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THE LAW AND WORKING OF THE CONSTITUTION: DOCUMENTS 1660–1914

VOL. II 1784–1914

THE CONSTITUTIONAL HISTORY
OF MEDIEVAL ENGLAND
From the English Settlement to 1485

J. E. A. JOLLIFFE

Second edition

THE CONSTITUTIONAL HISTORY
OF MODERN BRITAIN
1485–1937

SIR DAVID LINDSAY KEIR

Fourth edition

*

ADAM AND CHARLES BLACK

THE LAW AND WORKING OF THE CONSTITUTION: DOCUMENTS 1660–1914

BY

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IN TWO VOLUMES

VOLUME II

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ADAM AND CHARLES BLACK

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THOMAE WHITE EQUITI AURATO
OLIM SCHOLARI REDINGENSI
DEINDE SODALITATIS MERCATORUM SCISSORUM
MAGISTRO
COLLEGII DIVI JOHANNIS BAPTISTAE
FUNDATORI
TANTI BENEFICII MEMORES
JOHANNENSES DUO

INTRODUCTION

The present selection of documents illustrating the development of the British Constitution since 1660 has, we make bold to claim, two novel features. The first is a negative one. We have not, in the manner of some of our predecessors in this field, prefaced each of our documents, or groups of documents, with a set of notes, commentaries, or asides of praise and blame; at the most our notes are designed to make the reader able to understand the circumstances of the case as well as if he had the whole of the original document, instead of an excerpt, before him. Nor have we, as others of such predecessors have preferred, attempted to write the constitutional history of two hundred and fifty years in some century—or score—of breathless pages, and attached it to the front of the selections by way of guide or précis of what is to follow. We have chosen rather to use all the available space for the inclusion of original materials, intending by our presentation to make it possible for them to speak for themselves. But the student in need of a general commentary will, we trust, make use of some full-scale modern work such as Sir David Keir's *Constitutional History of Modern Britain*, for which these volumes should present *pièces justificatives*; for information on some particular topics he would do well to consult the appropriate sections of Sir William Holdsworth's *History of English Law*.

In the second place, we have taken seriously the observation that the British Constitution is not written down in books but is flexible in the sense of being found in the minds and practice of each generation.

Those who have confined their attention to the great constitutional milestones have not been able to show the whole, nor indeed some of the most interesting aspects, of the constitution. To do so one must go behind the Statutes and the Judgements known to lawyers. These are but the " bones cast in a little low dry garret " which we desire to clothe with flesh and blood and bring out into the world. We have been anxious—if we may vary the metaphor—to show the wheels turning, the driver at the controls, and the direction of the journey, as well as the authorized stopping-places. To do this we have drawn upon more varied sources, correspondence, commission reports, novels, memoranda, and so on (as has

only been done tentatively by others for earlier periods and on a much smaller scale, and by none, to our knowledge, for this). We hope thus to vivify as well as to extend the range of information. This has been the hardest part of the work: for statesmen, in dealing with some practical problem, but rarely put their reflections whole upon paper (even when the solution can only be reached from constitutional first principles), or if they do, they seldom achieve that brevity for which we had perforce to look in making this selection. Nevertheless, we hope that we have been able to bring into the foreground institutions of such paramount importance as the Cabinet, for which one might search the Statutes of these years in vain. It is hoped also that the Statutes and the great decisions of the Courts will, in this company, reveal more of their true significance.

Our emphasis in fact, has throughout been upon showing the constitution in working order, and not as a collection of exhibits in a museum. This, we hope, will avoid error. In the first volume, for example, the study of the relationship of the King and his Ministers under the first two Hanoverians should make the cruder Whig misinterpretations of the reigns of George II and George III impossible, even for those who have neither taste nor time to study the work of modern scholars who have so drastically altered old conceptions of the eighteenth century. In this volume the Statutes themselves emphasize the contrast between the seventeenth and eighteenth centuries. In the former the great Acts establishing the framework of a system come thick upon us. In the latter, when the mass of local legislation is cleared out of the way (upon which, together with foreign affairs, the bulk of Parliamentary time was consumed), there remains a small group of Acts aiming at electoral reform and the independence of members. However ineffective, these deserve the increased notice which here they must attract. But in the comparative dearth of major change, the need to show how habit and custom were the real factors of weight is increased. Nowhere is this more true than in local government. And it must be done by seeing men at work.

Apart from this attempt to broaden the sources of such a collection we can claim that in our second volume (mainly of the nineteenth century) we had, even in the use of Statutes, to break new ground. In treating this century of change we have borne in mind Maitland's claim that constitutional history must be concerned with all the many and various fragments of government and authority of the modern world. Thus to show the extension of the franchise by successive Reform Acts is necessary but not enough: we have tried to show something of the treatment of groups within the state (trade unions as well as churches), the development of delegated legisla-

tion, the appearance of the modern Civil Service, the reform of the Judicature, and the enormous but chaotic growth of local government. Difficulties arise from the amount of the material and the verbosity of modern Statutes, so that we can often give the student only a single specimen. But in this part of the work we have remained no less anxious to state general principles in concrete terms : we have preferred to illustrate, for example, freedom of the individual in terms of street-corner meetings or housing regulations, rather than to reproduce some set-piece oration by an elder statesman. Consider, for instance, the immense constitutional significance, and the importance to every citizen, of the change in ideas revealed between Sir William Erle's memorandum on restraint of trade, and the opinions expressed in the case of Vacher *v.* the London Compositors or in the Osborne Judgement. Or take the doctrine of the control of finance by the Commons ; does this not emerge more vividly when it is examined in connection with the establishment of the Public Accounts Committee and the discussion of the shortage of parliamentary time? It emerges indeed not as a platitude but as a problem, and one with which men of flesh and blood have to deal as best they can, interpreting for themselves the spirit of the constitution.

To find the space for all the material we have been discussing we have felt it right to keep rigidly to the constitution of the United Kingdom. Indian and overseas affairs have been excluded : Ireland is included only in respect of her connection—and the dissolution of that connection—with the United Kingdom. We have not attempted any detailed illustration of the local differences between England and Scotland.

In each volume the material has been arranged in four main groups, by origins rather than by subject-matter. These groups are Statutes, Parliamentary Proceedings (including Select Committees and Resolutions as well as debates), Judicial Proceedings, and the Miscellaneous Section to which we have referred above. This division is no more perfectly satisfactory than the attempted classification of powers in our constitution. Necessarily some parts, even successive stages, of the same subject are to be found in more than one section ; we have endeavoured by means of full cross-references in footnotes to enable the reader to bring all these together with ease. This, in conjunction with an index which includes topics and offices as well as proper names, should make it simpler to trace selected subjects through different sources and periods. Within each section the documents are printed simply in chronological order. The text of the Statutes quoted is that of the Statutes of the Realm to the end of that series (the death of Queen Anne) and thereafter the

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ABBREVIATIONS
IN VOLUME II

A. & E. = Reports by Adolphus and Ellis of Cases argued and determined in the Court of King's (Queen's) Bench.

A.C. = Law reports, Appeal Cases, House of Lords, since 1890.

C.J. = Commons Journals.

Ch. = Law reports, Chancery Division, since 1890.

East = East's reports of Cases argued and determined in the Court of King's Bench.

H. Bla. = Henry Blackstone's reports of Cases argued and determined in the Courts of Common Pleas and Exchequer Chamber.

K.B. = Law reports, King's Bench Division, since 1901.

L.J. = Lords Journals.

L.R.Q.B. = Law reports, for the Council of Law reporting, Queen's Bench, 1865–75.

Parl. Deb. = *The Parliamentary Debates*, 1st to 5th series. 1st series, 1803–12, published by W. Cobbett, and 1812–20 under the superintendence of L. Hansard ; 2nd (or new) series, 1820–30, published Hansard ; 3rd series, 1830–92, published Hansard ; 4th series, 1892–1909 (officially authorized by Parliament from 1899) ; 5th series begins 1909.

Parl. Hist. = W. Cobbett, *Parliamentary History of England* (up to 1803 where *Parliamentary Debates* begin).

Parl. Pap. = *Parliamentary Papers*, printed by order of the Houses of Parliament.

Q.B. = Law reports, Queen's Bench Division, 1891–1901.

Q.B.D. = Law reports, Queen's Bench Division, 1875–90.

S.T. = Howell, *State Trials* (34 volumes, 1163–1820).

S.T. (N.S.) = *State Trials*, New Series (8 volumes, 1820–58).

SECTION A

STATUTES

I

AN ACT FOR AUDITING THE PUBLIC ACCOUNTS, 1785

25 Geo. III, c. 52.

'Whereas the present Method of accounting for the Receipts, Issues, and Expenditures of the Publick Money, before the Auditors of the Imprest, is become insufficient to answer the good Purposes intended thereby; for Remedy whereof, it is important that a more effectual Method shall be provided in future for examining the Publick Accounts of the Kingdom, and for preventing, so far as possible, all Delays, Frauds, and Abuses, in delivering in and passing the same: And whereas it is expedient for the effecting thereof, . . . [that present Patents as Auditors of the Imprest should be abolished . . .]; that all Fees, Gratuities, and Perquisites, in the Office of the Auditors of the Imprest, should be forthwith abolished; and that every Officer and Clerk in the said Office or Department should be paid by the Publick a certain fixed annual Salary, in lieu of all such Fees, Gratuities, and Perquisites:' . . .

IV. 'And, in order effectually to provide such Examination of all Publick Accounts in future as may be necessary for the Security of the Publick Interest,' be it further enacted, That it shall and may be lawful for his Majesty, his Heirs and Successors, to nominate and appoint five Commissioners, by Letters Patent under the Great Seal of *Great Britain*, two of whom shall be the Comptrollers of the Army Accounts, now and hereafter for the Time being; and to grant fixed Salaries to each of the said Commissioners, to be paid out of the Aggregate Fund, not exceeding, in the Whole the Sum of four thousand Pounds clear of all Deductions annually, who shall be styled, The *Commissioners for auditing the Publick Accounts*, and shall hold their Offices *quam diu se bene gesserint* [except the said

Comptrollers of the Army Accounts] . . .; and shall, before they shall enter upon the Execution of the Powers vested in them by this Act, take an Oath before the Chancellor of the Exchequer, which he is hereby authorised and required to administer, the Tenor whereof shall be as followeth; (that is to say):

'I *A. B.* do swear, That, according to the best of my Skill and Knowledge, I will faithfully, impartially, and truly execute the several Powers and Trusts vested in me by an Act *for better examining and auditing the Publick Accounts of this Kingdom.*

So help me GOD.'

V. And be it further enacted, That the Lord High Treasurer, or the Commissioners of the Treasury, or any three of them, shall be, . . . authorised to appoint such Officers and Clerks, and other Persons, as shall appear to them to be necessary, from Time to Time, for making up and preparing for Declaration the several Publick Accounts of the Kingdom, with such fixed Salaries to each as they shall judge proper . . . which shall be to the several Officers, Clerks, and other Persons, in lieu of all Fees, Gratuities, and Perquisites whatsoever.

[§§ VI-XXV set out, in detail, regulations for their procedure.]

II

A CUSTOMS AND EXCISE ACT (ESTABLISHING THE CONSOLIDATED FUND) 1787

27 Geo. III, c. 13.

XLVII. And be it further enacted . . . That, . . . the several Duties of Customs, Excise, and Stamps, granted or consolidated by this Act, together with the Duty on Hackney Coaches and Chairs, granted by the Acts of the ninth of Queen *Anne*, and eleventh of King *George* the Third; and on Hackney Coaches, by the twenty-fourth of King *George* the Third; the Duty on Hawkers and Pedlars, made perpetual by an Act of the first of King *George* the First; and the Duty on Hawkers and Pedlars, granted by the twenty-fifth of King *George* the Third; the Duty on Houses, Windows, and Lights, granted by the sixth of King *George* the Third; on inhabited Houses, by the nineteenth of King *George* the Third; and on Houses, by the twenty-fourth of King *George* the Third; the Arrears of the Duties on Male Servants, granted by the seventeenth and twenty-first of King *George* the Third; and on Male and Female Servants, by the twenty-fifth of King *George* the Third;

the Duties on Salt, by the twenty-sixth of King *George* the Second, and the twentieth and twenty-second of King *George* the Third; the Sum of twelve thousand Pounds *per Annum*, payable half-yearly by the Bank, pursuant to the twenty-third of King *George* the Third; the Duty of Sixpence in the Pound on Pensions granted by the twelfth of King *George* the First, and the Duty on one Shilling in the Pound on Salaries and Pensions granted by the thirty-first of King *George* the Second; the Duties on Shops, on Coaches, and other Carriages, and Waggons and Carts, by the twenty-sixth of King *George* the Third; and on Horses, by the twenty-fifth of King *George* the Third, shall be carried to, and constitute a Fund, to be called *The Consolidated Fund*; and the same shall be issued and applied to the Uses and Purposes herein-after directed.

[§§ XLVIII-L. The revenue from the Post Office, the new duties on wines, etc., to be carried to the Consolidated Fund during His Majesty's life, and after his demise the surplus (over stated standard returns) to be carried to it.]

[§ LI. Account to be kept in the Exchequer of the amount of the Hereditary Duties of Excise, so that, on His Majesty's demise, it may be paid to his successors.]

LII. And be it further enacted . . . That all other Publick Monies . . . which, . . . shall arise and be paid into the Receipt of the Exchequer, not being particularly appropriated or appointed to any Use or Uses, by any Act or Acts of Parliament made or to be made, shall be carried to, and made Part of the said Fund to be called *The Consolidated Fund.*

[§§ LIII-LXII provide for the payment of Annuities from the Consolidated Fund.]

[§ LXIII. Payment[1] of sums for the Royal Household and Dignity (under 1 Geo. III, c. 1 and 17, Geo. III, c. 21) amounting to £900,000, to be made from the Consolidated Fund.]

[§ LXVI. Augmentation of Judges' salaries (by 32 Geo. II, c. 35)[2] to be paid from the Consolidated Fund.]

LXXII. 'And whereas it may happen hereafter, that the Exigencies of the publick Service may require extraordinary Expences, beyond the annual Produce of the publick Revenue; and it will be highly important for the Maintenance of publick Credit, and for the Strength and Safety of these Kingdoms, that effectual Measures should be taken for increasing the said Revenue in Proportion to the additional annual Charge occasioned by such Expences;' be it enacted . . ., That distinct Accounts shall be kept by the several Boards appointed for collecting and managing

[1] See Vol. I, Sect. A, No. LIV, p. 138.
[2] Cf. Vol. I, Sect. A, No. LV, p. 139.

the different Branches of the publick Revenue, of the total Amount, in every Quarter of a Year . . . and that the Commissioners of the Treasury shall cause to be prepared, and shall lay before both Houses of Parliament, within fourteen Days after the Commencement of every Session, an Account of the total Produce of the Duties of Customs, Excise, Stamps, and Incidents respectively, distinguishing (as far as possible) in each Branch the Produce on every separate Article the Duties on which shall have amounted to one thousand Pounds or more, in the four Quarters next preceding the Date of such Account; and also an Account of all Additions which shall have been made to the annual Charge of the publick Debt, by the Interest or Annuities for or on account of any Loan which shall have been made after the passing of this Act, and within the Space of ten Years next preceding the Date of such Account; together with an Account of the Produce within the Year next preceding of any Duties which shall have been imposed, or of any Addition which shall have been made to the Revenue, for the Purpose of defraying the increased Charge occasioned by every such Loan respectively.

III

A ROMAN CATHOLIC RELIEF ACT, 1791

31 Geo. III, c. 32.

'Whereas, by divers Laws now in force, divers Penalties and Disabilities have been imposed on Papists or Persons professing the Popish Religion, or holding Communion with the See of *Rome*, and their Children, and certain Principles have been attributed to them which are dangerous to society and civil Liberty, and which they are willing to disclaim: And whereas it is expedient that such Persons as shall take the Oath of Allegiance, Abjuration, and Declaration hereinafter mentioned, shall be relieved from some of the Penalties and Disabilities aforesaid:' . . . be it enacted . . . That, . . . it shall be lawful for Persons professing the *Roman* Catholick Religion personally to appear in any of His Majesty's Courts of Chancery, King's Bench, Common Pleas, or Exchequer, at *Westminster*, or in any Court of General Quarter Sessions of and for the County, City, or Place, where such Person shall reside, and there, in open Court, between the Hours of nine in the Morning and two in the Afternoon, take, make, and subscribe the following Declaration and Oath; *videlicet*,

'"I *A. B.* do hereby declare, That I do profess the *Roman* Catholick Religion."

'"I *A. B.* do sincerely promise and swear, That I will be faithful and bear true Allegiance to His Majesty King GEORGE the Third, and him will defend to the utmost of my Power against all Conspiracies and Attempts whatever that shall be made against his Person, Crown, or Dignity; and I will do my utmost Endeavour to disclose and make known to his Majesty, his Heirs and Successors, all Treasons and traiterous Conspiracies which may be formed against him or them: And I do faithfully promise to maintain, support, and defend, to the utmost of my Power, the Succession of the Crown; . . . [in accordance with the Act of Settlement] . . . hereby utterly renouncing and abjuring any Obedience or Allegiance unto any other Person claiming or pretending a Right to the Crown of these Realms: and I do swear, That I do reject and detest, as an unchristian and impious Position, that it is lawful to murder or destroy any Person or Persons whatsoever, for or under Pretence of their being Hereticks or Infidels; and also that unchristian and impious Principle, that Faith is not to be kept with Hereticks or Infidels: And I further declare, That it is not an Article of my Faith, and that I do renounce, reject, and abjure the Opinion, that Princes excommunicated by the Pope and Council, or any Authority of the See of *Rome*, or by any Authority whatsoever, may be deposed or murdered by their Subjects, or any Person whatsoever: And I do promise, that I will not hold, maintain, or abet any such Opinion, or any other Opinions contrary to what is expressed in this Declaration: And I do declare, That I do not believe, that the Pope of *Rome*, or any other foreign Prince, Prelate, State, or Potentate, hath, or ought to have, any temporal or civil Jurisdiction, Power, Superiority, or Pre-eminence, directly or indirectly, within this Realm: And I do solemnly, in the Presence of God, profess, testify, and declare, that I do make this Declaration, and every Part thereof, in the plain and ordinary Sense of the Words of this Oath, without any Evasion, Equivocation, or mental Reservation whatever; and without any Dispensation already granted by the Pope, or any Authority of the See of *Rome*, or any Person whatever; and without thinking that I am or can be acquitted before God or Man, or absolved of this Declaration, or any Part thereof, although the Pope or any other Person or Authority whatsoever shall dispense with or annul the same, or declare that it was null and void.

So help me GOD."

Which said Declaration and Oath shall be subscribed by the Person taking and making the same . . . [provision made for those who cannot write, and for certificates to be evidence of Oath] . . .

IV. . . . Now be it further enacted, That . . . no Person who shall take and subscribe the Oath herein-before appointed to be taken and subscribed in Manner hereby required, shall be presented, indicted, sued, impeached, prosecuted, or convicted, in any Civil or Ecclesiastical Court of this Realm, for being a Papist, or reputed Papist, or for professing or being educated in the Popish Religion, or for hearing or saying Mass, or for being a Priest or Deacon, or entering or belonging to any Ecclesiastical Order or Community of the Church of *Rome*, or for being present at, or performing or observing any Rite, Ceremony, Practice or Observance of the Popish Religion, or maintaining or Assisting others therein.

V. Provided always, and be it further enacted, That no Place of Congregation, or Assembly for religious Worship, shall be permitted or allowed by this Act, until the Place of such Meeting shall be certified to the Justices of the Peace, at the General or Quarter Sessions[1] . . . and that no Person in holy Orders, or pretended holy Orders, whether as Priest or as a Minister of any other higher Rank or Order, shall perform any ecclesiastical Function, or otherwise officiate in any such Place of Meeting, until his Name, and his Description, as a Priest or Minister, shall have been recorded at the Quarter or other General Session. . . .

VI. Provided always, and be it further enacted, That if any Assembly of Persons professing the *Roman* Catholick Religion shall be had in any Place for religious Worship, with the Doors locked, barred, or bolted during any Time of such meeting together, all and every Person and Persons, who shall come to or be at such Meeting, shall not receive any Benefit from this Law; but, notwithstanding having taken the aforesaid Oath of Allegiance, Abjuration, and Declaration, shall, from the Time of Conviction, be liable to the same Pains and Penalties, for such their Meeting, as if this Act had not been made.[2]

IV

THE LIBEL ACT, 1792[3]

32 Geo. III, c. 60.

'Whereas Doubts have arisen whether on the Trial of an Indictment or Information for the making or publishing any Libel, where an Issue or Issues are joined between the King and the

[1] Cf. Vol. I, Sect. A, No. XXIV, p. 63.
[2] By its 23rd section it is enacted that this Act is not to apply to Scotland.
[3] See Vol. II, Sect. C, No. VI, at p. 254.

Defendant or Defendants, on the plea of Not Guilty pleaded, it be competent to the Jury impanelled to try the same to give their Verdict upon the whole Matter in Issue:' Be it therefore declared and enacted . . . That, on every such Trial, the Jury sworn to try the Issue may give a general Verdict of Guilty or Not Guilty upon the whole Matter put in Issue upon such Indictment or Information; and shall not be required or directed, by the Court or Judge before whom such Indictment or Information shall be tried, to find the Defendant or Defendants Guilty merely on the Proof of the Publication by such Defendant or Defendants of the Paper charged to be a Libel, and of the Sense ascribed to the same in such Indictment or Information.

II. Provided always, That, on every such Trial, the Court or Judge before whom such Indictment or Information shall be tried, shall, according to their or his Discretion, give their or his Opinion and Directions to the Jury on the Matter in issue between the King and the Defendant or Defendants, in like Manner as in other Criminal Cases.

III. Provided also, That nothing herein contained shall extend, or be construed to extend, to prevent the Jury from finding a Special Verdict, in their Discretion, as in other Criminal Cases.

IV. Provided also, That in case the Jury shall find the Defendant or Defendants Guilty, it shall and may be lawful for the said Defendant or Defendants to move in Arrest of Judgement, on such Ground and in such Manner as by Law he or they might have done before the passing of this Act; any thing herein contained to the contrary notwithstanding.

V

A HABEAS CORPUS SUSPENSION ACT, 1794[1]

34 Geo. III, c. 54.

An Act to empower his Majesty to secure and detain such Persons as his Majesty shall suspect are conspiring against his Person and Government.

'Whereas a traitorous and detestable Conspiracy has been formed for subverting the existing Laws and Constitution, and for introducing the System of Anarchy and Confusion which has so fatally prevailed in *France*:' Therefore, for the better Preservation of his Majesty's sacred Person, and for securing the Peace and the Laws and Liberties of this Kingdom; be it enacted . . . That

[1] See Vol. I, Sect. A, No. XVIII, p. 46; also cf. Vol. II, Sect. A, No. VII, p. 10.

every Person or Persons that are or shall be in Prison within the Kingdom of *Great Britain* at or upon the Day on which this Act shall receive his Majesty's Royal Assent, or after, by Warrant of his said Majesty's most Honourable Privy Council, signed by six of the said Privy Council, for High Treason, Suspicion of High Treason, or treasonable Practices, or by Warrant, signed by any of his Majesty's Secretaries of State, for such Causes as aforesaid, may be detained in safe Custody, without Bail or Mainprize, until the first Day of *February* one thousand seven hundred and ninety-five; and that no Judge or Justice of the Peace shall bail or try any such Person or Persons so committed, without Order from his said Majesty's Privy Council signed by six of the said Privy Council, till the said first Day of February one thousand seven hundred and ninety-five; any Law or Statute to the contrary notwithstanding.

III. Provided always, and be it enacted, That nothing in this Act shall be construed to extend to invalidate the ancient Rights and Privileges of Parliament, or to the Imprisonment or Detaining of any Member of either House of Parliament during the Sitting of such Parliament, until the Matter of which he stands suspected be first communicated to the House of which he is a Member, and the Consent of the said House obtained for his Commitment or Detaining.

[A similar Act suspending the normal Habeas Corpus procedure in 1798 (38 Geo. III, c. 36) has the following third section not found in—though not at variance with—the Act given above.

'Provided always, That, from and after the said first Day of *February* one thousand seven hundred and ninety-nine, the said Persons so committed shall have the Benefit and Advantage of all Laws and Statutes any Way relating to or providing for the Liberty of the Subjects of this Realm; and that this present Act shall continue until the said first Day of February one thousand seven hundred and ninety-nine, and no longer.']

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VI

AN ACT FOR MANNING THE NAVY, 1795[1]

35 Geo. III, c. 34.

'Whereas it is necessary that a Supply of Men be forthwith raised in the most speedy and effectual Manner, within *Great Britain*, for the Service of the Navy,' . . . be it enacted . . . That, . . . a speedy and effectual Levy of able-bodied Men, within the

[1] For Impressment under Common Law, see Vol. I, Sect. C, No. XIV, p. 289.

descriptions herein-after mentioned, to serve his Majesty in the Navy, shall be forthwith made and put in Execution, according to the Rules and Directions of this Act. . . .

V. And be it further enacted . . . That the Justices of the Peace and other Magistrates aforesaid shall and they are hereby authorized and required to levy and cause to be levied to serve his Majesty, in the Navy of *Great Britain*, all able-bodied, idle, and disorderly Persons, who cannot upon Examination prove themselves to exercise and industriously follow some lawful Trade or Employment, or to have some Substance sufficient for their Support and Maintenance.

VI. And be it further enacted . . . That the said Justices and other Magistrates aforesaid, shall be, . . . authorized and empowered to raise and levy, . . . to serve his Majesty in the Navy, . . . all Men who shall have offended against any Law in force at the Time of passing this Act, by virtue whereof they shall be or be liable to be deemed or adjudged to be idle and disorderly Persons, or Rogues and Vagabonds, or incorrigible Rogues, and punishable as such . . . and also all Men who shall be adjudged to be guilty of illegal landing, running, unshipping, concealing, receiving, or carrying prohibited Goods, Wares, or Merchandizes, or any Foreign Goods liable to the Payment of the Duties of Customs or Excise, the same Duties not having been paid or secured, or of embezzling any Naval Stores, the Property of his Majesty, or of aiding or assisting in any of the offences before mentioned; and all such Persons, being thereof convicted . . . shall be dealt with according to the Directions of this Act, . . . in lieu of such Penalty, or any Punishment, to which such Persons may be liable by any Law now in force.

[§ VII. Magistrates to issue Warrants to constables, etc. to search for such persons, and the officers of the Navy to pay the constables and other Parish officers for each man accepted.]

VIII. Provided always, . . . That no Person shall be admitted into His Majesty's Service, by virtue of this Act, who is not such an able-bodied Man as is fit to serve his Majesty, and is free from Ruptures, and every other Distemper, or bodily Weakness or Infirmity, which may render him unfit to perform his Duty in the Navy, nor any Person who, in the Opinion of the Officer or Officers appointed by the said Commissioners of the Admiralty to regulate this Service, shall appear to be under the Age of sixteen Years, or above the Age of fifty Years.

IX. Provided also, . . . That this Act, . . . shall not extend to oblige any Person to enter into the Service of the Navy, who shall make it appear, to the Satisfaction of the Justices, or Magistrates before whom such Person shall be produced, that he hath any Vote in the Election of any Member or Members to serve in Parliament

for any County, City, Borough, Town, Cinque Port, or Place, within the Kingdom of *Great Britain.*

[§ XI. Provision for appeal by man delivered to the Navy, if lodged within four days; details about his discharge if appeal succeeds.]

XXIII. And, to encourage such Inhabitants and others to assist in discovering and apprehending such Persons described as aforesaid, . . . if any Person shall discover and give Information of any able-bodied Man or Men fit to serve his Majesty, within any of the Descriptions of this Act, so that he or they shall be apprehended and brought before the Justices or Magistrates aforesaid, and ordered to be entered in his Majesty's Service, such Person, for every Man so discovered and entered, shall receive . . . the Sum of ten Shillings. . . .

[§§ XXIV-XXVII. Actions to lie against persons, including Justices, for injury done in connection with this Act, but treble costs for defence if prosecution fails.]

VII

TREASONABLE AND SEDITIOUS PRACTICES ACT, 1795[1]

36 Geo. III, c. 7.

'We, your Majesty's most dutiful and loyal Subjects, . . . duly considering the daring Outrages offered to your Majesty's most Sacred Person, in your passage to and from your Parliament at the Opening of this present Session, and also the continued Attempts of wicked and evil disposed Persons to disturb the Tranquillity of this your Majesty's Kingdom, particularly by the Multitude of seditious Pamphlets and Speeches daily printed, published, and dispersed, . . . tending to the Overthrow of the Laws, Government, and happy Constitution of these Realms, have judged that it is become necessary to provide a further Remedy against all such treasonable and seditious Practices and Attempts: . . . calling to Mind the good and wholesome Provisions which have at different Times been made by the Wisdom of Parliament for the averting such Dangers, and more especially for the Security and Preservation of the Persons of the Sovereigns of these Realms,' . . . be it enacted . . . That if any Person or Persons whatsoever, after the Day of the passing of this Act, during the natural Life of our most Gracious Sovereign Lord the King, . . . and until the End of the next Session of Parliament

[1] Vol. I, Sect. A, No. III, p. 5, and No. XXIV, p. 87; also Vol. II, Sect. A, No. V, p. 7.

after a Demise of the Crown, shall, within the Realm or without, compass, imagine, invent, devise, or intend Death or Destruction, or any bodily Harm tending to Death or Destruction, Maim, or Wounding, Imprisonment or Restraint, of the Person of the same our Sovereign Lord the King, his Heirs and Successors, or to deprive or depose him or them from the Style, Honour, or Kingly Name, of the Imperial Crown of this Realm, or of any other of his Majesty's Dominions or Countries; or to levy War against his Majesty, his Heirs and Successors, within this Realm, in order, by Force or Constraint, to compel him or them to change his or their Measures or Counsels, or in order to put any Force or Constraint upon, or to intimidate, or overawe, both Houses, or either House of Parliament; or to move or stir any Foreigner or Stranger with Force to invade this Realm, or any other his Majesty's Dominions or Countries, under the Obeisance of his Majesty, his Heirs and Successors; and such Compassings, Imaginations, Inventions, Devices, or Intentions, or any of them, shall express, utter, or declare, by publishing any Printing or Writing, or by any overt Act or Deed; being legally convicted thereof, upon the Oaths of two lawful and credible Witnesses, upon Trial, or otherwise convicted or attainted by due Course of Law, then every such Person and Persons, so as aforesaid offending, shall be deemed, declared and adjudged, to be a Traitor and Traitors, and shall suffer Pains of Death, and also lose and forfeit as in Cases of High Treason.

II. And be it further enacted, . . . That if any Person or Persons within that Part of *Great Britain* called *England*, at any Time from and after the Day of the passing of this Act, during three Years from the Day of Passing this Act, and until the End of the then next Session of Parliament, shall maliciously and advisedly, by Writing, Printing, Preaching, or other Speaking, express, publish, utter, or declare any Words or Sentences to excite or stir up the People to Hatred or Contempt of the Person of his Majesty, his Heirs or Successors, or the Government and Constitution of this Realm, as by Law established, then every such Person and Persons, being thereof legally convicted, shall be liable to such Punishment as may by Law be inflicted in Cases of High Misdemeanors; . . . [for a second Offence may either be punished as for High Misdemeanor, or banished, or transported for seven years.] . . .

III. And be it further enacted, That if any Offender or Offenders, who shall be so ordered by any such Court as aforesaid to be banished the Realm, or transported beyond the Seas, . . . shall be afterwards at large within any Part of the Kingdom of *Great Britain*, without some lawful Cause, before the Expiration of the Term for which such Offender or Offenders shall have been ordered to be

banished, or transported beyond the Seas as aforesaid, every such offender . . . shall suffer Death, as in Cases of Felony without Benefit of Clergy; . . . .

IV. Provided always, That no Person or Persons, by virtue of this present Act, shall for any Misdemeanor incur any the Penalties herein-before mentioned, unless he, she, or they be prosecuted within six Calendar Months next after the offence committed, . . . [and the Prosecution brought to trial without delay, unless in open Court it is held that there are special grounds for delay, or unless it is an Outlawry case] . . .; and that no Person shall, upon Trial, be convicted by virtue of this Act, for any Misdemeanor, but by the Oaths of two credible Witnesses.

[§ V. Persons accused of treason to have benefit of 7 Will. III, c. 3, and 7 Ann, c. 11, for such trials.[1]]

VI. Provided also, and be it enacted, That nothing in this Act contained shall extend, or be construed to extend, to prevent or affect any Prosecution by Information or Indictment at the Common Law, for any Offence within the Provisions of this Act, unless the Party shall have been first prosecuted under this Act.

VIII

THE SEDITIOUS MEETINGS AND ASSEMBLIES ACT, 1795[2]

36 Geo. III, c. 8.

'Whereas Assemblies of divers Persons, collected for the Purpose or under the Pretext of deliberating on Public Grievances, and of agreeing on Petitions, Complaints, Remonstrances, Declarations, or other Addresses, to the King, or to both Houses, or either House of Parliament, have of late been made use of to serve the Ends of factious and seditious Persons, to the great Danger of the Public Peace, and may become the Means of producing Confusion and Calamities in the Nation:' Be it enacted . . . That no Meeting, of any Description of Persons, exceeding the Number of fifty Persons, (other than and except any Meeting of any County, Riding, or Division, called by the Lord Lieutenant, Custos Rotulorum, or Sheriff, of such County; or a Meeting called by the Convener of any County or Stewartry in that part of *Great Britain* called *Scotland*; or any Meeting called by two or more Justices of the Peace of the

[1] Vol. I, Sect. A, No. XXX, p. 80; the former statute is 7 & 8 Will. III in the Statutes of the Realm.

[2] Vol. I, Sect. A, No. V, p. 9.

County or Place where such Meeting shall be holden; . . . or any Meeting called by the major Part of the Grand Jury of the County, or of the Division of the County, where such Meeting shall be holden, at their General Assizes or General Quarter Sessions of the Peace; or any meeting of any City, or Borough, or Town Corporate, called by the Mayor or other Head Officer . . . or any Meeting of any Ward or Division of any City or Town Corporate, called by the Alderman or other Head Officer of such Ward or Division; or any Meeting of any Corporate Body,) shall be holden, for the Purpose or on the Pretext of considering of or preparing any Petition, Complaint, Remonstrance, or Declaration, or other Address to the King, or to both Houses, or either House of Parliament, for alteration of Matters established in Church or State, or for the Purpose or on the Pretext of deliberating upon any Grievance in Church or State, unless Notice of the Intention to hold such Meeting, and of the Time and Place when and where the same shall be proposed to be holden, and of the Purpose for which the same shall be proposed to be holden, shall be given, in the Names of seven Persons at the least, being Householders . . . [who must be local residents and who must be described in the notice] . . . which Notice shall be given by public Advertisement in some public Newspaper usually circulated in the County and Division where such Meeting shall be holden . . . the Authority to insert such Notice shall be signed by seven Persons at the least, being Householders . . . and shall be delivered to the Person required to insert the same in any such Newspaper as aforesaid; which Person shall . . . at any time after such Notice shall have been inserted in such Paper, and within fourteen Days after the Day on which such Meeting shall be had, produce such Notice and Authority, and cause a true Copy thereof (if required) to be delivered to any Justice of the Peace for the County, City, Town, or Place, where such Person shall reside, or where such Newspaper shall be printed, . . . [Penalty of £50 for inserting Notice without Authority or for refusing to produce it if required to do so by a Justice] . . .

[§ III. Meetings without notice to be deemed unlawful Assemblies.]

IV. And be it enacted, . . . That if any Persons, exceeding the Number of fifty, being assembled contrary to the Provisions hereinbefore contained, and being required or commanded by any one or more Justice or Justices of the Peace, or by the Sheriff of the County or his Under Sheriff, or by the Mayor or other Head Officer or Justice of the Peace of any City or Town Corporate, . . . by Proclamation to be made in the Kings Name, . . . to disperse themselves, shall, to the Number of twelve, or more, notwithstanding

such Proclamation made, remain or continue together by the Space of one Hour after such Command or Request made by Proclamation, that then such continuing together to the Number of twelve or more, . . . shall be adjudged Felony without Benefit of Clergy, and the Offenders therein shall be adjudged Felons, and shall suffer Death, as in case of Felony without Benefit of Clergy.

VI. And be it further enacted, . . . That in case any Meeting shall be holden, in pursuance of any such Notice as aforesaid, and the Purpose for which the same shall in such Notice have been declared to be holden, or any Matter which shall be in such Notice proposed to be propounded or deliberated upon at such Meeting, shall purport that any Matter or Thing by Law established may be altered otherwise than by the Authority of the King, Lords, and Commons, in Parliament assembled, or shall tend to incite or stir up the People to Hatred or Contempt of the Person of his Majesty, his Heirs or Successors, or of the Government and Constitution of this Realm, as by Law established, it shall be lawful for one or more Justice . . . [or other officers, as in § IV] . . . by Proclamation, to require or command the Persons there assembled to disperse themselves; . . . [if twelve or more remain for an hour in defiance, they suffer death as Felons—as in § IV]. . . .

VII. And be it further enacted, . . . That if any one or more Justice or Justices of the Peace, present at any Meeting requiring such Notice as aforesaid, shall think fit to order any Person or Persons who shall at such Meeting proceed to propound or maintain any Proposition for altering any Thing by Law established, otherwise than by the Authority of the King, Lords, and Commons, in Parliament assembled, . . . [or stir up hatred against King or Constitution], . . . to be taken into Custody, to be dealt with according to Law; and in case the said Justice or Justices, or any of them, or any Peace Officer acting under their or any of their Orders, shall be obstructed in taking into Custody, any Person or Persons so ordered to be taken into Custody, then and in such Case it shall be lawful for any such Justice or Justices thereupon to make, or cause to be made, such Proclamation as aforesaid, in Manner aforesaid; . . . [twelve or more disobeying shall suffer death as felons]. . . .

VIII. And be it further enacted, . . . That every Justice and Justices of the Peace, Sheriff, Under Sheriff, Mayor, and other Head Officer aforesaid, is and are hereby authorised and empowered, on Notice or Knowledge of any such Meeting or Assembly as is hereinbefore mentioned, to resort to the Place where such Meeting or Assembly shall be, or shall be intended to be holden, or to any Part thereof, and there to do, or order or cause to be done, all such Acts, Matters, and Things, as the Case may require, . . .

and it shall be lawful for all and every Justices of the Peace, Sheriff, Under Sheriff, Mayor, and other Head Officer as aforesaid, to take and require the Assistance of any Number of Constables or other Officers of the Peace, within their respective Districts, . . . to give such Assistance as shall be necessary for the due Execution of this Act.

[§ X. Death for obstructing magistrates, or for continuing together after Proclamation would have been made but for such obstruction.]

[§ XI. Corresponding powers and provisions for Scotland.]

XII. 'And whereas certain Houses, Rooms, or Places, within the Cities of *London* and *Westminster*, and in the Neighbourhood thereof, and in other Places, have of late been frequently used for the Purpose of delivering Lectures and Discourses on and concerning supposed public Grievances, . . . to stir up Hatred and Contempt of his Majesty's Royal Person, and of the Government and Constitution of this Realm as by Law established:' Be it therefore enacted, That every House, Room, Field, or other Place where Lectures or Discourses shall be delivered, or public Debates shall be had on or concerning any supposed public Grievance, or any Matters relating to the Laws, Constitution, Government or Policy of these Kingdoms, for the Purpose of raising or collecting Money, or any other valuable Thing, from the Persons admitted, . . . unless the Opening or Using of such House, Room, Field, or Place, shall have been previously licensed . . . [as in § XVI] . . . shall be deemed a disorderly House or Place, and the Person by whom such House, Room, Field, or Place, shall be opened or used for the Purpose aforesaid, shall forfeit the Sum of one hundred Pounds for every Day or Time that such House, Room, Field, or Place, shall be opened or used as aforesaid, to such Person as will sue for the same, and be otherwise punished as the Law directs in Cases of disorderly Houses; and every Person managing or conducting the Proceedings, . . . [or lecturing, or debating, or paying or receiving money or tickets] . . . shall for every such Offence forfeit the sum of one hundred Pounds to such Person as will sue for the same.

XIV. And be it further enacted, . . . That is shall be lawful for any Justice or Justices of the Peace, or Chief Magistrate respectively, of any County, City, Borough, or Place, who shall by Information upon Oath, have reason to suspect that any House, Room, Field, or Place, or any Parts or Part thereof, are or is opened or used for the purpose of delivering Lectures or Discourses, or for public Debate, contrary to the Provisions of this Act, to go to such House, Room, or Place, and demand to be admitted therein; and in case such Justice or Justices, or other Magistrate, shall be refused

Admittance . . . the same shall be deemed a disorderly House or Place, within the Intent and Meaning of this Act; . . . and every Person refusing such Admittance shall forfeit the Sum of one hundred Pounds to any Person who shall sue for the same.

[§ XVI. Two or more Justices to have the power to issue annual licences for opening rooms for paid lectures or discussions.]

XVIII. Provided also, That nothing in this Act contained shall be construed to extend to any Lectures or Discourses to be delivered in any of the Universities of these Kingdoms, by any Member thereof, or any Person authorised by the Chancellor, Vice Chancellor, or other proper Officers of such Universities respectively.

[§ XIX. Schoolmasters, while teaching only those confided to their care, also exempt.]

IX

DEMISE OF THE CROWN ACT,[1] 1797

37 Geo. III, c. 127.

[§ I fixes 14 days as time to elapse from Proclamation to meeting of Parliament.]

[§ II repeals 6 Ann, c. 7, s. 6.]

III. And be it further enacted by the Authority aforesaid, That in case of the Demise of his Majesty, his Heirs or Successors, subsequent to the Dissolution or Expiration of a Parliament, and before the Day appointed by the Writs of Summons for assembling a new Parliament, then, and in such Case, the last preceding Parliament shall immediately convene and sit at *Westminster*, and be a Parliament, to continue for and during the Space of six Months, and no longer, to all Intents and Purposes as if the same Parliament had not been dissolved or expired, but subject to be sooner prorogued or dissolved by the Person to whom the Crown of this Realm of *Great Britain* shall come, remain, and be, according to the Acts for limiting and settling the Succession to the same.

[§ V. In case of the King's demise on or after the day appointed for the assembling of a new Parliament, such new Parliament to meet.]

[1] See Vol. I, Sect. A, No. XXXII, p. 84, and No. XLI, p. 111; also Vol. II, Sect. A, No. XL, p. 136.

X

NEWSPAPER PUBLICATION ACT, 1798[1]

38 Geo. III, c. 78.

'Whereas it is expedient that Regulations should be provided touching Publications of the Nature hereinafter mentioned:' be it therefore enacted . . . That no Person shall, after forty Days from the passing of this Act, print or publish, or cause to be printed or published, any Newspaper or other Paper, containing public News or Intelligence, or serving the Purpose of a Newspaper, until an Affidavit or Affidavits, or Affirmation or Affirmations, made and signed as hereinafter mentioned, shall be delivered to the Commissioners for managing his Majesty's Stamp Duties, at their Head Office, or to some of their Officer or Officers in the respective Towns, and at the respective Offices which shall be named and appointed by the said Commissioners, for the Purpose of receiving such Affidavits or Affirmations, (but which shall not be required to be upon stamped Paper,) containing the several Matters and Things hereinafter for that Purpose specified and mentioned.

II. And be it further enacted, That such Affidavit . . ., shall specify and set forth the real and true Names, Additions, Descriptions, and Places of Abode of all and every Person and Persons, who is and are intended to be the Printer and Printers, Publisher and Publishers, of the Newspaper or other Paper mentioned in such Affidavit . . . and of all the Proprietors of the same, if the Number of such Proprietors, exclusive of the Printer and Publisher, does not exceed two, and in case the same shall exceed such Number, then of two of such Proprietors, exclusive of the Printer and Publisher, and also the Amount of the proportional Shares of such Proprietors in the Property of the Newspaper or other Paper, and the true Description of the House or Building wherein any such Paper is intended to be printed, and likewise the Title of such Paper.

[§ VII. Penalty for failure to comply with above provisions £100 for each occasion.]

[§ X. Names and addresses of printers and publishers to appear in every newspaper, and every such person to be held responsible for printing and publishing wilfully and knowingly unless he can prove the contrary.]

[§ XIV. A signed copy of every newspaper to be delivered to the Commissioners of Stamps and to be available for legal proceedings.]

XVIII. And be it further enacted, That if any Person shall knowingly and wilfully print or publish, or cause to be printed or

[1] Cf. Vol. I, Sect. A, No. XII, p. 29.

published, any Newspaper, or other such Paper as aforesaid, the same not being printed upon Paper duly stamped according to Law, he shall forfeit and pay, over and above all other Penalties recoverable by Law, the Sum of twenty Pounds for every such Newspaper, . . .

[§ XIX. Penalty of £20 for each copy of an unstamped newspaper that any person may have in his possession.]

XXX. And be it further enacted, That no Order or Conviction made in pursuance of this Act by any Justice of the Peace shall be removed by *Certiorari*, Advocation or Suspension, out of the County, Riding, Stewartry, or Place, wherein such Order or Conviction shall be made, into any Court whatever; and that no Writ of *Certiorari*, Advocation, or Suspension shall supersede Execution, or other Proceedings upon any such Order or Conviction, but that Execution and other Proceedings shall be had thereupon, any such Writ or Writs, or Allowance thereof, notwithstanding.

[§ XXXI. Only the sections dealing with printing or publishing on unstamped paper, the arrest of such offenders, the discovery of them, or taking such papers out of Great Britain, apply to Scotland.]

XI

UNLAWFUL COMBINATIONS AND CONFEDERACIES ACT, 1799

39 Geo. III, c. 79.

'Whereas a traitorous Conspiracy has long been carried on, in conjunction with the Persons from Time to Time exercising the Powers of Government in France, to overturn the Laws, Constitution, and Government, and every existing Establishment, Civil and Ecclesiastical, both in *Great Britain* and *Ireland*, and to dissolve the Connection between the two Kingdoms, so necessary to the Security and Prosperity of both: And whereas, in pursuance of such Design, and in order to carry the same into Effect, divers Societies have been of late Years instituted in this Kingdom, and in the Kingdom of *Ireland*, of a new and dangerous Nature, inconsistent with Publick Tranquillity, and with the Existence of regular Government, particularly certain Societies calling themselves *Societies of United Englishmen*, *United Scotsmen*, *United Britons*, *United Irishmen*, and *The London Corresponding Society*: And whereas the Members of many such Societies have taken unlawful Oaths

and Engagements of Fidelity and Secrecy, and used secret Signs, and appointed Committees, Secretaries, and other Officers, in a secret Manner; and many of such Societies are composed of different Divisions, Branches, or Parts, which communicate with each other by Secretaries, Delegates, or otherwise, and by means thereof maintain an Influence over large Bodies of Men, and delude many ignorant and unwary Persons into the Commission of Acts highly criminal: And whereas it is expedient and necessary that all such Societies as aforesaid, and all Societies of the like Nature, should be utterly suppressed and prohibited, as unlawful Combinations and Confederacies, highly dangerous to the Peace and Tranquillity of these Kingdoms and to the Constitution of the Government thereof, as by Law established: ' Be it enacted . . . That from and after the passing of this Act, all the said Societies . . . are hereby utterly suppressed and prohibited, as being unlawful Combinations and Confederacies against the Government of our Sovereign Lord the King, and against the Peace and Security of his Majesty's liege Subjects.

II. And be it further enacted, . . . That . . . Societies, now established, or hereafter to be established, . . . the Members whereof shall, according to the Rules thereof, or to any Provision or Agreement for that Purpose, be required or admitted to take any Oath . . . not required or authorized by law . . . and every Society, of which the Names of the Members or of any of them, shall be kept secret from the Society at large, or which shall have any Committee or select Body so chosen or appointed, that the Members constituting the same shall not be known by the Society at large to be Members of such Committee or select Body, . . . and every Society which shall be composed of different Divisions or Branches, or of different Parts, acting in any Manner separately or distinct from each other, or of which any Part shall have any separate or distinct President, . . . [etc.] . . . shall be deemed and taken to be unlawful Combinations and Confederacies; and every Person who, from and after the passing of this Act, shall become a Member of any such Society, or who, being a Member of any such Society at the passing of this Act, shall afterwards act as a Member thereof; and every Person who, after the passing of this Act, shall directly or indirectly maintain Correspondence or Intercourse with any such Society, or with any Division, Branch, Committee, or other select Body, President, Treasurer, Secretary, Delegate, or other Officer, or Member thereof as such, or who shall, by Contribution of Money or otherwise, aid, abet, or support such Society, or any Members or Officers thereof as such; shall be deemed guilty of an unlawful Combination and Confederacy.

III. Provided always nevertheless, and be it enacted, That nothing herein contained shall extend to any Declaration to be taken, subscribed, or assented to by the Members of any Society, in case the Form of such Declaration shall have been first approved and subscribed by two or more of his Majesty's Justices of the Peace for the County, Stewartry, Riding, Division, or Place, where such Society shall ordinarily assemble, and shall have been registered with the Clerk of the Peace, or his Deputy, for such County . . . [such licence to be subject to review at the General Session of the Justices]. . . .

V. 'And whereas certain Societies have been long accustomed to be holden in this Kingdom under the Denomination of *Lodges of Free Masons*, the Meetings whereof have been in great Measure directed to charitable Purposes;' be it therefore enacted, That nothing in this Act shall extend to the Meetings of any such Society or Lodge which shall, before the passing of this Act, have been usually holden under the said Denomination and in conformity to the Rules prevailing among the said Societies of Free Masons. . . .

VIII. And be it further enacted, That every Person who, at any Time after the passing of this Act, shall in Breach of the Provisions thereof, be guilty of any such unlawful Combination and Confederacy, as in this Act is described, shall and may be proceeded against for such Offence in a summary Way, either before one or more Justice or Justices of the Peace . . . or by Indictment in the Court of Justiciary. . . . [penalty, £20 or three months' imprisonment if prosecuted before Justices: if indicted, seven years' transportation or two years' imprisonment].

[§§ IX-XXXIX. Further details about meetings and publications.]

XII

AN ACT FOR THE UNION WITH IRELAND,[1] 1800

39 & 40 Geo. III, c. 67.

'Whereas in pursuance of his Majesty's most gracious Recommendation to the two Houses of Parliament in *Great Britain* and *Ireland* respectively, to consider of such Measures as might best tend to strengthen and consolidate the Connection between the two Kingdoms, the two Houses of the Parliament of *Great Britain* and

[1] See also Vol. I, Sect. A, Nos. LXI and LXIII, pp. 147, 150; cf. Vol. I, Sect. A, No. XXXIX, p. 98. See also Vol. II, Sect. A, No. XLIV, p. 145.

the two Houses of the Parliament of *Ireland* have severally agreed and resolved, that, in order to promote and secure the essential Interests of *Great Britain* and *Ireland*, and to consolidate the Strength, Power, and Resources of the *British* Empire, it will be advisable to concur in such Measures as may best tend to unite the two Kingdoms of *Great Britain* and *Ireland* into one Kingdom, in such Manner, and on such Terms and Conditions, as may be established by the Acts of the respective Parliaments of *Great Britain* and *Ireland*.

'And whereas, in furtherance of the same Resolution, both Houses of the said two Parliaments respectively have likewise agreed upon certain Articles for effectuating and establishing the said Purposes, in the Tenor following:'

ARTICLE FIRST. That it be the first Article of the Union of the Kingdoms of *Great Britain* and *Ireland*, that the said Kingdoms of *Great Britain* and *Ireland* shall, upon the first Day of *January* that shall be in the Year of our Lord one thousand eight hundred and one, and for ever after, be united into one Kingdom, by the Name of *The United Kingdom of Great Britain and Ireland*; and that the Royal Stile and Titles appertaining to the Imperial Crown of the said United Kingdom and its Dependencies; and also the Ensigns, Armorial Flags and Banners thereof, shall be such as his Majesty, by his Royal Proclamation under the Great Seal of the United Kingdom, shall be pleased to appoint.

ARTICLE SECOND. That it be the second Article of Union, that the Succession to the Imperial Crown of the said United Kingdom, and of the Dominions thereunto belonging, shall continue limited and settled, in the same Manner as the Succession to the Imperial Crown of the said United Kingdoms of *Great Britain* and *Ireland* now stands limited and settled, according to the existing Laws, and to the Terms of Union between *England* and *Scotland*.

ARTICLE THIRD. That it be the third Article of Union, that the said United Kingdom be represented in one and the same Parliament, to be stiled *The Parliament of the United Kingdom of Great Britain and Ireland*.

ARTICLE FOURTH. That it be the fourth Article of Union, that four Lords Spiritual of *Ireland* by Rotation of Sessions, and twenty-eight Lords Temporal of *Ireland* elected for Life by the Peers of *Ireland*, shall be the Number to sit and vote on the Part of *Ireland* in the House of Lords of the Parliament of the United Kingdom; and one hundred Commoners (two for each County of *Ireland*, two for the City of *Dublin*, two for the City of *Cork*, one for the University of *Trinity College*, and one for each of the thirty-one most considerable Cities, Towns, and Boroughs) be the Number to sit

and vote on the Part of *Ireland* in the House of Commons of the Parliament of the United Kingdom:

That such Act as shall be passed in the Parliament of *Ireland* previous to the Union, to regulate the Mode by which the Lords Spiritual and Temporal, and the Commons, to serve in the Parliament of the United Kingdom on the Part of *Ireland*, shall be summoned and returned to the said Parliament, shall be considered as forming Part of the Treaty of Union, and shall be incorporated in the Acts of the respective Parliaments by which the said Union shall be ratified and established:

That all Questions touching the Rotation or Election of the Lords Spiritual or Temporal of *Ireland* to sit in the Parliament of the United Kingdom, shall be decided by the House of Lords thereof; and whenever, by reason of an Equality of Votes in the Election of any such Lords Temporal, a complete Election shall not be made according to the true Intent of this Article, the Names of those Peers for whom such Equality of Votes shall be so given, shall be written on Pieces of Paper of a similar Form, and shall be put into a Glass, by the Clerk of the Parliaments at the Table of the House of Lords, whilst the House is sitting; and the Peer or Peers whose Name or Names shall be first drawn out by the Clerk of the Parliaments, shall be deemed the Peer or Peers elected, as the Case may be:

That any Person holding any Peerage in *Ireland* now subsisting, or hereafter to be created, shall not thereby be disqualified from being elected to serve, if he shall so think fit, . . . for any County, City, or Borough of *Great Britain*, in the House of Commons of the United Kingdom, unless he have been previously elected as above, to sit in the House of Lords of the United Kingdom; but that so long as such Peer of *Ireland* shall so continue to be a Member of the House of Commons, he shall not be entitled to the Privilege of Peerage, nor be capable of being elected to serve as a Peer on the Part of *Ireland*, or of voting at any such Election; and that he shall be liable to be sued, indicted, proceeded against, and tried as a Commoner, for any Offence with which he may be charged:

That it shall be lawful for his Majesty, his Heirs, and Successors, to create Peers of that part of the United Kingdom called *Ireland*, and to make Promotions in the Peerage thereof after the Union; provided that no new Creation of any such Peers shall take place after the Union until three of the Peerages of *Ireland*, which shall have been existing at the Time of the Union, shall have become extinct; and upon such Extinction of three Peerages, that it shall be lawful for his Majesty, his Heirs and Successors, to create one Peer of

that Part of the United Kingdom called *Ireland*; and in like Manner so often as three Peerages of that Part of the United Kingdom called *Ireland* shall become extinct, it shall be lawful for his Majesty, his Heirs and Successors, to create one other Peer of the said Part of the United Kingdom; and if it shall happen that the Peers of that Part of the United Kingdom called *Ireland*, shall, by Extinction of Peerages, or otherwise, be reduced to the Number of One Hundred, exclusive of all such Peers of that Part of the United Kingdom called *Ireland*, as shall hold any Peerage of *Great Britain* subsisting at the Time of the Union, or of the United Kingdom created since the Union, by which such Peers shall be entitled to an Hereditary Seat in the House of Lords of the United Kingdom, then and in that case it shall and may be lawful for his Majesty, his Heirs and Successors, to create one Peer of that Part of the United Kingdom called *Ireland* as often as any one of such One Hundred Peerages shall fail by Extinction, or as often as any one Peer of that Part of the United Kingdom called *Ireland* shall become entitled, by Descent or Creation, to an Hereditary Seat in the House of Lords of the United Kingdom; it being the true Intent and Meaning of this Article, that at all Times after the Union it shall and may be lawful for his Majesty, his Heirs and Successors, to keep up the Peerage of that Part of the United Kingdom called *Ireland* to the Number of one hundred over and above the Number of such of the said Peers as shall be entitled, by Descent or Creation, to an Hereditary Seat in the House of Lords of the United Kingdom:

. . . [Peerages in Abeyance to be deemed existing Peerages: and no Peerage to be deemed extinct but on default of claim for a year after the death of the last possessor. If a claim be made after that period and allowed by the House of Lords, and if a new creation has taken place in the interval, then no new right of creation to accrue to the King on the next extinction of a Peerage.] . . .

That all Questions touching the Election of Members to sit on the Part of *Ireland* in the House of Commons of the United Kingdom shall be heard and decided in the same Manner as Questions touching such Elections in *Great Britain* now are, or at any Time hereafter shall by Law be heard and decided; subject nevertheless to such particular Regulations in respect of Ireland as, from local Circumstances, the Parliament of the United Kingdom may from Time to Time deem expedient:

That the Qualifications [1] in respect of Property of the Members elected on the Part of *Ireland* to sit in the House of Commons of the United Kingdom, shall be respectively the same as are now provided by Law in the Cases of Elections for Counties and Cities

[1] See Vol. I, Sect. A, No. XLII, p. 117.

and Boroughs respectively in that Part of *Great Britain* called *England*, unless any other Provision shall hereafter be made in that respect by Act of Parliament of the United Kingdom:

That when his Majesty, his Heirs or Successors, shall declare his, her, or their Pleasure for holding the first or any subsequent Parliament of the United Kingdom, a Proclamation shall issue, under the Great Seal of the United Kingdom, to cause the Lords Spiritual and Temporal, and Commons, who are to serve in the Parliament thereof on the Part of *Ireland*, to be returned in such Manner as by any Act of this present Session of the Parliament of *Ireland* shall be provided; and that the Lords Spiritual and Temporal and Commons of *Great Britain* shall, together with the Lords Spiritual and Temporal and Commons so returned as aforesaid on the Part of *Ireland*, constitute the two Houses of the Parliament of the United Kingdom:

That if his Majesty, on or before the first Day of *January* one thousand eight hundred and one, on which Day the Union is to take place, shall declare, under the Great Seal of *Great Britain*, that it is expedient that the Lords and Commons of the present Parliament of *Great Britain* should be the Members of the respective Houses of the first Parliament of the United Kingdom on the part of *Great Britain*, then the said Lords and Commons of the present Parliament of *Great Britain* shall accordingly be the Members of the respective Houses of the first Parliament of the United Kingdom on the part of *Great Britain*; and they, together with the Lords Spiritual and Temporal and Commons, so summoned and returned as above on the Part of *Ireland*, shall be the Lords Spiritual and Temporal and Commons of the first Parliament of the United Kingdom; and such first Parliament may (in that Case) if not sooner dissolved, continue to sit so long as the present Parliament of *Great Britain* may now by Law continue to sit, if not sooner dissolved: Provided always, That until an Act shall have passed in the Parliament of the United Kingdom, providing in what Cases Persons holding Offices or Places of Profit under the Crown in *Ireland*, shall be incapable of being Members of the House of Commons of the United Kingdom, no greater Number of Members than twenty, holding such Offices or Places, as aforesaid, shall be capable of sitting in the said House of Commons of the Parliament of the United Kingdom; and if such a Number of Members shall be returned to serve in the said House as to make the whole Number of Members of the said House holding such Offices or Places as aforesaid more than twenty, then and in such Case the Seat or Places of such Members as shall last have accepted such Offices or Places shall be vacated, at the Option of such Members, so as to

reduce the Number of Members holding such Offices or Places to the Number of twenty; and no Person holding such Office or Place shall be capable of being elected or of sitting in the said House, while there are twenty Persons holding such Offices or Places sitting in the said House; and that every one of the Lords of Parliament of the United Kingdom, and every Member of the House of Commons of the United Kingdom, in the first and all succeeding Parliaments, shall, until the Parliament of the United Kingdom shall otherwise provide, take the Oaths, and make and subscribe the Declaration, and take and subscribe the Oath now by Law enjoined to be taken, made, and subscribed by the Lords and Commons of the Parliament of *Great Britain*:

That the Lords of Parliament on the Part of *Ireland*, in the House of Lords of the United Kingdom, shall at all Times have the same Privileges of Parliament which shall belong to the Lords of Parliament on the part of *Great Britain*; and the Lords Spiritual and Temporal respectively in the Part of *Ireland* shall at all times have the same Rights in respect of their sitting and voting upon the Trial of Peers, as the Lords Spiritual and Temporal respectively on the Part of *Great Britain*; and that all Lords Spiritual of *Ireland* shall have Rank and Precedency next and immediately after the Lords Spiritual of the same Rank and Degree of *Great Britain*, and shall enjoy all Privileges as fully as the Lords Spiritual of *Great Britain* do now or may hereafter enjoy the same (the Right and Privilege of sitting in the House of Lords, and the Privileges depending thereon, and particularly the Right of sitting on the Trial of Peers, excepted); and that the Persons holding any temporal peerages of *Ireland*, existing at the Time of the Union, shall, from and after the Union, have Rank and Precedency next and immediately after all Persons holding Peerages of the like Orders, and Degrees in *Great Britain*, subsisting at the Time of the Union; and that all Peerages of *Ireland* created after the Union shall have Rank and Precedency with the Peerages of the United Kingdom so created, according to the Dates of their Creations; and that all Peerages both of *Great Britain* and *Ireland*, now subsisting or hereafter to be created, shall in all other Respects, from the Date of the Union, be considered as Peerages of the United Kingdom; and that the Peers of *Ireland* shall, as Peers of the United Kingdom, be sued and tried as Peers, except as aforesaid, and shall enjoy all Privileges of Peers as fully as the Peers of *Great Britain*; the Right and Privilege of sitting in the House of Lords, and the Privileges depending thereon, and the Right of sitting on the Trial of Peers, only excepted.

ARTICLE FIFTH. That it be the Fifth Article of Union, That the

Churches of *England* and *Ireland*, as now by Law established, be united into one Protestant Episcopal Church, to be called *The United Church of England and Ireland*; and that the Doctrine, Worship, Discipline, and Government of the said United Church shall be, and shall remain in full force for ever, as the same are now by Law established for the Church of *England*; and that the Continuance and Preservation of the said United Church, as the established Church of *England* and *Ireland*, shall be deemed and taken to be an essential and fundamental part of the Union; and that in like Manner the Doctrine, Worship, Discipline, and Government of the Church of *Scotland*, shall remain and be preserved as the same are now established by Law, and by the Acts for the Union of the two Kingdoms of *England* and *Scotland*.

ARTICLE SIXTH. That it be the Sixth Article of Union, That his Majesty's Subjects of *Great Britain* and *Ireland* shall, from and after the first Day of *January* one thousand eight hundred and one, be entitled to the same Privileges, and be on the same Footing, as to Encouragements and Bounties on the like Articles being the Growth, Produce, or Manufacture of either Country respectively, and generally in respect of Trade and Navigation in all Ports and Places in the United Kingdom and its Dependencies; and that in all Treaties made by his Majesty, his Heirs and Successors with any Foreign Power, his Majesty's Subjects of *Ireland* shall have the same Privileges and be on the same Footing, as his Majesty's Subjects of *Great Britain*. . . .

[The remainder of this article is mainly concerned with duties, listed in a schedule, later repealed by 34 & 35 Vict., c. 116.]

ARTICLE SEVENTH. That it be the seventh Article of Union, that the Charge arising from the Payment of Interest, and the Sinking Fund for the Reduction of the Principal, of the Debt incurred in either Kingdom before the Union, shall continue to be separately defrayed by *Great Britain* and *Ireland* respectively, except as herein after provided:

That for the Space of twenty Years after the Union shall take place the Contribution of *Great Britain* and *Ireland* respectively towards the Expenditure of the United Kingdom in each Year, shall be defrayed in the Proportion of fifteen Parts for *Great Britain*, and two Parts for *Ireland*; and that at the Expiration of the said Twenty Years, the future Expenditure of the United Kingdom . . . shall be defrayed in such proportion as the Parliament of the United Kingdom shall deem just and reasonable upon a Comparison of the real Value of the Exports and Imports of the respective Countries . . . [or by comparing the consumption of certain listed articles, or by comparison of incomes. Revision to

take place at intervals of not less than seven nor more than twenty years. Many other financial details.] . . .

ARTICLE EIGHTH. That it be the eighth Article of Union, That all Laws in force at the Time of the Union, and all Courts of Civil and Ecclesiastical Jurisdiction within the respective Kingdoms, shall remain as now by Law established within the same; subject only to such Alterations and Regulations from Time to Time as Circumstances may appear to the Parliament of the United Kingdom to require; provided that all Writs of Error and Appeals, depending at the Time of the Union or hereafter to be brought, and which might now be finally decided by the House of Lords of either Kingdom, shall, from and after the Union, be finally decided by the House of Lords of the United Kingdom; and provided, that, from and after the union, there shall remain in *Ireland* an Instance Court of Admiralty, for the Determination of Causes, Civil and Maritime only, and that the Appeal from Sentences of the said Court shall be to his Majesty's Delegates in his Court of Chancery in that Part of the United Kingdom called *Ireland*; and that all Laws at present in force in either Kingdom, which shall be contrary to any of the Provisions which may be enacted by any Act for carrying these Articles into Effect, be from and after the Union repealed.

'And whereas the said Articles having, by Address of the respective Houses of Parliament in *Great Britain* and *Ireland*, been humbly laid before his Majesty, his Majesty has been graciously pleased to approve the same; and to recommend it to his two Houses of Parliament in *Great Britain* and *Ireland* to consider of such Measures as may be necessary for giving Effect to the said Articles: In order, therefore, to give full Effect and Validity to the same,' be it enacted . . . That the said foregoing recited Articles, each and every one of them, according to the true Import and Tenor thereof, be ratified, confirmed, and approved, and be and they are hereby declared to be, the Articles of the Union of *Great Britain* and *Ireland*, and the same shall be in force and have effect for ever, from the first Day of *January* which shall be in the Year of our Lord one thousand eight hundred and one; provided that before that Period an Act shall have been passed by the Parliament of *Ireland*, for carrying into effect, in the like manner, the said foregoing recited Articles. . . .

[§ II recites and makes part of the Act an Act of the Irish Parliament, regulating in great detail the mode by which the representatives of Ireland in the Parliament of the United Kingdom are to be summoned.]

III. And be it enacted, That the Great Seal of *Ireland* may, if his Majesty shall so think fit, after the Union, be used in like

Manner as before the Union, except where it is otherwise provided by the foregoing Articles, within that Part of the United Kingdom called *Ireland*; and that his Majesty may, so long as he shall think fit, continue the Privy Council of *Ireland* to be his Privy Council for that Part of the United Kingdom called *Ireland.*

XIII

CLERGY DISQUALIFICATION ACT, 1801 [1]

41 Geo. III, c. 63.

'Whereas it is expedient to remove Doubts which have arisen respecting the Eligibility of Persons in Holy Orders to sit in the House of Commons, and also to make effectual Provision for excluding them from sitting therein' be it therefore declared and enacted . . . That no Person having been ordained to the Office of Priest or Deacon, or being a Minister of the Church of *Scotland*, is or shall be capable of being elected to serve in Parliament as a Member of the House of Commons.

[§ II. The election of such Persons to be void: any person being so ordained after his election shall vacate his seat: £500 a day penalty for sitting and voting contrary to this Act: elections before the passing of this Act however shall not be void.[2] § III. No person to be liable to penalties under this Act unless the prosecution shall be begun within twelve months of the offence. § IV. Celebration of Divine Service according to the rites of the Church of England or of Scotland in a place of Public Worship to be prima facie evidence of ordination.]

[1] This Act has been amended (by allowing those who formally relinquish their Orders to sit in Parliament) by the Clerical Disabilities Act, 1870. Those in holy orders holding ecclesiastical office in Wales are also (by 4 & 5 Geo. V, c. 91, 2 (4)) exempted; but it was ruled by the Privy Council in the case of Mr. MacManaway (Hansard, 5th Series, Commons, 477, col. 1882) that those in holy orders in the Church of Ireland are not eligible. For the exclusion of Roman Catholic priests see Vol. II, Sect. A, No. XX, § IX, at p. 47. Cf. also Vol. I, Sect. A, No. IV, p. 9. Contrast disqualification in Boroughs, Vol. II, Sect. A, No. XXV, at p. 82.

[2] Thus, Horne Tooke, whose election had led to the passing of this Act, was exempted in that Parliament.

XIV

THE MILITIA ACT, 1802 [1]

42 Geo. III, c. 90.

'Whereas a respectable Military Force, under the Command of Officers possessing landed Property, within *Great Britain*, is essential to the Constitution; and the Militia, as by Law established, through its constant Readiness on short Notice for effectual service, has been found of the utmost Importance to the internal Defence of this Realm: And whereas it is necessary, for the better fulfilling the Purposes of the Institution of the Militia, that the Numbers thereof to be ratified and kept in constant Readiness for effectual Service within *Great Britain* should be augmented: And whereas the Laws now in force for regulating the Militia require Amendment; . . . and that new Provisions should be made; and it would greatly tend to the better Execution thereof if the Whole of the said Provisions were comprised in one Act of Parliament.' . . .

[§ II. H.M. shall appoint Lieutenants of the Counties who shall call out the militia yearly: Lieutenants may (with H.M.'s approval) appoint deputies: may also give commissions in Militia subject to H.M. being able to veto within fourteen days of certificate being issued.]

[§§ III-XXXVIII. Property qualification fixed for officers: numbers to be enrolled specified county by county, to be subdivided by Deputy Lieutenants and a Justice of the Peace. Constables to compile lists of eligible men; these lists are to be sent eventually to the Privy Council.]

XXXIX. And be it further enacted, That where the Number of Militia Men so fixed and settled for any County, Riding, or Place, shall be greater than the former Quota for such County, Riding, or Place, then and in every such Case, the Lieutenant for such County, Riding, or Place, together with any two or more Deputy Lieutenants, . . . shall, at a General Meeting to be holden for that Purpose, appoint what Number of Militia Men shall serve for each respective Hundred, Rape, Lathe, Wapentake, or other Division within such County, Riding, or Place; and the additional Number of Militia Men to make up the whole Number so fixed and settled as aforesaid shall be provided or chosen in the same Manner as other Militia Men are by this Act to be provided or chosen; and all the additional Men so provided or chosen as aforesaid, or their Substitutes, and also all Volunteers, shall take the Oath by this Act required to

[1] Cf. Vol. I, Sect. A, Nos. X and LIII, pp. 17 and 135; cf. also Vol. II, Sect. A, No. XXX, p. 100, and No. XLI, p. 136.

be taken, and shall be enrolled or sign their Consent to serve in the Militia, in such Manner as is directed by this Act, and in case of Refusal, shall be subject to the same Penalties as in like Cases are inflicted by this Act: Provided always, that where the Number of Militia Men so fixed and settled for any County, . . . [etc.], . . . shall be less than the former Quota of such County, . . . [etc.] . . . the said Lieutenants, . . . shall, at a General Meeting to be held for that Purpose, dismiss to their own Homes by Ballot, proportionally out of each respective Hundred, . . . [etc.], . . . so many Militia Men as shall exceed the Number so fixed and settled as aforesaid; and the several Persons so dismissed as aforesaid, shall remain liable to serve in the Militia . . . and the Names of all the Persons so dismissed as aforesaid shall be entered in a List; and the Deputy Lieutenants shall cause the Men necessary for supplying any Vacancies that may thereafter arise in the Militia of such County, Riding, or Place, to be ballotted for out of the Persons contained in any such List as aforesaid, while fit Persons can be found to supply such Vacancies . . . and whenever as soon as all Persons returned in any such List that can be found fit to supply such Vacancies as aforesaid, shall by Ballot have supplied such Vacancies as aforesaid, then and in every such Case the Men necessary for supplying such future Vacancies as may arise in such Militia, shall be raised, chosen, and ballotted for in Manner directed by this Act.

[§§ XL-XLII. Substitutes and Volunteers allowed.]

XLIII. And be it further enacted, That no Peer of this Realm, nor any Person being a commissioned Officer in his Majesty's other Forces, or in any one of his Majesty's Castles or Forts, nor any Officer on the Half Pay of the Navy, Army, or Marines, nor any non-comissioned Officer or private Man serving in any of his Majesty's other Forces, nor any commissioned Officer serving, or who has served four Years in the Militia, nor any Person being a Resident Member of either of the Universities, nor any Clergyman, nor any Teachers, licensed within the County, Riding, or Place, to teach in some separate Congregation, whose Place of Meeting shall have been duly registered within twelve Months previous to the General Meeting appointed to meet in *October* for the Purposes of this Act, nor any Constable or other Peace Officer, nor any articled Clerk, Apprentice, Seaman, or Seafaring Man, nor any Person mustered, trained, or doing Duty, or employed in any of his Majesty's Docks or Dock Yards for the Service thereof, or employed and mustered in his Majesty's Service in the Tower of *London*, *Woolwich Warren*, the several Gun Wharfs at *Portsmouth*, or at the several Powder Mills, Powder Magazines, or other Storehouses belonging to his Majesty, under the Direction of the Board of

Ordnance, nor any Person being free of the Company of Watermen of the River *Thames*,[1] nor any poor Man who has more than one Child born in Wedlock, shall be liable to serve personally, or provide a Substitute to serve in the Militia; and no Person having served personally, or by Substitute, according to the Directions of any former Act or Acts relating to the Militia, or under this Act, shall be obliged to serve again, until by Rotation it shall come to his Turn; but no Person who has served only as a Substitute or Volunteer in the Militia, shall by such Service be exempted from serving again, if he shall be chosen by Ballot.

[§ LXIV. No militiaman to enlist in army.]

LXXXIX. And be it further enacted, That, during such Time as any Militia shall be assembled for the Purpose of being trained and exercised, all the Clauses, Provisions, Matters, and Things contained in any Act of Parliament which shall then be in force for the punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters, and in the Articles of War made in pursuance of such Act, shall be in force with respect to such Militia, and to all the Officers, Non-commissioned Officers, Drummers, and private Men of the same, in all Cases whatsoever, but so that no Punishment shall extend to Life or Limb; and that it shall be lawful for the Officer commanding and present with any Detachment or Division of Militia, called out to exercise under any of the Provisions of this Act, not being under the Rank of Captain, to order, when he shall think it necessary, a Regimental Court Martial to be held for the Trial of any Offence committed by any Serjeant, Corporal, Drummer, or private Man under and during his Command. . . .

CXI. And be it further enacted, That in all Cases of actual Invasion, or upon imminent Danger thereof, and in all Cases of Rebellion or Insurrection, it shall be lawful for his Majesty (the Occasion being first communicated to Parliament, if the Parliament shall be then sitting, or declared in Council, and notified by Proclamation, if no Parliament shall be then sitting or in being) to order and direct the Lieutenants of the said several Counties, Ridings, and Places, . . . with all convenient Speed to draw out and embody all the Regiments, Battalions, and Corps of Militia, within their respective Counties, Ridings, and Places herein-before appointed to be raised and trained, or so many of them or such Part or Proportion of them, or any of them, as his Majesty shall in his Wisdom judge necessary, and in such Manner as shall be best adapted to the Circumstances of the Danger, and to put the said

[1] Cf. Vol. I, Sect. C, No. XXI, p. 316.

Forces under the Command of such General Officers as his Majesty shall be pleased to appoint, and to direct the said Forces to be led by their respective Officers into any Parts of *Great Britain*, for the repelling and Prevention of any Invasion, and for the Suppression of any Rebellion or Insurrection within *Great Britain*; and from the Time of any Regiment, Battalion, or Corps of Militia being called out and embodied as aforesaid, until the same shall be returned again to its own County, Riding, or Place, and disembodied by his Majesty's Order, the Officers, Non-commissioned Officers, Drummers, and private Men of every such Regiment, Battalion, or Corps, shall be subject to all the Provisions contained in any Act of Parliament which shall be then in Force for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters, and the Articles of War made in pursuance thereof; and all the Provisions contained in every such Act and Articles of War shall be in force with respect to the Militia, and shall extend to all the Officers, Non-commissioned Officers, Drummers, and private Men of the Militia, while embodied as aforesaid, in all Cases whatsoever.

CXII. Provided always, and be it further enacted, That neither the Whole nor any Part of the Militia directed by this Act to be raised and maintained, shall on any Account be carried or ordered to go out of *Great Britain*.

[§ CXIII. In such cases if Parliament is not sitting it must be called together within fourteen days.]

XV

AN ACT FOR RESTORING ORDER IN IRELAND, 1803 [1]

43 Geo. III, c. 117.

An Act for the suppression of Rebellion in Ireland, *and for the Protection of the Persons and Property of his Majesty's faithful Subjects there, to continue in Force until six weeks after the Commencement of the next Session of Parliament.*

'Whereas a treasonable and rebellious Spirit of Insurrection now unfortunately exists in *Ireland*, and hath broken out into Acts of open Murder and Rebellion, and Persons who may be guilty of Acts of Cruelty and Outrage in Furtherance and immediate Pro-

[1] Cf. Act of 44 Vict., c. 4 (1881), and also the Prevention of Crime Act, 1882, 45 & 46 Vict., c. 25.

secution of such Insurrection and Rebellion, and who may be taken by his Majesty's Forces to be employed for the Suppression of the same, may seek to avail themselves of the ordinary Course of the Common Law to evade the Punishment of such Crimes committed by them, whereby it has become necessary for Parliament to interpose';[1] be it therefore enacted . . . That from and after the passing of this Act, it shall and may be lawful to and for the Lord Lieutenant, or other Chief Governor or Governors of *Ireland*, from Time to Time during the Continuance of the said Rebellion, whether the ordinary Courts of Justice shall or shall not be at such Time be open, to issue his or their Orders to all Officers commanding his Majesty's Forces in *Ireland*, and to all others whom he or they shall think fit to authorize in that Behalf, to take the most vigorous and effectual Measures for suppressing the said Insurrection and Rebellion in any Part of *Ireland*, which shall appear to be necessary for the publick Safety, and for the Safety and Protection of the Persons and Properties of his Majesty's peaceable and loyal Subjects, and to punish all Persons acting, aiding, or in any manner assisting in the said Rebellion, or maliciously attacking or injuring the Persons or Properties of his Majesty's loyal Subjects, in Furtherance of the same, according to Martial Law, either by Death, or otherwise, as to them shall seem expedient . . . and to arrest and detain in Custody all Persons engaged in such Rebellion, or suspected thereof; and to cause all Persons so arrested and detained in Custody to be brought to Trial in a summary way by Courts Martial, to be assembled under such Authority as the said Lord Lieutenant, or other Chief Governor or Governors shall from Time to Time direct, . . . [Courts Martial to be of commissioned officers; not less than seven nor more than thirteen; to try those taken in open arms and those accused of " in any manner assisting the same "] . . . provided that no Sentence of Death shall be given against any Offender by such Court Martial, unless the Judgement shall pass by the Concurrence of two Thirds at least of the Officers present.

II. And be it enacted, That no Act which shall be done in pursuance of any Order which shall be so issued as aforesaid shall be questioned in his Majesty's court of King's-bench in *Ireland*, or in any other Court of the Common Law in any Part of the United Kingdom: And in order to prevent any Doubt which might arise, whether any Act alledged to have been done in conformity to any Orders so to be issued as aforesaid was so done, it shall and may be lawful to and for the said Lord Lieutenant, or other Chief Governor or Governors, to declare such Acts to have been done in Conformity to such Orders, and such declaration signified by any Writing under

[1] Cf. Wolfe Tone's case, Vol. II, Sect. C, No. III, p. 240.

the Hand of such Lord Lieutenant, or other Chief Governor or Governors, shall be a sufficient Discharge and Indemnity to all Persons concerned in any such Acts, and shall, in all Cases, be conclusive Evidence that such Acts were done in Conformity to such Orders.

[§ III. Officers and soldiers for acts so done shall be responsible to courts martial only.]

[§ IV. A sufficient return to a writ of Habeas Corpus is that the party is detained by warrant of a person authorized by the lord-lieutenant.]

[§ V. Nothing in this Act to interfere with the Royal Prerogative power " to resort to the exercise of Martial Law against open enemies or traitors," or any other powers of any other person to suppress treason or rebellion.]

[§ VI is not printed in the Statutes at large except as the summary " Continuance of Act, which may be altered this Session " ; but the Act continues in force until six weeks after the Commencement of the next Session of Parliament.]

XVI

THE REGENCY ACT, 1811[1]

51 Geo. III, c. 1.

' Whereas by reason of the severe Indisposition with which it hath pleased God to afflict the King's Most Excellent Majesty, the Personal Exercise of the Royal Authority by His Majesty is, for the present, so far interrupted, that it becomes necessary to make Provision for assisting His Majesty in the Administration and Exercise of the Royal Authority, and also for the Care of his Royal Person during the continuance of His Majesty's Indisposition, and for the Resumption of the Exercise of the Royal Authority by His Majesty ; ' 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, That His Royal Highness *George Augustus Frederick*, Prince of *Wales* shall have full Power and Authority, in the Name and on the Behalf of His Majesty, and under the Stile and Title of " *Regent of the United Kingdom of Great Britain and Ireland*," to exercise and administer the Royal power and Authority to the Crown of the United Kingdom of *Great Britain* and *Ireland* belonging, and to use, execute and perform all Authorities, Prerogatives, Acts of Government and Administration

[1] See Vol. II, Sect. B, No. VI, p. 164, for means of giving Royal assent to this Act ; cf. also Sect. B, Nos. II and III, pp. 154, 157.

of the same, which lawfully belong to the King of the said United Kingdom to use, execute and perform; subject to such Limitations, Exceptions, Regulations and Restrictions, as are hereinafter specified and contained; and all and every Act and Acts which shall be done by the said Regent, in the Name and on the Behalf of His Majesty, by virtue and in pursuance of this Act, and according to the Powers and Authorities hereby vested in him, shall have the same force and Effect to all Intents and Purposes as the like Acts would have if done by His Majesty himself, and shall to all Intents and Purposes be full and sufficient Warrant to all Persons acting under the Authority thereof; and all Persons shall yield Obedience thereto, and carry the same into Effect, in the same manner and for the same Purposes as the same Persons ought to yield Obedience to and carry into Effect the like Acts done by His Majesty himself; any Law, Course of Office, or other Matter or Thing to the contrary notwithstanding.

[§ II. Form of signature of the Regent.]

III. And be it further enacted, That when His Majesty shall by the Blessing of God be restored to such a State of Health as to be capable of resuming the Personal Exercise of his Royal Authority, and shall have declared his Royal Will and Pleasure thereupon, as hereinafter provided, all and every the Powers and Authorities given by this Act, for the Exercise and Administration of his Royal Power and Authority, . . . or for the Care of His Majesty's Royal Person, shall cease and determine; and no Act, Matter, or Thing, which, under this Act . . . might be done in the Administration of His Majesty's Royal Power and Authority . . . shall, if done after such Declaration of His Majesty's Royal Will and Pleasure, be thenceforth valid or effectual.

IV. Provided always, . . . That all Persons holding any Offices or Places, or Pensions during His Majesty's Pleasure, at the time of such Declaration, under any Appointment or Authority of the Regent, or Her Majesty, under the Provisions of this Act, shall continue to hold the same, and to use, exercise, and enjoy all the Powers, Authorities, Privileges and Emoluments thereof, notwithstanding such Declaration of the Resumption of the Royal Authority by His Majesty, unless and until His Majesty shall declare his Royal Will and Pleasure to the contrary; and all Orders, Acts of Government or Administration of His Majesty's Royal Authority, made, issued or done by the said Regent, before such Declaration, shall be and remain in full Force and Effect, until the same shall be countermanded by His Majesty.

V. Provided also, . . . That no Acts of Regal Power . . . which

might lawfully be done or executed by the King's Most Excellent Majesty, personally exercising his Royal Authority, shall, during the Continuance of the Regency by this Act established, be valid and effectual, unless done and executed in the Name and on the Behalf of His Majesty, by the Authority of the said Regent, according to the Provisions of the Act, and subject to the Limitations, Exceptions, Regulations and Restrictions hereinafter contained.

[§ VI. Regent to take three oaths: (i) Allegiance to the King; (ii) to execute duties according to this Act and for the Welfare of King and People; (iii) to maintain Presbyterian Church in Scotland.]

[§ VII. The Regent, on taking the oaths, shall subscribe the Declaration 30 Car. II. Stat. 2,[1] and produce a certificate of having taken the Sacrament.]

VIII. Provided always, . . . That until after the First Day of February One thousand eight hundred and twelve, if Parliament shall be then assembled, and shall have been sitting for Six Weeks . . . or if Parliament shall be then assembled, but shall not have been so sitting for Six Weeks, then until the Expiration of Six Weeks after the Parliament shall have been so assembled and been sitting; or if Parliament shall not then be assembled, then until the expiration of Six Weeks after Parliament shall have been assembled and sitting . . . the Regent shall not have or exercise any Power or Authority to grant, in the Name or on the Behalf of His Majesty any Rank, Title or Dignity of the Peerage, by Letters Patent, Writ of Summons, or any other manner whatever, or to summon any Person to the House of Lords by any Title to which such Person shall be the Heir Apparent, or to determine the Abeyance of any Rank, Title or Dignity of Peerage, which now is or hereafter shall be in Abeyance, in favour of any of the Coheirs thereof by Writ of Summons, or otherwise.

IX. Provided also, . . . That the said Regent shall not, until after the said First Day of *February* One thousand eight hundred and twelve, or the Expiration of such Six Weeks as aforesaid, have Power or Authority to grant, in the Name or on the Behalf of His Majesty, any Office or Employment whatever, in Reversion, or to grant for any longer Term than during His Majesty's Pleasure, any Office, Employment, Salary or Pension whatever, except such Offices and Employments in Possession for the Term of the natural Life, or during the good Behaviour of the Grantee or Grantees thereof respectively, as by Law must be so granted: Provided always, that nothing herein contained shall in any manner affect or extend to prevent or restrain the granting of any Pensions under the Provisions of . . . [The Acts 39 Geo. III, c. 110, 48 Geo. III, c. 145,

[1] Vol. I, Sect. A, No. XVII, p. 43.

40 Geo. III, c. 1 (Scotland); § x exempts pensions under 41 Geo. III, c. 96, 43 Geo. III, c. 160, and 45 Geo. III, c. 72.]

XI. And be it enacted, That nothing in this Act contained shall extend or be construed to extend to empower the said Regent, in the Name and on Behalf of His Majesty, to give the Royal Assent to any Bill or Bills in Parliament, for repealing, changing, or in any respect varying the Order and Course of Succession to the Crown of this Realm, as the same stands now established. . . .

[12 & 13 Will. III, c. 2 (the Act of Settlement),[1] 14 Car. II, c. 4 (the Act of Uniformity),[2] and 5 Anne, c. 7 (Scotland) [3] (securing the Presbyterian Church in Scotland), are here cited.]

XII. Provided also, . . . That if His said Royal Highness, *George Augustus Frederick* Prince of *Wales* shall not continue to be resident in the United Kingdom of *Great Britain* and *Ireland*, or shall at any time marry a Papist, then and in either of such cases, all the Powers and Authorities vested in His said Royal Highness by this Act, shall cease and determine.

XIII. . . . Be it therefore enacted, That the Care of his Majesty's Royal Person, and the disposing, ordering and managing of all Matters and Things relating thereto, shall be, and the same are hereby vested in the Queen's Most Excellent Majesty, during the continuance of His Majesty's Indisposition. . . .

[The remainder of the section provides in detail for the Household of George III being managed by the Queen, giving her the right to appoint to offices, except the Lord Chamberlain, the Gentlemen of the Bedchamber, the Equerries, the Captain of the Guard and the Captain of the Pensioners. She cannot dismiss those appointed by the King.]

[§§ XV and XVI. She is provided with a Council whose Members are to take an oath to give true advice about the care of the King and the resumption of his personal authority.]

[§§ XVII and XVIII. The Queen's Council may examine physicians on oath and report to the Privy Council upon the King's health.]

[§§ XIX and XX. The Queen and her Council are to notify the King's restoration to health to the Privy Council, and the King may, thereafter, cause the Privy Council to assemble in his presence.]

XXI. And . . . That if His Majesty, by the Advice of Six or more of such Privy Council so assembled, shall signify His Royal Pleasure to resume the Personal Exercise of his Royal Authority, and to issue a Proclamation declaring the same, such Proclamation shall be issued accordingly, countersigned by the said Six or more of the said Privy Council, and all the Powers and Authorities given by this Act shall from thenceforth cease and determine, and the Personal Exercise of the Royal Authority by His Majesty shall be

[1] Vol. I, Sect. A, No. XXXVI, p. 92. [2] Vol. I, Sect. A, No. XI, p. 20.
[3] Cf. Act of Union, Vol. I, Sect. A, No. XXXIX, p. 98.

and be deemed to be resumed by His Majesty, and shall be exercised by His Majesty, to all intents and purposes, as if this Act had never been made.

XXII. . . . [On the death of the Regent—or his ceasing to be Regent under the provisions of this Act—a Proclamation to be issued by the Privy Council in the King's name: on the death of the Queen the Regent to issue a Proclamation.] And in case the Parliament in being at the time of the issuing of any Proclamation declaring the Death of the Regent or of Her Majesty, or at the time of the issuing of any Proclamation for the Resumption of the Personal Exercise of the Royal Authority by His Majesty, shall then be separated, by any Adjournment or Prorogation, such Parliament shall forthwith meet and sit.

[§ XXIII provides that, on the issue of such Proclamation subsequent to a dissolution of one Parliament and before the summons of another, procedure similar to that of 37 Geo. III, c. 127, § iii[1] is to be followed: the last seven sections deal with the death of the Queen; the issue of money from the Civil List to the Queen and Royal Family; the Keeper of the Queen's Privy Purse; the care of the King's estates; and with authorizing the Regent to dispose of Droits of the Crown and Admiralty.]

XVII

HABEAS CORPUS AMENDMENT ACT,[2] 1816

56 Geo. III, c. 100.

'Whereas the Writ of *Habeas Corpus* hath been found by Experience to be an expeditious and effectual Method of restoring any Person to his Liberty, who hath been unjustly deprived thereof: And Whereas extending the Remedy of such Writ, and enforcing Obedience thereunto, and preventing Delays in the Execution thereof, will be advantageous to the Public: And Whereas the Provisions made by an Act passed in *England* in the Thirty first Year of King *Charles* the Second, intituled *An Act for the better securing the Liberty of the Subject, and for Prevention of Imprisonment beyond the Seas*, and also by an Act passed in *Ireland* in the Twenty first and Twenty second Years of His present Majesty, intituled *An Act for better securing the Liberty of the Subject*, only extend to cases of Commitment or Detainer for criminal or supposed criminal matter;' Be it therefore enacted . . . That where any Person shall be confined or restrained of his or her Liberty (otherwise than for some criminal or supposed criminal matter, and

[1] The Demise of the Crown Act, Vol. II, Sect. A, No. IX, p. 16.

[2] See Vol. I, Sect. A, No. XVIII, p. 46.

except Persons imprisoned for Debt or by Process in any civil Suit) within that Part of *Great Britain* called *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, or the Isles of *Jersey*, *Guernsey* or *Man*, it shall and may be lawful for any One of the Barons of the Exchequer, of the Degree of the Coif, as well as for any One of the Justices of One Bench or the other; and where any Person shall be so confined in *Ireland*, it shall and may be lawful for any One of the Barons of the Exchequer, or of the Justices of One Bench or the other in *Ireland*; and they are hereby required, upon Complaint made to them by or on the behalf of the Person so confined or restrained, if it shall appear by Affidavit or Affirmation (in cases where by Law an Affirmation is allowed) that there is a probable and reasonable Ground for such Complaint, to award in Vacation time, a Writ of *Habeas Corpus ad Subjiciendum*, under the Seal of such Court, whereof he or they shall then be Judges or One of the Judges, to be directed to the Person or Persons in whose Custody or Power the Party so confined or restrained shall be, returnable immediately before the Person so awarding the same, or before any other Judge of the Court under the Seal of which the said Writ issued.

[§ II makes failure to obey the writ contempt of court.]

III. And be it further enacted by the Authority aforesaid, That in all cases provided for by this Act, although the Return to any Writ of *Habeas Corpus* shall be good and sufficient in Law, it shall be lawful for the Justice or Baron before whom such Writ may be returnable, to proceed to examine into the Truth of the Facts set forth in such Return, by Affidavit or by Affirmation (in cases where an Affirmation is allowed by Law) and to do therein as to Justice shall appertain; and if such Writ shall be returned before Any One of the said Justices or Barons, and it shall appear doubtful to him on such Examination, whether the material Facts set forth in the said Return, or any of them, be true or not, in such case it shall and may be lawful for the said Justice or Baron to let to bail the said Person so confined or restrained, upon his or her entering into a Recognizance with One or more Sureties, or in case of Infancy or Coverture, or other Disability, upon Security by Recognizance, in a reasonable Sum, to appear in the Court of which the said Justice or Baron shall be a Justice or Baron, upon a Day certain in the Term following, and so from Day to Day as the Court shall require, and to abide such Order as the Court shall make in and concerning the Premises; and such Justice or Baron shall transmit into the same Court the said Writ and Return, together with such Recognizance, Affidavits and Affirmations; and thereupon it shall be lawful for

the said Court to proceed to examine into the Truth of the Facts set forth in the Return, in a summary Way by Affidavit or Affirmation (in cases where by Law Affirmation is allowed), and to order and determine touching the discharging, bailing or remanding the Party.

[§§ IV-VI. The writ to run despite local privileges ; provisions for it in vacation ; it is to extend to all Habeas Corpus Writs within 31 Car. II, c. 2.]

XVIII

A TRADE UNION ACT, 1825

6 Geo. IV, c. 129.

[§§ I and II repeal previous Acts against combination, and also the Trade Union Act of the previous session.]

III. And be it further enacted, That from and after the passing of this Act, if any Person shall by Violence to the Person or Property, or by Threats or Intimidation, or by molesting or in any way obstructing another, force or endeavour to force any Journeyman, Manufacturer, Workman or other Person hired or employed in any Manufacture, Trade or Business, to depart from his Hiring, Employment or Work, or to return his Work before the same shall be finished, or prevent or endeavour to prevent any Journeyman, Manufacturer, Workman or other Person not being hired or employed from hiring himself to, or from accepting Work or Employment from any Person or Persons ; or if any Person shall use or employ Violence to the Person or Property of another, or Threats or Intimidation, or shall molest or in any way obstruct another for the Purpose of forcing or inducing such Person to belong to any Club or Association, or to contribute to any common Fund, or to pay any Fine or Penalty, or on account of his not belonging to any particular Club or Association, or not having contributed or having refused to contribute to any common Fund, or to pay any Fine or Penalty, or on account of his not having complied or of his refusing to comply with any Rules, orders, Resolutions or Regulations made to obtain an Advance or to reduce the Rate of Wages, or to lessen or alter the Hours of working, or to decrease or alter the Quantity of Work, or to regulate the Mode of carrying on any Manufacture, Trade or Business, or the Management thereof ; or if any Person shall by violence to the Person or Property of another, or by Threats or Intimidation, or by molesting or in any way obstructing another,

force or endeavour to force any Manufacturer or Person carrying on any Trade or Business, to make any Alteration in his Mode of regulating, managing, conducting or carrying on such Manufacture, Trade or Business, or to limit the Number of his Apprentices, or the Number or Description of his Journeymen, Workmen or Servants; every Person so offending or aiding, abetting or assisting therein, being convicted thereof in Manner hereinafter mentioned, shall be imprisoned only, or shall and may be imprisoned and kept to Hard Labour, for any Time not exceeding Three Calendar Months.

IV. Provided always, and be it enacted, That this Act shall not extend to subject any Persons to Punishment, who shall meet together for the sole Purpose of consulting upon and determining the Rate of Wages or Prices, which the Persons present at such Meeting or any of them, shall require or demand for his or their Work, or the Hours or Time for which he or they shall work in any Manufacture, Trade or Business, or who shall enter into any Agreement, verbal or written, among themselves, for the Purpose of fixing the Rate of Wages or Prices which the Parties entering into such Agreement, or any of them, shall require or demand for his or their Work, or the Hours of Time for which he or they will work, in any Manufacture, Trade or Business; and that Persons so meeting for the Purposes aforesaid, or entering into any such Agreement as aforesaid, shall not be liable to any Prosecution or Penalty for so doing; any Law or Statute to the contrary notwithstanding.

V. Provided also, and be it further enacted, That this Act shall not extend to subject any Persons to Punishment who shall meet together for the sole Purpose of consulting upon the determining the Rate of Wages or Prices which the Persons present at such Meeting, or any of them, shall pay to his or their Journeymen, Workmen or Servants, for their Work, or the Hours or Time of working in any Manufacture, Trade or Business, or who shall enter into any Agreement, verbal or written, among themselves, for the Purpose of fixing the Rate of Wages or Prices, which the Parties entering into such Agreement, or any of them, shall pay to his or their Journeymen, Workmen or Servants, for their Work, or the Hours or Time of working in any Manufacture, Trade or Business; and that Persons so meeting for the Purposes aforesaid, or entering into any such Agreement as aforesaid, shall not be liable to any Prosecution or Penalty for so doing, any Law or Statute to the contrary notwithstanding.

[§§ VI-XIII details about procedure for prosecutions under this Act.]

XIX

THE REPEAL OF THE TEST AND CORPORATION ACTS, 1828

9 Geo. IV, c. 17.

'Whereas an Act[1] was passed in the Thirteenth Year of the Reign of King *Charles* the Second, intituled *An Act for the well governing and regulating of Corporations*: and Whereas another Act[2] was passed in the Twenty-fifth Year of the Reign of King *Charles* the Second, intituled *An Act for preventing Dangers which may happen from Popish Recusants*: And Whereas another Act[3] was passed in the Sixteenth Year of the Reign of King *George* the Second, intituled *An Act to indemnify Persons who have omitted to qualify themselves for Offices and Employments within the Time limited by Law, and for allowing further Time for that Purpose; and also for amending so much of an Act*[2] *made in the Twenty-fifth year of the Reign of King Charles the Second, intituled, 'An Act for preventing Dangers which may happen from Popish Recusants' as relates to the Time for receiving the Sacrament of the Lord's Supper now limited by the said Act:* And Whereas it is expedient that so much of the said several Acts of Parliament as imposes the Necessity of taking the Sacrament of the Lord's Supper according to the Rites or Usage of the Church of *England*, for the Purposes therein respectively mentioned, should be repealed:' Be it therefore enacted . . . That so much and such Parts of the said several Acts . . . as require the Person or Persons in the said Acts respectively described to take or receive the Sacrament of the Lord's Supper according to the Rites or Usage of the Church of *England*, for the several Purposes therein expressed, or to deliver a Certificate, or to make Proof of the Truth of such his or their receiving the said Sacrament in manner aforesaid, or as impose upon any such Person or Persons any Penalty, Forfeiture, Incapacity, or Disability whatsoever for or by reason of any Neglect or Omission to take or receive the said Sacrament, within the respective Periods and in the Manner in the said Acts respectively provided in that Behalf, shall, from and immediately after the passing of this Act, be and the same are hereby repealed.

II. 'And Whereas the Protestant Episcopal Church of *England*

[1] 13 Car. II, St. II, c. 1 (Vol. I, Sect. A, No. IX, p. 15).
[2] 25 Car. II, c. 2 (Vol. I, Sect. A, No. XVI, p. 39).
[3] 16 Geo. II, c. 30.

and *Ireland*, and the Doctrine, Discipline, and Government thereof, and the Protestant Presbyterian Church of *Scotland*, and the Doctrine, Discipline and Government thereof, are by the Laws of this Realm severally established, permanently and inviolably.': . . . Be it therefore enacted, That every Person who shall hereafter be placed, elected, or chosen in or to any Office of Mayor, Alderman, Recorder, Bailiff, Town Clerk, or Common Councilman, or in or to any Office of Magistracy, or Place, Trust, or Employment relating to the Government of any City, Corporation, Borough, or Cinque Port within *England* and *Wales* or the Town of *Berwick-upon-Tweed*, shall, within One Calendar Month next before or upon his Admission into any of the aforesaid Offices or Trusts, make and subscribe the Declaration following:

'I *A. B.* do solemnly and sincerely, in the Presence of God, profess, testify, and declare, upon the true Faith of a Christian, That I will never exercise any Power, Authority or Influence I may possess by virtue of the Office of to injure or weaken the Protestant Church as it is by Law established in *England*, or to disturb the said Church, or the Bishops and Clergy of the said Church, in the Possession of any Rights or Privileges to which such Church, or the said Bishops and Clergy, are or may be by Law entitled.'

III. And be it enacted, That the said Declaration shall be made and subscribed, as aforesaid, in the Presence of such Person or Persons respectively, who, by the Charters or Usages of the said respective Cities, Corporations, Boroughs, and Cinque Ports, ought to administer the Oath for the due Execution of the said Offices or Places respectively, and in default of such, in the Presence of Two Justices of the Peace of the respective Counties, Ridings, Divisions, or Franchises, wherein the said Cities, Corporations, Boroughs, and Cinque Ports are; which said Declaration shall either be entered in a Book, Roll, or other Record, to be kept for that Purpose, or shall be filed amongst the Records of the City, Corporation, Borough or Cinque Port.

IV. And be it enacted, That if any Person, placed, elected, or chosen into any of the aforesaid Offices or Places, shall omit or neglect to make and subscribe the said Declaration in manner above mentioned, such Placing, Election, or Choice shall be void. . . .

V. And be it further enacted, That every Person who shall hereafter be admitted into any Office or Employment, or who shall accept from His Majesty, His Heirs or Successors, any Patent, Grant, or Commission, and who by his Admittance into such Office or Employment or Place of Trust, or by his Acceptance of such Patent, Grant, or Commission, or by the Receipt of any Pay,

Salary, Fee, or Wages by reason thereof, would, by the Laws in force immediately before the passing of this Act have been required to take the Sacrament of the Lord's Supper according to the Rites or Usage of the Church of *England*, shall, within Six Calendar Months after his Admission to such Office, Employment, or Place of Trust, or his Acceptance of such Patent, Grant, or Commission, make and subscribe the aforesaid Declaration, or in Default thereof his Appointment to such Office, Employment or Place of Trust, and such Patent, Grant, or Commission, shall be wholly void.

VI. And be it further enacted, That the aforesaid Declaration shall be made and subscribed in His Majesty's High Court of Chancery, or in the Court of King's Bench, or at the Quarter Sessions of the County or Place where the Person so required to make the same shall reside ; and the court in which such Declaration shall be so made and subscribed shall cause the same to be preserved among the Records of the said Court.

VII. Provided always, That no Naval Officer below the Rank of Rear Admiral, and no Military Officer below the rank of Major General in the Army or Colonel in the Militia, shall be required to make or subscribe the said Declaration, in respect of his Naval or Military Commission ; and that no Commissioner of Customs, Excise, Stamps, or Taxes, or any Person holding any of the Offices concerned in the Collection, Management, or Receipt of the Revenues which are subject to the said Commissioners, or any of the Officers concerned in the Collection, Management, or Receipt of the Revenues subject to the Authority of the Postmaster General, shall be required to make or subscribe the said Declaration, in respect of their said Offices or Appointments : . . . [those abroad to make declaration within six months of their return to England]. . . .

VIII. And be it further enacted, That all Persons now in the actual Possession of any Office, Command, Place, Trust, Service, or Employment, or in the Receipt of any Pay, Salary, Fee, or Wages, in respect of or as a Qualification for which, by virtue of or under any of the before-mentioned Acts or any other Act or Acts, they respectively ought to have heretofore taken or ought hereafter to receive the said Sacrament of the Lord's Supper, shall be and are hereby confirmed in the Possession and Enjoyment of their said several Offices, . . . [despite their failure to take the Sacrament: they are indemnified from penalties] . . . ; and that no Election of or Act done or to be done by any such Person or under his Authority, and not yet avoided, shall be hereafter questioned or avoided by reason of any such Omission or Neglect ; . . .

IX. Provided nevertheless, That no Act done in the Execution of any of the Corporate or other Offices, Places, Trusts, or Com-

missions aforesaid, by any such Person omitting or neglecting as aforesaid, shall by reason thereof be void or voidable as to the Rights of any other Person not privy to such Omission or Neglect, or render such last-mentioned Person liable to any Action or Indictment.

XX

ROMAN CATHOLIC EMANCIPATION ACT, 1829

10 Geo. IV, c. 7.

'Whereas by various Acts of Parliament certain Restraints and disabilities are imposed on the Roman Catholic Subjects of His Majesty, to which other Subjects of His Majesty are not liable: and Whereas it is expedient that such Restraints and Disabilities shall be from henceforth discontinued: and Whereas by various Acts certain Oaths and Declarations, commonly called the Declaration against Transubstantiation, and the Declaration against Transubstantiation and the Invocation of Saints and the Sacrifice of the Mass, as practised in the Church of *Rome*, are or may be required to be taken, made, and subscribed by the subjects of His Majesty, as Qualifications for sitting and voting in Parliament, and for the Enjoyment of certain Offices, Franchises, and Civil Rights:' Be it enacted . . . That from and after the Commencement of this Act all such Parts of the said Acts as require the said Declarations, . . . as a Qualification for sitting and voting in Parliament, or for the Exercise or Enjoyment of any Office, Franchise, or Civil Right, be and the same are (save as hereinafter provided and excepted) hereby repealed.

II. And be it enacted, That from and after the Commencement of this Act it shall be lawful for any Person professing the Roman Catholic Religion, being a Peer, or who shall after the Commencement of this Act be returned as a Member of the House of Commons, to sit and vote in either House of Parliament respectively, being in all other respects duly qualified to sit and vote therein, upon taking and subscribing the following Oath, instead of the Oaths of Allegiance, Supremacy, and Abjuration.

'I *A. B.* do sincerely promise and swear, That I will be faithful and bear true Allegiance to His Majesty King *George* the Fourth, and will defend him to the utmost of my Power against all Con-

spiracies and Attempts whatever, which shall be made against his Person, Crown, or Dignity; and I will do my utmost Endeavour to disclose and make known to His Majesty, his Heirs and Successors, all Treasons and traitorous Conspiracies which may be formed against Him or Them: and I do faithfully promise to maintain, support, and defend, to the utmost of my Power, the Succession of the Crown, which Succession, by an Act,[1] intituled *An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject*, is and stands limited to the Princess *Sophia*, Electress of *Hanover*, and the Heirs of her Body, being Protestants; hereby utterly renouncing and abjuring any Obedience or Allegiance unto any other Person claiming or pretending a Right to the Crown of this Realm: And I do further declare, That it is not an Article of my Faith, and that I do denounce, reject, and abjure the Opinion, that Princes excommunicated or deprived by the Pope, or any other Authority of the See of *Rome*, may be deposed or murdered by their Subjects, or by any Person whatsoever: And I do declare, That I do not believe that the Pope of *Rome*, or any other Foreign Prince, Prelate, Person, State, or Potentate, hath or ought to have any Temporal or Civil Jurisdiction, Power, Superiority, or Pre-eminence, directly or indirectly, within this Realm. I do swear, That I will defend to the utmost of my power the Settlement of Property within this Realm, as established by the Laws: And I do hereby disclaim, disavow, and solemnly abjure, any Intention to subvert the present Church Establishment, as settled by Law within this Realm: And I do solemnly swear, That I will never exercise any Privilege to which I am or may become entitled, to disturb or weaken the Protestant Religion, or Protestant Government in the United Kingdom: And I do solemnly, in the presence of God, profess, testify, and declare, That I do make this Declaration, and every Part thereof, in the plain and ordinary Sense of the Words of this Oath, without any Evasion, Equivocation, or mental Reservation whatever. So help me GOD.'

. . . . . .

[§ III. The name of the sovereign for the time being to be used in the above oath.]

IV. Provided always, . . . That no Peer professing the Roman Catholic Religion, and no Person professing the Roman Catholic Religion, who shall be returned a Member of the House of Commons after the Commencement of this Act, shall be capable of sitting or voting in either House of Parliament respectively, unless he shall first take or subscribe the Oath hereinbefore appointed . . . and that any such Person professing the Roman Catholic Religion, who

[1] See Vol. I, Sect. A, No. XXXVI, p. 92.

shall sit or vote in either House of Parliament, without having first taken or subscribed, in the Manner aforesaid, the Oath in this Act, appointed and set forth, shall be subject to the same Penalties, Forfeitures, and Disabilities, and the Offence of so sitting and voting shall be followed and attended by and with the same Consequences, as are by Law enacted and provided in the case of Persons sitting or voting in either House of Parliament respectively, without the taking, making, and subscribing the Oaths and the Declaration now required by Law.

V. And be it further enacted, That it shall be lawful for Persons professing the Roman Catholic Religion to vote at Elections of members to serve in Parliament for *England* and for *Ireland*, and also to vote at the elections of Representative Peers of *Scotland* and of *Ireland*, and to be elected such Representative Peers, being in all other respects duly qualified, upon taking and subscribing the Oath hereinbefore appointed and set forth, instead of the Oaths of Allegiance, Supremacy, and Abjuration, and instead of its Declaration now by Law required . . . and instead also of such other Oath or Oaths as are now by Law required to be taken by any of His Majesty's Subjects professing the Roman Catholic Religion, and upon taking also such other Oath or Oaths as may now be lawfully tendered to any Person offering to vote at such Elections.

. . . . . .

[§ VI. Oath to be administered as former oaths.]

[§ VII. Persons administering the oath at elections to take an oath duly to administer this.]

[§ VIII deals with Scotland, repealing Acts against Popery and giving Roman Catholics the right to elect and be elected members for Scotland.]

IX. And be it further enacted, That no Person in Holy Orders in the Church of *Rome* shall be capable of being elected to serve in Parliament as a Member of the House of Commons; and if any such Person shall be elected to serve in Parliament as aforesaid, such Election shall be void; and if any Person, being elected to serve in Parliament as a Member of the House of Commons, shall, after his Election, take or receive Holy Orders in the Church of *Rome*, the Seat of such Person shall immediately become void; and if any Person shall, in any of the Cases aforesaid, presume to sit or vote as a Member of the House of Commons, he shall be subject to the same Penalties, Forfeitures, and Disabilities as are enacted by an Act passed in the Forty-first Year of the Reign of King *George* the Third, intituled *An Act to remove Doubts respecting the Eligibility of Persons in Holy Orders to sit in the House of Commons.*[1] . . .

[1] Vol. II, Sect. A, No. XIII, p. 28.

X. And be it enacted, That it shall be lawful for any of his Majesty's Subjects professing the Roman Catholic Religion to hold, exercise, and enjoy all Civil and Military Offices and Places of Trust or Profit under His Majesty, his Heirs or Successors, and to exercise any other Franchise or Civil Right, except as hereinafter excepted, upon taking and subscribing at the times and in the Manner hereinafter mentioned, the Oath hereinbefore appointed and set forth. . . .

XI. Provided always, . . . That nothing herein contained shall be construed to exempt any Person professing the Roman Catholic Religion from the Necessity of taking any Oath or Oaths, or making any Declaration, not herein-before mentioned, which are or may be by Law required to be taken or subscribed by any Person on his Admission into any such Office or Place of Trust or Profit as aforesaid.

XII. Provided also, . . . That nothing herein contained shall extend or be construed to extend to enable any Person or Persons professing the Roman Catholic Religion to hold or exercise the office of Guardians and Justices of the United Kingdom, or of Regent of the United Kingdom, under whatever Name, Style, or Title such Office may be constituted; nor to enable any Person, otherwise than as he is now by Law enabled, to hold and enjoy the Office of Lord High Chancellor, Lord Keeper or Lord Commissioner of the Great Seal of *Great Britain* or *Ireland*; or the Office of Lord Lieutenant, or Lord Deputy, or other chief Governor or Governors of *Ireland*; or His Majesty's High Commissioner to the General Assembly of the Church of *Scotland*.

XIII. Provided also, . . . That nothing herein contained shall be construed to affect or alter any of the Provisions of an Act [1] passed in the seventh Year of His present Majesty's reign, intituled *An Act to consolidate and amend the Laws which regulate the Levy and Application of Church Rates and Parish Cesses, and the Election of Churchwardens, and the Maintenance of Parish Clerks, in* Ireland.

XIV. And be it enacted, That it shall be lawful for any of His Majesty's Subjects professing the Roman Catholic Religion to be a Member of any Lay Body Corporate, and to hold any Civil Office or Place of Trust or Profit therein, and to do any Corporate Act, or vote in any Corporate Election or other Proceeding, upon taking or subscribing the Oath hereby appointed and set forth. . . .

XV. Provided nevertheless, . . . That nothing herein contained shall extend to authorize or empower any of His Majesty's Subjects professing the Roman Catholic Religion, and being a Member of any Lay Body Corporate, to give any vote at, or in any

[1] 7 Geo. IV, c. 72.

Manner to join in the Election, Presentation, or Appointment of any Person to any Ecclesiastical Benefice whatsoever, or any Office or Place belonging to or connected with the United Church of *England* and *Ireland*, or the Church of *Scotland*, being in the Gift, Patronage, or Disposal of such Lay Corporate Body.

XVI. Provided also, . . . That nothing in this Act contained shall be construed to enable any Persons, otherwise than as they are now by Law enabled, to hold, enjoy, or exercise any Office, Place, or Dignity of, in, or belonging to the United Church of *England* and *Ireland*, or the Church of *Scotland*, or any Place or Office whatever of, in, or belonging to any of the Ecclesiastical Courts of Judicature of *England* and *Ireland* respectively, or any Court of Appeal from or Review of the Sentences of such Courts, or of, in, or belonging to the Commissary Court of *Edinburgh*, or of, in, or belonging to any Cathedral or Collegiate or Ecclesiastical Establishment or Foundation; or any Office or Place whatever, of, in or belonging to any of the Universities of this Realm; or any Office or Place whatever, and by whatever Name the same may be called, of, in, or belonging to any of the Colleges or Halls of the said Universities, or the Colleges of *Eton*, *Westminster*, or *Winchester* or any College or School within this Realm; or to repeal, abrogate, or in any Manner interfere with any local Statute, Ordinance, or Rule, which is or shall be established by a competent authority within any University, College, Hall, or School, by which Roman Catholics shall be prevented from being admitted thereto, or from residing, or taking Degrees therein: Provided also, that nothing herein contained shall extend or be construed to extend to enable any Person, otherwise than he is now by Law enabled, to exercise any right of Presentation to any Ecclesiastical Benefice whatsoever; or to repeal, vary, or alter in any manner the Law now in force in respect to the Right of Presentation to any Ecclesiastical Benefice.

XVII. Provided always, . . . That where any Right of Presentation to any Ecclesiastical Benefice shall belong to any Office in the Gift or Appointment of His Majesty, His Heirs or Successors, and such Office shall be held by a Person professing the Roman Catholic Religion, the right of Presentation shall devolve upon and be exercised by the Archbishop of *Canterbury* for the Time being.

XVIII. And be it enacted, That it shall not be lawful for any Person professing the Roman Catholic Religion, directly or indirectly, to advise His Majesty, his Heirs or Successors, or any Person or Persons holding or exercising the Office of Guardians of the United Kingdom, or of Regent of the United Kingdom, under whatever Name, Style, or Title such Office may be constituted, or the Lord Lieutenant, or Lord Deputy, or other Chief Governor or

Governors of *Ireland*, touching or concerning the appointment to or Disposal of any Office or Preferment in the United Church of *England* and *Ireland*, or in the Church of *Scotland*; and if any Person shall offend in the Premises, he shall, being thereof convicted by due Course of Law, be deemed guilty of a high Misdemeanour, and disabled for ever from holding any Office, Civil or Military, under the Crown.

XIX. And be it enacted, That every Person professing the Roman Catholic Religion, who shall after the Commencement of this Act be placed, elected, or chosen in or to the Office of Mayor, Provost, Alderman, Recorder, Bailiff, Town Clerk, Magistrate, Councillor, or Common Councilman, or in or to any Office of Magistracy or Place of Trust or Employment relating to the Government of any City, Corporation, Borough, Burgh, or District within the United Kingdom of *Great Britain* and *Ireland*, shall, within One Calendar Month next before or upon his Admission into any of the same respectively, take and subscribe the Oath herein-before appointed and set forth . . . which said Oath shall either be entered in a Book, Roll, or other Record to be kept for that Purpose, or shall be filed amongst the Records of the City, Corporation, Burgh, Borough, or District.

XX. And be it enacted, That every Person professing the Roman Catholic Religion, who shall after the Commencement of this Act be appointed to any Office or Place of Trust or profit under His Majesty, His Heirs or Successors, shall within Three Calendar Months next before such Appointment, or otherwise shall, before he presumes to exercise or enjoy or in any manner to act in such Office or Place, take and subscribe the Oath herein-before appointed and set forth . . . and the proper Officer of the Court in which such Oath shall be so taken and subscribed shall cause the same to be preserved among the Records of the Court; and such Officer shall make, sign, and deliver a Certificate of such Oath having been duly taken and subscribed, as often as the same shall be demanded of him, upon Payment of Two Shillings and Sixpence for the same; and such Certificate shall be sufficient Evidence of the Person therein named having duly taken and subscribed such Oath.

XXI. And be it enacted, That if any Person professing the Roman Catholic Religion shall enter upon the exercise or enjoyment of any Office or Place of Trust or Profit under His Majesty, or any other Office or Franchise, not having in the Manner or at the Times aforesaid taken and subscribed the Oath herein-before appointed and set forth, then and in every such Case such Person shall forfeit to His Majesty the Sum of Two Hundred Pounds; and the Appointment of such Person to the Office, Place, or Fran-

chise shall be deemed and taken to be vacant to all Intents and Purposes whatsoever.

XXII. Provided always, That for and notwithstanding any thing in this Act contained, the Oath herein-before appointed and set forth shall be taken by the Officers in His Majesty's Land and Sea Service, professing the Roman Catholic religion, at the same Times and in the same Manner as the Oaths and Declarations now required by law are directed to be taken, and not otherwise.

XXIII. And be it further enacted, That from and after the passing of this Act, no Oath or Oaths shall be tendered to or required to be taken by His Majesty's Subjects professing the Roman Catholic Religion, for enabling them to hold or enjoy any Real or Personal property, other than such as may by Law be tendered to and required to be taken by His Majesty's other Subjects; and that the Oath herein appointed and set forth, being taken and subscribed in any of the Courts, or before any of the Persons above-mentioned, shall be of the same Force and Effect, to all Intents and Purposes, as, and shall stand in the Place of, all Oaths and Declarations required or prescribed by any Law now in force for the Relief of his Majesty's Roman Catholic Subjects from any Disabilities, Incapacities, or Penalties; . . .

XXIV. 'And Whereas the Protestant Episcopal Church of *England* and *Ireland* and the Doctrine, Discipline, and Government thereof, and likewise the Protestant Presbyterian Church of *Scotland*, and the Doctrine, Discipline and Government thereof, are by the respective Acts of Union of *England* and *Scotland*, and of *Great Britain* and *Ireland*, established permanently and inviolably: and Whereas the Right and Title of Archbishops to their respective Provinces, of Bishops to their Sees, and of Deans to their Deaneries, as well in *England* as in *Ireland*, have been settled and established by Law;' Be it therefore enacted, That if any Person, after the Commencement of this Act, other than the Person thereunto authorized, by Law, shall assume or use the Name, Style, or Title of Archbishop of any Province, Bishop of any Bishoprick, or Dean of any Deanery, in *England* or *Ireland*, he shall for every such Offence forfeit and pay the Sum of One hundred Pounds.

. . . . . .

[§ XXV. Judicial or other officers not to attend with insignia of office at any place of worship other than Established Church.]

[§ XXVI. Penalty on Roman Catholics officiating except in their usual places of worship.]

[§ XXVII. Not to repeal 5 Geo. IV, c. 25—Irish Burials Act.]

XXVIII. 'And Whereas Jesuits, and Members of other Religious Orders . . . of the Church of *Rome*, bound by Monastic or Religious

Vows are resident within the United Kingdom; and it is expedient to make Provision for the gradual Suppression and final Prohibition of the same therein.' Be it therefore enacted, That every Jesuit, and every Member of any other Religious Order, Community, or Society of the Church of *Rome*, bound by Monastic or Religious Vows, who at the time of the Commencement of this Act shall be within the United Kingdom, shall, within Six Calendar Months, after the commencement of this Act, deliver to the Clerk of the Peace of the County or Place where such Person shall reside, or to his Deputy, a Notice or Statement, in the Form and containing the Particulars required to be set forth in the Schedule [1] to this Act annexed; which Notice or Statement such Clerk of the Peace, or his Deputy, shall preserve and register amongst the Records of such County or Place, without any Fee, and shall forthwith transmit a Copy of such Notice or Statement to the Chief Secretary of the Lord Lieutenant, or other Chief Governor or Governors of *Ireland*, if such person shall reside in *Ireland*, or if in *Great Britain*, to One of His Majesty's Principal Secretaries of State; and in case any Person shall offend in the Premises, he shall forfeit and pay to His Majesty, for every Calendar Month during which he shall remain in the United Kingdom without having delivered such Notice or Statement, as is herein-before required, the Sum of Fifty Pounds.

