0007150000

0007150-000

特272－77

The government of Great Britain

精興社出版部・編

精興社書店

昭和１４

ABH

THE GOVERNMENT OF GREAT BRITAIN

B43
147

特272
77

THE GOVERNMENT OF GREAT BRITAIN

CONTENTS.

PART I.

INTRODUCTORY.

CHAPTER I.—THE BRITISH CONSTITUTION.

CHAPTER II.—THE FORM OF THE HOUSE OF COMMONS.

PART II.

THE EXECUTIVE.

PART III.

THE JUDICIARY.

CONTENTS.

PART I.

INTRODUCTORY.

CHAPTER I.

THE BRITISH CONSTITUTION.

§ 1. **The Nature of a State.**—An independent civilised state at the present day must possess certain marks or characteristics. Thus it must be permanently established and organised for the purposes of government. It must be in possession of a definite area of territory, and it must have attained a certain standard of civilisation. It must also be free from all external control. The kingdom of Great Britain, though it contains within itself nations once separate, satisfies these conditions and therefore forms a state: but its organisation is complicated by the fact that various self-governing Dominions and colonial Dependencies are connected with it. Whatever the technical theory, the relations between these colonies and the parent state vary considerably, and, as will be seen later, are very peculiar and cannot be precisely defined.

§ 2. **The Functions of a State.**—Every modern state has a complex organisation for the purposes of government. In this organisation it is possible to distinguish three separate functions of the state. These are the legislative, the executive, and the judicial functions.

Every state has to secure the maintenance of order in the area which it controls. For this purpose it lays down rules which must be observed by its inhabitants. These rules determine what may and may not be done by the latter and regulate the methods in which certain transactions between them are to be conducted. They also impose, in some cases, positive duties which must be performed by those on whom they fall under pain of punishment. These rules which a state lays down for the guidance of its subjects are called laws. The process by which they are formulated is termed legislation, and the persons who determine of what they shall consist are collectively called the "Legislature."

Legislation, however, is not the sole function of a state. After rules have been laid down for its subjects to follow, the state must see that they are obeyed and that any questions which arise concerning their meaning are determined. It must, therefore, appoint persons to decide these questions. Such persons are called judges or, collectively, the "Judiciary," and the function they exercise is called the judicial function.

Again, it is necessary that there shall be some person or persons in a state who shall appoint these judges, shall carry on its dealings with other states, and generally shall organise its affairs. Such a person or body of persons is termed the "Executive."

§ 3. **The Government of a State.**—It is possible for all these various functions to reside in one person or body of persons, but as a general rule they are more or less separated. It is obvious that they are intimately connected with each other and that the smooth working of the government of the state will depend on the proper adjustment of the relations of the various bodies which exercise them. The manner in which this adjustment is

made differs in various states. In an autocratic state, *i.e.* one in which the arbitrary will of the monarch is the determining factor in government, little adjustment is or should be necessary. But in a democratic state, *i.e.* one in which the inhabitants as a whole decide through their representatives the manner in which they shall be governed, the adjustment frequently becomes a matter of the utmost nicety. The rules which determine the formation, powers and mutual relations of the various bodies which exercise the functions of government are known collectively as the "Constitution" of the state.

§ 4. **Forms of Constitutions.**—A constitution may be the result of a continuous growth, as in the case of Great Britain, or it may have been adopted as a whole—subject to future amendment—at one particular time, as in the case of Belgium and the United States. In the former case it must be gathered from various sources—custom, statutes and judicial decisions: in the latter it is contained in a single document, with subsequent amendments in further documents.

Another distinction between constitutions can be found in the methods by which they are altered. In some countries every alteration of the constitution must be made in a particular way different from that in which laws are usually made. Such a constitution is called "rigid." Most foreign constitutions are of this type. In the British constitution alterations can be made in exactly the same way that ordinary laws are passed. It is therefore termed "flexible."

A third classification of constitutions might be made according to the relations of the executive and the legislature. In some the legislature itself appoints and dismisses the executive; in others it does not do so. To the former type belong the constitutions of Great Britain, Belgium and France, to the latter that of the United States of America.

§ 5. The Flexibility of the British Constitution.—As has been pointed out, the British Constitution is "flexible." This fact has had an important influence on later English history. Since every part of the Constitution is capable of alteration by the ordinary methods of legislation, it follows that those who have desired to make any change in the Constitution have endeavoured to do so in the same way that they would attempt to alter any other law They have had no need of revolutionary methods, because the machinery for a change was ready to their hand. The only force which could prevent the accomplishment of their aims was the force of public opinion as represented in Parliament. Once they had obtained the majority of the electors of the country permanently on their side they were bound to achieve their object within a few years in the ordinary course of parliamentary legislation. If they failed to convince their countrymen of the desirability of the change they would also fail with revolutionary methods. The consequence is that Great Britain has been free from the revolutions which the rigid constitutions of other countries have provoked, while at the same time its constitution has undergone considerably greater change.

On the other hand, it is true that the maintenance of the Constitution depends on the good sense of the electors. It is from a fear that this will not be always in evidence that the safeguards of a rigid constitution have been introduced in other countries. But it should be remembered that ultimately every government depends on the favourable opinion of its subjects, and that if these permanently desire any particular thing they have the power to obtain it. All that these safeguards can be, therefore, is a check on hasty and ill-considered measures. In the British Constitution it is presumed that this function is discharged by the House of Lords; but the powers of that body have

been largely curtailed by the Parliament Act of 1911, and the institution of an effective second chamber is one of our most serious political problems.

§ 6. The Sovereignty of Parliament.—According to Professor Dicey the two main characteristics of the British Constitution are the "legislative sovereignty of Parliament" and the "universal rule or supremacy throughout the constitution of ordinary law."

Parliament has the power to pass or repeal any law whatever. Thus it can alter the succession to the Crown or the established religion of the land; it can change the Constitution and extend its own duration; it may provide for the compulsory purchase of private property, and may validate a marriage previously illegal. Indeed it has done all these things at various times. Perhaps the most striking instance of its power is to be found in the passing of the Septennial Act in 1716 Originally elected for three years only, the Parliament of 1715 passed this Act by which it not only fixed the duration of future Parliaments at seven years but even extended its own duration by four years.

On several occasions Parliament has endeavoured to limit the power of its successors by passing laws declared to be unchangeable. Thus in the Acts of Union with Scotland and Ireland certain provisions were intended to be immutable and to form an essential and fundamental part of the Union. One of such provisions declared the permanence of the Established Church of Ireland. Nevertheless that Church was disestablished in 1869, which fact is a clear witness to the impossibility of limiting the absolute sovereignty of Parliament. If it were limited in any way it would be no longer sovereign.

It is an essential feature of the sovereignty of Parliament that no other body in the state has any power of legislation

independent of 't At one time, as will be seen later, such a jurisdiction was claimed and exercised by the King in Council, but these days are long since past. At the present time every body within the British Empire exercising any legislative function, whether the legislature of a colony or a district council, is subordinate to the British Parliament. It will be seen later that this principle, though modified in practice by recent developments, still holds in theory even in regard to the great self-governing Dominions.

§ 7. **The Rule of Law.**—Every person in Great Britain is subject to and must obey the laws of the land. It is true, indeed, that the Monarch is an exception to this rule and that he "can do no wrong." But as nearly every official act of the Monarch must be done through some agent, and these agents are themselves personally responsible for the legality of the acts they do, this exception is more apparent than real.

No person is in a privileged position in this respect. The persons who compose the government of the day cannot do just as they please, but must exercise their powers strictly in accordance with the rules which Parliament has laid down. In some cases, such as extradition, where it is necessary for the well-being of the State, Parliament has given the ministers of the Crown a discretion, but it must be noticed that this discretion is itself the gift of the law and is no exception to the general rule. If any executive officer exceeds his powers, a complaint may be at once made by the person aggrieved in the courts of law, and if it is proved that the act in question is not strictly in accordance with the law the offender will be condemned. However wide the powers of the executive may be, therefore, one can never say that they are unlimited.

Again, it is to be noted that every man is subject to the same tribunals. There is not one court for the official and

another for the citizen, as is the case in certain continental countries. But the same courts have to determine the disputes of a citizen with the executive as those which determine disputes between citizens. It is therefore obviously desirable that the courts should be free from the control of the executive. As will be seen later, this freedom was attained in 1701.

Again, there is no right which a citizen possesses which he cannot maintain in the courts of law. Wherever there is a right there is a means of obtaining redress for its infringement. Thus it has been laid down by the courts that every person has a right of action against anyone who unlawfully interferes with his personal liberty. That is to say, unless the arrest of any person can be shown to be justified by the law, he is entitled to damages from the person who arrested him, and is further entitled to be set at liberty.

