable" was to last was soon seen. On Friday, January 29th, the Commons resolved to debate what answer they would return to the Lords' request, "To-morrow Morning at Nine of the clock." [3] On the "To-morrow Morning," they resolved that the first thing to be decided was the Appellation of the person to whom the answer should be made. The debate on the Appellation continued for some days. On February 3rd, the Speaker acquainted the House, "That there were two of the Judges without, at

[1] Commons Journals, vol. vii. p. 581.
[2] *Ibid.*, vol. vii. p. 582. [3] *Ibid.*, vol. vii. p. 590.

the door, with a message from the Lords." On being admitted, the messengers then acquainted the Commons that they were sent to ask the Commons to join in an address to the Lord Protector, asking that all Catholics and malcontents should be ordered from London for three months.[1] By way of reply, the Commons said they would "send an answer by messengers of their own," and continued the debate upon the "Appellation." "All these passages," says Whitelock, "tended to their own destruction. . . . The Protector looked upon himself as aimed at by them. . . . He therefore took a resolution suddenly to dissolve Parliament."[2] On February 4th, Parliament was dissolved.

Let us consider if this period of history supports Sir J. A. Marriott's contention. It must be remembered, in the first place, that a "legislature genuinely bi-cameral in structure and under the ægis of a constitutional but hereditary monarchy" —for many people in the kingdom considered that Charles I was acting in a constitutional way, and his actions must be judged according to those times, and not according to modern ideas of the part to be played by a constitutional monarch— gave rise to conditions that led up to the civil war and the interregnum. In the opinion of the writer, parliamentary institutions were as great a failure in the time of Charles I as the constitutional experiments of the interregnum, and

[1] Commons Journals, vol. vii. p. 591.
[2] *Memorials*, p. 672.

for the same reason, for in the case both of the constitutional monarchy and the experiments of the interregnum, the governmental organs were used for the purpose of coercion, and not to govern the country in a fair and proper manner. Take first the case of the Rump of the Long Parliament. When the Rump constituted itself the sole instrument of government, there was no one in a position to deny it any of the powers which it appropriated. Conditions were far from settled, and Cromwell, the only man who could have withstood its rapacious claims, was stamping out the last efforts of the Royalists. Moreover, when the Rump appropriated the power of the old Houses of Parliament and the King by a mere vote, at no time was it "less representative than at the moment when it passed this vote," and "at no time between 1649 and 1653 was the Long Parliament entitled to say that it represented the people."[1] It is scarcely surprising that, under these conditions, the Rump as an instrument of government was not a success. To describe it as an instrument of government is a travesty of the real position. It was nothing less than a despot which had seized the chance, when everybody else was busy, of getting the reins of government into its hands. Having accomplished this, "it chose to forget that its usurped authority in fact rested upon the power of the sword." When conditions became more settled, it was sharply reminded of the fact, and as it paid no

[1] See Firth's *Cromwell*, quoted by Marriott at p. 30.

heed to the warnings, Cromwell swept it away. The Rump, then, was unrepresentative, despotic, and its authority rested upon the power of the sword. In the light of English constitutional history nothing could augur worse for its success as an instrument of government.

With the Rump dissolved, a new Constitution was drawn up. It was a rigid Constitution, inasmuch as it contained provisions, some of which have been mentioned, which were intended to stand for all time. The Single Chamber set up under this Constitution proved just as big a failure as the Rump. A rigid Constitution was quite a new idea to Englishmen. Hitherto, they had regarded their Parliament as a constituent, as well as a legislative body. Naturally, the fundamentals were discussed " in a manner which was extremely distasteful to Cromwell," and were altered. Its interference with the religious toleration, such as it was, granted by the Instrument, finally destroyed any chance of success it might have achieved when once it had realized that it was not a constituent body. Cromwell was not very patient with this Parliament, and neither he nor Parliament really tried to make a success of the new Constitution.

The last of Cromwell's Parliaments was bi-cameral in structure, and it proved to be no more of a success than his other Parliaments.

Of Cromwell's four Parliaments, three were uni-cameral, one bi-cameral, and all were failures. In each case one is led to the opinion that it

is wrong to attribute the failure to uni-cameralism or bi-cameralism, and from that to draw the conclusion given above. The cause of the failure was in no way due to the form of government, but to the man who tried the experiments, the religious intolerance and bitter hostility of the men who attempted to exercise the organs of government. It is admitted that "it is true that Cromwell never gave any indication that he possessed special capacity for the task of constitutional reconstruction, it is truer still that he was unfitted alike by temperament and training for the rôle of a 'constitutional' ruler in the modern sense." [1] Again, "Cromwell's authority . . . rested upon the fidelity of his unconquerable Ironsides. His parliamentary experiments, though undertaken in all good faith, were in consequence foredoomed to failure." [2] Had Cromwell possessed capacity for the task of constitutional construction, or, more important still, had his authority rested upon the support of a grateful people, had he been able to call together a representative body of men without fearing a Stuart Restoration, it is certain that some form of Single Chamber Government would have been evolved, which would have attained some measure of success. In the opinion of the writer, the experiment failed because of the conditions under which it was tried; because of the man who tried it. That it is not, on that account, as contended by Sir J. A. Marriott, "less pregnant with political

[1] Marriott, *Second Chambers*, p. 43. [2] *Ibid.*, p. 45.

instruction and suggestiveness" may be true. It is submitted, however, that it is not pregnant with the "political instruction and suggestiveness" which he has put upon it.

History, though extremely valuable, is certainly not conclusive, and it must be used with very great care. If it is sought to use it as an argument, then it is better to take the whole period of history, rather than one special period, and draw inferences from that. English constitutional history shows that the origin of the House of Lords is different from all other Second Chambers. The House of Lords was not created by any national convention. It does not owe its existence to some paper scheme. Its powers and privileges and existence have been moulded by historical process. Like the rest of the Constitution, it has grown and not been made. It is very important to remember that English modern organs of government have come into existence by a process of evolution and specialization. They have their roots in the simpler institutions of distant ancestors. They are continually changing in power and form, adapting themselves imperceptibly to the needs of each period, whilst their outward expression still appears the same. This growth has continued unchecked. Other countries have had times of general upheaval, when it has been found necessary to do away with existing institutions, and substitute others in the form of a single authoritative document, or a series of such documents.

This has happened only once in English history. In this respect it is unique.

The early English Parliaments were simply meetings between the King, the Clergy, the Greater and Lesser Barons, and the Representatives of the people. To understand the functions of the meeting, all modern ideas of Parliament must be forgotten. Professor Pollard points out that the early Parliaments, (*a*) did not and were not intended to make laws, (*b*) sat as one body, and (*c*) were not composed of representatives from the three estates in the realm, inasmuch as the theory of estates never became established in England.[1] When the Clergy, Barons, and the Representatives met, they did so to parley. They were the nation come to talk with its king. Physical exigencies of space eventually led to a division of the meeting. The Greater Barons and the Archbishops and Bishops began to deliberate together, apart from the Knights of the Shire and the Burgesses, and the Clergy withdrew altogether, and deliberated amongst themselves. The division of the Parliament was purely accidental. It was certainly never intended that one meeting should check the work of the other meeting, and thus perform what is said to be the main function of a Second Chamber. History shows the Knights of the Shire and the Burgesses, the Commons of England, gradually growing stronger at the expense of the Greater Barons, the House of Lords. The Commons

[1] Pollard, *History of Parliament*, p. 20.

gradually assumed control of the most important Government functions, by early attaining a firm control over the national purse. Just as the Common Law slowly swallowed up the Canon Law, the Law Merchant, Borough Law, and Custom, so the House of Commons gradually swallowed up the powers of the House of Lords. The process, of course, was gradual, extending over many centuries, and marked only by important disputes between the two Houses. Although gradual, it was a continuous process, and by it the equality of power given by the Constitution was destroyed.

Constitutional history, then, clearly demonstrates that in theory there is no Second Chamber in England, but that, owing to an accident, Parliament works in two parts, both of which in theory possess identical powers, but one of which has expanded and grown stronger at the expense of the other, and is in practice the important part.[1] If the appeal is to be addressed to history, then it is not difficult to agree with Professor J. H. Morgan "that history pronounces slowly, but inexorably against the survival of the Second Chamber."[2]

THE PREVALENCE OF THE BI-CAMERAL SYSTEM.

It is said that the two-chamber type of government has been everywhere accepted as the normal

[1] Not taking into account the Parliament Act, 1911.

[2] *Contemporary Review*, May 1910.

type of government.[1] On this ground, it might be argued that a bi-cameral form of government is better than a uni-cameral system. Though it is true that bi-cameral governments are far more numerous than uni-cameral governments, this fact does not prove that the bi-cameral system is the better. There are many different Second Chambers testifying to an equal variety of opinion as to the principles on which such chambers ought to be based. Bi-cameral governments, wherever they are found, owe their existence to differing causes, and are the outcome of varying circumstances. The reasons which support such a form of government in one country would be fatal to its existence in another country. For example, both France and Northern Ireland have Second Chambers; but the reason for the setting up of a Second Chamber in those countries was entirely different in each case. Again, many countries owe their Second Chamber to English influence, and this, in part, explains the existence of many Second Chambers.

France.

Let us briefly consider the reasons which led France to adopt a bi-cameral form of government, and arm her Second Chamber with large powers.

Since the meeting of the Estates-General in 1789, France has had many different kinds of government; monarchist, imperial, bi-cameral,

[1] McKechnie, *Reform of the House of Lords*, p. 4.

tri-cameral, and uni-cameral.[1] It would be impossible to deal in detail here with the reasons which gave rise to these varied systems, but the reasons for the constitution of the present Legislature, which are now shortly examined, will sufficiently illustrate the varying causes for the adoption of a bi-cameral system.

After the defeat of the French Army under Napoleon III, at Sedan, a Republic was at once proclaimed, and, in 1871, a National Assembly, strongly Monarchist in its sympathies, met to debate plans for a new Constitution. Thiers, a Conservative, but a strong Republican, was elected Chief of the Executive, and the First President of the new Republic. Although the Monarchists had a majority in the Assembly, they were divided into two camps. This enabled Thiers to keep them in check. After two years of office, Thiers was voted out of power, and Marshal MacMahon became President, and the Duc de Broglie, Prime Minister. The former belonged to the Monarchist Party, the latter was the leader of the Orleanists. The existence of the Republic was critical. Differences of opinion between the Monarchists and the Orleanists had already been partly bridged, and everything seemed favourable to the anti-Republicans. The refusal of the Comte de Chambord to recognize the tricolour, however, gave the *coup de grâce* to the aspirations of the Monarchists for the time being, and proved in the end the saving of the Republic. Realizing that a

[1] See Dicey, *Law of the Constitution*, 8th ed. Appendix I, p. 469.

Monarchy was, for the time being, out of the question, the Assembly set to work to organize a Republic, the constitution of which was to be bi-cameral in structure, with the Second Chamber so constituted as to lend itself to the machinations of the Monarchists, and to be a bulwark against a Republican majority in the Popular House.

The present Constitution is based on the following three laws: (*a*) February 24, 1875, Loi relative à l'organisation du Sénat; (*b*) February 25, 1875, Loi relative à l'organisation des pouvoirs publics, and (*c*) July 16, 1875, Loi constitutionelle sur les rapports des pouvoirs publics.

The first of the above laws is the most important for the present purpose. The object and intention of the Monarchists in the Assembly was achieved by the passing of that law, which established a strong Monarchist Senate with power to counteract the Republican tendencies of the Popular House. They had in view the ultimate establishment of a Monarchy, and, although for a moment this was impossible, it was a step designed to facilitate that purpose later on should circumstances become more favourable. Neither the Monarchists, nor the Republicans, however, regarded the work of the Assembly, in passing these three laws, as final. On the one hand, the Monarchists definitely looked forward to a future restoration, whilst on the other hand, it was hoped by the Republicans finally to place the Republic on a sound basis.[1]

[1] See Lowell, *Government and Parties in Central Europe*, vol. i. pp. 19 *et seq.*

The Law of February 24, 1875, furthered the purpose of the Monarchists by the manner in which it distributed the franchise. It discriminated unfairly between the small villages and the rural communes, which were the chief stronghold of the Monarchists, and the population in the towns, which was of a Radical character, by weighting representation on the electoral college in favour of the former. Moreover, one quarter of the Members of the Senate was, in the first instance, to be elected by the National Assembly with its Monarchist majority. In this way a Monarchist Senate was assured.

The expectations of the Monarchists were realized. During the first years of the Republic the Senate was strongly Monarchist, whilst the Chamber of Deputies contained a strong Republican element. The existence of the Republic was more than once in danger.

In 1884, the Senate was reformed, and its monarchial devices abolished. It has since become "a protection to the Republic and the stronghold of the Radical Party." [1] As an ensurer of the stability of the Republic, it now fulfils its most useful work.

Northern Ireland.

Northern Ireland found a Second Chamber thrust upon her merely because the Protestant minority in the South of Ireland had insisted

[1] Lees-Smith, *Second Chambers*, p. 147.

upon a Senate to protect its interests. The late Mr. Bonar Law told the House of Commons that " we as a Government could not take the responsibility of saying, ' we are going to give protection to the minority in the South, if we cannot devise a method of doing the same in the North.' " [1] There was no demand for a Second Chamber in Ulster, though there exists a definite religious minority, and it is certain that when the religious and the Home Rule questions are disposed of, Belfast and its near districts will form one of the strongest Labour centres in the United Kingdom. Lord Carson, then Sir Edward Carson, told the Government " the Ulster democracy would prefer to have no Second Chamber." [2] The Coalition Government could not impose a Senate upon the Irish Free State, and allow the Ulster Catholics no protection, and a Second Chamber was, therefore, given to Ulster.

English Influence.

Many Second Chambers owe their existence to English influence. " In the middle and latter half of the eighteenth century, the English Constitution stood out as the only one that possessed ancient ideals of self-government." [3] It was respected by all continental nations accordingly. When the time came for them to make a change

[1] Parliamentary Debates, Commons, November 8, 1920, vol. cxxxiv. col. 923.

[2] *Ibid.*, November 8, 1920, vol. cxxxiv. col. 925.

[3] J. M. Robertson, *Rainbow Circle Papers*, p. 86.

in their constitutions, it was generously copied. "Montesquieu . . . trying it by Mr. Marriott's test imputed to it special merits. It had survived, therefore it was fittest to survive." [1] "The British model was followed by France, by Spain and Portugal, and by Holland and Belgium, combined in the Kingdom of the Netherlands; and after a long interval, by Germany, Italy, and Austria." [2] It had survived the French Revolution, in which so many constitutions came to grief, and thereby gained more prestige. And, in the words of Sir Henry Maine, "it became, not metaphorically, but literally, the envy of the world, and the world on all sides took to copying it."

It does not need a very extensive inquiry into the various constitutions of Europe to prove the truth of the above assertions. A perusal of the Belgian Constitution, for example, shows it to be, very largely, merely the English Constitution in a written form. The Dutch Constitution is also a case in point. Legislative power is exercised by the King, and the Upper and Lower Houses of Parliament.[3] Members of the Upper House must have held or hold one or more of the high public offices designated by law, or pay a certain amount in income tax.[4] It is elected for nine years, one-third of its members retiring every three

[1] J. M. Robertson, *Rainbow Circle Papers*, 1911, p. 88.
[2] Maine, *Popular Government*, p. 13.
[3] Dutch Constitution, Article 109.
[4] *Ibid.*, Article 90.

years.[1] A Member of the Upper House cannot be a Member of the Lower House. As the Upper House is constituted on a restricted franchise, its power is limited. It cannot initiate legislation, the power of initiation belonging to the Lower House,[2] and it has no control over the national purse.

One might continue to give examples showing the effect of English influence, but it is sufficiently clear that the emulation on the part of other countries of English institutions does explain in part the prevalence of the bi-cameral system. This should be in itself a sufficient reason why prevalence cannot be relied upon as an argument in favour of the system.

Each of the Constitutions in Europe which has the English Constitution as its model, differs both from the model, and from other copies of the model. In no way is the difference more pronounced than in the construction of the Second Chamber. "While foreign countries have imitated us, there is no institution in which they have diverged so widely from our model as in constituting their Upper Chamber."[3] Italy, for example, constitutes her Senate in the main by a system of nomination. France constitutes her Senate by indirect election. Holland elects her Senate directly. No country which has copied the English Constitution constitutes the Second Chamber in exactly the same way.

[1] Dutch Constitution, Article 91. [2] *Ibid.*, Article 93.
[3] Temperley, *Senates and Upper Chambers*, p. 6.

It seems relevant to ask why the English Constitution was copied, and particularly to inquire whether it was copied because it was bi-cameral. We have the answer supplied in the quotations given above. It was copied because it had "withstood revolution," because "it was the envy of the world," because it possessed "ancient ideals of self-government." It seems reasonable to infer that in copying each country was prompted by its own particular motive, and sought to assuage its own special need. The English system alone, in Europe, secured a decent measure of peace, prosperity, and liberty. Other countries desired their people to enjoy the same peace, prosperity, and liberty. If the English system of government had been uni-cameral or tri-cameral it would still have been copied. The fact that it was bi-cameral was incidental and of secondary importance. It was the fruits of the system that was important in their eyes. To get the fruits, they copied the system, but the procedure which enabled the system to work harmoniously attracted little or no attention.

It has been well said that bi-cameral governments have nothing in common except the number two. This is borne out by the statements contained above, and it is submitted that it is unwise to use the argument of prevalency to justify the existence of the Second Chamber.

When the time for reconstruction comes, bi-cameralists, if they wish to succeed in securing the continued existence of a Second Chamber in

this country, must prove the necessity of having a Second Chamber, by showing that there is work for that body to perform, necessary for the good government of the State, and which cannot, with the same degree of efficiency, be performed by a Single Chamber. Only in this way will they be able successfully to assert the superiority of bi-cameral government for this country.

CHAPTER II

THE FUNCTIONS OF A SECOND CHAMBER FOR THIS COUNTRY

THE functions of a Second Chamber have recently been classified and put into compact form. In 1917 and 1918, a Conference, composed of thirty members drawn in equal numbers from the House of Commons and the House of Lords, under the Chairmanship of the late Lord Bryce, was held to consider the problem of the Reform of the House of Lords, and, if possible, to arrive at a scheme which could be put into operation. All shades of opinion were represented, but it was found impossible, so great were the differences of opinion, so divergent the views expressed, to present a unanimous report. The Chairman, however, in a letter to the Prime Minister of the day, stated that general agreement prevailed that the following were the chief functions of a Second Chamber for this country: [1]

1. The examination and revision of Bills brought from the House of Commons, a function which has become more needed since, on many occasions during the last thirty years, the House of Commons

[1] Page 4 of Lord Bryce's letter.

has been obliged to act under special rules limiting debate.

2. The initiation of Bills dealing with subjects of a practically non-controversial character, which may have an easier passage through the House of Commons if they have been fully discussed, and put into a well considered shape before being submitted to it.

3. The interposition of so much delay (and no more) in the passing of a Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it. This would be specially needed as regards Bills which affect the fundamentals of the Constitution, or introduce new principles of legislation, or which raise issues whereon the opinion of the country may appear to be equally divided.

4. Full and free discussion of large and important questions such as those of foreign policy, at moments when the House of Commons may happen to be so much occupied that it cannot find sufficient time for them. Such discussion may often be all the more useful in an assembly whose debates and divisions do not involve the fate of the Executive.

The possible functions of a Second Chamber might be classified and arranged in many different ways, but the above classification includes all the work which could be given to a Second Chamber, with the exception of judicial work, is concise, and has the support of the Bryce Conference behind it. The four functions are, therefore, as

set out above, adopted as the possible functions of a Second Chamber. In the following pages each function is examined. If it can be shown that a function leads to good government, and further that it is a function which can only, or with the best results, be performed by the Second Chamber, the case for the existence of that body so far as concerns such a function will be fully proved. If the examination of any of the above functions reveals the fact that a function is not necessary for good government, or though necessary, is not a suitable function for a Second Chamber, such a function must be rejected as one of the functions of a Second Chamber, and will not be available to argue the necessity for the existence of a Second Chamber. By examining each of the four functions, the writer hopes to make out a case for or against the Second Chamber.

Of the four functions, Function 3 obviously raises the most important issues. It is proposed to discuss it after consideration of the other three functions, and a discussion of the performance of an analogous function by the Senates of Australia and Canada. The functions are hereafter referred to as Function 1, Function 2, Function 3, and Function 4.

FUNCTION 1.

No longer can it be said that the House of Commons initiates and controls legislation. This

power has passed almost entirely to the Government of the day. It would be outside the scope of this work to give the history of this transference of power. One starts with the fact that legislation is initiated, shaped, controlled, and regulated by the Government, and that, so far as its legislative functions are concerned, the House of Commons is becoming a mere machine for the registration of votes.[1] For the purpose of illustrating the need of the function, the methods whereby the Government controls and regulates legislation are examined.

Ordinarily, the House of Commons sits on Monday, Tuesday, Wednesday, and Thursday of each week, at three o'clock in the afternoon, and continues to do business until eleven-thirty o'clock.[2] On Fridays, the House meets at eleven o'clock in the morning, and rises at four-thirty o'clock in the afternoon. Thus, in a normal week, there are thirty-nine and a half hours available for the tremendous volume of public and private work. The duty of a modern Government is to govern, and for this purpose it requires the greater part of the time of the House of Commons. Unless, therefore, the House otherwise directs, Government business is given precedence at all sittings, except after a quarter past eight o'clock on Tuesday and Wednesday, and the sitting on Friday. The latter sitting is reserved for private business, petitions, orders of the day, and notices and

[1] See Sir Sydney Low's *Governance of England*, chapter iv.

[2] Standing Orders of the House of Commons (1924), p. 3.

motions.[1] After Whitsuntide, until Michaelmas, the private member has to give up more of his time to Government business. Such business has precedence at all sittings except those of the third and fourth Fridays after Whit-Sunday.[2] Again, on the Friday sitting, the private member cannot set down opposed private business. All private business set down for Monday, Tuesday, Wednesday, or Thursday, which is not disposed of before three o'clock, is postponed at the pleasure of the Chairman of the Ways and Means Committee, without the question being put. Such postponed business is distributed between the sittings on which Government business has precedence and other sittings. Finally, all unopposed private business is to have precedence of opposed private business.[3]

Mention has been made of the foregoing rules to show how the Government has acquired the time of the House of Commons for Government business. Not only has the Government acquired the time of the House of Commons, but by the aid of special rules limiting debate, it regulates its use. These rules to limit debate are the Closure, the Closure by Compartments (popularly called the Guillotine), and the Kangaroo. With the help of its majority, a Government may at any time put one or all of these into operation and, at its pleasure, shorten, or even prevent, debate. It would be out of place to go into the history of

[1] Standing Orders of the House of Commons (1924), pp. 5–6.
[2] *Ibid.* (1924), pp. 5–6. [3] *Ibid.* (1924), pp. 8–9.

these rules at great length, but in order that something of their tremendous power may be appreciated, and the effect they produce when put into operation against a piece of legislation shown, the following pages are given to a brief history and description of each rule, and examples are named which illustrate the rule.

THE CLOSURE.

The Closure is simply a motion "that the question be now put." This motion, "that the question be now put," must be decided without debate or amendment. Before the motion is allowed to be put, however, the consent of the Chair must first be obtained. This will be refused if the Chair considers it an abuse of the rules of the House, or an infringement of the rights of the minority. Any member may move the Closure in this way, either on the conclusion of a speech or by interrupting a speaker. If the motion is carried and the question following it has been decided, further motions, necessary to bring to a decision questions previously proposed from the Chair, may be made.[1] If a clause is at that time under discussion, a motion may be made, that the question that certain words in the motion shall stand part of the clause, or that the clause stand part of or be added to the bill, be now put. All

[1] It must receive at least one hundred votes. Sometimes the motion is agreed to without a division.

such motions are to be forthwith put without debate or amendment.[1]

The Closure rule, which has many times been amended, and each time been made more stringent, was first introduced in its original form by Mr. W. H. Smith, First Lord of the Treasury, on February 21, 1887. The hand of the Government was forced by the obstructionist tactics of the Irish Nationalists, and the rules then formulated were intended to enable the normal business of the House to proceed. "I do not think," said Mr. Smith, "there is a single member in the House who will deny that, after struggling for many years against the difficulties with which the House has had to contend, it is absolutely necessary to place some restriction on that perfect liberty of debate which we have previously enjoyed. Some change in the conduct of the business of this House must be made." [2]

This form of Closure was used continually throughout the Committee Stage of the Criminal Law Amendment (Ireland) Act, 1887, which the Irish Nationalists were obstructing to the utmost of their ability. For example, during the second sitting the Committee was discussing a troublesome amendment to Clause 1 of the Bill moved by Mr. Healy. After long and weary discussion, during which first one and then another of the Irish members got up, and delivered what were obviously intended to be obstructionist speeches,

[1] Standing Orders of the House of Commons (1924), p. 20.
[2] Hansard, 1887, cclxi. col. 187.

the Closure was brought into operation, and it was claimed " that the question be now put." [1]

After its first introduction, the Closure rapidly became part of the normal procedure of the House. Though it restricted freedom of discussion, it was nevertheless fairer than other forms of restriction, for due regard had to be paid to the rights of minority parties, and care exercised that it did not abuse the rules of the House. During the period of Liberal Administration, 1906–14, it was used with ever increasing frequency. Good examples illustrating its use are to be found in those pages of Hansard detailing the history of the Finance Bill, 1909.

The Closure is used not only to cut down the legislative opportunities of the House, but also to bring discussion to a close on matters, for example, of Executive policy, or on special subjects or problems which the House has been debating, after a sufficient ventilation of the matter, which may perhaps involve some grievance, real or supposed, has taken place.[2]

[1] Hansard, cccxiv. col. 655. Other occasions of its use during discussion of this Bill are to be found in cols. 1415–20; vol. cccxv. cols. 1663–71.

[2] In this way debate on vote of censure moved by Sir Robert Horne on the late Labour Government, for withdrawing criminal proceedings against the editor of the *Workers' Weekly* (Parl. Deb., Coms., 1924, vol. clxxvii. col. 694), was brought to a close. Debate on King's Speech in January 1924 brought to a close by the Closure. The House was discussing the Speech and the Labour Party's amendment to it. After some discussion Mr. Ramsay MacDonald claimed the question. Several members rose on points of order, but the Speaker accepted the Motion and pointed out that the main question must be put. (Parl. Deb., Coms., 1924, vol. clxix. col. 674).

THE GUILLOTINE.

The Guillotine, or Closure by Compartments, sets up a time-table of days and hours, and prescribes that at the stated times discussion must close, and the section of the Bill allocated to the particular time be voted upon without further amendment or discussion.[1] It is not difficult to imagine how powerful a weapon this may be. Of all parliamentary devices for shortening debate, it is certainly the most unpopular. By it, a Government may either cut down discussion or absolutely stifle it, provided, of course, its resolution is adopted by the House.

The responsibility for its introduction, as in the case of the Closure, lies with the Irish Nationalists. It was found necessary by the Government, in 1887, to use a form of guillotine, to get its Criminal Law Amendment (Ireland) Act, 1887, through the House of Commons. This Bill, politically highly contentious, proposed to abolish the jury system in Ireland for certain classes of crimes; to give magistrates extra jurisdiction in certain cases; to allow a special jury at the request of the Attorney-General for Ireland; to allow certain trials to take place in England, if the Attorney-Generals for Ireland and England certified that a fairer trial could be had there than in Ireland; in general to make better provision for securing law and order in Ireland.[2]

[1] Parl. Deb., Coms., 1920, vol. cxxvi. col. 957.
[2] Hansard, 1887, vol. cccxii. cols. 1624–58.

Liberals and Irish Nationalists did all in their power to hinder and block the passage of the Bill through the House of Commons. Before the Government introduced their Closure resolution, thirty-five days had been spent in discussing the Bill, fifteen days of which had been occupied by the Committee Stage, but only Clause 4 had been reached.[1] Not only had fifteen days been spent in Committee on the Bill, but some of those days had been "protracted beyond all former experience." The amount of time spent on the Bill had held up all the work of the Session, and there was a danger that, not only would the Bill not be passed, but that the whole course of legislation would be stopped. "It is our duty," said Mr. W. H. Smith, "to see that the Administration of this country, the conduct of Business in the House of Commons, the interests which are confided to the charge of the Government and the House of Commons, are not paralysed by the action of those to whom we desire to give full liberty consistently with the traditions of the House of Commons itself, but who have no right to tyrannize over the great majority of the House."[2]

It was purely as an extraordinary remedy for an extraordinary state of affairs that the Government introduced their mild form of Closure. If, by ten o'clock on Friday night, June 17th, the proceedings in Committee were not at an end,

[1] Hansard, 1887, vol. cccxv. col. 1596.
[2] *Ibid.*, 1887, vol. cccxv. col. 1659.

and the Bill reported to the House, the Chairman was to put the question or questions on any amendment or motion then before the Committee. The question that any clause then under consideration and the remaining clauses stand part of the Bill was next to be put. The Bill was then to be reported to the House. Provision was made against motions to report Progress, or for the Chairman to leave the Chair. Such motions were not to be allowed unless proposed by some member who had charge of the Bill; if so proposed the question on such a motion was to be put forthwith.[1]

When the time came for the Bill to be reported, only Clause 6 had been reached. In accordance with the resolution, Clauses 7 to 20 were added to the Bill without a word of discussion.[2] On the Report Stage, the Irish Nationalists pursued with relentless energy their former tactics, and a further closure resolution became necessary. If, by seven o'clock on Monday evening, July 4th, the proceedings on the Report had not concluded, the Speaker was to put the question or questions on any amendment or motion already proposed from the Chair. No amendments, other than those in order, and printed in the Order Book, at the time of bringing forward the resolution, were to be allowed to be moved. The question on remaining amendments, if moved, was to be put forthwith. No motion of adjournment

[1] Hansard, 1887, vol. cccxv. col. 1594.
[2] *Ibid.*, 1887, vol. cccxvi. col. 448.

was to be allowed unless moved by a member in charge of the Bill, and the question on such a motion was to be put forthwith.[1] This second closure was perhaps more drastic than the first. It seemed to take the Opposition by surprise. All members who had been busy preparing amendments to delay the proceedings on the Report were now precluded from moving them, unless, by a lucky chance, they had put them on the Order Book before the introduction of the resolution.

For some time after its first introduction to the House, this form of closure was not applied to a Bill unless it became clear that without it a Bill could not get through its stages in the House of Commons. It was an extraordinary remedy to be applied only in extraordinary cases.[2] Gradually, however, it came to be part of the ordinary procedure of the House. "We must recognize," said Lord Robert Cecil, "that the Guillotine has become a normal part of the procedure of the House. That is the fact which has emerged during the last few years. . . . By force of circumstances the Guillotine will be applied to every contentious measure without exception in future, whichever party is in office, and whatever may be the nature of the Bill." [3] It is difficult to say exactly when it became a part of the normal

[1] Hansard, 1887, vol. cccxvi. col. 1337.

[2] *E.g.*, Home Rule Bill, 1883, was twenty-eight days in Committee before Guillotine was applied. Education Bill, 1902, thirty-eight days in Committee before Guillotine was applied. In both cases argument was used that Bill could make no progress without its aid.

[3] Parl. Deb., Coms., 1913, vol. i. col. 598.

procedure of the House. Probably the Closure used by the Balfour Government, in the case of the Licensing Bill, 1904, marked the beginning of the new use to which the Guillotine could be put. This Bill had been before the Committee for only six days, the discussion having occupied some thirty-four hours of parliamentary time, when Mr. Balfour moved his Closure resolution. It was claimed there had been no opposition, for, out of the hundred and forty-three speeches, one hundred and ten had come from the Government benches. On the other hand, it was contended by the Government that, as there were sixty-four pages of amendments to the Bill on paper, it was " impossible . . . to avoid passing a resolution of this kind." " There is one thing worse than this species of curtailment of the liberties of the House," said Mr. Balfour, " and that is that we should become a wholly impotent Assembly, carrying on endless debates month after month, wearisome to ourselves, nauseous to the country, and destructive to the dignity and efficiency of this Assembly." [1] This argument marked the change in the use of the Guillotine. Hitherto its use had been extraordinary, to prevent obstruction. Now its use was to be ordinary, to secure the efficiency of debate. Under the resolution, six days were given to the discussion of the Bill in Committee and on the Report. On the sixth day, all proceedings in Committee and on the Report had to be brought to a con-

[1] Hansard, 1904, vol. cxxxvii. col. 328.

clusion. The days set apart were allotted to various clauses of the Bill; for example, the first day was given to a discussion of Clause 1, and the second day to Clauses 2 and 3. On the fourth day, the proceedings in Committee on the remaining clauses of the Bill, new Government clauses, on the schedules or new Government schedules, were to be brought to a conclusion, and the Bill reported.[1]

The result of the Guillotine was that out of the two hundred and sixty-four lines in the Bill as it appeared after consideration on Report, only fifty-four had been discussed in Committee. Of the two hundred and ten lines, one hundred and five were Government amendments, introduced without any debate or discussion. The Opposition complained that the basis of compensation, how the amount of compensation was to be ascertained, the division of compensation between the interested parties, who in fact were the interested parties, and many other points raised by the Bill had never been properly discussed.[2]

From 1904 to 1914, a Closure resolution was a common occurrence. It became definitely "a normal part of the procedure of the House." The case of the National Health Insurance Bill,

[1] Hansard, 1904, vol. cxxxvii. col. 320.