XXIX. And be it further enacted, that if any Jesuit, or Member of any such Religious Order, Community, or Society, as aforesaid, shall, after the Commencement of this Act, come into this Realm, he shall be deemed and taken to be guilty of a Misdemeanor, and being thereof lawfully convicted, shall be sentenced and ordered to be banished from the United Kingdom for the Term of his natural Life.

[§ XXX. Natural-born subjects being Jesuits may return into the kingdom and be registered.]

XXXI. Provided also. . . . That, notwithstanding any thing herein-before contained, it shall be lawful for any One of His Majesty's Principal Secretaries of State, being a Protestant, by a Licence in Writing, signed by him, to grant Permission to any Jesuit, or Member of any such Religious Order, Community, or Society as aforesaid, to come into the United Kingdom, and to remain therein for such Period as the said Secretary of State shall think proper, not exceeding in any Case the Space of Six Calendar Months; and it shall also be lawful for any of His Majesty's Principal Secretaries of State to revoke any Licence so granted before the Expiration of the Time mentioned therein, if he shall so think fit. . . .

XXXII. And be it further enacted, That there shall annually

[1] The Schedule gives a specimen form requiring the Date, Name, Age, Place of Birth, Name of Order, and Particulars of the Order, to be entered.

be laid before both Houses of Parliament an Account of all such Licences as shall have been granted for the Purpose herein-before mentioned within the Twelve Months then next preceding.

XXXIII. And be it further enacted, That in case any Jesuit, or Member of any such Religious Order, Community, or Society as aforesaid, shall, after the Commencement of this Act, within any Part of the United Kingdom, admit any Person to become a Regular Ecclesiastic, or Brother or Member of any such Religious Order, Community, or Society, or be aiding or consenting thereto, or shall administer or cause to be administered, . . . any Oath, Vow, or Engagement purporting or intending to bind the Person taking the same to the Rules, Ordinances, or Ceremonies of such Religious Order, Community, or Society, every Person offending in the Premises in *England* or *Ireland* shall be deemed guilty of a Misdemeanour, and in *Scotland* shall be punished by Fine and Imprisonment.

XXXIV. And be it further enacted, That in case any Person shall, after the Commencement of this Act, within any Part of this United Kingdom, he admitted or become a Jesuit, or brother or Member of any such Religious Order, Community, or Society aforesaid, such Person shall be deemed and taken to be guilty of a Misdemeanour, and being thereof lawfully convicted shall be sentenced and ordered to be banished from the United Kingdom for the term of his natural Life.

[§ XXXV. The party offending may be banished by the King in Council, and § XXXVI, if at large after three months, may be transported for life.]

XXXVII. Provided always, and be it enacted, That nothing herein contained shall extend or be construed to extend in any Manner to affect any Religious Order, Community, or Establishment consisting of Females bound by Religious or Monastic Vows.

[§§ XXVIII-XL. How penalties may be recovered: the Act to take effect ten days after it has become law.]

XXI

IRISH COUNTY FRANCHISE ACT, 1829

10 Geo. IV, c. 8.

'Whereas by an Act of the Parliament of *Ireland*, passed in the Thirty-third Year of the Reign of King *Henry* the Eighth, . . . it is amongst other Things enacted, . . . that every Elector of the said Knights shall dispend and have Lands and Tenements of

Estate of Freehold within the said Counties at the least to the yearly Value of Forty Shillings, over and above all Charges: And Whereas by an Act passed in the Parliament of *Ireland*, in the Thirty-fifth Year of the Reign of His late Majesty King *George* the Third, . . . and also by subsequent Acts, Persons having Freehold Estates are required to register their Freeholds in the Manner therein prescribed, in order to qualify them to vote at Elections for Members to serve in Parliament for Counties in *Ireland*: And Whereas it is expedient to increase the Amount of the Qualification necessary to entitle persons to vote at such Elections, and to amend the Laws now in force in Ireland relating to the Registry of Freeholds;' Be it therefore enacted . . . That from and after the Commencement of this Act that Part of the said Act of the Thirty-third Year of King Henry the Eighth, herein-before recited, which relates to the Amount or Value of the Freehold necessary to qualify Persons to be Electors of Knights of the Shire to serve in Parliament for Counties in *Ireland*, shall be . . . repealed.

II. And be it enacted, That from and after the Commencement of this Act no Person shall be admitted to vote at any Election of any Knight of the Shire to serve in the Parliament of the United Kingdom for any County in *Ireland* (save as hereinafter is provided), unless such Person shall have an Estate of Freehold, in Lands, Tenements, or Hereditaments in such County, of the clear Yearly Value of Ten Pounds at the least, over and above all Charges, except only Public or Parliamentary Taxes, County, Church, or Parish Cesses or Rates, and Cesses on any Townland or Division of any Parish or Barony.

III. And be it enacted, That from and after the Commencement of this Act no Person shall be admitted to vote at any Election of a Knight of the Shire to serve in the Parliament of the United Kingdom for any County in *Ireland* by virtue or in respect of any Estate of Freehold of less annual Value than Twenty Pounds of the late Currency of *Ireland*, unless such Freehold shall be registered pursuant to the Provisions of this Act, save only as hereinafter provided.

IV. And be it enacted, That . . . a Session for the Purpose of registering Freeholds within this Act shall be holden in and for each County in Ireland, by and before the Assistant Barrister of such County, . . . and the Clerk of the Peace for each such County shall, Forty Days at the least before the Day so appointed, cause to be posted in each Market Town therein Notices, . . . that such Session, . . . will be holden on the Days and at the Places so appointed, and that Applications for that Purpose will be then and there taken into Consideration.

V. And be it enacted, That every Person intending to register

a Freehold at any such Session shall give to the Clerk of the Peace for the County Notice in Writing of such Intention Thirty clear Days at the least before the Day appointed for the holding of such Session . . . [application to be made in proper form and stating whether £10 or £20 freehold. Clerk to put lists of claims in the newspapers fifteen days before the session].

XIII. And be it enacted, That where any Person against whose Claim to register a Freehold any Order shall be made by the Assistant Barrister on any other Ground than Insufficiency of Value shall consider himself aggrieved by such Order, it shall be lawful for such Person to appeal from such Order to the Judges of Assize at the next Assizes for the County; and such Judges of Assize, or One of them, shall have Power, on Motion, to review such Order, and either to affirm or reverse the same, as shall be fit.

XXII

THE REFORM ACT, 1832[1]

2 Will. IV, c. 45.

'Whereas it is expedient to take effectual Measures for correcting divers Abuses that have long prevailed in the Choice of Members to serve in the Commons House of Parliament, to deprive many inconsiderable Places of the Right of returning Members, to grant such Privilege to large, populous, and wealthy Towns, to increase the Number of Knights of the Shire, to extend the Elective Franchise to many of His Majesty's Subjects who have not heretofore enjoyed the same, and to diminish the Expence of Elections;' be it therefore enacted . . . That each of the Boroughs enumerated in the Schedule marked (A.)[1] to this Act annexed, (that is to say,) *Old Sarum*, *Newtown*, *St. Michael's* or *Midshall*, *Gatton*, *Bramber*, *Bossiney*, *Dunwich*, *Ludgershall*, *St. Mawe's*, *Beeralston*, *West Looe*, *St. Germain's*, *Newport*, *Blechingley*, *Aldborough*, *Camelford*, *Hindon*, *East Looe*, *Corfe Castle*, *Great Bedwin*, *Yarmouth*, *Queenborough*, *Castle Rising*, *East Grinstead*, *Higham Ferrars*, *Wendover*, *Weobly*, *Winchelsea*, *Tregony*, *Haslemere*, *Saltash*, *Orford*, *Callington*, *Newton*, *Ilchester*, *Boroughbridge*, *Stockbridge*, *New Romney*, *Hedon*, *Plympton*, *Seaford*, *Heylesbury*, *Steyning*, *Whitchurch*, *Wootton Bassett*, *Downton*, *Fowey*, *Milborne Port*, *Aldeburgh*, *Minehead*, *Bishop's Castle*, *Okehampton*, *Appleby*, *Lostwithiel*, *Brackley*, and *Amersham*, shall from and after the End of this present Parliament cease to return any Member or Members to serve in Parliament.

[1] Cf. Vol. II, Sect. A, No. XXXII, p. 103, and No. XXXVIII, p. 126.

[2] Schedule omitted.

II. And be it enacted That each of the Boroughs enumerated in the Schedule marked (B.)[1] to this Act annexed, (that is to say,) *Petersfield, Ashburton, Eye, Westbury, Wareham, Midhurst, Woodstock, Wilton, Malmesbury, Liskeard, Reigate, Hythe, Droitwich, Lyme Regis, Launceston, Shaftesbury, Thirsk, Christchurch, Horsham, Great Grimsby, Calne, Arundel, St. Ives, Rye, Clitheroe, Morpeth, Helston, North Allerton, Wallingford,* and *Dartmouth,* shall from and after the end of this present Parliament return One Member and no more to serve in Parliament.

III. And be it enacted, That each of the Places named in the Schedule marked (C.)[1] to this Act annexed, (that is to say,) *Manchester, Birmingham, Leeds, Greenwich, Sheffield, Sunderland, Devonport, Wolverhampton, Tower Hamlets, Finsbury, Mary-le-bone, Lambeth, Bolton, Bradford, Blackburn, Brighton, Halifax, Macclesfield, Oldham, Stockport, Stoke-upon-Trent,* and *Stroud,* shall for the Purposes of this Act be a Borough, and shall as such Borough include the Place or Places respectively which shall be comprehended within the Boundaries of such Borough, as such Boundaries shall be settled and described by an Act to be passed for that Purpose in this present Parliament, which Act, when passed, shall be deemed and taken to be Part of this Act as fully and effectually as if the same were incorporated herewith; and that each of the said Boroughs named in the said Schedule (C.)[1] shall from and after the End of this present Parliament return Two Members to serve in Parliament.

IV. And be it enacted, That each of the Places named in the Schedule marked (D.)[1] to this Act annexed, (that is to say,) *Ashton-under-Lyne, Bury, Chatham, Cheltenham, Dudley, Frome, Gateshead, Huddersfield, Kidderminster, Kendal, Rochdale, Salford, South Shields, Tynemouth, Wakefield, Walsall, Warrington, Whitby, Whitehaven,* and *Merthyr Tydvil,* shall for the Purposes of this Act be a Borough, and shall as such Borough include the Place or Places respectively which shall be comprehended within the Boundaries of such Borough, as such Boundaries shall be settled and described by an Act to be passed for that Purpose in this present Parliament, which Act, when passed, shall be deemed and taken to be Part of this Act as fully and effectually as if the same were incorporated herewith; and that each of the said Boroughs named in the said Schedule (D.) shall from and after the End of this present Parliament return One Member to serve in Parliament.

. . . . . .

[§ V. Boroughs of Shoreham, Cricklade, Aylesbury, and East Retford to include certain adjacent districts.]

[1] Schedules omitted.

[§ VI. Weymouth and Melcombe Regis to return two members only; Penryn to include Falmouth; Sandwich to include Deal and Walmer.]

[§§ VII-X. Settlement of Boundaries.]

[§ XI. Description of the returning officers for the new boroughs and exceptions from such service.]

[§§ XII-XVII. Redistribution and division of certain counties.]

[§ XVIII. Limitation on voting rights in respect of freeholds for life.]

XIX. And be it enacted, That every Male Person of full Age, and not subject to any legal Incapacity, who shall be seised at Law or in Equity of any Lands or Tenements of Copyhold or any other Tenure whatever except Freehold, for his own Life, or for the Life of another, or for any Lives whatsoever, or for any larger Estate, of the clear yearly Value of not less than Ten Pounds over and above all Rents and Charges payable out of or in respect of the same, shall be entitled to vote in the Election of a Knight or Knights of the Shire to serve in any future Parliament for the County, or for the Riding, Parts, or Division of the County, in which such lands or Tenements shall be respectively situate.

XX. And be it enacted, That every Male Person of full Age, and not subject to any legal Incapacity, who shall be entitled, either as Lessee or Assignee, to any Lands or Tenements, whether of Freehold or any other Tenure whatever, for the unexpired Residue, whatever it may be, of any Term originally created for a Period of not less than Sixty Years, (whether determinable on a Life, or Lives, or not,) of the clear yearly Value of not less than Ten Pounds over and above all Rents and Charges payable out of or in respect of the same, or for the unexpired Residue, whatever it may be, of any Term originally created for a period of not less than Twenty Years, (whether determinable on a Life or Lives, or not,) of the clear yearly Value of not less than Fifty Pounds over and above all Rents and Charges payable out of or in respect of the same, or who shall occupy as Tenant any Lands or Tenements for which he shall be *bonâ fide* liable to a yearly Rent of not less than Fifty Pounds, shall be entitled to vote in the Election of a Knight or Knights of the Shire to serve in any future Parliament for the County, or for the Riding, Parts, or Division of the County, in which such Lands or Tenements shall be respectively situate; Provided always, that no Person being only a Sub-Lessee, or the Assignee of any Underlease, shall have a Right to vote in such Election in respect of any such Term of Sixty Years or Twenty Years as aforesaid, unless he shall be in the actual Occupation of the premises.

XXI. And be it declared and enacted, That no Public or Parliamentary Tax, nor any Church Rate, County Rate, or Parochial Rate,

shall be deemed to be any Charge payable out of or in respect of any Lands or Tenements within the meaning of this Act.

XXII. And be it enacted, That in order to entitle any Person to vote in any Election of a Knight of the Shire or other Member to serve in any future Parliament, in respect of any Messuages, Lands, or Tenements, whether Freehold or otherwise, it shall not be necessary that the same shall be assessed to the Land Tax; any Statute to the contrary notwithstanding.

XXIII. And be it enacted, That no Person shall be allowed to have any Vote in the Election of a Knight or Knights of the Shire for or by reason of any Trust Estate or Mortgage, unless such Trustee or Mortgagee be in actual Possession or Receipt of the Rents and Profits of the same Estate, but that the Mortgagor or Cestuique Trust in Possession shall and may vote for the same Estate notwithstanding such Mortgage or Trust.

XXIV. And be it enacted, That notwithstanding anything herein-before contained no Person shall be entitled to vote in the Election of a Knight or Knights of the Shire, to serve in any future Parliament in respect of his Estate or Interest as a Freeholder in any House, Warehouse, Counting-house, Shop, or other Building occupied by himself, or in any Land occupied by himself together with any House, Warehouse, Counting-house, Shop, or other Building, such House, Warehouse, Counting-house, Shop, or other Building being, either separately, or jointly with the Land so occupied therewith, of such Value as would, according to the provisions herein-after contained, confer on him the Right of voting for any City or Borough, whether he shall or shall not have actually acquired the right to vote for such City or Borough in respect thereof.

XXV. And be it enacted, That notwithstanding anything herein-before contained no Person shall be entitled to vote in the Election of a Knight or Knights of the Shire to serve in any future Parliament in respect of his Estate or Interest as a Copyholder or Customary Tenant, or Tenant in Ancient Demesne, holding by Copy of Court Roll, or as such Lessee or Assignee, or as such Tenant and Occupier as aforesaid, in any House, Warehouse, Counting-house, Shop or other Building, or in any Land occupied together with a House, Warehouse, Counting-house, Shop, or other Building, such House, Warehouse, Counting-house, Shop, or other Building being, either separately, or jointly with the Land so occupied therewith, of such Value as would according to the Provisions herein-after contained confer on him or on any other Person the right of voting for any City or Borough, whether he or any other Person shall or shall not have actually acquired the Right to vote for any such City or Borough in respect thereof.

XXVI. And be it enacted, That notwithstanding anything herein-before contained no Person shall be entitled to vote in the Election of a Knight or Knights of the Shire to serve in any future Parliament unless he shall have been duly registered according to the Provisions herein-after contained; and that no Person shall be so registered in any Year in respect of his Estate or Interest in any Lands or Tenements, as a Freeholder, Copyholder, Customary Tenant, or Tenant in Ancient Demesne, unless he shall have been in the actual Possession thereof, or in the receipt of the Rents and Profits thereof for his own Use, for Six Calendar Months at least next previous to the last Day of *July* in such Year, which said period of Six Calendar Months shall be sufficient, any Statute to the contrary notwithstanding; and that no Person shall be so registered in any Year, in respect of any Lands or Tenements held by him as such Lessee or Assignee, or as such Occupier and Tenant as aforesaid, unless he shall have been in the actual Possession thereof, or in the receipts of the Rents and Profits thereof for his own Use, as the Case may require, for Twelve Calendar Months next previous to the last Day of *July* in such Year: Provided always, that where any Lands or Tenements, which would otherwise entitle the Owner, Holder, or Occupier thereof to vote in any such Election, shall come to any Person, at any Time within such respective Periods of Six or Twelve Calendar Months, by Descent, Succession, Marriage, Marriage Settlement, Devise, or Promotion to any Benefice in a Church, or by Promotion to any Office, such Person shall be entitled in respect thereof to have his Name inserted as a Voter in the Election of a Knight or Knights of the Shire in the Lists then next to be made by virtue of this Act as herein-after mentioned, and, upon his being duly registered according to the Provisions herein-after contained, to vote in such Election.[1]

XXVII. And be it enacted, That in every City or Borough which shall return a Member or Members to serve in any future Parliament, every Male Person of full Age, and not subject to any legal Incapacity, who shall occupy, within such City or Borough, or within any Place sharing in the Election for such City or Borough, as Owner or Tenant, any House, Warehouse, Counting-house, Shop, or other Building, being, either separately, or jointly with any Land within such City, Borough, or Place occupied therewith by him as Owner, or occupied therewith by him as Tenant under the same Landlord, of the clear yearly Value of not less than Ten Pounds, shall, if duly registered according to the Provisions herein-after contained, be entitled to vote in the Election of a Member or Members to serve in any future Parliament for such City or

[1] Cf. Vol. II, Sect. A, No. XXXII, § 5, at p. 105.

Borough : Provided always, that no such Person shall be so registered in any Year unless he shall have occupied such Premises as aforesaid for Twelve Calendar Months next previous to the last Day of *July* in such year, nor unless such Person, where such Premises are situate in any Parish or Township in which there shall be a Rate for the Relief of the Poor, shall have been rated in respect of such Premises to all Rates for the Relief of the Poor in such Parish or Township made during the time of such his Occupation so required as aforesaid, nor unless such Person shall have paid, on or before the Twentieth Day of *July* in such year, all the Poor's Rates and assessed Taxes which shall have become payable from him in respect of such premises previously to the Sixth Day of *April* then next preceding : Provided also, that no such Person shall be so registered in any Year unless he shall have resided for Six Calendar Months next previous to the last Day of *July* in such Year within the City or Borough, or within the Place sharing in the Election for the City or Borough, in respect of which City, Borough, or Place respectively he shall be entitled to vote, or within Seven Statute Miles thereof or of any Part thereof.

XXVIII. And be it enacted, That the Premises in respect of the Occupation of which any Person shall be entitled to be registered in any Year, and to vote in the Election for any City or Borough as aforesaid, shall not be required to be the same Premises, but may be different Premises occupied in immediate Succession by such Person during the Twelve Calendar Months next previous to the last Day of *July* in such Year, such person having paid, on or before the Twentieth Day of *July* in such Year, all the Poor's Rates and Assessed Taxes which shall previously to the Sixth Day of *April* then next preceding have become payable from him in respect of all such Premises so occupied by him in succession.

XXIX. And be it enacted, That where any Premises as aforesaid, in any such City or Borough, or in any Place sharing in the Election therewith, shall be jointly occupied by more Persons than One as Owners or Tenants, each of such joint Occupiers shall, subject to the Conditions herein-before contained as to Persons occupying Premises in any such City, Borough, or Place, be entitled to vote in the Election for such City or Borough, in respect of the Premises so jointly occupied, in case the clear yearly Value of such Premises, shall be of an Amount which, when divided by the Number of such Occupiers, shall give a Sum of not less than Ten Pounds for each and every such Occupier, but not otherwise.

[§ XXX. Occupiers may demand to be rated.]

XXXI. And be it enacted, That in every City or Town being a County of itself, in the Election for which Freeholders or Burgage

Tenants, either with or without any superadded Qualification, now have a Right to vote, every such Freeholder or Burgage Tenant shall be entitled to vote in the Election of a Member or Members to serve in all future Parliaments for such City or Town, provided he shall be duly registered according to the Provisions herein-after contained; but that no Person shall be so registered in any Year in respect of any Freehold or Burgage Tenement, unless he shall have been in the actual Possession thereof, or in Receipt of the Rents and Profits thereof for his own Use, for Twelve Calendar Months next previous to the last Day of *July* in such Year (except where the same shall have come to him, at any Time within such Twelve Months, by Descent, Succession, Marriage, Marriage Settlement, Devise, or Promotion to any Benefice in a Church, or to any Office,) nor unless he shall have resided for Six Calendar Months next previous to the last Day of *July* in such Year within such City or Town, or within Seven Statute Miles thereof or of any Part thereof: Provided always, that nothing in this Enactment contained shall be deemed to vary or abridge the Provisions herein-before made relative to the Right of voting for any City or Town, being a County of itself, in respect of any Freehold for Life or Lives: Provided also, that every Freehold or Burgage Tenement which may be situate without the present Limits of any such City or Town being a County of itself, but within the Limits of such City or Town, as the same shall be settled and described by the Act to be passed for that Purpose as herein-before mentioned, shall confer the Right of voting in the Election of a Member or Members to serve in any future Parliament for such City or Town in the same Manner as if such Freehold or Burgage Tenement were situate within the present Limits thereof.

[§ XXXII. Freemen not to vote in boroughs unless resident; freemen created since March 1, 1831, excluded, with provisos as to the freemen of certain boroughs.]

XXXIII. And be it enacted, That no Person shall be entitled to vote . . . for any City or Borough, save and except in respect of some Right conferred by this Act, or as a Burgess or Freeman or as a Freeman and Liveryman, or, in the Case of a City or Town being a County of itself, as a Freeholder or Burgage Tenant, as hereinbefore mentioned . . . [The rights of existing voters in Boroughs—except those in Schedule A—on other qualifications or customs, are safeguarded, provided they reside and keep on the Register.]

[§ XXXIV. Provisions as to freeholders in New Shoreham, Cricklade, Aylesbury, or East Retford.]

XXXV. Provided nevertheless, and be it enacted, That notwithstanding any thing herein-before contained no Person shall be entitled to vote in the Election of a Member or Members to serve in any future Parliament for any City or Borough (other than a City or Town being a County of itself, in the Election for which Freeholders or Burgage Tenants have a Right to vote as herein-before mentioned,) in respect of any Estate or Interest in any Burgage Tenements or Freehold which shall have been acquired by such Person since the First Day of *March* One thousand eight hundred and thirty-one, unless the same shall have come to or been acquired by such Person, since that Day, and previously to the passing of this Act, by Descent, Succession, Marriage, Marriage Settlement, Devise, or Promotion to any Benefice in a Church, or by Promotion to any Office.

XXXVI. And be it enacted, That no Person shall be entitled to be registered in any Year as a Voter in the Election of a Member or Members to serve in any future Parliament for any City or Borough who shall within Twelve Calendar Months next previous to the last Day of *July* in such Year have received Parochial Relief or other Alms which by the Law of Parliament now disqualify from voting in the Election of Members to serve in Parliament.

XXXVII. ' And whereas it is expedient to form a Register of all Persons entitled to vote in the Election of a Knight or Knights of the Shire to serve in any future Parliament, and that for the Purpose of forming such Register the Overseers of every Parish and Township should annually make out Lists in the Manner herein-after mentioned ' ; be it, therefore enacted, That the Overseers of the Poor of every Parish and Township shall on the Twentieth Day of *June* in the present and every succeeding Year cause to be fixed on or near the Doors of all the Churches and Chapels within such Parish or Township, or if there be no Church or Chapel therein, then to be fixed in some public and conspicuous Situation within the same respectively, a Notice according to the Form numbered 1, in the schedule (H.) [1] to this Act annexed, requiring all Persons who may be entitled to vote in the Election of a Knight or Knights of the Shire to serve in any future Parliament, in respect of any property situate wholly or in part in such Parish or Township, to deliver or transmit to the said Overseers on or before the Twentieth Day of *July* in the present and in every succeeding Year a Notice of their Claim as such Voters according to the Form numbered 2, in the said Schedule (H.), or to the like Effect: Provided always, that after the Formation of the Register to be made in each Year, as herein-after mentioned, no Person whose Name shall be upon such

[1] Schedule omitted.

Register for the Time being shall be required thereafter to make any such Claim as aforesaid, as long as he shall retain the same Qualification, and continue in the same Place of Abode described in such Register.

XXXVIII. And be it enacted, That the Overseer of the Poor of every Parish and Township shall on or before the last Day of *July* in the present Year make out or cause to be made out, according to the Form numbered 3, in the said Schedule (H.) an alphabetical List of all Persons who shall claim as aforesaid to be inserted in such list as Voters in the Election of a Knight or Knights of the shire, to serve for the County, or for the Riding, Parts, or Division of the County wherein such Parish or Township lies, in respect of any Lands or Tenements situate wholly or in part within such Parish or Township; and that the said Overseers shall on or before the last Day of *July* in every succeeding Year make out or cause to be made out a like List, containing the Names of all Persons who shall be upon the Register for the Time being as such Voters, and also the Names of all Persons who shall claim as aforesaid, to be inserted in such last-mentioned List as such Voters: and in every List so to be made by the Overseers as aforesaid the Christian Name and Surname of every Person shall be written at full Length, together with the Place of his Abode, the Nature of his Qualification, and the local or other Description of such Lands or Tenements, as the same are respectively set forth in his Claim to vote, and the Name of the occupying Tenant, if stated in such Claim; and the said Overseers if they shall have reasonable Cause to believe that any Person so claiming as aforesaid, or whose Name shall appear in the Register for the Time being, is not entitled to vote in the Election of a Knight or Knights of the Shire for the County, or for the Riding, Parts, or Division of the County in which their Parish or Township is situate, shall have Power to add the Words " objected to " opposite the Name of every such Person on the Margin of such List; and the said Overseers shall sign such List, and shall cause a sufficient Number of Copies of such List to be written or printed, and to be fixed on or near the Doors of all the Churches or Chapels within their Parish or Township, or if there be no Church or Chapel therein, then to be fixed up in some public and conspicuous Situation within the same respectively, on the Two *Sundays* next after such List shall have been made; and the said Overseers shall likewise keep a true Copy of such List, to be perused by any Person without Payment of any Fee, at all reasonable Hours within the Two first Weeks after such List shall have been made: Provided always, that every Precinct or Place, whether extra-parochial or otherwise, which shall have no Overseers of the Poor, shall for the

Purpose of making out such List as aforesaid be deemed to be within the Parish or Township adjoining thereto, such Parish or Township being situate within the same County, or the same Riding, Parts, or Division of a County, as such Precinct or Place; and if such Precinct or Place shall adjoin Two or more Parishes or Townships, so situate as aforesaid, it shall be deemed to be within the least populous of such Parishes or Townships according to the last Census for the Time being; and the Overseers of the Poor of every such Parish or Township shall insert in the list for their respective Parish or Township the Names of all Persons who shall claim as aforesaid to be inserted therein as Voters in the Election of a Knight or Knights of the Shire to serve for the County, or for the Riding, Parts, or Division of the County, in which such Precinct or Place as aforesaid lies, in respect of any Lands or Tenements situate wholly or in part within such Precinct or Place.

[§§ XXXIX-LIX. Provisions as to objections to names on the lists, the revision of the lists in open court by barristers appointed by the Judges of Assize, or Lord Chief Justice of King's Bench. Overseers to prepare lists of borough voters, except Freemen, who are to appear on a Town Clerk's list. In London the returning officer to prepare a list of liverymen: barristers to revise as above. Scrutiny by returning officer at elections abolished.]

LX. Provided also, . . . That, upon Petition to the House of Commons, complaining of an undue Election or Return of any Member or Members to serve in Parliament, any Petitioner, or any Person defending such Election or Return, shall be at liberty to impeach the Correctness of the Register of Voters in force at the Time of such Election, by proving that in consequence of the Decision of the Barrister who shall have revised the Lists of Voters from which such Register shall have been formed the Name of any Person who voted at such Election was improperly inserted or retained in such Register, or the Name of any Person who tendered his Vote at such Election improperly omitted from such Register; and the Select Committee appointed for the Trial of such Petitions [1] shall alter the Poll taken at such Election according to the Truth of the Case, and shall report their Determination thereupon to the House, and the House shall thereupon carry such Determination into Effect, and the Return shall be amended, or the Election declared void, as the Case may be, and the Register corrected accordingly, or such other Order shall be made as to the House shall seem proper.

[§ LXI. Sheriffs of the counties divided by the Act to fix the time of, and to preside at, the elections.]

[1] See Vol. I, Sect. A, No. LVII, p. 140; cf. Vol. II, Sect. A, No. XXXIII, p. 107.

LXII. And be it enacted, That at every contested Election of a Knight or Knights to serve in any future Parliament for any County, or for any Riding, Parts, or Division of a County, the Polling shall commence at Nine o'Clock in the Forenoon of the next Day but Two after the Day fixed for the Election, unless such next Day but Two shall be *Saturday* or *Sunday*, and then on the *Monday* following, at the principal Place of Election, and also at the several Places to be appointed as hereinafter directed for taking Polls; and such polling shall continue for Two Days only, such Two Days being successive Days; (that is to say,) for Seven Hours on the first Day of polling, and for Eight Hours on the Second Day of polling; and no Poll shall be kept open later than Four o'Clock in Afternoon of the Second Day; any Statute to the contrary notwithstanding.

LXIII. And be it enacted, That the respective Counties in *England* and *Wales*, and the respective Ridings, Parts, and Divisions of Counties, shall be divided into convenient Districts for polling, and in each District shall be appointed a convenient Place for taking the Poll at all Elections of a Knight or Knights of the Shire to serve in any future Parliament, and such Districts and Places for taking the Poll shall be settled and appointed by the Act to be passed in this present Parliament for the purpose of settling and describing the Divisions of the Counties . . . provided that no County, nor any Riding, Parts, or Division, of a County, shall have more than Fifteen Districts, and respective Places appointed for taking the Poll for such County, Riding, Parts, or Division.

[§§ LXIV-LXVI. The sheriff to have power to arrange booths at polling places in a county and to fix the districts which are to poll at each of them. The sheriff in a county election may act in places having exclusive jurisdiction. The custody of the poll books, and the final declaration of the poll in counties to be the duty of the sheriff or under sheriff.]

LXVII. And be it enacted, That at every contested Election of a Member or Members to serve in any future Parliament for any City or Borough in *England*, except the Borough of *Monmouth*, the Poll shall commence on the day fixed for the Election, or on the Day next following, or at the latest on the Third Day, unless any of the said days shall be *Saturday* or *Sunday*, and then on the *Monday* following, the particular Day for the commencement of the Poll to be fixed by the Returning Officer; and such polling shall continue for Two Days only, such Two Days being successive Days, (that is to say), for Seven Hours on the First Day of polling, and for Eight Hours on the Second Day of polling; and that the Poll shall on no Account be kept open later than Four o'clock in the Afternoon of such Second Day; any statute to the contrary notwithstanding.

LXVIII. And be it enacted, That at every contested Election of a Member or Members to serve in any future Parliament for any City or Borough in England, except the Borough of *Monmouth*, the Returning Officer shall, if required thereto by or on behalf of any Candidate, on the day fixed for the Election, and if not required may, if it shall seem to him expedient, cause to be erected for taking the Poll at such Election, different Booths for different Parishes, Districts, or Parts of such City or Borough, which Booths may be situate either in one Place or in several Places, and shall be so divided and allotted into Compartments as to the Returning Officer shall seem most convenient, so that no greater Number than Six hundred shall be required to poll at any one Compartment; and the Returning Officer shall appoint a Clerk to take the Poll at each Compartment, and shall cause to be fixed on the most conspicuous Part of each of the said Booths the Names of the several Parishes, Districts, and Parts for which such Booth is respectively allotted; and no Person shall be admitted to vote at any such Election, except at the Booth allotted for the Parish, District, or Part wherein the Property may be situate in respect of which he claims to vote, or in case he does not claim to vote in respect of Property, then wherein his Place of Abode as described in the Register may be; but in case no booth shall happen to be provided for any particular Parish, District, or Part as aforesaid, the Votes of Persons voting in respect of Property situate in any Parish, District, or Part so omitted, or having their Place of Abode therein, may be taken at any of the said Booths, and the Votes of Freemen residing out of the Limits of the City or Borough may be taken at any of the said Booths; and public Notice of the Situation, Division, and Allotment of the different Booths shall be given Two Days before the Commencement of the Poll by the Returning Officer; and in case the Booths shall be situated in different Places, the Returning Officer may appoint a Deputy to preside at each Place; and at every such Election the Poll Clerks at the close of each Day's Poll shall enclose and seal their several Poll Books, and shall publicly deliver them so enclosed and sealed, to the Returning Officer or his Deputy, who shall give a Receipt for the same, and shall, on the Commencement of the Poll on the Second Day, deliver them back, so enclosed and sealed, to the persons from whom he shall have received the same; and every Deputy so receiving any such Poll Books, on the final close of the Poll shall forthwith deliver or transmit the same, so enclosed and sealed, to the Returning Officer, who shall receive and keep all the Poll Books unopened until the following Day, unless such Day be *Sunday*, and then till the *Monday* following, when he shall openly break the Seals thereon, and cast up the number of Votes as they appear on the

several Books, and shall openly declare the State of the Poll, and make Proclamation of the Member or Members chosen, not later than Two o'Clock in the Afternoon of the said Day: Provided always, that the Returning Officer, or his lawful Deputy may, if he think fit, declare the final state of the Poll, and proceed to make the Return immediately after the Poll shall have been lawfully closed: Provided also, that no Nomination shall be made or Election holden of any Member for the City or Borough, in any Church, Chapel, or other Place of Public Worship.

[§ LXIX. Polling districts for Shoreham, Cricklade, Aylesbury, and East Retford.]

LXX. And be it enacted, That nothing in this Act contained shall prevent any Sheriff or other Returning Officer, or the lawful Deputy of any Returning Officer, from closing the Poll previous to the Time fixed by this Act, in any Case where the same might have been lawfully closed before the passing of this Act; and that where the Proceedings at any Election shall be interrupted or obstructed by any Riot or open Violence, the Sheriff or other Returning Officer, or the lawful Deputy of any Returning Officer, shall not for such Cause finally close the Poll, but, in case the Proceedings shall be so interrupted or obstructed at any particular Polling Place or Places, shall adjourn the Poll at such Place or Places only until the following Day, and if necessary shall further adjourn the same until such Interruption or Obstruction shall have ceased, when the Returning Officer or his Deputy shall again proceed to take the Poll at such Place or Places; and any Day whereon the Poll shall have been so adjourned shall not, as to such Place or Places, be reckoned One of the Two Days of polling at such Election within the Meaning of this Act; and wherever the Poll shall have been so adjourned by any Deputy of any Sheriff or other Returning Officer, such Deputy shall forthwith give Notice of such Adjournment to the Sheriff or Returning Officer, who shall not finally declare the State of the Poll, or make Proclamation of the Member or Members chosen, until the Poll so adjourned at such Place or Places as aforesaid shall have been finally closed, and delivered or transmitted to such Sheriff or other Returning Officer; anything herein-before contained to the contrary notwithstanding.

[§§ LXXI-LXXVII. Detailed regulations as to the conduct of elections; regulations for Monmouth and Wales; penalties for breach of duty by election officers.]

LXXVIII. Provided always, . . .That nothing in this Act contained shall extend to or in any wise affect the Election of Members to serve in Parliament for the Universities of *Oxford* or *Cambridge*,

or shall entitle any Person to vote in the Election of Members to serve in Parliament for the City of *Oxford* or Town of *Cambridge* in respect of the Occupation of any Chambers or Premises in any of the Colleges or Halls of the Universities of *Oxford* or *Cambridge*.

[§ LXXIX. Interpretation of words used in the Act: *e.g.* " City or Borough " to include Berwick and all towns returning members apart from the County; " Overseers " to include those who do duty of overseers of poor even if not so called. If obvious intention clear then a misnomer not to vitiate.]

[§§ LXXX-LXXXII. Provisions in case the proposed Boundary Act be not law before the next election.]

SCHEDULES ANNEXED TO THE ACT

A. Fifty-five boroughs returning two members, Higham Ferrers returning one member, disfranchised (see § 1).

B. Thirty boroughs returning two members deprived of one member (§ 2).

C. Twenty-two cities and boroughs given two members (§ 3).

D. Twenty boroughs given one member (§ 4).

E. List of places sharing in the election of members, with their shire-towns and counties (§§ 8, 9).

E. 2. List of places sharing in the election of members, with places from which the seven miles are calculated.

F. List of counties to be divided (§ 14).

F. 2. List of counties to return three members (§ 15).

G. List of cities and towns included in counties (§ 17).

H.-L. Forms of lists and notices.

XXIII

JUDICIAL COMMITTEE ACT, 1833

3 & 4 Will. IV, c. 41.

. . . Be it therefore enacted . . . That the President for the Time being of His Majesty's Privy Council, the Lord High Chancellor of *Great Britain* for the Time being, and such of the Members of His Majesty's Privy Council as shall from Time to Time hold any of the Offices following, that is to say, the Office of Lord Keeper or First Lord Commissioner of the Great Seal of *Great Britain*, Lord Chief Justice or Judge of the Court of King's Bench, Master of the Rolls, Vice Chancellor of *England*, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of *Canterbury*, Judge of the High Court of Admiralty,

and the Chief Judge of the Court in Bankruptcy, and also all Persons Members of His Majesty's Privy Council who shall have been President thereof or held the Office of Lord Chancellor of *Great Britain*, or shall have held any of the other Offices herein-before mentioned, shall form a Committee of His Majesty's said Privy Council, and shall be styled " The Judicial Committee of the Privy Council ": Provided nevertheless, that it shall be lawful for His Majesty from Time to Time, as and when He shall think fit, by His Sign Manual, to appoint any Two other Persons, being Privy Councillors, to be Members of the said Committee.

II. And be it further enacted, That . . . all appeals or Applications in Prize Suits and in all other Suits or Proceedings in the Courts of Admiralty, or Vice Admiralty Courts, or any other Court in the Plantations in *America* and other His Majesty's Dominions or elsewhere Abroad, which may now, by virtue of any Law, Statute, Commission, or Usage, be made to the High Court of Admiralty in *England*, or to the Lords Commissioners in Prize Cases, shall be made to His Majesty in Council, and not to the said High Court of Admiralty in *England* or to such Commissioners as aforesaid; and such Appeals shall be made in the same Manner and Form and within such Time wherein such Appeals might, if this Act had not been passed, have been made to the said High Court of Admiralty or to the Lords Commissioners in Prize Cases respectively; and that all Laws or Statutes now in force with respect to any such Appeals or Applications shall apply to any Appeals to be made in pursuance of this Act to His Majesty in Council.

[§§ III-XXXI. H.M. may refer other matters to the Committee; detailed regulations for procedure.]

XXIV

POOR LAW AMENDMENT ACT, 1834[1]

4 & 5 Will. IV, c. 76.

' Whereas it is expedient to alter and amend the Laws relating to the Relief of poor Persons in *England* and *Wales*: ' Be it therefore enacted . . . That it shall be lawful for His Majesty, His Heirs and Successors, by Warrant under the Royal Sign Manual, to appoint Three fit Persons to be Commissioners to carry this Act into execution, and also from Time to Time at pleasure to remove

[1] Cf. Vol. II, Sect. B, No. XI, p. 171.

any of the Commissioners for the Time being, and upon every or any Vacancy in the said Number of Commissioners either by Removal or by Death or otherwise, to appoint some other fit Person to the said Office; and until such Appointment it shall be lawful for the surviving or continuing Commissioners or Commissioner to act as if no such Vacancy had occurred.

II. And be it further enacted, That the said Commissioners shall be styled "The Poor Law Commissioners for *England* and *Wales*;" and the said Commissioners, or any Two of them, may sit, from Time to Time as they deem expedient, as a Board of Commissioners for carrying this Act into execution; and the said Commissioners acting as such Board shall be and are hereby empowered, by Summons under their Hands and Seal, to require the Attendance of all such Persons as they may think fit to call before them upon any Question or Matter connected with or relating to the Administration of the Laws for the Relief of the Poor, and also to make any Inquiries and require any Answer or Returns as to any such Question or Matter, and also to administer Oaths, and examine all such Persons upon Oath, and to require and enforce the Production upon Oath of Books, Contracts, Agreements, Accounts, and Writings, or Copies thereof respectively, in anywise relating to any such Question or Matter; or, in lieu of requiring such Oath as aforesaid, the said Commissioners may, if they think fit, require any such Person to make and subscribe a Declaration of the Truth of the Matters respecting which he shall have been or shall be so examined: Provided always, that no such Person shall be required, in obedience to any such Summons, to go or travel more than Ten Miles from the Place of his Abode: Provided also, that nothing herein contained shall extend or be deemed to extend to authorize or empower the said Commissioners to act as a Court of Record, or to require the Production of the Title, or of any Papers or Writings relating to the Title of any Lands, Tenements, or Hereditaments not being the Property of any Parish or Union.

[§§ III and IV require Commissioners to have a seal, issue Rules and Regulations and to keep a Record of Proceedings.]

V. And be it further enacted, That the said Commissioners shall, once in every Year, submit to One of the Principal Secretaries of State a general Report of their Proceedings; and every such general Report shall be laid before both Houses of Parliament within Six Weeks after the Receipt of the same by such Principal Secretary of State, if Parliament be then sitting, or if Parliament be not sitting then within Six Weeks after the next Meeting thereof.

[§ VI. Commissioners to report to Secretary of State when required.]

[§ VII gives them power to appoint Assistant Commissioners, but the number not to exceed 9 without Treasury consent.]

VIII. And be it further enacted, That no Commissioner or Assistant Commissioner appointed as aforesaid shall during his Continuance in such Appointment be capable of being elected or sitting as a Member of the House of Commons.

[§ IX provides for staff whose salaries are subject to Treasury control.]

[§ X limits appointments of Commissioners to five years from passing of the Act.]

[§ XI provides for Commissioners to take oath to act impartially and honestly. Appointments to be notified to Clerks of the Peace and published.]

XII. And be it further enacted, That it shall be lawful for the said Commissioners to delegate to their Assistant Commissioners, or to any of them, such of the Powers and Authorities hereby given to the said Commissioners (except the Powers to make General Rules) as the said Commissioners shall think fit; and the Powers and Authorities so delegated, and the Delegation thereof, shall be notified in such Manner, and such Powers and Authorities shall be exercised at such Places, for such Periods, and under such Circumstances, and subject to such Regulations as the said Commissioners shall direct; and the said Commissioners may at any Time revoke, recall, alter, or vary all or any of the Powers and Authorities which shall be so delegated as aforesaid, and notwithstanding the Delegation thereof, may act as if no such Delegation had been made; . . . and all Summonses and Orders made by any such Assistant Commissioner in pursuance or exercise of such delegated Powers and Authorities shall be obeyed, performed, and carried into effect by all Persons as if such Summons or Order had been the Summons or Order of the said Commissioners, and the Breach, Nonobservance, or Nonperformance thereof shall be punishable in like Manner.

XIII. And be it further enacted, That if any Person, upon any Examination under the Authority of this Act, shall wilfully and corruptly give false Evidence, he shall be deemed guilty of Perjury, and if any Person shall make or subscribe a false Declaration, he shall, on being convicted thereof, suffer the Pains and Penalties of Perjury; and if any Person shall wilfully refuse to attend in obedience to any Summons of any Commissioner or Assistant Commissioner, or to give Evidence, or shall wilfully alter, suppress, conceal, destroy, or refuse to produce any Books, Contracts, Agreements, Accounts, and Writings, or Copies of the same, which may be so required to be produced before the said Commissioners or Assistant Commissioners, every Person so offending shall be deemed guilty of a Misdemeanor.

[§ XIV allows witnesses' expenses to be paid out of poor rates of parishes concerned.]

XV. And be it further enacted, That from and after the passing of this Act the Administration of Relief to the Poor throughout England and Wales, according to the existing Laws, or such Laws as shall be in force at the Time being, shall be subject to the Direction and Control of the said Commissioners; and for executing the Powers given to them by this Act the said Commissioners shall and are hereby authorized and required, from Time to Time as they shall see Occasion, to make and issue all such Rules, Orders, and Regulations for the Management of the Poor, for the Government of Workhouses and the Education of the Children therein, and for the Management of Parish poor Children . . . and the keeping, examining, auditing, and allowing of Accounts, and making and entering into Contracts in all Matters relating to such Management or Relief, or to any Expenditure for the Relief of the Poor, and for carrying this Act into execution in all other respects, as they shall think proper; and the said Commissioners may, at their Discretion, from Time to Time suspend, alter, or rescind such Rules, Orders, and Regulations, or any of them: [1] Provided always, that nothing in this Act contained shall be construed as enabling the said Commissioners or any of them to interfere in any individual Case for the Purpose of ordering Relief.

XVI. And be it further enacted, That no General Rule of the said Commissioners shall operate or take effect until the Expiration of Forty Days after the same, or a Copy thereof, shall have been sent, signed and sealed by the said Commissioners, to One of His Majesty's Principal Secretaries of State; [2] and if at any Time after any such General Rule shall have been so sent to such Principal Secretary of State His Majesty, with the Advice of His Privy Council, shall disallow the same or any Part thereof, such General Rule, or the Part thereof so disallowed, shall not come into operation, if such Disallowance be notified to the said Commissioners at any Time during the said Period of Forty Days, but if such Disallowance be made at any Time after that Period, such Disallowance shall, by One of His Majesty's Principal Secretaries of State, be notified to the said Commissioners, and from and after such Disallowance shall have been so notified then such General Rule, so far as the same shall have been so disallowed, shall cease to operate, subject however and without Prejudice to all Acts and Transactions under or in virtue of the same previously to such Disallowance having been so notified.

[1] Cf. Vol. II, Sect. D, No. LV (A), at p. 445.

[2] Cf. Vol. II, Sect. B, No. XXVIII (D), at p. 229, and Sect. C, No. XX, p. 307.

XVII. And be it further enacted, That all General Rules for the Time being in force at the Commencement of every Session of Parliament, and which shall not previously have been submitted to Parliament, shall from Time to Time, within One Week after the Commencement of every such Session, be laid by One of His Majesty's Principal Secretaries of State before both Houses of Parliament.

XVIII. And be it further enacted, That a written or printed Copy of every Rule, Order, or Regulation of the said Commissioners shall, before the same shall come into operation in any Parish or Union, be sent by the said Commissioners, by the Post, or in such Manner as the Commissioners shall think fit, sealed or stamped with their Seal, addressed to the Overseers of such Parish, the Guardians of such Union or their Clerk, and to the Clerk to the Justices of the Petty Sessions held for the Division in which such Parish or Union shall be situate; and such Overseers, Guardians, or their Clerk, and Clerks to the Justices aforesaid, are hereby required to keep and preserve, notify and give Publicity to, such Rules, Orders, and Regulations, in such Manner as the said Commissioners shall direct, and also to allow every Owner of Property or his Agent, or any Rate-payer, in every such Parish or Union, to inspect the same at all reasonable Times, free of any Charge for such Inspection, and to furnish Copies of the same, being paid for such Copies. . . .

[Penalty up to £10 on overseers, etc., if they do not comply.]

[§ XIX. No inmate of a workhouse obliged to attend any religious service.]

XXI. And be it further enacted, That, . . . all the Powers and Authorities . . . [for building, buying, altering, regulating, Workhouses, or land for Workhouses, or for financing them] . . . shall in future be exercised by the Persons authorized by Law to exercise the same, under the Control, . . . of the said Commissioners; and the said Commissioners . . . etc., shall be entitled to attend at every parochial and other local Board and Vestry, and take part in the Discussions, but not to vote at such Board or Vestry: Provided always, that nothing herein contained shall be construed to give the said Commissioners or Assistant Commissioners any Power to order the building, purchasing, hiring, altering, or enlarging of any Workhouse, or the purchasing or hiring of any Land at the Charge or for the Use of any Parish or Union, save and except so far as such Powers are expressly given by this Act.

XXIII. And be it further enacted, That it shall be lawful for the said Commissioners, and they are hereby empowered, from Time to Time when they may see fit, by any Writing under their Hands and Seal, by and with the Consent in Writing of a Majority of the

Guardians of any Union, or with the Consent of a Majority of the Rate-payers and Owners of Property entitled to vote in manner hereinafter prescribed, in any Parish, such last-mentioned Majority to be ascertained in manner provided in and by this Act, to order and direct the Overseers or Guardians of any Parish or Union not having a Workhouse or Workhouses to build a Workhouse or Workhouses, and to purchase or hire Land for the Purpose of building the same thereon, or to purchase or hire a Workhouse or Workhouses, or any Building or Buildings for the Purpose of being used as or converted into a Workhouse or Workhouses; . . . and the Overseers . . . are . . . required to assess, raise, and levy such Sum or Sums of Money as may be necessary for the Purposes specified in such Order. . . .

[§ XXIV. The cost of such workhouses is put on the rates and the amount is limited to one year's rates.]

XXV. And be it further enacted, That it shall be lawful for the said Commissioners . . . without requiring any such Consent as aforesaid, . . . to order and direct the Overseers or Guardians of any Parish or Union having a Workhouse or Workhouses, or any building capable of being converted into a Workhouse or Workhouses, to enlarge or alter the same. . . . Provided always, that the Principal Sum or Sums to be raised for such Purposes, and charged upon any Parish, shall not exceed in the whole the Sum of Fifty Pounds, nor in any such Case exceed One Tenth of the average annual Amount of the Rates raised for the Relief of the Poor in such Parish for the Three Years ending at Easter the next preceding the raising of such Money.

XXVI. And be it further enacted, That it shall be lawful for the said Commissioners . . . to declare as many Parishes as they may think fit to be united for the Administration of the Laws for the Relief of the Poor, and such Parishes shall thereupon be deemed a Union for such Purpose, and thereupon the Workhouse or Workhouses of such shall be for their common Use . . . but notwithstanding such Union and Classification each of the said Parishes shall be separately chargeable with and liable to defray the Expence of its own Poor, whether relieved in or out of any such Workhouse.

[§§ XXVII-XXX deal with the apportioning of expense between parishes in a Union.]

XXXII. [Any Union may be dissolved, regulated or added to; the Commissioners are to make the necessary financial adjustments on an alteration, whether by a charge on the rates or otherwise.] . . . Provided always, . . . that no such Dissolution, Alteration, or Addition shall take place or be made unless a Majority of not

less than Two Thirds of the Guardians of such Union shall also concur therein; and in every such Case, when the said Majority of the Guardians of such Union shall so concur in such proposed Alteration, the Terms on which such Concurrence shall have been given, if approved by the said Commissioners, shall be binding and conclusive on the several Parishes of such Union.

[§§ XXXIII and XXXIV allow parishes to unite for settlement and for rating with the agreement of all the Guardians, subject to the approval of the Commissioners: the agreement to be filed with the Clerk of the Peace.]

XXXV. And be it further enacted, That from and after such depositing and filing of the said Agreement, Part, or Counterpart, the said Guardians shall, under such Regulations as the said Commissioners shall in that respect prescribe, proceed to ascertain and assess the Value of the Property in the several Parishes of such Union rateable to the Relief of the Poor, and to cause to be made such Surveys and Valuations of the said Property, or any Part thereof, as may be necessary from Time to Time, to make a fair and just Assessment upon the said united Parishes in respect of such Property so rateable as aforesaid; and all Rates grounded on every such Valuation or Assessment shall be made, allowed, published, and recovered in such and the same Manner as Rates for the Relief of the Poor are now by Law made, allowed, published, and recovered; and the Rate-payers shall have the like Power of Appeal against such last-mentioned Rates as any Persons now have against Rates made for the Relief of the Poor.

[§ XXXVI. In such cases expenditure for the poor in the Union to be in common.]

XXXVII. And be it further enacted, That from and after the passing of this Act no Union or Incorporation of Parishes shall be formed under the Provisions of the said Act made and passed in the Twenty-second Year of the Reign of His late Majesty King George the Third,[1] without the previous Consent of the said Commissioners, testified under their Hands and Seal.

XXXVIII. And be it further enacted, That where any Parishes shall be united by Order or with the Concurrence of the said Commissioners for the Administration of the Laws for the Relief of the Poor, a Board of Guardians of the Poor for such Union shall be constituted and chosen, and the Workhouse or Workhouses of such Union shall be governed, and the Relief of the Poor in such Union shall be administered, by such Board of Guardians; and the said Guardians shall be elected by the Rate-payers, and by such Owners of Property in the Parishes forming such Union as shall in manner

[1] 22 Geo. III, c. 83.

herein-after mentioned require to have their Names entered as entitled to vote as Owners in the Books of such Parishes respectively; and the said Commissioners shall determine the Number and prescribe the Duties of the Guardians to be elected in each Union, and also fix a Qualification without which no Person shall be eligible as such Guardian, such Qualification to consist in being rated to the Poor Rate of some Parish or Parishes in such Union, but not so as to require a Qualification exceeding the annual Rental of Forty Pounds, and shall also determine the Number of Guardians which shall be elected for any One or more of such Parishes, having due Regard to the Circumstances of each such Parish: Provided always, that One or more Guardians shall be elected for each Parish included in such Union; and such Guardians, when so elected, shall continue in Office until the Twenty-fifth Day of *March* next following their Appointment or until others are appointed in their Stead, . . . and in the event of any Vacancy occurring in such Board . . . the other or remaining Members of the said Board shall continue to act until the next Election, or until the Completion of the said Board, as if no such Vacancy had occurred, and as if the Number of such Board were complete; and every Justice of the Peace residing in any such Parish, and acting for the County, Riding, or Division in which the same may be situated, shall be an *ex officio* Guardian of such united or common Workhouses, and shall, until such Board of Guardians shall be duly elected and constituted as aforesaid, and also, in case of any Irregularity or Delay in any subsequent Election of Guardians, receive and carry into effect the Rules, Orders, and Regulations of the said Commissioners; and after such Board shall be elected and constituted as aforesaid every such Justice shall *ex officio* be and be entitled, if he think fit, to act as a Member of such Board, in addition to and in like Manner as such elected Guardians: Provided always, that, except where otherwise ordered by the said Commissioners, and also except for the Purpose of consenting to the Dissolution or Alteration of any Union or any Addition thereto, or to the Formation of any Union for the Purposes of Settlement or rating, no *ex officio* or other Guardian of any such Board as aforesaid shall have Power to act in virtue of such Office except as a Member and at a Meeting of such Board; and no Act of any such Meeting shall be valid unless Three Members shall be present and concur therein: Provided also, that nothing herein contained shall prevent such Owners and Rate-payers from re-electing the same Persons or any or either of them to be Guardians for the Year next ensuing, nor from electing as a Guardian any Person who may already have been chosen as a Guardian of any other Parish.

[§ XXXIX fixes similar regulations for single parishes.]

XL. [At Elections of Guardians or when local consent is required under the terms of this Act, owners of—as well as those who pay rates on—property are to have the right to vote. Votes to be given in writing] . . . and the Rate-payers under Two hundred Pounds shall each have a single Vote; and the Rate-payers rated at Two hundred Pounds or more, but under Four hundred Pounds, shall each have Two Votes, and the Rate-payers rated at Four hundred Pounds or more, shall each have Three Votes; and the Majority of the Votes of such Owners and Rate-payers which shall be actually collected and returned shall in every such Case be binding on such Parish. . . . [votes by Proxy allowed; voters to have been rated for at least one year].

[§§ XLI-XLV. Commissioners are to make workhouse rules which the J.P.'s are to enforce when visiting workhouses. Lunatics not to be in workhouses.]

XLVI. And be it further enacted, That it shall be lawful for the said Commissioners, as and when they shall see fit, by Order under their Hands and Seal, to direct the Overseers or Guardians of any Parish or Union, or of so many Parishes or Unions as the said Commissioners may in such Order specify and declare to be united for the Purpose only of appointing and paying Officers, to appoint such paid Officers with such Qualifications as the said Commissioners shall think necessary for superintending or assisting in the Administration of the Relief and Employment of the Poor, and for the examining and auditing, allowing or disallowing of Accounts in such Parish or Union, or united Parishes, and otherwise carrying the Provisions of this Act into execution; and the said Commissioners may and they are hereby empowered to define and specify and direct the Execution of the respective Duties of such Officers, . . . [their appointment, dismissal, etc.] . . ., and when the said Commissioners may see Occasion, to regulate the Amount of Salaries payable to such Officers respectively, and the Time and Mode of Payment thereof, and the Proportions in which such respective Parishes or Unions shall contribute to such Payment; and such Salaries shall be chargeable upon and payable out of the Poor Rates of such Parish or Union, or respective Parishes, in the Manner and Proportions fixed by the said Commissioners, and shall be recoverable against the Overseers or Guardians . . . [by ordinary legal process].

[§ XLVII. Overseers' accounts to be passed quarterly by Auditors or J.P.s.]

XLVIII. And be it further enacted, That the said Commis-

sioners may and they are hereby authorized and empowered, . . . either upon or without any Suggestion or Complaint in that Behalf from the Overseers or Guardians of any Parish or Union, to remove any Master of any Workhouse, or Assistant Overseer, or other paid Officer of any Parish or Union whom they shall deem unfit for or incompetent to discharge the Duties of any such Office, or who shall at any Time refuse or wilfully neglect to obey and carry into effect any of the Rules, Orders, Regulations, or Bye Laws of the said Commissioners, whether such Union shall have been made or such Officer appointed before or after the passing of this Act, and to require from Time to Time the Persons competent in that Behalf to appoint a fit and proper Person in his Room; and that any Person so removed shall not be competent to be appointed to or to fill any paid Office connected with the Relief of the Poor in any such Parish or Union, except with the Consent of the said Commissioners under their Hands and Seal: Provided always, that no Person shall be eligible to hold any Parish Office, or have the Management of the Poor in any way whatever, who shall have been convicted of Felony, Fraud, or Perjury.

[§§ XLIX-LI. Contracts to be in conformity to Commissioners' rules: repeal of previous statutes.]

[§ LII is famous in social history. It recites the evils of out-door relief and explains that as " difficulty may arise in case any immediate and universal Remedy is attempted to be applied in the Matters aforesaid " the Commissioners are to have power to regulate as they think fit the period, extent, and character of any relief given to the able-bodied outside the workhouse. Relief contrary to their regulations to be illegal and to be disallowed. Overseers may, in special circumstances, and making a report to the Commissioners, hold up the operation of their rules for a period not exceeding thirty days. If the Commissioners, however, disapprove they may by " peremptory order " fix a day from which such relief must stop. The overseer is allowed some discretion in cases of emergency in giving out food, temporary lodging, and medicine.]

[§§ LIII-CIV. Detailed regulations dealing with sickness, loans, militiamen, emigration, paternity orders, bastards, fraud, bonds, summonses, free postage; the prohibition of fermented liquor in workhouses, the recovery of expense of maintenance or removal; the duties of Justices to observe the Commissioners' rules in binding apprentices, and to stop the salaries of offending workhouse masters; the methods for the trial of offenders, appeals, and the limitation of actions.]

CV. And be it further enacted, That no Rule, Order, or Regulation of the said Commissioners or Assistant Commissioners, or any of them, shall be removed or removable by Writ of Certiorari into any Court of Record, except His Majesty's Court of King's Bench

at *Westminster*; and that every Rule, Order, or Regulation which shall be removed by Writ of Certiorari into the said Court of King's Bench shall nevertheless, unless and until the same shall be declared illegal by that Court, continue in full force and virtue, and be obeyed, performed, and enforced, in such and the same Manner, and by such and the same Ways and Means, as if the same had not been so removed.

[§§ CVI-CX. Details of judicial procedure in connection with the above, including obligation to find sureties in the sum of fifty pounds before issue of writ of Certiorari, and the obligation to pay the Commissioners' costs if the rule is upheld by the King's Bench. If the rule is found invalid persons acting under it, or contracts made, before the Court's decision is notified, are protected.]

XXV

THE MUNICIPAL CORPORATIONS ACT, 1835

5 & 6 Will. IV, c. 76.

[§§ I-VIII reserve property rights and some other benefits to Freemen, their wives and children, including the Freeman's vote retained in parliamentary Reform Act. Freemen's roll is to be kept. In future no one to be admitted a Freeman by gift or purchase. Boundaries of Boroughs remain as in 2 & 3 Will. IV, c. 64. Style of Corporation to be Mayor, Aldermen, and Burgesses.]

IX. And be it enacted, That every Male Person of full Age who on the last Day of *August* in any Year shall have occupied any House, Warehouse, Counting house, or Shop within any Borough during that Year and the whole of each of the Two preceding Years, and also during the Time of such Occupation shall have been an Inhabitant Householder within the said Borough, or within Seven Miles of the said Borough, shall, if duly enrolled in that Year according to the Provisions herein-after contained, be a Burgess of such Borough and Member of the Body Corporate of the Mayor, Aldermen, and Burgesses of such Borough: Provided always, that no such Person shall be so enrolled in any Year, unless he shall have been rated in respect of such Premises so occupied by him within the Borough to all Rates made for the Relief of the Poor of the Parish wherein such Premises are situated during the Time of his Occupation as aforesaid, and unless he shall have paid on or before the last Day of *August* as aforesaid all such Rates, . . . Provided also, that the Premises in respect of the Occupation of which any Person shall have been so rated need not be the same Premises

or in the same Parish, . . . Provided also, that no Person being an Alien shall be so enrolled in any Year, and that no Person shall be so enrolled in any Year who within Twelve Calendar Months next before the said last Day of *August* shall have received Parochial Relief or other Alms, or any Pension or charitable Allowance from any Fund intrusted to the charitable Trustees of such Borough herein-after mentioned: Provided that in every Case provided in this Act the Distance of Seven Miles shall be computed by the nearest public Road or Way by Land or Water.

X. And be it enacted, That no Medical or Surgical Assistance given by the charitable Trustees of any Borough shall be taken to be such charitable Allowance as shall disqualify any Person from being enrolled a Burgess as aforesaid; nor shall any Person be so disqualified by reason that any Child of such Person shall have been admitted and taught within any public or endowed School.

XI. And be it enacted, That in every Borough it shall be lawful for any Person occupying any House, Warehouse, Counting-house, or Shop to claim to be rated to the Relief of the Poor in respect of such Premises, whether the Landlord shall or shall not be liable to be rated to the Relief of the Poor in respect thereof; and upon such Occupier so claiming, and actually paying or tendering the full Amount of the last made Rate then payable in respect of such Premises, the Overseers of the Parish in which such Premises are situate are hereby required to put the Name of such Occupier upon the Rate for the Time being; . . . Provided always, . . . nothing herein contained shall be deemed to vary or discharge the Liability of such Landlord, . . .

[§ XII deals with inheritance of premises.]

XIII. And be it enacted, That after the passing of this Act no Person shall be enrolled a Burgess of any Borough, for the Purpose of enjoying the Rights conferred for the first Time by this Act, in respect of any Title other than by Occupancy and Payment of Rates within such Borough, according to the Meaning and Provisions of this Act.

[§ XIV deals with Guilds, Mysteries, and Trading Companies.]

XV. And be it enacted, That on the Fifth Day of *September* in every Year the Overseers of the Poor of every Parish wholly or in part within any Borough shall make out an Alphabetical List, to be called " The Burgess List ", . . . of all Persons who shall be entitled to be enrolled in the Burgess Roll of that Year, . . .

[§§ XVI-XXIV deal with omissions from lists, claims, objections, and oaths. Town Clerk to keep lists. Being on lists entitles to vote. Pay for overseers for this work.]

XXV. And be it enacted, That in every Borough shall be elected, at the Time and in the Manner herein-after mentioned, One fit Person, who shall be and be called " The Mayor " of such Borough; and a certain Number of fit Persons, who shall be and be called " Aldermen " of such Borough; and a certain number of other fit Persons, who shall be and be called " The Councillors " of such Borough; and such Mayor, Aldermen, and Councillors for the Time being shall be and be called " The Council " of such Borough; and the Number of Persons so to be elected Councillors of such Borough shall be the Number of Persons in that Behalf mentioned in conjunction with the Name of such Borough in the Schedules (A) and (B) to this Act annexed;[1] and the Number of Persons so to be elected Aldermen shall be One Third of the Number of Persons so to be elected Councillors; and on the Ninth Day of *November* in this present Year the Councillors first to be elected under the Provisions of this Act, and on the Ninth Day of *November* in the Year One thousand eight hundred and Thirty-eight, and in every Third succeeding Year, the Council for the Time being of every Borough shall elect from the Councillors, or from the Persons qualified to be Councillors, the Aldermen of such Borough, or so many as shall be needed to supply the Places of those who shall then go out of Office according to the Provisions herein-after contained; and that upon the Ninth Day of *November* in the Year One thousand eight hundred and thirty-eight, and in every Third succeeding Year, One Half of the Number appointed as aforesaid to be the whole Number of the Aldermen of every Borough shall go out of Office; and the Councillors immediately after the first Election of Aldermen shall appoint who shall be the Aldermen who shall go out of Office in the Year One thousand eight hundred and thirty-eight, and thereafter those who shall go out of Office shall always be those who have been Aldermen for the longest Time without Re-election: Provided always, that any Aldermen so going out of Office may be forthwith re-elected, if then qualified as herein provided; provided also, that the Aldermen so going out of Office shall not be entitled to vote in the Election of a new Alderman.

XXVI. And be it enacted, That the Mayor and Aldermen shall, during their respective Offices, continue to be Members of the Council of the Borough, notwithstanding any thing herein-after contained as to Councillors going out of Office at the End of Three Years.

[§ XXVII. Provisions for filling an extraordinary Vacancy in the office of Alderman.]

XXVIII. And be it enacted, That no Person being in Holy

[1] Schedules omitted.

Orders, or being the regular Minister of any Dissenting Congregation, shall be qualified to be elected or to be a Councillor of any such Borough or an Alderman of any such Borough,[1] nor shall any Person be qualified to be elected or to be a Councillor or an Alderman of any such Borough who shall not be entitled to be on the Burgess List of such Borough, nor unless he shall be seised or possessed of Real or Personal Estate or both to the following Amount, that is to say, in all Boroughs directed by this Act to be divided into Four or more Wards to the amount of One thousand Pounds, or be rated to the Relief of the Poor of such Borough upon the annual Value of not less than Thirty Pounds, and in all Boroughs directed to be divided into less than Four Wards, or which shall not be divided into Wards, to the Amount of Five hundred Pounds, or be rated to the Relief of the Poor in such Borough upon the annual Value of not less than Fifteen Pounds, or during such Time as he shall hold any Office or Place of Profit, other than that of Mayor, in the Gift or Disposal of the Council of such Borough, or during such Time as he shall have directly or indirectly, by himself or his Partner, any Share or Interest in any Contract or Employment with, by, or on behalf of such Council; provided that no Person shall be disqualified from being a Councillor or Alderman of any Borough as aforesaid by reason of his being a Proprietor or Shareholder of any Company which shall contract with the Council of such Borough for lighting or supplying with Water or insuring against Fire any Part of such Borough.

XXIX. And be it enacted, That every Burgess of any Borough who shall be enrolled on the Burgess Roll for the Time being of such Borough shall be entitled to vote in the Election of Councillors and of the Auditors and Assessors herein after mentioned for such Borough, and no Person who shall not be enrolled in such Burgess Roll for the Time being shall have any Voice or be entitled to vote in any such Election.

XXX. And be it enacted, That upon the First Day of *November* in every Year the Burgesses so enrolled in every Borough shall openly assemble and elect from the Persons qualified to be Councillors the Councillors of such Borough, or such Part of them as shall be needed to supply the Places of those who shall then go out of Office: Provided nevertheless, that whenever any Day by this Act appointed for any Purpose shall in any Year happen on a *Sunday*, in every such Case the Business so appointed to be done shall take place on the *Monday* following.

XXXI. And be it enacted, That upon the First Day of *November* One thousand eight hundred and thirty-six, and in every succeeding

[1] Contrast Parliamentary disqualification, Vol. II, Sect. A, No. XIII, p. 28.

Year, One Third Part of the Number appointed as aforesaid to be the whole Number of the Councillors of every Borough shall go out of Office; and in the said Year One thousand eight hundred and thirty-six those who shall go out of Office shall be the Councillors who were elected under the Provisions of this Act by the smallest Numbers of Votes in this present Year, and in the next Year, One thousand eight hundred and thirty-seven, those who shall so go out of Office shall be the Councillors who were elected under the Provisions of this Act by the next smallest Number of Votes in this present Year, the Majority of the whole Council always determining, when the Votes for any such Persons shall have been equal, who shall be the Persons so to go out of Office; and thereafter those who shall so go out of Office shall always be the Councillors who have been for the longest Time in Office without Re-election: Provided always, that any Councillor so going out of Office shall be capable of being forthwith re-elected, if then qualified, as herein provided.

XXXII. And be it enacted, That every Election of Councillors within any Borough according to the Provisions of this Act shall be held before the Mayor and Assessors for the Time being of such Borough, except as herein is excepted; and the voting at every such Election shall commence at Nine o'Clock in the Forenoon, and shall finally close at Four o'Clock in the Afternoon of the same Day, and shall be conducted in manner following; that is to say, every Burgess entitled to vote in the Election of Councillors may vote for any Number of Persons not exceeding the Number of Councillors then to be chosen, by delivering to the Mayor and Assessors or other presiding Officer as herein-after mentioned a Voting Paper, containing the Christian Names and Surnames of the Persons for whom he votes, with their respective Places of Abode and Descriptions, such Paper being previously signed with the Name of the Burgess voting, and with the Name of the Street, Lane, or other Place in which the Property for which he appears to be rated on the Burgess Roll is situated.

[§ XXXIII. Polling booths to be provided.]

XXXIV. And be it enacted, That no Inquiry shall be permitted at any Election as to the Right of any Person to vote as a Burgess in any Borough, except only as follows; (that is to say,) that the Mayor or other presiding Officer shall, if required by any Two Burgesses entitled to vote in the same Borough, put to any Voter at the Time of his delivering in his Voting Paper, and not afterwards, the following Questions, or any of them, and no other:

1. Are you the Person whose Name is signed as A. B. to the Voting Paper now delivered in by you?

2. Are you the Person whose Name appears as A. B. on the Burgess Roll now in force for this Borough, being registered therein as rated for Property described to be situated in ? (*Here specify the Street, etc., as described in the Burgess Roll.*)
3. Have you already voted at the present Election ?

And no Person required to answer any of the said Questions shall be permitted or qualified to vote until he shall have answered the same; and if any Person shall wilfully make a false Answer to any of the Questions aforesaid he shall be deemed guilty of a Misdemeanor, and may be indicted and punished accordingly.

[§§ XXXV-XXXIX. Mayor to choose in a tie. Auditors and Assessors to be elected. Existing Mayors to be eligible for office under new regime after retiring. Division into Wards to be made by Barristers appointed for that purpose.]

XL. And be it enacted, That the said Barrister or Barristers shall, after the Division of the Borough into such number of Wards as is directed by this Act, apportion among the several Wards of such Borough the Number of Councillors mentioned in conjunction with the Name of such Borough in the said Schedule (A.),[1] and in assigning the Number of Councillors to each Ward the said Barrister or Barristers shall, as far as in his or their Judgment he or they may deem it to be practicable, have Regard as well to the Number of Persons rated to the Relief of the Poor in such Ward as to the aggregate Amount of the Sums at which all the said Persons shall be so rated: Provided always, that the Number of Councillors assigned to each Ward shall be a Number divisible by Three; . . .

[§§ XLI-XLVIII. A Councillor, if elected for more than one Ward, to sit as Mayor directs. Bye-election provisions. Penalties for irregularities. § XLIX. Mayor to be chosen out of Aldermen or Councillors on Ninth November for one year. Provisions for filling a vacancy. §§ L-LVI. Those elected to accept office or pay a fine (certain exemptions); bankruptcy or absence to forfeit office. Penalties for unqualified who accept office. Bribery forfeits right to vote.]

LVII. And be it enacted, That the Mayor for the Time being of every Borough shall be a Justice of the Peace of and for such Borough, and shall continue to be such Justice of the Peace during the next succeeding Year after he shall cease to be Mayor, unless disqualified as aforesaid; and such Mayor shall, during the Time of his Mayoralty, have Precedence in all Places within the Borough, and in Boroughs which return a Member or Members to serve in Parliament, other than the Town of *Berwick-upon-Tweed*, and other than Cities and Towns which are Counties of themselves, shall be

[1] Schedules omitted.

the Returning Officer at all such Elections; and in case the Mayor shall, at the Time when he shall be required to perform the Duties of such Returning Officer be dead, absent, or otherwise incapable of acting, or in case there shall be no Mayor, the Council of such Borough shall forthwith elect one of the Aldermen to be the Returning Officer for such Borough in the Place of the Mayor being so dead, absent, or otherwise incapable: Provided always, that in every Case where there shall be more than One Mayor within the Boundaries of any Borough as the same are or shall at any future Time be settled in so far as respects the Election of Members to serve in Parliament the Mayor of that Borough to which the Writ of Election shall be directed shall be the Returning Officer.

LVIII. And be it enacted, That the Council of every Borough, on the Ninth Day of *November*, in this present Year, shall appoint a fit Person, not being a Member of the Council, to be the Town Clerk of such Borough, who shall hold his Office during Pleasure; and in any Borough may be an Attorney of One of His Majesty's Superior Courts at *Westminster*, any Law, Statute, Charter, or Usage to the contrary notwithstanding; and the Council of every Borough shall in every Year appoint another fit Person, not being a Member of the Council, to be the Treasurer of the Borough, and also such other Officers as have been usually appointed in such Borough, or as they shall think necessary for enabling them to carry into execution the various Powers and Duties vested in them by virtue of this Act, and may from Time to Time discontinue the Appointment of such Officers as shall appear to them not necessary to be re-appointed; and shall take such Security for the due Execution of his Office by any such Town Clerk, Treasurer, or other Officer, as the said Council shall think proper; and shall order to be paid to the Mayor, and to the Town Clerk and Treasurer, and to every such other Officer to be employed as aforesaid, such Salary or Allowance as the said Council shall think reasonable; and in case of a Vacancy in any such Office as aforesaid by Death, Resignation, Removal, or otherwise, the Council of such Borough may appoint another fit Person in the Place of the Person so making such Vacancy; provided that the Town Clerk and Treasurer shall not be the same Person.

[§§ LIX-LXI. Officers to give Council financial accounts. Penalties for failure. In Oxford, Berwick, and cities named and being counties of themselves, the Council is to appoint a Sheriff.][1]

[1] The list is the counties of the cities of Bristol, Canterbury, Chester, Coventry, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester; the counties of the towns of Carmarthen, Haverfordwest, Kingston-upon-Hull, Newcastle-upon-Tyne, Nottingham, Poole, and Southampton.

LXII. And be it enacted, That the Council of every Borough in which a separate Court of Quarter Sessions of the Peace shall be holden, as is herein after provided, shall, within Ten Days next after the Grant of the said Court shall have been signified to the Council of such Borough, appoint a fit Person, not being an Alderman or Councillor, to be Coroner of such Borough so long as he shall well behave himself in his Office of Coroner. . . .

LXIII. And be it further enacted, That . . . every Coroner appointed in any Borough shall make and transmit to One of His Majesty's Principal Secretaries of State a Return . . . of all the Cases in which he may have been called upon to hold an Inquest touching the Cause of Death of any Person during the Year ending on the Thirty-first Day of *December* immediately preceding.

[§§ LXIV-LXVIII. County Coroners to act in other Boroughs. Council may remove officers appointed prior to this Act, paying them compensation.]

LXIX. And be it enacted, That all Acts whatsoever authorized or required by virtue of this Act to be done by the Council of such Borough, and all Questions of Adjournment or others that may come before such Council, may be done and decided by the Majority of the Members of the Council who shall be present at any Meeting held in pursuance of this Act, the whole Number present at such Meeting not being less than One Third Part of the Number of the whole Council; and at all such Meetings the Mayor, if present, shall preside; and the Mayor, or, in the Absence of the Mayor, such Alderman, or in the Absence of all the Aldermen, such Councillor as the Members of the Council then assembled shall choose to be the Chairman of that Meeting, shall have a Second or Casting Vote in all Cases of Equality of Votes; and the Minutes of the Proceedings of all such Meetings shall be drawn up and fairly entered into a Book to be kept for that Purpose, and shall be signed by the Mayor, Alderman, or Councillor presiding at such Meeting; and the said Minutes shall be open to the Inspection of any Burgess at all reasonable Times on Payment of a Fee of One Shilling: Provided always, that previous to any Meeting of the Council held by virtue of this Act a Notice of the Time and Place of such intended Meeting shall be given Three clear Days at least before such Meeting, by fixing the said Notice on or near the Door of the Town Hall of the Borough; and such Notice shall be signed by the Mayor, who shall have Power to call a Meeting of the Council as often as he shall think proper; and in case the Mayor shall refuse to call any such Meeting after a Requisition for that Purpose signed by Five Members of the Council at the least shall have been presented to

him, it shall be lawful for the said Five Members to call a Meeting of the Council . . . [giving notice of the business to be transacted and allowing three days before the meeting] . . . and no Business shall be transacted at such Meeting other than is specified in the Notice: Provided always, that there shall be in every Borough Four quarterly Meetings in every Year at which the Council shall meet for the Transaction of general Business, and no Notice shall need to be given of the Business to be transacted on such quarterly Days: . . . [dates and further details of quarterly meetings].

LXX. And be it enacted, That it shall be lawful for the Council of any Borough to appoint out of their own Body, from Time to Time, such and so many Committees, either of a general or special Nature, and consisting of such Number of Persons as they may think fit, for any Purposes which, in the Discretion of such Council, would be better regulated and managed by means of such Committees: Provided always, that the Acts of every such Committee shall be submitted to the Council for their Approval.

[§§ LXXI-LXXV. Charitable Trusts.]

LXXVI. And be it enacted, That the Council to be elected for any Borough shall, immediately after their First Election, and so from Time to Time thereafter as they shall deem expedient, appoint, for such Time as they may think proper, a sufficient Number of their own Body, who, together with the Mayor of the Borough for the Time being, shall be and be called the Watch Committee for such Borough; and all the Powers herein-after given to such Committee may be executed by the Majority of those who shall be present at any Meeting of such Committee, the whole Number present at such Meeting being not less than Three; and such Watch Committee shall, within Three Weeks after their First Formation, and so from Time to Time thereafter as Occasion shall require, appoint a sufficient Number of fit Men, who shall be sworn in before some Justice of the Peace having Jurisdiction within the Borough to act as Constables for preserving the Peace by Day and by Night, and preventing Robberies and other Felonies, and apprehending Offenders against the Peace;[1] and the Men so sworn shall not only within such Borough, but also within the County in which such Borough or Part thereof shall be situated, and also within every County being within Seven Miles of any Part of such Borough, and also within all Liberties in any such County, have all such Powers and Privileges, and be liable to all such Duties and Responsibilities, as any Constable duly appointed now has or hereafter may have within his Constablewick by virtue of the Common Law of this

[1] Cf. Vol. II, Sect. A, No. XXXIX, §§ 9 and 30, pp. 131, 133.

Realm, or of any Statutes made or to be made, and shall obey all such lawful Commands as they may from Time to Time receive from any of the Justices of the Peace having Jurisdiction within such Borough, or within any County in which they shall be called on to act as Constables, for conducting themselves in the Execution of their Office.

[§ LXXVII. The Watch Committee are to make regulations for the Constables, and they (or two local J.P.'s) may discharge unfit constables.]

[§§ LXXVIII-LXXXV. Constables' duties: they may release on recognizance to appear before magistrate. Penalties for neglect in or assault on Constables. Special Constables. " Watching " to cease.]

LXXXVI. And be it enacted, That the Watch Committee of every such Borough shall, on the first Day of *January*, the First Day of *April*, the First Day of *July*, and the First Day of *October* in every Year, transmit to one of His Majesty's Principal Secretaries of State a Report of the Number of Men appointed to act as Constables or Policemen in such Borough, and of the Description of Arms, Accoutrements, and Clothing, and other Necessaries furnished to each Man, and of the Salaries, Wages, and Allowances payable to such Constables or Policemen, and of the Number and Situation of all Station Houses in such Borough; and also a Copy of all Rules, Orders, and Regulations which shall from Time to Time be made by such Watch Committee or by the Council of such Borough for the Regulation and Guidance of such Constables or Policemen.

[§ XXXVII allows for bringing new parts of the Borough under the Lighting Acts.]

[§ LXXXVIII allows Council to assume duties of Inspectors under such an Act and to levy rate for lighting up to a maximum of 6d. in the £1 on property rated to poor relief in the given part of the Borough.]

[§ LXXXIX. A proviso about Dockyards.]

XC. And be it enacted, That it shall be lawful for the Council of any Borough to make such Bye Laws as to them shall seem meet for the good Rule and Government of the Borough, and for Prevention and Suppression of all such Nuisances as are not already punishable in a summary Manner by virtue of any Act in force throughout such Borough, and to appoint by such Bye Laws such Fines as they shall deem necessary for the Prevention and Suppression of such Offences; provided that no Fine so to be appointed shall exceed the Sum of Five Pounds, and that no such Bye Law shall be made unless at least Two Thirds of the whole Number of the Council shall be present; provided that no such Bye Law shall be of any Force until the Expiration of Forty Days after the same or a Copy thereof shall have been sent, sealed with the Seal of the

said Borough, to One of His Majesty's Principal Secretaries of State, and shall have been affixed on the outer Door of the Town Hall or in some other public Place within such Borough; and if at any Time within the said Period of Forty Days His Majesty, with the Advice of His Privy Council, shall disallow the same Bye Law or any Part thereof, such Bye Law or the Part thereof disallowed shall not come into operation: Provided also, that it shall be lawful for His Majesty, if He shall think fit, at any Time within the said Period of Forty Days, to enlarge the Time within which such Bye Law, if disallowed, shall not come into force; and no such Bye Law shall in that Case come into force until after the Expiration of such enlarged Time.

[§§ XCI-XCVII. Fines, Borough receipts, salaries, rates for deficiencies, publication of accounts, Corporation lands, buildings, and sales. Measures for preventing collusive sales by the retiring Borough rulers.]

XCVIII. And be it enacted, That it shall be lawful for His Majesty from Time to Time to assign to so many Persons as he shall think proper His Majesty's Commission to act as Justices of the Peace in and for each Borough, and in and for each of the Counties of Cities and Towns respectively named in the said Schedule (A),[1] and in and for such of the Boroughs in the said Schedule (B.)[1] to which His Majesty may be pleased upon the Petition of the Council thereof to grant a Commission of the Peace: Provided nevertheless, that every Person so to be assigned shall reside within the Borough for which he shall be assigned, or within Seven Miles of such Borough, or of some Part thereof, during such Time as he shall act as a Justice of the Peace in and for such Borough.

XCIX. And be it enacted, That if the Council of any Borough shall think it requisite that a salaried Police Magistrate or Magistrates be appointed within such Borough, such Council is hereby empowered to make a Bye Law fixing the Amount of the Salary which he or they are to receive in that Behalf; and such Bye Law so made by any Council as aforesaid shall be transmitted to One of His Majesty's Principal Secretaries of State, and it shall be lawful thereupon for His Majesty, if he shall think fit, to appoint One or more fit Persons, according to the Number fixed in the said Bye Law (being Barristers at Law of not less than Five Years standing), to be during His Majesty's Pleasure Police Magistrate or Magistrates and a Justice or Justices of the Peace for such Borough, and to direct that such Sum shall be paid quarterly out of the Borough Fund of such Borough, as will be sufficient to pay such yearly Salary

[1] Schedules omitted.

to each of the Justices so assigned as last aforesaid, . . . [similar procedure every time this office may be vacant]. . . .

CI. And be it further enacted, That every Person assigned to keep the Peace within any Borough under the Provisions of this Act, . . . shall, during the Continuance of such Assignment, execute the Duties of a Justice of the Peace in and for the Borough for which he shall have been so assigned, though he may not have such Qualification by Estate as is required by Law in the Case of other Persons being Justices of the Peace for a County, provided that such Person be not disqualified by Law to act as a Justice of the Peace for any other Cause or upon any other Account than in respect of Estate, and although such Person may not be a Burgess of the Borough in and for which he shall have been assigned to act as a Justice of Peace; . . . [a Summons or Warrant issued by him to be obeyed within the borough and within seven miles of it]. . . . Provided nevertheless, that no such Person, by virtue of such Assignment, shall act as a Justice of the Peace at any Court of Gaol Delivery or General or Quarter Sessions, or in making or levying any County Rate, or rate in the Nature of a County Rate. . . .

CIII. And be it enacted, That the Council of every Borough, which shall be desirous that a separate Court of Quarter Sessions of the Peace shall be or continue to be holden in and for such Borough shall signify the same by Petition to His Majesty in Council, setting forth the Grounds of the Application, the State of the Gaol, and the Salary which they are willing to pay to the Recorder in that Behalf; and it shall be lawful for His Majesty, if He shall be pleased thereupon to grant that a separate Court of Quarter Sessions of the Peace shall be thenceforward holden in and for such Borough, to appoint for such Borough, or for any Two or more of such Boroughs conjointly, a fit Person, being a Barrister at Law of not less than Five Years standing, who shall be and be called the Recorder of such Borough or Boroughs, and shall hold such Office during his good Behaviour, . . . and the Council of every such Borough shall appoint a fit Person to be Clerk of the Peace during his good behaviour; and the Recorder for the Time being of any Borough shall be a Justice of the Peace of and for such Borough, although he may not have such Qualification by Estate as is required by Law in the Case of any other Person being a Justice of the Peace for a County; . . . Provided always, that no Person being such Recorder as aforesaid shall be eligible to serve in Parliament for such Borough, nor shall he be an Alderman, Councillor, or Police Magistrate of such Borough: . . . [but he shall not be disqualified from acting as a barrister to revise the Parliamentary voters' list]. . . .

CV. And be it enacted, That the Recorder of every Borough

shall hold once in every Quarter of a Year . . . a Court of Quarter Sessions of the Peace . . . of which Court the Recorder of such Borough shall sit as the sole Judge; . . . Provided nevertheless that no Recorder, by virtue of his Office, shall have Power to make or levy any County Rate, or Rate in the Nature of a County Rate, or to grant any Licence or Authority to any Person to keep an Inn, Alehouse, or Victualling House, to sell exciseable Liquors by Retail, or to exercise any of the Powers herein specially vested in the Council of such Borough.

[§§ CVII-CXXXVIII. Further Reform of Courts. Boroughs with separate Quarter Sessions not to be liable for County Rate but to pay certain prosecution charges and other expenditure. Courts of record for trial of civil actions to be retained, with extended jurisdiction, in some boroughs. Jury regulations. Fees and Penalties. Appeals. Exceptions to these rules. Position of Oxford, Cambridge, and Durham. Interpretation Clause.]

CXXXIX. . . . in every case in which any Body Corporate . . . now is or are in their Corporate Capacity, and not as charitable Trustees . . . seized or possessed of any Manors, Lands, Tenements, or Hereditaments whereunto any Advowson or Right of Nomination or Presentation to any Benefice or Ecclesiastical Preferment is appendant or appurtenant . . . every such Advowson [etc.] . . . shall be sold at such Time and in such Manner . . . so that the best Price may be obtained for the same;[1] . . . and the Proceeds of every such Sale shall be paid to the Treasurer of the Borough . . . and shall be by him invested in Government Securities for the Use of the Body Corporate. . . .

[§§ CXL-CXLIII. Elections may be deferred by Order in Council; King's powers to grant Charters of Incorporation; Interpretation Clause.]

XXVI

THE ECCLESIASTICAL COMMISSION ACT, 1836

6 & 7 Will. IV, c. 77.

'Whereas His Majesty was pleased, on the Fourth Day of *February* and on the Sixth Day of *June* in the Year One thousand eight hundred and thirty-five, to issue Two several Commissions

[1] Under the direction of the Ecclesiastical Commissioners set up in February and June 1835, whose work is referred to (and taken over) in 6 & 7 Will. IV, c. 77, here following.

to certain Persons therein respectively named, directing them to consider the State of the several Dioceses in *England* and *Wales*, with reference to the Amount of their Revenues, and the more equal Distribution of Episcopal Duties, and the Prevention of the Necessity of attaching by Commendam to Bishopricks Benefices with Cure of Souls, and to consider also the State of the several Cathedral and Collegiate Churches in *England* and *Wales*, with a view to the Suggestion of such Measures as may render them conducive to the Efficiency of the Established Church, and to devise the best Mode of providing for the Cure of Souls, with special Reference to the Residence of the Clergy on their respective Benefices: And whereas the said Commissioners have, in pursuance of such Directions, made Four several Reports. . . .' [Then lists the proposals contained in these reports, including those for geographical rearrangements, residence, First Fruits, and the revision of Bishops' Incomes so as to provide for the augmentation of smaller bishoprics and] . . . if, in determining the Mode of regulating the Episcopal Incomes . . . it shall be deemed expedient to make the Alterations required in any Case by the subtraction or addition of Real Estates, such Real Estates be transferred accordingly. . . . And whereas it is expedient that the said Recommendations should be carried into effect as soon as conveniently may be: Be it therefore enacted . . . That the Lord Archbishop of *Canterbury* for the Time being, the Lord Archbishop of *York* and the Lord Bishop of *London* for the Time being, *John* Lord Bishop of *Lincoln*, *James Henry* Lord Bishop of *Gloucester*, the Lord High Chancellor of *Great Britain*, the Lord President of the Council, the Lord High Treasurer or the First Lord of the Treasury, and the Chancellor of the Exchequer, for the Time being respectively, and such One of His Majesty's Principal Secretaries of State as shall be for that Purpose nominated by His Majesty under His Royal Sign Manual (such Lord Chancellor, Lord President, Lord High Treasurer or First Lord of the Treasury, Chancellor of the Exchequer, and Secretary of State being respectively Members of the United Church of *Great Britain* and *Ireland*,) the Right Honourable *Dudley* Earl of *Harrowby*, the Right Honourable *Henry Hobhouse*, and the Right Honourable Sir *Herbert Jenner* Knight, shall for the Purposes of this Act be One Body Politic and Corporate by the Name of " The Ecclesiastical Commissioners for *England*," and by that Name shall have perpetual Succession and a Common Seal, and by that Name shall and may sue and be sued, and shall have Power and Authority to take and purchase and hold Lands, Tenements, and Hereditaments, to them, their Successors and Assigns, for the Purposes of this Act, the Statutes of Mortmain, or any other Act or Acts, to the contrary hereof notwithstanding.

[§ II. All but the *ex officio* members to be removable by the King in Council: vacancies to be filled by appointment under the Royal Sign Manual.]

[§ IX. Commissioners empowered to take evidence on oath.]

X. And be it enacted, That the said Commissioners shall from Time to Time prepare and lay before His Majesty in Council, such Schemes as shall appear to the said Commissioners to be best adapted for carrying into effect the herein-before recited Recommendations, and shall in such Schemes recommend and propose such Measures as may, upon further Inquiry, which the said Commissioners are hereby authorized to make, appear to them to be necessary for carrying such Recommendations into full and perfect Effect: Provided always, that . . . in particular that it shall be competent to the said Commissioners to propose in any such Scheme that all Parishes, Churches, or Chapelries which are locally situate in any Diocese, but subject to any peculiar Jurisdiction other than the Jurisdiction of the Bishop of the Diocese in which the same are locally situate, shall be only subject to the Jurisdiction of the Bishop of the Diocese within which such Parishes, Churches, or Chapelries are locally situate.

XII. And be it enacted, That when any Scheme prepared under the Authority of this Act shall be approved by His Majesty in Council it shall be lawful for His Majesty in Council to issue an Order . . . and to direct in every such Order that the same be registered by the Registrar of each of the Dioceses . . . affected thereby.

[§ XIII then to be published in the London Gazette.]

XIV. And be it enacted, That so soon as any such Order in Council shall be so registered and gazetted it shall in all respects . . . have and be of the same Force and Effect as if all and every Part thereof were included in this Act. . . .

[§ XV. Copies to be laid before Parliament without unnecessary delay.]

XXVII

METROPOLITAN BUILDINGS ACT, 1844

7 & 8 Vict., c. 84.

[§§ I-V. Regulations to be observed in new building in the Metropolis.]

VI. And be it enacted, with regard to all Buildings . . . [of all three classes defined] . . . That, . . . every such Building shall be

built under the special Supervision of the Official Referees, according to the Provisions of this Act in that Behalf, . . . and if any Difference arise as to whether any such Building be liable to such special Supervision, the same shall be determined by the Official Referees; subject nevertheless to an Appeal, at the Instance of any Party interested, to the Commissioners of Works and Buildings, whose Decision in the Matter shall be final.

XI. And for the Purpose of preventing the express Provisions of this Act from hindering the Adoption of Improvements, . . . be it enacted, with regard to every Building of whatever Class, so far as relates to the Modification of any Rules hereby prescribed, That if in the Opinion of the Official Referees the Rules of this Act imposed shall be inapplicable, or will defeat the Objects of this Act, and that by the Adoption of any Modification of such Rules such Objects will be attained either better or as effectually, it shall be the Duty of such Official Referees to report their Opinion thereon, stating the Grounds of such their Opinion to the Commissioners of Works and Buildings; and that if on the Investigation thereof it shall appear to the said Commissioners that such Opinion is well founded, then it shall be lawful for the said Commissioners or any Two of them to direct that such Modification may be made in such Rules as will in their Opinion give effect to the Purposes of this Act; . . . [any interested party may make representations to the Commissioners, through the Official Referees, for a modification of the rules; the Commissioners, after considering the Referees' report may " make such Order in the Matter as may appear to them to be requisite "]. . . .

XXVIII

COUNTY COURTS ACT, 1846

9 & 10 Vict., c. 95.

'. . . And whereas the County Court is a Court of ancient Jurisdiction having Cognizance of all Pleas of Personal Actions to any Amount by virtue of a Writ of Justicies issued in that Behalf: And whereas the Proceedings in the County Court are dilatory and expensive, and it is expedient to alter and regulate the Manner of proceeding in the said Courts for the Recovery of Small Debts and Demands. . . .' Be it enacted . . . that it shall be lawful for Her Majesty, with the Advice of Her Privy Council, from Time to Time to order that this Act shall be put in force in such County or Counties

as to Her Majesty, with the Advice aforesaid, from Time to Time shall seem fit; and this Act shall extend to those Counties concerning which any such Order shall have been made, and not otherwise or elsewhere: Provided always, that no Court shall be established under this Act in the City of *London*.

II. And be it enacted, That it shall be lawful for Her Majesty, with the Advice aforesaid, to divide the whole or Part of any such County, including all Counties of Cities and Counties of Towns, Cities, Boroughs, Towns, Ports, and Places, Liberties, and Franchises therein contained, or thereunto adjoining, into Districts, and to order that the County Court shall be holden for the Recovery of Debts and Demands under this Act in each of such Districts, and from Time to Time to alter such Districts as to Her Majesty with the Advice aforesaid, shall seem fit, and to order from Time to Time that the Number of Districts in and for which the Court shall be holden shall be increased until the whole of such County shall be within the Provisions of this Act, and with the Advice aforesaid to alter the Place of holding any such Court, or to order that the holding of any such Court be discontinued, or to consolidate any Two or more of such Districts. . . .

III. And be it enacted, That every Court to be holden under this Act shall have all the Jurisdiction and Powers of the County Court for the Recovery of Debts and Demands, as altered by this Act, throughout the whole District for which it is holden, and there shall be a Judge for each District to be created under this Act, and the County Court may be holden simultaneously in all or any of such Districts; and every Court holden under this Act shall be a Court of Record.

IX. And be it enacted, That the Lord Chancellor shall appoint as many fit Persons as are needed to be Judges of the County Court under this Act, each of whom shall be a Barrister at Law who shall be of Seven Years standing, or who shall have practised as a Barrister and Special Pleader for at least Seven Years. . . .

XXI. And be it enacted, That every Judge of the County Court whose Name shall be inserted by Her Majesty in any Commission of the Peace for the County, Riding, or Division of a County for which he is appointed Judge of the County Court may and shall act in the Execution of the Office of Justice of the Peace for the said County, Riding, or Division although he may not have such Qualification by Estate or Interest in Lands, Tenements, and Hereditaments as is required by Law in the Case of other Persons. . . .

LVIII. And be it enacted, That all Pleas of Personal Actions, where the Debt or Damage claimed is not more than Twenty Pounds, whether on Balance of Account or otherwise, may be holden in the

County Court, without Writ; and all such Actions brought in the said Court shall be heard and determined in a summary Way in a Court constituted under this Act, and according to the Provisions of this Act: Provided always, that the Court shall not have cognizance of any Action of Ejectment, or in which the Title to any corporeal or incorporeal Hereditaments, or to any Toll, Fair, Market, or Francise, shall be in question, or in which the Validity of any Demise, Bequest, or Limitation under any Will or Settlement may be disputed, or for any malicious Prosecution, or for any Libel or Slander, or for Criminal Conversation, or for Seduction, or Breach of Promise of Marriage.

LIX. And be it enacted, That, on the Application of any Person desirous to bring a Suit under this Act, the Clerk of the Court shall enter in a Book to be kept for this Purpose in his Office a Plaint in Writing, . . . and thereupon a Summons, stating the Substance of the Action, and bearing the Number of the Plaint on the Margin thereof shall be issued under the Seal of the Court; . . . and Delivery of such Summons to the Defendant, or in such other Manner as shall be specified in the Rules of Practice, shall be deemed good Service; and no Misnomer or inaccurate Description of any Person or Place in any such Plaint or Summons shall vitiate the same, so that the Person or Place be therein described so as to be commonly known.

LX. And be it enacted, That such Summons may issue in any District in which the Defendant or One of the Defendants shall dwell or carry on his Business at the Time of the Action brought; . . .

LXIX. And be it enacted, That the Judge of the County Court shall be the sole Judge in all Actions brought in the said Court, and shall determine all Questions as well of Fact as of Law, unless a Jury shall be summoned as herein-after mentioned. . . .

LXX. And be it enacted, That in all Actions where the Amount claimed shall exceed Five Pounds it shall be lawful for the Plaintiff or Defendant to require a Jury to be summoned to try the said Action; and in all Actions where the Amount claimed shall not exceed Five Pounds it shall be lawful for the Judge, in his Discretion, on the Application of either of the Parties, to order that such Action be tried by a Jury; . . .

LXXXIX. And be it enacted, That every Order and Judgment of any Court holden under this Act, except as herein provided, shall be final and conclusive between the Parties, but the Judge shall have Power to nonsuit the Plaintiff in every Case in which satisfactory Proof shall not be given to him entitling either the Plaintiff or Defendant to the Judgment of the Court, and shall also in every Case whatever have the Power, if he shall think fit, to order a new

Trial to be had upon such Terms as he shall think reasonable, and in the meantime to stay the Proceedings.

XC. And be it enacted, That no Plaint entered in any Court holden under this Act shall be removed or removable from the said Court into any of Her Majesty's Superior Courts of Record by any Writ or Process, unless the Debt or Damage claimed shall exceed Five Pounds, and then only by Leave of a Judge of One of the said Superior Courts, in Cases which shall appear to the Judge fit to be tried in One of the Superior Courts, and upon such Terms as to Payment of Costs, giving Security for Debt or Costs, or such other Terms as he shall think fit.

CXXVIII. And be it enacted, That all Actions and Proceedings which before the passing of this Act might have been brought in any of Her Majesty's Superior Courts of Record where the Plaintiff dwells more than Twenty Miles from the Defendant, or where the Cause of Action did not arise wholly or in some material Point within the Jurisdiction of the Court within which the Defendant dwells or carries on his Business at the Time of the Action brought, or where any Officer of the County Court shall be a Party, except in respect of any Claim to any Goods and Chattels taken in Execution of the Process of the Court, or the Proceeds or Value thereof, may be brought and determined in any such Superior Court, at the Election of the Party suing or proceeding, as if this Act had not been passed.

CXXIX. And be it enacted, That if any Action shall be commenced after the passing of this Act in any of Her Majesty's Superior Courts of Record, for any Cause other than those lastly hereinbefore specified, for which a Plaint might have been entered in any Court holden under this Act, and a Verdict shall be found for the Plaintiff for a Sum less than Twenty Pounds, if the said Action is founded on Contract, or less than Five Pounds if it be founded on Tort, the said Plaintiff shall have Judgment to recover such Sum only, and no Costs; and if a Verdict shall not be found for the Plaintiff the defendant shall be entitled to his Costs as between Attorney and Client, unless in either Case the Judge who shall try the Cause shall certify on the Back of the Record that the Action was fit to be brought in such Superior Court.

[Schedule D attached to the Act is a table of maximum fees. These are not heavy: *e.g.* a summons costs about threepence per pound claimed, with a maximum charge of three shillings.]

XXIX

THE TREASON FELONY ACT, 1848[1]

11 & 12 Vict., c. 12.

'Whereas by an Act of the Parliament of *Great Britain* passed in the Thirty-sixth Year of the Reign of His late Majesty King *George* the Third,[2] intituled *An Act for the Safety and Preservation of His Majesty's Person and Government against treasonable and seditious Practices and Attempts*, it was among other things enacted, that if any Person or Persons whatsoever, after the Day of the passing of that Act, during the natural Life of His said Majesty, and until the End of the next Session of Parliament after the Demise of the Crown, should within the Realm or without, compass, imagine, invent, devise or intend Death or Destruction, or any bodily harm tending to Death or Destruction, Maim or Wounding, Imprisonment or Restraint of the Person of His said Majesty, His Heirs or Successors, or to deprive or depose Him or Them from the Style, Honour, or Kingly Name of the Imperial Crown of this Realm or of any other of His said Majesty's Dominions or Countries, or to levy War against His said Majesty, Heirs and Successors, within this Realm, in order by Force or Constraint, to compel Him or Them to change His or Their Measures or Counsels, or in order to put any Force or Constraint upon or to intimidate or overawe both Houses or either House of Parliament, or to move or stir any Foreigner or Stranger with Force to invade this Realm or any other of His said Majesty's Dominions or Countries under the Obeisance of His said Majesty, His Heirs and Successors, and such Compassings, Imaginations, Inventions, Devices, or Intentions, or any of them, should express, utter, or declare by publishing any Printing or Writing, or by any overt Act or Deed, being legally convicted thereof, upon the Oaths of Two lawful and credible Witnesses, upon Trial, or otherwise convicted or attainted by due Course of Law, then every such Person or Persons so as aforesaid offending should be deemed, declared, and adjudged to be a Traitor and Traitors, and should suffer Pains of Death, and also lose and forfeit as in Cases of High Treason: . . . [all of which relating to H.M.'s heirs having been made perpetual by 57 Geo. III, c. 6]. And whereas Doubts are entertained whether the Provisions so made perpetual were by the last-recited Act extended to *Ireland*: And whereas it is expedient to repeal all such of the Provisions made perpetual by

[1] See also Vol. I, Sect. A, No. III, p. 5, and No. XXXIV, p. 87.

[2] 36 Geo. III, c. 7.

the last-recited Act as do not relate to Offences against the Person of the Sovereign, and to enact other Provisions instead thereof applicable to all Parts of the United Kingdom, and to extend to *Ireland* such of the Provisions of the said Acts as are not hereby repealed:' Be it therefore enacted . . . That from and after the passing of this Act the Provisions of the said Act . . . save such of the same respectively as relate to the compassing, imagining, inventing, devising, or intending Death or Destruction, or any bodily Harm tending to Death or Destruction, Maim or Wounding, Imprisonment or Restraint of the Person of the Heirs and Successors of His said Majesty King *George* the Third, and the expressing, uttering, or declaring of such Compassings, Imaginations, Inventions, Devices, or Intentions, or any of them, shall be and the same are hereby repealed.

II. And be it declared and enacted, That such of the said recited Provisions . . . as are not hereby repealed shall extend to and be in force in that Part of the United Kingdom called *Ireland*.

III. And be it enacted, That if any Person whatsoever after the passing of this Act shall, within the United Kingdom or without, compass, imagine, invent, devise, or intend to deprive or depose our most Gracious Lady the Queen, Her Heirs or Successors, from the Style, Honour, or Royal Name of the Imperial Crown of the United Kingdom, or of any other of Her Majesty's Dominions and Countries, or to levy War against Her Majesty, Her Heirs or Successors, within any Part of the United Kingdom in order by Force or Constraint to compel Her or Them to change Her or Their Measures or Counsels, or in order to put any Force or Constraint upon or in order to intimidate or overawe both Houses or either House of Parliament, or to move or stir any Foreigner or Stranger with Force to invade the United Kingdom or any other Her Majesty's Dominions or Countries under the Obeisance of Her Majesty, Her Heirs or Successors, and such Compassings, Imaginations, Inventions, Devices, or Intentions, or any of them, shall express, utter, or declare, by publishing any Printing or Writing, or by open and advised Speaking, or by any overt Act or Deed, every Person so offending shall be guilty of Felony, and being convicted thereof shall be liable, at the Discretion of the Court, to be transported beyond the Seas for the Term of his or her natural Life, or for any Term not less than Seven Years, or to be imprisoned for any Term not exceeding Two Years, with or without hard Labour, as the Court shall direct.

[§§ IV-XI fix time limit for prosecution, number of witnesses, provisions for Scotland.]

XXX

MILITIA ACT, 1852[1]

15 & 16 Vict., c. 50.

'. . . And whereas by divers Acts, and ultimately by an Act of the last Session of Parliament, . . . all Proceedings for and relating to the Balloting or Enrolment of Militia Men stand suspended until the First Day of *October* One thousand eight hundred and fifty-two, subject to the Power of Her Majesty, by Order in Council, to direct any such Proceedings to be had at any Time before the Expiration of that period: And whereas it is expedient, for better fulfilling the Purposes of the Institution of the Militia with as little Disturbance as may be to the ordinary Occupation of the People, that, the Laws for raising and regulating the Militia should be amended:' Be it therefore enacted . . . as follows:

I. It shall be lawful for One of Her Majesty's Principal Secretaries of State from Time to Time to make Regulations limiting the Ages at which Persons may be appointed Officers of the several Ranks in the Militia, and for securing the Appointment of Persons as such Officers who are qualified to discharge the Duties of Officers of their respective Ranks. . . .

XI. For the Purpose of raising the Number of Men required to be raised under this Act, the Lieutenants of the said several Counties, Ridings, and Places shall . . . direct their Deputy Lieutenants, or the Colonels or Commanding Officers of the Regiments, Battalions, or Corps of Militia of their respective Counties, Ridings, and Places, without Delay, to proceed to raise and enrol Volunteers to serve for the Term of Five Years in the Militia of such Counties, Ridings, or Places, not exceeding the Numbers of Men for the Time being authorized to be therein raised under this Act. . . . being able-bodied Men between such Ages and of such Height as shall be from Time to Time fixed by Regulations made by Her Majesty's Secretary-at-War as herein provided, and for such Bounties or other Payments as shall be from Time to Time authorized by such Regulations.

XIV. All Regulations made under this Act shall be laid before both Houses of Parliament within Twenty-one Days next after the making thereof, if Parliament be then sitting, or if Parliament be not then within Twenty-one Days after the next Meeting of Parliament.

XVIII. In Case it appear to Her Majesty, after the Thirty-first

[1] See Vol. I, Sect. A, No. X, p. 17, and No. LIII, p. 135. See also Vol. II, Sect. A, No. XIV, p. 29, and No. XLI, p. 136.

of *December* in the Year One thousand eight hundred and fifty two that the Number of men required to be raised . . . cannot be raised by voluntary Enlistment under the provisions of this Act . . . or in case of actual Invasion or imminent Danger thereof, it shall be lawful for Her Majesty in any such Cases, with the Advice of Her Privy Council if it appear to Her advisable so to do, to order and direct that the Number of Men so required to be raised shall be raised by Ballot as herein provided.

[Other sections continue the provisions of the Act of 1802[1] save as here amended.]

XXXI

EXCHEQUER AND AUDIT DEPARTMENTS ACT, 1866

29 & 30 Vict., c. 39.

'Whereas it is expedient to consolidate the Powers and Duties of the Comptroller of Her Majesty's Exchequer and of the Commissioners for auditing the Public Accounts, and to unite in One Department the Business hitherto conducted by the separate Establishments under them; and to make other Provisions for the more complete Examination of the Public Accounts of the United Kingdom:' . . .[1]

3. At any Time within Twelve Months after the passing of this Act it shall be lawful for Her Majesty, Her Heirs and Successors, by Letters Patent under the Great Seal of the United Kingdom to nominate and appoint the Person who shall at that Time hold the Office of Comptroller General of the Receipt and Issue of Her Majesty's Exchequer, and Chairman of the Commissioners for auditing the Public Accounts, to be Comptroller General of the Receipt and Issue of Her Majesty's Exchequer and Auditor General of Public Accounts, in this Act referred to as "Comptroller and Auditor General," and also to nominate and appoint One of the Persons who shall at that Time hold the Offices of Commissioners for auditing the Public Accounts to be "Assistant Comptroller and Auditor."

The said Comptroller and Auditor General and Assistant Comptroller and Auditor shall hold their Offices during good Behaviour, subject, however, to their Removal therefrom by Her Majesty, Her Heirs and Successors, on an Address from the Two

[1] Vol. II, Sect. A, No. XIV, p. 29.

Houses of Parliament;[1] and they shall not be capable of holding their Offices together with any other Office to be held during Pleasure under the Crown, or under any Officer appointed by the Crown; nor shall they be capable while holding their Offices of being elected or of sitting as Members of the House of Commons; nor shall any Peer of Parliament be capable of holding either of the said Offices.

8. The Treasury shall from Time to Time appoint the Officers, Clerks, and other Persons in the Department of the Comptroller and Auditor General, and Her Majesty by Order in Council may from Time to Time regulate the Numbers and Salaries of the respective Grades or Classes into which the said Officers, Clerks, and others shall be divided.

12. At the Close of each of the Quarters ending on the Thirty-first Day of *March*, the Thirtieth Day of *June*, the Thirtieth Day of *September*, and the Thirty-first Day of *December* in every Year the Treasury shall prepare an Account of the Income and Charge of the Consolidated Fund in *Great Britain* and in *Ireland* for such Quarter, . . . [to be sent to the Comptroller and Auditor General so that he may give his Certificate for the purpose of Advances being made by the Bank of England in case of deficiency].

15. When any Ways and Means shall have been granted by Parliament to make good the Supplies granted to Her Majesty by any Act of Parliament or Resolution of the House of Commons, the Comptroller and Auditor General shall grant to the Treasury, on their Requisition authorizing the same, a Credit or Credits on the Exchequer Accounts at the Bank of England and Bank of Ireland, or on the growing Balances thereof, not exceeding in the whole the Amount of the Ways and Means so granted.

21. The Treasury shall cause an Account to be prepared and transmitted to the Comptroller and Auditor General for Examination on or before the Thirtieth Day of *September* in every Year, showing the Issues made from the Consolidated Fund of Great Britain and Ireland in the Financial Year ended on the Thirty-first Day of March preceding, for the Interest and Management of the Public Funded and Unfunded Debt, for the Civil List, and all other Issues in the Financial Year for Services charged directly on the said Fund; and the Comptroller and Auditor General shall certify and report upon the same with reference to the Acts of Parliament under the Authority of which such Issues may have been directed; and such Accounts and Reports shall be laid before the House of Commons by the Treasury. . . .

22. . . . Accounts of the Appropriation of the several Supply

[1] Cf. Vol. I, Sect. A, No. XXVI, § III, p. 95.

Grants comprised in the Appropriation Act of each Year shall be prepared by the several Departments, and be transmitted for Examination to the Comptroller and Auditor General and to the Treasury, and when certified and reported upon and herein-after directed they shall be laid before the House of Commons; and such Accounts shall be called the "Appropriation Accounts" of the Moneys expended for the Services to which they may respectively relate; . . . and the Comptroller and Auditor General shall certify and report upon such Accounts as herein-after directed; and the Reports thereon shall be signed by the Comptroller and Auditor General. . . .

XXXII

THE REPRESENTATION OF THE PEOPLE[1] ACT, 1867

30 & 31 Vict., c. 102.

2. This Act shall not apply to *Scotland* or *Ireland*,[2] nor in anywise affect the Election of Members . . . for the Universities of *Oxford* or *Cambridge*.

PART I—FRANCHISES

3. Every Man shall, in and after the Year One thousand eight hundred and sixty-eight, be entitled to be registered as a Voter, and when registered, to vote for a Member or Members to serve in Parliament for a Borough, who is qualified as follows: (that is to say,)

1. Is of full Age, and not subject to any legal Incapacity; and
2. Is on the last Day of *July* in any Year, and has during the whole of the preceding Twelve Calendar Months been, an Inhabitant Occupier, as Owner or Tenant, of any Dwelling House within the Borough; and
3. Has during the Time of such Occupation been rated as an ordinary Occupier in respect of the Premises so occupied by him within the Borough to all Rates (if any) made for the Relief of the Poor in respect of such Premises; and
4. Has on or before the Twentieth Day of *July* in the same Year *bonâ fide* paid an equal Amount in the Pound to that payable by other ordinary Occupiers in respect of all Poor

[1] Cf. Vol. II, Sect. A, No. XXII, p. 55, and No. XXXVIII, p. 126.

[2] Ireland and Scotland were dealt with by 31 & 32 Vict., c. 49 and 31 & 32 Vict., c. 48 respectively.

Rates that have become payable by him in respect of the said Premises up to the preceding Fifth Day of *January*:

Provided that no Man shall under this Section be entitled to be registered as a Voter by reason of his being a joint Occupier of any Dwelling House.

4. Every Man shall, in and after the Year One thousand eight hundred and sixty-eight, be entitled to be registered as a Voter, and, when registered, to vote for a Member or Members to serve in Parliament for a Borough who is qualified as follows: (that is to say,)

1. Is of full Age and not subject to any legal Incapacity; and
2. As a Lodger has occupied in the same Borough separately and as sole Tenant for the Twelve Months preceding the last Day of *July* in any Year the same Lodgings, such Lodgings being Part of one and the same Dwelling House, and of a clear yearly Value, if let unfurnished, of Ten Pounds or upwards; and [1]
3. Has resided in such Lodgings during the Twelve Months immediately preceding the last Day of *July*, and has claimed to be registered as a Voter at the next ensuing Registration of Voters.

5. Every Man shall, in and after the Year One thousand eight hundred and sixty-eight, be entitled to be registered as a Voter, and, when registered, to vote for a Member or Members to serve in Parliament for a County, who is qualified as follows: (that is to say),

1. Is of full Age, and not subject to any legal Incapacity, and is seised at Law or in Equity of any Lands or Tenements of Freehold, Copyhold, or any other Tenure whatever, for his own Life, or for the Life of another, or for any Lives whatsoever, or for any larger Estate of the clear yearly Value of not less than Five Pounds over and above all Rents and Charges payable out of or in respect of the same, or who is entitled, either as Lessee or Assignee, to any Lands or Tenements of Freehold or of any other Tenure whatever, for the unexpired Residue, whatever it may be of any Term originally created for a Period of not less than Sixty Years (whether determinable on a Life or Lives or not), of the clear yearly Value of not less than Five Pounds over and above all Rents and Charges payable out of or in respect of the same:

Provided that no Person shall be registered as a Voter under this Section unless he has complied with the Provisions of the Twenty-

[1] Cf. 41 & 42 Vict., c. 26, § 6 (1878) which allows the voter to have occupied different lodgings in the same house and to be a joint occupier if the total rent is equivalent to £10 apiece.

sixth Section of the Act of the Second Year of the Reign of His Majesty *William* the Fourth, Chapter Forty-five.[1] . . .

6. Every Man shall, in and after the Year One thousand eight hundred and sixty-eight, be entitled to be registered as a Voter, and, when registered, to vote for a Member or Members to serve in Parliament for a County, who is qualified as follows: (that is to say,)

1. Is of full Age, and not subject to any legal Incapacity; and
2. Is on the last Day of *July* in any Year, and has during the Twelve Months immediately preceding been, the Occupier, as Owner or Tenant, of Lands or Tenements within the County of the rateable Value of Twelve Pounds or upwards; and
3. Has during the Time of such Occupation been rated in respect to the Premises so occupied by him to all Rates (if any) made for the Relief of the Poor in respect of the said Premises; and
4. Has on or before the Twentieth Day of *July* in the same Year paid all Poor Rates that have become payable by him in respect of the said Premises up to the preceding Fifth Day of *January*.

7. Where the Owner is rated at the Time of the passing of this Act to the Poor Rate in respect of a Dwelling House or other Tenement situate in a Parish wholly or partly in a Borough, instead of the Occupier, his Liability to be rated in any future Poor Rate shall cease, and the following Enactments shall take effect with respect to rating in all Boroughs:

1. After the passing of this Act no Owner of any Dwelling House or other Tenement situate in a Parish either wholly or partly within a Borough shall be rated to the Poor Rate instead of the Occupier, except as herein-after mentioned:[2]
2. The full rateable Value of every Dwelling House or other separate Tenement, and the full Rate in the Pound payable by the Occupier, and the Name of the Occupier, shall be entered in the Rate Book:

Where the Dwelling House or Tenement shall be wholly let out in Apartments or Lodgings not separately rated, the Owner of such Dwelling House or Tenement shall be rated in respect thereof to the Poor Rate;

[1] See Vol. II, Sect. A, No. XXII, at p. 59.

[2] See also Poor Rate Assessment Act, 1869, 32 & 33 Vict., c. 1, §§ 3, 4, 7, 8, and Registration Act, 1878, 41 & 42 Vict., c. 26, § 14. By these Acts the Owner, instead of the occupier, might be compelled, or might agree, to be rated, but in such cases the latter was not to lose his vote.

Provided as follows:

(1) That nothing in this Act contained shall affect any Composition existing at the Time of the passing of this Act, so nevertheless that no such Composition shall remain in force beyond the Twenty-ninth Day of *September* next:

(2) That nothing herein contained shall affect any Rate made previously to the passing of this Act, and the Powers conferred by any subsisting Act for the Purpose of collecting and recovering a Poor Rate shall remain and continue in force for the Collection and Recovery of any such Rate or Composition:

(3) That where the Occupier under a Tenancy subsisting at the Time of the passing of this Act of any Dwelling House or other Tenement which has been let to him free from Rates is rated and has paid Rates in pursuance of this Act, he may deduct from any Rent due or accruing due from him in respect of the said Dwelling House or other Tenement any Amount paid by him on account of the Rates to which he may be rendered liable by this Act.

9. At a contested Election for any County or Borough represented by Three Members no Person shall vote for more than Two Candidates.

10. At a contested Election for the City of *London* no Person shall vote for more than Three Candidates.

11. No Elector who within Six Months before or during any Election for any County or Borough shall have been retained, hired, or employed for all or any of the Purposes of the Election for Reward by or on behalf of any Candidate at such Election as Agent, Canvasser, Clerk, Messenger, or in other like Employment, shall be entitled to vote at such Election, and if he shall so vote he shall be guilty of a Misdemeanor.

[§§ **12-16** deal with bribery (including disfranchisement of boroughs notoriously corrupt).]

[§§ **17-25** deal with the distribution of seats (including setting up of London University seat).]

51. 'Whereas great Inconvenience may arise from the Enactments now in force limiting the Duration of the Parliaments in being at the Demise of the Crown': [1] Be it therefore enacted, That the Parliament in being at any future Demise of the Crown shall not be determined or dissolved by such Demise, but shall continue so long as it would have continued but for such Demise, unless it should be sooner prorogued or dissolved by the Crown, anything

[1] Cf. Vol. I, Sect. A, No. XXXII, p. 84.

in the Act passed in the Sixth Year of Her late Majesty Queen *Anne*, Chapter Seven, in any way notwithstanding.[1]

52. 'Whereas it is expedient to amend the Law relating to Offices of Profit the Acceptance of which from the Crown vacates the Seats of Members accepting the same, but does not render them incapable of being re-elected': Be it enacted, That where a Person has been returned as a Member to serve in Parliament since the Acceptance by him from the Crown of an Office described in Schedule (H.)[2] to this Act annexed, the subsequent Acceptance by him from the Crown of any other Office or Offices described in such Schedule in lieu of and in immediate Succession the one to the other shall not vacate his Seat.[3]

XXXIII

THE PARLIAMENTARY ELECTIONS (CORRUPT PRACTICES) ACT,[4] 1868

31 & 32 Vict., c. 125.