This latter right is enforced, if necessary, by a writ of *habeas corpus*. By this writ the court can compel any person who is imprisoned to be brought before it, and thus find out the cause of his imprisonment and, if necessary, release him. As the courts are independent of the executive, this writ provides an absolute bar to any proceeding on the part of the executive in the nature of imprisoning its political opponents. If for the good of the State it is desirable at any time in periods of political excitement that political partisans should be imprisoned, it is necessary for the executive to obtain power beforehand from Parliament for this purpose. Power is given by passing an Act of Parliament suspending the operation of the *habeas corpus* Acts in cases where a Secretary of State, or other minister named in the Act, shall declare that a person is arrested on suspicion of treason. Such an Act was passed in 1881 with regard to Ireland.

The right of freedom of speech, again, is nothing more than this: that no man can be prevented from saying anything anywhere unless he infringes some rule of the law either in what he says or in the way he says it. Anyone, whether he be policeman or private citizen, who wishes to interfere with the utterance of another must be prepared to show that that utterance has in some way been forbidden by the law.

§ 8. The Conventions of the Constitution.—The Constitution consists of the various rules which govern the relations of the legislature, the executive, and the judiciary and determine their composition, powers, and methods of working. These rules are of two kinds. Some are definitely laid down by the law. Thus the Act of Settlement declares that the judges hold office for life on good conduct. Rules of this kind are termed laws of the Constitution, and will be enforced by the courts of law. On the other hand, there are some rules observed habitually, which are not laid down by any law, and which could be broken without any penalty being incurred for the actual breach. To this class belong the maxims that "Ministers resign office or dissolve Parliament when they have ceased to command the confidence of the House of Commons," and that "Parliament ought to meet at least once a year."

Such rules are termed "Conventions of the Constitution," and generally refer to the exercise of the King's prerogative on the advice of the Cabinet, or of the privileges of the Houses of Parliament. In reality they are understandings observed in the conduct of the government of the country by which the will of the nation is carried out. There is, for example, no method legally to compel a ministry to resign or dissolve when they are defeated on some vital question in the House of Commons,

but unless they do the one or the other they will continue in office without the support of the nation as a whole.

Why, then, are these conventions observed? Do they rest on nothing more than the good faith of those who conduct the various institutions of government? The answer to this question is found in the fact that although the breach of these conventions is not of itself contrary to the law, yet the inevitable consequence of any breach must be to compel the convention breaker to go further and break the actual law of the land and thus come into conflict with the courts. An example of this is to be found in the rule that Parliament must meet at least once a year. If it did not, those taxes that are voted yearly would cease to be due and it would become difficult to carry on the administration without raising money unlawfully. Again, the annual Army Act which legalises for a year the existence of a standing army would cease to operate and the maintenance of that portion of the country's defensive forces would become impossible without contravening the law of the land as expressed in the Bill of Rights.

If Ministers refused to resign or advise a dissolution after having lost the confidence of the House of Commons, their opponents in that House could refuse to pass any measure they introduced. This would have an effect similar to that produced by the non-meeting of Parliament for a year and would impel the Ministry to illegal practices if they determined to remain in power. As a matter of fact such a crisis would not arise, because the King would dissolve Parliament in such a case whether his ministers so advised or not.

§ 9. The Growth of the Constitution.—As has been already stated, the British Constitution is not embodied in one single document, but is the outcome of gradual growth and development. Some of its features at the present day

may appear archaic and to have outlasted the measure of their utility. It should be remembered, however, that the British Constitution resembles a vast machine which requires the most delicate and complicated adjustment, so that it would be unwise to condemn at once as useless any provision that to the casual observer seems of little value. An instance of this occurs, as will be seen later, in the composition of the various boards which have developed from committees of the Privy Council.

The history of the Constitution can be traced from a time when the King did everything, until at the present day he does nothing personally. Theoretically, even now, the King is the source from which all the functions of government spring. Laws are passed by the "King's most Excellent Majesty by and with the advice and consent of" Parliament. Executive acts are done in the King's name, and the heads of the administrative departments are his ministers. Lastly, the King is the fountain of justice, and the judges are appointed by him to keep his peace and to dispense justice in his name. This theoretical aspect of the functions of government illustrates, better perhaps than anything else, the unbroken character of the development of the British Constitution. The history of that Constitution is indeed the history of the gradual limitation of the King's power in the various spheres of government, until in all branches of the administration it can now be exercised only in accordance with a settled procedure laid down and determined by the laws and conventions of the Constitution. The English King, however, has never been an autocratic despot. There never has been a time when he was not limited to some extent by a council of the nation.

It is in the development of this council and the gradual acquisition by it of the control over matters which were at

first almost wholly in the hands of the King that the clue is to be found for tracing the development of the Constitution. The first step was the acquisition of the control over taxation. This, once acquired, led naturally and of necessity to the control over legislation. The control over the Executive was the last to be acquired, but is now as complete as the control over taxation and legislation.

In the following pages the Legislature, the Executive, and the Judiciary will be separately treated. First of all their gradual growth and development will be traced, and then their composition and method of working at the present day will be considered. Some account will also be given of the nature and working of Local Government in England and Wales, and the book will conclude with a consideration of the relations which exist between Great Britain and its colonies and dependencies.

CHAPTER II.

THE FORM OF THE HOUSE OF COMMONS.

§ 10. **The Anglo-Saxon Witan**[1] (*i.e.* wise men) has been long generally, though erroneously, regarded as the stock from which our present Parliament has sprung. How little truth there is in this idea is shown by the fact that the Witan was in no sense a representative assembly. Its members represented themselves, and had no delegated authority to act for the rest of the people. As to the composition and powers of the body there has been much discussion. So far as evidence is available, it tends to show that the Witan usually consisted of the members of the royal family, the royal officials such as the Ealdormen, important Church dignitaries such as the bishops and great abbots, and other persons of influence or importance whom the King asked to be present. There is no evidence that any particular persons had a right to assist in the deliberations of this body. Some men, of course, owing to their position in the country would naturally expect to receive a summons, and it might not be politic for the King to omit calling to his councils men whom it was dangerous to offend or whose cooperation was desired. But presence at the Witan depended on the King's summons.

§ 11. **The Commune Concilium** or Magnum Concilium took the place of the Witan shortly after the Norman Conquest, though exactly how soon is uncertain. It was

[1] The term Witena-gemot ("meeting of the wise men") does not seem to have any official authority.

in principle a feudal court attended by the King's tenants-in-chief, *i.e.* those who held their land directly from the King. It thus differed from the Witan in that "tenure" and not "wisdom" was the qualification for membership. But membership was not entirely confined to the landowners: royal officials, who were not necessarily tenants-in-chief, also attended, and from an early date great ecclesiastical dignitaries, the archbishops, bishops, and abbots, were present, though these last in all probability attended in their capacity of tenants-in-chief, all of them being great landowners.

In theory it was the duty of all the tenants-in-chief to be present at the meetings of this council, but such a complete attendance would have early become impossible, and the King soon formed the practice of selecting those to whom writs of summons should be addressed. Only on three occasions, viz. at Salisbury in 1086 and 1116 and at the Assize of Clarendon in 1166, does a full meeting appear to have taken place. As Gneist says, "throughout medieval times the summons to attend National Councils was mainly regarded as an irksome duty, which all would have gladly declined."

With the loss of Normandy in John's reign the importance of the Great Council increased, the barons combining against the centralising policy of the Crown, which had rapidly developed under Henry II. Hence arose the movement that led to Magna Carta (1215), by which the Council acquired fresh power and importance.

The method of summoning this assembly is laid down by Clause 14 of Magna Carta, 1215, which has been thus translated:—"In order to take the common counsel of the Nation . . . . the King shall cause to be summoned the archbishops, bishops, earls, and greater barons, by writ directed to each severally, and all other tenants-in-chief by

a general writ addressed to the sheriff of each shire; . . . . the consent of those present on the appointed day shall bind those who, though summoned, shall not have attended." This may perhaps be regarded as foreshadowing that separation of the assembly into two Houses which subsequently occurred. It clearly shows the inequality of status then existing among those who were summoned.

This clause of Magna Carta cannot be regarded, however, as the origin of popular representation. Although the decision of those who were present was to bind the absentees, the members of the council were not summoned as representatives. This was first done in 1213, when the King directed four discreet men from each county to be sent to confer with him at Oxford. Representatives of the towns were first summoned by Simon de Montfort to the Parliament of 1265. To this Parliament were called two citizens or burgesses from twenty-one cities or boroughs, mentioned individually by name, as well as two knights from each shire. For this reason de Montfort has been called "the founder of the House of Commons." He is, however, scarcely entitled to this designation, as the assembly he convened represented merely his own supporters, and it is open to question whether he intended this type of Parliament to be permanent. Still, subsequent development was made on the basis he then established.