[2] "It is—to a degree which is wholly unprecedented in a measure which if it once passes this House is reasonably certain to take its place upon the Statute Book—the exclusive and uncorrected composition of the Government and the draftsman, and this House . . . is being invited to perform the function not of a Parliament but of a registry" (Mr. Asquith). *Ibid.*, 1904, vol. cxxxix. col. 98.

1911, shows how far the procedure had travelled since it was first used. This huge measure of social reform, bristling with contentious points, full of ambiguities, after seventeen days of discussion in Committee, was made the subject of one of the most stringent Closure by Compartment resolutions ever known to the House of Commons. Under the resolution, the time allotted for discussion was hopelessly inadequate. Only fifteen further days were given to the Committee Stage, whilst four days were given to the Report, and one to the Third Reading.[1] A proper understanding of the meaning of the Bill in the time allowed for its discussion was impossible, and the history of its passage through the House of Commons is most amazing, and at the same time most instructive.

The resolution was felt to be particularly unfair, because it was known that the Government realized that their Bill, in the form it was presented to the House on the Second Reading, would not work, and therefore, that new clauses would have to be added, and innumerable amendments made in Committee and on the Report Stage. By their resolution, the Government did not propose to guillotine the Bill then before the House, but a new Bill which the House had never seen,[2] and

[1] Subsequently another day was added to Committee and Report.

[2] "It is not this Bill which we are guillotining; it is a new Bill which has never been considered. Some parts of it have been faintly adumbrated, but no man on earth knows what it actually is the Government will lay before us" (Mr. A. Chamberlain, Parl. Deb., Coms., 1911, vol. xxx. col. 173).

this is what in fact happened. At one time during the Committee Stage four hundred and seventy amendments were made to the Bill under the Closure, few of those amendments having been foreshadowed by discussion.[1] Masses of clauses, affecting the interests of innumerable institutions, were passed, along with amendments, without any consideration being given to them.[2] On the Report Stage the Bill was practically remodelled, so extensive were the alterations made.

The result of this truncated discussion and hurried workmanship was a bad Bill. Even if the result had been otherwise, it would have been impossible to justify so flagrant a disturbance of the liberties of individual members of the House of Commons. In the House of Lords, the Government, by throwing hundreds of amendments down, attempted to make their Bill workable.[3]

To-day the Guillotine is less common; indeed, it seems to have fallen into disuse. The last

[1] "Hardly any of them have been discussed at all at this stage of our proceedings, and the way in which the Government have been pouring amendments into the House, as if they were coming out of some patent machine, shows that even they themselves from hour to hour do not know in the least what they are doing" (Mr. B. Law, Parl. Deb., Coms., 1911, vol. xxx. see cols. 657–787).

[2] See Parl. Deb., Coms., 1911, vol. xxx. cols. 497, 1775. On third day clauses 24 to 29 down for consideration. Clauses 27 to 29 passed under Closure with six Government amendments. On eighth day clauses 43 to 45 down for discussion. Just before ten o'clock a long amendment to clause 43 had to be agreed to, proposed by Mr. L. George. Clauses 44 and 45, former dealing with Powers and Duties of Local Health Commissioners, latter with income, passed under the Closure.

[3] Parl. Deb., Lords, 1911, vol. x. cols. 806 *et seq.*, cols. 1942 *et seq.*

occasion of its attempted use was on March 8, 1920, and that was the first time it had been proposed to use it since the outbreak of war.[1] The distaste which is now felt at having to resort to it was well expressed by the late Mr. Bonar Law. He said: "This is the first time that a resolution of this kind has been necessary since the outbreak of war, and I may add that it is the first time that I have had anything to do with a resolution of this kind from this Box, though I have had many opportunities of dealing with similar resolutions when I sat on the other side of the table, and the House will not be surprised to hear that in a discussion of this kind I should prefer the other position, the attack rather than the defence." The great body of members were against the Government's proposal. It was suggested that a Select Committee should be appointed to consider the best method of securing, with the maximum of free discussion, the completion of the necessary financial business before March 25th,[2] thus effecting in a better way the object of the Government. This suggestion met with general support, and, in view of the general feeling of the House, the Government motion was withdrawn and a Committee appointed with a "determining voice in the allocation of our time."

Although, for the moment, the Guillotine appears to be dead, can it be said to be buried? That is a question which time will answer. With so

[1] Parl. Deb., Coms., 1920, vol. cxxvi. col. 959.
[2] *Ibid.*, 1920, vol. cxxvi. col. 966.

many precedents at hand, there is always the danger of the Guillotine being resuscitated.

THE KANGAROO.

The Kangaroo enables the Chairman, during the debate in a Committee of the whole House on a Bill, to choose what amendments shall receive discussion. The Closure swept away both the substantial and the unsubstantial amendment. By the Kangaroo it was hoped to get rid of the frivolous amendment.[1] The Kangaroo was also intended to protect the dignity of the Government. Previously, where so many amendments were put down, it was necessary, if progress was to be made, to introduce a Guillotine resolution with its consequent disfavour; now, under the Kangaroo, many of the amendments could be summarily disposed of by the Chair. The Kangaroo has not done all that its authors claimed for it. Its working has been well described by Lord Cecil of Chelwood, then Lord Robert Cecil. "He (the Chairman) has a section of a Bill to be got through at 7.30 or 10.30, and he has a large number of amendments on the paper. He quite properly selects the amendments which raise the widest issues. What is the result? The debates which take place are repeated over and over again. They are second reading debates, and there is an inevitable unreality in the whole proceedings. . . .

[1] Parl. Deb., Coms., 1909, vol. viii. col. 1216.

I do not see how he can select the smaller details to be discussed under the Guillotine. But the result is to reduce the Committee proceedings of this House to an absolute farce so far as they are concerned with the consideration of the details of a Bill." [1] The Kangaroo may, of course, be used otherwise than in connection with the Guillotine, but the result is much the same. The flaw is that the Chairman can only measure an amendment by the importance of the issues it purports to raise. It is thus possible that many amendments, important from the point of view of revision and drafting, are not allowed. The Kangaroo was frequently used during the Committee Stage of the Finance Bill 1909.[2]

Before leaving the rules of parliamentary procedure, it is necessary to look at the conditions under which the House works. With the exception of Fridays, the House normally meets at three o'clock and rises at eleven-thirty o'clock. When, however, it is discussing some highly contentious and complicated Bill or matter, it is often found necessary to extend the sitting into the early hours of the morning. Though the level of debate is usually very high, it is not to be expected that attention could be as keen and diligent as if the discussion were taking place at a more reasonable hour. When you have a series of these protracted sittings, the value of the work must in

[1] Parl. Deb., Coms., 1913, vol. l. col. 592.

[2] *Ibid.*, 1909, vol. xix. col. 906; 1924, vol. clxxiii. col. 305, for an example well illustrating the rule.

the end suffer seriously, although the quantity be unimpaired. Late sittings are a normal part of parliamentary life, though lately, perhaps, they have not been so regular a feature as during the years 1905–1914. It is, of course, those highly contentious and complicated Bills, which cause the protracted sittings, that need the most careful consideration it is possible to give. Unless the hours of sittings are altered, protracted sittings extending well into the early hours of morning will continue to exist, and this is a fact which must be borne in mind in considering the necessity of a Second Chamber with revising powers.

CONCLUSIONS.

The first conclusion, though it has more reference to a discussion of Function 2, may well be noted here. With the greater part of the time of the House taken up by Government business, the private member has not to-day the same opportunity he once possessed of showing his own constructive ability. He is, for the greater part of his time in the House, occupied with public business. The second conclusion is, that as the result of the rules limiting debate, the opportunity of the private member to make helpful criticism, to propose remedies for obvious defects, and generally, where the matter under consideration is a Bill, to make the Bill the best Bill possible, is cut down along with his opportunity for obstruction. Of the five stages through which a Bill in

the House of Commons has to pass, the most important are the Committee and Report Stages. In Committee, the Bill should be examined line by line, clause by clause, and concessions or necessary alterations made. On the Report Stage, the Bill should be given the final touches to make it watertight. Effect, too, is usually given here to concessions promised in Committee, or on matters held over for the consideration of the Government. Thus, of all the stages, the Committee and the Report Stages are the most important, for it depends upon what takes place there whether the Bill will be a good Bill or not. As has been seen, the Committee and Report Stages offered the best opportunity for those opposed to the Bill to obstruct and hinder its passage through the House. Thus it became necessary, even though the Bill was passing through its most vital stages, to introduce rules limiting debate. Whilst the rules were used for their original purpose, little damage was done. When, however, they became part of the normal parliamentary procedure, and discussion, at the discretion of the Government backed by its supporters, could be guided, cut down or stifled, their inevitable result was, for the most part, to destroy constructive criticism, encourage obstruction, and to throw upon the Government and its draftsman the burden of securing a sound Bill.

Apart from cutting down discussion, the Government can rely upon its majority for support whether or not the merits of the particular case

deserve it. "We are nominally here in questions of controversy debating solemnly whether a particular detail of a particular Bill shall or shall not be adopted," said Lord Robert Cecil. "The discussion goes on in all the forms, we are solemnly addressing one another and asking one another to give the matter impartial consideration, and vote according to the merits of the question. But we all know that that appeal is usually addressed to about twenty members or something of that kind, and that the great mass of the members of the House do not even take the trouble to come in and listen to the debates, but at the conclusion of the debate they come in from other parts of the House and vote without any reference whatever to the discussion, and without any reference whatever to the merits of the question, simply and solely because one vote would turn the Government out and another would keep the Government in office." [1] In the same way, it ought to be remembered that the Opposition can also count on its members to vote in a certain way without any reference to the merits of the particular question. The fact that members treat the Committee and Report Stages merely as another opportunity to indulge in Second Reading speeches, and in giving their vote are guided by party considerations and not by the merits of the particular amendment or question then before the Committee or the House, tends further to impair the value of these stages.

[1] Parl. Deb., Coms., 1913, vol. l. col. 593.

The result of the rules limiting debate, and the fact that some part, at any rate, of the time allowed for discussion will be used for party purposes, is, as stated above, to take from the value of the Committee and Report Stages. The proceedings in Committee on most Government Bills have almost ceased to be deliberative, and a sort of desultory discussion, not directed to any particular point, goes on, or Opposition members move amendments which strike at the root principle of the Bill. Between the Committee and Report Stages, the Order Paper is filled with amendments: (*a*) purporting to give effect to concessions promised by the Government in Committee, (*b*) raising Second Reading points or other matters already fully ventilated in Committee, and (*c*) drafting amendments put down by the Government. The greater part of the time of the House on the Report will usually be taken up by amendments falling under (*a*) and (*b*), the drafting amendments being passed with little or no discussion. The extent of the damage will depend in each case, of course, upon the stringency of the resolution (if any), or the use to which the closure is put, or upon the good judgment of the Speaker or Chairman in choosing amendments to be discussed under the Kangaroo, and also upon the manner in which members conduct the discussion. Rules limiting debate, however, much as they may be disliked, are a modern necessity as a corrective to verbiage or obstruction, both of which in some degree are inevitable in a body such

as the House of Commons. Inasmuch as such rules give rise to the effects described above, there is always the danger, when the rules are put into operation, however necessary they may be, of a bad Bill.

THE FUNCTION.

If the above conclusion is correct, the need for revision is beyond question. This fact, however, does not of itself establish the claim of the Second Chamber as the body to perform the function. Uni-cameralists argue that revision can be given by the Single Chamber; but it is not difficult to show that a Second Chamber, so far as concerns this country, is the better body to perform the function. In the first place, the House of Lords has proved itself to be useful as a revising body in the past, and there seems to be no reason why it should not continue to be so useful when reconstituted. In the second place, the House of Commons, as has been seen, has quite sufficient work to do, and it is doubtful whether a complete rearrangement of its work would enable it to perform the function. Finally, as the necessity for revision is due to the manner in which the House of Commons works, it would be illogical to give that body the function to perform, thereby running the risk of those causes, which intensify the need of revision, operating whilst the revision itself takes place. It is submitted that the function of revision must be performed by a Second Chamber.

Two duties seem to devolve upon the Second Chamber in performing the function. The first duty may be called the agreed duty, for it was the duty contemplated by the Bryce Conference. The Second Chamber must carefully consider the Bill clause by clause, line by line, and rectify mistakes in the drafting, in order to ensure, so far as it is possible for any legislative body to ensure, that the intention is expressed by the words used. The second duty, although not an agreed duty, seems most necessary and to flow naturally from the procedure adopted by the House of Commons in considering Bills. The Second Chamber must make such amendments as shall be necessary, without destroying the principle of the Bill, to uphold the rights of minorities disturbed by it. It is very necessary that legislation should be modified in favour of minorities. To allow minorities only the right to turn themselves into a majority is inequitable and leads to bad legislation. In insisting that some regard must be paid to the rights of minorities, the Second Chamber performs a function once performed by the House of Commons in Committee in the days when it was usual for the Government to be defeated four or five times in a session.

THE AGREED DUTY.

The many cases of construction arising upon that part of the Finance (1909–10) Act, 1910, which related to the Land Taxes, well illustrate the need of a strong, revising body. This particular Act

was not, of course, chosen to argue the right of the Second Chamber to interfere with a Money Bill. It was chosen because its parliamentary and subsequent history illustrate the effect of the rules limiting debate upon an important Bill.

The Finance Bill, 1909, proposed three novel taxes on land. The first, an increment tax, was a tax to be paid on the increment value accruing to land from the enterprise of the community; the second, an undeveloped land tax, was a tax to be paid on the capital value of all land not used to the best advantage as defined by the Bill; the third, a 10 per cent. reversion duty, was a tax upon any benefit accruing to a lessor by the determination of a lease. Had the procedure in the House of Commons been all that could be desired, to put such novel proposals into a Bill would have been no light task. The fact that the Bill met with strenuous opposition from the Conservative Opposition, was closured and the Kangaroo brought freely into use, considerably increased the difficulty of putting the proposals into clear and unambiguous language. When the Bill became law, the Courts were crowded with cases raising points of construction which, to some extent, might have been avoided if it had been considered by a revising body.

It is proposed first to briefly refer to two of these cases, and then to go shortly into the parliamentary history of the particular section of the Act in order if possible to show how the ambiguity giving rise to the case was allowed to go unamended.

LUMSDEN *v.* COMMISSIONERS OF INLAND REVENUE.[1]

This case raised the construction of the words "subject in each case to the like deductions as are made under the general provisions of this Part of this Act as to valuation for the purpose of arriving at the site value of land from the total value," in Section 2, Sub-section 2 of the Finance (1909–10) Act, 1910.

Under the Act, the increment duty was to be paid on the increment value of the land, which was the difference (if any) between the original site value as on April 30, 1909, and the site value on the occasion on which the duty was to be paid, the occasion being specified in Section 1. The site value of the land was its value divested of all buildings, trees, shrubs, etc., and from this value for the purpose of the duty other deductions set out in Section 25 of the Act were allowed.

The appellant was the owner of a dwelling-house and shop known as No. 32 Lansdown Road, at Forest Hall, in Northumberland. On February 9, 1911, his property was provisionally valued by the Commissioners of Inland Revenue, and the figures arrived at were not disputed by him.[2] On

[1] A.C., 1914, pp. 877–931.

[2]

	£
Original gross value	658
Original full site value (arrived at by deducting from gross value difference between that value and value of fee simple of land divested of buildings, etc.) ..	228
Original total value (arrived at by deducting from gross value capitalized value of tithe)	625
Original assessable site value (arrived at by deducting from the total value the deductions from gross value to arrive at full site value as above, viz. £430 and value of works £90)	105

August 23, 1910, he sold his property for £750, subject to a tithe of the capital value of £33. He was assessed at £25 for duty by the Commissioners, the occasion on which the duty became payable being the sale.

It was admitted that the full site value of the property, both on April 30, 1909, and on August 23, 1910, the date of the sale, was the same, namely, £228. It was also admitted that the capital value of the tithe and the value of the deductions to be allowed under Section 25, Sub-section 4, were respectively £33 and £90. In his appeal to a referee, the appellant succeeded in his contention that the increment value was the difference between the original assessable site valuation of £105 and the occasional assessable site valuation, ascertained by deducting from the consideration price the deductions made under the general provisions of Part 1 of the Act.

The referee having decided in favour of the appellant, the Commissioners appealed. Horridge, J., found in favour of the Commissioners,[1] and the appellant accordingly took the case to the Court of Appeal,[2] where a decision in favour of the Commissioners was again given by the Court, Swinfen Eady, L.J., dissenting. The Master of the Rolls admitted that the effect of his decision would involve hardship not contemplated by the legislature. "I am aware," he said, "that the construction I feel driven to adopt has the effect of taxing builders' profits. It is not for me to

[1] (1913), 1 K.B., p. 346. [2] (1913), 3 K.B., p. 809.

consider the policy of the Act. My duty—and it is by no means an easy duty—is to discover the true effect of the language used by the legislature in expressing its intention."

The appellant took the case to the House of Lords.[1] It was again argued on his behalf that the duty was one on the increase in the value of the site, and not on profits derived from a sale, and that to tax anything, other than an increase in site value, was contrary to the whole scheme of the Act; and it was further argued that to carry out the intentions of the Act, the transfer price was to be the basis from which the deductions were to be made. On the other hand, it was argued for the Crown that effect must be given to the plain effect of the language of the Act. The contention of the appellant and the Crown were put with great clearness by the Lord Chancellor, Lord Haldane. The former contended that the deductions, directed by Section 2, to be made from the purchase price, ought to be made from the £750 and £33, that the analogy of gross value might be followed and assessable site value ascertained. The full site value had remained unchanged. Therefore, the difference between the gross value and full site value was £555. This figure plus the £90, allowed under Section 25, Subsection (*a*), was to be deducted from the consideration price of £750, that price being taken to be the total value for the purpose of ascertaining the proper deductions. This gave an assessable site

[1] A.C., 1914, p. 877.

value of £105, and, as the original site value had been found to be £105, there was no increment. The latter contended that as the gross value had been estimated at £658, the full site value at £228, and the amount to be deducted in respect of works had been agreed at £90, the total amount of the deductions was £520. This sum, on being deducted from the consideration price, resulted in an assessable site value of £230—or an increment value of £125 on which duty had to be paid.

The point to be decided by their Lordships was whether the appellant was correct in his contention, "that the expression 'like deductions' means, where the case is one of transfer on sale, that deductions are to be made from the value of the consideration in their character resembling or analogous to, but not identical with, those which are made when, under the general provisions as to valuation, site value is ascertained from total value." [1] Lords Moulton and Parmoor decided that the appellant was right in his contention. Lords Haldane and Shaw, that he was wrong. The former were of the opinion that "total value" and the consideration price were equivalent factors, and that the gross value was to be ascertained by taking the consideration price as the basis. "I not only do not find that the Statute compels the substitution of £658," said Lord Parmoor, "but in my opinion it carefully provides against such an absurd conclusion as would result in giving a lower figure for gross than the consideration on

[1] A.C., 1914, p. 889.

transfer in respect of the same property on the occasion of a sale." Lord Haldane admitted that it was unlikely that the legislature intended to put a tax on anything other than an increase in site value. He agreed there were cases of construction where it was necessary to reject the natural meaning of words used in a Statute and give them another meaning. "But," he pointed out, "a mere conjecture that Parliament entertained a purpose which, however natural, has not been embodied in the words it has used if they be literally interpreted is no sufficient reason for departing from the literal interpretation." [1] Two great objections to the construction contended for by the appellant were pointed out by him. In the first place, it assumed that site value on the occasion of a sale, when directed to be ascertained for the purposes of duty, meant the same thing as site value when directed to be ascertained for the purposes of the original valuation. In the second place, it imported an "instruction to make deductions on another basis than that of the valuation which is expressly mentioned" and to substitute the actual price for total value. He pointed out that site value, when used in connection with increment value, could not mean the same thing as site value when used in connection with original assessable site value, "For in the definition of site value which occurs towards the end of Section 25 . . . it is expressly provided that a reference to site value in the Act on an

[1] A.C., 1914, p. 892.

occasion when increment duty is to be collected is not, as in other cases deemed to be a reference to assessable site value as ascertained in accordance with Section 25." [1] Lord Shaw, in a clear judgment, gave his reasons against the construction contended for by the appellant,[2] but he pointed out that, " If, on the allegation of increment, the Statute had ordained that in order to ascertain increment value you had simply, as in the original case, to make your deductions of buildings, etc., from total value, the case would be at an end." As the House was divided the appeal was dismissed and the order of the Court of Appeal affirmed.

PARLIAMENTARY HISTORY OF SECTIONS 1, 2, AND 25 OF THE ACT.

Section 1.

Section 1, Clause 1 of the Bill, laid down the principle of the increment value duty. It placed a duty on the increment value of land which became payable on the occasions there specified.[3] The Committee spent nearly six days in discussing the clause, and the greater number of amendments were directed against the principle of the tax and provided members with the opportunity for delivering Second Reading speeches. On its introduction to the Committee, it was met with a motion to postpone discussion because it was impossible

[1] A.C., 1914, p. 892. [2] *Ibid.*, pp. 897–903.
[3] Parl. Deb., Coms., 1909, vol. vi. col. 1366.

to adequately consider the proposals contained in it until other parts of the Bill had been discussed.[1] Amendments were moved to postpone its operation until after December 31, 1911[2]; to exclude agricultural land from the duty[3]; to alter the rate of the duty[4]; to allow the money raised to be distributed in the same manner as the Probate Duty Grant under the Local Government Act 1889[5]; to leave out paragraph (*a*) (this in order to call attention to the inconvenience of the Government proposals)[6]; to exempt land acquired by lease or by sale for building purposes[7]; in short, the clause was attacked from every conceivable position. The weapon used by the Government to accelerate the progress of the Committee was the Closure.[8] After all amendments had been disposed of, on the question "That the clause, as amended, stand part of the Bill," the whole principle of the tax was discussed from top to bottom, and a full ventilation of the Opposition's objection to it given.[9]

Section 2.

With the principle of the tax established by Clause 1, Clause 2 (i.e. Section 2 of the Act)

[1] Parl. Deb., Coms., 1909, vol. vi. col. 1366.
[2] *Ibid.*, 1909, vol. vi. col. 1396.
[3] *Ibid.*, 1909, vol. vi. col. 1496.
[4] *Ibid.*, 1909, vol. vi. cols. 1704 and 1751–2
[5] *Ibid.*, 1909, vol. vi. col. 1758.
[6] *Ibid.*, 1909, vol. vi. col. 1806.
[7] *Ibid.*, 1909, vol. vii. col. 183.
[8] E.g., see vol. vi. cols. 1663–8.
[9] *Ibid.*, vol. vii. col. 403.

defined the tax [1] Under this clause, the increment value of the land was to be the amount by which the site value on the occasion on which the duty was to be paid exceeded an original site value ascertained under Clause 14 of the Bill. The clause, upon its introduction to the Committee, was immediately met with a motion for its postponement.[2] The discussion which arose on the motion well illustrates the difficulty of the House of Commons, with its set rules of procedure, to give adequate consideration to such a clause, inextric-

[1] E.g., 1909, vol. vii. col. 465.
Clause 2.
(1) For the purpose of this part of this Act the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which Increment Value Duty becomes due, exceeds the original site value of the land.
(2) The site value of the land on the occasion on which Increment Value Duty become due shall be taken to be:
(*a*) Where the occasion is a transfer on sale of the fee simple of the land, the value of the consideration for the transfer; and
(*b*) . . .
(*c*) . . .
(*d*) . . .
subject to such deduction (if any) as the Commissioners allow in each case in respect of any part of the value which is proved to their satisfaction to be attributable to the value of buildings or structures of which the land is deemed to be divested under this Act for the purpose of ascertaining the site value, or to any matter in respect of which a deduction may be allowed under this Act in estimating that site value, or to goodwill, or any other matter which is personal to the occupier or other person interested for the time being in the land, and in the case of agricultural . . .
(3) . . .
(4) . . .

[2] Parl. Deb., Coms., 1909, vol. vii. col. 467.

ably connected, as it was, with a clause coming later in the Bill. The argument in favour of a postponement was shortly this: Expressions, material to a proper discussion and understanding of the clause, were contained in Clause 14. Those expressions ought to be fully examined by the Committee first.[1] The motion was described, and maybe with perfect truth, as "a very familiar motion which is made by every Opposition upon every Bill and upon every clause of that Bill and . . . its only use is delay."[2] It was, therefore, resisted and defeated. The motion, however, provided two members of the Committee with the opportunity of describing the machinery which ascertained the two site values. Under Clause 14, the original site value was an imaginary value of the bare site, arrived at by considering the value of the land divested of all buildings, structures, trees, etc. Under Clause 2, where there was a sale, the site value was the actual price, less certain deductions. The two methods were said to be inconsistent, and the Government were charged with comparing unlike with unlike.[3] The Lord Advocate answered the criticism on behalf of the Government. He claimed that although the two methods were different, they were not inconsistent, but differed necessarily. He gave the reasons. "In the case of the original site value you have no standard to go by. You must rely

[1] Parl. Deb., Coms., 1909, vol. vii. cols. 467–86.

[2] Mr. Lloyd George.

[3] Parl. Deb., Coms., 1909, vol. vii. cols. 470–4. (See speeches of Mr. Mason and Mr. Clyde.)

undoubtedly on the question of opinion, the question of opinion being the price that the willing buyer would pay for the land alone divested of buildings, and the rest of it. . . . 'Now,' said my hon. and learned friend, 'when you come to your site value at the date of the transaction you proceed upon a different principle.' Certainly we proceed upon a different principle. . . . We have the actual transaction before us of which the complex subject . . . is the subject matter of sale, and you do not want any comparison of the original site value with the price which the owner receives. What you want to compare is the original site value with the site value which he is receiving for the composite subject, a price which is not severed. You have a price which is a stock price for the composite site. You must do your best to sever that. . . . The method proposed in the Bill is that you should take the price which is got for the composite site and then endeavour to obtain what is the price of the buildings actually upon the ground and the improvements that have actually been made. That is a matter of estimate." [1] Further, he agreed that to get the second site value you took from the actual price received the cost of the buildings less depreciation.[2] From that statement, and the statements of members which evoked it, one gets an idea of what the intention of the Government was, and

[1] Parl. Deb., Coms., 1909, vol. vii. col. 475. (See speech of Mr. Ure.)

[2] *Ibid.*, 1909, vol. vii. col. 477.

that intention seems to fit with the construction put upon the words "subject . . . total value" in Section 2, Sub-section 2, by Lords Moulton and Parmoor in the case discussed above.

In discussing a Bill such as the Finance Bill, 1909, those members of the Committee who belonged to the Opposition would have been more than human if they had not utilized every opportunity to point out and attack its many weaknesses. Having, however, so fully ventilated their complaint against the two methods of valuation above described, they ought to have seen that the language of the Bill really did carry out the intentions of the Government, instead of merely confining themselves to the moving of amendments attacking the Bill. It would be out of place to go into all the amendments moved to this clause. Discussion is confined, therefore, as far as possible, to amendments having some bearing on the ambiguity giving rise to the case of Lumsden *v.* The Commissioners of Inland Revenue.

After the motion to postpone the consideration of the clause had been disposed of, it was sought to move an amendment to leave out Sub-section 1 in order to raise the question of the distinction between the original value and the site value. This the Chair refused to accept, on the ground that it would render the rest of the clause unintelligible.[1] Amendments, to exclude all land from the operation of the duty, other than land neglected, uncultivated, unbuilt upon, or inade-

[1] Parl. Deb., Coms., 1909, vol. vii. col. 489.

quately built upon [1] to render land exempt from duty where the increment value was less than one-tenth of the original site value,[2] raising the question of the position of the Commissioners,[3] brought the proceedings in Committee, on the first day the clause was there discussed, to half-past twelve o'clock in the morning. The next amendment was to leave out the word "site" and to insert the word "capital." On this amendment discussion took place on the two methods of arriving at site value under the Bill.[4] The inconvenience and difficulty of making the original site value under Clause 14 were stressed, and a local system of valuation asked for. A strong speech against the methods of valuation was delivered by the late Mr. Bonar Law. At seven minutes to three in the morning the division was taken and the amendment defeated. The clause was then closured down to the word "land" in Sub-section 1.[5] The House finally adjourned at eight minutes past four o'clock.

It was felt that as the clause stood there was a danger that by reason of fluctuations in the value of land the whole of the increment would be taken by the tax. An amendment was accordingly moved to avert this danger.[6] The Committee was reminded that the Chancellor of the Exchequer

[1] Parl. Deb., Coms., 1909, vol. vii. col. 493.
[2] *Ibid.*, 1909, vol. vii. col. 497.
[3] *Ibid.*, 1909, vol. vii. col. 513.
[4] *Ibid.*, 1909, vol. vii. col. 538.
[5] *Ibid.*, 1909, vol. vii. col. 661.
[6] *Ibid.*, 1909, vol. vii. col. 813.

had promised to move an amendment to obviate this danger. The mover of the amendment expressed himself satisfied with an answer given by the Government, but the Committee insisted on continuing to discuss the points raised until the Closure was moved. Amendments were then moved to enable an owner to set off a decrement in the value of his land before he paid duty on the increment of other land,[1] and to provide that the duty should be paid on the real increment and not on a nominal increment.[2] The clause was then closured down to the word "value" in Sub-section (*a*).[3]

With the words of the clause down to the words "as the Commissioners" closured, and all amendments to Sub-sections (*c*) and (*d*) prevented from being put before the Committee, the Committee was ready to discuss the deductions to be made. Amendments were moved to include the costs and expenses of valuation or of sale incurred by the owner in the deductions to be made[4]; for concessions in cases where the increment value had been increased by the direct expenditure of the owner in redeeming the Land Tax, by commutation of tithes.[5] A further amendment opened the question of the duties of the Commissioners.[6] After two more amendments had been disposed

[1] Parl. Deb., Coms., 1909, vol. vii. col. 845.
[2] *Ibid.*, 1909, vol. vii. col. 875.
[3] *Ibid.*, 1909, vol. vii. col. 905.
[4] *Ibid.*, 1909, vol. vii. col. 1023.
[5] *Ibid.*, 1909, vol. vii. col. 1059.
[6] *Ibid.*, 1909, vol. vii. col. 1060.

of, an important amendment was moved by the Attorney-General, Sir William Robson. He moved to omit the words "the value of" ("attributable to the value of"),[1] explaining that, as the clause stood, there was a danger that the deduction to be made in respect of buildings would be confined to their cost, whereas the intention of the Government was to deduct any value added to the site which was attributable to the buildings. He gave an example to illustrate his point. If there was a site value of £100, and the buildings on the site cost £1,000, it would not be fair, he said, to take the total value at £1,100. "We therefore," he added "strike out the words 'the value of' in order that the taxpayer may get the full benefit of the deduction in so far as the total value is due to buildings, not merely the cost of buildings, but any value they give to the site." It was objected to the amendment that it would cut both ways. The value attributable to the buildings might be less than the cost of the buildings. The Government were accordingly asked to accept an amendment, already on the Paper, as a proviso to their amendment, which ensured that nothing less than the cost of construction should be deducted.[2] This they refused to do, and the amendment was agreed. Two further drafting amendments were moved by the Attorney-General: to leave out the word "or," after the word "structure," and to insert the words "or

[1] Parl. Deb., Coms., 1909, vol. vii. col. 1163.

[2] *Ibid.*, vol. vii. cols. 1164–8. (See Mr. Pretyman's speech.)

other things." [1] In explaining these amendments he said: "I desire not merely to cover buildings, structures, and other things, but to establish parity between this clause and Clause 14." It was shown to the Attorney-General that he had not followed the language of Clause 14, and another amendment which professed the same object was pressed. He insisted, however, that his amendment did, in fact, and was intended to, establish a connection between two clauses in different parts of a Bill, and must, therefore, be accepted.

The next amendment was one "to test the *bona fides* of the Government and the *bona fides* as well as practicability of these land taxes in the way the Government propose to use them," so as to enable the owner to get the benefit of any increment caused by his own exertion and outlay, by allowing him the benefit of it, in a case where he owned all the land in a particular neighbourhood, and had created an actual increment of a given piece of the land.[2] The Government promised to consider the matter, and asked the mover to withdraw his amendment. The amendment was withdrawn, and the amendment which the Government had been asked to accept as a proviso to the Attorney-General's amendment of the previous evening next came before the Committee.[3] It was sought to provide that the deductions in respect of the buildings should in no case be less than the actual

[1] Parl. Deb., Coms., 1909, vol. vii. col. 1170.
[2] *Ibid.*, 1909, vol. vii. col. 1200. [3] *Ibid.*, vol. vii. col. 1229.

cost of the buildings, less depreciation. It was claimed that the amendment should be accepted as the basis which the Government supported as the basis of their tax, for, without the amendment, it was urged that buildings would be treated as part of the site value. The Attorney-General, in answer to the mover of the amendment, put clearly what the tax was intended to be. "This is a tax on site value. He (Mr. Clyde) has again and again spoken as if this were a tax on buildings. Really the value of a building—that is to say, the cost of a building—whether it be great or small, whether it was a wise or a foolish expenditure, does not affect the value of the site as a site. That is all we are taxing. First of all we ascertain what is the site value as on April 30, 1909. Having ascertained that, we compare it with the site value when the tax comes to be assessed. . . . If a builder buys a site and proceeds to put buildings upon it, it would not be correct to say that the value of the composite hereditament thus called into existence is represented by the cost of the site added to the cost of the buildings. The union of the two brings into existence another value, which is really the product of the builder's ingenuity, enterprise, and energy. Therefore it is not enough merely to take away the cost of the buildings; there is also the value which the buildings have given to the site. . . . For that purpose we deduct anything which has been added to the value by the industry or ingenuity of the builder." [1]

[1] Parl. Deb., Coms., 1909, vol. vii. cols. 1235–6.