5. From and after the next Dissolution of Parliament a Petition complaining of an undue Return or undue Election of a Member to serve in Parliament for a County or Borough may be presented to the Court of Common Pleas at *Westminster*, if such County or Borough is situate in *England*, or to the Court of Common Pleas at *Dublin*, if such County or Borough is situate in *Ireland*, by any One or more of the following Persons:

1. Some Person who voted or who had a Right to vote at the Election to which the Petition relates; or
2. Some Person claiming to have had a Right to be returned or elected at such Election; or,
3. Some Person alleging himself to have been a Candidate at such Election:

And such Petition is herein-after referred to as an Election Petition.

[1] Vol. I, Sect. A, No. XLI, p. 111; see also Sect. A, No. XXXII, p. 84, and No. XXXVI, § III, at p. 95; see also Vol. II, Sect. A, No. IX, p. 16, and No. XL, p. 136.

[2] Schedule (H) gives a list of 26 of the main administrative offices. This list was extended from time to time in subsequent years.

[3] The Re-election of Ministers' Act, 9 Geo. V, c. 2, provides that acceptance of office within nine months of a new Parliament did not compel re-election, but excepted the Stewardship of the Chiltern Hundreds and of Northstead Manor. The Amending Act of 1926 abolished the system of requiring re-election (16 & 17 Geo. V, c. 19).

[4] Vol. I, Sect. A, No. LVII, p. 140.

11. The following Enactments shall be made with respect to the Trial of Election Petitions under this Act :[1]

1. The Trial of every Election Petition shall be conducted before a Puisne Judge of One of Her Majesty's Superior Courts of Common Law at *Westminster* or *Dublin*, according as the same shall have been presented to the Court at *Westminster* or *Dublin*, to be selected from a Rota to be formed as herein-after mentioned.
2. The Members of each of the Courts of Queen's Bench, Common Pleas, and Exchequer in *England* and *Ireland* shall respectively, on or before the Third Day of Michaelmas Term in every Year, select, by a Majority of Votes, One of the Puisne Judges of such Court, not being a Member of the House of Lords, to be placed on the Rota for the Trial of Election Petitions during the ensuing Year.
9. Every Election Petition shall, except where it raises a Question of Law for the Determination of the Court, as herein-after mentioned, be tried by One of the Judges herein-before in that Behalf mentioned, herein-after referred to as the Judge, sitting in open Court without a Jury.
10. Notice of the Time and Place at which an Election Petition will be tried shall be given, not less than Fourteen Days before the Day on which the Trial is held, in the prescribed Manner.

[11. provides that the trial shall be held in the locality except in special circumstances.] . . .

13. At the Conclusion of the Trial the Judge who tried the Petition shall determine whether the Member whose Return or Election is complained of, or any and what other Person, was duly returned or elected, or whether the Election was void, and shall forthwith certify in Writing such Determination to the Speaker, and upon such Certificate being given such Determination shall be final to all Intents and Purposes.
14. Where any Charge is made in an Election Petition of any corrupt Practice having been committed at the Election to which the Petition refers, the Judge shall, in addition to such Certificate, and at the same Time, report in Writing to the Speaker as follows :
    (a) Whether any corrupt Practice has or has not been proved to have been committed by or with the Knowledge and Consent of any Candidate at such Election, and the Nature of such corrupt Practice :

[1] Vol. I, Sect. A, No. LVII, p. 140.

(b) The Names of all Persons (if any) who have been proved at the Trial to have been guilty of any corrupt Practice:

(c) Whether corrupt Practices have, or whether there is Reason to believe that corrupt Practices have, extensively prevailed at the Election to which the Petition relates.

15. The Judge may at the same Time make a special Report to the Speaker as to any Matters arising in the course of the Trial an Account of which in his Judgment ought to be submitted to the House of Commons.

16. Where, upon the Application of any Party to a Petition made in the prescribed Manner to the Court, it appears to the Court that the Case raised by the Petition can be conveniently stated as a Special Case, the Court may direct the same to be stated accordingly, and any such Special Case shall, as far as may be, be heard before the Court, and the Decision of the Court shall be final; and the Court shall certify to the Speaker its Determination in reference to such Special Case.

12. Provided always, that if it shall appear to the Judge on the Trial of the said Petition that any Question or Questions of Law as to the Admissibility of Evidence or otherwise requires further Consideration by the Court of Common Pleas, then it shall be lawful for the said Judge to postpone the granting of the said Certificate until the Determination of such Question or Questions by the Court, and for this Purpose to reserve any such Question or Questions in like Manner as Questions are usually reserved by a Judge on a Trial at Nisi Prius.

13. The House of Commons, on being informed by the Speaker of such Certificate and Report or Reports, if any, shall order the same to be entered in their Journals, and shall give the necessary Directions for confirming or altering the Return, or for issuing a Writ for a new Election, or for carrying the Determination into execution, as Circumstances may require.

14. Where the Judge makes a special Report the House of Commons may make such Order in respect of such special Report as they think proper.

16. The Report of the Judge in respect of Persons guilty of corrupt Practices shall for the Purpose of the Prosecution of such Persons in pursuance of Section Nine of the Act of the Twenty-sixth Year of the Reign of Her present Majesty, Chapter Twenty-nine, have the same Effect as the Report of the Election Committee therein mentioned that certain Persons have been guilty of Bribery and Treating.

17. On the Trial of an Election Petition under this Act, unless the Judge otherwise directs, any Charge of a corrupt Practice may be gone into and Evidence in relation thereto received before any

Proof has been given of Agency on the Part of any Candidate in respect of such corrupt Practice.

18. The Trial of an Election Petition under this Act shall be proceeded with notwithstanding the Acceptance by the Respondent of an Office of Profit under the Crown.

19. The Trial of an Election Petition under this Act shall be proceeded with notwithstanding the Prorogation of Parliament.

31. Witnesses shall be subpœnaed and sworn in the same Manner as nearly as Circumstances admit as in a Trial at Nisi Prius, and shall be subject to the same Penalties for Perjury.

32. On the Trial of an Election Petition under this Act the Judge may, by Order under his Hand, compel the Attendance of any Person as a Witness who appears to him to have been concerned in the Election to which the Petition refers, and any Person refusing to obey such Order shall be guilty of Contempt of Court. The Judge may examine any Witness so compelled to attend or any Person in Court although such Witness is not called and examined by any Party to the Petition. After the Examination of a Witness as aforesaid by a Judge such Witness may be cross-examined by or on behalf of the Petitioner and Respondent, or either of them.

[§ 33. The provisions 26 & 27 Vict., c. 29, § 7,[1] relating to the examination and indemnity of Witnesses to apply in cases before the judge as it would before a Committee of the House of Commons.]

43. Where it is found, by the Report of the Judge upon an Election Petition under this Act, that Bribery has been committed by or with the Knowledge and Consent of any Candidate at an Election, such Candidate shall be deemed to have been personally guilty of Bribery at such Election, and his Election, if he has been elected, shall be void, and he shall be incapable of being elected to and of sitting in the House of Commons during the Seven Years next after the Date of his being found guilty; and he shall further be incapable during the said Period of Seven Years—

(1.) Of being registered as a Voter and voting at any Election in the United Kingdom; and

(2.) Of holding any Office under the Act of the Session of the Fifth and Sixth Years of the Reign of His Majesty King William the Fourth, Chapter Seventy-six,[2] or of the Session of the Third and Fourth Years of the Reign of Her present

[1] A witness may refuse to answer a question on the ground it may criminate him: if he does answer every question asked, he is entitled to a certificate of indemnity which shall stay all proceedings in the courts against him for corrupt practices. Such answers not evidence in courts of law except in perjury cases.

[2] Vol. II, Sect. A, No. XXV, p. 79.

Majesty, Chapter One hundred and eight, or any Municipal Office; and

(3.) Of holding any Judicial Office, and of being appointed and of acting as a Justice of the Peace.

45. Any Person, other than a Candidate, found guilty of Bribery in any Proceeding in which after Notice of the Charge he has had an Opportunity of being heard, shall, during the Seven Years next after the Time at which he is so found guilty, be incapable of being elected to and sitting in Parliament; and also be incapable—[provisions as in § 43 (1)-(3) above].

48. If any Returning Officer wilfully delays, neglects, or refuses duly to return any Person who ought to be returned to serve in Parliament for any County or Borough, such Person may, in case it has been determined on the Hearing of an Election Petition under this Act that such Person was entitled to have been returned, sue the Officer having so wilfully delayed, neglected, or refused duly to make such Return at his Election in any of Her Majesty's Courts of Record at Westminster, and shall recover double the Damage he has sustained by reason thereof, together with full Costs of Suit; provided such Action be commenced within One Year after the Commission of the Act on which it is grounded, or within Six Months after the Conclusion of the Trial relating to such Election.

XXXIV

THE BALLOT ACT, 1872[1]

35 & 36 Vict., c. 33.

2. In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper . . . showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station . . .

Any ballot paper which has not on its back the official mark,

[1] Cf. Vol. II, Sect. B, No. X, p. 169.

or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted.

After the close of the poll the ballot boxes shall be sealed up, so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the Clerk of the Crown in Chancery. The decision of the returning officer to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

[§ 3. Penalties for fraud or irregularities.]

4. Every officer, clerk, and agent . . . shall maintain . . . the secrecy of the voting in such station, and shall not communicate except for some purpose authorised by law, before the poll is closed, to any person any information as to the name . . . of any elector who has or has not applied for a ballot paper . . . and no person whosoever, shall interfere with . . . a voter when marking his vote, or otherwise attempt to obtain in the polling station information as the candidate for whom any voter . . . is about to vote or has voted . . . Every officer [etc.] . . . shall not attempt to ascertain at such counting the number of the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper . . . [penalties of six months' imprisonment with or without hard labour for offences under this section].

[§§ 5-19. Duties of officers, application of the Act to Scotland and Ireland, and the provision of polling stations.]

20. The poll at every contested municipal election shall, so far as circumstances admit, be conducted in the manner in which the poll is by this Act directed to be conducted at a contested parliamentary election, . . .

[§§ 21-33. Personation, bribery and undue influence, miscellaneous provisions. Full details for the conduct of elections in six attached schedules.]

XXXV

SUPREME COURT OF JUDICATURE ACT, 1873

36 & 37 Vict., c. 66.

PART I—*Constitution and Judges of Supreme Court*

3. From and after the time appointed for the commencement of this Act, the several Courts herein-after mentioned (that is to say), the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy, shall be united and consolidated together, and shall constitute, under the subject to the provisions of this Act, one Supreme Court of Judicature in England.

4. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of " Her Majesty's High Court of Justice ", shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is herein-after mentioned, and the other of which, under the name of " Her Majesty's Court of Appeal ", shall have and exercise appellate jurisdiction, with such original jurisdiction as herein-after mentioned as may be incident to the determination of any appeal.

[5. Constitution of High Court of Justice.]

6. Her Majesty's Court of Appeal shall be constituted as follows :—There shall be five ex-officio Judges thereof, and also so many ordinary Judges (not exceeding nine at any one time) as Her Majesty shall from time to time appoint. The ex officio Judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer. The first ordinary Judges of the said Court shall be the existing Lords Justices of Appeal in Chancery, the existing salaried Judges of the Judicial Committee of Her Majesty's Privy Council, appointed under the " Judicial Committee Act, 1871 ", and such three other persons as Her Majesty may be pleased to appoint by Letters Patent; . . .

9. All the Judges of the High Court of Justice, and of the Court of Appeal respectively, shall hold their offices for life, subject to a power of removal by Her Majesty, on an address presented to Her Majesty, by both Houses of Parliament. No Judge of either of the

said Courts shall be capable of being elected to or of sitting in the House of Commons. Every Judge of either of the said Courts (other than the Lord Chancellor) when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

15. Subject to the provisions in this Act contained with respect to existing Judges, the salaries, allowances, and pensions payable to the Judges of the High Court of Justice, and the ordinary Judges of the Court of Appeal respectively, shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine.

PART II—*Jurisdiction and Law*

16. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say,)

(1) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court;
(2) The Court of Queen's Bench;
(3) The Court of Common Pleas at Westminster;
(4) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court;
(5) The High Court of Admiralty;
(6) The Court of Probate;
(7) The Court for Divorce and Matrimonial Causes;
(8) The London Court of Bankruptcy;
(9) The Court of Common Pleas at Lancaster;
(10) The Court of Pleas at Durham;
(11) The Courts created by Commissioners of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions: . . .

17. There shall not be transferred to or vested in the said High Court of Justice, by virtue of this Act,—

(1) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal in Bankruptcy:

(2) Any jurisdiction of the Court of Appeal in Chancery of the County Palatine of Lancaster:

(3) Any jurisdiction usually vested in the Lord Chancellor or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind:

(4) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or other writings, to be passed under the Great Seal of the United Kingdom:

(5) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any College, or of any charitable or other foundation:

(6) Any jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England.

18. The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following; (that is to say,)

(1) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court as a Court of Appeal in Bankruptcy:

(2) All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the Chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the Lords Justices of Appeal in Chancery as a Judge of re-hearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster:

(3) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of Judge:

(4) All jurisdiction and powers of the Court of Exchequer Chamber:

(5) All jurisdiction vested in or capable of being exercised by Her Majesty in Council, or the Judicial Committee of Her

Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

20.[1] No error or appeal shall be brought from any judgment or order of the High Court of Justice, or of the Court of Appeal, nor from any judgment or order, subsequent to the commencement of this Act, of the Court of Chancery of the county palatine of Lancaster, to the House of Lords, or to the Judicial Committee of Her Majesty's Privy Council; but nothing in this Act shall prejudice any right existing at the commencement of this Act to prosecute any pending writ of error or appeal, . . . [from any prior judgement of a Court whose jurisdiction is here transferred]. . . .

24. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the Rules following:

(1) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.

(2) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceed-

[1] Cf. Vol. II, Sect. A, No. XXXVI, p. 121.

ing instituted in that Court for the same or the like purpose before the passing of this Act.

(3) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.

(4) The said Courts respectively, and every Judge thereof, shall recognise and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognised and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

(5) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court

to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any Judgment, Decree, Rule, or Order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such Order as shall be just.

(6) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognise and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any Statute, in the same manner as the same would have been recognised and given effect to if this Act had not passed by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

(7) The High Courts of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

25. . . . [(1)-(10) are a list of detailed amendments or declarations of the law.] . . .

(11) Generally in all matters not herein-before particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.

PART III—*Sittings and Distribution of Business*

[§§ **26-28** concern Terms and Vacations.]

29. Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any Judge or

Judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter, depending in the said High Court or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any Commissioner or Commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the said High Court of Justice; and, subject to any restrictions or conditions imposed by Rules of Court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the Judge or Judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a Commissioner or Commissioners as aforesaid, or at sittings to be held in Middlesex or London as hereinafter in this Act mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

31. For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any Judge from sitting whenever required in any Divisional Court, or for any Judge of a different Division from his own,) there shall be in the said High Court five Divisions consisting of such number of Judges respectively as herein-after mentioned. Such five Divisions shall respectively include, immediately on the commencement of this Act, the several Judges following; (that is to say,)

(1) One Division shall consist of the following Judges; (that is to say,) The Lord Chancellor, who shall be President thereof, the Master of the Rolls, and the Vice-Chancellors of the Court of Chancery, or such of them as shall not be appointed ordinary Judges of the Court of Appeal:

(2) One other Division shall consist of the following Judges; (that is to say,) The Lord Chief Justice of England, who shall be President thereof, and such of the other Judges of the Court of Queen's Bench as shall not be appointed ordinary Judges of the Court of Appeal:

(3) One other Division shall consist of the following Judges;

(that is to say,) The Lord Chief Justice of the Common Pleas, who shall be President thereof, and such of the other Judges of the Court of Common Pleas as shall not be appointed ordinary Judges of the Court of Appeal:

(4) One other Division shall consist of the following Judges; (that is to say,) The Lord Chief Baron of the Exchequer, who shall be President thereof, and such of the other Barons of the Court of Exchequer as shall not be appointed ordinary Judges of the Court of Appeal:

(5) One other Division shall consist of two Judges who, immediately on the commencement of this Act, shall be the existing Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes and the existing Judge of the High Court of Admiralty, unless either of them is appointed an ordinary Judge to the Court of Appeal. The existing Judge of the Court of Probate shall (unless so appointed) be the President of the said Division, and subject thereto the Senior Judge of the said Division, according to the order of Precedence under this Act, shall be President.

The said five Divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate, Divorce, and Admiralty Division. . . .

[§§ **33-36**. Assignment to business to Divisions: Plaintiff's option to choose Division subject to transfer according to Rules of Court and provisions of this Act.]

PART IV—*Trial and Procedure*

72. Nothing in this Act or in the Schedule hereto, or in any Rules of Court to be made by virtue hereof, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the Rules of Evidence, or the law relating to jurymen or juries.

[Part V—Officers and Offices is omitted entirely.]

PART VI—*Jurisdiction of Inferior Courts*

88. It shall be lawful for Her Majesty from time to time by Order in Council to confer on any inferior Court of civil jurisdiction, the same jurisdiction in Equity and in Admiralty, respectively, as any County Court [1] now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed.

[§§ **89-100** and the Schedule omitted.]

[1] See Vol. II, Sect. A, No. XXVIII, p. 94.

XXXVI

APPELLATE JURISDICTION ACT, 1876

39 & 40 Vict., c. 59.

3. Subject as in this Act mentioned an appeal shall lie to the House of Lords[1] from any order or judgment of any of the courts following; that is to say,

(1) Of Her Majesty's Court of Appeal in England; and
(2) Of any Court in Scotland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute; and
(3) Of any Court in Ireland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute.

5. An appeal shall not be heard and determined by the House of Lords unless there are present at such hearing and determination not less than three of the following persons, in this Act designated Lords of Appeal; that is to say,

(1) The Lord Chancellor of Great Britain for the time being; and
(2) The Lords of Appeal in Ordinary to be appointed as in this Act mentioned; and
(3) Such Peers of Parliament as are for the time being holding or have held any of the offices in this Act described as high judicial offices.

6. For the purposes of aiding the House of Lords in the hearing and determination of appeals, Her Majesty may, at any time after the passing of this Act, by letters patent appoint two qualified persons to be Lords of Appeal in Ordinary, . . .

A person shall not be qualified to be appointed by Her Majesty a Lord of Appeal in Ordinary unless he has been at or before the time of his appointment the holder for a period of not less than two years of some one or more of the offices in this Act described as high judicial offices, or has been at or before such time as aforesaid, for not less than fifteen years, a practising barrister in England or Ireland, or a practising advocate in Scotland.

Every Lord of Appeal in Ordinary shall hold his office during good behaviour, and shall continue to hold the same notwithstanding

[1] Cf. Vol. II, Sect. A, No. XXXV, § 20, at p. 116.

the demise of the Crown, but he may be removed from such office on the address of both Houses of Parliament.

There shall be paid to every Lord of Appeal in Ordinary a salary of six thousand pounds a year.

Every Lord of Appeal in Ordinary, unless he is otherwise entitled to sit as a member of the House of Lords, shall by virtue and according to the date of his appointment be entitled during his life to rank as a Baron by such style as Her Majesty may be pleased to appoint, and shall during the time that he continues in his office as a Lord of Appeal in Ordinary, and no longer, be entitled to a writ of summons to attend, and to sit and vote in the House of Lords; his dignity as a Lord of Parliament shall not descend to his heirs.[1] . . .

A Lord of Appeal in Ordinary shall, if a Privy Councillor, be a member of the Judicial Committee of the Privy Council, and, subject to the due performance by a Lord of Appeal in Ordinary of his duties as to the hearing and determining of appeals in the House of Lords, it shall be his duty, being a Privy Councillor, to sit and act as a member of the Judicial Committee of the Privy Council.

[§ 8. House of Lords may hear appeals during prorogation of Parliament.]

10. An appeal shall not be entertained by the House of Lords without the consent of the Attorney General or other law officer of the Crown in any case where proceedings in error or on appeal could not hitherto have been had in the House of Lords without the fiat or consent of such officer.

12. Except in so far as may be authorised by orders of the House of Lords an appeal shall not lie to the House of Lords from any court in Scotland or Ireland in any case, which according to the law or practice hitherto in use, could not have been reviewed by that House, either in error or on appeal.

14. Whereas [by 34 & 35 Vict., c. 91] . . . Her Majesty was empowered to appoint and did appoint four persons qualified as in that Act mentioned to act as members of the Judicial Committee of the Privy Council at such salaries as are in the said Act mentioned, in this Act referred to as paid Judges of the Judicial Committee of the Privy Council:

And whereas the power given by the said Act of filling any vacancies so occasioned by death, or otherwise, in the offices of the persons so appointed, has lapsed by efflux of time, and Her Majesty has no power to fill any such vacancies:

[1] Cf. Vol. II, Sect. D, No. XXXV, p. 403.

Be it enacted, that whenever any two of the paid Judges of the Judicial Committee of the Privy Council have died or resigned, Her Majesty may appoint a third Lord of Appeal in Ordinary in addition to the Lords of Appeal in Ordinary herein-before authorised to be appointed, and on the death or resignation of the remaining two paid Judges of the Judicial Committee of the Privy Council Her Majesty may appoint a fourth Lord of Appeal in Ordinary in addition to the Lords of Appeal in Ordinary aforesaid; and may from time to time fill up any vacancies occurring in the offices of such third and fourth Lord of Appeal in Ordinary. . . . [such Lords of Appeal in Ordinary to be in the same position in all respects as those mentioned earlier]. . . .

Her Majesty may by Order in Council, with the advice of the Judicial Committee of Her Majesty's Privy Council or any five of them, of whom the Lord Chancellor shall be one, and of the archbishops and bishops being members of Her Majesty's Privy Council, or any two of them, make rules for the attendance, on the hearing of ecclesiastical cases as assessors of the said Committee of such number of the archbishops and bishops of the Church of England as may be determined by such rules.

The rules may provide for the assessors being appointed for one or more year or years, or by rotation or otherwise, and for filling up any temporary or other vacancies in the office of assessor.

Any rule made in pursuance of this section shall be laid before each House of Parliament within forty days after it is made if Parliament be then sitting, or, if not then sitting, within forty days after the commencement of the then next session of Parliament.

If either House of Parliament present an address to Her Majesty within forty days after any such rule has been laid before such House, praying that any such rule may be annulled, Her Majesty may thereupon by Order in Council annul the same, and the rule so annulled shall thenceforth become void, but without prejudice nevertheless to the making of any other rule in its place, or to the validity of anything which may in the meantime have been done under any such rule.

[§§ **15-25.** Amendments or repeal of previous acts, etc.]

XXXVII

THE ARMY ACT, 1881 [1]

44 & 45 Vict., c. 58.

An Act to consolidate the Army Discipline and Regulation Act, 1879, and the subsequent Acts amending the Same.

Preliminary

Be it enacted . . . as follows

1. This Act may be cited for all purposes as the Army Act, 1881.

2. This Act shall continue in force only for such time and subject to such provisions as may be specified in an annual Act of Parliament bringing into force or continuing the same.

3. This Act is divided into five parts, relating to the following subject-matters; that is to say,

Part I., discipline:

Part II., enlistment:

Part III., billeting and impressment of carriages:

Part IV., general provisions:

Part V., application of military law, saving provisions, and definitions.

PART I

DISCIPLINE

Crimes and Punishments

Offences in Respect of Military Service

4. Every person subject to military law who commits any of the following offences; that is to say,

(1) Shamefully abandons or delivers up any garrison, place, post, or guard, or uses any means to compel or induce any governor, commanding officer, or other person shamefully to abandon or deliver up any garrison, place, post, or guard, which it was the duty of such governor, officer, or person to defend; or

(2) Shamefully casts away his arms, ammunition, or tools in the presence of the enemy; or

(3) Treacherously holds correspondence with or gives intelli-

[1] The whole consists of 193 sections (with many sub-sections) and 5 schedules. This specimen may show the scope and character of the whole, at the moment when Army Discipline Regulations were codified and made easy of annual re-enactment. See also Vol. II, Sect. B, No. XX, p. 194, and cf. Vol. I, Sect. A, No. XX, p. 55.

gence to the enemy, or treacherously or through cowardice sends a flag of truce to the enemy; or

(4) Assists the enemy with arms, ammunition, or supplies, or knowingly harbours or protects an enemy not being a prisoner; or

(5) Having been made a prisoner of war, voluntarily serves with or voluntarily aids the enemy; or

(6) Knowingly does when on active service any act calculated to imperil the success of Her Majesty's forces or any part thereof; or

(7) Misbehaves or induces others to misbehave before the enemy in such manner as to show cowardice,

shall on conviction by court-martial be liable to suffer death, or such less punishment as in this Act mentioned. . . .

Offences punishable by ordinary Law

41. Subject to such regulations for the purpose of preventing interference with the jurisdiction of the civil courts as are in this Act after mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this section mentioned shall be deemed to be guilty of an offence against military law, and if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by court-martial, and on conviction to be punished as follows; that is to say,

(1) If he is convicted of treason, be liable to suffer death or such less punishment as is in this Act mentioned; and

(2) If he is convicted of murder, be liable to suffer death; and

(3) If he is convicted of manslaughter or treason-felony, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

(4) If he is convicted of rape, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

(5) If he is convicted of any offence not before in this Act particularly specified which when committed in England is punishable by the law of England, be liable, whether the offence is committed in England or elsewhere, either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England.

Provided as follows:—

(*a*) A person subject to military law shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or

rape committed in the United Kingdom, and shall not be tried by court-martial for treason, murder, manslaughter, treason-felony, or rape committed in any place within Her Majesty's dominions, other than the United Kingdom and Gibraltar, unless such person at the time he committed the offence was on active service, or such place is more than one hundred miles as measured in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court.

(b) A person subject to military law when in Her Majesty's dominions may be tried by any competent civil court for any offence for which he would be triable if he were not subject to military law. . . .

XXXVIII

REPRESENTATION OF THE PEOPLE ACT, 1884[1]

48 Vict., c. 3.

Extension of the Household and Lodger Franchise

2. A uniform household franchise[2] and a uniform lodger[3] franchise at elections shall be established in all counties and boroughs throughout the United Kingdom, and every man possessed of a household qualification or a lodger qualification shall, if the qualifying premises be situate in a county in England or Scotland, be entitled to be registered as a voter, and when registered to vote at an election for such county, and if the qualifying premises be situate in a county or borough in Ireland, be entitled to be registered as a voter, and when registered to vote at an election for such county or borough.

3. Where a man himself inhabits any dwelling-house by virtue of any office, service, or employment, and the dwelling-house is not inhabited by any person under who such man serves in such office, service, or employment, he shall be deemed for the purposes of this Act and of the Representation of the People Acts to be an inhabitant occupier of such dwelling-house as a tenant.

[**4.** Restriction of multiplication of votes.]

[1] This Act was followed by a measure for the redistribution of seats ; see Vol. II, Sect. B, No. XXI, p. 196.

[2] As defined, as respects England, says § 7 of this Act, in 3rd sect. of 30 & 31 Vict., c. 102, see Vol. II, Sect. A, No. XXXII, p. 103.

[3] As defined in 30 & 31 Vict., c. 102, § 4, see Vol. II, Sect. A, No. XXXII, at p. 104.

Assimilation of Occupation Certification

5. Every man occupying any land or tenement in a county or borough in the United Kingdom of a clear yearly value of not less than ten pounds shall be entitled to be registered as a voter and when registered to vote at an election for such county or borough in respect of such occupation subject to the like conditions respectively as a man is, at the passing of this Act, entitled to be registered as a voter and to vote at an election for such county in respect of the county occupation franchise,[1] and at an election for such borough in respect of the borough occupation franchise.[2]

[§ **6.** Voter not to vote in a county in respect of occupation of property in a borough.]

Supplemental Provisions

9. . . . (2) In every part of the United Kingdom it shall be the duty of the overseers annually, in the months of April and May, or one of them, to inquire or ascertain with respect to every hereditament which comprises any dwelling-house or dwelling-houses within the meaning of the Representation of the People Acts, whether any man, other than the owner or other person rated or liable to be rated in respect of such hereditament, is entitled to be registered as a voter in respect of his being an inhabitant occupier of any such dwelling-house, and to enter in the rate book the name of every man so entitled, and the situation or description of the dwelling-house in respect of which he is entitled, and for the purposes of such entry a separate column shall be added to the rate book.

(8) Both in England and Ireland where a man inhabits any dwelling-house by virtue of any office, service, or employment, and is deemed for the purposes of this Act and of the Representation of the People Acts to be an inhabitant occupier of such dwelling-house as a tenant, and another person is rated or liable to be rated for such dwelling-house, the rating of such other person shall for the purposes of this Act and of the Representation of the People Acts be deemed to be that of the inhabitant occupier; and the several enactments of the Poor Rate Assessment and Collection Act, 1869, and other Acts amending the same referred to in the First Schedule to this Act shall for those purposes apply to such inhabitant occupier, and in the construction of those enactments the word

[1] As defined in 30 & 31 Vict., c. 102, § 6, see Vol. II, Sect. A, No. XXXII, at p. 105.

[2] As defined in 2 & 3 Will., 4, c. 45, § 27, see Vol. II, Sect. A, No. XXII, at p. 59. The Act refers to appropriate previous Acts for definitions in the cases of Ireland and Scotland also.

" owner " shall be deemed to include a person actually rated or liable to be rated as aforesaid.[1]

10. Nothing in this Act shall deprive any person (who at the date of the passing of this Act is registered in respect of any qualification to vote for any county or borough,) of his right to be from time to time registered and to vote for such county or borough in respect of such qualification in like manner as if this Act had not passed.

Provided that where a man is so registered in respect of the county or borough occupation franchise by virtue of a qualification which also qualifies him for the franchise under this Act, he shall be entitled to be registered in respect of such latter franchise only.

Nothing in this Act shall confer on any man who is subject to any legal incapacity to be registered as a voter or to vote, any right to be registered as a voter or to vote. . . .

XXXIX

THE LOCAL GOVERNMENT ACT, 1888

51 & 52 Vict., c. 41.

PART I—COUNTY COUNCILS

Constitution of County Council

1. A council shall be established in every administrative county as defined by this Act, and be entrusted with the management of the administrative and financial business of that county, and shall consist of the chairman, aldermen, and councillors.

2. (1) The council of a county and the members thereof shall be constituted and elected and conduct their proceedings in like manner, and be in the like position in all respects, as the council of a borough divided into wards, subject nevertheless to the provisions of this Act, and in particular to the following provisions, that is to say:—

(2) As respects the aldermen or councillors—

(a) clerks in holy orders and other ministers of religion shall not be disqualified for being elected and being aldermen or councillors;[2]

(b) a person shall be qualified to be an alderman or councillor who, though not qualified in manner

[1] See Vol. II, Sect. A, No. XXXII, § 7 (and footnote), p. 105.

[2] Cf. Vol. II, Sect. A, No. XIII, p. 28.

provided by the Municipal Corporations Act, 1882, as applied by this Act, is a peer owning property in the county, or is registered as a parliamentary voter in respect of the ownership of property of whatsoever tenure situate in the county;

(c) the aldermen shall be called county aldermen, and the councillors shall be called county councillors; and a county alderman shall not, as such, vote in the election of a county alderman;

(d) the county councillors shall be elected for a term of three years, and shall then retire together, and their places shall be filled by a new election; and

(e) the divisions of the county for the purpose of the election of county councillors, shall be called electoral divisions and not wards, and one county councillor only shall be elected for each electoral division:

[(3) The number and apportionment of County Councillors to be determined by the Local Government Board.]

(4) As respects the electors of the county councillors—the persons entitled to vote at their election shall be, in a borough, the burgesses enrolled in pursuance of the Municipal Corporations Act, 1882, and the Acts amending the same, and elsewhere the persons registered as county electors under the County Electors Act, 1888:[1] . . .

Powers of County Council

3. There shall be transferred to the council of each county on and after the appointed day, the administrative business of the justices of the county in quarter sessions assembled, that is to say, all business done by the quarter sessions or any committee appointed by the quarter sessions, in respect of the several matters following, namely,—

(i) The making, assessing, and levying of county, police, hundred, and all rates, and the application and expenditure thereof, and the making of orders for the payment of sums payable out of any such rate or out of the county stock or county fund, and the preparation and revision of the basis or standard for the county rate:

(ii) The borrowing of money;

(iii) The passing of the accounts of and the discharge of the county treasurer;

[1] 51 & 52 Vict., c. 10; principally { Occupation of land of the value of £10 and, / Burgess qualification, as therein extended to counties.

(iv) Shire halls, county halls, assize courts, judges lodgings, lock-up houses, court houses, justices rooms, police stations, and county buildings, works, and property, subject as to the use of buildings by the quarter sessions and the justices to the provisions of this Act respecting the joint committee of quarter sessions and the county council;

(v) The licensing under any general Act of houses and other places for music or for dancing, and the granting of licences under the Racecourses Licensing Act, 1879;

(vi) The provision, enlargement, maintenance, management, and visitation of and other dealing with asylums for pauper lunatics;

(vii) The establishment and maintenance of and the contribution to reformatory and industrial schools;

(viii) Bridges and roads repairable with bridges, and any powers vested by the Highways and Locomotives (Amendment) Act, 1878, in the county authority;

(ix) The tables of fees to be taken by and the costs to be allowed to any inspector, analyst, or person holding any office in the county other than the clerk of the peace and the clerks of the justices;

(x) The appointment, removal, and determination of salaries, of the county treasurer, the county surveyor, the public analysts, any officer under the Explosives Act, 1875, and any officers whose remuneration is paid out of the county rate other than the clerk of the peace and the clerks of the clerks of the justices;

(xi) The salary of any coroner whose salary is payable out of the county rate, the fees, allowances, and disbursements allowed to be paid by any such coroner, and the division of the county into coroners' districts, and the assignment of such districts;

(xii) The division of the county into polling districts for the purposes of parliamentary elections, the appointment of places of election, the places of holding courts for the revision of the lists of voters, and the costs of and other matters to be done for the registration of parliamentary voters;

(xiii) The execution as local authority of the Acts relating to contagious diseases of animals, to destructive insects, to fish conservancy, to wild birds, to weights and measures, and to gas meters, and of the Local Stamp Act, 1869;

(xiv) Any matters arising under the Riot (Damages) Act, 1886;

(xv) The registration of rules of scientific societies . . . the registration of charitable gifts . . . the certifying and recording of places of religious worship . . . the confirmation and record of the rules of loan societies . . .; and

(xvi) Any other business transferred by this Act.

4. Where it appears to the Local Government Board that any powers, duties, or liabilities of any quarter sessions or justices, or any committee thereof, under any local Act are similar in character to the powers, duties, and liabilities transferred to county councils by this Act, or relate to property transferred to a county council by this Act, the Board may, if they think fit, make a Provisional Order for transferring such powers, duties, and liabilities to the county council.

8.—(1) Nothing in this Act shall transfer to a county council any business of the quarter sessions or justices in relation to appeals by any overseers or persons against the basis or standard for the county rate or against that or any other rate.

(2) All business of the quarter sessions or any committee thereof not transferred by or in pursuance of this Act to the county council shall be reserved to and transacted by the quarter sessions or committee thereof in the same manner, as far as circumstances admit, as if this Act had not passed.

9.—(1) The powers, duties, and liabilities of quarter sessions and of justices out of session with respect to the county police shall, on and after the appointed day, vest in and attach to the quarter sessions and the county council jointly, and be exercised and discharged through the standing joint committee of the quarter sessions and county council appointed as herein-after mentioned :[1]

(3) Nothing in this Act shall affect the powers, duties, and liabilities of justices of the peace as conservators of the peace, or the obligation of the chief constable or other constables to obey their lawful orders given in that behalf.

10.—(1) After the passing of this Act it shall be lawful for the Local Government Board to make from time to time a Provisional Order for transferring to county councils—

(a) any such powers, duties, and liabilities of Her Majesty's Privy Council, a Secretary of State, the Board of Trade, the Local Government Board, or the Education Department, or any other Government department, as are conferred by or in pursuance of any statute and appear to relate to matters arising within the county, and to be of an administrative character : also

(b) any such powers, duties, and liabilities arising within the county, of any commissioners of sewers, conservators, or other public body, corporate or unincorporate (not being the corporation of a municipal borough or an urban or rural authority, or a school board, and not being a board of guardians) as are conferred by or in pursuance of any statute ;

[1] Cf. Vol. II, Sect. A, No. XXV, § LXXVI, p. 87.

and such Order shall make such exceptions and modifications as appear to be expedient, and also such provisions as appear necessary or proper for carrying into effect such transfer, and for that purpose may transfer any power vested in Her Majesty in Council:

(2) Provided that before any such Order is made, the draft thereof shall be approved, if it relates to the powers, duties, or liabilities of a Secretary of State, or the Board of Trade, or any other Government department, by such Secretary of State, Board, or department, and approved, if it affects the powers, duties, or liabilities of any commissioners, conservators, or body, corporate or unincorporate, by such commissioners, conservators, or body; and every such Provisional Order shall be of no effect until it is confirmed by Parliament.

(3) If any such powers, duties, or liabilities as are referred to in any Provisional Order under this section arise within two or more counties, they may be transferred to the county councils of such two or more counties jointly, and may be exercised and discharged by a joint committee of such councils.

16.—(1) A county council shall have the same power of making byelaws in relation to their county, . . . as the council of a borough have of making byelaws in relation to their borough . . .

(2) Provided that byelaws made under the powers of this section shall not be of any force or effect within any borough.

[From § **20** *Financial Relations between Exchequer and County* are dealt with. These are complicated. For previous grants in aid of the rates from the Exchequer is substituted the payment to councils of the proceeds of duties on specified licences, of probate, and of stamp duties. These payments are to be put by councils in an Exchequer Contribution Account from which payments are to be made to local authorities, persons, or funds responsible for services in the County, such as poor law schools, the maintenance of medical officers, the care of lunatics, and the police, to meet part or all of the cost of such services. Then if the Local Government Board is not satisfied with the work of a medical officer the 50 % of the cost usually paid in support is not to be given but is to be returned from the Exchequer Contribution Account to H.M. Exchequer. Thus also—]

25.—(1) If a Secretary of State withholds as respects the police of any county, his certificate under the County and Borough Police Act, 1856, that the police of the county has been maintained in a state of efficiency in point of numbers and discipline during the year . . ., the council of that county, in lieu of transferring any sum . . . to the police account of the county fund, shall forfeit to the Crown and shall pay into Her Majesty's Exchequer out of the county fund, and shall charge to the Exchequer Contribution Account of that fund, such sums as the Secretary of State certifies to be in his

opinion equivalent to one half of the cost of the pay and clothing of the police of the county during the said year. . . .

General Provisions as to Transfer

28.—. . . (2) The county council shall, with the exceptions hereinafter mentioned, have power to delegate, with or without any restrictions or conditions as they may think fit, any powers or duties transferred to them by or in pursuance of this Act, either to any committee of the county council appointed in pursuance of this Act, or to any district council in this Act mentioned; the county council may also, without prejudice to any other power whether to appoint committees or otherwise, delegate to the justices of the county sitting in petty sessions any power or duty transferred by this Act to the county council in respect of the licensing of houses or places for the public performance of stage plays, and in respect of the execution as local authority of the Explosives Act, 1875, or of the Act relating to contagious diseases of animals.

(3) Provided that the county council shall not under this section delegate any power of raising money by rate or loan.

30.—(1) For the purpose of the police, and the clerk of the peace, and of clerks of the justices, and joint officers, and of matters required to be determined jointly by the quarter sessions and the council of a county, there shall be a standing joint committee of the quarter sessions and the county council, consisting of such equal number of justices appointed by the quarter sessions and of members of the county council appointed by that council as may from time to time be arranged between the quarter sessions and the council, and in default of arrangement such number taken equally from the quarter sessions and the council as may be directed by a Secretary of State.

(3) . . .; and all such expenditure as the said joint committee determine to be required for the purposes of the matters above in this section mentioned, shall be paid out of the county fund; and the council of the county shall provide for such payment accordingly.

PART II—APPLICATION OF ACT TO BOROUGHS, THE METROPOLIS, AND CERTAIN SPECIAL COUNTIES

Application of Act to Boroughs

31. Each of the boroughs named . . . being a borough which on the first day of June one thousand eight hundred and eighty-eight, either had a population of not less than fifty thousand, or was a county of itself shall, from and after the appointed day, be

for the purposes of this Act an administrative county of itself, and is in this Act referred to as a county borough.

Provided that for all other purposes a county borough shall continue to be part of the county (if any) in which it is situate at the passing of this Act, . . .

Application of Act to Metropolis

40. In the application of this Act to the Metropolis, the following provisions shall have effect :—

(1) The Metropolis shall, on and after the appointed day, be an administrative county for the purposes of this Act by the name of the administrative county of London.

(2) Such portion of the administrative county of London as forms part of the counties of Middlesex, Surrey and Kent, shall on and after the appointed day be severed from those counties, and form a separate county for all non-administrative purposes by the name of the county of London ; . . . [and to have its own sheriff and commission of the peace and quarter sessions court]. . . .

(3) Provided that, for the purpose of the jurisdiction of the justices under such commission, and of such court, as well as other non-administrative purposes, the county of the city of London shall continue a separate county, but if and when the mayor, commonalty, and citizens of the city assent to jurisdiction being conferred therein on such justices and court may by commission under the Great Seal be made subject to the jurisdiction thereof.

(8) There shall also be transferred to the London county council the powers, duties, and liabilities of the Metropolitan Board of Works. . . .

[Part III deals with Boundaries]

PART IV—FINANCE

68.—(1) All receipts of the county council, whether for general or special county purposes, shall be carried to the county fund, and all payments for general or special county purposes shall be made in the first instance out of that fund.

(3) In this Act the expression " special county purposes " means any purposes from contribution to which any portion of the county is for the time being exempt. . . .

(4) If the moneys standing to the general county account of the county fund are insufficient to meet the expenditure for general county purposes, county contributions may be levied to meet the deficiency on the whole administrative county, and shall be assessed on all the parishes in the county.

(5) If the moneys standing to any special county account of the county fund are insufficient to meet the expenditure for the special county purposes chargeable to that account, county contributions may be levied to meet the deficiency on any parishes in the county liable to be assessed to county contributions for those purposes.

(6) Any precept for county contributions may include as separate items a contribution for general county purposes, and a contribution for any special county purpose or purposes, . . .

69.—(1) The county council may from time to time, with the consent of the Local Government Board, borrow, on the security of the county fund, and of any revenues of the council, or on either such fund or revenues, or any part of the revenues, such sums as may be required for the following purposes, or any of them, that is to say: . . . [for consolidating debt, capital improvements by land purchase, building and other permanent improvements, advances for emigration, and other purposes authorised by this act].

71.—(3) The accounts of a county council and of the county treasurer and officers of such council, shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under . . . the Public Health Act, 1875,[1] . . . and all enactments . . . applying to audit by district auditors, including the enactments imposing penalties and providing for the recovery of sums, shall apply in like manner as if, so far as they relate to an audit of the accounts of an urban authority and the officers of such authority, they were herein re-enacted with the necessary modifications, and accordingly all ratepayers and owners of property in the county shall have the like rights, and there shall be the same appeal as in the case of such audit. . . .

Proceedings of Councils and Committees

80.—(3) Every county council shall from time to time appoint a finance committee for regulating and controlling the finance of their county; and an order for the payment of a sum out of the county fund, whether on account of capital or income, shall not be made by a county council, except in pursuance of a resolution of the council passed on the recommendation of the finance committee, and (subject to the provisions of this Act respecting the standing joint committee [2]) any costs, debt, or liability exceeding fifty pounds shall not be incurred except upon a resolution of the council passed on an estimate submitted by the finance committee.

[1] 38 & 39 Vict., c. 55, §§ 247 and 250.

[2] See § 30, sub-sect. 3.

[§ 81 allows the appointment of joint committees for any purpose of joint interest with full powers delegated except those of making rates or borrowing. §§ 82-102 are supplementary matters of detail and §§ 103-126 are transitory.[1]]

XL

THE DEMISE OF THE CROWN ACT, 1901[2]

1 Ed. VII, c. 5.

Be it enacted . . .

1.—(1) The holding of any office under the Crown, whether within or without His Majesty's dominions, shall not be affected, nor shall any fresh appointment thereto be rendered necessary, by the demise of the Crown.

(2) This Act shall take effect as from the last demise of the Crown.

XLI

TERRITORIAL AND RESERVE FORCES ACT, 1907

7 Edw. VII, c. 9.

Be it enacted . . .

1.—(1) For the purposes of the reorganisation under this Act of His Majesty's military forces other than the regulars and their reserves, and of the administration of those forces when so reorganised, and for such other purposes as are mentioned in this Act, an association may be established for any county in the United Kingdom, with such powers and duties in connection with the purposes aforesaid as may be conferred on it by or under this Act.

(2) Associations shall be constituted, and the members thereof shall be appointed and hold office in accordance with schemes to be made by the Army Council. . . .

2.—(1) It shall be the duty of an association when constituted to make itself acquainted with and conform to the plan of the Army Council for the organisation of the Territorial Force within the

[1] Space is lacking to fill in the picture of local government by printing the long Local Government Act 1894 (56 & 57 Vict., c. 73) which set up Parish Councils (empowered to merge Burial Boards in themselves), and District Councils, both Urban and Rural (whose powers vary but which all take over the work of the old Highway and Sanitary Boards).

[2] See Vol. I, Sect. A, No. XXXII, p. 84, and No. LV, p. 139 ; Vol. II, Sect. A, No. IX, p. 16, and No. XXXII, § 51, p. 106.

county and to ascertain the military resources and capabilities of the county, and to render advice and assistance to the Army Council and to such officers as the Army Council may direct, and an association shall have, exercise, and discharge such powers and duties connected with the organisation and administration of His Majesty's military forces as may for the time being be transferred or assigned to it by order of His Majesty signified under the hand of a Secretary of State or, subject thereto, by regulations under this Act, but an association shall not have any powers of command or training over any part of His Majesty's military forces. . . .

6. It shall be lawful for His Majesty to raise and maintain a force to be called the "Territorial Force," consisting of such number of men as may from time to time be provided by Parliament.[1] . . .

7.—(1) Subject to the provisions of this Part of this Act, it shall be lawful for His Majesty, by order signified under the hand of a Secretary of State, to make orders with respect to the government, discipline, and pay and allowances of the Territorial Force, and with respect to all other matters and things relating to the Territorial Force, including any matter by this Part of this Act authorised to be prescribed or expressed to be subject to orders or regulations.

(2) The said orders may provide for the formation of men of the Territorial Force into regiments, battalions, or other military bodies, and for the formation of such regiments, battalions, or other military bodies into corps, either alone or jointly with any other part of His Majesty's forces, and for appointing, transferring, or attaching men of the Territorial Force to corps, and for posting, attaching, or otherwise dealing with such men within the corps; and may provide for the constitution of a permanent staff, including adjutants and staff sergeants who shall, except in special circumstances certified by the general officer commanding, be members of His Majesty's regular forces; and may regulate the appointment, rank, duties, and numbers of the officers and non-commissioned officers of the Territorial Force.

(3) Subject to the provisions of any such order, the Army Council may make general or special regulations with respect to any matter with respect to which His Majesty may make orders under this section.

(4) Provided that the said orders or regulations shall not—

(a) affect or extend the term for which, or the area within which, a man of the Territorial Force is liable under this Part of this Act to serve; or

(b) authorise a man of the Territorial Force when belong-

[1] See Vol. I, Sect. A, No. LIII, p. 135, and Vol. II, Sect. A, No. XIV, p. 29, and No. XXX, p. 100.

ing to one corps to be transferred without his consent to another corps ; or

(c) when the corps of a man of the Territorial Force includes more than one unit, authorise him when not embodied to be posted, without his consent, to any unit other than that to which he was posted on enlistment ; or

(d) when a corps of a man of the Territorial Force includes any battalion or other body of the regular forces, authorise him to be posted without his consent to that battalion or body.

[§ 9. Men to enlist for a county and for a period not exceeding four years, but may be re-engaged. § 10. Certain sections of the Army Act applicable to the Territorial Force—mainly concerning enlistment, recruiting, and competent military authority.]

13.—(1) Any part of the Territorial Force shall be liable to serve in any part of the United Kingdom, but no part of the Territorial Force shall be carried or ordered to go out of the United Kingdom.

(2) Provided that it shall be lawful for His Majesty, if he thinks fit, to accept the offer of any part or men of the Territorial Force, signified through their commanding officer, to subject themselves to the liability—

(a) to serve in any place outside the United Kingdom ; or

(b) to be called out for actual military service for purposes of defence at such places in the United Kingdom as may be specified in their agreement, whether the Territorial Force is embodied or not :

and, upon any such offer being accepted, they shall be liable, whenever required during the period to which the offer extends, to serve or be called out accordingly.

(3) A person shall not be compelled to make such an offer, or be subjected to such liability as aforesaid, except by his own consent, and a commanding officer shall not certify any voluntary offer previously to his having explained to every person making the offer that the offer is to be purely voluntary on his part.

[§ 15. Compulsory annual training for Territorial Force of 8 to 15 (18 for mounted men) days, and compulsory drills.]

17.—(1) Immediately upon and by virtue of the issue of a proclamation ordering the Army Reserve to be called out on permanent service, it shall be lawful for His Majesty to order the Army Council from time to time to give, and when given to revoke or vary, such directions as may seem necessary or proper for embodying all or any part of the Territorial Force, and in particular to make

such special arrangements as they think proper with regard to units or individuals whose services may be required in other than a military capacity:

20.—(1) Any man of the Territorial Force who without leave lawfully granted, or such sickness or other reasonable excuse as may be allowed in the prescribed manner, fails to appear at the time and place appointed for assembling on embodiment, shall be guilty, according to the circumstances, of deserting within the meaning of section twelve, or of absenting himself without leave within the meaning of section fifteen, of the Army Act, snd shall, whether otherwise subject to military law or not, be liable to be tried by court-martial, and convicted and punished accordingly, and may be taken into military custody.

(2) Sections one hundred and fifty-three and one hundred and fifty-four of the Army Act shall apply with respect to deserters and desertion within the meaning of this section in like manner as they apply with respect to deserters and desertion within the meaning of those sections, and any person who, knowing any man of the Territorial Force to be a deserter within the meaning of this section or of the Army Act, employs or continues to employ him, shall be deemed to aid him in concealing himself within the meaning of the first-mentioned section.

24.—(1) Any offence under this Part of this Act, and any offence under the Army Act if committed by a man of the Territorial Force when not embodied, which is cognizable by a court-martial shall also be cognizable by a court of summary jurisdiction, and on conviction by such a court shall be punishable with imprisonment for a term not exceeding three months or with a fine not exceeding twenty pounds, or with both such imprisonment and fine, but nothing in this provision shall affect the liability of a person charged with any such offence to be taken into military custody.

(2) Any offence which under this Part of this Act is punishable on conviction by court-martial, shall for all purposes of and incidental to the arrest, trial, and punishment of the offender, including the summary dealing with the case by his commanding officer, deemed to be an offence under the Army Act, with this modification, that any reference in that Act to forfeiture and stoppages shall be construed to refer to such forfeitures and stoppages as may be prescribed.

(4) Where a man of the Territorial Force is subject to military law and is illegally absent from his duty, a court of inquiry under section seventy-two of the Army Act may be assembled after the expiration of twenty-one days from the date of such absence, notwithstanding that the period during which he was subject to military

law is less than twenty-one days or has expired before the expiration of twenty-one days.

30.—(1) The power of enlisting men into the first class of the army reserve under the Reserve Forces Act, 1882, shall extend to the enlistment of men who have not served in His Majesty's regular forces, and men so enlisted who have not served in the regular forces are in this Part of this Act referred to as special reservists, and a special reservist may be re-engaged, and when re-engaged shall continue subject to the terms of service applicable to special reservists.

(2) A special reservist may, in addition to being called out for annual training, be called out for a special course or special courses of training at such place or places within the United Kingdom at such time or times and for such period or periods, in like manner and subject to the like conditions as he may be called out for annual training, and may during any such course be attached to or trained with any body of His Majesty's forces.

34.—(1) His Majesty may by Order in Council transfer to the Army Reserve such battalions of the Militia as may be specified in the order, and every battalion so transferred shall from the date mentioned in the order be deemed to have been lawfully formed under this Part of this Act as a battalion of special reservists.

(2) As from the said date every officer of any battalion so transferred shall be deemed to be an officer in the reserve of officers, and every man in such battalion shall be deemed to be a special reservist, and the order may contain such provision as may seem necessary for applying the provisions of the Reserve Forces Acts, 1882 to 1906, as amended by this Act, to those officers and men :

Provided that, unless any officer or man in any battalion so transferred indicates his assent to such transfer certified by his commanding officer, nothing in the order shall affect his existing conditions of service.

(3) All Orders in Council made under this section shall be laid before both Houses of Parliament.

XLII

THE PARLIAMENT ACT, 1911 [1]

1 & 2 Geo. V, c. 13.

Whereas it is expedient that provision should be made for regulating the relations between the two Houses of Parliament :

[1] See Vol. II, Sect. D, No. LXI, p. 453.

And whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation:

And whereas provision will require hereafter to be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber, but it is expedient to make such provision as in this Act appears for restricting the existing powers of the House of Lords:

Be it therefore enacted . . .

1.—(1) If a Money Bill,[1] having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified, notwithstanding that the House of Lords have not consented to the Bill.

(2) A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions "taxation," "public money," and "loan" respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.[2]

(3) There shall be endorsed on every Money Bill when it is sent up to the House of Lords and when it is presented to His Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. Before giving his certificate, the Speaker shall consult, if practicable, two members to be appointed from the Chairmen's Panel at the beginning of each Session by the Committee of Selection.

2.—(1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in three

[1] Vol. I, Sect. B, No. I, p. 153, and Sect. D, No. VI, p. 326; also Vol. II, Sect. B, No. XV, p. 187.

[2] Vol. I, Sect. B, No. XXI, p. 208.

successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless two years [1] have elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the third of those sessions.[1]

(2) When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.

(3) A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.

(4) A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former Bill or contains only such alterations as are certified by the Speaker of the House of Commons to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have been made by the House of Lords in the third session [1] and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section:

Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House in the second or third session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords.

[1] By the Parliament Act, 1949 (12, 13, & 14 Geo. VI, c. 103) one year is substituted for two years, and two sessions for three sessions.

3. Any certificate of the Speaker of the House of Commons given under this Act shall be conclusive for all purposes, and shall not be questioned in any court of law.

4.—(1) In every Bill presented to His Majesty under the preceding provisions of this Act, the words of enactment shall be as follows, that is to say:—

"Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Commons in this present Parliament assembled, in accordance with the provisions of the Parliament Act, 1911, and by authority of the same, as follows."

(2) Any alteration of a Bill necessary to give effect to this section shall not be deemed to be an amendment of the Bill.

5. In this Act the expression "Public Bill" does not include any Bill for confirming a Provisional Order.

6. Nothing in this Act shall diminish or qualify the existing rights and privileges of the House of Commons.

7. Five years shall be substituted for seven years as the time fixed for the maximum duration of Parliament under the Septennial Act, 1715.[1]

8. This Act may be cited as the Parliament Act, 1911.

XLIII

PROVISIONAL COLLECTION OF TAXES ACT, 1913[2]

3 Geo. V, c. 3

Be it enacted . . .

1.—(1) Where a resolution is passed by the Committee of Ways and Means of the House of Commons (so long as it is a Committee of the whole House)[3] providing for the variation of any existing tax, or for the renewal for a further period of any tax in force or imposed during the previous financial year, whether at the same or a different rate, and whether with or without modifications, and the resolution contains a declaration that it is expedient in the public interest that the resolution should have statutory effect under the provisions of this Act, the resolution shall, for the period limited by this section, and subject to the provisions of this Act, have statutory effect as if

[1] See Vol. I, Sect. A, No. XLVI, p. 126.

[2] This Act was prompted by the result of the case of Gibson Bowles *v.* The Bank of England (1913), 1 Ch. 57; 82 L.J. Ch. 124.

[3] See Vol. II, Sect. B, No. VII, p. 166.

contained in an Act of Parliament, and, where the resolution provides for the renewal of a tax, all enactments which were in force with reference to that tax as last imposed by Act of Parliament shall, during the said period, and subject to the provisions of this Act, have full force and effect with respect to the tax as renewed by the resolution :

Provided that—

(a) The resolution shall cease to have statutory effect if it is not agreed to, with or without modification, by the House within the next ten days on which the House sits after the resolution is passed by the Committee, and also if a Bill varying or renewing the tax is not read a second time by the House within the next twenty days on which the House sits after the resolution is agreed to ; and

(b) The resolution shall cease to have statutory effect if Parliament is dissolved or prorogued, or an Act comes into operation varying or renewing the tax, or the resolution is rejected by the House, or the provisions giving effect to the resolution are rejected during the passage of the Bill containing those provisions through the House, and the resolution, if modified by the House, shall have effect under this Act as so modified ; and

(c) Where the resolution so ceases to have statutory effect . . . any money paid in pursuance of the resolution shall be repaid or made good, and any deduction made in pursuance of the resolution shall be deemed to be an unauthorised reduction ; and

(d) . . . [makes provision that in the event of the House subsequently modifying a tax as varied or renewed in the resolution the same obligation to repay shall apply].

(e) When during any session a resolution has had statutory effect under this Act, statutory effect shall not again be given under this Act in the same session to the same resolution or to a resolution having the same effect.

(2) The period for which a resolution shall have statutory force under this section shall be a period expiring at the end of four months after the date on which the resolution is expressed to take effect, or, if no such date is expressed, after the date on which the resolution is passed by the Committee. . . .

2. . . . [Payments on account of Temporary taxes made within one month after the date of their expiration to be legal payments provided that a resolution for their renewal is passed within the month ; otherwise the obligation to repay is to apply ; Temporary taxes are defined as those imposed for a period not exceeding eighteen months.]

3. This Act shall apply only to duties of customs and excise and to income tax.

XLIV

THE END OF THE IRISH UNION[1]— AN EPILOGUE, 1920-23

(A)

THE GOVERNMENT OF IRELAND ACT, 1920[2]

10 & 11 Geo. V, c. 67.

Be it enacted . . .

1.—(1) On and after the appointed day there shall be established in Southern Ireland a Parliament . . . consisting of His Majesty, the Senate of Southern Ireland, and the House of Commons of Southern Ireland, and there shall be established for Northern Ireland a Parliament . . . consisting of His Majesty, the Senate of Northern Ireland, and the House of Commons of Northern Ireland.

(2) For the purpose of this Act, Northern Ireland shall consist of the Parliamentary counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone, and the parliamentary boroughs of Belfast and Londonderry, and Southern Ireland shall consist of so much of Ireland as is not comprised within the said parliamentary counties and boroughs.

[§ 2 makes provision for a Council of Ireland elected from the Parliaments of North and South to deal with matters of common interest. § 3 provides for establishing a Parliament for the whole of Ireland to take over power of the Council and of both Parliaments when Northern and Southern Parliaments pass identical Acts to this effect.]

4. . . . the Parliament of Southern Ireland and the Parliament of Northern Ireland shall respectively have power to make laws for the peace, order, and good government of Southern Ireland and Northern Ireland with the following limitations namely . . . [restricted, in general, to their particular parts of Ireland, and in addition] . . . that they shall not have power to make laws in respect of the following matters . . .

(1) The Crown or the succession to the Crown, or a regency or the property of the Crown . . . or the Lord Lieutenant, except as respects the exercise of his executive power in relation to Irish services . . .

[1] See Vol. I, Sect. A, No. XLVIII, p. 128, No. LXI, p. 147, and No. LXIII, p. 150; also Vol. II, Sect. A, No. XII, p. 20.

[2] 13 Geo. V, c. 2, § 1 (Irish Free State Consequential Provisions Act, 1923) repeals this Statute except for its provisions for Northern Ireland.

(2) The making of peace or war . . . [and related matters].
(3) The navy, the army, the air force, the territorial force . . .
(4) Treaties, or any relations with foreign states, or relations with other parts of His Majesty's dominions . . . [etc.].
(5) Dignities or titles of honour; or
(6) Treason, treason felony, alienage, naturalization, or aliens as such, or domicile; or
(7) Trade with any place out of the part of Ireland within their jurisdiction, except so far as trade may be affected by the exercise of the powers of taxation given to the said parliaments . . . [or in dealing with contagious diseases, fraud, navigation, etc.]

[Sub-sects. (8)-(14) reserve Cables, Wireless, aerial navigation, Lighthouses, coinage, Trade marks, and some interim matters.]

[§ 5 prohibits laws interfering with religious equality or taking property without compensation.]

6.—(1) Neither the Parliament of Southern Ireland nor the Parliament of Northern Ireland shall have power to repeal or alter any provision of this Act . . .

(2) Where any Act of the Parliament of Southern Ireland or the Parliament of Northern Ireland deals with any matter . . . which is dealt with by any Act of Parliament of the United Kingdom passed after the appointed day and extending to the part of Ireland within its jurisdiction, the Act of the Parliament of Southern Ireland or . . . of Northern Ireland shall be read subject to the Act of the Parliament of the United Kingdom, and so far as it is repugnant to that Act, but no further, shall be void. . . .

[**§ 7.** Further details about the Council of Ireland.]

Executive Authority

8.—(1) The executive power in Southern Ireland and in Northern Ireland shall continue vested in His Majesty the King, . . .

(2) As respects Irish services, the Lord Lieutenant . . . on behalf of his Majesty, shall exercise any prerogative or other executive power of His Majesty the exercise of which may be delegated to him by His Majesty:

[Sub-sects. (3)-(8). Provisions about ministers and departments. (9) reserves, for the time being, to the United Kingdom government, postal services and banks, records, etc. and general land purchase laws.]

[Sub-sects. 10, 11, and 12. The Council of Ireland: The Summoning of Parliaments: Assent to Bills.]

13. The Senate of Northern Ireland shall be constituted as provided in the Third Schedule to this Act.[1]

14. . . . (2) The House of Commons of Northern Ireland shall consist of fifty-two members returned . . . [as the members of the United Kingdom Parliament are returned, but after three years the Northern Ireland Parliament may alter electoral qualifications.]

[§ **16.** Money Bills to originate in the Commons and the Senate not to amend them. § **17.** When there is a disagreement between two Houses of an Irish legislature the Lord Lieutenant may convene a joint session of both Houses to vote together and settle it.]

19. Unless and until the Parliament of the United Kingdom otherwise determine . . .

(a) the number of members to be returned by constituencies in Ireland to serve in the Parliament of the United Kingdom shall be forty-six . . .

[§§ **30-36** detailed Financial provisions (giving powers of levying some kinds of taxation). §§ **37-49.** Judicial provisions, dividing Irish supreme court into two sections with a common appeal court from which appeals are to lie to the House of Lords.]

50. Where any decision of a court in Ireland involves . . . the validity of any law made by . . . either of the Irish Parliaments . . . an appeal shall lie to the High Court of Appeals for Ireland . . .

51. If it appears to the Lord Lieutenant or a Secretary of State expedient in the public interest that steps shall be taken for the speedy determination of the question whether any Act . . . [of either of the two Irish Parliaments] . . . is beyond the powers of such Parliament . . . the Lord Lieutenant, or Secretary of State or members of the Joint Exchequer Board . . . may represent the same to his Majesty in Council, and thereupon . . . the said question shall be . . . determined by the Judicial Committee of the Privy Council.

53. Any decision of the House of Lords or of the Judicial Committee of the Privy Council as to the validity of any law . . . [made by either Irish Parliament] . . . shall be final and conclusive and binding on all Courts.

[§§ **54-74.** Provision for existing officers of public services, etc.; Irish Transfer orders under this Act; Definitions.]

[1] The Senate of Northern Ireland by Schedule Three is to consist of the Lord Mayors of Belfast and Londonderry and twenty-four senators elected by the Northern House of Commons. The Senate of Southern Ireland is chosen in a more complicated way by nomination by interests including Labour, Commerce, the Roman Catholic Church, the Church of Ireland, Privy Councillors, and the County Councils.

75. Notwithstanding the establishment of the Parliaments of Southern and Northern Ireland . . . the supreme authority of the Parliament of the United Kingdom shall remain unaffected and undiminished over all persons, matters, and things in Ireland and every part thereof.

(B)

Irish Free State (Agreement) Act, 1922

12 Geo. V., c. 4.

1.—(1) The Articles of Agreement for a Treaty between Great Britain and Ireland set forth in the Schedule to this Act shall have the force of law as from the date of the passing of this Act.

(2) For the purpose of giving effect to . . . the said Agreement, Orders in Council may be made transferring to the Provisional Government . . . the powers and machinery therein referred to, and as soon as may be and not later than four months after the passing of this Act the Parliament of Southern Ireland shall be dissolved and such steps shall be taken as may be necessary for holding, . . . an election of members for the constituencies which would have been entitled to elect members to that Parliament, and the members so elected shall constitute the House of the Parliament to which the Provisional Government shall be responsible, and that Parliament shall, as respects matters within the jurisdiction of the Provisional Government, have power to make laws in like manner as the Parliament of the Irish Free State when constituted. . . .

(4) No writ shall be issued after the passing of this Act for the election of a member to serve in the Commons House of Parliament for a constituency in Ireland other than a constituency in Northern Ireland.

SCHEDULE—ARTICLES OF AGREEMENT

1. Ireland shall have the same constitutional status in the Community of Nations known as the British Empire as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa, with a Parliament having powers to make laws for the peace order and good government of Ireland and an Executive responsible to that Parliament, and shall be styled and known as the Irish Free State.

2. Subject to the provisions hereinafter set out the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada, and the law, practice and constitutional usage of governing the relationship of the Crown or the representative of the Crown and

of the Imperial Parliament to the Dominion of Canada shall govern their relationship to the Irish Free State.

3. The representative of the Crown in Ireland shall be appointed in like manner as the Governor-General of Canada, and in accordance with the practice observed in the making of such appointments.

4. The oath to be taken by Members of the Parliament of the Irish Free State shall be in the following form :—

> I . . . do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established and that I will be faithful to H.M. King George V., his heirs and successors by law in virtue of the common citizenship of Ireland with Great Britain and her adherence to the membership of the group of nations forming the British Commonwealth of Nations.

7. The Government of the Irish Free State shall afford to His Majesty's Imperial Forces :—

> (a) In time of peace such harbour and other facilities as are indicated in the Annex[1] hereto, or such other facilities as may from time to time be agreed between the British Government and the Government of the Irish Free State ; and
>
> (b) In time of war or of strained relations with a Foreign Power such harbour and other facilities as the British Government may require for the purposes of such defence as aforesaid.

12. If . . . [within a month of the passing of the Act] . . . an address is presented to His Majesty by both Houses of the Parliament of Northern Ireland to that effect, the powers of the Parliament and Government of the Irish Free State shall no longer extend to Northern Ireland, and the provisions of the Government of Ireland Act, 1920 (including those relating to the Council of Ireland), shall so far as they related to Northern Ireland, continue to be of full force and effect, subject to the necessary modifications.

Provided that if such an address is so presented a Commission consisting of three persons, one to be appointed by the Government of the Irish Free State, one to be appointed by the Government of Northern Ireland and one who shall be Chairman to be appointed by the British Government shall determine in accordance with the wishes of the inhabitants, so far as may be compatible with economic and geographic conditions the boundaries between Northern Ireland and the rest of Ireland, and for the purposes of the Government of Ireland Act, 1920, and of this instrument, the boundary of Northern Ireland shall be such as may be determined by such Commission.

16. Neither the Parliament of the Irish Free State nor the Parliament of Northern Ireland shall make any law so as either

[1] Annex omitted.

directly or indirectly to endow any religion or prohibit or restrict the free exercise thereof or give any preference or impose any disability on account of religious belief or religious status or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruction at the school or make any discrimination as respects State aid between schools under the management of different religious denominations or divert from any religious denomination or any educational institution any of its property except for public utility purposes and on payment of compensation.

(C)

Irish Free State Constitution Act, 1922

(Session 2)

13 Geo. V, c. 1.

WHEREAS the House of the Parliament constituted pursuant to the Irish Free State (Agreement) Act, 1922, sitting as a Constituent Assembly for the settlement of the Constitution of the Irish Free State, has passed the Measure (hereinafter referred to as "the Constituent Act") set forth in the Schedule to this Act, whereby the Constitution appearing as the First Schedule to the Constituent Act is declared to be the Constitution of the Irish Free State:

And whereas by the Constituent Act the said Constitution is made subject to the following provisions, namely;)

> "The said Constitution shall be construed with reference to the Articles of Agreement for a Treaty between Great Britain and Ireland set forth in the Second Schedule hereto annexed (hereinafter referred to as the Scheduled Treaty) which are hereby given the force of law, and if any provision of the said Constitution or of any amendment thereof or of any law made thereunder is in any respect repugnant to any of the provisions of the Scheduled Treaty, it shall, to the extent only of such repugnancy, be absolutely void and inoperative and the Parliament and the Executive Council of the Irish Free State shall respectively pass such further legislation and do all such other things as may be necessary to implement the Scheduled Treaty."

. . . Be it therefore enacted . . .

1. The Constitution set forth in the First Schedule to the Constitution Act shall, subject to the provisions to which the same is by the Constituent Act so made subject as aforesaid, be the Constitution of the Irish Free State, and shall come into operation on the same being proclaimed by His Majesty . . . but His Majesty

may at any time after the proclamation appoint a Governor-General for the Irish Free State.

[§ 2. No liability for taxes or duties for current financial year to be affected, nor for that year are goods transported between the two countries to be treated as imports or exports—except that information may be required.]

3. If the Parliament of the Irish Free State make provision to that effect, any Act passed before the passing of this Act which applies to or may be applied to self-governing Dominions, whether alone or to such Dominions and other parts of His Majesty's Dominions, shall apply or may be applied to the Irish Free State in like manner as it applies or may be applied to self-governing Dominions.

4. Nothing in the said Constitution shall be construed as prejudicing the power of Parliament to make laws affecting the Irish Free State in any case where, in accordance with constitutional practice, Parliament would make laws affecting other self-governing Dominions.

FIRST SCHEDULE ABOVE REFERRED TO

CONSTITUTION OF THE IRISH FREE STATE (SAORSTÁT EIREANN)

Article 1

The Irish Free State (otherwise hereinafter called or sometimes called Saorstát Eireann) is a co-equal member of the Community of Nations forming the British Commonwealth of Nations.

Article 2

All powers of government and all authority legislative, executive, and judicial in Ireland, are derived from the people of Ireland and the same shall be exercised in the Irish Free State (Saorstát Eireann) through the organisations established by or under, and in accord, with, this Constitution.

Article 3

Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State (Saorstát Eireann) at the time of the coming into operation of this Constitution who was born in Ireland or either of whose parents was born in Ireland or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State (Saorstát Eireann) for not less than seven years, is a citizen of the Irish Free State (Saorstát Eireann) and shall within the limits of the jurisdiction of the Irish Free State (Saorstát Eireann) enjoy the privileges and be subject to the obligations of

citizenship: Provided that any such person being a citizen of another State may elect not to accept the citizenship hereby conferred; and the conditions governing the future acquisition and termination of citizenship in the Irish Free State (Saorstát Eireann) shall be determined by law.

Article 12

A Legislature is hereby created to be known as the Oireachtas. It shall consist of the King and two Houses. . . . The sole and exclusive power of making laws for the peace, order and good government of the Irish Free State (Saorstát Eireann) is vested in the Oireachtas.

Article 24

The Oireachtas shall hold at least one session each year. The Oireachtas shall be summoned and dissolved by the Representative of the Crown in the name of the King . . . Provided that the sessions of Seanad Eireann shall not be concluded without its own consent.

Article 66

The Supreme Court of the Irish Free State (Saorstát Eireann) shall, with such exceptions (not including cases which involve questions as to the validity of any law) and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court. The decision of the Supreme Court shall in all cases be final and conclusive, and shall not be reviewed or capable of being reviewed by any other Court, Tribunal or Authority whatsoever:

Provided that nothing in this Constitution shall impair the right of any person to petition His Majesty for special leave to appeal from the Supreme Court to His Majesty in Council or the right of His Majesty to grant such leave.

SECTION B

PARLIAMENTARY PROCEEDINGS

(INCLUDING DEBATES, RESOLUTIONS, IMPEACHMENT, ORDERS, PARLIAMENTARY PAPERS AND COMMITTEE REPORTS [1])

I

AN ADDRESS TO REMOVE MINISTERS,[2] 1784

William Pitt. . . . No man was more zealous or more unreserved in admitting and asserting the right of the House to advise the Sovereign in the exercise of all his prerogatives than he was: this has always been a sentiment which he had avowed: but that a declaration on the part of the House of their disapprobation of His Majesty's Ministers should, *ipso facto*, in any given instance, bind and compel the Sovereign to dismiss those Ministers, or oblige them to resign, was a point which he never had admitted, and would never allow. Such a sentiment of disapprobation surely placed Ministers in awkward and unpleasant situations; but that it should force them to retire, he would maintain, was an unconstitutional doctrine, hostile to the prerogative of the Crown, and to that balance of power on which the excellency of our government depended. . . .

Attempts have been made, said Mr. Pitt, to fix imputations of criminality on the present Administration. Their sins have been stated; and one of the most glaring of them is, that the late Ministry were dismissed against the sense of the House. But what is the meaning of this charge? To what conclusion does the argument, when followed up, lead? Does it not fairly admit of this comment, that it is improper for His Majesty to dismiss his Ministers, provided they are approved of by the House of Commons; and that so long as they act agreeably to its sentiment, so long, and no longer are they to enjoy the patronage of the Crown, and retain the offices of administration? Is this a decent treatment of the prerogative? Is this constitutional doctrine? Is it not degrading the dignity of

[1] But not Royal Commission Reports, which will be found in Sect. D, where also the War Cabinet Report of 1917 is printed.

[2] Cf. Vol. I, Sect. B, No. XXXVIII, p. 240.

the Sovereign? Is it not a transference of the prerogatives of the Crown to the House of Commons, and a placing the royal sceptre under the mace that lies upon the table? The Constitution of this country is its glory; but in what a nice adjustment does its excellence consist! Equally free from the distractions of democracy, and the tyranny of monarchy, its happiness is to be found in its mixture of parts.[1] It was this mixed government which the prudence of our ancestors devised, and which it will be our wisdom inviolably to support. They experienced all the vicissitudes and distractions of a republic. They felt all the vassalage and despotism of a simple monarchy. They abandoned both, and by blending each together, extracted a system which has been the envy and admiration of the world. It is this scheme of government which constitutes the pride of Englishmen, and which they can never relinquish but with their lives. This system, however, it is the intention of the present Address to defeat and destroy. It is the intention of this Address to arrogate a power which does not belong to the House of Commons —to place a negative on the exercise of the prerogative and to destroy the balance of power in the Government as it was settled at the Revolution.[2] . . .

[*Parl. Hist.*, xxiv, 709, March 1, 1784.]

II

THE KING'S INCAPACITY[3]

House of Commons, 10th December 1788

Mr. *Fox*. . . . Undoubtedly it was their duty to lose no time in proceeding to provide some measure for the exigency of the present moment, but . . . he, for one, would willingly dispense with the motion then made [*i.e.* Pitt's motion to examine precedents for the interruption of the personal exercise of the Royal authority, in view of the physician's reports they had just heard]. What were they going to search for? Not for precedents upon their journals, not parliamentary precedents, but precedents in the history of England. He would be bold to say, nay they all knew, that the doing so would prove a loss of time, for there existed no precedent whatever, that could bear upon the present case. The circum-

[1] See Vol. I, Sect. D, No. XIV, p. 340.

[2] Cf. Vol. II, Sect. D, No. XXIV (C), p. 387.

[3] Compare with this the Protest of the Minority Peers in the Extract next following. Also the Royal Assent to the Regency Bill (No. VI in this section), and the Regency Act 1811 in Sect. A, No. XVI, p. 34.

stances to be provided for did not depend upon their deliberations as a house of parliament; it rested elsewhere. There was then a person in the kingdom differing from any other person that any existing precedents could refer to—an heir apparent of full age and capacity to exercise the royal power. It behoved them, therefore, to waste not a moment unnecessarily, but to proceed with all becoming diligence to restore the sovereign power and the exercise of the royal authority. . . .

In his firm opinion, his royal highness the Prince of Wales had as clear, as express a right to assume the reins of government, and exercise the power of sovereignty, during the continuance of the illness and incapacity with which it had pleased God to afflict his Majesty, as in the case of his Majesty's having undergone a natural and perfect demise: and, as to this right, which he conceived the Prince of Wales had, he was not himself to judge when he was entitled to exercise it; but the two Houses of Parliament, as the organs of the nation, were alone qualified to pronounce when the Prince ought to take possession of, and exercise his right. He thought it candid, entertaining this opinion, to come forward fairly, and avow it at that instant; and therefore, under such an idea, he conceived that as short a time as possible ought to intervene between the Prince of Wales's assuming the sovereignty, and the present moment. He justified the Prince's not making this his indubitable claim himself, by imputing his desire of waving the open advancement of it, to his having been bred in those principles which had placed his illustrious House on the throne, and to his known reverence and regard for those principles as the true fundamentals of our glorious constitution in the maintenance of which, his family had flourished with so much prosperity and happiness, as sovereigns of the British empire. . . . He should not oppose the motion, but he thought it his duty to say, that it was incumbent on the House to lose no time in restoring the third estate. His Royal Highness, he was convinced, must exercise the royal prerogative during, and only during, his Majesty's illness. . . .

Mr. *Pitt*. . . . If a claim of right was intimated (even though not formally) on the part of the Prince of Wales, to assume the government, it became of the utmost consequence, to ascertain, from precedent and history, whether this claim was founded; which if it was, precluded the House from the possibility of all deliberation on the subject. In the mean time, he maintained, that it would appear, from every precedent and from every page of our history, that to assert such a right in the Prince of Wales, or anyone else, independent of the decision of the two Houses of Parliament, was little less than treason to the constitution of the country. He did

not mean then to enter into the discussion of that great and important point; because a fit occasion of discussing it would soon afford both the right hon. gentleman and himself an ample opportunity of stating their sentiments upon it. In the mean time, he pledged himself to this assertion, that in the case of the interruption of the personal exercise of the royal authority, without any previous lawful provision having been made for carrying on the government, it belonged to the other branches of the legislature, on the part of the nation at large, the body they represented, to provide, according to their discretion, for the temporary exercise of the royal authority, in the name, and on the behalf of the sovereign, in such manner as they should think requisite; and that, unless by their decision, the Prince of Wales had no more right (speaking of strict right) to assume the government, than any other individual subject of the country. What Parliament ought to determine on that subject, was a question of discretion. However strong the arguments might be on that ground, in favour of the Prince of Wales, which he would not enter into at present, it did not affect the question of right; because, neither the whole, nor any part, of the royal authority could belong to him in the present circumstances, unless conferred by the Houses of Parliament.—As to the right hon. gentleman's repeated enforcement of the Prince of Wales's claim, he admitted that it was a claim entitled to most serious consideration; and thence, argued, that it was the more necessary to learn how the House had acted in cases of similar exigency, and what had been the opinion of Parliament on such occasions. He would not allow that no precedent analogous to an interruption of the personal exercise of the royal authority, could be found, although there might possibly not exist a precedent of an heir apparent in a state of majority, during such an occurrence, and in that case, he contended, that it devolved on the remaining branches of the legislature, on the part of the people of England, to exercise their discretion in providing a substitute. From the mode in which the right hon. gentleman had treated the subject, a new question presented itself, and that of greater magnitude even than the question which was originally before them, as matter of necessary deliberation. The question now was, the question of their own rights, and it was become a doubt, according to the right hon. gentleman's opinion, whether that House had, on this important occasion, a deliberative power. He wished, for the present, to wave the discussion of that momentous consideration; but, he declared that he would, at a fit opportunity, state his reasons for advising what step Parliament ought to take in the present critical situation of the country, contenting himself with giving his contradiction of the right hon. gentleman's bold assertion, and pledging

himself to maintain the opposite ground against a doctrine so irreconcileable to the spirit and genius of the constitution. . . .

Mr. *Fox*. . . . The right honourable gentleman had, though he believed unintentionally, misrepresented what he had said. . . . The right honourable gentleman had charged him with something like treason to the constitution for having asserted that the Prince of Wales had a right, from law, to the government which the two Houses could not take away from him: the right honourable gentleman, however, in stating the position, instead of the words " the two Houses " substituted the equivocal word " Parliament ". . . . If by parliament the right honourable gentleman meant the three branches of the legislature, consisting of King, Lords, and Commons, he would agree with him . . . for no doubt the parliament, in that sense, could alter or limit the succession, or place such restrictions as it pleased upon the exercise of the sovereign power. But if by parliament he meant the two Houses without the king, then . . . such a parliament, if such could be entitled to that name, could not legally deprive the Prince of Wales of the regency during the incapacity of his father, and during that period only, or place any restrictions upon him in the exercise of the sovereign power in the name of his father. . . .

[*Parl. Hist.*, xxvii, 706, Dec. 10, 1788.]

III

THE REGENCY BILL, 1788 [1]

PROTEST BY THE MINORITY OF PEERS AGAINST THE RESOLUTION

" DISSENTIENT "

1st, " Because we adhere to the antient principle recognized and declared by the Act of the 13th of *Charles* II.,[2] that no Act or Ordinance, with the Force and Virtue of a law, can be made by either or both Houses of Parliament, without the King's Assent, a Principle standing as a Bulwark to the people against the Two Houses, as the Two Houses are their Security against the Crown."

2ndly, " Because this Principle is tacitly admitted by the Third Resolution, while it overthrows the Practice by a simulated Appearance of the Royal Assent under a Commission to pass Bills, a Commission which would be inconsistent with the Provisions in an

[1] See Vol. II, Sect. A, No. XVI, p. 34; Sect. B, No. II, p. 154, and No. VI, p. 164.

[2] Vol. I, Sect. A, No. III, § III, p. 7.

Act of 33 *Henry* VIII., requiring that every Commission shall be signed by his Majesty's Hand.

In our present unhappy Situation, that essential Requisite being unattainable, we cannot condescend to give a Sanction to a counterfeit Representation of the Royal Signature, and we dare not assume a Power to dispense with the Law which makes that Signature essential to the Validity of a Commission to pass Bills."

3rdly, " Because we conceive that the unquestionable Rights of the People, so fallaciously represented as being upheld by these Resolutions, are violently infringed by an unnecessary Assumption on the Part of the Two Houses of Powers beyond those which the Nation has assigned them. Invariable Practice, in all good Times, and positive Laws established by complete Parliaments, truly and constitutionally representing the Nation, have defined those Powers. And we cannot but regard with the utmost Apprehension any proposal to overstep those Boundaries, when the Consequences of such Usurpation is so fatally marked in the History of our Country."

4thly, " Because it was confessed in the Debate, that the Powers of this Commission were not to be confined solely to the Act of appointing a Regent; to what other Purposes they may extend were not explained. State Necessity, the avowed Ground of the Measure, may serve as a Pretext for any Diminution of the just Prerogative of the Crown, or of the Liberties of the People, that best suits the Designs of Ambition. Fatal Experience had shown to our Ancestors the boundless Mischiefs of Powers thus usurped under plausible Appearances; and it is particularly the Duty of the House of Peers to check the Renewal of a Practice to assume the Name, without the Substance of the Royal Authority, by which this House was once annihilated, the Monarchy overthrown, and the Liberties of the People subdued."

5thly, " Because these dangerous and alarming Consequences of the Measure adopted would have been obviated by the Amendment rejected; it proposed to substitute a Measure conformable to the Practice of our Ancestors at the glorious Era of the Revolution; They seized not upon public Necessity as a Convenience for the Usurpation of new Powers, but proceeded in a plain and explicit Form to the Revival of the Royal Authority with full Efficacy, before they entered upon the Exercise of their legislative Functions; Pursuing a similar Course, the Amendment proposed the immediate Nomination of the natural Representative of the King, the Heir Apparent of the Crown, to whom alone it was universally admitted the Eyes and Hearts of all Men were turned during the present unhappy Conjuncture, that with a perfect and efficient Legislature, such future Provisions might be enacted, as the preservation of the

full and undiminished Authority of the Crown and the Liberties of the People may require."

[Signed by 24 peers.]

[L.J., xxxviii, 333, Dec. 29, 1788.]

IV

IMPEACHMENT OF WARREN HASTINGS, 1790 [1]

(A)

The House resolved itself into a Committee of the whole House, to take into further Consideration the State in which the Impeachment of *Warren Hastings*, Esquire, late Governor General of *Bengal*, was left at the Dissolution of the last Parliament. . . .

Mr. Speaker resumed the Chair. . . .

Sir *Peter Burrell* accordingly reported from the said Committee, the Resolution which the Committee had directed him to report to the House . . . *viz.*

Resolved, That it appears, That an Impeachment by this House, in the Name of the Commons of *Great Britain* in Parliament assembled, and of all the Commons of *Great Britain* against *Warren Hastings*, Esquire, late Governor General of *Bengal*, for sundry High Crimes and Misdemeanours, is now depending.

The said Resolution being read a Second Time, was, upon the Question put thereupon, agreed to by the House.

[C.J., xlvi, 136, Dec. 23, 1790.]

(B)

The Order of the Day being read for taking into Consideration the Report from the Lords Committee [2] appointed to examine Precedents, relative to the state of the Impeachment against *Warren Hastings*, Esquire, brought up from the Commons and proceeded upon in the last Parliament, and for the Lords to be summoned.

It was moved " That a Message be sent to the Commons, to acquaint them, That this House will proceed upon the Trial of *Warren Hastings*, Esquire." . . . Then it was moved to insert in the said Motion after the Word (" That ") the following Words, [" the Judges do attend on *Wednesday* next to deliver their Opinions . . . Whether the Recognizances entered into by *Warren Hastings*, Esquire . . . on the 21st of *May* 1787, are still in Force? . . . It was resolved in the Negative].

[1] Vol. I, Sect. B, No. II, p. 155, and No. VIII, p. 180.

[2] This report contains a learned summary of the whole of the law and precedents on Impeachment.

Then an amendment was proposed to be made to the said motion, by adding at the end thereof the following words (" on Monday next "). The same was agreed to.

Then the Question was put, " Whether to agree to the said Motion thus amended ? "

It was resolved in the affirmative.

[L.J., xxxix, 190-91 May 16, 1791.]

V

JUDGES AND THE CABINET, 1806

C. J. Fox:[1] . . . But, in point of fact, there is nothing in our constitution that recognizes any such institution as a Cabinet council; and the house will recollect that this is an opinion which I expressed long since, upon an occasion to which every man must look back with regret (his majesty's last illness). The opinion which I then declared, I have always held, and still hold, that a Cabinet council is unknown to our law, and has in no instance whatever been recognized by parliament. That part of the privy council which his majesty thinks proper habitually to consult has, indeed, of late years,[2] been denominated the Cabinet council. But names are of small account upon this question. Call this council what you will —either the ministers of state or the executive committee, still the law can know nothing of its members but as privy counsellors. But a few words as to the general principles. If the point were mooted, whether the appointment of a Cabinet council at all be not an abuse of the royal prerogative, I confess there would be much to say on both sides, and I should have great doubts which course to take. However, it is undeniably a body which parliament has always declined to recognise; and their avoiding any such recognition has afforded some advantage to the gentlemen on the other side, of which they have very diligently availed themselves. As the existence of a Cabinet council has never been legally acknowledged, there is, of course, no legal record of the members comprising any Cabinet; and we have it not in our power to state any thing of authority upon the subject, but what may have come within our own observation, or may have been communicated to us by our fathers . . . When the right hon. gent. speaks of the responsibility

[1] Fox was defending Lord Ellenborough's combining the Lord Chief Justiceship with a seat in the Cabinet.

[2] See, however, Vol. I, Sect. D, No. X, p. 330.

of the Cabinet, I would recommend him to consider, whether it would be expedient to insist upon the attachment of responsibility to the whole of such a body,[1] for every ministerial act; and whether such a measure might not be apt to endanger, if not in most instances to defeat, the object of responsibility? For any act done in my office, I am directly responsible to parliament and the country; and perhaps it is much better for any purpose of practical responsibility, that it should fall on one man, than on a body; for this obvious reason, that the difficulty of producing conviction and punishment is the less in one case than in the other. I do not mean to say, that it is not desirable to bring forward the charges of guilt against all the advisers as well as the agent, if it were practicable to prove the charge. The immediate actor can always be got at in a way that is very plain, direct, and easy, compared to that by which you may be able to reach his advisers. There are to be seen many cases in which parliament have tried to get at the advisers too. But how have they tried to do so? Look at the mode, and that mode alone will sustain my argument, that the Cabinet counsellors are not legally known. For in the address presented upon such occasions as I have referred to, it will be found, that parliament apply to know by whom any measure to which the address alludes, may have been advised. Surely, then, such an application serves to shew, that the Cabinet has never been deemed a responsible body; for, if it were, such an application would be quite superfluous. But, don't confine your research to those addresses; look at the journals throughout. Examine the several articles of impeachment on record, and you can discover no instance of any man, or body of men, being impeached as Cabinet counsellors. Take the end of queen Anne's reign. See the articles of impeachment exhibited against the earl of Oxford for the conclusion of the peace of Utrecht. Lord Bolingbroke and Mr. Prior, who were the persons principally concerned in that transaction, being then out of the country, and beyond the reach of parliament, it was eagerly endeavoured to implicate lord Oxford. In prosecution of this object a variety of shifts and expedients were resorted to, which would have been totally unnecessary had the Cabinet council been considered a responsible body. . . . One word more before I quit this part of the subject. Some gentlemen may confound the functions of what is called the Cabinet council, and therefore it may be necessary to state a distinction, of which the noble lord (Castlereagh) must be aware. Councils frequently meet, which are assembled solely for the purpose of affording to the members an opportunity of consulting with each other, and stating their ideas reciprocally on points con-

[1] See Vol. I, Sect. B, No. XXXVI, p. 238.

nected with their several departments, but with no intention of communicating the result to his majesty. Indeed upon many such points it would not only be unnecessary, but improper to communicate with his majesty. The noble lord (Castlereagh) knows to what I allude. On other occasions the Cabinet council meet to advise his majesty in person. In the former case of meeting, it will not surely be pretended that any responsibility can attach to the proceedings of this council, or that any individual minister can incur censure for consulting them, the aid of whose counsels may be useful and necessary. And to whom should responsibility attach in the latter description of meetings? To the agent, to be sure, who executes the plan resolved on. This I maintain, to be well founded. For if this committee of the privy council should order any project which did not meet my approbation, and against which I should consequently protest, still if the plan were exceptionable, my protest would not avail to acquit me of the responsibility that would arise from the execution of it. This I take to be the general rule with regard to ministerial responsibility; and every thing that has occurred different from this rule, I consider in the light of an exception.

In all the observations on the other side with regard to this subject, gentlemen appear altogether to overlook the privy council. They seem indeed to forget the existence of that body; for in talking of objects of ambition they confine themselves to the Cabinet council. But pray is not a seat in the privy council an object of ambition also, and is not the circumstance of being struck off from that body a cause of disgrace? There may, to be sure, have been instances where such striking off produced no disgrace or mortification to the party concerned, but was felt rather as a source of pride. But yet, to say generally, that a seat in the privy council is not an object of ambition, and a removal from it the cause of mortification and disgrace, would be wholly absurd. Perhaps the desire of obtaining the seat is balanced by the fear of losing it, and this fear affords a guarantee for a privy counsellor's performance of his duty. These counsellors are known to the law, and it is known that if any one of them should advise his majesty, he is responsible for such advice, whether he belongs to what is called the Cabinet council or not.

Having said so much on the subject of responsibility, I shall now go into the other points connected with this question. With regard to theoretical principles, the name of Montesquieu has been adduced.[1] For this writer, as a general political philosopher, I entertain the highest respect; but the application of his opinions to, or his clear comprehension of, the constitution of England, I am not disposed to admit. What Montesquieu chiefly insists upon,

[1] See Vol. I, Sect. D, No. XXXVI, p. 378.

that has any relation to the point at issue, is this, that the legislative should be totally separate from the judicial functions.[1] But will any man attempt to apply this rule to the constitution of England? Will you separate the executive government altogether from the legislative? I hardly think that any proposition of that sort is ever likely to be submitted to this house; and sure I am, that none such would, or ought to be adopted. But Montesquieu says, that the judicial ought to be separate from the legislative function. Do gentlemen mean to press the application of that doctrine to this country? No, they cannot, for the case of the lord chancellor immediately presents itself. Over this case, however, it has been attempted to pass by the aid of a fine distinction. In order to favour the adoption of Montesquieu, and apply it to this question, it is maintained, that there is a material difference between a civil and a criminal judge.

The gentlemen who support the motion, not content with the theory of Montesquieu, which is not at all applicable to the constitution of this country, have had recourse to the authority of Blackstone, but being unable to find any theory exactly to answer the maintenance of their arguments, they have, I observe, endeavoured to pare down different theories, in order to suit their purpose: still however, they have failed. . . . However, the words quoted from this author by the gentleman on the other side are, I am prepared to say, quite misunderstood. When Blackstone says, that "a judge should not be a minister of state," he means the word minister in the English sense, and not in the German, Italian, or French sense. He means, of course, that a judge shall not administer the affairs of government. But that is quite a different thing from the manner in which the gentlemen on the other side would have it understood or applied. The meaning of Blackstone, however, will appear to be palpably different from the construction of the honourable gentleman, when we look at the conduct pursued during those very latter years of the reign of Charles II. which formed the subject of his panegyric. It will be recollected that in the course of that period sir Wm. Temple[2] introduced a bill for the appointment of a committee of privy counsellors, to consist of about 30 persons. This bill was shown to, and approved of by, lords Essex, Hollis, Cavendish, Russell, and all the best men of the day, and yet by this bill it was provided that the chief justice of the common pleas should be a member of the proposed committee of council.

There is a case illustrative of the meaning of Blackstone, that recognizes a principle directly opposite to that which the gentlemen

[1] An obvious misprint has been corrected in this sentence.

[2] Vol. I, Sect. D, No. IX, p. 329.

on the other side are anxious to establish; and brought forward by sir Wm. Temple, who was scandalized at the misconduct of that government which Blackstone panegyrized. . . . I am told that there is only one instance stated on my side; namely, that of lord Hardwicke; and the gentlemen are so good as to give me the case of lord Eldon in addition. But it was stated that these noble lords held for a very short time only the offices of lord chief justice and members of the committee of council. But the shortness of the time was of little account. If the noble lords thought the retention of such offices was contrary to constitutional principle, they would not surely sanction by their own acts the violation of such a principle.

There was, however, another case, that of lord Mansfield: that noble lord connected in his own person, from 1757, to 63, the two situations, the junction of which is now so much complained of. I do not mean to discuss the character of lord Mansfield, who, like many great men, had very good and very bad qualities, but certainly the odium attached to it, did not proceed from his merely combining a seat in the Cabinet with the chief justiceship of the King's Bench. . . .

On a division—for Mr. Spencer Stanhopes motion (condemning the appointment) 64

—for the order of the day (i.e. for the government) 222

[*Parl. Deb.* (*Cobbett*), vi, 310, March 3, 1806.]

VI

ROYAL ASSENT TO THE REGENCY BILL, 1811 [1]

It was moved to Resolve, " That it is expedient and necessary that Letters Patent should pass under the Great Seal of The United Kingdom of *Great Britain* and *Ireland*, of the Tenor and in the Form following:

GEORGE the Third, by the Grace of God, of the United Kingdom of *Great Britain* and *Ireland*, King, Defender of the Faith: To Our right trusty and right well beloved the Lords Spiritual and Temporal, and to Our trusty and well beloved Knights, Citizens and Burgesses, and the Commissioners for Shires and Burghs of the House of Commons, in this present Parliament assembled, Greeting: . . . And whereas, by Our Letters Patent, bearing Date at *Westminster* the Fifteenth Day of *January* last past, We did give and grant unto . . . [the Commissioners named] . . . and any Three

[1] See Vol. II, Sect. A, No. XVI, p. 34; also Sect. B, Nos. II and III, pp. 154, 157.

of them, full Power in our Name to hold Our said Parliament, and to open and declare, and cause to be opened and declared, the Causes of holding the same, and to proceed upon the said Affairs in our said Parliament, and to do every Thing which, for Us, and by Us, for the Government of Our said United Kingdom of *Great Britain* and *Ireland*, and other Our Dominions thereunto belonging, should there be done: and whereas, in Our said Parliament, an Act hath been agreed and accorded on by you Our loving Subjects . . . And albeit the said Act . . . is not of Force and Effect in the Law without Our Royal Assent, given and put to the said Act: and forasmuch as, for divers Causes and Considerations, We cannot conveniently at this Time be present in our Royal Person in the Higher House of Our said Parliament, being the Place accustomed to give Our Royal Assent to such Acts as have been agreed upon by Our said Subjects, the Lords and Commons, We have therefore caused these Our Letters Patent to be made, and by the same do give and put Our Royal Assent to the said Act, . . . and have fully agreed and assented to the said Act, willing that the said Act . . . from henceforth shall be of the same Strength, Force and Effect, as if We had been personally present in the said Higher House, and had openly and publicly, in the Presence of you all, assented to the same: And We do by these Presents declare and notify the same Our Royal Assent, as well to you the Lords Spiritual and Temporal and Commons, aforesaid, as to all others whom it may concern; Commanding also by these Presents . . . [the Commissioners named] . . . to declare and notify this Our Royal Assent . . . and the Clerk of Our Parliaments to endorse the said Act with such Terms and Words in Our Name as is requisite and hath been accustomed for the same, and also to enroll these Our Letters Patent and the said Act in the Parliament Roll, and these Our Letters Patent shall be to every of them a sufficient Warrant in that Behalf: And finally, We do declare and will, that, after this Our Royal Assent given and declared by these Presents and notified as aforesaid, then and immediately the said Act shall be taken, and accepted and admitted a good, sufficient, and perfect Act of Parliament and Law, to all Intents, Constructions, and Purposes, and to be put in due Execution accordingly, the Continuance or Dissolution of this Our Parliament, or any other Use, Custom, Thing or Things, to the contrary thereof notwithstanding: . . . In Witness whereof, We have caused these Our Letters to be made Patent:

Witness Ourself at *Westminster*, the Day of , in the Fifty-first year of Our Reign.[1]

[1] The blanks were filled, on a motion later in the day, " with the Words (" Fifth, February ")."

By the King Himself, by and with the Advice of the Lords Spiritual and Temporal in Parliament assembled."

[L.J., xlviii, 64, Feb. 2, 1811.]

VII

STANDING ORDER [No. 60] OF 1821 [1]

Resolved. That this House will not proceed upon any Motion for an Address to the Crown, praying that any Money may be issued, or that any Expense may be incurred, but in a Committee of the whole house.

[C.J., lxxvi, 101, Feb. 22, 1821.]

VIII

HIS MAJESTY'S OPPOSITION, 1826 [2]

The Chancellor of the Exchequer moved that the report of the Committee of the whole House on the Civil List Act be now received.[3] Mr. *Hobhouse* said, he would take that opportunity . . . to enter his protest against that proceeding, and to express his astonishment that his majesty's ministers should have chosen that very peculiar time for proposing one of the most uncalled for acts that could be conceived—that of making an unnecessary addition to the burthens of the country, and to the number of placemen and pensioners now sitting in the House of Commons. . . . It was said to be very hard on his majesty's ministers to raise objections to this proposition. For his own part, he thought it was more hard on his majesty's opposition (a laugh) to compel them to take this course. . . . He thought that his majesty's ministers had made use of the right hon. gentleman's [4] character in a way they ought not to have done ; namely for the purpose of carrying an improper measure. . . .

Mr. Secretary *Canning* said . . . that the opportunity was not

[1] See Vol. I, Sect. B, No. XVIII, p. 197 ; Vol. II, Sect. B, No. XXVII, qu. 2460 at p. 231, and cf. also Sect. A, No. XLIII, p. 143.

[2] The first recorded use of this phrase. Cf. Vol. I, Sect. D, No. XL, p. 388, and Vol. II, Sect. D, No. VII, p. 352.

[3] Which contained a proposal to separate the offices of Treasurer of the Navy and President of the Board of Trade ; to pay £2500 a year to the former, and to raise the importance of the latter by paying him a salary of £5000 a year.

[4] W. Huskisson who held the two offices at this time.

selected by his Majesty's government neither did the suggestion emanate from them. It originated, not from his majesty's government, but from those whom the hon. gentleman had designated his majesty's opposition (a laugh). . . . If the government did not stir in this matter, some gentleman on the other side of the House would take it up (hear). . . . [He proceeded to outline facts to support his view that the amount of work attached to these offices was too great to be discharged by one man.] He therefore rebutted the charge of looking out to increase the number of placemen in that House. . . . But confessing that, in his opinion, the influence of the Crown needed not in this respect to be enlarged, he wished the House to look to the opposite extreme. . . . He knew of no law by which the Crown was at present bound to select its ministers from either or both Houses of Parliament . . . the king might send to any two private gentlemen, offering to make one of them his secretary of state, and the other his prime minister. . . . He had, however, never heard any gentleman say in that House that he thought such a mode of conducting government a good one for the country. The presence of government officers then became only a question of degree, which was not to be met by any plan for counting heads, but by the general views and immediate character of the government itself. . . . Though there was no rule of law to require the Crown to choose its servants from Parliament, was there not good sense in the practice? Was this not a most useful check to the choosing of ministers upon a system of mere favouritism? . . .

Mr. *Tierney* . . . begged the House to consider the plain and simple question which they were called upon to decide was this—whether the salary of the President of the Board of Trade should be 2,000 *l.* or 5,000 *l.* a year. . . . What that had to do with the influence of the Crown generally it might be for the right hon. gentleman opposite to explain. He (Mr. T.) could not. . . . An hon. friend near him had called the opposition the " king's opposition ". The propriety of this appellation had been recognized by gentlemen on the other side; and indeed it could not be disputed. From his personal experience, he could bear testimony to the truth of the designation. . . . For years he had opposed the measures of government, because he disapproved of their principles; but when they changed their tone, he had not been backward in giving them his feeble support. My hon. friend (continued Mr. Tierney) could not have invented a better phrase to designate us . . . for we are certainly to all intents and purposes, a branch of his majesty's government. Its proceedings for some time past have proved, that though the gentlemen opposite are in office, we are in power. The measures are ours but all the emoluments are theirs (cheers, and laughter).

. . . The right hon. gentleman . . . has declared that the government is in no want of such supporters as it may gain from this measure. I differ from him widely. I think that the government do want support. I never saw a session when they wanted it more. The right hon. gentleman may not be aware of the full extent of his obligations to this side of the House; but I can assure him, that if, as he asserts, he would not consent to stay in office with a pitiful majority of twenty, he would, without our support, have been long ago driven from his present honours. If we take away our support, out he must go to-morrow. . . . I mean to consider the proposition as a compliment to the right hon. gentleman [Huskisson] for I am not convinced that his office ought permanently to be a cabinet office. . . . I feel myself bound . . . to oppose this attempt to make the Presidency of the Board of Trade a substantive office.[1] . . . I am equally opposed to the miserable project for reducing the salary of the Treasurer of the Navy . . . in order that it may be given to somebody for support in this House. . . .

The House divided Ayes 87 Noes 76. Majority for receiving the report 11. Mr Secretary *Canning* expressed his regret that the smallness of the majority would prevent him from persevering in a course which . . . he had conscientiously supported. . . . As it seemed to be the wish of the House, they would consent to the union of the ancient office of Treasurer of the Navy with that of the President of the Board of Trade. . . .

Mr. *Tierney* rose . . . to assure his majesty's Government that they had, by this act, justly earned the approbation of " his majesty's Opposition ".

[*Parl. Deb., N.S.* (*Hansard*), xv, col. 132, April 10, 1826.]

IX

PRIVILEGE AND PUBLICATION, 1837[2]

Resolved, That the power of publishing such of its Reports, Votes, and Proceedings as it shall deem necessary or conducive to the public interests is an essential incident to the constitutional functions of Parliament, more especially of this House, as the representative portion of it.

[1] Tierney, however, agreed with the idea of increasing Huskisson's salary (in the double office) in order to increase " the rank and importance of this officer ", that is, as he says above, as a personal compliment.

[2] Vol. I, Sect. B, No. X, p. 184. See also Stockdale *v.* Hansard, Vol. II, Sect. C, No. XI, p. 264.

Resolved, That by the law and privilege of Parliament, this House has the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges, and that the institution or prosecution of any action, suit, or other proceeding, for the purpose of bringing them into discussion or decision, before any court or tribunal elsewhere than in Parliament, is a high breach of such privilege, and renders all parties concerned therein amenable to its just displeasure, and to the punishment consequent thereon.

Resolved, That for any court or tribunal to assume to decide upon matters of Privilege inconsistent with the determination of either House of Parliament thereon is contrary to the law of Parliament, and is a breach and contempt of the Privileges of Parliament.

[C.J., xcii, 419, May 31, 1837.]

X

ELECTORAL INFLUENCE AND THE BALLOT, 1838 [1]

Mr. *Grote*. . . . No one can deny that bribery and intimidation are serious evils: as little can any one deny, that bribery and intimidation infect at this moment almost every vein and artery of our elective system, and that the securities which we possess against them are impotent and contemptible. That a remedy against such mischiefs is urgently needed stands confessed and obvious to every one; and what second remedy, what other measure of any promise or efficiency, has ever been proposed, even by those whose aversion to the ballot is most unconquerable? . . .

If your election does not bring out the genuine, unbought, unconstrained sentiments of the voters,—if it is not publicly known to bring out this result and no other,—you might as well have no election at all; the institution is a deceit and a failure. Such is the object and intention of a representative system. And now I ask the House whether this object is really attained. Does the practical working of English elections produce that result for which alone representation exists? Does it afford to the Nation at large legitimate ground for confidence in the members assembled within these walls? I affirm that it does not, and that it cannot. . . . In reference to the late severe contested election in the West Riding of Yorkshire, the Tory Leeds newspaper . . . says that the Whig Lords forced their tenants to vote for Lord Morpeth and Sir George Strickland.

[1] Cf. Vol. II, Sect. A, No. XXXIV, p. 111.

"The Duke of Norfolk's agents put on the screw with unusual severity! Lord Fitzwilliam's did the same . . . and Lord Burlington's insisted that promises given to Mr Wortley should be violated under penalties which the poor tenants understood too well". . . . [He goes on to give examples of the same kind from Whig papers where the pressure, it was said, had been applied by the Tories,] . . . I could easily multiply testimonies of this kind. . . . You disfranchise altogether men who have employment in the Customs or in the Excise,[1] because the law presumes that they cannot vote independently of the Government which appoints and removes them. Follow out this presumption, and calculate the thousands and tens of thousands of voters who are no less dependent on private patrons than officers of Excise are on the Government. . . .

You hear it sometimes argued, Sir, that open voting makes the elector responsible to the public, and that secret voting removes that responsibility. But this is a mere abuse of terms . . . Responsibility, in its only legitimate meaning, can attach to nothing but to the performance of a man's duty; a man is responsible when he is liable to loss in the event of discharging his duty badly, and when he is protected from loss in the event of discharging it well. Now, what is the duty of an elector? Simply to deliver his own opinion sincerely and conscientiously . . . this being the sole duty of an elector, will any man tell me that publicity of suffrage makes him responsible for discharging it well? Will any man tell me that every elector who votes sincerely and conscientiously is protected from loss, and that no elector becomes liable to loss except when he votes otherwise? The reverse is notoriously the fact; and it is because the reverse is the fact that the ballot is demanded. Let it not be pretended, then, that publicity makes an elector responsible for the discharge of his duty: all that publicity does is to make him liable to ill usage from those whom he opposes, and to good usage from those whom he supports. . . . In a contested election, the public are divided into partisans on both sides; no one ever takes the least thought about the sincerity of votes; every one thinks that he is serving the public by multiplying votes on his own side, no matter whether these votes represent genuine convictions or not. It is thus that the real public obligation—the genuine electoral conscience—is left destitute of all support or guarantee from without, while it is exposed to assault and importunity of every kind from those whose good will or ill will bears closely upon the comforts of the elector. Such are the effects of an open suffrage: so far from creating an efficient public responsibility,—so far from providing new securities for conscientious voting,—it only lets in fresh dangers,

[1] Vol. I, Sect. A, No. LIX, p. 145.

and sows factitious seeds of evil. Let the elector vote in secret, and the path of duty becomes at once smooth and easy: he will have no perils to defy, and no temptations to resist. . . .

[*Parl. Deb.* (3rd series), xl, 1132, Feb. 15, 1838.]

XI

POOR LAW ADMINISTRATION, 1847[1]

SIR G. GREY: I rise to move, pursuant to notice, for leave to bring in a Bill to Amend the Administration of the Laws for the Relief of the Poor in England. I do not propose to effect by this Bill any alteration in the general provisions of the laws now in force relating to the relief of the poor; I intend to confine myself to proposing a change in the mode of administering that law, and to effect that which, I trust, will be a considerable improvement in the constitution of the body by which those laws have hitherto been administered, and to whom was confided the task of carrying them into effect. . . . The reasons for the establishment of some central authority which existed in 1834 still remain in full force. We feel now as the Government then did, that the influence of a general superintending authority cannot be safely dispensed with. Without some such authority we feel that the administration of the Poor Law cannot be efficiently carried out. I believe that no one would wish to see the old administration of the Poor Law restored. I do not believe that there exists in the mind of the public a desire that we should recur to the old system of local administration, unchecked and uncontrolled by any central authority. It is quite evident that no Act of Parliament could contain fixed and permanent rules which should be applicable to every district throughout the country; but they must in that case be carried into effect in a uniform and unvarying manner. You may in an Act of Parliament lay down general principles, but you cannot take into account every varying circumstance which may from time to time arise in different districts, or even in the same district of the country. For this purpose, there must be some discretionary power created. We have felt that we ought to maintain the principle of the administration of the Poor Law established in the year 1834, which was that of combining local administration with a general superintending and central authority. But though that principle was recognised, the question for us to consider was in what manner the central authority invested with discretionary power, could most advantageously be composed.

[1] Vol. II, Sect. A, No. XXIV, p. 69.

In the year 1834, when an extensive change was made in the law, it was thought that the persons who were to be invested with the discretionary powers to be exercised by the central authority ought not to form any part of the Executive Government; that they should remain free from that popular influence which must necessarily operate in a greater or less degree upon all public men—upon all who take part in carrying on the government of the country. It was at that time thought better, also, that no political changes should be allowed to affect those who were to be entrusted with these powers. Upon these grounds, the Poor Law Commission was separated from the Executive Government; and doubtless there was at the time much to be urged in favour of such an arrangement; but we must consider it now in the light of experience. Looking to the results of that arrangement, and appealing to that experience by which alone it can be tried, I think I may assert that it has not been as successful as was anticipated. The responsibility of the Poor Law Commissioners to Parliament was indirect and imperfect. The power they exercised was free from that check which is imposed upon those public functionaries who are obliged to listen in this House to charges made against them, either by Members of Parliament, or suggested by other parties; and, on the other hand, they were not enabled to explain their official conduct in this House —they were not enabled to answer their accusers face to face, and their vindication has been for this reason necessarily incomplete. They have laboured under a manifest disadvantage in this respect. When complaints as to any of the ordinary departments of the Government are made, the representative of that department is familiar with the details of the subject to which the complaint relates: he has followed them, step by step; he knows the correspondence relating to it, and remembers the reasons which led to the course that has been pursued; and, therefore, he is able to state fully the grounds of his vindication, and to offer, if not a satisfactory, at least a full and complete explanation of the conduct of the department which he represents. But, under the existing Poor Law Commission, what really happens? Complaints are made, and questions asked of the Home Secretary respecting some matter connected with the administration of the Poor Law. The Home Secretary is expected to give an answer; and his first answer almost necessarily is, that he is entirely ignorant of the matter, but that he will inquire into the facts of the case, and come down on a future day and give a reply: and, consequently, either by personal conversation, or written communication, he obtains an explanation from the Commissioners; but still without a knowledge of all the circumstances which led to the act in question; and in this state

he is expected to give full information to the House of the subject. This, unquestionably, leads to great inconvenience; and the administration of the law has been, to a certain degree, prejudiced by it. The principle, therefore, of the Bill which I have to propose is in accordance with what fell from my noble Friend at the head of the Government at the beginning of the Session, namely that there shall be a general superintending authority immediately responsible to Parliament. My general proposition is, that the existing powers shall be transferred to a new Board, which in its constitution will be similar to the Board of Control. The chief member of the Board will be called the President, and he will be responsible for the ordinary administration of the law. But associated with the President of the Board there will be certain Members of the Cabinet, ex officio members of the Board, namely, the President of the Council, the Lord Privy Seal, one of the Secretaries of State, and the Chancellor of the Exchequer. There will also be two Secretaries to the Board, and it is proposed that the President and one of the Secretaries shall be allowed to have seats in Parliament. I do not say that they both shall have seats in the House; but it is essential that the Board shall be directly represented in this House either by the President or Secretary. As I said before, the powers of the Poor Law Commissioners will be transferred to this new Board, which will become responsible for the administration of the law. Now, with respect to making general rules, the present practice is, that before a general rule of the Poor Law Commissioners takes effect, it is submitted to the Secretary of State for the Home Department for forty days; and if he, within that time, does not disallow it, it has the force of law, subject, however, to disallowance by the Queen in Council, and subject to be taken by *certiorari* before the Court of Queen's Bench. When the noble Lord at the head of the Government brought this subject forward at the commencement of the Session, he proposed that general rules should not take effect until sanctioned by the Queen in Council; but on further consideration, it was thought that making the general rules by Orders in Council was open to objection. It is proposed by this Bill that no general rule shall be made unless under the signature of three Members of the Board. The power will also exist that a general rule may be disallowed by an Order in Council; and it will also be subject to legal investigation when brought by *certiorari* before the Court of Queen's Bench. Other rules and orders must be signed by two Members of the Board, or by the President and Secretary. At present, the Poor Law Commissioners are required to prepare an annual report, to be laid before Parliament. The new Board will have to present a similar report each

year; but it is not intended that it shall continue to be addressed, as at present, to the Secretary of State, but to the Crown, when directions will be given that it shall be laid before Parliament. . . .

MR. HUME: was glad the right hon. Baronet had at length had the opportunity of introducing this Bill; but he was not satisfied that the Government had taken the best course. Hitherto they had had a Board of Poor Law Commissioners, which was virtually only one man. The business was in fact allowed to be conducted by one individual, and that individual without having any responsibility thrown upon him; and he was not sure that the new Cabinet Minister to be provided by this Bill would relieve them from that difficulty. He was inclined to think that Her Majesty's Ministers would do better to adopt a local inspection. The different boards had adopted different systems, although the original intention of the new Poor Law had been to establish a general system of management. But with regard to the question of responsibility, he was disposed to think that there should be one responsible Member of the Board to answer for its acts—the Secretary at any rate. He would hold him responsible; and they might believe him that the more they brought responsibility to bear upon some quarter or another, the better. . . . He began to have great doubts indeed of all boards. He wanted to see more responsibility thrown upon some one; . . .

MR. HENLEY: . . . felt great doubts as to the propriety of appointing a Board, the whole of the members of which were to be composed of the Members of the existing Government, with the exception of one—whom they intended to call the President of the Board—because the inevitable consequence of such a step must be that every question which came on in that House, in which such Commissioners were concerned, would become a Government question; and therefore any man who had any grievance or complaint to prefer in the House against them, would have to contend against the whole weight of the Government. In fact, the Government would feel that they were vitally interested in the decision, and that a censure upon the Commissioners implied a censure upon the Government. He could not see how things could be otherwise under the proposed scheme. . . .

LORD J. RUSSELL: . . . at the present time, after thirteen or fourteen years' experience in the administration of that law, there still exists so great a diversity of circumstances to which that law is to be applied, that it would not be prudent, safe, or advisable, to attempt to bring every part of the country under one general set of rules. It is for that reason, therefore, that . . . it is necessary to have some central authority which can apply rules to par-

ticular places, relax them in particular instances, and, in short, make the rules act with that elastic power which should be found necessary in the administration of this particular law . . . we are of the opinion that some Member of the Government should, as the head of the Board to be appointed under this Bill, be made responsible—as he will be mainly and chiefly answerable, to Parliament for anything that takes place under the administration of the law relating to the poor. The hon. Member for Dorsetshire (Mr. Bankes) says, " Why not give this power to the Secretary of State for the Home Department, or to the Under Secretary ? " I entirely differ from the proposition. I have long considered this point, and having had much experience as to the duties appertaining to the Home Office, and having observed what has gone on in that office since I left it, my opinion is, that by far too many matters of detail are placed in the hands of the Secretary of State for the Home Department. What are the Secretaries of State ? They are great officers, to whom great functions are confided, and great interests entrusted. The Home Secretary of State is a person who is responsible for the peace of the country, and for the due administration of the criminal law of the country, so far as the prerogative of the Crown is concerned, as advised by the Administration of the day. I think that a great officer of that kind ought to have his mind exclusively occupied with these great functions, and that it is a duty sufficiently onerous to engage his undivided attention. He ought to be ready, whenever any great danger threatens the peace of the country, to give his mind promptly to the consideration of the subject, and to be always ready to act as his responsibility for the internal security and peace of the country would require him to do. But if you impose upon him other duties ; if you tell him that he must devote one portion of his time to the superintendence of the working of the Factory Bill, and another portion of his time to regulation of the dietary of a workhouse ; and if you require other portions of his time to be occupied by the details of other Bills which have been passed within the last few years, you must necessarily thereby diminish his power to give attention to those great objects which are, by virtue of his office, solely committed to his care. The duties which have sprung up from the alterations which the law has comparatively of recent date undergone, and which have devolved upon the Secretary of State for the Home Department, do not properly belong to that great officer. I think one advantage that will be gained by this Bill is, that instead of the Home Secretary being more involved by it in the administration of the Poor Law, he will be more separated from it. . . . You will have a person charged with all the measures that may be introduced, and with all the rules

which may be adopted under this new law; and moreover, whenever any complaint shall be made or any investigation be instituted, either in this House or in the other House of Parliament, you will have a person ready to explain and defend the administration of the law, or who at least will be able to place it before either House in such a manner as shall admit of an accurate judgment to be formed of it, as to whether the party complained of has acted rightly or not. It has been objected to the appointment of this officer, that it will, in some degree, constitute the office a political one. I admit it. The administration of the law under this plan will necessarily assume a political character, so far as the appointment of the chief officers is concerned. That is undoubtedly a misfortune; but it is one which cannot be avoided, because, as the chief appointment will be held by a person having a seat in this House, there will necessarily be a political bearing upon all questions connected with his office.

[*Parl. Deb.* (3rd series), xcii, 340, May 4, 1847.]

XII

A GOVERNMENT'S PROGRAMME AND HOUSE OF COMMONS TIME, 1848[1]

MR. DISRAELI: . . . Whatever be the merits or demerits of this Session of Parliament, there is no doubt that it possesses, by general consent, one characteristic—that of having been a Session of unexampled duration. There is, however, a suspicion very prevalent that its efficacy has not been commensurate with the period of its existence. It is said that, after having sat now for nearly ten months —after having laboured with a zeal and an assiduity which have not been questioned—Parliament is about to be prorogued with a vast number of projects of legislation of great interest and value not passed, and many of them little advanced. Why, Sir, the very subjects recommended to our consideration in the Speech from the Throne have not even been dealt with by the House in the way contemplated when we first met. There is more than one reason generally offered to account for this unsatisfactory state of affairs—for an unsatisfactory state of affairs I am sure every Gentleman will agree it really is, because it amounts to the acknowledgment, if it be true, of a very great public evil, namely, that our system of government is inadequate to pass those measures that are required for the public welfare. One of the most popular causes which is assigned

[1] Cf. Vol. II, Sect. B, Nos. XXVI and XXVIII, pp. 207 and 219.

for this unsatisfactory state of affairs, and for the existence of this great evil, is that there is too much discussion in the House of Commons—too many speeches—too much talk. . . .

There is another cause alleged for the unsatisfactory state of public business, and that is, the forms of this House—the constitution of this House—which are now discovered to be cumbersome and antiquated, and to offer a great obstacle and barrier to the efficient, satisfactory, and speedy transaction of public affairs. This is the view of the case which is, I believe, principally relied on by Her Majesty's Government. . . .

. . . I, therefore, propose, in a manner the most brief and condensed I can command, to discuss whether these two causes are the real causes of the evil which exists—whether it is to be imputed to discussion in this House, or to the forms of the Legislature, that, after having sat nearly ten months, we have done very little, and that very little not very well.

But before I enter into that inquiry, . . . I should state what, independent of our debates, this House of Commons, which it is the fashion to blame at present, has really done; and, in doing so, I will refer to a short paragraph in the report of the Committee on Public Business, . . . It appears from that report that there have been this year forty-five public Committees, some of more than usual importance, with an average number of fifteen Members serving on each Committee. Then there have been twenty-eight Election Committees, with five Members serving on each Committee; fourteen groups on Railway Bills, with five Members on each group; seventeen groups on private Bills, with five Members on each group; and there have been also one hundred and eleven other Committees, on private business. Of the public Committees, that on commercial distresses sat thirty-nine days; that on sugar and coffee planting, thirty-nine days; that on the Navy, Army, and Ordnance expenditure, forty days: and that on the miscellaneous expenditure, thirty-seven days. There have, besides, been presented this year upwards of 18,500 petitions, showing an increase of 25 per cent above the greatest number presented in any former year, except 1843.