§ 12. **The Model Parliament.**—In the thirty years following de Montfort's Parliament counties or towns, or both, were on various occasions represented in the National Assembly, but such representation became regular only after "the Model Parliament" of 1295. To this Parliament were summoned by separate writ the archbishops, bishops, and abbots, seven earls and forty-one barons. General writs were also issued to the sheriffs for the election of two knights from each county, two citizens from each city,

and two burgesses from each borough. Besides this, there was attached to the writs sent to the archbishops and bishops what is known as the "praemunientes clause." By this they were directed to cause the attendance in person of the archdeacons and heads of cathedral chapters, and also of proctors to represent the other clergy. It is noteworthy that all these various persons who were summoned did not form one great assembly, although they met in the presence of the King. The aid or grant of money which the King desired was voted by the barons and knights, the burgesses, and the clergy, separately, and each voted a different proportion of their goods.

§ 13. **The Attendance of the Clergy.**—As has been stated before, the inferior clergy were summoned to the Parliament of 1295 by their representative proctors. Their attendance, however, was not a willing one, as they wished to keep themselves separate, as a privileged class. They had already two assemblies or Convocations of their own, one in the province of Canterbury and the other in that of York. These, like the Parliament, were of gradual development and had become representative by 1283. In them the clergy granted their aids to the King, and, as money was after all the real reason for his desire for the presence of the clergy at the central assembly, it is perhaps not to be wondered at that they soon ceased to attend this. After the end of the fourteenth century they do not appear ever to have attended. Thus the design of Edward I. to make a permanent assembly of the three estates of the realm, the Lords, the Commons, and the clergy, was not fulfilled. It is interesting to note that the clergy are still summoned by the praemunientes clause, although they do not attend.

§ 14. **Convocation.**—A few words may not be out of place here with regard to the history of Convocation after the fourteenth century. The clergy retained the right of

taxing themselves in convocation, but after the reign of Henry VIII. their grants were always confirmed by Parliament. In 1664, however, an arrangement was made between Lord Clarendon and Archbishop Sheldon by which the clergy ceased to tax themselves separately, and acquired in return the right of voting in respect of their glebes for the election of members of the House of Commons. This has been described as "the greatest alteration in the Constitution ever made without an express law." In spite of this arrangement Convocation still continued to meet for other purposes down to 1717. But from that date until 1850 it was always prorogued immediately after meeting. Since 1850 it has frequently discussed church matters. Each convocation consists of two houses, the bishops forming the upper, and the deans, archdeacons, and proctors the lower. Since 1884 these two houses have deliberated separately.

§ 15. **The Separation of the Houses.**—It has already been mentioned that Magna Carta provided for the summoning of the greater barons separately and the lesser barons by writs addressed to the sheriffs. Ultimately the division of the Parliament into two Houses took place on these lines. Those who had a separate summons formed the Upper House, and those who were elected for the counties and the boroughs formed the Lower House. The knights of the shire were by birth and breeding much nearer to the barons than the burgesses, and for some time they sat and granted aids to the King with the former. The burgesses from the first deliberated and voted apart, and it was only gradually that the knights drew away from the barons and joined the burgesses. The chief reasons for this were the common representative character and community of interests of the knights and the burgesses. The separation may be dated from the first years of the reign

of Edward III., and became definitely established in the course of the reign. Since that time Parliament has kept the form in which we now know it.

§ 16. **The further history of the House of Commons** must be confined to a statement of the changes which were gradually made in the qualifications of its members and those who elected them and in the numbers of which it was composed. By the time that the two Houses separated it had been determined that the Lower House should be composed of representatives of the counties and boroughs. The number of county representatives remained fairly constant, except for the addition of members from the Welsh counties in the reign of Henry VIII., and from those of Scotland and Ireland on the passing of the respective Acts of Union.

The borough representatives tended to increase greatly in number. This was due to the fact that the King issued writs to a gradually increasing number of boroughs, many of which were only small towns and largely under royal domination. In the time of Edward I. the number of borough representatives seems to have averaged seventy-five. This had increased to over two hundred by the close of the reign of Edward IV. During the time of the Tudors the number of the Lower House was nearly doubled, and Elizabeth alone added sixty-two new members. The borough members grew gradually less and less representative, owing to the fact that in many of the boroughs the elective power was confined to a few individuals and that these were open to bribery. It has been stated that, in 1816, 487 members out of a total of 658 were returned upon the nomination of the Government and 267 private patrons.

A rearrangement of the borough representation was made by the Reform Act of 1832. Fifty-six of the rotten

boroughs, as they were called, were disfranchised altogether, while others lost one member only. In their place certain large towns which had previously had no representation were given members. At the same time the number of county members for England and Wales was increased from 95 to 159. Reform Acts dealing with Scotland and Ireland were also passed in the same year. The total membership of the House of Commons was fixed at 658. This number was increased to 670 in 1885 and in 1918 to 707 by the Representation of the People Act. Under this Act a further redistribution of seats was effected, the unit for Great Britain being one seat for every 70,000 inhabitants. England now returns 492 members, Wales 36, and Scotland 74. Ireland was to return 105 members, but this arrangement is no longer in force.

§ 17. **The Franchise before 1918.**—The qualifications required of voters for county and borough representatives differed, and the two franchises must be considered separately. Originally all those who were entitled to attend the county court could vote in the election of knights of a shire. These seem to have included all the landowners whether they held direct from the King or of an intermediate lord. The sheriff presided over the election. In 1430 the right to vote was restricted to those residents who owned freeholds of the value of forty shillings a year. No subsequent change was made in the franchise, *i.e.* the qualification or right of a person to a vote, until the Act of 1832, which restricted the existing qualification in various ways and created a new property qualification. This was finally fixed at £5 by the Representation of the People Act, 1867. The last-mentioned Act also introduced a franchise depending on the occupation of premises rated at £12. In 1884 the county franchise was largely assimilated to that of the boroughs.

Before 1832 there was no general rule as to the right to vote for a borough representative. The qualifications varied in different boroughs. They may be summarised under four heads—(1) the holding of land, (2) residence combined with payment of scot and lot, or, as we should say, rates and taxes, (3) the freedom of the borough, (4) corporate office. With two exceptions these qualifications were abolished by the Reform Act of 1832. The exceptions were the forty-shilling freehold qualification in towns that were counties and that arising from the freedom of a chartered town. From 1832 to 1867 the borough franchise depended on the occupation of premises of the clear yearly value of £10, subject to certain conditions as to residence and payment of rates. The household and lodger franchises in force till 1918 were introduced by the Representation of the People Act 1867.

In 1885 an attempt was made to divide up the country into constituencies which should be roughly of the same size. This had become possible owing to the assimilation of the borough and county franchises. Previously the taking away of a member from a borough had entailed the disfranchisement of the majority of the borough electors, but this result no longer followed. Hence a large number of towns which had returned members were thrown into county divisions, while the larger towns were split up into districts and given a representation more in accordance with their size. The counties, too, were divided into a much larger number of districts than formerly.

The Franchise from 1884 to 1918 depended on the possession of one of the following qualifications:—

(1) Forty-shilling freeholds, if of inheritance, or in occupation, or acquired by marriage, marriage-settlement, will, benefice or office.

(2) Other property of £5 yearly value, except that the

value of leaseholds had to be £50 if the original term was less than sixty years, and no term less than twenty years gave a vote.

The above only applied to counties and in certain counties of cities such as Bristol, Exeter and Norwich.

(3) Twelve months' occupation of land or a house of the clear yearly value of £10.

(4) Twelve months' occupation of a dwelling-house for which the rates had been paid, combined with residence. This included occupation by virtue of any office, service, or employment, which was known as the "service franchise."

(5) Twelve months' occupation of lodgings of the clear yearly value of £10 unfurnished.

(6) Freedom of a borough if this gave a right to vote before 1832. The freedom must be acquired by birth or servitude, *i.e.* apprenticeship, and there were certain qualifications as to residence. In the City of London the freeman had to be a liveryman of one of the City Companies.

(7) A degree of certain Universities subject to various conditions.

The Scottish and Irish qualifications were generally similar to those set out above which relate to England.

Women, infants, peers, aliens, idiots, and lunatics might not vote, even if in other respects they possessed the necessary qualifications. Persons employed for the purpose of an election could not vote in that election. Parochial relief was a bar to the right to vote: but this did not apply to medical relief. Another bar was conviction for treason, felony or corrupt practices. In the last case the disqualification extended for seven years, and in the other two until the sentence had been served or a pardon granted. Provisions were also in force to prevent the creation of property votes merely for election purposes.

