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THE EYES HAVE IT

THE AYES HAVE IT

The Story of the
Marriage Bill

By

A. P. HERBERT

Author of Holy Deadlock



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TO
E. S. P. HAYNES
AND
ALL THE VETERANS

My thanks to Miss Joy Griffith for all her labours
not only on this book but on the Bill.

A. P. H.

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Mr, Speaker: The question is that the Bill be now read a third time. As many as are of that opinion say Aye.

Hon, Members: Aye.

Mr, Speaker: To the contrary, No.

Hon. Members: No.

Mr, Speaker: I think the Ayes have it.

Hon. Members: No. Aye. No.

Mr, Speaker: Clear the Lobbies.

THE AYES HAVE IT

EXCUSES

IT is the Marriage Bill no more, but the Matrimonial Causes Act, 1937; and I have been asked to tell the plain tale of that long and difficult transformation. If I thought that this would emerge as a boastful or a bitter record I should not attempt it: but that, I think, can easily be avoided. Indeed, one of my main purposes is to redistribute some of the excessive credit (and responsibility) which have come my way; and the final picture is more likely to show me as a very fortunate flounderer in very strange waters.

Then, I think that the tale may have some interest, and even instruction, for those who know as little of the Parliamentary machine as I did two years ago. So much is written about Parliament: so little is known about its procedure, the successive, scientific processes by which the laws are made. So many people ask, 'Why was this and that done—or not done?' and do not wait for the answers. The answers are mostly too long to talk about, but in these pages I hope they will be plain. This is only one small Act of Parliament (with, it is true, an exceptional history): but every Act of Parliament has to go through precisely the same stages, climbing from floor to floor of the law-factory, and passing through one machine after another. To some the theme may seem too small, too technical and complex. Yet from a small event big lessons may be

learned. An apple, they say, explained the conduct of the stars: and the commas of Committees, in this great State, govern the lives of thousands. Yet, though every boy knows how a film is made arid can explain the machinery of a motor, how few know anything about the works of Parliament!

And this tale will, I think, on the whole, reconcile many who do not think much of that ancient machinery. It will reveal, it is true, the extraordinary part that mere accident may play in important legislation. But it will also show, I hope, the fine humanity and kindness which are to be found among those much-abused persons, the politicians.

Finally, it is a tale of action, of suspense, surprise, I might say adventure: and as such it may commend itself to some who care nothing for divorce or politics, but like to see lost causes won, forlorn hopes fulfilled, resolution rewarded, and lame dogs leaping at last over the stile. In short, it is a sort of Cinderella story.

And now that the boys are publishing their autobiographies, I hope that a grandfather may be permitted, while it is fresh, to record a small but extraordinary slice of his life.

II

ELECTION

I SHOULD, I suppose, begin with my election to the House of Commons; for that was the first accident.

Three weeks before the General Election of 1935 I had no more thought of standing for Parliament than I had of exploring the Pole. But one day in October my friend Mr. Sidney Rogerson, of Imperial Chemical Industries, sent me an invitation, I do not quite know why, to go up to Billingham and see the opening of the new coal-into-oil plant by Mr. Ramsay Macdonald. I went, I do not quite know why: and on the special train one of the old Oxford men passed and paused at Lord Melchett's table where I sat. I did not know him; I do not think we were introduced: but I happened to hear his name. And without that chain of chances there would be no Matrimonial Causes Act, 1937.

I had often thought that I should like to be in Parliament and try to tackle some of the things, especially divorce reform, about which, as a writer, I was interminably abusing 'the politicians'. But I was not, I thought (and still think), fitted for an ordinary territorial constituency: I was not a strong party man, and could afford neither the money nor the time. I had been 'approached' some years earlier by a Conservative Association, but I learned

that I should be expected to contribute about £1,000 a year to the local Association, and I was quite unable to save the State at that price. But I had sometimes secretly entertained ambitious, almost impious thoughts, about that great prize, an Oxford University seat. When certain eminent political friends said 'You ought to come into the House, my boy,' I would say 'All right, if you give me Oxford University.' and we would laugh heartily at the notion. The great Lord Hugh Cecil and Professor Oman were then strongly entrenched, and, in any case, what chance had a professional humorist, with queer opinions about divorce and drink, of entering that citadel of the Church of England?

But now Professor Oman was to retire; and after much discussion (and, I had heard, some unpleasantness) a new candidate, Professor C. R. M. Cruttwell, had been adopted by the Conservative 'Caucus'. I had said to my secret heart that now, if ever, with a new candidate and dissension in the citadel, would be the time to attempt a breach. But unless by chance I had met this Oxford man on this unpremeditated expedition to Billingham I should not have done anything about it. For one thing, I had not the faintest notion how to begin.

We talked now a little about the Oxford situation and the new candidate, and I said to him: "Would there be any chance for an Independent, do you think?" 'What does one do?' 'Must one have a Committee?' 'Must you have taken your degree?' (I had never taken mine), and so on. He seemed to

think the procedure would not be difficult. The trouble would be to obtain the addresses of the electors in the short time remaining (less than three weeks) before nomination day. He did not encourage me. I said, 'Well, if you meet any young man who would help me, ask him to let me know.' We had a large lunch at Billingham, and I thought no more about it.

Next week, to my surprise, a young man rang me up from Oxford—Mr. Francis Pakenham, a lively and learned tutor of Christ Church—and he asked me if I meant business about the Election. I said I was blown if I knew. He came to see me with my friend Mr. Peter Fleming. They were flattering and enthusiastic. They thought I should not get more than half a dozen votes in Oxford itself, but that would not matter, for there were only 700 there, out of the 22,000. There was a new register, and B.A.s had votes now, so that it was a younger register. They thought that hockey Blues by the thousand would support me; and some of the 3,000 ladies, for poor Mr. Cruttwell was a bachelor. But the keener they became the more dubious was I. The whole thing now seemed absurd, impertinent, and dangerous. I should probably lose my deposit, and I could not spare £150. If I were defeated it would be 'another of Mr. Herbert's publicity stunts': and if I were elected, how was I to keep up my work and feed the family? Besides, I liked a quiet life, and I hated making speeches—except after dinner to a small company.

But I said I would think it over: and meanwhile I would try to draft an election address and see how it looked.

This, I perceived, would be the crux of the question. The University electors are scattered over the country, and vote by post. They cannot be addressed at meetings, or canvassed at the front-door. They cannot be swept away by oratory or good looks, loud-speakers or posters. The Election Address is the one approach to them. It is one of the big remaining opportunities for the power of the pen: and a professional writer, we thought, should make the most of it. I had seen the somewhat dreary Address of the two official Conservatives—or rather of the 'Caucus', for it was not signed by either of the candidates, but by a number of Heads of Houses and other eminent persons on their behalf; so that any elector was entitled to say that he had not the smallest notion what the new candidate, Mr. Cruttwell, thought about anything. This was not the fault of Mr. Cruttwell, who had my sympathy from first to last. It was the way things were done then, and had been done for a very long time. That is changed—already. At the recent by-election all the three candidates wrote long personal addresses.

I sat down next day and composed an Address, which afterwards received some praise. But I was not to know that then, and the more I wrote the less I liked it. At least, I thought, it was a good intellectual exercise for a spasmodic journalist to

be compelled to display all his political beliefs in one basket. It is: and I commend it as an exercise to every citizen. One discovers how few the eggs are and of what irregular shapes and sizes. Very soon I ceased to think of my Address as a practical affair for public use. Three-parts through I very nearly stopped: and I remember, as I threw the sheets across, apologizing to my secretary for wasting her time. But I explained to her the intellectual exercise theory; she said she didn't mind; and we laboured on.

When we had done, it was the longest election address in political history—or so I suppose: nearly 5,000 words. I read it through and liked a few passages; but, as a whole, I thought it was impossible. And 'honestly', as people say, I was pleased. For this, I said, would let me out of the mess. I had made an effort; I had had a useful and a chastening exercise: but nobody at Oxford or anywhere else would urge me to stand for Parliament when they had read a page or two of *this*, I sent it off and had a more cheerful evening.

But at Oxford the document was approved, except for a word or two: and there we were, sliding down the slope again. There was still a small hope that I might be saved from this preposterous enterprise by the difficulty of getting the electors' addresses. I went up to Oxford and crept about, feeling like a burglar surveying the scene of a contemplated coup. One immediate task was to collect the signatures of at least twelve voters for the nomination paper.

This was not easy in Oxford, for nearly all my friends among the dons were 'wedded' either to the official Conservatives or the Labour candidate, Mr. J. L. Stocks, now dead. The only signatures I obtained in Oxford were those of Mr. G. C. Vassall, Mr. A. E. Lynam, and other members of the staff of the Dragon School, where my son was. In London I secured the names of Mr. Philip Agnew, proprietor of *Punch*, Mr. E. S. P. Haynes, that veteran champion of divorce reform, and Mr. A. H. M. Wedderburn, a contemporary of Oxford days. But I had not one Head of a House behind me (though privately Mr. H. A. L. Fisher wished me well), no Committee (indeed, I have no Committee now), no office or organization, and none of the usual appurtenances—not even the addresses of the 22,000 electors. And it was only a few days before nomination day, which was Friday, November 4.

So that even as I secured the schoolmasters' signatures I assured my friends that there was little real danger of their being mixed up in politics. They looked at me a little queerly, I thought. The few political friends whom I consulted in London just laughed in a friendly way; and I do not blame them. They said that one who had written so much queer stuff about pubs and divorce might, perhaps, offer himself to the electors of Hoxton or Covent Garden and hope to scrape together a seedy suffrage or two: but to go to Oxford University of all places, the electoral capital of religion and respectability, where there were more country clergymen to the square

vote than in any other constituency—this, they suggested politely, was simply to make a free gift of £150 to the State.

Well, I did not make any large wagers on my chances, but I did know—or thought I knew—something that was hidden from these wise men: and this is relevant to the main story. I believed that the country parsons, as a whole, were not so hidebound or timid, even upon my suspect causes, as tradition said. Through my work on *Punch* I had for many years had much correspondence with clergymen, schoolmasters, dons, Civil Servants and all those respectable ranks which presumably make up the University vote. That year, through my "Word War" in *Punch*, I had had about 1,000 letters from friendly strangers of this kind. As for divorce and the Church, I had formed even then, from various signs, the opinion that the majority of churchmen were ready and even eager for a reasonable reform. And I thought that more of them might be with me on some of my minor causes, the preservation of pedestrians and quiet, of the English (and the Latin) language, for example, than would be against me on the bigger things.

Still, with good reason, I think, I wavered. So many people stand for Parliament at the General Election that to the others it may not seem to matter much whether they stand or not. But, if you have already two or three lines of activity, and are not rich, it must always be a big choice to set out upon another. Then, on the Tuesday, the faithful and

indefatigable Frank Pakenham secured from somewhere a set of addresses, believed to be fairly up-to-date. Now we had to make up our minds; and that evening at Hammersmith we debated all things at a meeting of my Council, Executive Committee, and General Staff—namely, my wife and a neighbour, Mr. Frank Bluff. My wife says that I have done so many odd things that she is always resigned for the next: and she thought, wisely, that I had got the political itch so badly that it must be obeyed. Mr. Bluff, I suspect, was eager for the fight. We decided to go ahead.

But how? The Election Addresses of the other candidates were in print, with official 'parties' behind them and organized workers ready to despatch them. Ours was in type, waiting for the word 'Go' at a printing works at Chichester, of which Frank Bluff was a director. The addresses of the electors were at Oxford. So were the voting papers. We were at Hammersmith. Our 'workers' were nowhere. All the professional addressing firms were overflowing with election business. Time was short.

But my wife and Mr. Bluff are grand organizers. On the Wednesday morning we told the printers to start the machines. On Thursday, November 3, my candidature was announced—or, as I felt, confessed. Friday, November 4, was nomination day. And by the following Wednesday morning, seven days from zero hour, my wordy Address had been posted to all the 22,000 electors—though a great many of them had thoughtlessly moved and so escaped us.

This was no mean feat for a scratch organization of amateurs. It was all done in the old nursery at home, by my wife and family, friends, neighbours, and kindly strangers who rang up and offered their aid. I have often marvelled at the free, fiery and selfless toil that people will devote to pushing some one else into Parliament: but in this wild enterprise it impressed me more than ever. Still, it was fun; and those who say that they have no use for politics do not realize what fun they miss, if it is only the fun of the fight and the communal excitement of the team. Day and night, with intervals for sausages or sandwiches, they ploughed through that interminable card-index and transcribed the names of those innumerable clergymen. 'Another Rector/ the girls would sigh, 'What a hope!' and some of them put the clergymen as high as 30 per cent of the total. But, as I have said, that did not frighten me so much as many. In fact, in that week, of the 100 letters of support I received, about 25 were signed by clergymen: and gratefully I record that fact. And, by the way, I had practised no deception on the clergy. For in my Address I said, upon Divorce:

'If His Majesty's Government do not, as they should, accept the responsibility for this reform, I shall myself do what I can.'

At last the slag-heaps of envelopes were ready. Frank Pakenham brought the voting forms from Oxford and Frank Bluff the great bales of Addresses from Chichester. You could not move anywhere in

the house without treading on my political opinions or climbing over a mountain of M.A.s. And the Second Phase of the Operation began—the Folding of the Forms and the Filling of the Envelopes. It may all sound simple now, but it was not. I remember at one point there was a query whether my verbose Address, with the voting form and the envelope, would not together exceed the weight permitted by the regulations for a free election communication. We ran from neighbour to neighbour seeking a kitchen with a trustworthy scale. But Frank Bluff and the Acford Press had made their calculations soundly, and all was well. Then, when all at last was done, and the first van was at the door, we discovered that our envelopes were not the regulation size. For a brief but alarming period it seemed that we might have to begin all over again. But Frank somehow poured oil on the Post Office, and away the fateful documents went.

Meanwhile, on the Friday, my wife and I went up to Oxford for the nominations, as I thought it would be the respectful duty of a Candidate to do. My 'agent', Frank Pakenham, and my chief nominator, Mr. Gilbert Vassall, met us in the Broad. The celebrated athlete and schoolmaster was still a little bewildered, I think, to find himself involved in politics: but he put on his cap, hood and gown, I handed over my £150, in notes, and guiltily we advanced upon the Clarendon Building.

I found, with some surprise, that I was the only Candidate present. While I was secretary to Sir

Leslie (now Lord Justice) Scott, I had seen many nomination days at the Town Hall of Liverpool. All the candidates for all the ten divisions would be there, with their agents and supporters, and a crowd of spectators. T. P. O'Connor would make a sly little speech of thanks to the Returning Officer; he would reply, and one felt that something important and serious had been done, the offer by a number of citizens of their services to the State. But at Oxford University, the home of solemnity and ritual, the Candidates, it seemed, did not trouble to appear: the dons who represented them gave their names and addresses to the Vice-Chancellor, deposited their £150, and that was all. This did not matter to me, indeed it gave me hope: for it was a sign of sleepiness in the citadel. It may seem a small thing, but it was symptomatic of an attitude of mind which has, I think, been fatal to the Conservative Caucus, and might be fatal to the University representation. A tradition of inevitable success had led to lazy behaviour. Two champions were chosen by the High Priest, as it were: their election address may have been written by somebody else; somebody else attended both the nominations and the counting. They were elected almost automatically and had little to do but take the train to Westminster.

Well, I have no wish to introduce any alien excitement into the monastic calm of a University election. But, as often as I have the temerity to stand again, I shall at least think it right to present myself both at the nomination and the counting, if

only as a kind of formal acknowledgment of the high honour I am asking the University to give me.

Beyond that, Heaven forbid that I should augment the labours of the University candidate, which are so beautifully few. The rest of the 'campaign' consisted of one speech, and one short letter to *The Times*. I am not even sure that it was proper to make the speech. The undergraduate Conservative Association kindly invited and urged me to address a meeting at the Union. Lord Hugh Cecil had declined a similar invitation on the ground that the Burgesses by tradition ought not to speak about general politics in Oxford; but Mr. Cruttwell, they said, had addressed them at one of the hotels. It was cheering to have the support of the young men; and in the special circumstances I thought that I had better accept. But I had not spoken at the Union since 1913, and the prospect of addressing bright and critical youth in that difficult place was alarming. Peter Fleming, Eric Linklater (who had, in vain, made a similar assault on the Scottish Universities) and one or two other good friends came up with me. I heard that the young men were highly critical now, and generally stamped after forty minutes, no matter how distinguished the visitor. I was terrified, as I always was at the Union. The building was packed, upstairs and down—though there were only about three voters in the audience, for undergraduates have no votes. They permitted me to harangue them for a full hour without stamping, and the

speech, I believe, was successful, though slightly deplorable. I made some irreverent fun of All Souls College, in terms which I will not repeat, for All Souls, I gather, have generously forgiven me. But the boys seemed to like it.

The only other thing to be done was to try to scotch the allegation that by my candidature I was 'unpatriotically splitting the National vote' and might 'let Labour in.' This accusation was made first of all by some young gentlemen at Hertford College, of which Mr. Cruttwell was President (and Lord Hugh Cecil, by the way, a Fellow). It was politely expressed, I believe, in a final appeal to Conservatives, and I found it everywhere. The answer was that this was nonsense: since under the system of voting employed at the Universities (the single transferable vote) it is mathematically impossible to 'split the vote'. That is one great advantage of the system, as I shall try to explain later. But it is one thing to say 'Nonsense!' and another thing to convey that message to 22,000 people scattered all over the country. I had had my one free message to every elector under the law, and I was not going to buy 22,000 stamps and send them another. I got Mr. Humphreys, the Secretary of the Proportional Representation Society, to write to the *Telegraph* and explain the point, and I wrote to *The Times* myself. But I gather that we did not have much effect: for I met the Lord Chancellor at Mr. Selfridge's party on the night of the polling day, and he still genially accused me of 'splitting the vote.'

Not that I cared, in principle, if I did. For one of the main excuses for my assault was my belief that there had been too much pure 'party' stuff in University politics.

One Address—one speech—one letter. I do not wonder if my territorial colleagues in the House look with envy, or worse, on the University member who, with such comparatively small exertions, can secure the same position and the same voting power. But there are only twelve of us; I think we have our uses; and I, for one, could never undertake the endless responsibilities of an ordinary constituency, to say nothing of the prolonged and exhausting struggle to get it.

The whole 'campaign' had cost me about £100. But the deposit might go after that. Frank Bluff inquired in the City about the possibilities of insuring against the loss of that £150. He could get no better rate than £25 per cent—or £37 10s in all. I said I thought better of my chances than that, and we did no business.

I should have been less bold, maybe, if I had known the precise terms of Section 27 of the Representation of the People Act, 1918: and here, since this in part is intended as a work of instruction for younger citizens and even younger politicians, may I be permitted a small digression on the nature of Proportional Representation, or rather the Single Transferable Vote, by which our fate was now to be decided? For I think it is a good device, and I do

not see why we should not use it more. It was imposed on the Universities as an experiment by the Act of 1918. I think that I understand it; I have never yet been able to explain it so that any one else understood it; but it can do no harm to try again, and I will try to explain it in terms intelligible to my old friend, Bobby.

On the face of it the thing seems simple enough. The voter has as many *choices* as there are candidates: but he has only one *vote*. Every man's vote is effective, but it is effective only once. This is not true of the ordinary election, where every man has a single but a non-transferable vote. Let us take an example. There are two candidates (this is at an ordinary election), Sir Samuel Hoare, and Sir Stafford Cripps; but Sir John Simon, let us say, offers himself also. Those who want to support the National Government are now embarrassed—some liking Simon and some preferring Hoare. The result may very well be this:

Cripps	.	.	. 5 0 0
Simon	.	.	. 2 5 1
Hoare	.	.	. 2 5 0

The National vote has been 'split' and the votes of the National voters have not been effective, although they outnumbered the Opposition voters. This seems silly, but it has often happened; it has much afflicted the unfortunate Liberals, for example; and nobody seems to care.

But suppose that the National voters had been

able to say 'I give my first vote to Hoare, or, if that is no good, to Simon.' Then, Hoare being at the bottom of the poll, his votes could have been transferred to Simon. A National candidate would have been elected and the votes of Hoare's supporters would not have been wasted.

This is, very roughly, the system employed at the Universities at a General Election, where there are *two* seats to be filled. It is not employed where only one seat is in the market. There is, I believe, no scientific reason for this; it is merely the result of a legislative accident, or compromise: and I know now so well how they may happen. But there it is. Therefore at a by-election it is possible to "split the vote". This was expected at the last by-election where two Conservatives opposed Sir Arthur Salter: but in the event he had a clear majority over both of them.

Where there are two seats and three or more candidates the calculations are somewhat complex: but the simple electors will never be required to do them, and so long as the essence of the system is made clear I do not see why it should not be extended to certain other two-seated constituencies, at least. Let me try to make it clear.

We now have Mr. Neville Chamberlain and Sir Samuel Hoare standing for X University (two seats). They are opposed by Sir Stafford Cripps, but they are not greatly alarmed. At the last minute Sir John Simon again pops up—I cannot say why. There is again great perturbation among the ill-informed

(including the Lord Chancellor) for it is thought that Simon will 'split the vote' and let Cripps in.

Not a bit of it.

Some National voters will mark their papers thus:

Chamberlain	.	.	1
Cripps	.	.	.4
Hoare	.	.	.2
Simon	.	.	.3

And some of them:

Chamberlain	.	.	1
Cripps	.	.	.4
Hoare	.	.	.3
Simon	.	.	.2

At the counting of the votes, the papers—or if you like, the voters, for each voting paper is the voter himself—are grouped first of all according to the first choices, each No. 1 being equivalent to the x of an ordinary election.

The election might be finished on this one count, as at Cambridge University in 1935.

But the object of this lecture, Bobby, is to show the transferable vote at work. So we will suppose that the first choices come out as follows:

Chamberlain	.	.	7,000
Simon	.	.	4,000
Hoare	.	.	3,000
Cripps	.	.	999

The total of votes cast is 14,999. There are two seats to be won: and they will go to the first two

candidates who score one-third *plus* i of the total votes—that is, 5,000.

(Why, Bobby? Because it is obvious that *three* candidates cannot do that.)

This figure—5,000—is called the 'Quota'.

Now Chamberlain has exceeded the quota already and he is elected. If Simon had 5,000 or more first choices he too would be elected at once, and there would be no more to be said. But he is still 1,000 votes short.

So the second stage begins.

Chamberlain has not only his quota but a *surplus* of 2,000. According to the principles of this game it is unfair that these 2,000 votes should not be effective, and so large a body of opinion be represented solely by Chamberlain. So the next thing is to add up the *second* preferences marked on Chamberlain's papers and to distribute some of them among the other candidates. Not *all* of them, Bobby, because if you did that some of Chamberlain's supporters would be getting two votes, and each man's vote must be effective only once.

Now some of the 7,000 who gave their 1'S to Chamberlain gave their 2's to Simon, and some to Hoare: perhaps a few old friends gave a 2 to Cripps. Suppose that Hoare does better on this count and gets 3,500 2's—against Simon's 2,800 and Cripps's 700.

Hoare will not get all those 3,500, but a fraction of them, calculated by reference to the proportion that Chamberlain's surplus bears to his total vote.

His surplus was 2,000, that is, two-sevenths of his total. So there will be transferred (as I make it) to Hoare two-sevenths of 3,500 votes, that is, 1,000—and to Simon two-sevenths of 2,800, or 800. Cripps's share is two-sevenths of 700, or 200.

(Observe, by the way, Bobby, that these transferred votes, which originally were mere 2's, are now promoted to the status of I'S.)

The score is now:

Chamberlain	7,000 less	2,000,	or	5,000	(elected)
Simon	4,000 plus	800,	or	4,800	
Hoare	3,000 plus	1,000,	or	4,000	
Cripps	999 plus	200,	or	1,199	

The total is still the same, 14,999. Every vote is accounted for.

Neither Simon nor Hoare has reached the magic figure of 5,000.

So the third stage begins.

Poor Cripps is still at the bottom, and is now deemed to be out of the running, and all those who have supported him, without avail so far, are now free to put their votes to more effective use. So the next thing is to take the 2's on his voting papers and give them to Simon or Hoare, as indicated by the electors. Note that if Chamberlain is No. 2, you jump over his name to No. 3, as Chamberlain has his quota already. A voting paper marked 1 for Cripps, 2 for Chamberlain, 3 for Simon, goes to Simon.

And this time there is no question of calculating

fractions. If there are 50 2's for Simon on Cripps's papers, he gets the full 50. This, as you may have guessed, Bobby, is because none of the votes on Cripps's papers has counted at all yet, and every vote is to be made effective as far as possible.

At this point, in real life, it might be found that none of the supporters of Cripps had sunk so low as to indicate so much as a second or a third preference for any of these horrid members of the National Government. In that case, the task of the counters would be much simplified, for they would set these votes aside without further trouble.

But probably the followers of Cripps loathe one of the three Ministers a little less than the others. The lawyers, for example, might give Simon some 2's because, like Cripps, he was a distinguished advocate. Let us suppose that he receives in this way 500 2's and 300 3's—all these votes, observe, become 1's now.

Simon's total vote, then, is

4,800 plus 800, or 5,600

Hoare receives only 300 2's and 99 3's, and becomes

4,000 plus 399, or 4,399

The total number of votes (including Chamberlain's 5,000) is 14,999 as before.

Simon has his quota and is elected to the second seat.

Observe, finally, that even if Simon, coming in at the last moment (we do not know why) had been

less well supported, he could not have damaged the National Cause by splitting the vote':

- (1) Chamberlain is elected first.
- (2) Then, if either Simon or Hoare is elected second the National Cause has not suffered.
- (3) If Cripps goes to the bottom he cannot be elected, and the National Cause has not suffered.
- (4) But if Simon, the last-comer, goes to the bottom (or, for that matter, Hoare) all the second and third preferences on his paper go to Hoare (or Simon), becoming I'S, and the National Cause has not suffered by Simon's intervention.
- (5) And if, in spite of all this, Cripps is elected by getting his quota—and he can only be elected by getting his quota—he would have been elected anyway, and the National Cause has not suffered by Simon's intervention.

Now let us pass to the actual battle. The University polling ceased at 5.30 p.m. on Saturday, November 6, two days after the general poll. I went up to Oxford at midday to a conference which the Vice-Chancellor, Mr. A. D. Lindsay, had called to announce to the Candidates or their representatives how he proposed to deal with certain kinds of spoiled papers. Some of the Masters and Bachelors of Arts, it appeared, had done queer things—had written their signatures on one date and had them witnessed on another, and so on.

Afterwards, from, I think, the Registrar, Mr. Douglas Veale, we heard by accident a shocking piece of information. In the ordinary election, as most men know, a candidate saves his deposit if he receives *one-eighth of the total votes polled*. But at a University election, they said, you must have *one-eighth of the first preferences*—a very different thing. I had hoped to get a fair number of 2's, both from Conservatives and Labour, but my expectation of I'S was modest. Frank Pakenham and I, horrified to find how little we knew of the game, went across to Blackwell's bookshop to study the Representation of the People Act, and see what else we did not know. Mr. Blackwell took us through his cellars but could not find the Representation of the People Act. So we had lunch. And after that I went to the Radcliffe Camera (I believe for the first time), and examined the Act. The rumour was true. A very odd provision, as any one will perceive who has read the foregoing digression on the Single Transferable Vote. For the essence of that system, as I have tried to explain, is that, though every voter has only one vote, he has two or three choices; and his second (or third) preference may in the end be the effective expression of his vote. In the final reckoning his '2' or '3' may become a V, and thousands of the votes recorded in the result began as humble '2's' or '3's'.. It seems absurd, therefore, to assess the acceptability of a candidate by reference only to the number of I'S he receives. Another legislative accident, I fear. One more odd, but

somehow consoling, thing I discovered was that here the £150 was forfeited not to the State, as usual, but to the University Chest.

I wandered rather forlornly about the streets till 5.30, cheered only by one of those gilded telegrams of goodwill from my friend, Mr. Bean, the licensee of the Prospect of Whitby, at Wapping. A queer but warming encouragement to a would-be Burgess for the University of Oxford.

At the Clarendon Buildings I found Mr. J. L. Stocks, the Socialist candidate, whom I never met before or since. He seemed charming. We agreed that if we had known of that rule about the deposit we might never have taken the plunge at all. Some readers may think that I am making a queer fuss about a small sum: but, apart from the money, there is something symbolic of humiliation in the phrase 'forfeits his deposit'. Defeat is one thing: this makes it fiasco.

Neither of the Conservative candidates was present at the counting. I thought this was odd: for I had never failed to face a first night, much as I detest them. But, as things turned out, it was just as well.

This was worse than a first night. I felt, as authors do, seeing the stalls fill up and the critics come in, that I was an alien who had thrust himself into a strange land and deserved what was coming to him. I was the only person in the room not in academic dress. The Vice-Chancellor, the Registrar, one or two Heads of Houses and dons I did

not know—including one lady—Mr. Stocks, the representatives of the other candidates and my own, Mr. Harrod of 'the House', Frank Pakenham and all were in hoods and gowns. Technically, I think, I was not even a member of the University, for I had never taken my degree. Certainly I had no vote: yet I was putting myself forward to be a Burgess, Parliamentary voice of this great place. I felt very properly small.

Yet, until they opened the cupboards, I think I still retained some faint defiant hope. The Vice-Chancellor, quiet, able and genial, as always, described the course of the proceedings. Then they opened the cupboards.

An attendant brought forth from the cupboards bundle after bundle of the voting papers, foolscap size and assembled by fifties, and piled them on the long bare table.

First, the 'Cecil-Cruttwells' (Cecil-i—Cruttwell-2). Bundle after bundle—pile after pile: till at last there were four monstrous mountains of bundles. Then one pile of I'S for me—substantial, but only one. My heart sank. I am not trying to work up a story: at that moment I was absolutely persuaded of defeat. I had never hoped, of course, to come within miles of Lord Hugh Cecil: but now in those four mountains I seemed to see for the first time the full strength of the citadel, of the impregnable traditions of Oxford Conservatism. I consoled myself with the thought that at least I was not disgraced; for now Mr. Cruttwell's and Mr. Stocks's

I'S were on exhibition, and both their piles were smaller than mine. But there were all Cruttwell's 2's to come. 'What a hope!' I whispered to Frank: and he answered 'Never mind. The old deposit's all right, I think.'

They counted the I's, and the Vice-Chancellor read out the result:

Cecil	.	.	.	7,365
Herbert	.	.	.	-3,39°
Stocks	.	.	.	2,683
Cruttwell	.	.	.	1,(803

I was highly delighted to find myself second. But I began doing some furtive arithmetic. The total votes cast were 15,241. 8's into that was 1,900. The deposit was safe.

1,900. But Mr. Cruttwell had only 1,800. I could not believe it. The official Conservative candidate at Oxford could *not* have lost his deposit. It was absurd. But I scribbled and divided and multiplied in my little book again, and came to the astonishing conclusion that he had. I was glad that poor Mr. Cruttwell had not come.

But I was still quite sure that after the later calculations he would be elected. I had heard that morning that it was possible for a candidate to lose his deposit and yet be elected (though this, I now know, is erroneous.)

They began the Second Stage, with which those who have studied the lecture on page 20 will be familiar—the distribution of the surplus 2's on the

Cecil papers. Quiet fell on the room while everybody except myself did arithmetic. I was not quite clear what they were at, and I still did not think that it had any practical interest for me.

The answers to the sums were announced at last:

Cecil	.	.	.7,365	(elected)
Herbert	.	.	.3,864	
Cruttwell	.	.	3,674	
Stocks	.	.	2,776	

Astounded, I found myself still second. But no one yet had obtained the 'quota'—which was **5,081**.

They began the Third Stage. Mr. Cruttwell, it will be seen, had 'gone up one'. Mr. Stocks had gone to the bottom and was out of it, and the next thing was a ghoulish assault upon his '2's' and '3's'.

And now I began again to take a personal interest in the election. For I had observed, far down at the other end of the table, a goodly pile of Stocks-1—Herbert-2's.