Here I would make one observation on these petitions, since considerable error exists out of doors among our constituents on the subject. There is an idea that the presentation of a petition is an empty form—that it is ordered to lie on the table, and is never heard of again. Now, it is as well that our constituents should know that every petition laid on the table is scrutinised by a Select Committee of the most experienced and influential Members of this House—that every petition which, from the importance of its sub-

ject or the ability of its statements, appears to merit more particular notice, is printed at the public cost, and afterwards circulated among the Members; and I believe that at this moment the right of petition (although it is not permitted to make speeches on every petition) is a more important and efficient right than has ever been enjoyed at any time by the people of England in this respect. . . .

. . . I do not suppose that the noble Lord will allege that our conduct with respect to the discussions of his proposal for the repeal of the navigation laws were at all of a vexatious or frivolous character. That is not one of the discussions that have forced the fish dinner to be postponed for a week.[1] But I have a charge against the Government, as far as the conduct of public business is concerned, for their not having carried the repeal of the navigation laws. If the subject is of such urgent importance as to be the first recommended in the Queen's Speech, why was your project introduced so late as the 15th of May? I will tell you how it was—because the noble Lord, when Parliament met, chose to introduce into Her Majesty's Speech—the Jewish Disabilities Bill . . . though I agree with the noble Lord as to the principle which animated his legislation, I do not at all approve of his conduct as manager of the House of Commons. My opinion is, generally speaking, that upon all subjects of that kind—the emancipation of the Catholics, and the like—it is not advisable that a Minister should bring forward a project of change unless he is able to carry his measure. I believe the evils are great of a Minister failing in measures of that kind: the failure imparts a party spirit and a party bitterness to subjects in which party bitterness at all events, and party spirit as little as possible, should mingle. . . . If the noble Lord had been in Opposition, he would have been perfectly justified, from his position, from the opinions upon religious disabilities which he has always most ably upheld, in bringing the subject before the House year after year, to see whether, by fresh cogency of logic and increased brilliancy of rhetoric, he could make an advance in the House and in the country, and, in fact, to gauge the progress of the question. I think, in the position of the First Minister of the Crown, he was not justified in bringing forward a measure of this kind unless he had a moral certainty of passing it. . . .

. . . I hold in my hand a list of forty-seven Bills, . . . More than two-thirds of them are Government measures, and, therefore, they ought not to have been brought forward unless demanded for the public weal . . .: But here is a list of forty-seven Bills, abandoned, withdrawn, or postponed during the last six months . . .

[1] The end-of-session Government dinner.

Having endeavoured to persuade the House that the alleged causes of the present unsatisfactory state of affairs are not the real causes, I think it is but right—I think it is but frank—to state what I think the real cause to be. . . . I am willing to admit that hon. Gentlemen opposite, as far as personal qualities are concerned, need not, upon the whole, shrink from competition with any body of men in this House who may reasonably be called upon to administer the Government of the country; but I must say that, if I be asked the cause of the great evil at issue—this avowal of political incompetency in the institutions of the country—I find the cause—there. [The hon. Member here pointed to the Treasury bench amidst the loudest cheers.] I see there a body of men who acceded to power without a Parliamentary majority. I think that they were justified by the exigency of the case in so acceding to power . . . but, . . . they are not justified in retaining it under such circumstances; and their having done so has occasioned two results, both of a very serious description. In the first place, we have a Cabinet who, in preparing their measures, have no conviction those measures will be carried. After all their deliberations—after all their foresight—after all their study of the public interest, when their measures are launched from the Cabinet into this House, they are not received here by a confiding majority—confiding, I mean, in their faith in the statesman-like qualification of their authors, and in their sympathy with the great political principles professed by the Members of the Administration. On the contrary, the success of their measures in this House depends on a variety of small parties, who, in their aggregate, exceed in number and influence the party of the Ministers. The temper of one leader has to be watched—the indication of the opinion of another has to be observed—the disposition of a third has to be suited; so that a measure is so altered, remoulded, remodelled, patched, cobbled, painted, veneered, and varnished, that, at last, no trace is left of the original scope and scheme; or it is withdrawn in disgust by its originators, after having been subjected to prolonged and elaborate discussions in this House. This is one of the great causes of that waste of public time which, in these days, is as valuable as public treasure.

There is another inconvenience resulting from the present position of the Government—in my opinion more serious, if not so flagrant—and that is, it is impossible to expect from Ministers thus situated those matured, finished, and complete measures which, under other circumstances, we should have a right to demand from them. Men in their situation will naturally say—"What is the use of taking all these pains, of bestowing all this care, study, and foresight, on the preparation of a measure, when the moment it is

out of our hands it ceases to be the measure of the Cabinet, and becomes essentially the measure of the House of Commons? . . . Thus it happens that the House of Commons, instead of being a purely legislative body, is every day becoming a more administrative assembly. The House of Commons, as now conducted, is a great Committee sitting on public affairs, in which every man speaks with the same right, and most of us with the same weight. No more the disciplined array of traditionary influences and hereditary opinions—the realised experience of an ancient society, and of a race that for generations has lived and flourished in the high practice of a noble system of self-government. That is all past. For these the future is to provide us with a compensatory alternative in the conceits of the illiterate, the crotchets of the whimsical, the violent courses of a vulgar ambition that acknowledges no gratitude to antiquity—to posterity no duty; . . . Sir, I trace all this evil to the disorganisation of party. I know that there are Gentlemen in this House who affect to deprecate party government. I am not now going to enter into a discussion respecting party government; but this I will tell you . . . that you cannot choose between party government and Parliamentary government. I say, you can have no Parliamentary government if you have no party government; and, therefore, when Gentlemen denounce party government, they strike at that scheme of government which, in my opinion, has made this country great, and which I hope will keep it great. . . .

LORD J. RUSSELL: . . . there was formerly no practice more sanctioned and encouraged by usage than the practice of discussing the subject of petitions at the time when they were first presented. . . . And yet that practice has been abolished, nor has any complaint been made of a hindrance to free discussion. . . . It shows that there may be some alteration in the forms of this House without injury to the essential rights of discussion, and without impediment to the freedom of debate. . . . I must yet remind the hon. Member and the House, that this supposed duty of the Members of a Government to introduce a great number of measures to Parliament, and to carry those measures through Parliament in a Session, is a duty which is new to the Government of this country. That duty may have been more or less well performed by the present Government; but it is a duty which was hardly known and recognised by the Governments and Ministers of this country at a former period. I will mention three Ministers who were supported by as large majorities as any which can be found in Parliamentary history. The first of these is Sir R. Walpole. It would be really difficult to name the legislative measures which Sir R. Walpole introduced. There was, indeed, a measure which he brought forward involving

an alteration in the Excise laws, but he failed to carry it. I may mention also Lord Chatham, who was supported by a Parliamentary majority for six Sessions almost without debate, and with hardly a division, and yet, with the exception of a Bill which provided that soldiers' pensions might be paid in advance, with a deduction of 5 per cent, I do not know any Act to which the name of Lord Chatham is attached. Another Minister of the Crown, who was supported by a large majority, and of whom his supporters used to say that he was born to maintain the institutions of the country—I allude to Mr. Pitt—stands in the same position. With the exception of his great measure for the union of this country with Ireland, few legislative acts can be found to which the name of Pitt is attached; and it is well known that he attempted, but was not able to carry, a measure on the subject of tithes, which was not ultimately carried till the period of Lord Grey's Administration. I say, therefore, that it is not the sole or principal duty of a Government to introduce legislative measures, or to carry them through Parliament. I am bound to declare that in times of great difficulty and pressure, the chief portion of the time and attention of Ministers must be given to those questions of administration which devolve upon them in the exercise of the discretionary power vested in the Crown, and which every day may call forth. When, therefore, those questions of administration have to be attended to, it is more difficult than usual to watch the details of every measure which may be brought before Parliament. And yet, notwithstanding this state of things, and the difficulty which we felt in meeting them, I find that out of 125 Bills introduced by the Government during the present Session, 105 Bills have been already passed, or have received so much of the sanction of the House as to make it probable that they will receive the assent of the Crown during the present Session. . . . The hon. Gentleman finds fault with us for agreeing to a Committee on the Estimates,[1] and he draws a very fine distinction between this Committee and the Committees appointed by Mr. Pitt, Lord Castlereagh, and the Duke of Wellington. . . . I accept that distinction, but, at the same time, I must say that I do not think that the absence of a message from the Crown is likely to be so exceedingly dangerous a precedent. What really would have been dangerous was for us to have left to the Committee to say what should be the number of men employed in the Army and Navy. But we did no such thing; on the contrary, we stated that the opinion of the Government was that a certain number of men ought to be employed for the present year, and that no expression

[1] Compare the later and regular Committees on the Estimates, Vol. II, Sect. B, No. XXVII, p. 217, and No. XXVIII, at p. 223.

of opinion on the part of the Committee would induce us to change that determination. . . . I must say, at the same time, that a great benefit has arisen from the inquiry which has been prosecuted with respect to the naval estimates, which has not only been of great use to the House, but which has been taken into consideration by the Government, and, for the most part, adopted. . . . I do maintain, above all, that, as I have already stated in the commencement of my address to the House, with sedition in England, incipient rebellion in Ireland, and a convulsion in Europe, the labour of administration is the chief business to which we ought to devote our attention. There have been moments when every one must have felt that a slight indiscretion might have provoked foreign nations—there have been moments when a slight want of watchfulness or care might have given an inconsiderable number of miscreants an opportunity of involving the country in confusion.

[*Parl. Deb.* (3rd series), ci, 669, Aug. 30, 1848.]

XIII

THE CABINET IN THE MID-NINETEENTH CENTURY

Evidence given to the Select Committee on Official Salaries, 1850

A. EVIDENCE OF SIR ROBERT PEEL [1]

325. . . . We will take the members of the Cabinet. You have the First Lord of the Treasury, the Chancellor of the Exchequer, the three Secretaries of State, the President of the Board of Control and the First Lord of the Admiralty. All these are offices which at all times and under all circumstances would be in the Cabinet I apprehend. In addition to the Lord Chancellor. There are certain other Cabinet offices that have not the same amount of labour imposed upon them; there is the Lord President of the Council, whose labours, however, have been very much increased of late. . . . Then as to the Lord Privy Seal; that office certainly has not the same amount of official duty attached to it; but in my opinion it is a great advantage in conducting the affairs of this country, to have one or two Members of the Cabinet who are not overloaded with the proper duties of their respective offices; it is a great advantage to the Prime Minister to have colleagues to whom he can commit the

[1] Compare Mr. Gladstone's account of Peel's views on the labours of a first minister, Vol. II, Sect. D, No. XXIX, p. 391.

consideration of a particular subject, with whom he can confer upon it, and by whose advice he can benefit. I will refer to the evidence that was given in the year 1831 by Lord Durham. . . .

. . . " It is the custom to transfer the consideration of such subjects as do not immediately fall within the business of the heads of departments to those members of His Majesty's Cabinet who are not required to give personal attendance in their offices. . . ."

. . . In the case of a Minister holding one of the chief offices, the business which he ought to go through, and which he is supposed to go through, is so heavy that without some assistance the strain would be too severe. Take the case of the Prime Minister. You must presume that he reads every important despatch from every foreign court. He cannot consult with the Secretary of State for Foreign Affairs and exercise the influence which he ought to have with respect to the conduct of Foreign Affairs unless he be master of everything of real importance passing in that department. It is the same with respect to the other departments. India, for instance, how can the Prime Minister be able to judge the course of policy with regard to India unless he be cogniscent of all the current important correspondence ? In the case of Ireland and the Home Department, it is the same. Then the Prime Minister has the patronage of the Crown to exercise, which you say, and justly say, is of so much importance and of so much value ; he has to make enquiries into the qualifications of the persons who are candidates ; he has to conduct the whole of the communications with the Sovereign ; he has to write, probably with his own hand, the letters in reply to all persons of station who address themselves to him ; he has to receive deputations on public business ; [1] during the sitting of Parliament, he is expected to attend six or seven hours a day while Parliament is sitting, for four or five days in the week ; at least, he is blamed if he is absent. Now, how is it possible for him to go through all this unless you render him some assistance ? I say, then, it is a great advantage that there should be one or two persons with whom he can confer, men who have the influence of high office, and who are connected with him by the ties of a common responsibility ; it is highly important that he should have one or two men with whom he can confer, who are not overwhelmed with details of office. If he applies to a Secretary of State for assistance, he finds him just as over-burthened as himself. . . .

241. *Mr. Bright.* With regard to the office of Lord Chancellor, when the judicial and political offices are united as they are at present, is there not a danger that the Government, seeking for a very service-

[1] Cf. Vol. I, Sect. D, No. XXXIX, p. 387.

able man as a political character, may in some degree overlook that which is required for the highest judge in the realm, proceeding in the Court of Chancery?—[Sir R. Peel] The political advantage of a Lord Chancellor to a government would be entirely relinquished if he were not a man of the highest eminence in the profession. . . .

B. EVIDENCE OF LORD JOHN RUSSELL

1265. *Mr. Cobden.* What proportion of church livings in the hands of the Crown are at the disposal of the First Lord of the Treasury and what portion are in the gift of the Lord Chancellor?—[Lord J. Russell] There is a much greater proportion in the hands of the Lord Chancellor. I think that there are about 700 in the gift of the Lord Chancellor. Without being able to say how many there are in the gift of the First Lord of the Treasury, I should say there are perhaps three or four in the year.

1266. *Mr. Deedes.* Independent of deaneries and bishoprics? Yes.

1267. *Mr. Cobden.* Is not that vast extent of patronage considered a very large share of the remuneration of the office of Prime Minister in this country?—[Lord J. Russell] That depends upon how people consider it. I think it is an exercise of power like other kinds of power, like proposing a great public measure, or carrying into effect a change in the particular mode of administration. It seems to me much more an exercise of power than any particular advantage. I remember hearing a person who was very intimate with Mr. Pitt say, that Mr. Pitt had told him that it never but once occurred in his long and powerful administration that he was able to place exactly the man he wished in the office that he wished. . . .

1260. *Mr. Cobden.* The maintenance of these offices [ministers without departmental duties] is justified on the ground that it is necessary that other ministers who are excessively worked should have the opportunity of calling in the aid of their colleagues whose time is not so fully filled up—[Lord J. Russell] . . . There is another reason I think, which is, that you must look at this government altogether as a Parliamentary Government; if you were framing a government as the Emperor of Russia might frame a government to conduct the business of the several departments, you would certainly frame one somewhat different from that which we now have; but, considering every measure that is proposed by the government has to be proposed to the House of Commons and to the House of Lords, and that the policy of the government has to be defended in the House of Commons and in the House of Lords, I think it very desirable to have persons who can take part in that defence, and are qualified to do so even though they are men who would not accept offices of great labour; I think it would not be a

good thing if the government of this country were much weaker than independent members of the House of Commons and of the House of Lords in defence of their measures. . . .

C. EVIDENCE OF SIR CHARLES WOOD

46. *Mr. Ellice.* Have the duties of Lords of the Treasury much increased of late years?—[Sir Charles Wood] I think they have. In former times the Lords of the Treasury did not perform very onerous services; but latterly the constant supervision which is exercised by the House of Commons over matters of more minute detail than they ever before interfered with, renders it necessary to have a Parliamentary control in the office over matters which formerly might very properly be trusted to the permanent officers; but now we must take very great care that the matter is seen by some Parliamentary officer, in order to be quite sure not only that that which is right is done, but that it is done in such a way as is consistent with the views which are known by persons in Parliament to be entertained by the House of Commons upon such subjects . . . [49]. . . . There is another duty which it is indispensable should be performed by some persons connected with the Government, but for which there are very few persons at liberty, and that is attendance upon Committees of this House. . . .

[*Parl. Papers*, Sess. 1850, xv (611), 204 *seq.*]

XIV

A CIVIL SERVANT IN THE MID-NINETEENTH CENTURY

G. ARBUTHNOT (AUDITOR OF THE CIVIL LIST) TO THE LORDS OF H.M. TREASURY, 1854

[He is protesting against the recent Northcote-Trevelyan report on the need for reform.[1]]

" It was my fortune to enter the Public Service about the period (1820) when Lord Liverpool, with a patriotism for which he never obtained due credit, voluntarily surrendered the influence obtained

[1] The reforms proposed in the Northcote-Trevelyan report were principally entry by merit, promotion by merit within the service, the classification and separation of duties, manual and administrative, and a greater unity within classes across the lines of departmental division. The authors replied to Arbuthnot by claiming that the major part of his letter was in support of their ideas.

Cf. the 1914 Report of the Royal Commission, Vol. II, Sect. D, No. LXII, p. 464.

by the power of making direct appointments to the superior offices in the Customs department, for the purpose of improving the efficiency of that service. From that period all collectorships and other offices of importance were filled by the advancement of officers already in the Service, instead of by the appointment of strangers to it on political recommendations; and in the year 1827 the principle was organized by the establishment of a graduated system of promotion throughout the Service, proceeding partly according to seniority, but as respects the superior offices, entirely by selection. . . . Proofs of the estimation in which this extended system of promotion is held by the public has been afforded by a clause in the recent Customs Act, by which two fifths of vacant landing-waiterships are required to be filled by the promotion of officers of an inferior grade, thus . . . opening to officers of the lowest rank the opportunity for eventual advancement to the highest offices in the Service—a measure which . . . is in a contrary direction from the recommendations contained in this Report. . . .

I conceive that the suggestions on these points [a plan for the division of labour and greater unity within the Service] proceed from a misapprehension of the functions which the permanent Civil Officers of the Crown are required to discharge. . . . [They cannot compare with the Indian Civil Servants who become legislators, or with Continental functionaries.] . . .

Our Constitution vests the legislation in Members of Parliament, and the Ministers of the Crown are necessarily selected from that order. The officers of our Civil Service cannot . . . aspire to become statesmen and to carry out systems of policy. Their humble but useful duty is, by becoming depositories of departmental tradition, and by their practical acquaintance with the working of those laws, by which constitutional jealousy has guarded the Civil Administration, as they affect their own department, to keep the current business in its due course; to warn Ministers of the consequences of irregular proceedings into which they might inadvertently fall; to aid in preparing subjects for legislation; and possibly to assist by their suggestions the development of a course of reform. To fulfill these duties with efficiency it is necessary that, as a general rule, each man's experience should be confined to the special branch of the Service in which he is engaged. Such is the complicated character of our institutions, that, without such division of labour, no man could obtain that intimate acquaintance with details and the bearing of those details upon general principles, which constitute the distinction between the permanent executive officers and the members of the Government. . . .

[*Parl. Papers*, 1854–55, xx, 406.]

XV

THE COMMONS AND FINANCE,[1] 1860–61

(A)

The Resolutions of the Commons, 1860

Resolved, That the right of granting Aids and Supplies to the Crown is in the Commons alone, as an essential part of their Constitution; and the limitation of all such Grants, as to matter, manner, measure, and time, is only in them.

Resolved, That although the Lords have exercised the power of rejecting Bills of several descriptions relating to Taxation by negativing the whole, yet the exercise of that power by them has not been frequent, and is justly regarded by this House with peculiar jealousy, as affecting the right of the Commons to grant Supplies and to provide the Ways and Means for the Service of the year.

Resolved, That, to guard for the future against an undue exercise of that power by the Lords, and to secure to the Commons their rightful control over the Taxation and Supply, this House has in its own hands the power so to impose and remit Taxes, and to frame Bills of Supply, that the right of the Commons as to the matter, manner, measure and time may be maintained inviolate.

[C.J., cxv, 360, July 7, 1860.]

(B)

Public Accounts Committee, 1861[2]

The Chancellor of the Exchequer [Mr. Gladstone], in moving for the appointment of a Select Committee on Public Accounts, said that the object of the Committee would be to revise the accounts of the public expenditure after they had gone through the regular process of examination in the hands of the executive Government. That was obviously the true completion of the duty of that House with regard to the public money. The Committee on Public Monies which sat two or three years ago had made this recommendation, and made it unanimously. He should, therefore, move that a Select Committee be appointed for the examination from year to year of the audited accounts of the public expenditure; and if that

[1] The occasion of these resolutions, moved by Lord Palmerston, was the dispute over the Paper Duties. The resolutions were carried after an amendment had been defeated by 369 to 52. (See also Vol. I, Sect. B, No. I, p. 153, and Vol. II, Sect. A, No. XLII, p. 140.

[2] Compare Vol. II, Sect. B, No. XV (B), p. 187, and No. XXVII, p. 217.

Motion was adopted, he would on a future day move that a Committee of that nature be appointed at the commencement of every Session; and, likewise, that the order for the appointment of that Committee be made a standing order of the House. . . . Motion *agreed to*. . . .

The CHANCELLOR of the EXCHEQUER [after moving the nomination of nine members to serve on the select committee] . . . said the Government, after a great deal of consideration, had determined on departing in one point from the recommendations of the Committee on Public Monies, to which the appointment of this Select Committee was due. The recommendation had been that this Select Committee should be nominated by the direct authority of the Speaker. These names had been chosen with a view to give satisfaction to both sides of the House, and fairly to represent all parties, while bringing as much talent, knowledge, and experience as possible to discharge these important functions. . . .

Mr. HENNESSY objected to the list proposed, because it did not contain a single Irish name. . . .

Mr. SEYMOUR FITZGERALD observed that no Scotch Member had been placed on the Committee. . . . as a mere mark of respect to Ireland and Scotland, two Members from those parts of the kingdom ought to have been placed on the Committee. . . .

The CHANCELLOR of the EXCHEQUER . . . could not sanction the notion that on a question of public accounts, which had no imaginable bearing on any separation of interests between one part of the kingdom and another, these national distinctions should be imported into the appointment of a Committee of that House. The Government had sought to ascertain what hon. Members were best qualified to undertake these duties, which were of a dry and repulsive kind, and he believed their choice was correct.

Original Question put, and *agreed to*. The Committee was then nominated.

[*Parl. Deb.* (3rd series), clxii, 318 and 773, April 9 and 19, 1861.]

XVI

DISSOLUTION AND THE ADMINISTRATION, 1868 [1]

Mr. GLADSTONE . . . The right hon. Gentleman [Mr. Disraeli] has made constitutional propositions, or rather propositions touching

[1] Compare this view with those of Peel and Aberdeen, Vol. II, Sect. D, No. XXX, p. 393; also cf. Vol. II, Sect. D, No. LIV, p. 443.

the Constitution, such as I for one am not able to pass without notice. The right hon. Gentleman treats it as a matter of course that every Administration, or at least every Administration sitting in a Parliament that was called into existence before the Ministry itself, is entitled, for no other cause than the cause of its own existence, to inflict upon the country a dissolution; and the right hon. Gentleman has distinctly told us that that infliction was the measure which he advised Her Majesty to adopt upon the present occasion. I have said to "inflict" upon the country a dissolution, because, from very old date and by high parliamentary authority, the epithet "penal" has been attached to dissolutions of that character. . . . Where will the right hon. Gentleman find a case, until Friday last, in the whole history of this country, in which a Ministry, twice defeated by majorities of 60 and 65, advised the resort to a dissolution? There is no such case. The right hon. Gentleman speaks as if this resort to a dissolution—an adverse or penal dissolution—were an everyday practice. What are the instances of such resort? The case of 1841 is a doubtful precedent; the Government which appealed to the country did so with a majority against it of a single vote. It was the same in the famous and memorable case of 1784, when, if I recollect rightly, Mr. Pitt appealed to the country after a division in which 190 members voted for him and 191 against him. The right hon. Gentleman has named Sir Robert Peel; but he will not tell me that the opinion of Sir Robert Peel was that every Ministry was justified, upon the plea that the Parliament had not been elected under what the right hon. Gentleman calls its influence, in making a dissolution a previous condition to its resignation. . . . The right hon. Gentleman seems to suppose that such is the influence of an existing Government that it must necessarily be taken for granted that the effect of that influence is powerfully and conclusively felt in the elections. [Mr. Disraeli made a gesture of dissent.] Very well, if the right hon. Gentleman does not take that for granted he only enables me the more broadly to question his proposition and to ask him to show me, from the history of this country, and from great constitutional authorities other than Members of the Governments of Lord Derby, where the doctrine is laid down that, irrespective of other considerations, an Administration as an existing Administration is entitled to make an appeal to the country a condition previous to its resignation of office. Sir Robert Peel in 1846—beaten by a small majority, and having just carried a measure which insured for him unrivalled popularity—did not thus appeal to the country. I conceive the right hon. Gentleman is the person who is bound to prove his proposition. He has quoted no precedent whatever. . . . There are two conditions, as it appears to me,

which are necessary in order to make an appeal to the country by a Government whose existence is menaced by a legitimate appeal. The first of them is that there should be an adequate cause of public policy; and the second of them is that there should be a rational prospect of a reversal of the vote of the House of Commons. I have not said one word against the advice given by the right hon. Gentleman so far as it may be thought it can be founded upon one of those two principles. At the same time, I am not willing now to conceal my opinion that the right hon. Gentleman was not well justified in that advice. The right hon. Gentleman and his Colleagues . . . are too much given to this practice of dissolution. Dissolution in 1852, dissolution in 1859, dissolution in 1868—and all these to determine the question whether the right hon. Gentleman and his friends were to continue in office. . . .

[*Parl. Deb.* (3rd series), cxci, 1710, May 4, 1868.]

XVII

CORPORATE BODIES AND THE STATE—CONTROL AND CONSULTATION

University Test Bill, 1870

Mr. Gladstone: . . . As regards the general objects of the Bill, . . . it leaves the Colleges to the operation of the statutes, those statutes depending for their shape at the present time, and for the modifications which they may undergo from time to time hereafter, upon the joint action of certain powers. Those powers will be, on the one hand, the members for the time being of these venerable corporations, and, on the other hand, the political authority entrusted by Parliament to control that action. . . . If the Church of England retains that place in the convictions and in the affection of the country . . . which, I for one, believe she now holds, that will be her security for retaining an adequate influence and position in the Universities. But, on the other hand, should the day ever arrive when—happily as some may think, but unhappily as I should say—the Church of England, either through her demerits, her divisions, or through any other cause loses that position in the convictions and the affections of the country, it would be of no avail for us to surround her with the factitious barrier of statutes; . . . because such statutes would inevitably give way before the pressure of the altered sentiments of the nation. . . . It is perfectly true that, under this Bill, religious teaching in the Colleges may no

longer be confined to the doctrines of the Church of England. . . . It is possible that, under the operation of this Bill, religion in the Colleges may be various—that it shall be free is the object of the Bill. That it shall cease to be definite, that it shall cease to correspond with sincere and heartfelt conviction, may be the apprehension of the right hon. Gentleman; but it is not the necessary, the legitimate, or the natural result of a measure such as this.

. . . What is the main change that the Bill has undergone since it was introduced last year? It is this—that it contains an absolute and universal repeal of that clause of the Act of Uniformity [1] which imposes tests, instead of leaving it to Colleges, by their own separate action, to pass beyond the operation of that clause. . . . But will my right hon. Friend say that as regards that one great, and as I admit very important change, the Bill is, in its present form, more repugnant to the general body of the University than it was in its previous form? I doubt very much whether he will make that assertion. . . .

With regard to the headships of Colleges. . . . The manner in which that clause came into the Bill was this—Those within the University of Cambridge who were favourable to the general scope of the Bill came before the Government, and represented that they had agreed among themselves upon a certain basis, which included the reservation that the headships of Colleges were not to come under the operation of the Bill. Those who generally concurred with them at Oxford entered into the same understanding, and it was upon that representation that the provision was introduced into the Bill.

[*Parl. Deb.* (3rd series), cci, 1225, May 23, 1870.]

XVIII

THE SPEAKER'S LISTS, 1872

Mr. G. Bentinck called attention, as a matter of privilege, to a statement which had been made in one of the public journals, to the effect that the Speaker of the House, on the occasion of important discussions, was furnished by the whip on each side with a list of members who were desirous of taking part in the debate; and that these lists were used in such a way as to deprive independent members of a hearing. Mr. Brand, who had recently been elected Speaker, said he had never seen such a list; but Mr. Glyn and Mr. Noel, the Government and Opposition whips, admitted

[1] See Vol. I, Sect. A, No. XI, § VI, p. 23.

that they had been in the habit of supplying Mr. Speaker Denison with such lists for his assistance, but denied that there was any intention that they should be used " to gag " independent members. The feeling of the House, however, was evidently against the practice, and it was understood that it should be discontinued. Mr. Disraeli said, amid much laughter, that he had always been anxious to develop the oratorical powers of young members of his party, and he had thought it good tactics to give members below the gangway an opportunity of speaking, because he had felt that there were smouldering emotions which would be relieved by the expression of opinion, and that after such a process they would get on in debate with better temper than was sometimes the case.

[See *Parl. Deb.* (3rd series), vol. ccix, cols. 1036-39, Feb. 26, 1872: the summary here used is from the *Anecdotal History of the British Parliament*, p. 584.]

XIX

EQUALITY BEFORE THE LAW, 1875

Mr. LOWE said, the Amendment which he was about to move to the clause was proposed in no adverse sense to the spirit of the Bill.[1] . . . He held that nobody would dispute that it was a sound principle that when they were making a penal law, as in the present case, they should make that law as wide as possible, and avoid picking out a particular class and subjecting them to penalties from which the rest of the community were free. He thought that was more especially the case when it fell upon the humbler classes of the community. . . . All, then, which he asked the Home Secretary to do was to apply this general principle in two cases. One was the section under consideration, which punished workmen for the abandonment or breach of a contract, whereby the supply of gas or water by a municipality might be interfered with; and the other was where a workman by breach of his contract of service would expose valuable property, real or personal, to destruction. He was perfectly willing to adopt those principles, but there was a third that ought to be added, and that was where human life was placed in danger. But what he wanted was that it should not be limited to breach of contract or to working people, but that wherever it was a man's duty, by contract or otherwise, to do a particular thing, and by abandoning that duty without reasonable excuse, he did any of the three things specified, he should be punished. . . . He thought

[1] The Conspiracy and Protection of Property Bill.

the right hon. Gentleman would see the justice of the case as clearly as it appeared to him, and that he would not be blind or deaf to the consideration that it was very important to teach the working men to consider that they were not a class apart from the rest of the country—that what we did for or against them we were willing to do for or against ourselves if we fell into a similar fault. . . . He moved to omit the clause—" where a workman is employed by a municipal authority or other public body " &c., and to insert—

" Where a person is legally bound and is able to perform any duty the immediate and probable consequences of the neglect of which would be to deprive the community of a supply of gas or water, or shall expose property of the value of £100, or endanger human life, such person, if he abandons that duty without reasonable excuse, shall on conviction," &c. . . .

Mr. ASSHETON CROSS said, he quite admitted the general principle the right hon. Gentleman had laid down, that it was always wise, if you could, to have a general, instead of a particular law; but persons who were brought under a particular law must not fancy they are singled out because of something objectionable in them or their calling. The simple explanation was, that the relation to the public they had undertaken required special legislation, which did not, as a rule affect others who were not so employed, and there were numerous instances of persons occupying such relations who had never felt or suggested that special legislation was a grievance. There were many laws, criminal as well as civil, relating to bankers, brokers, merchants, factors, carriers, bailees, trustees, the Army, the Navy, railway servants, and others whose special relations required to be specially dealt with, and by dealing specially with them, you could often deal much more fairly by the general public. It often happened that persons belonging to these special classes, if they committed certain offences, required to be punished either with more or less severity on account of the position they occupied, which might impose upon them greater responsibilities; and if we were to generalize the law and say that all persons should be subject to equal punishment for like offences we might inflict hardships much more grievous than any we removed. . . . [Contracts of personal service, he maintained, should be treated differently from other contracts; for breach of the latter, civil proceedings were appropriate.] . . . There were numberless precedents for this kind of legislation. Take, for instance, the Army, and the Navy, and the Police, where there was special legislation by the Mutiny Act to prevent danger to the state.[1] Persons employed on railways were

[1] See Vol. I, Sect. A, No. XX, p. 55; cf. also Vol. II, Sect. A, No. XXXVII, p. 124, and Sect. B, No. XX, p. 194, and Sect. C, No. II, p. 237.

also governed by special acts, and suffered punishment if they did anything that practically tended to public danger. This clause was drawn precisely on the analogy. No one particular class was singled out, and upon that ground, whilst appreciating the spirit of the right hon. Gentleman's wish, it would be most dangerous to extend the criminal law as he proposed, and therefore he must oppose the Amendment.

Sir WILLIAM HARCOURT said: . . . Suppose the coal merchant or the coal owner broke his contract and did not deliver coal, and the consequence was a town was not supplied with gas, why was the workman who did [*sic*—not do?] his work to go to prison and the coalowner not? That was a clear question, one upon which the working classes would form an opinion. . . . If " person " instead of " workman " were inserted in this clause, it might be preserved in its present form, and, by omitting contracts of service, it might be made applicable to every class of community. . . .

Mr. ASSHETON CROSS, . . . There could be no possible objection to substitute the word " person " for " workman " if the clause were not to be extended beyond those who were bound by some contract. He therefore assented to the Amendment. . . .

Amendment *agreed to.*

[*Parl. Deb.*, 3rd series, ccxxv, 1341, July 12, 1875.]

XX

MILITARY LAW, 1879

Colonel STANLEY [moving for leave to bring in an Army Discipline and Regulation Bill] . . . in 1625 a Commission was issued to certain military officers and civilians authorising them to punish military offenders, and he was sorry to say " other dissolute offenders," by martial law. Articles of War were issued for their guidance. Three or more persons constituted a Court, and their sentences required the sanction of the Crown before they could be carried out. These Articles contain an outline of the present system, without the present statutory authority. The first part deals with the martial law; the second with the Articles of War, growing out of it, as they now do out of the Mutiny Act: the third with the court martial to try and sentence offenders; and the fourth with the general confirmation of the sentence before execution. . . . Under that system the Army appears to have been administered until we come to something approaching the Mutiny Act in 1689.[1] . . . That

[1] See Vol. I, Sect. A, No. XX, p. 55, and Vol. II, Sect. C, No. II, p. 237. For part of the text of the Bill in its final form as an Act see Vol. II, Sect. A, No. XXXVII, p. 124.

Bill was contained in 10 sections. The 1st section enabled the Government to punish any officer or soldier.

> " Inciting, causing, or joining in mutiny, or deserting the Army, with death or such punishment as by court martial shall be inflicted."

Other sections declared the number and rank of the officers who were to constitute the court martial; section 8 limited the Act and prescribed the form of the proceedings; while the 10th further prescribed that all capital cases should only be tried between certain hours of the day. That Act made no provision for the discipline or government of the Army in minor matters, and made no mention of the Articles of War. Apparently, therefore, the Parliament, by the Mutiny Act, while it strengthened the authority of William III over the Army by enabling him to punish certain *quasi*-political offences left the Army in every other respect to be governed by the Prerogative clauses. . . . From that time to the present . . . the same general line has still been followed. There have been Mutiny Acts passed by Parliament, and Articles of War expressed the Prerogative of the Crown, although in later years statutory power is given to these Articles by a Statute passed by this House. . . .

In 1869—whether following or in consequence of the Courts Martial Commission I am not at this moment prepared to say—instructions were given to the Parliamentary Counsel to prepare a Bill to consolidate the law relating to the Army. It was clear that such a step was necessary, for the Courts Martial Commission commented very strongly in their Report on the necessity of drafting the military law in a clearer form. . . . Pressing business before the House prevented the introduction of the Bill by successive Secretaries of State; but it was always felt—and I think that those who were most intimate with the subject have felt it strongest—that, like the dancing bear, of which it was said that the wonder was not that he danced so well, but that he danced at all, the wonder was not that the officers of the Army administered the law as they found it in the Mutiny Act with so little complaint, but that they were able to administer it at all. When, therefore, attention was called to it in the House, it was felt that many of the sections could not be theoretically or practically defended. . . . I am happy to state that, as far as possible, the Bill which I now ask leave to introduce follows the general lines of the Bill laid before the Committee. The Bill was to consolidate and amend the Mutiny Act and the Articles of War; and though I am afraid it looks rather bulky and formidable, I hope hon. Members will not think it unduly so, when they remember that the Mutiny Act contained 110 clauses, the Articles of War 192; and, further, that we have endeavoured, in certain

matters, to bring within the scope of the Bill portions of the Enlistment Act. . . . We define generally the Regular Forces as officers and men who are continuously serving. It will be borne in mind that Viscount Cardwell's Act of 1871 place [*sic*] the Auxiliary Forces, of whatever nature, when training and exercising with the Militia or Regular Forces, under the Mutiny Act. We provide under this Bill, also, that whenever the Militia and the Volunteers are brigaded with the Regulars, that in relation to military law they shall be placed in precisely the same position. Viscount Cardwell's Act recognizes the Auxiliary Forces as coming in direct relation to the Army, as it was then understood. They form part of the general Land Forces, and, when together, should be brought under the same discipline. We think it right to be consistent, and we think where Forces are so much intermingled, it is advisable to recognize the fact, and to place the Militia and the Volunteers upon precisely the same footing as officers and men of the Regular Army, when they are attached to them. A Volunteer, then, while serving with the Regular Forces —which is entirely at his own choice—shall become liable to this Act, exactly as if he were the soldier whose duty he is anxious to undertake. . . . I have done my utmost to redeem the promise given by my predecessor. . . .

[*Parl. Deb.*, 3rd series, ccxliii, 1909, Feb. 27, 1879.]

XXI

THE REDISTRIBUTION BILL, 1885

The Earl of KIMBERLEY. . . . Your Lordships will doubtless remember that when the Franchise Bill,[1] which it is calculated will give the voting power to not less than 2,000,000 additional persons, was under discussion, it was considered just that it should be accompanied by a Redistribution Bill, and accordingly . . . the present Bill has been passed through the other House, and has now reached your Lordships. The difficulties attending a Bill of such minuteness and of so far-reaching a character could hardly have been overcome, so as to allow of the Bill being passed, had it not been for the Government having the advantage of free communication with the Leaders of the Party opposite with regard to the principal provisions of the measure. Those communications have resulted, as your Lordships are aware, in an agreement as to the main principles of the Bill; . . . The principle of the Bill is to redress the great inequalities which have existed, up to the

[1] See Vol. II, Sect. A, No. XXXVIII, p. 126.

present time, in the distribution of seats, and especially the very great inequalities which have existed between county and borough representation as regards the population of the several constituencies. In a matter of this kind, it was impossible to produce exact equality unless we had . . . arbitrarily divided the whole country into electoral divisions, without any reference to ancient practice or tradition. We have not pursued that course, but have endeavoured, as far as possible, to respect the ancient divisions of the country, and to make no unnecessary changes. The result is that certain anomalies, as between some constituencies and others, exist in the Bill; but they are very few in number, and of no great extent, . . . Under the present system in England, the proportion of seats to population is, in counties one to 70,800 persons, and, in boroughs, one to 41,200. Under the Bill the proportion will be one to 52,800 in counties and one to 52,700 in boroughs. . . . The plan pursued has, in the first place, been that boroughs have been disfranchised in which there was not a population of 15,000. In the second place, what are known as the Hundred Boroughs, such as Cricklade, and large rural boroughs like Stroud, have been merged into the counties. Thirdly, one Member has been taken from every borough which has not a population of 50,000, and one Member has also been taken from each of the three counties of Herefordshire, Rutland, and Sligo. In addition to that, the boroughs of Macclesfield and Sandwich, which had been disfranchised for corrupt practices, have been merged in the counties. . . . With the 12 additional Members to which I have alluded, the total number of seats available for redistribution is therefore 180. The seats have been distributed in this way—97 Members have been given to the counties, and 83 to existing and new boroughs and the Metropolis. . . . The totals for the United Kingdom are as follow:—There are now 283 county seats and 360 borough seats; whereas, under the Bill, there will be 377 county seats and 284 borough seats. . . . The rural and town constituencies have been kept separate as far as possible, and towns have not been unnecessarily merged with the counties, so as to deprive the counties of their rural character. . . . At the present time there are only 22 Metropolitan Members; under the Bill there will be 59 Members. An addition has been made throughout the Metropolis, and a diminution in one case only—that of the City of London, which now has 4, and will in future have 2 Members only. . . . There is another point with regard to the Bill to which I may direct the attention of the House. We have introduced a plan to divide constituencies returning several Members into single-Member districts. Many have held that [it] is necessary to respect the right of minorities to representation; but, although many ingenious

schemes have been propounded—so ingenious, in fact, as to be rather difficult to understand—what has been adopted, in order not to neglect this important part of the subject, has been what is known in France as *scrutin d'arrondissement*. In boroughs, however, where there are only 2 Members, those 2 are still left. That, no doubt, is an anomaly, and no one can deny that it is so; but it is not essential to the working of the Bill that everything should be perfectly logical. . . .

The Marquess of SALISBURY. . . . One of the results of those colloquies to which the noble Earl had referred, with which Parliament had most reason to be satisfied, was the appointment of this Royal Commission. He did not believe, whichever Party were in power, that a more satisfactory system could have been adopted than that which resulted from the appointment of those impartial Commissioners, whose decision should be rigorously adhered to. As to the boundaries, that had been done. No one had impugned either the ability, or industry, or impartiality of the Commissioners. . . . He should personally retreat from the responsibility of deciding on claims which he could not measure, by supporting, in all cases when pressed to a division, the decision of the Commissioners.

[*Parl. Deb.*, 3rd series, ccxcviii, 1360, June 8, 1885.]

XXII

IRISH HOME RULE, 1886[1]

Mr. GLADSTONE [moving for leave to bring in a Home Rule for Ireland Bill]. . . . And, Sir, the first point to which I would call your attention is this, that whereas exceptional legislation—legislation which introduced exceptional provisions into the law—ought itself to be in its own nature essentially and absolutely exceptional, it has become for us not exceptional, but habitual.[2] We are like a man who, knowing that medicine be the means of his restoration to health, endeavours to live upon medicine. . . . Have we attained the object which we desired, and honestly desired, to attain? No, Sir, agrarian crime has become, sometimes upon a larger and sometimes upon a smaller scale, as habitual in Ireland as the legislation which has been intended to repress it. . . . it is impossible to depend in Ireland upon the finding of a jury in a case of agrarian crime according to the facts as they are viewed by the Government, by the Judges, and by the public, I think, at large. . . . Finally, Sir,

[1] Compare Vol. II, Sect. A, No. XLIV, p. 145, and Sect. B, Nos. XXIV and XXV, at pp. 204, 206.

[2] Compare Vol. II, Sect. D, No. XIX, p. 376.

it is not to be denied that there is great interference in Ireland with individual liberty in the shape of intimidation. . . .

But in the 53 years since we advanced far in the career of Liberal principles and actions—in those 53 years, from 1833 to 1885—there were but two years which were entirely free from the action of this special legislation for Ireland. . . . The case of Ireland, though she is represented here not less fully than England or Scotland, is not the same as that of England or Scotland. England, by her own strength, and by her vast majority in this House, makes her own laws just as independently as if she were not combined with two other countries. Scotland—a small country, smaller than Ireland, but a country endowed with a spirit so masculine that never in the long course of history, excepting for two brief periods, each of a few years, was the superior strength of England such as to enable her to put down the national freedom beyond the border—Scotland, wisely recognized by England, has been allowed and encouraged in this House to make her own laws as freely and as effectually as if she had a representation six times as strong. The consequence is that the mainspring of law in Scotland is felt by the people to be Scotch; but the mainspring of law in Ireland is not felt by the people to be Irish, and I am bound to say—truth extorts from me the avowal—that it cannot be felt to be Irish in the same sense as it is English and Scotch. . . .

. . . Something must be done, something is imperatively demanded from us to restore to Ireland the first conditions of civil life—the free course of law, the liberty of every individual in the exercise of every legal right, the confidence of the people in the law, and their sympathy with the law, apart from which no country can be called, in the full sense of the word, a civilized country, nor can there be given to that country the blessings which it is the object of civilized society to attain. . . . It is a problem not unknown in the history of the world; it is really this—there can be no secret about it as far as we are concerned—how to reconcile imperial unity with diversity of legislation. Mr. Grattan not only held these purposes to be reconcilable, but he did not scruple to go the length of saying this—" I demand the continued severance of the Parliaments with a view to the continued and everlasting unity of the Empire." . . .

I pass on to ask how are we to set about the giving effect to the proposition I have made, to the purpose I have defined, of establishing in Ireland a domestic Legislature to deal with Irish as contradistinguished from Imperial affairs? And here, Sir, I am confronted at the outset by what we have felt to be a formidable dilemma. . . . We are going to draw the distinction—we have drawn the distinction—in the Bill which I ask leave to lay on the

Table for legislative purposes with reference to what I hope will be the domestic Legislature of Ireland. But this House is not merely a Legislative House; It is a House controlling the Executive; and when you come to the control of the Executive, then your distinction between Imperial subjects and non-Imperial subjects totally breaks down—they are totally insufficient to cover the whole case.

For example, suppose it to be a question of foreign policy. Suppose the Irish Members in this House coming here to vote on a question of foreign policy. Is it possible to deny that they would be entitled to take part in discussing an Address to the Crown for the dismissal of the Foreign Minister. . . . What will be the effect of the dismissal of the Foreign Minister on the existence and action of the Government to which he belongs? Why, Sir, the Government in 19 cases out of 20 will break down with the Foreign Minister; and when these Gentlemen, coming here for the purpose of discussing Imperial questions alone, could dislodge the Government which is charged with the entire interests of England and Scotland, I ask you what becomes of the distinction between Imperial and non-Imperial affairs? I believe the distinction to be impossible, and therefore I arrive at the next conclusion—that Irish Members and Irish Peers cannot, if a domestic Legislature be given to Ireland, justly retain a seat in the Parliament at Westminster. . . .

But I must admit that, while I cannot stand on the high ground of principle, yet, on the very substantial ground of practice, to give up the fiscal unity of the Empire would be a great public inconvenience, and a very great public misfortune. . . . I conceive that there is but one escape from it, and that is, if there were conditions upon which Ireland consented to such arrangements as would leave the authority of levying Customs duties and such Excise duties as are immediately connected with Customs in the hands of Parliament here, and would, by her will, consent to set our hands free to take the course that the general exigencies of the case appear to require. These conditions I take to be three:—In the first place, that a general power of taxation over and above these particular duties should pass unequivocally into the hands of the domestic Legislature of Ireland. In the second place, that the entire proceeds of the Customs and Excise should be held for the benefit of Ireland, for the discharge of the obligations of Ireland, and for the payment of the balance, after discharging those obligations, into an Irish Exchequer, to remain at the free disposal of the Irish Legislative Body . . . [and the third condition would be that] . . . the provisions of this Act should not be altered, except either on an Address from the Irish Legislature to the Crown . . . or else after replacing and calling into action the full machinery under

which Irish Representatives now sit here, and Irish Peers sit in the House of Lords, so that they might have the very same means of defending their Constitutional rights as they have now.

. . . With regard to the future Judges, we hold the matter to be more simple. We propose to provide that they should hold office during good behaviour; that their salaries—these are the superior Judges alone—should be charged on the Irish Consolidated Fund; that they shall be removable only on a Joint Address from the two Orders of the Legislative Body; and that they should be appointed under the influence, as a general rule, of the responsible Irish Government. . . .

I ask that in our own case we should practise, with firm and fearless hand, what we have so often preached—the doctrine which we have so often inculcated upon others—namely, that the concession of local self-government is not the way to sap or impair, but the way to strengthen and consolidate unity. I ask that we should learn to rely less upon merely written stipulations, and more upon those better stipulations which are written on the heart and mind of man. I ask that we should apply to Ireland that happy experience which we have gained in England and in Scotland, where the course of generations has now taught us, not as a dream or a theory, but as practice and as life, that the best and surest foundation we can find to build upon is the foundation afforded by the affections, the convictions, and the will of the nation; and it is thus, by the decree of the Almighty, that we may be enabled to secure at once the social peace, the fame, the power, and the permanence of the Empire.

[*Parl. Deb.*, 3rd series, ccciv, 1036, April 8, 1886.]

XXIII

REPORT ON THE FEATHERSTONE RIOTS,[1] 1893

To Her Majesty's Secretary of State for the Home Department

. . . We pass next to the consideration of the all-important question whether the conduct of the troops in firing on the crowd was justifiable; and it becomes essential for the sake of clearness

[1] The riots took place at Ackton Hall Colliery, Featherstone, near Wakefield, on September 7, 1893. This was in the middle of Doncaster race week and after the West Riding Collieries had been out on strike for six weeks. Two men lost their lives. Mr. Asquith, as Home Secretary, appointed this special Committee of enquiry in October 1893. On the issues raised, compare Vol. II, Sect. C, Nos. VIII and IX, pp. 259, 262, and No. XVII, p. 294.

to state succinctly what is the law which bears upon the subject. By the law of this country everyone is bound to aid in the suppression of riotous assemblies. The degree of force however which may be lawfully used in their suppression depends on the nature of each riot, for the force used must always be moderated and proportioned to the circumstances of the case and to the end to be attained.

The taking of life can only be justified by the necessity for protecting persons or property against various forms of violent crime, or by the necessity of dispersing a riotous crowd which is dangerous unless dispersed, or in the case of persons whose conduct has become felonious through disobedience to the provisions of the Riot Act,[1] and who resist the attempt to disperse or apprehend them. . . . The necessary prevention of such outrage on person or property justifies the guardians of the peace in the employment against a riotous crowd of even deadly weapons.

Officers and soldiers are under no special privileges and subject to no special responsibilities as regards this principle of the law. A soldier for the purpose of establishing civil order is only a citizen armed in a particular manner. He cannot because he is a soldier excuse himself if without necessity he takes human life. The duty of magistrates and peace officers to summon or to abstain from summoning the assistance of the military depends in like manner on the necessities of the case. A soldier can only act by using his arms. The weapons he carries are deadly. They cannot be employed at all without danger to life and limb, and in these days of improved rifles and perfected ammunition without some danger of injuring distant and possibly innocent bystanders. To call for assistance against rioters from those who can only interpose under such grave conditions ought, of course, to be the last expedient of the civil authorities. But when the call for help is made, and a necessity for assistance from the military has arisen, to refuse such assistance is in law a misdemeanour.

The whole action of the military when called in ought, from first to last, to be based on the principle of doing, and doing without fear, that which is absolutely necessary to prevent serious crime, and of exercising all care and skill with regard to what is done. No set of rules exists which governs every instance or defines beforehand every contingency that may arise. One salutary practice is that a magistrate should accompany the troops. The presence of a magistrate on such occasions, though not a legal obligation, is a matter of the highest importance. The military come, it may be, from a distance. They know nothing, probably, of the locality, or of the special circumstances. They find themselves introduced

[1] Compare Vol. I, Sect. A, No. XLV, p. 123.

suddenly on a field of action, and they need the counsel of the local justice, who is presumably familiar with the details of the case. But, although the magistrate's presence is of the highest value and importance, his absence does not alter the duty of the soldier, nor ought to paralyse his conduct, but only to render him doubly careful as to the proper steps to be taken. No officer is justified by English law in standing by and allowing felonious outrage to be committed merely because of a magistrate's absence.

The question whether, on any occasion, the moment has come for firing upon a mob of rioters, depends, as we have said, on the necessities of the case. Such firing to be lawful, must . . . be necessary to stop or prevent such serious and violent crime as we have alluded to ; and it must be conducted without recklessness or negligence. When the need is clear, the soldier's duty is to fire with all reasonable caution, so as to produce no further injury than what is absolutely wanted for the purpose of protecting person or property. An order from the magistrate who is present is required by military regulations, and wisdom and discretion are entirely in favour of the observance of such a practice. But the order of the magistrate has at law no legal effect. Its presence does not justify the firing if the magistrate is wrong. Its absence does not excuse the officer for declining to fire when the necessity exists.

With the above doctrines of English law the Riot Act does not interfere. Its effect is only to make the failure of a crowd to disperse for a whole hour after the proclamation has been read a felony ; and on this ground to afford statutory justification for dispersing a felonious assemblage, even at the risk of taking life. In the case of the Ackton Hall Colliery, an hour had not elapsed after what is popularly called the reading of the Riot Act, before the military fired. No justification for their firing can therefore be rested upon the provisions of the Riot Act itself, the further consideration of which may indeed be here dismissed from the case. But the fact that an hour had not expired since its reading did not incapacitate the troops from acting when an outrage had to be prevented. All their common law duty as citizens and soldiers remained in full force. The justification of Captain Barker and his men must stand or fall entirely by the common law. Was what they did necessary, and no more than was necessary, to put a stop to or prevent felonious crime ? In doing it did they exercise all ordinary skill and caution, so as to do no more harm than could be reasonably avoided ?

If these two conditions are made out, the fact that innocent people have suffered does not involve the troops in legal responsibility. A guilty ringleader who under such conditions is shot dead, dies by justifiable homicide. An innocent person killed under such condi-

tions, though where no negligence has occurred, dies by an accidental death. The legal reason is not that the innocent person has to thank himself for what has happened, for it is conceivable (though not often likely) that he may have been unconscious of any danger and innocent of all imprudence. The reason is that the soldier who fired has done nothing except what was his strict legal duty. . . .

BOWEN [L.J.]
ALBERT K. ROLLIT [Kt.; M.P.]
R. B. HALDANE [Q.C.; M.P.].

[*Parl. Papers*, c. 7234, p. 9, Session 1893-94, xvii, 381.]

XXIV

HOME RULE AND THE LORDS, 1893

The DUKE of DEVONSHIRE. . . . Consider what, in that case would be the responsibility of your Lordships' House. You would be told that you had had the power to prevent these evils, that you had had the power to impose an interval during which the true will and desire of the people might be ascertained, but that you had failed to use this opportunity. In vain you would plead that you had acted as we are told we ought to act; in vain you would plead that you had acted on the assumption that the vote of the House of Commons was conclusive. Those who now denounce you for attempting to withstand the judgement of the popular Assembly would then be the first to denounce, with more justice, this Assembly as an utterly useless and inefficient body, incapable of averting even the consequence of a mistaken estimate of the opinion of the country. . . . I shall be told that the House of Commons approved of this Bill, and that the general election gave to the House of Commons the necessary mandate and authority to work out the organic details of the measure.[1] I traverse that argument at every step. For reasons which I have stated, I deny that the House of Commons received any mandate upon Home Rule at all at the last Election; and I say further that, if there were a mandate, it was a conditional mandate, and that the conditions were not within the knowledge of the country. Before this measure is passed into law, we have a right to demand that the judgement of the country shall be given not upon a cry, not upon an aspiration, not upon an impatient impulse, but upon a completed work; and that this measure the result of the collective

[1] Cf. Vol. II, Sect. B, No. XXVI, p. 207, and Sect. D, No. XLII (introductory note), p. 410.

wisdom of the Government and Parliament shall be submitted to the country for its approval, aye or no. . . . All our institutions hitherto have been gradual in their growth and never has there been wholly absent from them, even in Ireland, the germ of local self-government. In very recent times we have seen an enormous development of the principles of local self-government. In our County Councils and in our County Borough Councils we have seen great and powerful bodies created, possessing now very considerable executive and administrative powers. No-one can say how far this principle may yet be capable of extension; but to whatever extent it may grow, in the course of its growth it destroys nothing, it takes no power away from our Central Government or from our Imperial Parliament. It grows side by side with our Parliamentary institutions. It is like the case of the action of a father who as his sons grow up and show more capacity for business, entrusts a larger and larger share of the management of his affairs to them, or like the case of an employer who as his business increases, and he feels less inclined to devote himself to details, delegates constantly to managers and subordinates a larger amount of power and responsibility. But the course you prefer resembles that of a father who is compelled by his son to sign during his lifetime a bond, assigning a considerable proportion of his income and an appreciable amount of control in the management of his affairs; or like the conduct of subordinate managers of a firm who insist on their employer converting his business into a limited liability company, and appointing all of them co-directors with equal power and authority to himself. . . .

[*Parl. Deb.*, 4th series, xvii, 29, Sept. 5, 1893.]

XXV

LORDS AND COMMONS, 1907[1]

DUKE of DEVONSHIRE. . . . If urgency exists for finding some means of adjusting the differences between the two Houses, it has arisen solely from the events which have taken place within the existence of the present Parliament. I am far from saying that a case may not be made out for endeavouring to find some improved machinery by which differences, when they arise, may be more easily adjusted. But if this necessity exists, it is a new necessity. Up to the date of the present Parliament, means of settling differ-

[1] Compare Vol. II, Sect. D, Nos. LX and LXI, pp. 451, 453.

ences between the two Houses have always been found. The course of progress and of reform has never been permanently obstructed by the action of this House. This House has never permanently thwarted the clearly expressed will of the country, even in matters in which it held distinctly different convictions and opinions. Instances are not wanting in which experience has shown that this House has been a more faithful and more accurate exponent of the real will of the people than the House of Commons. Take the case of the last reform of the House of Commons. It is true that this House delayed the passing of the Franchise Bill; but it delayed it only for one session, and almost simultaneously with the passing of the Franchise Bill in the next session, a Redistribution Bill was passed, to the great satisfaction, even of the House of Commons and the great satisfaction of the country.

I am not surprised that not much reference has been made by speakers on the Government side of the House to the history of the Home Rule Bill. . . . No more striking and conclusive proof of the advantage and necessity of a Second Chamber—even an unreformed Second Chamber—has ever been given than that afforded by the history of that measure. If that measure had been passed, it could never have been repealed except through the stress of something approaching a revolution or civil war. But for the action of the House of Lords, that measure would have been passed; and it would have been passed, as the result has proved, against the will of the country. The Government are again raising the question of Irish Government, but I shall be very much surprised to find that even this Government or this House of Commons proposes to re-introduce either the Home Rule Bill of 1886[1] or that of 1893. . . . I desire to call attention to the canon which was laid down in the most weighty and authoritative words by the late Lord Salisbury in the debate upon that measure, a canon which I believe this House not only acted upon then, but has been prepared and is still prepared to act upon in a similar occasion. Lord Salisbury said—

"Again, there is a class of cases, small in number, varying in kind, in which the nation must be called into council and must decide the policy of the Government. We must decide by all we see around us and by the events that are passing. We must decide, each for himself, upon our conscience and to the best of our judgement in the exercise of that tremendous responsibility which at such a time each member of these Houses bears, whether the House of Commons does or does not represent the full, deliberate and sustained convictions of the body of the nation, but when we once have come to the conclusion, from all the circumstances of the case,

[1] Cf. Vol. II, Sect. B, No. XXII, p. 198.

that the House of Commons is at one with the nation, it appears to me—save in some very exceptional cases, save in the highest cases of morality, in those cases in which a man would not set his hand to a proposition though a revolution should follow his refusal—it appears to me that the occasion for the action of this House has passed away, that it must devolve responsibility upon the nation, and may fairly accept the conclusion at which the nation has arrived." . . .

[*Parl. Deb.*, 4th series, clxxiv, 14, May 7, 1907.]

XXVI

CHANGES IN THE POSITION AND PERSONNEL OF THE COMMONS, 1911

The CHANCELLOR of the EXCHEQUER (Mr. Lloyd George): I rise to move the important Motion that stands in my name:—

> " That, in the opinion of this House, provision should be made for the payment of a salary at the rate of four hundred pounds a year to every Member of this House, excluding any Member who is for the time being in receipt of a salary as an officer of the House, or as a Minister, or as an officer of His Majesty's Household."

. . . The principle of payment of Members has been repeatedly affirmed in the House of Commons by very considerable majorities. There is a Motion down on the Paper in the name of the hon. Baronet the Member for Wandsworth (Sir H. Kimber), suggesting that without any consultation at all with the constituencies we are voting large sums of money to ourselves, and are, therefore, in the position of trustees who were utilising money that they ought to have expended for the benefit of the beneficiaries of the trust in order to pay ourselves. That is true of every Member who votes for his salary in the House of Commons. . . . May I also point out, although I do not carry the theory of a mandate too far,[1] that the Prime Minister, immediately before the last General Election, stated to the House of Commons that he proposed, if we got a majority in the new Parliament, to submit a Resolution to the House of Commons for the purpose of paying the Members. This was on the eve of the General Election—a very inconvenient moment to make an announcement of an unpopular character. But, at any rate, it was with full notice to the constituencies, and though I

[1] Cf. Vol. II, Sect. B, No. XXIV, p. 204, No. XXVIII, at p. 222, and Sect. D, No. XLII (introductory note), p. 410.

cannot conceive an election being fought merely upon that issue I do not see any other way in which you can get the assent of the constituencies to it than by putting it among the other questions which the constituencies had got to consider. . . .

. . . It is said that in proposing this we are departing from some great British tradition. As a matter of fact, we are reverting to an old British tradition. The old tradition of this House was that Members were paid. [An Hon. Member: " By the constituencies."] They will be paid still by the constituencies. The only difference is that instead of being a charge on the rates, which I am sure hon. Members opposite would deprecate, it is a charge on the Imperial taxes . . . Nominally that came to an end about two and a half centuries ago, but not really. Payment of Members continued in a different and more objectionable form until the year 1780. Sometimes the payment was indirect, surreptitious and corrupt. Much oftener it was in the form of small offices and pensions, until at last the number and the character of these pensions became such a very great public scandal that there was an inquiry, for which, I think, Mr. Burke was responsible, after a great agitation, and as a result of the inquiry that was brought to an end.[1] . . .

Therefore, we are reverting to a much earlier tradition, and I think to a better one. May I also point out a very remarkable fact in connection with that inquiry. There was a Sub-Committee appointed at Westminster. Owing to the burning of the documents of this House I have been quite unable to get hold of the original report. There was a Sub-Committee in connection with that matter sitting at Westminster, and they recommended at that very date in their report, when they examined the whole situation, that all Members of Parliament be entitled to reasonable wages according to the wholesome practice of ancient times. That was the position. All we propose is that the recommendation, which was the result of the inquiry by the Committee into the conditions of that time, and which had the support of some of the greatest figures in British history, should at last get the sanction of Parliament in the year 1911. So that, in this respect at any rate, we are the real custodians of the old traditions of the country, the traditions of the ancient British House of Commons. We are the real constitutional party, and we resent the innovation, introduced, it is true, some time ago, which we think has hopelessly failed in practice. I am going to say why we are abandoning the experiment which was made in 1780 of an unremunerated Membership of Parliament. It is, for one reason, because Parliamentary conditions have completely changed during the last year or two.

The work of Parliament is greater, infinitely greater; it is greater

[1] Vol. I, Sect. A, No. LX, p. 146, and other Acts cited in footnote thereto.

in the quantity and volume of work. Not only that, but it is very much greater in the attention it demands at the hands of each individual Member. In the old days, how was the work of Parliament really done? Anybody who cares to look at Hansard, the old Hansard, will find that the work of Parliament was practically in the hands of very few Members. Anybody who conducts a Bill through this House knows that that is not the case any longer. On the contrary, every Member of Parliament not merely has the right to intervene in Debate, but exercises that right frequently. Another difference is this: there is a real difference in the composition of its Members. I shall come to that later on, but I am dealing first of all with the work of Parliament. In the old days, fifty or sixty years ago, and even down to forty years ago, the work of Parliament was in the hands of very few Members. But still more remarkable is this: If Hon. Members will take the trouble to look not merely at Hansard, but at the old Division lists, they will find that although there was practically the same number of Members in this House as we have got now, the attendance was by no means general. The bulk of Members were absent during the greater part of the Session. They were brought up for great occasions, and that only occurred, not every year, and even in the years where they had very heavy Parliamentary work it was only during a portion of the year that you had a very considerable attendance of Members. The Divisions were small; there would be a great whip up for a big Division on a big Bill. What happened to Members in the meantime? They were down in the country, in their country houses, or those who attended to business were down attending to business. There was nothing then to prevent a Member of Parliament being a loyal member of his party and giving all the support which a Government values most. I think I will not dwell upon that. I think it will be thoroughly appreciated. They came up when they were really needed, and they were conveniently absent when it was necessary to get on with business.

. . . I will show the House of Commons in a very complete[1] form the difference. Take two Budgets which created a conflict with the House of Lords. Take the Budget of 1861, one of Mr Gladstone's greatest and most controversial Budgets. Here we have got all the Division Lists of that year—(holding up a thin book). It is a fairly thin volume, yet in 1861 there was quite a long Session, there was great conflict in the House, ending with the House of Lords, and that represents all the divisions which took place in that year. Now I come to 1909 (producing a thick volume). I think further comment is unnecessary. I have here

[1] *sic*—concrete?

the Corn Law Divisions. This was the great Corn Law year (holding up a thin volume). Yes, it is pretty thin, but still there you have a proposal which in many respects altered the history of England, altered its social condition, whether for better or worse is a matter of controversy at this very moment; profoundly affected the rural life of England, and affected the whole industrial fabric of this country. You will see that the House of Commons settled that in a very convenient and compendious form. That shows the difference. It is not merely that. Take the Budget of 1853, which settled the question of the Death Duties. I am not sure whether it was not the first time that Death Duties were introduced. I rather think it was. [An Hon. Member: "The Succession Duties."] Yes, the Succession Duties on land. It was very contentious, and was violently assailed. There were fourteen Divisions on that altogether. The Government was attacked with just the same vigour—I do not like to use controversial language—with the same strenuousness, enthusiasm, and zeal as characterised the Debates on the Budget of 1909. Take the largest Division. In only one Division were there over 200 Members at all on the winning side. On the side[1] in which the Government were defeated there were 163 on each side. That shows that in those days Parliamentary work was a totally different thing from what it is now. And that is what is essential when you come to consider a proposal of this kind. Members then could attend to their business, there was nothing to interfere with that attention; they could go on for weeks attending to their business, and just come here when the Government needed them. That is what happened to the vast majority in those days.

Not only that, but the Government in those days had no legislative programme in the modern sense of the term. They had what I may call a dummy programme. At the beginning of the year, in the King's Speech, there was a list of measures, always promised, but never even introduced. Lord Palmerston always had the same King's Speeches, always had the same measures, but never carried one of them until the very end of his career. He never attempted to carry them . . . but now every Government in turn makes a real effort to carry its programme, to the great inconvenience of Members and with very disastrous results to their business. That is not the same thing. I remember looking at some King's Speeches during the time the right hon. Gentleman the present Leader of the Opposition was Prime Minister, and at a time when he was doing his best to keep down the programme of the Government, as it was not a convenient season for contentious

[1] *sic*—'division'? or 'question'?

measures. But even then he had a huge programme, and as compared with what happened in the 'sixties and the 'fifties it was an enormous programme, but it was a programme of which three-fourths was carried. That, again, implies a complete change in the conditions of Parliamentary life. . . . I am only saying that the *laissez-faire* doctrine has been abandoned by common consent of both parties. In the matter of interference, if the right hon. Gentleman opposite (Mr. Austen Chamberlain) and his friends came in tomorrow they would have a legislative programme perhaps different to ours, their Bills would be different, they would involve interference with trade and commerce, with representative Government possibly, and generally with interference, not in the sense of undue interference. I do not want to raise controversial questions. It would interfere with the lives of the people in their homes, in the workshops, possibly in their amusements, when it became a question of Licensing Acts, for instance. It would interfere with the people at every point, and the only difference is not in the general principle of interference; the only difference between us would be in the direction, method, and subject-matter.

. . . As soon as you embark upon legislation of that character depend upon it the constituents will insist upon constant attendance, and insist upon an explanation why Members were not present. That surely makes a great difference. Not only did they not insist upon an explanation in the old days, but it was never volunteered to them. I remember, Mr. Gladstone pointed out once in conversation the great difference with regard to the work of Members of Parliament in the old days and in his latter days. He said that then a Member of Parliament was only expected to deliver one speech between one General Election and another. He did not point out that probably he was more responsible than anybody else for altering that state of things. But now, not only is a Member of Parliament expected to address his own constituents several times in the course of the year, but he is expected to address everybody else's constituents. That shows that there is a great arousing of interest in politics in every class of the community. We have admitted people in one Reform Bill after another into the purview of the constitution, and these people have grievances that they want to have redressed, and this is the High Court, this is the tribunal, to which they appeal. Another great change that has taken place is the setting up of Grand Committees. It is only a symptom of the development which I have been pointing out. It is inevitable the moment you begin to increase your output of legislation. You must have recourse to Grand Committees or something of that kind. Yesterday the hon. Baronet Member for the City of London

(Sir F. Banbury) complained that he really could not give proper attention to the work of the Government down here because he was busy upstairs in Grand Committee. He said, " I have no time to look after anything else." He was uttering a great truth when he said that, and I am sure he had no idea that he was helping a Motion for the payment of Members. As a matter of fact he was. That is the sum and substance of the matter, that a Member who does his duty to his constituents has very little time left for anything else—a Member who does his duty by his constituents, as I presume we are all trying to do. . . .

. . . All this means that we necessarily circumscribe the choice of the people and of the classes from whom they can choose Members of Parliament. And this brings me to a very vital change in the conditions of Parliamentary life from those which existed thirty, forty, or fifty years ago. The Noble Lord the Member for Oxford University (Lord Hugh Cecil) said on Monday—and it struck me very much at the time—that the reformed Parliament in 1832 was a highly aristocratic assembly. This is perfectly true. It was a highly aristocratic assembly in the sense that really you had got the pick of the county families represented there, and practically nobody else except members of the legal profession. You cannot keep them out anywhere, whether the sphere is high or low, and in Parliament, of course, you have Members of the legal profession there. I wish to point out that the conditions do really give an undue preference to a certain section of the legal profession.

Since that date you have had a process of democratisation going on in the character of the Members of this House. You have gradually broadened and broadened the basis not merely of representation, but of choice. In the old days we had practically only two classes here. We had the great county families and the legal profession, and we had odds and ends coming in; but, in the main, representation was confined to these two great classes. Since then, you have brought in one class after another—the great middle class —the labouring population, and factory representation. I think everybody will agree that this process of broadening has raised the average of the House. . . . One reason why we have been able to democratise the representation of this House has been the Corrupt Practices Act.[1] Prior to that, apart from the difficulties of getting into the House, representation in the House was confined almost entirely to those who had very considerable means at their disposal. Since then there has been a very great change in the character of this House, and men of very limited means are enabled to come in.

But, even now, membership of this House is very largely confined to four classes, apart from the other classes I shall point out

[1] See Vol. II, Sect. A, No. XXXIII, p. 107.

later on. Men of means who have got an unearned income, and barristers with their practice in the London courts are Members. . . . Then there are those in well-organised and well-established businesses who have efficient, and, what is even more important, accommodating partners. Then there is another class who are "something in the City". These are the main classes, and I will come to the Labour and Irish representation later on. What is the demand embodied in this Resolution? It is practically a demand from the democracy, which still is under the impression, and I think, sound impression, that it is labouring under a good many ills that Parliament alone can remedy. The demand of the democracy is really for a free choice of doctors. Instead of confining, as it were, those who were able to remedy their evils and cure them to a small class, they say, "We want an unlimited choice in picking out the men who will suit us best." . . . This demand can only be met in two ways. The first is by raising funds in connection with some great national agitation, or an agrarian agitation, or a labour agitation, which would enable Members connected with the movement to be more or less adequately maintained during the time they are attending to the business of that movement. The second is by the organisation of capital and labour, whose business is likely to be affected by legislation. These are the only two classes outside the four I have mentioned who offer any sort of opening for democratic representation in the House, and both of them, in my judgment, are open to serious objection. One objection is that when the fervour of the agitation dies down, and when you come to humdrum Parliamentary work, it is difficult to keep up the funds. Another objection is that I do not think it is desirable—and I agree here with my hon. Friend the Member for Leicester (Mr. Ramsay Macdonald)—that any man should come here to represent any organisation except his own constituency, I do not care whether it is a trade union organisation or any other organisation.[1]

. . . I observe there is an Amendment on the Paper in the name of the hon. Member of Fareham (Mr. Lee), in which he refers to this proposal as a violation of the principle of gratuitous public service. Will the hon. and gallant Member tell me, when he replies, where does he find the principle in any branch of the public service where men necessarily devote as much time to the public service as Members of Parliament do. The hon. and gallant Member has been associated with two branches of the public service, the Army and as a Minister. In both of those branches he violated the

[1] Compare the judgements in the Osborne Case, Vol. II, Sect. C, No. XXIV, p. 320 (which is mentioned, *en passant*, by Mr. Lloyd George in the passage here omitted).

principle of gratuitous public service, and I venture to say that no one has any reason to complain of that, not even the hon. Member himself. Really when we hear about this contamination and degradation or receiving this money for public service did he feel any contamination when he handled his monthly cheque as a Minister. [An Hon. Member: " Is it monthly ? "] That degradation is a degradation which the hon. and gallant Member is prepared to undergo a second time at a moment's notice, and not only that, but I will say this much for his courage, that he is prepared to face it even on a larger scale than ever, nay, even for a longer period. If I may say so, there has been a good deal of cant talked about this. It has been usual whenever you had criticism of Labour Members.

After all, where is the disgrace of receiving payment for faithful and honourable service ? I mean where does it degrade public life ? How does it lower it by receiving payment for serving your country in the Civil Service, in the Army, in the Navy, in the administration of justice, or in the great offices of State ? Is the professional soldier less of a patriot than the volunteer ? He is just as much of a patriot and a much better soldier. Take the administration of justice, and let the House mark that in the higher branches of the administration of justice the men are all paid. It is only when you come to the lower branches that you get the principle of gratuitous service. . . .

Our work does not cease. There is no Long Vacation for a politician. The moment he is out of Parliament he is off to the constituency to address all sorts of meetings, and to work on Committees and other little organisations which go on outside Parliament in different ways. His work is not represented altogether by his work in Parliament and addressing meetings. . . . Undoubtedly a conscientious Member does the hardest work you can put any man to in this country.

I come to local administration. The hon. Member for Mile End (Mr. Harry Lawson), a district I have heard of before, had something to say about local administration, and also another hon. and learned Gentleman. Apart from presiding officers, mayors, and chairmen of county councils, the work is nothing like as absorbing as the work of a Member of Parliament. . . .

I agree that when you come to presiding officers, chairmen, and mayors, that it is a different matter. Let me invite hon. Gentlemen on both sides of the House to remember that the only way in which you are able to get men of that kind is by changing them every year. That is why you have got to change mayors, because the work becomes so absorbing that the man cannot attend to his business. . . . I have always thought that it was a bad system, and that the

Continental system was infinitely a better one, where you get a man responsible for a certain number of years and who necessarily should be paid. What is a mayor or a chairman of a County Council? He is there for a year. He cannot plan any good work. He can only attend to the general finances, and he confines his operations to some little charity or little exhibition. He cannot do what every director of a great concern ought to do, look ahead for some years. It takes a whole year to master the work, and he cannot look ahead and plan what he is to do in the second or third year and develop his work. . . .

There is only one other thing that I should like to say in connection with local administration. There is always a complaint made whenever any Bill is introduced, especially if it is by a Liberal Government, that we are creating a great bureaucracy in this country. Have hon. Members noticed that gratuitous work necessarily means bureaucracy? Take a bench of magistrates where the work is gratuitous. Who really does the work of the bench? The Clerk to the Magistrates. He is the only man who is there always and who has the knowledge for the purpose. Take again the municipalities, where you have mayors performing gratuitous services. The work is getting more and more into the hands of the town clerks. It is the one way to create a bureaucracy. It is the one way to put not merely administration but policy into the hands of officials, and that I think is a bad thing in itself. In regard to administration advice must be secured from paid assistants, but they are not always the best people to advise upon policy. The one way to strengthen and encourage bureaucracy is to get too much gratuitous work of this kind. . . .

Mr. ARTHUR LEE: . . . In my view the disadvantages of this proposal are both cumulative and overwhelming. In the first place I think this proposal must lead to the loss of the moral authority of the House of Commons in the public mind, and if we are to have the House of Commons established as a Single Chamber with the control of the destinies of the country in its hands there is one thing it needs more than anything else, and that is moral authority. I also object to Members of Parliament in future becoming the mere paid delegates of their constituency rather than their free and independent representatives, because I believe it will lead to the extinction of that type of Member in the House of Commons who has been its peculiar pride and strength up to the present time. It will lead to the extinction of the class of Member who is active and distinguished in other walks of life, and who, in spite of having other work, does as a matter of fact attend to the business of this House because he believes it an honour and a duty to do so, but who in future will have neither time nor inclination to

compete with the vast number of candidates that will come forward when the reward is not merely election to the House of Commons, but a competence—I will not say more than that—which will be paid for his work as a Member of Parliament.

I think we have a notorious example before us of what happens—and I only speak of countries with which I am thoroughly familiar—in the United States of America and Canada. There we know that representative and influential men, speaking generally, have the greatest reluctance to enter politics at all. As a matter of fact, with very few exceptions they do not enter politics. How often have I myself, when I raised that very point with men of that description in Canada and in the United States, heard them reply, "Why should we? We pay others to do that for us." I am afraid that will be the case very soon here, and, as a result, I believe we will get a different type of Member in this House from that which we have been used to. . . . If hon. Gentlemen below the Gangway on the other side really imagine that the genuine working man will be enabled, as the result of payment of Members, to enter the House of Commons in larger numbers than at present, I ask, where do they get that experience from? I draw upon practical experience, and people who do not draw upon their practical experience are not wise. I find in the United States of America, where the salaries of Members of Parliament are higher than in any other country in the world, there is not a single genuine working man in the Congress.

. . . It is very obvious that the unofficial election expenses are the real obstacle to working men entering Parliament, and circumstances will make the caucus in all parties just as powerful after the payment of Members as it is now. . . .

. . . I now come to my last point, which I am bound to raise, because I was pointedly challenged by the Chancellor of the Exchequer, who indulged in some very good-humoured chaff. He dealt with the argument, "if you do not pay Members of Parliament, why should you pay Ministers?" I think the best answer to that is contained in a leading article of the "Daily Chronicle" of 21st January of this year, where it is said:

> "Ministers of the Crown are paid as salaried servants, expected and required to give their whole time and full energies to the service of the State and to that service alone. This not the theory of a House of Representatives. We want to see in the House of Commons a microcosm of the nation, and the British people, we believe, prefers that its Members of Parliament should in large measure be men still engaged in the various callings of life rather than that they should be professional whole-timers in politics."

Mr. ARTHUR HENDERSON: Does not that article recommend the payment of Members?

Mr. LEE: Certainly it does. It of course supports the Government, but it does meet the point on which I was challenged with regard to the payment of Ministers. It applies also to other servants of the State and not merely to Ministers. It applies also to soldiers. They are essentially servants of the State. They are held accountable by the State for the way in which they perform their duties, and there are actually ways provided by our Parliamentary procedure for reducing their salaries if we are not satisfied with the way in which they perform their duties. I claim, and that is my argument, that the representatives of the people are entirely in a different category. I claim they are not servants of the State; they are not servants even of their constituencies. They are free representatives of their constituencies; at any rate, they have been in the past and I hope they will so remain. It is further not essential they should give their whole time to the business of Parliament. It is well known many of the most useful and influential Members of this House have not given their whole time. . . .

Mr. RAMSAY MACDONALD: . . . The change that has taken place in our proceedings is not merely that we sit late and divide often. It is also that a whole series of questions relating to the lives of the people, conditions of labour, housing conditions, their outgoings and their incomings, right down to the humblest operation of the humblest man's life, has within the last two generations become great, pressing problems for this House to solve in the best way it possibly can. The hon. Gentleman overlooked that change. The historian of the future will record that, towards the end of 1911 that change had become so patent that Ministers were compelled to accommodate themselves to it, and that one of the necessary steps which had to be taken to accommodate themselves to it was to see that Members of this House were paid.

[*Parl. Deb.*, 5th series, xxix, 1365 *seq*, Aug. 10, 1911.]

XXVII

THE COMMITTEE ON ESTIMATES, 1912[1]

The CHANCELLOR of the EXCHEQUER (Mr. Lloyd George): I beg to move,

"That a Select Committee be appointed to examine and report

[1] Compare Vol. II, Sect. B, No. XII, at p. 181, and also No. XV, p. 187.

on such of the Estimates presented to this House as may seem fit to the Committee."

It will be within the recollection of the House that some time ago a memorial was presented to the Prime Minister on this subject. . . . It was signed, not merely by Members on this side of the House, but by a very considerable number of Members sitting on the Opposition side of the House. It represented the opinion of a very considerable body of Members of all parties, and I feel that it represented also a very growing feeling of uneasiness as to the enormous increase in expenditure during the last fifteen or twenty years, and a feeling that the House was not exercising control over that expenditure that it used to do. . . .

. . . It is regarded as treasonable on the part of the Treasury clerks to put down expenditure, forgetting that they are at the present moment the only check there is upon increase in expenditure. The House of Commons has ceased to be a check. . . . I have not forgotten the Public Accounts Committee. I think I shall be able to prove that it is inadequate, not because it is inefficient, quite the reverse, but because its functions are inadequate to the performance of the duties which are necessary. That is the attitude of almost every Department. The Treasury is in the position of always coming down and always checking and always saying No, and therefore there is constant war between the Departments which are spending Departments and the Treasury. And you have no real check upon recurring expenditure but the check of the Treasury. It is quite inefficient for the real demand there is for a thorough overhauling of the whole expenditure of the Session. After all, any attempt at economy is a very unpleasant task. . . .

. . . The first thing I lay down is this: In any Committee you appoint there must be no Committee that will divest the Executive of its responsibility. That is, [*sic*—Then ?] there must be no Committee which is to be a substitute for House of Commons responsibility; and the third point is, that there must be no Committee that will accept responsibility for the policy it is examining.

Sir F. BANBURY: There is nothing about that in the reference. Would the right hon. Gentleman put in something which would ensure that what he desires should be carried out in the reference?

Mr. LLOYD GEORGE: I should like to consider that. I am not sure whether it is desirable to restrict in the terms or whether it is not better that there should be an understanding between all parties in the House. The Chairman of the Committee must be drawn from the Opposition, and I think it would be far better to leave the question to the general understanding of the House rather than to specify it in words which might be difficult to interpret. . . .

. . . The proposal is that you should take one class of Estimates and examine them thoroughly. It is quite impossible for any Committee to make a thorough examination of all the Estimates in a single year. After all, the examination of the Treasury is, in the main, confined to new expenditure. I do not mean to say that there is not a general overhauling of the expenditure, but the real scrutiny must necessarily be confined to the new expenditure. A Committee of this kind, when it started with a particular Vote, would examine the whole of the Vote, including the recurring expenditure. That would take a very considerable time. It would be quite impossible to examine the whole of the Estimates thoroughly and give a satisfactory account of them in a single year. Therefore, it is proposed to take the Estimates in turn, and to go from one Department to another in rotation. I have already laid down the exceptions. The Committee is to have nothing to do with questions of policy, and there must be no impairing of Ministerial or House of Commons control.

[*Parl. Deb.*, 5th series, xxxvii, 360, April 17, 1912.]

XXVIII

THE HOUSE OF COMMONS, ITS PROCEDURE AND PUBLIC BUSINESS, 1914 [1]

[THE SELECT COMMITTEE ON PUBLIC BUSINESS OF 1914 was set up owing to the complaints of Private Members (who made up its membership) that they had lost and were losing much of their power to criticize or to initiate legislation in the House of Commons. It surveyed the working of the procedural reforms since 1881 from this point of view. It hoped to increase the freedom of the ordinary member of Parliament and to facilitate business in the House generally. Most of the evidence it heard dealt with points of detail, but it was constantly and necessarily forced to consider the constitutional background.]

(A)

RIGHT HON. T. LOUGH, M.P., EXAMINED

Mr. Swift MacNeill

238. You are theoretically opposed to Cabinet Government altogether?—Not to Cabinet Government, but I think a large Cabinet makes Cabinet Government almost impossible.

[1] Cf. Vol. II, Sect. B, No. XII, p. 176, and No. XXVI, p. 207, and Sect. D, No. XLIX, p. 434.

239. Because there is in that more extension of the division of responsibility, is that it?—No, but twenty-one Members, the present number hardly can be described as a Cabinet; it is nearly a public meeting.

240. All through your précis you seem to consider that Ministry is in the necessity of things opposed to the ordinary Member of the House of Commons?—Yes, I think always the principle of the House of Commons in its true sense is opposition to the administration and that its independence of the administration ought to be preserved.[1]

241. Do you not see for a moment that a Cabinet, however powerful it may be, is only powerful because it is the servant of the House of Commons, and you would destroy its *proprio motu*?—The intention of my evidence on the point was that I have no objection at all to the Cabinet being well supported by the House of Commons, but what I object to is such stringent rules drawn up as will enable a Cabinet to go on eternally, or to go on any length of time, although the support of the House is very languid or hardly there.

244. You entered the House of Commons as we know, in 1892. You then contrast the freedom of 1892 with the very drastic restrictions of these rules 1902. Do you recollect that in 1902 the closure was in full swing?—Yes from 1887. . . .

246. You recollect, too, that between 1892 and 1902 what is now called the guillotine was resorted to on more than one occasion?—Yes, I do not object to that at all.

247. Why do you speak, then, of the more frequent application or the more drastic application of the closure? The reason is that the applications of the closure which you refer to in 1893 were largely on a great measure of the Government that the majority recognised ought to be pressed through, but now we see the closure applied to everything, and to measures which have emanated from the Cabinet more than from the House of Commons. . . .

249. Your idea is this, that the rights of the private Member have been curtailed even in our own days . . . [250] . . . do you know, that since 1832 that complaint has been regularly made, it was made by Lord Brougham and by everyone down since the Reform Bill, and do you know what the answer is—that if these rights were [*sic*: not?] curtailed on account of the increase of education, both of the people and of their representatives in the House of Commons, no business could be conducted at all?—You have got to get a balance between the two, and I think our rules, the rules of 1902, that we are working under, have gone a great deal too far.

251. Now we will take the question of Questions, if I may so call it, in 1902; are you aware that the establishment of questions

[1] Compare Montesquieu, Vol. I, Sect. D, No. XXXVI, p. 378.

was owing to the restriction of the rights of private Members? Are you aware that questions is an institution which did not spring up until 1836 when petitions and motions for petitions were abolished,[1] and that really the questions came in consequence of the curtailment of rights? . . . [252] . . . Now we come to this. Do you not think (and this is 1902) that the restriction of questions to three-quarters of a hour was little short of an outrage?—Yes I do; at any rate, I think it has worked very badly . . .

(B)

LORD R. CECIL, K.C., M.P., EXAMINED

Mr. Swift MacNeill

911. . . . I think you are in favour, as far as you can, of re-establishing what is called the independent member of the House of Commons?—Yes; within limits, I certainly would like to see more independent members of the House of Commons. I do not think I would like to see 670 independent members of the House of Commons.

912. But within limits. Do you recollect how Lord Palmerston defined the independent member—as a gentleman on whom nobody could depend?—Quite.

913. . . . I want to have this out which is on the first page of your memorandum: " That is to say, a deliberative Assembly to have any vitality must be so constituted that every reasonable opinion has some chance of adoption, for, if not, all discussions must be unreal "?—Yes.

914. Now, since the establishment of what we know as Parliamentary Government, when were discussions real, can you tell me? I mean discussions in the Houses of Parliament—when were they real for the purpose of affecting debates?—They were immensely real 100 years ago, or rather more; it is said that Wilberforce, speaking on the motion for Melville's impeachment, changed 40 votes. Pitt, when he began his tenure of office, which lasted 20 years, more or less, was beaten over and over again on very important and vital questions. . . .

917. These cases, as you know, took place at a time when Parliamentary Debates were not published, or published under the greatest restrictions?—Yes. You asked me when it ever happened, and I went back to the time when it was most clearly in force. I should certainly say that right down to the end of 1880, Parliament—that is to say, right down to 1885, at any rate, there was always a reasonable chance of the Opposition succeeding not on Second

[1] Cf. Vol. II, Sect. B, No. XII, at p. 177, and Sect. D, No. XLIX (A), p. 434.

Reading of vital Government measures, no doubt, but on Committee, and they did quite frequently beat the Government. I had the figures taken out for me in the 'seventies and 'eighties, and my impression is that it averaged about three or four defeats a Session to the Government on smaller measures. On the Land Bill of 1881 the Government was defeated in Committee. . . .

919. But you know there was no mandate from the people for the Land Bill?—No, I do not think mandates matter much.

920. I am glad to hear you say that?—I do not say they ought not to matter.

921. My point is this, and is it not true, that in former days the House of Commons might have been regarded in some small degree as a deliberative assembly because pressure from without was less strong?—There were no printed reports?—I think that was one of the reasons certainly.

922. There was no proper education of public opinion?—I will not put it in that way.

923. I would. People then were more Members of Parliament and less delegates?—Certainly, but may I say that I think the real change is not that Members have become more delegates of their constituents, but that they have become more delegates of the Party organisations, which is quite a different thing.[1]

924. And then the Party organisation (I think you will agree with me in this) is much more represented by the Cabinet than by Members of the House of Commons?—I should say that if you really looked into the real principle of our constitution now, it is purely plebiscitical, that you have really a plebiscite by which a particular man is selected as Prime Minister, he then selects his Ministry himself, and it is pretty much what he likes subject to what affects the rule that he has to consider—namely, that he must not do anything that is very unpopular.

925. And this particular man is selected by indications by the people, so that the choice is irresistible?—I think, generally speaking, that would be true, not always. . . .

927. I want to put this to you. You think there is no real discussion in the House of Commons, and I agree with you, but I want to bring out from you that the real reason why there is no real discussion of an important nature in the House of Commons is that the people have given a mandate to the Prime Minister, and the Prime Minister then carries it out with the aid of Parliament?[2] . . .

[1] Cf. Vol. I, Sect. D, No. XLII, p. 392, and Vol. II, Sect. C, No. XXIV, p. 320.

[2] Cf. Vol. II, Sect. D, No. XLII and references given at p. 411.

—I should agree with you, generally speaking, that the procedure questions are only a part of the evil under which the House of Commons is suffering, and that is my view (and, of course, that is one of the reasons I am such a strong advocate of the Referendum). You want to restore a greater and more intimate connection between Members of the House of Commons and the electors who choose them.

935. . . . Is this not the main object of debating now in the House of Commons, not to affect the issue, but to affect public opinion outside?—I think that is true of a good deal of the debate, but I do not think it is true of the debates in Committee. I think the debates on the Second Reading are almost all addressed to the public outside; the debates in Committee I do not think are addressed to the public outside, and they do not have any opportunity of knowing what they are, generally speaking, because they are not reported.

936. Only one more question. Would you not think the main object of the House of Commons is to be a Board of Control over the Government, not perhaps a register of legislation, but more a Board of Control?—. . . The main object of it is to discuss and criticise. . . .

Mr. James Hope

970. You have no special suggestions to make with regard to Supply, to making the control of the House more of a reality with regard to Supply?—No, I do not think that can be, myself. I daresay the Estimates Committee [1] may do something—I do not know how it is working—but I suspect not very much. The real truth is, as far as I know, that there are very few, if any (there are one or two) Members of the House who desire to limit the expenditure of the country when it comes to the actual practical fact.

971. The result is that Supply is made use of to ventilate particular questions only?—Yes, and a very important use. . . .

973. There was a time in the days of Mr. Joseph Hume, and so on, when there was much more of a direct attempt, at any rate?—No, I do not think, probably, there was very much then; in the old days there was, because the object of the House of Commons was to limit the expenditure by the King and his Ministers, really; they were not the same Party at all, but since the Ministers have become representatives of the majority of the House of Commons there really is no object in trying to limit their expenditure . . . [975] . . . It is very difficult to point out really, when you come to think

[1] See Vol. II, Sect. B, No. XXVII, p. 217, and cf. No. XII, at p. 181, and No. XV (B), p. 187.

of it, what can be done towards reducing expenditure, except a very close supervision of the details of the expenditure, and that is obviously impossible by Members of the House of Commons. . . .

(C)

Rt. Hon. A. J. Balfour, M.P., examined

Chairman

1144. Of course, as you are aware, it is not an essential part of Parliamentary work that the Government of the day should be responsible entirely for legislation, or at all; in the United States the Members of the Government are not in Congress, they do not sit either in the House of Representatives or in the Senate, and the legislation is entirely separate from the Government?—I am aware of that, and I have observed with great interest in all the proposals that have been brought before you, there is a distinct, almost an unconscious leaning towards an absolute separation between the legislative and the administrative functions. That system was approached, no doubt, in the eighteenth century. The Government then certainly did not take the same view of their duties in connection with legislation that they do now, . . .

1145. Was there not a stage between the two where they did not insist so much on every detail practically being carried through as they wished it to be, or as they brought it in, and have they not tightened these bonds very much of recent years? . . . — . . . It is absolutely certain that Governments were more tolerant of defeats on aspects of Bills, in old times than they are now. I think, taking Mr. Gladstone's Government of 1868–74, which is commonly regarded as his greatest Government, he was defeated nine times in that Parliament, and I remember one particular case . . . in which he was defeated upon no less a measure than the Ballot Act [1] by a combination of the Tory opposition and a certain number of Radicals. I forgot what the amendment was, but he felt the change was so important that he tried to re-introduce the old form of the Bill, and he was beaten by a larger majority than he had been beaten by the first time; but he went on, and indeed as far as I remember there was no very serious criticism on the part of the Opposition to his going on. . . .

1153. Might we not throw an almost intolerable burden on the Government or on Departments by sending up to Committees a large number of Private Members' Bills, which touch all kinds of subjects, and those Bills are almost invariably, if I may say so, very

[1] See Vol. II, Sect. A, No. XXXIV, p. 111.

sloppy and very slipshod, very incomplete and impracticable . . . ? I think so myself. I may be corrupted by a long sitting upon one of the two Front Benches, but certainly while I do not always admire Government legislation, I never admire private Members' legislation.

1156. Of course, there is no doubt that the length of time during recent years, at any rate, and the continual attendance which is required, is making it difficult for both Parties to get Members to come from the localities to attend the House: do you think if the sitting were less continuous it might relieve that difficulty?—I feel strongly that this House sits too long. I know that is not a view universally held, but I am convinced that Mr. Gladstone was right when he said that the utility of the House was greatly impaired if you compelled it to sit during too many months in the year . . . nor do I think anybody can doubt that it is excessively bad for the Departments. Our system of questions is, I believe, unique.[1] . . . I believe, speaking under correction, that in no legislature in the world is the Executive subjected for an hour a day to a bombardment of questions upon its Executive work. . . . [1158] . . . I think it is a system which has immense value, I cannot doubt that, but let it be remembered that . . ., if you do not give to the Departments and to the Ministers in charge of the Departments, a close time in which they are not perpetually considering " How am I to defend myself against this attack or that attack? " in which they are allowed to plough the field without having a sword in one hand, you do not really give them a fair chance. They cannot think out the problems which they have got to deal with. . . . We are now asking Parliament . . . to deal with social problems. Now, social problems from the very nature of the case are problems of extreme difficulty and complexity, and if you never give to Ministers and the Departments time to think out those excessively difficult questions, I do not see how you can expect them to bring forward well-considered legislation. . . .

1168. . . .—I am utterly sceptical myself about managing a Department through a Committee of this House or any Committee. I am convinced that the responsibility must lie with the Parliamentary head of the Department, and with his colleagues in the Cabinet. I will not say the only result, but one result of surveying the work of a Department by a Committee is that the whole work of that Department stops until the Committee ceases its investigations, by which I mean that the Parliamentary head of the Department, the permanent head of the Department and his chief subordinates are working up their case; they are going to be secretly cross-examined, perhaps they are to be cross-examined even in a

[1] See p. 221 (this extract) and references there given.

hostile spirit; they are in the position of defendants, and, like other defendants, they spend their time in buttressing up their position, and not in administering their office. . . . Therefore I think the minute examination of officials before a Committee may easily be carried too far, and as for administering a Department by a Committee, I think the thing is wholly impracticable. I gather that Mr. Jowett took a somewhat different view, basing his opinion upon municipal experience. His municipal experience is far greater than mine, and I should not venture to differ from him as far as municipal work is concerned, but I am quite convinced that the idea of managing great Departments of State by a Parliamentary Committee is perfectly futile, and I do not think it is really worth consideration.[1]

1258. . . .—I think that one of the most important functions of the House of Commons is criticism of the Government or a general commentary on public affairs. . . . It is perfectly true that the opportunities have been prodigiously curtailed; it is quite true that there was a time, for instance, at which you could debate the state of Europe on the motion from the Chair that the candles should be lighted; but I do not think that meant that our forefathers thought that nothing short of endless opportunities would enable adequate criticism. It is that they were never faced with the problems we are faced with. Just think how many ways there are of criticising the Government now. Firstly, you have the debate on the Address; then you have all the debates on the Estimates, and remember that those debates are now taken, or ought to be taken if the spirit of the Supply rule was carried out, week by week. There is a weekly opportunity on some estimate or other of criticising the Government. You may say if you like that the Estimates are put down by the Government, and that they are not put down for the convenience of the Opposition, but the principle of the Supply rule was that they should be put down for the convenience of the Opposition, and that used to be, and for anything I know to the contrary is still, the practice of the House. . . . Then you have in addition an unlimited field of discussion upon the Second Reading of the Appropriation Bill, upon the Third Reading of the Appropriation Bill, and upon the Motion for Adjournment for the Holidays, and the Motion for Adjournment for the Holidays occurs at least twice in every Session, and the Appropriation Bill also occurs at least twice in every Session. Then, of course, you have Votes of Censure, necessarily not very frequent, but which always remain as a last resource to the Opposition, if they think the opportunity is sufficiently important or otherwise justifies a

[1] Compare Asquith's views at p. 231 of this extract.

request on the part of the responsible leader of the Opposition for a day. In addition to that, you have the hour's cross-examination of the Government every day, and you have the Motions for Adjournment. I quite agree that under the present system Motions for Adjournment come on at a very inconvenient hour and are limited in time.

1689. . . .—I do not think we ought to suppose that the private Members' opinions have no effect on the Government; I think they have, not probably the Opposition, but when the views of the Opposition are supported or are sympathised with by a very large number of the Government side, there probably is pressure put on the Government to modify in certain cases the policy which they otherwise would have adopted. . . . The external aspect, no doubt, of too much of our debate is that the thing is argued, that then the Government Whips are put on, and that then, irrespective of the argument, the decision of the House is taken. That is true to a large extent, but I must not be taken as supposing that the private Member is therefore no more than a mere machine, with no power to form an opinion, and with no opportunity of that opinion being brought effectively before the Executive.

1690. Do you think the power of the caucus in the constituencies has increased, and therefore operates upon the action of private Members in the House?—I think the constituencies do . . . follow too mechanically now the views of headquarters, but I do not think that is because the central organisation of either party, so far as I know anything about it, is exercised more than it used to be. I think it is because in the localities there is a keener interest in the party conflict, and any Member whom they think is not playing up to their side, they desire to exchange for somebody who will be more effective from that point of view. . . .

Mr. Ponsonby

1703. You think the control of the House over the Foreign Affairs, which of late years have been less and less discussed, is sufficient?— . . . [1704] . . . —If there had been a very sharp difference of opinion between the two big parties in the House or between any of the parties in the House, as to the trend of Foreign Policy, I think you would have found much more time given to it. There was much more time given to it when there was such a difference of opinion, as in Lord Beaconsfield's administration.

1705. A Party division?—Yes; but when there is no such Party division, when the leaders of the Opposition, without at all committing themselves to the details of Foreign Administration, of which, indeed, they have a very imperfect acquaintance, are fairly confident that the general lines pursued are not inconsistent with

national welfare, then I think probably the less time given to Foreign Affairs the better. . . . [1707] . . . Indiscreet speeches, the value of which we can perfectly weigh within the House, get reported and circulated abroad, or in India, or even at home in the provinces, and very often make bad blood quite unnecessarily, and raise difficulties which might easily have been avoided.

1708. Then you do not think the uninformed condition of the House of Commons on Foreign Affairs matters?—I am not quite disposed to agree that the position of the House of Commons is uninformed. It does not know, and it cannot know, and, if I may say so, it ought not to know exactly what passed between the Foreign Secretary and the Ambassador of this or that great Power in such and such a conversation on such and such a day. Such conversations must be confidential if you are to work the European system at all, and I do not think that it would be any gain to the peace of the world, or our own national interests, if 670 prying eyes were perpetually directed towards these current details of international negotiations.[1]

Lord Hugh Cecil

1771. . . . It has been said that the existing rigidity of party discipline depends on the constituencies. Ought not a distinction to be drawn between the constituency and the party organisation in the constituency; for example, a Member is censured, and perhaps driven out of Parliament for giving particular votes against his party, and yet it may be almost certain, . . . that in every one of these votes, both the votes for his party and the votes against his party, he has represented the mind of the majority of his constituency, . . . Let us assume the constituency to be a Liberal constituency, normally every vote he had given in the ordinary party divisions is approved by the normal party majority. On some special occasions he votes with the Unionist party, but these are probably cases in which there is a very strong case against the Liberal party, and there may be, and almost certainly is, a sufficient body of dissentient Liberals who on that particular issue would agree with the Unionist party. So that he has really represented strictly the majority of his constituents in all his votes. Yet when the election comes a third candidate is run, and he finds himself supported only by those dissentient Liberals probably, and a certain section of the Unionist party who think he has behaved well, and so on?— . . . —I do not see any possible method of avoiding that. The party which does not organise is certain to be defeated, and as long as that is so the premium on organisation is so great that no party can resist it.

[1] Cf. Vol. I, Sect. D, No. VII, p. 327.

(D)

Rt. Hon. H. H. Asquith, M.P. (First Lord of the Treasury and Secretary of State for War) examined

Chairman

2176. I presume you agree that it is really necessary that the Government must supervise and keep control over all legislation?—It must; it is responsible. . . . [2177] . . . —I think the interdependence of the Executive and Legislature is perhaps the most fundamental thing in our Constitutional system. I do not desire to see it changed at all.[1]

2187. Have you ever considered whether it would be practicable to adopt the principle with regard to legislation, of not embodying the details so fully in Bills as we do, leaving them to be drafted by the Departments after the Bills have been carried which fix the general principle, such drafts being laid upon the table of the House as Orders? I understand that it is a system which is adopted in France?—It was a favourite idea of the late Mr. John Stewart [*sic*] Mill. . . . but it has never found very much favour here, I think, partly because people have a certain amount of dread and suspicion of the draughtsman. After all, you are leaving enormous power in the hands of the draughtsman if you are to give him the right finally to control the shape of your Bill. I see no objection to it in principle. . . .

2189. You remember possibly the 1904 Licensing Bill . . . [2190] . . . provided for regulations to be drafted by the Secretary of State, by the Home Office, and the regulations drafted under it for the guidance of magistrates were longer than the Bill itself? . . . [2192]. . . . But if those regulations had been in the Bill they would have made it enormously longer; the discussion would have been endless, and, as a matter of fact, I believe they were accepted afterwards without any controversy whatever?—Every Minister who has ever been in charge of a Bill will heartily sympathise with you in encouraging the drafting of Bills in such a shape that as much of the Bill as possible may be thereafter provided by regulation or Order in Council or some mechanism of that kind, and not be subject to possible discussion in Committee.[2]

2193. They could be discussed by being laid on the table of the House, but when you have carried the Bill there would be no reason

[1] Cf. Vol. I, Sect. D, No. XXXVI, p. 378, and Vol. II, Sect. D, No. XLII (A), at p. 411.

[2] Compare Vol. II, Sect. A, No. XXIV, §§ XV and XVI, at p. 72, and Sect. C, No. XX, p. 307.

for obstructively discussing those details?—I should be very glad to see that experiment tried.

2203. . . . —Although in form they move a reduction in the Estimates, the speeches and the actions of Members are almost invariably in favour of increased expenditure. The people who keep down expenditure are the much-abused Ministers and Departments. . . . you say a lot of time is wasted on the floor of the House in discussing small points of detail, but you will never know in the case of the Estimates of any particular Department where a big question of policy may not arise on what in itself appears to be a comparatively insignificant item. To-day, for instance, we have the Home Office Vote coming on for discussion. I know as an old Home Secretary that there is a mass of things in the Home Office Vote of the most detailed and technical description which you could discuss at endless length if you liked on the floor of the House. On the other hand, there is this question of the feeding, or what is to be done with these women, which you can only raise there, a thing which nobody ever anticipated five years back, and which perhaps five years hence will be regarded as ancient history. That is just a sort of illustration of the kind of thing which springs up which for the moment absorbs public attention, and which is for the moment of very great and perhaps vital importance; but the only opportunity for discussing it is afforded by some, under normal conditions, practically non-controversial item in the Estimates of a particular Department, and I think everybody would be very much dissatisfied, and reasonably dissatisfied, if opportunities of that kind were withdrawn from the House as a whole. . . .

Mr. Robert Harcourt

2226. You suggested a very damaging criticism of the idea of sending the Estimates upstairs on various grounds, but I do not know whether you have considered at all the special point of the Scotch or Irish Estimates, whether your objections would apply to those; for instance, the analogy of the Scottish Committee, whether it might be desirable to send upstairs Scottish Estimates?—I speak as a Scottish Member, and I believe the whole of the House would be glad to see the Scottish Estimates removed to a seclusion where only the Scottish Members were to be found. I do not think any very great harm would result from that, because English Members very rarely take any part in them at all or show any interest in them. I do not see any great objection to that suggestion.

2229. Have you considered at all . . . the practice of foreign Parliaments with regard particularly to the Navy, Army, and Foreign Affairs, of having a Budget Committee or some inter-

mediary between the Cabinet and the full House of Commons in which discussion is conducted in private without the presence of the Press, and I presume the Minister expounds his policy and is criticised in a preliminary way?—I see great difficulty in adapting that to our constitutional and administrative machinery. In France, where the system has been carried to the highest point of development, the Committee chooses a reporter who makes a report to the House, and that report has really the same authority, or very nearly the same, and sometimes much greater, than a Ministerial statement. . . . I doubt very much whether you would acclimatise or, rather engraft that system of bureau upon our Parliamentary system.[1]

Chairman

2460. With regard to money resolutions, what is your view? —That is a controversial question upon which I do not like to express a very positive opinion. I attach the greatest possible importance to the English principle that no charge should be imposed except on the recommendation of the Crown.[2] I am not disposed to attach quite so much importance as I once did to the value of money resolutions as a check upon extravagance. When I was advising the Government I remember that Ministers had natural objections to clauses which involved resolutions, because it made them more difficult to get through, and in that way, the requirement of the resolution operated as a kind of red flag; . . . I am not quite sure that that motive operates so strongly now. . . .

[Report, Select Committee, 1914 (Procedure) : 378 : 1915.]

[1] Cf. Balfour's view (in this extract), qu. 1168, at p. 225.

[2] See Vol. I, Sect. B, No. XVIII, p. 197, and Vol. II, Sect. B, No. VII, p. 166.

SECTION C

JUDICIAL PROCEEDINGS,

I

THE CASE OF THE DEAN OF ST. ASAPH, 1783–84

Shrewsbury Assizes, Aug. 6, 1784.

Mr Justice *Buller*. Gentlemen of the Jury: This is an indictment against William Davies Shipley,[1] for publishing the pamphlet[2] which you have heard, and which the indictment states to be a libel.

The defendant has pleaded that he is not guilty; and whether he is guilty *of the fact* or not, is the matter for you to decide. . . .[3]

You have been pressed very much by the counsel [Erskine for the Dean] and so have I also to give an opinion upon the question, whether this pamphlet is or is not a libel? Gentlemen, it is my happiness that I find the law so well and so fully settled that it is impossible for any man who means well to doubt about it; . . . the matter appears upon the record, and as such, it is not for me, a single judge sitting here at *nisi prius* to say, whether it is or is not a libel. . . . Those who adopt the contrary doctrine forget a little to what lengths it would go; for if that were to be allowed . . . you deprive the subject . . . of his appeal—you deprive him of his writ of error; for if I was to give an opinion here that it was not a libel, and you adopted that, the matter is closed for ever . . . whatever appears upon the record is not for our decision here, but may be the subject of further consideration in the court out of which the record comes; and afterwards, if either of the parties thinks fit, they have a right to carry it to the dernier resort, and have the opinion of the House of Lords upon it; and therefore that has been the uniform and established answer not only in criminal but civil cases. . . .

You have been addressed by the quotation of a great many

[1] The Dean of St. Asaph.

[2] " A Dialogue between a Gentleman and a Farmer "—where principles and persons of the government are very thinly disguised.

[3] Cf. Vol. II, Sect. A, No. IV, p. 6; also Vol. II, Sect. C, No. VI, p. 251.

cases upon libels. It seems to me that the question is so well settled, that gentlemen should not agitate it again. . . . The very last case that has ever arisen upon a libel was conducted by a very respectable and honourable man who is as warm a partisan and upon the same side of the question, as the counsel for the defendant, and, I believe, of what is called the same party. But he stated . . . there could be but three questions.

The first is, Whether the defendant is guilty of publishing the libel?

The second, Whether the innuendos or the averments made upon the record are true?

The third, which is a question of law, Whether it is or is not a libel? Therefore, said he, the two first are the only questions which you [1] have to consider: and this, added he, very rightly, is clear and undoubted law. It is adopted by me as clear and undoubted law, and it has been held so for considerably more than a century past. . . . With such a train of authorities it is really extraordinary to hear the matter now insisted on as a question which admits a doubt; and if we go further back, it will be found still clearer, for about the time of the Revolution authorities will be found which go directly to the point . . . [he discusses the Seven Bishops' and Bushell's cases] [2]. . . The judges are sworn to administer the law faithfully and truly. The jury are not so sworn, but to give a true verdict according to the evidence. Did any man ever hear of it, or was it ever yet attempted, to give evidence of what the law was? If it were done in one instance it must hold in all. . . . It is, after the fact is found by the jury, for the Court to say whether it is an offence or not. It would undoubtedly hold in civil cases as well as criminal. . . .

I wish to be as explicit as I can in the directions I give, because if I err in any respect, it is open to the defendant to have it corrected. As far as it is necessary to give any opinion in point of law upon the subject of the trial I readily do it; beyond that I don't mean to say a word because it is not necessary nor proper here. In a future stage of the business, if the defendant is found guilty, he will have a right to demand my opinion; and if ever that happens, it is my duty to give it, and then I will. . . . Therefore I can only say, that if you are satisfied that the defendant did publish this pamphlet, and are satisfied as to the truth of the innuendos in point of law, you ought to find him guilty. If you are not satisfied of that, you will of course acquit him.

[The Jury found the defendant "Guilty of publishing only": after considerable dispute between Erskine and the Judge as to the meaning

[1] *i.e.* the jury.

[2] See Vol. I, Sect. C, Nos. I and VII, pp. 245, 258.

of this, it was recorded as] " Guilty of publishing, but whether a libel or not the jury do not find."

In the Court of King's Bench, Nov. 15, 1784, on the motion to set aside the verdict and grant a new trial.

The Earl of *Mansfield*, L.C.J. . . . The answer to these three objections is, that by the constitution the jury ought not to decide the question of law, whether such a writing, of such a meaning, published without a lawful excuse, be criminal; . . . therefore it is the duty of the judge to advise the jury to separate the question of fact from the question of law; and as they ought not to decide the law; and the question remains entire upon the record, the judge is not called upon necessarily to tell them his own opinion. It is almost peculiar to the form of prosecution for libel, that the question of law remains entirely for the Court *upon record* . . . so that a general verdict, ' that the defendant is guilty,' is equivalent to a special verdict in other cases. It finds all which belongs to the jury to find; it finds nothing as to the law. Therefore when a jury have been satisfied as to every fact within their province to find, they have been advised to find the defendant *guilty*, and in that shape they take the opinion of the Court upon the law. . . . The subject matter of these three objections has arisen upon every trial for a libel since the Revolution, which is now near one hundred years ago. . . . During all this time, as far as it can be traced, one may venture to say, that the direction of every judge has been consonant to the doctrine of Mr. Justice Buller; and no counsel has complained of it by any application to the Court. . . .

. . . We must in all cases of tradition trace backwards, and presume, from the usage which is remembered, that the precedent usage was the same . . . I by accident (from memory only I speak now) recollect one where the *Craftsman* was acquitted; and I recollect it from a famous, witty, and ingenious ballad that was made at the time by Mr. Pulteney; and though it is a ballad, I will cite the stanza I remember from it, because it will show you the idea of the able men in opposition, and the leaders of the popular party in those days. They had not an idea of assuming that the jury had a right to determine upon a question of law, but they put it upon another and much better ground. The stanza I allude to is this:

For Sir Philip [1] well knows,
That his *innuendos*
Will serve him no longer
In verse or in prose;
For twelve honest men have decided the cause,
Who are judges of fact, though not judges of laws.

[1] Sir Philip Yorke, afterwards Lord Chancellor Hardwicke.

It was the admission of the whole of that party: they put it right; they put it upon the *meaning* of the *innuendos*: upon *that* the jury acquitted the defendant: and they never put a pretence of any other power, except when talking to the jury themselves. . . .

Such a judicial practice in the precise point from the Revolution, as I think, down to the present day, is not to be shaken by arguments of general theory or popular declamation. Every species of criminal prosecution has something peculiar in the mode of prosecution; therefore general propositions, applied to all, tend only to complicate and embarrass the question. No deduction or conclusion can be drawn from what a jury *may* do, from the *form* of procedure, to what they *ought* to do upon the fundamental principles of the constitution and the reason of the thing, if they will act with integrity and good conscience.

The fundamental definition of trial by jury depends upon a universal maxim that is without an exception. Though a definition or maxim in law, without an exception, it is said, is hardly to be found, yet I take this to be a maxim without an exception: *Ad quaestionem juris non respondent juratores; ad quaestionem facti non respondent judices.* . . .

The constitution trusts that, under the direction of a judge, they will not usurp a jurisdiction which is not in their province. They do not know and are not presumed to know the law; they are not sworn to decide the law; they are not required to decide the law. . . . But further, upon the reason of the thing, and the eternal principles of justice, the jury ought not to assume the jurisdiction of the law. As I said before, they do not know, and are not presumed to know anything of the matter; they do not understand the language in which it is conceived, or the meaning of the terms. They have no rule to go by but their affections and wishes . . . so the jury who usurp the judicature of the law, though they happen to be right, are themselves wrong, because they are right by chance only, and have not taken the constitutional way of deciding the question. It is the duty of the judge, in all cases of general justice, to tell the jury how to do right, though they have it *in their power* to do wrong, which is a matter entirely between God and their own consciences.

To be free, is to live under a government by law. The *liberty of the press* consists in printing without any previous license, subject to the consequences of law. The *licentiousness* of the press is *Pandora's* box, the source of every evil. . . .

Jealousy of leaving the law to the Court, as in other cases, so in the case of libels, is now, in the present state of things, puerile rant and declamation. The judges are totally independent of the

minister that may happen to be, and of the king himself. Their temptation is rather to the popularity of the day. But I agree with the observation cited by Mr. Cowper from Mr. J. Foster, ' that a *popular* judge is an odious and pernicious character.' . . .

In opposition to this, what is contended for? That the law shall be in every particular cause what any twelve men, who shall happen to be the jury, shall be inclined to think, liable to no review, and subject to no control, under all the prejudices of the popular cry of the day, and under all the bias of interest in this town, where thousands, more or less, are concerned in the publication of newspapers, paragraphs, and pamphlets. Under such an administration of law, no man may counsel or advise, whether a paper was or was not punishable.

I am glad I am not bound to subscribe to such an absurdity, such a solecism in politics.—Agreeable to the *uniform* judicial practice since the Revolution warranted by the fundamental principles of the constitution, of the trial by jury, and upon the reason and fitness of the thing, we are all of opinion that this motion should be rejected, and this rule discharged.

[The judgement was unanimous. Erskine subsequently moved for Arrest of Judgement. Lord Mansfield and his fellow judges granted this, discharging the Dean, on the ground that " there were no averments to point the application of the paper as a libel upon the King and his Government ".]

[*S.T.*, xxi, 943.]

II

GRANT *v.* GOULD, 1792

[Grant moved, in the court of King's Bench, for a prohibition to prevent the execution of a sentence of a thousand lashes passed on him by a court-martial. He denied that the offence with which he was charged was a military offence (persuading two soldiers to desert to join the East India Company's service), or that as a recruiting agent he was liable to punishment by court-martial.]

Lord Loughborough. . . . This leads me to an observation that martial law such as it is described by *Hale*, and such also as it is marked by Mr. Justice *Blackstone*, does not exist in *England* at all. Where martial law is established and prevails in any country, it is of a totally different nature from that, which is inaccurately called martial law, merely because the decision is by a court martial, but which bears no affinity to that which was formerly attempted to be

exercised in this kingdom; which was contrary to the constitution, and which has been for a century totally exploded. Where martial law prevails, the authority under which it is exercised, claims a jurisdiction over all military persons, in all circumstances. Even their debts are subject to enquiry by a military authority: every species of offence, committed by any person who appertains to the army, is tried, not by a civil judicature, but by the judicature of the regiment or corps to which he belongs. It extends also to a great variety of cases, not relating to the discipline of the army, in those states which subsist by military power. Plots against the Sovereign, intelligence to the enemy, and the like, are all considered as cases within the cognizance of military authority.

In the reign of King *William*, there was a conspiracy against his person in *Holland*, and the persons guilty of that conspiracy were tried by a council of officers. There was also a conspiracy against him in *England*, but the conspirators were tried by the common law. And within a very recent period, the incendiaries who attempted to set fire to the docks at *Portsmouth*, were tried by the common law. In this country, all the delinquences of soldiers are not triable, as in most countries of *Europe*, by martial law; but where they are ordinary offences against the civil peace, they are tried by the common law courts. Therefore it is totally inaccurate to state martial law, as having any place whatever within the realm of *Great Britain*. But there is by the providence and wisdom of the Legislature, an army established in this country, of which it is necessary to keep up the establishment. The army being established by the authority of the legislature, it is an indispensable requisite of that establishment, that there should be order and discipline kept up in it, and that the persons who compose the army, for all offences in their military capacity, should be subject to a trial by their officers. That has induced the absolute necessity of a mutiny act, accompanying the army.[1] . . . It is one object of that act to provide for the army; but there is a much greater cause for the existence of the mutiny act, and that is, the preservation of the peace and safety of the kingdom: for there is nothing so dangerous to the civil establishment of a state, as the licentious and undisciplined army. . . . An undisciplined soldiery are apt to be too many for the civil power; but under the command of officers, those officers are answerable to the civil power, that they are kept in good order and discipline. . . . The object of the mutiny act therefore, is to create a court invested with authority to try those who are a part of the army . . . and the object of the trial is limited to breaches of military duty. Even by that extensive power granted by the legis-

[1] Vol. I, Sect. A, No. XX, p. 55, and references there given.

lature to his Majesty, to make articles of war, those articles are to be for the better government of his forces, and can extend no further than they are thought necessary to the regularity and due discipline of the army. . . .

This Court [*i.e.* a military court] being established in this country by positive law, the proceedings of it, and the relation in which it will stand to the courts of *Westminster Hall*, must depend upon the same rules, with all other courts, which are instituted, and have particular powers given them, and whose acts therefore, may become the subject of application to the courts of *Westminster Hall*, for a prohibition. Naval courts martial, military courts martial, courts of admiralty, courts of prize are all liable to the controuling authority, which the courts of *Westminster Hall* have, from time to time, exercised, for the purpose of preventing them from exceeding the jurisdiction given to them: the general ground of prohibition, being an excess of jurisdiction, when they assume a power to act in matters not within their cognizance. . . .

It cannot be a foundation for a prohibition that in the exercise of their jurisdiction the court has acted erroneously. That may be a matter of appeal, where there is an appeal, or a matter of review: though the sentence of a court martial is not subject to a review, there are instances no doubt, where upon application to the crown, there have been orders to review the proceedings of courts martial.

My brother *Adair* justly and correctly said, that a prohibition to prevent the proceedings of a court martial, is not to be granted, without very sufficient ground and due consideration. Not that it is not to be granted, because it would be dangerous in all cases to grant prohibitions; for it would be undoubtedly dangerous, if there was a facility in applying for prohibitions, and the sentence were to be stopped, for asking it to be further enquired into. But in such cases it is the duty of the court to consider the matter fully and deliberately, upon the motion to prohibit, and the court not, without great danger, take the course in such a case which they have done in others, where there is no danger in the delay, to put the matter in prohibition, and determine it, upon the record.[1] . . .

[Grant, Lord Loughborough made clear, came under the Mutiny Act and the Articles of War because he received money as a soldier, having, for his recruiting work, assumed the character of a sergeant in the 74th regiment, and taken pay as such. Therefore the military court had power to punish him. If the sentence was heavy his only hope lay in Royal mercy.]

Rule discharged.

[2 H. Bla., 98.]

[1] Cf. Vol. II, Sect. C, No. III, p. 240.

III

THE CASE OF WOLFE TONE, 1798

[Wolfe Tone, a civilian, was sentenced on November 10, 1798, by a Dublin court martial to be hanged, having been captured in the course of the attempted French invasion of Ireland.]

In the interval [*i.e.* between the confirmation of the sentence of the court martial by the Lord Lieutenant and its execution] a motion was made in the Court of King's Bench by Mr. Curran, on an affidavit of Mr. Tone's father, stating that his son had been brought before a bench of officers, calling itself a court martial, and by them sentenced to death.