§ 18. The Franchise at the present time.—Continuous and widespread demands for the further extension of the franchise—especially to women—and for electoral reforms, led in 1918 to drastic changes in these matters. An Act, the main principles of which had been settled in advance by a large committee consisting of representatives of all political parties and presided over by the Speaker, was without much difficulty passed through Parliament in that year. Its easy passage may be attributed to the lull in party strife brought about by the war and the formation of a Coalition Government. The main changes are as follows:—

(1) Instead of the seven alternative qualifications there are now three, namely, in respect of (*a*) residence, (*b*) occupation of business premises, (*c*) possession of a university degree or its equivalent.

(*a*) and (*b*).—Male electors must be of full age and have resided, or occupied business premises of an annual value of not less than £10, in the same parliamentary borough or county, or one contiguous thereto, for six months ending on January 15 or July 15 in any year. A woman voter must be thirty years of age, and entitled to be registered as a local government elector in respect of the occupation of premises of a yearly value of not less than five pounds, or of a dwelling house; or she must be the wife of a husband entitled to be so registered. Lodgers in unfurnished, but not furnished, rooms can vote, if otherwise qualified.

(*c*) The University franchise is extended to men of twenty-one years and women of thirty years of age, who have taken a degree, or, in the case of women, its equivalent. In Scotland other scholastic attainments are admitted as qualifications.

(2) No person may vote at a general election for more than two constituencies, for one of which, in the case of a

man, there must be a residence qualification, and, in the case of a woman, a local government qualification (her own or her husband's). The second vote must rest on a different qualification.

(3) Receipt of poor relief or other alms no longer counts as a disqualification. The old disqualifications through legal incapacity remain. But the incapacity of peers does not extend to peeresses in their own right.

(4) Two registers of electors are to be prepared each year, one in the spring, and the other in the autumn. University registers may be made up as the governing bodies appoint.

(5) In university constituencies returning two or more members the elections must be conducted on the principle of proportional representation, each elector having one transferable vote.

(6) At a general election all polls are to be held on the same day, except in the cases of Orkney and Shetland, and university elections. Provision is made for absent electors to vote, in certain cases by proxy.

Previous to the passing of this act the number of persons (all males) qualified for registration as parliamentary electors was about 8,350,000. The number now qualified is about 16,000,000, of whom 6,000,000 are women.

§ 19. **Who may be an M.P.**—There is now no property or religious qualification for membership of the House of Commons. By an Act of Henry V. residence in the constituency was required, but this requirement became obsolete, and was abolished in 1774. In 1710 a property qualification was imposed, but it was constantly evaded, and was finally repealed in 1858.

One of the chief bars to membership was found in the oath which members had to take before they could sit in the House. The form in which this was framed prevented persons with certain religious beliefs from taking it. Various changes were made, and as a consequence it became possible for Roman Catholics in 1829, Quakers, Moravians, and Separatists in 1834, and Jews in 1858 to become members. In 1888 an affirmation was made sufficient for those who dislike to take an oath. This prevents the recurrence of such disputes as those which arose with regard to Mr. Bradlaugh, an atheist, between 1880 and 1886.

Women are now eligible for membership under the Parliament (Qualification of Women) Act 1918.

The following persons are, however, disqualified from becoming members:—

(1) Minors, aliens, idiots, and lunatics.

(2) Peers, except that an Irish non-representative peer may sit for a British constituency. The wife of a peer does not share her husband's disqualification.

(3) Clergy of the Church of England, the Church of Scotland, and the Roman Catholic Church. Ministers of the Church of England may free themselves from this disqualification, and re-enter secular life under an Act of 1870. Nonconformist ministers may become members.

(4) Government contractors.

(5) Persons convicted of treason or felony, unless they have served their sentence or been pardoned. Bankrupts. Persons found guilty of corrupt practices may not be elected for seven years for any constituency, and never for that where the offence was committed; but if the offence is the unauthorised act of an agent, the only penalty is an incapacity for being elected for the constituency in question during the next seven years.

(6) Pensioners of the Crown; but exceptions are made for holders of civil service and diplomatic pensions.

(7) Certain office holders. Judges: Government clerks and officials: returning officers for their own constituencies:

all persons holding offices of profit under the Crown created since October 25th, 1705 (with certain exceptions). Further, any member who accepts an office of profit under the Crown created before that date other than a commission in the army or navy thereby vacates his seat, although he may be re-elected. It is in accordance with this rule that the head of a Government office, such as the Home Secretary, requires re-election after appointment. This provision is also used to enable members to retire if they wish. A seat cannot be resigned, but the member accepts some nominal office such as the stewardship of the Chiltern Hundreds. By this means the seat is vacated and a day or two later the office is resigned.

(8) It may be noted that from 1372 to 1871 no lawyer could legally sit for a county constituency.

Besides the disqualifications set out above, a member may vacate his seat for various reasons:—

(1) By the acceptance of office, as noticed above.

(2) By succeeding to a peerage or being made a peer; but this does not apply to non-representative Irish peers, provided they sit for a constituency in Great Britain.

(3) By death.

(4) By lunacy continuing for six months.

(5) By bankruptcy, unless it is annulled or a discharge granted within six months, with a certificate that it was not caused by misconduct.

(6) By becoming naturalised in a foreign country.

(7) The House has an inherent right to expel a member for conduct rendering him unfit to take part in its deliberations. This vacates the seat, but does not prevent re-election of the member. Thus John Wilkes, who was expelled for seditious libel, was three times re-elected, and the action of the House in finally giving his seat to his opponent was subsequently declared unconstitutional.

§ 20. **The Duration of Parliament.**—One of the Ordinances of the Lords Ordainers in 1311 directed that Parliament should meet annually, and this was reaffirmed by legislation in 1330 and 1362. The rule was observed during the reign of Edward III., and sometimes two, three, or even four Parliaments met in one year. In the fifteenth century there were long intermissions, and in the reign of Henry VII., which extended over a period of twenty-four years, seven Parliaments only were summoned of which only one occurred in the last thirteen years. Again, there was only one Parliament between 1515 and 1528, but in the reign of Elizabeth a summons was issued on the average once in three and a half years.

James I. summoned only one Parliament between 1610 and 1621, and none was called from 1629 to 1640. Subsequently the Triennial Act, 1641, was passed, which provided that Parliament should be summoned every third year. In 1664 this was repealed, but it was provided that three years should not go by without a Parliament, while the Bill of Rights, 1689, contained the statement that "Parliament ought to be held frequently." Since the Revolution Parliament has met practically every year, but this rule is merely a "Convention of the Constitution," as there is no statutory provision to that effect. If Parliament were not to meet for a year, those taxes which are granted annually would cease and the Government would find it difficult to carry on its work. But a greater difficulty still would arise. Power to control the members of the army is given by the annual Army Act, and if this were not passed it would be impossible to maintain the army. Hence the Crown is in practice forced to summon Parliament to vote supplies and to pass the annual Army Act.

The duration of Parliament was first affected by the Triennial Act of 1694, which provided that no Parliament

should continue longer than three years, a period which was extended to seven years in 1716 by the Septennial Act. The Parliament Act of 1911 limited the duration of Parliament to five years, but Parliament may, as in 1915, extend its own existence by an Act passed through both Houses and assented to by the Sovereign.

Formerly the death of the Sovereign at once dissolved Parliament, but by an Act of 1696 Parliament was to continue for six months unless previously dissolved. Since 1867 the death of the monarch does not affect the duration of Parliament.

Originally a fresh Parliament was summoned each year, but later more than one session was sometimes held. The ten Parliaments of Elizabeth's reign held thirteen sessions and the four of James I. eight sessions. The Long Parliament (1640-1660) and the Pensionary Parliament (1661-1679) are well-known examples of long-lived Parliaments.

§ 21. **How Parliament is summoned.**—A Proclamation is issued that the King desires to have the advice of his people in Parliament. Then an Order in Council is made directing the Lord High Chancellor to issue the necessary writs. The peers are summoned by separate writs. The writs for members of the House of Commons are directed to the various returning officers, who conduct the necessary elections and subsequently make a return stating who has been elected.