I received, in fact, from the admirable supporters of Mr. Stocks 1,315 2's and 27 3's: and these, becoming I'S, as I have explained, took me up to 5,206.

Mr. Cruttwell received 154 2's and 23 3's and went up to 3,697.

The score, then, was:

Cecil	•	.	-7,365
Herbert		.	5,206

Cruttwell	.	.	3,697
Stocks	.	.	2,776 ¹

"Mr. Herbert now has his quota,' said the Vice-Chancellor quietly, 'and is elected/

He went on to announce the sad news about Mr. Cruttweirs deposit.

I rose and 'as the only Burgess present' (that was a queer moment) proposed a vote of thanks to the Vice-Chancellor, the Registrar, and his staff for the swift and efficient manner in which they had done their complicated business, made more complex, I feared, than usual by my own intrusion.

And let me remark, to the credit of this system, that the result was declared under two hours from the closing of the poll.

We filed out, a rather silent party. I still felt more guilty than elated; and I was sorry for the three dons who represented the 'Caucus' and had to go and break the news.

Mr. Stocks charmingly congratulated me, and I remember he said: 'Well, now I hope you'll do something about the Divorce Laws.'

The Registrar was kind too: but he added, 'Well, now I hope you'll take your degree.'

With Frank Pakenham I slunk out into the night, feeling much more like a naughty schoolboy than a Parliamentary representative of the oldest University.

¹ These are the figures officially recorded in *Whittaker* and elsewhere: but they are misleading, for the deductions illustrated on page 21 have not been made, so that there seem to have been 19,000 voters, where there were, in fact, 15,241.

We had a sherry at the Clarendon Hotel, I rang up my wife, and travelled home in time to hear the 'result' on the wireless and have a pleasant party with my gallant General Staff.

I did take my degree—at the first opportunity: indeed, I took two, both B.A. and M.A., to the sound of some good-humoured hilarity among the Young. It is an elaborate and lengthy ritual. One marches and bows and kneels and bows, goes out in one gown and hood and comes back with another set. And I could not help contrasting the public and colourful display by which one is made a B.A. with the almost secretive manner in which one becomes a Burgess. In Oxford, on the smallest provocation, every one puts on fancy dress and bursts into Latin. The hockey Blue who takes a bad third in History is proclaimed a Bachelor of Arts with all the pageantry that Oxford can command: but those who offer themselves for the rare office of Burgess do not trouble to attend in person either the nomination or the election: and the result might never be known to the world at all if a reporter from the *Oxford Mail* were not hanging about the Old Clarendon Building in the dark. Surely there should be some comparable parade on such an occasion: surely the Vice-Chancellor should stand at the top of some imposing steps and say to the world (in Latin, of course): 'These are the men that the Masters and Bachelors of Arts of Oxford, scattered about the world, have chosen to be their trumpets and protectors in the councils of the nation!'

Thus I reflected as I marched and bowed and changed my clothes. Heaven knows, I do not want to take part in any public show that I can avoid. But if the University representation is to be preserved the Universities must make the most of it. And here, I thought, was another straw in the wind.

It gives me pleasure to say that the first and most generous letter of congratulation I received came from Mr. Cruttwell, the Principal of Hertford, who was the victim in many ways of an unpredictable and undeserved misfortune. My election, naturally, caused some dismay in many quarters of Oxford: but I must add that, ever since, I have received nothing but courtesy, hospitality and kindness.

And perhaps I may conclude this section of the story with an extract from a letter from Lord Hugh Cecil, the Senior Burgess. I wrote to congratulate him on his election and to ask for certain advice. He replied (and I do not think he would mind my repeating this, for it is an example of that frank and fearless sincerity which has won for him universal respect):

'DEAR MR. HERBERT,

'Thank you for your very kind congratulations. I wish I could reciprocate them, but sincerity obliges me to say that I deeply and keenly regret, on public grounds, your election to the University seat/

He had in mind (I presume and hope) the question

of divorce, on which he feels as strongly as all the Cecils.

I liked that. I knew where I was. But there followed two pages of careful and particular advice about the customs governing a Burgess: and, ever after, in the House, he treated me as if I were a favourite son.

MAIDEN SPEECH

So, on November 26, 1935, I passed for the first time through the Members' entrance, with a sense of pride and astonishment which has not yet departed.

On December 3 the House met for real business. On December 4, like an ass, I made my maiden speech.

How much of an ass I was, I suppose I shall never know. There were a very few kind people then who stoutly said that I was not an ass. There are a few more now who kindly say that I was bold, rash, but, on the whole, not an ass. Looking back, I snatch eagerly at any straw of evidence that may suggest that I was not an ass. I was highly delighted, for example, to see an article in the *Fortnightly Review* of September 1, 1937, by Mr. Stephen Gwynn, who was a witness of the awful event. He says:

'I soon found that his audacity and ingenuity were approved by very old parliamentary hands. To do the thing successfully it was necessary to create a favourable impression; and that was achieved at once. The speech was frank and modest as well as witty: it pleased the House, and convinced the House that the speaker was just as much in earnest as if he had had the demeanour of a fanatic/

Well, that was very pleasant to read. And at the time the popular Press supported me. But, though I was let off lightly, and generously, by that most generous place, I did not feel that this was the general impression in the House. There are certain technical justifications which I shall mention later; and these, too, I have often pleaded in my private court. But, on the whole, with the best will in the world to take a kindly view, I have to confess that I was an ass to take the risks I did.

And I have not the excuse that I blundered innocently into folly, a novice lacking the counsel of experienced people. I received great quantities of good advice, all inimical to the course which I took; so what moral the Young are to draw from this part of the story I do not know.

Just before Parliament met I had a long midnight talk, after a dinner at Oxford, with the late Sir Austen Chamberlain. That great and lovable man had been kind to me for many years, and I delighted to listen to his discourses over the port at Grillion's Club. Twice I persuaded him into the Café Royal, where his apparition astonished the Bohemians; but he was not the least lively person there, and on the second occasion, a 'late' night, he was the last to leave.

Now, with an admiring audience of undergraduates, warmly and wisely he advised me, especially on that gnawing problem—how soon to make the Maiden Speech? The very thought of it is formidable, and there is an equal temptation to 'get it over'

prematurely and to postpone it pusillanimously. Sir Austen's advice was 'Wait. Don't be in a hurry. Sit in the House, and absorb the atmosphere. See the kind of thing that can be said and mustn't be said. And study procedure. This Parliament should last for four or five years. There's plenty of time.'

This is the advice of all the Old Hands; and they are right. The House of Commons is a place like no other place:¹ it can truly be understood from the inside only. And it is always best to see how the field is placed before one begins to lash the bowling.

'Wait. Study procedure.' These two golden lessons, then, with every good intention, I took to Westminster. And I promptly disobeyed the first.

But that was partly because I obeyed the second. I got from the Vote Office on the first day the Manual of Procedure, and the Standing Orders, and I borrowed Sir Erskine May's great tome, and I read for miles and miles. I don't think I learned very much: and most of it, in the books, is most confusing. But I did grasp one important point. It is very little known or understood outside Parliament, and I commend it to the close attention of the reader, especially if he is inclined to complain that his Member 'doesn't seem to *do* very much'.

The chief business of Parliament is still finance. It is the Government's job to extract money from the people for the purpose of the King's Government: and it is Parliament's job to see that they do

¹ 'A more terrible audience there is not in the world.'—LORD MACAULAY.

not extract too much or spend it unwisely. Any time left over may be devoted to legislation: but most of the rules are designed not to assist legislation but to retard it. Governments in these days are always bursting with legislation themselves: and the time in which private Members may propose legislation is small. Besides, the Government as a rule dislike private Members' legislation, because they will drag up awkward questions which had best be left alone; and there is generally the Report of a Royal Commission behind them.

But still the private Members are allowed to play at legislation on a few Fridays at the beginning of the Session. There is great competition on those days; they have to be balloted for; and I, for one, never win anything in a ballot.

The private Member has other opportunities of raising questions and making fusses. He can—again, if he is successful in the ballot—put down vague resolutions for discussion on the first few Wednesdays of the Session: and I believe that, many years ago, divorce reform was discussed in that way. Also, on any motion for the adjournment of the House, at eleven o'clock any evening, or on the Christmas, Easter or Whitsun adjournments, he can raise a question and abuse the Government on any matter of *administration*. But—and this is the vital point—in these miscellaneous debates he must not discuss anything that will 'involve legislation.' That is, Bobby, he may say, 'I wish the Government would keep the King's Proctor, or the B.B.C. or

the village postman, in order': but he cannot say, 'I wish the Government would bring in a measure of Divorce Reform.'

I am not complaining of this rule; it is probably sound. But it is the most effective of all the muzzles on the would-be law-reformer in Parliament: and eager law-reformers outside should know about it. Many of them, as I know to my sorrow, do not.

Now this muzzle is not applied during the three or four days' debate on the Address ('The Loyal Address to His Majesty in response to the Gracious Speech from the Throne'). In this debate you may deal with almost any subject under the sun, on the ground that it ought to have been mentioned in the gracious but, as far as you are concerned, contemptible speech from the Throne. You may regret that His Majesty's Government will propose no legislation for the institution of polygamy, the abolition of wasps, the reform of the weather, or anything else. It is almost impossible to be out of order on the Address: and I believe that the Speaker and Deputy Speaker go almost frantic with boredom.

Unfortunately, nearly all my pet schemes 'involve legislation', and from my study of May and the Manual I came to the conclusion that in all probability my only opportunity during the whole Session of mentioning Divorce, Licensing or Betting Reform would be in the debate on the Address. For they could not be mentioned in any of the free-for-all debates on the adjournment; there was fixed in my mind (and nothing has happened to remove it) the

conviction that I should never 'win a turkey' in any ballot: and they were matters far too complex and controversial for the Ten-minute Rule. And though I was by no means itching to address the House of Commons, I did want to say a word or two about divorce in my first session.

Accordingly, with trepidation and regret, I decided to go against the advice of Sir Austen Chamberlain, whom I loved, and speak on the Address.

I carefully prepared a speech. It might, I think, have been a good speech: at least, it was likely to be kindly received, for the House is very kind to maiden speeches. After the startling victory at Oxford I had been most generously greeted by Members: and I think they wished me to do well. There was goodwill and, perhaps, some expectation.

And I did my best to ruin everything.

On the first day, December 3, the Prime Minister, Mr. Baldwin, made an announcement concerning private Members' time:

'There is only one effective Friday before Christmas for the second reading of private Members' Bills. The Government consider that, as the House has met so soon after the General Election and so near to Christmas, it will be more convenient to Members, and will give them more time to think out suitable Bills, if we postpone the ballot until we meet in the New Year. I have caused conversations to take place through the

usual channels' (i.e., the Whips) 'and the Patronage Secretary' (Chief Whip) 'tells me that the Opposition and the Opposition Liberals have no objection to this course. . . . The necessary motion to carry this into effect will be taken to-morrow.'

Not an unreasonable proposal, as I know now. A private Member may know very well what he wants to do: but he may be a very long way from getting it drafted in proper Parliamentary form. But then, in my study at home, I had a Divorce Bill, printed and ready, so far as I knew, for discussion—the Bill which for years Mr. Holford Knight had been vainly presenting to the Commons.

So when I heard that benevolent little phrase about Members requiring 'more time to think out suitable Bills' a little red light shone somewhere, and the Hammersmith Hampden in me began to bubble. 'Think out' indeed (I fancy those were the fatal words) when a Royal Commission had thought everything out nearly twenty-five years earlier! Really! If no one else had a Bill ready for this Friday, why should not this long-neglected reform be discussed upon it? Then, I had gathered already in conversation with friends that private Members' time was not very highly valued; and many thought that it was a waste of time. This, perhaps, was the beginning of a new assault upon it.

I had already written to the Speaker asking if I might speak on the Address: but late that night, in bed, I determined that I would make an ass of

myself and, instead of speaking on the Address, oppose the Prime Minister's motion the next day.

I could make a much better story if I pretended that I knew many things that I know now. It is possible to make a good strategic defence for this rash act; and some kind friends have been kind enough to make it. The rules of Parliamentary procedure have one chief purpose, to prevent people talking too much. The tact and cunning of the Government Whips are mainly directed towards the same end, to prevent people talking too much, especially when the Government do not want people to talk at all. The free-lance, therefore, who wants to talk more than authority desires must make his own opportunities: and he must use for that purpose the very procedure which is designed to muzzle him. I wanted to talk about divorce on the Friday in question: the Government were proposing a motion to prevent me from talking about divorce: this, then, was my opportunity to talk about divorce, and I took it.

So, I believe, some friendly experts said later. And it is all quite sound, provided always that the practitioner is an experienced and popular Parliamentarian, and not a novice making his maiden speech. I cannot claim that there was so much clear thought in my own mind. But I did, I know, say to myself that it would be better, though much more dangerous, to direct my remarks to a practical point, which fell, so to speak, within my special 'department'—free speech, independence, private

Members' rights, and so on—than to make a vaguely genial speech about nothing in particular on the Address. I saw the dangers clearly enough—or some of them. On the one hand the danger that threatens any one who does anything in these days, if he does no more than cross the road quicker than the next man—'seeking publicity': and, on the other hand, the technical, physical dangers. I was terrified of the House. I thought that I might break down, 'dry up' (it is one of my favourite nightmares). But what might be forgiven to a new Member shyly making his maiden speech in the ordinary way, might be irrevocable ruin, I knew, to a new Member impudently setting himself against the Prime Minister on his second day in Parliament.

But I decided. In the morning I went to the Library at the House and looked up some point in Hansard—I forget what: and I scribbled down some rough notes on the back of an old copy of the Matrimonial Causes Bill, which I had secured some time before from the Divorce Law Reform Union (or the Marriage Law Reform League).¹

Then I walked east along the Embankment, denouncing His Majesty's Government to the River Thames; for it was Wednesday, the day of the weekly *Punch* lunch, at which the Editor and staff

¹ When I was quarrelling with Mr. Claud Mullins in *The Times* recently, and reluctantly, he wrote that Mr. Herbert, 'after making a sensational speech in the House about being prevented from introducing his Bill (which he referred to as being in his pocket) realized that he had no Bill'. It does not matter much; but if we meet again I will show him the actual copy, with my pencil scribbles upon it, which was not 'in my pocket*' but in my hand.

arrange the cartoons. I had to excuse myself about half-way through the first cartoon, and I walked along the Embankment again, still trying audibly to get my oration clear in my head, for the preparation had been much more scrappy than I like. Near the Temple, intent on declamation, I charged into my friend Sir Campbell Stewart, and I am glad to remember that I was able to laugh at myself as heartily as he did.

Now the appalling moment was near. I sent a note to the Speaker, to say what I intended. Then I took my seat on the front bench below the gangway, on the Government side. Still I asked nobody's aid—what an ass! But after Questions Mr. William Mabane, the Member for Huddersfield, happened to sit down two places from me. I had known him for some years; and on the first day he had kindly given me lunch and shown me some of the ropes, with two other new Members. So now I leaned over, told him what I was going to do, and asked him what he thought about some technical detail—not—what an ass!—whether he thought it was a wise thing to do. He was alarmed, I could see, because he was my friend and knew, better than I did, how rash a deed I had in mind. But, what was greatly to his credit, as I shall always think, he wasted no time in argument, but acted. He said, 'Well, if you must do it, you must have Jimmy with you,' He crossed the gangway and spoke to Mr. James Maxton, who sat just opposite with his three members of the Independent Labour Party.

Jimmy Maxton is always ready to strike a blow for independence, especially if it may hit the Government. He came across and had a word with me, and said that he would start the shindy. This was heartening: I was more frightened than ever, but nothing would make me give up. A friend on the bench behind me, I think Colonel Sandeman-Allen, urged me to abandon my plan for my own sake. And at that moment a messenger at the Bar was trying to attract my attention. Mabane saw him and brought me a message from the Speaker's Secretary, trying kindly to save me from myself, and saying that if I did this thing I should lose my chance of making an effective maiden speech. Not that, but the thought of the Speaker himself taking this trouble for me, shook me for a moment. But the devil was in me, Mr. Baldwin was up, and I was lamentably set for battle.

The Prime Minister 'begged to move':

'That until the Adjournment of the House for Christmas, Government business do have precedence on Fridays; and that no Bills, other than Government Bills, be introduced and that no ballot be taken for determining the precedence of such Bills.'

He was very brief. He said that 'in practice only one Friday would be affected by the motion'. (This, as Mr. Maxton pointed out later, was not strictly accurate: for since no Bills could be presented before Christmas, no Bills could be printed. And therefore,

no Bills being ready, the first Friday after Christmas was forfeited to the Government also.) He concluded:

'There is no intention on the part of the Government, unless something quite unforeseen occurs, to interfere at all in the course of this Session with the usual regulations for the conduct of private Members' business.'

Mr. Attlee, for the Labour Party, still more briefly assented to the motion.

Then Jimmy Maxton rose. I do not think that, till he heard of my intention, he and his little band had intended to make a fuss. They enjoy making a fuss, of course, especially if they can attack the official Opposition as well as the Government: but I think (in the main) he was nobly coming to the aid of a new and rash Independent. He has the enviable faculty of rising at any moment and speaking eloquently about anything: and with his rich voice, delightful humour, his cascade of hair and deep, burning eyes, he is one of the most fascinating speakers in the House. I was grateful indeed for such assistance, and I began to realize how mad I had been to think of declaring such a war single-handed, without seeking the assistance of any one.

Maxton said:

'I do not agree that it is a good practice to take even one or two private Members' Fridays

and to postpone the ballot for Bills until after we return from the Christmas holidays. It would have been possible to take the ballot for Bills during the period between now and Christmas, and then those Members who had secured the right to introduce Bills, having intimated the Titles of their Bills, could, during the period of the Recess, have prepared those Bills. Thus we could have started right off with those Bills after the Christmas Recess. This motion means that at least one, or, at the maximum, three private Members' Bills are going to lose their chance as against the procedure of having the ballot and intimating the Titles of the Bills during this part of the Session and proceeding directly with them on the first Friday after the Recess.'

All this, I believe, was sound sense: and shows, I hope, that I was not barking up an entirely imaginary tree.

He went on:

'I should not be particularly hot about this question because the chance of either myself or any of my hon. friends here getting the right to introduce one of these Bills is, I think, on a calculation of the chances, about 150 to 1 against. Therefore I am not going to be unduly excited about the matter, but I know that the Prime Minister made a similar statement in the last Parliament to that which we have heard to-day, and then came back here after the Christmas

Recess and moved that the whole time of private Members be taken by the Government. I know, too, from speeches he has made here that he does not hold private Members' time in very high regard. In this House he has expressed a somewhat contemptuous view of the use made by private Members of such time as is available to them. It may be true that much of the private Members' time is not very well used. On the other hand, valuable measures have reached the Statute Book through the medium of private Members' Bills. I think private Members ought to be very jealous in safeguarding every minute of the little time that is available to them. I suggest that the Prime Minister and the Parliamentary Secretary to the Treasury should re-write this proposal with a view, at least, to having the ballot before we adjourn for Christmas. . . . I ask the Prime Minister, therefore, to reconsider his motion and to hold the ballot before we adjourn.'

With this stout encouragement, the Junior Burgess for Oxford University rose, in a mist of apprehension. As I gazed at the Speaker and waited for him to call my name I thought what a raving fool he must consider me for going against his wise advice. Now I was off: and from that moment I did not see a human face until I came out of the strange incredible dream. No one who has not made a maiden speech in the House of Commons

(except perhaps an actor) can imagine that ordeal. It is bad enough, I suppose, in the ordinary case, when the New Boy modestly intervenes in an ordinary debate, asks for the usual indulgence of the House, and attempts no more than to say a few things which will neither annoy nor bore. Even then he may drop his notes, address the Speaker as 'Ladies and Gentlemen', speak of 'Mr. Baldwin' instead of the 'Prime Minister', or 'dry up' utterly and have to sit down. But all these perils were ten times magnified for me, a New Boy wantonly thrusting himself in where only the most experienced could safely tread, assailing a motion of the Prime Minister in his first speech, which by custom should be one long demand for indulgence. It was dangerous enough to complete such a speech: if I had broken down it would, I think, have been the end of me. The House was packed, for it was early in the day. Never, I suppose, shall I address so full a House again: indeed, I hope not. And never shall I speak with such assurance. Afterwards Mr. Churchill praised my 'composure' and 'aplomb': I have never felt composed in that place since. But that day, it is true, once I was off, I had no fears. I felt utterly alone, but cool and certain, whirling along in a wild dream of my own, which I, for once, was controlling. But I did perceive soon how wise were those Old Hands who had said that the House of Commons was like no other place. This audience, unlike the well-refreshed diners I had known, rarely laughed when I wanted it to laugh;

and they laughed when I least expected it, than which there is nothing more disconcerting. It was this, I think, which made me say more about the Bill itself than I had intended, for I was goaded into retorting and shaken out of my stride. It was this, I suppose, that dragged from me that impious vow, for I cannot believe that that was in my head when I began. Always afterwards it made me hot to remember it, and even now, when it has been fulfilled, I almost blush to write it down, I hardly believe that I can have said it. But there it is in Hansard (Column 135, Vol. 307, No. 5):

‘ . . . I have in my hand a Bill which I am ready to introduce next Friday, or on the Friday after, or on all the Fridays, until it is passed into law; and I swear that it shall be passed before this Parliament is over/ (*Laughter*)

Then indeed the Members did right to laugh. For surely no more deplorable boast had ever been heard beneath that roof. Disraeli said, I believe, that the time would come when they *would* hear him: he did not undertake that a particular measure should be passed into law.

I sat down in a sad silence. Sir Archibald Sinclair was kind, but, committed 'through the usual channels', was bound to accept the motion. George Buchanan, Mr. Maxton's eloquent lieutenant, supported us in principle and detail, and, as usual, enjoyed the chance to flick the Labour Party as

well as the Government. Miss Eleanor Rathbone (another Independent University Member) said that she too had a Bill ready, the Family Inheritance Bill, which had long been knocking at the door. It is still.

The I.L.P. challenged a division and provided the tellers, and we had a very small party in the 'No' Lobby—Ayes, 232: Noes, 5. Mr. Garro Jones and Miss Rathbone voted with us. So that in my first division I was banded with the republicans and rebels against His Majesty's Government—a queer beginning for Oxford University.

As I was going back into the Chamber I met Mr. Winston Churchill in the Members' Lobby. He took me away and marched me up and down the corridor outside the Library; and I shall never forget how kind and encouraging he was. He had been talking to the Front Bench, he said, and had found few good words for me there, at which I do not wonder. It was like his warm and generous nature to seek out and comfort the hunted stag. He began with some too high compliments, which I will not repeat; and passed to some well-merited and sound advice. He said, I remember, which is of more general interest, that it was right for a young Member to make his own openings upon points of procedure: and it was right too on such questions to vote as one spoke. (Something severe had been said, I gathered, about my going into the Lobby with 'those fellows'—the I.L.P.)

Then relaxing at last, with that delicious twinkle

and majestic flow of words, he made this characteristic remark: 'Call that a maiden speech? It was a brazen hussy of a speech. It was the most painted harlot of a speech that ever presented itself before a modest Parliament.'

The House of Commons is the most generous assembly of men, and will forgive almost anything except a mean spirit. Austen Chamberlain seemed to have forgotten that he had ever given me certain wise advice. In every quarter I felt that I was being let off very lightly, and I was grateful.

A leader-writer in *The Times*, under the heading 'A Premature Crusader', was my sternest monitor.

'Mr. A. P. Herbert has lost no time in showing the House of Commons that he is an original Member, and yesterday he made a set speech on an otherwise agreed motion not to start Private Members' Bills before Christmas. The maintenance of private Members' rights is always a worthy object for a Crusade, but on this occasion the rights were not threatened and the Crusade was therefore only an overlong gallop. If Mr. Herbert had had a little more experience of the House of Commons, he would have realized the extraordinary value to private Members of the Prime Minister's promise that, in return for the surrender of one Friday before Christmas, there should be no poaching on their preserves throughout next year. The object of a private Member who is concerned with the practical

matter of getting his Bill passed was therefore served far better by supporting the motion. Mr. Herbert can ballot for his Bill when the House reassembles. If unsuccessful, he can introduce it under the Ten Minutes' Rule at any time after the ballot, or he can induce some successful member to sponsor it. In any case it will stand a better chance than if private Members' time next year were subject to Government seizure. It may be hoped that his mistake yesterday will not prejudice the chance of a discussion of his Bill, which in his hands promises a more lively debate than that evoked by its predecessors in previous Parliaments. The success of a private Member depends upon securing the sympathy of other private Members, who prefer that even the most attractive speeches should be reserved for the right occasion.'

I record this not in resentment (I have had too many benefits from *The Times* for that), but to show how tricky is this Parliamentary game, and how difficult it is for the best men outside to criticize justly the poor strugglers within. It is like looking through the glass of an aquarium and attacking the behaviour of the fish. This knowing writer, lecturing me for my 'inexperience', was wrong both in theory and in fact, and evidently had not made so close a study of the books as myself, the tyro. The ballot brought me nothing: the Ten Minutes' Rule was out of the question (as I shall show), and

in fact, for the rest of the Session, there was not one other occasion on which, by the rules of Order, it was possible so much as to whisper the words 'Divorce Reform'. Moreover, that premature and lunatic speech drew out and disclosed the support of many quiet Members who, if I had sat silent, might have remained silent also. And so, maybe, there was some method in my madness.

IV

FIRST SESSION

So much for the exciting preliminaries. Now for the donkey work.

After my big talk about having a Bill 'all ready', Mr. Baldwin, if he could have witnessed my work and worries during the next few weeks, might have been excused a smile.

True, as I have said, there was already in existence a Matrimonial Causes Bill, which I will call the Holford Knight Bill, for that Member had charge of it for many years. He never had the fortune, I believe, to get more than a brief hearing at the fag-end of a Friday afternoon, when the Bill would be talked out by Dr. O'Donovan, the then Catholic Member for Mile End. And mark this, Bobby—'talking-out' is a device that may be abused, when a Bill of minor importance has had a full discussion. But a measure so important and controversial as a profound alteration of the Divorce Laws cannot hope to pass the barrier of a Second Reading after an hour's debate: the Speaker cannot permit a vote to be taken and talking-out becomes inevitable. Therefore, the only chance is to obtain first place on a Friday; and that, for one reason or another, Mr. Holford Knight never did. He died last year, and I am sorry, indeed, that he did not live to see some at least of his Bill become law.

Who drafted it I have never been able to discover.

Much of it was Greek to me, not being a practical lawyer; and this year, when the Law Officers looked at it at last, they found some clauses that were out of date or undesirable, and one or two that seemed to be meaningless. Still, it was all based on the Royal Commission; and it would be foolish for a new fellow to tamper with their main proposals.

But I wanted to make a few alterations. For example, I had boldly announced in my Election Address that 'whatever else is done or not done, I should abolish the cruel system of the *decree nisi*, which (like the King's Proctor) is not found necessary in Scotland'. (And any one who wants a laugh is entitled to laugh at that now.)

Then, though here my hopes were slenderer still, I wanted to do more than the Bill attempted to reduce the number of 'separations'. The judicial separation, as a *permanent* state of life, was warmly condemned by the Royal Commission, Lord Birkenhead, and many other great men, as unnatural and harmful, breeding illicit unions and illegitimate children. Almost every one knows, of his own experience, the case of the wife who has chosen to securer separation (with maintenance), but, though she has due grounds for divorce, will not employ them. Later, the man forms a new and honest attachment, and desires to tackle the difficult adventure of marriage again, but with better hope of success. But he is the 'guilty party'; effective action can only come from his wife: and, failing that, he for life must exist single or in sin. I have heard,

in correspondence, of many hundreds of cases; and, whether the wife is moved by deep religious conviction, by natural human feeling, or mere vindictiveness, the result is not obviously beneficial to the State. I thought, and still think, that, in proper cases, the Court should be able to say, 'Looking at the history and the character of the individuals concerned, we think that this is a case where, after a proper interval, this man (or woman) should be free to make a new marriage, not for his own benefit only, but for that of the State, which desires regular and fruitful unions.'

Now, the Royal Commission did go a short way in that direction. They recommended that where an application was made to the Court for a judicial separation on grounds which would have justified a petition for divorce, the Court should have power to say, on the application of the respondent, 'No, there must here be a divorce and not a separation.' And this provision was contained in the Holford Knight Bill.

But this clause, as I understood it, meant that an injured Catholic wife, for example, might either be compelled into a divorce, of which she disapproved, or deprived of the remedy of judicial separation, which the Catholics accept. Heaven knows if I was right or wrong, but I did take upon myself the decision to omit that proposal; and I believe that it had a profound influence on the passage of the Bffl.

But in its place I have to put something better.

I thought it might be possible to secure my object without outraging the conscience of individual Catholics. The separation (judicial or voluntary) may be valuable, both as a temporary relief and a breathing-space for reconciliation. But at the end of a period, in proper cases, as described above, I wanted to propose that *either* party might *ask* the Court to convert a separation into a divorce. The power of the Court would have to be discretionary, and obviously in many cases would never be exercised—when the guilty party, for example, had been guilty of vitriol-throwing, or other gross cruelty, or where the other party was a Catholic and resisted on religious grounds. There is a similar arrangement, I believe, in Switzerland and Sweden.

I drafted something myself, very crudely and badly (I even had 'shall' where the word should have been 'may'); but, apart from that, it was soon clear that the scheme was very far from the region of practical politics, and I had to drop it in Committee without discussion.

There are loud complaints now in certain quarters that nothing has been done by the Act for couples who, instead of divorcing when they could, formed voluntary separations. But there was nothing about them in the original Bill, for the simple reason that they could not be relieved without admitting the principle of divorce by consent, which was never entertained by the Royal Commission. The question of granting the 'guilty party' some positive rights in proper cases is a different one. I did at least make

an ineffective attempt to tackle this; and I shall be interested to hear what others may propose in future.

Then Mr. E. S. P. Haynes introduced me to Lord Kilbracken, who is an expert draftsman, and generously offered his aid. He went through the Bill before Christmas; he put some of my notions into Parliamentary and legal language, brought this and that up to date, and gave me a clause of his own about children, which also disappeared in Standing Committee.

Before Christmas, too, I think, Mr. Claud Mullins, the Metropolitan magistrate, rang me up, very naturally, for I had mentioned his name in the divorce section of my Election Address. And he was by no means content with the Holford Knight Bill.

This energetic and public-spirited barrister and magistrate is, like myself, a free-lance (or should I say free-cudgel?) law-reformer, but knows much more about the practice of the law than I do. Behind the scenes he had already, I believe, contributed much to the Act of 1935 concerning imprisonment for debt.¹ He had long been well known for his original and enlightened use of the social services available in the magistrates' courts for the purpose of conciliation in the matrimonial disputes of the poor; and his example and inspiration, I suspect, contributed much to the Summary Procedure (Domestic Proceedings) Act of this year (1937), which became law just after the Matrimonial Causes

¹ Money Payments (Justices' Procedure) Act, 1935.

Act, and is, to my eyes, the other side of the same coin.

Now he was ready, privately, with amendments and additions to this Bill about divorce. I perceived very soon, from his own frank disclosures, that any contributions I accepted from him were likely to lead to trouble. For, like myself, I fear, and other would-be reformers, he overflows with new proposals, and is inclined to be made impatient by the comparatively slow pace at which other people accept them. Like myself, too, he is inclined to express his impatience forcibly and publicly. But, unlike myself, he is not a journalist enjoying the Englishman's supposed rights of free speech, but holds an important judicial post, and judges are not, according to the Constitution, supposed to take an active, and public, part in politics. So, from time to time, there is disquiet among official persons, not about his private counsel, but about his public utterances. And I have to say, with regret, that I do not wonder. For it was about some violent public utterances that in the end, to my sorrow, we quarrelled, and quarrelled publicly, in *The Times*. It is very difficult to make me quarrel with a friend and ally—especially in *The Times*; and I hated it.