" I do not pretend to say," observed Mr. Curran, " that Mr. Tone is not guilty of the charges of which he was accused;—I presume the officers were honourable men;—but it is stated in the affidavit, as a solemn fact, that Mr. Tone had no commission under His Majesty, and therefore no court martial could have any cognizance of any crime imputed to him, while the Court of King's Bench sat in the capacity of the great criminal court of the land. In times when war was raging, when man was opposed to man in the field, courts martial might be endured; but every law authority is with me, while I stand upon this sacred and immutable principle of the constitution—*that martial law and civil law are incompatible*; and that the former must cease with the existence of the latter. This is not the time for arguing this momentous question. My client must appear in this court. *He is cast for death this day.* He may be ordered for execution while I address you. I call on the Court to support the law.[1] I move for a *habeas corpus* to be directed to the provost marshal of the barracks of Dublin, and major Sandys to bring up the body of Mr. Tone.

Lord Chief Justice [Kilwarden].—Have a writ instantly prepared.

Mr. *Curran.*—My client may die while this writ is preparing.

Lord Chief Justice.—Mr. Sheriff, proceed to the barracks, and acquaint the provost-marshal that a writ is preparing to suspend Mr. Tone's execution; and *see that he be not executed.*

[The Court awaited in a state of the utmost agitation, the return of the Sheriff.]

Mr. *Sheriff.*—My lords, I have been at the barracks, in pursuance of your order. The provost-marshal says he must obey major Sandys. Major Sandys says he must obey lord Cornwallis.

Mr. *Curran.*—Mr. Tone's father, my lords, returns, after serving the Habeas Corpus: he says general Craig will not obey it.

[1] Cf. Vol. II, Sect. C, No. II, p. 237.

Lord Chief Justice.—Mr. Sheriff, take the body of Tone into your custody. Take the provost-marshal and major Sandys into custody: and show the order of this Court to general Craig.

Mr. *Sheriff* (who was understood to have been refused admittance at the barracks) returns.—I have been at the barracks. Mr. Tone, having cut his throat last night, is not in a condition to be removed. As to the second part of your order, I could not meet the parties.

[A French Emigrant Surgeon, whom General Craig had sent along with the Sheriff, was sworn.]

Surgeon.—I was sent to attend Mr. Tone this morning at four o'clock, his windpipe was divided. I took instant measures to secure his life, by closing the wound. There is no knowing, for four days, whether it will be mortal. His head is now kept in one position. *A sentinel is over him, to prevent his speaking.* His removal would kill him.

Mr. Curran applied for further surgical aid, and for the admission of Mr. Tone's friends to him. [*Refused.*]

Lord Chief Justice.—Let a rule be made for suspending the execution of Theobald Wolfe Tone; and let it be served on the proper persons.

[Mr. Tone lingered until the 19th day of November, when he expired.]

[*S.T.*, xxvii, 624.]

IV

WRIGHT *v.* FITZGERALD, 1798–1800 [1]

At Clonmell Assizes, March 14, 1799.

[In this case, Mr. Wright, a teacher of French in Clonmell, brought an action against Thomas Judkin Fitzgerald, late High Sheriff of Tipperary, for £1000 damages. Mr. Fletcher "in a nervous and eloquent speech, stated the plaintiff's case", which was that he had been tied up and flogged, without trial, and in spite of his loyalty. The Defence was that it was necessary to inspire terror to put down the rebellion and to extort confessions.]

. . . Mr. Justice *Chamberlain* then proceeded to charge the jury. His lordship said, that the jury were not to imagine, that the

[1] The importance of this case lies in its being the main authority for the doctrine that emergency measures for dealing with rebellion are not justified once order has been restored and ordinary Courts can function; an Indemnity Act does not normally relieve persons from responsibility for acts committed *mala fide*. But compare with this judgement Vol. II, Sect. C, No. XV, p. 282; No. XVII, p. 294; No. XXI, p. 312; No. XXIII, p. 317; also Sect. D, No. XXVII, p. 389.

legislature, by enabling magistrates to justify under the Indemnity Bill, had released them from the feelings of humanity, or permitted them wantonly to exercise power, even though it were to put down rebellion. No; it expected that in all cases there should be a grave and serious examination into the conduct of the supposed criminal; and every act should show a mind intent to discover guilt, not to inflict torture. By examination or trial, he did not mean that sort of examination and trial which they were then engaged in, but such examination and trial, the best the nature of the case, and the existing circumstances would allow of. That this must have been the intention of the legislature, was manifest from the expression— "magistrates and all other persons," which proved that as every man, whether magistrate or not, was authorised to suppress rebellion, and was to be justified by that law for his acts, it is required, that he should not exceed the necessity which gave him the power; and that he should show in his justification, that he had used every possible means to ascertain the guilt which he had punished; and above all, no deviation from the common principles of humanity should appear in his conduct.

The plaintiff appeared, by evidence uncontradicted, to be a man of unimpeachable character, and to have been grossly and wantonly abused; he was therefore entitled to a compensation in damages;— what those damages should be, it was not his province to determine; but from the injury proved to have been sustained, if the jury should give the whole damages (1000 l) laid in the declaration, he would not think it too much.

He thought it but justice to the defendant to say, that he believed he had done much good in his capacity as sheriff, had suppressed rebellion in his country, and had proved himself to be a man of great courage and intrepidity.

Lord *Yelverton* said, he should add but one or two words to the admirable charge delivered by his brother Chamberlain; he subscribed implicitly to his construction of the statute, to his deductions of the facts proved, to his opinion of the damages, and to his character of the defendant. But all this did not warrant him in his conduct towards the plaintiff. The defendant had indeed manifested his loyalty most fully, for he had written it in blood, and imprinted his name on the plaintiff's back.

The jury retired, and found a verdict for the plaintiff 500 l damages and 6d. costs.

[The Court of Exchequer dismissed Fitzgerald's application to set aside the verdict with full costs.]

[*S.T.*, xxvii, 765.]

V

BURDETT *v.* ABBOT, 1811

[An action for trespass brought by Sir Francis Burdett, M.P., in the court of King's Bench. Burdett had published a letter in Cobbett's *Weekly Register* which the House of Commons had resolved was libellous and scandalous: the House had resolved that he was guilty of a breach of privilege; and the Speaker's (Abbot) warrant for his arrest had been executed with the assistance of soldiers.]

LORD ELLENBOROUGH, C.J.[1] . . . The only points which are immediately presented by the record for our decision are, first, Whether the House of Commons has any authority by law to commit in cases of contempt as a breach of privilege? Secondly, Whether, supposing the House to have such an authority in general, that authority has been well executed by the warrant in question: that is, whether the warrant stated in the plea of the defendant discloses a sufficient ground of commitment in this instance? And thirdly, Whether the means which have been used for the execution of the Speaker's warrant are in law justifiable? . . .

[He dismisses most of the cases mentioned in the trial as beside the point: Thorpe's case, for instance, is concerned merely with the privilege of individual members, which are justified " that they may have their freedom and liberty freely to intende upon Parliament ".]

. . . As to the first point which arises in this case; has the House of Commons a right to commit for breach of privilege? It has been argued, that they are prohibited from imprisoning persons by the statute of Magna Charta, and the 28 *Ed.* 3. *c.* 3.: but the provision in Magna Charta directed against acts of unauthorized force, " that no man shall be imprisoned but by the *lawful* judgement of his peers, or *by the law of the land*; " and that of the stat. 28 *Ed.* 3. " that no man shall be put out of land or tenement, *nor taken or imprisoned*, nor disinherited, nor put to death, without being brought in to answer *by due process of the law*; " are satisfied as far as they relate to this subject, if the *lex et consuetudo parliamenti* be, as Lord Coke and all the writers on the law have held that it is, part of the *law of the land* in its large and extended sense:[2] . . . [an antiquarian discussion of the origins of the House of Commons]. . . . The privileges which belong to them seem at all times to have been, and necessarily must be, inherent in them, independent of any precedent: it was necessary that they should have the most complete

[1] Besides ruling on the point before him the Chief Justice indulged in *dicta* of importance in future controversy.

[2] See Vol. I, Sect. C, No. X, at p. 280, and references there given for Vol. I; see also Vol. II, Sect. C, No. XI, at p. 268, No. XIX, at p. 301.

personal security, to enable them freely to meet for the purpose of discharging their important functions, and also that they should have the right of *self-protection*: I do not mean merely against acts of individual wrong; for poor and impotent indeed would be the privileges of Parliament, if they could not also protect themselves against injuries and affronts offered to the aggregate body, which might prevent or impede the full and effectual exercise of their parliamentary functions. This is an essential right necessarily inherent in the supreme legislature of the kingdom, and of course as necessarily inherent in the parliament assembled in two Houses as in one. The right of self-protection implies, as a consequence, a right to use the necessary means for rendering such self-protection effectual. Independently, therefore, of any precedents or recognized practice on the subject, such a body must à priori be armed with a competent authority to enforce the free and independent exercise of its own proper functions, whatever those functions might be. On this ground it has been, I believe, very generally admitted in argument, that the House of Commons must be and is authorized to remove any immediate obstructions to the due course of its own proceedings. But this mere power of removing actual impediments to its proceedings would not be sufficient for the purposes of its full and efficient protection: it must also have the power of protecting itself from insult and indignity wherever offered, by punishing those who offer it. Can the High Court of Parliament, or either of the two Houses of which it consists, be deemed not to possess intrinsically that authority of punishing summarily for contempts which is acknowledged to belong, and is daily exercised as belonging, to every superior court of law, of less dignity undoubtedly than itself? And is not the degradation and disparagement of the two Houses of parliament in the estimation of the public, by contemptuous libels, as much an impediment to their efficient acting with regard to the public, as the actual obstruction of an individual member by bodily force, in his endeavour to resort to the place where parliament is holden? And what would it consist with the dignity of such bodies, or what is more, with the immediate and effectual exercise of their important functions, that they should wait the comparatively tardy result of a prosecution in the ordinary course of law, for the vindication of their privilege from wrong and insult? The necessity of the case would, therefore, upon principles of natural reason, seem to require that such bodies, constituted for such purposes, and exercising such functions as they do, should possess the powers which the history of the earliest times shews that they have in fact possessed and used. . . .

[Further and lengthy antiquarian discussion.]

. . . So that if the *Parliament itself*, in any *anterior form* of its existence, be of prescriptive antiquity, about which no reasonable doubt can be entertained, the same privileges which were in such anterior form then enjoyed by it may still (if necessary so to consider it) be even technically prescribed for by Parliament in the very form into which it has since resolved itself and now subsists: unless, indeed, it can be contended with effect, that the legislature itself is incompetent to vary the precise form in which, in time beyond memory, it appears to have existed and acted; a point which, I presume, few persons will be hardy enough to contend for. There is no pretence, therefore, for treating the privileges of the House of Commons, as some persons have treated them, as things of a novel origin and constitution, beginning within time of legal memory, and standing upon no authority of prescription or statute.

These privileges appear to have been claimed, exercised and recognized in numerous precedents almost as early as we can distinctly trace the House acting in its separate parliamentary capacity. . . . [He mentions the cases of Thorpe, Ferrers, Trewinnard, W. Thranwis, John Wentworth, and arrives at that of Hall (1580) an M.P.] . . . In that case *Arthur Hall*[1] was punished for a libel on the dignity of the House, by being committed and expelled; and he was also *fined*: in respect to which species of punishment, that of fining, the House exercised in that instance a power which they have not since been in the *habit* of exercising; but certainly that precedent, as far as it goes to the expulsion and imprisonment of a member, is fully sustained by more modern usage. He was committed for six months, and to be further imprisoned till a revocation and retraction under his hand of the slander contained in his book. That might perhaps be considered as an excess of jurisdiction, as contrary to the general principles of *English* law: for the Courts of law cannot commit a person TILL he retracts or makes personal submission for his offence: but as far as the mere infliction of imprisonment goes, it shews at least that the House were in the habit of committing for contempts. And the sort of libel for which he was punished, as it appeared in *D'Ewes' Journal*, was not a libel upon individual members, but upon the whole parliament.

Without resting any longer, however upon these precedents, I come with more satisfaction to an authority which cannot be gainsayed or questioned; to the legislative recognition of a power in either House of Parliament to punish by imprisonment; for that, I think, is virtually to be understood from the stat. 1 *Jac.* 1. *c.* 13. . . .

[He turns aside to discuss the Act of the 4 H. 8 in connection with R. Strode's case and then Mr. Holles' case.]

[1] See Prothero, p. 131.

Then comes the stat. 1 *Jac.* 1. *c.* 13. which, after reciting, that " heretofore doubt had been made if any person, being arrested in execution, and by *privilege of either of the Houses of Parliament set at liberty*, whether the party at whose suit such execution was pursued, be forever after barred and disabled to sue forth a new writ of execution in that case: " (which shews very clearly, that Parliament had been in the habit of setting aside or superseding such executions;) for avoiding all further doubt and trouble which in like cases may hereafter ensue; *enacts*, " that the party at whose suit such writ of execution was pursued, his executors, etc. *after such* time *as the privilege* of *that session of parliament*, in which such privilege shall be so granted, *shall cease*, may sue forth and execute a *new* writ or writs of execution," etc. Is not this an ample recognition of the prior exercise of an authority by the Houses of Parliament to liberate persons entitled to privilege, who were in execution: this statute enacting however, at the same time, that it should not be an answer to the further charging him in execution by his creditor, that he had once been taken in execution. The statute then provides, that from thenceforth no sheriff, bailiff, or other officer, from whose arrest or custody any such *person* so arrested in execution *shall be delivered by any such privilege*, shall be charged or chargeable with or by any action whatsoever, for delivering out of execution any such *privileged person so as is aforesaid by such privilege of Parliament set at liberty*; any law, custom, or privilege heretofore to the contrary notwithstanding." And then follows this proviso, which is very material to the present purpose: " Provided always, that this act, or anything therein contained, shall not extend to the *diminishing* of any *punishment* to be hereafter *by censure in parliament inflicted* upon any person which shall hereafter make or procure to be made any such arrest as aforesaid." Now by *inflicting censure*, the power of doing which was thus saved to the Houses of Parliament, as they had been before accustomed to exercise it, must be meant, not a mere crimination or reproof in *words only*, but the substantial *infliction* of positive *punishment* by Parliament upon the offender. This act, indeed, applies in terms only to the particular case of arrests; but no one can reason so weakly as to suppose, or argue so narrowly as to say, that the power of the Houses of Parliament to inflict punishment existed and had been exercised only in that particular case. I have mentioned this instance, not from the necessity of the thing in so plain a case, but because it has been thrown out very confidently, that the privilege of the House of Commons stood upon no parliamentary recognition or authority whatsoever: here, however, is a direct parliamentary recognition of their right to inflict punishment by censure in parliament in the one case that is specially mentioned,

and it virtually ratifies what had been antecedently done by the House in the way of punishment, of which the usual mode appears to have been by imprisonment.

. . . I come now to a period nearer to our own times, and more within our own immediate contemplation and view, where the materials for our judgement are more abundant, and the sources from which they are drawn are in some respects more satisfactory. If any person more than another could be supposed to doubt the power of the House of Commons to commit for contempt; if any person whoever sat in this place was, more than another, jealous of any supposed encroachment upon the rights of the people, either on the part of the Crown, or of either House of Parliament, or less favourable in general to claims of parliamentary privilege, it was my Lord *Holt*. . . .

[He discusses Ashby *v.* White and the Queen *v.* Paty.[1]]

It is impossible for anything to be more full, explicit, and unqualified, than this language of Lord *Holt*, in which he recognizes a power of commitment in the House of Commons for a breach of the privileges of their House: and what is said of the House of Commons may be understood as said also of the House of Lords; for they are one and the same in this respect: they are but the grand council of the realm divided into two different parts, each carrying with it this essential power and privilege to protect itself, which each has exercised ever since (and therefore must be presumed collectively to have exercised before) their separation.

Prior to *Ashby* v. *White*, in point of time, was the Earl of *Shaftesbury*'s[2] case, which was a commitment by the House of Lords "for a high contempt (stated to have been) committed against this House." Two of the judges there thought it was a material ingredient in that case, that the sessions during which the commitment was made was then continuing. . . . No distinction was taken in that case between the authority of the Lords and that of the Commons to commit. And notwithstanding the generality of the commitment, which was for a high contempt without saying when, where, or how committed, it was sustained by this court, and Lord *Shaftesbury* was remanded. This case has been referred to by judges in later times as an authority upon the point. And in *Alexander Murray's* case, the commitment which was by the House of Commons for an offence against them was in the same terms, "for a high contempt of this House." Mr. Justice *Wright* says in that case, "that it was agreed on all hands that they (the House of Commons) have power

[1] Vol. I, Sect. C, Nos. IX and X, pp. 278, 279.
[2] Vol. I, Sect. C, No. III, p. 251.

to judge of their own privileges. It need not appear to us what the contempt was; for if it did appear, we could not judge thereof"; And then he cites Lord *Shaftesbury's* case. Mr. Justice *Dennison* says, "They need not tell us what the contempt was, because we cannot judge of it." Mr. Justice *Foster* says, "The law of Parliament is part of the law of the land, and there would be an end of all law, if the House of Commons could not commit for a contempt: all courts of record, even the lowest, may commit for a contempt: and Lord *Holt*, though he differed with the other judges, yet agreed that the House might commit for a contempt in the face of the House." That statement of Mr. Justice *Foster* certainly represents Lord *Holt* as having narrowed his admission far beyond what he appears to have done by Lord *Raymond's*[1] report. The power of committing for contempts is not there limited by Lord *Holt* to contempts committed *in the face of the House.* I do not know how those words got into *Wilson's* report;[2] but the report of Lord *Holt's* own words, as made by Lord *Raymond*, who heard them, is more likely to be correct. Upon this case I would observe, that I agree with *Wright* and *Dennison*, Justices, in thinking, that it *need not appear* what the contempt was; but I am not prepared to say with them, that we could in *no case* judge of it, or that there might not appear such a cause of commitment as, coming collaterally before the Court in the way of a justification pleaded to an action of trespass, the Court might not be obliged to consider and to pronounce to be defective: but it might be a more doubtful question whether, coming directly before us, as on a return to a habeas corpus, we could relieve the subject from the commitment of the House in any case whatever. . .

[He discusses Brass Crosby's case.[3]]

. . . Now to what extent it may be warrantable to inquire into the cause of the commitment, it is not necessary to pronounce: the commitment must always be by a Court of competent jurisdiction; and the competence of the House of Commons to commit for a contempt and breach of privilege cannot be questioned. A competence to commit for all matters and in all cases has never been asserted or pretended to on the part of either House of Parliament: the House of Commons does not pretend to a general criminal jurisdiction. But if the judges before whom those applications were made on writs of habeas corpus had felt that the House had no pretence of power to commit, or had seen upon the face of the returns that they had exercised it in those cases extravagantly, and beyond all bounds of reason and law, would they not have been wanting in their

[1] Lord Raymond's Reports, ii, 1114 (Paty's Case).
[2] Wilson Reports, i, 300.
[3] See Vol. I, Sect. C, No. XIX, p. 311.

duty if they had not looked into the causes of commitment stated; and would it have been an excuse for a most imperfect discharge of their important duty upon the writ of habeas corpus to say, that though they remanded the prisoner, he had his remedy by action, if the case were that he ought never to have been committed at all? Is not the value of the immediate liberty of the subject of such importance, that, where his case falls within the remedy of the writ of habeas corpus, the judges were bound at common law to give the party the benefit of his immediate liberation, rather than to turn him over to a distant remedy by action against a party who may die before he can obtain his judgement; or if he live may become insolvent? . . . Upon this subject I will only say that if a commitment appeared to be for a *contempt* of the House of Commons *generally*, I would neither in the case of that Court, or of any other of the superior Courts, inquire further: but if it did not *profess* to commit *for a contempt*, but for some matter appearing upon the return, which could by no reasonable intendment be considered as a contempt of the Court committing, but a ground of commitment palpably and evidently arbitrary, unjust, and contrary to every principle of positive law, or national [*sic*: natural?] justice; I say, that in the case of such commitment, (if it ever should occur, but which I cannot possibly anticipate as ever likely to occur,) we must look at it and act upon it as justice may require from whatever Court it may profess to have proceeded. . . .

Thus the matter stands upon the authority of precedents in parliament, upon the recognition by statute, upon the continued recognition of all the judges, and particularly of Lord *Holt*, who was one of the greatest favourers of the liberties of the people, and as strict an advocate for the authority of the common law against the privileges of parliament as ever existed . . . What is there against it? Is it inexpedient that they should have such a power? . . . I have already said that a priori, if there were no precedents upon the subject, no legislative recognition, no practice or opinions in the Courts of law recognizing such an authority, it would still be essentially necessary for the Houses of Parliament to have it; indeed that they would sink into utter contempt and inefficiency without it. Could it be expected that they should stand high in the estimation and reverence of the people, if, whenever they were insulted, they were obliged to await the comparatively slow proceedings of the ordinary course of law for their redress? That the Speaker with his mace should be under the necessity of going before a grand jury to prefer a bill of indictment for the insult offered to the House? They certainly must have the power of self-vindication and self-protection in their own hands; and if there be any authenticity in the recorded

precedents of Parliament, any force in the recognition of the legislature, and in the decisions of the Courts of law, they have such power.

Assuming then that the House has the power of commitment, the next point is whether it has been well exercised by the warrant in question. . . . But if it be clear, as it is, that this was a matter which the House was competent to decide both as to the fact and the effect of the publication; then by analogy to the judgement of a Court of law, (and the judgements of either House of Parliament cannot with propriety be put upon a footing less authoritative than those of the ordinary Courts of law,) the House must be considered as having decided both, as far as respects any question thereupon which may arise in other Courts. . . .

Supposing then a power of commitment for breach of privilege to exist in the House, and that the warrant itself discloses a sufficient ground of commitment, and an order to their officer to execute it, the justification for the persons acting under it is made out, unless any unjustifiable means appear to have been afterwards used to carry the warrant into execution. And that brings me to the last point to be considered, whether the means which appear to have been used on this occasion for the execution of the Speaker's warrant were justifiable? And that depends upon the single question, Whether, after notice given by the Serjeant at Arms of the purpose of his coming to the plaintiff's house, and the nature of the warrant he came to execute, and after a request, made by him, that the outer door might be opened to him, which was not complied with, he was authorized to break into the House for the purpose of arresting the plaintiff, and carrying the warrant into full execution? . . . Therefore upon authorities the most unquestionable this point also has been settled, that where an injury to the public has been committed in the shape of an insult to any of the Courts of justice, on which process of contempt is issued, the officer charged with the execution of such process may break open doors if necessary in order to execute it. And therefore, upon these authorities, I conceive myself justified in saying, that all the points essential to be maintained in order to sustain the defendant's justification upon this record are made out. First, it is made out that the power of the House of Commons to commit for contempt stands upon the ground of reason and necessity independent of any positive authorities on the subject: but it is also made out by the evidence of usage and practice, by legislative sanction and recognition, and by the judgements of the Courts of law, in a long course of well-established precedents and authorities. 2dly, That the resolution of the House, that the plaintiff had been guilty of a breach of its privileges, and that the order made for his commitment for that

offence, were in conformity to their power: that the warrant issued by the Speaker in this case, which warrant itself embraces the resolution and order of the House, was made in the due execution of their order: and that the mode of executing that warrant in this case, by breaking the house, after due notification and demand of admittance without effect, is justifiable, upon the ground of its being an execution for a process of contempt, to which the personal privilege of the individual in respect to his door must give way for the public good. Under these circumstances, without the least particle of doubt upon my mind, I am clearly of opinion that there must be a judgement for the defendant.

[Bayley and Grose, JJ., concurred.]
[14 East 131.]

VI

THE CASE OF SIR FRANCIS BURDETT, 1820

Leicester Assizes, March 20, 1820.

BEST, J. (summing up) . . . Gentlemen, this is an information filed by His Majesty's *Attorney General* against the defendant Sir *Francis Burdett*, Baronet, for a libel charged to be a seditious libel. . . . It says cruelties have been practised by a party of soldiers of the country employed by Government to disperse an illegal meeting [the meeting on August 19, 1819, in St. Peter's Field, Manchester] . . . it is charged that it was written to excite sedition in the country. . . .

. . . The question is not, nor ever can be (if the liberty of the press is to be supported), whether that which has been written be true or false; because then a man meaning honestly might be convicted for stating an untruth. It is not the truth or falsehood that makes a libel, but the temper with which it is published; and another ground on which the truth or falsehood cannot be inquired into is this: because whether it be true or false no man ought to charge another with crime. That would make the liberty of the press inconsistent with another liberty equally dear to an Englishman—his character. No man's character is to be taken from him by attacks in newspapers or any publication whatever. If they do what is wrong, you were properly told by the learned counsel in the outset, the courts of justice are open to bring them to punishment. It is on these grounds I refused the evidence [relating to what had

taken place at the Manchester meeting], because according to the law of the land it is not admissible. Gentlemen, there is another point touched on, and that is the question of intention. Gentlemen, intention is undoubtedly a matter of importance in the inquiry; but whether a man intends to publish a libel or not is not to be collected from declarations and acts of another time, but from the paper itself, unless the defendant is in a condition to repel by evidence the inference immediately arising from the paper. The defendant has given you in his speech his notions of how that might be done. Suppose the paper libellous; yet if he had shown after he had written it he endeavoured to stop the publication, that would repel the libellous intention. Or suppose, as in the other case, the case of the Seven Bishops,[1] where it was charged to be a malicious libel, the defendant could prove it was not published by a man intruding his opinions upon the public, but it was a petition addressed by him to his Sovereign on a subject on which he was called on to advise. This is the way intention is to be inquired into. It is to be collected from facts connected with the publication, and not by what the defendant is proved to have said at another time. . . .

Gentlemen, with respect to Locke I quite agree with the observation that has been made; and if when you come by-and-by to attend to this libel, you think this paper was written with the same pure spirit and intention with which the invaluable and immortal works of that writer were written, it is no libel, because they are protected by the true liberty of the press, which is nothing more than this—it is said without the liberty of the press a free Government cannot be supported—the liberty of the press is this, that you may communicate any information that you think proper to communicate by print; that you may point out to the Government their errors, and endeavour to convince them their system of policy is wrong, and attended with disadvantage to the country, and that another system of politics would be attended with benefit. It is from such writings that the religion of this country has been purified; it is by writings of that spirit the Constitution has been brought to the perfection it now has. And, therefore, God forbid that I should utter a sentence to show that a man, speaking with that respect which he ought to speak with of established institutions, may not show some reform may be necessary, or that the military ought not to be used in the manner in which they are. But the question always is as to the manner . . . in other words whether they appeal to the sense or the passions. . . . [He next quotes several passages from the alleged libel.] . . . I say it is impossible that anything has occurred or that one has heard of, can afford an excuse to the most intemperate man

[1] See Vol. I, Sect. C, No. VII, p. 258.

for using this language. . . . We have no evidence that Government gave any directions, but you are desired,

" To put a stop in its commencement to a reign of terror and blood ". . . .

" 'Tis true James could not inflict the torture on his soldiers—could not tear the living flesh from their bones with a cat-o'-nine-tails—could not flay them alive."

Insinuating, undoubtedly, that it may and can be done now. Will any man tell me that is temperate discussion? Will any man tell me that a thing more pregnant with mischief could be published? Do not suppose I think the Government rests on the army,—it rests on the affections of the people. And I believe it will be a long time before any set of persons can so far detach the people from the Government as to render it insecure. But, although the Government is secure, when insurrections take place, the soldiers are wanted to assist the magistrates. Therefore, at a moment like this, to put them in mind of circumstances likely to paralyse them in the discharge of their duty, is the most dangerous libel that could be circulated. It was published—it would find its way into the hands of the soldiers as well as into the hands of gentlemen; and to-day we are told that the same soldiers that fought for *Cæsar* abroad destroyed the liberties of their country. They fought abroad to establish a domination in a foreign land. The British army has been used for no such purpose. It has fought for the establishment of our nation, and on all these occasions it is known that the discipline which exists in that army has not destroyed its spirit. It is, thank God, what it was, still; and they will meet again with the same spirit when called on on a future occasion, and I hope and trust, whether men mean it or not, no man will be able to render a British soldier other than he is, one of the most respectable. The passage concludes with a profanation of the words used by Nelson immediately before the battle of Trafalgar, " Be this as it may, our duty is to meet, and England expects every man to do his duty."

Gentlemen, I have no hesitation in declaring this a libel. Is it a calm appeal to the judgement of the people, or a most inflammatory paper addressed to the passions of those whose passions are most likely to be acted upon?

[The Jury, after a short consultation, found the prisoner guilty.]

On the Application in the Court of King's Bench for a New Trial. Nov. 27, 1820.

Best, J. . . . Another point on which the motion for a new trial was made was, that I took upon myself to lay down the law to

the jury as to the libel, and that since the statute 32 *Geo.* 3. c. 60.[1] I was not warranted in so doing. I told the jury that they were to consider whether the paper was published with the intent charged in the information; and that if they thought it was published with that intent, I was of opinion that it was a libel. I, however, added that they were to decide whether they would adopt my opinion. In forming their opinion on the question of libel, I told the jury that they were to consider whether the paper contained a sober address to the reason of mankind, or whether it was an appeal to their passions, calculated to incite them to acts of violence and outrage. If it was of the former description, it was not a libel; if of the latter description, it was. It must not be supposed that the statute of George the Third made the question of libel a question of fact. If it had, instead of removing an anomaly it would have created one. Libel is a question of law, and the judge is the judge of the law in libel as in all other cases, the jury having the power of acting agreeably to his statement of the law or not. All that the statute does is to prevent the question from being left to the jury in the narrow way in which it was left before that time.[2] The jury were then only to find the fact of the publication, and the truth of the innuendoes; for the judges used to tell them that the intent was an inference of law, to be drawn from the paper, with which the jury had nothing to do. The Legislature has said that that is not so, but that the whole case is to be left to the jury. But the judges are in express terms directed to lay down the law as in other cases. In all cases the jury may find a general verdict; they do so in cases of murder and treason, but there the judge tells them what is the law, though they may find against him; unless they are satisfied with his opinion. And this is plain from the words of the statute.[3] . . .

. . . My opinion of the liberty of the press is, that every man ought to be permitted to instruct his fellow subjects; that every man may fearlessly advance any new doctrines, provided he does so with proper respect to the religion and Government of the country; that he may point out errors in the measures of public men: but he must not impute criminal conduct to them. . . . Where vituperation begins, the liberty of the press ends. This maxim was acted upon by the greatest states of antiquity. In our country, the liberty of the press allows us to persuade men to use their constitutional influence over their representatives to obtain in

[1] 'Fox's' Libel Act, Vol. II, Sect. A, No. IV, p. 6.

[2] See Lord Kenyon (R. *v.* Gordon, 1798), "By the Act of Parliament I am bound to say that I think this is a very grave libel" (Gurney's Notes—Papers of Solicitor of Treasury, 1511).

[3] Vol. II, Sect. A, No. IV, § II, at p. 7; cf. also Vol. II, Sect. C, No. I, particularly at p. 236.

the regular parliamentary manner a redress of real or supposed grievances. But this must be done with temper and moderation, otherwise instead of setting the Government in motion for the people, the people may be set in motion against the Government. . . .

HOLROYD, J. . . . With respect to the objection of the learned Judge's refusing to receive evidence of the truth of the facts alleged, or rather assumed in the libel, there is, I think, not the least doubt upon the point. Although the objection was made, it was not even attempted to be supported by argument at the trial. Whatever might be the result of a due inquiry into those facts elsewhere, it is clear that that was not the proper place or occasion for inquiring into them, nor would the writing be otherwise than in law a libel. It assumes as true a statement most highly calumnious on individuals, and on the Government, merely from a statement in a public newspaper, and without the knowledge, whether it were true or not, to any or to what extent, and indulges in the highest strain of invective, for the purpose of inflaming the public, and raising in their minds the greatest discontent, disaffection, and alarm. That is, in itself, a seditious libel, and the question for the jury was, whether what the defendant had written and published, with the intent stated in the information, was a libel or not, and not to what extent it was so; even supposing that the result of that inquiry would have any palliation of the libel. . . . For these reasons, I think the rule for a new trial ought to be discharged.

BAYLEY, J. . . . I take it to be the bounden duty of the judge to lay down the law as it strikes him, and that of the jury to accede to it, unless they have superior knowledge on the subject: and the direction in this case did not take away from the jury the power of acting on their own judgement. Besides, if the judge be mistaken in his view of the law, his mistake may be set right by a motion for a new trial; but if the jury are wrong in their view of it, it is not so easy to rectify their mistake.

[On a technical point about proof of publication, *Bayley, J.*, however, was of opinion that there should be a new trial.]

ABBOTT, C. J. . . . Another ground for the motion was, that the learned Judge gave his own opinion to the jury upon the character of the publication in question, expressing himself at the same time somewhat to this effect: You are to say whether you will adopt this opinion or not; and unless you are satisfied that I am wrong, you will take the law from me. This was supposed to be contrary to, or at least beyond, the duty of the Judge, as prescribed by the statute to which I have just alluded; it was, however, in my opinion, not only not contrary to, or beyond, the duty of the Judge, as prescribed

by that statute, but in strict conformity to it. The clauses of the statute have been referred to. If the Judge is to give his opinion to the jury, it must be not only competent but proper for him to tell the jury, if the case will so warrant that in his opinion the publication before them is of the character and tendency attributed to it by the indictment; and that, if it be so in their opinion, the publication is an offence against the law. This has been repeatedly done by different Judges within my experience, and I am not aware of any instance in which it has been omitted. The contrary has sometimes occurred, in cases where the Judge has thought that the matter of the publication was innocent; but those cases also are instances of an opinion given, and not of silence on the part of the Judge, as to the law of the case. The statute was not intended to confine the matter in issue exclusively to the jury without hearing the opinion of the Judge, but to declare that they should be at liberty to exercise their own judgement upon the whole matter in issue, after receiving thereupon the opinions and directions of the Judge. For these reasons I am of opinion that the rule ought to be discharged.

[*Best, J.*, added that he agreed with the majority on the technical point also, that for a libel written in one county and published in another, the libeller may be prosecuted in either.]

Rule discharged.

[*S.T.* (N.S.), i, 1-170.]

VII

THE CASE OF THE SLAVE, GRACE, 1827

THE KING *v.* JOHN ALLAN

Nov. 6, 1827, in the High Court of Admiralty, on appeal from the Vice-Admiralty Court of Antigua.

LORD STOWELL. . . . The fifth count is that which is alone entitled to consideration in this case. It states that—" She, being a free subject of his Majesty, was unlawfully imported as a slave from Great Britain into Antigua, and there illegally held and detained in slavery, contrary to the form of the Statute in such case made and provided."

The objection, therefore, . . . is that she was a free subject of his Majesty. . . . Now this averment must be proved. . . . The truth of that complaint depends upon the nature of that freedom,

if any, which she enjoyed before the institution of this suit; and I can find nothing that warrants any such assertion of a freedom so conferred. The sole ground upon which it appears to have been asserted is, that she had been resident in England some time as a servant waiting upon her mistress, but without the enjoyment of any manumission, that could alone deliver her from the character of a slave, which she carried with her when she left Antigua; for I think it demonstrable that she could derive no character of freedom that would entitle her to maintain a suit like this (founded upon a claim of permanent freedom) merely by having been in England, without manumission, for a manumission is a title against all the world. . . . This suit, therefore, fails in its foundation: she was not a free person; no injury is done to her by her continuance in a state of slavery; and she has no pretence to any other station than that which was enjoyed by every slave of the family. If she depends upon such a freedom conveyed by a mere residence in England, she complains of a violation of right which she possessed no longer than whilst she resided in England, but which had totally expired when that residence ceased and she was imported into Antigua. . . .

The question has been argued as depending upon the interpretation of the well-known case of *Sommersett*.[1] . . . The personal traffic in slaves resident in England had been as public and authorised in London as in any of our West India islands . . . from a very early period up to nearly the end of the last century.

. . . The real and sole questions which the case of *Sommersett* brought before Lord *Mansfield* . . . was whether a slave could be taken from this country in irons and carried back to the West Indies, to be restored to the dominion of his master. And all the answer, perhaps which that question required was, that the party who was a slave could not be sent out of England in such a manner and for such purpose; stating the reasons of that illegality. It is certainly true that Lord *Mansfield* in his final judgement amplifies the subject largely. He extends his observation to the foundations of the whole system of the Slavery Code; for in one passage he says, that

" Slavery is so odious that nothing can be suffered to support it but positive law."

Far from me be the presumption of questioning any *obiter dicta* that fell from that great man upon that occasion; but . . . I observe that ancient custom is generally recognized as a just foundation of all law; that villeinage of both kinds, which is said by some to be the prototype of slavery, had no other origin than ancient

[1] See Vol. I, Sect. C, No. XX, p. 314.

custom; that a greater part of the Common Law itself in all its relations has little other foundation than the same custom; and that the practice of slavery, as it exists in Antigua and several other of our colonies, though regulated by law, has been in many instances founded upon a similar authority. . . .

. . . The arguments of counsel in that decisive case of *Somersett*, do not go further than to the extinction of slavery in England as unsuitable to the genius of the country, and to the modes of enforcement: they look no further than to the peculiar nature, as it were, of our own soil; the air of our island is too pure for slavery to breathe in. How far this air was useful for the common purposes of respiration during the many centuries in which two systems of villeinage maintained their sway in this country, history has not recorded. . . .

The system of slavery in our West India colonies was perfect in every part, if I may use that expression, meaning thereby that perfection which consists in the adequacy of the means to produce the intended effect. It was a system not thrown out of use, because it was incapable of being used in the full extent in England. With the laws of the colonies it could be conciliated. That system was completely armed at every point: and though frequently softened, as in the case of domestic slaves, it was in no wise deficient in compelling the obedience of its subjects: whereas in England it was totally impotent, and the law could not borrow those instruments from a foreign law, which were necessary to make the system work properly. This may have occasioned one great difference between the two systems. The fact certainly is, that it never has happened that the slavery of an African, returned from England, has been interrupted in the colonies in consequence of this sort of limited liberation conferred upon him in England. There has been no act nor ceremony of manumission nor any act whatever that could even formally destroy those various powers of property which the owner possessed over his slave by the most solemn assurances of law. . . . Such rights could not be extinguished by mere silence, or by this country's declining to act in such a conveyance. . . . It has been said that the Law of England discourages slavery, and so it certainly does within the limits of these islands; but . . . to this trade in those colonies it gives an almost unbounded protection, and it is in the habit of doing so at the present time in many exercises of public authority. . . . Can any man doubt that at this time of day slaves in the colonies may be transferred by sale made in England? . . . for the Acts of Parliament . . . prescribe and regulate the manner in which these transfers of slaves are to be securely made in this Kingdom, and

the mode to be adopted when money is lent on mortgage upon the security of slaves.[1] . . .

[*S.T.* (N.S.), ii, 274.]

VIII

CASE OF THE BRISTOL RIOTERS, 1832

Bristol, Monday, Jan. 2, 1832. Special Commission for the trial of prisoners charged with taking part in riots there (on 29th to 31st October 1831).

TINDAL, C.J., charged the grand jury. . . . The law of England hath, accordingly, in proportion to the danger which it attaches to riotous and disorderly meetings of the people, made an ample provision for preventing such offences, and for the prompt and effectual suppression of them when they arise. . . .[2]

In the first place by the Common Law, every private person may lawfully endeavour, of his own authority, and without any warrant or sanction of the magistrate to suppress a riot by every means in his power. He may disperse, or assist in dispersing, those who are assembled; he may stay those who are engaged in it from executing their purpose; he may stop and prevent others whom he shall see coming up with the rest; and not only has he the authority, but it is his bounden duty, as a good subject of the King to perform this to the utmost of his ability. If the riot be general and dangerous, he may arm himself against the evildoers, to keep the peace. Such was the opinion of all the judges of England in the time of Queen *Elizabeth*, in a case called ' the Case of Armes,' (*Popham's* Rep. 121) although the judges add that it would—

" be more discreet for everyone in such a case to attend and be assistant to the justices, sheriffs, or other ministers of the King, in the doing of it,"

It would undoubtedly be more advisable so to do; for the

[1] The slave trade had, of course, been abolished by the Act of 1807 (47 Geo. III, Sess. I, c. 36), but this had been aimed at the transfer of persons from Africa. When the whole institution of slavery came to be dealt with in 1833 by the Act of Abolition (3 & 4 Will. IV, c. 73), all slaves in the colonies became apprenticed labourers (and their children were born free) of their former masters; compensation was provided for the masters by the Imperial legislature. Section III of the Act provided that all slaves who might have already been brought, and all apprenticed labourers who might subsequently be brought, into any part of the United Kingdom, should be " absolutely and entirely free to all intents and purposes whatsoever ".

[2] Cf. Vol. II, Sect. B, No. XXIII, p. 201, and Sect. C, No. IX, p. 262.

presence and authority of the magistrate would restrain the proceedings to such extremities, until the danger was sufficiently immediate, or until some felony was either committed, or could not be prevented without recourse to arms; and at all events, the assistance given by men who act in subordination and concert with the civil magistrate, will be more effectual to attain the object proposed, than any efforts, however well intended, of separated and disunited individuals. But if the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of the magistrate, it is the duty of every subject to act for himself, and upon his own responsibility, in suppressing a riotous and tumultuous assembly; and he may be assured that whatever is honestly done by him in the execution of that object will be supported and justified by the Common Law.

And, whilst I am stating the obligation imposed by the law on every subject of the realm, I wish to observe that the law acknowledges no distinction in this respect between the soldier and the private citizen. The soldier is still a citizen, lying under the same obligation, and invested with the same authority, to preserve the peace of the King, as any other subject. If the one is bound to attend the call of the civil magistrate, so also is the other; if the one may interfere for that purpose, when the occasion demands it, without the requisition of the magistrate, so may the other too; if the one may employ arms for that purpose, when arms are necessary, the soldier may do the same. Undoubtedly, the same exercise of discretion which requires the private subject to act in subordination to, and in aid of, the magistrate ought to operate in a still stronger degree with a military force. But where the danger is pressing and immediate, where a felony has actually been committed, or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authorities, the military subjects of the King, like his civil subjects, not only may, but are bound, to do their utmost, of their own authority, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people.

Gentlemen, still further, by the Common Law, not only is each subject bound to exert himself to the utmost, but every sheriff, constable, and other peace officer is called upon to do all that in them lies for the suppression of riot, and each has authority to command all other subjects of the King to assist them in the undertaking. By an early statute, which is still in force (the 13 *Hen.* 4. c. 7), any two justices, together with the sheriff or under-sheriff of the county, shall come with the power of the county, if need be, to arrest any

rioters, and shall arrest them; and they have power to record that which they see done in their presence against the law, by which record the offenders shall be convicted, and may afterwards be brought to punishment. And here I most distinctly observe that it is not left to the choice or will of the subject, as some have erroneously supposed, to attend or not to attend to the call of the magistrate, as they think proper; but every man is bound, when called upon, under pain of fine or imprisonment, to yield a ready and implicit obedience to the call of the magistrate, and to do his utmost in assisting him to suppress any tumultuous assembly; for in the succeeding reign another statute was passed, which enacts that the King's " liege people, being sufficient to travel in the counties where such routs, assemblies, or riots be, shall be assistant to the justices, commissioners, sheriffs, and other officers upon reasonable warning," to ride with them in aid to resist such riots, routs, and assemblies, on pain of imprisonment, and to make fine and ransom to the king.[1] . . . In later times the course has been for the magistrate, on occasion of actual riot and confusion, to call in the aid of such persons as he thought necessary, and to swear them as special constables. And in order to prevent any doubt, if doubt could exist, as to his power to command their assistance by way of precaution, the statute 1 *Geo.* 4. c. 37, and since that has been repealed by the still more recent Act of 1 and 2 *Will.* 4. c. 41, the statute last referred to has invested the magistrate with that power in direct and express terms, when tumult, riot, or felony, was only likely to take place, or might reasonably be apprehended. Again, that this call of the magistrate is compulsory, and not left to the choice of the party to obey or not, appears from the express enactment in the latter Act, that, if he disobeys, unless legally exempted, he is liable to the penalties and punishments therein specified.

But the most important provision of the law for the suppression of riots is to be found in the statute 1 Geo. 3. st. 2. c. 5. by which it is enacted.

[Here follow the main clauses of " the Riot Act ".[2]]

. . . Such are the different provisions of the law of England for the putting down of tumultuary meetings; and it is not too much to affirm that if the means provided by the law are promptly and judicially enforced by the magistrate, and honestly seconded by the co-operation of his fellow-subjects, very few and rare would be

[1] 2 Hen. V, St. I, c. 8; Dalton, an early writer on this subject, explains that this means that such aid must be given by all " above the age of fifteen years and able to travel ".

[2] See Vol. I, Sect. A, No. XLV, p. 123.

the instances in which tumultuous assemblages of the people would be able to hold defiance to the laws. . . .

[*S.T.* (N.S.), iii, 1.]

IX

R. *v.* PINNEY, 1832

Trial at Bar on 25th October to 1st November 1832 of Charles Pinney for Neglect of Duty as Mayor on the Occasion of the Riots at Bristol on 29th, 30th and 31st October 1831.[1]

LITTLEDALE, J. (summing up) . . . You will take into consideration the circumstances in which a man is placed. He is bound to hit the exact line between an excess and what is sufficient and how difficult it is in cases of riots of this kind to hit that line. . . . Still, however, in point of law he is bound to do it; and although you will give very lenient consideration to it, it is for you to consider whether he has hit that line or not . . . the law requires that, whether a man seeks an office or is compelled to accept it, he should do his best. . . . A man is bound by law to do his duty, and you are to consider whether he has done his duty or not. . . . Has the defendant done all that he knew was in his power to suppress the riots, that could reasonably be expected from a man of honesty, and ordinary prudence and activity, under the circumstances in which he was placed? . . . Did he use those means that the law requires to assemble a sufficient force to prevent the mischief? And did he make such a use of that force to prevent the mischief that an honest man ought to have done, by his own personal exertion? . . .

I lay down to you as the general duty of justices as to riots; they are to keep the peace and to pursue and arrest rioters; and to enable them to do that they are empowered to call upon the King's subjects to aid them in suppressing riots when they shall be reasonably required. Therefore in the case of riot, the Common Law obligation cast upon a justice is to call upon the King's subjects to aid him in suppressing the riot. . . .

I do not apprehend that a justice of the peace is bound to ride along and charge with the military. . . . A military officer may act without the authority of the magistrate if he chooses to take the responsibility; but . . . there are few military men who will take upon themselves to act without a magistrate, except on the most pressing occasion, where it is likely to be attended with a great deal of destruction of life. A man, generally speaking, does not like to

[1] Cf. preceding extract (No. VIII) and references there given.

do it without the authority of a magistrate, though the authority need not be given by his presence. . . .

The jury found him Not Guilty.

[*S.T.* (N.S.), iii, 11, at p. 510.]

X

R. *v.* FURSEY, 1833

[At the Old Bailey on 4 July 1833 the prisoner was accused of feloniously stabbing two policemen attempting to take a banner from him at a meeting which the Secretary of State had publicly notified as dangerous to the peace and as illegal.]

Gaselee, J. (summing up) . . . On the part of the prisoner a great deal of evidence has been given to show that the conduct of the policemen was very violent and very outrageous. You will have therefore to consider whether their conduct was a sufficient provocation to the prisoner to resist as he did or whether, from the fact of his having taken the weapon out with him, there was that malignity of purpose which would have made the offence of the prisoner amount to murder, if death had ensued.

It appears from the evidence of Mr. *Stallwood* that the proclamation contained in the Riot Act was not read.[1] Now, a riot is not the less a riot nor an illegal meeting the less an illegal meeting because the proclamation of the Riot Act has not been read, the effect of that proclamation being to make the parties guilty of a capital offence, if they do not disperse within an hour; but, if that proclamation be not read, the common law offence remains, and it is a misdemeanour, and all magistrates, constables and even private individuals are justified in dispersing the offenders; and if they cannot otherwise succeed in doing so, they may use force.[2] . . . There has been given in evidence a proclamation issued by order of one of the Secretaries of State: and in that proclamation it is stated that printed papers have been posted up, advertising that a public meeting would be held to adopt preparatory measures for holding a National Convention. Now, that proclamation is not evidence that the meeting was to be held for the purpose there mentioned . . . but if placards . . . were posted up, stating the meeting was for those purposes, then it is an illegal meeting. . . . The proclamation states it to be an illegal meeting and commands all constables and others to disperse it. If such a notice be given, and a party chooses to treat it as of no effect, he does so at his

[1] Vol. I, Sect. A, No. XLV, p. 123.

[2] Cf. two preceding extracts (VIII and IX).

own risk . . . but without any proclamation at all, if a meeting is illegal, a party who attends it knowing it to be so is guilty of an offence. . . .

A Juryman . . . " The only evidence as to the character of the meeting is that . . . given by Mr. *William Carpenter*. . . . Are we to consider it as an illegal meeting as a matter of course, because it is so pronounced in the proclamation by the Secretary of State ?

Parke, J. Certainly not.

Another Juryman. Then the legality of the meeting we are not to decide upon ?

Gaselee, J. If the meeting was legal, then the arrest was improper. Then the question is whether the resistance to arrest was proportioned to the attempt made to arrest. . . .

The jury found the prisoner Not Guilty.

[*S.T.* (N.S.), iii, 565.]

XI

STOCKDALE *v.* HANSARD, 1839

LORD DENMAN, C.J. This was an action for a publication defaming the plaintiff's character, by imputing that he had published an obscene libel.

The plea was, that the inspectors of prisons made a report to the secretary of state, in which improper books were said to be permitted in the prison of *Newgate* ; that the Court of Aldermen wrote an answer to that part of the report, and the inspectors replied repeating the statements, and adding that the improper books were published by the plaintiff. That all these documents were printed by and under orders from the House of Commons, who had come to a resolution to publish and sell all the papers they should print for the use of the members, and who also resolved, declared, and adjudged, that the power of publishing such of their reports, votes, and proceedings as they thought conducive to the public interest, is *an essential incident* to the due performance of the functions of parliament, *more especially* &c.[1]

The plea, it is contended, establishes a good defence to the action on various grounds.

1. The grievance complained of appears to be an act done by order of the House of Commons, a court superior to any court of

[1] See the Resolution, Vol. II, Sect. B, No. IX, p. 168 ; cf. also Vol. I, Sect. B, No. X, p. 184.

law, and none of whose proceedings are to be questioned in any way.

This principle the learned counsel for the defendant repeatedly avowed in his long and laboured argument; but it does not appear to be put forward in its simple terms in the report that was published by a former House of Commons.

It is a claim for an arbitrary power to authorise the commission of any act whatever, on behalf of a body which in the same argument is admitted not to be the supreme power in the state.

The supremacy of parliament, the foundation on which the claim is made to rest, appears to me completely to overturn it, because the House of Commons is not the parliament, but only a co-ordinate and component part of the parliament. That sovereign power can make and unmake the laws; but the concurrence of the three legislative estates is necessary; the resolution of any one of them cannot alter the law, or place any one beyond its control. The proposition is therefore wholly untenable, and abhorrent to the first principles of the constitution of *England*. . . .

[He goes on to discuss points which will be found in Patteson's judgement here following.]

Patteson, J. . . . The plea then alleges that the defendants *printed* and *published* the report and reply by authority of the House; and, in conclusion, it sets out a resolution of the House of the 31st *May* 1837, by which it was resolved, declared, and adjudged, that the power of *publishing such of its reports, votes and proceedings as it shall deem necessary, or conducive to the public interests*, is an essential incident to the constitutional functions of Parliament, more especially of the Commons' House of Parliament as the representative portion of it. . . . This resolution must be treated as declaratory only of a supposed ancient power of the House of Commons to publish, and that for two reasons. First, because, if it be treated as creating a new power or privilege, it would plainly be an alteration of the existing law, and an enactment of a new law by one branch of the legislature only, which, it is admitted on all hands, cannot lawfully be done. Neither is the language of the resolution consistent with such a supposition; for, if the power or privilege be essential now, it must always have been so, since the constitutional functions of parliament have always been the same. Secondly, if it be treated as a new power or privilege, it is not applicable to the libel for the publication of which this action is brought, nor to the action itself, both of which are prior to the passing of the resolution. . . .

The second question is, as I conceive, raised upon this record, by the declaratory resolution of the 31st of May 1837, set out at

the conclusion of the plea. The other resolutions and orders set out in the plea are not declaratory of the power or privilege of the House, but directory only: and, as it has been shewn that it is possible that the House, however unintentionally, may make illegal orders, and that, if it should do so, those who carry them into effect may be proceeded against by action at law, it follows that the Court in which such action is brought must, upon demurrer, enquire into the legality of those directory orders, and cannot be precluded from doing so by the mere fact of those orders having been made.

If this Court, then, be not precluded from entertaining the question as to the legality of the directory orders by the orders themselves, it is precluded, if at all, by the resolution of the 31st May 1837, and by nothing else. No other resolution of the House of Commons to a similar effect is set out in the plea, and we cannot look out of the record. It is certainly somewhat strange to urge that this Court in which the present action was already pending, and which had already on its proceeding the declaration of the plaintiff, should be precluded from entering into the question by a resolution of the House of Commons passed between the declaration and the plea; but I pass on to consider the effect of the resolution as if it had been passed long before any action had been brought in which a question could arise as to the existence of the power to which it relates.

The proposition is certainly very startling, that any man, or body of men, however exalted, except the three branches of the legislature concurring, should, by passing a resolution that they have the power to do an act illegal in itself, be able to bind all persons whatsoever, and preclude them from enquiring into the existence of that power and the legality of that act. Yet this resolution goes to that extent; for, unless it is taken to mean that the House of Commons has power to order the publication of that which it knows to be defamatory of the character of an individual, and to protect those who carry that order into effect from all consequences, it will not avail the defendants in this action. I take the resolution, therefore, to have that meaning, though the language of it does not necessarily so import. And I take it also, in combination with the resolutions in 1835, to mean that the House of Commons deems it necessary or conducive to the public interests that *all* the parliamentary papers which it orders to be printed should be sold, though the resolution of 1837 by itself would seem to imply directly the contrary, and that some discrimination as to publishing should be exercised on the subject. Now, if the House of Commons, by declaring that it has power to publish all the defamatory matter which it may have ordered to be printed in the course of its pro-

ceedings with impunity to its publisher, can prevent all enquiry into the existence of that power, I see not why it may not, by declaring itself to have any other power in any other matter, equally preclude all enquiry in courts of law or elsewhere, as to the existence of such power. And what is this but absolute arbitrary dominion over all persons, liable to no question or control? It is useless to say that the House cannot by any declaratory resolution give itself *new* powers and privileges; it certainly can, if it can preclude all persons from enquiring whether the powers and privileges, which it declares it possesses, exist or not: for then how is it to be ascertained whether those powers and privileges be new or not? If the doctrine be true that the House, or rather the members constituting the House, are the sole judges of the existence and extent of their powers and privileges, I cannot see what check or impediment exists to their assuming any new powers and privileges which they think fit to declare. I am far from supposing that they will knowingly do so; but I see nothing to prevent it. Some mode of ascertaining whether the powers and privileges so declared be new or not must surely be found; and, if it be conceded that the courts of law, when that question of necessity arises before them, may make the enquiry, then the doctrine that the resolution of the 31st May 1837 precludes enquiry by this Court must fall to the ground. But it is argued that the point must be ascertained by reference to public opinion. I cannot find in the common law, or statute law, or in any books of authority whatever, any allusion to such reference: and indeed what tribunal can be conceived more uncertain, fluctuating, and unsatisfactory, than public opinion? It is even difficult to define what is meant by the words "public opinion."

It is further argued that the courts of law are inferior courts to the Court of Parliament and to the Court of the House of Commons, and cannot form any judgment as to the acts and resolutions of their superior to the courts of law: and in that sense they are inferior courts: but the House of Commons by itself is not the Court of Parliament. Further, I admit that the House of Commons, being one branch of the legislature, to which legislature belongs the making of laws, is superior in dignity to the courts of law, to whom it belongs to carry those laws into effect, and, in so doing, of necessity, to interpret and ascertain the meaning of those laws. It is superior also in this, that it is the grand inquest of the nation, and may enquire into all alleged abuses and misconduct in any quarter, of course in the courts of law, or any of the members of them: but it cannot, by itself, correct or punish any such abuses or misconduct; it can but accuse or institute proceedings against the supposed delinquents in some court of law, or conjointly with the other branches of the

legislature may remedy the mischief by a new law. With respect to the interpretation and declaration of what is the existing law, the House of Lords is doubtless a superior court to the courts of law. And those courts are bound by a decision of the House of Lords expressed judicially upon a writ of error or appeal, in a regular action at law or suit in equity; but I deny that a mere resolution of the House of Lords, or even a decision of that House in a suit originally brought there (if any such thing should occur, which it never will, though formerly attempted),[1] would be binding upon the courts of law, even if it were accompanied by a resolution that they had power to entertain original suits: much less can a resolution of the House of Commons, which is not a court of judicature for the decision of any question either of law or fact between litigant parties, except in regard to the election of its members, be binding upon the courts of law. And it should be observed that, in making this resolution, the House of Commons was not acting as a court either legislative, judicial, or inquisitorial, or of any other description. It seems to me, therefore, that the superiority of the House of Commons has really nothing to do with the question.

But it is further said that the courts of law have no knowledge or means of knowledge as to the lex et consuetudo parliamenti, and cannot therefore determine any question respecting it.[2] And yet, at the same time, it is said that the lex et consuetudo parliamenti are part of the law of the land.[3] And this Court is, in this very case, actually called upon by the defendants to pronounce judgment in their favour, upon the very ground that their act is justified by that very lex et consuetudo parliamenti, of which the Court is said to be invincibly ignorant, and to be bound to take the law from a resolution of one branch of the parliament alone. In other words, we are told that the judgment we are to pronounce is not to be the result of our own deliberate opinion on the matter before us, but that which is dictated to us by a resolution of the House of Commons, into the grounds and validity of which resolution we have no means of enquiring, and are indeed forbidden by parliamentary law to enquire at all. I cannot agree to that position. If I am to pronounce a judgment at all, in this or in any other case, it must and shall be the judgment *of my own mind*, applying the law of the land as I understand it according to the best of my abilities, and with regard to the oath which I have taken to administer justice truly and impartially.

But, after all, there is nothing so mysterious in the law and

[1] See Vol. I, Sect. B, No. III (especially (H)), p. 157.
[2] Vol. I, Sect. C, No. X, p. 279, and No. XIX, p. 311.
[3] Cf. Vol. II, Sect. C, No. V, p. 243, and references there given.

custom of parliament, so far at least as the rest of the community not within its walls is concerned, that this Court may not acquire a knowledge of it in the same manner as of any other branch of the law. . . .

It is, indeed, quite true that the members of each House of Parliament are the sole judges whether their privileges have been violated, and whether thereby any person has been guilty of a contempt of their authority: and so they must necessarily adjudicate on the extent of their privileges. All the cases respecting commitments by the House, mostly raised upon writs of habeas corpus, and collected in the arguments and judgments in *Burdett* v. *Abbot*,[1] established, at the most, only these points, that the House of Commons has power to commit for contempt; and that, when it has so committed any person, the Court cannot question the propriety of such commitment, or inquire whether the person committed had been guilty of a contempt of the House; in the same manner as this Court cannot entertain any such questions, if the commitment be by any other court having power to commit for contempt. . . . The other cases which have been cited in argument relate generally to the privileges of individual members, not to the power of the House itself acting as a body; and hence, as I conceive, has arisen the distinction between a question of privilege coming directly or incidentally before a court of law. It may be difficult to apply the distinction. Yet it is obvious that, upon an application for a writ of habeas corpus by a person committed by the House, the question of the power of the House to commit, or of the due exercise of that power, is the original and primary matter propounded to the Court, and arises directly. Now, as soon as it appears that the House has committed the person for a cause within their jurisdiction, as for instance, for a contempt so adjudged to be by them, the matter has passed in rem judicatam, and the court, before which the party is brought by writ of habeas corpus, must remand him. But if an action be brought in this Court for a matter over which the Court has general jurisdiction, as, for instance, for a libel, or for an assault and imprisonment, and the *plea first* declares that the authority of the House of Commons or its powers are in any way connected with the case, the question may be said to arise incidentally; the Court must give some judgment, must somehow dispose of the question. I do not, however, lay any great stress on this distinction. It seems to me that, if the question arises in the progress of a cause, the Court must of necessity adjudicate upon it, whether it can be said in strict propriety of language to arise directly or incidentally.

[1] Vol. II, Sect. C, No. V, p. 243.

. . . The supposed mischief of an appeal to the House of Lords cannot surely prevent this Court from adjudicating on the question. Indeed the Attorney-General asks us to pronounce judgment for the defendants, because the House of Commons have resolved that we are bound to do so; yet upon that judgment a writ of error will lie just as much as if we give judgment for the plaintiff. To avoid such inconvenience, if it be important to do so, some legal mode should have been found of making it unnecessary for us to give any judgment at all: but no such mode can be found. . . .

It is further argued that, if this Court can entertain this question, so can the most inferior Court of Record in the kingdom, where the matter arises within its jurisdiction. I admit it to be so; but I can see no reason why the mere resolution of the House should preclude an inferior court from the enquiry, any more than this Court: nor can I see anything derogatory to the dignity of the House in such inquiry.

Upon the whole the true doctrine appears to me to be this: that every court in which an action is brought upon a subject-matter generally and primâ facie within its jurisdiction, and in which, by the course of the proceedings in that action, the powers and privileges and jurisdiction of another court come into question, must of necessity determine as to the extent of those powers, privileges, and jurisdiction: that the decision of that court, whose powers, privileges and jurisdiction are so brought into question, as to their extent, are authorities, and, if I may so say, evidences in law upon the subject, but not conclusive. In the present case, therefore, both upon principle and authority, I conceive that this Court is not precluded by the resolution of the House of Commons of May 1837 from inquiring into the legality of the act complained of, although we are bound to treat that resolution with all possible respect, and not by any means come to a decision contrary to that resolution unless we find ourselves compelled to do so by the law of the land, gathered from the principles of the common law, so far as they are applicable to the case, and from the authority of decided cases, and the judgments of our predecessors, if any be found which bear upon the questions.

I come then to the third question: Whether the act complained of be legal or not. I do not conceal from myself that, in considering this point, the resolution of the House of Commons of 31st *May* 1837 is directly called in question; but, for the reasons I have already given, I am of opinion that this Court is, not only competent, but bound, to consider the validity of that resolution, paying all possible respect, and giving all due weight, to the authority from which it emanates.

The privilege, or rather power (for that is the word used),

which that resolution declares to be an essential incident to the constitutional functions of parliament, is attempted to be supported, first, by shewing that it has been long exercised and acquiesced in; secondly, that it is absolutely necessary to the legislative and inquisitorial functions of the House.

First, as to exercise and acquiescence. I am far from saying that, in order to support any privilege or practice of parliament, or of either House, it is necessary to show that such privilege or practice has existed from time of legal memory. That point was disposed of by Lord *Ellenborough*, in the course of the argument in *Burdett* v. *Abbot*.[1] . . . Long usage, commencing since the two Houses sat separately (if indeed they ever sat together, as to which I do not stop to inquire, nor *when* they separated, as being wholly immaterial to this question), may be abundantly sufficient to establish the legality of such privilege or practice.

Now, with respect to the exercise of the power in question, I conceive that such exercise is matter of history, and therefore that the observation of Mr. Attorney-General, that he ought not to be called upon in arguing a demurrer to prove matter of *fact*, is not well founded. *If*, indeed, the plea had stated that the Commons' House of Parliament had been used to exercise this power, the demurrer would have admitted the exercise, but no such averment appears upon the face of the plea; and the historical fact of the exercise of the power is introduced by the defendants' counsel himself, in order to argue thence that the power must be legal. The onus of showing that it is so lies upon the defendants; for it is certainly primâ facie contrary to the common law. It is very remarkable that no mention is made of this alleged power of the House of Commons in any book of authority, or by any text writer. It is no where enumerated among the privileges or powers of the House. After the utmost research by the learned counsel who so ably argued this case, he has not furnished us with a single passage from any author, nor have I found any, in which even a hint is thrown out that the House of Commons has power to order defamatory matter appearing upon its proceedings to be published, and to protect the publisher from the consequences which generally attach upon the publication of such matter. . . .

Beyond all dispute it is necessary that the proceedings of each House of Parliament should be entirely free and unshackled; that *whatever is done or said in either House should not be liable to examination elsewhere*; therefore no order of either House can itself be treated as a libel, as the Attorney-General supposed it might if this action would lie. No such consequence will follow.

[1] See Vol. II, Sect. C, No. V, p. 243.

The power claimed is said to be necessary to the due performance both of the legislative and inquisitorial functions of the House. In all the cases and authorities, from the earliest times hitherto, the powers which have been claimed by the House of Commons for itself and its members, in relation to the rest of the community, have been either some privilege properly so called, i.e. an exemption from some duty, burden, attendance, or liability to which others are subject, or the power of sending for and examining all persons and things, and the punishing all contempts committed against their authority. Both of these powers proceed on the same ground, viz. the necessity that the House of Commons and the members thereof should in no way be obstructed in the performance of their high and important duties, and that, if the House be so obstructed, either collectively, or in the persons of the individual members, the remedy should be in its own hands, and immediate, without the delay of resorting to the ordinary tribunals of the country. Hence liberty of speech within the walls of the House, freedom from arrest, and from some other restraints and duties during the sitting of parliament, and for a reasonable time before and after its sitting (with the exception of treason, felony, and breach of the peace), which, although the privileges, properly so styled, of the individual members, are yet the privileges of the House. Hence the power of committing for contempt those who obstruct their proceedings, either directly, by attacks upon the body or any of its members, or indirectly, by vilifying or otherwise opposing its lawful authority. Cases have frequently arisen, in which the extent and exercise of these privileges and powers have come in question: and I believe that all such cases will be found to range themselves under one of the two heads I have mentioned. But this is, I believe, the first time in which a question has arisen as to the power of the House to authorize an act prejudicial to an individual who has neither directly or indirectly obstructed the proceedings of the House, and is in no way amenable to its authority. . . .

[He uses further arguments to prove that this privilege is not necessary for the proper work of the House. This part of the argument is less important as by the Parliamentary Papers Act, 1840—3 & 4 Vict., c. 9—the Houses were by statute given such power and privilege and the law changed, to overrule this part of the judgement.]

Where then is the necessity for this power? Privileges, that is, immunities and safeguards, are necessary for the protection of the House of Commons, in the exercise of its high functions. All the subjects of this realm have derived, are deriving, and I trust and believe will continue to derive, the greatest benefits from the exercise of those functions. All persons ought to be very tender in

preserving to the House all privileges which may be necessary for their exercise, and to place the most implicit confidence in their representatives as to the due exercise of those privileges. But *power*, and especially the power of invading the rights of others, is a very different thing: it is to be regarded, not with tenderness, but with jealousy; and, unless the legality of it be most clearly established, those who act under it must be answerable for the consequences. The onus of shewing the existence and legality of the power now claimed lies upon the defendants: it appears to me, after a full and anxious consideration of the reasons and authorities adduced by the Attorney-General in his learned argument, and after much reflection upon the subject, that they have entirely failed to do so: and I am therefore of opinion that the plaintiff is entitled to our judgment in his favour.

[Littledale, J., and Coleridge, J., delivered judgements to the same effect.]

[A. & E., ix, 107.]

XII

THE CASE OF THE SHERIFF OF MIDDLESEX, 1840

[On a motion for a writ of habeas corpus, made " on the affidavit of Messrs. *Evans* and *Wheelton*, sheriff of Middlesex ".[1] In the Court of Queen's Bench on 27 January 1840.]

LORD DENMAN, C.J. I think it necessary to declare that the judgement delivered by this Court last *Trinity* term, in the case of *Stockdale* v. *Hansard* appears to me in all respects correct. The Court decided there that there was no power in this country above being questioned by law. . . .

[The only question upon the present return (by the Serjeant-at-Arms of the House of Commons to the writ of habeas corpus; it stated that he held the prisoners under a Speaker's warrant " for contempt and breach of the privilege of the House ") is, whether the commitment is sustained by a legal warrant. . . .]

Bayley, J. as well as Lord *Ellenborough*, appear in that case [*i.e.* Burdett *v.* Abbot][2] to have been of opinion that, if particular facts are stated in the warrant, and do not bear out the commitment, the Court should act upon the principle recognized by *Holt*, C.J. in *Regina* v.

[1] This affidavit set forth that they had served an order of the Court of Queen's Bench on Messrs. Hansard (arising out of the previous case) and as a result had been committed to the custody of the Serjeant-at-Arms by the Speaker for contempt of privilege of the House.

[2] Vol. II, Sect. C, No. V, p. 243.

Patty;[1] but that, if the warrant merely states a contempt in general terms, the Court is bound by it. That rule was adopted in this Court in *Rex* v. *Hobhouse*; and in the late case of *Stockdale* v. *Hansard*[2] there was not one of us who did not express himself comformably to it. . . . There is something in the nature of the houses themselves which carries with it the authority that has been claimed; though, in discussing such questions, the last important decision is always referred to. Instances have been pointed out in which the Crown has exerted its prerogative in a manner now considered illegal, and the Courts have acquiesced: but the cases are not analogous. The Crown has no rights which it can exercise other than by process of law and through amenable officers, but representative bodies must necessarily vindicate their authority by means of their own, and those means lie in the process of committal for contempt. This applies not to the houses of parliament only, but, as was observed in *Burdett* v. *Abbot*, to the courts of justice, which, as well as the houses, must be liable to continual obstruction and insult if they were not intrusted with such powers. It is unnecessary to discuss the question whether each house of parliament be or be not a court; it is clear that they cannot exercise their proper functions without the power of protecting themselves against interference. The test of the authority of the House of Commons in this respect, submitted by Lord *Eldon* to the judges in *Burdett* v. *Abbot*,[3] was whether, if the Court of Common Pleas had adjudged an act to be a contempt of court, and committed for it, stating the adjudication generally, the Court of King's Bench on a habeas corpus setting forth the warrant, would discharge the prisoner because the facts and circumstances of the contempt were not stated. A negative answer being given, Lord *Eldon*, with the concurrence of Lord *Erskine* (who had before been adverse to the exercise of jurisdiction), and without a dissentient voice from the House, affirmed the judgement below. And we must presume that what any court, much more, what either house of parliament, acting on great legal authority, takes upon it to pronounce a contempt is so.

It was urged that, this not being a criminal matter, the Court was bound by stat. 56 *G.* 3. *c.* 100. *s.* 3[4] to inquire into the case on affidavit; but I think the provision cited is not applicable. On the motion for a habeas corpus, there must be an affidavit from the party applying; but the return, if it discloses a sufficient answer, puts an end to the case, and I think the production of a good warrant is a sufficient answer. Seeing that, we cannot go into the question of contempt on affidavit, nor discuss the motives which may be alleged. Indeed (as the courts have said in some of the cases) it would

[1] Vol. I, Sect. C, No. X, p. 279. [2] See preceding case (No. XI).
[3] Vol. II, Sect. C, No. V, p. 243. [4] Vol. II, Sect. A, No. XVII, at p. 39.

be unseemly to suspect that a body, acting under such sanctions as a house of parliament, would in making its warrant suppress facts which, if discussed, might entitle the person committed to his liberty. If they ever did so act I am persuaded that on further consideration they would repudiate such a course of proceeding. What injustice might not have been committed by the ordinary courts in past times if such a course had been recognised, as, for instance, if the Recorder of *London* in *Bushell's Case*,[1] had in the warrant of commitment suppressed the fact that the jurymen were imprisoned for returning a verdict of acquittal. I am certain that such will never become the practice of any body of men amenable to public opinion.

In the present case, I am obliged to say that I find no authority under which we are entitled to discharge these gentlemen from their imprisonment.

[Littledale, J., concurring added that the House of Commons must act " through the proper officer; and we must also notice that the Speaker is that officer ".

Williams, J., and Coleridge, J., also concurred.]

[A. & E., xi, 273.]

XIII

THE QUEEN *v.* COOPER AND OTHERS, 1843

[On 20th March 1843 at Stafford Spring Assizes, Cooper was charged with seditious conspiracy, in that he had joined with others to urge that the strikers in the potteries (in August 1842) should remain out until the Charter became law.]

ERSKINE, J., summing up. . . . It was not unlawful for men to agree to desist from working for the purpose of obtaining an advance of wages, neither was it unlawful for them to agree among themselves to support each other for the purpose of obtaining any other lawful object; and then, if the establishment of the Charter were a lawful object and the means proposed for effecting that object were lawful he could not see that the adoption of such means by the men was criminal, and, therefore, he could not see how it could be criminal for others honestly and peaceably to advise and encourage their adoption. But if the obvious peril of such experiment were such as to convince the jury that the defendants contemplated and intended, through the pressure of distress from a simultaneous cessation of all work, to produce discontent, tumult, and outrage, and through the operation of such results to press on the Government the adoption of the Charter, then the charge of this indictment would be made out.

The learned judge then went through the evidence at great

[1] See Vol. I, Sect. C, No. I, p. 245.

length. With regard to the turning out the hands at Mr. *Ridgway's* *Cooper* alleged that Mr. *Ridgway* did not object. The question, however, was not what Mr. *Ridgway* would object to . . . but what his men would object to, and if the men . . . were willing to continue their work and a mob of people went and by terror or force compelled them to desist from work, that meeting was an unlawful meeting; and if that, . . . was the result of a previous conspiracy between him and the other defendants . . . then that would satisfy the charge upon the indictment. The meeting at Hanley took place . . . after *Cooper* had heard . . . of some at least of the acts of violence and outrage that had been committed, yet he went to the meeting in the evening and gave out these words, and set the tune:

" The Lion of Freedom is loosed from his den,
And we'll rally round him again and again."

The jury were to say with what intention language such as that was used by him after all he knew of the conduct of persons whom he might very naturally suppose to be those whom he had addressed in the morning. . . . But the defendant . . . had stated that it was innocent, being only a song in praise of *O'Connor*. [He went on to deal with Cooper's argument that the Anti-Corn Law League had a greater responsibility for agitation and should be standing in his place in the dock.] . . . The jury are to judge of the effect of every speech, letter, and document which is brought in evidence for the purpose of showing that defamatory or seditious language has been used, and they are to decide whether the language is such as the law describes as seditious, viz. whether its effect is to bring the Crown, the Government, and the laws of the country into hatred and contempt . . . how the Government may have treated similar language cannot affect the question . . . you are to ask yourselves whether . . . their object was to invite the people to acts of violence of any description, whether for the purpose of turning out the colliers by force or intimidation, or whether for the purpose of committing any of those outrages, or whether the object of those speeches was that which is avowed by the defendants themselves, for the purpose of inducing the workmen to abstain voluntarily from work until the Charter should become the law of the land. And, if you should come to the latter conclusion that there is nothing more in the speeches than what might fairly be attributed to a declaration of their wish that labour should voluntarily cease till the Charter became the law of the land, you will have then to ascertain from the evidence whether you are satisfied that that was the purpose of the defendants, or whether their purpose was, by turning those hands out of employ, and keeping them out of employ, to raise tumults or such a force in the country as would intimidate the Government

and compel them by terror, and not by sound reason and conviction, to adopt the Charter as the law of the land. . . . The defendants avow that they have conspired so far, but innocently conspired, for the purpose of procuring the Charter peaceably and quietly and without the employment of intimidation or force, all further conspiracy they deny. You will have to say whether, from the conduct of these several parties at these transactions, you are satisfied they have combined, not only for the purpose of procuring the People's Charter as a part of the law of the land by peaceable and lawful means, but whether they have also conspired and combined to procure its being established as a part of the law of the land by tumult, by violence, and by unlawful means.

The Jury returned a verdict of guilty but recommended *Capper* [one of those charged with Cooper] to mercy.

Cooper. I trust your Lordship will allow me to express my sense of your extreme kindness during this trial; I feel in reality that you are an *Erskine.*

The learned judge interrupting *Cooper* desired him to refrain from such remarks. . . .

On 4th May 1843, the defendants were called up for judgement before Lord DENMAN, L.C.J., PATTESON, COLERIDGE, and LITTLEDALE, JJ. (in Queen's Bench).

PATTESON, J.—[delivering the judgement of the Court, after hearing the prisoner's speeches in mitigation].

. . . it is of great importance that it should be known what the charge against you was because you . . . have laid before us your opinions with respect to certain political matters which you call the People's Charter, as if you supposed you had been prosecuted either for entertaining those opinions or expressing them. The case is not so. . . . No such indictment has been preferred. . . . Every man has a right to entertain such opinions he may think fit with respect to the institutions of the country, and with the respect to the possibility of their being made better by alteration, provided that he entertains [them] honestly, and that, if he disseminates them, he does so in a proper manner, and relying on the change being made by those who by the constitution of the country are entrusted with the power of making it. All the people in the country have no right to make that change.

. . . before you went into the Potteries in the month of August there had been many people out of employ, there was great distress in the country, much dispute between masters and workmen with respect to wages; great hostility existing as early as April. It appears there were a great many out of employ, and it was put to

the jury with respect to the circumstances in the most favourable way for you that could possibly be, because the learned judge told the jury a workman had a right to demand what wages he thought his labour entitled him to, and that he was not obliged to work for any lower wages . . . and no doubt, workmen, if they agree as to wages, if it is done peaceably and without intimidation, may do so, and not commit a breach of the law, but then when we come [*sic*—to ?] another matter, recommending all persons to abstain from work at all, not to insist upon having any particular wages, but recommending all persons to abstain from working altogether until the Charter became the law of the land—that matter is a very different one indeed. The Court does not say it is lawful for any man to continue not to do any work at all, and it is clearly illegal for persons to compel other workmen throughout the whole country to abstain from work until the Charter becomes the law of the land. That is an act that has been characterised as an overt act of treason; at all events it is most unlawful. When we consider the number of people that were at that time ready to commit any mischief, and who did commit all sorts of outrage, although you say they were not Chartists, the mischief done by addressing a large number of persons indiscriminately becomes apparent. It might have been different if you had been addressing your own club . . . You told the people not to steal, but you told them not to work, and they must have a subsistence, and the inferences therefore was [*sic*] clear. . . .

[Cooper sentenced to two years in Stafford gaol. Richards sentenced to one year in Stafford gaol.]

[*S.T.* (N.S.), iv, 1250, at 1311.]

XIV

THE QUEEN *v.* O'CONNELL AND OTHERS, 1844

[O'Connell appealed from the verdict of the Court of Queen's Bench (Dublin), given in 1843, that he was guilty of seditious conspiracy. A motion for a new trial having failed, the case came, on a writ of error, before the House of Lords on—]

Thursday July 4th. Present Lord Lyndhurst, L.C., Lord Brougham, Lord Denman, Lord Cottenham, Lord Campbell. [The House proceeded to judgement on—]

Wednesday September 4th.

LORD LYNDHURST, L.C. My Lords, after a careful attention to

this case, I consider it to be my duty to move that the judgement of the Court below be affirmed. When the record was first presented at your Lordships bar, it occurred to me, as I believe it did to every other noble Lord who had attended to these proceedings, that it was proper, from the nature of these questions and the other circumstance connected with the case, and in order to avoid all possible suspicion of political influence or bias in the decision of your Lordships' House, that the assistance of Her Majesty's judges should be required. . . . Upon all the points submitted to their consideration with the exception of one question . . . their opinion has been unanimous. With respect to that one question, seven of the learned judges, including the *Chief Justice* of the Common Pleas, have expressed a clear . . . opinion against the objections that have been raised . . . [Only two, and those with reservations, had accepted the argument of the appeal on this one question. The Lord Chancellor stressed that there was only a technical argument to deal with and cited authorities to confirm his view that the decision should be against O'Connell]. . . .

LORD BROUGHAM . . . we called in the judges because the cause was one of great public importance; it was a Government prosecution: it regarded an extensive conspiracy against the peace of the realm; above all it was a political question, and one exciting great temporary interest among the parties which divide the country, and which also divide the two houses of the legislature. . . .

. . . I consider it as clear that the highest Court is bound to view with the utmost respect the practice, and the decision, and the precedents in the courts below . . . and only to overrule their decision when we find it clear, beyond all doubt, that they have mistaken the law . . . but then our opinion must be quite clear that the error has been committed; also a uniform course of precedent must, generally speaking, be admitted to make the law to us as well as to the Courts below. . . . [In this case he finds such precedents, sees no such error, and therefore he concurs with the Lord Chancellor in thinking that the appeal must be rejected.]

LORD DENMAN, L.C.J. . . . if it is possible that such a practice as that which has taken place in the present instance should be allowed to pass without a remedy (and no other remedy has been suggested) trial by jury itself instead of being a security to persons who are accused, will be a delusion, a mockery, and a snare. . . . [He took as one main argument that the sheriff's list from which the jury had to be selected was defective by the omission of names and that consequent challenges by the defence were overruled. He therefore thought that the appeal must be found good and was for the reversal of the courts below.]

LORD COTTENHAM—[After an even more technical argument about the powers of the House to investigate the record was of opinion that the plaintiff must succeed].

LORD CAMPBELL [also delivered a learned explanation of his reasons for thinking the appeal must succeed, ending]—" I need hardly press upon your Lordships, that you are not bound by the opinion of the majority of the judges whom you thought fit to consult, although the opinion is entitled to the highest respect. The appeal is not from the Irish judges to the English judges, but to this Chamber of the Imperial Parliament—which I hope will long continue satisfactorily to administer justice in the last resort to all the inhabitants of the United Kingdom.

LORD LYNDHURST, L.C., from his place on the Woolsack put the question, " Is it your Lordships' opinion that the judgement of the Court below in this case be reversed ? As many of your Lordships as are of that opinion will say ' Content.' "

LORDS COTTENHAM, CAMPBELL, AND DENMAN answered " Content ".

LORD LYNDHURST, L.C. As many as are of an opposite opinion will say " Not Content ".

LORD BROUGHAM and one or two other peers said, " Not Content ".

LORD LYNDHURST, L.C., made no declaration of what he considered to be the opinion of their Lordships. After a pause of some moments, the noble and learned Lord again put the question in the same terms, and with the same result.

LORD WHARNCLIFFE. . . . My Lords, in this state of things I cannot help suggesting that your Lordships should not divide the House upon a question of this kind, when the opinion of the Law Lords have been already given upon it, and the majority is in favour of reversing the judgement. In point of fact, my Lords, they constitute the Court of Appeal: and if, departing from what the practice has ever been, noble Lords, unlearned in the law, should interfere to decide such questions by their votes, instead of leaving them to the decision of the Law Lords, I very much fear that the authority of this House as a court of justice would be very greatly lessened throughout the country. Under these circumstances, and with these views, I beg leave humbly to suggest, that such of your Lordships as are not Lords learned in the law, and have not heard the whole case, and cannot be supposed to be acquainted with the whole of the reasoning upon it, and who are, therefore, not qualified to pass a judgement upon such an occasion, should abstain altogether from voting. It is far better that the character of this House as a court of appeal and a court of law should be maintained, even though

the decision should, in the opinion of your Lordships, be objectionable, as being contrary to that of the judges, and although it should prove inconvenient in this particular instance: it is, I say, under such circumstances, better to concur in the opinion of the majority of the Law Lords, than reverse the judgement of those persons who by their education and station must be best able to decide upon subjects of this nature, and who in reality constitute the court of law in this House.

LORD BROUGHAM. I perfectly agree in the opinions expressed by my noble friend. Differing, as I do, in opinion from the majority of the Law Lords and concurring in opinion with the majority of the learned judges . . . while I deeply lament the decision which has just been come to . . . nevertheless I highly approve of the view of this matter taken by my noble friend and implore your Lordships who have not heard all the arguments, who have not made yourselves perfectly acquainted with the subject, and whose habits do not lead you to take part usually in the discussion of such questions, not to take any part in the decision. . . .

LORD CAMPBELL. . . . With reference to the distinction between Law Lords and Lay Lords . . . such a distinction is one which is not known to the Constitution; but, nevertheless, I think no judge ought ever to decide a case, all the arguments in which he has not heard. . . . I believe that none but the Law Lords attended to the arguments in this case; it would therefore, I think, be proper that noble Lords who have not heard the case should abstain from voting.

LORD LYNDHURST, L.C. I think those noble Lords, who have not heard the arguments, will decline voting if I put the question again.

The Earl of STRADBROKE said that he had considered the subject most attentively, and he was desirous of giving an opinion with respect to it.

The Marquess of CLANRICARDE. My Lords, I think it right to say, that if any noble Lord, not learned in the law, who has not heard the whole argument, votes in addition to the Law Lords on this question, I shall, as a matter of privilege, think it my duty to give my vote. . . . I must also say that I should be very sorry to be reduced to that necessity: for I should look upon the course of proceeding which would oblige me so to act, to be one of the most calamitous nature to this House and the country: but I must add, that it is not required in this case, more than in any other, that the particular Lords who vote should be those who have studied questions of this kind. I think it infinitely better that all those noble Lords who are not, in the common acceptation of the term and in the usage of Parliament, qualified to decide, should leave the House, and I hope

I shall be allowed to do so, in common with all other noble Lords who are not lawyers.

[The Earl of VERULAM expressed agreement with this, and set an example by departing.] All the Lay Lords then withdrew.

The question that the judgement be reversed was again put, when it was carried in the affirmative.[1]

[*S.T.* (N.S.), v, p. 832.]

XV

THE QUEEN *v.* NELSON AND BRAND,[2] 1867

AT THE CENTRAL CRIMINAL COURT

COCKBURN, L.C.J. (charging the grand jury) . . . this prosecution is founded upon the fact that a British subject (a Mr. George William Gordon) has been brought to trial before a court-martial, he not being a person in the military service, but a civilian ; that by that court-martial, ordered by one of the parties accused, Colonel Nelson, and presided over by the other, Lieutenant Brand, he was condemned for high treason, and sentenced to death, and that sentence having been approved by Colonel Nelson, was executed under it.

The prosecution, as I understand, is founded upon two grounds. In the first place, that there was no jurisdiction in those who tried and sentenced this man to death. In the second, that if there was jurisdiction, that jurisdiction was not honestly, but corruptly exercised, for the purpose of getting rid of an obnoxious individual. . . . [Details the facts of the negro rising in Jamaica in October 1865, stressing the proclamation of martial law by the Governor in the county of Surrey, including Kingston : Gordon

[1] In 11 Cl. & F. 425, in connection with the report of this case, a list is given of occasions when Lay Lords took some part in the decisions.

Reeve *v.* Long—L.J. 1695. I Salk 227.

Bertie *v.* Falkland—L.J. 1697. Colles Rep. 10.

Ashby *v.* White—L.J. 1703, vol. 17, p. 369. 2 Ld. Raym. 938 (four bishops and nine peers voting against reversal of the verdict of Queen's Bench).

Douglas *v.* Hamilton—L.J. 1769, vol. 32, p. 264, (lay lords entering a protest against the reversal of the judgement of the court below).

Alexander *v.* Montgomery—L.J. 1773, vol. 33, p. 519.

Hill *v.* St. John—L.J. 1775, vol. 34, p. 443. (The two law lords present overruled by the lay lords and judgement of King's Bench affirmed.)

Bishop of London *v.* Fytche—L.J. 1783, vol. 36, p. 687, (judgement reversing King's Bench by 19 to 18.)

[2] Cf. Vol. II, Sect. C, No. XVII, p. 294, and also No. IV, p. 241, with references there given.

had given himself up but was executed for secret complicity in this outbreak.] . . .

The first question, therefore, is whether the Governor had authority to proclaim martial law—a question obviously of infinite importance, not only in this case, but in any other similar case which may arise hereafter. Now one thing is quite clear—namely, that the power of a Governor to declare martial law can proceed only from one of two sources. It must either be derived from the commission which he has received from the Crown, or from some statute, either of imperial or local legislation. It can be derived from no other source. A Governor, simply as such, would have no power to declare martial law; but, if the terms of his commission are large enough to invest him with such authority as the Crown possesses, and the Crown has, by virtue of the prerogative inherent in it, the power to proclaim martial law, the Governor would have that power. So, again, if, by virtue of any imperial or local legislation, authority to declare and exercise martial law has been conferred upon him, he would be entitled, on the necessity arising, to act upon that authority. We have, therefore, to inquire, on the present occasion, whether by virtue of his commission or by virtue of any legislative enactment the Governor of Jamaica was invested with such power. . . .

. . . the Governor, assuming, as I do for the present purpose, that his commission confers on him all the executive power of the Crown in the government of the island, can have no further power to declare martial law, as derived from his commission, than that which the Sovereign would have. We are, therefore, brought face to face, with this great constitutional question—Has the Sovereign, by virtue of the prerogative of the Crown, in the event of rebellion, the power of establishing and exercising martial law within the realm of England?[1] . . .

We need not trouble ourselves with the consideration of whether there ought to be such a thing as martial law or not: the question for us is whether there is such a thing, and whether the Crown has the power, and whether the representatives of the Crown in our colonies abroad have the power, to call it into action. And if martial law can thus be called into existence, then arises this all-important question, what this martial law is[2] . . . If it be true that you can apply martial law for the purpose of suppressing rebellion, it is equally certain that you cannot bring men to trial for treason under martial law, after a rebellion has been suppressed. It is well established . . . that the only justification of it is founded on the assumption of an absolute necessity—a necessity paramount to all law. . . .

[1] Cf. Vol. II, Sect. C, No. III, p. 240.

[2] See Vol. II, Sect. D, No. XXVII, p. 389.

. . . so far as I have been able to discover, no such thing as martial law has ever been put in force in this country against civilians, for the purpose of putting down rebellion. I own, therefore, that I am a little astonished when I find persons, in authority and out of authority, talking and writing about martial law in the easy familiar way in which they do talk about it, as one of the settled prerogatives of the Crown in this country, and as a thing perfectly ascertained and understood, when, so far as I can find it never has been resorted to or exercised in England for such a purpose at all. On the other hand it is no doubt true that martial law has been put in force in the sister country. I allude to what took place in Ireland at the close of the last century. . . .

Assuming the existence of the power to put martial law in force, whether as inherent in the prerogative or as derived from statutory enactment, a question of vital importance presents itself, namely, What is the martial law which is thus to supersede the common law of England? . . .

In like manner, if a mutiny breaks out on board ship, immediate force may be resorted to; you may quell the mutiny if necessary by killing those engaged in it. So, if a regiment in an army, or a company in a regiment, breaks out into mutiny, you may put it down at once by the immediate application of force. You may order other troops to fire on them, or put them to the sword, if they refuse to submit. But this is not what can properly be called martial law. It is part and parcel of the law of England—or perhaps I should say it is a right paramount to all law, and which the law of every civilised country recognises—that life may be protected or crime prevented by the immediate application of any amount of force which, under the circumstances, may be necessary. But that is not what we are dealing now with. What we are considering is whether, for the suppression of a rebellion, you may subject persons not actively engaged in it, and whom you therefore cannot kill on the spot, to an anomalous and exceptional law, and try them for their lives without the safeguards which the law ought to afford. . . .

. . . [He describes military law as detailed, clear and known.] . . . Why are we to be told that when you come to deal with a civilian by martial law, it is to be something different from the martial law which is applied to the soldier? I confess myself at a loss for any reason that can be given for that assertion, and certainly before I adopt the doctrine that a law, if it may be called a law, of the uncertain and arbitrary character which martial law is said to be, can be administered in this country, and that Englishmen can be tried for their lives under it, I shall require something more than assertion unsupported by authority—of this I am perfectly sure—namely,

that in those repertories of the law of England which have been compiled by the sages and fathers of the law, and which have been handed down to us with the sanction of their great names, to inform us, and those who are to come after us in future ages, what the law of England was and is, no authority for anything of the sort can be found. On the contrary, when Coke, and Hale, and Blackstone speak of martial law, it is plain they are speaking of the law applicable to the soldier, or what in modern phrase is called military law. It is plain that they knew of no other ; and the fact that when speaking, and clearly speaking, about the law applicable to soldiers, such men as Lord Hale and Sir William Blackstone, with their accuracy of statement, call it martial law and do not point out any distinction between martial law and military law as it is spoken of now, goes far indeed to show that they knew of no such difference, and that the distinction now supposed to exist is a thing that has come into the minds of men certainly much later than when these eminent luminaries of the law of England wrote their celebrated treatises.

On the other hand, let us see what authority there is which justifies the assertion that, if martial law can be legally exercised, it can be exercised in the arbitrary and despotic form which some persons contend for, as being something that has no limit, except for the particular exigency, or, I might almost say, the convenience of the moment. I will bring before you all that I have been able to discover. In the first place, I find this distinction taken in the works upon military courts-martial, written mostly by military men, as I think, from an entire misconception of the meaning of Lord Hale, and especially of that of Sir William Blackstone in his commentaries — a work probably more ready to their hands, and the language of which is certainly ambiguous and calculated to mislead until you carefully look to see what is the subject-matter of which he is treating, upon which all difficulty vanishes. But military writers upon courts-martial certainly do make this distinction, and there is also the Authority of two distinguished members of the legal profession, though not of judicial position. Mr. Headlam, certainly a gentleman of great learning and judgement, being called upon, when Judge-Advocate-General, to afford information to the commissioners at that time appointed under a Royal Commission to inquire into the defences of the United Kingdom, makes the following statement. He writes :—

" I have to observe, with a view of preventing any misunderstanding on the subject, that there is a broad distinction between the martial law called into existence and the law administered by courts-martial for the ordinary government of the army, which for distinction and accuracy may be called 'military law.' The latter,

namely, military law, is applicable only to the army and such persons connected with it as are made amenable to it by the Mutiny Act. Martial law, according to the Duke of Wellington, is 'neither more nor less than the will of the general who commands the army; in fact, martial law means no law at all. Therefore the general who declares martial law, and commands that it shall be carried into execution, is bound to lay down the rules, regulations, and limits, according to which his will is to be carried out.' "

The opinion thus cited by Mr. Headlam was that of a very great man, and as to what may be done in an enemy's country, in time of war, may be perfectly sound—on that I pronounce no opinion—but I cannot accept the opinion even of so great a man as authority on a question of law, and I certainly should not recommend anybody to act upon it in case martial law should be proclaimed in our own country, or to rely on it as a protection if called upon to answer for his conduct in a court of justice for any injury inflicted on a fellow-subject in the exercise of martial law.[1] Mr. Headlam goes on to say—

" The effect of a proclamation of martial law in a district of England is a notice to the inhabitants that the executive government has taken upon itself the responsibility of superseding the jurisdiction of all the ordinary tribunals, for the protection of life, person, and property, and has authorised the military authorities to do whatever they think expedient for the public safety."

All this may be true, but I should like to know on what authority the statement rests. I can only say that I have not been able to find it, and I hope I shall give no offence when I say that, in a matter of such importance, before such doctrines as these, involving such serious consequences if carried into effect, are enunciated in this positive and unqualified manner, and spoken of as though of ordinary occurrence, some judicial decision or some high legal authority should be cited, or at all events instances adduced of the exercise of such a power. . . .

Gentlemen, it may be that all I have said upon the subject of the law will have left you, as I own candidly it still leaves me, not having the advantage of judicial opinion to guide me, nor of forensic argument and disputation to enlighten and instruct me, in some degree of doubt. Let me, therefore, add that if you are of opinion, upon the whole, that the jurisdiction to exercise martial law is not satisfactorily made out, and that it is a matter which ought to be submitted to further consideration on the trial of the accused before a competent court where all the questions of law incident to the discussion and decision of the case may be fully raised and authori-

[1] Cf. Vol. II, Sect. C, No. XXI, p. 312, and No. XXIII, p. 317.

tatively and definitely considered and decided, I must say that I think that the safer course will be to let this matter go forward. If there was a power to put martial law in force, and consequently jurisdiction to try persons under it, that will be safely ascertained and firmly established by judicial decision; if there was none, it follows that there has been a miscarriage of justice which calls for inquiry, and as to which further inquiry ought to take place. If, however, upon the review of the authorities to which I have called your attention, and of the enactments of the Jamaica statutes, and the recognition and reservation of the power of the Crown in the Acts of Parliament, you think the accused ought not further to be harassed by criminal proceedings, and that the case against them ought not to be submitted to the consideration of a jury, you will say so by ignoring this indictment; upon this you must exercise your own judgement. Again on the second branch of the case, in which we take the legality of martial law for granted, if you think that although there may have been a mistake, and a most grievous mistake, in condemning and sending this man to death, yet that the proceedings were done honestly and faithfully, and in what was believed to be the due course of the administration of justice, again I say you ought not to harass the accused persons by sending them to trial to another tribunal. If, on the other hand, you think there is a case which, at all events, calls for further inquiry and for an answer on the part of those who stand charged with this most serious offence, then you will find a true bill.

[The grand jury "ignored the indictment" but recommended "that martial law should be more clearly defined by legislative enactment", and the Lord Chief Justice (in one of his notes to the report) agreed—"protesting so far as in me lies, and with whatever of weight and authority belongs to the office I have the honour to hold, against the exercise of martial law in the form in which it has lately been put in force".]

[F. Cockburn: Special Rep., published with notes by the Lord Chief Justice.]

XVI

WASON *v.* WALTER, 1868

[The plaintiff, in a petition to the House of Lords in 1867 charged a high judicial officer with making false statements to an election Committee of the House of Commons in 1835. In a debate on the petition in the House of Lords the charge was utterly refuted and the Lord Chancellor said the petition would remain "a perpetual record of his (the plaintiff's) falsehood and malignity". *The Times* reported

and commented on this debate, and Walter, being responsible for the publication, was proceeded against for libel on two counts, the report and the comment. The jury found for the defendant on both counts.]

Cockburn, C.J.—[in the Court of Queen's Bench, Nov. 19, 1868, after hearing arguments in support of a rule for a new trial]. . . .

. . . The main question for our decision is, whether a faithful report in a public newspaper of a debate in either house of parliament, containing matter disparaging to the character of an individual, as having been spoken in the course of the debate, is actionable at the suit of the party whose character has thus been called in question. We are of opinion that it is not.

Important as the question is, it comes now for the first time before a court of law for decision. Numerous as are the instances in which the conduct and character of individuals have been called in question in parliament during the many years that parliamentary debates have been reported in the public journals, this is the first instance in which an action of libel founded on a report of a parliamentary debate has come before a court of law. There is, therefore, a total absence of direct authority to guide us. There are, indeed, dicta of learned judges having reference to the point in question, but they are conflicting and inconclusive, and having been unnecessary to the decision of the cases in which they were pronounced, may be said to be extrajudicial. . . .

Several cases were cited in the course of the argument before us, but they turned for the most part on the question of parliamentary privilege, and therefore appear to us very wide of the present question. The case of *Rex* v. *Wright* approaches nearest to the one before us. In that case a committee of the House of Commons having made a report imputing to Horne Tooke seditious and revolutionary designs after his acquittal on a trial for high treason, and the House having ordered the report to be printed for the use of its members, the defendant, a bookseller and publisher, printed and published copies of the report. On an application for a criminal information the Court refused the rule, apparently on the ground that the report of a committee of the House of Commons, approved of by the House, being part of the proceedings of parliament, could not possibly be libellous. Lord Kenyon, C.J., says, "This report was first made by a committee of the House of Commons, then approved by the House at large, and then communicated to the other House, and it is now sub judice; and yet it is said that this is a libel on the prosecutor. It is impossible for us to admit that the proceeding of either of the houses of parliament is a libel; and yet that is to be taken as the foundation of this applica-

tion." Lord Kenyon and his colleagues appear to have thought that a paper, though containing matter reflecting on the character of an individual, if it formed part of the proceedings of the House of Commons, would be so divested of all libellous character as that a party publishing it, even without the authority of the House, would not be responsible at law for the defamatory matter it contained. If this doctrine could be upheld, it would have a manifest bearing on the present question, for as no speech made by a member of either house, however strongly it may assail the character and conduct of others, can be held to be libellous, it would follow, such a speech being a parliamentary proceeding, that the publication of it would not be actionable. But this is directly contrary to the decision in *Rex* v. *Lord Abingdon*, and *Rex* v. *Creevey*, in which the publication of speeches made in parliament reflecting on the character of individuals was held to be actionable. . . .

Beyond, however, impugning the authority of *Rex* v. *Wright*, the two last-mentioned cases afford little assistance towards the solution of the present question. There is obviously a very material difference between the publication of a speech made in parliament for the express purpose of attacking the conduct or character of a person, and afterwards published with a like purpose or effect, and the faithful publication of parliamentary debates in their entirety, with a view to afford information to the public, and with a total absence of hostile intention or malicious motive towards any one.

The case of *Lake* v. *King*, which was cited in the argument before us, has no application to the present case. There, a petition having been presented to the House of Commons by the defendant, impugning the conduct of the plaintiff, copies of the petition had been printed and circulated among the members of the house, and it was held that, the printing and circulating petitions being according to the course and usage of parliament, no action would lie.

The case of *Stockdale* v. *Hansard*,[1] which was much pressed upon us by the counsel for the defendant, is in like manner beside the question. . . .

To the decision of this Court in that memorable case we give our unhesitating and unqualified adhesion. But the decision in that case has no application to the present. The position that an order of the House of Commons cannot render lawful that which is contrary to law, still less that a resolution of the House can supersede the jurisdiction of a court of law by clothing an unwarranted exercise of power with the garb of privilege, can have no application where the question is, not whether the act complained of being unlawful at law, is rendered lawful by the order of the House or protected

[1] Vol. II, Sect. C, No. XI, p. 264.

by the assertion of its privilege, but whether it is, independently of such order or assertion of privilege, in itself privileged and lawful.

Decided cases thus leaving us without authority on which to proceed in the present instance, we must have some recourse to principle in order to arrive at a solution of the question before us, and fortunately we have not far to seek before we find principles in our opinion applicable to the case, and which will afford a safe and sure foundation for our judgement.

It is now well established that faithful and fair reports of the proceedings of courts of justice, though the character of individuals may incidently suffer, are privileged, and that for the publication of such reports the publishers are neither criminally nor civilly responsible. . . .

We entirely concur with Lawrence, J., in *Rex* v. *Wright*, that the same reasons which apply to the reports of the proceedings in courts of justice apply also to proceedings in parliament. It seems to us impossible to doubt that it is of paramount public and national importance that the proceedings of the houses of parliament shall be communicated to the public, who have the deepest interest in knowing what passes within their walls, seeing that on what is there said and done, the welfare of the community depends. Where would be our confidence in the government of the country or in the legislature by which our laws are framed, and to whose charge the greatest interests of our country are committed,—where would be our attachment to the constitution under which we live, if the proceedings of the great council of the realm were shrouded in secrecy and concealed from the knowledge of the nation? How could the communications between the representatives of the people and their constituents, which are so essential to the working of the representative system, be usefully carried on, if the constituencies were kept in ignorance of what their representatives are doing? What would become of the right of petitioning on all measures pending in parliament, the undoubted right of the subject, if the people are to be kept in ignorance of what is passing in either house? Can any man bring himself to doubt that the publicity given in modern times to what passes in parliament is essential to the maintenance of the relations subsisting between the government, the legislature, and the country at large. It may, no doubt, be said that, while it may be necessary as a matter of national interest that the proceedings of parliament should in general be made public, yet that debates in which the character of individuals is brought into question ought to be suppressed. But to this, in addition to the difficulties in which parties publishing parliamentary reports would be placed, if this

distinction were to be enforced and every debate had to be critically scanned to see whether it contained defamatory matter, it may be further answered that there is perhaps no subject in which the public have a deeper interest than in all that relates to the conduct of public servants of the state,—no subject of parliamentary discussion which more requires to be made known than an inquiry relating to it. Of this no better illustration could possibly be given than is afforded by the case before us. A distinguished counsel, whose qualification for the judicial bench had been abundantly tested by a long career of forensic eminence, is promoted to a high judicial office,[1] and the profession and the public are satified that in a most important post the services of a most competent and valuable public servant have been secured. An individual comes forward and calls upon the House of Lords to take measures for removing the judge, in all other respects so well qualified for his office, by reason that on an important occasion he had exhibited so total a disregard of truth as to render him unfit to fill an office for which a sense of the solemn obligations of truth and honour is an essential qualification. Can it be said that such a subject is not one in which the public has a deep interest and as to which it ought not to be informed of what passes in debate? Lastly, what greater anomaly or more flagrant injustice could present itself than that, while from a sense of the importance of giving publicity to their proceedings, the houses of parliament not only sanction the reporting of their debates, but also take measures for giving facility to those who report them, while every member of the educated portion of the community from the highest to the lowest looks with eager interest at the debates of either house, and considers it a part of the duty of the public journals to furnish an account of what passes there, we were to hold that a party publishing a parliamentary debate is to be held liable to legal proceedings because the conduct of a particular individual may happen to be called in question? . . .

We however are glad to think that, on closer inquiry, the law turns out not to be as on some occasions it has been assumed to be. To us it seems clear that the principles on which the publication of reports of the proceedings of courts of justice have been held to be privileged apply to the reports of parliamentary proceedings. The analogy between the two cases is in every respect complete. If the rule has never been applied to the reports of parliamentary proceedings till now, we must assume that it is only because the occasion has never before arisen. If the principles which are the foundation of the privilege in the one case are applicable to the other, we must not hesitate to apply them, more especially when by so

[1] He was Sir Fitzroy Kelly, lately appointed Lord Chief Baron.

doing we avoid the glaring anomaly and injustice to which we have before adverted. Whatever disadvantages attach to a system of unwritten law, and of these we are fully sensible, it has at least this advantage, that its elasticity enables those who administer it to adapt it to the varying conditions of society, and to the requirements and habits of the age in which we live, so as to avoid the inconsistencies and injustice which arise when the law is no longer in harmony with the wants and usages and interests of the generation to which it is immediately applied. Our law of libel has, in many respects, only gradually developed itself into anything like a satisfactory and settled form. The full liberty of public writers to comment on the conduct and motives of public men has only in very recent times been recognized. Comments on government, on ministers and officers of state, on members of both houses of parliament, on judges and other public functionaries, are now made every day, which half a century ago would have been the subject of actions or ex officio informations, and would have brought down fine and imprisonment on publishers and authors.[1] Yet who can doubt that the public are gainers by the change, and that, though injustice may often be done, and though public men may often have to smart under the keen sense of wrong inflicted by hostile criticism, the nation profits by public opinion being thus freely brought to bear on the discharge of public duties? Again, the recognition of the right to publish the proceedings of courts of justice has been of modern growth. Till a comparatively recent time the sanction of the judges was thought necessary even for the publication of the decisions of the courts upon points of law. Even in quite recent days judges, in holding publication of the proceedings of courts of justice lawful, have thought it necessary to distinguish what are called ex parte proceedings as a probable exception from an operation of the rule. Yet ex parte proceedings before magistrates, and even before this Court, as, for instance, on application of criminal informations, are published every day, but such a thing as an action or indictment founded on a report of such an ex parte proceeding is unheard of, and if any such action or indictment should be brought, it would probably be held that the true criterion of the privilege is, not whether the report was or was not ex parte, but whether it was a fair and honest report of what had taken place, published simply with a view to the information of the public and innocent of all intention to do injury to the reputation of the party affected.

It is to be observed that the analogy between the case of reports of proceedings of courts of justice and those of proceedings in parliament being complete, all the limitations placed on the one to prevent injustice to individuals will necessarily attach on the other:

[1] Cf. Vol. I, Sect. C, No. IV, p. 252, for the law in Charles II's reign.

a garbled or partial report, or of detached parts of proceedings, published with intent to injure individuals, will equally be disentitled to protection. Our judgement will in no way interfere with the decisions that the publication of a single speech for the purpose or with the effect of injuring an individual will be unlawful, as was held in the cases of *Rex* v. *Lord Abingdon*, and *Rex* v. *Creevey*. At the same time it may be as well to observe that we are disposed to agree with what was said in *Davison* v. *Duncan*, as to such a speech being privileged if bonâ fide by a member for the information of his constituents. But whatever would deprive a report of the proceedings in a court of justice of immunity will equally apply to a report of proceedings in parliament.

It only remains to advert to an argument urged against the legality of the publication of parliamentary proceedings, namely, that such publication is illegal as being in contravention of the standing orders of both houses of parliament.[1] The fact, no doubt, is, that each house of parliament does, by its standing orders, prohibit the publication of its debates. But practically, each house not only permits, but also sanctions and encourages, the publication of its proceedings, and actually gives every facility to those who report them. Individual members correct their speeches for publication in Hansard or the public journals, and in every debate reports of former speeches contained therein are constantly referred to. Collectively, as well as individually, the members of both houses would deplore as a national misfortune the withholding their debates from the country at large. Practically speaking, therefore, it is idle to say that the publication of parliamentary proceedings is prohibited by parliament. The standing orders which prohibit it are obviously maintained only to give to each house the control over the publication of its proceedings, and the power of preventing or correcting any abuse of the facility afforded. . . . Should either house of parliament ever be so ill-advised as to prevent its proceedings from being made known to the country—which certainly never will be the case—any publication of its debates made in contravention of its orders would be a matter between the house and the publisher. For the present purpose, we must treat such publication as in every respect lawful, and hold that, while honestly and faithfully carried on, those who publish them will be free from legal responsibility, though the character of individuals may incidentally be injuriously affected.

So much for the great question involved in this case. We pass on to the second branch of this rule, which has reference to alleged misdirection in respect of the second count of the declaration,

[1] See Vol. I, Sect. B, No. XXVII, p. 217, and No. XXXIV, p. 236.

which is founded on the article in the *Times* commenting on the debate in the House of Lords and the conduct of the plaintiff in preferring the petition which gave rise to it. We are of the opinion that the direction given to the jury was perfectly correct. The publication of the debate having been justifiable, the jury were properly told the subject was, for the reasons we have already adverted to, pre-eminently one of public interest, and therefore one on which public comment and observation might properly be made, and that consequently the occasion was privileged in the absence of malice. As to the latter the jury were told that they must be satisfied that the article was an honest and fair comment on the facts,—in other words, that, in the first place, they must be satisfied that the comments had been made with an honest belief in their justice, but that this was not enough, inasmuch as such belief might originate in the blindness of party zeal, or in personal or political aversion, that a person taking upon himself publicly to criticise and condemn the conduct or motives of another, must bring to the task, not only an honest sense of justice, but also a reasonable degree of judgement and moderation, so that the result may be what a jury shall deem, under the circumstances of the case, a fair and legitimate criticism on the conduct and motives of the party who is the object of censure.

Considering the direction thus given to have been perfectly correct, we are of opinion that in respect of the alleged misdirection as also on the former point, the ruling at nisi prius was right, and that consequently this rule must be discharged.

Rule discharged.

[1868, L.R. iv, Q.B., 82.]

XVII

PHILLIPS *v.* EYRE, 1870

[23 June 1870, in the Court of Exchequer Chamber.]

WILLES, J. This is an action complaining of false imprisonment . . . in the island of Jamaica. The plea states in effect that the defendant was governor of the island; that a rebellion broke out there which the governor . . . had arrested by force of arms . . . [he explains that an Act of indemnity was passed by the colonial legislature to cover acts done in good faith to restore order: the plaintiff complained (a) that his imprisonment was outside this indemnity and (b) that the governor could not give his assent to such a legis-

lative measure in which he was personally interested] . . . It may be convenient to consider generally [1] the condition of the governor of a colony and other subjects of Her Majesty there in case of open rebellion. To a certain extent their duty is clear to do their best and utmost in suppressing the rebellion. Even as to tumultuous assemblies and riots of a dangerous character, though not approaching to actual rebellion, Tindal, C.J., in his charge to the Bristol grand jury on the special commission upon the occasion of the riots in 1832, there, in accordance with many authorities, stated the law as to private citizens. . . .[2]

This perilous duty, shared by the governor with all the Queen's subjects, whether civil or military, is in a special degree incumbent upon him as being entrusted with the powers of government for preserving the lives and property of the people and the authority of the Crown; and if such duty exist as to tumultuous assemblies of a dangerous character, the duty and responsibility in case of open rebellion are heightened by the consideration that the existence of the law itself is threatened by force of arms and a state of war against the Crown established for the time. To act under such circumstances within the precise limits of the law of ordinary peace is a difficult and may be an impossible task, and to hesitate or temporize may entail disastrous consequences. Whether the proper, as distinguished from the legal course has been pursued by the governor in so great a crisis, it is not within the province of a court of law to pronounce. Nor are we called upon to offer any judicial opinion as to the lawfulness or propriety of what was done in the present case, apart from the validity and legalizing effect of the colonial Act.[1] It is manifest, however, that there may be occasions in which the necessity of the case demands prompt and speedy action for the maintenance of law and order at whatever risk, and where the governor may be compelled, unless he shrinks from the discharge of paramount duty, to exercise de facto powers which the legislature would assuredly have confided to him if the emergency could have been foreseen, trusting that whatever he has honestly done for the safety of the state will be ratified by an Act of indemnity and oblivion. There may not be time to appeal to the legislature for special powers. The governor may have, upon his own responsibility, acting upon the best advice and information he can procure at the moment, to arm loyal subjects, to seize or secure arms, to

[1] The main importance of this case lies in its statement of the validity of Acts of a Colonial legislature after the passing of 28 & 29 Vict., c. 63. The extract, here given, however, discusses the place in English Law generally of Acts of Indemnity and of the duty of suppressing rebellion (see footnote, Vol. II, Sect. C, No. IV, p. 241, and references there given.

[2] See Vol. II, Sect. C, No. VIII, p. 259.

intercept munitions of war, to cut off communication between the disaffected, to detain suspected persons, and even to meet armed force by armed force in the open field. If he hesitates, the opportunity may be lost of checking the first outbreak of insurrection, whilst by vigourous action the consequences of allowing the insurgents to take the field in force may be averted. In resorting to strong measures he may have saved life and property out of all proportion to the mistakes he may honestly commit under information which turns out to have been erroneous or treacherous. The very efficiency of his measures may diminish the estimate of the danger with which he had to cope, and the danger once past, every measure he has adopted may be challenged as violent and oppressive, and he and everyone who advised him, or acted under his authority, may be called upon, in actions at the suit of individuals dissatisfied with his conduct, to establish the necessity or regularity of every act in detail by evidence which it may be against public policy to disclose. The bare litigation to which he and those who acted under his authority may be exposed, even if defeated by proving the lawfulness of what was done, may be harassing and ruinous. Under these and like circumstances it seems to be plainly within the competence of the legislature, which could have authorized by antecedent legislation the acts done as necessary or proper for preserving the public peace, upon a due consideration of the circumstances to adopt and ratify like acts when done, or, in the language of the law under consideration, to enact that they shall be " made and declared lawful and confirmed." Such is the effect of the Act of Indemnity in question, which follows the example of similar legislation in the mother-country and in other dominions and colonies of the Crown. . . .

. . . [then recites a list of Acts of Indemnity in England and continues] . . . The principle of these enactments is indemnity for what was done in zeal for the public service, and a patriotic oblivion of the troubles and dissensions for the past, so that, to use the language of the Act of " Grace, General Pardon, Indemnity, and Oblivion " passed at the Restoration, " No mention be made thereof in time to come in judgement or judicial proceeding ". . . .

We have thus discussed the validity of the defence upon the only question argued by counsel, touching the effect of the Colonial Act, but we are not to be understood as thereby intimating any opinion that the plea might not be sustained upon more general grounds as shewing that the acts complained of were incident to the enforcement of martial law. It is, however, unnecessary to discuss this further question, because we are of opinion with the Court below that the Colonial Act of Indemnity, even upon the

assumption that the acts complained of were originally actionable, furnishes an answer to the action.

The judgement of the Court of Queen's Bench for the defendant was right, and is affirmed.

[1870, L.R. vi, Q.B., 1.]

XVIII

BEATTY *v.* GILLBANKS,[1] 1882

[Beatty was the leader of the Salvation Army in Weston-super-Mare. A rival organization called the Skeleton Army paraded the streets in opposition at the same time. Riots ensued. The magistrates issued a notice forbidding all persons to assemble to the danger of the public peace. Beatty refused to disperse his procession on the orders of a constable, but submitted quietly to arrest and was guilty of no violence. The magistrates ordered him to be bound in his own recognizances to keep the peace for twelve months and in default to be imprisoned for three months. On his appeal the magistrates stated a case to the Queen's Bench division.]

FIELD, J. I am of opinion that this order cannot be supported. The matter arises in this way. The appellants have, with others, formed themselves into an association for religious exercises among themselves, and for a religious revival, if I may use that word, which they desire to further among certain classes of the community. No one imputes to this association any other object, and so far from wishing to carry that out with violence, their opinions seem to be opposed to such a course, and, at all events in the present case, they made no opposition to the authorities. That being their lawful object, they assembled as they had done before and marched in procession through the streets of Weston-super-Mare. No one can say that such an assembly is in itself an unlawful one. The appellants complain that in consequence of this assembly they have been found guilty of a crime of which there is no reasonable evidence that they have been guilty. The charge against them is, that they unlawfully and tumultuously assembled, with others, to the disturbance of the public peace and against the peace of the Queen. Before they can be convicted it must be shewn that this offence has been committed. There is no doubt that they and with them others assembled together in great numbers, but such an assembly to be unlawful must be tumultuous and against the peace. As far as these appellants are concerned there was nothing in their conduct when they were assembled together which was

[1] Cf. Vol. II, Sect. C, No. XXII, p. 315.

either tumultuous or against the peace. But it is said, that the conduct pursued by them on this occasion was such, as on several previous occasions, had produced riots and disturbance of the peace and terror to the inhabitants, and that the appellants knowing when they assembled together that such consequences would again arise are liable to this charge.

Now I entirely concede that every one must be taken to intend the natural consequences of his own acts, and it is clear to me that if this disturbance of the peace was the natural consequence of acts of the appellants they would be liable, and the justices would have been right in binding them over. But the evidence set forth in the case does not support this contention ; on the contrary, it shews that the disturbances were caused by other people antagonistic to the appellants, and that no acts of violence were committed by them. . . .

What has happened here is that an unlawful organisation has assumed to itself the right to prevent the appellants and others from lawfully assembling together, and the finding of the justices amounts to this, that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act. There is no authority for such a proposition, and the question of the justices whether the facts stated in the case constituted the offence charged in the information must therefore be answered in the negative.

CAVE, J., concurred. *Judgment for the appellants.*

[1882, ix, Q.B.D., 308.]

XIX

BRADLAUGH *v.* GOSSETT, 1884

In the Queen's Bench Division, Feb. 9, 1884

LORD COLERIDGE, C.J.—[after hearing argument on the demurrer to the statement of claim :—This claim was that as Bradlaugh was duly elected Burgess for Northampton, the resolution of the House of Commons (9th July 1883) [1] excluding him should be declared void, that the Serjeant-at-Arms (Gossett) should be restrained from excluding him, and that he should be given all other relief to which he was entitled.]

. . . it seems to be conceded that a resolution of the House of Commons only (and what is true of one House of Parlia-

[1] This resolution, of course, followed the scenes in May when Bradlaugh required the Speaker to call him to the table to take the oath, and the Speaker did not do so, being aware that Bradlaugh was a professed atheist on whom it could have no binding force.

ment is true of the other) cannot change the law of the land. Sir John Patteson and Sir John Coleridge,—the former especially,—put this point with great force in their judgements in *Stockdale* v. *Hansard*:[1] and yet, if the House of Commons is,—as for certain purposes and in relation to certain persons it certainly is, and is on all hands admitted to be,—the absolute judge of its own privileges, it is obvious that it can, at least for these purposes, and in relation to those persons, practically change or practically supersede the law.

Again, there can be no doubt, that in an action between party and party brought in a court of law, if the legality of a resolution of the House of Commons arises incidentally, and it becomes necessary to determine whether it be legal or no for the purpose of doing justice between the parties to the action, in such a case the Courts must entertain and must determine that question Lord Ellenborough expressly says so in *Burdett* v. *Abbot*;[2] and Bayley, J., seems to assume it. . . . All the four judges who gave judgement in *Stockdale* v. *Hansard* assert this in the strongest terms. . . . I see no answer to the statements of the judges, . . . that, when a question is raised before the Court, the Court must give judgement on it according to its notions of the law, and not according to resolution of either House of Parliament. Cases may be put, cases have been put, in which, did they ever arise, it would be the plain duty of the Court, at all hazards to declare a resolution illegal and no protection to those who acted under it. Such cases might by possibility occasion unseemly conflicts between the Courts and the Houses. But, while I do not deny that as matter of reasoning such things might happen, it is consoling to reflect that they have scarce ever happened in the long centuries of our history, and that in the present state of things it is but barely possible that they should ever happen again.

Alongside, however, of these propositions, for the soundness of which I should be prepared most earnestly to contend, there is another proposition equally true, equally well established, which seems to me decisive of the case before us. What is said or done within the walls of Parliament cannot be inquired into in a court of law. On this point all the judges in the two great cases which exhaust the learning on the subject, *Burdett* v. *Abbot* and *Stockdale* v. *Hansard*;—are agreed, and are emphatic. The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellenborough, " They would sink into utter contempt and inefficiency without it."

[1] Vol. II, Sect. C, No. XI, p. 264.
[2] Vol. II, Sect. C, No. V, p. 243.