§ 22. **The Conduct of an Election.**—The returning officer gives public notice of the receipt of the writ and appoints a day for receiving nominations, which must be in a particular form and accompanied by a deposit to cover the expenses of the election. If only one candidate is nominated he is declared to be elected, but if two or more are nominated a poll is necessary. A day is

named, and the election is made by ballot, so that no one may know how any elector has voted. The votes are then counted, and the candidate with the greatest number is declared elected. In the case of a tie the returning officer has a casting vote. Very stringent rules are laid down to prevent anything in the shape of bribery or corruption. The candidates are allowed to spend only a fixed amount of money in advocating their claims, *i.e.* 7d. for each voter in a county constituency and 5d. in a borough. They can also employ only a certain number of people for payment in the work of the election. An election agent who manages the details of the election is usually employed on each side. After the election a strict account has to be rendered of all expenses incurred during the election.

The House of Commons itself formerly decided all disputes as to elections, but in 1868 this function was transferred to two judges of the High Court of Justice.

§ 23. **The Meeting of Parliament.**—Parliament meets on the day appointed, and the first duty of the Commons is to appoint a Speaker. He acts as chairman of the House and also as its representative in communicating with the Crown. After his appointment has been approved, the newly elected members take the oath of allegiance. The Speech from the Throne, which is a statement of the objects of summons, is then read in the House of Lords, where the Commons are summoned to hear it. After some formal business has been transacted in the House of Commons to show its independence of the Crown, the Speech is then re-read there by the Speaker, and the real business of the session begins.

§ 24. **Adjournment, Prorogation, and Dissolution.**—While Parliament is sitting it is necessary for it to be adjourned from day to day and sometimes for longer

periods. Each House has the sole control over its own adjournment, which is effected by a motion agreed to by the House. If both Houses are adjourned for more than fourteen days the Sovereign can issue a Proclamation calling on them to re-assemble after six days.

A Parliament does not sit continuously throughout the whole of its existence, but for certain periods known as sessions. As a general rule there is only one session in each year, commencing about the end of January or beginning of February and ending in August. Occasionally another session is held in the autumn. During the War, however, autumn sessions became the rule. The dates of the beginning and ending of a session are determined by the Sovereign acting on the advice of the Prime Minister. When the Prime Minister thinks that the Parliament has sat long enough and that the session should end he advises the Sovereign accordingly, and the latter in person or by special representatives prorogues it until a certain date. It will assemble again on this date, unless it is further prorogued in the meantime.

It has already been seen that the maximum duration of a Parliament is now fixed at five years, but the Sovereign may, on the advice of his Ministers, dissolve it at any time before the expiration of that period. When a dissolution is contemplated, the present practice is for the King first to prorogue Parliament, and then to issue a Proclamation dissolving it. The same Proclamation provides for the summons of the next Parliament on a day named; and, as we have seen, it is accompanied by an Order in Council commanding the issue of the writs necessary for that purpose.

CHAPTER III.

THE FORM OF THE HOUSE OF LORDS.

§ 25. **General History.**—The origin of the House of Lords can be traced to the Commune Concilium. Magna Carta, as we have seen, sanctioned the organisation of this body on a feudal basis for purposes of taxation. It acquired additional power during the long minority of Henry III., when the whole supervision of the administration came into its hands. The magnates of the realm had thus a corporate existence in a recognised assembly with definite duties before the date when Edward I. bade them share the most important of their powers with the representatives of the Commons. The essential distinction to make between the Commune Concilium and the House of Lords is the growth and ultimate triumph of the hereditary principle.

The various ranks of the peerage were gradually created. The first duke was the Black Prince, who was created Duke of Cornwall in 1337. The title of Marquess dates from 1385 and that of Viscount from 1440. Sixteen representative peers of Scotland were added in 1707, and twenty-eight of Ireland in 1801. The Appellate Jurisdiction Act of 1876 further increased the House by the addition of four—now six—Lords of Appeal in Ordinary.

The numbers of the House have varied from time to time, but originally the spiritual peers were in a majority. The Wars of the Roses thinned the ranks of the lay peers. Fifty-three were summoned in 1454, but only 29 in 1485. At the death of Elizabeth their number was 59, and this had increased to 168 by the death of Anne. No fewer

than 388 peerages were created during the reign of George III., but some of these and of the older ones became extinct, and the number of lay peers at his death was 342. The reign of Queen Victoria saw the creation of 373 lay peers, and at her death the membership of the House of Lords had reached a total of 591.

§ 26. **The members of the House of Lords** owe their position to one of the following considerations: hereditary right; creation of title by the King; official position; election. The Law Lords have a seat in the Lords by virtue of official position; the Irish peers are elected for life, and the Scottish peers for the duration of Parliament. About 720 is the voting strength of the Lords.

§ 27. **The Spiritual Peers** were formerly the most influential and powerful in the assembly and outnumbered their lay colleagues. The dissolution of the monasteries in the reign of Henry VIII. greatly diminished their number, which was finally fixed at twenty-six. In 1801 one archbishop and three bishops of the Irish Church were added, but on the disestablishment of that Church in 1869 they lost their right to be summoned. Although fresh bishoprics have been created the number of seats to which the spiritual peers are entitled has not increased.

The twenty-six seats are thus allotted. The archbishops of Canterbury and York and the bishops of London, Durham, and Winchester are always entitled to a summons. The remaining twenty-one seats are filled by the twenty-one bishops who have longest held an English see. The Bishop of Sodor and Man has no right to speak or vote, but there is some ground for the opinion that he has a right to a seat. On resignation of his see a bishop loses his right to a seat in the House of Lords. In 1642 an Act was passed taking away the right of the bishops to sit in the House of Lords, but this was repealed in 1660.

§ 28. **The Peerage of the United Kingdom.**—The meaning of the terms "baron" and "peer" has changed considerably. Originally a baron was a tenant of land who held direct of the Crown and owed military service to the King, and as such he was usually summoned to the Magnum Concilium. Before the time of Magna Carta a distinction had grown up between the greater barons, who received a special writ of summons, and the lesser tenants-in-chief, who were summoned collectively through the sheriffs, and ceased to attend. Under Henry III. the Magnum Concilium consisted of the greater tenants-in-chief. Nevertheless, Edward I. acted on the principle that it was for the King to determine who should and who should not be summoned, and summoned people who held no lands of the Crown. The writ by which this summons was made ultimately became the sole condition for attendance.

At first the King exercised considerable discretion in the issuing of writs, and it did not follow that because a man had been summoned his heir would be summoned after him; but in time the territorial magnates established a right to be summoned, and as the baronies were hereditary the analogy was applied to a writ of summons, and the perpetual or hereditary summons became the rule. This was established in practice, if not in theory, by the end of the fourteenth century. Thus there grew up the conception of an hereditary "peerage" (the term "peer" originally meant "equal"), though the full legal theory of peerage was not elaborated till quite modern times.

It was sometimes difficult to know who the heir of a baron really was, as there were no title deeds or documents stating precisely the rules of descent. It was different with the other ranks of the peerage, which were created by letters patent laying down definite rules governing the succession to the dignity. The certainty which this method

of creation gave was so great that it was applied to the creation of baronies. The first instance occurs in 1387, and after the reign of Henry VI. it became the usual method. But in the case of a modern claim to a barony which was not so created, proof must be given that a writ of summons was issued and that the person summoned took his seat.

At the present day a new peer of the United Kingdom is always created by letters patent. A writ of summons is sent to the new peer, and on his first attendance at the House of Lords this, with the patent, is entered upon the Journals of the House. The House of Lords itself determines any doubtful claims as to peerages.

§ 29. **Scottish Peers.**—The Act of Union with Scotland provided that sixteen Scottish peers should sit in the House of Lords as representatives of the Scottish peerage. These sixteen are elected by the Scottish peers at Holyrood before the commencement of each Parliament. Their right to sit and vote only continues for the duration of the Parliament. They do not receive a special summons, but a list of those elected is sent to the Clerk of the House. Only those Scottish peers who are not peers of the United Kingdom can be elected. The Crown is debarred from creating any more Scottish peers, and as a number of Scottish peerages have become extinct or their holders have been created peers of the United Kingdom, the number of Scottish peers who have no seat in the House of Lords tends gradually to decrease. In 1707 the peerage of Scotland was nearly as large as that of England, but in December 1909 there were only twenty Scottish peers who had no seat in the House of Lords.

§ 30. **Irish Peers.**—Twenty-eight Irish representative peers were added to the House of Lords by the Act of Union in 1801. They are elected for life and not merely

for the duration of a Parliament like the Scottish peers. All the peers of Ireland are entitled to vote for their election. It was provided by the Act of Union that only one Irish peerage should be created for every three that became extinct until the number was reduced to one hundred, and that the peerage should be subsequently kept at this figure by the creation of a new Irish peerage for every one that became extinct or whose holder acquired a seat in the House of Lords as a peer of the United Kingdom. In 1801 the Irish peerage numbered 234, but in December 1909 the number of Irish peers who had no seat in the House of Lords had been reduced to sixty-five. These peers, as has been previously stated, might be elected to the House of Commons for any constituency in Great Britain, but not for an Irish constituency.