After the above statement, the Government were asked by Mr. Balfour whether they agreed that they were adopting different methods of valuation in the two cases.[1] He contended the original site value was merely an estimate, whereas the occasional site value was the consideration less the value of the house. The Attorney-General agreed with Mr. Balfour as to the original site value, but not as to occasional site value. Under Clause 2, he told the Committee, they had to take the total value and deduct, not the cost of the buildings, not the value of the buildings, but any value attributable to the buildings, structures, and other things, and so get back to the land under Clause 14. He added that if he had not made his amendment yesterday, builders' profits might have been taxed, and he then contended that the value under each clause was comparable.

It ought to be noted that whereas Mr. Balfour used the word "consideration" to denote the value from which the deductions were to be made, the Attorney-General used the word "total-value." The latter corrected Mr. Balfour with regard to "value attributable to the buildings." In using the term "total-value," it must be taken that the Attorney-General meant a "total value" based on the consideration.

The Attorney-General's explanation did not satisfy the Committee. The Government were asked why, if their object was the same in each case, they had used different language.[2] It was

[1] Parl. Deb., Coms., 1909, vol. vii. col. 1237.
[2] *Ibid.*, 1909, vol. vii. col. 1243.

argued that it would have been possible, in ascertaining the occasional site value, for the owner to have estimated the value of the site divested of buildings. Instead, "In one case you said you are to value the site value as if divested of buildings, and in the other case you take the buildings first, and you have to value what is attributable to the buildings."[1] It was suggested that the consideration should be apportioned between the house and the site, which made the joint value, by using such words as "So much consideration as is to be attributable to the value as if divested of buildings," and in that way secure harmony between the two clauses. The construction of the clause was later given to the Committee as follows: "You must start with a consideration basis, and by that means you get the value of the total thing. Having done that it is necessary to make all the deductions to bring it upon the same footing as the site value which is to be obtained under Clause 14. Having got the total value based on the consideration, the clause will read as now amended, 'Subject to the deduction attributable to the buildings, structures and other things of which the land is deemed to be divested under this Act for the purposes of site value.' That is in the same terms as the deductions referred to in Clause 14 for the purpose of getting at the original value."[2]

[1] See speech of Sir Edward Carson.

[2] Parl. Deb., Coms., 1909, vol. vii. col. 1246. (See speech of Mr. J. M. Astbury.)

The Attorney-General promised that between then and the Report Stage the drafting of the words would be carefully considered, and the Committee passed on to other amendments.

Clause 14.

Clause 14, Section 25 of the Act, contained the definitions of total value and site value.[1] The first amendment moved was to insert after the word "the" in Section 1 the word "net." It was argued that it was more equitable to take the net amount which a buyer or seller would

[1] *Clause* 14.

(1) For the purposes of this Part of this Act, the total value of land means the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, might be expected to realize.

(2) For the purposes of this Part of this Act, the site value of land means the amount which the fee simple of the land, if sold at the time in the open market by a willing seller, might be expected to realize if the land were divested of any buildings and of any other structures (including fixed or attached machinery) on, in, or under the surface, which are appurtenant to or used in connection with any such buildings, and of all growing timber, fruit trees, fruit bushes, and other things growing thereon.

(3) . . .

(4) The Commissioners shall allow as deductions from the site value of any land:

(*a*) Any part of that site which is proved to the satisfaction of the Commissioners to be directly attributable to works of a permanent character executed *bona fide* by or on behalf of any person interested in the land for the purpose of fitting the land for use as building land or for the purpose of any business, trade, or industry other than agriculture; and

(*b*) . . .

and the site value as reduced by those deductions shall be taken to be the site value as ascertained for the purpose of this Part of this Act. (Parl. Deb., Coms., 1909, vol. ix. col. 733.)

realize, for property estimated to fetch £1,000 at a sale would realize to its owner only £982 10s., or thereabouts, after payment of Vendor's costs and expenses. The Attorney-General refused to accept the amendment, because under Clause 2 the taxable value was to be the whole consideration. "If the amendment is accepted," he said, "we shall in the original site value make a deduction for expenses, but the higher the original site value for the purposes of the Increment Value Duty the better it is for the taxpayer, because it is the amount of the original site value that is deducted from the consideration given on the transfer before you arrive at the amount it is desired to tax." [1]

On an amendment to insert at the end of Section 2 the words given below,[2] the Committee once more discussed the methods of valuation adopted by the Bill. Under Clause 14 it was again pointed out that the site value was estimated. One did not begin with the total value and then deduct from it, or divest it of, value attributable to buildings to arrive at original site value. The datum in that case was the value of a subject in a hypothetical condition. In ascertaining occasional site value, the datum was the total value as measured by the actual price

[1] Parl. Deb., Coms., 1909, vol. ix. col. 736.

[2] *Ibid.*, 1909, vol. ix. col. 736. To insert at the end of Section 2 the words "Provided that, in the opinion of the owner, the original site value entered in the return required by Section 16 of this Act may be calculated by deductions from total value according to the method prescribed by Sub-section 2 of Section 2 of this Act."

got on a transaction. The amendment proposed to give the owner the option of having the same datum for both valuations. In estimating the original site value, he might start with an estimated total value, and make the deductions from that value, just as under Clause 2 he started with total value as measured by the consideration, and made his deductions from that value. The Government refused to accept the amendment because nothing had been said to impugn the scheme adopted in the Bill.

Before dealing with the Report Stage, it is necessary to put in the form of a summary what seems to have been the intention of the Committee with regard to those two site values, and how they were to be ascertained. To ascertain the occasional site value, it was originally intended under the Act to deduct from the consideration the value of the buildings and structures. The Lord Advocate told the Committee that, in his opinion, this value meant cost less depreciation. The Government then came to the conclusion that this would be unfair, and an amendment was moved that the value attributable to buildings should be deducted. Under Clause 14, for the purpose of estimating site value, the land was regarded as divested of buildings, structures, trees, and other things. In order to make the two clauses comparable a further amendment was moved by the Government, as described above. Thus, when the clauses left Committee, the value attributable to all the things which, under

Clause 14, were excluded in estimating the original site, was to be deducted from the consideration under Clause 2 to arrive at occasional site value, and it seems clear that the construction intended was that contended for by the appellant in Lumsden *v.* Commissioners of Inland Revenue.

THE REPORT STAGE.

Clause 2.[1]

The first amendment moved was one to exclude all minerals, whether worked or unworked, from

[1] (1) For the purposes of this Part of this Act the increment value of any land shall be deemed to be the amount (if any) by which the site value of the land, on the occasion on which Increment Value Duty becomes due, exceeds the original site value of the land.

(2) The site value of the land on the occasion on which Increment Value Duty becomes due shall be taken to be:

(*a*) Where the occasion is a transfer on sale of the fee simple of the land, the value of the consideration for the transfer; and

(*b*) . . .

(*c*) . . .

(*d*) . . .

subject to such deduction (if any) as the Commissioners allow in each case in respect of any part of the value which is proved to be attributable to buildings, structures, or other things of which the land is deemed to be divested under this Act for the purpose of ascertaining the site value, or to any matter in respect of which a deduction may be allowed under this Act in estimating that site value, or to the expenditure of money on any redemption of land tax, or of any rent charge as defined in this Act effected after the 30th day of April, 1909, or to goodwill, or any other matter which is personal to the owner, occupier, or other person interested for the time being in the land, and, in the case of agricultural land, the value of which is due solely to its capacity for agricultural purposes, also, in respect of any part of that value which is proved to the Commissioners to be attributable to works of a permanent character, executed by or on

the operation of the clause. It was resisted by the Government and defeated by the House.[1] There then followed two drafting amendments,[2] to which an amendment was moved to throw upon the Commissioners the responsibility of proving that the rise in value had been caused by something done by the community.[3] The House did not divide upon the amendment, and it was withdrawn. Amendments were moved to allow the owner of land to deduct any loss which he sustained on his property from any gain he realized before he had to pay the tax on the gain[4]; to allow the deduction of such a sum as would compensate the owner for loss of income with compound interest thereon at 4 per cent. during the period he was unable to sell or let the land.[5] The former touched the fundamental principle of the tax and was defeated. The latter was one which had been moved in Committee, with one important difference, namely, the Commissioners were to say what consideration it would be reasonable for the

behalf or at the expense of any person interested in the land, or to the good husbandry of any person in occupation of or interested in the land.

(3) . . .

(4) . . .

(5) . . . Parl. Deb., Coms., 1909, vol. xii. col. 206.

[1] Parl. Deb., Coms., 1909, vol. xii. col. 208.

[2] *Ibid.*, 1909, vol. xii. col. 217. To leave out the words "become" ("on which increment value becomes due") and to insert "is to be collected as ascertained in accordance with this section."

At end of Sub-section 1 to insert words "as ascertained in accordance with the general provisions of this Part of this Act as to valuation."

[3] *Ibid.*, vol. xii. col. 217.

[4] *Ibid.*, vol. xii. cols. 220, 221.

[5] *Ibid.*, vol. xii. col. 233.

owner to accept. "I am not prepared," said Mr. Lloyd George, "to adopt the very remarkable principle laid down . . . that the Commissioners are to decide what value the consideration is to be." Five drafting amendments were then made to the clause,[1] after which the Attorney-General moved a most important amendment, namely, to leave out the words in Section 2, "subject . . . land," and the words in Section 3, and in their place to insert, "In each case to the like deductions as are made under the general provisions of this Part of this Act as to valuation, for the purpose of arriving at the site value of land from the total value."[2] Clause 2, he again explained, gave the occasional value, Clause 14 the original value, the difference between the two giving the amount on which the duty was to be charged. "In order to make the two clauses agree we incorporated into Clause 2, Section 2, the deductions which were to be allowed for the purposes of the site value. Now we propose to put all those deductions into one clause, hence the simpler words we are inserting in this clause. They make no difference whatever after careful consideration of the new clause. I say they make no change in the burden on the subject or in the deductions." The Attorney-General then went briefly through the various deductions in Clause 25, and showed how all had been incorporated. In the discussion which followed it was

[1] **Parl. Deb., Coms., 1909, vol. xii. cols. 241–2.**
[2] *Ibid.*, 1909, vol. xii. col. 243.

complained that it was difficult to follow the tax under the new terminology introduced by the Government. No question was raised as to whether the alteration in the drafting would put a different construction upon the two clauses, and the time of the House was occupied by a consideration of what effect the alteration would have on agricultural land.

Clause 25.[1]

The first amendments to Clause 25, which took the place of the old Clause 14, were drafting

[1] *Clause* 25. Parl. Deb., Coms., 1909, vol. xii. col. 662.

(1) . . .

(2) . . .

(3) For the purposes both of total value and site value, land shall be deemed to be sold free from incumbrances, but subject to any rent-charge and to any burden, charge or restriction arising by operation of law or imposed by any Act of Parliament, or in pursuance of the exercise of any powers, or the performance of any duties under any such Act, and to any right of common and to any easements affecting the land, and to any covenant or agreement restricting the use of the land where, in the opinion of the Commissioners, the restraint imposed by the covenant or agreement is reasonably necessary in the interests of the public, or in view of the character and surroundings of the neighbourhood, and the opinion of the Commissioners shall in this case be final, and not subject to any appeal.

(4) The Commissioners shall allow as deductions from the site value of any land—

(*a*) Any part of that site value which is proved to the Commissioners to be directly attributable to work executed or expenditure of a capital nature (including any expenses of advertisement) incurred *bona fide* by or on behalf of any person interested in the land, or arising from the dedication for open spaces of any part of the land of the same owner for the purpose of improving the value of the land as building land, or for the purpose of any business, trade, or industry other than agriculture, or to the expenditure of money on any redemption of Land Tax, or any rent-charge as defined

amendments, and altered the terminology of the expressions used in Clause 14, and introduced new values. The total value became the gross value, the site value, the full site value. The words in Sub-section 3 as far as the word "and" were struck out, and a definition of a new value inserted, called the total value. "The total value of land means the gross value after deducting the amount by which the gross value would be diminished if the land were sold subject to any fixed charges, and to any public right of way or any public rights of user." [1] "We are showing," the Attorney-General said, "the meaning of the various definitions, but they will make no difference to the incidence of the tax; they do not alter it. These amendments are simply to ensure that the various explanations which were given during the Committee Stage shall be put into the Bill. . . . We have already passed the 'gross

> by this Act, or other fixed charge not being an incumbrance within the meaning of this Act, or on the enfranchisement of copyhold land or customary freeholds, or to goodwill, or any other matter which is personal to the owner, occupier or other person interested for the time being in the land, provided that where any works executed or expenditure incurred for the purpose of improving the value of the land for agriculture have actually improved the value of the land as building land, or for the purpose of any business, trade, or industry, other than agriculture, the works or expenditure shall for the purpose of this provision be treated as having been executed or incurred, also for the latter purposes; and
>
> (*b*) . . .
>
> and the site value as reduced by those deductions shall be taken to be the site value as ascertained for the purposes of this Part of this Act.
>
> (5) . . .

[1] Parl. Deb., Coms., 1909, vol. xii. col. 665.

value'—that is the value of the land, with the buildings upon it, and taking no account of restrictions. We next come to the 'site value,' which is the total value reduced by all the deductions which we provide. We have used so many expressions . . . that it was desirable to put those expressions into the Act." Three amendments were next made by the Government, one raising discussion of the manner in which the Commissioners were to exercise discretion as to the covenants.[1] It was felt by many members that there should be a right of appeal from the decision of the Commissioners with regard to covenants and easements. An amendment to allow an appeal had been before the Committee, but was withdrawn. The question was again brought to the notice of members on a motion to leave out the words "and the opinion of the Commissioners shall in this case be final and not subject to any appeal."[2] In view of the opinion expressed on both sides of the House, the Government amended Sub-section 3 to allow an appeal to the referee.

An important drafting amendment was made by the Government[3] re-arranging the clause for

[1] Parl. Deb., Coms., 1909, vol. xii. col. 668.

[2] *Ibid.*, 1909, vol. xii. col. 672.

[3] *Ibid.*, 1909, vol. xii. col. 684. In Sub-section (4) to leave out the words "The Commissioners shall allow as deductions from the site value of any land" and to insert instead the words "The assessable site value of land means the total value after deducting—

(*a*) "The same amount as is to be deducted for the purpose of arriving at full site value from gross value; and

(*b*) . . ."

the purpose of dividing into sub-sections the parts of a long and troublesome clause.

Concern was felt in some parts of the House that a person might be taxed on some part of the value attributable to his own expenditure. As the clause stood, it was not possible to deduct expenditure of a capital nature unless it could be proved to be directly attributable to the value of the land. An amendment was accordingly moved to leave out the word "directly" in paragraph (*a*) [1] The special case which prompted the moving of the amendment was that of the garden city where the increase in the increment value of the land was entirely due to the enterprise of the promoters. On a division being taken, the amendment was defeated.

Three further important drafting amendments were made by the Government.[2] It was next attempted to move an amendment to divest the land of agricultural equipment, but this was ruled out of order by the Speaker. Further drafting amendments were made by the Government.[3]

[1] Parl. Deb., Coms., 1909, vol. xii. col. 685.

[2] *Ibid.*, 1909, vol. xii. col. 697. In paragraph (*a*) to leave out the words "or" ("or the expenditure of money") and to insert "and (*c*) any part . . ."

In paragraph (*b*) after word "the" ("the site value") to insert the word "full."

[3] *Ibid.*, 1909, vol. xii. col. 699. In paragraph (*b*) after word "value" ("arriving at the site value of") insert words "from the gross value of the land."

In same paragraph to leave out the words "and the site value as reduced by those deductions shall be taken to be the site value as ascertained for the purpose of this Part of this Act" and to insert the words "Where . . . purposes."

" Any reference in this Act to site value (other than a reference

A discussion on the question of the cost of drains from the value of agricultural land brought the proceedings on the Report, so far as this clause was concerned, to a close.

The parliamentary history of these clauses has now been given, and it substantiates that part of this work which generally describes the conditions under which the House of Commons legislates. As was pointed out earlier, the original site value was the estimated value of the divested land; the occasional site value was the "total value as measured by the actual price got on a transaction," or "the total value based on the consideration," subject to the deduction of the value attributable to the buildings, structures, and other things of which the land, for the purpose of estimating original site value, was deemed to be divested. The difference between these two values so found, less certain other deductions to be allowed by the Commissioners, was the site value for the tax. On the Report Stage, total value became gross value, and a new value was introduced and called total value. All the deductions, for the sake of simplicity, were put into one clause. It was this re-arrangement, and the considerable alterations made to Clauses 2 and 14, which gave rise to the ambiguity we are discussing. The House was told that the many amendments were purely drafting amendments,

to the site value of land on an occasion on which Increment Duty is to be collected) shall be deemed to be a reference to the assessable site value of the land as ascertained in accordance with this Section."

necessary to make the Bill more intelligible; as such it accepted them, omitting to inquire whether they altered the whole construction of the clauses.

COMMISSIONERS OF INLAND REVENUE *v.* GRIBBLE.[1]

This case raised the question of the proper construction of the word " purchase " in Section 14, Sub-section 1 of the Act. The Appellants were the trustees under a Marriage Settlement, whereby a freehold house, subject to a lease for ninety-four years from Michaelmas 1816, was conveyed to them upon trust to sell and hold the proceeds upon certain other trusts. On September 29, 1910, the lease expired, and the appellants were assessed for reversion duty under Section 13 of the Act. They appealed to a referee against the assessment, on the ground that the reversion was purchased before April 30, 1909. On the referee deciding in favour of the trustees, the Commissioners appealed. Horridge, J., found in favour of the Commissioners, and the appellants took the case to the Court of Appeal.

The question for the Court was whether the word " purchase " was used in a technical sense or merely restricted to the meaning of " buy." The Master of the Rolls and Kennedy, L.J., decided that the meaning of the word was " the ordinary and commercial and businesslike meaning of the word," and the appeal was accordingly

[1] 3 K.B., 1913, pp. 212–21.

dismissed. "If," said Kennedy, L.J., "a man tells me in ordinary life, 'I have just purchased a house,' I certainly do not suppose he has been exchanging another house for it. If I say, 'I have bought a reversion,' I presume I should be understood to mean 'purchased.' . . . 'Purchase' may not be the most perfect expression that could be used, because to be perfect possibly the word should have been—and this discussion shows it—qualified by the words 'for money.'"

Buckley, L.J., delivered a strong dissenting judgment. He pointed out that the word "purchaser" might have one of four meanings. It might mean a buyer for money; purchaser for money's worth; purchaser for valuable consideration; a person who takes otherwise than by descent, and that this last meaning, relating exclusively to real property law, ought not to be taken into account. "I read this section," he said, "as meaning that, in the case of a reversion to a lease acquired for value, not necessarily for money or money's worth, the exemption is to attach in favour of the person sought to be charged." He added that it was commonplace that the imposition of a duty in statutes of taxation must be in plain terms. Though Section 14 did not impose a duty, it exempted from a duty, and therefore came equally within the observation, in the sense that all were exempted who were not plainly included.[1]

[1] 3 K.B., 1913, pp. 217–19.

PARLIAMENTARY HISTORY OF CLAUSE 8.[1]

Under Clause 7 of the Bill a duty called Reversion Duty was to be paid "on the value of the benefit accruing to the lessor by reason of the determination of the lease." The benefit was the difference between the total value of the land at the time the lease determined and the capital value of the consideration for the original grant of the lease. The duty was to be paid at the rate of £1 for every full £10 of the value.[2]

In Clause 8 certain reversions were exempted from the duty.

The first amendment to Clause 8 was one to exempt all persons from paying the tax who had bought reversions before the introduction of the Budget. It was contended that the Government, by maintaining this section, discriminated unfairly between one class and another. The amendment was resisted, on the ground that it was necessary to have a hard-and-fast line,

[1] *Clause* 8.

(1) Where in the case of a reversion purchased before the 30th day of April, 1909, the lease on which the reversion is expectant determined (otherwise than by agreement between the lessor and the lessee, not contained in the lease itself) within thirty years of the date of the purchase, no Reversion Duty shall be charged under this section of the Act on the determination of the lease.

(2) No Reversion Duty shall be charged on the determination of a lease the original term of which did not exceed twenty-one years, nor shall Reversion Duty be charged where the interest of the lessor expectant on the determination of a lease is a leasehold interest which does not exceed that number of years.

[2] Parl. Deb., Coms., 1909, vol. ix. col. 87.

and accordingly defeated.[1] The clause was then closured, on the motion of Mr. Lloyd George, down to the word " thirty." [2]

By reason of the Closure, the Committee were precluded from discussing several amendments which would have raised the question of the meaning of the word " purchased." [3] Undoubtedly had the Committee been able to discuss these amendments, or at any rate those of Mr. Watson Rutherford, the ambiguity which gave rise to the case of the Commissioners of Inland Revenue *v.* Gribble would never have arisen, for probably some such words as suggested by Kennedy, L.J., would have been adopted to make the meaning of the word " purchased " clear.

Having closured so many important drafting amendments, the Committee went on to discuss

[1] Parl. Deb., Coms., 1909, vol. ix. col. 287.

[2] *Ibid.*, 1909, vol ix. col. 316.

[3] Amendments closured. See Order Paper of the House of Commons, July 20, 1909, p. 3351.

Earl of Ronaldshay.—Clause 8, page 7, line 7, leave out word " where."

Mr. Charles Craig.—Same amendment as above.

Captain Craig.—Clause 8, page 7, line 5, leave out Sub-section (1).

Mr. Watson Rutherford.—Clause 8, page 7, line 5, after word " of," insert words " land acquired for valuable consideration in money or money's worth before April 30, 1909, and leased before April 30, 1909, or in case of."

Clause 8, page 7, line 5, after word " reversion " insert words " acquired for valuable consideration in money or money's worth."

Clause 8, page 7, line 5, after word " purchased," insert words " or acquired by devise, or succession, or otherwise."

Mr. Joynson-Hicks.—Clause 8, page 7, line 5, after word " purchased," insert words " or agreed to be purchased."

amendments which attacked the principle of the tax. Amendments were moved to extend the exemption to reversions purchased before April 30, 1909, where the lease determined within sixty years of the date of the purchase [1]; to exclude premises demised on the same terms and conditions as contained in the lease determined where no fine was paid or any other consideration given for the demise.[2]

On the Report Stage no discussion took place, nor were any amendments made to the clause.

No long conclusion from the parliamentary history of the clauses discussed above is necessary. It is submitted that that history, and the two cases mentioned which raised important points of construction on the clauses, clearly show the need for the existence of a strong revising body.

THE PROTECTION OF MINORITIES.

A good example which shows the need of a Second Chamber to protect, by modifying legislation, the rights of minorities is provided by the Temperance (Scotland) Act, 1913. A Temperance Measure, in the form of Local Option, had long been before the electors of Scotland. As long ago as 1880, 1881, and 1882, resolutions, moved by Sir Wilfrid Lawson in the House of Commons, had received considerable support from Scottish members. In 1912 the Liberal Govern-

[1] Parl. Deb., Coms., 1909, vol. ix. col. 323.
[2] *Ibid.*, 1909, vol. ix. col. 343.

ment recognized the demand for such a measure, and adopted a private member's Bill which had been before the House in the Sessions of 1909, 1910, and 1911, and they promised to see that it became law.

The 1912 Bill was presented to the House in the form in which it had last passed the Scottish Grand Committee, and it was claimed that the great temperance organizations in Scotland were all in favour of it.[1] Ostensibly the Bill was a Local Option Bill, containing three main provisions: the first dealt solely with local option; the second altered the hours of opening public-houses; and the third dealt with the position of clubs.[2] For the purpose of giving effect to local option, local government areas were selected to be the areas within which the options under the Bill were to be worked. Electors in each area were to be given power, by means of a poll, obtained by a requisition, which had to be signed by 10 per cent. of the electors in the area, to vote for three resolutions. Any elector might demand a form of requisition from the clerk of the local authority. He then had to get his paper signed and lodged, after which the poll followed.[3] The Secretary for Scotland was also given power to regulate the procedure by which the requisition was obtained.[4]

The first resolution on the voting paper, and

[1] Parl. Deb., Coms., 1912, vol. xxxvi. col. 883.
[2] *Ibid.*, 1912, vol. xxxvi. cols. 884 and 885.
[3] Clause 5 of the Bill, Sub-section 1.
[4] *Ibid.*, Sub-section 2.

the most drastic, was that no licence should be granted within the area. For this to be carried, it was proposed that a three-fifths majority of the voters, which majority had to consist of at least 30 per cent. of the electorate in the area, should be required. The second resolution was a limiting resolution. For this to be carried, it was proposed to require a majority consisting of at least 30 per cent. of the electorate in the area. The third resolution was a no-change resolution. It was proposed that only a bare majority should be necessary to carry this. If the last resolution was carried, the system of magisterial discretion was to continue.[1] If the no-licence resolution was not carried, all the votes recorded for it were to be given to the limiting resolution.[2]

The second main provision of the Bill proposed that no public-house should open before ten o'clock in the morning.

The third provision dealt with the unsatisfactory position of the law relating to clubs, and set out certain grounds which could be made use of to object to the licence possessed by clubs.[3]

The time fixed for the Bill to come into operation was five years from the 1st day of June, 1912.

The second reading of the Bill was moved by the Secretary for Scotland in the House of Commons, and the Opposition was led by Captain Gilmour and Mr. Mackinder. The principal objections were stated shortly by the latter two.

[1] Parl. Deb., Coms., 1912, vol. xxvi. col. 884.
[2] Clause 2 (ii). [3] *Ibid.*, 8 (i), (ii), (iii), and (iv).

It was complained that this was necessary on the second reading, because, when "matters with which this question bristles and which involve differences of opinion as to the methods of advancement, and in regard to the justice done to those touched by the Bill," came to be discussed, the Government remained obdurate and refused to compromise.[1] The Government were warned, "You will have a piebald city black and white; you aim at making good better, but you allow the bad to become worse.[2] It was objected to the form of the resolutions that if the no-change resolution was carried the hands of the magistrates would be tied, and this would prevent a reduction of the licences in the area which had voted for no change.[3] The chief opposition to the Bill was that it contained no scheme for disinterested management and compulsory insurance, and came into operation too soon. Opposition on these grounds had been anticipated, and the Government admitted that a disinterested management clause would not strike at the principle of the Bill, and that such a clause, in the form of another option, could be put into the Bill in Committee. With regard to compulsory insurance, the Secretary for Scotland informed the House "that what the trade really wants is a compensation scheme something like the scheme which exists in England. . . . To setting up anything resembling that scheme,

[1] Parl. Deb,, Com., 1912, vol. xxxvi. col. 896. (See Mr. Mackinder's speech.)

[2] *Ibid.*, 1912, vol. xxxvi. col. 897.

[3] *Ibid.*, 1912, vol. xxxvi. col. 897.

or involving the consequences of that scheme, the Government is entirely opposed." [1] It was protested that the insertion of the short-time notice, and the absence of any financial basis upon which a scheme could be founded by the trade, made it impossible for any scheme of voluntary insurance to succeed; and the Government was told "the worst you can do in the interests of temperance is to give your legislation a vindictive appearance." [2] Great regret was expressed at the absence of a disinterested management clause. Some ascribed its absence to the prohibitionists who supported the Government.[3] "The Bill is called a Local Option Bill," said one member, who, for a long number of years, had been associated with temperance work, "but it is not a Local Option at all; it is a Limited Local Veto Bill. What we want is a real Local Option Bill." [4] The Bill passed its second reading by a majority of fifty-three votes, and was sent to the Scottish Grand Committee.

Later the House was informed that in Committee the Government had been "obdurate and indisposed to accept any amendments." [5] Absence of a compulsory insurance scheme was excused on the ground that "it was impossible to put the proposed scheme in the Bill . . . because there was a choice of one out of some four or five

[1] Parl. Deb., Coms., 1912, vol. xxxvi. col. 886.
[2] *Ibid.*, 1912, vol. xxxvi. col. 901.
[3] *Ibid.*, 1912, vol. xxxvi. cols. 901–3 and 926.
[4] *Ibid.*, 1912, vol. xxxvi. col. 924. (Mr. Hogge.)
[5] *Ibid.*, 1912, vol. xliii. col. 437.

schemes placed before us . . . and not a single person from first to last on either side of the House gave a whole-hearted support to any one of the schemes; they were all 'damned with faint praise.'" [1] Mr. McKinnon, who had charge of the Bill, promised, however, to look "with a very benevolent eye" upon any Private Member's Bill which came before the House with a scheme of compulsory insurance. The Bill passed its third reading, and was sent to the House of Lords.

This is the kind of Bill which a Second Chamber, acting in pursuance of Function 1, would be expected to modify. If put into operation in the form in which it left the House of Commons, injustice might be done to a certain section of the community. Moreover, although purporting to be a Local Option Bill, it clearly was something more, and it was felt that the absence of the disinterested management clause could be directly traced to the influence of the extremists supporting the Government.

From the first the House of Lords conceded the principle of the Bill, and agreed that there was a strong desire in Scotland for a Local Option Bill. "I readily admit," said the Earl of Camperdown, "that there is a considerable feeling in Scotland in favour of some measure of this sort, but whether Scotland is in favour of this particular Bill is another matter." [2] The House rightly felt bound "to consider the rights which

[1] Parl. Deb., Coms., 1912, vol. xliii. col. 475.
[2] *Ibid.*, Lords, 1912, vol. xii. col. 870.

have grown up under the present system, and to deal justly and reasonably with those interests." [1] In that spirit it set about amending the Bill.

On the Second Reading, the Bill was generally criticized. It was pointed out that " the publican who obeys the law, who conducts his business on sound and proper lines, gets a reward, and he knows that if he goes on conducting his business on those lines he will get a renewal almost as a matter of course." On that ground it was urged that it was just that the Bill should contain a scheme for compulsory insurance.[2] With regard to disinterested management, the opinion was expressed that, while neither the strict temperance man, nor the trade, might like such a system, it did enable the sale of liquor to be regulated on sound and wise lines.[3]

In Committee amendments were moved to remove the objections to the Bill. The first important amendment was to postpone the operation of the Bill for fourteen years. It was argued that " when licensed premises are bought and sold, from fifteen to eighteen years of the net profits is the rate at which they change hands." [4] It was pointed out that all classes of men had their money in licences. If the Bill came into operation in so short a period as five years, there was a risk that many of these men

[1] Parl. Deb., Lords, 1912, vol. xii. col. 867. (See speech of Lord Balfour of Burleigh, cols. 860–9.)

[2] *Ibid.*, Lords, 1912, vol. xii. col. 866. (Lord Balfour.)

[3] *Ibid.*, 1912, vol. xii. col. 868.

[4] *Ibid.*, 1912, vol. xii. col. 1002.

would be ruined. By giving them a longer period, it was hoped that licensees would be able to arrange to give up their licences without absolute and complete loss. The Government refused to accept the amendment, on the ground that their proposals had been before the electorate for some time, and licensees had had ample time to prepare for the Bill.[1] Many in the House thought fourteen years too long a period, but they were not prepared to support the Government period of five years. It was rightly felt that people who had put their money into a legitimate undertaking, "and whose property had been recognized by the Exchequer,"[2] were entitled to equitable treatment. The Bill was accordingly amended. On the Report Stage, the Bill was further amended, the period of fourteen years being reduced to ten years.[3]

Two important amendments dealing with disinterested management were brought before the Committee; one by Lord Balfour of Burleigh, and the other by Lord Salisbury. The former proposed that disinterested management should have a monopoly in the area. The latter proposed that there should be four instead of three options put before the voter, the fourth option being one of disinterested management. The Government refused to accept either scheme.

[1] Parl. Deb., Lords, 1912, vol. xii. col. 1004. (See speech of Earl Beauchamp.)

[2] *Ibid.*, 1912, vol. xii. cols. 1005–8. (See speech of Lord Balfour.)

[3] *Ibid.*, 1912, vol. xiii. col. 212.

They even refused to say which of the two schemes they preferred. On the Report in the House of Commons, Mr. Sherwell, an ardent temperance reformer, although in favour of disinterested management, had refused to move any amendment, because he knew it would be hopeless on account of the pressure the Government were exerting through the whips.[1] The House of Lords, however, was determined to have some scheme of disinterested management. Lord Balfour, therefore, withdrew his amendment, and supported Lord Salisbury's amendment, which was carried.