Whether in all cases and under all circumstances the Houses are the sole judges of their own privileges, in the sense that a resolution of either House on the subject has the same effect for a court of law as an Act of Parliament, is a question which it is not now necessary to determine. No doubt, to allow any review of parliamentary privilege by a court of law may lead, has led, to very grave complications, and might in many supposable cases end in the privileges of the Commons being determined by the Lords. But, to hold the resolutions of either House absolutely beyond inquiry in a court of law may land us in conclusions not free from grave complications too. It is enough for me to say that it seems to me that in theory the question is extremely hard to solve; in practice it is not very important, and at any rate does not now arise . . . [discusses Eliot's case—see Stephen, J., below—and Shaftesbury's case].[1]

. . . I need not discuss at any length the fact that the defendant in this case is the Serjeant-at-arms. The Houses of Parliament cannot act by themselves in a body; they must act by officers; and the Serjeant-at-arms is the legal and recognized officer of the House of Commons to execute its orders. I entertain no doubt that the House had a right to decide on the subject-matter, have decided it, and have ordered their officer to give effect to their decision. He is protected by their decision. They have ordered him to do what they have a right to order, and he has obeyed them.

It is said that in this case the House of Commons has exceeded its legal powers, because it has resolved that the plaintiff shall not take an oath which he has a right to take, and the threatened force is force to be used in compelling obedience to a resolution in itself illegal. But there is nothing before me upon which I should be justified in arriving at such a conclusion in point of fact. Consistently with all the statements in the claim, it may be that the plaintiff insisted on taking the oath in a manner and under circumstances which the House had a clear right to object to or prevent. Sitting in this seat I cannot know one way or the other. But, even if the fact be as the plaintiff contends, it is not a matter into which this Court can examine. If injustice has been done, it is injustice for which the courts of law afford no remedy. On this point I agree with and desire to adopt the language of my Brother Stephen. The history of England, and the resolutions of the House of Commons itself, shew that now and then injustice has been done by the House to individual members of it. But the remedy, if remedy it be, lies, not in actions in the courts of law . . ., but by an appeal to the constituencies whom the House of Commons represents.

It follows that this action is against principle and is unsupported

[1] Vol. I, Sect. C, No. III, p. 251.

by authority, and that therefore the demurrer must be allowed, and that there must be judgement for the defendant.

MATTHEW, J., concurred in this judgement.

STEPHEN, J. . . . but for the amendment made at the last hearing I at least should have felt bound to decide the case on a much narrower ground than that on which I think we ought to deal with it. Taken by itself the order of the 9th July states nothing except that the House had by resolution excluded a member, who in the judgement of the House had disturbed its proceedings, till he undertook not further to disturb it. It is obvious that we could not interfere with what might be a mere measure of internal discipline. . . . The correspondence with the Speaker certainly sets the matter in a different light. I cannot read the statement of claim as asserting less or interpret the demurrer as admitting less than what I have already stated [*i.e.* that Bradlaugh's exclusion was the result of his being denied the opportunity of taking the Oath though duly elected].

The legal question which this statement of the case appears to me to raise for our decision is this:—Suppose that the House of Commons forbids one of its members to do that which an Act of Parliament requires him to do, and in order to enforce its prohibition, directs its executive officer to exclude him from the House by force if necessary, is such an order one which we can declare to be void and restrain the executive officer of the House from carrying out. In my opinion we have no such power. I think that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statute-law which has relation to its own internal proceedings, and that the use of such actual force as may be necessary to carry into effect such a resolution as the one before us is justifiable.

Many authorities might be cited for this principle; but I will quote two only. The number might be enlarged with ease by reference to several well-known cases. Blackstone says: "The whole of the law and custom of Parliament[1] has its original from this one maxim, 'that whatever matter arises concerning either House of Parliament ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere.'" This principle is re-stated nearly in Blackstone's words by each of the judges in the case of *Stockdale* v. *Hansard*.[2] As the principal result of that case is to assert in the strongest way the right of the Queen's Bench to ascertain in case of need the extent of the privileges of the House, and to deny emphatically that the Court is bound by a resolution of the House declaring any particular matter to fall

[1] See Vol. II, Sect. C, No. V, p. 243, and references there given.

[2] Vol. II, Sect. C, No. XI, p. 264.

within their privilege, these declarations are of the highest authority. Lord Denman says: "Whatever is done within the walls of either assembly must pass without question in any other place." Littledale, J., says: "It is said the House of Commons is the sole judge of its own privileges; and so I admit as far as the proceedings in the House and some other things are concerned." Patteson, J., says: "Beyond all dispute, it is necessary that the proceedings of each House of Parliament should be entirely free and unshackled, that whatever is said or done in either House should not be liable to examination elsewhere." And Coleridge, J., said: "That the House should have exclusive jurisdiction to regulate the course of its own proceedings, and animadvert upon any conduct there in violation of its rules or derogation from its dignity stands upon the clearest grounds of necessity."

Apply the principle thus stated to the present case. We are asked to declare an order of the House of Commons to be void, and to prevent its execution in the only way in which it can be executed, on the ground that it constitutes an infringement of the Parliamentary Oaths Act.[1] This Act requires the plaintiff to take a certain oath. The House of Commons have resolved that he shall not be permitted to take it. Grant, for the purposes of argument, that the resolution of the House and the Parliamentary Oaths Act contradict each other; how can we interfere without violating the principle just referred to? Surely the right of the plaintiff to take the oath in question is "a matter arising concerning the House of Commons," to use the words of Blackstone. The resolution to exclude him from the House is a thing "done within the walls of the House," to use Lord Denman's words. It is one of those "proceedings in the House of which the House of Commons is the sole judge," to use the words of Littledale, J. It is a "proceeding of the House of Commons in the House," and must therefore in the words of Patteson, J., "be entirely free and unshackled." It is "part of the course of its own proceedings," to use the words of Coleridge, J., and is therefore, "subject to its exclusive jurisdiction." These authorities are so strong and simple that there may be some risk of weakening them in adding to them. Nevertheless, the importance of the case may excuse some further exposition of the principle on which it seems to me to depend.

. . . In order to raise the question now before us, it is necessary to assume that the House of Commons has come to a resolution inconsistent with the [Parliamentary Oaths] Act. . . . But it would be indecent and improper to make the further supposition that the House of Commons deliberately and intentionally defies and breaks

[1] 29 Vict., c. 19.

the statute-law. The more decent and I may add the more natural and probable supposition is, that for reasons which are not before us, and of which we are therefore unable to judge, the House of Commons considers there is no inconsistency between the Act and the resolution. They may think there is some implied exception to the Act. . . . With this we have nothing to do . . . it would be impossible for us to do justice without hearing and considering those reasons; but it would be equally impossible for the House, with any regard for its own dignity and independence, to suffer its reasons to be laid before us for that purpose, or to accept our interpretation of the law in preference to its own. . . .

A resolution of the House permitting Mr. Bradlaugh to take his seat on making a statutory declaration would certainly never have been interfered with by this Court. If we had been moved to declare it void and to restrain Mr. Bradlaugh from taking his seat until he had taken the oath, we should undoubtedly have refused to do so. On the other hand, if the House had resolved ever so decidedly that Mr. Bradlaugh was entitled to make the statutory declaration instead of taking the oath, and had attempted by resolution or otherwise to protect him against an action for penalties, it would have been our duty to disregard such resolutions, and, if an action for penalties were brought, to hear and determine it according to our own interpretation of the statute. Suppose, again, that the House had taken the view of the statute ultimately arrived at by this Court, that it did not enable Mr. Bradlaugh to make the statutory promise, we should certainly not have entertained an application to declare their resolution to be void. We should have said that, for the purpose of determining on a right to be exercised within the House itself, and in particular the right of sitting and voting, the House and the House only could interpret the statute; but that, as regarded rights to be exercised out of and independently of the House, such as the right of suing for a penalty for having sat and voted, the statute must be interpreted by this Court independently of the House . . .

. . . I should in any case whatever feel a reluctance almost invincible to declaring a resolution of the House of Commons to be beyond the powers of the House, and to be void. Such a declaration would in almost every imaginable case be unnecessary and disrespectful. I will not say that extraordinary circumstances might not require it, because it is impossible to foresee every event which may happen. It is enough to say that the circumstances which would justify such a declaration must be extraordinary indeed. . . .

. . . That part of the prayer . . . which asks us to restrain the Serjeant-at-Arms from using force to prevent the plaintiff from entering the House, may be disposed of in a few words. The

order is, to exclude the plaintiff from the House, and we cannot suppose that this means more than that the plaintiff is to be prevented by the use of such force as may be absolutely necessary for the purpose from entering such parts of the Houses of Parliament as the order applies to. . . . I am of opinion that the use of such force is strictly justifiable. . . . The only force which comes in question in this case is, such force as any private man might employ to prevent a trespass on his own land. I know of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice. One of the leading authorities on the privilege of parliament contains matter on the point which shews how careful parliament has been to avoid even the appearance of countenancing such a doctrine. . . . This is the case of Sir John Eliot, Denzil Hollis, and Others, . . . In this case the defendants were convicted in 1629 on an information before the Court of King's Bench for seditious speeches in parliament and also for an assault on the Speaker in the chair. They pleaded to the jurisdiction that these matters should be inquired into in Parliament and not elsewhere; and their plea was overruled. In 1666 this judgement was reversed upon writ of error; one error assigned being that the speaking of the seditious words and the assault on the Speaker were made the subject of one judgement; whereas the seditious speech, if made in parliament, could not be inquired into out of parliament, even if the assault upon the Speaker should be tried in the Court of King's Bench: hence there should have been two separate judgements. This case is the great leading authority, memorable on many grounds, for the proposition that nothing said in parliament by a member as such, can be treated as an offence by the ordinary Courts. . . . But the House of Lords carefully avoided deciding the question whether the Court of King's Bench could try a member for an assault on the Speaker in the House.

The plaintiff argued his own case before us at length. It is due to him to state the reasons why his arguments do not convince me. He referred to a great number of authorities; but his argument was in substance short and simple. He said that the resolution of the House of Commons was illegal, as the House had no power to alter the law of the land by resolution; and, admitting that the House has power to regulate its own procedure, he contended that in preventing him from taking his seat, the House went beyond matter of internal regulation and procedure, as they deprived both him and the electors of Northampton of a right recognized by law, which ought to be protected by the law; and so inflicted upon him and them wrongs which would be without a

remedy if we failed to apply one. I think that each part of this argument requires a plain, direct answer.

It is certainly true that a resolution of the House of Commons cannot alter the law. If it were ever necessary to do so, this Court would assert this doctrine to the full extent to which it was asserted in *Stockdale* v. *Hansard*.[1] The statement that the resolution of the House of Commons was illegal must, I think, be assumed to be true, for the purposes of the present case. The demurrer for those purposes admits it. We decide nothing unless we decide that, even if it is illegal in the sense of being opposed to the Parliamentary Oaths Act, it does not entitle the plaintiff to the relief sought. This admission, however, must be regarded as being made for the purposes of argument only. It would, as I have already said, be wrong for us to suggest or assume that the House acted otherwise than in accordance with its own view of the law; and, as we know not what that view is, nor by what arguments it is supported, we can give no opinion upon it. I do not say that the resolution of the House is the judgement of a Court not subject to our revision; but it has much in common with such a judgement. The House of Commons is not a Court of Justice; but the effect of its privilege to regulate its own internal concerns practically invests it with a judicial character when it has to apply to particular cases the provisions of Acts of Parliament. We must presume that it discharges this function properly and with due regard to the laws, in the making of which it has so great a share. If its determination is not in accordance with law, this resembles the case of an error by a judge whose decision is not subject to appeal. There is nothing startling in the recognition of the fact that such an error is possible. If, for instance, a jury in a criminal case give a perverse verdict, the law has provided no remedy. The maxim that there is no wrong without a remedy does not mean, as it is sometimes supposed, that there is a legal remedy for every moral or political wrong.[2] If this were its meaning, it would be manifestly untrue. There is no legal remedy for the breach of a solemn promise not under seal and made without consideration; nor for many kinds of verbal slander, though each may involve utter ruin; nor for oppressive legislation, though it may reduce men practically to slavery; nor for the worst damage to person and property inflicted by the most unjust and cruel war. The maxim means only that legal wrong and legal remedy are correlative terms; and it would be more intelligibly and correctly stated, if it were reversed, so as to stand, " Where there is no legal remedy there is no legal wrong."

[1] Vol. II, Sect. C, No. XI, p. 264.
[2] Cf. Vol. I, Sect. C, No. IX, at p. 279.

The assertion that the resolution of the House goes beyond matter of procedure, and that it does in effect deprive both Mr. Bradlaugh himself and his constituents of legal rights of great value, is undoubtedly true if the word " procedure " is construed in the sense in which we speak of civil procedure and criminal procedure, by way of opposition to the substantive law which systems of procedure apply to particular cases. No doubt, the right of the burgesses of Northampton to be represented in parliament, and the right of their duly elected representative to sit and vote in parliament and to enjoy the other rights incidental to his position upon the terms provided by law are in the most emphatic sense legal rights of the highest importance, and in the strictest sense of the words.[1] Some of these rights are to be exercised out of Parliament, others within the walls of the House of Commons. Those which are to be exercised out of Parliament are under the protection of this Court, which, as has been shown in many cases, will apply proper remedies if they are in any way invaded, and will in so doing be bound, not by resolutions of either House of Parliament, but by its own judgement as to the law of the land, of which the privileges of Parliament form a part. Others must be exercised, if at all, within the walls of the House of Commons; and it seems to me that, from the nature of the case, such rights must be dependent upon the resolution of the House. In my opinion the House stands with relation to such rights, in precisely the same relation as we the judges of this Court stand in to the laws which regulate the rights of which we are the guardians, and to the judgements which apply them to particular cases; that is to say, they are bound by the most solemn obligations which can bind men to any course of conduct whatever, to guide their conduct by the law as they understand it. If they misunderstand it, or (I apologize for the supposition) wilfully disregard it, they resemble mistaken or unjust judges; but in either case there is in my judgement no appeal from their decision. The law of the land gives no such appeal; no precedent has been or can be produced in which any Court has ever interfered with the internal affairs of either House of Parliament, though the cases are no doubt numerous in which the Courts have declared the limits of their powers outside of their respective Houses. This is enough to justify the conclusion at which I arrive.

We ought not to try to make new laws, under the pretence of declaring the existing law. But I must add that this is not a case in which I at least feel tempted to do so. It seems to me that, if we were to attempt to erect ourselves into a Court of Appeal from the House of Commons, we should consult neither the public interest, nor the

[1] Cf. Vol. I, Sect. B, No. XXXIII (C), (E), and (G), pp. 231-35.

interests of parliament and the constitution, nor our own dignity. We should provoke a conflict between the House of Commons and this Court, which in itself would be a great evil; and even upon the most improbable supposition of their acquiescence in our adverse decision; an appeal would lie from that decision to the Court of Appeal, and thence to the House of Lords, which would thus become the judge in the last result of the powers and privileges of the House of Commons.

For these reasons I am of opinion that there must be judgement for the defendant.

[1884, xii, Q.B.D., 271.]

XX

INSTITUTE OF PATENT AGENTS AND OTHERS *v.* JOSEPH LOCKWOOD, 1894

By the Patents, Designs, and Trade Marks Act, 1883, s. 101: "The Board of Trade may from time to time make such general rules" . . . "as they think expedient, subject to the provisions of this Act. (a) For regulating the practice of registration under this Act." By sub-s. 3: "General rules may be made under this section" . . . "and shall (subject as hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed." By sub-s. 4: "Any rules made in pursuance of this section shall be laid before both Houses of Parliament." By sub-s. 5: "If either House of Parliament, within the next forty days after any rules have been so laid before such house, resolve that such rules or any of them ought to be annulled, the same shall, after the date of such resolution, be of no effect."

By the Patents, Designs, and Trade Marks Act, 1888, s. 1, sub-s. 1, "after the 1st of July, 1889, a person shall not be entitled to describe himself as a patent agent . . . unless he is registered as a patent agent in pursuance of this Act." And by sub-s. 2, "The Board of Trade shall . . . make such general rules as are in the opinion of the Board required for giving effect to this section, and the provisions of sect. 101 of the principal Act" (the Act of 1883) "shall apply to all rules so made as if they were made in pursuance of that section." By sub-s. 3, Every person who proves to the satisfaction of the Board of Trade that, prior to the Act, he had bonâ fide practised as a patent agent should be entitled to be registered in pursuance of the Act. By sub-s. 4, "If any person knowingly describes himself as a patent agent in contravention of this section, he shall be liable on summary conviction to a fine not exceeding £20."

The Board of Trade made certain rules known as the Register of Patent Agents Rules, 1889, which were laid before Parliament, and no objection was taken to them within the forty days specified by the principal Act. They provided (inter alia) for the mode by which a patent agent practising before the Act of 1888 should be entered in the register; and also for the payment of an entrance fee, and an annual

fee by all patent agents continuing on the register, and for erasure from the register of the name of any person whose annual fee was not paid.

LORD HERSCHELL, L.C. . . . [in the House of Lords] . . . I confess that it seems to me, if there were any power to impose fees at all, very difficult indeed to arrive at the conclusion, when the Board of Trade have sanctioned a particular fee, that it is within the province of a Court of Law to canvass their conclusion, and to determine what is the legitimate amount at which the fee may be fixed. Such a department as the Board of Trade is very much more competent to determine a question of that description than judges can possibly be, and it would be, I think, not an improvement upon any scheme of legislation which gave power to fix fees if those fees were made subject to the control of the judges according to their views of what fees were reasonable or unreasonable.

The question whether there is power to impose a fee at all is, no doubt, a much more serious question. The contention on the part of the respondent is, that there being no express power given to impose fees, it can never be supposed that it was intended to commit a public body without express sanction and authority the power to impose taxation, which this in effect is. I cannot myself regard this as properly called taxation. The statute of 1883, of which this Act in many particulars is an amendment, creates a register, or, at all events, continues a register, and it provides that the Board of Trade, with the sanction of the Treasury, may regulate the fees to be required for registering and doing other acts in connection therewith; and of course the fixing of fees for a great variety of matters being left to a rule-making body is a description of legislation thoroughly well understood. It is every-day practice for those to whom rule-making is committed to have committed to them also the fixing of the fees which are to be paid in relation to matters to be done under the rules. There is, therefore, nothing novel in legislation of this description. But it is said that no such right is expressly conferred. My Lords, it is impossible to my mind to conceive wider language than that which is used in the 2nd subsection of the 1st section of the Act of 1888. The truth is, the legislation is a skeleton piece of legislation left to be filled up in all its substantial and material particulars by the action of rules to be made by the Board of Trade.[1] . . . It seems to me that thereupon it was their duty to make all the rules necessary for making the legislation contemplated by the section effective. The Legislature must be taken to have contemplated that a register could not be made without some one filling the office of registrar, or some corre-

[1] See Vol. II, Sect. B, No. XXVIII (D), p. 229, and cf. Sect. A, No. XXIV, §§ XV and XVI, p. 72.

sponding office; that any person performing those duties would require a payment for performing them; that the funds not having been expressly found by Parliament, must be somehow or other provided; and seeing that the system and scheme of the legislation under the previous Act had been that fees on registration should, at all events, go towards the expenses of paying for registration, I cannot but think that it was well within the scope of this enactment that the Legislature should entrust the Board of Trade, who were to make these rules, with the power of fixing such fees as they thought reasonable and necessary for carrying into effect the purposes of the section. Unless they had done so, it seems to me very difficult to say that it would have been possible to carry them into effect at all . . .

My Lords, what I am about to say bears also upon the further question which has been argued. It is said that this would be a very large power for the Legislature to commit to any other body; but it must be remembered that it is committed to a public department, and a public department largely under the control of Parliament itself; and not only so, but inasmuch as the section provides that these rules are to be dealt with in the same manner, and subject to the provisions contained in the 101st section of the previous Act, the result is to leave the matter completely in the control of Parliament, because any of the rules made by the Board of Trade may be annulled by either House of Parliament within forty days after they are laid on the table, and the laying of them on the table is made compulsory. Therefore, my Lords, I can see nothing extraordinary in leaving to such a body as the Board of Trade the powers which are in question in this case, at all events when the exercise of their functions by a great public Department of State, itself under the control of Parliament, is placed directly under the control of Parliament also and made subject to its direct action.

That really would be sufficient to determine that these rules were such as the Board of Trade were entitled to make. I will say one word, however, before leaving this part of the subject, upon the point suggested that they involved something harsh or unfair as regards the respondent, inasmuch as it was said that before this he could exercise his profession or calling of a patent agent without any registration, without the payment of any fee, and now he can only do so and represent himself as a patent agent by paying an annual fee to keep on the register. That is, in a sense, perfectly true; but, on the other hand, it must be remembered that the position of a patent agent on the register, when nobody not on the register can call himself a patent agent, is a position very different, and, in many respects, much more advantageous, than that which he occupied before; . . .

Then it is said that a right expressly given him by the statute is interfered with, inasmuch as the statute provides that "Every person who proves to the satisfaction of the Board of Trade that prior to the passing of the Act he had been bonâ fide practising as a patent agent shall be entitled to be registered as a patent agent in pursuance of this Act." . . . Now, where is there anything in this Act about his title to be registered at all, or how he is to get on the register, or who is to put him there, or what register it is to be, and kept by whom? Nothing of the sort is to be found in the section. The words "in pursuance of this Act" only become intelligible if you read into the section, as the statute provides you shall, the rules which are made under sub-sect. 2. But if you read into the section, as shewing how he is to be registered in pursuance of the Act, the rules made under sub-sect. 2, then of course every rule which is intrà vires, at all events (putting aside for the moment the other question), is to be read into the section and have just the same effect as if it has been contained in the Act itself; and if so it is impossible to say that he can claim to be registered otherwise than in the manner which the statute, as filled up, if I may say so, by the rules provides.

So far I have dealt with the question whether the rules are intrà vires; but there is no doubt another very important question which has been argued before your Lordships, namely, whether this question can be canvassed in the courts, when once the rules have been made by the Board of Trade and laid as provided on the tables of both Houses of Parliament. It is said that it is only rules properly made under sub-sect. 2 which can become part of the Act and be treated as such.

My Lords, the words of sub-sect. 2 are, "The Board of Trade shall as soon as may be after the passing of this Act, and may from time to time make such general rules as are in the opinion of the board required for giving effect to this section, and the provisions of sect. 101 of the principal Act shall apply to all rules so made as if they were made in pursuance of that section." Therefore, any rule which in the opinion of the Board of Trade is required to be made in order to give effect to the section, is a rule made pursuant to the provisions of sub-sect. 2, and any rule made pursuant to the provisions of sub-sect. 2 is to be dealt with as if made in pursuance of sect. 101 of the principal Act. Now, let us see what is to be the effect as regards rules made in pursuance of sect. 101 of the Act of 1883. First of all, "the Board of Trade may from time to time make such general rules and do such things as they think expedient," and their "general rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the

commencement of this Act, and shall (subject as hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed." The "subject as hereinafter mentioned" is this, that they are to be laid before Parliament and remain before Parliament for consideration for forty days, and during those forty days they may be annulled by a resolution of either House. If not so annulled or until so annulled what is the effect? They are to be "of the same effect as if they were contained in this Act." My Lords, I have asked in vain for any explanation of the meaning of those words or any suggestion as to the effect to be given to them if, notwithstanding that provision, the rules are open to review and consideration by the Courts. The effect of an enactment is that it binds all subjects who are affected by it. They are bound to conform themselves to the provisions of the law so made. The effect of a statutory rule if validly made is precisely the same that every person must conform himself to its provisions, and, if in each case a penalty be imposed, any person who does not comply with the provisions whether of the enactment or the rule becomes equally subject to the penalty. But there is this difference between a rule and an enactment, that whereas apart from some such provision as we are considering, you may canvass a rule and determine whether or not it was within the power of those who made it, you cannot canvass in that way the provisions of an Act of Parliament. Therefore, there is that difference between the rule and the statute. There is no difference if the rule is one within the statutory authority, but that very substantial difference, if it is open to consideration whether it be so or not.

I own I feel very great difficulty in giving to this provision, that they "shall be of the same effect as if they were contained in this Act," any other meaning than this, that you shall for all purposes of construction or obligation or otherwise treat them exactly as if they were in the Act. No doubt there might be some conflict between a rule and a provision of the Act. Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other. That would be so with regard to the enactment and with regard to rules which are to be treated as if within the enactment. In that case probably the enactment itself would be treated as the governing consideration and the rule as subordinate to it. Those are points which I need not dwell upon on the present occasion.

Although it is not necessary for the determination of this case to express an opinion upon it, yet, as the matter has been so much

discussed, I think it only right to express the opinion which I entertain, that the words to which I have referred are really meaningless unless they have the effect which I have described, and they seem to me to be the apt and appropriate words for bringing about the effect which I have described. They are words, I believe, to be found in legislation only in comparatively recent years, and it is difficult to understand why they have been inserted unless with the object I have indicated.

I have dealt at length with the question whether this rule is ultrà vires or not and whether it can be so treated, because it is the ground upon which the decision proceeded in the Court below, and inasmuch as an adverse view was expressed to the validity of the rule, it appears to me well that, differing as I do from that view, I should express my differing opinion.

[1894, A.C., 347.]

XXI

EX PARTE D. F. MARAIS,[1] 1901–2

This was a petition [to the Judicial Committee of the Privy Council] for special leave to appeal from the order of the Supreme Court [in Cape Town] set out in their Lordships' judgment.

It stated the petitioner's arrest on August 15, 1901, by the chief constable of the town of Paarl, about thirty-five miles from Cape Town, who had no warrant, and did not know the cause of arrest, but alleged that he was acting under instructions from the military authorities; that on August 18 he and his fellow-prisoners were removed 300 miles to the town of Beaufort West, and on their arrival were detained in custody; that on September 6 he petitioned the Supreme Court in Cape Town to release him on the ground that his arrest and imprisonment were in violation of the fundamental liberties secured to the subjects of His Majesty, when it appeared from an affidavit sworn by the gaoler of Beaufort West that the petitioner was detained by an order of the military authorities dated September 8 for contravening Martial Law Regulations. . . .

Buchanan J., in refusing the application, was stated in the petition to have held that martial law had been proclaimed in the districts both of the Paarl and of Beaufort West, that the Court ought not to go into the necessity for that proclamation nor accept any responsibility for the acts of the military authorities performed in pursuance of it, though if the petitioner had not been removed from the Paarl the Court might have inquired into the necessity for martial law in that district, that the petitioner was held in custody by an officer acting under the military authorities, and that the Court could not exercise jurisdiction over the petitioner so long as martial law lasted.

[1] Cf. Vol. II, Sect. C, No. IV, p. 241, and references there given.

In his petition the petitioner contended that he had committed no crime, otherwise that he should have been arrested and tried according to law, that the civil Courts were open for his trial, that Buchanan J. himself was announced to sit for the trial of all offenders in the district of Paarl on August 27, 1901, that his arrest, deportation, and confinement in custody by the military authorities were wholly illegal, and that he was entitled to his immediate discharge. . . .

Dec. 18. [1901] The reasons for their Lordships' report that the petition should be refused were delivered by

The Lord Chancellor. This was a petition by D. F. Marais for special leave to appeal against a decision of the Courts in Cape Colony which had refused to release him from an arrest effected by the military forces of the Crown on August 15 last.

It appeared sufficiently from the petitioner's own petition, as well as the documents accompanying it, that the district in which he was arrested, and the district to which he was removed (and of which removal he also complained), was a district which had been proclaimed under martial law. . . .

The only ground susceptible of argument urged by the learned counsel was that whereas some of the Courts were open it was impossible to apply the ordinary rule that where actual war is raging the civil Courts have no jurisdiction to deal with military action, but where acts of war are in question the military tribunals alone are competent to deal with such questions.

The question was as fully argued before their Lordships by the learned counsel [1] as it could have been argued if leave to appeal had been given, and their Lordships did not think it right to suggest any doubt upon the law by giving special leave to appeal where the circumstances render the law clear. They are of opinion that where actual war is raging acts done by the military authorities are not justiciable by the ordinary tribunals, and that war in this case was actually raging, even if their Lordships did not take judicial notice of it, is sufficiently evidenced by the facts disclosed by the petitioner's own petition and affidavit.

Martial law had been proclaimed over the district in which the petitioner was arrested and the district to which he was removed. The fact that for some purposes some tribunals had been permitted to pursue their ordinary course is not conclusive that war was not raging. That question came before the Privy Council as long ago as the year 1830.

In *Elphinstone* v. *Bedreechund* the Supreme Court at Bombay had given a large sum as damages against the appellant for the seizure of certain treasure at Poonah. During the time of the

[1] Haldane, K.C., and Mackarness.

seizure no actual hostilities were carried on in the immediate neighbourhood of Poonah, but the great battle of Kirkee had been fought, and Poonah had been taken possession of by the British forces. The treasure was seized on July 17, 1818. At Poonah some Courts had been open from the previous February, and it was argued and held by the Bombay Courts that it must be held to be a time of peace, and that the military authorities were responsible in damages for seizure of the treasure.

To this the Attorney-General, Sir James Scarlett, replied, that a military commander may allow the usual Courts of justice that existed in the country before the invasion to continue their jurisdiction upon such subjects as may not be reserved for the consideration of the commander; but this does not deprive the commander of his power, or free the country from military government.

Lord Tenterden in giving judgment said: "We think the proper character of the transaction was that of hostile seizure made, if not flagrante, yet nondum cessante bello, regard being had both to the time, the place, and the person, and, consequently, that the municipal Court had no jurisdiction to adjudge upon the subject," and the judgment was accordingly reversed.

The truth is that no doubt had ever existed that where war actually prevails the ordinary Courts have no jurisdiction over the action of the military authorities.

Doubtless cases of difficulty arise when the fact of a state of rebellion or insurrection is not clearly established.

It may often be a question whether a mere riot, or disturbance neither so serious nor so extensive as really to amount to a war at all, has not been treated with an excessive severity, and whether the intervention of the military force was necessary; but once let the fact of actual war be established, and there is an universal consensus of opinion that the civil Courts have no jurisdiction to call in question the propriety of the action of military authorities.

The framers of the Petition of Right knew well what they meant when they made a condition of peace the ground of the illegality of unconstitutional procedure.[1]

For these reasons their Lordships advised His Majesty to refuse leave to appeal.

[1902, A.C., 109.]

[1] See Gardiner, No. 10, p. 66.

XXII

WISE *v.* DUNNING, 1902

LORD ALVERSTONE, C.J. [In the King's Bench Division] This is a case stated by way of appeal from an order made by the stipendiary magistrate of Liverpool binding over the appellant " to be of good behaviour ". The recognizance also bound him over " to keep the peace "; but the actual form of it is not material because it contained the words " to be of good behaviour ". The case has been extremely well argued. I am of opinion that the magistrate was perfectly justified in putting the appellant under recognizances. It is not necessary to go at great length into the various authorities which were cited to us; I am not able to find in those authorities any statement of a rule of law which is to be applied in all such cases as this. The difficulty arises from attempts to apply the law to particular states of circumstances, for it is obvious that different people may express different opinions as to what ought to have been the application of the law under particular circumstances. For instance, our attention was called to the opinion of a very learned lawyer and writer, Mr. Dicey, with respect to *Beatty* v. *Gilbanks*,[1] and his opinion, as I understood the passage when read, was that the view taken by the Irish Courts is in conflict with that taken by Field J. and Cave J. in that case. But I think that, when *Beatty* v. *Gilbanks* is closely examined, it lays down no law inconsistent with anything stated by the judges in the Irish cases. For this purpose it is sufficient to cite the following passages. In *Beatty* v. *Gilbanks* Field J. said, stating, I think, the law with absolute accuracy: " Now I entirely concede that every one must be taken to intend the natural consequences of his own acts, and it is clear to me that if this disturbance of the peace was the natural consequence of acts of the appellants they would be liable, and the justices would have been right in binding them over. But the evidence set forth in the case does not support this contention." O'Brien C.J. in *Reg.* v. *Justices of Londonderry* said: " No act on the part of any person was proved to shew that it was reasonably probable that the conduct of the defendants would, on the day in question, have provoked a breach of the peace." It is, in my opinion, important to emphasize that enunciation of the necessary test, because it has been pressed upon us by the appellant's counsel that if the appellant did not intend to act unlawfully himself, or to induce other persons to act unlawfully,

[1] See Vol. II, Sect. C, No. XVIII, p. 297.

the fact that his words might have led other people so to act would not be sufficient. . . .

DARLING, J. I am of the same opinion. I think it necessary to summarize shortly the facts which were proved before the magistrate. To begin with, we have the appellant's own description of himself. He calls himself a " crusader ", who is going to preach a Protestant crusade. In order to do this he supplied himself with a crucifix, which he waved about, and round his neck were hung beads—obviously designed to represent the rosaries used by Roman Catholics. Got up in this way, he admittedly made use of expressions most insulting to the faith of the Roman Catholic population amongst whom he went. There had been disturbances and riots caused by this conduct of his before, and the magistrate has found that the language of the appellant was provocative, and that it was likely to occur again. Large crowds had assembled in the streets, and a serious riot was only prevented by the interference of the police. Now, what was the natural consequence of the appellant's acts? It was what has happened over and over again, what has given rise to all the cases which were cited to us, and what must be the inevitable consequence if persons, whether Protestants or Catholics, are to be allowed to outrage one another's religion as the appellant outraged the religion of the Roman Catholics of Liverpool. The kind of person which the evidence here shews the appellant to be I can best describe in the language of Butler. He is one of

> . . that stubborn crew
> Of errant saints, whom all men grant
> To be the true Church Militant;
> . . . .
> A sect, whose chief devotion lies
> In odd perverse antipathies.—*Hudibras*, Pt. 1.

In my view, the natural consequence of those people's conduct has been to create the disturbances and riots which have so often given rise to this sort of case. Counsel for the appellant contended that the natural consequence must be taken to be the legal acts which are a consequence. I do not think so. The natural consequence of such conduct is illegality. I think that the natural consequence of this " crusader's " eloquence has been to produce illegal acts, and that from his acts and conduct circumstances have arisen which justified the magistrate in binding him over to keep the peace and be of good behaviour. In the judgment of O'Brien C.J. in *Reg.* v. *Justices of Londonderry* there is this passage: " Now I wish to make the ground of my judgment clear, and carefully to guard against being misunderstood. I am perfectly satisfied that the magistrates did not make the order which is impugned by reason of there

having been, or there being likely to be, any obstruction of the highway, and that the true view of what took place is that the defendants were bound over in respect of an apprehended breach of the peace; and, in my opinion, there was no evidence to warrant that apprehension." It is clear that, if there had been evidence to warrant that apprehension, the Chief Justice would have held the magistrates' decision in that case to be right. It is said that *Beatty* v. *Gillbanks* is in conflict with that decision. I am not sure that it is. I am inclined to think that, having regard to the passage which my Lord read from Field J.'s judgment in *Beatty* v. *Gillbanks*, the whole question is one of fact and evidence. But I do not hesitate to say that, if there be a conflict between these two cases, I prefer the law as it is laid down in *Reg.* v. *Justices of Londonderry*. If that be a right statement of the law, as I think it is, the magistrate was perfectly justified in coming to the conclusion he did come to in this case, even without taking into consideration the question of the local Act of Parliament to which we were referred.

For these reasons I am of opinion that the magistrate's order was right.

[1902, i, K.B. 167.]

XXIII

TILONKO *v.* ATTORNEY-GENERAL OF NATAL, 1907[1]

This was a petition for special leave to appeal [to the Judicial Committee of the Privy Council] from a judgment of a military court and the sentence following thereon.

It stated that the petitioner was on July 30, 1906, indicted before a court-martial claiming to sit under a declaration of martial law for the crimes of sedition and public violence; that he objected to the trial on the grounds that he was not a military man, had not been taken in the field, had never taken up arms against the Government, that the state of the country was not such as to justify his being tried before a court-martial, and that the Civil Courts before whom he had a right to be tried had in no way been interrupted in their functions and were then sitting. It alleged that the court-martial " arrogated to itself jurisdiction " under colour of a proclamation of martial law, a Colonial Office circular of January 26, 1867, and a mandate of the Governor addressed to the commandant of militia dated February 11, 1906; but that a state of war did not exist at the time of the proclamation, and that the powers of the common law were sufficient for the

[1] Cf. Vol. II, Sect. C, No. IV, p. 241, and references there given.

civil power to maintain order. The petitioner submitted that his trial before the military tribunal was without jurisdiction and illegal. The petitioner added that an indemnity Act of 1906 had been passed, which purported to approve of all sentences passed by any court-martial or by any Court or person exercising any judicial function under the authority of the general commanding officer of the Colonial forces in Natal subsequently to the proclamation, and confirmed all acts done and indemnified those who did them.

The judgment of their Lordships was delivered by

THE EARL OF HALSBURY. This is an application for special leave to appeal to His Majesty in Council. It is desirable to call attention to that fact, because the learned counsel for the petitioner has, from time to time, used the phrase that his right to appeal cannot be refused. There is no right to appeal. This is an application for special leave to appeal, which their Lordships have no difficulty in advising His Majesty to refuse.

The foundation upon which counsel for the petitioner has proceeded is a totally inaccurate analogy between the proceedings of a military court sitting under what is called the Mutiny Act, and proceedings which are not constituted according to any system of law at all. It is by this time a very familiar observation that what is called " martial law " is no law at all. The notion that " martial law " exists by reason of the proclamation—an expression which the learned counsel has more than once used—is an entire delusion. The right to administer force against force in actual war does not depend upon the proclamation of martial law at all. It depends upon the question whether there is war or not. If there is war, there is the right to repel force by force, but it is found convenient and decorous, from time to time, to authorize what are called " courts " to administer punishments, and to restrain by acts of repression the violence that is committed in time of war, instead of leaving such punishment and repression to the casual action of persons acting without sufficient consultation, or without sufficient order or regularity in the procedure in which things alleged to have been done are proved. But to attempt to make these proceedings of so-called " courts-martial ", administering summary justice under the supervision of a military commander, analogous to the regular proceedings of Courts of justice is quite illusory. Such acts of justice are justified by necessity, by the fact of actual war; and that they are so justified under the circumstances is a fact that it is no longer necessary to insist upon, because it has been over and over again so decided by Courts as to whose authority there can be no doubt.

But the question whether war existed or not may, of course, from time to time be a question of doubt, and if that had been the

question in this case, it is possible that some of the observations of the learned counsel with regard to the period of trial, and the course that has been pursued, might have required consideration. But no such question arises here. An Act of Parliament has been passed in Natal which in terms enacts the legality of the sentences in question, and provides that they shall be deemed to be sentences passed in the regular and ordinary course of criminal jurisdiction. This Board has no power to review these sentences, or to inquire into the propriety or impropriety of passing such an Act of Parliament. The only thing for persons who are subject to such an Act of Parliament to do is to obey. The question in this case arises under the Natal Act of Parliament in respect of offences committed in Natal, which Act has been assented to by the Governor and, having the force of law, is binding on their Lordships. The language of the Act appears to their Lordships to be subject to no question of doubt or ambiguity at all.

Sect. 6 enacts that " All sentences passed by any courts-martial or by any Court or person administering martial law under the authority of the Governor or of the commandant of militia in Natal, or by any military officer purporting to exercise authority in that behalf, since the date of the aforesaid proclamation of February 9, 1906, including fines and other punishments inflicted by military officers in the field, are hereby confirmed and made and declared to be lawful, and in so far as the same shall not have been already carried into effect, shall be deemed to be final sentences passed by duly and legally constituted Courts of this Colony, and no appeal shall lie in respect of same, but they shall be and remain in force and shall be carried out in the same manner as the sentences of the Courts of law in this Colony ".

Under these circumstances their Lordships feel that it is impossible to entertain any question of appeal, and they will therefore humbly advise His Majesty to dismiss the petition. Their Lordships are of opinion that in the circumstances of this case the petitioner ought to pay the costs of the petition.

[1907, A.C., 93.]

XXIV

THE OSBORNE JUDGEMENT, 1909

OSBORNE *v.* THE AMALGAMATED SOCIETY OF RAILWAY SERVANTS, 1907-1909

[The A.S.R.S. was a trade union established in 1872. In 1906 by its rule XIII it was making contributions to the Labour Representation Committee and collecting 1s. 1d. annually from each member for providing the representation of railwaymen in the House of Commons, on condition they accepted the Labour Party whip. Osborne, a member of the union, claimed that this use of the funds and these rules were *ultra vires*.]

FLETCHER MOULTON, L.J. . . . Now there is no doubt that in the year 1871 the maintenance of parliamentary representation was no recognized object of trade unions, and I can see no justification for saying that it comes within the definition of the objects of trade unions contained in s. 16 of the Act of 1876. I am therefore of opinion that it cannot legally be made an object of a trade union, and that it was ultra vires to add this to the original objects of this trade union. It follows that it was ultra vires to make rules for the collection of funds for the purpose from the members by way of compulsory contribution.

But there is another and more far-reaching objection to the legality of the rules of this society as they stand according to the contention of the defendants. One has only to look at the proposed additions to rule XIII., section IV., to see that the object of the parliamentary fund is to procure members of Parliament who shall be bound to vote in a prescribed manner, and that it is in consideration of their undertaking so to vote that the funds of the society are to be expended in procuring their election and in supporting them in Parliament. Any such agreement is, in my opinion, void as against public policy. This is best seen by taking the simplest case. Suppose that A. contracts with B. that he will pay the election expenses of B. and support him while in Parliament provided that B. will engage to vote as A. directs. To my mind it is clear beyond contest that such an agreement would be void as against public policy, and this none the less though A.'s motives were perfectly pure and his intention was solely to use the power he thus obtained for the public good. The reason why such an agreement would be contrary to public policy is that the position of a representative is that of a man who has accepted a trust towards the public, and that any contract, whether for valuable consideration or otherwise,

which binds him to exercise that trust in any other way than as on each occasion he conscientiously feels to be best in the public interest is illegal and void. This deep-seated principle of law is the basis of the illegality at common law of bribery at parliamentary elections, for the power of voting for a representative is also a trust towards the public. . . . And it is no answer to say that before or at the election he openly avowed his intention to be thus contractually fettered. The majority who elected him may be willing to permit it, but they cannot waive the rights in this respect of the minority. By our Constitution a representative is chosen by the vote of the majority, and however little the political views of the elected member coincide with those of the minority, they cannot complain. But that election is the election of a representative, and, whoever be chosen, their right remains that he shall be a representative, and not one who has contractually fettered himself in discharge of the duty of representative which he has accepted as regards the public, and not only as regards his own supporters. . . . They may waive their own rights as against the trustee, but they cannot waive the rights of others.[1]

Applying these principles to the present case, I am of opinion that the rules as contended for by the defendants would imply the employment of the funds of the society for purposes contrary to public policy. The two additions to rule XIII., section IV., proposed are as follows: " Clause 2 (a).—All candidates shall sign and accept the conditions of the Labour Party and be subject to their whip." New clause 7.—" The executive committee shall make suitable provisions for the registration of a constituency represented by a member or members, who may be candidates responsible to and paid by this society ". The conditions of the Labour Party bind members when elected to abide by the decision of the parliamentary party in carrying out the aims of its constitution, and the new clause 7, set out above, treats the members of Parliament when elected as responsible to the society. . . .

. . . I am of opinion that the proposed rules are illegal, and that the enforcement of subscriptions to raise funds to carry them into effect and the employment of the existing funds of the society for that purpose would be wholly illegal acts. I agree, therefore, that the plaintiff is entitled to the whole of the relief which the Master of the Rolls has formulated in his judgment.

FARWELL, L.J. This appeal raises the question whether trade unions can lawfully apply any of their funds in promoting the election, paying the election expenses, and providing for the maintenance of a member of Parliament who is bound to vote . . . for advancing

[1] Cf. Vol. I, Sect. D, No. XLII, p. 392.

the interests of a class, in the present case of workmen, but which might equally well be of employers. It involves the grave constitutional question whether a trade union can by fine and expulsion compel its members to subscribe for such a purpose, and whether such a purpose is not in itself illegal. The question is of the utmost importance, involving not only the relation of the trade unions, with their extraordinary privileges to the public, but also the power of a majority of a trade union to compel an unwilling minority to dispose of their subscribed and invested funds and to pay levies in future for objects of which they may heartily disapprove. . . .

Prior to the passing of the Act of 1871 a trade union, as such, had no legal status. It was, speaking generally, an association of wage-earners for the purpose of improving or maintaining the conditions of their employment. It combined the objects of a friendly society with those of a trade guild. . . . These and such as these were the proper functions of a trade union in 1871. But both before and after that Act all the individual members of such an association might also form themselves into a co-operative society under the Industrial Acts, or a political society or the like, but they would do so as individuals, not as a trade union; or they might, if less than twenty, trade as partners, but such partnership would be outside and independent of their position as a trade union. The defendants' argument confuses the trade union with the members composing it. It is impossible to assimilate the position of an association that had no legal status with that of an individual who has all the ordinary rights and duties of citizenship, and it is even more impossible to adopt the respondents' argument that a trade union can do anything that any number of men not exceeding twenty can do, for this leaves out the consideration that nineteen of them cannot bind the twentieth to any course except by agreement, and until the terms of the agreement are known it is impossible to determine its meaning.

. . . The defendants' contention, that the mere assumption of the name of trade union with some one rule that is in restraint of trade can possibly give to the persons assuming it the extraordinary privileges of the Acts of 1871, 1876, and 1906, is extravagant.[1]

It is then argued that, even if this be so, the acts complained of here are within the powers of a trade union as defined by the Act. It is said that the object of the union is to improve the condition of its members, that, for example, an eight-hours day would so improve

[1] The privileges particularly of exemption from actions for tort (under the Act of 1906) and of security against prosecutions for conspiracy (under the Act of 1876). See the next page, example noted. Compare Vol. II, Sect. C, No. XXVII, p. 333.

it, and that such a result can be better achieved by legislation than by striking. I disclaim all intention of expressing any opinion of the merits of the claim. Whether the eight-hours day is or is not beneficial is for the union to decide, not for the Court, but the argument by which the claim is supported and the means by which it is proposed to carry it out are questions for the Court. The argument that it will improve the condition of the members proves too much. I will take two illustrations at the opposite ends of the scale. It can hardly be denied that it would improve the condition of the members of any community that they should be induced to abandon anger, hatred, malice, and all uncharitableness, and to live in peace and harmony as Christians, yet it could not be contended that the majority of a trade union, whether Church of England, Roman Catholic, or Dissenting, could compel the minority to pay for the services of a clergyman of the same denomination as the majority to inculcate these doctrines. Or, again, it is better that the members should drink good beer at a fair price rather than bad beer at a high price, but no one could say that the thirsty majority of a trade union could compel the rigid total abstaining minority to contribute to the expense of taking and keeping open licensed premises with a union official as manager to supply members with liquors. It is impossible to construe Acts like these by the light of arguments founded upon broad generalities. When it is said, for instance, that trade unions may carry on a trade or run a newspaper, it must be remembered that, if that be so, traders or newspaper proprietors could register themselves as trade unions. . . . For example, if a trade union as such can run a newspaper, the proprietors of *The Times*, for instance, can register themselves as a trade union and libel all and sundry with perfect impunity. . . .[1]

Leaving now the general for the particular reasons given by counsel, it is said that the objects of the union can be better obtained by parliamentary action than by strikes. Assume that it is so; it does not follow that all means of inducing Parliament to act are therefore legalized. It is clear that the most direct and effective mode, namely, of compelling all the members of the union on pain of expulsion to vote for a particular candidate, would be illegal. In my opinion it would also be illegal for a landlord to compel his tenants, by means of covenant and proviso for re-entry, to subscribe to the funds of the particular party that he supported, or for an employer to make his workmen, on pain of dismissal, subscribe to his party funds; and it follows that in my opinion it is equally illegal for a trade union to compel their members to allow their funds to be applied, and themselves to subscribe, as is proposed

[1] See footnote on previous page.

in the present case, and all the more so because their power is greater, as many of the members who preferred their principles to their union would have to suffer greater sacrifices by giving up the benefits incident to a long membership in an old-established and wealthy union. If this were not so, the position of the working man is indeed parlous. His own trade union may compel him to pay for A.'s return and maintenance in the House, his master's trade union may compel him to pay for B., and he himself may desire that C. should represent him. Such compulsion is utterly opposed to the whole theory of representative government. I do not rest my opinion upon any statutory provision, but on the broad general ground stated in Blackstone, vol. i, p. 178: "As it is essential to the very being of Parliament that elections should be absolutely free, therefore all undue influences upon the electors are illegal, and strongly prohibited." And point is added to this by the reasons already given by him at p. 171 for limiting the franchise. He says there: "If it were probable that every man would give his vote freely, and without influence of any kind, then, upon the true theory and genuine principles of liberty, every member of the community, however poor, should have a vote in electing those delegates, to whose charge is committed the disposal of his property, his liberty, and his life. But, since that can hardly be expected in persons of indigent fortunes, or such as are under the immediate dominion of others, all popular states have been obliged to establish certain qualifications; whereby some, who are suspected to have no will of their own, are excluded from voting, in order to set other individuals, whose wills may be supposed independent, more thoroughly upon a level with each other." The learned author then quotes from Locke on Government a passage relating to interference by the Executive, and I will read the following passage, which appears to me to be applicable to the present case (Locke, Of Civil Government, § 222): "Thus to regulate candidates and electors, and new-model the ways of election, what is it but to cut up the government by the roots, and poison the very fountain of public security? For the people, having reserved to themselves the choice of their *representatives*, as the fence to their properties, could do it for no other end, but that they might always be freely chosen, and so chosen, freely act, and advise, as the necessity of the commonwealth, and the public good should, upon examination, and mature debate, be judged to require. This, those who give their votes before they hear the debate, and have weighed the reason on all sides, are not capable of doing. To prepare such an assembly as this, and endeavour to set up the declared abettors of his own will, for the true *representatives* of the people, and the law-makers of the

society, is certainly as great a *breach of trust*, and as perfect a declaration of a design to subvert the government, as is possible to be met with." Freedom of choice is the very corner stone of representative government, the withdrawal of which would destroy the whole fabric. It is the justifrcation by which legislative interference with the individual freedom of free men in a free country is reconciled with such freedom, namely, that the interference is their own act, because the Act is passed by the representatives of the whole body of free and independent electors freely chosen. . . .

. . . To return to Blackstone, at p. 159 there is this passage: " Every member, though chosen by one particular district, when elected and returned, serves for the whole realm. For the end of his coming thither is not particular, but general; not barely to advantage his constituents, but the *common* wealth. . . . And therefore he is not bound, like a deputy in the united provinces, to consult with, or take the advice of, his constituents upon any particular point, unless he himself thinks it proper or prudent so to do." The same principle is enforced by Burke in one of his Bristol speeches, in vol. iii (ed. of 1815) of his collected works at p. 19: " To deliver an opinion is the right of all men, that of constituents is a weighty and respectable opinion, which a representative ought always to rejoice to hear; and which he ought always most seriously to consider. But *authoritative* instructions; *mandates* issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience; these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenour of our constitution. Parliament is not a *congress* of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a *deliberative* assembly of *one* nation, with *one* interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You chuse a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of *parliament*. If the local constituent should have an interest, or should form a hasty opinion, evidently opposite to the real good of the rest of the community, the member for that place ought to be as far, as any other, from any endeavour to give it effect." I do not, of course, suggest that a member may not bind himself by promises to his constituents to support a particular party or particular measures, but his primary duty is to his country, and he cannot bind himself at law by any promise in abnegation of such duty. If a man has been elected on promises given without due

consideration, it is a matter for his own honour to determine whether he should resign or what course he should adopt, but no promise made by him to vote in any given way has any legal validity. The promise would be nudum pactum because given without consideration, or bad because given for an illegal consideration. The passage already read from Locke applies with great force to this. No one could attempt to defend an individual millionaire who subsidized members on terms that they voted for a particular measure, or generally according to his directions, and the case is certainly not improved by multiplying the subsidizers by seven or by thousands, or by registering them as a trade union. If the payments were made from time to time as payments for each vote as it was given, the transaction would be too scandalous for any attempt at a defence, and I fail to see any difference between payment by the year and payment for each vote. Service is service, whether the wage be paid by the month or by the job. These observations are, of course, limited to the case before the Court, of the intrusion of strangers into a constituency. I see no reason why the electors who desire a particular candidate, who may be a poor man, to be their member should not subscribe for his expenses and his maintenance in Parliament, provided always that they do not attempt to buy his votes. He cannot be deprived of his independence, nor can he free himself from the great duty to his country that he undertakes by becoming a member. . . .

Appeal dismissed : [1] judgement of the Master of the Rolls confirmed.

[1909, i, Ch., at 186].

[1] The judgements did not all concur in their basis for regarding the rules of the Amalgamated Railway Servants as illegal, and it is not possible to take any of the opinions alone as good law. The main objections were, first, the compulsion on the minority in a Trade Union to subscribe to the support of politicians they might dislike, second, the interference with the freedom of a Member of Parliament to make up his own mind ; and third, the intervention of any third party coming between the member and his constituency. The Act of 1913, now once more effective since the repeal of the Trades Disputes Act, 1927, gave to the Trade Unions the right to support political parties on the " contracting-out " basis. It dealt almost entirely with the first objection.

XXV

BOARD OF EDUCATION (APPELLANTS) AND RICE AND OTHERS, 1911

LORD LOREBURN, L.C. [In the House of Lords] . . . It is unnecessary to enter in detail upon the protracted dispute between the Swansea Local Education Authority and the managers of the Oxford Street voluntary schools, technically termed "non-provided" schools. Certain salaries were paid to teachers by the local education authority in the "provided" schools within their area. Smaller salaries had been paid to the teachers in the voluntary schools prior to the Act of 1902, and after that Act passed the same system of paying smaller salaries was continued. Then some of the teachers gave notice upon the ground that their salaries were inadequate and below those paid to their comrades in the provided schools. And the managers of the Oxford Street schools pressed upon the local education authority the fact that they were able to keep their teachers only by finding out of their own pockets, or by the assistance of well-wishers, the difference between the two scales of salary. They claimed that by refusing to level up those salaries to the same scale the local education authority had failed to discharge its statutory duty of maintaining and keeping efficient the Oxford Street schools. Mr. Hamilton, K.C., who was sent down to inquire and report to the Board of Education in London, reported that there had been such a failure. . . .

At length the questions in issue came up for a decision by the Board of Education in London, and it is their action which is the subject of the order made by the Divisional Court, confirmed by the Court of Appeal, and now ripe for final adjudication by this House.

I proceed now to consider what is the statutory duty laid upon the Board of Education in regard to disputes of this kind.

Their duties, so far as concerns the present litigation, are twofold. In the first place they are required by s. 7, sub-s. 3, of the Act of 1902 to determine a certain class of questions. The words of the sub-section run as follows: "If any question arises under this section between the local education authority and the managers of a school not provided by the authority, that question shall be determined by the Board of Education." . . .

Comparatively recent statutes have extended, if they have not originated, the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various

kinds. In the present instance, as in many others, what comes for determination is sometimes a matter to be settled by discretion, involving no law. It will, I suppose, usually be of an administrative kind; but sometimes it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases the Board of Education will have to ascertain the law and also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view. Provided this is done, there is no appeal from the determination of the Board under s. 7, sub-s. 3, of this Act. The Board have, of course, no jurisdiction to decide abstract questions of law, but only to determine actual concrete differences that may arise, and as they arise, between the managers and the local education authority. The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari.

In the second place the Board are authorized, by s. 16 of the Act of 1902, to make such order as they think necessary or proper for the purpose of compelling the local education authority to fulfil its duty, if after holding a public inquiry they think it has failed to fulfil any of its duties under the Act of 1902. This is a perfectly distinct thing from what is prescribed by s. 7, sub-s. 3. It is designed to enable the Board of Education, if they think it right to make an order and to enforce by application to the Courts of law obedience to such order as they may make. It does not deal with the determination of disputes between a local authority and managers, though if such dispute is decided one way and the local education authority refuses to act in accordance with the decision, its refusal may be followed by an order under s. 16 and by an application to the Court to enforce it. In the coil in which this quarrel, simple as it is in itself, has been entangled, this distinction may have been somewhat overlooked.

In some of the judgments in the Courts below it is affirmed as matter of law that under this Act a local authority is not entitled

to differentiate between schools in regard to the scale of salaries or the standard of efficiency in the absence of special circumstances appropriate to the differentiation. . . . I do not find anything, however, in the statute itself which prohibits the local authority from doing for some schools more than it does for others, even if the circumstances are indistinguishable. . . . I say nothing as to any remedy which ratepayers might have against the local authority upon the ground that it was misapplying public money in giving to the preferred school more than was justifiable. On that I express no opinion. But the managers have no right to claim more for their school than the Act requires merely because the local authority spends on other schools more than the Act requires. . . . At the same time I must observe that such treatment is a strong circumstance which the Board of Education are bound to scrutinize, in order to satisfy themselves that the discrimination does not involve any lowering of the proper standard of efficiency in the schools for which less is done. . . .

In my opinion the questions which the Board of Education was required by s. 7, sub-s. 3, of the Act of 1902 to determine in this case are accurately stated at the end of Mr. Eden's letter of February 3, 1908, on behalf of the managers in the following terms :—

(1) Whether the local education authority have in fixing and paying the salaries of the teachers fulfilled their duty under sub-s. 1 of s. 7 of the Act.

(2) Whether the salaries inserted in the teachers' present agreements are reasonable in amount and ought to be paid by the authority, or what salaries the authority ought to pay.

I am of opinion that the Education Board have not really determined these questions in the document of December 17, 1908, which purports to be their decision. I think there has been a confusion between the points that were to be decided and the arguments of either side, and perhaps also a confusion between the Board's duty under s. 7, sub-s. 3, and their duty under s. 16. The managers were entitled to an explicit determination of the questions which they raised. This they have not obtained. That suffices to dispose of the case, and I move your Lordships to dismiss this appeal with costs.[1]

[1911, A.C., 179.]

[1] A mandamus therefore to be issued commanding the Board to determine the questions.

XXVI

DYSON *v.* THE ATTORNEY-GENERAL, 1911

FLETCHER MOULTON, L.J. [In the Court of Appeal] In this case the plaintiff has received a paper from the Commissioners of Inland Revenue (known ordinarily as Form No. IV) making certain inquiries and threatening him with a penalty unless the inquiries are answered by a certain date, and he is desirous of testing the legality of the procedure, and for that purpose has brought an action against the Attorney-General for a declaration that he is under no obligation to comply.

The law advisers to the Crown, being of opinion that this course was not open to the plaintiff, took out a summons to dismiss the action on the ground that it was frivolous and vexatious and disclosed no reasonable cause of action. The Master and the judge approved of their contention, and it is from this decision of the judge in chambers that the present appeal is brought.

Now it is unquestionable that, both under the inherent power of the Court and also under a specific rule to that effect made under the Judicature Act, the Court has a right to stop an action at this stage if it is wantonly brought without the shadow of an excuse, so that to permit the action to go through its ordinary stages up to trial would be to allow the defendant to be vexed under the form of legal process when there could not at any stage be any doubt that the action was baseless. But from this to the summary dismissal of actions because the judge in chambers does not think they will be successful in the end lies a wide region, and the Courts have properly considered that this power of arresting an action and deciding it without trial is one to be very sparingly used, and rarely, if ever, excepting in cases where the action is an abuse of legal procedure. . . . To my mind it is evident that our judicial system would never permit a plaintiff to be " driven from the judgment seat " in this way without any Court having considered his right to be heard, excepting in cases where the cause of action was obviously and almost incontestably bad. . . .

FARWELL, L.J. Order XXV., r. 4, was never intended to apply to a case of this kind, and we might well have allowed the appeal on this ground alone, but the case raises a question of public importance, and as we have had it fully argued I think that we ought now to decide it. . . .

Now the action asks for no declaration in respect of any penalty; the complaint is that the Legislature has entrusted to a Government

department (the Commissioners of Inland Revenue) the performance of the duty of making certain specific inquiries in a specific manner from landowners and of requiring answers to be sent to themselves, and has imposed a 50l. penalty for disobedience. The plaintiff alleges that the Commissioners have exceeded their powers by making inquiries not authorized to be made, by not giving proper time to answer, and by requiring answers to be sent to a person not authorized to receive them and to whom it is injurious to the plaintiff's interest to send them. This appeal has been heard as if it were on demurrer under the old practice, and the allegations must therefore be taken as true for the present purpose. It is obviously a question of the greatest importance; more than eight millions of Form IV have been sent out in England, and the questions asked entail much trouble and in many cases considerable expense in answering; it would be a blot on our system of law and procedure if there is no way by which a decision on the true limit of the power of inquisition vested in the Commissioners can be obtained by any member of the public aggrieved, without putting himself in the invidious position of being sued for a penalty. I am, however, of opinion that the Attorney-General's contention is not well founded.

1. In a case like the present the Attorney-General is properly made defendant. It has been settled law for centuries that in a case where the estate of the Crown is directly affected the only course of proceeding is by petition of right, because the Court cannot make a direct order against the Crown to convey its estate without the permission of the Crown, but when the interests of the Crown are only indirectly affected the Courts of Equity, whether the Court of Chancery or the Exchequer on its equity side . . . could and did make declarations and orders which did affect the rights of the Crown. . . . It has not, since the Commonwealth at any rate, been the practice of the Crown to attempt to defeat the rights of its subjects by virtue of the prerogative; in 1667 Baron Atkyns in *Pawlett* v. *Attorney-General* says: "The party ought in this case to be relieved against the King; because the King is the fountain and head of justice and equity, and it shall not be presumed that he will be defective in either; it would derogate from the King's honour to imagine that what is equity against a common person should not be equity against him." So too, in the case where a petition of right is required, that proceeding "exists only for the purpose of reconciling the dignity of the Crown and the rights of the subject and to protect the latter against any injury arising from the acts of the former; but it is no part of its object to enlarge or alter those rights": per Lord Cottenham in *Monckton* v. *Attorney-General*. It is very unusual for the responsible minister to

refuse to authorize the indorsement "let right be done," and it would be unjustifiable to refuse in any case where a plausible claim is made out. As Lord Langdale says in *Ryes* v. *Duke of Wellington*, "I am far from thinking that it is competent to the King, or rather to his responsible advisers, to refuse capriciously to put into a due course of investigation any proper question raised on a petition of right." The present is not a case for a petition of right at all; the Crown is not directly affected, but the plaintiff seeks a declaration from the Court of the true construction of an Act which imposes burdensome and expensive inquiries upon him, and for non-compliance with which he is threatened with fines. The argument on behalf of the Attorney-General admits for this purpose the illegality of the inquiries, but claims for a Government department a superiority to the law which was denied by the Court to the King himself in Stuart times.

[Point 2 concerns the validity of precedents previous to the Judicature Acts.]

3. The next argument on the Attorney-General's behalf was "ab inconvenienti"; it was said that if an action of this sort would lie there would be innumerable actions for declarations as to the meaning of numerous Acts, adding greatly to the labours of the law officers. But the Court is not bound to make declaratory orders and would refuse to do so unless in proper cases, and would punish with costs persons who might bring unnecessary actions: there is no substance in the apprehension, but if inconvenience is a legitimate consideration at all, the convenience in the public interest is all in favour of providing a speedy and easy access to the Court for any of His Majesty's subjects who have any real cause of complaint against the exercise of statutory powers by Government departments and Government officials, having regard to their growing tendency to claim the right to act without regard to legal principles and without appeal to any Court. Within the present year in this Court alone there have been no less than three such cases. In *Rex* v. *Board of Education*[1] the Board, while abandoning by their counsel all argument that the Education Act, 1902, gave them power to pursue the course adopted by them, insisted that this Court could not interfere with them but that they could act as they pleased. In *In re Weir Hospital* the Charity Commissioners were unable to find any excuse or justification for the misapplication of £5000 of the trust funds committed to their care. In *In re Hardy's Crown Brewery* the Commissioners of Inland Revenue, who are entrusted by s. 2, sub-s. 1, of the Licensing Act, 1904, with the

[1] Vol. II, Sect. C, No. XXV, p. 327.

judicial duty of fixing the amount of compensation under the Act, fixed the sum mero motu without any inquiry or evidence and without giving the parties any opportunity of meeting objections, and claimed the right so to act without interference by any Court. Bray J. and the Court of Appeal held that they had acted unreasonably and ordered them to pay costs. In all these cases the defendants were represented by the law officers of the Crown at the public expense, and in the present case we find the law officers taking a preliminary objection in order to prevent the trial of a case which, treating the allegations as true (as we must on such an application), is of the greatest importance to hundreds of thousands of His Majesty's subjects. I will quote the Lord Chief Baron in *Deare* v. *Attorney-General*: " It has been the practice, which I hope never will be discontinued, for the officers of the Crown to throw no difficulty in the way of proceedings for the purpose of bringing matters before a Court of justice when any real point of difficulty that requires judicial decision has occurred." I venture to hope that the former salutary practice may be resumed. If ministerial responsibility were more than the mere shadow of a name, the matter would be less important, but as it is, the Courts are the only defence of the liberty of the subject against departmental aggression. . . .

Appeal allowed.

[1911, 1 K.B., at p. 418.]

XXVII

VACHER & SONS LTD. *v.* THE LONDON SOCIETY OF COMPOSITORS, 1913

An APPEAL to the House of Lords from an order of the Court of Appeal reversing an order of Channell, J., in chambers.

The appellants were general and parliamentary printers, carrying on business at Westminster. The respondent society was a registered trade union. On July 28, 1911, the appellants commenced an action against the respondent society and two other defendants, Naylor and Holmes, who were respectively the secretary and the organizing secretary of the society, for damages for conspiracy to libel and for libel.[1]

[1] The respondents had sent a document called " The Compositors' Fair List and Guide to the London Printing Offices " to Vacher's customers. Vacher's were not in the list. They also wrote to Vacher's customers, and

VISCOUNT HALDANE, L.C. My Lords, this appeal raises the question of the true construction to be put on s. 4 of the Trade Disputes Act, 1906. That Act was passed five years after the decision of this House in the case of *Taff Vale Ry. Co.* v. *Amalgamated Society of Railway Servants.* It had been there decided that a trade union, registered under the Trade Union Acts, could be sued in its registered name, and also that a trade union, whether registered or not, could, since the Judicature Acts, be sued in a representative action at common law, if the persons selected as defendants were persons who from their position might fairly be taken to represent the union. . . .

It is common knowledge that this decision gave rise to keen controversy as to whether the law required amendment. On the one hand it was contended that the principle laid down ought to remain undisturbed, because it simply imposed on the trade unions the legal liability for their actions which ought to accompany the immense powers which the Trade Union Acts had set them free to exercise. On the other side it was maintained that to impose such liability was to subject their funds, which were held for benevolent purposes as well as for those industrial battles, to undue risk. It was said that by reason of the nature of their organization and their responsibility in law for the action of a multitude of individuals who would be held in law to be their agents, but over whom it was not possible for them to exercise adequate control, they were, by the decision of this House, exposed to perils which must cripple their usefulness.

My Lords, we have heard, in the course of this case, suggestions as to the merits of the conflicting points of view and as to the reasonableness, in interpreting the language of Parliament in the Trade Disputes Act of 1906, of presuming that the Legislature was acting with one or other of these points of view in its mind. For my own part, I do not propose to speculate on what the motive of Parliament was. The topic is one on which judges cannot profitably or properly enter. Their province is the very different one of construing the language in which the Legislature has finally expressed its conclusions, and if they undertake the other province which belongs to those who, in making the laws, have to endeavour to interpret the desire of the country, they are in danger of going

in both actions gave, it was alleged, the impression that Vacher's

1. Did business unfairly.
2. Treated their employees badly.
3. Refused to employ Trade Unionists.
4. Should not be given orders for printing.

This, it was alleged, was a damaging libel.

astray in a labyrinth to the character of which they have no sufficient guide. In endeavouring to place the proper interpretation on the sections of the statute before this House sitting in its judicial capacity, I propose, therefore, to exclude consideration of everything excepting the state of the law as it was when the statute was passed, and the light to be got by reading it as a whole, before attempting to construe any particular section. Subject to this consideration, I think that the only safe course is to read the language of the statute in what seems to be its natural sense. . . .

The Act is confined to trade unions within the definition of the Trade Union Acts of 1871 and 1876. The title is "An Act to provide for the Regulation of Trades Unions and Trade Disputes." This appears to me to indicate that the scope of the statute was not confined to the regulation of trade disputes merely. Sect. 1 is confined to cases of trade disputes and amends the law of conspiracy in such cases by precluding legal remedy unless the act done would have been actionable apart from the circumstances of agreement or combination to do it. Sect. 2 is also confined to cases of trade disputes. It legalizes what is popularly called "peaceful picketing." Sect. 3 takes away the actionable character of any act done by a person in contemplation or furtherance of a trade dispute if the ground of action is only that what was done induced another person to break a contract of employment, or was an interference with the trade, business, or employment of another person, or with his right to dispose of his capital or his labour as he pleases. It will be observed that these three sections all relate to trade disputes, but that none of them relates exclusively to the case of a trade union. Sect. 4, sub-s. 1, the section which has to be construed in the present appeal, does, however, relate exclusively to the case of a trade union. It enacts that an action against such a union, whether of workmen or masters, or against any members or officials of the union on behalf of themselves and all the other members, in respect of any tortious act alleged to have been committed by or on behalf of the union, shall not be entertained by any Court. I draw attention to the fact that this section differs from the three preceding sections not only in relating exclusively to the case of a trade union, but in that sub-s. 1 omits mention of any restriction which would confine the tortious act to one in contemplation or in furtherance of a trade dispute. Upon this point it has been contended by the learned counsel who addressed the House for the appellants that such a restriction ought to be implied. It is said that s. 5, which provides that the Act may be cited as the Trade Disputes Act, 1906, and the scheme of the first three sections, which deal only with trade disputes, shew that the Act is to be interpreted as so confined, and that

it cannot be supposed that the Legislature intended to free trade unions from liability to the extent which a literal reading of s. 4, sub-s. 1, would indicate.

My Lords, with this contention I am unable to agree. . . .

LORD MACNAGHTEN. My Lords, the point raised by this appeal is a very short one and, in my opinion, absolutely clear. . . .

The Trade Disputes Act, 1906, declares that " An action against a trade union, . . . in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any Court." The language of the enactment is precise and unambiguous. No one can doubt what the words mean.

Now it is " the universal rule," as Lord Wensleydale observed in *Grey* v. *Pearson*, that in construing statutes, as in construing all other written instruments, " the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance, or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further."

Acts of Parliament are, of course, to be construed " according to the intent of the Parliament " which passes them. That is " the only rule," said Tindal C.J., delivering the opinion of the judges who advised this House, in the *Sussex Peerage Case*. But his Lordship was careful to add this note of warning : " If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver." Nowadays, when it is a rare thing to find a preamble in any public general statute, the field of inquiry is even narrower that it was in former times. In the absence of a preamble there can, I think, be only two cases in which it is permissible to depart from the ordinary and natural sense if the words taken in their natural sense lead to some absurdity or that there is some other clause in the body of the Act inconsistent with, or repugnant to, the enactment in question construed in the ordinary sense of the language in which it is expressed.

Now there is nothing absurd in the notion of an association or body enjoying immunity from actions at law. Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the Court,

and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the Legislature. . . .

[Lord Atkinson, in his judgement, concurred. Order of the Court of Appeal affirmed and appeal dismissed with costs.]

[1913, A.C., 107.]

XXVIII

LOCAL GOVERNMENT BOARD *v.* ARLIDGE, 1911–15

[Arlidge, by order of Hampstead Borough Council, was prohibited in January 1911 from using his house for habitation until, in their judgement, it had been made fit for such purposes. He appealed to the Local Government Board, submitting expert reports that the house was habitable. The Board sent an inspector to hold a public enquiry which Arlidge declined to attend. On the report of its inspector the Board confirmed the closing order. After repairs Arlidge appealed for the closing order to be lifted, the Council refused, the Board sent the inspector to hold another public enquiry which Arlidge (with solicitor and witnesses) attended; Hampstead Borough Council and the London County Council were also represented. The Inspector submitted a report to the Board; the Board gave Arlidge the opportunity of submitting a further statement in writing; this he declined to do. He brought his action to have the order of the Board quashed. The case went from the King's Bench Division to the Appeal Court and thence to the House of Lords. For Arlidge it was contended that the Board's decision had been taken

(*a*) neither by the Board itself nor anyone lawfully authorized to act for the Board;

(*b*) contrary to natural justice in that Arlidge had not been heard orally before the Board (but only before the Inspector);

(*c*) that the report of the Inspector had been kept secret from Arlidge.

The Court of Appeal reversed the lower court and found in favour of Arlidge. In the House of Lords the grounds on which the judgement of the King's Bench Division (in favour of the L.G. Board) was restored, were given by—]

VISCOUNT HALDANE, L.C. . . . The closing of dwelling-houses as being dangerous or injurious to health, or unfit for habitation, is no new jurisdiction. The Housing of the Working Classes Act, 1890, gave to the local authority the power to take proceedings to enforce penalties and closing orders before Courts of summary jurisdiction, to be followed, in certain circumstances, by demolition orders.

Under that Act the owner of the house had an appeal to quarter sessions. This power of closing was somewhat extended by the Housing of the Working Classes Act, 1903, but the principle of the application being to a Court of justice remained the same. A change of this principle was introduced in the Housing and Town Planning Act, 1909. The local authority was empowered itself to make the closing order, certain conditions having been complied with, and it was given power to determine the closing order if satisfied that the house in respect of which the order had been made had subsequently been rendered fit for habitation. In respect of both a closing order and a determining order the owner was given a right of appeal. But the appeal was to be, not as before to quarter sessions, but to the Local Government Board. Stringent powers of inspection were given to both the local authority and the Local Government Board. In the case of an appeal, the procedure as to everything, including costs, was to be such as the Board might by rules determine. The Board was to have power to make such order on any appeal as it should think equitable. It could state a case, but only on a question of law, for the opinion of the High Court, and could be compelled by the High Court to do so. The rules were to provide that the Board should not dismiss any appeal without having first held a public local inquiry. . . .

My Lords, it is obvious that the Act of 1909 introduced a change of policy. The jurisdiction, both as regards appeals, was in England transferred from Courts of justice to the local authority and the Local Government Board, both of them administrative bodies, and it is necessary to consider what consequences this change of policy imported.

My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same. In the case of a Court of law tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal. In modern times it has become increasingly common for Parliament to give an appeal in matters which really pertain to administration, rather than to the exercise of the judicial functions of an ordinary Court, to authorities whose functions are administrative and not in the ordinary sense judicial. Such a body as the Local Government Board has the

duty of enforcing obligations on the individual which are imposed in the interests of the community. Its character is that of an organization with executive functions. In this it resembles other great departments of the State. When, therefore, Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the contrary, to have intended it to follow the procedure which is its own, and is necessary if it is to be capable of doing its work efficiently. I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In *Board of Education* v. *Rice* he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view. If the Board failed in this duty, its order might be the subject of certiorari and it must itself be the subject of mandamus.

My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff. When, therefore, the Board is directed to dispose of an appeal, that does not mean that any particular official of the Board is to dispose of it. This point is not, in my opinion touched by s. 5 of 33 & 34 Vict. c. 70, the Act constituting the Local Government Board to which I have already referred. Provided the work

is done judicially and fairly in the sense indicated by Lord Loreburn, the only authority that can review what has been done is the Parliament to which the Minister in charge is responsible. The practice of the department in the present case was, I think, sufficiently shown by Sir Horace Monro's affidavit to have been followed. In accordance with that practice the Board, in order to obtain materials with which to decide, appointed one of its health inspectors to hold a public inquiry. This was in accordance with the rules it had made under the section of the statute which I have quoted and with its usual practice. It is said that the report of the inspector should have been disclosed. It might or might not have been useful to disclose this report, but I do not think that the Board was bound to do so, any more than it would have been bound to disclose all the minutes made on the papers in the office before a decision was come to. It is plain from Sir Horace Monro's affidavit that the order made was the order of the Board, and so long as the Board followed a procedure which was usual, and not calculated to violate the tests to which I have already referred, I think that the Board was discharging the duty imposed on it in the fashion Parliament must be taken to have contemplated when it deliberately transferred the jurisdiction, first from a Court of summary jurisdiction to the local authority, and then, for the purposes of all appeals, from quarter sessions to an administrative department of the State. What appears to me to have been the fallacy of the judgment of the majority in the Court of Appeal is that it begs the question at the beginning by setting up the test of the procedure of a Court of justice, instead of the other standard which was laid down for such cases in *Board of Education* v. *Rice*. I do not think the Board was bound to hear the respondent orally, provided it gave him the opportunities he actually had. . . .

[Lords Shaw, Parmoor, and Moulton concurred.]

[1915, A.C., 120.]

XXIX

IN RE X'S PETITION OF RIGHT, 1915—AN EPILOGUE

[In December 1914 the military authorities took possession of land and buildings belonging to the suppliants for use as an aerodrome. It was held that the occupation was necessary for the defence of the realm and was temporary. The suppliants claimed compensation under the Defence of the Realm Act 1842, or the Military Lands Act, 1892. The Attorney-General, for the Crown, claimed that possession

was taken in virtue of the prerogative and denied that there was a legal right to compensation.]

(In the King's Bench Division.)

AVORY, J. The question for decision in this case is whether in time of war between His Majesty and foreign powers the competent naval or military authority acting on behalf of His Majesty is entitled to take possession of and occupy lands and premises, the possession and occupation of which is in their opinion necessary for securing the public safety and the defence of the realm, without making compensation to the owners or persons claiming to be entitled to the possession of such land and premises, in other words, whether the suppliants in the circumstances of this case are by law entitled to compensation either under the Defence of the Realm Act, 1842, or the Military Lands Act, 1892, or any Act amending the same or either of them, or otherwise.

I find as a fact, upon the evidence and admissions made, that the possession and occupation of the land and premises in question was in the opinion of the competent naval or military authority necessary for securing the public safety and the defence of the realm, and that such possession and occupation is not intended to be of a permanent character, but only for such time as is required by the exigencies of the existing war.

The suppliants in this petition, while not disputing the right of the naval or military authorities acting on behalf of His Majesty the King compulsorily to possess and occupy the said lands and premises, contend that such right is subject to their right to compensation under the Defence of the Realm Act, 1842, the Military Lands Act, 1892, or other Acts amending the same. The Solicitor-General in answer contends that His Majesty in time of war is by virtue of his Royal prerogative entitled to possess and occupy any lands or premises for purposes of the defence of the realm without making compensation therefor, and that if such prerogative right is open to doubt the competent naval or military authority acting on behalf of His Majesty was entitled so to do by virtue of the powers of the Defence of the Realm Act, 1914, and the Regulations issued thereunder by His Majesty in Council. In reply Mr. Leslie Scott on behalf of the suppliants contends that the prerogative and that the Defence of the Realm Act, 1914, and the Regulations issued thereunder do not repeal or suspend the right to compensation conferred by the earlier Acts.

If it had been necessary to decide this case on the Royal prerogative alone, I would have devoted more attention to it. A reference to the case of *Rex* v. *Hampden*[1] (the Ship Money Case)

[1] Gardiner, No. 20, p. 108.

will show the amount of learning and argument that may be bestowed upon it; but as the point has been raised I will express my opinion upon it. The case just mentioned and other authorities appear to establish that by the Constitution the defence of the realm is entrusted to the Crown, that the law has entrusted the person of His Majesty with the care of this defence, that in this business of defence the " suprema potestas " is inherent in His Majesty as part of his Crown and kingly dignity, that in times of war or invasion the maxim " Salus populi suprema lex " must prevail, and that in these times of war not only His Majesty, but likewise every man that hath power in his hands, may take the goods of any within the realm, pull down their houses or burn their corn to cut off victuals from the enemy, and do all other things that conduce to the safety of the kingdom without respect had to any man's property. These propositions are admitted by Mr. St. John in his exhaustive argument against the Crown in that case, and Sir Richard Hutton, one of the judges who gave judgment against the Crown, said: " There are some inseparable prerogatives belonging to the Crown, such as the Parliament cannot sever from it. . . . Such is the care for the defence of the kingdom, which belongeth inseparably to the Crown as head and supreme protector of the kingdom "; and further he said: " I do agree in the time of war, when there is an enemy in the field, the King may take goods from the subject [where there is] such a danger as tends to the overthrow of the kingdom." In the *Saltpetre Case*,[1] quoted by the Solicitor-General, (a decision of all the judges) it is said: " When enemies come against the realm to the sea-coast, it is lawful to come upon my land adjoining to the same coast, to make trenches or bulwarks for the defence of the realm, for every subject hath benefit by it. And therefore by the common law, every man may come upon my land for the defence of the realm "; and, coming to later times, to quote a dictum of Willes J. in *Hole* v. *Barlow*, " Every man has a right to the enjoyment of his land; but, in the event of a foreign invasion, the Queen may take the land for the purpose of setting up defences thereon for the general good of the nation. In these and such like cases private convenience must yield to public necessity." In support of his argument that this prerogative can lawfully only be exercised in the event of actual invasion, Mr. Leslie Scott relies upon the words in the *Saltpetre Case*, " When enemies come against the realm, the sea-coast," and upon the words " or unless the enemy shall have actually invaded the United Kingdom at the time when such lands . . . shall be so taken " in s. 23 of the Act 5 & 6 Vic. c. 94. If this be a limitation on the exercise of the prerogative, I think the

[1] 1606. See Keir and Lawson, p. 325.

changed conditions of modern warfare must be taken into account, and the realm now requires protection from enemy aircraft and the long-range guns of enemy ships as in the old days it required protection from the landing of enemy troops. Moreover, when possession was taken of the lands and premises in question there had been an actual bombardment of the coast by ships of the enemy. Without pretending to an exhaustive study of the question I have come to the conclusion that His Majesty, by virtue of his war prerogative, through his representatives, was under the then existing circumstances entitled to take possession of the land and premises in question and still is entitled to occupy the same without making compensation to the suppliants.

If the case, however, be considered as governed by statute law alone, I should come to the same conclusion. With the exception of the expression to which attention has been called in s. 23 of the Defence of the Realm Act, 1842, it appears to me that this Act and the Military Lands Act, 1892, and the Acts amending the same prior to the Defence of the Realm Act, 1914, are intended to operate in times of peace and not in times of war, and the possession and occupation of lands and premises therein contemplated are of a permanent or quasi-permanent character. I think the expression in s. 23, " or unless the enemy shall have actually invaded the United Kingdom," must be intended as a saving of His Majesty's prerogative right in time of war. Otherwise, upon the suppliants' argument, there would have been no power compulsorily to take possession of the land, as it is not suggested that the other conditions precedent in the section had been fulfilled; and it has been laid down that Acts of Parliament which would divest the King of his prerogatives or abridge them in the slightest degree do not in general extend to or bind the King unless there be express words to that effect. . . . But if I am wrong in this view of the operation of the Acts of 1842 and 1892, the effect of the Defence of the Realm Act, 1914, and the Regulations issued thereunder has still to be considered. In my opinion regulation No. 2 of these Regulations confers upon the competent naval or military authority during the continuance of the present war an absolute and unconditional power to take possession of land or buildings and to do any other act involving interference with private property, where for the purpose of securing the public safety or the defence of the realm it is necessary so to do, and that this enactment impliedly repeals for the time being any right to, or liability to pay, compensation if it existed in time of war under the earlier Acts. It was argued that, as the Act of 1914 empowered also the making of regulations providing for the suspension of any restrictions on the acquisition or user of land under the

Defence Acts or Military Lands Acts, it was necessary for the Crown to show a specific suspension in the Regulations of the right to compensation. I think the absolute and unconditional power conferred by regulation No. 2 is sufficient to suspend, if not to repeal, all restrictions, including any restriction from taking possession of land without paying compensation.

Upon these grounds I come to the conclusion that the suppliants have failed to establish any right in law to compensation under the circumstances of this case, and judgment must be entered for the Crown.

I think it right to add that the suppliants are, in my opinion, entitled to apply to the Commissioners under the Royal Commission of Inquiry, dated March 31, 1915, for compensation in respect of any direct and substantial loss incurred and damage sustained by them by reason of interference with the property of business in the circumstances in this case.[1]

[1915, iii, K.B. 650.]

[1] a: The Court of Appeal upheld the decision.

In the House of Lords the case was withdrawn after the Attorney-General agreed that the Crown would pay compensation (to be settled by arbitration) as the suppliants had had ground for supposing that the Crown had proceeded under the Defence Act, 1842.

b: In De Keyser's Royal Hotel *v.* The King (1919 2 Ch. 197 (1920) A.C. 508; 88 L.J. Ch. 415: 89 L.J. Ch. 417) Peterson J. relied upon the above case. The hotel had been requisitioned under the Defence of the Realm regulations for use by administrative staff of the Air Service and the War Office. A claim was made for compensation as of right and an offer of an ex gratia payment (to be settled by arbitration) was declined. In the appeal court, Peterson's judgement was reversed. " X's " Petition of Right concerned land taken for the actual conduct of hostilities (an aerodrome), whereas this involved only administrative purposes. The House of Lords was doubtful whether the prerogative power had ever been as great as the Attorney-General contended and, in any case, Lord Parmoor dealt with it in these words: " When the power of the Executive to interfere with the property or liberty of the subject had been placed under Parliamentary control and directly regulated by statute, the Executive no longer derives its authority from the Royal Prerogative of the Crown, but from Parliament, and that in exercising such authority the Executive is bound to observe the restrictions which Parliament has imposed in favour of the subject". As the Defence of the Realm Act, 1914 had not set aside the Defence Act, 1842, but merely suspended the restrictions, imposed by that Act, upon the acquisition of land, de Keyser's Hotel were entitled to compensation in the manner laid down in the Act of 1842.

SECTION D

MISCELLANEA

I

THE KING AND THE CABINET, 1784

DUKE OF PORTLAND TO MR. FOX, FEB. 16, 1784

Mr. Ogilvie has reported . . . that unless we consented to admit the Chancellor, the Duke of Richmond, and Lord Gower, together with Pitt, into the Cabinet, it would be impossible to form a junction, or any Administration, that would have the appearance of stability; for that the King's partiality to all of them, but particularly to Thurlow, was so great and so decided, that his Majesty's confidence could not be obtained by any Ministry of which the Chancellor was not a part; and that as they were the determined supporters of the King against the encroaching spirit of the Commons, and were considered to be such by his Majesty, though *he* might be satisfied, or might not insist upon all of them being of the Cabinet, an Administration from which *any* of them were excluded, would not be authorised to expect the cordial support of their corps. That it was unreasonable in us to expect even the virtual resignation of the whole, or any of the present Administration for the purpose of negotiation, as it would be an avowal on their part of the charge alleged against them by the House of Commons, and be a direct acknowledgment of the unconstitutional principles of which they were accused; but that if the House was rash, or wicked enough, to refuse or postpone the supplies to-morrow, one consequence of which, he asserted, would be your being execrated, and probably torn to pieces by the people, *they* would immediately resign, but with the determination of commencing an immediate and active opposition; which, being countenanced by the King, would effectually defeat every measure attempted to be brought forward in the House of Lords, and by that means render our Administration as inefficient as theirs was by our influence in the House of Commons. . . .

[Lord J. Russell, *Correspondence of C. J. Fox*, ii, 236.]

[But eight years later after Thurlow's attack on Pitt's plan for joining a sinking fund to the new state loan, (such open warfare being but the climax to a cold and covert war between them), George III writes to Dundas (May, 1792).]

" Mr. Dundas is to acquaint the Lord Chancellor that Mr. Pitt had this day stated the impossibility of his sitting any longer in Council with him, it remains therefore for my decision which of the two shall retire from my service. The Chancellor's own penetration must convince him however strong my personal regard nay affection is for him, that I must feel the removal of Mr. Pitt impossible with the good of my service."

[Fortescue's transcripts of correspondence of George III, quoted by D. G. Barnes, *George III and William Pitt*, p. 238.]

II

THE IDEA OF A WAR MINISTER, 1794

Dundas to Pitt, July 9, 1794

. . . The idea of a War Minister as a separate Department you must on recollection be sensible cannot exist in this country. The operations of war are canvassed and adjusted in the Cabinet, and become the joint act of His Majesty's servants; and the Sec^{y} of State who holds the pen does no more than transmit their sentiments. I do not mean to say that there is not at all times in H.M.'s Councils some particular person who has, and ought to have, a leading and even an overruling ascendency in the conduct of public affairs; and that ascendency extends to war as it does to every other subject. Such you are at present as the Minister of the King. Such your father was as Secretary of State. Such you would be if you was Secretary of State, and such Mr. Fox would be if he was Secretary of State and the Duke of Bedford First Lord of the Treasury. In short it depends, and must ever depend, on other circumstances than the particular name by which a person is called; and if you was to have a Secretary of State for the War Department tomorrow, not a person living would ever look upon him or any other person but you, as the War Minister. All modern wars are a contention of purse, and unless some very peculiar circumstance occurs to direct the lead into another channel, the Minister of Finance must be the Minister of War. Your father for obvious reasons was an exception to the rule.

It is impossible for any person to controvert the position I now state; and therefore, when you talk of a War Minister, you must mean a person to superintend the detail of the execution of the operations which are determined upon. But do you think it possible to persuade the public that such a separate Department can be necessary? Yourself, so far as a general superintendence is necessary, must take that into your own hands. If it was in the hands of any other, it would lead to a constant wrangling between him and the various Executive Boards.[1]

[J. H. Rose, *Pitt and the Great War*, p. 271.]

III

A DEFENCE OF POLITICAL PARTIES,[2] 1794

C. J. Fox to Lord Holland, Oct. 5, 1794

. . . In what situations are men most or least likely to act corruptly—in a party, or insulated? and of this I think there can be no doubt. There is no man so pure who is not more or less influenced, in a doubtful case, by the interests of his fortune or his ambition. If, therefore, upon every new question a man has to decide, this influence will have so many frequent opportunities of exerting itself that it will in most cases ultimately prevail; whereas, if a man has once engaged in a party the occasions for new decisions are more rare, and consequently these corrupt influences operate less. This reasoning is much strengthened when you consider that many men's minds are so framed that, in a question at all dubious, they are incapable of any decision; some, from narrowness of understanding, not seeing the point of the question at all; others, from refinement, seeing so much on both sides, that they do not know how to balance the account. Such persons will, in nine cases out of ten, be influenced by interest, even without their being conscious of their corruption. In short, it appears to me that a party spirit is the only substitute that has been found, or can be found, for public virtue and comprehensive understanding; neither of which can be reasonably expected to be found in a very great number of people. Over and above all this, it appears to me to be a constant incitement to everything that is right; for, if a party spirit prevails, all power, aye, and all rank too, in the liberal sense of the word, is in a great measure elective. To be at the head of a party, or even

[1] Cf. Vol. II, Sect. D, No. XXXIV (A), p. 402.

[2] Cf. Vol. I, Sect. D, No. XLVI, p. 396.

high in it, you must have the confidence of the party; and confidence is not to be procured by abilities alone. In an Epitaph upon Lord Rockingham, written I believe by Burke, it is said, "*his virtues were his means*;" and very truly; and so, more or less, it must be with every party man. Whatever teaches men to depend upon one another, and to feel the necessity of conciliating the good opinion of those with whom they live, is surely of the highest advantage to the morals and happiness of mankind; and what does this so much as party? . . . the decisive argument upon this subject appears to me to be this: Is there any other mode or plan in this country by which a rational man can hope to stem the power and influence of the Crown? I am sure that neither experience nor any well-reasoned theory has ever shown any other. Is there any other plan which is likely to make so great a number of persons resist the temptations of titles and emoluments? . . .

[Lord J. Russell, *Correspondence of C. J. Fox*, iii, 90.]

IV

REFORM AND THE CONSTITUTIONAL BALANCE, 1796

C. J. Fox to Lord Holland, Sept. [?] 1796

. . . Instead of saying *now* that the power of the House of Commons ought to be first restored and its constitution considered afterwards, it would be better to invert the order, and say, Parliament should first be reformed, and then restored to its just influence. You will observe that I state this opinion as being mine *now*, in contradistinction to those times when the Whig party was only beaten, but not dispersed, and when I certainly *was* of a different opinion.

At present I think that we ought to go further towards agreeing with the democratic or popular party than at any former period; for the following reasons:—We, as a party, I fear, can do nothing, and the contest must be between the Court and the Democrats. These last, without our assistance, will be either too weak to resist the Court,—and then comes Mr. Hume's Euthanasia, which you and I think the worst of all events,—or, if they are strong enough, being wholly unmixed with any aristocratic leaven, and full of resentment against us for not joining them, will go probably to greater excesses, and bring on the only state of things which can

make a man doubt whether the despotism of monarchy is the worst of all evils. . . .

[Lord J. Russell, *Correspondence of C. J. Fox*, iii, 135.]

V

CABINET SECRECY

Mr. Canning to Lord Malmesbury, July 20, 1797

. . . In consequence of some circumstances having transpired, a resolution was passed to oblige the members of the Cabinet to secrecy on the subject of Lord Malmesbury's negotiation [for peace with France]. Mr. Canning and Mr. Hammond were alone to open the despatches and answer them, and as the latter wrote an abominable hand, his copies only were to be shewn to the minor members of the Cabinet, who, it was hoped, would not take the trouble to decypher them. . . .[1]

You will, I think have understood the meaning of the resolutions of the Cabinet . . . in the manner in which I understand it, which is, that it was devised by Lord Grenville to *tie up Pitt's tongue alone*, whom he suspected of communicating with other persons, and fortifying himself with out-of-door opinions against the opinions which might be brought forward in Council by those with whom he differed in his general view of the Negotiation.[2] I am not sure that he did not suspect him further of sounding the public sentiment through the newspapers as to the terms which it might be proper to accept, and the concessions which it might be excusable to make for the sake of peace. . . .

[*Lord Malmesbury's Diaries and Correspondence* (1844), iii, 416.]

VI

PITT'S RESIGNATION, 1801

Mr. Pitt to the King, Jan. 31, 1801

Mr. Pitt would have felt it, at all events, his duty, previous to the meeting of Parliament, to submit to your Majesty the result of

[1] In the original this first paragraph is printed as a footnote to explain the second.

[2] But cf. Vol. II, Sect. D, No. XV (C), at p. 368.

the best consideration which your confidential servants could give to the important questions respecting the Catholics and Dissenters, which must naturally be agitated in consequence of the Union. The knowledge of your Majesty's general indisposition to any change of the laws on this subject would have made this a painful task to him; and it is become much more so by learning from some of his colleagues, and from other quarters, within these few days, the extent to which your Majesty entertains, and has declared, that sentiment.

He trusts your Majesty will believe that every principle of duty, gratitude, and attachment must make him look to your Majesty's ease and satisfaction, in preference to all considerations but those arising from a sense of what in his honest opinion is due to the real interest of your Majesty and your dominions. Under the impression of that opinion, he has concurred in what appeared to be the prevailing sentiments of the majority of the Cabinet, —that the admission of the Catholics and Dissenters to offices, and of the Catholics to Parliament (from which latter the Dissenters are not now excluded), would, under certain conditions to be specified, be highly advisable, with a view to the tranquillity and improvement of Ireland, and to the general interest of the United Kingdom.

For himself, he is on full consideration convinced that the measure would be attended with no danger to the Established Church, or to the Protestant interest in Great Britain or Ireland :—That now the Union has taken place, and with the new provisions which would make part of the plan, it could never give any such weight in office, or in Parliament, either to Catholics or Dissenters, as could give them any new means (if they were so disposed) of attacking the Establishment :—That the grounds on which the laws of exclusion now remaining were founded, have long been narrowed, and are since the Union removed : . . .

It is with inexpressible regret, after all he now knows of your Majesty's sentiments, that Mr. Pitt troubles your Majesty thus at large with the general grounds of his opinion and finds himself obliged to add that his opinion is unalterably fixed in his mind. It must, therefore, ultimately guide his political conduct, if it should be your Majesty's pleasure that, after thus presuming to open himself fully to your Majesty, he should remain in that responsible situation in which your Majesty has so long condescended graciously and favourably to accept his services. It will afford him, indeed, a great relief and satisfaction if he may be allowed to hope that your Majesty will deign maturely to weigh what he has now humbly submitted, and to call for any explanation

which any parts of it may appear to require.

In the interval which your Majesty may wish for consideration, he will not, on his part, importune your Majesty with any unnecessary reference to the subject; and will feel it his duty to abstain himself from all agitation of this subject in Parliament, and to prevent it, as far as depends on him, on the part of others. If, on the result of such consideration, your Majesty's objections to the measure proposed should not be removed, or sufficiently diminished to admit of its being brought forward with your Majesty's full concurrence, and with the whole weight of Government, it must be personally Mr. Pitt's first wish to be released from a situation which he is conscious that, under such circumstances, he could not continue to fill but with the greatest disadvantage.

At the same time, after the gracious intimation which has been recently conveyed to him of your Majesty's sentiments on this point, he will be acquitted of presumption in adding, that if the chief difficulties of the present crisis should not then be surmounted, or very materially diminished, and if your Majesty should continue to think that his humble exertions could in any degree contribute to conducting them to a favourable issue, there is no personal difficulty to which he will not rather submit than withdraw himself at such a moment from your Majesty's service. He would even, in such case, continue for such a short further interval as might be necessary to oppose the agitation or discussion of the question, as far as he can consistently with the line, to which he feels bound uniformly to adhere, or reserving to himself a full latitude on the principle itself, and objecting only to the time, and to the temper and circumstances of the moment. But he must entreat that, on this supposition, it may be distinctly understood that he can remain in office no longer than till the issue (which he trusts on every account will be a speedy one) of the crisis now depending shall admit of your Majesty's more easily forming a new arrangement, and that he will then receive your Majesty's permission to carry with him into a private situation that affectionate and grateful attachment which your Majesty's goodness for a long course of years has impressed on his mind,—and that unabated zeal for the ease and honour of your Majesty's Government and for the public service which he trusts will always govern his conduct.

He has only to entreat your Majesty's pardon for troubling you on one other point, and taking the liberty of most respectfully, but explicitly, submitting to your Majesty the indispensable necessity of effectually discountenancing, in the whole of the interval, all attempts to make use of your Majesty's name, or to influence the

opinion of any individual, or descriptions of men, on any part of this subject.[1]

[Stanhope's *Pitt*, III, xxiii.]

VII

SYSTEMATIC OPPOSITION, 1804[2]

C. J. Fox to Charles Grey, Jan. 29, 1804

. . . I have had a direct communication (wholly unsought by me) from that part of the opposition which sits at the bar end of the House, to the following effect. That it is their wish to join with us in a systematic opposition, for the purpose of removing the Ministry, and substituting one on the broadest possible basis. Stowe and all his appendages,[3] Lord Spencer, and Windham are the *proposers*: of Carlisle and others they have no doubt; and Fitzwilliam, as you know, is eager for such a plan. . . . Upon the subject of Pitt there was no reserve; it was stated that he, for himself, peremptorily refused entering into anything that could be called opposition, and that a full explanation had taken place between Lord Grenville and him upon that point. The result of this explanation was that all political connexion between them was off, and that, if the proposed plan took place, no consideration was to be had of Pitt or his opinions at all, except as far as, in a prudential view, one might sometimes shape a question, for the purpose of availing ourselves of his support, as one would of any other individual. It was admitted, too, that Pitt's plan might be to let the Doctor fall, and then to avail himself of the merit of not having been in opposition, in order to make himself the most acceptable person to succeed him. . . .

[Lord J. Russell, *Correspondence of C. J. Fox*, iii, 449-50.]

[1] With this declaration of Pitt on his resignation compare two statements on Addington's resignation in 1804. First, Warren Hastings to Addington begging him to remain, "I know it is universally expected; because you were called to this high trust by the King's own selection: you are the minister of his choice, and of his peculiar confidence" (Pellew, *Sidmouth*, ii, 276). Second, Addington's own pronouncement (to Lord Redesdale), "I have never suffered nor will I suffer, personal feelings to stand in the way of public duty. . . . My conduct must speak for itself. . . . With party I have no connexion: I shall adhere to the King, and pursue such a course as I can conscientiously justify to myself" (Pellew, *op. cit.*, ii, 315, 316).

[2] Cf. Vol. I, Sect. D, No. XL, p. 388, and Vol. II, Sect. B, No. VIII, p. 166.

[3] The Duke of Buckingham, Lord Grenville, Mr. Thomas Grenville.

VIII

GOVERNMENT SUPPORT IN THE COMMONS, 1805

C. J. Fox to the Earl of Lauderdale, July 12, 1805

. . . The House of Commons is evidently divided into four parties, nearly upon a loose calculation, as follows :—

Supporters of the Chancellor of the Exchequer for the time being	180
Opposition	150
Pitt	60
Addington	60
	450

There are, besides, several members who vote whimsically, or, in such case as Melville's, from fear of their constituents, &c. ; and many, of course, who never or very seldom attend. The first class, were it not for the very precarious state of the K., would, I fear, be much larger ; and the second, for the same reason, and from the slowly increasing, but still increasing weight of Carlton House,[1] will much more likely gain ground than lose any. The third class seems very unlikely to increase at present ; and the fourth will either gain or lose,—first, according to the notions that will be entertained of the Doctor's being more or less well regarded at Windsor ; next, according to their success in setting themselves up (which they will endeavour to do) as opposers of corruption and guardians of the public purse, &c. . . .

[Lord J. Russell, *Correspondence of C. J. Fox*, iv, 98.]

IX

THE REGENT AND THE CABINET IN 1812

(A)

The Duke of Northumberland to Colonel McMahon,[2] March 18, 1812

I foretold you may remember, my dear Colonel, upwards of a year ago, that there would be a violent struggle when H.R.H.

[1] The residence of the Prince of Wales.

[2] Private Secretary to the Regent, cf. Vol. II, Sect. D, No. XI, at p. 359.

assumed the reins of Government, and the event has proved, I was correct. *Firmness* and *firmness alone* will ensure H.R.H.'s future tranquility and happiness. Should he be unfortunately persuaded to give way in the least at this present moment, they [1] will do what they threaten, storm the Closet and, having taken the R[egent] prisoner, they will compel him to act in every particular as they please. . . .

[No. 37.]

(B)

MINUTE OF THE CABINET (WRITTEN, AND COMMUNICATED TO THE PRINCE REGENT, BY LORD ELDON). 12 O'CLOCK, NIGHT OF THE 13TH MAY 1812

The Chancellor, understanding himself to be authorised by the Prince Regent, to learn the sentiments of the Cabinet, whether they would consider it to be their duty, if called upon by His Royal Highness, to carry on the administration of the Government under any member of the present Cabinet whom His Royal Highness might think proper to select as the head of it, requests that the Cabinet will be pleased to express their sentiments upon this point, that he may be enabled to lay them before His Royal Highness.

In answer to this, the Cabinet expressed that they would feel it to be their duty, if called upon by the Prince Regent, to carry on the administration of the Government under any member of the present Cabinet whom his Royal Highness might think proper to select as the head of it. They consider it to be at the same time incumbent upon them most humbly to submit to His Royal Highness that, under all the present circumstances of the country, the result of their endeavours to carry on the Government must be very doubtful. It does not, however, appear to them to be hopeless if the Administration is known to possess the entire confidence of the Prince Regent.

[No. 71.]

(C)

THE DUKE OF NORTHUMBERLAND TO COLONEL MCMAHON, MAY 26, 1812

. . . If, I say, my dear Colonel, H:R:H: should take up this line of acting on the present occasion, I will engage for it, with all their pride, & hauteur, they [1] will readily submit to any reasonable, and proper terms, rather than forego the whole object of their lives. To conduct the affairs of a State a person must be endowed with great political courage, & firmness. Without these necessary qualifications, they soon become mere puppets, & are played upon by every

[1] The Regent's old Whig friends.

arrogant, artfull, & ambitious demagogue, who continues to make their lives miserable, by keeping them in almost continual alarm; either for the purpose of forcing himself into power, or of preserving the power he already is in possession of. I confess, as far as I am capable of judging, the Prince, in the situation in which he now finds himself could not have selected a more proper person than Lord Wellesley to place at the head of his affairs. . . . Great care, & attention, however, I shoud suppose necessary to check him on some occasions, & prevent his bad qualities from frustrating, what otherwise his great abilities woud perform; & I trust in God our worthy R[egent] will never forget the great difference that exists between admitting, & learning advice with patience, & being dictated to. Plans may be formed, & measures proposed, by the Minister; but the final adoption of them must absolutely depend upon the Regent.[1] It is he who must decide upon them, & no infraction of this rule, in my humble opinion, ought ever to be permitted.

I own I shall wait with impatience, till I learn the result of Lord Wellesley's endeavours to form an Administration, & the Regent's decision on the men & measures to be employed & brought forwards. It is the most anxious moment I ever felt; as I look upon it as decisive of H:R:H:'s future comfort, or torment. I confess I look with dread at the consequence of the universal & total emancipation of the Roman Catholicks, from all those wise & necessary restraints, under which they have been placed by the good sense of our forefathers, & which their experience convinced them were necessary for security of the State, & the Constitution. . . .

P.S. I hope in God, altho' the P:R: has given Ld. W[ellesley] carte blanche, he does not mean to give himself up blindfold into his hands, but select his own Administration from amongst the names, which Ld. W: shall lay before him.[2]

[No. 81.]

D—Minute of the Cabinet [May 27, 1812]

Your Royal Highnesse's confidential servants having received the communication made to them on the 25th inst by your Royal Highnesse's commands through the Lord Chancellor, the Earl of Liverpool, & Viscount Melville, have taken that communication into their most serious consideration and have most anxiously and repeatedly deliberated upon the same, and they beg leave most humbly to submit to your Royal Highness their decided conviction that no beneficial result is likely to arise to your Royal Highnesse's service from any further attempt being made on their part, under the

[1] Cf. Vol. I, Sect. D, No. XXXIX, at p. 388.

[2] Cf. Vol. II, Sect. D, No. XXV (B), p. 388, and references there given.

present circumstances, to bring about an union between your Royal Highnesse's servants and Marquis Wellesley and Mr. Canning.[1]

[No. 84.]

[Aspinall (ed.), *Letters of George IV*, vol. i.]

X

TREASURY INFLUENCE IN ELECTIONS, 1812

Lord Liverpool to Sir W. Scott,[2] Sept. 25, 1812

I have received the favour of your letter, and I can assure you I feel all the importance of having the King's Advocate in Parliament.

I should hope that this may be accomplished if he can assist himself to a certain degree. You will, perhaps, be surprised when I tell you that the Treasury have only one seat free of expense, for which our friend Vansittart will be elected. I have two more which personal friends have put at my disposal: and this is the sum total of my powers free of expense.

Mr. Curwen's bill[3] has put an end to all money transactions between Government and the supposed proprietors of boroughs. Our friends, therefore, who look for the assistance of Government must be ready to start for open boroughs, where the general influence of Government, combined with a reasonable expense on their own part, may afford them a fair chance of success. I should hope the King's Advocate would have no difficulty in agreeing to what has been proposed to him; in doing which he will have the same advantage as many of our official supporters who have been in Parliament for years.

[Yonge, *Liverpool*, i, 444.]

[1] Professor Aspinall appends this note in his edition of these letters:

"The Prince Regent, through his private secretary, sent the following reply (dated 27 May, 10.30 P.M.) to the Cabinet Minute:

"'Colonel McMahon is commanded by His Royal Highness the Prince Regent to state his commands to Lord Liverpool to attend himself and to desire the attendance of his colleagues at Carlton House tomorrow morning at twelve o'clock, as the Prince is desirous to learn from each of his servants the grounds of the opinion which they have communicated to His Royal Highness in the Minute of this day.'" (Add. MSS. 38247, fo. 328.)

[2] M.P., Oxford University, judge of the High Court of Admiralty, privy councillor, and brother of Lord Chancellor Eldon.

[3] In 1809, Mr. Curwen, M.P. for Carlisle, had carried a Bill to prevent the sale of Seats in Parliament. Lord Liverpool had supported it warmly in the House of Lords, though Perceval, at that time Chancellor of the Exchequer and leader of the House of Commons, was resisting it.

XI

THE REGENT, HIS PRIVATE SECRETARY, AND MINISTERS, 1818–22

(A)

VISCOUNT PALMERSTON TO FREDERICK BEILBY WATSON, AUG. 28, 1818

I was sorry to find by your note of yesterday that there had been a mistake about the word ;[1] the error however was not wholly mine, as the copy intended for the use of the Regent and which is always distinguishable from the other by having the days of the week inserted as well as the days of the month, was sent, and the copy omitted was one of those intended for the use of the departments to which these papers are sent.

I have to-day set right the mistake ; but in reference to that part of your note in which you state that you are commanded to express to me the "*surprize*" of His Royal Highness at the omission I was supposed to have made, I feel myself compelled to say that it is quite impossible for me in the official situation which I have the honor to hold, to receive through you, any expression of the Regent's dissatisfaction.

I can assure you that in saying this I do not mean the slightest disrespect to yourself personally, and I am persuaded that upon reflection you will at once admit the propriety of my feeling upon this subject. I do not think it necessary to trouble the Regent upon this occasion, because I am confident that this explanation will be sufficient.

[No. 750.]

FREDERICK BEILBY WATSON TO VISCOUNT PALMERSTON, AUG. 29, 1818

The note which accompanied the return of the preceding warrants for the WORD for September, was a literal obedience to the commands of the Prince Regent ; and in reply to your Lordship's remarks upon it I beg permission to observe that whatever commands His Royal Highness is pleased to honor me with, it is my duty to fulfil them.

[1] The monthly watchword of the London sentries sent to the Regent in case he should wish, as Palmerston put it, "like Haroun Alraschid to perambulate the streets incognito".

I cannot but regret that your Lordship should feel pained by that note on account of my being the amenuensis [*sic*] on the occasion, at the same time it appears to me that your Lordship has given a more serious interpretation to the word "surprize" than it was designed to convey.

[No. 751.]

VISCOUNT PALMERSTON TO FREDERICK BEILBY WATSON, SEPT. 2, 1818

. . . I beg leave to state that whatever may be the duties of your situation towards the Prince Regent it cannot in my opinion form any part of them to make to the official advisers of the Crown communications of the nature of that contained in your note to me; and I have therefore felt it necessary previous to leaving town to transmit to Lord Liverpool copies of my letter to you and of your reply requesting him as head of the Administration most respectfully to state to the Prince Regent the view which I take of this matter.

[No. 752.]

(B)

THE KING TO THE EARL OF LIVERPOOL, JAN. 1822 [1]

I have desired to see yr Ld[p] for the purpose of conferring with you relative to the office of my Private Secretary. As the Government is now, I hope, fixed on a settled and firm basis, I am desirous that we should have no impediment or interruption to our permanent tranquillity, if it can possibly be avoided. With this view it has occurred to me . . . that perhaps it might be desirable to get rid of the office of Private Secretary. This has always been looked upon, I know, with a jealous eye, both by the Govt. and the country, and it would, in my opinion, be highly popular if we were to take the present opportunity, connecting it with general arrangements, to break up the *thing altogether*. This, however, cannot be done without making an extended provision for Sir Benj. Bloomfield,[2] because I think it is desirable that he should quit the Privy Purse also, for by thus retiring entirely from my family, it would be the means of saving both myself and the Govt. much inconvenience, arising from the natural consequence of mistaken power and patronage. Your Lordship must be aware that my feelings are naturally tender and delicate, and therefore must be embarrassed by a question of this kind, and the Govt. will therefore feel, I am sure, that they owe it to me to take this necessary measure on them-

[1] No more precise date given.

[2] The then Private Secretary.

selves, and thus relieve me, by providing most amply for Sr Benj., from all the natural and innumerable inconveniences of misrepresentation &c. &c. &c. which must otherwise devolve upon me, and to which such a question will otherwise naturally be open.

[No. 991.]

THE EARL OF LIVERPOOL TO THE KING, JAN. 19, 1822

Lord Liverpool has the honour to send your Majesty the draft of the paper your Majesty was desirous of receiving. It is humbly submitted as the foundation of the communication your Majesty seemed desirous of making, but subject to any alterations your Majesty might think advisable.

Lord Liverpool will only add that supposing the arrangement as far as regards the situation of Private Secy to be under all the present circumstances expedient, he is clearly of opinion (and all those with whom he has been at liberty to communicate concur with him) that the offer of the Govt. of Ceylon is . . . quite adequate to any claims which could fairly be founded on the ambiguous situation of Private Secretary to the Sovereign, unless, indeed, powerful and sufficient reasons could be given for declining all foreign employment.

[No. 992.]

THE KING TO SIR BENJAMIN BLOOMFIELD, [JAN. 1822]

. . . The King renders the fullest justice to the attachment, zeal and integrity manifested by Sir B. Bloomfield in the discharge of the very laborious and confidential duties which the King has imposed upon him, and he can assure him that it was not from preference to any other individual, nor from want of any personal confidence, that he feels it necessary to make this explanation.

But many circumstances have occur'd which induce the King to think it highly desirable to place the office of his Private Secretary upon a different footing from that on which it has hitherto existed in the hands of Sir J. MacMahon and Sir B. Bloomfield.

The King, in short, wishes to restore it, as nearly as possible, to what it was when held by Sir H. Taylor under the King his father, and to limit the functions of the situation to the arrangement of his papers, the copying of his letters and the occasionally writing what he may think proper to dictate, and afterwards sign; but that in future no communication should be made to the King upon publick affairs except through his Ministers, unless in those cases where the individuals making them are entitled to apply directly to the King.

It must be obvious that so compleat an alteration in the nature of the situation could not be made without being liable to much misconception, so long as the office remains in the hands of Sir B. Bloomfield, . . . the King never could entertain the idea of removing Sir B. Bloomfield from his service, except through an arrangement which would be in all respects honourable and advantageous to him.

But as the Govt. of Ceylon will shortly become vacant, . . . the King cannot let this opportunity pass bye without offering it to Sir B.B. . . .

[No. 993.]

(C)

THE EARL OF LIVERPOOL TO THE KING, MARCH 5, 1822

. . . Lord Liverpool and Lord Londonderry beg leave most humbly to represent to your Majesty, that they consider it to be of the utmost importance (whatever domestick arrangement your Majesty may be desirous of hereafter making respecting Sir William Knighton) that nothing should be done in this way, at the present moment; that the introduction of Sir Wm. Knighton into your Majesty's family even in no other character, than that of domestick physician, would very much augment all the difficulties attendant upon the removal of Sir B. Bloomfield, and would create a prejudice, very inconvenient to Sir Wm. Knighton himself.

They venture therefore to recommend that no alteration should take place in your Majesty's establishment at this time, except the abolition of the office of Private Sec^{y}, and the transfer of the care of your Majesty's papers from Sir B. Bloomfield to Mr Watson.

[No. 1005.]

THE KING TO THE EARL OF LIVERPOOL, MARCH 21, 1822

. . . Finally, I wish you to state, that when the inordinate power of the late office of Private Secretary is retrospectively look'd at, I am bound to say, that the Government have acted wisely, & honestly for the character of all parties, when they recommended its abolition; but I must however be plain, & therefore have no hesitation in saying, that my ready acquiescence in the measure was entirely influenced, by the embarassment & painful distress I suffer'd, in consequence of Sr. B——n B——d's unhappy, uncertain & oppressive temper; & likewise the change that had been gradually taking place for the last two years, in his general demeanor.

Having made this explanation, tell him if you please, that I have no resentment whatever, that I shall do his qualities ample

justice, & only regret, that he had the power, to inflict on my feelings a constant pressure, which made it necessary for me to separate myself from him. . . .

[No. 1017.]

THE EARL OF LIVERPOOL TO THE KING, MARCH 24, 1822

. . . Lord Liverpool can never have the least difficulty in acknowledging that it was his humble advice, and that of his colleagues with whom he was at liberty to communicate, that the office of Private Secretary to your Majesty should be abolished. They had been invariably impressed with the serious objections that existed to such an office upon the principle on which it had been held by Sir J. Macmahon and Sir B. Bloomfield. If they had not previously recommended its abolition, it arose solely from an indisposition to obtrude upon your Majesty such a change in your habits as they apprehended might be felt by your Majesty as affecting your personal comforts, but they should have considered it inconsistent with their duty, after all the experience they had had of the inconveniences of such an office, and its incompatibility with the Constitution of the country, if they had not taken the opportunity of any change, and therefore of the change arising out of the separation of Sir B. Bloomfield from your Majesty, humbly to represent to your Majesty the necessity of abolishing the office.

The responsibility, therefore, of the abolition rests entirely upon your Majesty's confidential servants, and Lord Liverpool trusts, and sincerely believes that your Majesty will feel no serious personal inconvenience from the manner in which the business may now be transacted, but that, on the contrary, your Majesty will be relieved from much embarrassment in which your Majesty was occasionally involved, unavoidably, from the existence of such an office. . . .

[No. 1021.]

(D)

THE KING TO SIR WILLIAM KNIGHTON, JULY 17, 1822.

½ PAST 5 P.M.

Nothing but the most *pressing urgency* would induce me, indisposed as you are at this moment, to entreat you to come to me for a few instants; but I cannot stir one step without your advice. Dispatches have been received from Vienna, with a letter from the Emperor to me written with his own hand, which have thrown *us all* (the Govt.) into great confusion. . . .

[No. 1031.]

[Aspinall (ed.), *Letters of George IV*, vol. ii.]

XII

THE PERSONAL SERVANTS OF THE CROWN, 1821.

THE KING TO THE MARQUIS OF LONDONDERRY, OCT. 12, 1821

. . . The only observation, therefore, which becomes necessary for me to make, is that I have no wish to seperate myself from my present Government. That the conduct of Lord Liverpool has, upon very many occasions been so monstrous, that I can not consent to a continuance of a system which renders my life full of inquietude and vexation.

I understand it to be your settled opinion that it would be very useful to the Government to send Mr Canning back to a Cabinet situation: this is a circumstance of great difficulty with my wounded feelings; nevertheless, to prove to you how sincere all my intentions are towards the Government, I would endeavour to make up my mind to this painful arrangement, if you continue, upon further reflection, to desire it; provided he is so placed that I may not be exposed to personal communication; and also upon the distinct understanding that, whenever India is open, he may be removed to that Government.

Finally, let me impress on your mind in the strongest manner not to deceive yourself by supposing that any expediency shall ever induce me to give up the sacred privilege of naming the personal servants of the Crown.[1] . . .

[Letter No. 958.]

[Aspinall (ed.), *Letters of George IV*, vol. ii.]

XIII

PARLIAMENTARY REFORM, 1821

MEMORANDUM BY LORD LIVERPOOL (IN REPLY TO PROPOSALS FOR DISFRANCHISEMENT OF GRANPOUND)

. . . I should then say that the giving the right of election to the populous manufacturing towns was the worst remedy which could be applied.

In the first place, it would be the greatest evil conferred on those towns; it would subject the population to a perpetual factious canvass, which would divert, more or less, the people from their industrious habits, and keep alive a permanent spirit of turbulence and disaffection amongst them.

[1] Cf. Vol. II, Sect. D, No. XXV (A), p. 387.

Against such a measure all the most respectable inhabitants of those towns would, I am convinced, protest. . . .

In the next place, I think the proposed transfer would be the one the most injurious to the Constitution that could be devised.

I do not wish to see more such boroughs as Westminster, Southwark, Nottingham, &c. I believe them to be more corrupt than any other places when seriously contested; and I believe the description of persons which find their way into Parliament through these places are generally those who, from the peculiarity of their character or their station, are the least likely to be steadily attached to the good order of society.

I see all the difficulties of deviating from the old course of throwing the borough into the hundred. By this species of remedy we did not propose to reform Parliament, but to reform the particular borough. The moment we depart from it we launch into the sea of speculation. If I am driven, however, to the alternative, I should prefer transferring the members to the larger counties. County elections are the least corrupt of any in the kingdom.

The representatives of them, if not generally the ablest members in the House, are certainly those who have the greatest stake in the country, and may be trusted for the most part in periods of difficulty and danger. . . .

If, however, any project of borough reform could be devised, I should certainly prefer it to any addition to the county members. It would have many advantages, and this particular, that it would leave the frame and system of Parliament unaltered.

I should like, if it were possible, to make no alteration in the proportions of either county members, members for popular places, or members for boroughs, but to substitute, where abuse was proved, a pure and well-constituted borough for a corrupt one.

[Yonge, *Liverpool*, iii, 137.]

XIV

MINISTERIAL SOLIDARITY—AGREEMENT TO DIFFER, 1821

(A)

Mr. W. H. Fremantle's Report of Conversation with Lord Liverpool [Nov. 1821]

He begun by saying that the situation of the Government at the end of the last session was such that he did not know how far its

stability could be depended upon; . . . and under these impressions he did not feel himself authorized or justified in proposing a connexion with the Government to any person or party at that time. The case was now altered, for he had to say that there was no doubt or question as to the continuance of the Government, and as to the complete confidence and support of the King, and therefore he wished to make known to me, for the information of Lord Buckingham and his friends, what steps the Government were enabled to take with a view of forming a connexion with them.

The great and material point to which the Government looked was strength in the House of Commons, and therefore whatever changes would take place in the Cabinet were to be grounded on this consideration alone.[1] . . . That it was right to advert to the situation of Ireland, . . . the King had satisfied himself that measures might be pursued which would keep the Catholic question in a state in which neither of the contending parties would preponderate. . . .