But I have this consolation. Because of Mr. Mullins's past difficulties it was agreed that I should not reveal in public who was the author of Mr. Mullins's proposals: and to this I steadfastly adhered. But a letter I wrote to *The Times* this year (September) caused Mr. MuUins to reveal the part he

had played. So I am now able—and glad—to thank him publicly for his assistance, though here and there I may have to correct, in a friendly way, his own estimate of its ultimate value.

In reply to this letter Mr. Mullins said:

'At my own request Mr. Herbert has never made public my share in the preparation of his Bill, but, as he now criticizes me for not confining my activities to sitting on the Bench, I must reveal that it was I who suggested and drafted the clauses that made the Herbert Bill so different from, and so much more acceptable than, the Buckmaster-Holford Knight Bill.'

My desire is, as I have said, to redistribute among many persons some of the excessive credit that I have received. But the words I have quoted do less than justice to all those who, long before Mr. Mullins and I were heard of, laid the unshakable foundations of this reform. There was, after all, a Royal Commission which made its Report in 1912; and it is right to remark how strongly that Report has stood the test of time. It provided the flesh, bones, and blood of the present Act. All that we have done is to give the picture a new frame, hang it in a better light—and sell it.

Still, after all these years of effort, the stark fact remained that, for one reason or another, Parliament had not accepted the proposals of the Royal Commission; and it was not my habit to close my ears

to new ideas. I perceived that the Bill might not be so 'ready' as I had thought. I cut down my holiday at Madeira to a week and came home to fuss about the Bill with my various advisers. All in vain, as things turned out, for nothing happened at all that Session.

Mr. Mullins said that what was needed was a New Approach to this problem. From his long experience in the magistrates' courts he was naturally most interested in the troubles of the poor; and he said that divorce reformers in the past had tended to concentrate too much upon those who could afford solicitors. His experiments in his own Court had shown that 'conciliation', wisely and patiently conducted through the probation officers, the medical officer, religious aid, or otherwise, could avert 'separations' in a surprising number of cases. Poor wives would come to him asking for separation and maintenance orders, and thinking that a magistrate's order for so much a week must operate as punctually and permanently as the commands of a Good Fairy. He would point out that the husband, if separated from his wife, was likely to take up with some body else; that his earnings were small and could not possibly support two households—and so what? Was she quite sure? And what was really the trouble?

Then, after private inquiry, it was found very often that the trouble could be remedied, sometimes by the doctor.

In seven months [he wrote to me] 220 summonses were issued at the South-western Court and 89 final orders were made, I am confident that not one of the 131 women who did not get an order had any complaint about being denied legal rights: 23 of these women had their cases dismissed after formal trial, but the other 108 were convinced that they were better off without court orders. With this experience in the matter of orders for separation or maintenance, how can we tolerate a system that leaves applicants for divorce with only legal assistance?¹

But such humane work was only possible in Courts of Summary Jurisdiction; and those courts had power to grant separations only and not divorces. So that when the poor required a divorce they must go to the High Court or the Assizes, where there were no 'social services' and so no machinery of conciliation. There the troubles became at once a matter for legal and public recriminations, and the whole atmosphere was different. How much better, said Mr. Mullins, if the same human and more or less private attention could be devoted to the divorce suits of the poor as they now received, at least in some police courts, when they desired a separation.

All this sounded sense to me, and was in tune with my own intentions, though I was well aware that conciliation, like divorce, was a horse that an eager rider might ride too hard. But what was the

conclusion? Parliament, having refused all these years to give the High Court extended powers in divorce, was not likely all at once to bestow them on the magistrates. Mr. Mullins was able to quote from an article a dictum of the Lord Chief Justice (Lord Hewart):

'Changes in the substantive law of divorce appear to be quite inevitable. As for procedure, by way of diminishing difficulties and inequalities, especially as between rich and poor, it is conceivable that 19 divorce cases out of 20, with all their puzzles, may perhaps before very long be heard and determined gratis by those diligent and accomplished gentlemen, the stipendiary magistrates, the county-court judges, and the chairmen of quarter sessions who happen to be lawyers.'¹

But he agreed that this would be going too fast; and he produced a sort of compromise. The magistrates (or rather selected magistrates, the Lord Chancellor to do the selection) were to have jurisdiction to hear divorce suits and pronounce their conclusions, but not immediately to grant divorces. The papers were then to be sent to the High Court; the High Court could say 'Yes' or 'No', or, in doubtful cases, summon the parties to the High Court. All this was not to come into force for a year, by which time, Mr. Mullins hoped (and he was right), the social services in the magistrates' courts

¹ *Daily Telegraph*, October 22, 1935.

would have been 'regularized' and strengthened by the Summary Procedure (Domestic Proceedings) Bill—which is now law.

Well, even to my unpractised eye, a procedure by which one court was to hear the evidence and another court pronounce the decision seemed likely to cause criticism; and in fact this was the point that contributed most to the singularly unanimous condemnation of the lawyers. Mr. Mullins, I think, agreed that it was unsatisfactory, but was inclined to take the view that the question of machinery was a mere detail that could be amended later. I question that. I have thought it right to outline this unfortunately still-born scheme at length, because I like the spirit of it still, and it is very possible that something like it, in the end, will come. But whoever proposes it again will have to face frankly the granting of divorce jurisdiction to courts of summary jurisdiction (or some of them). This does not greatly alarm me: but at present, like so many other things, it is not practical politics.

However, after reflection, I said that I would fly this difficult kite. Mr. Mullins drafted a long clause for me (Clause Ten), and we had to drop it in the Standing Committee, as I shall relate, without a debate.

A small part of the scheme, a clause giving magistrates for the first time the power to grant a separation order for adultery, we were able to retain. This, I think, should be valuable, for it brings such cases within the area of conciliation.

Then, the Bill, as it stood, contained no clause to relieve the clergy of the Church of England from their lawful obligations concerning the marriage of divorced persons. I do not know why; for there was such a clause in Lord Buckmaster's Bill at least fifteen years earlier. It was obvious that any section of the Church that objected to marrying persons who had divorced their spouses on the ground of adultery would object still more strongly if the new grounds were added. We agreed that this ought to go in: Mr. MuUins drafted a clause and Lord Kilbracken amended it. At this time I was darting like an industrious bee from one adviser to another, from Mr. Mullins to Lord Kilbracken, and from him to my old friend and encourager Mr. E. S. P. Haynes, who, though the veteran of the party (he gave evidence before the Royal Commission), said least of all. Then I would telephone to A to explain why B thought that A's drafting ought to be altered. It was a busy holiday. And all the time I was well aware that I should soon be in hot water for not consulting either of the two Divorce Reform Societies, who had been in the business for years, and disliked each other.

Finally, Mr. Mullins said: 'Why not forbid any divorce before a certain period—say, five years?' I had seen a hint of this proposal in an ably written pamphlet issued by the Modern Churchmen's Union, of which Mr. Mullins was a principal member. It fitted well with a passage which I had carefully noted in one of the resolutions discussed (and

later carried) by the Upper House (in other words, the Bishops) of the Convocation of Canterbury:

'That this House, recognizing that full legal enactment of the Christian standard of marriage may not always be possible in a State which comprises all sorts and kinds of people, including many who do not accept the Christian way of life, or the means of grace which the Church offers its members, is of opinion that *some amendment of the State law relating to grounds of divorce may be demanded by the circumstances of the day, and that the Church should be prepared to give consideration to proposals for such amendment\ provided that any proposed amendment does not tend to make marriage a temporary alliance or to undermine the foundations of family life.*⁹

It fitted, too, though it seemed severe, with my own fundamental views, which were to secure more humane and honest divorce in the genuine hard cases, without making it too easy for the merely irresponsible or foolish. I got the figures, and found that the proportion of dissolutions of marriage under five years was, in fact, not large—between 12 and 14 per cent. So I accepted that also. And this clause gave more trouble than anything else in the Bill. Some said (I said it myself) that we should not have got a Second Reading without it, or after that, passed through the Committee stage as smoothly as we did. No one can tell. But certainly, to the

general public and the legal profession, it did not make the Holford Knight Bill more 'acceptable'.

There, then, a few days before Parliament met again, was my Bill—but still studded with drafting errors. I wrote a Memorandum to describe what the Bill did: this was difficult, because the Memorandum must not be 'argumentative'. But in a 'preamble', as I had discovered in my study of Erskine May, you may say what you like. So I wrote a preamble, challenging but quite sincere:

'Whereas it is expedient for the true support of marriage, the protection of children, the removal of hardship, the reduction of illicit unions and unseemly litigation, the relief of conscience among the clergy, and the restoration of due respect for the law, that the Acts relating to marriage and divorce be amended. . . .'

And this preamble, word for word, is on the Statute Book to-day.

Lastly, I scratched out the title 'Matrimonial Causes Bill', and, after much consideration, wrote 'Marriage Bill'. Of this, too, I am a little proud, though this, too, earned a black mark in certain quarters. I knew that such measures had always borne the dreary title of 'Matrimonial Causes Bill'. But that seemed an anaemic banner for such a fight as was before us. As a journalist, I imagined the headlines, and saw that 'Marriage Bill' would be both briefer and better. 'Divorce Bill' would not do; for

while every clause was concerned with marriage, there were important ones which had nothing to do with divorce—the nullity clause, for example, and the presumption of death. Also, the name "Marriage Bill" did symbolize a genuine belief—already expressed in the first few words of my preamble—that the Bill was designed by reforming the divorce laws to bring benefit to the institution of marriage itself; but few people will believe that, and I will not argue the point.

Parliament met on January 21, and the ballot for places for Private Members' Bills was held on February 6. But first I had to get backers, which requires much bustling about and importunity. (A Bill may be backed by twelve Members and no more.) Some of us, as I know to my cost, are inclined to put our names to Bills and Resolutions with too little knowledge or reflection. But no man carelessly put his name to this. I was not surprised; but I was frightened by the number of Members who thought that, on the whole, they were with me, but had a too dangerous proportion of Catholics in their constituency. There are, I believe, only 2,000,000 Catholics in the Kingdom, but they seemed to dominate it. Other Members had had matrimonial troubles of their own, and naturally shied away. Some were put off by the Five Years' Clause, and among those, I suspect, was Mr. Winston Churchill, who had half promised his powerful aid. Not all who signed were happy about that. A few said frankly, 'Why don't you leave things alone? The

rich can get a divorce easily enough by bogus adultery; and, as for the poor, it is a good thing that there should be one law for the rich and another for the poor\

My maiden speech had at least disclosed to me some of the few active sympathizers, such as Sir Arnold Wilson and Mrs. Tate, those unfailing lieutenants, and Sir Francis Acland, an old supporter of the cause. In the end, six other brave Members from all parties gave their names—Miss Rathbone, Mr. Boothby, Mr. Bevan, Mr. Cocks, Mr. Wedgwood, and Mr. Thurtle.

With excitement, but not much hope, I attended the first ballot; for I do not draw horses in sweepstakes, and, if I do, they are last.

This ballot, to the newcomer, is one of the queerest of the Parliamentary scenes. About 250 Members have put down their names in the book; about twenty attend the 'draw'. Not many more than twenty are eager to 'win a turkey' for themselves, being pregnant with a particular reform. The rest go in to give a friend another chance, or as a Party duty, for the Whips have always a few Bills ready for a Friday. Sometimes one of the Departments wants to get some small measure through for which there is no room in the Government programme (which may seem an odd use for private Members' time, but gives some private Member an almost certain run for his money).

As a rule there are about ten private Fridays available for Second Readings. In theory three Bills

can be disposed of in a day; but in practice, if the first Bill on the paper is substantial and controversial, there is no hope for the others. And the later in the year the Friday is the less chance the Bill has of thrusting through the congested traffic in the final stages. So the only hope for a prickly measure such as ours is to win a number in the first five or six, and the odds against that are about fifty to one.

But there is always hope; and thirty-three numbers are drawn. The Chairman of Ways and Means, Sir Dennis Herbert, genially presides over this momentous lottery and draws the numbers from the ballot-box. The Members present eagerly write down the winning names. My number was 81: 80 came out about sixteenth, and a little later 82; but not 81. But I had no cause to complain. Mr. Holford Knight, and others, I suppose, had attended the draw every session for many years, in vain. Some old Members tell me that they have been in that place for twenty years and never won the tiniest turkey.

Many will think—and I myself have often thundered the same—that this is an unsatisfactory method of deciding what legislative proposals shall be discussed in Parliament. But what is the remedy? Every Member thinks that his Bill is as important as another's; and the limited time must be distributed somehow. I have sometimes wondered whether there might not be reserved two spare Fridays in the gift of the Speaker (like a head master's nomination at a public school). The

Speaker would have to certify that such-and-such a measure was of special public importance, and, although unsuccessful in the ballot, deserved to have a hearing. But I have no doubt that the experts would find many good objections to this.

As things are, the only remedy is to persuade some successful Member to adopt your unfortunate child. The only two Members I could find on the telephone were by no means willing to be the foster-fathers of divorce. After lunch I heard of one Member who had won a high place in the ballot, to his great dismay, for he had entered by mistake, thinking that he was putting his name down for the daily ballot for seats in the Strangers' Gallery. But I could not find him. Then a friend said: 'What about X——? He's won a good place, and is going about asking what on earth he's to do with it.' I hustled about and found X——at last. He said: 'Divorce? Good God, no! I was in the Navy.' I did not immediately follow the reasoning, and had no opportunity to inquire about it. For he rushed across the Lobby to the Whips' Office, where he was, I believe, provided with a Bill.

To him, I thought, that wanteth not, to him shall be given.

Still, a Member can always 'present' a Bill, and have it read a first time and printed; and, though he has no precedence, he can put it on the Order Paper after those that have, and hope that some supernatural power will cause the other Bills to

collapse immediately or keep the Members in charge of them away.

The only other course was the one unwisely recommended by the leader-writer in *The Times*—to ask leave to present the Bill "under the Ten Minutes' Rule\ But if leave was granted, I should be no better off; and if it was not, as seemed likely, I should be out of court for the rest of the Session. The one advantage of this procedure is that a member can make a brief speech, and to that extent advertise his wares. But it is intended, as I had learned from the books, for simple Bills, "presumably non-controversial': the Speaker is not bound to put the question, and would not do so, I was persuaded, for a thorny thing like mine.

So on the Friday morning I took my stand behind the Speaker's Chair at the tail of the long and rather pathetic queue of private Members waiting to present their Bills at the Table. None of us, in fact, had Bills in our hands, but "dummies' procured from the Public Bill Office and having only the titles, short and long, and the names of their presenters and supporters. Pathetic, I said, because we carried (though only in "dummy') so many high hopes and fierce enthusiasms that were destined to come to nothing in the end (that session, at least). I am not thinking of the personal ambitions of any Member, but of all those glowing minorities outside which are the principal breeders of private Friday Bills. And there is this to be said about private Friday Bills: there is generally at the heart of them the flame

of some ideal, crazy and impossible though they may seem to be to the practical politician; and they are rarely concerned, as in these days most Government Bills must be, at bottom, with the material problems of profit and loss and bread and butter. That is one reason why I value the private Fridays, and am never away that day if I can help it. They are a nuisance often, I know, to Governments and Whips; but they are, in a way, the last expression of real democracy, for they are the sole machinery by which minorities can still not merely splutter, but endeavour to construct. Therefore, whenever a 'Count' is called on a Friday,¹ I leap up from my lunch and canter along the corridors in order to help to 'keep a House'; for in a democracy surely every man has a right to be heard, if only for a short time. Of the Bills presented at the Table that day, some very tiny fraction struggled at last into law; but the others at least had some small chance.

So the Bill was presented, printed and published, and at once I was in hot water. Not with our enemies, who were not yet bothering their heads about us, but with our friends. And here, Bobby, I believe, is one of the first rules of politics—to expect as much trouble from your friends as from your enemies. Later in the same session I proposed a mild attack upon the Entertainment Tax, about which I had been writing ferociously for many years; and at once I found that I was running contrary to

the policy of the West End Theatre managers, of ail people. On this year's Finance Bill I put down, and succeeded in speaking upon, precisely the same motion and was applauded from the same quarter.

Now—and I do not wonder—I was much blamed by the Old Guard for adding new and perilous proposals to the Bill, for overloading a vessel which was already heavy enough, and so on. I can understand the anxiety of Mrs. M. L. Seaton-Tiedeman, for example, the veteran secretary of the Divorce Law Reform Union. This brave fighter had been at it for I know not how many years, speaking in Hyde Park on Sundays, lobbying the House of Commons, writing letters and answering letters, and all the time keeping her little Union alive with hardly any resources. It must have been galling to her to see this new recruit entangling the ancient cause with dubious embroideries. Still, as I told my critics, there was no other Member actively devoted to the task, and they must make the best of it. I said, too, that there would be so much fuss about the new stuff in the Bill that the old proposals, more important, would almost be taken for granted. And this was what happened. This Divorce Bill 'created a record', for all the denunciations, at that time, came not from the Bishops, but from the Bohemians. People almost cut me at the Caf⁶ Royal.

At the Temple, too, I believe there was no comment that was considered too severe. A Mrs.

Normanton, especially, gave interviews, wrote public articles, and made a number of speeches at women's societies, denouncing the Bill in terms most unexpectedly unjudicial in one who surely will soon sit upon the Bench. I was even blamed for not being successful in the ballot. The report of the Divorce Law Reform Union that Spring said that: 'We believed, like many thousands of others throughout the country, who had followed his great Press publicity, that Mr. Herbert would be a fighter for this cause, but *he appears to have faltered*. . . .' I wrote and drew attention to some of the 'rules of procedure', already mentioned in these pages, and I observed that, having failed to win a lottery, there was nothing I could do but sit about on Fridays and hope the most forlorn hope in the world, which I was doing. And I said still more. A lady reporter, by accident, got hold of this letter, a Sunday editor grabbed and published it, and more fat was in the fire.

In short, during that Session, I did not feel that I was much assisting this particular cause, though I had more fortune with others. I wondered often why I had left the comparative quiet of a man of letters in order to play Sisyphus in an ungrateful world. I wrote somewhere that I believed there was a majority in the House for these proposals, if once they could be heard; but it would be difficult to say on what evidence that faith was founded. I remember Arnold Wilson himself saying to me: 'It's no good; I'm afraid they don't want it.'

But I kept on putting the Bill down for distant Fridays, on the chance that one day all the other Bills would be disposed of early and leave me half an hour or so for a 'demonstration' at least. It never happened. But 'The old Marriage Bill again?' became a kind of genial jest, and in this way, I think, gained a place in the minds of Members.

Meanwhile, friendly Members like Mr. Victor Raikes, Colonel Gretton, and Mr. A. C. Moreing invited me to clubs and committees, the 1922 Committee, the St. Stephen's Club, the 1900, and gave me a chance to try my 'prentice hand at expounding the Bill and 'answering questions', which I did with some incoherence and no small alarm. This was good practice; and I agreed with Victor Raikes that it was perhaps a blessing in disguise that I had won no place that year; for I might have made a sad mess of things.

The Members named, Bobby, by the way, were all against me then, I think; but they wanted to hear what the other fellow had to say; so you may here record a good mark for British democracy.

The only other line of attack was Questions; and I dislike asking questions. They seldom bear any fruit but badinage; and Question-time, in my humble view, is an overrated entertainment. However, it was part of the game, and I drafted numerous questions, ingeniously designed to advertise the state of the law in the more civilized country of Scotland, in the Dominions, in foreign countries, and so on.

But to whom were they to be addressed? The Clerk-at-the-Table, who is the preliminary censor of Questions, said that I could not ask the Attorney-General in how many foreign countries there was divorce for desertion, for example; it was no part of his duties to know. But I could ask the Foreign Secretary about the state of the law in foreign countries. Well, poor Mr. Eden was being baited daily with innumerable questions about Abyssinia or some such trouble: and I saw no reason why he should be sniped about divorce as well. So I put down one question 'not for oral answer'. Lord Cranborne replied that 'The information was not available' (an odd reply, by the way, considering how much the Foreign Office knows about everything), and that was the end of the Question campaign.

I mention this, Fretful Constituent, with instructive purpose. In Parliament great mountains of labour may produce the tiniest visible mouse. Very often the mouse does not emerge at all, and then you never hear of the mountain. So do not lightly assert, as you sometimes do, that your Member 'never seems to *do* anything much.'

On May 20, when all private Members' time was exhausted, I put down a formal question to the Prime Minister, and was thoroughly, and properly, snubbed. I did not truly expect that the Government 'would provide time for the Marriage Bill'; but I wanted in a 'supplementary' question to urge the Government to prepare a Bill of their own 'for

consideration during the next session'. Mr. Baldwin replied: If my honourable Friend will give me an undertaking that the Measure will be non-controversial I shall be happy to consider the matter/ This caused great amusement.

(A year later, on May 6, 1937, it fell to Mr. Baldwin, in one of his last utterances in the House, to announce that the Government proposed to provide facilities for the remaining stages of the Marriage Bill. A strange world.)

Then I planned to smuggle my subject past the rules of order by criticizing the administration of the existing law. The Bishops of the Upper House of the Convocation of Canterbury had passed a resolution deploring 'the methods of collusion and perjury which are at the present time not uncommonly employed in seeking to secure decrees of divorce'. Nobody had paid the smallest attention. I asked the Labour Whips, who kindly consented, to put down the appropriate Vote, including the salaries and expenses of the Law Officers and the King's Proctor. And I devised a speech, into which, while criticizing, quite properly, the administration of the law, I hoped to insert a few parentheses about reforming it, but not so long or loose as to be ruled out of order.

'What was all this? "Collusion"—"perjury"—"not uncommon"! This was the allegation, not of an irresponsible journalist, but of the Bishops of the Established Church. What had His Majesty's Government to say or do about it? What was

the Attorney-General doing—and what the King's Proctor? Of course, so long as the present laws remained there was bound to be a certain amount of collusion and perjury, because the law was repugnant to the conscience of the people. That, however, was not my immediate concern; indeed, it would be improper to speak of it. The Government in their wisdom had decided that the law did not require reforming; but surely they desired that it should be enforced. What was the truth of these allegations? Perhaps the King's Proctor was not receiving enough money to enable him to discharge his duties properly. If that were so, then Parliament must act. For Parliament had enacted this extraordinary law, with which apparently His Majesty's Government were perfectly content, and Parliament must ensure that it was not defied. It was one thing for the subjects to revolt against what they conceived to be a bad law; but if the very officials who were charged to execute it were lukewarm as well, then indeed . . .' And so on, and so on.

I was highly pleased with this device, I know. But unhappily on that very day there was a great fuss about the Fascist meetings. There had been a stormy meeting at Oxford at which my own 'agent', Frank Pakenham, had been rabbit-punched and knocked out. And I had to make a speech about these proceedings instead.

So one more mountain produced no mouse.

The 'campaign' of that Session concluded with

another ineffective but friendly episode. On the last day but one before the adjournment was taken the Appropriation Bill: and on this again almost any matter "not involving legislation" can in theory be raised. In practice the main debate concerns some single question selected by the Oppositions, and the odd man with a bee of his own has to take his chance at the end. But I thought that I would have one more attempt to discharge my King's Proctor oration. To this I had now added a diatribe about the use of anonymous letters by that much-abused official. (He has since told me, it is fair to say, that this has been much exaggerated.) So through my friend Harry Strauss, the Parliamentary Private Secretary to the Attorney-General, I gave notice, as is customary, of my intention. The day was hot; the main debate (on I forget what) seemed to be inexhaustible; and, as I sat in the Chamber, I discovered that both the Law Officers were hanging about the House, rather reluctantly, in order to reply to my remarks if I was called (which was doubtful). This embarrassed me; for they were friends of mine, and I might never "get in" at all. My boat was anchored at Charing Cross; I was tired of waiting, and the lust of battle was dim. So I withdrew to the Smoking Room and found there the two Law Officers sadly waiting for my onslaught to develop. I said that I would spare them if they came down the river with me. So I brought the ship to the Speaker's Steps, and embarked the two of them, with Strauss. We steamed down to Wapping, and,

over supper, I harangued them there. So ended the first Session.

And now, Bobby, you will begin to perceive why so many hot-headed reformers come raging into Parliament and there become placid or embittered old men.

SECOND SESSION

IN the long summer recess I returned happily to my own work. Indeed, I did not go away on holiday at all. In September I began writing a revue for Mr. C. B. Cochran, I had not before had the honour to be responsible to him for the entire words of an original revue, though I had worked for him three or four times.

It was a very big job, and it was by no means finished—not even the devising and writing—when Parliament met in the autumn. Rehearsals were to begin about the same time. When my work is to be performed in the theatre, I give it, as a rule, my whole mind and time: during rehearsals I am at the theatre most of the day, and fussing and working at the thing most of the night. I love working for Mr. Cochran, and he expects generous effort from those who work for him. I remember saying to my wife that it would be just like Fate to let me win a place in the ballot when I had this exceptionally exacting job on hand. I could not possibly attend to a Bill in Parliament and a Cochran revue at the same time.

But that was precisely the situation that Fate had prepared for me. I put my name down for the ballot again, and again I attended the draw, and again my number did not emerge from the box among the first thirty-three. At this point of the

story I do, if I may, mildly pat myself on the back—or rather, perhaps, I give special thanks to the powers that control us all; for I was faced with a big temptation and overcame it. I was tempted strongly to shrug my shoulders, go down to the Smoking Room and have a beer. I could bewail my fate to the reporters later, complain against the queer machinery of Parliament, and feel myself free for a few weeks—for I had done my best—to devote my main energy and time to Mr. Cochran, which, after all, was a part of my profession in life, and might reward me.

But my particular angel, or imp, said: 'No; you have taken this cause upon you and you must do all you can.' So, wondering at my own perversity, I hurried downstairs to the Members' telephone room, with the list of winners in my hand. On the way, I looked in at the Labour Whips' Office, for Labour had four or five of the first ten numbers; but there, as I expected, I was kindly told that there were plenty of Bills for Labour Members (and, of course, for a party in opposition, the private Fridays are of immense importance).

So I went into the telephone-box and pursued the Conservatives and Liberals. I tried first the few winners I knew, Mr. Maurice Petherick, for example; but he was already wedded to another Bill in the same line of country (which is now, I am glad to say, the Summary Procedure (Domestic Proceedings) Act, 1937). Others had their own Bills, or were not at home, or were entirely dependent

on the support of Roman Catholics, or were in conference, or simply spluttered at the word 'divorce'.

A Mr. De la Bere, whom I did not know, had place No. 2. It seemed presumptuous for me even to think of aiming so high, and I was content at first to chase the eight's and nine's, and even fourteen's. But the telephone attendant told me that Mr. De la Bère was a new Member, like myself, so he might, I thought, have no Bill in the bag. Some one told me that I might find him at Hay's Wharf: he is a director of that and many other companies. He was 'in conference'. I returned to Mr.—, who was still out, and Mr.—, who was 'somewhere in the building but could not be found'. It was vital, I knew, to get my hooks into somebody then—before lunch: for by the time the House met in the afternoon the best places would have been promised to Members with less explosive notions, if not to the Whips. But I had failed to get Mr. De la Bere, my last hope, twice. I had been telephoning for an hour; and that is too much telephoning for me. It was lunch-time, and I felt in need of refreshment. I was about to abandon the quest and seek the Smoking Room, but I thought that I would make *one* more attempt to get Mr. De la Bere—and then give it up.

And here was one more of the happy accidents: for this time he was available. And his first words gave me my first substantial hope. True, he began with the usual pass-word about the Roman Catholics in his constituency, but he did not utter it with the

usual conviction. What he did say firmly was that he, too, was of an independent turn of mind, and was afraid of nobody. And this he has abundantly shown.

We agreed to meet that afternoon in the Chamber, after Questions. He sat on the Government benches near the Speaker. Neither of us knew the other by sight. After waiting about ten minutes I edged along the almost empty bench and said to the next Member, 'Do you know De la Bere?' He said, "I am De la Bere.' We went out and sat in the 'Aye' Lobby.

At once, like eagles, two other Members, with Bills in their beaks, descended on us and tried to carry him off. But I was able to claim priority and bullied them away. He, too, already had a Bill in his hand, an innocent little thing about municipal elections, which the Whips had given him. My heart sank when I saw that: but I did not know Mr. De la *Bhtc*.

And let me say here that if the life of any man or woman is changed for the better by the Matrimonial Causes Act, 1937, I hope that they will always remember gratefully the name of Mr. Rupert De la Bere, Member for Evesham.

They should give thanks too for the chance that plucked that name from the hat at the second cast. For, apart from the few who already had an active interest in the cause, I do not suppose there was a single other Member on the Government side who could, at that time, have been persuaded to give his

place to this Bill. I say 'at that time'. Consider. Mr. De la Bere had no special interest in the question; he was not, like myself, an Independent; he took the Whip, though he was never, I believe, one of its most docile recipients. The Government Whips would not, at the best of times, I suppose, have clapped heartily on the back a member of their own flock who said that he proposed to introduce a Divorce Bill on the second Friday of the Session. For such a question, cutting across party, is sure to give the Government trouble: and Governments have enough trouble of their own making.

But it was then November 1936. And at that time, as I am sorry to have to recall, the name of Mrs. Simpson was on every lip; and, most unfairly, as we now know from a certain judgment of the President of the Divorce Division, many hard things were being said about a certain divorce case. The abdication crisis had not yet come to a head; and the last thing that any one wanted then was to provoke discussion of these sad matters in the House.

So it was not an auspicious moment at which to father a Divorce Bill upon a Conservative Member; and when Mr. De la Bere went off to see the Whips again it is not difficult to guess what they said to him, though I do not know. All this, I repeat, is not said in criticism of the Whips, but in applause of Mr. De la Bere's courage. I must add that once the battle was joined we had nothing but friendly (though unofficial) aid from the Whips, though I,

as an Independent, had no sort of claim upon them, and two at least were deeply opposed to the Bill.

Well, Mr. De la Bere saw the Whips, and others, and came back to me; and a friend of his, Mr. R. H. Morgan, supported my plea. We said that it was a pity to waste so fine a strategical position upon the Municipal Elections Bill; that this would be the first occasion on which this long-neglected question had had a fair chance at the top of the list; and that, win or lose, this was a big and worthy cause for any private Member to adopt. But I do not think that in fact he needed much persuasion; for he is a fighter. By six o'clock he had made his decision. I think that it required real courage and I hope that he will never regret it.

But all the afternoon, while I was urging him to say 'Yes', I was thinking 'What in the world shall I do if he does?' For rehearsals for *Home and Beauty* were to begin that very week: I had lyrics to write (to music), dialogue to repair, scenes to devise. Supposing by any miracle, I thought, we get a Second Reading and go into Committee, between these two diverse and enormous responsibilities I shall certainly go off my head.

Nobody, however, seemed to think that there was the smallest danger of our getting a Second Reading. Some of the Whips, I was told, thought it was out of the question. One of the great experts on the ways and procedure of the House said meaningly: 'You'll fill a Friday, all right.' By which, he meant, I suppose, that there would be so great a

press of speakers against us that at four o'clock the Speaker would be unable to grant the 'closure'—that is, permit a division—and the Bill would be 'talked out' as it had been before.

There was another danger of which kind friends reminded me. Just before four o'clock on a Friday, the Member in charge of a Bill may move 'that the Question be now put' and a division taken. But this motion may be challenged, and, though it may be supported by a majority in the Lobbies, it is not effective unless the total votes are at least 100. So that, though we might command a majority of the Members present, we might not be able to get a division on the main question.

Then, if we were not 'talked out', we might be 'counted out'. After one o'clock on Friday any Member may 'take notice' that there are not forty Members present in the Chamber. The bells are rung throughout the building, the policemen bellow at the doors of dining-rooms and smoking-rooms, and the Speaker turns his sand-glass. If within two minutes there are forty Members in the Chamber the debate continues; if not, the House adjourns for the day, and the Bill under discussion loses its place for ever. Members who want to save it must rise from their lunch and run: Members who think it is embarrassing or better dead can stay where they are—and sometimes do.