The Committee next sought to increase the number of votes required for a no-licence resolution from a three-fifths majority to a two-thirds majority.[2] As municipal electors in Scotland represented only 17 per cent. of the population, it was pointed out that the Bill enabled 5 per cent. of the population to dictate to the remainder. The provision that, in the event of a no-licence resolution not carrying, all votes given to it should be added to the votes cast for the limiting resolution, was felt to be very unfair. There were three distinct resolutions, and a man had to make up his mind which he intended to vote for before he marked his paper. That one set of votes should be transferable was inequitable, and intended as a sop for the prohibitionists. The Government refused to amend the clause, and asked the Committee not to agree to the amend-

[1] Parl. Deb., Coms., 1912, vol. xlii. col. 295.
[2] *Ibid.*, Lords, 1912, vol. xii. col. 1083.

ment, but the amendment was agreed and the clause deleted.[1]

A scheme of compulsory insurance was brought before the Committee by the Earl of Camperdown. "These licensees," said Lord Salisbury, "are really deserving of pity. It may be public will in Scotland for the licences to be reduced, but I certainly think it is a great pity that these men who have been earning an honest living up till now should be ejected without any means of compensation."[2] The scheme proposed was thought to be too complicated to be adopted.[3] On the Report, Lord Salisbury and Lord Balfour of Burleigh presented a joint scheme of disinterested management and insurance, which was accepted by the House.[4]

"With the exception of one alteration—a very small alteration changing three-fifths of the persons who actually voted into two-thirds—this House has not passed any amendments which can in any way be said to interfere with the principle of the Bill,"[5] said Lord Balfour, and those words may be taken as correctly describing the work of the House of Lords. The Bill had been modified to secure justice to a minority, Local Option as distinct from Prohibition.

The Government majority in the House of Commons refused to accept the Lords' amend-

[1] Parl. Deb., Lords, 1912, vol. xii. col. 1089.
[2] *Ibid.*, 1912, vol. xii. col. 1136.
[3] *Ibid.*, 1912, vol. xii. col. 1121.
[4] *Ibid.*, 1912, vol. xiii. cols. 219–20.
[5] *Ibid.*, 1912, vol. xiii. col. 350. (Lord Balfour.)

ments. On May 7, 1913, the Bill was again introduced into the House of Commons, and it was proposed to bring the machinery of the Parliament Act into operation. The intention of the Government was to bring in the Home Rule Bill and the Welsh Church Disestablishment Bill under the same procedure at the same time. Strong protests were raised against such a course. "There are almost all the differences in the world between this Bill and the other two to which the Parliament Act is to be applied. This is a Bill of a different character in the respect that it raises no large or constitutional question as both the others do. It is different in the subject matter with which it deals, and it is concerned with a question which falls under that category of social reform where our differences are differences of method, and not of principle." [1] Such was the argument against the course proposed. It was agreed that an opposition or a party in power could not always have its own way, and had to acquiesce in what the majority demanded, but it was argued that the minority had the right to insist upon, and to have "fair conditions and upon reasonable terms." [2] By the aid of the Guillotine, the Bill was rushed through the House of Commons, and then sent to the House of Lords. The latter protested strongly against the Bill being brought in under the Parliament Act, but they read it a second time and sent it to a Committee

[1] Parl. Deb., Coms., 1913, vol. liv. col. 681. (Mr. Clyde.)
[2] *Ibid.*, 1913, vol. liv. col. 684. (Mr. Clyde.)

of the whole House. During Committee, an arrangement was made between the Opposition and the Government, because of the distaste both felt at bringing the Bill under the Parliament Act. The Opposition were to allow the Bill to pass, and the Government in return promised two important concessions. The percentage of votes required for a no-licence resolution to pass was increased, and the time for the coming into operation of the Bill was extended to eight years.[1]

The history of this Bill shows the need of a Second Chamber to perform this function. The actual working of the Act shows, quite clearly, that the Bill had not the support in Scotland that its authors claimed for it. The allegation of the House of Lords, that the Act was not a Local Option Act, and did not further to any material extent the cause of temperance, or was in the best interests of temperance reform, has been fully substantiated. The first poll under the Act was held in the months of November and December of 1920. Of the one thousand two hundred and fifteen areas, into which the country was divided, three hundred and eight were already without public houses. Polls were taken in five hundred and eighty-four areas. In five hundred and eight areas the no-change resolution was carried. In thirty-five areas the limitation resolution was carried. In forty-one areas the no-licence resolution was carried. That result certainly does not justify the contention that the Act was in

[1] Parl. Deb., Lords, 1913, vol. xiv. cols. 1475 and 1481.

the form desired by Scotland, or that it would promote temperance. The Local Vetoists, whose resolution was placed first on the voting paper, and who obtained the benefit of the votes of the limitation resolution, only obtained 38·4 per cent. of the total votes recorded.[1] Another poll was taken in October, November, and December of 1923. "If ever," writes Lord Salvesan (a retired Scottish Judge), "there was an occasion which held forth a promise of success for the No-Licence Party, it was the last plebiscite. They had prepared for it steadily for a period of three years; they had past successes to boast of; their campaign was assisted by thousands of voluntary workers—by pulpit oratory in most of the so-called Evangelical Churches; by lavish expenditure on propaganda; by hundreds of public meetings; and by the fact which was never contemplated when the 1913 Act was passed, that the number of votes had been more than doubled by the lowering of the franchise and the inclusion of women."[2] Yet with all this preparation and this extra advantage, the result of the plebiscite did not justify the assertion that the Act met a long-felt want in Scotland. Polls in the 1923 election were taken in two hundred and fifty-seven areas. In two hundred and eight areas the no-change resolution was carried. In two areas the limitation resolution was carried. The no-licence resolution failed to receive sufficient support in

[1] *Scotsman* for December 23, 1920.

[2] See his article in *English Review*, February 1924.

any area. For a continuation of a limited number of public-houses, the necessary percentage of votes was received in sixteen areas, but the limiting resolution was repealed in six areas. No-licence was continued in eighteen areas and repealed in five areas.[1]

It is submitted that those results show the need of a Second Chamber to revise legislation along the lines indicated above.

FUNCTION 2.

In discussing Function 1, it has been seen how little time the House of Commons has to accomplish the great volume of public and private work. Naturally, the Government takes most of the time for its own measures, for it is upon these that its reputation depends. Every Government has its programme to put into operation. The greater part of this programme is politically controversial. Even were this not so, it is still the duty of the Opposition in the House of Commons to oppose. The result is that the Government measure takes time to get through, and there is little opportunity for the uncontroversial private member's Bill, however necessary it may be. As regards Government Bills of a non-controversial character, these excite no enthusiasm, and lead the Government outside its programme. Frequently the Government promises to introduce such a Bill, or promises facilities for a private member's Bill

[1] White Paper, Cmd. 2059 (1923).

which has passed its Second Reading. When the time comes for the promise to be fulfilled, the House is too busy discussing matters of great political importance, and the uncontroversial measure has to give way. The result is that Bills of great importance have to be shelved, merely because they are uncontroversial. Appended below is a list of Bills which failed to become law during the Session of 1924, in many cases because the Government, finding itself handicapped by lack of time, was unable to grant the necessary facilities.[1] All these Bills are not, of course, of equal importance, but with the exception of the Trade Union Act Amendment Bill and the Merchandise Marks Bill they were uncontroversial from the political point of view.

It is Bills of this kind which Lord Bryce wished to assist, by having them put into shape by the Second Chamber. Had the Bills which failed to pass in 1924 been first discussed in the House of Lords, and then sent in good order to the House of Commons, the amount of time wasted in the Commons could have been utilized to much greater advantage, and many of those Bills, considerably altered no doubt in detail, would have become law.

The history of a few of these Bills, in order to

[1] Adoption of Children Bill; Allotments Bill; Bankruptcy Bill; Blind Persons Act (1920) Amendment Bill; Building Material Bill; Criminal Justice Bill; Guardianship of Infants Bill; Legitimacy Bill; Merchandise Marks Bill; Moneylenders Bill; Northern Ireland Land Bill; Public House Improvement Bill; Summer Time Bill; Trade Union Act Amendment Bill.

show how very necessary is the function, is now briefly given.

THE BLIND PERSONS ACT (1920) AMENDMENT BILL.

This Bill was presented to the House of Commons on January 18, 1924, by Mr. T. Henderson, supported by Mr. Clynes, and, in the usual manner, it was read a first time, ordered to be printed, and a day was fixed for the Second Reading.[1] On May 23rd, the Second Reading was moved by Mr. Henderson. The object of the Bill, as appeared from its title, was to amend the Blind Persons Act, 1920. "The discussion," said Mr. Henderson, "during the progress of the 1920 Bill in this House made it perfectly clear that, if the blind were to be looked after in the manner in which we believed they ought to be looked after an alteration would have to take place in the law. . . . The 1920 Act was a step in the right direction, it has failed in so far as the well-being of the blind is concerned."[2]

That the well-being of the blind might in future be assured, Mr. Henderson's Bill contained two main provisions. The first was to reduce the pensionable age to thirty. The second was to give the blind worker the full unskilled rate of pay.

Examples were shortly given to the House which, in Mr. Henderson's opinion, justified the

[1] Parl. Deb., Coms., 1924, vol. clxix. col. 392.
[2] *Ibid.*, 1924, vol. clxxiii. col. 2567.

proposed alteration in the law, and the Government was urged "to give every facility to the Bill in the hope that we may bring some brighter times to the blind people." [1]

The motion was seconded in a short speech by Mr. T. Martin.[2]

During the debate, it became clear that the Bill was a matter upon which all parties would very willingly co-operate. From all parts of the House congratulations were poured on the proposer and seconder, and sympathy was expressed with the object of the Bill. It was clear that the need of amending the Act of 1920 was felt by everybody. A note of real criticism came from Lord Eustace Percy. He was not in any way hostile to the principle of the Bill, but he was of the opinion that, whilst it might be true that a blind man of thirty years of age, who was incapable of earning his living, would never be able to do so, it was not necessarily so. He did not think it right that a blind man should receive both a pension and the full rate of wages. "The provision of both may be mercy, and it may be generosity, but it is not necessary to remedy the inequality complained of." [3] His criticism was that the Bill lacked statesmanship, and failed to provide a "great system of co-ordination." With its real object he was sympathetic, and he did not divide against the Bill.

[1] Parl. Deb., Coms., 1924, vol. clxxiii. cols. 2567–71. (See his speech.)

[2] *Ibid.*, 1924, vol. clxxiii. cols. 2571–5.

[3] *Ibid.*, 1924, vol. clxxiii. col. 2588. (See his speech.)

A Bill of this character must receive facilities from the Government if it is to become law. Mr. Arthur Greenwood, who was then Parliamentary Secretary to the Ministry of Health, told the House that, whilst the Government was pleased at the support the Bill had received, he was not prepared to say that it would be accepted in all its details.[1] The House was also informed that Mr. Clynes would answer any question as to the possibility of facilities being given to the Bill, and with that answer the House had to be content, one member expressing great disappointment at the attitude of the Government.[2]

On June 4th, the Prime Minister was asked whether he intended to give facilities to the Bill. His answer was that the Government was considering the contents of the Bill, and Mr. Henderson was requested to repeat his question after Whitsuntide.[3] After Whitsuntide accordingly the question was repeated, and the House was informed that the Government was considering the introduction of a Money Resolution of a more limited scope at a later stage, as they were unable to accept the Bill in its present form.[4] At a later date, the Prime Minister was asked whether he intended to grant facilities. Mr. Henderson was referred to the answer given on June 19th, with the observation, "It would in any case be impossible, in view of the state of parliamentary

[1] Parl. Deb., Coms., 1924, vol. clxxiii. col. 2600.
[2] Sir Kingsley Wood.
[3] Parl. Deb., Coms., 1924, vol. clxxiv. col. 1245.
[4] *Ibid.*, 1924, vol. clxxiv. col. 2320.

business, to deal with this matter before the recess." [1] Still another attempt was made to obtain facilities, and the questioner was again referred to the answer of the 19th day of June.[2]

THE SUMMER TIME BILL.

This Bill failed to become law, again because the Government had not time for the necessary facilities. The subject matter of the Bill, though of an entirely different nature from the Blind Persons Bill, was just as important. Again, it was a measure politically uncontroversial.

The object of the Bill was to fix Summer Time in this country permanently, and so that the period should conform with the period of Summer Time on the Continent. In 1922, there had been held in Paris a Conference between French, Belgian, and British representatives to decide the question of Summer Time, and to so fix the period of its operation that the three countries should be in conformity with each other. An agreement was reached. In France, however, the agrarian population, bitterly opposed to the proposed arrangement, forced the Government to drop it. This having been done, agitation was commenced by those who favoured Summer Time, and the French Government had to re-introduce a measure of Summer Time in a modified form.[3] In

[1] Parl. Deb., Coms., 1924, vol. clxxv. col. 2254.
[2] *Ibid.*, 1924, vol. clxxvi. col. 14.
[3] *Ibid.*, 1924, vol. clxxii. cols. 879–80.

England, upon France's failure to ratify the agreement, a compromise was reached as to Summer Time. There was to be no fixed period of operation, and Summer Time was to be renewed annually by the insertion of special provisions in the Expiring Laws Continuance Bill. The period, however, adopted by England, differed from that on the Continent, and much inconvenience was thereby caused. The necessity was felt of coming to a common agreement on this matter with France and Belgium.[1] A second International Conference was held in Paris on March 10, 1924, the British Representative being Sir Malcolm Delevinge.[2] An agreement was reached, and the members of the Conference agreed to recommend to their Governments that Summer Time should commence on the night of the first Saturday in April (if that date coincided with Easter, then on the preceding Saturday), and should end on the night of the first Saturday in October.[3]

The Bill, the Second Reading of which was moved by Sir Kingsley Wood, incorporated the agreement arrived at by the Conference. Sir Kingsley Wood met the criticism of the agriculturists in the House by pointing out that Summer Time benefited the general community. He met criticism of the effect the Bill would have on the education and health of children by reading from a Memorandum, presented in 1922 to the House

[1] Parl. Deb., Coms., 1924, vol. clxxii. col. 811.
[2] *Ibid.*, 1924, vol. clxxiii. col. 606.
[3] *Ibid.*, 1924, vol. clxxiii. col. 606.

by Mr. Fisher, then Minister for Education, and altogether made out a strong case for his Bill.[1]

Opposition to the Bill was led by Major Colfax, who moved an amendment to retain the *status quo* that the period of Summer Time might not be extended.[2] "We are prepared," he said, "to stand by the compromise as it was enacted in 1922, and that is the effect of my amendment."[3] Sir Kingsley Wood was represented as being a typical Londoner, and the mover of the amendment doubted "whether he has ever realized that there is such a thing as rural England." In short, he objected to the Bill on three grounds. It threw the whole of the agricultural community into disorder. It destroyed family life and the health of the child. It caused danger and inconvenience to the miners.[4] The argument of those opposed to the Bill followed the same lines.

Even with regard to a Bill of this kind, which did not involve the spending of money, and thus "give a nasty blow to taxpayers," the attitude of the Government was important. In this case, their attitude was extremely friendly. Mr. Rhys Davis, the Under-Secretary of State for Home Affairs, informed the House that the Government considered it advisable that the Bill should have its Second Reading that day. Mr. Davis himself represented a mining constituency. He told the House he knew what it was like to get up early

[1] Parl. Deb., Coms., 1924, vol. clxxii. col. 815.
[2] *Ibid.*, 1924, vol. clxxii. col. 819.
[3] *Ibid.*, 1924, vol. clxxii. col. 824.
[4] *Ibid.*, 1924, vol. clxxii. col. 827.

in the morning. "But if we are to take into account all the interests concerned," he added, "I am convinced that there is a preponderating opinion in the country in favour not only of regulating Summer Time, but of the permanent regulation of Summer Time. Having made this agreement with the other three countries the Government of the day are very anxious to honour that agreement." [1] Mr. Arthur Henderson, the Home Secretary, also spoke strongly in favour of the Bill. "We have been appealed to—the Home office has been appealed to—not only by France and by Belgium, but by the Post Office, the Ministry of Air, and the railway companies, who say that if you have this divergence in the dates as between one country and another it entirely upsets all the cross-channel traffic, and that has its repercussion upon the whole railway system." [2]

With so much in its favour, the Bill passed its Second Reading, and was then sent to one of the Standing Committees.[3] On June 30th, Sir Kingsley Wood was told by the Prime Minister that the Government had decided to adopt the Bill, because they wished to see it passed into law that session.[4] Nothing further was heard of the Government's intentions, and the cross-channel traffic continued to be upset.

[1] Parl. Deb., Coms., 1924, vol. clxxii. cols. 847–51. (See his speech.)
[2] *Ibid.*, 1924, vol. clxxii. cols. 882–3.
[3] *Ibid.*, 1924, vol. clxxii. col. 886.
[4] *Ibid.*, 1924, vol. clxxv. col. 918.

THE MERCHANDISE MARKS BILL.

The object of this Bill was to prevent, by a system of marking, the British consumer from being deceived into buying agricultural and dairy produce and meat of foreign origin. Bills to accomplish this object had already been before the House of Commons on previous occasions. In 1923, there had been a Merchandise Marks Bill. This Bill had passed its Second Reading by a comfortable majority, but its progress in Committee had been delayed by three obstructionists, Mr. Hogge, Mr. Pringle, and Lieutenant-Commander Kenworthy, who together put down more than a thousand amendments to it. In this way, the Bill had been held up for eighteen days, and it emerged just before the dissolution, which put a stop to further proceedings.[1]

By the 1924 Bill, which was in the same form as the Bill of 1923 as it emerged from Committee, it was proposed that chilled beef and agricultural and dairy produce should be marked, if imported, by a mark showing the country of its origin. "All we ask," said Sir Guy Grant, who moved the Second Reading, "is that the housewife should be entitled to buy that which she wishes to buy, instead of having foreign produce foisted upon her." Sir Henry Cautley, who seconded the motion, explained the various penalties to which foreign merchants and retailers in this country

[1] Parl. Deb., Coms., 1924, vol. clxx. cols. 1809–10.

were to be liable if they disobeyed the provisions of the Bill.[1]

The principal opposition again came from Mr. Hogge and Lieutenant-Commander Kenworthy, the former moving the Opposition amendment. The Bill, however, passed its Second Reading, and was sent to a Standing Committee.[2] No facilities were granted to the Bill, and it never came to be reported to the House.

THE GUARDIANSHIP OF INFANTS BILL.

This Bill was presented by Mrs. Wintringham, supported by Viscountess Astor, Lady Terrington, Sir Robert Newman, and others.[3] The principal Act regulating the law relating to the guardianship of infants was passed in 1886. In 1921, a Bill presented by Sir James Grieg had passed its Second Reading, but had been blocked by a number of contentious amendments on the Report Stage. In 1922 and 1923, Lord Askwith, in the House of Lords, introduced Bills dealing with the reform of the law in question, but the dissolutions of Parliament in those years put a stop to the work of the Joint Parliamentary Committee which was considering those Bills.[4]

Mrs. Wintringham's Bill was based on the evidence given before the two Committees. It contained four chief provisions: (*a*) the mother

[1] Parl. Deb., Coms., 1924, vol. clxx. cols. 806 *et seq.*
[2] *Ibid.*, 1924, vol. clxx. col. 1880 (184 votes to 158 votes).
[3] *Ibid.*, 1924, vol. clxix. col. 394.
[4] *Ibid.*, 1924, vol. clxxi. col. 2659.

was to have equal rights and responsibilities with regard to the guardianship and control of the legitimate infant; (*b*) parents were to maintain their children, educate them, and bring them up according to their means; if cruelty was used to the child, the mother was to share equally in the blame; (*c*) the mother was to have equal rights with regard to the custody of the legitimate child; (*d*) cases of appeal were to be allowed to go to a Court of Summary Jurisdiction.[1]

The Second Reading of the Bill was moved on April 4th. Mr. R. Murray, who seconded the motion, stated that "Primarily this is a Bill for the protection of the child, and only incidentally is it for dealing with certain legal anomalies in the position of fathers and mothers."[2] The House gave the Bill a sympathetic reception, all members present, with the exception of one,[3] declaring themselves to be in favour with the principles of the Bill. The debate on the Second Reading was thus described: "One can hardly call it a debate, because, with the exception of the honourable member for Central Leeds and my honourable friend, we have from almost every Member who has spoken in the debate a whole-hearted support of this Measure."[4]

The Government promised the promoters that a measure, embodying the main principle of the Bill, should be introduced in the House of Lords.

[1] Parl. Deb., Coms., 1924, vol. clxxi. cols. 2661–3.
[2] *Ibid.*, 1924, vol. clxxi. col. 2664.
[3] *Ibid.*, 1924, vol. clxxi. col. 2674.
[4] *Ibid.*, 1924, vol. clxxi. col. 2693.

The Bill was read a second time and sent to a Standing Committee, but it was never reported to the House.

CONCLUSIONS.

The examination of the four important measures, it is submitted, clearly shows the need for a Second Chamber to perform Function 2.

Take the case of the first Bill, the Blind Persons Act (1920) Amendment Bill. It was read a second time without a division, receiving general support from all parts of the House. Yet the Government, because of the state of business, could not find time to introduce the necessary Money Resolutions. One other point remains to be noticed with regard to this Bill. The Bill dealt with an important, though not an attractive, subject. Lord Eustace Percy's criticism showed up its defects, and how necessary it was that there should be someone in the House capable of giving constructive and intelligent criticism, apart from a natural enthusiasm for the object of the Bill. Yet the House was poorly attended, and few members with recognized first class capabilities were present. Had the place for the Second Reading been the House of Lords, this would not have been the case.

Sir Kingsley Wood's Summer Time Bill was of a more attractive nature than the Blind Persons Act (1920) Amendment Bill, and of the kind to provide Members with the opportunity of making a good speech. Hence the House was better

attended than in the case of the other Bill. Although the Bill passed its Second Reading with a good majority, and was welcomed by the Government as honouring an international agreement, it never became law.

The case of the Merchandise Marks Bill is of a slightly different nature. It was suspected of being a protectionist measure, and it only passed its Second Reading by thirty votes. The Government, being a free trade Government, could not perhaps be expected to go out of its way to provide facilities. When the debate on the Second Reading took place, neither the Minister nor the Secretary to the Board of Agriculture troubled to be present, and only put in an unwilling appearance after Mr. Clynes, the Leader of the House, had been dispatched to fetch them.[1] When a Bill of so important a nature was under discussion, there ought to have been no necessity to move the adjournment of the House to fetch the Ministers concerned.

The Guardianship of Infants Bill was an important measure, and one that proposed to effect radical changes in the law, but, during the early part of the debate on the Second Reading, so sparsely was the House attended that notice was given that there were not forty members present. With so important a measure for its consideration, the House of Commons, one feels, ought to have been better attended.[2]

[1] Parl. Deb., Coms., 1924, vol. clxx. col. 1801.
[2] *Ibid.*, 1924, vol. clxxi. col. 2678.

The following seem to be the natural conclusions to make from the discussion of the above examples :

1. The House of Commons has not time to carry through in all its stages an uncontroversial measure without the aid of the Government.

2. When a Government promises facilities, it often finds that the state of business is such that to fulfil its promise is impossible.

3. When the Government actually adopts the Bill, as in the case of the Summer Time Bill, there is no certainty that the Bill will become law, for it still depends upon the state of parliamentary business whether the Government can find time to help it through its final stages.

4. Uncontroversial measures, when they are dealt with by the House of Commons, find themselves in an atmosphere of apathy and indifference. Less than a third of the House takes the trouble to attend, and the best brains studiously avoid attending the debates.

5. A large number of useful and necessary Bills have to be dropped each year.

The need of a Second Chamber to initiate Bills upon which all parties are more or less in agreement, and to put them into a well-considered shape, only leaving the House of Commons to formally pass the Bill, seems clear. If the Second Chamber is generally respected, trusted, and honoured, the initiation and arrangement of such Bills could be safely left to it. Moreover, it would be reassuring to feel that this type of Bill was,

in the first place, receiving the attention of a body of sound, practical men, who cared naught for political contest and excitement, and would give the same care and attention to such a Bill that the House of Commons gives to one engendering a heated political debate.

FUNCTION 4.

This is a function which in the past has been performed, and is to-day performed with great brilliancy, by the House of Lords, especially so far as the function relates to matters in imperial and foreign affairs. The presence in the House of so many Peers possessing great knowledge of imperial and foreign affairs makes the House specially suitable to perform the function. Frequently, also, the Secretary of State for Foreign Affairs, the Indian Secretary, and the Secretary for the Colonies have been members of the House of Lords. The duties of these offices, especially those of the Foreign Office, are so exacting that their holders cannot properly perform them and attend to parliamentary work in the House of Commons. Lord Malmsley once said, "I found what Lord Palmerston told me was correct—namely, that the average work of the Foreign Office took him ten hours of the twenty-four." [1] Lord Balfour has even gone so far as to say that the head of the Foreign Office must be in the

[1] *Memoirs of an Ex-Minister*, p. 585.

House of Lords,[1] though this opinion did not prevent him, whilst a member of the House of Commons, from accepting office in the late Coalition Government as Foreign Secretary. Of course, all Foreign Secretaries have not been members of the House of Lords. Lord Palmerston and Sir Edward Grey, two famous Foreign Secretaries, were both members of the House of Commons. The late Prime Minister, Mr. Ramsay MacDonald, who effected a double rôle, was a member of the House of Commons. The present Foreign Secretary, Sir Austen Chamberlain, belongs to the House of Commons. In the light of recent experience, it is a little difficult to say whether the Foreign Secretary should be a member of the House of Commons or of the House of Lords; but there is no doubt that the House of Lords is the more suitable House for a discussion on foreign affairs.

The most important work comprised in the function is that dealing with foreign affairs, and in the following pages it is proposed to discuss the need of a Second Chamber to perform the function in its dealing with foreign affairs.

A discussion of Function 1 brought out the fact that the House of Commons was a body giving consideration to subjects on party lines. What is the duty of the Government so far as concerns foreign and imperial affairs? Is it to carry it out in a party manner, or to aim at representing the whole country? Surely the latter is

[1] See report of his speech in newspapers, May 18, 1904.

the proper duty. The Foreign Secretary must attempt to translate the feelings of the country as a whole into his work. "Our position depends on our foreign policy, and for that reason it is more and more important that those who have the responsibility, whether in office or in opposition, should be ready to consider the interest of the country as a whole in the conduct of our policy." [1] Those words are vitally true to-day. If foreign and imperial policy is to be conducted in that spirit, it should be discussed and criticized in that spirit, and, obviously, the best place for this discussion is the Second Chamber, as being the body freer from party bias. On the whole, the necessity for an impartial discussion and an impartial administration of foreign affairs has been recognized. It would be true to say "that foreign policy has seldom been, and never ought to be a matter of party politics." [2] The need for impartial discussion seems, then, to be the first point in favour of the function being performed by the Second Chamber.

Discussion of both the previous functions showed that the House of Commons has little time saved for routine Government business. In carrying out that business, in the natural course of things, it comes to discuss matters of foreign and imperial affairs when the Foreign Office vote

[1] Parl. Deb., Coms., 1913, vol. liii. col. 401. (Mr. Bonar Law.)

[2] See speech of the Hon. E. F. H. Wood at Manchester Constitutional Club, January 17, 1925.

comes to be considered in supply.[1] On these occasions, however, such a variety of subjects is dealt with that none receive adequate attention, and the discussion is apt to be somewhat disjointed and scrappy. Consideration of the King's Speech provides further opportunity to discuss the general principles of the Government's policy in these matters. Sometimes the Government sets aside a day, or a portion of a day, for a debate on some special matter.[2] On these occasions members have to be careful, as anything in the nature of a vote of censure would be treated as such, and the resignation of the Government would follow, with the attendant expense, toil, and uncertainty of a General Election. None of the above methods enable the House to keep in touch with the course of events. To keep up to date, questions are addressed to Ministers at Question Time,[3] or the matter is brought up on the adjournment of the House.[4] To elicit information, on matters of foreign affairs, by means of questions in the House of Commons, is a somewhat difficult matter. A question must be

[1] Parl. Deb., Coms., 1913, vol. liii.—the Foreign Office vote was being considered in supply. Discussion was raised on a great variety of subjects: annexation of Congo by Belgium (col. 345); relation of England to Egypt (col. 357); question of Turkey and Baghdad Railway (col. 364); position of Armenia (col. 370); future of Ottoman Empire (col. 378); native labour in Portuguese Islands of Principe and St. Thome (col. 420).

[2] *Ibid.*, 1924, vol. clxxvi. col. 3021.

[3] *Ibid.*, 1924, vol. clxxv. col. 1919; 1924, vol. clxxvi. col. 1518; 1913, vol. lii. col. 11.

[4] *Ibid.*, 1913, vol. lii. col. 2298.

a question, that is to say it must seek information and not give it, and arguments, imputations, quotations, and epithets are not allowed. A member may, of course, ask supplementary questions, but the Minister may always refuse to answer them, or seek the protection of the Speaker. In short, nothing in the nature of discussion is allowed. The adjournment provides an opportunity for discussing matters of foreign affairs, but the time is short, and many members wish to bring up other matters connected with the administrative policy of the Government.

In the House of Lords, the method of conducting business offers every facility for discussion on any subject. This is particularly useful from the point of view of Function 4. Peers may put down motions or questions, and, unlike the procedure in the House of Commons, they may move their questions in a speech. In this way important questions are fully ventilated. Even if no answer is returned, as sometimes happens, public attention is drawn to the matter in a way that would not be possible if only a question could be asked.[1] It frequently happens that, after a series of questions have been asked in the House of Commons upon some matter of foreign policy, a debate is held in the House of Lords embracing the subjects raised in the other House, and putting them forth in a compact and

[1] Parl. Deb., Lords, 1913, vol. xiv. col. 363. (See Lord Lamington's questions on Government policy with regard to Albania.)

intelligible form.[1] The House of Lords has sufficient time to hold these debates. Thus, whilst the House of Commons has to content itself with asking questions, the House of Lords can afford the luxury of a full dress debate. Apart, then, from the necessity of having impartial discussion, the procedure adopted by the House of Lords, together with the fact that it has time for debate, makes that body the more suitable of the two to perform Function 4.

A more important reason why the Second Chamber should continue to perform this function is that in the past it has performed the function well. The ability of the House of Lords to perform this function, and the usefulness and necessity of the function itself, and the manner in which the House of Lords performs it, are well illustrated by the following example.

On May 29, 1913, the House of Commons, in Supply, was considering the Foreign Office Vote. One of the matters brought to the notice of the Government was the existence of a slave trade between Angola and the Portuguese Islands of Principe and St. Thome.[2] Under an ancient Treaty with Portugal, it appeared that England had guaranteed the Portuguese West African

[1] A good illustration of this was a debate held in the House of Lords on July 28, 1913 (vol. xiv. col. 1406 *et seq.*), initiated by Lord Curzon. Debate embraced railway projects in Persia; question of Mohammerab to Khonomabad Railway; use of Swedish Gendarmerie. Compare this debate with questions in Commons, Parl. Deb., Coms., 1913, vol. liii. cols. 367, 381, 395, 396, 448, 777.

[2] Parl. Deb., Coms., 1913, vol. liii. col. 420.

possessions. This Treaty had been confirmed in 1904. Under two other Treaties with Portugal, both England and Portugal had agreed to take steps to put down slavery. From the speech of Mr. Falle, the member who raised the subject, it appeared that ignorant natives were being shipped from the mainland at Angola, under a form of contract service, to the islands, and there made to work on the cocoa plantations for the rest of their days. Quotations were given to the House from a book written by a British Consul on Principe, which clearly showed slavery to exist, and established the fact that he, the Consul, did not " seem to think anything shameful about it." From a reading of the Parliamentary Debates, it does not appear that Mr. Falle's remarks caused much interest. Only one member appears to have taken notice of what he said, and to have supported him in a request that a more vigorous policy should be adopted against Portugal, that she should realize the impossibility of England continuing to be her ally if she continued to permit slavery. Mr. Acland, the Under-Secretary of State for Foreign Affairs, who replied for the Government, stated, " There is no longer any recruiting from Angola for St. Thome, and a great deal of what he (Mr. Hoare) referred to as being conditions of slave trading on the mainland is a closed chapter altogether. I do not deny that in some parts of the Hinterland of Central Africa a state of domestic slavery probably exists, not exclusively in Portuguese dominions, but the

great matter of complaint, namely, a real system of slave trading between Portuguese dominions on the mainland and Portuguese dominions on the island, has been brought to an end." [1]

Later in the year, the whole subject of slave labour in these two islands, and slave trading between the islands and the mainland, was brought up in the House of Lords on the motion of the Earl of Mayo.[2] His disclosures revealed the fact that slave trading, and the existence of slavery on the islands, was anything but a closed chapter. It appeared that the work of the cocoa plantations was carried out by natives shipped from the mainland under the supervision of Portuguese planters. Ostensibly each native gave his service under a contract. The service was to be for a term of five years. During that period, board, food, and lodgings were to be supplied by the planter, who was to act as a beneficent guardian. At the termination of the five years' service, the native was to be shipped home, and given a sum of money to re-start him in life. "What," said the Earl of Mayo, "does an ignorant native know of contracts? What does he know of repatriation? He knows nothing about that at all; and understands only the language or dialect of his particular district." [3] The condition of the natives on the islands was dreadful. "Thousands die, the death rate is

[1] Parl. Deb., Coms., 1913, vol. liii. col. 458.
[2] *Ibid.*, Lords, 1913, vol. xiv. cols. 1283 *et seq.*
[3] *Ibid.*, 1913, vol. xiv. col. 1287.

appalling. The mean death rate, so far as we can ascertain, over the two islands is about 10 per cent., but no proper statistics are available." The following quotation, from a pamphlet written by a former Curator on the island of Principe was given: "The existence of slavery in the islands is an actual fact, although it appears to the public to be a system of free labour. The very nature of it involves a compulsion that makes the negro renew the contract again and again, till it constitutes forced labour for life." With regard to the repatriation clause in the contract, the Earl of Mayo told the House that some two thousand three hundred natives only had been emancipated since 1908, and that, at the highest rate of repatriation, it had been estimated it would take twenty or even thirty years to repatriate all the slaves. That the slave might not be landed on the mainland, in pursuance of the repatriation clause in his contract, with an empty pocket, a certain proportion of his wages was deducted and put to a repatriation fund. In 1909, this fund had grown to £100,000, yet, when Mr. Cadbury visited the islands some eight months after the publication of the figures, it had decreased to £62,000, no part of the fund having been used to repatriate the natives. The Earl of Mayo pointed out that £100,000 was a good round sum, "but it was left in the hands of the planters, the very men, of course, who want to keep these wretched natives on the islands." The Official Bulletin of the Portuguese Government was

brought to the notice of the House. It was there recorded that, during the month of May, one hundred and thirty natives had been shipped from Angola to St. Thome. Further, two steamships, the *Cazengo* and the *Mozambique*, had been granted licences to carry three hundred and eight hundred labourers respectively. "That last statement," declared the Earl of Mayo, "that these steamships had been granted licences is quite sufficient to refute the statement of the Under-Secretary of State for Foreign Affairs, for what is the good of granting licences if there are no labourers to be carried." [1] The Government's White Book, *Africa*, No. 2 (1913), which had been issued in February, received attention, and was severely criticized. It was said to represent an attempt, on the part of bureaucrats, to explain away the existence of forty thousand slaves working in the plantations, and to justify slavery "if it is carried out under a respectable alias, as for example 'contract labour.'" "The people of Great Britain," finally declared the Earl of Mayo, "have a clear right to demand either that slave owning or slave trading should cease, or that we should no longer be bound by a Treaty with Portugal to defend Colonies in which slavery is not only tolerated, but, under a respectable alias, maintained and defended."