(B)

THE DUKE OF WELLINGTON TO MR. W. H. FREMANTLE, DEC. 3, 1821

Since I saw you this morning, I have learned that Lord Sidmouth is to remain in the Cabinet by the King's particular desire. I have not seen Lord Liverpool, but I conclude that he omitted to mention this from forgetfulness. Indeed, I had myself forgotten that the King had in the discussions of last summer, desired it.

I beg you, however, to recollect that ours is not, nor never has been, a *controversial* Cabinet upon any subject; and that a man more or less of any particular opinion will not have the slightest influence on the decision of any question.

(C)

MR. CHARLES W. WYNN TO THE EARL OF LIVERPOOL, DEC. 11, 1821

. . . Regretting, as I do, the difference of sentiment to which I have already adverted, I must premise distinctly, and in terms which cannot be misunderstood, that it would be impossible for me to form a part of any Government without reserving to myself, in the most ample manner, the full liberty not only of supporting and advocating, but of originating, either in Parliament or in Council, any proposition which may appear to me desirable to promote the amelioration of the general state of Ireland;[2] and it is scarcely

[1] Vol. I, Sect. D, No. XXXVIII, p. 385.

[2] Cf. Vol. II, Sect. D, No. XVII, p 371.

necessary for me to add, that in my judgment concession to the Catholics is a primary step towards the accomplishment of this inestimable object. It would be moreover essential that I should not only possess, but also, at my own discretion, avow the perfect liberty of speaking and acting, which I retain on this subject; and it is probable that I might feel myself called upon to declare publicly that as the hope of contributing to the success of this measure had been my principal inducement to accept of office, so I should not hesitate one moment to relinquish it from the time of my being convinced that this purpose might be more effectually assisted by my resignation. The circumstance which mainly encouraged me to act upon this hope is the intended appointment of Lord Wellesley and Mr. Plunket. This appears to hold out to Ireland in general the fairest prospect of a firm, impartial, and conciliatory Administration, while their known sentiments with regard to the Catholics in particular will, I trust, excite in that great body of his Majesty's subjects, a confidence from which the most beneficial results may be expected. These nominations are, however, accompanied by that of another gentleman as Chief Secretary, whose opinions are known to be directly at variance with those of Lord Wellesley and Mr. Plunket on this most momentous subject. To Mr. Goulburn's merits and general character every man must do justice who has observed his conduct in the department which he has hitherto filled, but I am so deeply impressed with the inconvenience and irritation which may arise from the apprehension in the public mind of counteraction and opposition between the Lord Lieutenant and his Secretary at a period of so much disturbance as the present, that if this should be made the subject of Parliamentary discussion, I may, besides referring to my not having participated in his Majesty's councils when the appointment took place, find it necessary to declare that it is one in which I could not have concurred. . . .

(D)

THE EARL OF LIVERPOOL TO MR. CHARLES W. WYNN, DEC. 12, 1821

. . . Agreeing, as I have every reason to hope we now do, in all the other leading principles of Government, foreign and domestic, the difference of opinion which unfortunately exists between us on what is called the Roman Catholic question must be a matter of sincere regret to me.

You will do me the justice, however, to believe that this difference can only be founded on an opinion that the beneficial consequences supposed by yourself and others to be likely to follow the proposed

alteration of our laws on this subject, would not in fact result from it. But I think it material further to add, that whether I may or may not be mistaken, I am fully persuaded that in the state in which that question now is, and under all the circumstances of the country, fewer public evils are likely to arise from the adoption or rejection of the Catholic claims under a Government of a mixed character, than might occur under one which for brevity I designate as exclusively Protestant or exclusively Catholic.

With a knowledge of the sentiments entertained by you and by those immediately connected with you on this question, I could never have ventured to have asked the King's permission to be bearer of the proposition which has been made to you, unless I had been prepared to have it distinctly understood that you would be at full liberty to support, to advocate, and even to originate, if you should deem it necessary, any measure of which the removal of the disabilities of the Roman Catholics might form a part, or the whole. . . .

I trust that the explanation will prove satisfactory to you, and I have only to say, with respect to the appointment of Mr. Goulburn, that upon the principle upon which the Government is acting I can never consider the opinion of any individual, whether in support or in opposition to the Roman Catholic claims, to be in itself a bar to his appointment to office in Ireland, provided he is in all other respects duly qualified, it being understood that the existing laws, whatever they may be, are to be equally administered with respect to all classes of his Majesty's subjects, and that the Roman Catholics are in any case to enjoy their fair share of the privileges and advantages to which they are by law entitled. . . .

[Buckingham, *Courts of George IV*, i, 232-53.]

XV

CABINET ORGANIZATION, 1822–24

(A)

Rt. Hon. C. W. Wynn (President of Board of Control) to the Duke of Buckingham, Nov. 1822

. . . I continue most completely separated from the rest of the Cabinet. Whether they live at all together I know not, but believe they do. However, we have all been in town now for more than a week, and I never have seen anything of any of them except in Cabinet. No one dinner have I been asked to since the conclusion

of the Session, excepting one in the beginning of September at Robinson's. Now we all know that business can never be really settled in the meetings of so numerous a Cabinet, but that it must be *in fact* arranged at more private meetings and dinners.[1]

Canning is certainly not cordial, though there is nothing I have a right to complain of. Still I see that he is disposed to discuss the business of his own office, &c. with Lord Bathurst, Peel or Robinson, but not with me. Peel is reserved in his natural manner, but I rather get on with him. What is Canning's object I cannot at all discover. His obvious policy would be to unite us to himself, but I am clear that is not in his view. His language to me on the Catholic question was in such a tone as to lead me to doubt extremely whether he can be relied upon. . . .

[Buckingham, *Courts of George IV*, i, 398.]

(B)

THE RIGHT HON. CHARLES W. WYNN TO THE DUKE OF BUCKINGHAM, SEPT. 10, 1823

Canning told me that he had insisted that Huskisson should at all events be taken into the Cabinet at the end of the last Session, whether any vacancy occurred or not, and that the persuasion of Lord Maryborough to make room for him was a subsequent consideration. . . .

My own belief is that the only real and efficient Cabinet upon *all* matters consists of Lords Liverpool and Bathurst, Duke of Wellington, and Canning, and that the others are only more or less consulted upon different businesses by these four. Huskisson will, I think, be equally in the confidence of Liverpool and Canning. . . .

[Buckingham, *Courts of George IV*, i, 494.]

(C)

THE KING TO THE EARL OF LIVERPOOL, NOV. 6, 1823

The King does not hesitate to give his consent to the admission of Mr Huskisson into the Cabinet, for the King acquiesced in the proposal soon after the arrangement was made for putting into the hands of Mr Canning the seals as Secretary of State for the Foreign Department.

The King should have there suffered the renewal of this subject to have passed sub silentio but for the recent retirement of Lord Maryborough, whom the King at the time supposed Lord Liverpool

[1] Cf. Vol. I, Sect. D, No. XXXI (A) and (B), p. 371 ; cf. also Vol. II, Sect. D, No. LXIII, p. 470.

to have removed from the Cabinet for the purpose of lessening the numbers of which it is composed; this might have been, perhaps, a reason, altho' a very questionable one, especially as that individual had been sitting in the same Cabinet with the same members for the last nine years. . . .

The misfortune of this Government is that it is a Government of departments; but Lord Liverpool must endeavor to correct this defect by suppressing the passion which seems to exist for speech making out of time and out of proper place.

What would Mr. Pitt have said if in his days, sub-Ministers and others belonging to the Government had indulged in such inconvenient practices![1]

The King intends no unkindness nor embarrassment to Lord Liverpool by these observations, quite the contrary; but as the King passes much of his time in quiet retirement, nothing escapes his observation, although the King may not always consider it necessary to express his feelings.

Whenever the King puts upon his memoranda the word *confidential*, the King desires Lord Liverpool will always consider such communications to be strictly so, and that the contents of the papers may rest solely with themselves.

[No. 1110.]

(D)

THE EARL OF LIVERPOOL TO THE KING, NOV. 29, 1824

Lord Liverpool has the honour of sending to your Majesty a letter which he has received from Viscount Sidmouth.

Lord Liverpool very much regrets the loss of Lord Sidmouth's assistance but he is not surprised at his determination, as during the last Spring and Summer (for the reasons stated in his letter) he had become a very irregular attendant at the Cabinets, and though there always must exist more or less objection to any person being a member of your Majesty's Cabinet without holding a Cabinet office, the inconvenience is greatly increased if the individual is not a constant attendant and cannot devote a sufficient portion of his time to reading the papers and correspondence which, in obedience to your Majesty's commands are circulated amongst your Majesty's confidential servants.

[No. 1184.]

[Aspinall (ed.), *Letters of George IV*, vol. iii.]

[1] Cf. Vol. II, Sect. D, No. XXII (A), at p. 382; yet contrast Vol. II, Sect. D, No. V, p. 349.

XVI

THE CHOICE OF A NEW FIRST MINISTER, 1827

Attitude of the King, Ministers, and Civil Servants

Diary of Henry Hobhouse,

22nd Feb. 1827. . . . The other Ministers were at their posts,[1] and in the course of the morning assembled at the Home Office and agreed *una voce* that Mr Peel shd. forthwith wait on the King at Brighton, wch. he accordingly did in the course of the evening. The King was much affected at the event wch. forcibly reminded him of the loss he had sustained in the death of the D. of York, by wch. he was deprived of the only person with whom he co[ul]d confidentially consult as to the formation of a new Ministry. In the course of his conversation he mentioned to Mr. Peel that the greatest loss he had ever sustained was in the death of Ld. Londonderry. The King concurred with the Cabinet in thinking that no step should be taken towards filling up Ld. L.'s office, until time had been allowed for the chance of his recovering sufficiently to become sensible of his own malady and to tender his resignation.

Monday, 2 April. . . . For a long time no observation was made in either house with regard to the state of the Ministry, but it was at length noticed by Mr. Baring in the Lower and by L. Londonderry in the Upper House. Neither of them drew forth any remark from the Ministers or from any other member. . . . It became necessary, however, to obtain a vote of money and it being determined that the Chr. of the Exchr. should last Monday move for £200,000 on account, It was thought right also to advise the King to make to Ld. L[iver]pool, a communication on the subject of his retirement. . . . This silence excited the belief that it wo[ul]d be continued till after Easter, but this was not the case, for on Friday, when the resolution of the committee was to be reported, Mr. Tierney took the ground of objection, wch. was anticipated on the preceding night. In the meantime the King, who had been apprised of Tierney's intention had seen the D. of Wellington, Mr. Canning and Mr. Peel at Windsor. He explained to them severally his wish that the present Ministry shd. remain, putting at their head a nobleman of anti-Catholic principles. [The King at first proposed that the Cabinet should elect their own head and directed Canning to make a communication to the Cabinet

[1] After Liverpool's seizure on the 17th.

to this effect. But upon Canning's reducing the message into writing, it was determined that it shd. not be delivered until the King had seen Peel. Peel objected upon principle to the delegation by the King of this act of royalty and also deemed the proposition futile.[1] And it was abandoned.] . . . Canning offered a proposition wch. originated with the King, that Peel should take a peerage and take the lead of the Ho. of Lds., wch. Peel peremptorily refused as Canning expected. . . . Peel disavowed all wish to take the lead of Canning, but stated the difficulty he felt to be this, that considering the part he had taken on the Catholic question, he could not honourably do or suffer anything wch. should advance that question; that to put at the head of a Government so decided a promoter of the Catholic cause as Canning, would of necessity advance that cause, and Peel could not acquiesce in it, more particularly in his present office (wch. he refused to change) where by his counter signature of the K.'s warrants he is personally responsible for the appointment of all the great officers in church and state, though their selection is in fact made (and, as he admitted ought to be made) by the Prime Minister.

[On April 14, Hobhouse—who was a Home Office Civil Servant—wrote a private letter to Lord Sidmouth from Whitehall:

". . . I think it best becomes me to be *passive*; with the intention to remain here if the option of so doing is given to me by a principal not personally objectionable. Pray tell me fairly whether you think this is a fitting course for one who has never mixed himself with politics, but minded his own business during three apprenticeships."][2]

Saturday, 21, April. . . . The King, in order to obviate the alarm wch. might be taken by the Protestants in consequence of the tenets of the new Ministers, sent for the A[rch]b[isho]p of Canterbury and the Bp. of London, assured them of his firm determination to support the established church, asserted that he was and always had been as decided an enemy as his father to the Catholic claims and had so declared to Mr Fox in 1806, and authorised them to communicate these sentiments to their brethren. The King has also given audiences on this subject to the Duke of Newcastle and the Marq. of Londonderry, to the former as a Peer, and to the latter on his resigning his Ldp. of the Bedchamber.

[*Hobhouse Diary*, ed. Aspinall, p. 126 *seq.*]

[1] Cf. Vol. I, Sect. D, No. XXXVII, p. 382.

[2] Quoted from Sidmouth MSS. by Prof. Aspinall.

XVII

AN OPEN QUESTION, 1827

(A)

GEORGE CANNING TO WILLIAM HUSKISSON, FEB. 25, 1827

. . . I cannot conceive any more advantageous circumstances than those under which the H. of C. would come to its vote next Monday—more advantageous I think then than with a Govnt. declared in favour of the question.[1] I am morally certain that an attempt to force the question upon *this* country by a Govt. united on this point, and for this purpose, would be the prelude to another catastrophe like that of the India Bill of 1784 [*i.e.* 1783]. The question must not force its way. [No. 34.]

(B)

GEORGE CANNING'S MEMORANDUM FOR LORD LANSDOWNE, APRIL 23, 1827

1. The Catholic question is to remain, as in Lord Liverpool's Government, an open question, upon which each member of the Cabinet is at perfect liberty to exercise his own judgment, in supporting that question if brought forward by others, or in propounding it either in the Cabinet or to Parliament.[2] But if any member of the Cabinet should deem it an indispensable duty to bring forward individually the Catholic question in Parliament, he is distinctly to state that he does so in his individual capacity.

2. The inconvenience (now unavoidable) of having *one* open question in the Cabinet, makes it the more necessary to agree that there should be no other. All the existing members of the Cabinet are united in opposing the question of Parliamentary Reform, and could not acquiesce in its being brought forward or supported by any member of the Cabinet.

[1] That is, the Emancipation question. Cf. Vol. II, Sect. D, No. XIV, p. 363.

[2] Some Whigs could not accept Canning's basis for alliance. James Abercrombie wrote to the Earl of Carlisle at this time, for instance: ". . . Considering the state of Europe, the ground he has taken with respect to Portugal & the condition of Ireland, it will be beyond even his skill to defend the honesty of the principle on which his Govt. will be founded. . . . I think that even the most calm & dispassionate must allow that this is a case for enforcing principles of party. If you support for some purposes a Govt. formed on so dishonest a principle, it is confounding all notions of right & wrong in politics." (*Ibid.* No. 37.)

3. The present members of the Cabinet are also united in opposition to the motion for the repeal of the Test Act, of which notice stands on the books of the House of Commons. They see great inexpediency in now stirring a question which has slept for upwards of thirty years, and they could not consent to a divided vote by the members of the Cabinet upon it. [No. 219.]

[*The Formation of Canning's Ministry* (ed. Aspinall).]

XVIII

A MIXED MINISTRY—ROYAL POWER, 1827

A.—The King's Memorandum, Aug. 8, 1827

The King recommends the Cabinet to reorganise the Government.

The King has no desire to dissolve the present Government, provided they can agree in those principles of governing the country upon which the King has acted from the time the King undertook the Regency, up to the period of the King's coming to the Crown, and from that hour to the present.

The King distinctly stated to poor Mr. Canning (on his becoming Minister) that the King had no desire of forming what is termed, an exclusive Tory Government, as in that case it would have deprived the King of the distinguished talents of many members of the present Cabinet. Nevertheless there was a distinct understanding between the King and his late lamented Minister (Mr. Canning) on many very important points.

The King will begin, for example, by mentioning the question of Parliamentary Reform. The King joined with Mr. Canning, in giving his decided negative to that destructive project.

The King could not of course require of Mr. Canning to abjure his strong and settled opinions upon the subject of Catholic emancipation: but there was a distinct understanding that the King's conscientious feelings should not be disturbed upon that painful question, upon which the King's opinions are unalterably fixed: and moreover if at any time this question was to be forced upon Mr. Canning, from that moment the Cabinet was to be considered as dissolved.

If the present Government therefore chose to proceed upon the basis, thus framed by Mr Canning, the King would then place Lord Goderich at the head of the Treasury.

The King desires to have the decision of the Cabinet with as little delay as the pressing circumstances of the case will admit of.

[No. 1375.]

B.—The King to Viscount Goderich, Aug. 12, 1827

The King sends his very kind regards to Ld Godrich [*sic*].

The King has been disappointed in not seeing Ld. Goderich today & hopes, that he will come really prepared for the purpose of settling the different offices of the Govt tomorrow.

The King has quite *made up his mind not* to extend the Cabinet with any more members belonging to the Whig Party.

The King has no personal objections to Lord Holland, but, the King has the very strongest objections, to run any risk, that the present Govt should bear either the name, or even the semblance of a Whig Administration. It would be fatal to its stability, & what is more of consequence, in direct opposition to the King's principles, for Lord Godrich must remember what the King's conduct has been in governing this country—from the year '11 up to the present hour.[1]

At the age of 65, the King is not to put this aside, to satisfy the crotchets of individuals. These observations arise from what pass'd in conversation with Ld Anglesey on Tuesday night.

[Letter No. 1388.]

[Aspinall (ed.), *Letters of George IV*, vol. iii.]

C.—Mr. Herries to Lord Bexley, Dec. 28, 1827

I have carefully and anxiously reconsidered all that has passed between us on the subject of the proposed change in the Cabinet, which has been consented to, as I understand, reluctantly, and after much objection, by the King, upon a very pressing requisition on the part of Lord Goderich. This requisition was made without any previous communication with us, and it appears that there existed no intention of even communicating to us at present the prospective arrangement adopted as the result of it. Had it not been for a surmise on your part by which you were induced to require a categorical explanation from Lord Goderich, we, and others of our colleagues, would, I apprehend, at this moment have been unapprised of it, although it was well known to another portion of the Cabinet. Having however, already expressed my opinion upon the subject of these partial confidences in the Cabinet, I shall at present say nothing more on that topic, but submit to you what occurs to me upon the proposition itself.

[1] Cf. Vol. II, Sect. D, No. XXV (B), p. 388, and references there given.

In order to judge of the effect which may be produced upon the existing constitution of the Government by the introduction into the Cabinet of a leading and most influential member of the extreme Whig party, it is necessary to advert to the principles upon which the Government has been formed, as well as to the manner in which it is at present composed.

The present Cabinet consists in part of persons avowedly attached to the political principles which have prevailed in the Government of this country during the last forty years (with the exception of a very short interval), and in part of individuals previously accustomed to act in systematic opposition to those principles and to that Government upon all the most important questions of domestic and foreign policy.

Of these individuals, however, it must be added that they were distinguished from the majority of the party with which they habitually acted by the greater moderation of their principles and proceedings, and by a greater approximation on many topics of public policy to the opinions held by the persons who exercised the power of Government.

The union of these moderate Whigs with the Tories was first accomplished by Mr. Canning, and in forming a Government embracing these varieties of political persuasion it was distinctly laid down by him that the ruling character of the Government should be the same as that of Lord Liverpool. The members of the opposite party who joined Mr. Canning accepted office under that express explanation and condition. The Government thus constituted was therefore essentially Tory, although composed of persons who had not all of them theretofore been classed under that political distinction.

The death of Mr. Canning changed nothing in the principle on which the Government was constituted. That principle was, on the contrary, confirmed and enforced by the declaration of the King to his Ministers when he appointed Lord Goderich to the office of First Lord of the Treasury.

The principle so laid down and so confirmed is in point of fact no other than the principle of Mr. Pitt's Government, transmitted through his several successors (with the exception of Mr. Fox's short Administration in 1806) to Lord Liverpool, Mr. Canning, and Lord Goderich. It is in that character that it challenges the confidence and support of the country, and if that character be abandoned, its Pittite or Tory adherents, both in and out of office, are not only absolved from their engagements towards it, but their reputation for consistency and uprightness in their public conduct is perhaps materially implicated by the support which they may continue to give to it.

Public character in this country is the creation of public opinion only: it makes the general estimation, for worth and ability, in which the men who take part conspicuously in the management of public affairs are held and determines usually the place in the service of the State which they may aspire to occupy. There is no point upon which the public opinion is more severely exercised than on that which concerns the consistency between the professed opinions and the real conduct of public men. Upon this subject the public are greatly and justly jealous. . . .

The principle of the Government being such as I have stated, it is obvious that any person of the same political opinion as Lord Liverpool might be added to it without inconsistency or compromise, but that it would be impossible without the one or the other to bring into it an individual of diametrically opposite opinions, and more especially if he should be a person of great eminence, whose opinions, frequently and vehemently asserted, are universally known to be entertained in an extreme degree.

Such is the case with respect to Lord Holland, who, through a long, active and conspicuous political career, has espoused the principles and doctrines of the Whig party in the utmost length to which they have ever been carried; and who, even so late as the month of May last, took an opportunity of solemnly declaring that on whatever side of the House he might sit he would never fail to *vote for Parliamentary reform*, nor refuse to move, whenever called upon to do so, the *repeal of the Test and Corporation Acts.*

The consequence of the accession, at this time, to the King's Councils of a person thus pledged to these political opinions must, I think, upon the grounds which I have stated, be destructive either of the principles of "*Lord Liverpool's Government*" or of all public confidence in the political professions of the individual himself. . . .

My position is marked by striking peculiarities whereby I am certainly placed in a painful dilemma between conflicting obligations.

. . . It is in a most especial manner due to the King, who so graciously and firmly insisted upon my appointment, against the endeavours of a party which opposed it on the ground of my political principles, that I should uphold those principles without spot or blemish, and that I should take care to afford no ground for the misconstruction by which it was attempted on that occasion to attribute my appointment to private and personal rather than to public motives. . . . Whenever, therefore, such changes shall take place in the policy of the Government, or in the composition of the Administration, as must lead, in the judgment of the public, *to the*

abandoning or compromising of the "principles of Lord Liverpool's Administration," my sense of what I owe to the King, to the country, and to my own honour will leave me no choice but to resign my office.

[*Memoir of Rt. Hon. J. C. Herries*, by his son E. Herries, pp. 45-52.]

XIX

MAINTENANCE OF LAW AND ORDER, 1831

EXECUTIVE DIFFICULTIES

(A)

LORD MELBOURNE TO THE MARQUESS OF ANGLESEY, FEB. 26, 1831

. . . I am well aware how difficult it is, consistently with the general principles of our law, to frame any enactment which shall meet this great and growing evil. The Insurrection Act has no provision suited to the emergency. It is directed principally against nocturnal outrages. The acts we have to guard against are committed in the face of day. The suspension of the Habeas Corpus Act is a measure from its nature necessarily of a temporary character, and adapted only to a crisis which is expected speedily to be determined.[1] I am afraid this hope cannot be entertained upon this occasion. It was always my opinion, notwithstanding the clamour raised against the measure, that the provisions of the Act generally called by the name of the Seditious Meetings Bill,[2] were in themselves highly reasonable and expedient, and such as ought to form a part of the perpetual code of every people who wished to live in peace and security under a popular government. The object of this law was to prevent any men, or set of men, from going at any time into any place, and then, of their own authority, convoking a meeting of the populace of that place to discuss any measure which it seemed good to them to propose for discussion. The mode of attaining this object was by requiring that there should be some authority for holding a meeting founded in the natural weight and respectability of the community, such as the consent of the Lord Lieutenant, the High Sheriff, or a requisition signed by a majority of the Grand Jury or a certain number of freeholders. I do not say that the enactment of this Bill would suit Ireland. . . .

[1] Cf. Vol. II, Sect. B, No. XXII, p. 198.
[2] See Vol. II, Sect. A, No. VIII, p. 12.

(B)

LORD MELBOURNE TO SIR HERBERT TAYLOR, SEPT. 26, 1831

. . . It is the public feeling which is dangerous, not the political unions. If these latter should adopt any of the measures mentioned in my former letter, such as the resistance of the payment of taxes, unless they are supported by a large proportion of the middle and even of the better classes of society the attempt will be abortive and ridiculous. If they are so supported it is unnecessary to say how critical the state of public affairs will become. It is to prevent and to avert such a crisis that the Reform Bill has been proposed. . . .

(C)

LORD MELBOURNE TO SIR HERBERT TAYLOR, OCT. 25, 1831

. . . I am extremely concerned to learn from Dorsetshire that the spirit of party, occasioned by the recent election, prevails to such a degree in the yeomanry corps of that county that it is deemed inexpedient to call upon them to act in case of riot, provided the doing so can possibly be avoided. We must not conceal from ourselves that the real weakness and inherent vice of all institutions of this nature, from a regiment of volunteers down to a *posse* of special constables, is that, being taken immediately from the body of the people, and not having habits of military obedience, they are in times of strong popular feeling either divided within themselves by discordant opinions, or so possessed and heated with the prevailing popular sentiment, that either they cannot be depended upon for acting at all, or are entirely incapable of conducting themselves with that steadiness, coolness, and impartiality which are so absolutely required in such circumstances. . . .

[*Lord Melbourne's Papers* (ed. Sanders), pp. 134 and 183.]

XX

THE REPRESENTATIVE PRINCIPLE AND THE REFORM ACT, 1832

. . . Nothing in parliamentary history so humiliating as the funeral oration delivered that day by the Duke of Wellington over the old constitution, that, modelled on the Venetian, had governed England since the accession of the House of Hanover. He described his Sovereign, when his Grace first repaired to his Majesty,

as in a state of the greatest 'difficulty and distress', appealing to his never-failing loyalty to extricate him from his trouble and vexation. The Duke of Wellington, representing the House of Lords, sympathises with the King, and pledges his utmost efforts for his Majesty's relief. But after five days' exertion, this man of indomitable will and invincible fortunes, resigns the task in discomfiture and despair, and alleges as the only and sufficient reason of his utter and hopeless defeat, that the House of Commons had come to a vote which ran counter to the contemplated exercise of the prerogative.

From that moment power passed from the House of Lords to another assembly. But if the peers have ceased to be magnificoes, may it not also happen that the Sovereign may cease to be a Doge? It is not impossible that the political movements of our time, which seem on the surface to have a tendency to democracy, may have in reality a monarchical bias.

In less than a fortnight's time the House of Lords, like James II, having abdicated their functions by absence, the Reform Bill passed; the ardent monarch who a few months before had expressed his readiness to go down to Parliament, in a hackney-coach if necessary, to assist its progress, now declining personally to give his assent to its provisions.

In the protracted discussions to which this celebrated measure gave rise, nothing is more remarkable than the perplexities into which the speakers of both sides are thrown, when they touch upon the nature of the representative principle. On one hand it was maintained that, under the old system, the people were virtually represented; while on the other, it was triumphantly urged that if the principle be conceded, the people should not be virtually, but actually, represented. But who are the people? And where are you to draw a line? And why should there be any? It was urged that a contribution to the taxes was the constitutional qualification for the suffrage. But we have established a system of taxation in this country of so remarkable a nature, that the beggar who chews his quid as he sweeps a crossing, is contributing to the imposts! Is he to have a vote? He is one of the people, and he yields his quota to the public burthens.

Amid these conflicting statements, and these confounding conclusions, it is singular that no member of either House should have recurred to the original character of these popular assemblies, which have always prevailed among the northern nations. We still retain in the antique phraseology of our statutes the term which might have beneficially guided a modern Reformer in his reconstructive labours.

When the crowned Northman consulted on the welfare of his kingdom, he assembled the ESTATES of his realm. Now an estate is a class of the nation invested with political rights. There appeared the estate of the clergy, of the barons, of other classes. . . . This Third Estate was so numerous, that convenience suggested its appearance by representation; while the others, more limited, appeared, and still appear, personally. The Third Estate was reconstructed as circumstances developed themselves. It was a Reform of Parliament when the towns were summoned.

In treating the House of the Third Estate as the House of the People, and not as the House of a privileged class, the Ministry and Parliament of 1831 virtually conceded the principle of Universal Suffrage. In this point of view the ten-pound franchise was an arbitrary, irrational, and impolitic qualification. It had, indeed, the merit of simplicity, and so had the constitutions of Abbé Siéyès. But its immediate and inevitable result was Chartism.

But if the Ministry and Parliament of 1831 had announced that the time had arrived when the Third Estate should be enlarged and reconstructed, they would have occupied an intelligible position; and if, instead of simplicity of elements in its reconstruction, they had sought, on the contrary, various and varying materials which would have neutralised the painful predominance of any particular interest in the new scheme, and prevented those banded jealousies which have been its consequences, the nation would have found itself in a secure condition. Another class not less numerous than the existing one, and invested with privileges not less important, would have been added to the public estates of the realm; and the bewildering phrase 'the People' would have remained, what it really is, a term of natural philosophy, and not of political science.

[From *Coningsby*, by B. Disraeli (publd. 1844). (In World's Classics ed., p. 35.)]

XXI

PERSONAL DUTY TO THE CROWN, 1834

A NOTE BY SIR R. PEEL, MAY 10, 1834

The proposal to me at that time was to undertake the Government with the distinct understanding that the King's personal honour was so far pledged to the general principle of the Reform Bill, that the new Government must undertake to settle that question on those general principles to which the King had assented.

I had not a moment's hesitation in rejecting this proposal, having the strongest feeling that the acceptance of it would be accompanied with no satisfactory result, so far as the settlement of Reform was concerned; that any attempt at modification of details, to be made by a party hostile to the whole measure, would be perfectly useless, provoking in the then temper of the public mind suspicion as to our intentions, and contempt for our conduct; and that certain degradation would follow to those individuals of our party who should undertake the Government on such conditions, after the unmeasured vehemence of our opposition to the whole measure of Reform—certain injury to the character of public men as a body.

I would listen to no argument on the subject. The Duke of Wellington might, from the relation in which he had stood to the Crown—the high distinctions and rewards he had received (certainly not higher than his unparalleled services)—he might have no discretion; he might have no option—I am sure he felt he had none—but to obey the commands of the King.

But my case was a different one. Mine was the ordinary case of a public man, opposing most vehemently a public measure, permitting a Government to retire because they could not carry it, and then invited immediately to form another Government, the members of which were not to act on their own views and principles, but were to be bound, as the condition of appointment to office, to carry in all its leading outlines the very measure which they had just defeated, and by the defeat of which they had ousted their predecessors.

I well knew the consequences of my refusal to have any concern with this new Government. I knew that the formation of it would become a matter of extreme difficulty. I knew that the refusal of office by the leader of a party would be a very unpopular act with all those who consider political life a mere game, in which office is the prize to be attained and retained by any means that can be employed. I expected to hear what I did hear, and what will always be heard on similar occasions: 'Your general principles are undeniable; but this is the special case of exception. This is the crisis. All is at stake. The King must be supported, the country must be saved. To be sure, Reform cannot be prevented, but as it is clearly inevitable, why should we not undertake it?'

I publicly declared at the time, and I feel now most deeply and sincerely, that a high sense of duty alone—of paramount obligation to the Crown—induced the Duke of Wellington to tender his services to the King. But ten times rather would I have abandoned public life, and dissolved all party connection for ever, than have felt bound to accommodate my course, against my own feeling of what was honourable and right, to another man's sense of his own peculiar

duty, on account of the singularity of his position. Public life would be a miserable servitude if it imposed any such obligation.

Our course on the Catholic question was cited as a precedent. But in my opinion the fact of our having taken that course was in itself a great objection to the recurrence to it by us. And the circumstances are totally different. In 1829 we were in office, were bound by every obligation to tender our advice to the Crown, and, if required, to act upon it. In 1832 we were not in office, and were under no obligation as public men to undertake office on the condition of carrying measures of which we totally disapproved.

[Parker, *Peel*, ii, 238.]

XXII

CABINET SECRECY, 1834-35[1]

A.—Ministers' Disputes

Lord Melbourne to Sir Herbert Taylor, Nov. 4, 1834

I understand that a correspondence which has recently taken place between Lord John Russell and Lord Durham relating to the previous consultations upon the Act for the Reformation of Representation has been submitted by Lord John Russell to His Majesty accompanied by a request that he (Lord John) may be permitted to make in his place in the House of Commons any disclosure upon this subject which may appear to him to be necessary for the vindication of his character and that to this request His Majesty has been graciously pleased to accede.

I cannot do otherwise than seize the opportunity of the first moment of this matter coming to my knowledge to represent through you to His Majesty how extremely inconvenient this course is likely to prove, how much crimination, recrimination and general altercation it is likely to produce, and how entirely subversive it is of all the principles upon which the government of this country has hitherto been conducted. . . . The publicity of debates in Parliament established of late years is, I believe, on the whole advantageous. At the same time it must be admitted that there are inconveniences, and particularly that it prevents that fearlessness and sincerity on discussion which would otherwise take place. If the arguments in the Cabinet are no longer to be protected by an impenetrable veil of secrecy, there will be no place left in the public councils for the free

[1] See Vol. II, Sect. D, No. XXXII, p. 398, and references there given.

investigation of truth and the unshackled exercise of the understanding. . . .

SIR HERBERT TAYLOR TO LORD MELBOURNE, NOV. 5, 1834

. . . His Majesty orders me to assure you that he enters most sincerely and cordially into all you say upon it and the feeling you express and that no man can be more sensible than he is of the mischief that is done to any government, to its administration of the affairs of the country and to the general interests of the nation, by the disclosures of opinions and of discussion which may have taken place in the private sitting of the members of the government.[1] . . . His Majesty has therefore, not ceased to deprecate the practice, which has more especially obtained lately, of giving great dinners, which are a sort of political assembly, at which topics are introduced which necessarily lead to crimination and recrimination when parties are split as at present, and he also objects to "itinerant" speechifying, particularly by individuals holding high offices.

The King considers it almost useless to remark that the circumstance which is more immediately the subject of your letter has arisen out of these objectionable practices, but he leaves it for those concerned to trace the evil to its origin, whether to disclosures in Parliament and "Gateshead", at dinners, or in the *Edinburgh Review*.

[*Lord Melbourne's Papers* (ed. Sanders), pp. 215-17.]

B.—ADVICE TO THE CROWN

LORD GREY TO LORD MELBOURNE, FEB. 3, 1835

. . . I have heard . . . that the Ministers are prepared, at the meeting of Parliament to make a full statement of all the circumstances which induced the King to change the administration, and for this purpose to produce all the correspondence that passed, and a minute of the last conversation between you and the King, in his Majesty's handwriting and sanctioned by your signature. . . .

LORD MELBOURNE TO LORD GREY, FEB. 7, 1835

. . . They cannot in fairness or in prudence, produce such a minute, unless its accuracy has first been admitted by both parties to the conversation; and no such document has yet been submitted to me for my sanction. If it were, I own I should have great difficulty upon constitutional grounds, in affixing my signature to it, . . . The advice actually given to the Sovereign, the measures that were proposed to him in such a case, the public may have a right to know, the Ministers, for their own justification, may be

[1] Cf. Vol. II, Sect. D, No. XV, at p. 368.

permitted to divulge; but the arguments by which that advice was supported and still more the various observations upon men, measures and opinions, which were naturally made in such a conversation, the public have not a right to know, nor is it for the convenience of the public service that they should be published. The Tory party, intending to make government impossible under the House of Hanover, clogged the Act of Settlement with this restriction amongst others—that all business should be transacted in the Privy Council and that every Privy Councillor should sign the advice which he gave.[1] This part of the Act was repealed in the fourth of Anne, precisely, I apprehend, upon the ground I have stated—viz. that it would entirely preclude and prevent free discussion between the Monarch and his advisors. Such a mode of proceeding would at once break in upon the constitutional irresponsibility of the Crown, and perhaps make it a question of veracity and good faith between him and me. The case of 1807 was one of this character. I remember it well. The question was whether the King had given his consent to the introduction of the Bill or not. And I recollect your words in the House of Commons, when you stated that you had understood him to give a cold assent, a reluctant assent, but still an assent. This, however, was a statement of the actual practical result of your audience with him and not a detailed account of all which passed during that audience. There are here no Cabinet minutes to produce. . . .

[*Lord Melbourne's Papers* (ed. Sanders), p. 246.]

XXIII

CROWN AND CHANGE OF MINISTRY, 1835

KING TO THE CABINET, FEB. 22, 1835

. . . His Majesty considers that the confidence, the countenance, and the support of the Sovereign are indispensable to the existence and the maintenance of the Government, so long as the Constitution of the country is monarchical; and he can confidently appeal to all those whom he has called to his councils since Providence has placed him on the throne, whether he has not uniformly made this the rule of his conduct.

If unfortunately the present factious Opposition should carry their purpose to the length of refusing the supplies, and his Majesty's confidential servants should not consider it advisable to recommend his Majesty to make a further appeal to the country, his Majesty

[1] Vol. I, Sect. A, No. XXXVI, § III, at p. 95.

would consider it his duty to yield to their advice, although he might have been led to believe that the result of such appeal would offer proof of a further reaction in public feeling. . . .

The last charge of administration was his own immediate and exclusive act. He removed Ministers whom he considered no longer capable of carrying on the business of the country with advantage, and he called to his councils others whom he considered deserving of his confidence.[1]

The proceeding which is threatened would be a direct censure passed upon His Majesty's conduct, by a party avowing its determination to force itself upon him, and into his councils, in opposition to his declared principles and sentiments, his wishes, and his conscience. Imperious circumstances, and the apprehension of throwing the country into confusion may oblige His Majesty to sacrifice feeling, comfort, and rooted opinion, and to bow under the overpowering weight of this evil.

But it is impossible that he can give his confidence to men so introduced into his councils. They cannot expect it, nor can they claim a support to which their proceedings would have so little entitled them. His Majesty might be obliged to tolerate them, but he could not meet them cordially, nor communicate with them as with friends. They may become his Ministers, but never his *confidential* servants. He would receive all their advice with jealousy and suspicion. . . .

[Parker, *Peel*, ii, 287.]

XXIV

THE EXECUTIVE AND THE HOUSE OF COMMONS, 1835

(A)

Paper sent in Circulation to the Cabinet, March 25, 1835

Sir Robert Peel feels it to be his duty to call, previously to the meeting of the next Cabinet, the serious attention of his colleagues to the position of the Government in the House of Commons, and to this grave question, whether it is consistent either with the credit and character of public men or the interests of the King's service to continue the attempt to conduct a Government with a minority in the House of Commons.

Let us calmly review what has taken place. The Government has been beaten since the meeting of Parliament on the choice of a

[1] Cf. Vol. I, Sect. D, No. LII, p. 403.

Speaker, and on the amendment to the Address I was obliged to name Mr. Bernal for the Chair of the Committee of Ways and Means, from inability to secure the election of any one in the confidence of the Government. The first diplomatic appointment which we made could not have been persisted in, and was resigned in consequence of the interference of the House of Commons by the person designated for it. We have made no progress whatever with public business, have only yet passed through three or four votes on Navy estimates in the Committee of Supply, have been obstructed every night by frivolous debates.

I am aware that it is in the power of any individual member to take this course, and to create these impediments. But the course is taken, and the impediments are created, because we are in a minority, because we have not the weight and authority to check, through the opinion and voice of a majority, the vexatious opposition of individual members. . . .

Nothing can, in my opinion, justify the Administration in persevering against a majority, but a rational and well-founded hope of acquiring additional support, and converting a minority into a majority. I see no ground for entertaining that hope. But I foresee the greatest prejudice to the cause of good government, to the character of an Administration, and of the public men who compose it, and to the prerogatives of the Crown, in a long-continued course either of acquiescing in what you believe to be wrong, for fear of being in a minority, or of exhibiting the Executive Government without control over the House of Commons, and attempting—after sufficient proof of their failure—to govern with a minority.

We have tried the result of an appeal to the people. We cannot, I think, entertain the belief that there will arise through our maintenance of office the justification of a second appeal, or the prospect of acquiring great additional strength from the result of it.

If we are beaten on Monday, I shall greatly deprecate the entrance upon a course which I foresee will lead to the following results.

We shall ensure—shall we not justify?—constant obstruction to the course of public business. The impediments will be apparently unimportant, will involve, perhaps, no great principle, but will be effectual for their purpose. It will become very difficult to determine the point at which an actual paralysis of the functions of the Government will occur. The acquiescence of one night will be pleaded as a precedent for the acquiescence of the night following, and at last, without any plain intelligible ground of public principle, we shall be compelled to retire, and shall be told that, if we con-

sented to retain office after having been in a minority on such a great principle as the integrity of Church property, we ought not to have resigned on some much smaller matter.

(B)

SIR ROBERT PEEL TO THE KING, MARCH 29, 1835

. . . Your Majesty must bear in mind that this vote will follow a succession of votes adverse to the views of your Majesty's Ministers; that there is great public evil in permitting the House of Commons to exhibit itself to the country free from any control on the part of the Executive Government, and usurping, in consequence of the absence of that control, many of the functions of the Government.

This state of things might be tolerated for a time. It might be tolerated so long as there was a rational hope of converting a ministerial minority into a majority, or of making an appeal to the people with a prospect of decided success.

Sir Robert Peel feels that there is not ground for entertaining such a hope, or for believing that the position of the Government will be improved by persevering after a defeat on the question of the Irish Church. . . .

There are many cases in which public opinion, or the opinion of the House of Lords, might counterbalance a vote of the House of Commons carried by a considerable majority. But the Tithe question in Ireland is one upon which, as opposed to such a majority, neither public opinion in England, nor that of the House of Lords, would have a material effect.

Sir Robert Peel humbly assures your Majesty that he is not influenced, in submitting these important considerations to your Majesty's serious attention, by any feeling of personal dissatisfaction or mortification at his own position in the House of Commons. He would be proud to make any sacrifice, consistent with honour, that could relieve your Majesty from embarrassment, and would be amply repaid for it by his own sense of public duty, and your Majesty's kind and gracious approbation.

The apprehension he entertains from continued perseverance in the attempt to govern by a minority is, that it will be difficult for an Administration, however composed, to recover a control over the House of Commons; that the House of Commons, having been habituated to the exercise of functions not properly belonging to them, will be unwilling to relinquish it, and that the Royal prerogative and Royal authority will inevitably suffer from continued manifestation of weakness on the part of the Executive Government.

(C)

PEEL TO DUKE OF WELLINGTON, APRIL 4, 1835

. . . We are giving our opponents time to mature a new government. This Government will be formed independently of the King's consent, though, of course it cannot assume the actual functions of Government, and the offices of Government without that consent. But it will be found ready for the occasion, when that occasion shall arise. The longer we protract the struggle, if that struggle shall be ultimately unavailing, the more certain will be the blow at Royal authority.

The new Government, though not in formal existence, will virtually command a majority of the House of Commons, and when it is actually installed, will have to the whole world the appearance of having been nominated by the House of Commons, having been dictated to the King, and of continuing in office independently of his will and control.[1]

[Parker, *Peel*, ii, 292-302.]

XXV

LORD MELBOURNE DEMANDS ROYAL CONFIDENCE, 1835

(A)

VISCOUNT MELBOURNE TO THE KING, APRIL 13, 1835

. . . At all times and in all circumstances it is necessary for the conduct of public affairs under our constitution that the Ministry should possess, and be known and felt to possess, the full confidence of the Crown, the advantage of all the influence which it can command, and the due exercises of all the powers with which it is invested. . . .

Amongst these marks of confidence Viscount Melbourne places the appointment of the officers of your Majesty's household with respect to whom Viscount Melbourne trusts that your Majesty will be graciously pleased to listen to his recommendation.[2] . . . Viscount Melbourne would be anxious not to interfere with its present constitution provided those who compose it and who have seats in either House of Parliament are prepared to give your Majesty's servants firm unequivocal support; but Viscount Melbourne trusts that upon the occasions of future vacancies, those members of either Lords or Commons will not be selected whose principles and opinions are adverse to your Majesty's Government. . . .

[1] Cf. Vol. II, Sect. B, No. I, p. 153.

[2] Cf. Vol. II, Sect. D, No. XII, p. 362.

(B)

VISCOUNT MELBOURNE TO THE KING, APRIL 15, 1835

. . . Amongst many grave and weighty matters your Majesty has introduced, one subject—namely, the question of the Protestant Established Church in Ireland—is of such vital importance that Viscount Melbourne feels that it is absolutely necessary in the first instance to come to a precise explanation and to a distinct understanding upon it. . . . [claims that this question produced the dissolution of his last administration, and that since then—] . . .

The House of Commons has passed two resolutions, the one declaring . . . [that the surplus revenues of the Irish Church should be devoted to the education of the people] . . . and the other that no measure for the settlement of tithe can be satisfactory unless it embodies in it the principle of the foregoing resolution.

Upon the adoption of this second resolution by the House of Commons, your Majesty's servants resigned their offices into your Majesty's hands and your Majesty, in order to form a new administration called upon those who have proposed, supported, and carried both the above mentioned resolutions. It must be manifest that those who have borne such a part in these proceedings cannot, . . . undertake to carry on your Majesty's government unless it is understood that they are to act without delay, upon the principle of the resolution; . . . and that in so doing they are to receive the sanction, approbation, and support of your Majesty.

Viscount Melbourne is abundantly satisfied that your Majesty's gracious declaration " that, if he should be enabled to present such a distribution and arrangement of such a ministry as shall meet with your Majesty's approbation, he will receive from your Majesty those marks and proofs of your Majesty's favour, confidence and support which are indispensable to conducting the Government with honour and advantage ". But with reference to the statement and observations upon individuals with which this assurance is introduced, Viscount Melbourne must distinctly declare that, whilst he trusts he is incapable of recommending to your Majesty any individual whose character and conduct appear to him to disqualify them from holding any situation of trust and responsibility, he can neither admit nor acquiesce in any general or particular exclusions and that he must reserve to himself the power of recommending for employment any one of your Majesty's subjects who is qualified by law to serve your Majesty.[1]

[*Lord Melbourne's Papers* (ed. Sanders), p. 270.]

[1] Cf. Vol. II, Sect. D, No. IX (C), at p. 355; No. XVIII (B), p. 373 No. XLVIII, p. 432; also Vol. I, Sect. B, No. XXXVIII (A), p. 240.

XXVI

THE KING AND LEGISLATION, 1837

THE KING TO LORD MELBOURNE, FEB. 14, 1837

The King has received Viscount Melbourne's letter of yesterday, in reply to his communication upon the scheme for the abolition of Church rates, from which his Majesty rejoices to learn that Viscount Melbourne admits that he has entered with fairness and candour into the subject. The King, however, desires that it may be clearly understood that, in stating his sentiments and the objections which he entertains, on principle, to the proposed measure, he had not the least intention of withholding his assent to the introduction of the Bill for the consideration of Parliament, or of interfering with the constitutional course which is pursued with respect to this and other questions to which his Government may feel it to be their duty to call the attention of the legislature, sensible as he is that they must undergo the mature deliberation and discussion of both Houses of Parliament before they can be submitted for his Majesty's ultimate sanction. The King may have his own opinions upon the subject, and he deems it his duty to communicate them to Viscount Melbourne for such consideration as he and his colleagues may be disposed to give to them before they finally commit themselves.

[*Lord Melbourne's Papers* (ed. Sanders), p. 327.]

XXVII

MARTIAL LAW, 1838[1]

Joint Opinion OF THE ATTORNEY AND SOLICITOR-GENERAL, SIR JOHN CAMPBELL AND SIR R. M. ROLFE, TO LORD GLENELG (Secretary of State for War and Colonies)

. . . We have now the honour of reporting to your Lordship that in our opinion the Governor of Lower Canada has the power of proclaiming, in any district in which large bodies of the inhabitants are in open rebellion, that the Executive Government will proceed to enforce martial law. We must, however, add that in our opinion such proclamation confers no power on the Governor which he

[1] See Vol. II, Sect. C, No. XV, p. 282.

would not have possessed without it. The object of it can only be to give notice to the inhabitants of the course which the Government is obliged to adopt for the purpose of restoring tranquillity. In any district in which, by reason of armed bodies of the inhabitants being engaged in insurrection, the ordinary course of law cannot be maintained, we are of opinion that the Governor may, even without any proclamation, proceed to put down the rebellion by force of arms, as in case of foreign invasion, and for that purpose may lawfully put to death all persons engaged in the work of resistance; and this, as we conceive, is all that is meant by the language of the statutes referred to in the report of the Attorney and Solicitor General for Lower Canada, when they allude to the '*undoubted prerogative of His Majesty for the public safety to resort to the exercise of martial law against open enemies or traitors*'.

The right of resorting to such an extremity is a right arising from and limited by the necessity of the case—*quod necessitas cogit defendit*. For this reason we are of opinion that the prerogative does not extend beyond the case of persons taken in open resistance, and with whom, by reason of the suspension of the ordinary tribunals, it is impossible to deal according to the regular course of justice. When the regular courts are open, so that criminals might be delivered over to them to be dealt with according to law, there is not, as we conceive, any right in the Crown to adopt any other course of proceeding. Such power can only be conferred by the Legislature, as was done by the Acts passed in consequence of the Irish rebellions of 1798 and 1803, and also of the Irish Coercion Act of 1833.

From the foregoing observations, your Lordship will perceive that the question, how far martial law, when in force, supersedes the ordinary tribunals, can never in our view of the case, arise. Martial law is stated by Lord Hale to be in truth no law, but something rather indulged than allowed as a law, and it can only be tolerated because, by reason of open rebellion, the enforcing of any other law has become impossible. It cannot be said in strictness to *supersede* the ordinary tribunals, inasmuch as it only exists by reason of those tribunals having been already practically superseded.

It is hardly necessary for us to add that, in our view of the case, martial law can never be enforced for the ordinary purposes of civil or even criminal justice, except, in the latter, so far as the necessity arising from actual resistance compels its adoption.

[W. Forsyth, *Cases and Opinions* (publd. 1869), p. 198.]

XXVIII

RE-ELECTION OF A SPEAKER, 1841 [1]

SIR ROBERT PEEL TO THE DUKE OF WELLINGTON, AUG. 1, 1841

I have been much occupied in attempting to prevent disunion at the very opening of the Session.

Many of the most eager of our party are, or at least were, decidedly in favour of opposing Shaw Lefevre for the Chair. I am against it.

First, I do not think it for the public advantage that the election for the Chair should necessarily be made the object of a party.

Secondly, I do not think it would be just towards a Speaker who has shown himself well qualified for his office, and has in my opinion acted fairly and impartially to reject him.

Thirdly, I think that the late Speaker, if he be re-elected with the general goodwill of the House, will have greater authority and power to preserve order than a Speaker elected after a party contest.

Fourthly, I do not think we have any person to propose who would appear to advantage as Speaker, all things considered, when compared with Lefevre.

Fifthly, it is not a very high or satisfactory ground to allege for opposing Shaw Lefevre that the Whigs and Radicals opposed Lord Canterbury. We said it was unjust and impolitic to oppose Lord Canterbury, and it seems to me more becoming to a great party to act upon its own principle, and even to apply it against itself, than to say to its opponents, Though our principle was the right one, yet by way of retaliation we will adopt yours.

[Parker, *Peel*, ii, 476.]

XXIX

THE LABOURS OF A PRIME MINISTER, 1846 [2]

MR. GLADSTONE'S DIARY, JULY 24, 1846

On Monday the 13th I visited Sir R. Peel, and found him in his dressing-room laid up with a cut in one of his feet. . . . He said he had been twice prime minister, and nothing should induce him

[1] Vol. I, Sect. D, No. VIII, p. 328.

[2] Compare Vol. II, Sect. B, No. XIII, p. 182, but also Vol. I, Sect. D, No. I, p. 317.

again to take part in the formation of a government; the labour and anxiety were too great; and he repeated more than once emphatically with regard to the work of his post, 'No one in the least degree knows what it is. I have told the Queen that I part from her with the deepest sentiments of gratitude and attachment; but that there is one thing she must not ask of me, and that is to place myself again in the same position.' Then he spoke of the immense accumulation. 'There is the whole correspondence with the Queen, several times a day, and all requiring to be in my own hand, and to be carefully done; the whole correspondence with peers and members of parliament, in my own hand, as well as other persons of consequence; the sitting seven or eight hours a day to listen in the House of Commons. Then I must, of course, have my mind in the principal subjects connected with the various departments, such as the Oregon question for example, and all the reading connected with them. . . . Then there is the difficulty that you have in conducting such questions on account of your colleague whom they concern.

. . . I said, however, 'I can quite assent to the proposition that no one understands the labour of your post; that, I think, is all I ever felt I could know about it, that there is nothing else like it. But then you have been prime minister in a sense in which no other man has been it since Mr. Pitt's time.' He said, 'But Mr. Pitt got up every day at eleven o'clock, and drank two bottles of port wine every night.' 'And died of old age at forty-six,' I replied. 'This all strengthens the case. I grant your full and perfect claim to retirement in point of justice and reason; if such a claim can be made good by amount of service, I do not see how yours could be improved. You have had extraordinary physical strength to sustain you; and you have performed an extraordinary task. Your government has not been carried on by a cabinet, but by the heads of departments each in communication with you.' He assented, and added it had been what every government ought to be, a government of confidence in one another. 'I have felt the utmost confidence as to matters of which I had no knowledge, and so have the rest. Lord Aberdeen in particular said that nothing would induce him to hold office on any other principle, or to be otherwise than perfectly free as to previous consultations.' And he spoke of the defects of the Melbourne government as a mere government of departments without a centre of unity, and of the possibility that the new ministers might experience difficulty in the same respect. I then went on to say, 'Mr. Perceval, Lord Liverpool, Lord Melbourne were not prime ministers in this sense; what Mr. Canning might have been, the time was too short to show.' . . .

. . . He spoke of the immense multiplication of details in public business and the enormous task imposed upon available time and strength by the work of attendance in the House of Commons. He agreed that it was extremely adverse to the growth of greatness among our public men; and he said the mass of public business increased so fast that he could not tell what it was to end in, and did not venture to speculate even for a few years upon the mode of administering public affairs. He thought the consequence was already manifest in its being not well done.

It sometimes occured to him whether it would after all be a good arrangement to have the prime minister in the House of Lords, which would get rid of the very encroaching duty of attendance on and correspondence with the Queen. I asked if in that case it would not be quite necessary that the leader in the Commons should frequently take upon himself to make decisions which ought properly to be made by the head of the government? He said, Certainly, and that that would constitute a great difficulty. That although Lord Melbourne might be very well adapted to take his part in such a plan, there were, he believed, difficulties in it under him when Lord J. Russell led the House of Commons. Then when he led the House in 1828 under the Duke of Wellington as premier, he had a very great advantage in the disposition of the duke to follow the judgments of others in whom he had confidence with respect to all civil matters.[1] He said it was impossible during the session even to work the public business through the medium of the cabinet, such is the pressure upon time. . . .

[Morley, *Gladstone*, i, 297, ed. of 1903.]

XXX

THE CROWN AND DISSOLUTION, 1846-58

(A)

QUEEN VICTORIA TO LORD JOHN RUSSELL, JULY 16, 1846[2]

. . . She considers the power of dissolving Parliament a most valuable and powerful instrument in the hands of the Crown, but which ought not to be used except in extreme cases and with a certainty of success. To use this instrument and be defeated is a thing most lowering to the Crown and hurtful to the country. The

[1] Cf. Vol. II, Sect. D, No. XXXVIII, p. 406.

[2] See Gladstone's views, Vol. II, Sect. B, No. XVI, p. 188. See also Vol. II, Sect. D, No. LIV, p. 443.

Queen strongly feels that she made a mistake in allowing the Dissolution in 1841; the result has been a majority returned against her of nearly one hundred votes; but suppose the result to have been nearly an equality of votes between the two contending parties, the Queen would have thrown away her last remedy, and it would have been impossible for her to get any Government which could have carried on public business with a chance of success.

The Queen was glad therefore to see that Sir Robert Peel did not ask for a Dissolution and she *entirely concurs* in the opinion expressed by him in his last speech in the House of Commons, when he said:

"I feel strongly this, that no Administration is justified in advising the exercise of that prerogative, unless there be a fair, reasonable presumption, even a strong moral conviction, that after a Dissolution they will be enabled to administer the affairs of this country through the support of a party sufficiently powerful to carry their measures. I do not think a Dissolution justifiable to strengthen a party. I think the power of Dissolution is a great instrument in the hands of the Crown, and that there is a tendency to blunt that instrument if it be resorted to without necessity."

[*Queen Victoria's Letters*, 1st series, ii, 108.]

(B)

MEMORANDUM BY SIR CHARLES PHIPPS OF AN INTERVIEW WITH LORD ABERDEEN, MAY 15 (?), 1858

. . . the Queen had declined to give such sanction, or even such a pledge,[1] and equally guarding herself against being supposed to have made up her mind to refuse her sanction to a Dissolution, had told Lord Derby that she could not then make any prospective decision upon the subject . . . she considered that it would be a very unconstitutional threat for him to hold over the head of the Parliament, with her authority, by way of biassing their decision.

Lord Aberdeen interrupted me by saying that the Queen had done quite right. . . . He knew that the Government had threatened a Dissolution, that he thought that they had a perfect right to do so, but that they would have been quite wrong in joining the Queen's name with it.

He said that he had never entertained the slightest doubt that if the Minister advised the Queen to dissolve, she would, as a matter of course, do so. The Minister who advised the Dissolution took upon himself the heavy responsibility of doing so, but that the Sovereign was bound to suppose that the person whom she had

[1] Lord Derby had asked for permission to announce that, if his Government were beaten, the Queen would sanction a Dissolution.

appointed as a Minister was a gentleman and an honest man, and that he would not advise Her Majesty to take such a step unless he thought that it was for the good of the country. There was no doubt of the power and prerogative of the Sovereign to refuse a Dissolution—it was one of the very few acts which the Queen of England could do without responsible advice at the moment; but even in this case whoever was sent for to succeed, must, with his appointment, assume the responsibility of this act, and be prepared to defend it in Parliament.

He could not remember a single instance in which the undoubted power of the Sovereign had been exercised upon this point, and the advice of the Minister to dissolve Parliament had been rejected. . . . He thought it would be more right, and certainly more safe, for her to follow the usual course, than to take this dangerous time for exercising an unusual and, he believed he might say, an unprecedented, course, though the power to exercise the authority was undoubted.

[*Queen Victoria's Letters*, 1st series, iii, 363.]

XXXI

CONTROL OF FOREIGN POLICY BY CROWN AND CABINET,[1] 1848–59

(A)

LORD GREY TO LORD JOHN RUSSELL, MAY 28, 1848[2]

. . . It is clear that motions of direct censure upon the Government will be made in both Houses of Parliament. . . . Whatever may be the vote which either may come to, the debate will certainly be most damaging. . . .

Being convinced that an attack of this kind will immediately be made upon the Government, and that in the House of Lords it will be very powerfully supported, I think it only right that I should lose no time in warning you that it will be out of my power to take any part in repelling it; and further that, if I am taxed with disapproving of what has been done, I shall be compelled by silence at least to admit it.

[1] See also Vol. II, Sect. D, No. LIII, p. 442.

[2] These letters were provoked by Lord Palmerston recommending, in a dispatch to Sir H. Bulwer, the enlargement of the basis of the Spanish Government, instructions which he had communicated neither to the Queen nor to his colleagues: cf. Vol. II, Sect. D, No. XLII (B), at p. 415.

If the line of policy which has been adopted had been approved by the Cabinet, it would, of course, have been the duty of every member of the Cabinet, including those who might have differed from the majority but had acquiesced in their decision, to have now supported what has been done. But when the fact is that the subject never was brought before the Cabinet, when I and most of the members of it first saw the objectionable dispatches in the newspapers, and when it is notorious that, if the question had been submitted to us, we should most of us (I believe including yourself) have entirely disapproved of the adoption of such a tone towards an independent Government, the case is entirely altered, and I can recognise no obligations to support a policy which none of our opponents can condemn more than I do. . . .

(B)

LORD JOHN RUSSELL TO LORD PALMERSTON, OCT. 1, 1848

You say, " Unfortunately the Queen gives ear too readily to persons who are hostile to her Government, and who wish to poison her mind with distrust of her Ministers, and in this way she is constantly suffering under groundless uneasiness ". That the Queen is constantly suffering under uneasiness is too true, but I own I cannot say it is always groundless. It is surely right that a person speaking in the name of Her Majesty's Government should in important affairs submit his dispatches to the Queen and obtain the opinion of her Prime Minister before he commits the Queen and her Government? This necessary preliminary you too often forget; and the Queen naturally, as I think, dreads that upon some occasion you may give her name to sanction proceedings which she may afterwards be compelled to disavow. I confess I feel some of the same uneasiness; but as I agree with you very constantly in opinion my only wish is that in future you will save the Queen anxiety and me some trouble, by giving your reasons before, and not after, an important dispatch is sent. . . .

[S. Walpole, *Life of Lord John Russell*, ii, 44 *seq.*]

(C)

A NOTE BY LORD JOHN RUSSELL, 1854–55

Mr Kinglake has detailed, and has preserved in his fifth edition, a story regarding the dinner of the Cabinet at Pembroke Lodge, which, although accurate in the immediate purport of his relation, would give a very false impression of the real deliberations of the Cabinet. Some days before that dinner, a Cabinet meeting was held in the day-time at which the whole question of sending an expedition

to the Crimea . . . [was] very carefully and very maturely discussed. Lord Palmerston for some months had been bent on sending an expedition to the Crimea, and I had only withheld my assent till the siege of Silistria should have been proved to be a failure. . . . Some days afterwards I gave a Cabinet dinner at Pembroke Lodge, and as the members of the Cabinet, with the exception of the Chancellor, had been present at the previous deliberation, they cared little for criticising after dinner the exact form of the sentences in which the number of the troops and the disposition of the fleet were minutely specified.

It is no doubt true that several members of the Cabinet went to sleep during this discussion. It is what they had often done before when the style of a dispatch or the phrases of a bill to be introduced into Parliament were discussed after dinner. . . . The fact was the expedition to the Crimea had occupied the anxious thoughts of the members of the Cabinet for several months and the dinner at Pembroke Lodge at a round table in a small room seemed better adapted for rest than for new exertions from the critical faculty.

[S. Walpole, *Life of Lord John Russell*, ii, 223.]

(D)

Duke of Argyll on the Practice from 1853

It is the system in all Cabinets to which I have belonged that the Secretary for Foreign Affairs is in close personal relations with the Prime Minister, and that a great deal of the Foreign Office business is settled between them, without its being referred to the Cabinet at all. In our case, two men of such authority as Lord Aberdeen and Lord John Russell were specially fitted to deal with current business, and I do not recollect that the wretched squabble between the French and Russian Embassies at Constantinople was ever made the subject of Cabinet discussion at all. . . .

From the end of April, 1853 foreign affairs were no longer conducted, as in quiet times, by two ministers almost alone, with only an occasional reference to the Cabinet. A sense in the imminence in the dangers before us was too great for that. At every Cabinet meeting the time was now mainly taken up by hearing all the important despatches read to us. There is in all such documents a great amount of repetition, and the phrases of diplomacy are to a large extent so artificial and conventional, that the work did sometimes seem wearisome beyond endurance. . . . When Palmerston felt strongly on any subject which he thought ought to be taken, he generally explained it fully to Aberdeen in a letter, and gave notice

that he would raise the question in the next Cabinet. This was a straightforward method, and an excellent one for securing adequate discussion. Aberdeen had time to consider it himself, and to consult the colleagues on whom he most relied.

[*Memoirs of Duke of Argyll*, i, 445-56.]

(E)

ARGYLL'S NOTE[1] ON THE PRACTICE IN SEPTEMBER 1859

I have been amazed lately to observe that (either) the decision of the Cabinet in respect of drafts is not given effect to or it is misunderstood and that what is said seems to leave the vaguest possible impression on Lord John's mind. Then we are kept in entire ignorance of what is going on until the last moment. Why should not the state of negotiations be laid before us by printing the despatches up to the latest possible dates?

[*Memoirs of Duke of Argyll*, ii, 144.]

XXXII

CABINET MINUTES, 1848[2]

SIR ROBERT PEEL TO SIR JAMES GRAHAM, OCT. 31, 1848

Can you give me any information with regard to a practice, which certainly used to prevail in the earlier annals of Cabinet Councils, namely, the recording formally the opinions of the ministers present, either simply by way of record for their own satisfaction, or for the information of the Sovereign?[3]

I cannot recall to mind an instance, during my service in the Cabinet, of the revival of such a practice, yet I have heard frequent mention of it.

I think I have heard you say that during Lord Grey's Government minutes of Cabinet deliberations and decisions were occasion-

[1] To Mr. Gladstone.

[2] Compare Vol. I, Sect. D, No. XXXIII, p. 374; also Vol. II, Sect. D, No. XLVII, p. 431, and No. LXIII, p. 470.

[3] For striking examples of both kinds see *Lord Malmesbury's Diary*, ii, 303-7; the accounts of arguments and personalities being much fuller in the first than in the second kind. Lord Malmesbury concludes by printing this note:

"I, the underwritten James Harris, attended the several meetings of the Cabinet, when this minute was agreed to, and requested a copy of it as a voucher for my conduct. JAMES HARRIS, May 28th, 1787."

ally made. Was this at the desire of the Sovereign, wishing to know whether certain advice offered to him was the concurrent advice of the whole Government? Or was the minute made without the previous expression of that desire—either on account of the extreme importance of the subject or on account of differences of opinion in the Cabinet?

Were the minutes signed by the Cabinet Ministers? Where were they deposited? I presume with the Prime Minister, for they certainly are not matters of record, at the Foreign Office or at any other. At least I never heard of them being accessible.

The nearest approach to anything of the kind which I recollect was in 1829. I prepared a memorandum assigning my reasons for advising the King to permit the consideration of the Catholic question, by his Government with a view to its settlement. The King desired that all those of his Ministers who had theretofore resisted the Catholic claims should see this memorandum, and inform him whether they concurred in the advice given in it. But the communication took place individually, and not in Cabinet.

If you can give me any information on this subject founded either on your reading or personal experience, I shall be much obliged to you.

SIR JAMES GRAHAM TO SIR ROBERT PEEL, NOV. 1, 1848

I will answer your inquiries to the best of my recollection, but I have no memoranda to which I can refer, and fourteen years have elapsed since I left Lord Grey's Government, and memory is often treacherous.[1]

During the discussions in the Cabinet which preceded the Reform Act, and which attended its progress, serious differences of opinion from time to time arose, both with respect to the extent of the measure and with reference to the means necessary to be adopted for securing its passage through the two Houses of Parliament. The King had misgivings and serious doubts and apprehensions in his own mind respecting the course which it was his duty to pursue; he communicated these doubts to Lord Grey, sometimes in short notes written by himself, more frequently in reasoned minutes written by Sir Herbert Taylor, and occasionally in conversations at audiences granted to Lord Grey or some one of his colleagues.

The King was aware of the existence of shades of difference of opinion among his confidential servants at that critical juncture,

[1] His memory did not mislead him—see *Correspondence of William IV and Earl Grey* (ed. Grey), *e.g.* at ii, p. 80.

and hesitating much himself he required, when an important step was to be taken, that he should have some proof of the general concurrence of his ministers in the advice tendered for his adoption.

Lord Grey, Lord Lansdowne, and Lord Holland, who had served in the Administration of Lord Grenville and Mr Fox in 1805, were not unaccustomed to the preparation of minutes of Cabinet under similar circumstances in the reign of George III; and Lord Grey, as the Head of the Government, after full discussion, but before the Cabinet separated, when important decisions were taken, drew a written minute, in which he embodied the advice with the reasons sustaining it; and this minute was submitted to his Majesty.

I have often told you that Lord Grey was remarkable for the skill and address with which he framed these minutes. In the statement of the reasons which led to the conclusion he contrived so to blend and reconcile different opinions, that doubts and scruples were not concealed, yet the substance of the decision was not impaired. The minute opened always with the names of the members of the Cabinet present; it purported to be the summary of their united counsel, and I do not remember that any protest, or that the name of any dissentient minister, was introduced.

The original minute, not signed, but in the handwriting of the First Minister, with the names of the members present enumerated, was sent to the King; and Lord Grey kept a copy, made by his private secretary for his own use; but no other member of the Cabinet retained a copy. Thus the original was always in the possession of the Sovereign; one copy, and one copy only, in the exclusive possession of the Prime Minister.

Both Lord Grey and Sir Herbert Taylor, from experience under George III, were equally familiar with this mode of recording advice; and whether at the commencement of Lord Grey's Government recurrence to this practice was required by the King, or suggested by Lord Grey, I am unable now to say, but my impression is, that it was approved by both, and was considered the surest and safest mode of avoiding misunderstandings on great occasions.

The advice to dissolve Parliament on the morning after General Gascoigne's majority in the House of Commons was given personally by Lord Grey in the Closet on behalf of his colleagues; they waiting in the Ante-room, ready to tender their resignations, if the advice were not immediately adopted.

On almost every other important decision respecting the Reform Act, my belief is that minutes of Cabinet were framed. . . .

PRINCE ALBERT TO SIR ROBERT PEEL, NOV. 12, 1848

I return Sir James Graham's very interesting letter, which gives a complete account of the usage in Lord Grey's Cabinet.

The revival of such minutes, upon important questions of the day, would be of the greatest use to the Crown. I have always felt it to be a source of great weakness for the Sovereign not to be allowed to follow the arguments which may have decided the Cabinet in coming to a conclusion upon the advice which they may give.

[Parker, *Peel*, iii, 496 *seq.*]

XXXIII

ELECTING A LEADER, 1851

DUKE OF NEWCASTLE TO SIDNEY HERBERT, OCT. 27, 1851

. . . That Lord Aberdeen is, all things considered, our natural leader [1] and the *only* man who could properly assume that position, I think there can be no doubt. If he would *place himself* in that post, we should all recognise the claim. It has always appeared to me that the idea of *electing* a leader is a mistake, and an inversion of the proper constitutional view of party mechanism. A leader should become such, either because he is generally recognised as *facile princeps* in position, popularity, talent, discretion, debating power, or other qualifications necessary to balance the differences of opinion to be found in all parties, or by being selected by the Sovereign as her adviser when her Ministers have resigned. In the first case, public opinion and Parliament have pointed out to the Queen the man fitted to be consulted by her in an emergency; in the second, she either, having no such guide or repudiating it, selects him whom, if Parliament will support, she thinks fittest to be her Minister. If, however, a leader is *elected* by his party without the claims of superiority and obvious reasons which others beside his party must recognise, it appears to me that he must be placed in a false position, and be subject to suspicions of cabal which will be alike injurious to his friends and himself. . . .

[Lord Stanmore, *Memoir of Sidney Herbert*, i, 145.]

[1] This discussion among the Peelites was begun by Mr. Gladstone's suggestions that they should organize themselves as an effective party.

XXXIV

THE EXECUTIVE IN WAR-TIME—ENQUIRY BY THE COMMONS, 1854

A.—Russell to Aberdeen, Nov. 17, 1854

I will treat the subject in its two points of view: First, as to the official arrangements for the new department, with a view to the general efficiency of the public service; secondly, as to the immediate requirements of the great war in which we are engaged. In the first point of view I have already said that I do not think a Secretary at War can be maintained together with a Secretary of State for War. . . . I have also told you that I do not think the war estimates ought to be brought forward in the House of Commons by a person of rank and position inferior to a Secretary at War. . . . I come therefore, on this head, to the conclusion that the Secretary of State for the War Department must be in the House of Commons.

From the other point of view the prospect is equally clear.

We are in the midst of a great war. In order to carry on that war with efficiency, either the Prime Minister must be constantly urging, hastening, completing military preparations; or the Minister of War must be strong enough to control other Departments. . . .[1]

B.—Russell to Aberdeen, Jan. 1, 1855

Mr Roebuck has given notice of a motion to inquire into the conduct of the war. I do not see how this motion is to be resisted. But as it involves a censure upon the War Department, with which some of my colleagues are connected, my only course is to tender my resignation.

I therefore have to request you will lay my humble resignation of the office which I have the honour to hold, before the Queen, with the expressions of my gratitude for Her Majesty's kindness for many years.

C.—Memorandum by Lord John Russell

As the moment approached, I felt more and more strongly the reasons in favour of enquiry. Let me refer to some of those reasons. Inquiry is the proper duty and function of the House of Commons. When the British armies have suffered a reverse, this duty has always been performed. Thus when Minorca was lost

[1] Cf. Vol. II, Sect. D, No. II, p. 346.

in 1757 they consented to an inquiry. Thus when General Burgoyne capitulated in 1777, the House of Commons inquired into the causes of the disaster. Thus when the Walcheren expedition failed in attaining the chief objective of the enterprise, the House of Commons inquired. Inquiry is, indeed, at the root of the powers of the House of Commons. Upon the result of the inquiry must depend the due exercise of these powers. If from vicious organisation, the public affairs are ill administered, the remedy is better organisation. If from delay and confusion in the execution of orders, injury has arisen, the subordinate officers should be removed. If from negligence, incompetency, or corruption, the Ministers are themselves to blame for the failure which has been incurred, these Ministers may, according to the nature and degree of their fault, be censured, or removed, or punished.

[S. Walpole, *Life of Lord John Russell*, ii, 227-39.]

XXXV

LIFE PEERAGES, 1856

He [Lord Cranworth, Lord Chancellor] found in all authoritative text books and in the written words of his contemporaries full admission that the Crown's right to create peers was not limited to peerages with some remainder.[1] He therefore told Palmerston that his proposal was perfectly legal and without more ado or consultation with anybody, Palmerston advised the Queen to confer a life peerage on Baron Parke, under the title of Lord Wensleydale. By an unfortunate, or as some will think, a fortunate, accident, Baron Parke was laid up with an attack of gout, and was unable to take his seat on the first day of the session, which otherwise he certainly would have done. If he had so taken his seat, there is the highest probability—in my mind of certainty—that nothing more would have been heard of the matter than a few speeches of protest from some of the Law Lords. . . . The issue by the Queen of a patent of nobility without any reminder in it was a transaction which was hardly at all noticed by the public and created not the smallest excitement among politicians. . . .

Lyndhurst's plan of campaign was ingenious and effective. He could not bring the House of Lords in its ordinary legislative capacity to bear upon the question, because no vote by resolution or address would stop the action of the Crown. Neither could he enlist the House in its judicial capacity, because no strictly legal

[1] Cf. Vol. II, Sect. A, No. XXXVI, § 6, at p. 122.

question was raised at all. He resorted to the plea of privilege—a body of doctrine of wide range, necessarily vague, and always rich in possible appeals to the fears and the prejudices of each House of Parliament. He gave notice that he would move that the House should resolve itself into a Committee of Privileges to consider the patent issued to Baron Parke, and then in that Committee he would have a second opportunity of piling up arguments of assault, in moving that the patent was unconstitutional. This plan he carried into effect with astonishing ability and power. In his first speech, demanding that the question should be dealt with, not in any ordinary sitting of the House, but in a Committee of Privileges, he did not waste any time in arguing as to mere legality. He reminded us that it would be perfectly legal for the Crown to give patents of nobility to every man in a company of soldiers, and send them to the House of Peers. But nobody would contend that such an exercise of the prerogative would be constitutional. He warned us that our independence was at stake; for if an unscrupulous Minister could make as many peers for life as he chose, the manœuvre would be resorted to whenever it was convenient. He insisted that our unwritten Constitution was one of usage, and that no act or exercise of prerogative which had fallen into complete desuetude for centuries could be revived without the sanction of Parliament. He then showed that in every alleged case of a life peerage there were some one or more broadly discriminating facts which separated it entirely from the case of Baron Parke. . . .

[*Memoirs of Duke of Argyll*, ii, 11.]

XXXVI

THE TWO PARTY SYSTEM, 1856

Mr. Gladstone's Diary, Feb. 28, 1856

She spoke of arrangements for carrying on the government in the present state of things, and I frankly gave my opinion to H.M.[1] that she would have little peace or comfort in these matters, until parliament should have returned to its old organisation in two political parties; that at present we were in a false position, and that both sides of the House were demoralised—the ministerial side over-

[1] The Peelites resigned in protest against Palmerston's accepting the idea of a Commission of Enquiry into the management of the war. Gladstone described the committee as in "itself a censure on the government". He saw the Queen and the Prince when resigning his seals.

charged with an excess of official men, and the way stopped up against expectants, which led to subdivision, jealousy, and intrigue; the opposition so weak in persons having experience of affairs as to be scarcely within the chances of office, and consequently made reckless by acting without keeping it in view; yet, at the same time, the party continued and must continue to exist, for it embodied one of the great fundamental elements of English society. . . . H.M. seeming to agree in my main position, as did the Prince, asked me: But when will parliament return to that state? I replied I grieved to say that I perceived neither the time when, nor the manner how, that result is to come about; but until it is reached, I fear that Y.M. will pass through a period of instability and weakness as respects the executive. She observed that the prospect is not agreeable. I said, True, madam, but it is a great consolation that all these troubles are upon the surface, and that the throne has for a long time been gaining and not losing stability from year to year.[1] I could see but one danger to the throne, and that was from encroachments by the House of Commons. No other body in the country was strong enough to encroach. This was the consideration which had led my resigning colleagues with myself to abandon office that we might make our stand against what we thought a formidable invasion. . . .

[Morley, *Gladstone*, i, 540, ed. of 1903.]

XXXVII

A PRIME MINISTER AND HIS COLLEAGUES, 1857

I have already had occasion to speak of Palmerston's great loyalty to his colleagues in such matters. Even in the selection of new Cabinet Ministers he used always to consult them. Prime Ministers generally take these arrangements very much into their own hands, communicating only with some special department. But Palmerston on this, as on other occasions, told us the whole story [Sir John Bowring's quarrel with the Chinese Government and the sending of a new plenipotentiary] and that three names occurred to him, each having some different but peculiar qualifications.

[*Memoirs of Duke of Argyll*, ii, 77.]

[1] Compare this with introductory note to Bagehot's views, Vol. II, Sect. D, No. XLII, p. 410.

XXXVIII

THE PRIME MINISTER IN THE LORDS, 1858[1]

CABINET UNITY

LORD DERBY TO BENJAMIN DISRAELI, APRIL 30, 1858

. . . I am compelled, at a moment when I should least wish to say anything unpleasant to you, to call your attention to a notice which I see to-day in the Votes of the House of Commons. Lord Ellenborough, in the House of Lords, first pointed out to me, *from a newspaper*, a very material alteration, of which public notice had been given by yourself as Chancellor of the Exchequer, in the Resolutions intended to be proposed by the Government on the India question. I doubted at first the accuracy of Lord Ellenborough's information; and even when I returned home, and saw in the evening papers the proposed amendments, I concluded that they proceeded from Ld. J. Russell or an opponent, or an independent member of the House. But, on looking to the Votes, I am compelled to come to the conclusion that the amendments are your own, and, being your own, are presented to the House as the more mature result of the reflections of the Cabinet of which you are a (and in the House of Commons *the*) leading member. In that position you have a great latitude allowed to you, in which all your colleagues would acquiesce, and which no one would be more decided than myself in supporting.

But the Indian Resolutions, as you must be aware, are no ordinary question. Their substance, and their very phraseology, were carefully considered, and decided on, by the Cabinet. This being the case, I cannot but think that not the slightest deviation from those Resolutions ought to have been adopted, even verbally, without the consent of the Cabinet. That which I laboured to-day to impress upon the minds of the party, and that without which we cannot go on, is perseverance in our intentions once announced; and though, on matters immediately in discussion, it may be justifiable in the Leader of the House of Commons to act upon his own discretion, and recede from a position intended to have been maintained, in face of a formidable opposition, these considerations do not apply to an alteration, made without any external pressure, of a measure which had previously received the fullest consideration of the Cabinet.

Such, I deeply regret to say, appears to me to have been the effect of the amendments placed by you on the papers of the House

[1] Cf. Vol. II, Sect. D, No. LVII, p. 448.

of Commons, on the Cabinet Resolutions previously announced. The amendments are not verbal, nor technical. They affect vitally the constitution of the Council, and the position of the Minister of the Crown—so vitally that Lord Ellenborough declares, and in my opinion justly, that no man who had ever had experience of the working of the India Board would consent to serve under such restrictions. . . . We have a Cabinet at 2 to-morrow, at which this question must be raised. Will you call on me in Downing Street at 1.30? This subject cannot be avoided; and I should be glad, by previous communication with you, to make as easy as possible the explanations which must follow, and the determination which must be taken as to ulterior proceedings in Parliament. I own I do not see how your proposed amendments can be justified to Parliament, and still less how their announcement to Parliament can be justified to your colleagues. . . .

[Monypenny and Buckle, *Life of Disraeli*, iv, 138.]

XXXIX

THE CHOICE OF A PRIME MINISTER, 1859

A.—Lord Palmerston to Lord Granville, May 29, 1859

. . . It is important that an end should be put to the notion . . . that there are jealousies and ill-feelings between John Russell and me which would prevent the formation of a Liberal Government in the event of an overthrow of the present administration, and I concur with you that the most effectual way of removing that impression would be that an agreement should be come to between John Russell and me that we would both of us become members of any government either he or I might be called upon by the Queen to form, and you are at liberty to propose this arrangement to him.

Of course such an arrangement would not apply to the case of any other person being commissioned by the Queen to form an administration. In such a case John Russell and I would hold ourselves free to take such course as we might each of us think proper.

B.—Memorandum by Lord Granville [June 11, 1859]

. . . Her Majesty informed me that Lord Derby had resigned and that she had sent for me to desire that I should attempt to form another Administration. . . . I . . . assured the Queen . . . that

I believed the only two persons who could form a strong Liberal Government were either Lord Palmerston or Lord John Russell; . . . [but] . . . Her Majesty felt it to be an invidious task to select one of the two. . . . Her Majesty informed me that Her Majesty's experience of former changes of administration had taught her that the construction of an administration had failed when the person entrusted with the task had acted merely as a negotiator, and that the success of other attempts had been owing to the acceptance of the charge by the person for whom she had sent. Her Majesty laid Her Majesty's commands upon me to make the attempt, and I had the honour of conveying two letters from Her Majesty to Lord Palmerston and Lord John Russell, stating that Her Majesty relied upon their assistance.

C.—Lord John Russell to Lord Granville, June 12, 1859

I thought I had made an answer to your proposition which you could submit to the Queen. I have no difficulty in repeating that, while I feel deeply Her Majesty's great personal kindness towards myself, I cannot accept your proposal.

What has past between you and Palmerston appears to me to free the position from some difficulties. It is clear that if I were to form a Ministry I should have the assistance of Lord Palmerston. On the other hand, if he is to form a ministry, I should expect him to propose to me any office I might choose (omitting, of course, his own) with the option of going to the House of Lords or remaining in the House of Commons under him. That proposition on the grounds of fairness and equality I am prepared to accept. . . . I am afraid Her Majesty must encounter the difficulty of making a choice. But I do not think either Lord Palmerston or I should be inclined to do otherwise than submit with respect and loyal duty to Her Majesty's decision. . . .

D.—Lord Palmerston to Lord John Russell, June 12, 1859

Granville having given up his commission to form a Government, the Queen sent for me this afternoon and has desired me to undertake the duty. I shall drive down . . . to request your assistance and to ask what office you would like to hold.

E.—Lord Palmerston to the Queen, June 12, 1859

Lord John Russell, . . . has agreed to be a member of the Government without any suggestion that Viscount Palmerston should leave the House of Commons; but . . . Lord John Russell laid claim to the Foreign Office in a manner which rendered it

impossible for Viscount Palmerston to decline to submit his name to your Majesty for that post. . . .

[*Queen Victoria's Letters*, 1st series, iii, 438 *seq.*, and S. Walpole, *Life of Lord John Russell*, ii, 305 *seq.*]

XL

THE QUEEN'S PRIVY COUNCILLORS, 1859

Lord Palmerston to the Queen, July 2, 1859

Viscount Palmerston has heard . . . that Mr Bright would be highly flattered by being made a Privy Councillor. Would your Majesty object to his being so made if it should turn out that he wishes it? . . .

The Queen to Lord Palmerston, July 2, 1859

The Queen has received Lord Palmerston's letter of to-day. She is sorry not to be able to give her assent to his proposal with regard to Mr Bright. Privy Councillors have sometimes exceptionally been made without office, but this has been as rewards, even in such cases for services rendered to the State. It would be impossible to allege any service Mr Bright has rendered, and if the honour were looked upon as a reward for his systematic attacks upon the institutions of the country, a very erroneous impression would be produced as to the feeling which the Queen or her Government entertained towards these institutions. It is, moreover very problematical whether such an honour conferred upon Mr Bright would, as suggested, wean him from his present line of policy, whilst, if he continued in it, he would only have obtained additional weight in the country by his propounding his views as one of the Queen's Privy Councillors.[1]

[*Queen Victoria's Letters*, 1st series, iii, 446.]

XLI

RESIGNATION—MINISTERS' DUTY TO THE CROWN AND THEIR PARTY, 1866

Lord John Russell to the Queen, June 9, 1866

Lord Russell . . . is fully alive to the importance of averting a ministerial crisis; but Lord Russell would ill serve your Majesty's

[1] Vol. I, Sect. D, No. II, p. 318.

interests and those of the country if, by any premature concession, he were to expose his own character, and that of Mr Gladstone, to the loss of public confidence, and those who would most taunt and reproach them with such a concession would be their implacable and insidious enemies.

QUEEN VICTORIA TO EARL RUSSELL. (CYPHER TELEGRAM, FROM BALMORAL), JUNE 19, 1866

The Queen considers it the bounden duty of her Government, in the present state of the continent, to set aside all personal considerations, and to continue at their posts. In fact, knowing the impossibility of forming another Government, the Queen could not accept their resignations.

EARL RUSSELL TO QUEEN VICTORIA, JUNE 19, 1866

. . . Your Majesty's Ministers have fully considered the purport of your Majesty's gracious message in connection with the vote of last night in the House of Commons.[1] The proceedings of the last few weeks have convinced them that they will gain nothing by protracted discussion on the Bill. The reasons against a dissolution, founded on the general apathy of the south of England on the subject of Reform, appear to them to be valid. There remains only one course, and as they are not convinced till it has been tried that the experiment of forming a Government under Lord Derby may not succeed, your Majesty's Ministers feel themselves compelled, by their duty to your Majesty and the country, humbly to tender to your Majesty their resignations of the offices they hold.

[S. Walpole, *Life of Lord John Russell*, ii, 414, and *Queen Victoria's Letters*, 2nd series, i, 334, 335.]

XLII

BAGEHOT ON THE CONSTITUTION, 1867–72

[Bagehot's views should be read with caution as well as with care; his views should always be compared with the evidence available in this volume—but of course unknown to him—of how the constitution was really working at the time when he wrote. In this way one may detect and appreciate " the misreading of the essential nature of our Constitution in the last century by writers of the dominant Liberal individualist school of whom Bagehot was the typical . . . exponent. Interpreting the parliamentary situation of their own time with the light of their general prepossessions, they persuaded themselves that

[1] The Government had been defeated by eleven votes on an amendment to their Reform Bill.

our Constitution had, in fact, become what they thought it ought to be, namely a system based on the delegation of authority by the electorate to a Parliament which, in turn, delegated the day to day exercise of that power to a Cabinet " . . . (L. S. Amery, *Thoughts on the Constitution*, p. 15). Such a reading was natural in view of the lack of strong party government 1846–68 (see Sect. B, No. XII, p. 176, and Sect. D, No. XXXVI, p. 404. But the extension of the franchise, by encouraging party organisation, has brought back the proper initiative to Government (even while, paradoxically, it has encouraged the hardly compatible idea of mandates).[1] " Our Constitution . . . has never been one in which the active and originating element has been the voter, selecting a delegate to express his views in Parliament as well as, on his behalf, to select an administration conforming to those views. The starting point and mainspring of action has always been the Government. . . . At a general election the voter is not in a position to choose [his favourite government]. . . . There is a Government in being which he can confirm or else reject in favour of the alternative team " (Amery, *op. cit.*). The importance of the idea of " The King's Government " may be seen at each end of this section, in Peel's memoranda and Asquith's evidence.]

From the First Edition (1867) of " The English Constitution "

A.—*The Cabinet*

. . . No one can approach to an understanding of the English institutions, or of others which, being the growth of many centuries, exercise a wide sway over mixed populations, unless he divide them into two classes. In such constitutions there are two parts (not indeed separable with microscopic accuracy, for the genius of great affairs abhors nicety of division): first those which excite and preserve the reverence of the population—the *dignified* parts, if I may so call them; and next, the *efficient* parts—those by which it, in fact, works and rules. . . . The dignified parts of government are those which bring it force—which attract its motive power . . . they are the preliminaries, the needful pre-requisites of *all* work. They raise the army, though they do not win the battle. . . .

The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers. No doubt by the traditional theory, as it exists in all the books, the goodness of our constitution consists in the entire separation of the legislative and executive authorities,[2] but in truth its merit consists in their singular approximation. The connecting link is *the cabinet*. By that new word we mean a committee

[1] Cf. Vol. II, Sect. B, Nos. XXIV, p. 204, XXVI, p. 207, and XXVIII (B), qu. 919 at p. 222.

[2] Vol. I, Sect. D, No. XXXVI, p. 378.

of the legislative body selected to be the executive body. The legislature has many committees, but this is the greatest. It chooses for this, its main committee, the men in whom it has most confidence. It does not, it is true, choose them directly; but it is nearly omnipotent in choosing them indirectly. . . . There is nearly always some one man plainly selected by the voice of the predominant party in the predominant house of the legislature to head that party, and consequently to rule the nation. We have in England an elective first magistrate as truly as the Americans have an elective first magistrate. . . . Nevertheless our first magistrate differs from the American. He is not elected directly by the people; he is elected by the representatives of the people. He is an example of 'double election'. The legislature chosen, in name, to make laws, in fact finds its principal business in making and keeping an executive.

The leading minister so selected has to choose his associates, but he only chooses among a charmed circle. The position of most men in parliament forbids their being invited to the cabinet; the position of a few men ensures their being invited. Between the compulsory list whom he must take, and the impossible list whom he cannot take, a prime minister's independent choice in the formation of a cabinet is not very large; it extends rather to the division of the cabinet offices than to the choice of cabinet ministers. . . . The most curious point about the cabinet is that so very little is known about it. . . . No description of it, at once graphic and authentic, has ever been given. It is said to be sometimes like a rather disorderly board of directors, where many speak and few listen—though no-one knows. [It is *said* that at the end of the cabinet which agreed to propose a fixed duty on corn, Lord Melbourne put his back to the door, and said, 'Now is it to lower the price of corn, or isn't it? It is not much matter which we say, but mind, we must all say *the same*.' . . .] [1]

But a cabinet, . . . is a committee which can dissolve the assembly which appointed it; it is a committee with a suspensive veto—a committee with a power of appeal. Though appointed by one parliament, it can appeal if it chooses to the next. Theoretically, indeed, the power to dissolve parliament is entrusted to the sovereign only; and there are vestiges of doubt whether in *all* cases a sovereign is bound to dissolve parliament when the cabinet asks him to do so.[2] But neglecting such small and dubious exceptions, the cabinet which was chosen by one House of Commons has an appeal to the next House of Commons. The chief committee of the legislature has the power of dissolving the

[1] The passage in brackets is a footnote in Bagehot.

[2] See Vol. II, Sect. D, No. XXX, p. 393.

predominant part of that legislature. The English system, therefore, is not an absorption of the executive power by the legislative power; it is a fusion of the two. . . .[1]

. . . It has been said that England invented the phrase, 'Her Majesty's Opposition'[2]; that it was the first government which made a criticism of administration as much a part of the polity as administration itself. This critical opposition is the consequence of cabinet government. The great scene of debate, the great engine of popular instruction and political controversy, is the legislative assembly. A speech there by an eminent statesman, a party movement by a great political combination, are the best means yet known for arousing, enlivening, and teaching a people. The cabinet system ensures such debates, for it makes them the means by which statesmen advertise themselves for future and confirm themselves in present governments. . . . The deciding catastrophes of cabinet governments are critical divisions preceded by fine discussions. . . . And debates which have this catastrophe at the end of them—or may so have it—are sure to be listened to, and sure to sink deep into the national mind. . . .

. . . Generally speaking, in an electioneering country . . . the election of candidates to elect candidates is a farce. The Electoral College of America is so . . . It is true that the British House of Commons is subject to the same influences. Members are mostly, perhaps, elected because they will vote for a particular ministry, rather than for purely legislative reasons. But —and here is the capital distinction—the functions of the House of Commons are important and *continuous*. It does not, like the Electoral College in the United States, separate when it has elected its ruler; it watches, legislates, seats and unseats ministries, from day to day. Accordingly it is a *real* electoral body. The parliament of 1857, which, more than any other parliament of late years, was a parliament elected to support a particular premier—which was chosen, as Americans might say, upon the 'Palmerston ticket'—before it had been in existence two years, dethroned Lord Palmerston. Though selected in the interest of a particular ministry, it in fact destroyed that ministry. . . .

B.—*The Monarchy*

The popular theory of the English Constitution involves two errors as to the sovereign. First, in its oldest form at least, it considers him as an 'Estate of the Realm', a separate co-ordinate authority with the House of Lords and the House of Commons.

[1] Extracts in this volume should make Bagehot's underestimate of royal power clear.

[2] See Vol. II, Sect. B, No. VIII, p. 166.

This and much else the sovereign once was, but this he is no longer. That authority could only be exercised by a monarch with a legislative veto. He should be able to reject bills, if not as the House of Commons rejects them, at least as the House of Peers rejects them. But the Queen has no such veto. She must sign her own death-warrant if the two Houses unanimously send it up to her. It is a fiction of the past to ascribe to her legislative power. She has long ceased to have any. Secondly, the ancient theory holds that the Queen is the executive. . . . The defining characteristic of that government [*i.e.* British Cabinet Government] is the choice of the executive ruler by the legislative assembly; but when there are three parties a satisfactory choice is impossible. A really good selection is a selection by a large majority which trusts those it chooses, but when there are three parties there is no such trust. The numerically weakest has the casting vote—it can determine which candidate shall be chosen. But it does so under a penalty. It forfeits the right of voting for its own candidate. . . . A choice based on such self-denial can never be a firm choice—it is a choice at any moment liable to be revoked. The events of 1858, though not a perfect illustration of what I mean, are a sufficient illustration. The Radical Party, acting apart from the moderate Liberal Party, kept Lord Derby in power. The ultra-movement party thought it expedient to combine with the non-movement party. . . . After a short interval the Radicals returned to their natural alliance and their natural discontent with the moderate Whigs. . . .

If the sovereign has a genius for discernment, the aid which he can give at such a crisis will be great. He will select for his minister, and if possible maintain as his minister, the statesman upon whom the moderate party will ultimately fix their choice, but for whom at the outset it is blindly searching; being a man of sense, experience, and tact, he will discern which is the combination of equilibrium, which is the section with whom the milder members of the other sections will at last ally themselves. . . . Wanting something, but not knowing with precision what, parties will accept for a brief period anything, to see whether it may be that unknown something —to see what it will do. During the long succession of weak governments which begins with the resignation of the Duke of Newcastle in 1762 and ends with the accession of Mr. Pitt in 1784, the vigorous will of George III was an agency of the first magnitude.[1] If at a period of complex and protracted division of parties, . . . the extrinsic force of royal selection were always exercised discreetly, it would be a political benefit of incalculable value.

[1] Cf. Vol. I, Sect. D, Nos. LI and LII, pp. 401-3; but see also George II at work, Sect. D, No. XXXIV, p. 375, and No. XXXVII, p. 382.

But will it be so exercised? A constitutional sovereign must in the common course of government be a man of but common ability. I am afraid, looking to the early acquired feebleness of hereditary dynasties, that we must expect him to be a man of inferior ability. . . .[1]

. . . On the duties of the Queen during an administration we have an invaluable fragment from her own hand. In 1851 Louis Napoleon had his *coup d'état*; in 1852 Lord John Russell had his—he expelled Lord Palmerston. By a most instructive breach of etiquette he read in the House a royal memorandum on the duties of his rival. It is as follows: 'The Queen requires, first that Lord Palmerston will distinctly state what he proposes in a given case, in order that the Queen may know as distinctly to what she is giving her royal sanction. Secondly, having once given her sanction to such a measure that it be not arbitrarily altered or modified by the minister. Such an act she must consider as failing in sincerity towards the Crown, and justly to be visited by the exercise of her constitutional right of dismissing that minister. She expects to be kept informed of what passes between him and foreign ministers before important decisions are taken based upon that intercourse; to receive the foreign dispatches in good time; and to have the drafts for her approval sent to her in sufficient time to make herself acquainted with their contents before they must be sent off.'[2]

In addition to the control over particular ministers, and especially over the foreign minister, the Queen has a certain control over the Cabinet. The first minister, it is understood, transmits to her authentic information of all the most important decisions,[3] together with what the newspapers would do equally well, the more important votes in Parliament. He is bound to take care that she knows everything which there is to know as to the passing politics of the nation. She has by rigid usage a right to complain if she does not know of every great act of his ministry, not only before it is done, but while there is yet time to consider it—while it is still possible that it may not be done.

To state the matter shortly, the sovereign has, under a constitutional monarchy such as ours, three rights—the right to be consulted, the right to encourage, the right to warn. . . .

C.—*The House of Lords*

. . . The evil of two co-equal Houses of distinct natures is obvious. Each House can stop all legislation, and yet some legislation may be necessary. . . .

[1] See Vol. II, Sect. D, No. LVI, p. 447, and contrast No. XLV, at p. 429.

[2] See Vol. II, Sect. D, No. XXXI, p. 395.

[3] *e.g.* Vol. II, Sect. D, No. XLVI, p. 429, and compare No. L (E), at p. 439.

From the Reform Act[1] the function of the House of Lords has been altered in English history. Before that Act it was, if not a directing Chamber, at least a Chamber of Directors. The leading nobles, who had most influence in the Commons, and swayed the Commons, sat there. Aristocratic influence was so powerful in the House of Commons, that there never was any serious breach of unity. When the Houses quarrelled, it was, as in the great Aylesbury case,[2] about their respective privileges, and not about the national policy. The influence of the nobility was then so potent, that it was not necessary to exert it. The English Constitution, though then on this point very different from what it now is, did not even then contain . . . two Houses of distinct origin; it had two Houses of common origin—two Houses in which the predominant element was the same. The danger of discordance was obviated by a latent unity.

Since the Reform Act the House of Lords has become a revising and suspending House. It can alter Bills; it can reject Bills on which the House of Commons is not yet thoroughly in earnest—upon which the nation is not yet determined. Their veto is a sort of hypothetical veto. They say, We reject your Bill for this once, or these twice, or even these thrice; but if you keep on sending it up, at last we won't reject it.[3] . . .

It is the sole claim of the Duke of Wellington to the name of a statesman that he presided over this change. . . . In 1846, in the crisis of the Corn-Law struggle, and when it was a question whether the House of Lords should resist or yield, he wrote a very curious letter to the late Lord Derby:—

'For many years, indeed from the year 1830, when I retired from office, I have endeavoured to manage the House of Lords upon the principle on which I conceive that the institution exists in the Constitution of the country, that of Conservatism. I have invariably objected to all violent and extreme measures, which is not exactly the mode of acquiring influence in a political party in England, particularly one in opposition to Government. I have invariably supported Government in Parliament upon important occasions, and have always exercised my personal influence to prevent the mischief of anything like a difference or division between the two Houses. . . .

'Upon finding the difficulties in which the late King William was involved by a promise made to create peers, the number, I

[1] *i.e.* that of 1832.

[2] Vol. I, Sect. B, No. XVII, p. 193.

[3] Compare the arguments on the Home Rule Bill and on the Parliament Act, Vol. II, Sect. B, No. XXV, at pp. 206, 207, and Sect. D, No. LXI, p. 453.

believe, indefinite, I determined myself, and I prevailed upon others, the number very large, to be absent from the House in the discussion of the last stages of the Reform Bill, after the negotiations had failed for the formation of a new Administration. This course gave at the time great dissatisfaction to the party; notwithstanding that I believe it saved the existence of the House of Lords at the time and the Constitution of the country.

'Subsequently, throughout the period from 1835 to 1841, I prevailed upon the House of Lords to depart from many principles and systems which they as well as I had adopted and voted on Irish tithes, Irish corporations, and other measures, much to the vexation and annoyance of many. . . . It was at the same time well known that, from the commencement at least of Lord Melbourne's Government, I was in constant communication with it, upon all military matters, whether occurring at home or abroad, at all events. But likewise upon many others. . . .

'. . . I am the servant of the Crown and people. I have been paid and rewarded, and I consider myself retained; and that I can't do otherwise than serve as required; when I can do so without dishonour, that is to say, as long as I have health and strength to enable me to serve. But it is obvious that there is, and there must be, an end of all connection and counsel between party and me. I might with consistency, and some may think that I ought to, have declined to belong to Sir Robert Peel's Cabinet on the night of the 20th December. But my opinion is, that if I had, Sir Robert Peel's Government would not have been framed;

'. . . Upon the important occasion and question now before the House, I propose to endeavour to induce them to avoid to involve the country in the additional difficulties of a difference of opinion, possibly a dispute between the Houses, on a question in the decision of which it has been frequently asserted that their lordships had a personal interest; which assertion, however false as affecting each of them personally, could not be denied as affecting the proprietors of land in general. . . .'

D.—*The House of Commons*

. . . The elective is now the most important function of the House of Commons. . . . Lord Lyndhurst used for years to recount the small outcomings of legislative achievement; and yet those were the days of the first Whig Governments, who had more to do in legislation, and did more, than any Government. The true answer to such harangues as Lord Lyndhurst's by a Minister should have been in the first person. He should have said firmly, 'Parliament has maintained ME, and that was its greatest duty: Parliament has

carried on what, in the language of traditional respect, we call the Queen's Government; it has maintained what wisely or unwisely it deemed the best Executive of the English nation '.[1]

The second function of the House of Commons is what I may call an expressive function. It is its office to express the mind of the English people on all matters which come before it. . . .

The third function of Parliament is what I may call . . . the teaching function. A great and open council of considerable men cannot be placed in the middle of a society without altering that society. It ought to alter it for the better. It ought to teach the nation what it does not know. . . .

Fourthly, the House of Commons has what may be called an informing function—a function which though in its present form quite modern is singularly analogous to a medieval function. In old times one office of the House of Commons was to inform the Sovereign what was wrong. It laid before the Crown the grievances and complaints of particular interests. Since the publication of the Parliamentary debates a corresponding office of Parliament is to lay these same grievances, these same complaints, before the nation, which is the present sovereign. The nation needs it quite as much as the king ever needed it. . . . I am disposed to reckon it as the second function of parliament in point of importance, that to some extent it makes us hear what otherwise we should not.

Lastly, there is the function of legislation, of which of course it would be preposterous to deny the great importance, and which I only deny to be *as* important as the executive management of the whole state, or the political education given by Parliament to the whole nation. There are, I allow, seasons when legislation is more important than either of these. The nation may be misfitted with its laws, and need to change them: . . .

. . . An immense mass, indeed, of the legislation is not, in the proper language of jurisprudence, legislation at all. A law is a general command applicable to many cases. The 'special acts' which crowd the statute book and weary parliamentary committees are applicable to one case only. They do not lay down rules according to which a railway shall be made, they enact that such a railway shall be made from this place to that place, and they have no bearing upon any other transaction. . . .

The House of Commons can do work which the quarter-sessions or clubs cannot do, because it is an organized body, while quarter-sessions and clubs are unorganized. . . . At present the majority of Parliament obey certain leaders; what those leaders propose they

[1] Cf. Lord John Russell, Vol. II, Sect. B, No. XII, at p. 180; also D. Lloyd George, Vol. II, Sect. B, No. XXVI, at p. 210.

support, what those leaders reject they reject. An old Secretary of the Treasury used to say, 'This is a bad case, an indefensible case. We must apply our *majority* to this question.' That secretary lived fifty years ago, before the Reform Bill, when majorities were very blind, and very 'applicable'. Nowadays, the power of leaders' over their followers is strictly and wisely limited: they can take their followers but a little way, and that only in certain directions. Yet still there are leaders and followers. On the Conservative side of the House there are vestiges of the despotic leadership even now. A cynical politician is said to have watched the long row of county members, so fresh and respectable-looking, and muttered, 'By Jove, they are the finest brute votes in Europe!' But all satire apart, the principle of Parliament is obedience to leaders. Change your leader if you will, take another if you will, but obey No. 1 while you serve No. 1, and obey No. 2 when you have gone over to No. 2. The penalty of not doing so, is the penalty of impotence. It is not that you will not be able to do any good, but you will not be able to do anything at all. If everybody does what he thinks right, there will be 657 amendments to every motion, and none of them will be carried or the motion either.[1]

. . . it may seem odd to say so, just after inculcating that party organization is the vital principle of representative government, but that organization is permanently efficient, because it is not composed of warm partisans. The body is eager, but the atoms are cool. If it were otherwise, parliamentary government would become the worst of governments—a sectarian government. The party in power would go all the lengths their orators proposed—all that their formulae enjoined, as far as they had ever said they would go. But the partisans of the English Parliament are not of such a temper. They are Whigs, or Radicals, or Tories, but they are much else too. They are common Englishmen, and, as Father Newman complains, 'hard to be worked up to the dogmatic level'. They are not eager to press the tenets of their party to impossible conclusions. On the contrary, the way to lead them—the best and acknowledged way—is to affect a studied and illogical moderation. You may hear men say, 'Without committing myself to the tenet that 3 + 2 makes 5, though I am free to admit that the honourable member for Bradford has advanced very grave arguments in behalf of it, I think I may, with the permission of the Committee, assume that 2 + 3 do not make 4, which will be a sufficient basis for the important propositions which I shall venture to submit on the present occasion'. . . .

[1] Cf. Vol. I, Sect. D, No. XLVI, p. 396, and Vol. II, Sect. D, No. III, p. 347.

E.—[*The Landed Interest*] [1]

. . . The land of England returns many members annually for the counties; these members the constitution gave them. But what is curious is that the landed interest gives no seats to other classes, but takes plenty of seats *from* other classes. Half the boroughs in England are represented by considerable landowners, . . . In number the landed gentry in the House far surpass any other class. They have, too, a more intimate connexion with one another; they were educated at the same schools; know one another's family name from boyhood; form a society; are the same kind of men; marry the same kind of women. The merchants and manufacturers in Parliament are a motley race —one educated here, another there, a third not educated at all; . . . Traders have no bond of union, no habits of intercourse; their wives, if they care for society, want to see not the wives of other such men, but 'better people', as they say—the wives of men certainly with land, and, if Heaven help, with the titles. Men who study the structure of Parliament, not in abstract books, but in the concrete London world, wonder not that the landed interest is very powerful, but that it is not despotic. I believe it would be despotic if it were clever, or rather if its representatives were so, but it has a fixed device to make them stupid. The counties not only elect landowners, which is natural, and perhaps wise, but also elect only landowners *of their own county*, which is absurd. There is no free trade in the agricultural mind; each county prohibits the import of able men from other counties. This is why eloquent sceptics—Bolingbroke and Disraeli—have been so apt to lead the unsceptical Tories. . . .

F.—[*Ministers and Departments*]

. . . The parliamentary head is a protecting machine. He and the friends he brings stand between the department and the busybodies and crotchet-makers of the House and the country. So long as at any moment the policy of the office could be altered by chance votes in either House of Parliament, there is no security for any consistency. Our guns and our ships are not, perhaps, very good now. But they would be much worse if any thirty or forty advocates for this gun or that gun could make a motion in Parliament, beat the department, and get their ships or their guns adopted. The 'Black Breech Ordnance Company' and the 'Adamantine Ship Company' would soon find representatives in Parliament, if forty

[1] Cf. Vol. II, Sect. B, No. XXI, p. 196.

or fifty members would get the national custom for their rubbish. But this result is now prevented by the parliamentary head of the department. As soon as the opposition begins the attack, he looks up his means of defence. He studies the subject, compiles his arguments, and builds little piles of statistics, which he hopes will have some effect. He has his reputation at stake, and he wishes to show that he is worth his present place, and fit for future promotion. He is well known, perhaps liked, by the House—at any rate the House attends to him; he is one of the regular speakers whom they hear and heed. He is sure to be able to get himself heard, and he is sure to make the best defence he can. And after he has settled his speech he loiters up to the Secretary of the Treasury, and says quietly, 'They have got a motion against me on Tuesday, you know. I hope you will have your men here. A lot of fellows have crotchets, and though they do not agree a bit with one another, they are all against the department; they will all vote for the inquiry.' And the Secretary answers, 'Tuesday, you say; no (looking at a paper), I do not think it will come on on Tuesday. There is Higgins on Education. He is good for a long time. But anyhow it shall be all right.' And then he glides about and speaks a word here and a word there, in consequence of which, when the anti-official motion is made, a considerable array of steady, grave faces sits behind the Treasury Bench—nay, possibly a rising man who sits in outlying independence below the gangway rises to defend the transaction; the department wins by thirty-three, and the management of that business pursues its steady way. . . .

A friend once told me that an intelligent Italian asked him about the principal English officers, and that he was very puzzled to explain their duties, and especially to explain the relation of their duties to their titles. I do not remember all the cases, but I can recollect that the Italian could not comprehend why the First 'Lord of the Treasury' had as a rule nothing to do with the Treasury, or why the 'Woods and Forests' looked after the sewerage of towns. This conversation was years before the cattle plague, but I should like to have heard the reasons why the Privy Council office had charge of that malady. Of course one could give an historical reason, but I mean an administrative reason—a reason which would show, not how it came to have the duty, but why in future it should keep it.

But the unsystematic and casual arrangement of our public offices is not more striking than their difference of arrangement for the one purpose they have in common . . . there are almost no two offices which are exactly alike in the defined relations of the permanent official to the Parliamentary chief. . . . The *army*

and navy are the most similar in nature, yet there is in the army a permanent outside office, called the Horse Guards, to which there is nothing else like. In the navy, there is a curious anomaly —a Board of Admiralty, also changing with every government, which is to instruct the First Lord in what he does not know. The relations between the First Lord and the Board have not always been easily intelligible, and those between the War Office and the Horse Guards are in extreme confusion. . . .

G.—[*Matter added in Edition of 1872*]

In one minor respect, indeed, I think we may see with distinctness the effect of the Reform Bill of 1867. I think it has completed one change which the Act of 1832 began; it has completed the change which that Act made in the relation of the House of Lords to the House of Commons. . . . The spirit of the two Assemblies has become far more contrasted than it ever was. . . .

Recent discussions have also brought into curious prominence another part of the Constitution . . . for when the Queen abolished Purchase in the Army by an act of prerogative (after the Lords had rejected the Bill for doing so), there was a great and general astonishment.

But this is nothing to what the Queen can by law do without consulting Parliament. Not to mention other things, she could disband the army (by law she cannot engage more than a certain number of men, but she is not obliged to engage any men); she could dismiss all the officers, from the General Commanding-in-Chief downwards; she could dismiss all the sailors too; she could sell off all our ships of war and all our naval stores; she could make a peace by the sacrifice of Cornwall, and begin a war for the conquest of Brittany. She could make every citizen in the United Kingdom, male or female, a peer; she could make every parish in the United Kingdom a 'university'; she could dismiss most of the civil servants; she could pardon all offenders. In a word, the Queen could by prerogative upset all the action of civil government within the government, could disgrace the nation by a bad war or peace, and could, by disbanding our forces, whether land or sea, leave us defenceless against foreign nations.[1] Why do we not fear that she would do this, or any approach to it?

Because there are two checks—one ancient and coarse, the other modern and delicate. The first is the check of impeachment. . . . Against all gross excesses of the prerogative this is a sufficient protection. But it would be no protection against minor mistakes; any effort of judgement committed bona fide, and only entailing conse-

[1] Vol. I, Sect. D, No. XLV (B), p. 395.

quences which one person might say were good, and another say were bad, could not be so punished. . . . Against such misuses of the prerogative our remedy is a change of Ministry. And in general this works very well. Every Minister looks long before he incurs that penalty, and no one incurs it wantonly. But, neverthless, there are two defects in it. The first is that it may not be a remedy at all; it may be only a punishment. A Minister may risk his dismissal; he may do some act difficult to undo, and then all which may be left will be to remove and censure him. And the second is that it is only one House of Parliament which has much to say to this remedy, such as it is: the House of Commons only can remove a Minister by a vote of censure. . . . The support of the Lords is an aid and a luxury; that of the Commons is a strict and indispensable necessary.

These difficulties are particularly raised by questions of foreign policy. On most domestic subjects, either custom or legislation have limited the use of the prerogative. The mode of governing the country, according to the existing laws, is mostly worn into a rut, and most Administrations move in it because it is easier to move there than anywhere else. Most political crises—the decisive votes, which determine the fate of Government—are generally either on questions of foreign policy or of new laws; and the questions of foreign policy come out generally in this way, that the Government has already done something, and that it is for the one part of the Legislature alone—for the House of Commons, and not for the House of Lords—to say whether they have or have not forfeited their place by the treaty they have made. . . .

XLIII

A RADICAL POLITICIAN'S VIEWS OF REFORM, 1869

MR. MONK [a Radical but a Moderate Man] TO PHINEAS FINN

. . . One great authority told us the other day that the sole object of legislation on this subject should be to get together the best possible 658 Members of Parliament. That to me would be a most repulsive idea if it were not that by its very vagueness it becomes inoperative. Who shall say what is best; or what characteristic constitutes excellence in a member of Parliament? . . . One only excellence may be acknowledged, and that is the excellence of likeness. . . . Another great authority has told us that our House of

Commons should be the mirror of the people. I say, not its mirror but its miniature. And let the artist be careful to put in every line of the expression of that ever-moving face. To do this is a great work and the artist must know his trade well. In America the work has been done with so coarse a hand that nothing is shown in the picture, but the broad, plain, unspeaking outline of the face. As you look from the represented to the representation you cannot but acknowledge the likeness:—but there is in that portrait more of the body than of the mind. The true portrait should represent more than the body. With us hitherto, there have been sketches of the countenance of the nation which have been inimitable,—a turn of the eye here and a curl of the lip there, which have seemed to denote a power almost divine. There have been marvels on the canvas, so beautiful that one approaches the work of remodelling it with awe. But not only is the picture imperfect—a thing of snatches—but with years it becomes less and still less like its original. . . . To give to a bare numerical majority of the people that power which the numerical majority has in the United States would not be to achieve representation. The nation as it now exists would not be known by such a portrait; but neither can it indeed be known by that which exists. It seems to me that they who are adverse to change, looking back with an unmeasured respect on what our old Parliaments have done for us, ignore the majestic growth of the English people, and forget the present in their worship of the past. . . .

[*Phineas Finn*, by Anthony Trollope, publd. 1869. Vol. i, pp. 408, 409 in World's Classics ed.]

XLIV

THE RIGHT TO COMBINE: GROUPS AND THE COMMON LAW, 1869

Sir William Erle's[1] Memorandum for the Trades Unions Commission, 1869

I.—As the term Trade Union denotes many forms of association for various purposes . . . it may be well to premise that the term itself affords no indication in respect of lawfulness. Union by itself is presumed to be lawful; but the test of unlawfulness lies in the purpose of the union.

A person becomes a person of the Union by consenting to

[1] Previously Erle, J.

transfer a part of his own power over his own rights to the governing body of the union, which may be the general assembly or a body of delegates. . . . The force acquired by the combination is incalculably greater than the sum of the powers so transferred to the union by each individual, as is exemplified by soldiers for right and by robbers for wrong. This multiplication of force by combining is a reason why combination for a purpose either of crime or of some classes of wrong is made criminal. . . .

II.—Restraint of trade according to general principle of the Common Law is unlawful. I say "general principle" because the term "restraint of trade" is of very wide extension . . . and the unlawfulness depends on the degree of restraint resulting from the circumstances. . . .

Many examples might be given of other rights to a free course in other matters which are known to the law not by express grant but by enforcement of prohibition against violation thereof. The common law rights to a free course for passage on the highways, or for light to the eyes, or for air to the lungs . . . are not created by express grant, nor are they more capable of being perceived by any direct sense than the right to a free course of trade. . . .

The right to a free course for trade is of great importance to commerce and to productive industry, and has been carefully maintained by those who have administered the common law during the time to which our records extend. . . .

The laws relating to fairs, markets and staples; the prohibitions against forestalling, engrossing, regrating, monopolies,[1] and all similar contrivances for affecting prices otherwise than by competition, have their origin in a purpose of keeping the course of trade free from obstruction and enabling buyers and sellers to deal on the terms which free competition determines . . . Now their utility . . . has nearly ceased under altered circumstances from the advance of civilisation, it being found that supply is best secured by leaving mercantile speculation free. . . .

III.—. . . *Every person has a right under the law as between him and his fellow subjects, to full freedom in disposing of his own labour or his own capital according to his own will. It follows that every other person is subject to the correlative duty arising therefrom, and is prohibited from any obstruction to the authorised exercise of this right which can be made compatible with the exercise of similar rights by others.* Every act causing an obstruction to another in the exercise of the right comprised within this description—done, not in the exercise of the actor's own right, but for the purpose of obstruction—would, if damage should be caused thereby to the party obstructed, be a

[1] See Prothero, p. 275.

violation of this prohibition. . . . It is equally wrong whether it be done by one or by many—subject to this observation, that a combination of many to do a wrong, in a matter where the public has an interest, is a substantive offence of conspiracy. . . .

These propositions assume that a person has a right to do as he chooses with his own labour or capital, within the limits set by law . . . At the same time I am aware that such propositions assist but slightly in deciding specific cases of nuisance by obstruction, each of which involves for the most part many questions. . . . In the first place, it is a general rule relating to all nuisances, whether by obstruction or otherwise, that unlawfulness begins at a certain degree of annoyance, and that this degree is to be measured not by an exact standard, but on a supposed estimate of what is reasonable by men assumed to be prudent. . . . Secondly . . . Where there are conflicting interests, the limits for the exercise of the rights relating to such interests vary as circumstances vary, and the adjustment of the line where lawfulness ends and excess begins is not easy, because it is perpetually shifting. . . .

. . . The attempt to restrain trade in the relation between employers and employed begins for the most part with attempts in the way of combination, whereby the individuals of one class, either employers or labourers, attempt to restrain others of the same class from direct competition with themselves. Up to a certain point the attempt may be lawful . . . what is the point at which the attempt begins to be unlawful? And the answer, I submit, should be —When unlawful coercion is attempted to be put upon the will of any individual in disposing of his labour or his capital.[1] . . .

As to combination, each person has a right to choose whether he will labour or not, and also to choose the terms on which he will consent to labour, if labour be his choice. The power of choice in respect of labour and terms, which one person may exercise . . . many after consultation may exercise jointly, and they may make a simultaneous declaration of their choice, and may lawfully act thereon . . . but they cannot create any mutual obligation having the legal effect of binding each other not to work or not to employ . . . Any arrangement for that purpose . . . does not bind as an agreement, but is illegal, though not unlawful, on account of restraint of trade and is void. Every party to it who chooses to put an end to it is thenceforward free to claim his own terms for his own labour, as if such an arrangement had never been made; and any attempt to enforce, by unlawful coercion performance of any such supposed

[1] He is thinking principally of damage, deception, terror, or threats, but he also believes that, without such accompaniments, interference with trade on " malicious " motives would be illegal.

agreement against a party who chooses to break from it and labour or contract for labour upon different terms, is an attempt to obstruct him in the lawful exercise of his right to freedom to trade; and is thus a private wrong. It is also a violation of a duty towards the public. . . . A person can neither alienate for a time his freedom to dispose of his own labour or his own capital according to his own will . . . nor alienate such freedom generally and make himself a slave (*see* the argument of Hargrave in the Negro Sommerset's case 23 [1]); it follows that he cannot transfer it to the governing body of a union.

The reported cases exemplifying the application of these principles of Common Law are not numerous, because for some centuries statutes were passed with the intent of regulating the rate of wages, and the mode of conducting business, by the interference of the magistrate. . . .

IV.—. . . From the authorities referred to [2] . . . it appears that the crime of conspiracy consists of two elements—namely an intention, and an agreement by two or more to execute it; that an intention to use such coercion as is above described to be unlawful, against any person in the exercise of his right to freedom to trade is sufficient as to one element of conspiracy; and the making of the agreement to execute intention completes the offence. . . .

V.—. . . Two objections have been offered to the correctness of the principle that every employer and every working man has a right, as between him and his fellow subjects, to act according to his own will in disposing of his own capital or his own labour as far as is compatible with the rights of others; first because the law has put several restraints upon this freedom; and secondly, because in the professions of a physician and an advocate usage has put some restraint on this freedom in regard to the amount of fees.

As to the first objection, one answer is contained in the words used in defining the principle, by which its application is limited to the right of one subject *as against another subject.*

All rights are created by law, and are regulated by law, with the right to freedom as above described, although protected from violation by other subjects is still regulated under the law. The law restrains the working man of every rank from many kinds of work unless he has legal qualification . . . There are also restraints imposed by law to save the party restrained from damage by reason of his own ignorance or helplessness, such as restraints on women and children . . . under the Factory Acts. . . .

[1] Mansfield's judgement in this case, Vol. I, Sect. C, No. XX, p. 314.

[2] R. *v.* The Journeymen Taylors of Cambridge; R. *v.* Mawby; Hilton *v.* Eckersley; Walsby *v.* Anley.