Then it was said that if we did succeed in scraping a Second Reading, the opposition in Standing Committee would be so prolonged and powerful

that we should block the Standing Committee for the whole of the Session; and no other private Member's Bill would be able to get through. In short, expert opinion was very far from encouraging.

Meanwhile, Mr. De la Bere was busily at work among the official Conservatives, and we called a meeting of our General Staff, and sent out a 'whip' to every Member. We could not summon our 'supporters', for we did not know who they were.

It is pleasant at last to be able to say 'we'. It was pleasant then to lose at last the sense of being a single novice fussing and blundering alone, and to see about me at that meeting the first beginnings of an accomplished team, a team which from that day to the end never relaxed in loyalty or labour. Sir Francis Acland, I think, presided, and thereafter, like his son Richard, quietly helped us whenever he could. The father suffers, and most bravely, from asthma; and I shall never forget him sitting at a conference, gasping painfully for breath, but declining to leave until he had said what he thought was necessary.

Then there was Sir John Withers, of Cambridge University, a divorce solicitor, generous always with the experience of a busy lifetime, but equally content to sit in the background and support in silence.

I do not think we had then 'acquired' the two Labour men who helped us so energetically later—Mr. R. W. Sorensen, a nonconformist minister, and little Mr. George Griffiths, the popular miners'

Member. These two were eloquent and earnest answers to the old assertion that divorce was only a rich man's question.

But certainly Sir Arnold Wilson and Mrs. Tate were there: for they were always there if they were needed. These two, throughout, were the first lieutenants of the team: and, many days, I do not know what Mr. De la Bere and myself would have done without them.

Arnold Wilson is a remarkable person. Apart from the rest of his fine qualities and career, which are not relevant here, I think of him as the human encyclopaedia. He is always at work at something; and if he has a spare moment, there he sits in the Library, excavating information. What is more surprising, his memory keeps pace with his industry. It is difficult to mention any subject concerning which he cannot tell you the conclusions of all the Commissions and Committees, the provisions of the relevant Act, and numerous statistics. He is a Colonel who quotes Homer and Horace, and, stranger still, he can recite yards of my own verse, of which I could not repeat a line. He has generally two or three targets in sight, but could always spare time and trouble for ours.

As for Mavis Tate, I shall always think of her as the Honourable and Gallant Member for Frome. If any Member deserves the second epithet, she does. She was one of those who had had cause to divorce a spouse many years ago, and, as so many did, might well have said that she could not actively

engage in this affair. But she insisted on taking the field. She is a most effective speaker, with a fine delivery and a fighting mind; she hits hard and uses irony delightfully. I believe she has had some trouble in her constituency through coming in with us, and, if so, it is a shame.

VI

SECOND READING

THE fateful Friday came. I cannot describe with what anxiety and fear I sat in the Underground train that morning; and probably it would not be interesting if I could.

Private Fridays, even when they produce nothing, are often the most vital days of the Parliamentary week. They seldom bear that aspect on Sunday, for nowadays the Sunday papers seem to be written on Tuesday or Wednesday. Nor do these Fridays wear the trappings of drama at 11 o'clock in the morning, when they begin. As a rule, there are not more than ten Members present at Prayers; and when the Member in charge of the first Bill begins his epoch-making but apprehensive opening he is fortunate if he has an audience of forty. Do not, Fretful Constituent, start muttering things about slack attendance. For it is you who are chiefly responsible. It is you who bombard your Member with plaintive or indignant letters, which you expect him to answer by return of post, *in the morning*. It is you who insist that he shall be present on Friday at your ridiculous flower-shows, prize-givings, opening of art exhibitions, swimming baths, or dams, the unveiling of statues, laying of foundation-stones, launching of ships, crowning of beauty queens, annual meetings, and anniversary gatherings. An'i, having booked him

months ahead for one of these events, you are illogical and ungrateful to complain that he is not present in the Chamber when, by chance and at short notice, some subject that specially interests you comes up on that day. True, he might have opened the flower-show on Saturday instead; but that, probably, would not have suited you; and if the wretched fellow is not to take Saturday off, when *is* he to have a rest? The answer to all this, I think, is that private Members' Bills should not be taken on Fridays but on Wednesdays, instead of the Resolutions, which are much more often a waste of time. But there it is—you are responsible. Besides, the whole of Friday is not so dull. When your Member has finished answering your tiresome letters—provided always that you have not booked him to lay a foundation-stone, launch a ship, or reply for the Guests, your Member strolls along to the House; and all day, every minute, the attendance is increasing. By lunch-time there may be 150 in the House (though not in the Chamber). By 2 o'clock there may be 200 or more. About 3 o'clock even the Chamber fills up, and, if the subject is of general interest, the sitting may end in a blaze of excitement, which makes very many Government days look drab.

Still, the overture to Friday is always grim. I wish I could say, as a novelist might, that to-day, when *our* measure was top of the bill, all precedents were reversed, all flower-shows cancelled, all virgin vessels left waiting on the ways, and all the Members present in their place'. But I cannot. The usual

dozen were present at Prayers: and later, though the attendance was good for a Friday—and the Labour benches were well filled, as they generally are—the House was never crowded to an insanitary degree.

After Prayers—and I did pray; for I confess with shame that I am one of those foul-weather Christians who pray in the low times of danger and distress and doubt—after Prayers I looked over my shoulder to the back Government benches above the gangway, to see if the Senior Burgess for Oxford University was in his place. Lord Hugh Cecil was about to retire from the House of Commons in order to take up his new post as Provost of Eton. He was, I knew, charged with hot, sincere convictions on the subject of divorce. He had not spoken in the House for many months. I feared that he might use this occasion to make his swan-song: for I thought that, if he did, by the weight of his eloquence, the authority of his position, and the sentimental appeal of his farewell, his upstart junior might be blown out of the water. He never appeared—though he was in London that day. I do not know why, and I shall never inquire. For I like to think that it was the Cecilian courtesy, as consistent and powerful as the Cecilian convictions, that kept him away: that he did not wish to show Oxford divided, and did not like in his last words to cross swords with his successor. Whether or not that was the explanation, he has my respect and gratitude: and I know that the House of Commons, whatever he said, would have liked to hear him say good-bye.

There was one other important absentee that day. In I know not how many previous Parliaments, Dr. O'Donovan, the Catholic Member for Mile End, had 'talked out' any Divorce Bill: but he, as I had thankfully observed at Mr. Selfridge's, lost his seat at the General Election. I have since met Dr. and Mrs. O'Donovan on very friendly terms: but I was glad that morning that he was not there.

Mr. De la Bere, moving the Second Reading, made a short but effective speech. And I must remark, if I have not done so before, how finely self-effacing was this Member all the way. He had not even my small legal equipment; he knew even less about this tricky business than I did; but he was willing to speak whenever necessary, and also, though he had presented the Bill, to sit for many weary hours in silence. And, by the way, Fretful Constituents, get this into your head—those of you, that is, who complain that so many Members never seem to say or do anything. They are all doing things, all the time—as you should know from your correspondence. If they were all to insist on saying things, all the time, the Parliamentary system would collapse at once. There must, even in that high temple of free speech and democracy, be the few that speak and the many that follow: and, believe me, the many who sit quiet and loyally follow are in their way as valuable as the few who talk.

Mr. De la Bere had mentioned that he had been happily married for eighteen years and had four children. I capped him with twenty-three years,

four children and a grandchild. Later, Sir Francis Acland claimed twenty-eight years, though not, I think, so many children. The debate, here and there, sounded more like a Mothers' Meeting than a base assault upon marriage, morality, and family life. But it was, I believe, the temperate tone of the Bill's defenders that gained the day, and, what was more important, the benevolent neutrality of His Majesty's Government. In all my speeches outside I had urged that the Bill was designed not merely to relieve the misfortunes of individuals, but to strengthen three institutions—the Church, the Law, Marriage itself: and therefore it was a cause very proper for Conservatives to smile upon, for it had always been their way to preserve the old institutions by reforming them. I urged this now; and then laboriously explained the clauses, which took me fifty minutes. I hope I shall never have to speak so long again. I am not a good speaker, and I believe that I am worse in that alarming place than anywhere. But this day, I believe that, like Mr. De la Bere, I did succeed in striking the right note of restraint, and relieving the fears of some who thought that this affair must begin with violence and conclude with acrimony. The Chief Whip, Captain Margesson, sat just opposite to me, listening intently, which was encouraging but embarrassing. Afterwards, unofficially, and within the limits of his authority, he did all he could to help us: and that was very much.

All through the struggle I refrained from quoting

from the innumerable sad letters I received from suffering strangers; for I wanted to give as little excuse as possible for the foolish reply that "Hard cases make bad law\

But now I concluded with a letter from a strange Catholic lady, which is worth repeating:

 'Tlease God, your Bill will pass unmutilated. I am a Roman Catholic, a happy wife and mother, but there are others in this world of ours who most grievously are not. With what anxiety they must be waiting the result of this truly great reform. We pray for you.'

'I hope,' I said, 'indeed I pray, that the spirit of that letter may be moving in this House to-day.' I believe it was.

Sir John Simon, the Home Secretary, sat down beside me and congratulated us on our discretion: and he carried to his colleagues, I believe, the report that, if we had our chance, we might be trusted not to abuse it. Sir John seldom seems to receive due credit for anything he does; so let me say here that he, too, again within the limits of his authority, did all he could for us throughout the year: and though I know no Cabinet secrets I believe that it was not his fault that the Government did not come out more strongly.

Then we made ready to be torn to pieces by the enemy. Mr. W. P. Spens, K.C., moderately opposed the Bill. Later, he became not merely a constructive

critic but one of the chief architects of the rebuilding; and both voted and spoke for the Third Reading. But, what was extraordinary that day, not a single other speaker opposed the Second Reading of this deadly measure. Sir Francis Acland supported us, and Mrs. Tate, who made the best speech of the day, vital and stirring; and Mr. Sorensen, the nonconformist Minister, sincere and lofty; and Sir John Withers; and Mr. McEntee, a Labour Member; and Mr. Ernest Thurtle, another. Lieutenant-Commander Agnew was critical, but he, too, he said, would vote for the Second Reading. Where was the opposition? Where were the Catholics? No Catholic had spoken yet. Colonel Llewelin was then the Whip charged to keep a watchful eye over private Fridays; and a wise and fatherly eye it was. He told us that the Speaker was complaining that he had no speakers against the Bill. On our side we had still some more to come. Arnold Wilson had a fat oration ready. Before the debate we had been warned by all the experts that our side must be as brief as possible, for if the enemy did not get plenty of time to talk, we might not 'get the closure' at four o'clock. But now it was only 1.30, and if our people stopped talking the whole affair would stop. Here indeed was a strange reversal. What did it mean? What should we do? Was there here one of those Machiavellian plots? We huddled and whispered, and crept about the Chamber, not much assisting, I fear, poor Commander Agnew's thoughtful address. It was decided that our side had better shut up, and,

after the Attorney-General had spoken, we would try to get a division. In that way we should avoid the difficulty about the hundred voters. So Arnold Wilson nobly sat on his speech, and it was so.

What would the Government spokesman say? I nourished still a faint, wild hope that after the way the debate had gone the Government might take over the Bill, saying that it was of too great importance to be left to any private Member.

Sir Donald Somervell, the Attorney-General, did not say much. But he thought it was clear that the House desired the Bill to have a Second Reading; and in Committee, though it would remain a private Member's Bill, the Government desired that the assistance of himself or the Solicitor-General should be available.

This, at least, was warming news: for I knew that if we were left to struggle through Committee under our own small steam we should not advance very far. We owed this decision, I believe, to Sir John Simon's recommendation. But we might not have had that if the debate had gone otherwise; so let no man say that speeches make no matter.

The Speaker was about to put the question. But at this point, slightly out of breath, the Catholic Church made its first appearance, in the person of my good friend Mr. Anthony Crossley, who had evidently run from the luncheon-room, as I so often run.

This is a new and most important character in the story, to whom, though an enemy, the promoters

of the Bill owe much. Now he said that the Catholic Members had 'not yet had any official guidance on the Bill', and he wanted the Attorney-General to assure the House that the Five Years' Clause—in our view a great step forward—would remain in the Bill. 'If that Clause were withdrawn, there really can be no doubt that the Bill would have the uncompromising hostility of, I should think, most members of the Church of England as well as Roman Catholics, though, if that Clause stands, clearly things might be different/ And he concluded by saying that 'the whole fate of the Bill does depend on Clause One'.

The Attorney-General said that he could give no assurance, for the Bill was a private Member's Bill, and, as it stood, it did contain Clause One.

The Speaker put the question and the House divided. Mr. Spens and Mr. Crossley were tellers for the Noes: Mr. De la Bere and myself for the Ayes.

And a thrilling thing it was to stand beside Mr. De la Bere and hear him announce the figures:

Ayes to the Right	.	. 7 8
Noes to the Left	.	. 1 2

The time was 2.9 p.m. The long and bitter debate which was to fill the whole Friday had collapsed to the sound of cheers during the luncheon-hour, with two hours still to go.

Yes, the figures are small, for a theme so large. But before you throw stones at the Members,

Fretful Voter, recall this. It was the luncheon-hour and the end was not expected then. Some Members had gone out for an hour; others were intending to arrive (and did arrive) after lunch, to hear the end of the debate and vote.

But, whatever the figures, the result was there. For the first time a Bill embodying the main proposals of the Royal Commission of 1910-12 had received a Second Reading in the House of Commons. And this had happened within twelve months of my impious vow. It was too much to hope for more.

Excited but exhausted, after my wife and family had gone home, I went up to the Shaftesbury Theatre, where they were rehearsing *Home and Beauty*. And there I became entangled in a furious row between the comedian, my good friend Mr. Nelson Keys, and the stage director, my good friend Mr. Frank Collins. A strange day.

VII

STANDING COMMITTEE

BUT now, where were we? We did not clearly know.

The experts knew. They had not been theatrically gushing about our prospects for the Second Reading: they were much more assured and gloomy concerning our prospects of surviving the Committee stage. If Drake, as I have said before, had had the advantage of the modern yachtsman's handbooks he would never have left these shores; and if we had been governed by the experts now we should have withdrawn the Bill.

Ourselves, we held neither fond illusions nor sanguine hopes. Indeed, it seemed a most formidable task.

On the Second Reading, Bobby, the House accepts the main *principles* of a Bill, without committing itself to approval of the details. In Committee the House takes a tiny tooth-comb, examines every hair, and scrapes the scalp as well. Every clause, every line, every word and comma, may be questioned, amended, deleted, and put back—and it may be amended or deleted again on the Report stage. To any one who is acquainted with the zeal of the British legislator and the imperfection of all human plans, it is a marvel that the guts of any Bill ever emerge intact. And in Committee there are not the same restrictions on debate as there are upon

a Second or Third Reading, where a Member may not speak more than once. In Committee, in theory, he may speak as often as he will upon any question. Also he may put down almost any number of amendments, which, if they are called, must be met and discussed. Even the Government, commanding an assured majority, may make slow progress with an unpopular measure, resisted by a small minority with resolution and skill. The experts told us dark stories about Bills, thus opposed, of which, after days of debate, not more than a couple of *words* had been passed. We were not the Government, but a small group of private Members with an extremely vulnerable cargo. We should face an opposition determined and skilled, and backed by great forces outside which had successfully repelled our proposals for centuries. True, the enemy had not shown much fight yet: but that, the experts said, was part of the cunning game. They had not wanted it to be said that they had prevented a fair examination of the Bill, and so they had let the Second Reading go through. Now, having lured us into the swamps of Committee upstairs, they would slowly and painfully destroy us. And about these intentions, for once, I believe the experts were right.

There were immediate practical worries. No doubt there would be endless drafting and re-drafting to be done: it might go on for many weeks. The experts said that we must have solicitors and draftsmen always in attendance. But who was

going to pay for them? And what a trouble they were sure to be, especially if they differed from the Law Officers of the Crown!

What exactly did the Government's offer of advice amount to? I ran into the Attorney-General, Sir Donald Somervell (so many important things at the House seem to emerge from chance encounters), and put that question to him. He said: 'Come and see me at the Law Courts to-morrow/

And that was a big day. Sir Donald, like Sir Terence O'Connor, the Solicitor-General, was at Oxford in my own time, just before the war, and I expected no more than a friendly talk with him. But when he entered his room, he was followed not by one King's Proctor but two—Sir Thomas Barnes (the present holder of that office) and Sir Maurice Gwyer, whom I had met before, his predecessor.

This, I say, was a big moment for the humorous writer who had set out to reform the marriage laws of England. It appeared that at last we were taken most seriously.

We went through the Bill. We discussed this and that. And, by degrees, as the plot filters slowly through the dialogue of a first act, exciting hopes emerged. The Government assistance was to include not only the presence of one of the Law Officers in Committee, but, in the background, the advice of the Treasury Solicitor (King's Proctor) and the drafting experts of the Parliamentary Counsel's Department at the Treasury. In other words, our drafting and redrafting would be done

for us for nothing; and this was a great relief. But the Bill would strictly remain a private Member's Bill, and with questions of policy the Government would have nothing to do in a positive manner. If, for example, we chose to include in our Bill a clause for the encouragement of bigamy, or the abolition of the King's Proctor, that would be our own affair, though of course there would always be the risk of incurring the active hostility of the Government.

I had already gathered from conversations elsewhere that the continued presence of certain clauses in the Bill might militate (in diplomatic language) against the continuance of Government neutrality—the proposal to abolish the decree *nisi*, for example, and Mr. Mullins's unfortunate Clause Ten. And I had let it be known that we should not be stubborn about hanging out odd flags that were repugnant to the Admiral, though we would not surrender the ship to any one. For I never thought that we were likely to come through without escort: and even then I had one eye on the distant date when we might have to ask for Government time.

I may seem a wild one: but I have, I hope, some sense of practical politics. And if any one says that I should have stood for all or nothing, he is an ass. At all events, it was that assurance, I imagine, that had cleared the way for this most cheering conference.

As we walked away Sir Thomas Barnes, Treasury

Solicitor, King's Proctor, said to me: 'I believe this Bill will go through.' I was very much surprised by this confident prediction: but all through the difficult eight months that followed he never budged from it. Moreover, if it is discreet to say so, he was as keen as I was that the thing should happen.

The stage is filling rapidly, Bobby. But before it becomes too crowded I hope that you will take note of this quiet but essential figure in the tale. In my book *Holy Deadlock* I tried to do justice to the individual who from time to time holds the thankless office of King's Proctor. It is even an injustice to describe him so. He is primarily His Majesty's Procurator-General—or more shortly, the Treasury Solicitor—and must advise and assist the Government in many great matters. This distasteful business of divorce is only a small part of his duties. As King's Proctor he is not even paid. Yet outside official circles he is known only as the 'King's Proctor': and that is not a popular title. No one, I think, would so gladly see himself abolished as Sir Thomas Barnes. The holder of his office acquires *ex officio* a reputation for inhumanity and worse. Sir Thomas, at least, is one of the most human and charming of all the tribe of Whitehall, and it was a great privilege and pleasure to work with this most able and industrious public servant. Once there was any chance of this Bill becoming law, it was, of course, his duty to do what he could to see that the machinery was sound and workable. But

he put much more into the work than that: and without his constructive and tireless toil—and much of it I must not mention—I doubt if there would be an Act to-day. So, ladies and gentlemen, for once think kindly of the King's Proctor—and think of him rather as the Treasury Solicitor.

We met again that evening, when I had collected De la Bere and Arnold Wilson and communicated my surprising news, at Sir Maurice Gwyer's room at the Treasury. And there and then the first amendments to the Bill were drafted. Sir Maurice is now Chief Justice of India, and after that day we had his aid no more. He was then First Parliamentary Counsel, or in other words, head of the department which drafts all Government Bills. He is a man of great stature, massive mind, colossal calm. Talking to him, one cannot imagine the possibility of disturbance or error. It is always a pleasure to watch a master at his craft: and now it was fascinating to see this tricky top-of-the-table work being supremely well done. When we had decided what we wanted to say he would take down a couple of statutes from the shelf, look up a section or two, pause, murmur a phrase to the Treasury Solicitor, and, smooth as an off-drive, the long amendment would flow from his pen. And, perceiving then how numerous were the gaps to be filled, the traps to be avoided, we were thankful indeed to know that we were to have the best practitioners in the country behind us.

But let no one hastily assume that we were now,

as to policy, bound hand and foot by Government advisers. Whenever, against advice, we insisted that we must have this or that, the same technical aid was readily available.

Standing Committee A met on December 3, in Committee-room 10; and the long, alarming and exhausting business began.

In Committee, and the preparations for Committee, Bobby, the real work of Parliament, in a sense, is done. No doubt your father has taken you to the Strangers' Gallery to hear a debate in the Chamber. One Tuesday or Thursday you must get him to take you upstairs to one of those rooms like very high schoolrooms overlooking the river. For Parliamentary democracy is the apotheosis of the Committee: and it is perhaps the Englishman's capacity for going into Committee, and, more important, coming out of Committee, that, for good or ill, has 'made us what we are'.

In these dull rooms you will find no maces, wigs or gowns, no row of famous Ministers, no eloquence, no scenes of passion, no soft benches, no crowded galleries or high applause—only thirty or forty men and women quietly 'getting down to business' on very hard chairs. There may be a couple of reporters and a couple of strangers, not more.

Standing Committees, as a rule, meet from 11 till 1 o'clock, or later, on Tuesdays and Thursdays. Two hours—two days: it does not sound much. But those who are actively engaged in the work have to devise and draft their amendments, to consult

or conspire with their supporters in the intervals' apart from their many other toils and cares. And for those in charge of a Bill the rest of the week seems to be mainly occupied by the preparations for those four hours. On Tuesday, say, there is a rumpus, and the promoters undertake to put down amendments by the next meeting. Those amendments ought to appear in print on the Order Paper to-morrow, Wednesday, so that the opposition may be able to consider them before Thursday. Thus they must be handed in at the Table to-night, and the rest of the day may be spent in getting those amendments fixed, agreed and drafted. Some Government department must be consulted: one of the opposition must be found and squared. Those four hours seem to fill the week.

And for the ordinary party Member there are a hundred other tasks as important as this Bill. After lunch he must attend the sitting of the House and he may be there till II, 12, or 1 o'clock at night. That is, on Committee days, he is 'in the precincts' for twelve hours or more. I myself do not often perform such feats, so I may be permitted to commend those men and women who do. It is hard and worrying work, and the people, naturally, know nothing about it.

The Chairman, too, is not merely one who sits in the chair and preserves order. He must study before each day long pages of amendments, and understand precisely the purpose, meaning and propriety of each of them. His intellect must equal

his tact. He must let everybody talk who will, yet seize every opportunity to drive the business along. Our Chairman was Major Milner, the able and affable Labour Member for Leeds (S.E.). It would probably be improper for me to praise his work, but I should like to.

The Committee assembled slowly, and I kept an apprehensive eye on the clock. In Parliament one always seems to have one eye on the clock. I should mention, Bobby, that at twenty minutes past eleven, if there is no 'quorum', the Committee adjourns until the next day (a quorum is twenty members). And, by a recent rule, if this happens on two consecutive days, the Bill in question *goes to the bottom of the list*. It might be that we were doomed to die in that most ignominious way. It was, I knew, one of the recognized devices of 'obstruction'.

But the quorum was present in good time (indeed, there were forty present): and we began operations on the Five Years' Clause. That day in fact was comparatively peaceful: there were no divisions, and good progress was made. But I could not have been more nervous if the opposition had been equipped with poisoned darts. Sir Austen Chamberlain, just before he died, told me that he never rose in the House without a sinking feeling in the pit of his stomach: which, coming from a veteran statesman, may console the rest of us who suffer nerves, but equally deprives us of hope. Still, it may be said, he spoke of big occasions in the great arena: who **could** be frightened in an intimate Committee?

Well, I could. There was always at the back of my mind the thought of the innumerable unhappy people who had written to me, and, now that we had come so far, were at last beginning to hope. And I was fearful, as I was to the end, that by some blunder, some flash of temper or foolish word, I might bring our promising beginning to ruin. Also, I am a bad extempore speaker, and there would have to be much of that.

The opposition were formidable, we knew, though we did not know their numbers yet. There were two K.C.s against us, Mr. W. P. Spens and Mr. A. M. Lyons; and on controversial questions of policy we could not look to the Law Officers for aid.

So when I had to speak for the first time, I did not know, as they say, whether I was standing on my head or on my heels. And I have been amused since to hear the report of those remarks solemnly quoted as if it were the utterance of a reasonable being.

But the rest of the team stoutly held the fort: we resisted all amendments to Clause One and it was carried without a division. That, perhaps, was the strangest episode in the strange history of that strange clause; and I shall return to it later.

On the second day (Tuesday, December 8), there was added to our natural troubles the Constitutional Crisis. That was the fatal and final week. On the Friday of that week King Edward VII's abdication was concluded. On the Tuesday at 11 a.m.,

Standing Committee A was to meet again to continue the discussion of an amendment which proposed to insert the word 'persistent' before the word 'adultery' in paragraph (a) of Clause Two (new grounds for divorce). The object of the amendment was to prevent the granting of a divorce for a single act of adultery, and so to make impossible what is called the 'hotel divorce'. That morning the Members trickled in much more slowly. We counted and recounted anxiously, and still there were only about fourteen. At 11.10, De la Bere went out into the passage: returning, he reported that there were sufficient members waiting outside, but that they were reluctant to come in and debate this particular amendment because of its possible relevance to the Constitutional Crisis. It would be impossible, they said, to avoid indiscretions.

Well, I have no reason to suppose that these delicate anxieties were not sincerely felt. But I had heard so much from the experts about the low cunning of Committee-men that I smelt mischief everywhere, and I could not forget that rule about the 'two days running'. Also, now that, after twenty-three years, we had at last got the subject on to the political map, I resented bitterly the suggestion that the affairs of any individual should be considered sufficient to put it into the dark again. I said that I had not, so far, made any reference to particular cases, and did not intend to do so; and that others could presumably avoid any indiscreet details as well. De la Bere went out again and

somehow persuaded them in. We had a profitable morning and progressed well into Clause Two without a single reference to dangerous topics.

This day, too, we had an answer to that anxious question: What was the voting strength of the opposition? In debate they were extremely formidable, though always fair. There were the two K.C.s, Mr. Spens and Mr. Lyons. Mr. Spens, cherubic, industrious, constructive, keen, is a Chancery barrister. He had, I think, no hot religious objection to the new grounds of divorce: but he was rightly concerned about the interests of the children of unhappy marriages and his big complaint was that we were doing nothing effectively to combat collusion. His conversion, later, from an opponent to a constructive critic and, later, to an active collaborator, were vital factors in our success.

Mr. Lyons, like so many bachelors, was uncompromisingly opposed to divorce. He disliked, I think, every comma in the Bill. He disliked the five years' delay clause as much as anything else; and in spite of that he foresaw from time to time the nation set upon 'the slippery slope' to 'easy divorce'.

Then there were the three Catholics—Sir Patrick Hannon, courtly and lovable, as round and genial as the sun; Anthony Crossley, intellectual, eloquent, and earnest; Commander Bower, tall, bold, and blunt. They disliked everything except the Five Years' Clause. Recalling the exploits of Dr. O'Donovan in the past, and the reputed electoral

power of the Catholics, I had expected the most bitter antagonism from that quarter: but in fact we were much more harassed by the Anglicans. The Catholics expressed their faith sincerely but shortly, and when they saw defeat magnanimously accepted it. On the Anglican side there were Mr. Crowder, Mr. Cartland, and Lieutenant-Commander Agnew, who, though he voted for the Second Reading, was always against us afterwards. These, too, I think, throughout the Committee stage, admirably discharged the conflicting duties of loyalty to a faith and to the democratic principle. On every motion at least eight resolute and able speakers could have talked—and talked again. It might have been called 'obstruction'; but it would have been within the rules of the game; and always before this cause had been met with such manoeuvres. I do not know whether they were considered, but they were not employed.

And, apart from such obvious devices, it would have been easy, I imagine, to take advantage of the inexperience of De la Bere and myself in many subtler ways. So far as I know (it may be my innocence) it was never done. When we emerged at last from Committee I was told by some one that we had been cunningly led up the garden path (again!), and that the Bill was now in such a mess that it could never go forward: but I still do not know where this devilish work was done. (Indeed, something was said later about our having 'tricked' the opposition.) So much praise has been bestowed upon the promoters that I think it right to recall that

in a Committee, as in a football match, the fair play of the other side contributes much to the final score.

But on these first uneasy mornings all this was hidden from us. There was not, I confess, the friendly feeling which afterwards prevailed. There was, as older Members told me, an unusual acid in the air. And we did not yet know our strength. Standing Committees are composed originally upon party lines—in proportion to the strength of parties. A few members are specially added in relation to each particular Bill, and Sir George Penny, the Whip in charge, had done his best for us there, I knew. But this question cuts across party, and, for all we knew, a majority of the main body of the Committee, the quiet ones, might be against us. So that we approached with some anxiety the first division. We were still on the question that the word 'persistent' be there inserted before the word 'adultery'.

In Committee, Bobby, there is no marching through Lobbies. The names are read out and the Members answer 'Aye' and 'No'; and I am seldom quite sure whether I am 'Aye' or 'No'. Suppose, Bobby, that the amendment is to leave out 'and if', and insert 'but when'. The first question put by the Chair is:

'That the words proposed to be left out stand part of the clause.'

And the agitated novice may easily cry 'Aye' when he means 'No'. Indeed, whole parties of experienced men have committed this error.

But this morning we were without doubt 'Noes'; and there voted, to our delight and my surprise:

Ayes	8
Noes	24

Never say that politics, even in an upstairs Committee-room, are not exciting.

That day there were two more divisions. Mr. Agnew wanted to cut out 'desertion'; but Mr. Spens was against him and we won by 25 votes to 5. Then Mr. Lyons moved to raise the period from three years to five, and we defeated that by 16 votes to 5.

We now knew our strength and we breathed more freely. But we could not afford to abuse that strength (I do not think we ever did) and it depended on the regular attendance of the quiet Members on our side to maintain it. And you, Fretful Constituent, remember that. Not all the 'courage and pertinacity' of Mr. Herbert or any one else will get a private Member's Bill through without the aid of the quiet Member, who, uncompelled by Whips, leaves his home or business every Tuesday and Thursday morning, provides a quorum, sits in the background saying nothing or little, votes down the enemy, is never mentioned in the papers, but is reviled by foolish fellows for 'doing nothing'.

I can think of three or four Members who were with us nearly every morning, but usefully said no word. Colonel C. E. Ponsonby, for example (Member for Sevenoaks) did not make a single speech for

the Bill all the eight months; but all that time, in one way or another, he was quietly working for it—and voting for it. It was he, for example, who arranged that we should meet at the House a large deputation from the Mothers' Union, to see whether we could not find some points of understanding, if not agreement. It was not a fruitful meeting, but the effort was good, and might have been more effective than fifty speeches.

On the next day, Thursday, December 8, the Constitutional Crisis was approaching the peak. Again at 11.10 there were only about eighteen Members in the room, but again a bunch waited outside in the corridor. I went out myself and was told that every one was too much upset by the crisis to give his mind to this Bill. Also, at 11.30 the Labour Party had a meeting along the passage to discuss the crisis. I hope I did not appear ruthless or oppressive in the presence of deep feeling: but I thought, If we concede this there will be some trouble every morning. So I said rather pompously, I remember, 'The King's Government must go on,' though this was a Bill which the King's Government had resolutely declined to touch. We arranged to send a message to the Labour meeting whenever there was a division: and so they came in.

That day, too, in spite of the heavy hearts, we made good progress, repelled an amendment by Mr. Lyons and, not without divisions, carried two of the new grounds for divorce—desertion and cruelty. Indeed, at 12.30 we had a light-hearted

debate and division on a purely drafting amendment to substitute the words 'celebration of the marriage' for 'date of the marriage'.