§ 31. **The Law Lords.**—By the Appellate Jurisdiction Acts of 1876 and 1913 six Lords of Appeal in Ordinary have been added to the Lords. The persons chosen must have certain legal qualifications; they are appointed by letters patent and they have the rank of a baron for life. Like all other judges they hold office during good behaviour and may be removed on an address by both Houses of Parliament. Since 1887 they retain their right to a seat in the House after resignation of their office.

The Lords of Appeal in Ordinary and the bishops are the only members of the House of Lords who do not hold hereditary peerages. In 1856 a patent was issued to Sir James Parke, creating him Baron Wensleydale "for and during the term of his natural life," and giving him the right to a writ of summons. The House of Lords objected to the summons of a life peer, and ultimately a fresh patent was issued making the barony in question hereditary as in ordinary cases. This case decided therefore that the King cannot create a life peerage which carries

with it the right to a seat in the House of Lords. The object aimed at by this creation has, however, been achieved by the Appellate Jurisdiction Act.

§ 32. **Disqualifications.**—Women, infants, and aliens cannot sit in the House of Lords. Bankruptcy and conviction for treason or felony have the same effect as in the case of the House of Commons. A peer can also be disqualified from ever sitting again by sentence of the House when sitting as a court of justice. No peer may take his seat until he has taken the parliamentary oath, which is the same as in the House of Commons, or made the alternative declaration. As has been already mentioned, only certain members of the Episcopate and certain Scottish and Irish peers are entitled to a seat, and life peerages (other than those of the Lords of Appeal in Ordinary) do not carry with them the right to a summons.

CHAPTER IV.

THE LEGISLATIVE POWER.

§ 33. **Legislation and Taxation.**—Legislation is the process by which laws are made. A law is a rule or set of rules declared by the sovereign power in the State which all persons belonging to that State or within its borders are commanded to observe. Taxation is a particular form of legislation. It consists in a command to pay certain monies wherewith the business of the State may be carried on. At the present time nobody can be forced to pay any taxes unless it can be shown that such taxes are imposed on him by Act of Parliament. An Act imposing taxes has to be passed by the two Houses and must receive the assent of the King just like any other Act. In any yearly volume of statutes, Acts imposing taxation and Acts relating to other subjects, such as parish councils or merchant seamen, are found without any distinction being made between them. But this was not always so. Parliament first acquired control over taxation and then used this control as a lever to acquire control over legislation. This chapter will be devoted to tracing the methods by which this control was obtained and, when obtained, guarded against any competing claim.

§ 34. **Early Forms of Legislation.**—Before the Norman Conquest all laws were made by the King with the counsel and consent of the Witan, and the latter body was

always consulted with regard to any extraordinary taxation. After the Norman Conquest the respective powers of the King and his Council remained outwardly the same as before, but owing to the introduction of the feudal tenure of land and the consequent right of the King to demand feudal dues from his tenants the power over taxation largely passed into his hands. The Great Council which succeeded the older Witan, was, however, consulted about taxes other than these feudal dues; but the first successful opposition to taxation appears to have occurred in 1198, when a demand which had been made by the King was withdrawn and the Justiciar, who was the King's representative, resigned. The first recorded opposition to the King in respect of taxation was by Becket in 1163.

Before 1188 all direct taxes had been levied on the land, but the Saladin tithe of that year was imposed on movables. The amount was determined in the various parishes by the oaths of representative inhabitants. This method was also applied to determine the amount of taxation on land. The introduction of this principle of representation in assessing taxes laid the foundation of the system of taxation at the present day by which all taxes are voted by the representatives of the people. The people were thus being gradually educated up to the idea that they, not the King, were the proper persons to determine the amount of their taxation.

With regard to legislation, there was but little in the period from the Norman conquest to Magna Carta. What there was took the form of declarations of existing law which ought to be observed rather than of amendments to that law. These declarations at first were issued as charters by the various kings with the assent of the barons. An example of this is the Charter of Liberties issued by Henry I. in 1100, which was the sole legislative

act of his reign. A somewhat later form of legislation is the "Assize." Assizes were used to proclaim amendments in judicial procedure and were of a more or less temporary character. They were drawn up by the King with the advice and consent of his national council. Instances of this form of legislation are to be found in the Assize of Clarendon, 1166, and the Assize of Northampton, 1176.

§ 35. **Magna Carta** has been described as one of the three most important documents in our constitutional history, the others being the Petition of Right and the Bill of Rights. We have already seen that it laid down the method of summoning the national council. But besides this, it declared that without the consent of that council no scutage or aid should be levied except the three usual aids to which the King was entitled as feudal lord. The importance of this clause lies in the fact that it was a deliberate declaration by the King that he had no right to tax the people arbitrarily. The declaration certainly did not include the towns, other than London, but these had yet to establish their footing in the national assembly. In theory the council had always had the right to a voice in taxation, and as a matter of fact it had frequently been consulted by the various monarchs when they needed money. But these clauses of Magna Carta for the first time lay down definitely that taxation requires the consent of those who are to be taxed. The Great Charter contains nothing directly relating to the right or method of legislation, but, by defining the nature of the national assembly, which hitherto had always had some part in legislation, and by placing in the hands of that assembly the control over taxation, it exerted great influence on the ultimate history of legislation.

§ 36. **From Magna Carta to 1295.**—This period saw the gradual development of the national council into the

Model Parliament, containing practically the same elements as the Parliament of the present day. The rights which the assembly had were also confirmed and increased. The minority of Henry III. gave it considerable opportunity of asserting its position. Taxes asked for by the King were frequently refused, and when granted, the methods of collection and assessment were definitely laid down. For some time it was the practice for the King's ministers to negotiate separately with the various classes of the community as to what grant of taxation they would make. With the organisation of a national Parliament, containing representatives of the whole community, under Edward I. the need for these separate negotiations greatly diminished; and although subsequently the King tried on occasion to procure grants from or levy impositions on particular sections of the nation out of Parliament, his right to do this was strenuously denied by the national assembly and the practice gradually ceased. Even in Parliament, however, the various "estates," or groups, still made their grants separately and for separate amounts.

Parliament had acquired as yet but little control over legislation. The practice of petitioning the King to remedy grievances had begun, and so had that of making a grant rest upon the redress of grievances; the barons had used both under Henry III., but neither developed very far until the fourteenth century. Although legislation was now made by the King with the assent of Parliament, the assent was but formal, and that of the elected representatives was not regarded as strictly necessary. The famous statute of *Quia Emptores* in 1290 was passed by Parliament before the representative members arrived.

§ 37. **Taxation from 1295 to 1485.**—The demand was persistently put forward that "the King should live of his own." But the income which he derived from feudal sources proved insufficient, and he was forced to apply to Parliament to make up the deficiency in revenue. It is to this fact that Parliament owes its present powers and position.

In 1297 the Confirmatio Cartarum was extorted from Edward I. This confirmed Magna Carta and provided that taxation should be made only with the common consent and for the common benefit. It did not actually state that tallages, which were taxes on the towns, were included in the taxes not to be levied without common consent, and accordingly Edward I. imposed one in 1304. Subsequent tallages were resisted, and the right was expressly abolished in 1340. Another exception from the Charter of 1297 was the right to exact customs on wool and other articles. New customs were introduced and aroused great opposition. The customs were, however, eventually regulated and became part of the ordinary revenue. From the latter half of the fourteenth century the power of Parliament over indirect taxation has been recognised. Its control over direct taxation had already been obtained, and it may therefore be stated that the exclusive right of Parliament to impose taxation had become one of the rules of the Constitution.

§ 38. **Statutes and Ordinances.**—The control of Parliament over legislation was not acquired so soon or so easily as the control over taxation, but the latter eventually led to the former. In 1309 a subsidy was voted on condition that the King granted redress on certain points laid down in eleven articles. In 1322 an Act was passed which shows a considerable advance on the declaration of Edward I. that that which touches all must be approved by all. This statute declared that all the concerns of the realm "shall be treated, accorded, and established in parliaments by our lord the king and by the consent of the prelates, earls, and barons. and the commonalty of the realm."

But even this could not be said to be anything more than a declaration. It had yet to be converted into a fact. Side by side with the "Statute" enacted by the King, at the request of the Commons and with the assent of the Lords, was the "Ordinance" issued by the King on the advice of his council. The main distinction between the two forms of legislation was that the statute was a permanent legislative act, while the ordinance was really an executive act of a temporary character. The functions of the two overlapped, and as Parliament's control over the form and contents of statutes grew stronger, the King endeavoured to counteract this by legislating by way of ordinances, which were free from the control of Parliament. Thus the Ordinance of the Staple was issued in 1353 and the Commons immediately protested, while in 1390 they petitioned that no ordinance might be made contrary to the law of the land. During the fifteenth century legislation by ordinance disappeared, but the right of the King to legislate independently of Parliament, by virtue of his prerogative or royal power alone, was maintained and became a fruitful source of strife in the time of the Stuarts.