A very strong case had been made out for the Government to answer, and, at the outset, Viscount Morley, who replied, admitted the truth

[1] Parl. Deb., Lords, 1913, vol. xiv. col. 1286.

of the Earl of Mayo's statements. " The picture that the noble Earl painted," he said, " I admit without excess of colour, is of course detestable " ; [1] he added, " We are doing all that we can to secure a steady stream of repatriation at a proper and practical rate, and every labourer who is entitled to repatriation shall be repatriated." [2] The House was further informed that, at that moment, the Portuguese Government was giving good evidence of its intention to meet the wishes of the British Government, and, on that account, it was deemed inadvisable to threaten it in the manner suggested by the Earl of Mayo.

The general opinion of the House was that the conditions described ought to be ended as rapidly as possible. In view, however, of the Government's statement, it was felt that the case was one " where we must be contented with a gradual improvement." A mere threat to Portugal to break off the alliance would not, it was felt, put an end to the conditions of slavery,[3] and the Earl of Mayo was persuaded to amend his motion, and to ask for papers giving details of the recruitment and shipping of labourers from the mainland and the islands, the rate and conditions of repatriation and particulars of the repatriation fund.

During the year 1922, the utility of this function was well brought out by the discussions which took place in the House of Lords with respect to

[1] Parl. Deb., Lords, 1913, vol. xiv. col. 1287.
[2] *Ibid.*, 1913, vol. xiv. col. 1295.
[3] *Ibid.*, 1913, vol. xiv. col. 1385.

events in Ireland.[1] By means of questions and motions in the House of Lords, the country was kept well informed of what was happening in that country, and criticism of the Government's policy, on a large scale, which would not have been possible in the House of Commons, took place with beneficial result.

Debates of this character, such as that on the position of Law Lords, their right to take part in the political affairs of the House of Lords, and to make political speeches in the country, furnish other examples showing how well the House performs this function.[2]

The debate on the French occupation of the Rhine, which took place in the House of Lords on April 20, 1923, illustrates how necessary is the existence of a Second Chamber to perform this function. Lord Buckmaster, " in view of the increasing gravity of the situation caused by the French occupation of Germany," asked the Government to " inform the House of the latest developments, and make a statement as to their policy." [3] In answer to the question, an important statement was made by the Secretary of State for Foreign Affairs, the late Lord Curzon, and, in the debate which followed, a notable contribution was made by Lord Grey of Falloden.

In conclusion, then, Function 4 is a valuable function, and one which renders the existence of

[1] See Parl. Deb., Lords, for 1922, and in particular vol. xlix.
[2] *Ibid.*, 1922, vol. xlix. cols. 931–72.
[3] *Ibid.*, 1923, vol. liii. cols. 774–817.

a suitable Second Chamber necessary. " I think," said Lord Oxford and Asquith in his recent speech on the Reform of the House of Lords, " it (Second Chamber) ought to have—and to this I attach very great importance—the power which your Lordships' House as now constituted has most beneficially exercised in the past, and never more beneficially than during the years which followed the war—namely, the power of free, untrammelled, independent criticism of the policy and the action of the Executive of the day." [1]

Three of the functions specified by the Bryce Conference as functions for the Second Chamber have now been examined. Examination has shown how wide is their scope, how great their need, how real their benefit. Upon their performance depends good government in this country, and it has been shown that they are best performed by the Second Chamber. The case for the existence of a suitable Second Chamber to perform Functions 1, 2, and 4 seems clear. In the writer's opinion they are the basic functions of a Second Chamber for this country, and provide the real justification for its continued existence.

[1] Parl. Deb., Lords, 1925, vol. lx. col. 705.

CHAPTER III

THE AUSTRALIAN AND CANADIAN SENATES

THE scheme for the federation of the Australian colonies was discussed for at least fifty years before federation was accomplished. The difficulties in the way were great. Each colony had its own local sentiment, its own trade and manufactures, its own particular system of government; whilst the preponderance in population of the two big colonies naturally turned the smaller colonies away from federation in fear.[1] The first definite step taken towards union was in 1885, when a small Federal Council was appointed. Fear of German aggression in New Guinea, and a realization of their helplessness should they be attacked, resulted in the formation of this first Federal Council. The Federal Council had little power, however. It could only legislate on matters sent to it from the colonies, and had no power at all over revenue and expenditure. "Some few meetings were held which were not very fruitful in result, and before very long New South Wales and New Zealand had each withdrawn."[2] The next movement

[1] Wade's *Australia*, pp. 56, 57.

[2] *Ibid.*, p. 59.

towards federation was the speech of Sir Henry Parkes at Tenterden on October 24, 1889.[1] Sir Henry Parkes there demanded "that the people ought to set about creating a great national Government for all Australia." He asked that "a convention of leading men from all the colonies who will fully represent the feelings of the State Parliaments"[2] should be summoned. His speech seems to have had a mixed reception. We are told that he doubted at times whether he would be able ever to lift the timidity and doubt with which his proposals in the colonies had been shrouded.[3] On February 6, 1890, his speech bore fruit in the shape of a Conference at Melbourne. Representatives from the six colonies and New Zealand attended the Conference, and it was decided that union would be justified, and that a Convention should be called together to devise a scheme. A Convention was summoned (which sat at Sydney on March 2, 1891). Sir Henry Parkes was made President of the Convention. Sir Samuel Griffiths, Mr. Barton, Mr. Kingston, and Mr. Black were given the task of drafting a Constitution. Their draft Constitution forms the basis of the present Australian Constitution. The Convention, having got its draft Constitution, decided to refer it to the Colonial Parliaments for their approval.

Six years of inaction followed the work of the

[1] Wise's *Making of Australian Commonwealth*, pp. 1–9.

[2] *Federal Government of Australia.* Speeches by Sir Henry Parkes, pp. 1–6.

[3] Wise, pp. 21–9.

Sydney Convention.[1] The Colonial Parliaments dawdled over the task of passing the Constitution. They were jealous of their power and frightened that union would diminish it, but the greatest difficulty in the way of union was the fiscal question. New South Wales was a free trade colony, whilst the other colonies were protectionist. Federation would mean a uniform tariff system, "that there should be no impediment of any kind between one section of the people and another; but that trade and general communication should flow from one end of the continent to the other, with no one to stay its progress or call it to account."[2] The people of Sydney felt they would suffer great financial hardship by union, with its consequent adoption of protection. Yet, in spite of all difficulties, the movement in favour of federation grew amongst the people. It was greatly helped by the formation of a Society known as the Australian Natives Association. The most prominent man of the Association was Dr. John Quick. Under his leadership, the Association prevailed upon the Colonial Parliaments to pass enabling Acts, whereby a Convention elected by the people could deal with the matter. When a Constitution had been agreed upon by the Convention, it was to be sent direct to the people for approval, and not to the Colonial Parliaments.[3]

[1] Reeves, *State Experiments in Australia and New Zealand*, p.153.

[2] Sydney Convention Debates, pp. 23–4.

[3] See Introduction to Quick and Garran's *Annotated Constitution of Australia*.

This scheme "turned the flank of the State Parliaments, and enlisted the public in the federal cause." [1] The enabling Acts were passed, and a Convention, composed of sixty persons, ten from each colony, met at Adelaide, in March, 1887. The Convention, after sitting at Adelaide, moved on to Sydney, and sat finally at Melbourne in January, 1898. The new draft Constitutional Bill had as its basis the old Bill of six years ago. The chief difficulties which the Conventions had to overcome were with respect to the railways, the control of the rivers, and the respective powers of the Upper and Lower House of the Federal Government. To reach agreement on these matters proved an arduous task, but finally agreement was accomplished, and the draft Constitutional Bill ready for the reference to the people.

The Bill was easily carried in Victoria, South Australia, and Tasmania. In New South Wales, where at least eighty thousand votes were required for its approval, owing to the strong Free Trade tendencies of Sydney, the Bill failed to secure approval. Mr. Reid, the Prime Minister of New South Wales, induced the other Prime Ministers to meet him in conference. Matters objectionable to Sydney were modified. In the second referendum held in New South Wales, the Bill obtained a majority of twenty-four thousand votes.[2] The Constitution, after a struggle between the Colonial Secretary and delegates in London on the question of appeal on matters affecting

[1] Reeves, p. 156. [2] *Ibid.*, pp. 156–9.

the Constitution had been settled by a compromise, was put into statute form by the Imperial Parliament.

The Australian Constitution represents an attempt to reach a compromise upon two different principles, each of which is inconsistent with the other. Australia was a democratic continent. She must, therefore, have personal equality. Each colony, on the other hand, desired protection, and this was effected by the setting up of a bi-cameral form of government, giving large powers to the Second Chamber, with each colony having equal representation therein.[1] The Senate, or Second Chamber, in the interests of the colony, had to have sufficient power to withstand the demands of the Lower House when the latter desired to do something deleterious to the interests of the colony. Senates of the British or Canadian type were felt to be unsuitable. Something new was attempted, and Australia provided the world with one of its most interesting Second Chambers.

The Australian Federal Parliament contains two chambers, a House of Representatives and a Senate. The House of Representatives contains seventy-five members. This is not a fixed number, but the Constitution provides that the number of representatives shall always be "as nearly as possible twice the number of Senators."[2] A

[1] Wade's *Australia*, p. 64.

[2] Section 24 of Commonwealth of Australia Act, 63 and 64 Vict. C. 12.

parliamentary session has to be held at least once every year, and not more than twelve months is to elapse between any two sessions.[1] The Federal Parliament has power to make laws relating to trade, commerce, taxation, the post and telegraph, defence, and the providing of old age pensions.[2] The State Parliaments retain all the powers of Government not specifically vested in the Federal Parliament. If a law of the Federal Parliament should conflict with a law of the State Parliament, the former law is to prevail.

THE SENATE AND ITS POWERS.

The Senate contains thirty-six members drawn equally from the six states.[3] Senators are elected for a term of six years, and half of them retire every three years.[4] For the purpose of election, each State constitutes one electorate. The significance of this will appear later. The qualification and pay of a Senator are the same as those of a Representative.[5] The framers of the Constitution made very careful provision for the solution of difficulties and disputes arising between the two Houses. In framing their provisions, they were thrown back on their own resources. No scheme then in use in other countries worked with absolute satisfaction. Australia, therefore, endeavoured to evolve something new. The

[1] Section 6 of Commonwealth of Australia Act, 63 and 64 Vict. C. 12.

[2] *Ibid.*, 51. [3] *Ibid.*, 7. [4] *Ibid.*, 13. [5] *Ibid.*, 48.

scheme adopted is a new contribution to experiments on this problem—which has proved such a trouble to constitution makers. If the House of Representatives passes a Bill, and the Senate either rejects or amends it, the Bill must lie for three months. The Lower House, at the end of the three months, may pass the Bill again, and send it to the Senate. If the Senate still opposes its passage by rejecting it or insisting on its amendments, the Governor-General may dissolve both Houses simultaneously. In this way a rough kind of referendum is obtained on the Bill, and the probabilities are that the new Senate and the House of Representatives will be found to be of the same mind with regard to the Bill. Their agreement is, however, not certain. For the Senate, the State is the constituency, and there is usually a solid representation of the members of the majority party in the State. For the House of Representatives, the State is broken up into several constituencies. Thus, it is possible that the majority parties in each Chamber may be different. If, after the election, the House of Representatives again carries the Bill, and the Senate still refuses to allow it to pass, the final device is applied. A joint sitting of the Senate and the House of Representatives is held, and a majority vote settles the fate of the Bill.[1] This new and somewhat elaborate method for settling deadlocks was devised principally to satisfy the

[1] Section 57 of Commonwealth of Australia Act, 63 and 64 Vict. C. 12.

wishes of the smaller States, who looked to the Senate to protect them from New South Wales and Victoria.[1] Until 1913, the device had never been put into operation, though on three occasions the Governor-General had been asked for a double dissolution. Mr. Watson, a Labour Prime Minister, asked for a double dissolution in 1904. Sir George Reid, a Liberal Prime Minister, asked for a double dissolution in 1905. Mr. Fisher, a Labour Prime Minister, asked for a double dissolution in 1909. All three requests were refused. In each case the refusal was based on the ground that there was no strong public demand for the Bill.[2] In 1913, the Liberal Prime Minister, Mr. Cook, found himself with a majority of one (and that the Speaker's vote), in the House of Representatives, and in a minority of twenty-two in the Senate. Under such conditions, it was impossible for him to carry on the government of the country. He therefore introduced two Bills, of no great importance, into the House of Representatives, which it was certain the Senate would refuse to pass. One Bill restored the postal vote at elections. The other Bill prevented preference or discrimination in the employment of labour on account of membership or non-membership of industrial associations. Both these Bills, as had been anticipated, were rejected by the Senate. A double dissolution was requested, and, much to everybody's surprise, granted. Thus, the precedent was firmly estab-

[1] Wise, pp. 242–8.

[2] Keith's *Imperial Unity and the Dominions*, pp. 100 *et seq.*

lished that in this, as in all other matters, the Governor-General acts strictly on Ministerial advice, and not according to his own opinion.[1]

The provisions for altering the Constitution were so framed as to give the Senate equal power to the House of Representatives.[2] A Bill to alter the Constitution if passed twice by either House in the same or subsequent session, there being an interval of three months between each passing of the Bill, and rejected by the other House, might be sent to a referendum of the people with the consent thereto of the Governor-General. In 1913 six Bills were passed by the Senate which contained proposed alterations of the Constitution. All were rejected by the House of Representatives. They were repeated by the Senate in the same session in three months' time, and again sent to and rejected by the House of Representatives. The Governor-General, Sir Robert Munro, in accordance with the Constitution, was then asked to send them to a referendum of the people. This, on Ministerial advice, he refused to do, although the wording of Section 128 is clearly permissory, and allows him to use his own discretion. The action of Sir Robert Munro destroyed the personal discretion given by the Act, and firmly established the precedent that, in granting or refusing the request, the Governor-General will take the advice of his Ministers.[3] Thus, the object

[1] See *Round Table*, September 1914, pp. 733 *et seq.*

[2] Section 128 of Commonwealth of Australia Act, 63 and 64 Vict. C. 12.

[3] See Keith, *Imperial Unity in the Dominions*, p. 110.

and intention of the section has been defeated, and the Senate placed in a false and definitely subordinate position with respect to alterations of the Constitution.

FINANCIAL POWERS.

As is usual where there is Cabinet Government, laws appropriating revenue or moneys, or imposing taxation, must originate in the Lower House, and the Senate may not amend such Bills, or amend any Bill so as to put a charge or burden on the people.[1]

The amount of time spent in discussing the financial powers of the Senate in the various Convention Debates illustrates the importance and difficulty of the subject. Sir Samuel Griffiths wished to allow the Senate as much power over Money Bills as the House of Representatives. In his opinion, federation involved the principle that "every law should receive the assent of a majority of the States as well as of a majority of the people." If that, he said, was the correct interpretation of federation, then it was "quite inconsistent with the independent existence of the Senate as representing the separate States that that Chamber should be prohibited from amending Money Bills. . . . To give the Lower House alone a practically uncontrolled authority over expenditure was irreconcilable with the principle which

[1] Section 53 of Commonwealth of Australia Act, 63 and 64 Vict. C. 12.

required the assent of a majority of the States to all legislation." He wished the Senate to have full power over Money Bills. He recognized, however, that this was inconsistent with Cabinet Government and contemplated the American type of Government.[1] Another set of opinion, led by Sir Henry Parkes, held that the existence of two chambers with equal powers over finance would render the working of the Cabinet system of government, which was contemplated, impossible[2]; and Sir Henry Parkes wished to have a Cabinet responsible to the Lower House, and not a non-parliamentary Executive.

The smaller States feared aggression from New South Wales and Victoria. They insisted that the Senate, where their representation was out of all proportion to their population, should have equal powers over Money Bills. In the words of Mr. Kingston, it was felt that " there must be a check, and a substantial check; and if the small States are only going to be offered something, which is nominally a check, and which will not stand the test of time and use, it appears to me difficult to suppose that there will be any disposition on their part to enter into an alliance, by which they practically subordinate their powers and interest in any federal question to the decision of the majority in the National Assembly. . . . Any House which does not possess the power of amending or vetoing Money Bills in detail can

[1] Sydney Convention Debates, March 4, 1891, p. 32.
[2] *Ibid.*, March 15th, p. 380.

be subjected to disadvantages, which practically render it powerless."

The larger States followed Sir Henry Parkes, and it looked on many occasions as if the whole scheme was in danger of being wrecked on the financial rocks.[1]

In Committee the financial battle raged furiously. Two proposals were submitted. Sir John Downer, a delegate from South Australia, suggested that the Senate should be given power "to reject in whole or in part" a Money Bill. Mr. Wrixon, a Victorian delegate, suggested that the Senate should have power to reject Money Bills, but not to amend them. Protection, however, was to be given against tacking on the part of the Lower House. The debate on these two proposals "became warm; neither side seemed inclined to give way, and hints were thrown out that delegates might as well 'pack up their portmanteaux.' At last, however, the spirit of compromise was successfully appealed to . . . and it was agreed not to press the matter to a vote at that stage, but to withdraw both amendments, and let the decision stand over."[2] Eventually a compromise was reached. It is now known as the "compromise of 1891." All Money Bills were to originate in the House of Representatives. The Senate was not to be allowed to amend taxing or appropriation Bills. It could either reject such

[1] Sydney Convention Debates, March 16, April 2, 3, 6, 1891.

[2] Quick and Garran's *Annotated Constitution of Australia*, p. 128.

Bills or return them to the House of Representatives with suggested amendments.[1] There were to be provisions to prevent the Lower House from tacking, or including all the financial measures of the year in one Bill so as to make it difficult and impracticable for the Senate to reject them.[2]

The compromise withstood the storms which centred around it in succeeding Conventions, and became finally part of the Constitution. It was, however, clearly laid down that the right of rejection was to be exercised "not as an antiquated power never to be used, but as a real, living power." [3]

The Senate has upheld its financial rights on every occasion. In 1901, by its power of suggestion, it forced the House of Representatives to include all the items of expenditure proposed to be granted in supply Bills.[4] Not content with this, it, in the same session, insisted that supply Bills should contain no non-recurrent items of expenditure; but it was contending for something not supported by British practice, and had to give way.[5] It next attacked the form of the Governor-General's address at the opening and prorogation of Parliament. References in his address to the estimates and supply were, in accordance with the British practice, addressed to "Gentlemen of the House of Representatives."

[1] Article 50. [2] *Ibid.*, 54.

[3] Adelaide Convention Debates, April 13, 1897. (See Mr. Reid's speech.)

[4] Parl. Deb., 1901, vol. i. p. 1101. (June 12th.)

[5] *Ibid.*, 1901, vol. i. pp. 1310 *et seq.* (June 20th.)

In 1904, the Senate protested against this form of address, and claimed that "due recognition should be given to the constitutional fact that the providing of revenue and the grant of supply is the joint act of the Senate and the House of Representatives, and not of the House of Representatives alone," [1] and the Governor-General has since then modified the form of his address.

It was soon seen how important was the power of suggestion which had been given in the place of a right to amend. In 1902, the Senate sent down a number of requests for amendments of the Tariff Bill of that year. The House of Representatives refused to amend the Bill as requested, and sent it back to the Senate to be passed. Thereupon the Senate refused to pass the Bill, and repeated all the requests for amendments. The Government did not feel strong enough to ask for a double dissolution and go to the country. They knew that the fiscal controversy would place the constitutional dispute in the background. They were, therefore, obliged to accede to the requests made, and amend their Bill accordingly. Much the same fate befell the Custom and Tariff Bill of 1903.[2] Whilst considering the Sugar Bounty Bill of 1903, an amendment was carried in the Senate which the House of Representatives considered placed a charge upon the people. They, therefore, refused to accept the amendment on the ground that it was

[1] Parl. Deb., 1904, vol. xv. p. 942.

[2] See Harrison Moore, *Commonwealth of Australia*, p. 148.

unconstitutional. The Senate withdrew its amendment, but placed it in the Bill as a suggestion, and in this way forced the Government to incorporate it in the Bill.[1] The above examples show what power the right of suggestion gave to the Senate.

THE CHARACTER OF THE SENATE.

The Senate is elected upon party lines, and the method of election serves to accentuate party majorities within it. The election of Senators by "general ticket" over the whole State as a single constituency results in each State normally returning a solid representation of the members of one party. This leaves the minority parties in the State without representation in the Senate.[2] This, at first, operated in favour of the Labour Party. In 1914, that Party, though it had only a majority of eight in the House of Representatives, secured thirty-one out of the thirty-six seats in the Senate. Recently fortune has been less kind to that Party. In 1917, it obtained no seat in the Senate. In 1919, it managed to get one seat, though in the election it had secured nearly half the votes cast.

As might be expected, the Australian Senate is a party body, and acts on party lines. Its primary and most important function was, as has been previously pointed out, to protect the interests

[1] Parl. Deb., 1903, pp. 2076–8, 2364 *et seq.* (July 22nd.)
[2] Wade's *Australia*, p. 66.

of the individual States. Yet, it has "entirely failed to play the rôle of the guardian of special State rights. The Senate itself has seldom voted on State lines of cleavage, and such issues have very infrequently arisen." [1] Instead of protecting the State, it has used its tremendous powers for other purposes. The fact that the Labour Party has enjoyed such long periods of office, with such large majorities in the Senate, has made the Senate responsible for some of the world's most advanced legislation. In short, the Senate has failed to perform both its special function, and what is considered to be the main function of a Second Chamber, the function of protecting the electorate from legislation of an advanced type, and this failure is, to a certain extent, due to the party motives operating within it.

There are two conclusions to be drawn which will be of use to a would-be reformer of the House of Lords. The first is that popular election tends towards the creation of a Second Chamber which is merely a replica of the First Chamber.[2] The second conclusion is that, quite apart from the necessity of giving to the Senate large powers over finance in order that it might perform its special function and protect State rights, it would have been logically impossible to exclude a Senate based on so democratic a foundation from the realms of finance.

[1] Wade's *Australia*, p. 65.

[2] *Ibid.*, p. 66. See also article by Professor J. H. Morgan in *Contemporary Review*, May 1910, p. 541.

THE CANADIAN SENATE.

The history of parliamentary government in Canada, though interesting, is long, and a discussion in detail would be out of place here. Hence in the following pages merely a description of the present Senate, its composition, and the way in which it works, is attempted.

The present Canadian Constitution is the outcome of the Quebec Conference of 1864. The resolutions carried there were later put into statutory form by the Imperial Parliament in the British North American Act, 1867. By this Act, Canada was given a central Parliament composed of two Houses, the Senate and the House of Commons, and all powers and duties not given specifically to the local Legislatures were to belong to the central Parliament.

Originally, the Senate possessed seventy-two members; Ontario, Quebec, and the Maritime Provinces were given twenty-four members each, whilst Nova Scotia and New Brunswick had twelve members each.[1] Senators had to be thirty years of age, natural born or naturalised British subjects, and had to satisfy the conditions of a property qualification.[2] To-day, there are nominally ninety-six Senators, twenty-four Senators having been allowed the Western Provinces.[3] Apart from additions in numbers to the

[1] Articles 21 and 22. [2] *Ibid.*, 23.

[3] The numbers of the Senate and the distribution of members amongst the various provinces are regulated by the main Act

Senate, no alterations have been made since it was constituted under the before-mentioned Act.

Senators are nominated by the Governor-General and sit for life.[1] The intention of the framers of the Constitution was to make the Senate as nearly as possible like the House of Lords. It was felt to be impossible to found a local aristocracy and put the Upper House upon a hereditary basis, and a system, which gave the nearest approach possible to a hereditary Second Chamber, was adopted, namely, nomination for life. "Nomination by the Crown is, of course, the system which is most in accordance with the British Constitution. We resolved that the Constitution of the Upper Chamber should be in accordance with the British system as nearly as circumstances would allow. An hereditary Upper Chamber is impossible in this young country. Here we have none of the elements for the foundation of a landed aristocracy —no men of large territorial positions—no class separated from the mass of the people. . . . The only mode of adopting the English system to the Upper House is by conferring the power of appointment on the Crown, as the English Peers are appointed, but that the appointment should be for life." [2] It was further hoped by nomination to secure for the Senate men who had distinguished themselves in the various walks of life.

of 1867 and the following amending Acts: British North America Act (34 and 35 Vict. C. 35), 1881; British North America Act (49 and 50 Vict. C. 35), 1886; British North America Act (5 and 6 Geo. V. C. 45), 1915.

[1] Article 24. [2] Confederation Debates, p. 35.

THE POWERS OF THE SENATE.

The powers of the Senate are equal to those of the House of Commons,[1] except that all Money Bills must originate in the House of Commons.[2] The Senate, following the British practice before the passing of the Parliament Act, 1911, can reject such Bills, but it cannot amend them. Both Houses were intended to be legislative and deliberative assemblies. In the event of disagreement arising between the two Houses, the Governor-General was given power to add three or six Senators, representing equally the three divisions of the Dominion, to the Senate. To-day, he may add four or eight Senators.[3] This limited power of "swamping" is the only way in which the resistance of the Senate can be overcome. Thus, theoretically, the Canadian Senate possesses more power than the House of Lords, and is one of the strongest Second Chambers in the world.

The request for the additions to be made to the Senate has only once been made, and, on that occasion, it was refused. From the Colonial Secretary's dispatch, it seems that the power would only be exercised where the additions would secure the passage of the measure in dispute.[4] In view of the modern doctrine of ministerial respon-

[1] Article 17. [2] Article 18.

[3] British North America Act, 1915, Section 1.

[4] Buckingham and Ross's *Alexander Mackenzie and His Times*, p. 589. Earl of Kimberley's dispatch. Canadian Sessional Papers, 1877.

sibility, a request for the exercise of the power made now would probably be granted.

THE RECORD OF THE SENATE.

An examination of the history of the Senate shows how and in what spirit it has performed its work. The system of nomination was intended, as has been observed, to secure the best men. It was, however, used from the beginning as a party instrument. The nomination is made by the Governor-General. In making his nomination, he has always acted upon the advice of his Prime Minister. Any hope that the latter would rise above party considerations was quickly dispelled. Sir John Macdonald and Sir Wilfrid Laurier, the first Dominion Premiers, regarded the Senate as being specially reserved for their supporters. The former made one hundred and seventeen appointments to the Senate, every appointment, with the exception of one, proceeding from party motives. The latter made eighty-three appointments, all being party appointments.[1] Sir Wilfrid Laurier candidly acknowledged the motives which prompted his recommendations, " I have heard it said, ' why does not the Governor select Senators from the different political parties ? ' I have only to say that the Government is composed of men who are very human." [2] With nomination to the Senate

[1] Ross's *Senate in Canada*, Appendix.

[2] Canadian House of Commons Debates, January 30, 1911, p. 2715.

made on party lines, the Senate is purely a partisan assembly, leaving alone the Bills of its own party, but interfering unfairly with the Bills of the opposite party. Such is the record of the Canadian Senate. "The purely partisan exercise by the Ministry of the day of the power of creation," writes Professor J. H. Morgan, "gave it (the Senate) a congenital defect at the commencement of its existence from which it has never recovered." [1]

RAILWAYS BILL OF 1912 AND 1913.

In 1912, a Conservative Government, at the head of which was Sir Robert (then Mr.) Borden, was returned to power. The majority in the Senate consisted of Liberal nominees of the previous Administration. A Bill was introduced into the House of Commons to assist the improvement of the railways by granting subsidies to the Provincial Governments. The Liberal Opposition in the House of Commons put forward an amendment that the subsidies should be distributed between the various provinces upon the basis of population. They said they were afraid that otherwise Conservative provinces would receive more than their fair share of the moneys. Their amendment was lost in the Commons, but in the Senate the Government were defeated on a similar amendment to that moved in the Commons, one Senator declaring that the Bill, as it stood, pro-

[1] *Contemporary Review*, May 1910, p. 539.

vided a "huge fund for corruption." [1] As a result of this defeat, the Government were forced to drop the Bill.

In 1913, the question of railway development was again brought before the House of Commons. On April 30th, the Minister of Railways moved resolutions which, when passed by the House of Commons, were put into a Bill giving the Government power to enlarge the railway system. The Government were to be given power to "construct purchase, lease, or otherwise acquire in whole or in part, any railway, railway bridge, railway station, railway terminal, railway ferry, or other railway work in the Provinces of Quebec, Nova Scotia and Prince Edward Island, or in any other of the provinces." The Liberal Opposition in the House of Commons thought the provisions of the Bill were too wide. In the Senate an amendment was carried by the Liberal majority that "every such lease or contract of purchase shall be laid before Parliament for ratification." The Government refused to accept this amendment, which took away "the whole substance of the Bill," and the Bill had to be dropped.[2]

IMPROVEMENT OF HIGHWAYS BILL, 1913.

The object of this Bill was to improve the position of the farmer and settler "by getting the roads into good shape." [3] The Government told

[1] Cartwright in the Senate, March 18, 1912.

[2] *Canadian Annual Review*, 1913, pp. 255 *et seq.*

[3] Canadian House of Commons Debate, April 21st. (Mr. Cochrane's speech.)

the House of Commons they hoped "to be able to make arrangements with the different provinces as to what road . . . to construct, and to agree on specifications covering the construction of these roads." The Liberal Party were agreed as to the usefulness of the Bill, but they disagreed as to the manner in which the appropriation of money in the various provinces was to be made. They said they were frightened that Conservative provinces would also get more than their fair share of the money appropriated. Sir Wilfrid Laurier, therefore, asked that the money should be distributed in the same fashion as the Provincial subsidies, and he moved an amendment to that effect. His amendment was negatived. In the Senate, the Bill went into Committee without amendment,[1] but in Committee an amendment, identical with that of Sir Wilfrid Laurier in the House of Commons, was carried.[2] The Government contended that, as the Bill was a Money Bill, the amendment was unconstitutional, and in their contention they were supported by the Speaker of the Senate. The Liberal majority, however, voted down the ruling of their Speaker, and the Bill was dropped.

NAVAL BILL, 1912.

At the Colonial Conference in 1902, the view was put forward by the British Admiralty that there ought to be one navy for the Empire, and that it should be under one control. For that purpose,

[1] Senate Debates, May 15th. [2] *Ibid.*, May 22nd.

it was felt that all the Dominions should make a contribution towards the building of ships.[1] At the 1909 Conference, the Admiralty stated that "If the problem of Imperial Naval Defence is considered merely as a problem of naval strategy it will be found that the greatest output of strength for a single expenditure is obtained by the maintenance of a single navy with concomitant unity of training and unity of command. In furtherance . . . of this strategical ideal the maximum of power will be gained if all parts of the Empire contributed according to their resources and needs to the maintenance of the British Navy.[2]

Australia, New Zealand and other colonies loyally fell in with the wishes of the British Admiralty, but Canada felt that "the acceptance of the proposals would entail an important departure from the principle of self-government."[3] For some years this appears to have been the view of both the Liberal and Conservative Parties in the Dominion. However, the activity of Germany in building a huge navy put a different complexion on the matter. The German Navy Act, 1912, and the failure to consider officially Mr. Churchill's two invitations to have a naval holiday, seem to have brought home to Sir Robert Borden and the Conservative Party the necessity for immediate action. The former came to England and

[1] Report of Colonial Conference, 1902, Cd. 1299.
[2] See *Canadian Annual Review*, 1913, p. 126.
[3] Report of Colonial Conference, 1902, Cd. 1299, Appendix vi.

discussed the whole matter with the Admiralty. The result of the discussions was his conversion to the Admiralty doctrine as laid down at the two Colonial Conferences, and the introduction of the Naval Bill at the latter end of 1912.[1]

The proposals of the Government were attacked by the Liberal Party from every point of view. To the resolutions, Sir Wilfrid Laurier moved the following amendment, " That any measure of Canadian aid to Imperial defence which does not employ a permanent policy of participation by ships owned, manned and maintained by Canada and contemplating construction as soon as possible in Canada, is not an adequate or satisfactory expression of the aspirations of the Canadian people in regard to naval defence." [2] Around the resolutions hot discussion took place. From the speeches used by Government members it is clear that fear of Germany alone was the determining factor which caused them to alter their policy. " We find strong fleets of battleships kept concentrated in close proximity to the shores of Germany and the shores of Great Britain. Can it be argued for one single moment that the German Fleet exists for the defence of Germany against the attack of a naval power ? It must be remembered when considering this matter that Germany has a very small coast line and few great harbours on the North Sea, and it would be difficult to find a more unpromising coast for a

[1] House of Commons of Canada, Bill 21, 2nd session, 1912–13.
[2] See *Canadian Annual Review*, 1913, p. 141.

naval attack. . . . Does not the whole character of their fleet show that it is designed for aggressive and offensive action in the North Sea or North Atlantic?"[1] On February 13th, the voting on the resolutions took place and Sir Wilfrid Laurier's amendment was defeated.[2] Five days later the Second Reading of the Bill was moved in the House of Commons.