After lunch every day I would rush away across the river to a barn-like building near the Elephant and Castle and endeavour to switch my mind to the manifold problems of Mr. Cochran's *Coronation Revue* (one of which was now, "Will there be a Coronation?"). Then, with appeals in my ear from a Hungarian composer, an American producer, and an English comedian to write more words or better words, I would hurry to the Treasury Solicitor to get the text of the new amendments and to the House to confer with De la Bere and the team. Then I would find an odd assembly of telephone messages. 'From Mr. Kent, insanity amendment on the way'—'From Mr. Collins, please send second verse of *Twilight Sonata*'—'Please ring Treasury Solicitor'—'Please ring Miss Binnie Hale'—'Please ring Mr. Cochran.' Mr. Cochran, who had always been accustomed to get a whole mind from me, nobly forbore to complain of my distraction. Twice I woke up from a fiftful sleep and found myself trying to set divorce words to one of M. Brodsky's tunes. A weird and worrying time.

That day was the grim day when Mr. Baldwin made his famous speech announcing the abdication of King Edward. Having heard that, I went off to Walworth and found the company strenuously rehearsing, by chance, the Coronation number. I

amended the words of the song and went back to the King's Proctor.

On the fourth day we carried the insanity' paragraph, by 16 votes to 5. This, to us all, I think, was always the most anxious of the new grounds; and I knew little about it. But Arnold Wilson and Mavis Tate were both exceptionally well informed, spoke with an authority on the subject that the other side had not, and then and later did invaluable work.

On these big questions of policy the Law Officers must not express a view and could not help us much. But one or other was always comfortingly in the next chair—most often the Solicitor-General, Sir Terence O'Connor. And whenever there was a legitimate excuse to say a soothing or succouring word they did. Both were delightful, courteous, and indefatigable allies, to say nothing of their learning and ability. They passed like sun and moon alternately across our sky, and, contrary to the course of nature, were equal providers of light and warmth.

But they were both Oxford men of my own time; and often I said to myself, thinking of that old tag about 'Lost Causes', 'There is too much Oxford in this/ Sir Donald and Sir Terence, Sir John Simon, Sir Maurice Gwyer (for a short space), the two Aclands, later Mr. Spens, Mr. Kent, the brilliant young Treasury draftsman who was now assisting us, Harry Strauss and myself—with such support this cause was surely lost for ever.

But we had now had four sittings only; and we had carried against strong, though reasonable, opposition, three out of the five new grounds for divorce recommended by the Royal Commission—and these three the most important. In short, we had the guts of the Bill. This was remarkable progress, I thought myself that it was too good to last: and the experts, as usual, predicted that we were in for a tougher time round the next corner.

Before Christmas, by invitation, I went to the House of Lords and talked to the Bishop of St. Edmundsbury and Ipswich. He is a wise, human, and venerable man, and a most able Parliamentarian: many months later he made two excellent and helpful contributions to debate. Now he wanted to hear about the Bill, for he was already considering what should be said if it reached the Lords—at which I wondered, for very few were then looking so far ahead. I explained all the clauses, and told him what we hoped and intended. He listened gravely; and then I said that we thought that it was time for the Church to say a helpful word about the Bill. Bishops had told us what they thought about Betting Bills, and Drink Bills, and Bogus Clubs: but about this, so far, not a Bishop had said a word. 'And, my Lord,' I said, 'we deserve your help, for we respectfully say that we are pulling the Church's chestnuts out of the fire'. He listened gravely still, and said that he would do what he could. I believe that he did much.

Then mercifully came Christmas. I went up to

Manchester and the comparative peace of all-night rehearsals, first performances and second thoughts. I had had no holiday since the first week in January, and now I spent most of the recess in Manchester, either fussing about *Home and Beauty*, or writing lyrics to the music of Lehar for Herr Tauber to sing in *Paganini*. But I was happy, for I was not in Committee-room 10.

Hard work and Manchester must be healthy; for when the Committee met again, on January 21, I was the only one of the four chief conspirators present. De la Bere was down with 'flu; Mrs. Tate had pneumonia in Switzerland, and, to our regret, we never saw her in Committee again; not even Arnold Wilson was there. Indeed, for the first few minutes of the Fifth Day there was no Law Officer, and I found myself entirely alone on the promoters' bench. Others were away, too; and, looking round the room, I thought that if there was a division on any dubious point we might be in a tight place.

And there was a dubious point that day, the "habitual drunkenness" paragraph. This again was one of the Royal Commission's five new grounds for divorce. There has been some adverse and ill-informed comment concerning its deletion from the Bill; and it deserves a little explanation, which I hope some of my colleagues of the Press will read.

The proposal was not to grant a divorce for 'habitual drunkenness' without qualification, as so many critics too easily assumed. The words were:

The respondent (e) is an incurable habitual drunkard, and has for a period of at least three years been separated from the petitioner in consequence of habitual drunkenness'.

And a 'habitual drunkard' was defined later in the Bill as 'a person who habitually takes or uses any intoxicant' (which included drugs) 'and in consequence of the effects thereof is habitually a danger to himself or others, or incapable of managing himself or his affairs.'

A very high standard of drunkenness, it will be observed, set up twenty-three years earlier (when drunkenness was a much more serious and frequent evil) and rarely attained in these more enlightened days. It will be observed, too, that there were to be three necessary elements in a divorce upon this ground. There had to be habitual drunkenness (as defined), which had led to a three years' separation: and at the end of the three years the other party would have to prove that the habitual drunkenness still existed—and *was incurable*.

All this, it is obvious, would have been both difficult and expensive for a poor wife (or husband) to prove after a three years' absence.

Now, in the last ten minutes before we adjourned for Christmas, Mr. Spens had made a strong but reasonable speech in moving to 'leave out' this paragraph. One of his main points was that it might remove the incentive of the sober spouse to bring about a cure. (We had ourselves, by the way,

determined to take out the word 'incurable' for in a very few cases now would a doctor describe drunkenness as incurable.)

Mr. De la Bere, very properly, said that during the recess the promoters would 'discuss the matter and see whether they could not meet Mr. Spens at any rate to a large extent, if not wholly'.

But through influenza and other misfortunes the promoters never met before the next meeting.

Meanwhile, in intervals at Manchester, the question had worried me, for it was a big thing for private Members to throw over one of the major recommendations of that particular Commission, and a thing, I thought, not to be done lightly.

Now, it has long been possible to obtain a separation order for 'habitual drunkenness' in a magistrate's court (though not a judicial separation in the High Court). When I came home I rang up the Home Office and inquired how many separation orders were made upon that ground. And the answer was (for 1934) only 53 (42 of which, by the way, were granted to husbands and only 11 to wives). And the definition in the Act is less severe than that in our Bill, for the words are 'at times' dangerous, and not 'habitually'.

It did not seem, then, that this paragraph was likely to benefit a great number: and, as I have said, it was a ground likely to be both difficult and expensive for poor people to prove. Moreover, as I think Sir Thomas Barnes pointed out, we had already carried both desertion for three years and

cruelty; and desertion includes what is called by the lawyers 'constructive desertion*'. The person who makes it impossible for the other spouse to maintain the joint life, and in effect drives the other out of the home, may be guilty of 'constructive desertion', though it is he who remains in the home. And drunkenness so severe as was contemplated in our definition was likely in most cases to result either in legal cruelty or 'constructive desertion', So that what we should lose on the swings we might already have gained on the roundabouts.

This, I thought, was a powerful argument. And there was a tactical reason for letting any controversial thing go that we did not regard as essential. We had always one eye looking ahead to the Report stage. At the best, we did not expect to get more than one full day for that: and, at the best (that is, assuming no 'obstruction') we knew that one Friday would by no means be too long for the Report stage of such a Bill. (The Report stage, Bobby, is, with certain limitations, a sort of Committee stage repeated but on the floor of the House.) The more grounds of divorce we retained, the more amendments and orations would be permissible, and the greater the difficulty in the vital department of time. If any one had then said: 'Whatever happens you will have unlimited Government time', many decisions would have been more easy. But at that date we had no expectation whatever of a single Government minute, and some who are now being wise after the event should remember this.

For all these reasons, I decided that this was a thing not really deserving a desperate fight, though, if I had been able to consult the team and they had thought otherwise, I should have fought for it very fiercely. But they were not there; we did not even on that day have our usual conference in the Law Officers' room: and I had to make the choice alone. I said more or less what I have said here, and left it to the Committee.

Mr. Sorensen, the Labour Member, spoke strongly for preserving the paragraph; but the Solicitor-General usefully developed the theory of 'constructive desertion' which I have tried to explain. Even Mr. Sorensen, I think, was shaken; and I felt that if I pressed the thing to a division, in all the circumstances we should probably be beaten. It may be that I was wrong; it may be that we should have won, if I had made a challenge. Nobody can tell. But I did not challenge a division; and so, for the omission of that important paragraph, I accept entire responsibility. I have spent many words upon this episode, because it was this that caused so much talk about the 'mutilation' of the Bill by an inhuman opposition, and this was not quite fair. I was responsible, and if I was wrong the only thing I have to say in my defence is that a private Member should not be left by the Government to make such big decisions.

Next, upon our own motion, we dropped the fifth proposed new ground: '(f) is undergoing imprisonment under a commuted death sentence'.

This had been decided at the first meeting with Sir Maurice Gwyer. The number of persons in that situation, I had discovered, was 74 in 1934. We did not know how many were married; but many were, and always are, poor women who have killed their babies. These, though convicted of murder, are often released after a short period, and it was thought to be hard if in that short space an unfeeling husband were to be enabled to whip in a petition for divorce. That point might have been met, I suppose, by some special provision for infanticide mothers: but there were other considerations. If imprisonment for life under a commuted death sentence, why not other long terms of imprisonment? The Royal Commission justified the distinction on the ground that in the former case, but for the clemency of the Crown, the marriage would have been dissolved by death. The logic of this had always seemed to me to be a little thin. But if you admit any ordinary terms of imprisonment, where are you to fix the line? Having fixed at, say, ten years, you would be told: (*a*) that you were inflicting a double punishment, and (*b*) that you were running contrary to the modern spirit by which everything is done for the criminal's *reform*. And, after all, a convict is not lost to the world or his wife in the same degree as a lunatic. Again, I am not arguing, but recording our reflections. And behind them, again, was always the strategic desire to reduce the area of controversy, in the certain knowledge that we should be pressed for time.

There would, I am sure, have been protracted debate upon these points at each successive stage.

When all the amendments of detail have been disposed of the Chairman puts the general question, 'That the Clause, as amended, stand part of the Bill, and this may be debated at length. On this fifth day, with vast relief, we carried without a division the motion that 'Clause Two stand part of the Bill\ The opposition, to my surprise, and with my gratitude, did not utter a word. I do not quite know why. I was told, as usual, that this too was part of some deep and deadly strategy which we were not yet permitted to understand. I think it was more likely that certain undertakings we had already given on the question of collusion, and the dropping of the two doubtful grounds, had modified hostility.

However gained, the harvest was golden. In five days we had brought in two clauses only, but we had the biggest and most boisterous fish. And now some of us dared to hope that the Government might lend a more positive and public hand. The House of Commons had approved in principle on Second Reading, and in Committee had now examined and defined in detail, the chief cause of controversy—the extension of the grounds of divorce. So long as that was in doubt the decision of the Cabinet to stand aside was understandable. But the rest of the Bill, though it contained rich matter for argument, was mainly concerned with machinery; and His Majesty's Ministers, responsible for the administration of justice, would surely not permit what might

be most important changes to depend upon the well-meant blunderings of private Members. And this was no mean or modest anxiety. The Treasury Solicitor might advise us outside; the Law Officers might pipe up when their instructions permitted; but at many perilous points we might have plunged both feet into holes from which they could never be extricated. Some, no doubt, will say that we did.

Such pleas, I believe, were advanced in high quarters. Even if I knew what answer was made I could not reveal it; but any one who glances at the list of Cabinet Ministers will quickly conclude that upon this subject complete unanimity was hardly to be hoped. At all events, we resumed our strange course along the parallel tight-ropes. And, at this date, we can be grateful for the Government's elaborate aloofness, which, in modern English, might be described as "unilateral non-intervention". There are two particular pets of mine in the Act, which I know would not be there if the Government had taken charge. Further, it followed from their decision that our opponents in the Cabinet, few, I think, but formidable, could not come out into the open against us. The two most powerful men in the House of Lords are the Lord Chancellor and Lord Halifax. I have no reason to suppose that either was an enthusiastic supporter of this measure; indeed, Lord Halifax voted against us. But they never said a word; and during the long Lords' debates, I confess, I was sometimes guilty of a respectful chuckle.

But now the Lords were very far away. The rock next ahead was the question of collusion, on which, a respectable but resolute Siren, was perched Mr. W. P. Spens, K.C.

There are those who say that one of the most just and deserving grounds for divorce is the fact that both parties desire it; so why all this objection to 'collusion? That, like many simple statements, is a little too simple; but this is not the place to discuss it. There is much that can be said for some such arrangement as exists in Belgium—divorce by mutual consent subject to the wholesome safeguard of delay, to certain time limits and age limits,¹ and, I should add myself, the absence of children. But, whatever my private opinions may be, it would have been unforgivable folly, on this my first voyage, to have added to my already explosive cargo the smallest packet of divorce by consent. The Bill which I took over was founded on the Royal

¹ In Belgium, where divorce by mutual consent is allowed, the code lays down severe regulations in order to discourage the dissolution of marriage without grave reasons, e.g.:

The husband must be at least 25 years old and the wife at least 21 and at most 45 years.

The marriage must have lasted not less than two or more than 20 years.

The divorce must have the consent of father, mother, or nearest relative.

The spouses must reach mutual agreement as to custody of the children.

They must, during divorce proceedings, appear at regular intervals in Court, where the President endeavours to reconcile them.

They must agree upon the division of their property. The law decrees that half the possessions of each spouse must be at the disposal of the children. Neither spouse can re-marry till after a period of three years. (H. Gray, *Marriage Law Reform*, National Council for Equal Citizenship.)

Commission; and the Royal Commission stood firmly on the same basis as the existing law, that (apart from insanity) a marriage should be dissolved only because of a matrimonial offence, so found by a court of law.

We were not proposing to build a new system, but to repair the old one and add a harmonious wing or two. We could not in one breath boast (as we were always doing) the tremendous backing of the Royal Commission, and in the next challenge its fundamental principles. Somebody, maybe, will do that later; but we were content to ride one horse at a time.

Now, once it is admitted that to secure a divorce the party must prove an offence before a court of law, it follows that the offence must be a genuine offence sincerely complained of; for, if it is not, the Court is being deceived and mocked, and individuals become accustomed to a low valuation of the truth, and of the law of England. For whenever there is collusion in a divorce suit there is perjury, since the petitioner has to swear an affidavit that there has been neither collusion nor connivance.

As a barrister, I like the laws of England to be respected, whenever possible: and it had always been a main part of my case that the present law was compelling the citizen, the solicitor, and the courts into the odious paths of collusion, perjury, humbug and contempt for the law. My contention was that once you admitted reasonable new grounds for divorce, especially desertion, the temptation to

concoct bogus adultery cases would depart, and at least the worst scandals would come to an end.

But Mr. Spens was not content: and he had never missed an opportunity to complain that while we were extending the grounds for divorce we were doing nothing to diminish the opportunities for collusion. Even before Christmas one of our legal advisers said to me that Mr. Spens represented a body of opinion which, in the end, would have to be met, and that body included certain persons outside much more important than any one on Standing Committee A.

In logic and honesty, since we had ourselves denounced collusion, I did not see how I, at least, could resist the opinion of the experts that the courts required more power than they possessed to combat it. Accordingly, after much consultation among the lawyers, a new edition of our own Clause Three was devised, which we agreed to accept.

This amendment, then, was ready for discussion on the fifth day: but there befell one of those accidents of procedure which so much mystify the casual observer outside. The Chairman ruled that the amendment, being in the form of a new clause, was then out of order: it would have to be withdrawn and moved again at the end of the Committee's proceedings, when the rest of the Bill had been disposed of.

This made no material difference. The same clause was duly moved, discussed and carried on the last day. But then, and later, it was acidly suggested

by the enemies of the amendment, accusing Mr. Spens and myself of 'collusion', that it had been popped in as a last-minute sop, sugar, or bribe: though whether this was to reward Mr. Spens for past favours or to stimulate him to new ones I never discovered.

That, as I have said, was in my belief a turning-point. Thereafter Mr. Spens, the most formidable member of the opposition, was always more with us than against us. The Siren had moved half-way to our ship; and concluded the voyage as an essential member of the crew. The rocks, without him, were much less perilous. It would add spice to the story if I could pretend that all this proceeded from our own tactical cunning: or, on the other hand, that Mr. Spens had cleverly led us up some fatal garden path. But the plain truth is that, with no thought of tactics, we were ready to accept the advice of those who seemed to know better; and Mr. Spens, I believe, perceiving, as he afterwards said, that we were not merely fighting for 'easy divorce', was glad to contribute his experience and ability to the improvement of the Bill. Which, after all, is an example of the proper and effective working of the democratic system. If nobody in Parliament is ever to change his mind, or his direction, then we may as well go home to our families and let a dictator do our thinking for us. Further, right or wrong, this concession had the most powerful effect in the Lords.

This does not pretend to be a text-book: but I

had better briefly indicate what this particular bother was about.

Only the lawyers can say precisely what is the effect of the new words: and they disagree. Mr. Spens's own explanation was as follows (I have put the important words in italics):

'At present the Court *is bound to grant* a decree on evidence of adultery, *unless* the Court can find, on the evidence before it, that the petition has been presented or prosecuted in collusion with either of the parties. The Court has therefore got to have some *positive* evidence, enough to enable it to come to that finding. . . .

'What this Clause does is to put the onus exactly the other way, and to say that the Court *shall not be bound to grant a decree unless it is satisfied* that there has *not* been connivance, collusion, and so forth.'

Later the Solicitor-General, not pronouncing a policy, but enlightening us upon the effects, said:

'At present the Court has no right to inquire of the petitioner and ask questions in order to satisfy itself that there is not collusion. That puts the Court in an invidious position. It cannot put questions. It will henceforward, if the new Clause is passed, have the right to ask questions to satisfy itself/

The enemies of the proposal said that it would put upon the litigant the new and intolerable burden

of proving a negative; that they would lose their cases through a mere suspicion in the minds of judges; and that it would greatly prolong every divorce case.

But Lord Roche, a Law Lord, resisting later one of Lord Atkin's attacks in the House of Lords, said:

'I think it is not correct to say that it is altering the onus of proof at all. The onus of proof in divorce cases is not as it is under the general law: in divorce cases it is always on the petitioner and there it rests to-day. Lord Atkin says he wants to go back to the law as it is to-day. That is the law as it has been found to be insufficient. . . .

'I do not believe that the fudges are going to act on suspicion. The Judges of this country know how to act. The Judges of the Divorce Court are sensible and humane men, and, what is perhaps more important, they are busy men. They do not want to go hunting hares or indulging in any other form of riot, but they do want the power of suppressing and catching the few cunning hand-raiding foxes who at present seem to escape the meshes of the law.'

Where Law Lords differ so strongly, it is not for me to express an opinion. But we had to form an opinion then: and our conclusion was that expressed later by Lord Roche, that the new powers were reasonable, were not in essence new, and were likely to make little practical difference in the ordinary genuine case. In March last the President of the

Divorce Division quoted some words of Lord Hanworth, Master of the Rolls, in the Court of Appeal:¹

'The Court is charged under the original Acts and the Consolidation Acts to be satisfied in divorce suits that the case has been proved, *that there has not been connivance or collusion* for the purpose of obtaining a divorce contrary to the justice of the case, *that there has not been condonation*, and that its interference is justified.'

I read this in some bewilderment, for it seemed to say that the Courts already possessed the new powers and duties which Mr. Spens had asked for, and we were blamed for conceding.

Now, in October, the learned Mr. William Latey has expressed his opinion:²

'The new sub-section then does two things: (a) it demands from the petitioner and his or her legal advisers a measure of candour to the Court *already acknowledged as due to the Court by present practitioners*, thereby giving statutory sanction to a customary practice; (b) imposes on the Court the duty, in cases of suspicion, of requiring evidence from others than those tendered as witnesses. . . .

'Under the existing law the Court has actually,

¹ Hyman v. Hyman

¹ *The Matrimonial Causes Act, 1937*, by William Latey, M.B.E. (Sweet & Maxwell: Stevens and Sons.)

and recently, though in rare cases, required these things to be done, as a condition of granting a decree of divorce. Under the new Act such action by the Court may become more frequent.'

And if the reader does not by now know clearly what it is all about, he will at least have some notion of the difficulties which beset the free-lance law-reformer.

So, on the sixth day, we came to Clause Four. Recently, looking through Mr. Seuffert's learned work about the Act, I read: 'This is probably the most far-reaching and beneficial clause in the Act.'

And I found with surprise and pleasure that he referred to the troublesome Clause Four (now Section Six of the Act).

Clause Four, though on the face of it a subordinate affair, produced, in the Commons at least, the most anxiety and delay. It occupied two days in Committee: it caused us to be 'talked out' on the Report stage and so nearly wrecked the ship. It was amended and re-amended and re-drafted and re-shaped: in all, I think, there were seven or eight different versions of the thing: it was the cause of interminable misunderstandings, and consultations, and doubts. To myself it was a particular worry; for the troublesome part of it was a proposal of my own, which was loathed by the enemy and little liked by my friends. The legal experts were never more than lukewarm and at times antagonistic;

though, as I have said before, their aid was never less active and generous because of that. In the end, I believe, they came round to my opinion. At all events, it was a fight, and a private fight of my own: so I was glad to see what Mr. Seuffert said. But I hope that he (and I) are right.

I was always eager that this should not be merely a rich man's Bill. Mr. Mullins's Clause Ten, as I knew already, was doomed: and the trouble came because I sought to cater in a different way for those who use the magistrates' courts.

One of the objections offered to the Five Years' Clause was this: Suppose that a matrimonial offence—say, adultery—is committed in the second year of the marriage. The man cannot sue for divorce till after five years. But is the lady licensed to commit adultery throughout the five years? You say that you hope for a reconciliation—that is, that one party will forgive and the other mend her ways? But, supposing that does not occur, how, after the five years, will he be able to trace his evidence, the chamber-maid or porter, for example, who in the last few years may have gone from hotel to hotel, or may be dead?

The answer was that in that case the injured party was by no means shut out from all remedy. He could, for example, go to the High Court for a judicial separation. This would register the offence, and freeze the evidence, so that at the end of the waiting period the way would be open for a divorce.

That was easy to say but most difficult to draft, for numerous technical reasons which need not be related here. But the substantial difficulty was this: that I wanted these provisions to cover not only judicial separations obtained in the High Court but, in proper cases, such orders as are obtained in the magistrates' courts. For these are the natural and the neighbouring matrimonial courts of the great majority of the people. In 1934, I observed, there were 33 judicial separation orders in the High Court and 5,765 non-cohabitation orders made by magistrates. These courts had for long been assuming new power and importance in matrimonial affairs: and now I had always one eye on Mr. Petherick's Bill,¹ which was to improve their methods and composition, and extend their conciliation machinery. To exclude these courts from the arrangements now proposed might be to drive many people away from the local, familiar, friendly court, where, in addition to remedies, there was the chance of conciliation. Moreover, one of our main purposes was to reduce, in future at least, the numbers of permanent 'separations' and the formless lives which they produce. A magistrate's separation order has the same effect as a decree of the High Court, and we ought in this Bill to accept that fact.

But all this frightened not only our enemies but most of our friends (not including Sir Arnold Wilson, himself a magistrate). It would, for the

¹ Now the Summary Procedure (Domestic Proceedings) Act, 1937.

first time, they said, be giving the magistrate the power and duty to make a decision which could afterwards be the ground of a divorce. I said that I was not afraid of doing things for the first time: indeed, that was the object of all new legislation. They said that magistrates did not always exercise their present powers wisely and ought not to have any more. I said: 'In that case you had better take away their present powers. But nobody proposes that. The fact remains that they are separating thousands of couples each year for reasons which under the Bill will be good reasons for divorce.' Sir John Withers moved to exclude the magistrates. I talked at length and warmly, and said it would be 'class legislation': we rejected the motion by 16 votes to 9.

But the thing still bristled with technical and drafting difficulties, not all of which, maybe, have been disposed of yet. The clause, Mr. Spens rightly insisted, must not by a side-wind create still more grounds for divorce. But when that hole had been filled, the rest of the fourth or fifth edition became meaningless: and we had to start again. The clause became a patchwork of discarded garments, and in the end was torn up. To add to our troubles, Mr. Kent, the draftsman, was then at work each day on the Government's titanic Factory Bill, and had to dart from one to another. These troubles never appeared in the papers, or caused Bishops to write to *The Times*. But this clause and Clause One were the principal nightmares throughout, and far more

disturbing to all concerned than the fundamental Clause Two.

So I hope, indeed, that Mr. Seuffert is right.

Thereafter we had no divisions, and though dispute persisted it was comparatively tranquil. I am not experienced in these affairs: but I suppose that, towards the end of any protracted Committee struggle, I will not say fatigue but a proper resignation in the face of superior forces imposes a certain restraint upon the minority (especially if they have confident designs to turn the tables at the next encounter). Indeed, I have wondered since whether, for Committee purposes, the wise course would not be to place the most controversial propositions of a Bill near the end, instead of at the beginning, as the custom is.

On the eighth day we passed excitingly from Clause Four to Clause Eight: on the ninth day, energetically assisted by our Chairman, Major Milner, we whizzed through the remainder of the Bill, carried four clauses and dropped three. And on the tenth day, Tuesday February 9, we added five new clauses (most of which were new editions of old clauses withdrawn for repairs), and the second stage of the battle was over.

I like to recall that day, not to gratify the victors but to applaud the losers—and the spirit of British democracy. At the end of this close, protracted and detailed argument over one of the most explosive objects in the whole arsenal of controversy,

we were all better friends than we had been at the beginning. We all knew much better, and respected more, what the other fellow believed and said. But the majority had prevailed and the minority made no moan. The Ayes had it, and the Noes held out their hands. Anthony Crossley made about myself a complimentary speech in verse, and we all, with sincerity, applauded the Law Officers and our Chairman.

The simple story-reader may now pass on to page 146: but for the student of law and politics I shall add a few notes about the work of those four days.

In the dust and smoke of religious argument concerning the new grounds of divorce the important and useful residue of the Bill was always obscured from the public view.

The new grounds for nullity, for example. It is strange how great minds can deceive themselves with words. It is very strange how those who strain at a gnat of divorce will swallow eagerly a camel of nullity.

Nobody in either House ever whispered a word against the first new ground for declaring a marriage to be null and void—'that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage'. No time-limit applies to this provision: the petition can be made six weeks or (I believe) six years after the marriage. It is not less tempting to persons determined

on 'collusion' (and, by the way, the new provisions concerning collusion do not here apply), than, say, a divorce for desertion. The grievance is not in substance much different from that of the wife who after, say, one bridal week-end is deserted for life. But the same people who hotly fought against relieving the second victim, and wished her to wait not for three but seven years, had not a word to say about the much more easy relief of the first.

But in politics the unexpected seems to happen as often as it does in cricket. I expected, after all the talk about magistrates, that much trouble would attend Clause Nine. This was Mr. Mullins's clause to give the magistrates direct jurisdiction in adultery. We had now agreed to drop his Clause Ten, and some of our advisers thought that this was due for jettison too. We were all eager to lighten our load, wherever possible, in readiness for the storms ahead. But, rightly or wrongly, I determined to fight for this: and I sat up half the night composing an elaborate speech and imagining the numerous things that might be said against it. But nobody said a word against it, and it was carried, with a drafting amendment, in seven minutes. I have to confess that I then winked publicly at the Treasury Solicitor, who had been less than lukewarm about the clause.

What this section means, in effect, is that where the ground of complaint is adultery the poor petitioner can now go to the local magistrate, instead of the High Court or Assizes, for a separation

order. And later, under the former section, he (or she) can use this order as the foundation of a divorce in the High Court, though he will have to appear in the High Court, and the Court is not bound to take anything for granted.

On the other hand, there was some trouble now in Committee about the innocent and useful provisions concerning presumption of death after seven years. At present, if a poor woman whose husband has not been heard of for seven years marries again, and the first husband turns up, she cannot successfully be prosecuted for bigamy, but the second marriage is invalid and the children illegitimate. She will next year be able to apply to have death presumed and the first marriage dissolved.

Another valuable section, assisting especially the impecunious, is Section Thirteen. At present, if a husband domiciled in England deserts or is deported to another country, where he acquires a new domicile, the wife can only proceed against him in that country. The English Courts will now have jurisdiction to hear her suit. There are other apparent anomalies arising out of the law of nationality which we were unable to remedy. I have heard of innumerable distressing cases, and they were not forgotten: but the legal authorities were persuaded that we could not go further without plunging into an impenetrable swamp of trouble.

I had myself to move the deletion of my proposal to delete the decree *nisi*, for here again the authorities were adamant. But Sir John Withers

contributed an admirable provision *to* prevent greedy wives from using this machinery for purposes of blackmail, that is, by refusing to apply for decree absolute until the husband has coughed up another motor-car or yacht.

The clause 'to relieve the conscience of the clergy' caused talk but no real trouble: and the 'definitions' (e.g. of 'cruelty' and 'desertion') were whisked out of the Bill without a word, though much might have been said about that. But here the opposition were the gainers, for the definitions in the Bill were much wider than those at present accepted by the Courts.

At the present time (October 1937) there is much discussion among lawyers of the question: 'How far will the Act operate "retrospectively"—i.e. in respect of events happening before January 1, 1938, the date on which it comes into force?' For example, will three years' desertion 'immediately preceding' a petition on the ground of desertion presented in January 1938 be sufficient? Or will the petitioner have to wait till January 1941?

Parliament may intend to say one thing, and the Courts may decide that it has said another, I know; and I must not trespass on the legal argument.

But I can at least testify to the intention of Parliament; and, for what it is worth, I must record that there was never any doubt upon this point in any quarter of Parliament or among the numerous distinguished lawyers who from time to time advised the promoters of the Bill: indeed, it was one

of the strong objections of its opponents that it was 'retrospective'. In the original Bill there was a clause expressly saying that it should apply 'whether the circumstances relied on occurred before or after the passing of this Act.' But in certain particulars it was found difficult to amend, and upon the advice of the Law Officers it was omitted, on the ground that it was unnecessary. On February 4, the ninth day of proceedings in Standing Committee, the Solicitor-General is reported thus (column 297):

'So far as the Measure stands at present, with regard to any of the offences which have been spoken of, this Clause is unnecessary. If, for example, you take cruelty; if the Bill stands as we have passed it, a petition may be granted on the ground that the other party has, since the celebration of the marriage, treated the petitioner with cruelty; so that as the Bill stands, without this clause, it is retrospective.'

Later, Mr. W. P. Spens was concerned about the position of persons who had technically deserted and might find themselves liable to divorce without an opportunity to return to their spouses. He moved a new clause to provide that there should be no divorce for desertion until a year after the Act came into force. But this clause was withdrawn, again with the Law Officers' advice, on the understanding that there should be an interval between the passing of the Act and its coming into force, to enable such persons to have an opportunity to

terminate their desertion. Accordingly, for this and other reasons, January I was fixed.

My conclusion, then, is, if I may presume to express one, that any period of desertion or insanity immediately preceding the presentation of a petition after January i will count.

VIII INTERVAL

WE came out of Committee on February 9. The next thing was the Report stage. That could not happen before April 9.¹ In practice it could not happen then. For a Bill about Scottish sheep had passed through the Scottish Committee before us, and had the first place on Friday, April 9. We could not put our Bill down second on that day, for we were bound to fill at least a whole day (even without the 'obstruction' which we were told was coming). That left only three private Fridays for Report and Third Reading: and meanwhile an unusual number of private Members' Bills had secured their Second Reading and were in the market too. But there was nothing to be done except to put ours down for Friday, April 16, which we did.