These restraints by law are distinct from restraints by the will of another subject. The fullest freedom under the law as between him and his fellow subjects is compatible with countless restraints imposed by law for the benefit of his fellow subjects individually or of the public generally, or of himself. . . . .

[On the second point Erle argues that the restraints imposed by rules for doctors and lawyers are aimed at increasing efficiency in the public interest and not at limitation of membership for its own sake or to force up fees. Payments for their services are not fixed by bargaining; only registered doctors can sue for their fees, and advocates cannot do so at all. Their organization he holds to be therefore in the public interest and not for private advantage.]

[Royal Commission on Trades Unions, 11th Report, LXV, *Parl. Papers*, Sess. 1868–69, xxxi, 301.]

XLV

THE CROWN AND PARTY, 1872[1]

B. DISRAELI, (at a Manchester meeting) . . . Gentlemen, I am a party man. I believe that, without party, Parliamentary government is impossible. I look upon Parliamentary government as the noblest government in the world, and certainly the one most suited to England. But without the discipline of political connection, animated by the principle of private honour, I feel certain that a popular Assembly would sink before the power or the corruption of a minister. Yet, gentlemen, I am not blind to the faults of party government. It has one great defect. Party has a tendency to warp the intelligence, and there is no minister, however resolved he may be in treating a great public question, who does not find some difficulty in emancipating himself from the traditionary prejudice on which he has long acted. It is, therefore, a great merit in our Constitution that before a Minister introduces a measure to Parliament, he must submit to an intelligence superior to all party, and entirely free from influences of that character.

I know it will be said that, however beautiful in theory, the personal influence of the Sovereign is now absorbed in the responsibility of the Minister. I think you will find there is a great fallacy in this view. The principles of the English Constitution do not contemplate the absence of personal influence on the part of the Sovereign;

[1] Contrast this with Bagehot (Extract No. XLII), p. 410, and Viscount Gladstone (Extract No. LVI), p. 447, and see instances of the Queen's activity in all the latter part of this section.

and, if they did, the principles of human nature would prevent the fulfilment of such a theory. Gentlemen, I need not tell you that I am now making on this subject abstract observations of general application to our institutions and our history. But take the case of a Sovereign of England who accedes to his throne at the earliest age the law permits and who enjoys a long reign—take an instance like that of George III. From the earliest moment of his accession that Sovereign is placed in constant communication with the most able statesmen of the period, and of all parties. Even with average ability it is impossible not to perceive that such a Sovereign must soon attain a great mass of political information and political experience. Information and experience, whether they are possessed by a Sovereign or by the humblest of his subjects, are irresistible in life. No man with the vast responsibility that devolves upon an English minister can afford to treat with indifference a suggestion that has not occurred to him or information with which he had not been previously supplied. But, gentlemen, pursue this view of the subject. The longer the reign, the influence of that Sovereign must proportionately increase. All the illustrious statesmen who served his youth disappear. A new generation of public servants rises up. There is a critical conjuncture in affairs—a moment of perplexity and peril. Then it is the Sovereign can appeal to a similar state of affairs that occurred perhaps thirty years before. When all are in doubt among his servants he can quote the advice that was given by the illustrious men of his early years, and though he may maintain himself within the strictest limits of the Constitution, who can suppose when such information and such suggestions are made by the most exalted person in the country that they can be without effect? No, gentlemen; a minister who could venture to treat such influence with indifference would not be a Constitutional minister, but an arrogant idiot. . . .

[*Speeches of the Earl of Beaconsfield*, ed. Kebbel, ii, 492.]

XLVI

A DIVIDED CABINET—A REPORT TO THE QUEEN, 1877

Lord Beaconsfield to the Queen, Nov. 3, 1877

. . . Lord Beaconsfield thinks your Majesty should be made accurately acquainted with the views and feelings of the various

members of the Cabinet, with respect to the Eastern Question, in which your Majesty, naturally, takes so deep an interest.[1]

In a Cabinet of twelve members, there are seven parties, or policies, as to the course which should be pursued.

1st, the War Party pure and simple: which is of opinion that the time has arrived when material assistance should be afforded to the Porte. This party is headed by Mr. Secretary Hardy, supported by Lord John Manners, Sir M. Beach, and, before his untimely end, by the late First Lord of the Admiralty (Ward Hunt).

2nd, the party which is prepared to go to war, if Russia will not engage not to occupy Constantinople. The party consists of the Lord Chancellor, Mr. Secretary Cross, the present First Lord of the Admiralty (W. H. Smith), and the Duke of Richmond.

3rd, the party that is prepared to go to war, if, after the signature of peace, the Russians would not evacuate Constantinople. This party consists of the Marquis of Salisbury.

4th, the party of 'peace at any price' represented by the Earl of Derby.

5th, the party, which disapproves of any policy avowedly resting on what are called 'British interests,' which is considered 'a selfish policy' (almost as selfish as patriotism), and is in favor of an address to the four other neutral Powers, inviting them to join us 'in making some kind of appeal to the belligerents.' These are the views, very briefly, of the Chancellor of Exchequer [Sir S. Northcote]. They are utterly futile, and assuming as they do that Prince Bismarck, who is master of the situation, would join with the other neutral Powers in such a step, they approach silliness.

The 6th policy is represented by Lord Carnarvon, who did not conceal, at the last meeting of the Cabinet, his inclination, that Constantinople should be permanently acquired by Russia. These are the views of Lyddon, Freeman, and other priests and professors, who are now stirring in favor of the 'freedom of the Dardanelles.'

The 7th policy is that of your Majesty, and which will be introduced, and enforced to his utmost by the Prime Minister . . . [that Russia should be warned that unless she gave a written promise not to occupy Constantinople or the Dardanelles she could not count on British neutrality].

[Monypenny and Buckle, *Life of Disraeli*, vi, 194.]

[1] Contrast Vol. II, Sect. D, No. L (E), at p. 439; cf. also Vol. I, Sect. D, No. XXXIII, p. 374.

XLVII

CABINET RECORDS AND RECRIMINATION

(A)

. . . This incident [Lord Derby's disputing the facts of a Cabinet decision] . . . was typical of many others that have arisen through a disregard of what Lord Salisbury always held to be a fundamental requirement of the Cabinet System. Originating in a spontaneous gathering of friends, legally unrecognised, it had inherited a tradition of freedom and informality which was in his eyes indispensable to its efficiency. A Cabinet discussion was not the occasion for the deliverance of considered judgements but an opportunity for the pursuit of practical conclusions. It could only be made completely effective for this purpose if the flow of suggestions which accompanied it attained the freedom and fulness which belong to private conversations—members must feel themselves untrammelled by any consideration of consistency with the past or self-justification in the future. The convention which forbade any note being taken of what was said,—futile as a safeguard for secrecy, —was invaluable as a guarantee for this irresponsible licence in discussion. Lord Salisbury would have extended it in principle to the record preserved in each man's memory. The first rule of Cabinet conduct, he used to declare, was that no member should ever " Hansardise " another,—ever compare his present contribution to the common fund of counsel with a previously expressed opinion. Any record kept of the discussions must gravely restrict this invaluable liberty ;—if public reference to them were ever to be tolerated, it must disappear. . . .[1]

[Lady G. Cecil, *Life of Lord Salisbury*, ii, 223.]

(B)

. . . Talking of Cabinets, he [Lord Granville] said the one in which secrets had been best kept was Gladstone's first Cabinet. Mr. Gladstone followed Sir Robert Peel's example in always writing an agenda for the day. He was too much a man of business to like gossip at a Cabinet, whereas Lord Aberdeen often sat for hours listening and never saying a word. This Cabinet had been very leaky. Charles Villiers and Lord Clarendon were fond of talking too much in society.

[Sir A. West, *Recollections, 1832–1886*, p. 391.]

[1] Cf. Vol. II, Sect. D, No. XXXII, p. 398 ; contrast Vol. II, Sect. D, No. LXIII, p. 470.

XLVIII

THE QUEEN AND THE FORMATION OF A MINISTRY, 1880–87

(A)

THE QUEEN TO HER PRIVATE SECRETARY, MARCH 12, 1880 [1]

The Queen is anxious to write once more & more decidedly her very strong objection—indeed her determination *not* to accept Sir C. Dilke as a minister of any future Liberal govt. It is well known that he is a democrat—a disguised republican who is in communication with the extreme French republicans. He has been personally most offensive in his language respecting the Court—expenses, etc.,—& to place him in the govt., not to speak of the Cabinet, would be a sign to the whole world that England was sliding down into democracy and a republic. . . .

The Queen will not either accept people who have been personally offensive to her like Mr Lowe, Mr Ayrton, etc. She was unaware at the time Mr Gladstone proposed him to her that he was the person who had held disgraceful language towards her or she wᵘᵈ never have taken him. . . .

(B)

THE QUEEN TO HER PRIVATE SECRETARY, MARCH 13, 1880

The Queen has no objection . . . to Sir Henry Ponsonby's showing her Memᵐ. to one or two of the Leaders of the Opposition. . . .

The Queen is *no* partisan & *never has* been since the first three or four years of her reign when she *was* so from her inexperience & gᵗ friendship with Lᵈ. Melbourne. But she has, in common with many sound Liberals or Whigs, most *deeply* grieved over & been *indignant* at the *blind* and *destructive* course by the *Opposition* wʰ. wᵈ. *ruin* the country & her great anxiety is to *warn* them not to go on committing themselves to such a very dangerous & reckless course.

MEMORANDUM (BY SIR H. PONSONBY), MARCH 17, 1880

It was not desirable to show the Memo.

I told the Queen that my observation could be taken as hints, but that her Memo would be looked on as a message and create a row.

[1] The Queen's memorandum was headed, "Prospects of a Liberal Government"; her private secretary was Sir H. Ponsonby.

Granville and Hartington would be perplexed by it. It might induce them to abandon their posts as they could both do without office—and the persons named might resent this as interference. Dilke dislikes Granville and was received by the Prince of Wales (H.M. hoped not) and this might give rise to complications.

[A. Ponsonby, *Sir H. Ponsonby, His Life from His Letters*, pp. 181-84.]

(C)

SIR HENRY PONSONBY TO QUEEN VICTORIA, FEB. 3, 1886

General Sir Henry Ponsonby went direct to Mr. Gladstone on reaching London, but had to wait, as Mr. Childers was with him. Mr. Gladstone strongly urged that Mr. Childers should go to the War Office, and enquired what were the reasons your Majesty disliked him. Sir Henry Ponsonby could only say he was much disliked at the War Office and Admiralty, and that your Majesty could not possibly consent to his going to either Department again.

After some discussion Mr. Gladstone said he wished to please your Majesty to the best of his power, and therefore at a great sacrifice would give up Mr. Childers and would select the gentleman named by your Majesty, Mr. Campbell-Bannerman for the War Office. He was also ready to obey your Majesty's wishes as regards Lord Rosebery. . . .

QUEEN VICTORIA TO MR. GLADSTONE, Feb. 4, 1886

Osborne.—The Queen was so hurried yesterday that she had not time to write to Mr. Gladstone as she wished to do with respect to the Memorandum he sent her yesterday. She must say that it is absolutely necessary for Mr. Gladstone to *state explicitly what* his "examination" would lead to, for it would not be right that the country should be led step by step, as he himself would be, to approve, a measure which Mr. Gladstone *knows* the Queen cannot approve, and which has deterred four highly respected and influential Cabinet Ministers from joining his Government.[1] Mr. Gladstone *must* be aware that the want of explicitness on his part, both as regards Ireland and the Church Establishment, has produced many of the complications from which we are suffering now.

He *must now* let the country see what is likely to occur, or else there would be no object in turning out Lord Salisbury's Government.

[*Queen Victoria's Letters*, 3rd series, i, 42.]

[1] Presumably Lords Hartington, Selbourne, Derby, and Northbrook.

(D)

MARQUIS OF SALISBURY TO QUEEN VICTORIA, JAN. 2, 1887

. . . Lord Hartington writes that Mr. Goschen will accept if, after conversation with Lord Salisbury, no fatal divergence of policy shall appear.

Lord Salisbury regards the attainment of this result as a matter of enormous importance at this juncture, and would make great sacrifices to secure it. He earnestly hopes that your Majesty will [take] the same view of the situation and will give him the necessary powers.

It would be a grave national misfortune if this arrangement were to break [down] on any personal grounds.

(E)

QUEEN VICTORIA TO THE MARQUIS OF SALISBURY, JAN. 2, 1887

Delighted at good news which telegram from Mr. Goschen last night led me to expect. Quite agree as to great importance of this; and, though I should regret seeing any change, I will make only one exception, and that is, that one Member of your Cabinet, who is a real personal friend of mine and has been of great use to me, who was twice nearly sacrificed to please Lord Randolph and was made a Peer which he did *not* wish, should on no account be moved.[1] On this I must insist; any other arrangement which can be made without causing too much pain to others I will not object to.

[*Queen Victoria's Letters*, 3rd series, i, 247.]

XLIX

PARLIAMENTARY TIME

(A) QUESTIONS

THE GREAT OYSTER QUESTION

Speaking at the Free Trade Hall, Manchester, in June 1881, Sir Stafford Northcote gave the following illustration of one way in which the time of the House of Commons was consumed: "Every member in the House of Commons now desires to distinguish himself in some way or other. He has not the opportunity of making long speeches, because there is very little time given for

[1] Viscount Cross.

speeches in debate, and therefore the only way in which a great many men can bring themselves into notoriety is to put questions, and, if they do not get satisfactory answers, to move the adjournment of the House, and get up a debate. That suits extremely well the tastes of a great many gentlemen, and they come in and ask questions suggested by some accident. A man goes to his club and asks for oysters; he does not get them, and is told they are scarce. He immediately goes to the House and puts a question to the Home Secretary. He wants to know why oysters are scarce. Well, we have a very eloquent Home Secretary (Sir William Harcourt), but his colleagues do not encourage his speeches now he is in office, and his only opportunity is when answering questions, so that the best way of indulging his own very powerful fund of humour is in answering questions; and the probability is that when a man gets up to ask why oysters are scarce, the Home Secretary gives him an answer carefully written out over five or six pages of notepaper, and which occupies six or seven minutes in delivery. But the man is not satisfied with that; he returns to the attack, because he has now got connected with the oyster question. He immediately receives letters from all parts of the country, and suggestions as to remedies, and so he moves for returns, for he wants to know how many oysters are consumed. This is the sort of way—in many cases at least—that a very considerable portion of public time is wasted. But this gentleman's colleague, or perhaps his rival in another part of the empire, sees that his rival is getting into notoriety, so he must speak of something else; and in that way, instead of having, as I remember, some dozen or not twenty questions, we now find fifty, sixty, or seventy put in a night, and a debate got upon many of them." [1]

[Jennings, *Anecdotal History of Parliament* (publd. 1887), p. 437.]

(B) THE CLOSURE

In February, 1882, Sir Henry Brand, the Speaker of the House of Commons, addressing his constituents in Cambridgeshire, referred to his action in closing the debate . . . and said: "In a statement which he made to the House on the eventful sitting referred to, he thought it his duty to put before the House the necessity of assuming more effectual control over its debates. That opinion was deliberately founded on observations of the course of debates in the House of Commons during the present and past Parliaments. It might not be generally known that the House of

[1] For later limitation of the right to time for questions and for debate arising on them, see references in the 1914 Procedure Enquiry, Vol. II, Sect. B, No. XXVIII, p. 219.

Commons had no power whatever to close a debate, so that it was actually left at the mercy of small minorities, who on various grounds might desire to obstruct the business of the House. The will of the House of Commons was expressed by its votes; every vote involved the putting of a question from the chair, and upon such question every member might speak once and as long as he pleased, provided he spoke to the question; but, by an artifice of debate commonly practised, by moving adjournments members actually spoke as often as they pleased upon every question. In committee of the whole House there was no limit to the number of times which a member might speak to each question, and at every sitting of the House the Speaker put from the chair questions by the score, some more or less formally, but all of which might become the subject of debate without limit. Neither the House nor the Speaker could close a debate, and, as long as members rose and presented themselves to speak, the debate must go on. He knew of no power whatever that could close a debate in the House, except the sovereign power the Queen exercised when she prorogued Parliament.[1] Face to face with a grave crisis, he took upon himself to close a debate. But the House had not as yet signified its pleasure as to the action of the Speaker, should a similar crisis occur. It was said that freedom of speech was endangered if the House should assume the power to close a debate. Now, freedom of speech was the breath of the life of the House of Commons, and if freedom of speech was put in peril, he should be no party to a procedure of that kind; but he was persuaded that the House, in its wisdom, might find a way of safeguarding liberty of speech, and of combining order with freedom of debate."

[Jennings, *Anecdotal History of Parliament* (publd. 1887), p. 605.]

L

ROYAL INFLUENCE ON POLICY AND CABINET UNITY, 1882–85

(A)

The Queen to her Private Secretary, May 31, 1882

. . . With respect to Ireland & the Ministers, the Queen regrets to see that she has *no one* real *independent* friend in the Cabinet, never hearing exactly what passes, & finding that *no one* will see the

[1] Cf. Vol. I, Sect. B, No. VI (J), p. 179, and No. XVII (D), p. 196.

danger of going so much ahead with the radicals. The truth is, that, like so many people, Lord Granville has not the courage of his opinions & therefore is of not the slightest use to the Queen. She thinks him besides very much shaken morally & physically & she is afraid, that the Cabinet do not see sufficiently the great danger, of letting Egypt slip from under our control. Lord Beaconsfield would have foreseen this at once, & acted with great energy. Sir Henry Ponsonby must know well, that the Queen *cannot* communicate frequently & openly with Mr. Gladstone, as he does not possess her confidence; & *that* was *one* of the reasons, why she so strongly objected to taking him as her Prime Minister, as she felt & feels how false & painful her position is with regard to him. The Queen trusts from what Lord Spencer writes to her, that Mr. Gladstone & the Cabinet will be firm about the Prevention of Crime Bill, as he seems very strong upon it himself & that the Government let themselves be guided by Lord Spencer.

(B)

THE QUEEN TO HER PRIVATE SECRETARY, DEC. 15, 1882

Would Sir Henry tell Mr. Gladstone *how* unpleasant it is for her to have L^d^. Derby as a Minister for she utterly despises him; he has no feeling for the honour of England & the language in the French press & the alarm felt in Germany (she had a letter from her daughter hoping it was not true) show what a *very bad effect* his name will have on the Govt. All will believe that a "cotton-spinning", "peace-at-all-prices" policy is now to be favoured! Tell this *all* to Mr. Gladstone. It is too bad of Lord Granville *not* to give her a hint of this before it was too late. He has not once (since he came into office) been of the slightest help to her at all & it is a *gr^t^. shame.*

Mr. Gladstone will have to resist L^d^. Derby's foreign views at any time. But in the Colonies he may also do gr^t^. harm—by letting everything go. . . .

[A. Ponsonby, *Sir H. Ponsonby, His Life from His Letters*, pp. 192, 193.]

(C)

MEMORANDUM BY THE QUEEN, DEC. 16, 1882

The Queen was *grtly shocked* when Mr. Gladstone proposed Mr. Chamberlain in these uncomfortable words "Sir C. Dilke says *his friend* Mr. Chamberlain is quite ready to exchange with him"! The Queen gr^tly^ objected & was told Mr. Chamberlain had never said anything like [it to] Sir C. Dilke. But she maintained her

objections & she said that there might be other arrange^{ts}. The Queen is determined *not* to have a man like Mr. Chamberlain to hold such a personal app^{t}. & Mr. Gladstone sh^{d}. be told the Queen will NOT have him. If Sir C. Dilke & Mr. Chamberlain are such " friends " their power for mischief may be *very great.*

L^{d}. Granville's silence in all this shocks the Queen gr^{tly}. L^{d}. Hartington is the most straight forward & reliable & far less radical.

(D)

SIR HENRY PONSONBY TO EDWARD HAMILTON (GLADSTONE'S PRIVATE SECRETARY), DEC. 16, 1882

From your criticism I think you do not at all understand her feelings about Lord Derby. What she said could not have reflected in any way on Mr. Gladstone.

She disliked Lord Derby under the late Government but respecting his traditionary connection with the Tories she did her best to be friendly with him.

He threw her over at a critical moment. You will object that it was not " her " but " her Government ". But She looks upon it that England was on the eve of disastrous consequences, and that his action nearly ruined the country—and that what ruins the country is a crime against her and not against her Government.

That acts of this sort are above party consideration and that now he comes to her as one not who feels with her for the honor of the country as she believed he formerly did—but as one who is ready to sacrifice it at any moment.

Taking this from her point of view you will admit these are very different circumstances. She feels this more strongly than the Republican pill as you call the Member for Chelsea, [Sir Charles Dilke] as she believes to some extent in his determination and energy on behalf of the country. And in his case it was a personal attack upon her. This she is willing to pass by if some expression of regret for it is made. And I imagine this will be made.

(E)

THE QUEEN TO SIR HENRY PONSONBY, APRIL 15, 1885

With respect to Mr. Gladstone, the Queen does feel she is always kept in the dark.

In L^{d}. Melbourne's time she knew *everything* that *passed* in the Cabinet & the different views that were entertained by the different ministers, & there was no concealment. Sir Robert Peel, who was completely *master* of his Cabinet (& the Prime Minister *ought* to be) was after the 1st strangeness for her [who] hardly knew him, also very

open. L^d. Russell less communicative but still far more so than Mr. Gladstone & L^d. Palmerston too. They mentioned the names of the Ministers & their views. L^d. Palmerston again kept his Cabinet in g^t. order. L^d. Derby was also entirely master of his Cabinet. L^d. Aberdeen was most confidential & open & kind—L^d. Beaconsfield was like L^d. Melbourne. He told the Queen everything (He often did not *see* her for months) and said: "I wish you to know everything so that you may be able to judge".[1] Mr. Gladstone never once has told her the different views of his colleagues. She is kept completely in the dark—& when they have quarrelled over it and decide amongst themselves he comes and tries to *force* this on her.

The Queen is gr^tly aggrieved at the utter ignorance in which she is kept. It is very wrong & Mr. Gladstone cannot expect the Queen to have any confidence in a Minister who never tells her the different views of the different people in the Cabinet. He speaks of the result or of "one or two members" etc., & she stands alone & unsupported & unable to know what goes on! The Queen has never been treated so badly by any Ministers or Minister in this respect as the *present*. Sir Henry cannot wonder if the Queen wd. not be sorry if Mr. Gladstone retired. She is sure L^d. Hartington w^d. not do this.

[A. Ponsonby, *Sir H. Ponsonby, His Life from His Letters*, pp. 193-95.]

(F)

LORD SALISBURY TO SIR HENRY PONSONBY, NOV. 29, 1885

I have some difficulty in answering your letter, because the matter of it, the gravest that could possibly be discussed [a Conservative Home Rule Bill] has not yet been laid before the Cabinet for their decision. I did not anticipate that Lord Carnarvon would trouble the Queen with this question at this stage. I hold that the Queen should not be troubled with the divergent opinions of Ministers until they have ascertained by discussion that they cannot agree. The opinions of Lord Carnarvon have been mentioned at the Cabinet and they were repudiated by all the Ministers that spoke; but no general discussion was opened; and it was agreed to defer the matter until we should have ascertained by the Elections how far the matter was a practical one for us. I am therefore speaking only for myself in what follows. . . .

[A. Ponsonby, *Sir H. Ponsonby, His Life from His Letters*, p. 199.]

[1] Vol. II, Sect. D, No. XLVI, p. 429.

LI

CABINET SOLIDARITY, 1883

MR. GLADSTONE TO LORD GRANVILLE, JAN. 22, 1883

To-day I have been a good deal distressed by a passage as reported in Hartington's very strong and able speech, for which I am at a loss to account so far does it travel out into the open, and so awkward are the intimations it seems to convey. I felt that I could not do otherwise than telegraph to you in cipher on the subject. . . . While I thought an immediate notification needful, I was far from wishing to hasten a reply and desire to leave altogether in your hands the modes of touching a delicate matter. . . .

LORD HARTINGTON TO LORD GRANVILLE, JAN. 25, 1883

I am very sorry that my speech should have caused so much disturbance to Mr Gladstone, and I fear that I cannot say anything reassuring. My reason for forestalling discussions in the cabinet was that other members of the Government, Chamberlain for instance, and Herbert Gladstone, had spoken very strongly in the sense of advocating a large change in the local government of Ireland, and that it appeared to me that the Cabinet might, to a certain extent, become committed to a policy which it had never discussed and to which I felt the strongest objection.

Till I read Mr. Gladstone's letter, I confess that I had forgotten that the subject of Irish Local Government had ever been mentioned in a Queen's Speech by the present Government. How the paragraph referred to by Mr Gladstone could have found its way there I cannot in the least remember. So far as I know, no Bill was ever proposed by the Irish Government. No discussion upon it ever took place in the Cabinet and I can recollect no reference to, or explanation of, the paragraph in debates. . . .

[B. Holland, *Life of the Duke of Devonshire*, i, 386-88.]

LII

VOTING AND DISCIPLINE IN THE CABINET, 1885

THE DUKE OF ARGYLL TO MR. GLADSTONE, DEC. 18, 1885

From the moment our government was fairly under way, I saw and felt that speeches *outside* were allowed to affect opinion, and politically to commit the cabinet in a direction which was not determined by you deliberately, or by the government as a whole, but by the audacity . . . of our new associates. Month by month I became more and more uncomfortable, feeling that there was no paramount direction—nothing but *slip* and *slide*, what the Scotch call ' slithering '. The outside world, knowing your great gifts and powers, assume that you are dictator in your own cabinet. And in one sense you are so, that is to say, that when you choose to put your foot down, others will give way. But your amiability to colleagues, your even extreme gentleness towards them, whilst it has always endeared you to them personally, has enabled men playing their own game . . . to take out of your hands the *formation* of opinion.

[Morley comments on this] : . . . In common talk and in partisan speeches, the prime minister was regarded as dictatorial and imperious. The complaint of some at least among his colleagues in the cabinet of 1880 was rather that he was not imperious enough. Almost from the first he too frequently allowed himself to be overruled ; often in secondary matters, it is true, but sometimes also in matters on the uncertain frontier between secondary and primary. Then he adopted a practice of taking votes and counting numbers, of which more than one old hand complained as an innovation. Lord Granville said to him in 1886, ' I think you too often counted noses in your last cabinet.'

What Mr. Gladstone described as the severest fight that he had ever known in any cabinet occurred in 1883, upon the removal of the Duke of Wellington's statue from Hyde Park Corner. A vote took place, and three times over he took down the names. He was against removal, but was unable to have his own way over the majority. Members of the government thought themselves curiously free to walk out from divisions. On a Transvaal division two members of the cabinet abstained, and so did two other ministers out of the cabinet. In other cases, the same thing happened, not only breaking discipline, but breeding much trouble with the Queen.

[Morley, *Gladstone*, iii, 4, ed. of 1903.]

LIII

THE QUEEN AND FOREIGN POLICY,[1] 1886

EXTRACT FROM THE QUEEN'S JOURNAL, FEB. 6, 1886

Had some conversation with Lord Rosebery, who seemed much impressed with the difficulties of his new office of Foreign Secretary and said: "It was too much." I spoke anxiously of the Eastern question, and that I knew both Greece and Russia were waiting to see whether the new Government, especially Mr. Gladstone, would not alter their course, and that it was of the utmost importance that Lord Rosebery should at once state that there was going to be no alteration whatever in the British policy . . . should act according to his previous instructions. Lord Rosebery answered, that he quite agreed, and wished no change, but that he thought it right to speak first to Mr. Gladstone. . . . I spoke to Lord Rosebery about his Under-Secretary, Mr. Bryce, whom I did not know much about. He was a Scotch Professor. Lord Rosebery said he would insist on Mr. Bryce writing down every word he was to say, and his being told to say nothing more on his own account.

I urged Lord Rosebery not to bring too many matters before the Cabinet, as nothing was decided there, and it would be far better to discuss everything with me and Mr. Gladstone. Lord Rosebery is very friendly towards Germany, but is now aware that his friend, Count Herbert Bismarck, is not to be trusted. He does not very much care for France. I said I was ready to see him often, and to help him, and that I frequently had intelligence of a secret nature, which it would be useful and interesting for him to hear, and which came from a reliable source. Lord Rosebery is very anxious that there should be a continuity of foreign policy, which I naturally approve of, as I thought continual changes were very bad and dangerous. . . .

[*Queen Victoria's Letters*, 3rd series, i, 47, 48.]

[1] Cf. Vol. I, Sect. B, No. VII, p. 179, and Vol. II, Sect. D, No. XXXI, p. 395.

LIV

THE QUEEN CONSULTING THE OPPOSITION, 1886

THE MARQUIS OF SALISBURY TO QUEEN VICTORIA, MAY 15, 1886

. . . Lord Salisbury . . . respectfully encloses a Memorandum upon the question of dissolution, in obedience to your Majesty's commands. He has ventured to cast his observations in this form as being the most intelligible. There appears now to be no doubt as to the defeat of the Bill. . . .[1]

Secret. Enclosure.—Memorandum by the Marquis of Salisbury

The question I have to consider is whether, if Mr. Gladstone, on the defeat of his Bill, wishes to dissolve, it is desirable that he should be permitted to do so;[2] or whether it is better that Lord Hartington should be sent for.

I have taken the best means in my power to ascertain what the result is likely to be, if Mr. Gladstone should dissolve. Such conjectures are uncertain, and can only be offered with diffidence. But I am told that the political sections who are opposed to the Home Rule Bill will probably come back stronger than they are now; and, as any defeat of that kind would probably involve Mr. Gladstone's retirement, the result would be a great increase of strength to the party of resistance.

On the other hand this Parliament is so constituted that it cannot last long; and Mr. Gladstone's Party, if he is refused leave to dissolve, will do all in their power to make government impossible, and so to force a dissolution. But that dissolution, when it comes, will find us in a less favourable condition. Mr. Gladstone will have had time to raise some other Radical cry besides Home Rule; and so to regain the allegiance of Members who are falling away from him now.

Looking at the matter, therefore, purely in reference to the Home Rule controversy, it seems to be preferable that Mr. Gladstone should dissolve. But there are some other considerations pointing in the same direction.

If Mr. Gladstone is refused leave to dissolve, the fact will certainly be known. His *entourage* is far from discreet; and they are

[1] Gladstone's first Home Rule Bill.

[2] See Vol. II, Sect. D, No. XXX, p. 393, and Sect. B, No. XVI, p. 188.

very bitter. The consequence must be that those who are in favour of Home Rule—the Irish, and the more Radical English—will think, and say, that the action of the Queen is keeping them from Home Rule. A great deal of resentment will be excited against the Queen; and, if tempestuous times should follow, the responsibility will be thrown on her. This is undesirable, to say the least; especially if no object is to be gained by it. Whether it would diminish her influence seriously or not it is difficult to determine; but the risk of such a diminution ought not to be lightly incurred. Her influence is one of the few bonds of cohesion remaining to the community.

. . . this consideration [*i.e.* the Queen's health] adds another to the grounds which make it desirable that Mr. Gladstone should have leave to dissolve if he wishes it.

It is the natural and ordinary course; it will shield the Queen from any accusation of partisanship; it is likely to return a Parliament more opposed to Home Rule than the present; and it will adapt itself to the peculiar difficulties, as to the Queen's movements, which arise from the crisis coming at this particular date.

At the same time, I ought to repeat that electoral forecasts are notoriously insecure; and that the estimate which I have given of the result is only the best that I have been able to arrive at from the figures before us.

[*Queen Victoria's Letters*, 3rd series, i, 128.]

LV

CHANGES IN THE CHARACTER AND SCOPE OF GOVERNMENT

LECTURES WRITTEN BY MAITLAND, APRIL 1888

(A)

My object in saying so much of the statutory powers by means of which our government is now-a-days conducted, is to convince you that the traditional lawyer's view of the constitution has become very untrue to fact and to law. By the traditional lawyer's view I mean that which was expressed by Blackstone in the middle of the eighteenth century, and which still maintains a certain orthodoxy. According to that view, while the legislative power is vested in king and parliament, what is called the executive power is vested in the

king alone, and consists of the royal prerogative. Now most people know that this is not altogether true to fact—they know that the powers attributed to the king are really exercised by the king's ministers, and that the king is expected to have ministers who command the confidence of the House of Commons. Still I think that they would say that this was a matter not of law, but of convention, or of constitutional morality—that *legally* the executive power is in the king, though constitutionally it must be exercised by ministers. But the point that I wish to make is that this old doctrine is not even true to law. To a very large extent indeed England is now ruled by means of statutory powers which are not in any sense, not even as strict matters of law, the powers of the king. Let us take an instance or two. Look at the police force, that most powerful engine of government. That force was gradually created by means of a series of statutes ranging from 1829 to 1856. To some extent it was placed under the control of local authorities, of the justices of the peace in the counties, of watch committees in the boroughs: but a power of issuing rules for the government was given—to whom? not to the queen, but to one of H.M. principal Secretaries of State, which means in practice the Home Secretary. It is not for the queen to make such regulations: it is for the Secretary. So as to the administration of the poor law. In 1834, when the law was remodelled, a central authority was created with a large power of issuing rules, orders and regulations as to the relief of the poor. This power was given, not to the king, but to certain poor law commissioners,[1] and it has since been transferred to the Local Government Board. Look again at the powers of regulating the mercantile marine created by the great Merchant Shipping Act of 1854 or the powers relating to public elementary education given by the act of 1870. These are not given to the queen—they are given in the one case to the Board of Trade, in the other case to the Education Department.

How vast a change has taken place since Blackstone's day we may see from a very interesting passage in his book, Book I, chap. IX. He has a chapter on the Subordinate Magistrates. In this he speaks of sheriffs, coroners, justices of the peace, constables, surveyors of highways, and overseers of the poor. He prefaces it with these words, 'In a former chapter of these commentaries we distinguished magistrates into two kinds: supreme, or those in whom the sovereign power of the state resides; and subordinate, or those who act in an inferior secondary sphere. We have hitherto considered the former kind only, namely the supreme legislative power or parliament, and the supreme executive power,

[1] See Vol. II, Sect. A, No. XXIV, § XV, at p. 72.

which is in the king; and are now to proceed to inquire into the rights and duties of the principal subordinate magistrates. And herein we are not to investigate the powers and duties of his majesty's great officers of state, the lord treasurer, lord chamberlain, the principal secretaries or the like; because I do not know that they are in that capacity in any considerable degree the objects of our laws or have any very important share of magistracy conferred upon them: except that the secretaries of state are allowed the power of commitment in order to bring offenders to trial.' Now that is a very memorable sentence, and on the whole (though perhaps it is a little exaggerated) I think that it was true in Blackstone's day. The lord treasurer, the secretaries of state, were of course very important persons—perhaps quite as important then as now—but the law knew them not, or merely knew them as persons who advised the king in the use of his prerogatives. The law gave powers to sheriffs and coroners, to surveyors of highways and overseers of the poor; it gave few powers to the high officers of state, to the men who for good and evil had really the destinies of England in their hands: the powers that they in fact exercised were in law the king's powers. But I know no proof of the power of Blackstone's genius so striking as the fact that the sentence that I have just quoted should be repeated now-a-days in books which profess to set forth the modern law of England. Does not our law know these high officers of state? Open the statute book, on almost every page of it you will find 'it shall be lawful for the Treasury to do this,' 'it shall be lawful for one of the Secretaries of State to do that.'

This is the result of a modern movement, a movement which began, we may say, about the time of the Reform Bill of 1832. The new wants of a new age have been met in a new manner—by giving statutory powers of all kinds, sometimes to the Queen in Council, sometimes to the Treasury, sometimes to a Secretary of State, sometimes to this Board, sometimes to the other. But of this vast change our institutional writers have hardly yet taken any account. They go on writing as though England were governed by the royal prerogatives, as if ministers had nothing else to do than to advise the king as to how his prerogatives should be exercised.

In my view, which I put forward with some diffidence and with a full warning that it is not orthodox, we can no longer say that the executive power is vested in the king: the king has powers, this minister has powers, and that minister has powers. The requisite harmony is secured by the extra-legal organization of cabinet and ministry. The powers legally given to the king are certainly the most important, but I cannot consent to call them supreme. To be able to declare war and peace is certainly an important power,

perhaps the most important power that the law can give, and this belongs to the king. But the power to make rules for the government of the police force is also an important power, and this our law gives to a secretary of state. The one power may be vastly more important than the other, but it is in no sense supreme over the other. The supremacy of the king's powers, if it is to be found anywhere, must be found in the fact that the ministers legally hold their offices during his good pleasure.

[Maitland, *Constitutional History of England*, p. 415.]

(B)

. . . it seems to me impossible so to define constitutional law that it shall not include the constitution of every organ of government whether it be central or local, whether it be sovereign or subordinate. It must deal not only with the king, the parliament, the privy council, but also with the justices of the peace, the guardians of the poor, the Boards of Health, the School Boards, and again with the constitution of the Treasury, of the Education Department, of the Courts of Law. Naturally it is with the more exalted parts of the subject that we are chiefly concerned; they are the more intelligible and the more elementary: but we must not take a part for the whole or suppose that matters are unimportant because we have not yet had time to explore them thoroughly. Year by year the subordinate government of England is becoming more and more important. The new movement set in with the Reform Bill of 1832: it has gone far already and assuredly it will go farther. We are becoming a much governed nation, governed by all manner of councils and boards and officers, central and local, high and low, exercising the powers which have been committed to them by modern statutes.

[Maitland, *Constitutional History of England*, p. 501.]

LVI

ROYAL OFFICE—ITS DRAWBACKS, 1880-90 [1]

Who can blame the Queen? Prince Albert and Lord Beaconsfield alike had made her believe that continuity of high responsibility gave her knowledge and experience to which no passing minister

[1] Cf. Vol. II, Sect. D, No. XLII, at p. 415, and No. XLVI, p. 429.

could attain. This she firmly and honestly believed. But in fact this continuity on the heights cut her off from all opportunity of personal contact with the ideas of the people, and relieved her from the necessity of ever going to the roots of big questions by reason and argument. Politicians had to fight these things out in principle and detail on the platform, in the press, and in the House of Commons. They were in the continuity, not of the Throne, but of arduous public life. Their battles on national problems persisted for years, often for generations. Discussion and inquiry produced stages in their minds and in the minds of the people, which were steps to progress. Continuity such as the Queen experienced, was a great disadvantage because in its constitutional irresponsibility it was " out " of touch with forward movements. Those who are neither responsible actors nor students never undergo the grinding toil essential to the real understanding of difficult questions and problems, whether on foreign or home affairs. So of necessity was it in the case of the Queen. On a change of government, the Prime Minister would disclose his policy in formulæ on foreign affairs or projected Bills to the Queen, whose knowledge was confined to generalities and whose lofty isolation kept her apart from the all-essential dynamics of politics.

[Viscount Gladstone, *After Thirty Years* (publd. 1928, but here discussing the 1880's and 1890's), p. 375.]

LVII

CHOOSING A PRIME MINISTER, 1894

LORDS AND COMMONS

Lord Rosebery's Diary

February 25,[1] 1894. Asquith came. . . . He had been summoned to Harcourt yesterday to listen to a long memorandum. It set forth that the P.M. should be in the H. of C. But that he if it were the general wish would lead the H. of C. under conditions:

[1] Mr. Gladstone resigned on March 3, 1894: he had expected the Queen to ask his advice about his successor and intended to suggest Lord Spencer. On his way to resign Sir H. Ponsonby spoke to him and " was much impressed with the movement among a body of members of parliament against having any peer for prime minister. I signified briefly that I did not think there should be too ready a submission to such a movement.". . . " He [*i.e.* Ponsonby, the Queen's private secretary] came . . . desiring to obtain from me whatever I thought proper to say as to persons in the arrangements for

1. that he should take independent decisions in the House; 2. that he should see all F.O. despatches; 3. that he should have some control of patronage; and another which I forget.[1]

I remarked that it might be difficult to serve under Harcourt, but that it would be still more difficult to serve over him. Marjoribanks also said that there was a growing feeling in the H. of C. against a peer. I said I was delighted to hear it.

[Marquis of Crewe, *Life of Rosebery*, ii, 441.]

LVIII

THE QUEEN AND THE HOUSE OF LORDS, 1894

CAMPBELL-BANNERMAN'S NOTES OF A CONVERSATION WITH THE QUEEN AT BALMORAL, NOV. 6 AND 7, 1894

6 Nov.—Could never agree to taking from the Lords their power to alter or reject measures, this might be obtained from a President, not from her. Thinks it cruel that after her long reign at her age, with her many cares, she should be obliged to refuse her assent to proposals of her Ministers, when it would be her greatest pleasure to support them.

7 Nov.—Wishes to talk to me about this terrible question: so anxious there should be no agitations and no public meetings: thought an immediate dissolution would have avoided this.

Quite admitted that the H. of L. might require reform; Lord S. thought it did. But we must have a check against the H. of Commons which too strong, and had been ever since Lord Beaconsfield's most unfortunate Act.

Admitted that it was not wise to oppose a barrier to public opinion, better to guide and moderate it. . . .

the future. I replied . . . All my thoughts on it were absolutely at the command of the Queen . . . if he enquired of me from her and in her name; but that otherwise my lips must be sealed" (Morley, iii, 513, Mr. Gladstone's Memorandum). The Queen never made the formal enquiry. The Queen was in communication with Lord Rowton and thought of consulting Lord Salisbury (*Queen Victoria's Letters*, 3rd series, ii, 368), a step of whose dangers she was warned by Lord Rosebery (A. Ponsonby, *Sir H. Ponsonby, His Life from His Letters*, p. 277).

[1] It was, in fact, that a Cabinet should be called at his request. For comparison with such stipulations when the leadership was disputed, see Vol. II, Sect. D, No. XXXIX (C), at p. 408, and cf. also No. XXXVIII, p. 406.

Made a point of the alarm of all the better classes, the Budget being the latest instance, and pointed out that all the Liberal peers had turned against us, and Mr. G. had had great difficulty in finding a Household. It was this alarm that caused the antagonism between the two Houses, so that it was our fault.

I expressed regret that she should be so troubled; it was not we who raised the question but the peers who brought it on by their contemptuous treatment of the opinions represented in H. of C.; (a) believed there was no violent feeling in the country, but a strong steady conviction that present position was neither solid nor safe; ridiculous to have this elaborate representative system and maintain a House to check its result: check only applied to legislation, not to whole sphere of administration; (b) result as to legislation frequently that more violent Bills of Tories are passed when moderate Liberal Bills are refused; (c) no check in fact at all while Tories are in power: illusory as useful check, but great power to provoke and cause worse evils; better to trust those who have been given the power; (d) reasonable and sensible feeling throughout the masses; (e) House of Commons also not so bad as she thought; (f) no agitation necessary; cannot prevent discussion at public meetings; no necessity for violent language, case being so strong....

[J. A. Spender, *Life of Campbell-Bannerman*, i, 171.]

LIX

THE CABINET AND A CIVIL SERVICE DEPARTMENT, 1902

Morant is the principal person at the Education Department. He has occupied the most anomalous position the last six months . . . Gorst [1] picked him out for his private secretary. In that way he became acquainted with the politicians—Cabinet Ministers and Conservative private members, who were concerned with Education Bills and education policy. . . . So Morant has been exclusively engaged by the Cabinet Committee to draft this present Bill, attending to its meetings and consulting with individual members over clauses, trying to get some sort of Bill through the Cabinet. Both Kekewich [2] and Gorst have been absolutely ignored. Neither the one nor the other saw the Bill before it was printed. Just before

[1] Sir J. E. Gorst, M.P. for Cambridge University, Vice-President of the Committee of the Privy Council on Education, 1895–1902.

[2] Sir George Kekewich, Permanent Secretary of the Education Department.

its introduction in the House, Morant wrote to Gorst saying he assumed he " might put his name at the back ". Gorst answered: " I have sold my name to the Government; put it where they instruct you to put it! " Morant gives strange glimpses into the working of one department of English government. The Duke of Devonshire,[1] the nominal Education Minister, failing through inertia and stupidity to grasp any complicated detail half-an-hour after he has listened to the clearest exposition of it, preoccupied with Newmarket, and in bed till 12 o'clock; Kekewich trying to outstay this Government and quite superannuated in authority; Gorst cynical and careless, having given up even the semblance of any interest in the office; the Cabinet absorbed in other affairs and impatient and bored with the whole question of education. " Impossible to find out after a Cabinet meeting," Morant tells us, " what has actually been the decision. Salisbury does not seem to know or care, and the various Ministers who do care, give me contradictory versions. So I gather that Cabinet meetings have become more than informal—they are chaotic—breaking up into little groups, talking to each other without anyone to formulate or register the collective opinion. Chamberlain would run the whole thing if he were not so overworked by his own department."

[Beatrice Webb's Diary, April 1902, *Our Partnership*, p. 239; quoted D. N. Chester, *Public Administration*, 1950.]

LX

THE KING AND THE TWO HOUSES,[2] 1906

(A)

Lord Knollys to Campbell-Bannerman, Nov. 23, 1906

The King desires me to thank you for your Cabinet letter of the 21st, in which you say that the meeting " was entirely engaged with the arrangement of public business necessary for the conclusion of the session ". His Majesty can, however, hardly suppose, after what you told him at Windsor, that no discussion took place on the probability of an important and serious conflict arising between the House of Lords and the House of Commons.

This is a matter which most closely concerns the Sovereign, and the King directs me to let you know that he is naturally anxious to be informed if any discussion occurred which will enable

[1] The 8th Duke of Devonshire, President of the Council, 1895–1903.

[2] See also next extract, p. 453, and references there given.

you to ascertain the views of your colleagues on the subject in question.

(B)

EDWARD VII TO CAMPBELL-BANNERMAN, NOV. 26, 1906

In view of the serious state of affairs which would arise were a conflict to take place between the House of Lords and the House of Commons on the amendment passed by the former House on the Education Bill, the King feels certain that Sir Henry Campbell Bannerman will agree with him in thinking it is most important that there should, if possible, be a compromise in respect to these amendments.

The King would, therefore, ask Sir Henry to consider whether it would not be highly desirable that Sir Henry should discuss the matter with the Archbishop of Canterbury in the hope that some *modus vivendi* on the line of mutual concessions could be found to avoid the threatened commotion between the two Houses.

For the King thinks it would be deplorable, from a constitutional and every point of view, were such a conflict to occur. The King proposes to send a copy of this letter to the Archbishop, and wishes also to call Sir Henry's attention to pages 7-43 in the second volume of *Archbishop Tait's Life*, when a contest was on the eve of taking place between the Houses on the Irish Church question in 1869.

CAMPBELL-BANNERMAN TO EDWARD VII, NOV. 25, 1906

Sir Henry Campbell Bannerman . . . will at once place himself at the disposition of the Archbishop . . . to advance the prospect of an arrangement . . . but it may be that the time has not yet arrived for an actual accommodation.

Sir Henry Campbell Bannerman begs leave again to assure Your Majesty of his earnest desire to avoid unnecessary friction or conflict, and to spare Your Majesty trouble and anxiety. He was aware broadly of the incidents of 1869, but has refreshed his knowledge by reading the passages in *Archbishop Tait's Life* to which Your Majesty has referred him.

CAMPBELL-BANNERMAN TO EDWARD VII, NOV. 27, 1906

Sir Henry Campbell Bannerman, with his humble duty, knowing the deep interest which Your Majesty takes in the present education controversy, and its possible future course, begs leave to say that last evening he visited the Archbishop whom he regretted

to find suffering from serious indisposition. This fact, however, did not prevent them from having a long discussion: but they were both agreed that they could not carry it much further than they had gone at Windsor a week ago. . . .

EDWARD VII TO CAMPBELL-BANNERMAN, NOV. 27, 1906

. . . The King quite sees the difficulty of the position of his Government and of the Primate, but from the last paragraph of the Prime Minister's letter the King is glad to learn from Sir Henry's evident wish for consideration that an arrangement may yet be possible which would prevent a collision between the two Houses of Parliament.

[J. A. Spender, *Life of Campbell-Bannerman*, ii, 301 *seq.*]

LXI

THE KING AND THE STRUGGLE WITH THE PEERS, 1909-11 [1]

(A)

ASQUITH'S NOTE OF A CONVERSATION WITH EDWARD VII, OCT. 6, 1909

. . . He entered almost at once on the subject of the Budget and the Lords.

He asked me whether I thought he was well within constitutional lines in taking upon himself to give advice to, and if necessary put pressure upon, the Tory leaders at this juncture.

I replied that I thought what he was doing and proposing to do, perfectly correct, from a constitutional point of view; that the nearest analogy was the situation and occasion of William IV at the time of the Reform Bill; in both cases the country was threatened with a revolution at the hands of the House of Lords.

He said that in that case, he should not hesitate to see both Balfour and Lansdowne on his return to London. . . .

They might naturally ask what, if they persuaded the Lords to pass the Budget they were to get in return. It had occurred to him that the best answer would be: " An appeal to the country—such as you say you want: only *after* and not before the final decision on the Budget. . . . What had I to say to this? . . .

I did not think . . . that a dissolution could be very long delayed, but the arguments against forcing it on in January seemed to me to be difficult to answer.

[1] See Vol. II, Sect. A, No. XLII, p. 140, and Sect. B, No. XXV, p. 205, and Sect. D, No. LX, p. 451.

(B)

MEMORANDUM FOR THE PRIME MINISTER BY VAUGHAN NASH [HIS PRIVATE SECRETARY] DEC. 15, 1909

Lord Knollys [the King's Private Secretary] . . . began by saying that the King had come to the conclusion that he would not be justified in creating new peers (say 300) until after a second [1] general election. . . . The King regards the policy of the Government as tantamount to the destruction of the House of Lords. . . .

. . . If the plan for dealing with the Veto follows the general lines of the House of Commons resolution [2] coupled with shorter Parliaments (the King prefers four years to five) the King would concur, though apparently he would still hesitate to create Peers . . . his objection to the creation of Peers would be " considerably diminished " if Life Peers could be created . . .

Before coming away I thought I had better ask Lord Knollys whether the King realised that at the next General Election the whole question of the Lords would be before the country, and that the electors would know that they were being invited to pronounce . . . on the broad principles which were involved in the Government's policy. . . . I came away with the impression that the King's mind is not firmly settled and that it might be useful if you saw him some time before the Elections . . .

(C)

REVD. J. SCOTT LIDGETT [3] TO THE ARCHBISHOP OF CANTERBURY, DEC. 19, 1909

It is fashionable in some quarters to suppose . . . the country indifferent to a Constitutional encroachment, only thinly disguised by the House of Lords. Those who argue like this forget that the spirit of the Revolution of 1688 still lives in Nonconformists and will drive them to equivalent action in 1910. . . . However had the Constitutional question stood alone, I think it would have been left to ordinary political action. But there is the Educational difficulty. . . . Then there was the contemptuous rejection of the Licencing Bill. . . . I have regarded the action of the House of Lords as 'the unpardonable sin' so far as that institution is concerned.

[1] Parliament had been dissolved on December 3, 1909, after the Lord's rejection of the Budget on November 30, 1909.

[2] That the House of Lords was violating the Constitution in refusing to agree to financial proposals of the Commons.

[3] President Wesleyan Methodist Conference, 1908–9, previously President of National Council of Evangelical Free Churches of England and Wales (1906–7).

(D)

JOHN REDMOND: A SPEECH IN DUBLIN, FEB. 10, 1910[1]

. . . Every child knew that if Mr. Asquith introduced a Home Rule measure in the new Parliament it would be rejected by the Lords, and the pledge that decided the Irish party to support the Liberal party was . . . that neither he [the Prime Minister] nor his colleagues would ever assume or retain office again unless they were given assurances that they would be able to curb and limit the veto of the Lords. It is seriously suggested that, having won a victory at the polls against the Lords, Mr. Asquith should send the Budget back to them with a request to be kind enough to pass it into law. To do so would be to give the whole case against the Lords away. . . .

CABINET MINUTE, FEB. 11, 1910

His Majesty's Ministers do not propose to advise or request any exercise of the Royal Prerogative in existing circumstances, or until they have submitted their plan to Parliament . . . they would do so when—and not before—the actual necessity may arise.[2]

ASQUITH TO EDWARD VII, APRIL 13, 1910
(TELEGRAM)

. . . Government have resolved to make no changes in Budget. . . . They will ask House of Commons to pass Budget in every substantial respect in the same form in which it was passed in the late House of Commons.[3]

[1] In the January election the Government had gained a majority of 124, which was, however, a loss of 104 of the seats held after the 1906 election. In their majority were included 82 Irish.

[2] Compare Asquith's Speech to Commons, April 14, 1910:

"I think it . . . necessary to give notice . . . now that these resolutions are passing into the control of other people, of our future intentions. If the Lords fail to accept our policy . . . we shall feel it our duty immediately to tender advice to the Crown as to the steps which will have to be taken if that policy is to receive statutory effect in this Parliament. What the precise terms of that advice will be, it will, of course, not be right for me to say now, but if we do not find ourselves in a position to insure that statutory effect will be given to this policy in this Parliament, we shall then either resign our offices or recommend a dissolution of Parliament. And let me add this; that in no case would we recommend dissolution except under such conditions as will secure that in the new Parliament, the judgement of the people as expressed in the election will be carried into law."

[3] The Budget was reintroduced without any material changes and passed by the House of Lords on April 28, 1910.

EDWARD VII TO MR. ASQUITH, APRIL 19, 1910

The King has received from the Prime Minister the draft of a bill to make provision with respect to the powers of the House of Lords in relation to those of the House of Commons and to limit the duration of Parliament. The King notices that the date of this Bill is the first of this month.

(E)

CONVERSATION AT SANDRINGHAM, NOV. 11, 1910

" Mr. Asquith pointed out [1] that this would be [the] second time in the course of twelve months that the question of the relations between the two Houses had been submitted to the electorate. It was necessary, therefore, that in the event of the Government obtaining an adequate majority in the New House of Commons, the matter should be put in train for final settlement. This could only be brought about (if the Lords were not ready to give way) by the willingness of the Crown to exercise its prerogative to give effect to the will of the nation. The House of Lords cannot be dissolved and the only legal way in which it can be brought into harmony with the other House is by either curtailing or adding to its members. In theory, the Crown might conceivably adopt the former course by withholding writs of summons. But this has not been done for many centuries; it would be most invidious in practice; and it is at least doubtful whether it can be said to be constitutional. On the other hand the prerogative of creation is undoubted; it has never been recognised as having any constitutional limit; it was used for this very purpose in the 18th century, and agreed to be used on a large scale by King William IV in 1832. There could, in Mr. Asquith's opinion, be no doubt that the knowledge that the Crown was ready to use the prerogative would be sufficient to bring about an agreement without any necessity for its actual exercise."

CABINET ADVICE TO GEORGE V, NOV. 15, 1910

An immediate dissolution of Parliament. . . . The House of Lords to have the opportunity, if they demand it, at the same time, but not so as to postpone the date of the dissolution, to discuss the Government Resolutions. H.M. Ministers cannot, however, take the responsibility of advising a dissolution, unless they may understand that in the event of the policy of the Government being approved by an adequate majority in the new House of Commons, H.M. will be ready to exercise his constitutional powers (which may

[1] To George V. Edward VII had died on May 6, 1910.

involve the prerogative of creating peers) if needed to secure that effect shall be given to the decision of the country.

H.M. Ministers are fully alive to the importance of keeping the name of the King out of the sphere of party and electoral controversy. They take upon themselves, as is their duty, the entire responsibility for the policy which they will place before the electorate. H.M. will doubtless agree that it would be inadvisable in the interest of the State, that any communication of the intentions of the Crown should be made public unless and until actual occasion should arise.[1]

(F)

A. J. BALFOUR, DEC. 27, 1910, TO LORD LANSDOWNE

If I were King . . . I should be disposed to compel my Ministry to show their whole hand. I should say to them—Am I to understand that, under the threat of leaving me without a Ministry and the country without a government you propose to compel me to give a promise that, under circumstances which no man can foresee, I am to raise to the peerage 500 gentlemen, whose names have not been submitted to me, in order to pass a Bill which has never been discussed in Parliament, and which, under the pressure of discussion may be moulded into some quite unexpected shape. . . . As each occasion arises, I conceive it to be my duty to exercise the prerogative so as best to maintain the liberties of my people. You are driving me now to give you a complete power of attorney. . . .

If a protest of this kind were made . . . I think the King would at all events show that he had done his best to maintain the Constitution. . . . I do not believe, however, . . . that it would be fair to the King to suggest that he will better his position by attempting, under present circumstances, to change his Government. I consider . . . that such a policy would certainly be ineffectual, that

[1] Though the formal assent to the Prerogative being used to coerce the Lords if necessary was not needed until July 14, 1911 (see p. 458), the King gave the promise, as desired by the Cabinet, on the next day (November 16, 1910)—" His Majesty, after careful consideration of all the circumstances past and present, and after discussing the matter in all its bearings with my noble friend and colleague, Lord Crewe, felt that he had no alternative but to assent to the advice of the Cabinet " (Asquith in the House of Commons, August 7, 1911). Lord Crewe (in the House of Lords, August 8, 1911) denied that the King had been asked for guarantees: but his denial was based upon the fact that the promise would, of course, only be effective on the assumption that the Government won the election and that the Lords still opposed them. For criticism of the date and manner in which the promise was obtained, and also of the secrecy here imposed upon the King by the Cabinet, see the views of Balfour, Archbishop Davidson, and Lord Lansdowne, given on pp. 458, 459.

it might be humiliating in its results to the Crown, and might possibly impair its popularity.[1]

(G)

MR. ASQUITH'S MINUTE, DEC. 1910[2]

The part to be played by the Crown in such a situation as now exists, has happily been settled by the accumulated traditions and the unbroken practice of more than 70 years. It is to act upon the advice of the Ministers who for the time being possess the confidence of the House of Commons, whether that advice does or does not conform to the private and personal judgement of the Sovereign. Ministers will always pay the utmost deference, and give the most serious consideration, to any criticism or objection that the monarch may offer to their policy; but the ultimate decision rests with them; for they and not the Crown, are responsible to Parliament. It is only by a scrupulous adherence to this well established constitutional doctrine that the Crown can be kept out of the arena of party politics.

It follows that it is not the function of a constitutional sovereign to act as arbiter or mediator between rival parties and policies; still less to take advice from the leaders on both sides with a view to forming a conclusion of his own. . . .

It is technically possible for the Sovereign to dismiss Ministers who tender to him unpalatable advice. The last instance of such a proceeding was in 1834, when William IV compelled the resignation of Lord Melbourne and his colleagues. The result was, from the King's point of view, singularly unsatisfactory.[3] The dismissed Ministers found an adequate majority in the new House of Commons. The King was compelled to take them back again. . . . During the long reign of Queen Victoria, though she was often in disagreement with the Ministry of the day, she never resorted to this part of the prerogative. . . . The House of Commons, by reason of its power

[1] But nevertheless, in November 1911, Mr Balfour claimed, in a letter to Walter Long:—

"Had I been consulted in November [1910] with that knowledge of the issue which we were only permitted to have in July, there is not the slightest doubt that we should have taken office, dissolved in January, and, I believe, carried the country with us. . . . The iniquity of the Government in (a) rushing the King into pledges to be fulfilled by a straining of the Constitution many months after; (b) forcing a dissolution on an old Register; and (c) thereby making it quite impossible to have a third dissolution before the Coronation, is really difficult to express in parliamentary language. The King was not well advised, he has certainly been most monstrously treated by Ministers from whom he had a right to claim loyal service."

[2] After the November election in which the Government gained a majority (including the Irish) of 126.

[3] See Vol. II, Sect. D, Nos. XXIII-XXV, pp 383 *seq.*

over supply has every ministry at its mercy. The King cannot act without ministers, and ministers are impotent to carry on the government of the country without a majority in the House of Commons.

The position becomes exceptionally clear and simple when—as the case is now—a ministry has appealed to the country upon the specific and dominating issue of the day, and upon that issue commands a majority of more than 100 in the House of Commons.[1]

(H)

MEMORANDUM BY ARCHBISHOP DAVIDSON, JAN. 11, 1911

. . . the Prime Minister . . . may possibly endeavour . . . to secure from the Sovereign a promise . . . that a prolonged discussion shall not result in the contemptuous rejection by the House of Lords of the Parliament Bill. . . .[2]

. . . There is all the difference in the world between (1) a promise or quasi-promise given by the King now, before the actual Bill has even been debated, far less amended in either House of Parliament, and (2) such promise or undertaking of co-operation, given by the King hereafter, when the specific point of difference has come formally before the Sovereign and his advisers in black and white. . . . Then, and not till then, does the question practically arise how to cross the stile. . . . How can it possibly be the King's duty to make such declaration or promise now, while all is necessarily hypothetical?

I regard His Majesty as being more than entitled—as being almost bound—to refuse to give any such declaration whatever at the present stage, and this on the simple and intelligible ground that the actual crisis has not yet practically arisen and is not even, with any certainty, within sight. [He concludes that he does not believe the government could resign in protest against the King's refusal, if this were carefully couched.]

(I)

LORD LANSDOWNE—NOTE OF CONVERSATION WITH GEORGE V, JAN. 27, 1911

H.M. told me he had had some controversy with the Prime Minister as to the propriety of interviews between himself and the leaders of the Opposition. H.M. had, however, insisted, explaining that he did not seek for advice, but desired to obtain knowledge at first hand as to the views of the Opposition. Upon this, the P.M. had reluctantly withdrawn his objection. . . .

[1] The King had had some discussion with Asquith as to what should be held " a sufficient majority " ; the government majority at the elections of January and December was almost the same number.

[2] The promise had, of course, already been given, but this was kept secret by the Government ; see (E), and footnote, on p. 457.

I said that I could not conceive that there should be any impropriety in such conversations. As a constitutional Sovereign, H.M. was no doubt obliged to be guided by his Ministers, but this obligation did not seem to me in any way to preclude him from seeking information either as to questions of fact or as to matters of opinion. . . .

H.M. went on to say that the two Ministers referred to [1] had assured him that proposals for the amendment of the Parliament Bill would be fully considered in both Houses, and any arguments advanced by the Opposition carefully examined with a view to a "compromise". . . . I said that I thought the language of the two Ministers reasonable. It appeared to me to be in contrast with that which Lord Crewe had used in the House of Lords when he told us that we should merely be wasting our time if we discussed amendments of the Parliament Bill.

H.M. said that the circumstances were not quite the same, and he observed that it was owing to him that we had been allowed to have the Parliament Bill in the House of Lords at all; but there was obviously no time for discussing it then.

I said . . . it appeared to be inconceivable that the Parliament Bill should represent the last word of H.M.G. . . . Its provisions were entirely different . . . from those which had been put forward by the Government during the Constitutional Conference.[2] . . .

Some discussion followed as to the possibility of H.M. being forced to create Peers. . . . It was a step which I felt H.M. would be reluctant to take, and his Ministers not less reluctant to advise; and . . . up to a certain point, we should be justified in bearing this fact in mind when considering whether it was desirable to offer resistance to the Government proposals . . . as the situation developed, the issue might undergo a change. For example, supposing an amendment to be carried for the purpose of safeguarding the Constitution against a violent change during the time which, if the Bill became law, would pass before a reformed House of Lords could be called into existence. . . . Was it conceivable that H.M.'s advisers would desire that he should create 500 peers for the purpose of resisting such a proposal? . . .

(J)

CABINET MINUTE TO GEORGE V, JULY 14, 1911

The amendments made in the House of Lords to the Parliament Bill are destructive of its principle and purpose. . . . The Bill

[1] Asquith and Crewe.

[2] Which had taken place June to November 1910 in the transformed political situation following the death of King Edward.

might just as well have been rejected on Second Reading. It follows that if, without any preliminary conference and arrangement, the Lords' amendments are in due course submitted to the House of Commons, they will be rejected *en bloc* by that House of Commons and a complete deadlock between the two Houses will be created. Parliament having been twice dissolved during the last eighteen months, and the future relations between the two Houses having been at both Elections a dominant issue, a third Dissolution is wholly out of the question. Hence, in the contingency contemplated, it will be the duty of Ministers to advise the Crown to exercise its Prerogative so as to get rid of the deadlock and secure the passing of the Bill. In such circumstances Ministers cannot entertain any doubt that the Sovereign would feel it to be his Constitutional duty to accept their advice.

(K)

ASQUITH TO BALFOUR AND LORD LANSDOWNE, JULY 20, 1911

I think it is courteous and right before any public decisions are announced to let you know how we regard the political situation . . . We shall be compelled to ask that House [*i.e.* the Commons] to disagree with the Lord's amendments.

In the circumstances, should the necessity arise, the Government will advise the King to exercise his Prerogative to secure the passing into law of the Bill in substantially the same form in which it left the House of Commons; and His Majesty has been pleased to signify [1] that he will consider it his duty to accept, and act on, that advice.

(L)

SPEECH PRINTED IN THE NEWSPAPERS AND INTENDED FOR DELIVERY IN THE HOUSE OF COMMONS BY THE PRIME MINISTER ON JULY 24, 1911, BUT NOT DELIVERED OWING TO ORGANISED CLAMOUR

. . . I must at once recall the facts . . . which . . . place this Bill in an almost unique category.

The principle . . . and the main lines upon which it is drawn were . . . approved in the House of Commons as far back as the

[1] This notification follows formally on the King's acceptance of the Cabinet Minute of July 14, 1911, but (see p. 457 above and footnote) that acceptance was governed by the promise given in the previous November. By July 25 at the latest, this was known to the Conservatives, for on that day Lord Lansdowne complained to Archbishop Davidson that " such a promise being given now " was inevitable and " right constitutionally " but that it was " wrong " when " the King was virtually coerced into making the promise . . seven months ago."

year 1907. At the General Election in the year 1910, which followed rejection by the House of Lords of the Budget, this principle . . . became the predominant issue of the Election. In the new House of Commons, resolutions embodying . . . its detailed provisions were carried by large majorities, the Bill itself was introduced, and no one doubts that, but for the death of the King and the temporary truce which ensued, it would have been passed in that session and sent to another place. The Conference which followed proved that . . . settlement by agreement was impossible. The Bill was then presented to the House of Lords, and was laid aside . . . Another General Election followed in December 1910. . . . What was the result? A majority for the Government of 60 in Great Britain, of 120 in the United Kingdom as a whole.

In a word, it is true to say of this Bill . . . that it was the main issue of two elections and that by no form of Referendum that could be devised could the opinion of the electorate upon it have been more clearly pronounced. . . .

. . . Unless the House of Commons is prepared to concede these essential points, there is only one constitutional way of escape from what would otherwise be an absolute deadlock. It is the method of the resort to the Prerogative which is recognised by the most authoritative experts of constitutional law and practice. . . . But it is not necessary to rely on the dicta of text writers, however eminent. For the precedent of 1832 is what the lawyers call a case precisely in point. As we are accused by ignorant people for being responsible for a *coup d'état* . . . I think it is worthwhile to go in some little detail into the history of that transaction.

Duke of Wellington defeated. Lord Grey took office late in 1830.

No reform bill before country at previous elections.

1831 March 1st. Bill introduced.

1831 March 22nd. Second Reading carried by a majority of one.

April 18th, on General Gascoyne's amendment, Government defeated in this House by majority of 8.

They at once advised King to dissolve.

1831, May. General Election.

1831 July 6th. Second Reading in Commons, majority 136. Went up to Lords.

1831, October 8th. Second Reading rejected (House of Lords) 41.

No second dissolution but Parliament prorogued and Bill re-introduced in Commons.

Passed through all stages there, and went up to Lords a second time.

1832 May 6th. Second Reading in Lords, majority 9.

1832 May 7th. Lyndhurst's amendment (on going into Committee). It was at this stage that Ministers asked the Sovereign to authorise them, if necessary, to sue the Royal Prerogative of creation. William IV refused and Lord Grey resigned.

After 10 days—abortive attempt of Lyndhurst and Wellington to form government (Peel standing aloof).

May 17th, Grey recalled. King gave written consent " to create such number of peers as will be sufficient to ensure passing of Reform Bill ".

Lord Grey announced in House of Lords that he had now confidence in security of passing Reform Bill unimpaired in its principles and all its essential details.

The Bill was carried without its being necessary to resort to Prerogative. But everyone knows that it would not have been carried unless Lord Grey had requested and the King had consented to the exercise to any extent that might be necessary of the power of creation. Lord Grey was attacked, as I am now, for advising an unconstitutional course. . . . [He quotes Grey's speech of May 17, 1832.]

We cannot doubt then, Sir, that the advice we have tendered to the Crown—and which the Crown has accepted—is warranted by the constitutional principles, and that we are following in spirit and almost to the letter, the precedent set by the great Whig statesman of 1832. I need hardly add that we do not desire to see the prerogative exercised, and that we trust that the necessity for its exercise may be avoided. There is nothing derogatory or humiliating to a great party in admitting defeat. No one asks them to accept the defeat as final. They have only to convince their fellow-countrymen that they are right and we are wrong, and they can repeal our Bill. . . .

(M)

THE ARCHBISHOP OF CANTERBURY TO A CHICHESTER CHURCHMAN, AUG. 18, 1911

The question which had then to be decided [1] was not whether the Parliament Bill should pass, but whether it should pass immediately or pass a few weeks hence, after the House had been flooded with new Peers for the purpose . . . I had hoped this was obvious to most people. But . . . you, for example, are of opinion that the vote which we gave will promote speedy Disestablishment. I

[1] The Lords by 131 to 114 on August 13, 1911, decided " not to insist " upon their amendments and the Parliament Bill was carried. 2 Archbishops and 11 Bishops voted with the majority; 2 voted with the minority.

believe exactly the contrary to be true . . . It is worth while to make some sacrifices to prevent an ignominious 'ending' to the oldest legislative Chamber in the world . . .

[From J. A. Spender and C. Asquith, *Lord Oxford and Asquith*, i, 257-320; Lord Newton, *Lord Lansdowne*, 407-10; Bell, *Randall Davidson*, 620-37; and B. Dugdale, *Balfour*, ii, 67.]

LXII

THE CIVIL SERVICE, 1914

A.—Its History; Organisation and Recruitment

1. The Civil Service of the United Kingdom, as we know it to-day, is of comparatively recent origin. It may be said to date from 1855.[1]

It is indeed true that most of the existing Departments of State, or the origins from which they have grown, were in existence before 1855; but before that date, the administrative and clerical staffs presented no unity of organisation, no regularity of recruitment, and (save as to the expenditure of public money) no common principle of control. Moreover, there was not any limitation, whether imposed by formal regulation or by public opinion, on the appointment of public servants by political patronage.

2. Lord John Russell, writing in 1823, says, "Offices in the Post Office, the Stamp Office, and the Customs especially, are made part of the patronage of Members of Parliament voting in favour of the Government. . . . The Minister, seeing his advantage, has of late years more completely organised and adapted this kind of patronage to the purpose of Parliamentary influence. When an office in the Stamp or Post Office is vacant the Treasury write to the member for the County or Borough voting with the Government and ask for his recommendations."[2]

3. The Duke of Wellington, writing in 1829 to Sir Robert Peel, complains, not that political patronage exists, but that the Customs and other appointments which were held locally were claimed as the patronage of private members and not of the Government. "The whole system of the patronage of the Government," he writes, "is in my opinion erroneous. Certain members claim a right to dispose of everything that falls vacant within the town or

[1] Compare Vol. II, Sect. B, No. XIV, p. 185.

[2] Lord John Russell, *History of the British Government and Constitution*, 2nd ed. (1823), pp. 402-3.

county which they represent, and this . . . whether they support [the Government] upon every occasion, or now and then, or when not required, or entirely oppose." [1]

4. The effects of such methods of appointment upon the efficiency of the Service were unmistakable. Writing in 1849, Sir Charles Trevelyan, then Permanent Secretary to the Treasury, condemned the Civil Service of the day as overstaffed in numbers, inactive, and incompetent; and urged that the first necessary step towards reform was to ensure that only properly qualified persons should be appointed.

> " There is a general tendency," he wrote, " to look to the public establishments as a means of securing a maintenance for young men who have no chance of success in the open competition of the legal, medical, and mercantile professions." . . . " There being no limitation in regard to the age of admission in the great offices of State, the dregs of all other professions are attracted towards the public service as to a secure asylum, in which, although the prospects are moderate, failure is impossible, provided the most ordinary attention be paid to the rules of the Department."

Writing of an attempt made in 1840 by the Treasury Board to secure that " the clerks appointed to the principal offices should possess a competent knowledge of book-keeping by double entry," Sir Charles Trevelyan stated :—

> " This is the only general regulation that has ever been issued on the subject of the examination of candidates for employment in the civil departments of Her Majesty's Government, and there is reason to believe that no attention was paid to it in most of the offices to which the circular letter was sent, and that in others the practice recommended, although at first adopted, has since fallen into disuse."

If the method of appointing Civil Servants was bad, the subsequent treatment of them, according to the same high authority, aggravated the evil.

> " The prizes of the profession have long been habitually taken from those to whom they properly belong, and have been given to members of the political service. . . . We are involved in a vicious circle. The permanent Civil Servants are habitually superseded because they are inefficient, and they are inefficient because they are habitually superseded; and having been thus

[1] Parker, *Life of Sir Robert Peel*, ii, 140.

trained, they are appropriately shelved in *classes*, to which they succeed on the principle of seniority."

. . . . . .

12. We have said that the Ministry of Lord Palmerston was less zealous than their predecessors for the abolition of patronage in the Civil Service.

But the disasters of the Crimean War and the revelations of the Sevastopol Committee had directed public criticism to the administration of the various War departments, and with them to the departments of civil government. Public anxiety was aroused, and in June 1855 Mr. Layard moved in the House of Commons: "That this House views with deep and increasing concern the state of the nation, and is of opinion that the manner in which merit and efficiency have been sacrificed in public appointments to party and family influences and to a blind adherence to routine has given rise to great misfortunes, and threatens to bring discredit upon the national character and to involve the country in great disaster." Mr. Layard supported his motion by a vigorous attack on the system of purchase in the Army and nepotism in the Civil Service.

. . . Sir Stafford Northcote . . . warned the House that so long as the Civil Service Commission was confined to the imposition of a merely qualifying test it would become a "Board for stereotyping mediocrity or concealing bad appointments"; and would prove powerless to resist patronage.

The principle of open competition was again defended by Mr. Gladstone, who combated the view that patronage contributes to the strength of the executive government, and declared his belief that it was "not in the wit of man to devise a plan for the promotion of education so effective and powerful as the throwing open of the Civil Service."

Mr. Layard's motion failed; but the idea of open competition was, in Mr. Gladstone's words, "making rapid and steady way," and in 1857 the House recorded its unanimous opinion that "the experience acquired since the issuing of the Order in Council of May 21st, 1855, is in favour of the adoption of the principle of competition as a condition of entrance to the Civil Service."

14. The recommendations of the Select Committee[1] were accepted by the Government and carried into effect with more or less completeness. For the following ten years the Civil Service was recruited to a large extent by a system of limited competition, i.e. by competitive examination of nominated candidates who had previously passed a certain qualifying test of fitness; and there is

[1] Of 1860.

no doubt that the result was an improvement in the quality and efficiency of the public service.

15. The next great landmark in the history of the Civil Service is the Order in Council of 4th June 1870, which was inspired by Mr. Lowe (afterwards Lord Sherbrooke), then Chancellor of the Exchequer. This Order in Council made the competitive test obligatory for admission to certain departments and situations . . . subject to the following two classes of exceptions :—

I. The Civil Service Commissioners might dispense with the examination test should they think fit, in the case of professional officers, or in other cases on reasons shown.

II. The requirement of certification by the Civil Service Commissioners was waived altogether in the case of the following important categories of situations, viz. :—

(1) Those to which the holder was appointed directly by the Crown ;

(2) Those placed under the operation of section IV. of the Superannuation Act, 1859 ;

(3) Those filled in the customary course of promotion by officers serving in the same department ;

(4) Specified posts chiefly of a humble and menial, or of a temporary, character.

These exceptions constitute Schedule B. to the Order, and power was given by it to add situations to, or withdraw them from, this Schedule.[1]

Another point in this Order in Council calls for special notice. The Treasury is the department responsible for presenting to Parliament the estimates for the Civil Departments, and through its political officers, for defending the votes for these departments in Committee of the House of Commons. This procedure necessarily invested the Treasury with certain powers of co-ordination and control in financial matters over all departments ; and the Order in Council of 1870 extended this control somewhat beyond the region of finance into the domain of departmental administration. . . .

Finally, the power conferred by the Order of May 1855 on the Head of a Department, when appointing to certain situations, to dispense with the Civil Service Commissioners certificate, was withdrawn by the Order of 1870, and a provision substituted whereby, in similar circumstances, the Civil Service Commissioners may dispense with examination when moved thereto by the Head of the Department and the Lords of the Treasury.

[1] On the agreement both of the Treasury and the head of department concerned.

B.—Recent Developments: the Present Position

51. (5) *Labour Exchanges, &c.*—In recent years several important Acts of Parliament, (the Old Age Pension Act, the Labour Exchanges Act, and the National Health Insurance Act) have been passed requiring the creation of new, or the extension of existing official establishments.

These Acts called for the immediate services of large staffs of officials often with qualifications and experience somewhat differing from those commonly required in officers of the Civil Service, and tested by the Civil Service entrance examinations.

" During the year [1911] the Civil Service Commissioners at the request of the Board of Trade, appointed representatives to preside at a series of interviews . . . for the purpose of choosing the necessary subordinate staff in view of the immediate demands for the increase in the number of Exchanges. These Committees consisted of the representative of the Commissioners, as chairman, assisted by two more representatives of the Labour Exchange Department of the Board of Trade acting as assessors.[1] . . ."

52. This system of appointment . . . claims—and herein lies its essential character—to determine the comparative fitness of candidates by an appraisement, through personal interview, supplemented by testimonials, of their qualities of character and intelligence. Examination is often dispensed with, or, if used at all, is used only as a qualifying test. Substantially the system of appointment is selection by patronage, the abuses of patronage being, it is claimed, precluded by the substitution of a Board or Committee of Selection for the " Patron ". It makes a new departure in recruitment for the Civil Service, which calls for the most careful examination.[2]

53. This description of the latest plan of recruiting the Civil Service completes our summary of the various steps by which the existing organisation has been reached. . . .

54. These stages were, speaking in the widest manner :—

(1) The stage of patronage, generally practised, and generally unchallenged up to 1855.
(2) The stage of limited competition, 1855–1870.
(3) The stage of open competition from 1870 to the present day.

[1] Fifty-sixth Report of H.M. Civil Service Commissioners, pp. xvi, xvii.

[2] This departure from the 1870 system has been carried further since 1945 and the arguments for and against selection by " appraisement " are discussed in the 9th Report of the Select Committee on Estimates, 1947-48, *e.g.* at pp. ix, 16, 17, 25.

But each later stage did not exclude the earlier; Limited Competition did not wholly displace Patronage; nor was it itself entirely supplanted by Open Competition. So that it has come to pass that while Open Competition regulates appointment to the administrative and clerical classes of the Civil Service, and also to large and important groups of departmental situations, limited competition controls recruitment for certain other classes of such situations important in character though not numerous, and qualifying examination, into which the competitive principle does not enter, gives access to a very large number of subordinate situations; while even uncontrolled Patronage continues to fill some of the highest Departmental offices, as well as the lowest situations.

C.—Restrictions on the Liberty of Civil Servants

Ch. XI, § 9. . . . it has been forcibly urged upon us in evidence that a greater measure of liberty should be afforded to members of the Civil Service than is permitted by the rules which we have described. In particular it is contended that members of the Civil Service should be permitted to stand for Parliament and all local Councils, and if elected to take part in the deliberations of those assemblies without let or hindrance, leave of absence being granted for the purpose, and the periods of such absence being treated as " seconded " service.

It is also urged even more strongly that apart from actual candidature much greater freedom should be allowed to public servants to promote the candidature of others, as, for instance, by presiding or speaking at political meetings, by writing and canvassing on behalf of the candidates representing their views of whatever character they may be.

It is, indeed, admitted that such action might be unseemly on the part of officers occupying high administrative positions, but it is urged that at least in the lower ranks (and especially amongst the manipulative classes, whose numbers are considerable, but whose position does not permit them individually to exercise any direct influence over ministerial policy) such greater liberty would be harmless, and is desirable in order to realise the full powers and responsibilities of a complete citizenship.

10. We have attempted to state the case which has been presented to us fully and fairly, and we now proceed to express our opinion upon it.

In the first place, we have little doubt that complete liberty of political action for all officials alike would inevitably result in frequent conflicts between the desires and interests of the officer as a citizen

and his duty as an official, and that such conflicts could not fail to have a disastrous effect on the *morale* of the public service. . . .

We have already pointed out that the Civil Service is now being called upon to take a greater share in the burden of administration than was known a generation ago; and it cannot be denied that the success or failure of much legislation of a controversial character depends now much more largely than formerly upon administrative action. The conduct of the Civil Service will, therefore, come more frequently under public notice than it has done, and in these circumstances it would, we think, be disastrous if the feeling should arise that the effectiveness of a legislative policy were in any degree dependent upon the political bias of those administering it.

11. Speaking generally, we think that if restrictions on the political activities of public servants were withdrawn two results would probably follow. The public might cease to believe, as we think they do now with reason believe, in the impartiality of the permanent Civil Service; and Ministers might cease to feel the well-merited confidence which they possess at present in the loyal and faithful support of their official subordinates; indeed they might be led to scrutinise the utterances or writings of such subordinates, and to select for positions of confidence only those whose sentiments were known to be in political sympathy with their own.

If this were so, the system of recruitment by open competition would prove but a frail barrier against Ministerial patronage in all but the earlier years of service; the Civil Service would cease to be in fact an impartial non-political body, capable of loyal service to all Ministers and parties alike; the change would soon affect the public estimation of the Service, and the result would be destructive of what undoubtedly is at present one of the greatest advantages of our administrative system and one of the most honourable traditions of our public life.

[Royal Commission on the Civil Service: Fourth Report, 1914, Cd. 7338.]

LXIII

THE ORGANISATION OF THE CABINET—AN EPILOGUE

The War Cabinet Report, 1917

The most important constitutional development in the United Kingdom during the last year has been the introduction of the War

Cabinet system. This change was the direct outcome of the war itself. As the magnitude of the war increased, it became evident that the Cabinet system of peace days was inadequate to cope with the novel conditions. The enlarged scope of Government activity and the consequent creation of several new departments, made a Cabinet consisting of all the Departmental Ministers meeting under the Chairmanship of the Prime Minister, far too unwieldy for the practical conduct of the war. It was extremely difficult for so large a body to give that resolute central direction which became more imperative the more the population and resources of the nation had to be organised for a single purpose—the defeat of German militarism. Even the development of a comparatively small War Committee did not entirely meet the needs of the case, as the final responsibility rested not with them but with the Cabinet.

With the change of government, therefore, a new method of governmental organisation was introduced. The system of the War Cabinet distinguishes between the body which is responsible for the supreme direction of the war and the Ministers who have charge of the great administrative departments of State. The general direction of the policy of His Majesty's Government during the war rests with the War Cabinet, whose members, with one exception, are relieved of the day to day pre-occupations of administrative work, and whose time is, therefore, entirely available for initiating policy and for the work of co-ordinating the great Departments of State. . . . In addition, in June 1917, the War Cabinet invited General Smuts, who had attended the meetings of the Imperial War Cabinet as the Representative of the Government of the Union of South Africa, to attend the meetings of the War Cabinet during his stay in the British Isles. The only exception to the principle laid down above that the members of the War Cabinet should be free from administrative duties was in the case of Mr. Bonar Law, who filled the office of the Chancellor of the Exchequer, and one of whose principal duties was to act as the chief representative of the Government in the House of Commons.

The method of working the War Cabinet is as follows. At each meeting the Cabinet begins by hearing reports as to the progress of the war since the preceding day. Unless it wishes to confine its deliberations to general questions of policy, it then proceeds to deal with questions awaiting its decision. As these questions in the vast majority of cases affect one or more of the administrative departments, almost all its meetings are attended by the ministers and their chief departmental officials concerned. The majority of the sessions of the War Cabinet consist, therefore, of a series of meetings between members of the War Cabinet and those responsible for

executive action at which questions of policy concerning those departments are discussed and settled. Questions of overlapping or conflict between departments are determined and the general lines of policy throughout every branch of the administration co-ordinated so as to form part of a consistent war plan. Ministers have full discretion to bring with them any experts, either from their own departments or from outside, whose advice they consider would be useful. The extent to which this policy of inviting expert assistance is carried may be judged from the fact that from December 9th, 1916, to December, 1917, no less than 248 persons other than members of the War Cabinet and the Secretariat have attended its meetings. . . . Under this system the War Cabinet has held more than 300 meetings in the past year. This fact in itself indicates the great change which has taken place in the work of the Cabinet.

In practice a considerable number of less important, but often highly complex, questions are referred to individual members of the War Cabinet or to Committees of Ministers or others. In some cases the Minister or Committee has power to decide, in others the instruction is to carry out a detailed investigation such as the War Cabinet itself could not usefully undertake and submit a Report for final decision to the Cabinet. By this means the War Cabinet is enabled to carry out exhaustive investigations without the whole of its members being overburdened with the details of every question.

Apart from the attendance of the Ministers in charge of the Departments concerned, certain other arrangements are made to ensure that the Government Departments are kept in close touch with the policy of the Cabinet, and, conversely, that the members of the War Cabinet are kept in touch with the policy and action of the various Departments. Minutes are kept of the discussions of the War Cabinet. Complete files of these minutes are sent to the Ministers most closely concerned in the conduct of the war. In addition, copies of the War Cabinet minutes affecting them are sent to all other Departments. Besides this, the Secretariat of the War Cabinet are responsible for preparing weekly reports by arrangement with the Secretaries of State for Foreign Affairs, India and the Colonies on the matters with which they are concerned. These reports are circulated widely to all Ministers. Conversely a number of the Government Departments render weekly reports to the War Cabinet and also to other Ministers who are concerned or interested.

The working of the War Cabinet cannot be fully understood without some reference to the Secretariat which has come into existence in order to enable it to do its work. The Secretariat

consists of the Secretary, Lieut.-Colonel Sir M. P. A. Hankey, and of ten Assistant Secretaries, with an office establishment located at 2, Whitehall Gardens. Under instructions from the Prime Minister the principal duties of the War Cabinet Secretariat are as follows :—

(1) To record the proceedings of the War Cabinet.
(2) To transmit the decisions of the War Cabinet to those Departments which are concerned in giving effect to them or otherwise interested.
(3) To prepare the agenda papers; to arrange for the attendance of Ministers and other persons concerned; and to procure and circulate the documents required for discussion.
(4) To attend to the correspondence connected with the work of the War Cabinet.
(5) To prepare the Reports referred to in the previous section.

. . . The introduction of the War Cabinet system has resulted in considerable modifications of the administrative system of the Government. In the first place it has freed the various departmental Ministers from the constant necessity which rested upon them under the old Cabinet system of considering those wider aspects of public policy which often had nothing to do with their departments, but for which they were collectively responsible. They are, therefore, now able to devote a far larger part of their time to those administrative duties, which have become more exacting as the national activities have expanded under the pressure of the war. Secondly, it has made possible an increase in the number of Ministerial offices so as to effect a better distribution of functions. The new Ministries created since the introduction of the War Cabinet are the Ministries of Labour, Shipping, Food, Air, National Service, Pensions and Reconstruction. The method whereby the Ministers are kept in touch with one another and with the War Cabinet has already been described.

[War Cabinet Report for 1917, pp. 1-4, Cd. 9005, 1918.]

GLOSSARY

ACTION OF DEBT

An action which lies for the recovery of a certain sum of money owed, *e.g.* on a deed or contract or judgement, as opposed to a sum of money which is assessed by the jury.

ACTION OF RAVISHMENT OF WARD

An action which lay for the guardian holding land by knight service or in socage (*q.v.*) against a person who took from him the body of his ward.

ADVOCATION

The process by which, in Scotland, an action was carried from an inferior to a superior court; appeals were substituted by 31 & 32 Vict., c. 100.

ADVOWSON

The right, belonging to a patron, of presentation to a church or benefice.

AGGREGATE FUND

Fund created by consolidating the produce of various taxes into one fund, which became known as the Consolidated Fund by the Act of 27 Geo. III, c. 13.

AIDE (1) PUR FILE MARRIER, (2) PUR FAIER FITZ CHIVALIER

Incidents of feudal obligation whereby tribute was rendered by a tenant to his superior or lord on the occasion (1) of the marriage of the eldest daughter, and (2) the knighting of the eldest son, of the lord.

AMBIDEXTERS

Double dealers.

AMERCIAMENT

Pecuniary punishment of offenders against King or other lord in his Court, differing from fines, which are mainly statutory and certain, whereas amerciaments are arbitrarily imposed.

ANCIENT DEMESNE, TENURE IN

Tenure of land—either by charter or copy of court roll (*q.v.*)—which was recorded as Crown land in Domesday Book; it carried with it certain exemptions from tolls and jury service, and from the jurisdiction of courts other than those of the ancient demesne, unless the issue was between lord and tenant, when the courts at Westminster had jurisdiction.

ASSIGNS

Persons to whom an interest, *e.g.* a lease or a right under a contract, has been assigned, *i.e.* transferred, particularly by a testator.

ASSISTANTS OF THE HOUSE OF PEERS

Judges and Law Officers of the Crown summoned personally to attend the House of Lords (*e.g.* as advisers) but who are not active members thereof.

AUDITOR OF THE RECEIPT

Officer of Exchequer responsible for all receipts.

AVERMENT

A formal offer to prove a plea; the plea thus offered.

BAILIFFS

Chief magistrates of various towns.

BAILIWICK

The town or district over which a Bailiff has jurisdiction.

BAR, TRIAL AT

Trial before a full court consisting of several judges, distinguished from trial at Nisi Prius (*q.v.*) before one judge at the assizes or at the sittings in London and Middlesex.

BARON, COURT. *See* COURT

BARONS OF EXCHEQUER OF DEGREE OF COIF

Judges of the Court of Exchequer who had been admitted to the highest degree of the Common Law, a serjeant-at-law or degree of coif (*q.v.*). In former times when the Barons of the Exchequer were mainly financial officers they might not be men of legal training. (On this last point *see also* CURSITOR BARON.)

BENEFIT OF CLERGY. *See* CLERGY

BILL

When used in judicial proceedings is a declaration in writing expressing some fault committed against some law or statute of the realm, addressed to the proper jurisdiction. It was the normal

way of starting an action at Common Law, and served the purpose of a statement of claim. It always assumed the existence of an original writ, the service of which, however, in order to avoid complications, was as a matter of fact dispensed with. It was the invariable way of starting a suit in equity before the Chancellor.

BILL OF REVIEW

A declaration the object of which is to procure the examination and reversal of a decree in Chancery, made upon a former Bill, and signed by the person holding the Great Seal, and enrolled.

BOARD OF GREEN CLOTH

Court of justice of King's household composed of lord steward, treasurer of household, comptroller, and other officers, to which is committed *inter alia* the government and oversight of King's Court.

BURGAGE

An ancient form of tenure similar to socage whereby houses or lands in an ancient borough are held of some lord in common socage by a certain established rent.

CANARY PATENT

A licence for a monopoly of importation of Canary wine.

CASE, SPECIAL

A method of obtaining a judicial decision, by the full Court in Banc, on points of law. At the trial, instead of taking a special verdict (*q.v.*) the parties took a general verdict (*q.v.*) for the plaintiff or the defendant, to which they attached a statement of the facts agreed on between them and approved by the trial judge. This special case was then submitted to the full court for final decisions on the points of law involved.

CASSET = CASCHET, CASHET OR CATCHETT

A facsimile of the King's signature used in legal processes in Scotland before, but especially since, 1603, when the seat of Scottish government was transferred to London.

CERTIORARI, WRIT OF

A writ of, and returnable to, either Chancery or King's Bench, directing the officers of an inferior court to return the record of a case before them; used to remove cases to Westminster or to a judge at Nisi Prius (*q.v.*) when there is reason to doubt the capacity of the inferior court to give justice. Also, and in later times mainly, in order to examine the proceedings and see whether the decision of the inferior court should or should not be quashed.

CESS, PARISH

A parish assessment or tax.

CESTUI QUE TRUST

When property is given to a trustee in trust for another person who is the beneficiary of the trust, the latter is called " Cestui que Trust ".

CESTUI QUE TRUST IN POSSESSION

When " Cestui que Trust " and not the trustee is actually possessed of the property.

CHAMBERLAINS (OF EXCHEQUER)

Officers of the Exchequer who until 1826 were chiefly concerned with the preparation and custody of tallies.

CINQUE PORTS

Those ports which lie towards France and therefore have been considered by the King to be especially in need of protection. They were granted a peculiar jurisdiction and include the five towns of Dover, Sandwich, Romney, Winchelsea, and Rye.

CLERGY, BENEFIT OF

Ancient privilege of Clerks in Orders of exemption from certain penalties of law for the first offence (though a fine or branding might be imposed instead). The class of persons who could claim it was extended (and, from 1692, included women), upon a test of literacy by the so-called " neck verse " from the Psalms. Its operation, however, was much narrowed in course of time by statutory exceptions and abolished by Peel's Acts, 7 & 8 Geo. IV, cc. 27-29.

CLERK OF THE CROWN

An officer in the King's Bench whose function is to frame, read, and record all indictments against offenders arraigned or indicted of any public crimes.

COFFERER OF THE HOUSEHOLD

A principal officer of King's house next under the Controller with special charge and oversight of other officers of the household.

COIF, DEGREE OF

Title given the serjeants-at-law from the lawn worn under the caps at their creation. They were the highest class of pleaders at Common Law, and had a monopoly of pleading before the Common Pleas. All judges until the Judicature Act (1873) were first made serjeants.

COLLATE

To bestow a benefice upon; to appoint to a benefice.

COLLEGE

A corporation with privileges founded by royal or papal licence.

COLLEGIATE CHURCH

Church built and endowed for a society, or body corporate, of a dean or other president and secular priests, as canons or prebendaries in the said church.

COMMENDAM

A benefice or church living which, being vacant, is commended to the charge of an adequate clerk who for a period enjoys the profits, though not instituted.

COMMISSARY

Title in ecclesiastical law belonging to one who exercises the jurisdiction and office of a bishop on his behalf.

CONSERVATOR OF THE PEACE

All who have a special charge to see the King's peace kept, whether generally throughout the realm as the judges of the High Court or locally within a jurisdiction as a coroner or sheriff.

CONVOCATION

Assembly of the Bishops and representatives of the clergy of the province of Canterbury or of York to consult on ecclesiastical matters in time of parliament.

COPY OF COURT ROLL, TENURE BY. *See* COPYHOLD

COPYHOLD

A form of tenure (abolished in 1925) in which the tenant had no evidence of title but the copy of an entry in the roll made by the steward of the lord's court.

COUNTY COURT

(1) Before 1846 the old County Court (or shiremote) presided over by the sheriff; it had originally jurisdiction over all pleas, except pleas of the Crown (*q.v.*), but was gradually restricted by statute and by the growth of the assize system to petty cases. Knights of the Shire were elected in the County Court.

(2) From 1846 local and inferior courts of record for the trial of claims to debt and damage not exceeding £100 and to equity claims not exceeding £500 (*see* Vol. II, Sect. A, No. XXVIII, p. 94). These courts have no relation to the county, and the name is therefore

misleading: " local civil courts " would have been a more accurately descriptive name.

COUNTY OF ITSELF (TOWN OR CITY)

Borough which possessed the attribute of the ancient county, particularly sheriffs' court and quarter-sessions. To be distinguished from the modern county boroughs established at the same time as the administrative counties by the Act of 1888.

COUNTY PALATINE

Counties of Chester, Durham, and Lancaster, in which their owners had the full jurisdiction which the King had in the Kingdom. Notably the King's writ did not run within these counties.

COURT BARON

A court of civil jurisdiction which every lord of a manor held for the freeholders of his manor. (*See* CUSTOMARY COURTS.)

COURT LEET

An ancient court for criminal jurisdiction hardly distinguishable in practice from the manorial court in which its jurisdiction was exercised. Nevertheless sixteenth-century lawyers insisted that it was a franchise court (*i.e.* one based upon privilege from the King) exercising the criminal authority of the sheriff's tourn. It was purely local and was presided over by the steward of the lord of the manor or by borough officers. It undertook administrative as well as judicial work, *e.g.* police control.

COURT OF RECORD

King's courts in right of his crown and royal dignity; all courts of whose proceedings public records are kept, which can be cited as authoritative in legal proceedings.

COURT OF SESSION

The highest civil court in Scotland: it includes both the Inner and the Outer House, the former a court of appeal sitting in two divisions, the latter a number of Lords Ordinary who sit singly and try cases at first instance.

COURT OF WARDS AND LIVERIES

Established by 32 Hen. VIII, c. 46 (abolished 1660) for settlement of matters concerning wardships.

CURSITOR BARON

An official of the Court of Exchequer whose duty it was to know the " cursus " or course of the Exchequer. When the Barons of the Exchequer had become purely judicial officers, the cursitor

Baron grew in importance on account of his technical knowledge. Until 1834 he had duties to perform as an auditor.

CUSTOMARY COURTS

Courts which exercised jurisdiction over copyholders and administered the custom of the manor. (*See* COURT BARON.)

CUSTOMARY TENANTS

Those holding land by custom of the manor, or copyholders. (Sometimes called customary freeholders to distinguish them from those holding purely by the will of the lord of the manor. Their claim, under this name, to vote as freeholders at elections disallowed by 31 Geo. 2, c. 14.)

DEGREE OF THE COIF. *See* COIF

DEMUR

To put a stop to any action upon a point of legal difficulty, which must be determined by the court before any further proceedings can be had therein. Demurrer is a means of deciding a matter of law. It implied an admission of the truth of the facts alleged by the other side.

DISPENSATION BY NON OBSTANTE

Licence from King to do a thing which at Common Law might be done lawfully but was restrained by Act of Parliament.

DROITS OF ADMIRALTY

Enemy goods seized in time of war go to the Crown as Droits of Admiralty; also in former times shipwreck and wreckage on the high seas were Droits of Admiralty.

EMBRACERY

Unlawful influencing a jury by fear or favour.

ENGLISH PETITION

A bill in Chancery praying in aid the " extraordinary " equitable jurisdiction of this court—called an English Bill by way of distinction from proceedings in the " ordinary " jurisdiction of the court (consisting mainly of the preparation of writs for use at common law) which were entered and enrolled in French or Latin. From earliest time all Chancery procedure was in English, while Common Law Courts used Latin or French.

ERROR, WRIT OF

A writ directed to the chief justice of the court whose record is being attacked calling upon him to produce the record of the case before a superior court, so that it might consider the errors in the

record alleged by the appellant. Only errors of law and not of fact could be dealt with and it only applied to Common Law courts.

ESCUAGE (SCUTAGE)

An incident of tenure by Knight Service, originally entailing military service for forty days but later commuted to a fixed money payment.

ESSOINE

A valid excuse, such as sickness, absence, etc., for not appearing before a court to answer an action.

ESTREAT

To take out record of fine, bail, etc., and return it to the Court of Exchequer to be prosecuted.

EXCHEQUER CHAMBER, COURT OF

A court set up by Statute in 1358 to determine causes upon writs of error (*q.v.*) from the Common Law side of the Court of Exchequer; in 1588–89 a second Court of Exchequer Chamber was set up to determine any causes of particular difficulty which had been begun in the court of King's Bench. Both these Courts of Exchequer Chamber were abolished in 1830 (along with the jurisdiction of King's Bench to hear error from Common Pleas) and a new Court of Exchequer Chamber was established to hear cases in error from all three courts, composed of the judges of the two courts other than the one from which error was being brought. But in addition to these formal functions it was the practice of the Common Law judges, sitting in banc when a point of exceptional difficulty arose, to adjourn it to be further argued in Exchequer Chamber before a meeting of the judges of all three courts. In strictness this was an informal meeting, but some famous cases (*e.g.* Godden *v.* Hales) were thus argued before the twelve judges. This custom had died out by the middle of the eighteenth century.

(DE) EXCOMMUNICATO CAPIENDO

A writ issued to a sheriff to apprehend an excommunicated person who had not submitted within forty days and to keep him in prison until submission. Abolished in 1813, but some of the rules applicable to it transferred to the writ " de contumace capiendo ". The whole of the law concerning it is now, in effect, obsolete.

EX OFFICIO INFORMATION. *See* INFORMATION

FELONY

Every species of crime which occasioned the forfeiture of land or goods and which were capital offences. (Distinguished from Treason and Misdemeanour.)

FORESTALLING, INGROSSING AND REGRATING

Buying or bargaining for any corn, cattle, or other merchandise, by the way, as they come to fairs or markets to be sold with a view to profit, obtained by cornering the market. Ingrossing and regrating were similar crimes.

FRANK ALMOIGN

Tenure by spiritual service, where an ecclesiastical person or corporation holds land for itself and successors of some lord and his heirs; free from secular services or incidents to the donor and his heirs. Abolished 1925.

FREEHOLD FOR LIFE OR LIVES

Freehold estates (unlike leasehold estates which are for a definite period, *e.g.* for five years or from year to year) are for an indefinite period. Among freehold estates are (*a*) Estates in fee simple, (*b*) Estates in tail, (*c*) Life Estates. (*a*) is limited to a man and his heirs; this means that if he dies intestate the estate will go to his nearest heir whether that person is a descendant or collateral; it is also freely alienable. In effect the fee simple is now a perpetual interest and, for all except technical purposes, amounts to absolute ownership. (*b*) is to a man and the heirs of his body, that is to say it could only go to his descendants and not to collaterals; but, under certain circumstances, it can be barred, *i.e.* turned into a fee simple. (*c*) can be either for the life of the holder himself, or for the life of another, or for the lives of several persons to continue until the death of the survivor. Life estates, though commonly called leases for lives, were not leasehold but freehold estates. Freehold for life or lives may apply to land or to offices.

GAOL DELIVERY

This is a commission which is a patent in form of a letter from the King to certain persons, appointing them his justices and authorizing them to clear his gaol at such a place of its prisoners and bring them to trial.

GENERAL ISSUE

As opposed to "special pleading". In all proceedings the plaintiff or prosecutor had to set out all his allegations in detail. Then if the defendant was required to plead "special" he had to deal with each of these allegations one by one. If, on the other hand, he was allowed to plead the "general issue" he could in effect just say that he did not accept the allegations as a whole as a correct statement. An example is a plea of NOT GUILTY in criminal cases, and in civil suits various pleas according to the action, *e.g.* in trespass the plea not guilty, or in an action for breach of contract

the plea *non assumpsit*. The general issue in civil cases was abolished in 1834.

GENERAL VERDICT. *See* VERDICT

GENTLEMAN USHER OF THE BLACK ROD

The chief gentleman usher to the King. His duties are various but include attendance on the House of Lords when sitting.

GRAND JURY. *See* JURY

GRAND SERJEANTY

A tenure similar to Knight Service. Its main incident was personal service to the King, usually within the realm, and consisting of some duty such as carrying his banner or sword, etc.

GREAT WARDROBE

A branch of the King's wardrobe which looked after the storage of bulky articles, *e.g.* clothing. Distinguished from the Privy Wardrobe in the Tower of London which had control of arms and armour.

HABEAS CORPUS

Habeas Corpus is one of the prerogative writs demanding the production of a prisoner to enable the court to determine the legality of his imprisonment. If the first writ had no effect upon the custodian a second (alias) or third (pluries) was issued.

HANIPER (OR HANAPER)

A department of the wardrobe into which were paid the profits of the great seal. (From old French *hanapier*, case for goblet. Hence hamper = basket.)

HEADBOROUGH

A kind of constable similar to a tything man (*q.v.*) and inferior to a constable proper.

HEREDITAMENT

Real property that can be inherited, *i.e.* would go to the heir-at-law on the tenant's death intestate. Therefore it did not include a life estate or a leasehold, which was personal property and went to the next of kin.

HERIOT

The best beast, whether horse, ox, or cow, sometimes other articles, that a customary tenant dies possessed of, due and payable to the lord of the manor.

HIGH CONSTABLE

Constable of the Hundred or franchise constituted for the keeping of the King's peace. (*See* HUNDRED.)

HOMILIES

See Article XXXV of the Articles of Religion, 1562.

HONOURS

More noble sort of lordship on which other inferior lordships or manors depend, by performance of some customs or services to those who are lords over them.

HUNDRED

A part or division of a shire for jurisdictional and other purposes.

IMPARLANCE

A petition in a court of Common Law for a day to consider or advise what answer the defendant shall make to the action of the plaintiff, or to a criminal charge.

INFORMATION

Accusation or complaint exhibited against a person for some criminal offence. Information is only the allegation of the officer who exhibits, hence it differs from indictment which is an accusation found by oath of twelve men.

INFORMATION, *EX OFFICIO*

Accusation filed on behalf of the King by his own immediate officer, the Attorney-General. Usually employed against crimes which endanger public safety or order.

JEWEL OFFICE

Office administering the custody of the royal jewels in the Tower of London.

JUDGE ADVOCATE OF THE FLEET

An officer who conducts prosecutions in naval court-martial.

JUDICIALLY NOTICED

Recognized as true by the courts without the need of any formal evidence to prove the existence or nature of some fact or law. Thus the judge may require information from counsel about some local custom or Private Act, but of Acts of general application, of matters of common knowledge, etc., he should have cognizance.

JURY, COMMON (OR PETTY)

Twelve freeholders chosen by lot (challengeable by either party) from the panels of jurors returned by the sheriff.

JURY, GRAND

Body of twenty-four good and lawful men to examine charges or indictment before the justices of the peace in quarter-sessions or before the King's justices to decide whether there is a prima facie case for trial. Abolished in 1933.

JURY, SPECIAL

Juries introduced in trials where the issues are of too great nicety for ordinary freeholders, or when the impartiality of the sheriff is suspect. By 3 Geo. 2, c. 25, either party may demand a special jury if he is prepared to meet the extra cost in the event of the judge not seeing the necessity of such a jury. Abolished in 1949 except for the trial of Commercial cases in the City of London.

KINGS-OF-ARMS (GARTER, CLARENCEUX, NORROY, LYON)

Garter is the principal, Clarenceux the second, Norroy (North of Trent) third of the Chief Heralds of the College of Arms. Lyon is the Scottish King-of-Arms.

KNIGHT SERVICE IN CAPITE

A form of tenure whereby those holding land directly (in chief) from the King had to perform personal military service—this was later commuted to a money payment. (*See* ESCUAGE.)

LEET, COURT. *See* COURT

LETTERS PATENT

Open authorization under the King's Great Seal for the enjoyment of some privilege or the commission of some act. Patents for the development of inventions are still granted in this way.

LIBERTIES (OR FRANCHISES)

A royal privilege or branch of the King's prerogatives, normally conferred by a charter upon, and subsisting in the hands of, a subject. They are of various kinds (*e.g.* the Franchise of the City of London).

MAINPRIZE

The giving of security for the appearance of some person, who otherwise might be committed to prison, at a time stated. When a prisoner is bailed he is actually put in the custody of the person who has given bail for him so that technically he is still in prison. If mainprize has been given he is not in custody at all but someone has given sureties for his appearance. But this distinction early became obscured.

MALUM PROHIBITUM AND MALUM PER SE

Crimes used to be regarded as of two classes. All offences at Common Law were generally regarded as *mala per se* (wrong in themselves—wrong by Natural Law), but others, generally statutory offences (*e.g.* playing at unlawful games, and frequenting of taverns etc.), are only *mala prohibita* to some persons and at certain times and not *mala per se*.

MANDAMUS

Prerogative writ issued by the King's Bench to compel an inferior court to execute its jurisdiction, or to compel a subject or corporation to perform some ministerial duty. Only issued when there is no other convenient remedy, *e.g.* action for damages.

MARTIAL LAW

The law of war, that depends upon the prerogative power of the King. Formerly used to cover not only what is now called martial law, *i.e.* the peculiar situation created by a rebellion, but also what is now called military law, *i.e.* the internal law of the armed forces.

MASTERS OF CHANCERY

Assistants to the Court of Chancery concerned with the issue of certain writs and reporting on matters referred to them. Their chief was the Master of the Rolls, who later became the regular Chancery judge at first instance, and at the present day is President of the Court of Appeal.

MESSENGERS OF HIS MAJESTY'S CHAMBER

Officers employed in apprehending state prisoners, under the control of the Lord Chamberlain. Sixteen Messengers in 1772 were made dependent on the Secretaries of State and employed in conveying dispatches to foreign courts and also in arresting persons alleged to be guilty of libel on the government, etc.—called in consequence " Messengers of the Press ".

MISDEMEANOUR

Any crime or indictable offence not amounting to a felony, such as perjury, battery, libel, conspiracy, or public nuisance; generally punishable at Common Law by fine and imprisonment with or without hard labour. Modern statutes have often attached special punishments to specific misdemeanours, which may be crimes even more serious than many felonies.

MISPRISION OF TREASON

A crime consisting of the bare knowledge and concealment of treason without any degree of assent thereto.

MITTIMUS

Writ for removing and transferring of records from one court to another.

MONSTRANS DE DROIT

A Chancery writ to be restored to lands and tenements that are claimed to be a man's in right, though by some inquest found to be in the possession of one lately dead and to which the King was entitled. It was enacted in 1362 that a claimant to lands seized by the King, as a result of a verdict of an inquest taken *ex officio* by a royal officer, could obtain a writ to the escheator to certify the cause of his seisin into Chancery. There the finding at the inquest could be traversed or he could show his right " monstrer son droit ". Hence derived the Chancery writ of *Monstrans de Droit*. It was one of the remedies against the Crown virtually superseded by the Petition of Right Act 1860 and abolished by the Crown Proceedings Act 1947.

MORTMAIN

Lands held by a corporation (particularly the Church) are said to be held in Mortmain (in the dead hand). Medieval statutes (*e.g.* the Statute of Mortmain, 1279) attempted to prevent alienation of land to the Church. By 7 & 8 Will. III, a licence from the Crown dispenses from such statutes (thus regularizing previous prerogative practice). By 34 Vict., c. 13, various charitable gifts are exempted from the statutes.

NISI PRIUS

The commission to the Judge on Assize giving him civil jurisdiction. In the writ to the sheriff he is ordered to send a jury to Westminster " *unless* the judge comes *before* " on assize. As distinguished from Trial at Bar (*q.v.*) it is trial before a single judge either on Assize or at the sittings for the same purpose held in London and Middlesex.

NON VULT ULTERIUS PROSEQUI

Method of staying prosecution by the Crown, usually called " Nolle Prosequi ". It can be entered by the Attorney-General and operates to stop all proceedings without any need for the consent of the court.

NOTARY PUBLIC

A person publicly authorized to attest contracts, etc. An officer common in Scots law: in England mainly concerned with foreign business.

NOTICED. *See* JUDICIALLY NOTICED

ORDINARY

Civil and Common Law term for one who has, of his own right and not by deputation, immediate jurisdiction in ecclesiastical causes, as the archbishop in a province or the bishop or the bishop's deputy in a diocese.

ORDINARY LORDS OF SESSION

Members of the Court of Session (*q.v.*), the highest civil tribunal in Scotland, other than the Lord President and the Lord Justice Clerk.

OUSTER-LE-MAIN

A delivery of possession of land from the King, on a judgement given in Chancery for a person suing a *monstrans de droit* (*q.v.*), that the King's hand be amoved (*ouster le main*).

OUTLAWRY

Being put out of the law and hence out of the King's protection. The penalty for refusing to be amenable to the justice of a King's court. No longer important since judgement by default was made possible in the nineteenth century.

OYER AND TERMINER

A commission directed to the judges on assize by virtue of which they have power to hear and determine criminal matters.

PARISH CESS. *See* CESS

PATENT. *See* LETTERS PATENT

PATRON

He who has the power of appointment to an ecclesiastical benefice.

PETITION OF RIGHT

Procedure by which the subject may sue the Crown for illegal seizure of goods or for breach of contract (provided the Attorney-General or, since 1860, the Home Secretary endorses the petition "fiat justitia") despite the royal prerogative not to be sued by writ. By the Crown Proceedings Act, 1947, an ordinary action is substituted.

PETTY CONSTABLE

or Constable of the vill, village, or township, as opposed to Constable of the hundred or High Constable.

PETTY TREASON

Treason of a lesser kind. Crime against the security of the commonwealth, though not expressly, *e.g.* where servant killed his master or wife her husband, etc.

PLAINT

The exhibiting any action in writing. The party making his plaint is the plaintiff.

PLEA

The reply to a plaint; a mode of defence by contesting the facts.

PLEAS OF THE CROWN

Offences *contra pacem Domini Regis, coronam et dignitatem suam* which could be tried only in the King's courts; a term for criminal prosecutions.

POPISH RECUSANTS

Roman Catholics who wilfully absented themselves from their parish church, and on whom heavy fines and other penalties were imposed by various statutes.

PRAEMUNIRE

The name of a writ, or the crime for which it is granted, which though not capital is most serious as immediately affecting the King or his government. Originally the offence consisted in asserting the authority of a foreign (*i.e.* Papal) jurisdiction in the land. Other crimes were subsequently brought by statute within its ambit.

PREBENDARY

The holder of a prebend which is the portion of the revenues of a cathedral or collegiate church granted to a canon or the member of a chapter as his stipend.

PRECEPT

A command in writing by a justice of the peace, or other officer, for bringing a person or records before him, *e.g.* the order of the sheriff addressed to chief officers of boroughs in his shire to return to him the names of burgesses duly elected to serve in Parliament. In modern usage also a statutory order by a superior local authority to a subordinate one for the levy of a rate to cover the expenditure of the superior authority (*e.g.* a county council issues precepts to the district and borough councils in its area to levy rates for general county purposes).

PRIMER-SEISINS

The right of the King to first possession of land (that is, the entire profits of it for a year) of which a tenant-in-chief died possessed, until the heir did homage or reached the age of 21.

PROCTOR (PROCURATOR)

He who undertakes to manage another man's cause in any court of civil or ecclesiastical law for his fee.

PROHIBITION

A writ issuing out of a superior court of law directing the judge and parties in an inferior court to cease from the prosecution of a cause as not belonging to that jurisdiction.

PROTECTION

Protection of the King is an act of Grace, by writ issued out of Chancery, giving a subject immunity from lawsuits for a certain time, and for some reasonable cause.

PUISNE JUDGE

The Common Law judges and barons not being chiefs. (From French *puissant* = powerful.)

PURVEYANCE (OR POURVEYANCE)

Right enjoyed by the Crown, of buying up provisions and other necessaries, for the use of the royal household, at an appraised valuation, in preference to others and even without the owner's consent.

PYPOWDER, COURT OF

Incident to the franchise of a fair, this court administered the Law Merchant. From *pied poudré*, dusty foot of merchants on their travels.

QUAM DIU SE BENE GESSERINT

Translation—As long as they shall behave themselves well in their office. A clause often inserted in letters patent of the grant of offices—particularly judgeships. Ultimately distinguished from tenure at the King's pleasure (*bene placito*).

QUARTER SEAL

A minor seal used in Scottish law for ordinary business such as the authentication of Chancery Precepts. It consists of the upper part of the Great Seal, obverse and reverse.

QUO WARRANTO

A writ which lies against any person or corporation alleged to have usurped or unwarrantably to have extended any franchise or

liberty against the King without good title, and is brought against them to show by what right or title they hold or claim such franchise or liberty.

RAVISHMENT OF WARD. *See* ACTION OF RAVISHMENT OF WARD

RECOGNIZANCE

An obligation exacted and put on record by some court of record or magistrate, to perform some particular act, such as appearing at the Assizes, paying a debt, or keeping the peace.

RECORD, COURT OF. *See* COURT

RECORDER

Generally a qualified barrister appointed for a city or borough to preside over a court of record (almost always quarter-sessions) established by Crown grant giving jurisdiction to the mayor and other magistrates.

REGRATING. *See* FORESTALLING

REVERSION

Reversion is the return of land (according to Coke) to the grantor or his heirs at the end of the period of the grant. Offices, other than judicial offices, may be granted in reversion; judicial offices may not, for fear that the grantee may be incapable, whereas for other offices it is assumed that in such case the duties will be performed by a deputy.

RIDING (CORRUPTION OF TRITHING)

Parts or divisions of Yorkshire—namely East, West, and North.

RULE OF COURT

Either (1) an order of the court in a case between parties, or (2) a rule to regulate the practice of the court.

RULES OF PRACTICE

The same as the second meaning of Rule of Court above.

SCANDALUM MAGNATUM

Statutory offence, created in thirteenth and fourteenth centuries and finally abolished in 1888, of defaming the reputation of magnates and aimed at safeguarding the peace of the Kingdom.

SCOT AND LOT

One who pays scot and bears lot contributes to the local rates.

SERVITUDE

A subjection or subserviency of property either (1) to some definite person other than its owner, (2) to some definite property

other than that of its owner for the benefit of the other property, *e.g.* a right of way which the owner of one piece of land enjoys as such over an adjoining piece of land.

SESSION, COURT OF. *See* COURT

SIGNET

A seal kept by the Keeper of the Signet, used to authenticate and give effect to summonses in the Court of Session, *i.e.* a writ by which proceedings are commenced in that court.

SIGNET, WRITERS TO THE. *See* WRITERS

SIGN MANUAL

The superscription of the King at the top of grants or letters patent.

SIMONY

Corrupt presentation of any one to an ecclesiastical benefice for money, gift, or reward.

SOCAGE IN CAPITE

A form of tenure whereby the tenant performed certain non-military services to the King.

SPECIAL CASE. *See* CASE

SPECIAL JURY. *See* JURY

SPECIAL VERDICT. *See* VERDICT

STANNARIES

The mines and works where tin is mined and purified as in Cornwall and Devonshire, which had their own courts and jurisdiction.

STEWARTRIES

A parcel of land in Scotland enjoying a regal jurisdiction, generally parts of a county, but sometimes, *e.g.* in the case of Kirkcudbright, a county of itself.

SUMMONS, WRIT OF

The first step in an action; a process issued in the High Court at the plaintiff's instance to give the defendant notice of the claim made against him, and compelling him to appear and answer if he does not admit it; it also contains the name of the court, etc. where appearance is to be made.

SUSPENSION, PLEAS IN

were those in which some temporary incapacity to proceed with the action or suit was set forth.

TABLER

One who gets his meals at another's table for payment.

TELLERS OF THE EXCHEQUER

The four officers of the Exchequer who were formerly charged with receipt and payment of moneys.

TENANT IN ANCIENT DEMESNE. *See* ANCIENT DEMESNE

TESTE

Witness (so and so). Beginning of attestation clause which ended with the date.

TITHES

Originally a tenth part of the produce of the land devoted to the maintenance of the parochial clergy.

TORT

Wrong arising out of conduct (other than breach of contract) for which compensation or damages will be given in a civil action; *e.g.* trespass, libel, nuisance, negligence.

TOWN BEING A COUNTY OF ITSELF. *See* COUNTY

TREASURER OF THE CHAMBER

A chief officer of the Exchequer of Receipt.

TREASURER OF THE HOUSEHOLD

A court office, of a political nature before 1924.

TRIAL AT BAR. *See* BAR

TROVER

A special form of action which originally lay for damages against one who had found (hence the word *trover* = *trouver*) and converted to his own use the goods of another. The allegation of finding rapidly became fictitious and the need to plead it ceased to be necessary in the nineteenth century. Now the normal action for the recovery of goods or their value.

TUTORY

Custody of a ward.

TYTHINGMAN

A kind of petty constable elected by parishes; constable's deputy.

VACAT

Cancellation and erasure of an entry on a roll.

VERDICT, GENERAL

The answer of the jury on the matters committed to trial before them, *e.g.* verdict for the plaintiff for £500.

VERDICT, SPECIAL

In cases where the jury had doubt as to the law involved they might find a Special verdict, stating the facts as they found them, and referring the law thereon to the decision of the court. Or the judge might ask them for a special verdict.

VICAR-GENERAL

An ecclesiastical officer appointed by a bishop as his representative in matters of jurisdiction or administration.

VICINAGE

Neighbourhood or near dwelling.

VILLEIN IN GROSS

Bondman or servant being bound to a lord irrespective of any other property owned by him.

VILLEIN REGARDANT TO A MANOR

Bondman or servant, being bound to a lord, as a member belonging and annexed to a manor whereof the lord was owner.

WAGER OF LAW

An offer to make an oath of innocence or non-indebtedness, to be supported by the oaths of eleven compurgators who would swear to like effect—especially used in cases of debt. It became a form of licensed perjury and therefore other forms of action were gradually substituted.

WAPENTAKE

Synonym for HUNDRED (*q.v.*). Generally of northern shires owing to Danish influence.

WAST(E)

Actionable damage to real property by tenant or guardian.

WRITERS TO THE SIGNET

A corporation in Edinburgh whose members had the exclusive privilege (until it was modified in 1868 and abrogated in 1933) of signing summonses in the Court of Session (*q.v.*), and as, without such a signature a summons could not be signeted, they had a monopoly of work in the Court. It remains a Society of solicitors of the highest standing in Scotland.

WRITS

of advocation, certiorari, error, etc. (*see under* appropriate name, *e.g. under* Certiorari).

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