In Committee the Liberal Party used a multitude of arguments against the Bill, and it became necessary to amend Rule 17 to shorten the proceedings. So vehement was the onslaught of the Liberal Party, that for three weeks they occupied the time of the Committee in making speeches. The Committee Stage, broken by the time occupied in passing the closure resolutions, was resumed on May 6th,[3] and a fortnight later Sir Robert Borden was able to move the Third Reading, which was carried by one hundred and one votes to sixty-eight votes.

At that time there were in the Senate fifty-four Liberal Senators and thirty-two Conservative Senators. Little had been said in the House of Commons as to the probable action of the Senate. Speculation as to its action was all the more interesting because Sir George Ross, the Liberal leader there, was a prominent advocate of Imperial unity. On May 26th, the Second Reading of the Bill was moved in the Senate. Sir George Ross described

[1] House of Commons Debates, December 12, 1912. (See Mr. Hazen's speech.)

[2] *Canadian Annual Review*, 1913, p. 143 (122 votes to 75).

[3] *Ibid.*, 1913, pp. 164–6.

the proposed contribution as "three empty shells, with neither men, nor powder, nor shot," and he moved as an amendment, "This House is not justified in giving its assent to this Bill until it is submitted to the judgment of the country." [1] His amendment was carried by the Senate, and the Bill returned to the House of Commons.[2]

Great excitement followed the rejection of the Bill, and demands for Senate reform were heard on all sides. It was described as "a band of licensed wreckers,[3] and it was declared that "the time has come when this studied disregard of public interests should meet with the swift condemnation it deserves." [4]

Though defeated, Sir Robert Borden believed "that the duty of Canada will yet be honourably discharged." [5] That duty never was discharged, and on the outbreak of war Canada found herself with only two small vessels, the *Niobe* and the *Rainbow*, and no contribution had been made to Imperial Naval Defence.

The above examples show how the Senate, full of the nominees of a previous Administration, hampers the legislation of a new Government. The experience of Liberal Administrations, during the first few years of office before the Senate has been filled with Liberal nominees, has been that of Conservative Administrations. Their path has been blocked by the Conservatives in the Senate,

[1] Senate Debates, May 29, 1913.
[2] Fifty-one votes to twenty-seven votes.
[3] *Montreal Star*, May 30th. [4] *Halifax Herald*, May 29th.
[5] Speech at Halifax, September 16, 1913.

and, until death has created vacancies to be filled by their own men, the Government has been unable to carry important legislation through the Senate.

In 1896, Sir Wilfrid Laurier was returned to power at the head of a Liberal Government.[1] Two years later he carried a Bill through the House of Commons for the building of a railway from Atlin to Dawson. By means of the railway, Canada would have had access to the Klondike without having to go through American territory. It was proposed that the contracting firm should be given twenty-five thousand acres to every mile of railroad built. At that time all sorts of extravagant ideas were abroad about the wealth of the Yukon, and the Senate, on the ground that the contracting firm was being too generously treated, refused to pass the Bill.[2]

The year 1921 witnessed the dissolution of the Coalition set up by Sir Robert Borden and continued by Mr. Meighan, and the return to power of the Liberal Party under the Leadership of Mr. Mackenzie King. During the Borden and Meighan Governments the Conservative Party in the Senate had grown and was in the majority. The Liberal Leader in the Senate appealed to Senators to "act like independent judges. For my part," he declared, "I refuse to lead a Ministerial party in this chamber; I claim no followers;

[1] Riddell, *Canadian Constitution*, p. 117.

[2] Shelton's *Life and Letters of Sir Wilfrid Laurier*, vol. ii. p. 49.

I shun party discipline and the party whips." [1] The appeal appears to have been successful, and during that year no agitation for Senate reform was heard. But this phase of impartiality was short. In 1923, the Conservative majority in the Senate, of still substantial numbers, recognized its duty to the small, but energetic band of Conservatives in the House of Commons, and threw out the Canadian National Railway Construction Bill.

There are many other examples illustrating the partisan nature of the Senate, but the previous examples show sufficiently the motives which prompt action on its part.

In conclusion, the experience of Canada shows that nomination results in a partisan Second Chamber which, whilst its own party is in power, ceases to function as a Second Chamber, but when its opponents are in power interferes unfairly with their legislation. When this interference takes place, there is a general demand for reform, but, with the gradual subordination of the Senate to the dominant party in the House of Commons, friction between the two Houses ceases, and the cries for reform are no longer heard. The result of this partisanship is that for the greater part of their lives Canadians live under a single Chamber system of Government. "The Canadian Senate neither initiates nor controls important legislation. After meeting for the session it adjourns to wait for the arrival of Bills from the Commons. About

[1] Senate Debates, March 14, 1922.

once in a session it is allowed to reject or amend some measure of secondary importance by showing that it lives." Thus an eminent authority on Canadian matters sums up the work of the Senate.[1]

[1] Goldwyn Smith, *Canada and Canadian Question*, p. 166.

CHAPTER IV

FUNCTION 3[1]

THIS function is the most important function which the Bryce Conference proposed should be given to the Second Chamber. There is nothing new about Function 3; that the Second Chamber should check the legislative activities of the First Chamber, and thus protect the nation from hasty, ill-considered legislation, is an idea that first arose in the early part of the nineteenth century.[2] The First Chamber was felt to be prone to quick changes of opinion, and, therefore, unrepresentative of the true feelings of the community. Responsible people did not feel the community was, or indeed could, be represented by the First Chamber, and it was felt that the Second Chamber, as a body independent of and above fluctuating opinion, ought to check legislation on behalf of the conservative elements in the State. Support for the performance of the function was thus derived from a firm conviction that the voice of the people was not the voice of God.[3] Nowadays, the necessity for the performance of the function

[1] See p. 38.

[2] *Contemporary Review*, May 1910, p. 534.

[3] Sir Henry Maine's *Popular Government*, pp. 179–80.

is couched in different language. Obviously old arguments would be regarded as reactionary and undemocratic. To-day, the House of Lords claims to act as the ally of the people, and not as a guardian angel protecting a people from the folly and extravagance of the popular Assembly. "The power of the House of Lords is not to prevent the people of this country having the laws they want, but to see that the laws they have are really endorsed by the common sense of the community at large." [1] That, in effect, is only a restatement of nineteenth-century doctrine.

Previous to the Parliament Act, 1911, the House of Lords exercised this function by rejecting the offending Bill, or it might amend the Bill and refuse to pass it unless the House of Commons agreed to its amendment. By convention, it did not amend a Money Bill, but it could reject such a Bill. By convention, it did not either amend or reject the Bill containing the financial arrangements of the year, because "it had not the power of changing the Executive Government, and to reject a Finance Bill and leave the same Executive Government in its place means to create a deadlock from which there is no escape." [2] If the House of Commons were determined to have their Bill, they could appeal to the electorate. This was both an expensive and uncertain way of ascertaining the wishes of the electorate with regard to the particular Bill in dispute, but the only way in

[1] Mr. Balfour at Manchester, October 22, 1906.
[2] Lord Salisbury's speech on Budget 1894, July 30th.

which the function of protection could operate. If, after a successful election, the Peers still proved obdurate, the King's prerogative of creating Peers might be used to overcome their resistance. Under the Parliament Act, 1911, the constitutional usage whereby the House of Commons had complete authority in matters of finance was placed upon a statutory footing, and it was provided, by taking away the veto of the House of Lords and only allowing a suspensory veto over Bills other than Money Bills, that the will of the House of Commons in other legislative matter should finally prevail.

At the commencement of the present chapter, the argument for the function was shortly stated; by the function it is intended to secure protection in the shape of desired legislation to the exclusion of undesired legislation. The existence of a House of Lords with a power of veto used to be the security. Since the passing of the Parliament Act, 1911, there has been in existence virtually a unicameral form of government, for Money Bills cannot be touched, and the passing into law of other Bills can only be retarded for two years. Thus, the will of the House of Commons must finally prevail. Under modern conditions, this will of the House of Commons is the will of the party majority. The legal omnipotence of the King and the two Houses of Parliament has been redistributed between the King and the Ministerial Party in the House of Commons. Thus, " there is no assurance whatever that some fundamental

measure affecting liberty or property, or the Constitution might not be passed into law within two years . . . and, if a so-called financial measure within one session—although a large majority of electors might be opposed to it." [1] That briefly is the argument. The possibility of a return, not merely to office, but to power of a Labour Government in the near future, gives it an added piquancy. During the debate on the Government resolutions for the Reform of the House of Lords, in July, 1922, the House and the nation were treated to a considered warning by Lord Selborne of what might happen under the conditions established by the Parliament Act, 1911. He said, "Any form of nationalization of property might take place; if under the guise of finance, in one session, if otherwise within two years. Land might be nationalized, railways, ships, banks; or, indeed, the whole of our industrial and commercial system, as at present known, might be abolished." [2] This is perfectly true. So the main line of argument is weighted by fear of an aggressive and socialistic policy from a Labour Government in office with power. Whether this addition is really entitled to a place in the argument is another matter. The argument is the defenceless position under the Parliament Act, 1911. Whatever Government is in power, the danger still exists. You are not to say, because of a disapproval of the

[1] Parl. Deb., Lords, 1922, vol. li. col. 546. See generally cols. 687–739; and *ibid.*, Lords, 1924, col. 60.

[2] *Ibid.*, 1922, vol. li. col. 547.

known and widely advertised policy of a particular party, that should that party be returned to office the danger would be greater. If the opportunity exists for one party to legislate contrary to the desires of the bulk of the electorate, it exists for all parties. It ought always to be borne in mind that a Labour or Communist Government, bent on making an unscrupulous use of its power, could, with greater rapidity and ease, carry out its purpose by a series of administrative acts than by legislation. No Second Chamber, however, which has been proposed for this country was, for well known and adequate reasons, to have power to control the policy of the Executive. This special argument is not only quite unconnected with the main argument, but one the use of which is fraught with great danger, and, if persisted in and acted upon, would ruin any scheme of reform.

It was proposed by the Bryce Conference that the function should be brought into operation with respect to Bills which fall into three non-mutually exclusive categories, and the operation was to be determined by the necessity of getting the opinion of the nation upon a particular Bill. If it were possible to create a perfect, in the sense of satisfactory to all shades of political opinion, Second Chamber, then, provided the necessity for the function could be clearly shown to exist, it would doubtless be agreed that the best power that could be given for an efficient, satisfactory and practical performance would be a power of

rejection and not of delay. That being the case, why was it suggested that a reconstructed Second Chamber should only be given a power of delay? It is observed that, apart from any question of power, a discretionary duty is imposed upon the Second Chamber by the function. It is for it, in the first place, to pick out a Bill, and say it introduces new principles of legislation, alters the fundamentals of the Constitution, or can only claim the support of a divided electorate, and, on its satisfying one or more of those conditions, that it must be brought within the scope of the function. As it was only proposed to give the Second Chamber a "power of delay" to enforce its conclusion, a doubt is openly expressed of the capability of the Second Chamber to perform the discretionary duty in a satisfactory manner. The reasons for this doubt must be fully examined, and this leads to a short history of the exercise by the Second Chamber in the past of the function.

With the abolition of tenure, and the military incidents of the feudal system, the modern history of the House of Lords begins. From 1688 to 1832, the House of Lords was composed of great landowners, who, though shorn of their feudal rights and privileges, were active and powerful. They left the main business of government to a House of Commons filled with their nominees, and for the most part were able to secure much of their own way. Disagreements between the two Houses were rare and concerned matters of privilege.

After the passing of the Reform Act, 1832, the influence which the House of Lords once exercised over the House of Commons was destroyed. Pocket Boroughs, bribery, and general corruption were swept away, and the existence of the House of Commons made dependent upon the good-will of a people. An age of political reconstruction set in, and the complete establishment of legal democracy was witnessed.[1] A new class gradually evolved, a plutocracy of commerce and finance, and in the establishment of itself came into constant conflict with the landowning aristocracy. It was during this period that Function 3 became definitely established, and the House of Lords attempted to justify its continued existence by taking a new duty upon itself, that of protecting the people from the legislation of the Popular House. It cannot be disputed that many of the legislative projects of the House of Commons during this period needed the most careful consideration and revision that it was possible for a Second Chamber to give. Unfortunately, however, the House of Lords misconceived its plain duty and ranged itself on the side of the Conservative elements in the State. Whilst the measures of one party had an easy passage, those of the other party were subjected to vexatious delay and petty amendments. In this way reform after reform was resisted, finally to be conceded when it was clear that resistance would no longer be tolerated. The Second Chamber survived this

[1] See Ramsay Muir's *Peers and Bureaucrats*, p. 101.

age of political reconstruction by posing as the champion of Conservatism, and at the same time by never allowing its opposition to reform to go too far; but it destroyed the value of the function of protection, by allowing the exercise of the function to be prompted by class motives.

The following examples show how the House of Lords performed the function in this period.

MUNICIPAL CORPORATIONS ACT, 1835.

One of the first results of the passing of the great Reform Act, 1832, was to draw the attention of the Legislature to the dire condition of local government. The boroughs were self-elected and generally corrupt. The same corruption, bribery and rottenness which led to the passing of the Reform Act still survived in local government. Petitions for the reform of the municipalities poured in from all quarters. On April 17, 1833, Mr. Macaulay from Leeds and Mr. Tayleure from Bridgewater presented a petition for corporation reform.[1] On May 3, 1833, a petition signed by five thousand eight hundred inhabitants of the City of Leicester was presented by Mr. William Evans. It charged the Corporation of Leicester with making as many as two thousand freemen at one time.[2] Again, on May 15, 1833, another petition, presented on behalf of Sligo by Mr. John Martin, charged the Corporation with numerous abuses. These, along

[1] Hansard, 1833, vol. xvii. col. 202.
[2] *Ibid.*, 1883, vol. xvii. col. 907.

with other petitions, were presented to the House of Commons and referred by the House to a Committee on Corporations.[1] It would be easy to continue the examples.[2] Enough, however, has been said to show that by petitions the inhabitants of various boroughs were attempting to bring the House of Commons to see the necessity of municipal reform.

The efforts of the petitioners were not unsuccessful. When Mr. Althorp moved for the appointment of a Select Committee to inquire into the state of municipal corporations in England, Wales, and Ireland, the support he received showed that the House of Commons was alive to the need of reform.[3] His motion succeeded, and a Committee was appointed and immediately set to work. Attempts were made to include Scotland in the sphere of the Committee's activities. On the understanding that the Lord Advocate would conduct a special inquiry into the case of the Scottish Boroughs, these were excluded from the scope of the Committee's inquiries.

The Committee first determined that they would best discharge their duties " by inquiring how far the municipal corporations in England, Wales, and Ireland, as at present constituted, were useful and efficient instruments of local government, rather than by seeking to detect past abuses, with a view to their exposure or punishment." The

[1] Hansard, 1833, vol. xvii. col. 1270.
[2] *Ibid.*, 1833, vol. xv. cols. 949, 1187.
[3] *Ibid.*, 1833, vol. xv. col. 645.

attitude of the Committee, one feels, was very fair. In this frame of mind, it commenced and completed its inquiries. "The Chief Magistrate and Town Clerk being the officers best capable of giving information respecting the constitution of the different corporations with which they were respectively connected" were examined, but the Committee came to the conclusion that to hold a full inquiry in London was bound to be expensive and protracted; and also that there was "no certainty . . . that the result would prove satisfactory." They, therefore, suggested that a Commission should be appointed, and the country divided up into districts. They pointed out that with Commissioners on the spot "they will be enabled to command the evidence necessary to decide on the weight of conflicting statements; and they may in a short space of time collect the necessary information more easily and more accurately than it could be obtained by any other proceeding." Moreover, "deeply impressed with the importance of the subject," they recommended that no time should be lost in appointing the Commission.[1]

The suggestion of the Committee was adopted, and a Commission appointed. Although the Commissioners began their work in the autumn of 1833, they did not finish it until early in 1835. They received every incentive from the Government to accomplish the task as quickly as possible.

[1] See Report in *Annual Register*, 1833, pp. 377 *et seq.*, for this and the previous quotations given above.

The Commissioners found "that there prevails amongst the inhabitants of a great majority of the incorporated towns, a general, and in our opinion, a just dissatisfaction with their municipal institutions; a distrust of the self-elected municipal councils, whose powers are subject to no popular control, and whose acts and proceedings, being secret, are unchecked by the influence of public opinion . . . a discontent under the burden of local taxation, while revenues that ought to be applied for the public advantage, are diverted from their legitimate use, and are sometimes wastefully bestowed for the benefit of individuals, sometimes squandered for purposes injurious to the character and morals of the people." [1] The above quotation speaks for itself. "Their report," writes an eminent historian, "was one of the longest and most elaborate documents that had ever been published under the authority of Parliament. It had the merit of placing the whole history of corporations before the public, and of foreshadowing the great measure of reform which immediately resulted from it." [2] It is unnecessary to go further into the details of the report. The point the writer wishes to make is this: it took eighteen months to compile. It was compiled by men "eminently qualified for the task," who bestowed the "utmost pains and diligence upon it." [3] It could, therefore, only be considered as

[1] Hansard, 1835, vol. xxviii. cols. 542–3.
[2] Spencer Walpole, *History of England*, vol. iii. p. 314.
[3] Hansard, 1835, vol. xxviii. col. 554.

impartial, authoritative, and sound. Henceforth, none could plead ignorance of the state of local government.

Upon the report of the Commissioners the Government based their Bill. Lord John Russell, the Leader of the House of Commons, was entrusted with the task of piloting the Bill through the House of Commons. It was proposed that the Bill should apply to one hundred and eighty-three boroughs. The vote at municipal elections was to belong to those people who occupied warehouses, houses, and shops, and paid rates. All who then enjoyed pecuniary rights were to be allowed to keep them for life. In future, no person was to be admitted into corporations, or be burgesses of them, unless they were permanent inhabitants of the borough and paid rates. All exclusive rights of trading were to be abolished. The municipal governing body was to consist of a Mayor and Council. Members of the Council were to be elected for three years, one third retiring every year, whilst the Mayor was to be annually elected by the Council, and during the term of his Mayoralty was to be a Justice of the Peace. No qualification was to be necessary either for the office of a Councillor or Mayor. The Council was to appoint the Town Clerk and the Treasurer. The Council was to be given power to appoint a financial committee, and the accounts of this committee were to be audited regularly and brought before the public. Magistrates were to be appointed by the Crown, and not to be elected

by the Council. The borough might have a Recorder if it wished, but the Recorder must be a barrister of at least five years' standing, and the borough was to pay his salary.[1] Such were the chief provisions of the Bill introduced by Lord John Russell.

The motion for the First Reading was agreed to, and the Bill brought in and read a first time. Sir Robert Peel, the Leader of the Opposition in the House of Commons, "had no fancy for making himself the leader of the old-fashioned Tories."[2] One concludes from his speech that he had a sneaking fancy for some portions, at any rate, of the Bill. "I should be unwilling," he said, "to allow the motion to be put from the Chair without a single observation having been offered on the subject except those contained in the speech of the noble Lord. I shall make no opposition whatever to that motion; I shall throw not the slightest impediment in the way of the introduction of this Bill . . . and, moreover, I am about to state opinions upon the subject of Municipal Reform generally . . . which will prove that an opposition on my part . . . would be quite inconsistent with the opinions which I entertain."[3]

After the outspoken declaration by Peel on the First Reading, the Tories, though hating the measure, were powerless to interfere with its safe passage through the House of Commons. On

[1] Hansard, 1835, vol. xxviii. cols. 541–58.
[2] Spencer Walpole, *History of England*, vol. iii. p. 322 (2nd ed.).
[3] Hansard, 1835, vol. xxviii. cols. 542–3.

June 15, 1835, with scarcely any debate, and without a division the Bill was read a second time.[1] In Committee, Conservative opposition was directed to preserve the right of freemen to the parliamentary franchise, and it was protested that freemen " were to be taken by a side wind and without a hearing, pronounced guilty." The attempt, however, failed.[2] Peel endeavoured to attach a qualification to town councillors. He proposed that the qualification in boroughs divided into wards should be the possession of £1,000 or a building rated at £40 a year.[3] The Committee refused to amend the Bill in this respect. On July 17th, the Bill was reported, and four days later sent to the House of Lords.[4]

What had been impossible to effect in the House of Commons was attempted in the House of Lords. The Peers, " still clinging to the obsolete privileges of their order, rallied in the defence of abuses," and tried to upset the work of the House of Commons.[5] Lord Strangford, a doughty opponent of the Bill, asked their Lordships to allow counsel to address the House in support of a petition against the Bill from the Mayor, Bailiffs, and Commonalty of the City of Coventry.[6] Such a course was naturally much against the wishes of the Ministry, and was palpably intended to

[1] Hansard, 1835, vol. xxviii. col. 820.
[2] *Ibid.*, 1835, vol. xxviii. cols. 1069–1112.
[3] *Ibid.*, 1835, vol. xxix. col. 120.
[4] *Ibid.*, 1835, vol. xxix. col. 785.
[5] Spencer Walpole, *History of England*, vol. iii. p. 323.
[6] Hansard, vol. xxix. col. 1127.

delay the progress of the Bill. The Lords knew that if Strangford's request was granted other boroughs would apply for leave to have counsel argue their case against the Bill. Lord Brougham suggested, therefore, that two counsel should be selected to conduct the case of all boroughs opposed to the provisions of the Bill. He also spoke in warm support of the Bill and prevailed upon the House to adopt his suggestion.[1] Not content with having wasted three evenings listening to counsel, the majority in the House further desired that evidence should be brought of the truth or otherwise of the condition of affairs set out in the Report. On August 3rd, accordingly, the Earl of Carnarvon, "because he was anxious that the House should give this Bill a fair, cool and attentive consideration,"[2] moved that evidence should be received in support of the allegations contained in the petitions. His amendment was carried.[3] This move caused a further delay of a week, for, during the next five days, their Lordships busied themselves listening to evidence which chiefly consisted of imperfect repetitions of the evidence contained in the Commissioners' Report. The Commissioners themselves were violently attacked. They were charged "with stating direct falsehoods,"[4] and of having violent principles. As the hearing proceeded, it became evident to certain Tory Lords that they were

[1] Hansard, vol. xxix. cols. 1132, 1137, 1150.
[2] *Ibid.*, vol. xxix. col. 1355.
[3] *Ibid.*, 1835, vol. xxix. col. 1452.
[4] *Ibid.*, 1835, vol. xxx. col. 333.

damaging their own case, and causing irritation against themselves where none, previous to the hearing of the evidence, had existed. On August 7th, the Marquis of Salisbury gave as his view that it was "hardly worth while to persevere much further in the inquiry, unless they meant to go through the whole list of petitions." [1] He was followed by the Duke of Wellington, who suggested "that counsel might by an early hour to-morrow conclude the whole of what they intended to lay before the House. After that, the House should proceed to take into consideration the further proceedings with the Bill." On August 9th, the Earl of Wicklow formally moved "That the evidence on the Corporation Bill be now closed." [2] Three days later, Melbourne moved his original motion that the House should resolve itself into a Committee of the whole House on the Bill. In his speech he strongly deprecated the way in which the Commissioners had been treated. "I cannot but think that they have been treated with great and unmitigated injustice. Their names have been derided and definitions of their political characters given, from whence collected I know not." [3] Lyndhurst, at any rate, must in his own mind have felt the justice of Melbourne's remarks. The House was warned also against "setting yourselves in opposition to the opinions of the people of England, declared

[1] Hansard, 1835, vol. xxx. col. 135.
[2] *Ibid.*, 1835, vol. xxx. col. 136.
[3] *Ibid.*, 1835, vol. xxx. col. 332.

through the legitimate organs—their representatives in Parliament." Even then the extreme Tories still thought the proper method of dealing with the Bill was to throw it out. The Duke of Newcastle rose to propose an amendment with that object in view. Luckily the House refused its support, and Lord Melbourne's motion was carried and the Bill sent to a Committee of the whole House; but many noble Lords expressed themselves to be in entire agreement with the Duke's object.

In Committee, the Lords began to alter the Bill. Lyndhurst had "coolly promised the rank and file of his party to make the Bill what Tory Peers called a conservative arrangement." [1] He fulfilled that promise. "The present Bill, when it came from the House of Commons, contained a plain and simple plan . . . but what a difference between its former and its present condition," said Lord Holland. "Every one of its great principles had either been tampered with or destroyed." [2] On an amendment by Lyndhurst, the Committee decided to preserve the rights of freemen so far as property was concerned.[3] It also preserved their right to the franchise "as if this act had not been passed." [4] It determined, again on an amendment by Lyndhurst, that the Council should be elected from the ratepayers who paid on the highest assessment. For this purpose, it proposed

[1] S. Walpole, *History of England*, vol. iii. p. 325 (2nd ed.).
[2] Hansard, 1835, vol. xxx. col. 1034.
[3] *Ibid.*, 1835, vol. xxx. cols. 56, 57, 58.
[4] *Ibid.*, 1835, vol. xxx. col. 459.

that ratepayers should be divided into six classes. The one-sixth of those who paid the highest amount of rates should be those from whom the councillors should be elected. Brougham strenuously opposed this, describing it as "the worst alteration which has yet been proposed." [1] Yet it was carried by one hundred and twenty votes to thirty-nine votes. Later, the Committee decided that aldermen should be elected for life, and altered the Bill to give effect to this.[2]

The above three alterations, though by no means the only alterations, were the most important made to the Bill. They were of such a character that they completely changed the nature of the Bill. The action of the Committee is, perhaps, best described by the following quotation from one of the many speeches made by Lord Brougham. "God wot," he said, "we had little to expect from going into this Committee, except that of a slower death, and after the endurance of extensive mutilation. For after the lopping off first a twig, in order to try the operation, then a branch, to see how it would take elsewhere; you next severed the bough, and then you attacked the trunk of the tree itself; while now, to-night, my learned friend comes and lays the axe at the root." [3] The last statement was in reference to Lyndhurst's amendment that aldermen should be elected for life.

[1] Hansard, 1835, vol. xxx. cols. 483–4.
[2] *Ibid.*, 1835, vol. xxx. col. 601.
[3] *Ibid.*, 1835, vol. xxx. col. 586.

"Tory Lords," we read, "were enthusiastic at their success; yet even in their enthusiasm they could not conceal from themselves the dangers of their position." [1] True, they had converted the Bill into "a full, consistent and constitutional Conservative reform" [2]; but they certainly had not, as one Tory Lord had proudly boasted, strengthened their hold upon the affections of the people," and there was still the House of Commons to be reckoned with. However, for the moment, their triumph was complete. Russell nevertheless determined that it should not endure. On August 31st, in a calm and dignified speech, he told the House of Commons what were the intentions of the Ministry.[3] They refused to accept the Lords' amendment that aldermen should be elected for life. As a compromise, it was proposed that aldermen should be elected for six years. They refused to attach the qualification to the office of a councillor contained in the Lords' amendments. Instead, it was proposed to substitute some other qualification. In short, he told the House that they were prepared to meet the amendments in a fair spirit, agreeing where agreement did not mean the destruction of fundamental principles, refusing to agree where the reverse was the case, but in all never acting in a captious spirit. After Russell had finished speaking, Peel rose. He said he was present, "for

[1] S. Walpole, *History of England*, vol. iii. p. 326 (2nd ed.)
[2] Hansard, 1835, vol. xxx. col. 1034.
[3] *Ibid.*, 1835, vol. xxx. col. 1132.

the purpose of resisting any measure or resolution calculated in the slightest degree to interfere with the honour or independent character of the House of Lords as a branch of the Legislature." [1] Having said so much, he agreed with Russell that the introduction of aldermen for life was not an improvement, and that he could not support it. In short, he only gave support to a few of the minor amendments of the House of Lords.

Without Peel, the Tories were helpless. Further opposition on the part of the House of Lords would have made that body look foolish, with Peel supporting the Bill in the Commons. On September 4th, Lyndhurst had to advise the Lords to give way, and Lord John Russell was able to tell the House of Commons "that the alterations in the Bill to which I declared that I had an insuperable objection have been abandoned by the House of Lords." [2]

NONCONFORMISTS AND THE RELIGIOUS TESTS.

The action of the House of Lords upon legislation affecting Nonconformists is typical of their action upon the most important legislation of the Radical Ministries of this period. By the Oxford University Bill, 1854, which substituted a new governing body on the elective system for the University of Oxford, and made provision for the setting up of halls, and generally substituted a

[1] Hansard, 1835, vol. xxx. cols. 1145–56.
[2] *Ibid.*, 1835, vol. xxx. col. 1402.

modern and more equitable constitution for the University,[1] Nonconformists were allowed to take degrees, but not allowed to enjoy fellowships or obtain certain scholarships, by reason of the existence of certain religious tests which were not abolished by the Act. There were some in the House of Commons who would have been quite willing to see provisions incorporated in the Bill to do away with these tests. Lord John Russell himself was in sympathy with those who wished to abolish the tests. In asking leave of the House to bring in his Bill, he said, " I cannot think the whole purposes of the University are fulfilled while there is a test at the entrance of the University which hinders so many from entering it at all. I never, Sir, would consent to any measure by which the discipline of the colleges, nay more, the conduct of religious instruction in the colleges, and the attendance of Divine Worship, was in any way interfered with. But I do expect certainly that by the addition of those new halls there will be facilities which may induce Parliament not much longer to interpose the obstructions which hitherto have been interposed to the enjoyment of the benefits of those great schools by a far larger proportion of Her Majesty's subjects than at present enjoy them." [2] As the subject excited different opinions, not only in the House of Lords, but also in the House of Commons, it was felt that such provisions ought to be reserved for a separate

[1] Hansard, 1854, vol. cxxxi. col. 892.
[2] *Ibid.*, 1854, vol. cxxxi. col. 910.

measure. The Leader of the House, however, stated, " I certainly shall always and at any time be prepared to give my vote . . . for the admission of Dissenters." [1] Lord John Russell did not keep his word. Towards the end of the Committee Stage, new clauses were introduced abolishing religious tests on matriculation and on graduation. The Government, and especially Mr. Gladstone, who at that time was the member for the University, strongly opposed the clauses.[2] By two hundred and fifty votes to one hundred and sixty votes, the Committee passed the first of the two clauses abolishing the test on matriculation.[3] Feeling in the House ran so high that Lord John Russell almost yielded on the second clause, which abolished the test on graduation. The Opposition pointed out that the Government ought not to do this in view of the line they took when asking for the leave of the House to introduce the Bill. An amendment was, therefore, moved against the second clause, and with the two front benches supporting it, it was carried by a majority of eleven votes.[4]

Nothing further was done for the Dissenters until on February 12, 1864, the House of Commons granted leave to Mr. Dodson, Mr. Grant Duff, and Mr. Goschen to bring in a Bill for the abolition at Oxford of the religious tests for the Master of Arts and the higher degrees. The Bill was

[1] Hansard, 1854, vol. cxxxi. col. 911.
[2] *Ibid.*, 1854, vol. cxxxiv. col. 512.
[3] *Ibid.*, 1854, vol. cxxxiv. col. 585.
[4] *Ibid.*, 1854, vol. cxxxiv. col. 590 (205 votes to 196).

intended to contain no new principles, but to be merely a completion of the work begun by the Act of 1854. There was nothing in the Bill to prevent the non-conforming graduate from voting in the Senate, but it was hinted that such a provision could be inserted in Committee. The Bill passed its Second Reading by an easy majority.[1] As the Bill proceeded, however, the majorities in its favour steadily diminished. On the question being put "That the Bill be now read a Third Time," the House divided equally.[2] The Speaker gave his vote in favour of the motion, but on the question "That the Bill do now pass," it was thrown out by two votes.[3]

In 1866, another attempt was made with a similar Bill. This proved to be more successful. Mr. Coleridge, who was later to become Attorney-General and then Lord Chief Justice, took charge of this Bill. It passed its First and Second Readings and went through Committee with comfortable majorities, but the resignation of the Government, and the taking of office by Lord Derby on July 3, 1866, placed a further obstacle in its path. On July 20th, the Bill was withdrawn.