Two months to wait. It seemed strange, after all the talk about 'no time', though it was pleasant, very pleasant, to have no immediate urgencies. But meanwhile, outside, the enemy were massing, and now began a massive postal bombardment of Members, from which some useful lessons may

¹ I still had a small hope that the Government might now descend from the fence. They could say, 'This controversial Bill has come through not only the Second Reading, but the Committee stage, with unexpected credit and despatch. Of its nature, it is sure to cause long discussion in the Lords, and may, in the congestion of the last two weeks of the Session, be smothered. The Lords have nothing much to do at the moment. We will arrange that it goes forward before the usual time.' But this hope was foolish, so I record it down here in very small print.

be drawn. It was chiefly the work of the Mothers' Union, who claimed that their 500,000 members were united against us. I received a few letters from members of the Union who said that they disagreed with the parent body: and there was much evidence that the postal barrage was neither spontaneous nor well informed. Branch secretaries would write to their Members of Parliament saying that while their branch was 'not opposed to certain clauses', they were against the whole Bill. When Members wrote back, as we suggested, to inquire *which* clauses were not opposed, there was no reply, the local branch not possessing a copy of the Bill. Long after we emerged from Committee a leaflet issued by the General President was in circulation, criticizing the Bill as if it had never been amended in Committee. My ill-drafted clause about separations was denounced in terms which might have been fair enough when the Bill was printed, but not later, for the proposals went out in Committee. But the leaflet went on. The Union did their best to pursue it with a new edition, but, as they said, it is difficult to catch up an error among 500,000 scattered members. Such a bombardment, in the past, is said to have caused a stampede among Members, and this, at first, worried us, for there were two months to go. But in fact, I think, it caused little but annoyance. It was too early, too violent, and too evidently organized. Members pay due attention to the views of their constituents: but they are never much impressed by those who write only because somebody tells them to.

The Mothers' Union claimed to speak for the women of England, But Mrs. Hubback and the strong Council for Equal Citizenship were for us.

And now Mr. Claud Mullins, in a public speech, announced that, without his pet Clause Ten, the Bill was a 'dangerous' measure. This was a sad and surprising utterance—and not the last of its kind—to hear from one who had been a collaborator and ally; and, since the cause of it was the dropping of a scheme which was never contemplated by the Royal Commission and was never an essential part of the Bill, the language used, I thought, exhibited a less than judicial sense of proportion, to say no more.

But meanwhile the Church itself had done much to confirm the private judgment which had encouraged me to assail the University seat. That judgment, that opinion, had been that a majority of Anglican churchmen were ready for reform. Five Bishops (Durham, Birmingham, Coventry, Chichester and Manchester) came out into the open for us. Chichester said: 'The extension of the grounds of divorce is in the interest of public morality.' Dick Sheppard wrote: 'I see no threat to Christian marriage in this Bill. On the contrary, I think that it will strengthen Christian marriage.'

On the Second Reading I had remarked that, though my Bill had been before Parliament and the public for a year, I had received not a single protest from clerical constituents. I did that deliberately, **for** I thought that they might well have said to

themselves before: 'He has not a chance of success. Why bother?' And I wanted to extract the true opinion.

Thus challenged, I think two clergymen constituents wrote to say that I did not, at least in this affair, truly represent them. In June of this year, during an argument with the Bishop of Gloucester in the columns of *The Times*, I recorded these facts, again genuinely in search of information. This was just before the House of Lords debate: and this time, though the *Church Times* chided the clergy for not coming out against me, only five or six clergymen wrote politely to reveal their opposition. But many more, then as before, wrote to say that they were with me. I press this point to the credit of the Church of England—which has been unjustly blamed for the extreme opinions of a few—and especially of what *The Times* called 'the solid phalanx of country parsons', who were expected by the knowing politicians to be united against us. The knowing politicians had not perceived the signs, accumulating for some time, that there had been a great and honourable change of mind. This was finally and abundantly displayed by the divisions in the House of Lords.

During this interval, too, there happened yet one more tiny accident which might have had tremendous results. And this, though it should appeal to the story-reader, may also convey a useful lesson to the future legislator.

Far back, I have spoken of that first Friday when the private Members assemble behind the Speaker's Chair and, one by one, advance to the Table to present their Bills. Before that—even upon that same morning—there has been much bustling about to secure the names of 'backers'. Any one presenting a Bill himself has a fellow-feeling, as it were, towards another parent, and we may be too easily persuaded to scratch each other's backs. That first morning, hurrying up the stairs, I met my friend Mr. Clement Davies, K.C., who had a Bill about ice-cream on Sundays, and asked for my name. Well, I am all for any one having ice-cream on Sundays who wants ice-cream on Sundays—or any other day: and, without asking more, I gave my name to this measure, and thought no more about it. In fact, as I learned later, it concerned the Sundays off of the 'Stop-Me-and-Buy-One' men.

Many months later, during the Interval, I was informed that I had been added as a 'specialist' to the Standing Committee which was to consider the Ice-Cream on Sundays Bill (or rather the "Shops (Sunday Trading Restrictions) Act (1936) (Amendment) Bill). I did not attend, which was naughty, after all the help I had had from the quiet Members. Then, one day, I received an S. O. S. from those in charge of this Bill. Some of the Labour Party were highly opposed to it, and, by refusing to come in, had prevented the necessary quorum on Tuesday. If this happened again on the Thursday the Ice-Cream on Sunday Bill would go to the bottom of

the list and be lost. Would I therefore attend early, provide a quorum, and support the Bill?

I opened this appeal late on the Wednesday night, when I came home. I was tired: I intended to be at my private work all the next morning. The thought of attending in committee-room at 11.0 in the morning was odious, for many reasons. But then, here was a private Member—and an admired friend—menaced by precisely the same peril that we, by the goodwill of private Members, had avoided. And, after all, I had backed this Bill, although, disgracefully, I had no idea what it said. Certainly, I decided, I must go to the rescue.

When I woke next morning, I recalled this decision with extreme distaste. And the devil tempted me. He said: 'You do not want to get up yet—and that is important. You want to have a quiet morning at your private work—and that is important. But there is something still more important—you want to get your Bill through; and when those last Fridays come it will be a battle for time. *Every Bill that successfully emerges from Committee will be another enemy, stealing the precious hours. Why go and hammer the nails into your own coffin? This is a small Bill. Stay at home and let it die.*'

And the devil, in his facts, was right. For this same little Ice-Cream on Sundays Bill did later cause the most menacing mischief.

But I shyly record that I thrust the devil out. I went in and supported the Ice-Cream Bill. The

majorities in its favour on division were generally 1 or 2. It will be heard of again.

In March 1937 a Scottish Divorce Bill, presented by Lord Alness, passed through the House of Lords. I heard the Third Reading, which occupied about seven minutes. This Bill goes immeasurably farther than ours, and provides that the Court of Session may grant a divorce on any of the following new grounds:

'that the defender' (respondent)

(a) has deserted the pursuer' (petitioner) 'and persisted in such desertion for a period of not less than three years: or

(b) is a lunatic and has, since the date of the marriage, been continuously detained as such for a period of not less than three years; or

(c) has been guilty of cruelty towards the pursuer; or

(d) is undergoing penal servitude in pursuance either of a sentence thereto or of commutation of sentence of death; or

(e) has, since the date of the marriage and within the five years immediately preceding the raising of the action for divorce, been convicted at least three times of a crime, and sentenced on any such conviction to imprisonment for a period of not less than six months; or

'(f) is a habitual drunkard.'

It was too late for the Bill to secure a hearing in the Commons that Session, but more, no doubt, will be heard of it. In Scotland, for nearly four hundred years, there has been divorce for desertion enduring for four (not three) years, and with certain limitations that we have not got. This remains. Thus, in these small islands, we have one matrimonial law in England, another over the border in Scotland, and another in Ireland. Yet we think fit to make fun of America, where there are different laws in neighbouring States.

I heard from time to time that I was a Jew. Catholic speakers, I am told, are now proclaiming it in Hyde Park. I have a big nose: and nowadays everybody with a big nose is a Jew. Generally it does not matter; for in our country it is no crime to be a Jew. But in this affair it might well be thought to matter: so, for the benefit of Catholic orators and others (and as a final warning to all), I will relate the facts. My father was the last of a long line of Irish Catholics: my mother's uncle was an Anglican Bishop, and his father was another. My middle name is Patrick, and my nose, they tell me, is 'the Selwyn nose'. The name, and maybe the records, of Bishops George Augustus and John Selwyn, of Melanesia, New Zealand and Lichfield, will be known to the Catholic Evidence Guild, if not to the others.

IX BLACK DAYS

THE Report stage, Bobby, is the last fence but one. After the Committee has finished its labours the Bill is 'reported back' to the whole House with the amendments made. It is then put down to be 'considered' by the whole House (in the Chamber) as amended in the Standing Committee.

At this stage, too, many amendments can be put down and questions of detail are discussed.

After that comes the Third Reading. At this stage no amendments to the Bill can be moved, and nothing but what is actually left in the Bill can be discussed. (On the Second Reading you may regret that there is nothing about bigamy in the Bill, but not on the Third.) The Bill has now been passed in principle, and examined in detail, and the House has now to make up its mind whether it wants the finished article or not—'Yes or No?'

All this applies to every Bill. But before we approach the Report stage the reader should be apprised of the special rules which govern the final steeplechase for private Members' Bills.

And, by the way, these rules are sensible and fair enough. The cruel condition is always the shortage of time: and the rules are designed to distribute it equitably. After the Report stage comes the Third Reading; and we had three Fridays in which to surmount both obstacles—the 16th, 23rd and

30th of April. If we could complete our Report stage on the 16th, then we should be 'top of the bill' for Third Reading on the 23rd (for Bills ready for Third Reading take precedence of Bills still in Report stage): and then, given a majority, we should be able to take the last hurdle and run in with something to spare. But if we failed to clear the water-jump on the 16th we should be at the bottom of the list on the 23rd: for we should have had our chance, and any other Bills in the same state of readiness must have theirs next. Even so, if these were few and slight of substance, there would be a faint chance of finishing our Report on the 23rd, and still securing the 30th for our Third Reading. But this would be running it very fine: and the vital thing was to put the water-jump behind us on the 16th.

This was much to hope for, with a subject so large, complex, and provocative. But the result would be governed chiefly by the conduct of the enemy; what amendments they put down, and how much they discussed them. Our own amendments were few and formal, for we had been careful to leave as few loose ends as possible for this critical day. As for the enemy, I had no great hopes. One or two formidable fighters, not on the Committee, had warned us that they had reserved themselves for the Report stage, and the real trouble would now begin (though, in the event, these left us generously alone). As for the veterans of Standing Committee A, they had no cause to suppose that the Government would give us time: and there was not the

smallest reason why they should make things easy for us. Indeed, so long as the Bill remained the plaything of private Members, it was their duty to their beliefs to play the usual private Members' game. But I think that Mr. Crowder, Mr. Crossley and all would have welcomed, like ourselves, an affirmative word from Ministers, which would have relieved them of further responsibility.

During that week a great fog of amendments descended on the Order Paper, from friend and foe—twenty-six of them, four pages of them—a menacing spectacle, though we knew that all would not be called by the Speaker. The Report stage is a very useful device, principally designed, as I understand it, for the tidying and adjustment of details. Where a Minister is prevailed upon in Committee to make some concession, which will require inquiry, negotiation, or difficult drafting, he promises to deal with the matter 'on the Report stage'. Then, too, after a long process of amendment and re-amendment, in Committee, a clause may strongly need a verbal tidying, repair, or even complete recasting: and this is conveniently done now.

But also—to what extent I do not clearly understand—it is possible to put down amendments going to points of principle. It was disheartening now to see again on the Order Paper (and under the same names) so many of the old and fundamental amendments that we had faced and defeated far back in Committee-room 10.

'Leave out paragraph (b)' (desertion).

'Leave out paragraph (c)' (cruelty).

'Leave out paragraph (d)' (insanity).

But only one of these (desertion) was called by the Speaker on the day: though on the other two subjects amendments of detail were called.

On December 8 we had defeated by 16 votes to 5 an amendment by Mr. Lyons to increase the period of desertion from three years to five. (Leave out 'three' and insert 'five'.)

We saw now, sadly, on April 16, the following amendment on the Paper:

'Clause 2, page 2, line 6, leave out "three" and insert "seven"'

But I was not then aware of the wise arrangement by which excessive duplication is prevented. The Speaker goes through the amendments with the Chairman of the Committee, ascertains from him how thoroughly this and that was discussed, and then in his discretion makes a selection from the amendments. It is very easy to stand off and throw loose stones at 'Parliamentary procedure': it is not so easy to pick a good hole.

There was an amendment, too, to 'Leave out Clause 1' (the five years' delay). Terence O'Connor, I remember, said: 'I think you'll spend most of the day discussing that.' But the Speaker, to our surprise and satisfaction, did not call it.

What was more surprising still, no man put down an amendment of detail to that clause, such as was proposed in the Lords. That, I imagine, the

Speaker would have called: and the House would almost certainly have insisted on accepting it, whatever we had said.

Well, when we learned from Sir Horace Dawkins, then the genial Clerk-at-the-Table, what the Speaker's pencil had done, we hoped again: and I was still hoping at about 3 o'clock that Friday, with another hour to go. It was an agitating, encouraging, exasperating day. We did not get going till 11.45, for there was at first an interesting but not strictly relevant discussion about assize divorces. At first there was a pleasant spirit in the House, and a new enthusiasm, very different from the dubious welcome of the Second Reading. On the first division we had a majority of 118 to 39: and this rose steadily till at the last we had 166 to 45. Good figures for a Friday: at the Second Reading only 90 had voted altogether. I felt at last that we really had the House behind us: and Ministers, I believe, were impressed both by the figures and the feeling. Sir John Simon and the Chief Whip voted with us throughout: and Mr. Lloyd George came up specially from Churt to give the Bill one friendly vote. The main opponents of the Bill still put their case quite fairly and at reasonable length (though I began rashly by biting Commander Agnew's head off): but there were many amendments, and there was much that might legitimately be said. Our own supporters, including a most solid body on the Labour side, sat quiet as mice, which is the best service that in that situation supporters can render.

But the short hours passed; and at 2.45 we were still discussing insanity (Clause Two). This day Lord Wolmer had added himself to the enemy: and, coming fresh to the field, he was not reluctant to fire off a good deal of old or abandoned ammunition against all the new grounds of divorce. In such a case those in charge of a Bill, with one eye on the clock, are put in some difficulty, between discourteously refusing to reply to a genuine argument and foolishly permitting themselves to be provoked into wasting time.

Still, at 3.11 p.m. there were only six amendments to go: and only one of these contained a point of substance. But we were now on that spiky clause concerning the magistrates' courts. The point of substance was debated, properly enough, till 5.45: but the opposition pressed a division: we had a 4 to 1 majority, but the time was 3.52.

Even now, maybe, with extreme goodwill, the remaining business might have gone through in the time: but, as I have said, there is no good reason to expect extreme goodwill from a convinced and determined minority who have an opportunity to play out time.

The next amendment was a long and fierce-looking, but quite innocent affair, designed to tidy up, remove ambiguities, and fill some technical loop-hole in the same Clause Five. Indeed, it was to be moved by Mr, Spens, and its effect was to replace the words that we had just voted to keep in.

When Mr. Kent, the draftsman, gave it to me

I had demurred about putting it down. I said: 'Every minute will be precious. And when the other side see this they will say: "What is this long and complex and, for all we know, dangerous proposal?" And they will want to know all about it. If it is quite innocent let us leave it to the Lords to do. What are they for?'

But I consulted the Solicitor-General, and he very soundly said that we must send the Bill to the Lords as water-tight as we could make it. So I put it down, and all befell as I foretold. Mr. Spens moved it formally, but Lord Wolmer wanted to know. He said, very justly, that such important legislation ought not to be rushed through. For all he knew this was a proposal to widen the scope of the Bill. And he was still expressing his desire for information when, amid some excitement and disappointment, 4 o'clock came.

Our next anxiety was the zeal of our supporters. The promoters had made no complaint of 'obstruction' and never did (though we were amused by the expression of injured innocence on certain faces). But some of our enthusiastic Labour friends had used that ominous word, and this excited a few neutral Tories. These, accustomed in the past to many a tough and merciless Friday, said that never had such a Bill received so smooth a passage: and if there was any more talk of 'obstruction' there really would be 'obstruction', so there!

This was highly disturbing; for, if trouble of that

kind began, it would not assist us towards Government time; and, by request, I wrote to the *Manchester Guardian*, absolving Mr. Crossley and one or two others who had been unfairly blamed. I observed also that the Labour Party had been unfairly accused of 'apathy'; they had, in fact, been nobly silent, but voted like men. And then I found that, unwittingly, I had got a very old friend of mine, who was on the *Manchester Guardian*, into trouble. Wearing work.

We were now Number 3 on the Paper for Friday April 23. Before us was the 'Shops (Sunday Trading Restrictions) Act (1936) Amendment Bill', and the 'Inheritance (Family Provisions) Bill.' Both of these, we knew, had enemies; but there was still some hope that we might get an hour at the end of the day: and half an hour, barring 'trouble', would be enough.

On Thursday evening the House was discussing the Special Areas. I went home early, as usual, to study amendments and Mr. Kent's careful 'briefs'. In *The Times*, next morning, I noticed that the House had sat late: and at 10.30, when I arrived, I found that it was sitting still. It went on sitting till after II a.m., when Friday's sitting was automatically cancelled.

Our last chance of succeeding under our own steam was thus destroyed.

That was a black morning. But we consoled ourselves with the thought that in the end this extraordinary accident might assist the Government

to give us time. Mr. De la Bere said the right thing in the right places, and we were told to wait till private Members' time was exhausted.

It was exhausted on April 30, in the strangest way. And I relate this story as an awful warning to the too impetuous and free speaker.

Two more Bills had come down from Committee; so we were now fifth on the list, and there was not the remotest chance of our being reached. I went down to the House and found our old friend the Ice-Cream on Sundays Bill dominating the scene—though not the discussion. First in the list was Sir Assheton Pownall's little Bill to correct some mistake in the Road Traffic Act, through which it had been held illegal to share a taxi-fare. Second was the ice-cream Bill. Mr. Rhys Davies, the Welsh and well-voiced Labour Member for West-houghton, had taken a great part in the Sunday Trading Act of 1936, and he was concerned on behalf of the ice-cream sellers about the Ice-Cream on Sundays Bill, which sought to amend the Act so soon. He had organized a band of followers to talk all day about taxi-fares, in order to prevent the ice-cream Bill from being discussed at all. And he succeeded. All day they kept it up, sometimes praising this admirable little taxi-fare Bill, sometimes pulling it to pieces: and I believe that they were very funny. But I was in no mood to be amused by such manoeuvres and I did not listen much. This was to have been the great day of *our* Third Reading: I was disappointed and sore and worried. And, apart

from that, I took a solemn and, maybe, priggish view of these proceedings. It seemed to me a poor ending to private Members' time, and a poor advertisement for the democratic machine: and a strange thing for Labour, the democrats, to do. (I did not know then that in the past it had been a common stratagem, employed by all parties.) Also, it was the general belief that if they had faced a discussion, the ice-cream Bill would have been rejected. If this sort of thing were done, I thought, no wonder Prime Ministers set small value on private Members' time. And so on. I wandered moodily about the House, from time to time hissing these earnest reflections at my colleagues: and one or two said: 'Well, why don't you go into the Chamber and say so?' I did go in about 3.30, and I heard the end of Mr. Rhys Davies's speech on the taxi-fare Bill (which after a day's talk, by the way, was carried without a division). And during his speech two friends suggested that I should rise and register a protest: and I did. A little reflection would have shown that this was unwise. Anything I said would sound outside like an accusation that the Marriage Bill was being held up or obstructed, which was not so: and, since the Labour Party had been such good friends to that Bill, this would be hard. Still, a mild appeal on the point of principle might have done no harm; and when I rose my intention, though without doubt pompous, was not pugnacious. I had simply taken on myself, as a new Member, entire responsibility for the traditions

of the British Parliament, and I intended, quite politely, to save them from decay.

But there is in me a small volcano which erupts without warning. Perhaps it is the Irish blood. With much difficulty it had been kept under through all these worrying months. Now it erupted. I bubbled, I boiled, I exploded at the startled House. I said dreadful things. I compared poor Mr. Rhys Davies with 'an elephant floundering in a hip-bath'. I have never seen any one so surprised; he was naturally pleased with the success of his exertions; and here was this strange fellow, the (now) Senior Burgess for Oxford University, to whom he had done no sort of injury, spitting fire and blood at him. Much of what I said was sound in substance; but it was all ill-timed. And, as luck would have it, the only Labour Member there who had not yet spoken was Mr. V. la T. McEntee, who had all through the struggle been one of the most faithful supporters of the Marriage Bill and had spoken on the Second Reading. Now, when I sat down, he had to chide me, more in sorrow than in anger. What he and his friends most resented—justly, I think—was that I seemed to think that they alone were guilty of the tactics that I condemned. They had been used often before, by Conservatives, it appeared: but I did not know that.

I spent a miserable week-end, kicking myself in every accessible part. After all these weeks and months of restraint, of 'tact' and 'diplomacy', I had let my accursed volcano loose at the last minute;

and now, if the Government did give us time, I had antagonized an important section of our supporters.

But, once more, I had assessed too low the generosity of that place. On the Monday almost the first person I saw at the House was Mr. Rhys Davies: he came up to me and in a few friendly words explained his 'position' and dismissed the 'situation'. The House of Commons, I suppose, is the only place in the world where it is possible to call a man an 'elephant' (or anything else insulting) publicly and venomously, and be more friendly with him thereafter than you were before. It is a strange place—but a fine one.

X

REPORT AND THIRD READING

ON Thursday, May 6, Mr. De la Bere put his question to the Prime Minister, and Mr. Baldwin said:

'In view of the advanced stage which this private Member's Bill has reached, and of the special circumstances mentioned by my hon. friend's question, the Government, while continuing to regard the measure as a private Member's Bill, hope to afford an early opportunity, after the Whitsuntide recess, for the consideration of the remaining stages in this House.'

And that was one of the strangest episodes in the whole affair. May 6—six days before the Coronation, six days before the ceremonial beginning of a new regime which was founded, in a sense, on the British disapproval of divorce.

As for Mr. Baldwin himself, I never heard him express an opinion upon this subject; and I never met any one who did. But having some knowledge of his character and outlook, I imagine that, if compelled into a Lobby, he would have been with the 'Noes'. And I often wonder whether he would have given the same answer if he had not been about to retire. The present Prime Minister, I believe, was for us. At all events, we owe gratitude to both of them.

And so, on Friday, May 28, we came up for the conclusion of the Report stage and the Third Reading. This, in a way, was the most important day of all our numerous days; for such a thing had never happened in the Commons before, though it had twice come to pass in the Lords.

Yet, in comparison, it was a peaceful day—with confidence at last predominant, though I, at least, had many anxious moments. For all we knew, Lord Wolmer would still be seeking information, and, if any serious storm blew up on Report stage, there might still be insufficient time for the Third Reading. But Lord Wolmer was not there, and the remaining amendments went through in thirty minutes, smoothly steered by Terence O'Connor. He has a beautifully persuasive manner and voice; and I believe, if he was put to it, he could carry an amendment to the Ten Commandments.

At 11.40 Mr. De la Bere was moving the Third Reading; and now for the first time I really did believe that we were through. We were. The enemy still gallantly maintained the fight, but it was now a rearguard action. There was resignation in the speeches and generous compliments to the promoters, and far too many to myself (Anthony Crossley's, again, in verse). Mr. Michael Beaumont, though against us, congratulated us as 'an enthusiastic Parliamentarian', and said that when I introduced the Bill 'most of us thought the odds were anything up to 1,000 to one that it would never obtain the Third Reading*'. And here was Mr.

THE AYES HAVE IT

Spens, who had been a teller against us on the Second Reading, now speaking in support of the Third. Two more of the twelve who had voted against us then were in our Lobby now, and in these months I believe that many others had changed their minds. Before the end Mr. De la Bere had to go to his constituency, and I was sad that he could not behold the crowning of his courageous act. But Mavis Tate acted as 'teller' in his place, which was a fitting mark not only of her fine work but of the true opinion of women. We had been told so often that our opponents spoke for the women of England; but of the nine women in the House only one ever gave a vote against us. And so, at her side, excited but incredulous, I had the honour to announce the figures:

Ayes to the Right	.	.	190
Noes to the Left	.	.	- 37

XI

THE LORDS

AND SO to the House of Lords.

Our friends said 'Ah! Congratulations! So now you're resting?'—supposing, it seemed, that after a Third Reading in the Commons, a private Member's Bill was at once taken up by some kind fairy and whisked by magic through the Lords on to the Statute Book.

But, in Parliament, very rightly, nothing positive occurs without effort, though many good things may perish by default.

The only automatic event is that one of the Commons' clerks carries the Bill along the corridor to the House of Lords. Some noble Lord must then introduce it and name a day for Second Reading, or, after a certain time, it will descend into some shameful limbo from which it has to be extricated by a special motion.

What noble Lord was to pursue the struggle? We had boasted often that this Bill—or a Bill with the same centre—had twice passed through the House of Lords. But that was before the "Recall to Religion". And in those days the cause had had such mighty champions as the late Lords Birkenhead and Buckmaster, both Lord Chancellors. Where were such powerful champions to-day? The present Lord Chancellor, we thought, was against us, though, to do him justice, he has never

uttered a word about it; also Lord Halifax, the Leader of the House, and Lord Salisbury, his predecessor.

There was a past Lord Chancellor, Lord Sankey, on our side, but he modestly declined to act. All the Law Lords (except one, Lord Russell of Killowen) were in favour of reform; but all except one (Lord Roche) disliked Clause One (the Five Years' Clause). And all, I believe, though all were constructive and helpful, would have declined to accept full responsibility for the managing and mothering of the Bill. Rightly, I think. It is one of the odd contradictions in our Constitution that they possess both judicial and legislative power on the highest peak of the Constitution, and that double power, although most valuable, should be most cautiously employed.

Lord Gorell, the son of his great father, Chairman of the Royal Commission, was an obvious choice. There were equally obvious reasons against saddling him with the entire burden, which, I am sure, he himself perceived. But he was, to my delight, one of the Bill's most powerful aids: and here, at least, heredity scored highly.

Lord Snell, Labour's able and well-liked leader in the Lords, was a member of the Council of the Divorce Law Reform Union; and he was modestly ready to do all or nothing. He named a day, at once, to give the Bill a position; but his own Party thought it would be better for the Bill to be born on the other side of the House.

Many respected opinions had pointed to Lord

Eltisley, whom I did not know. As Douglas Newton he had served in the House of Commons. He was experienced, industrious, able and tactful they said, and they were right. I rang him up; we lunched; and, as promptly and boldly as Mr. De la Bere, he took on the task. For any one not acquainted with legal language and procedure it was a very tough and testing responsibility. Lord Eltisley's big subject was agriculture; and at that date, I believe, he knew as little of my subject as I know of his. But he went at it like a tiger. Mr. Spens and others patiently expounded all things; and within a week or two he was talking like a lawyer.

Now, again, began the conferences, the composing of 'whips', the drafting of amendments and counter-amendments. There grew, as in the Commons, an eager and active little group, a General Staff, round the Bill; Lord Gorell, Lord Drogheda (a practising barrister in divorce) and the wise Lord Roche—with Sir Thomas Barnes still working and willing on the wing. In the background, too, Lord Maugham, Lord Wright, and Lord Atkin were devoting their lucid minds and long experience to the improvement of the measure. And greatly they did improve it. Their combined alterations were of immense value. They were especially interested in this Bill, for the obvious reason that it was a legal as well as a social reform; they had a special opportunity because it was a private Member's Bill. It would be a good thing if the same rich counsel and close examination were available

for many other Bills, to the greater clarity and certainty of legislation. But they are busy Judges, with a full day; and that can hardly be expected.

There was here, then, no question of the Upper House accepting the Commons' proposals with a few minor amendments. Their Lordships had their knives ready, and, especially the Law Lords, seemed itching to begin the surgery. Indeed, as the number of proposed operations grew, I feared that they might end by killing the baby. For time, as usual, was short. The Second Reading in the Lords was not carried till June 28; and any Lords' amendments must go back to the Commons to be agreed.

But I was reckoning without the efficiency and despatch of that old-fashioned place. One of the important by-products of this affair has been, I think, to advertise once more, though all sensible men are aware of it, how very useful is a Second Chamber, and how excellent is our particular Second Chamber, especially on a question of this character.

Their methods seem extraordinary—to a House of Commons man; but to others they are attractive, and they must by all be confessed effective. One would expect to find there the stiffest formality; for is it not the last political citadel of ceremony and colour? But, in fact, that House's way of doing business is deliciously informal. The Lord Chancellor is not, like our Speaker, the severe ruler of debate; indeed, I believe, if noble Lords become

obstreperous, he has no power to control them. He does not even call upon or choose the speakers. The order of speakers appears to be arranged by some secret, invisible code, as certain savages are said to spread the news. Without a word said, speaker after speaker rises precisely in the right place, that is, where a good dramatist would put him. On rare occasions, when more than one noble Lord rises, there is a subdued murmuring of 'Lord Black, Lord Black', and Lord White sits down. If an equal number were to call 'Lord White!' and both noble Lords insisted on taking the floor, there would, I believe, be nothing to stop them. The Lord Chancellor, or Chairman of Committees, has no power to choose between them, and the problem could be settled, I believe, only by a resolution and a division. But these things do not happen. Their Lordships, with dignity and without ostentation, discipline themselves. And then, there is available, what we have not, the admirable motion, 'that the noble Lord be no more heard', which any one may move in the middle of any speech.

Their Lordships dislike sitting after dinner without good reason; and I do not blame them. If they are compelled to suffer this indignity there is no formal adjournment at a specified time. As soon as dinner appears to be demanded 'the debate is interrupted', and afterwards, I believe, they assemble vaguely at some convenient time, without the smallest reference to Standing Orders.

At first, this refusal to be rushed is disconcerting

to the impatient reformer from 'another place.'. Lord Snell had put the Bill down for June 17, not knowing, or maybe not caring, that this was the day of the Gold Cup at Ascot. This caused a very proper anxiety among the friends of the Bill, for it was thought that while all the Bishops would, no doubt, be present, many of the more worldly supporters of the Bill might be elsewhere. Lord Eltisley therefore tried to secure the following Tuesday, but that was the day of a Royal Garden Party, and many of the Bishops had important engagements. So we were put forward again to June 24. This was a month after we had left the Commons; and we began again to worry about the clock.

But, when they work, how swiftly their Lordships work! How well they speak! No one is speaking here for the sake of speaking, to impress constituents or excite the Press, to catch a vote or fill up time. It is, after all, a House of Experts, of men at the top of all the trees of State, of men tried and tested by long experience and labour as rulers of men, at home and abroad, great lawyers, churchmen, leaders of industry, doctors, scientists, sailors and soldiers. There is enough knowledge and wisdom here to give a good answer to almost any problem. It is not, perhaps, sufficiently employed; but then we do not sufficiently demand it. And, since all good speaking proceeds from substance, the standard of speaking in a big debate is very high, rounded, ripe, economical, assured.

There were more peers present for the Second Reading than had been seen in that place for many a day. One hundred and sixty voted in the first division of the Committee stage. And every day, as I sat in the gallery or stood at the Bar, watching the great men fill the golden Chamber, watching Bishop pitted against Bishop, and an Archbishop painfully poised between, I wondered humbly at the strange chances of life. I recalled that all this anxiety and argument in high places here, all the new hopes of thousands in lowly places outside, had come about through the accident of a humorous writer meeting a strange man in a railway train. And I wondered humbly at the ways of Providence.

That debate lasted for two days (that is, till dinner-time), and almost all of it was good. It followed the now familiar lines, but on a loftier level than before. Lord Eltisley simply and moderately expounded. Lord Fitzalan, for the Catholics, savagely attacked.