§ 39. **The Initiation of Legislation.**—The ordinance was not the only difficulty against which the Commons had to fight in obtaining control over legislation. At first all legislation in Parliament was initiated by the King. Gradually the Commons formed the practice of petitioning for the redress of grievances and making their grant of supplies depend upon a favourable answer. Even then, however, they were not sure of securing the desired end. They had at first no hand in drawing up the statutes which were founded on their petitions. Accordingly it sometimes happened that a statute did not contain all that they had asked for, or that, if it did, it was so qualified with conditions

as to make the proposed legislation useless. It also might happen that there was so much delay in drawing up the statute that the matter was put on one side and the petition forgotten. This last grievance was remedied by putting off the grant of supplies until the last day of the session, thus compelling the King to issue his statutes before he could get the money he required. This device was first used in 1339. A way to compel correspondence between the petition and the statute based on it was found in the reign of Henry VI. The petition was framed in the form of a statute, and a request was added that its form should not be altered. When this had become the recognised usage the power of the Crown over legislation proposed by Parliament was confined to the right of veto. The Crown and the Parliament had changed places, the executive and the legislature were clearly distinguished, and the foundation of the sovereignty of Parliament had been laid. The gradually increasing influence of the Commons is also shown by the change in the enacting part of the statute. At first the phrase used is "at the request of the Commons"; but this gives place in the reign of Henry VI. to "by the authority of Parliament," and after that reign the former phrase is never used.

§ 40. **Proclamations.**—The ordinance, as has been already pointed out, was a declaration issued by the King in Council of a more or less temporary character and having special reference to executive or administrative needs. This had gone out of use in the fifteenth century, but was revived as the "Proclamation" under the Tudors and Stuarts. The ordinance had been due to the confusion between the executive and the legislature and to the hitherto ill-defined powers of the latter, but the proclamation was a direct claim by the Crown to a legislative authority independent of Parliament. During the Tudor reigns the nation as a

whole recognised the danger of the time and the necessity for a strong central executive authority. And so the Parliament, while anything but servile, was the willing agent of the monarchy, and by that very willingness was able to acquire powers and create precedents whose full force and importance were only seen in later years.

In 1539 an Act gave the force of law to the proclamations of the King issued with the consent of his council. This practically resigned the legislative powers of the Parliament into the hands of the King, but at the same time it was a recognition of the fact that the eventual law-making power was in the Parliament and not in the King. This Act was repealed in the reign of Edward VI., but proclamations still continued to be issued, and in the time of Elizabeth were specially directed towards creating a censorship of the press. In the reign of Mary the judges had laid down that no new law could be made by proclamation, but it was not until 1610 that the position was clearly defined. The judges were then asked for their opinion, and laid down that the King could create no new offence and that his prerogative was only what the law allowed him; but that the King might by proclamation warn his subjects against offences and that the neglect of such warning would aggravate the offence. Further, that no new jurisdiction could be given to the Court of Star Chamber.

It was in this latter court that offences against proclamations were punished, and on its abolition in 1641 the illegal use of proclamations as a means of legislating without parliamentary sanction ceased. At the present day all proclamations derive their ultimate authority from Parliament, and if any emergency arose in which for the good of the State it was necessary to issue some proclamation, the Ministers authorising that issue would have

to obtain the subsequent passing of an Act of Indemnity to save them from the consequences of their illegal action. It should be noted, however, that the Crown can still validly issue proclamations, without the consent of Parliament, for the performance of acts which are purely executive, such as the making of war or peace

§ 41. **The Dispensing Power** consisted in the right of the Crown to exempt individuals from the operation of particular laws. It is undoubted that some power of this kind did reside in the King, but the uncertainty as to its extent led to constant struggles to restrict it within reasonable bounds and ultimately to its abolition. At first this power was necessary to remedy the errors in ill-drawn laws and the lack of regular meetings of the legislative assembly, but it was greatly abused in the fourteenth century, and petitions of 1347 and 1351 presented by the Commons show that large numbers of wrong-doers had been pardoned by its exercise. Various attempts at curbing it were made, but without much success, and during the reigns of the Tudors and the Stuarts it flourished strongly. In 1686 James II. obtained a verdict from a packed court that his exercise of the dispensing power was legal, and, armed with this declaration, he used the power unsparingly. It was largely the misuse of this power and the similar power of suspending laws that led to the Revolution of 1688 and the passing of the Bill of Rights. This enacted that "the pretended power of dispensing with laws or the execution of laws by regal authority as it hath been assumed and exercised of late is illegal." The King cannot, therefore, dispense with any law unless he is given power to do so by the law itself. But the right of the King to pardon offences is not taken away. This is now exercised on the advice of the Home Secretary.

§ 42. The Suspending Power was of much wider extent than the dispensing power. It was a claim to suspend the operation of a statute or number of statutes not merely in individual cases, but for the whole realm. In 1391 Parliament gave Richard II. this authority with regard to the Statute of Provisors, but declared that their so doing was not to act as a precedent. Similar authority was given in certain cases to Henry IV., but it was found impossible to confine the exercise of the power within proper limits. In the Stuart reigns it formed a grave cause of struggle between the King and Parliament. The Declaration of Indulgence of 1672 and the similar Declarations of 1687 and 1688 are the most conspicuous instances of its abuse. The last-mentioned Declaration led to the protest of the Seven Bishops, which was followed by their trial for seditious libel. Their acquittal was the signal for the invitation to William of Orange and the prelude to the Revolution. The Bill of Rights enacts "that the pretended power of suspending of laws or the execution of laws by regal authority without consent of Parliament is illegal." No other solution of the struggle was possible if Parliament was to establish its legislative omnipotence.

§ 43. Illegal Taxation.—We have already seen that by the end of the fourteenth century Parliament had acquired control over taxation. In the same way that the King endeavoured by means of proclamations to thwart the legislative powers of Parliament, so by means of "Impositions," which were customs duties imposed by the King with the authority of his council, he attempted to free himself from the parliamentary control over taxation. Several instances of impositions occurred during the Tudors, and in Bates' Case (1606) James I. obtained a verdict for the validity of the practice. Four years later, however, the Commons awoke to the constitutional importance of the

matter, and protested against the exaction of these customs. They were finally prohibited by the Long Parliament in 1640.

Charles I. endeavoured also to exact direct taxation under the title of ship money, with which episode the name of Hampden must always be associated. The tax was clearly illegal, although the influence of the King sufficed to obtain a verdict by seven judges against five in favour of its legality. In 1641 the Long Parliament declared ship money illegal and abolished it. Another illegal kind of exaction was made by means of benevolences. These were a sort of forced loan; but all forced loans and benevolences were declared illegal by the Petition of Right. In 1660 the feudal dues were also abolished, and the Crown received in exchange a fixed annual sum. Finally the Bill of Rights declared "that levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal." Since then the control of Parliament over the methods of raising the national revenue has been unquestioned.

§ 44. Indirect Influence and Corruption were also used by the Crown in its endeavour to control the current of legislation. By 1485 Parliament had theoretically acquired control over both taxation and legislation, but it was not until after the Reform Act of 1832 that it was completely emancipated from the controlling influence of the Crown. The right of summons was in the Crown, and its ministers would know exactly what laws the Sovereign desired to be passed, while the ordinary members, without any party organisation or much knowledge of state affairs, would have little coherence and could make but weak resistance to the royal wishes as put before them by the King's Ministers.

This was the position under the Tudors. These sovereigns also created many new constituencies, having few electors and being, therefore, particularly open to the royal influence. Such influence was also exercised by circulars addressed to the returning officers recommending various individuals or classes of persons for election. The Stuarts substituted for these methods interference with the various parliamentary privileges, and, in the time of Charles II., direct bribery. After the Revolution and down to 1832 corruption was rife. The boroughs were mostly in the hands of a few people, and were bought and sold like so much property. Among the members themselves bribery was carried on in various ways. Some were given offices of profit, others pensions. Government contracts were found for some, while the bestowal of honours and dignities was sufficient to win the votes of others. Systematic payments were also made direct to members, and it was cynically said that every man had his price.