On February 12, 1867, another Bill was introduced into the House of Commons by Mr. Coleridge. By April 12th, it had reached Committee. Here it was moved that its provisions should be extended to the University of

[1] Hansard, 1864, vol. clxxiv. col. 158 (211 votes to 189).
[2] *Ibid.*, 1864, vol. clxxvi. col. 675 (170 votes to 170).
[3] *Ibid.*, 1864, vol. clxxvi. col. 678.

Cambridge.[1] After a long debate that was done. By June 18th, the Bill was ready for its Third Reading. On the question being put, it was agreed without a division. Immediately Sir Michael Hicks-Beach stood up. He asked that the Bill should not be pressed to a division, the hour being so late. Mr. Grant Duff, one of the promoters of the Bill, reminded the House that the Bill had been discussed four times by that Parliament and the previous Parliament, and appealed to the generosity of members. "Everything that can be said on either side has been said," he declared, and he asked the Government, if the Third Reading was not to be proceeded with, to give him a day.[2] This Mr. Disraeli refused to do,[3] and the Bill had to wait until July, when it passed its Third Reading.

The promoters of the Bill were to be congratulated on the success of their efforts. By their courage, they carried their Bill through the House of Commons in the face of a Conservative Government. In the House of Lords their efforts counted for nought. True, the House gave the Earl of Kimberley leave to introduce the Bill. In moving the Second Reading, Kimberley gave a short review of the history of previous Bills to abolish the tests, and sketched the history of the present Bill, telling their Lordships that it had passed the Second Reading without a division, and of the great changes made in Committee, whereby its

[1] Hansard, 1867, vol. clxxxvi. col. 1443 (283 votes to 166).
[2] *Ibid.*, 1867, vol. clxxxviii. col. 86.
[3] *Ibid.*, 1867, vol. clxxxviii. col. 1658.

provisions had been extended to the University of Cambridge.[1] After Kimberley had spoken, the Duke of Marlborough rose to propose that the Second Reading should be taken that day three months hence. Apart from being opposed to changing the old constitution of the Universities, he objected to Dissenters being admitted to the governing body of Universities, because nothing could more tend to excite religious discord and increase religious animosities. He went so far as to suggest that there would be nothing more poisonous to the state of Society than to have the governing body of the Universities composed of men of every variety of creed which was known to exist.[2] That such arguments could be seriously put forward is astounding. In the ensuing debate, the Duke of Devonshire pointed out that the character of the colleges could not possibly be appreciably diminished, and that no dissenting influence was at all likely to be strongly felt in the Council. The House was reminded of the history of the gradual removal of religious disabilities in the country, and bluntly told that if it rejected the Bill, the agitation, which had already been produced by their Lordships' attitude, would be increased.[3] The Bishop of Peterborough next addressed the House. Notwithstanding the fact that he fully realized that Marlborough's amendment " tended to the rejection of the Bill," he felt

[1] Hansard, 1867, vol. clxxxix. cols. 43–7.
[2] *Ibid.*, 1867, vol. clxxxix. cols. 47–51.
[3] *Ibid.*, 1867, vol. clxxxix. cols. 52–8.

reluctantly compelled to support it. In a speech full of the most extraordinary argument, he attempted to justify his opposition to the Second Reading. Many other Lords took part in the debate, and it is, of course, quite impossible to give a summary of all their arguments. It is sufficient to say that, notwithstanding the wise council of Kimberley and the Duke of Devonshire, the fantastic and fatuous arguments of those opposed to the Bill carried the day.

The autocratic treatment the Bill had received made its promoters more determined than ever to get their Bill on to the Statute Book. In 1869, Sir John Coleridge was allowed to bring forward another Bill, this time from the Treasury Bench. This Bill removed all tests imposed by the Universities themselves, and set the colleges free from restrictions that had been imposed on them by Parliament.[1] It passed the House of Commons without a division.[2] This time the House of Lords got rid of the Bill by moving and carrying the previous question.[3]

The Government now felt it was time to exert itself on behalf of the House of Commons. In 1870, another Bill was brought into the House of Commons. The House of Lords had to deal with a Government measure, and the occasion called for greater subtlety. In moving the Second Reading of the Bill, in the House of Lords, the Earl of Ripon,

[1] Hansard, 1869, vol. cxciv. col. 1042.

[2] *Ibid.*, 1869, vol. cxciv. col. 1450. (Attempt by Conservatives to check pace of Bill.)

[3] *Ibid.*, 1869, vol. cxcviii. col. 143.

the Lord President of the Council, put the question very clearly. "The question," he said, "has been considered in no less than three distinct Parliaments, in every one of which the opinion of that House has been more and more decidedly affirmed in favour of the principle of the Bill. I admit that in 1864 that opinion was of a doubtful description, for the Bill was thrown out on one occasion by a majority of two, but in 1865 it passed the Second Reading, although circumstances prevented its further progress. . . . In the present Parliament . . . the majorities in favour of the measure have become more and more decided than on any previous occasion." [1] The House, however, was determined to be rid of the Bill. Lord Salisbury carried an amendment to the effect that it was necessary to provide adequate safeguards and securities if persons, other than members of the Church, were going to be allowed to hold offices in the Universities. He obtained the oppointment of a Select Committee to consider the best method of giving effect to his amendment.[2] It was obviously intended by their lordships that the Select Committee should be a grave for the subject matter before them, and not a "hatching machine."

On February 1, 1871, another University Tests Bill was introduced into the House of Commons and read for a first time. Mr. Gladstone himself took charge of the Bill. He explained that he did

[1] Hansard, 1870, vol. cciii. col. 199.
[2] *Ibid.*, 1870, vol. cciii. cols. 203–32.

so because " of the maturity at which the subject has arrived, and the position it has assumed as a question between the two Houses of Parliament." [1] The Bill passed rapidly through the House, and was introduced into the House of Lords whilst the Select Committee was still supposed to be sitting. " As regards the general principle of the measure the abolition of tests at the Universities—whatever your likings or dislikings may be, your Lordships must, I think, admit that the time has arrived when that principle can no longer be resisted. The long time during which this subject has now been agitated, and the large majorities which have approved the measure in the other House, are facts which are of themselves sufficient to furnish a weighty argument in favour of the Bill becoming law." [2] So spoke the Earl of Ripon in moving the Second Reading. The end of the resistance was felt by the Lords themselves. Lord Salisbury had to agree to the Bill going into Committee, and he informed the House that the Select Committee would furnish their report in time to be of assistance to the Committee. In Committee he was successful in inserting an amendment to require that a declaration should be made by everybody appointed to tutorial offices that they would teach nothing " contrary to the Divine authority of the Holy Scriptures." [3] The House of Commons declined to accept this amend-

[1] Hansard, 1871, vol. cciv. col. 141.
[2] *Ibid.*, 1871, col. ccv. col. 41.
[3] *Ibid.*, 1871, vol. ccvi. col. 1192.

ment, and the Lords had to give way. On June 11, 1871, the Bill received the Royal Assent.

With the year 1886, the modern history of the House of Lords entered its third period. The partisanship of the Upper Chamber became more pronounced. Whigs and Tories united to oppose Home Rule, and a new party, the Unionist Party, came into existence, which linked its fortunes with those of the Conservative Party. From that year onwards, the House of Lords became the stronghold of the Conservative and Unionist Party. When the Liberal Party was in power, it showed signs of great vigour, and interfered unceasingly with Bills. When its own party was in power, it almost ceased to exist as a parliamentary organ so far as concerned Function 3. In the second period of its modern history, it had allowed its exercise of the function to be influenced by class motives. In this third period, it added "party" to the considerations which influenced its exercise of the function.

Few examples are needed to illustrate the use to which the function was put. The experience of the Liberal Government 1882–95 sufficiently indicates the conduct of the House of Lords. All the principal Bills of Mr. Gladstone's Government were interfered with by the House of Lords. Unquestionably, it was right that the Home Rule Bill should have been thrown out. This Bill had not been fairly before the electorate, and even the Liberal Party were not agreed upon it; but on the Parish Council's Bill and Employer's Liability

Bill, Mr. Gladstone had his party with him. The Peers forced him to come to a compromise upon the Parish Council's Bill, and they riddled the Employer's Liability Bill with important amendments which completely changed its character. Their amendments to the latter Bill were rejected by the House of Commons by more than a party majority, but they refused to give way, and Mr. Gladstone had to abandon the measure.[1] So intolerable did the exercise of the function become that in 1911 the Liberal Party, for their own protection, were compelled to take from the House of Lords the power which enabled them to perform the function.

It has been thought proper to give two examples which illustrate the use to which the function was put in this period.

TRADE DISPUTES ACT, 1906, AND PLURAL VOTING BILL, 1906.

The action of the House of Lords with regard to the above shows clearly that, in performing Function 3, the House of Lords acted purely as a party body. The Trade Disputes Act was introduced into the House of Commons on the 28th day of March, 1906. Its object was to amend the law relating to trade unions and trade disputes, and to put it on a " more assured and satisfactory basis." The then law, set up by Acts of 1871 and 1878, had lost much of its effectiveness, owing to

[1] See Sir Sydney Low's *Governance of England*, chap. xii. p. 227.

a long course of judicial decisions restricting the rights and privileges trade unions were supposed to enjoy. In particular, the right of peaceable persuasion had been cut down, and great scope given to the law of conspiracy.[1] By the Bill, conspiracy was to be confined within definite limits,[2] the right of peaceful persuasion was to be enacted in express terms,[3] and the law of agency was to be so defined that " no act can be made the foundation of a claim for redress from trade union funds unless it is perfectly clear that the Act was authorized by the governing body of the union." [4] The Conservative Opposition, whilst agreeing the need for an amending Bill, disliked intensely many of the provisions of the Government Bill. They particularly deprecated the special position in which a trade union was to be placed with regard to the law of conspiracy.[5] It was not considered proper that combinations of workmen should be given the proposed enormous powers under the Bill, and, at the same time, immunity for the result of any action they might care to take.[6] Opposition to the Bill was doomed to failure so far as the House of Commons was concerned. By its majority, the Government secured an easy passage for the Bill, which was

[1] Parliamentary Debates (authorised edition), 1906, vol. cliv. cols. 1295–8.
[2] *Ibid.*, 1906, vol. cliv. col. 1298.
[3] *Ibid.*, 1906, vol. cliv. col. 1301.
[4] *Ibid.*, 1906, vol. cliv. cols. 1304–6.
[5] *Ibid.*, 1906, vol. cliv. cols. 1320–7.
[6] *Ibid.*, 1906, vol. clxiv. col. 910.

sent up to the House of Lords with Mr. Balfour's message that " It was too late to change the Bill. It was too late to reject it. The Bill as it had gone through must be accepted." [1]

The majority of Peers were bitterly opposed, not only to the provisions, but to the whole principle of the Bill. Believing as they did about the Bill, clearly Function 3 should have been put into operation and the Bill rejected. Yet they dare not reject it. Mr. Balfour's speech on the Third Reading in the House of Commons was tantamount to a command to them to allow it to pass. Apart from the direction they had received from the Leader of the Opposition in the House of Commons, their Lordships were frightened of what would happen were they to reject the Bill. The speech of the Marquis of Lansdowne in this respect is most enlightening. " We are passing," he said, " through a period when it is necessary for this House to move with very great caution. Conflicts, controversies, may be inevitable, but let us, at any rate so far as we are able, be sure that if we join issue we do so upon ground which is as favourable as possible to this House, and I believe the juncture is one when, even if we were to win for the moment, our victory would be fruitless in the end." [2] On those grounds the House allowed the Bill to pass.

The Plural Voting Bill, 1906, was introduced into the House of Commons on May 2, 1906, under

[1] Parliamentary Debates (au. ed.), 1906, vol. clxiv. col. 911.
[2] *Ibid.*, 1906, vol. clxvi. col. 703.

the ten minutes' rule. Its object was " to limit the abuse and anomaly of certain classes of plural voting." [1] On the Second Reading, an amendment moved on behalf of the Conservative Party declining to consider the Bill on the ground that it did nothing to remove other inequalities in the electoral system,[2] was defeated. The Bill passed its Second Reading, Committee, and Third Reading with big majorities and was sent to the House of Lords.[3]

Conservative opposition to the Bill in the House of Commons was based on the ground that it was not intended to redress genuine grievances, but represented an attempt " to gerrymander the polls in the interests of one particular party." This argument was borrowed by Conservative Peers in the House of Lords. On the Second Reading a motion, almost identical with that moved in the House of Commons, was moved by Lord St. Aldwyn.[4] His Lordship dubbed the Bill " a mean and petty scheme for disenfranchising voters, the majority of whom are supposed, for all I know quite erroneously, to be opposed to those at present in power." [5] He stated that the loss of the Bill would be " regretted by few beyond the circle of wirepullers and party agents who hope to find in it a means of preserving to their party some more seats than those to which it

[1] Parliamentary Debates (au. ed.), 1906, vol. clvi. cols. 580–6.
[2] *Ibid.*, 1906, vol. clvii. cols. 208–15.
[3] Second Reading, 403–95; Third Reading, 333–104.
[4] Parliamentary Debates (au. ed.), 1906, vol. clxvi. col. 1492.
[5] *Ibid.*, 1906, vol. clxvi. col. 1501.

would otherwise be entitled at the next General Election." [1] The wise words of Lord Courtney, who asked that the Bill should be read a second time to show the people their willingness "to abandon privilege and to be concerned only for the efficiency of electoral reform," went unheeded, and the amendment of Lord St. Aldwyn was carried.[2]

The fate which these two Bills met shows upon what basis the House of Lords proceeded in selecting Bills for the operation of the function, and the fact that the two come so near together in point of time makes their history more convincing of the wrong basis upon which the House proceeded. One was a measure of much social as well as of party importance, whilst the other was purely a party measure, and did not command the same sympathy and interest in the country. This had its influence on the opposition to the two Bills in the House of Commons. Conservative opposition to the Trades Disputes Act was of a restrained and serious nature. Opposition to the Plural Voting Bill was more frivolous. The late Sir Henry Campbell-Bannerman, in commenting upon the jovial air of Mr. Balfour, during the Second Reading of the latter Bill, sarcastically attributed it to the fact that here was a Bill which could be opposed to the bitter end. The first Bill was sent up to the House of Lords with the direction that it must be passed. That the

[1] Parliamentary Debates. (au. ed.), 1906, vol. clxvi. col. 1501.
[2] *Ibid.*, 1906, vol. clxvi. col. 1502.

Leader of the Opposition should assume it to be his duty to offer such a direction shows the biased and partial nature of the House of Lords. The second Bill received no such direction, for it was merely " a measure upon which the Liberal Party speaks with no uncertain voice." [1] The Bill, " not being a Bill with which this House really has direct interest," but being one upon which their Lordships could " join issue," with every assurance that their victory would not be fruitless, was rejected.[2] Such is the secret of the different treatment received by each. In each case the motive prompting the treatment was equally bad.

From the time when the House first claimed the right to protect the people to the passing of the Parliament Act, the function was marred by the class and party spirit which prompted its exercise. Whilst it would be untrue to say that the operation of the function was never justified,[3] it cannot be contended that the House has exercised it to give general satisfaction, and its misuse of power destroyed any value which the most ardent supporters of the function could claim for it.[4]

It must not be thought that, because of its

[1] Parliamentary Debates (au. ed.), 1906, vol. clxvi. col. 1487.

[2] *Ibid.*, 1906, vol. clxvi. col. 1487.

[3] Irish Home Rule Bill, 1893.

[4] Both Education Act, 1902, and Licensing Act, 1904, should have been sent to the electorate for its approval. As these measures emanated from a Conservative Government, the House of Lords allowed both to pass. On the other hand, all manner of Liberal Bills have been interfered with, e.g., Parish Councils Bill, 1893; Employers Liability Bill, 1893; Plural Voting Bill, 1906; Scottish Small Landholders Bill, 1907; Licensing Bill, 1908.

failure to perform Function 3 in the past, the House of Lords ought to be condemned as a legislative body. It is apparent that whatever function a Second Chamber may have to perform, it can only perform it properly if it acts impartially. Whether or not a body of legislators is capable of giving an impartial hearing to, and judgment of, a matter which is political, depends entirely on how far that body is free from party control and party feeling. Of all possible functions, it is most important that Function 3 should be performed with the strictest impartiality. In the last chapter, the Second Chambers of Canada and Australia were examined, the former expressing the constitutional ideas of the last century, the latter an expression of the most advanced constitutional ideas of the present day, to see if these two countries had been more fortunate with their Second Chambers. The examination revealed the failure of both to perform, in a satisfactory manner, Function 3. The reason for the failure was the same in each case. Both the Australian Senate and the Canadian Senate were the subject of the party system and acted in a party manner.

The party difficulty has proved to be the stumbling block for most reformers of the House of Lords. Various methods of creation have been proposed which would mitigate the party complexion of the Second Chamber, but so far none of the methods eradicate party from the Second Chamber. Proportional Representation, Nomina-

tion, and Professional and Business Representation are some of these methods. None of them would, however, give a non-partisan Second Chamber. No matter what the unit of representation may be, the representation itself will be determined by party considerations, for " party is a necessary and inevitable institution of democratic government on a large scale." [1] Some modes of constituting the Second Chamber give greater freedom from party control than others, and in choosing the mode, that giving the greatest freedom must be taken. That, however, is as far as any reformer of the House of Lords can go. The only thing, therefore, to be done with the difficulty is to recognize it as inevitable, and to modify the powers and duties of the Second Chamber accordingly.

The chief interest of the suggested alteration to the power of the Second Chamber for the purpose of this function lies in this, how far does it propose a return to the *status quo ante* ? In the first place, it is to be noticed that a power of delay only was to be given—the words being " so much delay (and no more) . . . as may be needed to enable the opinion of the nation to be adequately expressed " upon the Bill. Those words are clear and unambiguous, but what would an acceptance of them involve ? Surely nothing more or less than sufficient power for the Second Chamber to protect the nation from its representatives in the House of Commons. The amount of delay would

[1] Lees-Smith, *Second Chambers in Theory and Practice*, p. 135.

naturally vary with each Bill, and to be effective would have to be fixed by the Second Chamber on the occasion when it performed the function. In fixing the delay, the danger of disputes upon matters of political principle between the two Houses would again be inevitable. In the second place, if it is admitted that this form of delay is necessary, it would be illogical to exclude Money Bills, for it would be impossible for a Second Chamber to give protection if it were to have no power over Money Bills. An attempt to give the Second Chamber powers over Money Bills would raise a political storm which it is doubtful the scheme of reform containing it could weather.

The suggestion made by the Bryce Conference is an impossible compromise, unsatisfactory both to those who believe that Function 3 is not a proper function for a Second Chamber, and to those who wish to constitute a strong Second Chamber to perform this function. In view of the past history of the exercise of the function, and of the fact that it is impossible to create a Second Chamber entirely free from party, one is led to the conclusion that, however necessary protection against the legislation of the party majority in the House of Commons may be, Function 3 is not a function with which a Second Chamber can be safely entrusted. It must, therefore, be rejected as one of the functions of a Second Chamber for this country, and it is not available to argue the necessity of the Second Chamber.

THE NECESSITY FOR THE FUNCTION.

Whether the dangers of single chamber government, so far as this function is concerned, are exaggerated, must be considered. Whatever degree of legal omnipotence is now possessed by the majority in the House of Commons, no matter how safe and well entrenched it feels itself to be by reason of a five years' statutory existence, in its actions that majority must have regard to the wishes and feelings of the electorate—its political sovereign. Even the most absolute ruler that ever lived could not make or change every law at his pleasure. It has been pointed out that nothing is more surprising than the ease with which the many allow themselves to be governed by the few, and how implicitly people submit themselves to their rulers. The reason is stated to be that it is the governed who possess the force, and the governors have nothing for their support save the good opinion of those they govern. "It is, therefore, on opinion only that government is founded; and this maxim extends to the most despotic and most military governments, as well as to the most free and most popular. The Soldan of Egypt, or the Emperor of Rome, might drive his harmless subjects, like brute beasts, against their sentiments and inclination: but he must, at least, have led his mamelukes or prætorian bands, like men by their opinion." [1] It was long ago pointed out by one

[1] Hume, *Essays*, i. (1875 ed.), pp. 109, 110. See also Burke's *Thoughts on the Present Discontents*, edited by F. G. Selby, p. 2.

of the foremost authorities on the English Constitution that "a steady opposition to a formed public opinion is hardly possible in our House of Commons, so incessant is the national attention to politics and so keen the fear in the mind of each member that he may lose his seat." [1] To-day, those words are even truer than when Bagehot wrote them. Constituencies daily scrutinize the actions of their members and repeatedly call for explanations of their conduct.[2] The British system of having normally only two parties increases the control of the electorate over the Government. If a mistake is made, the party responsible is easily fixed with the blame, and suitably punished at the next General Election. The fact that they can so easily and so effectively be punished, that they are daily watched by the constituencies, and that their existence depends upon the good opinion of those they govern, must deter the most despotic of House of Commons majorities from insisting upon legislation to which a considerable portion of the electorate is hostile.

There are many ways in which the opinion of the electorate is being continually brought to the notice of the Government and the House of Commons. One of these ways is the Press. Ministers of the Crown are known to attach a great deal of importance to public opinion expressed through the Press. Undoubtedly, it is

[1] Bagehot's *English Constitution*, p. 241.

[2] "The enlarged electorate takes a quickened and continuous interest in our proceedings." Mr. Asquith in House of Commons, March 14, 1913.

a powerful weapon, and can be used to force a Ministry to defer to public opinion. It is, however, only right to bear in mind that the Press not only reflects public opinion; to a large extent it creates it, and in this respect it enjoys power without responsibility. Again, the public may make its opinion or its desire known to the Government upon a given matter through the various representative societies, or sections of the public may send delegations to Ministers to lay their views before the Government. Though the many representative societies and the delegations have some special interest which they push forward to the exclusion of all other interests, they serve to keep the Government in touch with current opinion.

The danger that a House of Commons majority will legislate contrary to the desires of the bulk of the electorate is exaggerated, but it is not entirely unfounded. Protection may be necessary in some form, for example, by a referendum, but the protection ought not, in the opinion of the writer, to be obtained through the action of a Second Chamber.

CONSTITUTIONAL BILLS.

One type of Bill for which protection was claimed seems to stand entirely apart from the two other types and to require special consideration, namely, a Bill altering the fundamentals of the Constitution. A constitution has been well

described as " l'ensemble des institutions et des lois fondamentales, destinée a regler l'action de l'administration et de tous les citoyens." [1] That definition of a constitution applies to England, although no difference exists between the machinery for making a constitutional and an ordinary law, and although the Constitution is said to be unwritten. A law altering the franchise, the order of succession to the crown, the functions of the judiciary, can be made with the same ease and in the same manner as a law relating to the closing of shops. The Constitution of this country is, therefore, said to be flexible, as opposed to those constitutions which lay down certain constitutional fundamentals that can only be altered by special, and in some cases complicated, machinery, and are consequently termed rigid.[2] Not only is the Constitution of this country flexible, but it is unwritten, in the sense that it is impossible to point to a single authoritative document or a limited number of documents, and say those contain the body of rules comprising the Constitution. Thus, not only can great changes be made in the Constitution, but, owing to the absence of a written code, it is practically impossible for people, uninstructed in constitutional matters, to realize at first the extent of the change. The result is that " the most cherished rights of individual citizens, as of societies and corporations, are held

[1] *Ahrens Cours*, iii. p. 380.

[2] Lord Bryce, *American Commonwealth*, i. pp. 475–8. Professor Dicey, *Law of the Constitution*, pp. 124, 142, 469.

on sufferance, held merely at the goodwill of a Parliament which is entirely devoid of all those checks and balances that have been carefully devised to restrict the power of other law-making bodies." [1]

Before the passing of the Parliament Act, 1911, there was some security that no structural alteration of the Constitution would be made until the nation had had an opportunity of expressing its opinion. The House of Lords has rendered service, on more than one occasion, by referring to the people Bills containing proposals for altering the Constitution, notably the Irish Home Rule Bill, 1893. On that occasion the nation refused to sanction the Bill. Inasmuch as the House of Lords performed Function 3 with regard to the constitutional Bills of one party, there was partial security. To-day, it is said, there is no security. "No impartial observer," wrote the late Professor Dicey, "can deny . . . the possibility that a fundamental change in our Constitution may be carried out against the will of the nation." [2] The words of the late Professor Dicey cannot be treated lightly. Again, if a country with both a written and a rigid Constitution feels the necessity of guarding against constitutional changes without due consideration, the necessity of providing against a hasty alteration in a flexible and unwritten Constitution does not seem to be an unreasonable argument. If, however, special machinery were

[1] McKechnie, *Reform of the House of Lords*, p. 6.
[2] Professor Dicey, *ibid.*, p. liii. Introduction (8th ed.).

to be set up in this country, the flexible nature of the Constitution would be impaired. The question to be determined is whether it would be right to allow the Second Chamber to perform Function 3 with regard to Bills altering the fundamentals of the Constitution. In the opinion of the writer, the arguments advanced against the function with respect to other types of Bill apply equally to a Bill altering the fundamentals of the Constitution. By giving the Second Chamber the function to perform, there is a danger of disputes on matters of political principle arising between the two Chambers which would completely overshadow the constitutional question. If the necessity of protection against such Bills is felt, the best way of securing it would be to set up special machinery to ensure that such a Bill should come before the electorate on its merits alone, without the possibility of side issues obscuring the main question. Whether it would be wise to set up such machinery is outside the scope of this book. The writer has been led to the conclusion, however, that so far as Function 3 and the Second Chamber are concerned, it would not be wise to make any exception in favour of a Bill altering the fundamentals of the Constitution.

CHAPTER V

THE NORWEGIAN CONSTITUTION

FOR nearly four centuries the Kingdom of Norway was united with that of Denmark, but Norway had her own laws, constitution and army. During the Napoleonic Wars, Denmark assisted France, with the result that, after the disastrous campaign in Russia, the Allies, as part punishment, demanded that Norway should be ceded to Sweden. The King of Denmark, however, instead of complying with this demand, sent his cousin, Prince Christian Frederick, to govern Norway as his Viceroy. The defeat of Napoleon at Leipzic, and the invasion of Holstein by Bernadotte of Sweden, compelled Denmark to come to terms. At the Treaty of Kiel, Norway, without being consulted in the matter, was handed over to Sweden.

This treatment caused the greatest indignation throughout the whole of Norway, and Prince Christian Frederick, in a spirit of bravado, summoned the nation to meet him at Eidsvold to decide what course of action should be taken. On May 17, 1814, the famous National Convention was held at Eidsvold, and the present Constitution drawn up and adopted, whilst Prince Christian Frederick was elected and proclaimed King.

Sweden was not prepared to lose the advantage given to her by the Treaty of Kiel. An army under Bernadotte crossed the frontier with every intention of carrying out the Treaty of Kiel. The Norwegians were prepared for such action on the part of Sweden, and Bernadotte found them stronger than he had expected. It became obvious that without bloodshed the conquest of the country was not to be accomplished. As his (Bernadotte's) diplomatic position was uncertain, and the Vienna Conference was already assembling, it was important to come to an immediate settlement. On the other hand, with the British Fleet blockading his coast, Prince Christian Frederick was uneasy as to what the result of his opposition would be. Both sides felt it would be wiser to have peace. A Convention was held at Moss on August 14th, and, under the terms of the Armistice there concluded, Prince Christian Frederick resigned his crown, and Norway consented to be linked to Sweden. On November 4th, the Eidsvold Constitution was altered to give effect to the arrangement of Moss, and Charles III made King of Norway.[1]

The union was never a happy one. With the establishment of parliamentary government in Sweden in 1885, Norway felt that in certain matters she was placed under the control of the Swedish Parliament. Disputes on questions of foreign policy, which was under the control of the Swedish Foreign Minister, were frequent.

[1] H. Boyesen, *History of Norway*, pp. 515–21.

With the refusal of Count Lowenhaeft, the joint Ambassador in Paris, to receive President Carnot, on the day of the centenary celebration of the fall of the Bastile, after being directed by the Storthing to do so, the whole matter of the administration of foreign affairs came to a head. Sweden, having little sympathy with France, had forbidden the Count to receive the President, whilst Norway had directed him to do so. After this episode, the question of separate foreign ministers and separate embassies became the burning question of the day.[1] There was much friction on account of the different tariff systems adopted by the two countries. Norway was a free trade country. Sweden was a protectionist country. It was thus very difficult to make trade treaties with other countries which were acceptable to both. The agitation in Norway for a separate consular service in 1891 gave the *coup de grâce* to the Union. After fourteen years of unsuccessful negotiation to settle the question, the Storthing resolved "that the Union with Sweden under one King is dissolved in consequence of the King having ceased to act as a Norwegian King."

The Constitution of Norway is one of the world's most interesting constitutions. The suggestions contained in the next chapter for the re-constitution of the House of Lords make a brief examination of those portions which relate to the Constitution of the Storthing—the Norwegian Parliament—and the respective

[1] H. Boyesen, *History of Norway*, p. 545.

powers and duties of the Storthing, the Odelsthing, and the Lagthing, necessary.

THE STORTHING.

The Storthing is composed of two bodies, the Lagthing and the Odelsthing, the latter corresponding to the English House of Commons, the former to the House of Lords, and it is the body through which the people exercise legislative power. Election to the Storthing is by proportional representation, and the vote is given to men and women over twenty-three years of age. It has a membership of one hundred and fifty, and the Constitution provides that rural districts shall have double the representation of the towns.[1] To be elected, a person must be thirty or more years old, and be a qualified voter in the district which he seeks to represent. Members of the Council of State, Officers employed in the Government Departments, and Officers of the Court cannot seek election.[2] Ex-Ministers and ex-Councillors of State may be elected for any district.[3]

The Storthing assembles on the first weekday after the 10th day of October in each year, and its first task is to elect its President and Vice-President. It then selects, by voting, a quarter of its members to form the Lagthing or Second Chamber. The two Things next elect their separate President and Vice-President. When this has been done, the Storthing is duly constituted and the King's speech delivered.

[1] Article 57. [2] *Ibid.*, 61. [3] *Ibid.*, 62.

The two Things hold their meetings separately. The Lagthing has a room of its own, whilst the Odelsthing sits in the Storthing Chamber. Neither may hold a meeting unless two-thirds of their number are in attendance.[1] Ministers of State and Councillors of State may attend the sittings of the Storthing, the Odelsthing and the Lagthing if they wish, but they cannot vote in any of the three Things.[2] The Storthing, which works on the committee system, usually requires the presence of Ministers to give information and views on the subject under discussion. If the Things are sitting in secret session, Ministers cannot attend unless they are invited to do so. This arrangement is a survival of a custom appertaining before the days of the complete establishment of parliamentary government. Ministers were formerly appointed by the King and were regarded merely as his agents, and a great fight took place between the King and the Storthing before the former would allow his Ministers to take part in the debates of the Storthing.

The Storthing is elected for a term of three years,[3] and there is no power of dissolution. This, and the right of secret meetings, give it more power over the Executive than the British House of Commons possesses.

THE WORK OF THE STORTHING.

The work to be done by the Storthing is fully set out in Article 75 of the Constitution, and may be briefly summarized as follows :

[1] Article 73. [2] *Ibid.*, 74. [3] *Ibid.*, 71.

FUNCTIONS OF AN ENGLISH SECOND CHAMBER

1. Control over Finance and Financial legislation.
2. Control of ordinary legislation.
3. Naturalization of aliens.
4. To alter the Constitution.
5. To examine, by means of machinery, which is described later, Minutes of the Council of State, public reports and papers in possession of Ministers, all Treaties entered into by the King, and generally to control the action of the Executive.

The Storthing, then, is a constituent as well as a legislative assembly, but only in the passing of ordinary legislation does it act as two chambers, and even in such legislation the power of the Lagthing is much restricted. The Lagthing cannot initiate ordinary legislation, or hamper legislation desired by the majority in the Odelsthing. All ordinary Bills must first be presented to the Odelsthing, either by one of its own members or by a Minister of State. If the Bill passes, it is sent to the Lagthing. The Lagthing may either pass the Bill, reject it *in toto*, or amend it. Its action usually takes the latter course. The Bill is returned to the Odelsthing. If the amendment is accepted, the Bill is sent for the Royal Assent. If the Odelsthing does not accept the amendment, it may either drop the Bill or return it in its original form to the Lagthing. If that body again rejects it, the Bill goes before the whole Storthing. No debate is allowed, and if a two-

thirds vote is registered in its favour it becomes law. Three days must intervene between each deliberation.[1] Thus, the part played by the Lagthing in ordinary legislation is very small.

The constitutional code has not given any definition of an ordinary Bill and a Money Bill. Whether a Bill is, or is not, a Money Bill, is decided in the light of parliamentary tradition of the last hundred years. The permanent rules and regulations for taxation are considered by the two bodies separately, but the Budget is considered by the whole Storthing. Thus, so far as financial legislation is concerned, Norway has a Single Chamber form of Government.

The procedure with regard to constitutional Bills is most interesting. A constitutional Bill is considered by the whole Storthing. The Bill is brought in the opening session before the newly elected Storthing and considered. When the time for dissolution comes, the Storthing votes upon it. If carried, the Bill awaits the return of the new Storthing, and becomes law if it receives a two-thirds vote.[2] Though Norway has not thought fit to guard herself against constitutional amendments by a strong Second Chamber, she has made it impossible for legislation in this direction to succeed unless a majority of the electorate is in favour of it. Her Constitution is better guarded than England. The only objection to the method she has adopted is the difficulty of confining General Elections to particular issues, and that,

[1] Article 76. [2] *Ibid.*, 112.

owing to this difficulty, constitutional legislation might easily be passed to which the electorate is hostile. Norway, however, seems quite satisfied with her method.