There was then a delightful interlude in which their Lordships discussed a point of procedure: Should they sit after dinner or adjourn the debate to another day? Lord Salisbury was for the latter, since 'My experience is that on the occasions of after-dinner sittings your Lordships' House does not present a spectacle which is as edifying as it ought to be when there is before us a subject of this very grave importance.'

This settled, the Archbishop of Canterbury

proceeded to the Table to make his brave, but much-criticized declaration of neutrality. I could always listen with pleasure to that beautiful voice, whatever it said, and admire the limpid flow of thought and language. In this speech he said nothing that surprised me, nothing that injured us, and all my sympathies were with him. But one or two friends had told me how amused the great man had been to hear that I was standing for Oxford; and, as I watched the stately feat upon the tight-rope, again I wondered humbly at the chances of life.

It was a fine debate: and in the Lords they do debate. Bishop cancelled Bishop, and Law Lord answered Law Lord, and the Bill sailed on smoothly between them. Lord Atkin was as hot against some clauses of the Bill as he was strong for the rest of it; but on the points of controversy his colleague Lord Roche had always a wise, and a more judicial answer for him. The Bishop of Durham followed the Bishop of St. Albans, and opened with the suspicion that his brother Bishop had not read the Bill. In all that year of talk this was the speech that I most enjoyed. What art! What ease! What dignified mischief! What scholarly sincerity! I wish that Dr. Henson was a Member of the House of Commons.

I had been severely taken to task by the Catholic Lord Fitzalan, for saying on the Third Reading in the Commons that this was, in the highest sense of the word, a Christian Bill, and that, in my belief, there was nothing in it of which Christ would have

disapproved. (It was a bold thing to say, but I was tired of angry post cards saying: 'You are breaking Christ's law/') Now I was glad to hear this brave Bishop declare:

'I think that this Bill, if it were passed into law, so far from bringing the law of England into conflict with the law of Christ, would bring the law of England into deeper and truer harmony with that law.'

The Archbishop had said, according to Dr. Henson, 'as if it were an admitted fact, that it was an agreed point that our Lord's teaching as certified by the critical scholars of our time, is represented by the teaching in St. Mark's Gospel'. 'But,' said Durham, 'so far as I know the Church of Christ has never allowed itself to draw a distinction in religious authority between one canonical gospel and another.' The most reverend Primate 'was on this point throwing over St. Matthew, according to whom divorce was permitted in certain circumstances. But is it not that same Gospel which authorizes you to use the Trinitarian form in baptism?

'So it is apparent that it is a very risky ground you get on when you begin to thrust the critical faculty into canonical authority.'

Lord Salisbury, venerable, nervous, but lively, made the most powerful attack upon the Bill. Then Lord Dawson made the first of his fine and forceful addresses. It was fortunate, indeed, that

the House possessed so well-respected a master of medicine to defend the insanity proposals, not difficult to attack, and to advise upon other uneasy subjects.

At the second day the score, if I may respectfully describe the position thus, was 2 Bishops for, and 1 against: 2 Archbishops neutral, and 1 Law Lords for; (I am sadly counting my old friend Lord Atkin as $\frac{1}{2}$ because of his powerful objections: indeed, on the Third Reading, I believe he abstained). Lord Wright (a rugged rock) and Lord Maugham (charming and crystal), with reservations, brought the Law Lords up to $3\frac{1}{2}$. The Catholic Law Lord, Lord Russell of Killowen, had not yet spoken.

Lords Birkenhead and Buckmaster honourably appeared on this old battleground of their illustrious fathers: and fine speeches by Lord Reading and Lord Gorell brought nothing but credit to the hereditary system. At the end of the second day the Second Reading was carried without a division.

The Committee stage, which is taken on the floor of the House, and not upstairs, was fixed for July 7: and the real trouble began.

The big worry (though there were others) was now the stormy Five Years' Clause (Clause One). A Member of the House of Commons had described it to me as 'the umbrella under which we had advanced'. I do not accept the description: but, if I did, I should have to say that now the wind took hold of the umbrella, and almost carried us over the cliff.

Mr. Claud Mullins, in a recent letter to *The Times*, included this among the proposals which made the new Bill 'more acceptable' than the original one. At that time it would have required prolonged research in the House of Lords to find any one (not a Catholic) who agreed with that description. Our good Lord Roche was one such, Lord Salisbury another, but the Archbishop of Canterbury, strangely, was not.

And now, for the benefit of the historian, the student of affairs, and those more simple persons who cry 'Why *does* Parliament do this and that?' I must recall the extraordinary history of this clause, part hero, part villain of the piece.

I remember one of my earliest advisers saying to me: 'It doesn't matter much about the actual drafting. Give the general idea. They'll alter it anyhow.' This, I assure all future free-lance legislators, is a profound mistake. You may be compelled to change your mind: but your own mind should be clear from the beginning. Our trouble with the Mothers' Union was partly due to a mistake of drafting.

Now, Clause One in its first form said that no petition for divorce should be *granted* within five years of the marriage.

But those words, obviously, would not prevent a petition being *presented* in the first six months. This, however, would have defeated the whole object of the clause, which was to shut out the very thought of divorce in the early years and so assist forgiveness

(by the lawyers offensively called 'condonation') of early offences, and so reconciliation.

So on the first day in Committee (in the Commons) on our own motion, the word 'granted' was replaced by the word 'presented'. That at once added many months to the 'no divorce' period, in practice: and if the six months' delay after the decree *nisi* were included, there would always be at least *six* years before a decree absolute. The Bill still contained my clause to abolish the decree *nisi*. If that clause were left out, as we expected, another six months would be added to the waiting period contemplated by the Bill as presented for Second Reading. But that clause was still in the Bill, and, for all we knew, might be left in: for we did not then know whether we commanded a majority on any point. It seemed impossible then to take a final decision; so while we resisted an immediate motion to reduce the period from 'five' to 'three' years, we did not shut out the possibility of some reduction later. Sir John Withers, who had moved to reduce the period to three years, had also an amendment on the Paper to give the Court power to make exceptions 'in special cases'. But this was not called. So Sir John is entitled to say that he anticipated by many months the ultimate decision of the Lords—and Parliament. But then, with his customary helpfulness, he withdrew his 'three years' amendment, not wishing, I think, to embarrass the promoters so early; and all was left a little vague.

But the promoters, at least, were clearly wedded

to the principle of the clause, and I, at least, have always believed the principle to be sound, subject to proper adjustments. It was still in the Bill, and without doubt it contributed much to the harmony of the Committee proceedings. The Catholics, I think, would have been much more combative without it.

Then, on the Report stage, a motion to delete the clause was not called: and no motion was put down to amend it. So that the House of Commons at no time, with full knowledge and concentration, gave a vote upon this clause. There it was; and on Third Reading members had to take or leave the Bill as a whole. Many told me privately that, rather than swallow the clause, they would abstain or vote against the whole. I do not think that many pressed their objection so far: for the talk then was that the Lords, with their great legal equipment, would certainly dismember or discard the clause.

It was easy, now that we had come so far, for those who had never lifted a finger to help us, to say: 'But why on earth did you include such a clause in your otherwise progressive measure?' I recalled an experience familiar to all who have written for the stage. The author, in his study, carefully constructs a passage of dialogue, at the end of which there is a 'laugh'. Some of it appears to be dull or purposeless: but every word is part of the preparatory train that leads to the laugh. The play has to be shortened and the harassed manager or producer says: 'Let's cut some of this stuff.' When this has

been done the audience laughs no more, and every one except the author is greatly surprised.

It can never be said surely whether we should have come so far without this aid: or whether, if it had been now abandoned, we should, as some assured us, later, have continued with the same success. But that was not the sole consideration. There had never been any 'bargain', as some suggested, and certainly we were under no obligation to those who, in spite of the clause, resisted all the rest of the Bill. But many anxious or dubious minds, in and out of Parliament, had been persuaded by it, I knew, to give their support in the first difficult days, and I felt that I owed them a duty not to throw over the principle now. It was an earnest of our assurances that we were not aiming to make marriage 'a temporary alliance'. So on the Third Reading I said: 'It may be that five years is too long a period, and some hon. Members have suggested that in another place this provision may be modified. For some strange reason I am not a Peer, and I have very little influence in another place, but I myself could not be a party to an abandonment of the principle of Clause One, or to any substantial modification of its provisions, without thinking myself guilty of a breach of faith to many who have supported the Bill.'

But now here were their Lordships fermenting with dislike of it. Mr. Mullins may still think that it made the Bill 'more acceptable': but he could have walked for hours about the House of Lords without meeting a Protestant Peer who loved it for itself

alone. Lord Atkin and Lord Hewart eloquently denounced it; not even the Archbishop of Canterbury liked it much; and of our Law Lord allies only Lord Roche steadfastly maintained that it was good. Most of the Press was equally hostile.

I have no doubt at all that if the Lords had voted purely 'on the merits', as they saw them, they would have thrown the whole clause out, without troubling to amend it. But then, what would happen when the Bill came back to the Commons? I found that I had been too modest when I said that we had no influence with their Lordships. Those upon our side, loath to kill the Bill by kindness, were very ready to listen to the promoters: and if we had lifted the right finger, out the clause would have gone. What then? In the Commons some said, and confidently, that all would still be well: others said that there would then be justifiable and perhaps fatal 'obstruction'. At the worst there might be a conflict between the two Houses, for which, at the end of the Session, there would be no time. I believe myself that the Commons, after some hot words, would have agreed with the Lords: but, as I have said, I was not thinking only in terms of tactics. The promoters, at least, were never in doubt what to do. We would accept an amendment to reduce the period to three years and to give the court a discretionary power for special cases.

Easy to say: but not easy to draft. The Law Lords now did some admirable work, and Lord Maugham's final version was, I believe, an amalgam

of the proposals of himself and Lords Atkin and Wright.

Upon this there was a good and exciting debate. Lord Atkin, in his quiet, dry style, bitterly attacked the clause again. Why, he said, take one step forward with Clause Two, and another step back with Clause One? The metaphor was scarcely just, and it might have been answered that this was the firm ground on which we had made our three big forward steps: but he carried many with him.

Lord Cecil, prophet of Geneva, defending the clause, was moved by some reference to the laws of other countries to make this remarkable and surprising announcement:

Tor my part, I do not care a button what foreigners say/

The Archbishop of Canterbury said that though he might have voted for the original clause, there was nothing worth preserving in the amended form. I did not, and do not, understand the reasoning. Three years, after all, is three years.

The Lord Chief Justice struck the clause another short sharp blow. Lord Roche stoutly defended it upon its merits: but it seemed to have so few friends that I thought it was lost, and perhaps the Bill with it.

But on the main question, whether the clause, as amended, should 'stand part', there voted

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A close call.

And even now we had not done with the thing, A week later, on July 15 (Report stage), Lord Moyne again put down a motion to delete the clause: and there was another long and anxious debate. It had been strongly put about that the fear of losing the Bill had been exaggerated, and Lord Moyne and others wanted the House to decide the question on its merits, without considering what might follow in the Commons. But now there was a new complication. Would it be consistent with their Lordships' reputation for wisdom if they gave a definite decision in Committee on one Thursday and reversed it on the next? This thought, no doubt, governed many votes. Lord Ponsonby concluded his attack delightfully: 'May I say that it is an interesting spectacle to me and one that gives me some secret amusement, to find your Lordships making a great effort to be reactionary in order to placate the House of Commons?'

Lord Arnold calculated that not more than 165 persons were likely to be affected by the clause in a year—or 3 per cent of 5,500 (present figures).

As I stood at the Bar with the faithful Commons, sick to death of the whole thing, I felt like piping an apology to the Peers for afflicting them with this dilemma.

There voted this time, Contents 91, Not-Contents 67—a bigger margin than before.

The only other large anxiety was lunacy as a ground of divorce, which was strongly attacked in

Committee by Lord Elton, the Archbishop of Canterbury and others. But here Lord Dawson had the guns, and the Contents prevailed by 95 to 31. Two Bishops were Content (Birmingham and Liverpool, two Not-Content (St. Albans and Winchester).

It remains only to applaud not only the work done that day, but the admirable speed of it. The Lords are rightly leisurely on the big questions, but on the small fry they waste not a minute. They adjourned, sensibly, for dinner, but sat thereafter nearly to midnight, and ploughed through the remaining rows of amendments, not slovenly, but swiftly. Lord Atkin, though prevented from cutting out the parts he disliked, did good constructive work elsewhere.

On July 15 (Report stage) their Lordships knocked the Bill about again till seven in the evening, and more effective surgery was done, including the insertion of some good new provisions for the benefit of children and lunatic spouses.

I was sorry on this day to have to organize opposition to an amendment by Lord Bertie of Thame. Lord Bertie, like myself, worries about words, and moves many amendments to correct the verbal slips and errors of the Commons. An admirable habit—for in the Commons there is seldom time for such action to be taken; and, as a rule, he is at once successful. But this afternoon, while I was having tea in the Lords' red room, I observed with dismay that Lord Bertie had put down an amendment to leave out 'among' and insert 'amongst'. The word following 'among' began with a consonant—the\

I have always disliked 'amongst' as I dislike 'whilst'—especially before a consonant. So I said to Lord Elibank: 'You must stop this thing.' Lord Elibank went to the great library of the Lords and emerged with dictionaries ajad Mr. Fowler's unsurpassable work. Fortified with these, he went into the Chamber and vigorously opposed Lord Bertie's amendment, which that nobleman, somewhat astonished at this reversal of form, at once withdrew. We were right, I believe, but I hope that he will not be discouraged by this from maintaining his noble watch upon the words of Bills.

On this day, too, on the promoters' own motion, the title was changed from 'Marriage' to 'Matrimonial Causes' Bill. This mystified many outside, and caused the Bishop of St. Albans and others to remark tartly that, no doubt, we were not quite so sure as we had been about the true nature of the Bill. These may think what they will. The draftsmen insisted that 'Marriage Acts' had commonly dealt with the 'celebration and conditions' of marriage and those concerned with dissolution had had the other name: so we assented. But I was sorry to lose the name that had so long been the partner of my days and dreams, and did, though the Bishop of St. Albans is not bound to believe it, express an intention sincerely held.

The Third Reading was taken on July 19. This short debate was much concerned with Christian principles, and on that theme revealed a singular lack of agreement among the Christian churches.

Of the eleven speakers five were Bishops, and three others founded their objections on religious principles. Yet in the end only one Bishop (St. Albans) voted against the Bill.

A few quotations will exhibit how confused and perilous were the seas of opinion through which we had come.

The Archbishop of Canterbury:

'I do not think it would be honest, on my part, however much on other grounds I may wish to do so, to oppose the Third Reading. . . . But as a Christian of that standard, my Lords, how can I bring myself to vote actively in favour of a Bill which contains some provisions which seem to me inconsistent with that standard?'

Lord Cecil:

'It seems to me quite impossible to maintain that this Bill is in accordance with Christian rule.'

The Bishop of St. Edmundsbury and Ipswich:

'I do not believe that this is a State Bill divorced from Christian feeling. I believe it represents the truest Christian feeling of this country. I think it is in accordance with Christ's spirit.'

The Bishop of Durham:

'I venture once again to ask your Lordships to accept this Bill because I am convinced not only that it will remove many hardships which ought to be remedied, but because I am persuaded that it will

bring the marriage law of the country into closer harmony with the principles of Christ.'

The Bishop of St. Albans:

'I believe this Bill to be fundamentally an anti-social Bill.'

And, as the Bishop of Durham reminded the House, the Methodists, in conference the day before, by an enormous majority had approved the Bill.

Lord Russell of Killowen, the Catholic Law Lord, delivered finely a strong, but, I am sorry to say, offensive speech. Lord Gorell later properly rebuked him for giving no one credit for sincerity except himself: and the Bishop of St. Edmundsbury and Ipswich properly reminded him of the Catholic Church's strange record in the matter of nullity. Lord Russell made just the kind of intolerant speech that the Catholics in the Commons had so honourably avoided, and it asked for just those comments which we, on our side, had as carefully suppressed. It was as well, maybe, that there should be one such slash now in the last encounter, to remind us how civilized the battle, on the whole, had been. Lord Russell was bitter about the amendment to Clause One, and said that their Lordships' action had been 'discreditable', more than hinting at trickery. Looking back at the long Parliamentary history of this controversy, I felt that such accusations did not come well from a Catholic. Year after year, by

talking out' and 'counting out', and every Parliamentary and electoral device that the wit of man could imagine, the men of his faith had prevented the advance, and even the discussion, of this reform. And now, if it had been true that a few poor Protestants had at last availed themselves of Parliamentary technique and stratagem, it would have been small cause for wonder.

Lord Gorell, with dignity and force, said the last words for his father's great work: and there voted:

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XII

THE LORDS' AMENDMENTS

THE Lords had done a big job expeditiously and well. It remained only for the Commons to agree (or not) with the Lords' amendments. The Government promised to 'provide facilities' on Friday, July 23, and once more Clause One began to disturb my sleep.

'If a BilF (I quote from Sir Erskine May's great work) 'be returned from one House to another with amendments, these amendments must either be agreed to by the house which had first passed the Bill, or the other house must waive their amendments: otherwise the Bill will be lost. Sometimes one house agrees to the amendments, with amendments, to which the other house agrees. Occasionally this interchange of amendments is carried even farther, and one house agrees to amendments with amendments, to which the other house agrees with amendments: to which, also, the first house, in its turn, agrees.'

In the more leisurely days of the past this game, I believe, was often played: but there is seldom time for it now. I heard a noble Lord remark recently: 'The power of the House of Lords is increasing, for the Commons always agree with our amendments.' In the last days of a long and tiring Session few

Members wanted to begin battledore and shuttlecock with the Lords: but the experts thought that there might be a little trouble. Mr. Lyons still wanted to abolish the waiting period, or reduce it still farther. But the former would (I think) have been out of order; and he would have no opportunity to do the latter unless the House could first be persuaded to disagree with the Lords. On that, as 'the promoters', we had the first shot.

Having heard some of the comments of the religious opposition, I was a little tempted to take the same line as the Archbishop of Canterbury. I could get Mr. De la Bere to move: 'That this House doth agree with the Lords in the said amendment.' He had not the same personal responsibility for the clause. The opponents would protest, and I would reply thus:

'On the question of Clause One I find myself in an embarrassment very similar to that described by the Most Reverend Primate on the Second and Third Reading in another place. I am in two minds. My conscience and my intellect are in conflict; and which am I to obey? On the one hand, my intellect has been persuaded by the speeches in the Lords that the clause in its original form was harsh, unworkable and bad, and that this amendment is a good one. How therefore can I give a positive vote against the amendment? On the other hand, my conscience tells me that, bad though the clause is, some of my honourable friends still desire it, and, what is

more, were persuaded by things that I have said and done that they would get it. How then can I give an active vote in favour of the amendment? Intellect, it is true, assures me that a reduction from five to three is not a "substantial modification"; but conscience tells me that it is so regarded. What, then, am I to do? If a division is called, I can only stand aside.'

But I did not long or seriously consider this, for it seems to me to be the duty of a leader to lead; and this particular baby I could pass to no one. So I moved myself 'That this House doth agree', and at some length justified the motion, reminding the House how from the first the clause had been constantly changing in shape and significance, and, in effect, would not be so far away from the original Bill. That had said (1) no petition 'granted' within five years, and (2) no decree *nisi*; so that a man might have got his decree absolute immediately at the end of the fifth year. Now, with the decree *nisi* back again, and the usual delays, he would not be likely to get it till after four or even four and a half years, so that the difference was slight between this version and that which was said by some to have secured the Second Reading. Finally, I appealed to the Catholic opposition to cease fire at last and not press a division. They, I thought, were sick of the subject and might be glad to let the thing go.

The enemy, I think, were not profoundly impressed by the argument, and I was chided, but very

gently. Harmon and Crossley generously responded to my appeal, and bade a friendly farewell to the fight. Some implacable Anglican did challenge a division, but there was some disagreement, and the division was called off.

So the strange history of this clause concludes, and it passed on to the Statute Book without the House of Commons having given a single vote upon it at any stage.

And now at last the horse smelled the stable.

There were thirty-four other Lords' amendments, some exceedingly complex: but in sixteen minutes they had all been agreed to, with the expeditious aid of Captain Bourne in the Chair.

Paddy Hannon was among the first to congratulate us.

XIII

'LE ROY LE VEULT

So, just eight months after the battle began, the last shot was fired. A Government measure, however substantial, is over and done with in two or three months. There lie before me 19 volumes of *Hansard*, all concerned with this Bill. I calculate that, in all, about 340,000 words were spoken about it. I have not counted how many times it was said that we were 'setting England on the slippery slope'.

On Friday, July 30, Black Rod knocked at the door of the Commons at noon, summoning the faithful Commons to hear the Lords Commissioners give the Royal Assent to certain Bills passed by both Houses during the previous Session.

The Prime Minister rises and walks out with the Leader of the Opposition: Ministers and their 'opposite numbers' follow. Anthony Crossley had charmingly suggested that we two should march together: and it was so. The champion of the Catholic Church and the Senior Burgess for Oxford University symbolically trod down together the fires of battle, because the King in Parliament had spoken. A small thing, but meaning much.

The granting of the Royal Assent is 'a quaint old ceremony'. The three Lords Commissioners, representing His Majesty, sit in a row far off, like three male witches, wearing their robes and strange hats. The Speaker and the faithful Commons are huddled

at the Bar. There is much doffing of hats by their Lordships and much bowing by the Clerks at the Table, and much Norman French. The Lord Chancellor, with his melodious voice, reads the Commission from His Majesty. A Clerk reads out the names of the Acts, one by one; another Clerk faces the faithful Commons and, in Norman French, announces the decision. For the Finance Act and the Appropriation Act the formula is:

'Le rgy remercie ses bons sujets, accepte leur benevolence, et ainsi le veult'

Fourth on the list was the Matrimonial Causes Act.

'Le roy le veult'

announced the Clerk. And by the grace of God, the goodwill of men, and the genius of the British Parliament, my fantastic vow had been fulfilled, twenty months after it was made.

Fifth, and fittingly, came the Summary Procedure (Domestic Proceedings) Act. Fittingly, because this, in a way, was a sister-ship to our vessel. Its main purpose was to improve and extend the machinery of *conciliation* in the Magistrates' Courts, and so, in proper cases, to keep failing marriages alive. It was ably piloted by my friend Mr. Maurice Petherick, and all through the long race was always just astern of us. It caused less public interest, for it excited little opposition; but it is of great social importance. And it owes much, I

suspect, to the example and inspiration of Mr. Claud Mullins.

And now my story is done. In the great scale of human affairs this Bill, this Act, weighs little, no doubt. Yet, as I have said, from a small event big lessons may be learned.

We have shown that a democracy, at least, can deal decently, though candidly, with religious strife. We have shown—as I said in the House—and when I say 'we', I do not mean the promoters only, but the whole body of private Members—that, granted a good cause, a good heart, and sufficient goodwill, it is possible still for the private Members, working loyally together, to bring a dangerous cause to birth and to force their offspring upon a dubious, though friendly, Government. We have shown that the machine is not always supreme; that Independents and even University Members may have some practical uses in this elastic and magical Constitution. We have shown, I hope, that in spite of all these odd events, the machinery of Parliament is, on the whole, as sound and worthy as ever it was. In my secret heart I rejoice that Oxford is not the champion of lost causes only, that a mere man of letters has been generously admitted into the field of action and so may have made the way easier for others. And I thank all those, in Parliament and out of it, who have made these things possible, not forgetting His Majesty's Government, and the people's Press, which for many years has been behind this cause.

As for the Act itself, it is too soon to speak; and it

was not the purpose of this record to defend it. It is never possible to foretell with confidence how a social measure of this character will work in practice. The best intentions may be struck down, the worst forebodings may triumph and be true. I hope and pray that the aims of all those who have worked upon this measure with such anxiety and care may be fulfilled; that it will add not only to the sum of human happiness, but to the strength of human institutions, the law, the Church, marriage itself. It does not do all that I should wish; but it does as much as could be expected to-day by those who understand the matter, and far more than I expected twelve months ago. For myself, I have no illusions. Where there are bouquets to-day there will be stones to-morrow. Indeed, the stones are flying already (the stones, I mean, of my friends: the others, most of them anonymous, have never troubled me). Those who, less than a year ago, were abusing me for trying too much, are now complaining that I did not attempt enough. I do not care. I am grieved only by the endless stream of letters from poor people who do not understand the strange ways of Parliament, and who find that after all the talk their particular assembly of misfortunes has not been imagined by any section of the Act; or, that, when it has, they are too poor to take advantage of the law. As to that, I must record that this is an Act to improve the law, not to enrich the poor—for that, by Standing Orders, no private Member could propose. If the people are not able to get

justice according to law, that is a matter which the King's Government must remedy, either by improving machinery or increasing incomes. These letters sadden me. But I am angered—and angered only—when wild and erroneous statements are made by persons who ought to know better, which increase unduly the doubts and disappointments of those poor people. The Act may not be perfect—but there it is. Parliament has spoken—let us wait, with patience and fair play, to see what it has done. The Ayes have it. *Le roy le veult.*

October 1937

APPENDIXES

(0)

MATRIMONIAL CAUSES BILL, 1933

(The Holford Knight Bill)

ARRANGEMENT OF CLAUSES

Clause

- i. Grounds for petition for divorce.
2. Circumstances constituting defences to proceedings for divorce.
3. Decree absolute not to be questioned after five years.
4. Decree of judicial separation.
5. New grounds for nullity.
6. Proceedings for a decree of presumption of death.
7. Evidence.
8. Jurisdiction.
9. Retrospective effect of Act.
10. Interpretation.
11. Short title, construction, commencement, and application.

A
BILL
TO

A, D. 1933 Amend the law relating to Matrimonial Causes
————— in England and Wales

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Grounds for petition for divorce the 1. The following section shall be substituted for section one hundred and seventy-six of the Supreme Court of Judicature (Consolidation) Act, 1925 (hereinafter called 'the principal Act'):

'176.—(1) A petition for divorce may be presented to the High Court (in this part of this Act referred to as "the court") either by the husband or the wife on the ground that the respondent—

(a) has since the marriage committed adultery; or

(b) has deserted the petitioner for a period of at least three years; or

(c) has since the marriage treated **the** petitioner with cruelty; or

(d) is incurably insane, and has been continuously a certified lunatic for a period

APPENDIX I

of at least five years immediately preceding the presentation of the petition; or

A.D. 1933

(*e*) is an incurable habitual drunkard, and has for a period of at least three years been separated from the petitioner in consequence of habitual drunkenness; or

(*f*) is undergoing imprisonment under a commuted death sentence.

(2) The court shall, whether the petition is opposed or not, satisfy itself so far as it reasonably can that the facts alleged in support of the petition are proved, and as to the existence or otherwise of any of the circumstances hereinafter specified as constituting defences to petitions for divorce, and, in the case of circumstances constituting a discretionary defence, as to the manner in which it should exercise its discretion, and if satisfied that the case is one in which a decree should be granted shall grant a decree of divorce.'

2. The following section shall be substituted for section one hundred and seventy-eight of the principal Act:

Circumstances constituting defences to proceedings for divorce

'178.—(1) Any of the following circumstances constitute an absolute defence to any proceedings for divorce:

(*a*) That the petition is presented or prosecuted in collusion with the respondent or with a co-respondent;

(*b*) Where the petition is presented on the ground of adultery, that the petitioner has in any way been accessory to or

THE AYES HAVE IT

A.D. 1933

connived at, or has condoned, the adultery in question or has been guilty of such wilful neglect or misconduct as has conducted to the adultery;

(c) Where the petition is presented on the ground of cruelty, that the petitioner has condoned the cruelty in question;

(d) Where the petition is presented on the ground of insanity or habitual drunkenness, that the petitioner has been guilty of such wilful neglect or misconduct as has conducted to the insanity or habitual drunkenness:

Trovided that an agreement honestly and properly made as to the course to be taken in any proceedings shall not be treated as proof of collusion if there existed previously to such agreement any adequate and good ground for divorce.

(2) Any of the following circumstances constitute a discretionary defence to any proceedings for divorce:

(a) That the petitioner has during the marriage committed adultery, or treated the respondent with cruelty, or deserted the respondent.

(b) That the petitioner has unduly delayed presenting or prosecuting the petition.

(3) Where an absolute defence is established the court shall, and where a discretionary defence is established the court

APPENDIX I

may, refuse the relief applied for, but there shall be no obligation on the court to refuse a decree on the ground of the petitioner's own adultery, cruelty, or desertion, if the court in its absolute discretion considers that, having regard to the circumstances of the case, the granting of a decree would nevertheless be just.'

A.D. 1933

3. The following subsection shall be added to section one hundred and eighty-three of the principal Act:

Decree absolute not to be questioned after five years

'(3) After the expiration of five years from the making of a decree absolute, the decree shall not be questioned, whether on the ground of lack of jurisdiction or on any ground whatsoever.'

4. The following subsection shall be substituted for subsections (1) and (2) of section one hundred and eighty-five of the principal Act:

Decree of judicial separation

'185.—(1) A petition for judicial separation may be presented to the court either by the husband or the wife on any grounds on which a petition for divorce might have been presented, and the court, if satisfied that such grounds exist, may grant a decree of judicial separation, and thereupon it shall no longer be obligatory for the petitioner to cohabit with the respondent:

'Provided that:

\a) the provisions of this Act with respect to defences to proceedings for

THE AYES HAVE IT

A.D. 1933

divorce shall apply also to proceedings for judicial separation; and

(b) if the respondent claims that instead of a decree of judicial separation a decree of divorce should be granted, the court may in its discretion refuse to grant a decree of judicial separation, and may, if satisfied as aforesaid, grant a decree of divorce, and the provisions of this Act with respect to such decree shall apply accordingly; but before granting a decree of divorce the court shall permit the petitioner to elect that the petition for judicial separation shall be dismissed.'

New
grounds
for nullity

5.—(1) In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall be voidable on the ground:

(a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or

(b) that either party to the marriage was at the time of the marriage of unsound mind or in a state of mental unsoundness which has become definite within six months of the marriage, or was at the time of the marriage subject to recurrent fits of insanity or epilepsy; or

(c) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or

(d) that the respondent was at the time of the

APPENDIX I

marriage pregnant by some person other than the petitioner: A.D. 1933

Provided that, in the cases specified in paragraphs (b), (c), and (d) of this subsection, the court shall not grant a decree unless it is satisfied:

- (i) that the petitioner was at the time of marriage ignorant of the facts alleged;
- (ii) that proceedings were instituted within a year from the date of the marriage; and
- (iii) that marital intercourse has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.

(2) Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

6.—(1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead, may present a petition to the court, and the court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death.

Proceedings
for a decree
of presumption
of death

(2) The fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and has not been known by the petitioner to be living within that time, shall be prima facie evidence that he or she is dead.

(3) Sections one hundred and eighty-three and one hundred and eighty-four of the principal

THE AYES HAVE IT

- A.D. 1933 Act shall apply to a decree of presumption of death as they apply to a decree of divorce.
- Evidence 7. The following section shall be substituted for section one hundred and ninety-eight of the principal Act:
- '198.—(1) The parties to any proceedings under this part of this Act, and the husband and wife of any such party, shall be competent and compellable to give evidence in such proceedings, and a witness in any such proceedings shall not be entitled to refuse to answer any question by reason only that the question tends to show that he or she has committed adultery.
- '(2) In any proceedings under this part of this Act a copy of an entry in the wages book of any employer of labour, or, if no wages book be kept, a written statement by the employer or any responsible person in his employ, shall be prima facie evidence that the wages therein stated as having been paid to any such employee have in fact been so paid.'
- Jurisdiction 8. Where a wife has been deserted by her husband, or where her husband has been deported from the United Kingdom under any law for the time being in force relating to the deportation of aliens, and was immediately before the desertion or deportation domiciled in England or Wales, the domicile shall, for the purpose of this Act, be deemed to be the same as it was immediately before the desertion or deportation.