CONTROL OF EXECUTIVE POLICY.

The control of the Storthing over the policy of the Executive is very great. Under the Constitution, it is entitled to have laid before it all minutes of the Council of State, all public records and papers (exclusive of those relating to military command), and all treaties which the King has made with foreign Powers. It is virtually impossible for the Executive to take a single step without first consulting the Odelsthing and gaining its approval. For the purpose of controlling the Executive, the Odelsthing appoints a Committee, the Committee of the Protocol. All Cabinet minutes are submitted to this Committee, and are perused with very great care. Even over matters connected with foreign affairs, the control of the Odelsthing over the Executive is very great. A Committee of nine members is chosen, and this Committee is acquainted with every diplomatic step the Executive takes, for nothing can constitutionally be hidden from it. If a single member of the Committee is dissatisfied with the policy pursued by the Executive, he can have the whole matter brought before the Odelsthing. If a member decides upon such a course, the ensuing debate usually takes place in camera, and standing orders lay it down that members must preserve

secrecy.[1] Thus, even if Norway has not felt the need of a Second Chamber, she has most certainly mitigated what might be the evils of Single Chamber Government by providing her Chamber with very real power to control the Executive, and by giving to the latter no power of dissolution.

JUDICIAL POWERS OF THE LAGTHING.

The Lagthing, like many other Second Chambers, has certain judicial functions. With the Supreme Court, it constitutes a court by which members of the Council of State, of the High Court of Justice, and of the Storthing, are tried, at the instance of the Odelsthing, for crimes committed in the exercise of their duties.[2] Since the establishment of Parliamentary Ministries, in 1884, there have been no impeachments, and the practice of impeachment may be considered to be dead, there being simpler methods of punishment in existence.

CONCLUSIONS.

It may well be asked whether Norway possesses a Second Chamber. The word chamber does not occur anywhere in the constitutional code. Instead, the word "section" is used, denoting a division of much less importance.[3] "The Storthing," declares one writer of authority, "is a one-chamber institution. . . . For the better dispatch

[1] Article 75. See also British Command Paper (1912) 6102.
[2] Article 86.
[3] *Ibid.*, 49.

of business it proceeds, as soon as it has assembled and the speech from the throne has been delivered, to elect from among its members a fourth part of their number, who form a separate Division, or a kind of Select Committee, called the Lagthing. This is the nearest approach the Norwegians have to an Upper Chamber." [1] Norway, then, possesses a uni-cameral system of government which incorporates certain features of a bi-cameral system. This is the opinion of Professor Bredo Morgenstierne, who states " at most it can be spoken of as a one-chamber system with some few traces of the two-chamber system." [2]

The main advantages Norway derives from her system of government are the following :

1. By the election of the Second Chamber by the First, representation being accorded the various political parties in proportion to their numbers, the dominant parties in both chambers are the same. Disagreements on matters of political principle are thus impossible; any disagreements which occur are usually upon matters of practical importance.
2. Disagreements are rapidly settled.
3. The Odelsthing really controls the Executive.
4. The Constitution is well safeguarded.

[1] H. L. Braekstad, *Constitution of Norway.*

[2] *Laerebog i den norske Statsforfatningsret* (2nd ed.), pp. 166, 168, 169.

CHAPTER VI

SUGGESTIONS FOR THE REFORM OF THE HOUSE OF LORDS

In past chapters, the need of a Second Chamber for this country has been shown by examining and explaining the work to be done. In that examination, four functions were dealt with, and Functions 1, 2, and 4 were found to be the real functions of the Second Chamber. It was submitted that Function 3, inasmuch as it was impossible to create a Second Chamber capable of satisfactorily performing it, was not a function proper for the Second Chamber. The other three functions were necessary for good government, and it was argued they made the existence of a Second Chamber a necessity. The main object of this book is thus completed, but it would be impossible to conclude without discussion upon two other points. Is a reform of the constitution of the House of Lords necessary for the better performance of the functions? Is an alteration of the power at present possessed by the House of Lords necessary for the better performance of the functions? To a short discussion of both those questions, the remaining pages are devoted.

To some, it may seem surprising to discuss the question of the necessity for reforming the constitu-

tion of the House of Lords. It is, however, necessary that briefly the arguments in favour of reconstruction of that body should be given, for it has recently been contended by Lord Haldane, a statesman of high authority, that no change should be made. His argument is a little difficult to understand. He admitted that, upon abstract principles, the constitution of the House of Lords could not be defended. Because of the difficulty of the question, and of the certainty of the eventual destruction of the House of Lords, he cautioned it to remain unreformed. "Let us," he said, "rather than attempt any rash thing, remain as we are, carefully watching and accommodating ourselves to the opinion of the time. It (reform) will not avert changes which some of your Lordships would not like to see, but then you cannot avert them whatever machinery you set up, because when these changes come, as they have come and will come, they come as the outcome of a tremendous democratic opinion in this country which you could not resist even if you would—a public opinion which is more potent than Kings and more potent even than Parliaments." [1] Such argument seems strangely out of place. Provided that those functions, which are the real functions of a Second Chamber, are adopted, no question arises of setting up machinery to withstand this mythical force of the future, more potent than Kings and Parliaments. To answer the first question, the picture of the work to be done

[1] Parl. Deb., Lords, 1925, vol. lx. col. 702.

must be kept in view. The three chief defects of the House of Lords as a Second Chamber are: (*a*) the comparative wealth of its members, (*b*) the class consciousness of members arising from the fact that they belong to the same order, and (*c*) its great size. These three defects have their root in the main objection to the House of Lords as a Second Chamber—its hereditary nature. Just as they rendered the House unsuitable to perform Function 3, and were instrumental in bringing into existence the Parliament Act, 1911, so to-day they mar the performance of the other three functions, and will assuredly lead to a further Parliament Act—an Act to abolish the Second Chamber—if the House of Lords is allowed to continue unreformed. There are people, of a different school from Lord Haldane, who regard these defects as virtues, and, on that account, are opposed to reform. Wealth, they say, gives greater opportunities for culture and the study of political thought than poverty. This may be true, but it also brings a tendency to idleness and self-indulgence.[1] This is a marked characteristic of many Peers so far as concerns their legislative duties. One still meets with those who use the old argument of the "stake in the country." This has lost much of its force since the phrase was neatly turned into "stake in the heart of the country."[2] However one may try to defend the present constitution of the House of Lords, with

[1] Sir Henry Sedgwick's *Elements of Politics*, p. 445.

[2] See generally R. Muir's *Peers and Bureaucrats*.

rational people the truth remains that its constitution makes it difficult for that body to deal with matters in an impartial manner; and it is only too easy to prefer a charge of impartiality against it. The danger was long ago pointed out by Lord Roseberry. "There is too much receiving of rent in this House and too little paying of rent," he said. "We represent too much one class; we see one side of the shield too much. I see a noble Lord from Ireland shakes his head. I know what he means; but he must know that we are all in the same boat." [1] The position to-day has not altered to any material extent, and the House is still, for the most part, composed of persons of the same order, mainly representative of some form of wealth. The remaining drawback to the efficiency of the House of Lords is its size. That some seven hundred Peers, the majority of whom are not of ancient lineage, who received their honour for reasons quite unconnected with legislative ability, caring nothing for public service, knowing and understanding nothing of politics, should have the power to step into the House of Lords and vote upon matters of national importance, is an anomaly incapable of justification and cannot be allowed to continue. These defects can only be remedied in one way, and that is by reconstituting the House of Lords on a different basis. The hereditary nature of the House is generally condemned, and support for its abolition is to be found amongst the peerage itself. It is realized,

[1] Parliamentary Debates (3rd series), 1884, vol. cclxxxix. col. 947.

"It is not right. It is not defensible, and . . . the circumstance that it has been possible to point to this House as being unpurged is one which has injured it almost more in the public esteem than any charge that has been brought against it." [1]

There is one special reason why a change should be made in the constitution of the House of Lords immediately. Until to-day, both political parties in the State had representation in that body. Now one party of considerable strength has no representation there, and the fact that the House of Lords is a hereditary chamber makes it impossible for that party to obtain representation without a violation of its most cherished beliefs. The constitution of a Second Chamber ought to be such that all parties may easily obtain representation therein. "I . . . am of the opinion," the Earl of Birkenhead told the House of Lords upon a recent occasion when a discussion on reform took place, "that if there were no other reasons for entering at once upon the task of the reform of this House an imperative reason would lie in the fact that if, and when, a Socialist Party is again returned to power in this country we must at least have a Second Chamber in which they can possess upon those Benches men who really share their views and are really authoritative in their counsels, and some measure of support of the Benches behind them." [2]

[1] Parl. Deb., Lords, 1925, vol. lx. col. 954. (See Lord Birkenhead's speech.)

[2] *Ibid.*, 1925, vol. lx. col. 952. (See also Lord Buckmaster's speech at col. 969.)

The exact nature of the necessary reform is a difficult question, and it seems that no reform that can be suggested will find favour with everybody. In outlining any scheme, it is well to bear in mind that English people dislike sweeping changes, and have no use for mere generalisations. They believe that their parliamentary institutions, which have served them so well, possess a value which it is impossible to ascertain by any process of analysation, and they look with mistrust upon paper schemes for bettering those institutions. When an institution has become clearly impossible, English feeling is to make as small a change as possible to put it right. The House of Lords, though it is not the best kind of Second Chamber, could not be described as impossible. It has performed great and useful service in the past. It still does its work quite as well as many other Second Chambers. Deep down in their hearts, English people recognize this, and they have a true and deep appreciation of the service rendered to the nation and to the Empire by the House of Lords. Whatever scheme is suggested for its reform must avoid a sudden break with the historical traditions of the past, show an intelligent anticipation of the needs of the future, and, above all, be truly national, free from Liberal, Unionist, or Labour sentiment. Only then, being equitable, will it secure the necessary support to enable it to last.

Here reform is considered in the light of the work to be done by the Second Chamber. Although

all would not agree that the real functions of a Second Chamber for this country are Functions 1, 2, and 4, it is submitted that, by confining the work to be done to that comprised by those three functions, a greater measure of agreement will be obtained. In giving a suggestion for reform, the writer starts with those three functions as the basis, and, bearing in mind the defects of the House of Lords, endeavours to constitute a body capable of performing the functions, as free as possible from those defects. By working in this way, it is more probable that, provided the argument is rational, the suggestions will receive some measure of agreement, instead of arousing that heated argument and impotent debate which have killed so many schemes for reform.

THE EXISTING PEERAGE.

What is to become of the existing peerage in the event of reform is a difficult question. Anything in the nature of favoured treatment must be avoided, for such a course would be strenuously opposed by a certain section of the community. On the other hand, to include a large representation from the peerage in the new Chamber would be the best way to preserve the historical associations of the House of Lords, and prevent that break with the past which must be avoided. It is clear that the new Chamber must contain a representation from the peerage. To allow the peers to choose a representation would be to

seriously weight the Second Chamber in favour of the Conservative elements in the State, and give rise to old defects. To refuse to allow the peers to choose a part of their number to represent them in the Chamber would be unfair. Whether representation is to be given to the peerage in the Second Chamber, and if so, the question of its size, and how it is to be secured, are matters to be settled by compromise. A good plan might be to allow peers to elect certain of their number, by a method of proportional representation. As it would not be right, for the reason given above, to adopt this as the sole method of securing a representation of peers, a certain number of seats in the Second Chamber might be reserved for peers elected in the manner hereafter described. The number of peers in the reformed Chamber should be confined to that of those who, at the present time, do the work of the House of Lords.

If the reformed Chamber is to exercise the judicial functions of the House of Lords, and there is no reason why it should not, the Lord Chancellor, ex-Lord Chancellors and the Law Lords should be entitled to sit *ex-officio* in the Second Chamber. The addition of these men would add to the prestige of the reformed Chamber, and be one more link with the past. The question of the retention of the twenty-six spiritual peers, or a proportion of that number, is somewhat different. A proposal to include them *ex-officio*, or to give them power to elect certain of their number, would be strongly resisted as creating a preference

in favour of the Church of England. It would, therefore, be best not to include them as of right, though, of course, they ought to be eligible for election to the Second Chamber.

Peers who are unable, or who do not wish, to obtain a place should be eligible for election to the House of Commons. To debar them from taking part in the politics of the country in the way that Scottish peers who do not sit in the House of Lords are debarred, would be unfair. At the same time, it ought to be impossible for a peer to sit first in one House and then in the other, for that is inconsistent with the dignity of either House.[1]

THE METHOD OF CONSTITUTING THE NEW CHAMBER.

Putting aside hereditary right, a Second Chamber may be constituted by nomination; election, direct or indirect; election by members of the House of Commons.

In examining the constitution of Canada, the chief characteristic of the Canadian Senate, a nominated Assembly, was noted. The Canadian Senate was seen to be a partisan body of the worst possible type. It interfered unduly, and in a far more capricious manner than ever the House of Lords has interfered with Liberal legislation of this country. It ceased to function as a Senate when its friends were in power in the Lower House. With the experience of Canada before us, it would be most unwise to use nomination to constitute the

[1] Parl. Deb., Lords, 1925, vol. lx. col. 972.

reformed Chamber. Nomination might be either for life or for a term of years. In either case, the result would be the same. The nomination, though made in the King's name, would be on the advice of the Prime Minister of the day and dictated by party interests. The Senate set up would prove unsuitable to perform the functions. Some prominence has been given to nomination since Lord Birkenhead advocated its use to secure representation for the Labour Party.[1] Even for this limited purpose, nomination ought not to be used.

The experience of Australia leads one to discard direct election as a method of constituting the reformed Chamber. The directly elected Second Chamber tends to dispute the power of the First Chamber, especially in matters connected with finance. A directly elected Chamber would prove unsuitable to perform Functions 1, 2, and 4, for the wrong type of person would be elected, the right type refusing to stand the expense, turmoil, and labour of the election.

The objection to an indirectly elected Second Chamber is that it tends to be conservative. Also, on account of its democratic basis, it would claim to share in the control of finance. A further objection to an indirectly elected Second Chamber is the absence of suitable machinery to effect the election. The only practical suggestion that has been made is that the County Council should be utilized for the purpose. This was suggested by Lord Rosebery, in the first place. To give the

[1] Parl. Deb., Lords, 1925, vol. lx. col. 954.

County Council this duty to perform, however, might be to introduce national politics into that body to the detriment of the performance of its real work. Instead of electing candidates suitable to perform the administrative work of such a body, there would be an election of men and women pledged to support a particular party when the time came for the election to the Second Chamber to be held. The case against election by the County Council has been well summed up by the Earl of Birkenhead. "County Councils," he said, "were never brought into being to discharge functions of that kind. It is wholly alien to their character, and . . . it would tend to infect them, wholly unnecessarily, with the views of general Party politics, and . . . it would, in the end, produce a Chamber in which nobody would have the slightest confidence, and at which everybody would justly laugh as being created by a number of esteemed country people who were brought together to fulfil quite different administrative functions." [1]

The remaining method is that of election by the House of Commons. This method was first suggested to the House of Lords on the second occasion that Lord Rosebery endeavoured to persuade the House to entertain reform.[2] Two

[1] Parl. Deb., Lords, 1925, vol. lx. col. 957.

[2] Hansard, March 19, 1888. "I think you would require to have in your reconstructed House a large infusion of elected Lords of Parliament—elected either by the future County Councils, or by the larger municipalities, or by the House of Commons, or by all three." (See his speech.)

advantages are derived from it. The expense and trouble of a direct election are saved, and the right type of person would thereby be attracted to stand for the Second Chamber. There would be little danger of disputes occurring between the two Chambers on matters of political principle. At the same time, the effect would be to bring into existence a partisan assembly. It seems impossible to create a Second Chamber entirely free from party. It becomes necessary, therefore, to look for some scheme which lessens the danger of party operating in the Second Chamber to bring about disputes between that body and the First Chamber. Election by the members of the House of Commons, in obviating this danger, has much to recommend it. Moreover, in adopting this method we are not experimenting with something which is unknown to the constitutions of the world. It is by this method that the Norwegian Second Chamber—the Lagthing—is constituted.[1] Election of the Second Chamber by the members of the First Chamber is the method suggested here for constituting the former.

As the English Second Chamber is to have onerous duties to perform, some little alteration in the Norwegian method must be made. In Norway, the right of election to the Lagthing is restricted to members of the Storthing. To incorporate this into a scheme for this country would be impracticable, and some of the best results of the method would be lost. The right of

[1] *Supra*, p. 214.

election ought not to be restricted to members of the House of Commons, for by going outside it will be possible to obtain a wider choice of men and women to send to the reformed Chamber—men and women with specialized knowledge or special qualities which render them suitable for the work of the reformed Chamber. From the point of view of convenience, the members of the House of Commons should only be the electors for the Second Chamber, and none should be eligible for election.

The Bryce Conference recommended election by the members of the House of Commons. In order to secure that each party in the House should have adequate representation, the election was to be by proportional representation. That the majority party in the House should not receive an unfair advantage, the country was to be divided up into thirteen areas, and the election of members for those areas vested in the hands of the members for the constituencies within the area. It was hoped that in this way the election would be influenced by local sentiment, and the power of the party whips reduced. The writer is of the opinion that election by members of the House of Commons is the best proposal that has been made, and suggests that the proposals of the Bryce Conference should be adopted.

After having decided the question of constituting the reformed Chamber, the point next to be settled is the number of members it is to contain. The French Senate has three hundred members.

The Australian Senate has thirty-six members. The Canadian Senate has ninety-six members. The Norwegian Lagthing has forty members. A Second Chamber with a membership of three hundred would be a suitable body to perform the functions enumerated.

THE TERM OF ELECTION.

The term of election presents another problem, for upon it depends the character of the Second Chamber. Although the dominant party in both chambers is to be the same, the idea is not to create a Second Chamber which shall be merely a replica of and servile to the First Chamber. To elect the Second Chamber for the life of the First would be unwise for two reasons. It would, in the first place, tend to make the Second Chamber merely a duplicate of the First. In the second place, the life of the House of Commons, though legally fixed at five years, is nevertheless uncertain. Although the Second Chamber will have no power to force the Ministry to go to the country, its debates are bound to affect it for good or ill, and may bring the date of dissolution appreciably nearer. If the existence of the Second Chamber is dependent upon the life of the First Chamber, there will be no desire, at any rate so far as the members of the majority party in the Second Chamber are concerned, to perform any given function properly, if, by so doing, they damage the prestige of the Ministry. For in such a case

they would injure themselves. To make the life of one dependent upon the life of the other is not only to tempt the Second Chamber not to perform its functions in a proper manner, but to strengthen the control of the party machine over the members of the Second Chamber. It seems best to fix the life of the new Chamber at a definite number of years. The maximum life of a House of Commons is legally fixed at five years. It is suggested that members of the Second Chamber should be elected for a term of ten years, and that half the members should retire every five years. This would give each House of Commons power to elect half the members of the Second Chamber.

Most reforms contain provisions requiring members of the Second Chamber to possess some property qualification and to have attained some age over twenty-one years. It is, however, neither wise nor necessary to insist upon qualifications of this kind. A property qualification is dangerous as favouring class prejudice. A high age-limit is unnecessary. Members of the House of Commons, it must be remembered, have an assured position in life. They would not be likely to elect anybody to the Second Chamber who did not occupy some position of recognized standing.

THE NEW SECOND CHAMBER.

The new Second Chamber should consist of:

1. The Lord Chancellor, ex-Lord Chancellors and the Law Lords.

2. Fifty peers elected by the peerage by a system of proportional representation.

3. Two hundred and fifty persons, one hundred of whom must be peers, elected by the members of the House of Commons in the manner before described.

The following conditions should apply:

(*a*) To be eligible for election peers and others must be twenty-one years of age, may be of either sex, and need possess no property qualification.

(*b*) The term of election is ten years; one half of the members retiring every five years.

(*c*) Ministers of the Crown may speak in both Houses of Parliament, but shall only vote in the House to which they belong.

The last provision is a very necessary reform. Its adoption would enable the House of Lords to keep in better contact with public affairs, and its performance of Functions 1 and 2, in having the Minister concerned in the House, would be better. Many foreign constitutions give Ministers the right of audience in both Houses, and there is no real reason to be advanced against allowing this in this country.

THE POWER OF THE SECOND CHAMBER.

The second question put was whether, for the better performance of the functions, an alteration of the powers at present possessed by the House of Lords would be necessary. Quite apart from any question of necessity, it has been said that it

would be unwise to alter the framework of the Parliament Act, 1911, which regulates the present powers of the House of Lords.[1] Functions 2 and 4 require no special power for their performance. The latter is well performed by the House of Lords to-day, and, in outlining the scheme for reform, provision was made for securing that those who are at present responsible for the performance of this function shall have a place in the Second Chamber. The proposed alteration in the constitution of the House of Lords should ensure an efficient performance of Function 2. With regard to Function 1, the House of Lords enjoys sufficient power under the Parliament Act to insist that the House of Commons shall listen to its suggestions. There is thus no need to alter the framework of the Act.

Without in any way altering the general framework of the Act, some modifications ought to be made. It is suggested that, if the two Houses are unable to agree upon a Bill, instead of the Parliament Act being immediately brought into operation, the Bill should, on the request of either House, be sent to a committee composed of members drawn equally from both. The committee, consisting of forty members, should be appointed at the beginning of each session, parties being represented thereon in proportion to their strength in each House. It should have no fixed chairman, the Minister in charge of the particular Bill under discussion being chairman. The duty of the committee

[1] Parl. Deb., Lords, 1925, vol. lx. cols. 958, 967, 969.

would be to consider the Bill and attempt to come to a compromise upon those parts to which objection was taken. With this object in view, it might consider the Bill for at least one month, unless before that time it was of opinion that sufficient time had already been spent in discussing the Bill. If necessary, the committee would have power to prolong the discussion. If agreement were reached, members of the committee would recommend their respective Houses to accept the Bill in its compromised form. If compromise was found to be impossible, and the Government were determined to have their Bill, or if either House refused to accept the compromise, the Bill would then have to take its usual course under the Parliament Act.

MONEY BILLS.

All important legislation at the present time turns on finance, and if the provisions of the Parliament Act, 1911, relating to Money Bills are not to be modified, the performance of Functions 1 and 2 would be considerably impaired. Money Bills require even more revision than ordinary Bills, and modification ought to be made to enable the Second Chamber to perform its revising function. It should be possible to secure this without altering the framework of the Act.

A Money Bill, in the terms of the Act, is strictly defined.[1] The object of the definition was explained to the House of Commons by the author

[1] 1 and 2 Geo. V, C. 13, section 1 (2).

of that Act as follows: "It is, in the first place, not to enlarge the boundaries within which, as we believe, constitutional practice and usage has established the authority of the House of Commons in matters of finance. On the other hand, it is to include by a statutory definition everything which is within the boundaries so established by usage. . . . It is intended by the definition to include Bills which under the present practice the House of Lords cannot amend, but it is not to include Bills, not being exclusively financial Bills, which the House of Lords can amend." [1]

It is suggested that it cannot be contended that the definition only includes such Bills as the House of Lords, before the passing of the Act, could not amend, and excludes such Bills as it could amend. The writer has formed the opinion that it would be beyond the power of any definition to effect such an object. From the fact that it was possible, merely by the alteration of a few words, to send a Bill to the House of Lords as an ordinary Bill, which had previously been certified as a Money Bill, is understood the necessity for modification of the provisions of the Act, relating to Money Bills.[2] The definition of a Money Bill is part of the framework of the Act, and it would not be wise to attempt an alteration of it in order to remedy the working of the Act.

It is left to the Speaker of the House of Commons to decide whether a Bill comes within the defini-

[1] Parl. Deb., Coms., 1911, vol. xxiv. cols. 257–8.

[2] War Charges (Validity) Bill, 1925. War charges (Validity) Bill, 1923.

tion, and in making his decision he acts, not as the representative of the House of Commons, but independently under statutory authority.[1] He is under no obligation to give the reasons for any decision he makes, and he has maintained that position by unbroken silence.

No part of the Act was more rigorously attacked than that relating to Money Bills. In view of some of the suggestions now made to modify the financial position, it is necessary to go briefly into some of the original objections.

In the first place, it was claimed that the definition of a Money Bill was far too wide, and attempts were unsuccessfully made to get the Government to adopt a definition of a Money Bill to be found in some of the colonial constitutions.[2] In the second place, the appointment of the Speaker as the tribunal which had to decide whether a Bill came within the definition was strongly condemned. The Speaker for many years has been absolutely detached from party. During Conservative Administrations, there have been Speakers of Liberal origin. During Liberal Administrations, there have been Speakers of Conservative origin. Once a member of Parliament is elected to the office of Speaker he drops all connection with party and treats everybody with strict impartiality. This detachment of the Speaker from all party bias is unquestioned, and has remained an unbroken tradition for many

[1] Section 1 (2) and 3 of the Act.

[2] Parl. Deb., Coms., 1911, vol. xxiii. cols. 2018, 2035, 2036.

years. The objection against appointing the Speaker to the position of the tribunal was the danger of completely altering his character. It was pointed out with much force by Mr. Balfour that the occupant of the Chair had not always been impartial. "In this country," he told the House of Commons, "it is easy, if anyone will search our records, to see that there have been periods when the Speaker did not stand as an even authority between the majority and the minority. He was not only the nominee, as indeed he must be, of the majority for the time being, but after he was nominated and after he was accepted he never forgot the source from which he obtained his authority, and he leaned to one side or the other, and had not learned that this House can only exist and retain its credit if they, whatever their original predilections may have been and to whatever party they may have belonged, hold the balance evenly between all sections of the House." [1] The fear was expressed that this state of things would be restored, that the Ministerial Party would insist upon its own Speaker, and require him to look at Bills through a pair of party spectacles; in short, that the office of Speaker would be for ever occupied by an honest partisan.[2] Another grave objection to the appointment of the Speaker was pointed out. In appointing him the House was said to be making its legal adviser the judge of the case.[3] "I ask," said Mr. Balfour, "whether it is

[1] Parl. Deb., Coms., 1911, vol. xxiv. col. 343.
[2] *Ibid.*, 1911, vol. xxiv. col. 293; see also cols. 298, 300.
[3] *Ibid.*, 1911, vol. xxiv. col. 302.

right that one chamber should be the deciding influence in a matter which concerns both Houses. You are asking the Speaker to decide not on a question of our domestic politics, of House of Commons politics, but you are asking him to come forward and say as between the First and Second Chambers what belongs to the one and what belongs to the other. If you think of this as a matter of abstract justice, is that a proper position in which to place the Speaker? I say it is a fundamentally false position. He embodies our spirit, and he carries our standard. He is the representative of our traditions, and he is our officer. Is it proper to ask him to decide upon a controversy which is not ours alone, but which concerns a matter which also affects the other House?" [1]

The Opposition did not merely confine itself to a criticism of the Government's proposition. Tribunals alternative to the Speaker were suggested; a Joint Committee, with the Speaker as Chairman [2]; a legal tribunal [3]; the Privy Council.[4] The last two suggestions found little favour with the House, for they gave to an outside body the power of determining matters arising within the High Court of Parliament.[5] The Opposition,

[1] Parl. Deb., Coms., 1911, vol. xxiv. cols. 345–6.

[2] *Ibid.*, 1911, vol. xxiv. cols. 295, 297, 300, 329, 350.

[3] *Ibid.*, 1911, vol. xxiv. cols. 297, 298, 305, 337.

[4] *Ibid.*, vol. xxiv. cols. 79, 319, 341, 354.

[5] *Ibid.*, vol. xxiv. col. 347. "I think this House will never consent that any outside authority should be brought in to override the decisions of the High Court of Parliament." (See speech of Mr. Samuel.)

therefore, concentrated all its efforts upon urging forward the first suggestion. It was objected to a Joint Committee, that the members, with the most honest intentions in the world, would be influenced very largely by party feelings. The Government, therefore, adhered to its original proposal, believing "that the best and most satisfactory tribunal to settle the question is our own Speaker." [1]

As pointed out, the defining of a Money Bill in strict terms has led to inconsistencies; but it must be acknowledged that the fear of change in the character of the Speaker has not materialised. Since the passing of the Act, he has on three occasions refused his certificate, and has on one occasion granted it when it was hoped it would be refused. Of course, the effects of the Act may have still to be fully appreciated. The traditional character of the Speaker, that up till now it has not changed, affords not the slightest guarantee for the future. With the possibility of a Government, finding its way blocked by a Speaker who respects the traditions of his office, one may be forgiven for being apprehensive. It would be easy for it to dismiss an honourable Speaker who thwarted its projects, and instal in his place an honest partisan. This objection against the Speaker, whilst it might become real, has so far shown no substance.

The second great objection to the Speaker still remains, and is to-day even more acutely felt.

[1] Parl. Deb., Coms., 1911, vol. xxiv. col. 296.

"I have the greatest confidence in our Speakers, and I am sure that any man likely to be elected Speaker of the House of Commons would do his best to come to a right decision," the present Lord Chancellor told the House of Lords recently. "But, after all, even Speakers are only men, and it seems to me that it is not right that a decision on a matter of this importance should be vested wholly in one who spends all his time in another place." [1] It is felt that by vesting the power of decision in the Speaker, the *ipse dixit* of the other House really decides what is a Money Bill.

Though the above objections are to-day put forward, no new suggestion for an alternative tribunal accompanies them. The suggestion is still that a Joint Committee with the Speaker in the Chair should decide what is a Money Bill. The objections, however, to such a Committee are far greater than the objections to the Speaker. It has been agreed that the tribunal must be an inside authority. As the duty of the tribunal is to decide whether a Bill comes within a statutory definition, it must also be strictly impartial. On this account, the Privy Council, a Commission of the Judges, or some other outside body of high distinction, would never receive the necessary support as the tribunal to certify whether a Bill was a Money Bill under the Act. Although such a body would always act with the strictest impartiality, it would be an outside authority. One is, therefore, thrown back upon the suggestion of a

[1] Parl. Deb., Lords, 1925, vol. lx. col. 707. (Viscount Cave.)

Joint Committee, drawn equally from both Houses. Such a tribunal would be an inside authority, but it cannot be contended that it would be an impartial authority, acting in the manner of a Court of Law. With the most important asset, which a tribunal must possess to perform the statutory duty satisfactorily, absent, how can it be claimed that such a Committee would perform it in a more satisfactory manner than the Speaker? In spite of the grave objections to the constitution of the Speaker as the tribunal to decide whether a Bill is a Money Bill, he still remains the best tribunal for this purpose. This being the case, the proper modification of the provisions in the Parliament Act, 1911, relating to Money Bills would not consist either in the alteration of the definition of a Money Bill, for the reason given above, or in the substitution of some other tribunal for the Speaker. Bearing in mind the reason for the modification, namely, to enable the Second Chamber to perform its duty of revision under Function 1, the proper modification seems to be to alter the effect of certifying a Bill as a Money Bill,[1] and it is suggested that Money Bills should be dealt with as follows:

1. The definition of a Money Bill shall be that contained in the Parliament Act, 1911.

[1] Parl. Deb., Coms., 1911, vol. xxix. col. 932. "Between Bills which are obviously Money Bills and Bills which are not obviously Money Bills, there is an ambiguous territory which the acutest intellect, without party or political prejudice, unmoved by any eddies of passion inside or outside of the House, would find it extremely difficult to determine." (Mr. Balfour.)

2. The annual Finance Bill (i.e. the Budget and Bills providing maintenance for the service of the year) shall be dealt with in the manner laid down by the Act.

3. The Speaker shall decide whether a Bill comes within the definition, and shall grant or withhold his certificate accordingly.

4. Money Bills, certified as such by the Speaker, except those specified in No. 2, shall be sent to the Second Chamber. That body shall have no power to either amend or reject them, but it may make suggested amendments. When the Second Chamber has made its suggestions, the Bill shall be sent down to the House of Commons. That body shall then consider the suggestions. In order to secure that sufficient time shall be given to the consideration of the suggestions, the Speaker, assisted by a small committee, representative of all parties in the House of Commons, shall fix the time required for the purpose. Any suggestions to which the House of Commons agrees shall be incorporated into the Bill. After the suggestions have been considered, the Bill, altered or unaltered, shall take its usual course under the Parliament Act. The carrying out of this suggestion would in no way impair the financial superiority of the House of Commons, but merely ensure that better consideration is given to Bills which spend the nation's money.

One point still remains to be noticed. To take away the veto of the House of Lords, by means of the Parliament Act, 1911, the assent of a majority

of the electors had to be obtained. It seems reasonable to insist that the Parliament Act, 1911, shall be so amended that no alteration of the arrangement then approved, or of any future arrangement in like manner approved, made by a House of Commons majority, shall have the force of law, unless the electorate again signifies its approval.

No long conclusion is necessary. The real functions of a Second Chamber are, it is submitted, Functions 1, 2, and 4. In giving suggestions for a reform of the House of Lords, the writer has endeavoured to create a Second Chamber capable of performing those functions, and to preserve the historical associations of the present Chamber. It is not asserted that all reasons for the acceptance of these three functions, as the functions of the Second Chamber, have been given, or that all the arguments which could be used for and against Function 3 have been advanced and met, or that the suggestions for reform are complete. It is to those who believe in the necessity of a Second Chamber, capable of revising and steadying action without danger to its existence and with untold benefit to the country, that he submits this book.

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