APPENDIX I

9. The provisions of this Act shall apply in all cases to which the same are applicable, whether the circumstances relied on occurred before or after the passing of this Act, and where any proceedings are pending at the time of the commencement of this Act the court shall allow such amendment of the pleadings as may be necessary or desirable as the result of the coming into operation of this Act.

A.D. 1933

Retrospective effect of Act

10. For the purposes of this Act:

Interpretation

The expression 'desertion' means desertion without the consent or against the will of the other party to the marriage, and without reasonable cause, and, where there has been no actual desertion, wilful and persistent refusal to permit marital intercourse shall be treated as equivalent to desertion;

Bigamy or any unnatural or grossly indecent offence shall be treated as equivalent to adultery;

The expression 'cruelty' means such conduct by one married person to another as makes it unsafe, having regard to the risk to life, limb, or health, bodily or mental, for the latter to continue to live with the former, and the following facts:

(a) that one party to a marriage has knowingly or negligently infected the other with venereal disease; and

(b) that a husband has compelled his wife to submit herself to prostitution; shall, without prejudice to the generality

THE EYES HAVE IT

A.D. 1933

of the foregoing definition of cruelty, be treated as equivalent to cruelty;

The expression 'habitual drunkard' means a person who habitually takes or uses any intoxicant, and while under the influence or in consequence of the effects thereof, is a danger to himself or others, or is incapable of managing himself or his affairs, and the expression 'habitual drunkenness' has a corresponding meaning;

The expression 'intoxicant' includes any intoxicating liquor, and any sedative, narcotic, or stimulant drug or preparation.

Short title,
construc-
tion, com-
mencement
and appli-
cation

11.—(1) This Act may be cited as the Matrimonial Causes Act, 1933.

(2) This Act shall be construed as one with Part VIII of the principal Act, and that Part of that Act and this Act may be cited together as the Matrimonial Causes Acts, 1925 and 1933.

(3) This Act shall come into operation on the first day of January nineteen hundred and thirty-four.

(4) This Act shall not apply to Scotland or Northern Ireland.

(2)

MARRIAGE BILL, 1936

ARRANGEMENT OF CLAUSES

Clause

1. No divorce within five years of marriage.
2. Grounds of petition for divorce.
3. Defences to proceedings for divorce.
4. Decree of judicial separation.
5. New grounds for nullity.
6. Proceedings for a decree of presumption of death.
7. Abolition of decree nisi.
8. Further provision for custody, & c , of children.
9. Extension of jurisdiction of courts of summary jurisdiction.
10. Provisions concerning courts of summary jurisdiction.
11. Relief for clergy of Church of England.
12. Evidence.
13. Jurisdiction.
14. Decree of dissolution not to be questioned after five years.
15. Retrospective effect of Act.
16. Interpretation.
17. Short title, construction and application.

**A
BILL**

TO

Amend the law relating to Marriage
and Divorce

A.D. 1936

WHEREAS it is expedient for the true support of marriage, the protection of children, the removal of hardship, the reduction of illicit unions and unseemly litigation, the relief of conscience among the clergy, and the restoration of due respect for the law, that the Acts relating to marriage and divorce be amended:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

No divorce
within five
years of
marriage

1. No decree of divorce shall be granted by any court unless at the time of granting such decree five years have passed since the date of the marriage in question. Provided that this section shall not prevent any court from granting at any time a decree or order for separation or maintenance or from giving any relief except a decree of divorce.

Grounds of
petition for
divorce

2. The following section shall be substituted for section one hundred and seventy-six of the Supreme Court of Judicature (Consolidation)

APPENDIX II

Act, 1925 (hereinafter called "the principal A.D. 1936 Act'): _____

'176.—(1) A petition for divorce may be presented to the High Court (in this part of the Act referred to as "the court") either by the husband or the wife on the ground that the respondent:

(a) has since the marriage committed adultery; or

(b) has deserted the petitioner for a period of at least three years; or

(c) has since the marriage treated the petitioner with cruelty; or

(d) is incurably insane, and has been continuously a certified lunatic for a period of at least five years immediately preceding the presentation of the petition; or

(e) is an incurable habitual drunkard, and has for a period of at least three years been separated from the petitioner in consequence of habitual drunkenness; or

(f) is undergoing imprisonment under a commuted death sentence.

(2) The court shall, whether the petition is opposed or not, satisfy itself so far as it reasonably can that the facts alleged in support of the petition are proved, and as to the existence or otherwise of any of the circumstances hereinafter specified as constituting defences to petitions for divorce, and, in the case of circumstances constituting a discretionary

THE AYES HAVE IT

A.D. 1936 defence, as to the manner in which it should exercise its discretion, and if satisfied that the case is one in which a decree should be granted shall grant a decree of divorce.'

Defences to proceedings for divorce 3. The following section shall be substituted for section one hundred and seventy-eight of The Principal Act;

'178.—(1) Any of the following circumstances constitute an absolute defence to any proceedings for divorce:

(a) That the petition is presented or prosecuted in collusion with the respondent or with a co-respondent:

(b) Where the petition is presented on the ground of adultery, that the petitioner has in any way been accessory to, or connived at, or has condoned, the adultery in question, or has been guilty of such wilful neglect or misconduct as has conduced to the adultery:

(c) Where the petition is presented on the ground of cruelty, that the petitioner has condoned the cruelty in question:

(d) Where the petition is presented on the ground of insanity or habitual drunkenness, that the petitioner has been guilty of such wilful neglect or misconduct as has conduced to the insanity or habitual drunkenness:

Provided that an agreement honestly and properly made as to the course to be taken in any proceedings shall not be treated

APPENDIX II

as proof of collusion if there existed previously to such agreement any adequate and good ground for divorce. A.D. 1936

(2) Any of the following circumstances constitute a discretionary defence to any proceedings for divorce:—

(a) That the petitioner has during the marriage committed adultery, or treated the respondent with cruelty, or deserted or without lawful excuse wilfully separated himself or herself from the respondent:

(b) That the petitioner has unduly delayed presenting or prosecuting the petition.

(3) Where an absolute defence is established the court shall, and where a discretionary defence is established the court may, refuse the relief applied for, but there shall be no obligation on the court to refuse a decree on the ground of the petitioner's own adultery, cruelty or desertion, if the court in its absolute discretion considers that, having regard to the circumstances of the case, the granting of a decree would nevertheless be just.'

4. The following subsections shall be substituted for subsections (1) and (2) of section one hundred and eighty-five of the principal Act: Decree of judicial separation

'185.—(1) A petition for judicial separation may be presented to the court either by the husband or the wife on any grounds on

THE AYES HAVE IT

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which a petition for divorce might have been presented, and the court, if satisfied that such grounds exist, may grant a decree of judicial separation, and thereupon it shall no longer be obligatory for the petitioner to cohabit with the respondent:

Provided that the provisions of this Act with respect to defences to proceedings for divorce shall also apply to proceedings for judicial separation.

(2) Subject to the provisions of section one of this Act, two years after a decree of judicial separation the court shall order that the decree be converted into one of divorce upon the petition of either party:

Provided that during this time the party petitioning has fulfilled any order for payments to the other party and that the court is satisfied that he will be able to continue to do so.'

New
grounds for
nullity

5.—(1) In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall be voidable on the ground:—

(a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or

(b) that either party to the marriage was at the time of the marriage of unsound mind or in a state of mental unsoundness which has become definite within six months of the marriage, or was at

APPENDIX II

A.D.1936

- the time of the marriage subject to recurrent fits of insanity or epilepsy; or
- (c) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or
- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner:

Provided that, in the cases specified in paragraphs (b) (c) and (d) of this subsection, the court shall not grant a decree unless it is satisfied—

- (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (ii) that proceedings were instituted within a year from the date of the marriage; and
- (iii) that marital intercourse has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.

(2) Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

6.—(1) Any married person who alleges that reasonable grounds exist for supposing that the other party to a marriage is dead, may present a petition to the court, and the court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death.

Proceedings
for a decree
of presump-
tion of death

- (2) The fact that for a period of seven years

THE AYES HAVE IT

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or upwards the other party to the marriage has been continually absent from the petitioner, and has not been known by the petitioner to be living within that time, shall be prima facie evidence that he or she is dead.

(3) On the making of a decree of presumption of death the petitioner shall be entitled to re-marry as if the marriage had been dissolved by death and shall not thereafter be liable to prosecution for bigamy on account of such marriage.

Abolition of
decree nisi

7. The procedure under which a decree for divorce must in the first instance be a decree nisi, to be made absolute subsequently, subject to certain conditions, shall be abolished, and accordingly subsections (1) and (2) of section one hundred and eighty-three of the principal Act shall be repealed and the following amendments shall be made:

(a) In subsection (2) of section one hundred and eighty-one of the said Act the words 'or before the decree nisi is made absolute' shall be repealed:

(b) In subsection (1) of section one hundred and eighty-two of the said Act the words 'shows cause against the making of a decree' shall be substituted for the words 'shows cause against a decree nisi':

(c) In subsection (1) of section one hundred and eighty-four of the said Act the word 'absolute' shall be omitted wherever this word occurs.

APPENDIX II

8.—(i) The court in making provision under section one hundred and ninety-three of the principal Act with respect to the custody, maintenance and education of the children of a marriage shall, whichever party to the marriage may be the guilty party, be guided by the principles laid down in section one of the Guardianship of Infants Act, 1925.

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Further provision for Custody & c, of children

(2) Where a child of the marriage is a ward of court the court may in any case, and shall on the application of either parent, refer all questions as to the custody, maintenance, and education of the child to the Chancery Division.

9.—(1) Among the grounds on which a married woman may apply to a court of summary jurisdiction under the Summary Jurisdiction (Married Women) Act, 1895, for an order or orders under that Act there shall be included the following ground:

Extension of jurisdiction of courts of summary jurisdiction

'that her husband has been guilty of adultery.'

(2) Where the wife of a married man has been guilty of adultery the married man shall be entitled to apply to the court of summary jurisdiction for an order and on such application the court may make one or more of the orders set out in section five of the Licensing Act, 1902, as amended by this Act:

Provided that no order shall be made on such application if it has been proved to the satisfaction of the court that the husband has condoned

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or connived at, or by his wilful neglect or misconduct conducted to such adultery.

Provisions concerning courts of summary jurisdiction

10. For the purpose of introducing conciliation methods into matrimonial causes concerning divorce and nullity, and for reducing the cost of such proceedings for those who are unable to afford adequate professional advice, the following provisions shall take effect twelve months after the passing of this Act:

- (i) A petition for the dissolution or for a sentence of nullity of marriage may be presented to a court of summary jurisdiction and be dealt with in that court in accordance with the provisions of this Act. The Lord Chancellor may make rules for the selection of justices to deal with cases arising under this section, and to adapt the procedure in force in the High Court to the needs of courts of summary jurisdiction:

Provided that a court of summary jurisdiction shall not have power to grant any relief above the financial limits fixed for cases of separation or maintenance as amended by this Act:

- (ii) At the hearing of such a petition the court of summary jurisdiction shall take the statements on oath or affirmation of all witnesses and shall put the same into writing and such statements shall be read over and signed by the witnesses who shall have been so examined and

APPENDIX II

shall be signed also by the justice taking the case: A.D. 1936

- (iii) After hearing the witnesses and recording their statements as above provided the court shall announce its decision and shall intimate what orders it proposes to make. The court shall then cause the documents in the case and the statements of the witnesses and a record of the decision of the court and of its proposed orders to be delivered to the proper officer of the High Court:
- (iv) At the time of announcing its decision or at any time later the court may make an interim order as provided by section six of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, and such interim order shall remain in force until the court has received the ruling of the High Court in the case and shall have summoned the parties to appear before the court:
- (v) On receipt of the case from a court of summary jurisdiction the High Court shall examine it. The Lord Chancellor may make rules regarding the methods of such examination.
- (vi) If in the opinion of the High Court the proper procedure has been complied with and the evidence recorded is such that a decree would have been made had the case been tried in the High

THE AYES HAVE IT

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Court, the High Court shall pronounce a decree in the absence of the parties and shall confirm the orders proposed by the court of summary jurisdiction. The High Court shall inform the court of summary jurisdiction of its approval and thereupon the court of summary jurisdiction shall have the same powers as in regard to orders for separation or maintenance:

- (vii) If in the opinion of the High Court the proper procedure has not been complied with or the evidence recorded is not such that a decree would have been made had the case been tried in the High Court, the High Court shall either refuse to pronounce a decree or shall adjourn the case and direct the court of summary jurisdiction to take further evidence on any points mentioned by the High Court:
- (viii) If in the opinion of the High Court the matters in question between the parties or any of them would be more conveniently dealt with in the High Court, that court may refuse to pronounce a decree and may direct that the parties be heard in the High Court. In such cases the proceedings shall be transferred to the High Court. In no such cases shall any appeal lie from the decision of the High Court. The Lord Chancellor

APPENDIX II

may make rules governing the transfer of such cases: A.D. 1936

(ix) The words 'five pounds' shall be substituted for the words 'two pounds' in section five (c) of the Summary Jurisdiction (Married Women) Act, 1895, and the words 'one pound' shall be substituted for the words 'ten shillings' in section one of the Married Women (Maintenance) Act, 1920:

(x) Section ten of the Summary Jurisdiction (Married Women) Act, 1895, shall apply to a petition for divorce or nullity.

11. The following subsection shall be substituted for subsections (2) and (3) of section one hundred and eighty-four of the principal Act:—

Relief for
clergy of
Church
of England

'(2) No clergyman of the Church of England shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on any ground and whose former husband or wife is still living or to permit any other minister of the Church of England to perform such a marriage service in his church or chapel.'

12. The following section shall be substituted for section one hundred and ninety-eight of the principal Act:—

Evidence

'198.—(1) The parties to any proceedings under this Part of this Act and the husband and wife of any such party shall be competent and compellable to give evidence in such

THE AYES HAVE IT

A.D. 1936

proceedings, and a witness in any such proceedings shall not be entitled to refuse to answer any question by reason only that the question tends to show that he or she has committed adultery.

(2) In any proceedings under this Part of this Act a copy of an entry in the wages book of any employer of labour, or, if no wages book be kept, a written statement by the employer or any responsible person in his employ shall be prima facie evidence that the wages stated therein as having been paid to any such employee have in fact been so paid.'

Jurisdiction

13. Where a wife has been deserted by her husband or where her husband has been deported from the United Kingdom under any law for the time being in force relating to the deportation of aliens, and was immediately before the desertion or deportation domiciled in England or Wales, the domicile shall, for the purposes of this Act, be deemed to be the same as it was immediately before the desertion or deportation.

Decree of dissolution not to be questioned after five years

14. The following section shall be substituted for section one hundred and eighty-three of the principal Act:—

'183. After the expiration of five years from the making of a decree of dissolution of marriage the decree shall not be questioned, whether on the ground of lack of jurisdiction or any other ground.'

APPENDIX II

15. The provisions of this Act shall apply to all cases to which the same are applicable, whether the circumstances relied on occurred before or after the passing of this Act, and where any proceedings are pending at the time of the commencement of this Act the court shall allow such amendment of the pleadings as may be necessary or desirable as the result of the coming into operation of this Act.

A.D. 1936
Retrospec
tive effect
of Act

16. For the purpose of this Act—

Interpreta-
tion

The expression 'desertion' means desertion without the consent or against the will of the other party to the marriage, and without reasonable cause, and, where there has been no actual desertion, wilful and persistent refusal to permit marital intercourse shall be treated as equivalent to desertion:

Bigamy or any unnatural or grossly indecent offence shall be treated as equivalent to adultery:

The expression 'cruelty' means such conduct by one married person to another as makes it unsafe, having regard to the risk to life, limb, or health, bodily or mental, for the latter to continue to live with the former, or as is calculated to cause and has caused the latter prolonged and unnecessary mental distress, and the following facts:—

(a) that one party to a marriage has

THE EYES HAVE IT

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knowingly or negligently infected the other with venereal disease; and

(*b*) that a husband has compelled his wife to submit herself to prostitution;

shall, without prejudice to the generality of the foregoing definition of cruelty, be treated as equivalent to cruelty:

The expression 'habitual drunkard' means a person who habitually takes or uses any intoxicant, and in consequence of the effects thereof is habitually a danger to himself or others, or incapable of managing himself, or his affairs, and the expression 'habitual drunkenness' has a corresponding meaning:

The expression 'intoxicant' includes any intoxicating liquor, and any sedative, narcotic, or stimulant drug or preparation.

Short title,
construction
and
application

17.—(1) This Act may be cited as the Marriage Act, 1937.

(2) This Act shall be construed as one with Part VIII of the principal Act.

(3) This Act shall not apply to Scotland or Northern Ireland.

MATRIMONIAL CAUSES ACT, 1937
(1 EDW. 8 & 1 GEO. 6. CH. 57.)

ARRANGEMENT OF SECTIONS

Section

- i. Restriction on petitions for divorce during first three years after marriage.
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CHAPTER 57

A.D. 1937 An Act to amend the law relating to marriage and
divorce. [30th July 1937.]

WHEREAS it is expedient for the true support of marriage, the protection of children, the removal of hardship, the reduction of illicit unions and unseemly litigation, the relief of conscience among the clergy, and the restoration of due respect for the law, that the Acts relating to marriage and divorce be amended:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Restriction
on petitions
for divorce
during first
three years
after
marriage

1.—(1) No petition for divorce shall be presented to the High Court unless at the date of the presentation of the petition three years have passed since the date of the marriage:

Provided that a judge of the High Court may, upon application being made to him in accordance with rules of court, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition, that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree nisi,

APPENDIX III

do so subject to the condition that no application to A.D. 1937
make the decree absolute shall be made until after
the expiration of three years from the date of the
marriage, or may dismiss the petition, without pre-
judice to any petition which may be brought after
the expiration of the said three years upon the same,
or substantially the same, facts as those proved in
support of the petition so dismissed.

(2) In determining any application under this
section for leave to present a petition before the
expiration of three years from the date of the
marriage, the judge shall have regard to the interests
of any children of the marriage and to the question
whether there is reasonable probability of a recon-
ciliation between the parties before the expiration
of the said three years,

(3) Nothing in this section shall be deemed to
prohibit the presentation of a petition based upon
matters which have occurred before the expiration
of three years from the date of the marriage.

2. The following section shall be substituted for Grounds
section one hundred and seventy-six of the Supreme of petition
Court of Judicature (Consolidation) Act, 1925 for divorce
(hereinafter called 'the principal Act') :— Geo.5.c.49

'176. A petition for divorce may be pre-
sented to the High Court (in this part of this
Act referred to as "the court") either by the
husband or the wife on the ground that the
respondent—

(a) has since the celebration of the marriage
committed adultery; or

(b) has deserted the petitioner without cause

THE AYES HAVE IT

A.D. 1937 for a period of at least three years immediately preceding the presentation of the petition; or

(c) has since the celebration of the marriage treated the petitioner with cruelty; or

(d) is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition;

and by the wife on the ground that her husband has, since the celebration of the marriage, been guilty of rape, sodomy or bestiality.'

Definition 3. For the purposes of section one hundred and of 'care and seventy-six of the principal Act, as amended by this treatment' Act, a person of unsound mind shall be deemed to be under care and treatment—
insanity

47 4 ict. (a) while he is detained in pursuance of any order or inquisition under the Lunacy and Mental Treatment Acts, 1890 to 1930, or of any order or warrant under the Army Act, the Air Force Act, the Naval Discipline Act, the Naval Enlistment Act, 1884, or the Yarmouth Naval Hospital Act, 1931, or is being detained as a criminal lunatic or in pursuance of an order made under the
21 & 22 Vict. £ . . . T . A
Geo. 5. c. 15 Criminal Lunatics Act, 1884;
47 & 48
c £4

20 & 21 Geo. 5. c. 23 (b) while he is receiving treatment as a voluntary patient under the Mental Treatment Act, 1930, being treatment which follows without any interval a period of such detention as aforesaid;

and not otherwise.

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4. The following section shall be substituted for A.D. 1937
section one hundred and seventy-eight of the ^ ' of
principal Act:— court on

'178.—(1) On a petition for divorce it shall presenta-
be the duty of the court to inquire, so far as it tion of
reasonably can, into the facts alleged and whether petition for
there has been any connivance or condonation on divorce
the part of the petitioner and whether any collu-
sion exists between the parties and also to inquire
into any countercharge which is made against the
petitioner.

(2) If the court is satisfied on the evidence
that—

(i) the case for the petition has been proved;
and

(ii) where the ground of the petition is
adultery, the petitioner has not in any manner
been accessory to, or connived at, or condoned
the adultery, or where the ground of the
petition is cruelty the petitioner has not in any
manner condoned the cruelty; and

(iii) the petition is not presented or prose-
cuted in collusion with the respondent or either
of the respondents;

the court shall pronounce a decree of divorce, but
if the court is not satisfied with respect to any of
the aforesaid matters, it shall dismiss the petition:

Provided that the court shall not be bound to
pronounce a decree of divorce and may dismiss
the petition if it finds that the petitioner has
during the marriage been guilty of adultery or if,

THE AYES HAVE IT

A.D.1937 in the opinion of the court, the petitioner has been guilty—

- (a) of unreasonable delay in presenting or prosecuting the petition; or
- (b) of cruelty towards the other party to the marriage; or
- (c) where the ground of the petition is adultery or cruelty, of having without reasonable excuse deserted, or having without reasonable excuse wilfully separated himself or herself from, the other party before the adultery or cruelty complained of; or
- (d) where the ground of the petition is adultery or unsoundness of mind or desertion, of such wilful neglect or misconduct as has conduced to the adultery or unsoundness of mind or desertion.'

Decree of 5. The following subsections shall be substituted
judicial for subsections (1) and (2) of section one hundred
separation and eighty-five of the principal Act:—

'(1) A petition for judicial separation may be presented to the court either by the husband or the wife on any grounds on which a petition for divorce might have been presented, or on the ground of failure to comply with a decree for restitution of conjugal rights or on any ground on which a decree for divorce a mensa et thoro might have been pronounced immediately before the commencement of the Matrimonial Causes Act, 1857, and the foregoing provisions of this Part of this Act relating to the duty of the court on the

20 & 21 Vict,
c. 85

APPENDIX III

presentation of a petition for divorce, and the A.D. 1937 circumstances in which such a petition shall or may be granted or dismissed, shall apply in like manner to a petition for judicial separation.

(2) Where the court in accordance with the said provisions grants a decree of judicial separation, it shall no longer be obligatory for the petitioner to cohabit with the respondent.'

6.—(1) A person shall not be prevented from Divorce presenting a petition for divorce, or the court from proceedings pronouncing a decree of divorce, by reason only after grant that the petitioner has at any time been granted a separation judicial separation or an order under the Summary or other Jurisdiction (Separation and Maintenance) Acts, relief 1895 to 1925, upon the same or substantially the same facts as those proved in support of the petition for divorce.

(2) On any such petition for divorce, the court may treat the decree of judicial separation or the said order as sufficient proof of the adultery, desertion, or other ground on which it was granted, but the court shall not pronounce a decree of divorce without receiving evidence from the petitioner.

(3) For the purposes of any such petition for divorce, a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation or an order under the said Acts having the effect of such a decree shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since the granting thereof, be deemed immediately to precede the presentation of the petition for divorce.

THE AYES HAVE IT

A.D. 1937
New
grounds for
decree of
nullity

7.—(1) In addition to any other grounds on which a marriage is by law void or voidable, a marriage shall be voidable on the ground—

- (a) that the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or
- (b) that either party to the marriage was at the time of the marriage of unsound mind or a mental defective within the meaning of the Mental Deficiency Acts, 1913 to 1927, or subject to recurrent fits of insanity or epilepsy; or
- (c) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or
- (d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner:

Provided that, in the cases specified in paragraphs (b) (c) and (d) of this subsection, the court shall not grant a decree unless it is satisfied—

- (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (ii) that proceedings were instituted within a year from the date of the marriage; and
- (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree:

(2) Any child born of a marriage avoided pursuant to paragraphs (b) or (c) of the last foregoing subsection shall be a legitimate child of the parties

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thereto notwithstanding that the marriage is so A.D. 1957 avoided.

(3) Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

8.—(1) Any married person who alleges that Proceedings reasonable grounds exist for supposing that the for decree other party to the marriage is dead may present a of presump- petition to the court to have it presumed that the death and other party is dead and to have the marriage dis- dissolution solved, and the court, if satisfied that such reason- of marriage able grounds exist, may make a decree of presump- tion of death and of dissolution of the marriage.

(2) In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved.

(3) Sections one hundred and eighty-one to one hundred and eighty-four inclusive of the principal Act shall apply to a petition and a decree under this section as they apply to a petition for divorce and a decree of divorce respectively.

9. Section one hundred and eighty-three of the Prevention principal Act shall be amended by adding thereto a of delay in subsection as follows:— application

(3) Where a decree nisi has been obtained, absolute application for decree whether before or after the passing of this Act, and no application for the decree to be made

THE AYES HAVE IT

A.D. 1937

absolute has been made by the party who obtained the decree, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom the decree nisi has been granted shall be at liberty to apply to the court and the court shall, on such application, have power to make the decree absolute, reverse the decree nisi, require further inquiry or otherwise deal with the case as the court thinks fit.'

Amendments as to maintenance, settlement of property, &c.

10.—(1) When a petition for divorce or nullity of marriage has been presented, proceedings under section one hundred and ninety, section one hundred and ninety-one, section one hundred and ninety-two or subsection (3) of section one hundred and ninety-three of the principal Act (which, respectively, confer power on the court to order the provision of alimony, the settlement of the wife's property, the application of property which is the subject of marriage settlements, and the securing of money for the benefit of the children) may, subject to and in accordance with rules of court, be commenced at any time after the presentation of the petition:

Provided that no order under any of the said sections or under the said subsection (other than an interim order for the payment of alimony under section one hundred and ninety) shall be made unless and until a decree nisi has been pronounced, and no such order, save in so far as it relates to the preparation, execution, or approval of a deed or instrument and no settlement made in pursuance of

APPENDIX III

any such order, shall take effect unless and until the A.D. 1937 decree is made absolute.

(2) The said section one hundred and ninety shall apply in any case where a petition for divorce or judicial separation is presented by the wife on the ground of her husband's insanity as if for the references to the husband there were substituted references to the wife, and for the references to the wife there were substituted references to the husband, and in any such case and in any case where a petition for divorce, nullity, or judicial separation, is presented by the husband on the ground of his wife's insanity or mental deficiency, the court may order the payments of alimony or maintenance under the said section to be made to such persons having charge of the respondent as the court may direct.

(3) In subsection (1) of the said section one hundred and ninety-one there shall be inserted after the word 'adultery' the words 'desertion, or cruelty.'

(4) The following subsection shall be added to section one hundred and ninety-three of the principal Act:—

'(3) The court may, if it thinks fit, on any decree of divorce or nullity of marriage, order the husband, or (in the case of a petition for divorce by a wife on the ground of her husband's insanity) order the wife, to secure for the benefit of the children such gross sum of money or annual sum of money as the court may deem reasonable, and the court may for that purpose

THE AYES HAVE IT

A.D. 1937 order that it shall be referred to one of the conveyancing counsel of the court to settle and approve a proper deed or instrument to be executed by all necessary parties:

Provided that the term for which any sum of money is secured for the benefit of a child shall not extend beyond the date when the child will attain twenty-one years of age.'

25 & 26 (5) Section three of the Supreme Court of Judica-
Geo. 5. c. 2 ture (Amendment) Act, 1935, shall cease to have
effect.

Extension of 11.-(1) Among the grounds on which a married
jurisdiction woman apply to a court of summary jurisdic-
summary tion under the Summary Jurisdiction (Married
jurisdiction Women) Act, 1895, for an order or orders under
in matri- that Act there shall be included the ground that her
monial husband has been guilty of adultery,
matters

5 8 & 5 9 Vict. (2) A husband shall be entitled to apply to a court
c. 39 of summary jurisdiction for an order on the ground
that his wife has been guilty of adultery, and the
powers of the court under the Summary Jurisdic-
tion (Separation and Maintenance) Acts, 1895 to
1925, shall include power to make, upon any
such application, any one or more of the
2 Edw. 7. orders set out in section five of the Licensing
c.28 Act, 1902.

(3) On any application made by virtue of this section, the court shall not make an order unless it is satisfied that the applicant has not condoned or connived at, or by his or her wilful neglect or misconduct conducted to, the adultery, and that the

APPENDIX III

application is not made or prosecuted in collusion A.D. 1937 with the other party to the marriage or any person with whom it is alleged that adultery has been committed.

12. The following subsection shall be substituted for subsections (2) and (3) of section one hundred and eighty-four of the principal Act:—

'(2) No clergyman of the Church of England or of the Church in Wales shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on any ground and whose former husband or wife is still living or to permit the marriage of any such person to be solemnized in the Church or Chapel of which he is the minister.'

13. Where a wife has been deserted by her husband, or where her husband has been deported from the United Kingdom under any law for the time and the husband was immediately before the desertion or deportation domiciled in England and Wales, the court shall have jurisdiction for the purpose of any proceedings under Part VIII of the principal Act, notwithstanding that the husband has changed his domicile since the desertion or deportation.

14.—(1) This Act may be cited as the Matrimonial Causes Act, 1937, and shall be construed as one with Part VIII of the principal Act, and this Act and that Part may be cited together as the Matrimonial Causes Acts, 1925 and 1937.

Relief for clergy of Church of England

and of Church in Wales

Jurisdiction under

change of domicile

Short title, construed-

application

THE AYES HAVE IT

A.D. 1937 order that it shall be referred to one of the conveyancing counsel of the court to settle and approve a proper deed or instrument to be executed by all necessary parties:

Provided that the term for which any sum of money is secured for the benefit of a child shall not extend beyond the date when the child will attain twenty-one years of age/

25 & 26 Geo. 5. c. 2 (5) Section three of the Supreme Court of Judicature (Amendment) Act, 1935, shall cease to have effect.

Extension of jurisdiction summarv in matrimonial matters 11.—(1) Among the grounds on which a married woman may apply to a court of summary jurisdiction (Married Women) Act, 1895, for an order or orders under that Act there shall be included the ground that her husband has been guilty of adultery.

5 8 & 5 9 Vict. c. 39 (2) A husband shall be entitled to apply to a court of summary jurisdiction for an order on the ground that his wife has been guilty of adultery, and the powers of the court under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, shall include power to make, upon any such application, any one or more of the orders set out in section five of the Licensing Act, 1902.

2 Edw. 7. c.28

(3) On any application made by virtue of this section, the court shall not make an order unless it is satisfied that the applicant has not condoned or connived at, or by his or her wilful neglect or misconduct condoned to, the adultery, and that the

APPENDIX III

application is not made or prosecuted in collusion A.D. 1937 with the other party to the marriage or any person with whom it is alleged that adultery has been committed.

12. The following subsection shall be substituted Relief for for subsections (2) and (3) of section one hundred clergy of and eighty-four of the principal Act:— Church of England

'(2) No clergyman of the Church of England and of or of the Church in Wales shall be compelled to Church in solemnize the marriage of any person whose Wales former marriage has been dissolved on any ground and whose former husband or wife is still living or to permit the marriage of any such person to be solemnized in the Church or Chapel of which he is the minister.'

13. Where a wife has been deserted by her hus- Jurisdiction band, or where her husband has been deported from under the United Kingdom under any law for the time part VIII of being in force relating to the deportation of aliens, principal and the husband was immediately before the deser- Act in case tion or deportation domiciled in England and of husband's Wales, the court shall have jurisdiction for the change of domicile purpose of any proceedings under Part VIII of the principal Act, notwithstanding that the husband has changed his domicile since the desertion or de- portation.

14.—(1) This Act may be cited as the Matri- Short title, monial Causes Act, 1937, and shall be construc- construed as one with Part VIII of the principal Act, and this Act and that Part may be cited together as the Matrimonial Causes Acts, 1925 application and 1937.

THE AYES HAVE IT

A,D. 1937 (2) This Act shall come into operation on the first day of January, nineteen hundred and thirty-eight.

(3) This Act shall not apply to Scotland or Northern Ireland,