It was by methods such as these that the King and his Ministers obtained a working majority during the eighteenth century. Towards the end of the century, however, it was shown that a party could be formed and exist without the prospect of mutual gain, and although the influence of the French Revolution retarded to some extent the reform movement in England, yet in 1832 the Reform Bill was passed which made it possible for Parliament to shake itself free from the indirect control of the Crown. Since that time the spread of the franchise and the passing of the Ballot Act have aided the growth of parliamentary independence, while the severity of legislation against bribery and corruption and the curtailment of election expenses within certain defined limits are witnesses to the formation of a body of public opinion inimical to all interference with the choice of the electors. And yet the

Crown still has great influence. But it is the influence of advice and wise counsel rather than of underhand interference for the sake of self-interest. No one can read the memoirs of distinguished statesmen of the last century without feeling how great has been the influence of the Sovereign in the guidance of national affairs. The important part played by the Sovereign is also shown very plainly in the published collection of "Letters of Queen Victoria." But the Crown's influence is now always exercised through advice given to Ministers with the single aim of advancing the public weal.

§ 45. The Right of Veto.—Apart from the indirect influence which has been dealt with in the preceding paragraph, the last stronghold of the Sovereign in resisting the legislative control of Parliament is to be found in the right of veto. This is the right of the Sovereign to refuse assent to any bill which is passed by Parliament. This right was frankly asserted and vigorously used under Elizabeth, but the Stuarts preferred other methods of thwarting the people's will. William III. exercised his veto on several occasions, but the solitary example (in 1707) afforded by the next reign is the last. The right has never actually been given up and the assent of the King is still necessary to legislation; but there are other methods of making his influence felt, and after the lapse of two centuries it is not likely that the exercise of the right will be revived. Its application to the control of colonial legislation will be dealt with later.

§ 46. The Clergy and Legislation.—This chapter would not be complete without some mention of the position of the clergy with regard to ecclesiastical legislation. As early as William I. the rule had been laid down that the assemblage of bishops could enact nothing that had not first been approved by the King. It has already been seen

that although summoned to the national assembly the clergy soon ceased to attend and preferred their own meetings in convocation. Hallam says that "they certainly formed a legislative council in ecclesiastical matters by the advice and consent of which alone, without that of the Commons (I say nothing as to the Lords), Edward III. and Richard II. enacted laws to bind the laity." One such instance is the statute *De Haeretico Comburendo*, passed in 1401. In 1534 an Act was passed placing on record a previous declaration made by the clergy in convocation that they could not make any new canons, *i.e.* ecclesiastical ordinances, without the King's previous permission, and that when made, such canons would only bind the laity with the added assent of the King in Parliament. Henceforth any enactments of convocation bind the clergy only, unless they are subsequently embodied in a statute and passed by Parliament. It was in this way that the Book of Common Prayer was settled in its present form in 1662.

Henry VIII. was declared to be "the only Supreme Head on earth of the Church of England." This Act was repealed in the time of Mary and has never been re-enacted, although a statute of Elizabeth accorded to her the title of Supreme Governor. The present position of the Church may be summed up as follows:—It is part of the national constitution: its liturgy and articles of religion, although framed by itself in convocation, have received parliamentary sanction, and cannot be altered without it. Its courts are part of the judicial system, and administer the law of the Church as part of the law of the land, while Parliament has provided punishments for breach of its doctrines and forms of worship in the case of those who have actually become its members and ministers.

§ 47. The Privileges of Parliament.—Constant struggle has marked the acquisition by Parliament of its control

over taxation, legislation, and the executive. In the course of those struggles its members have acquired various privileges; for it would be of little use to them to possess powers of control unless they were free from all interference in their exercise.

The chief privileges are those of freedom from arrest, freedom of speech, freedom to determine their own procedure, access to the Sovereign and the right to have the most favourable construction put on all their acts.

Freedom from arrest is one of the "ancient and undoubted" privileges of the members of each House. The attempted arrest of the five members by Charles I. in 1642 is perhaps the most notable instance of its violation. The King's conduct in this matter was described by the Commons as "false, scandalous, and illegal." The privilege, however, does not extend to an indictable offence, *i.e.* one triable at assizes or quarter sessions, or to contempt of court. A recent example of this is the case of Mr. Ginnell, who in 1920 was imprisoned for contempt of court in Ireland.

Freedom of speech is another of the "ancient and undoubted privileges" of the Houses. The last occasion on which its exercise was directly impugned was in the reign of Charles I., when Sir John Eliot, Denzil Holles, and Benjamin Valentine were imprisoned for seditious speeches in Parliament. The Bill of Rights provided "that the freedom of speech, and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament." In the eighteenth century the freedom of speech of members was interfered with by dismissal from any office or commission they held. At the present time each House has sole control over the speech of its members. The publication outside the House of fair and accurate reports of speeches made inside is also privileged. Formerly the privilege did not extend even to

Parliamentary papers published by order of the House. This was shown in an action brought against Hansards, the printers of the official reports of Parliament; but an Act of Parliament now protects official Parliamentary papers. Each House can exclude strangers from hearing its debates if it wishes.

Every peer has the right of access to the Sovereign, and the Commons collectively, through their Speaker, also have this right. The Sovereign is bound to put the most favourable construction on all that goes on in the House, and cannot take notice of anything done there until it is officially brought before him. The above privileges are demanded by the Speaker in the House of Lords at the commencement of every Parliament.

There are other recognised privileges which are not demanded by the Speaker. Thus each House has complete control over its own procedure. In the case of any bill, for example, either House could, if it chose, suspend all its standing orders and pass the measure through all its stages in a single night. But it could not do anything directly contrary to the law of the land. Thus it could not authorise its serjeant to behead one of its members. Each House has the power to imprison anyone who commits a breach of its privileges. In the case of the House of Commons this imprisonment can last only until the end of the session, but the House of Lords may imprison for a definite term. Each House has also the power of expelling any member who is unfit to serve, for example a member guilty of a misdemeanour. Formerly, too, the Commons were accustomed to determine disputed elections; but the trial of election petitions was handed over to the Judges by an Act of 1868.

CHAPTER V.

THE PROCESS OF LEGISLATION.

§ 48. Classification of Bills.—Legislation at the present day is effected by statute passed by the two Houses of Parliament and assented to by the Crown. It is true that other bodies have the right of making binding rules, but the authority under which they do so is always derived from Parliament. Before it is passed a statute is called a bill, and as such is introduced into one or other of the two Houses. At first almost all statutes originated in the House of Commons by way of petition, but it gradually became the established rule that, with the exception of money bills, which must be introduced in the Commons, and bills relating to the peerage, which must be introduced in the Lords, all bills may originate in either House. As a matter of fact, the more important Government bills are introduced in the House of Commons.

Bills may be divided into Public and Private bills. Public bills are those that concern the nation as a whole. Private bills are of a local or personal character, and will be dealt with in a later section. Public bills may again be divided into Government bills and those introduced by private members. There is no actual difference between them in form, but Government bills, having the whole weight of the party in power behind them and the privi-

lege, to a certain extent, of priority of treatment, have much more chance of being passed. To ensure full discussion all bills are "read" three times in each House. A reading is a resolution or vote of the House agreeing with the bill.

§ 49. **A Bill in the Commons.**—Any member who desires to introduce a bill in the Commons must first of all give notice of his desire to the House. He then moves that he may have leave to introduce it. This is usually given without debate, but occasionally a long debate is held on the introduction of an important measure. In the case of bills introduced under what is known as the "ten minutes rule" one short speech for and one against the bill are allowed. Occasionally leave is refused. When leave has been obtained the bill may be immediately introduced and read a first time, and a date is named for its second reading. Another method of introducing a bill is for the member to bring his bill up to the table of the House, when the title is read by the Clerk and the bill is considered to have been read a first time.

On the motion for second reading a general discussion of the whole principle of the bill takes place. It cannot be altered at this stage, but the House can either pass or reject the measure or direct that it be read that day six months or at any other time beyond the probable duration of the session, which is equivalent to a rejection; or, again, the bill may be passed with instructions that it shall be altered in Committee in accordance with some general principle. After second reading the bill is referred to one of the Standing Committees of the House unless the House otherwise orders. This does not apply to money bills or bills to confirm provisional orders. Four committees were set up in 1907 to relieve the congestion of business and two were added in 1919. They are called the A, B, C, D, E,

and Scottish committees, and the various bills are distributed among them by the Speaker, government bills having preference in five out of the six. An important measure, however, would usually be considered by a committee of the whole House, and a motion to this effect would be made after its second reading.

In the Committee stage a bill is considered clause by clause and relevant amendments may be made to it. When this has been finished, the bill as altered is reported to the House, and its consideration on this occasion is called the "Report stage." It may now be again amended, or even sent back to the Committee, but usually a motion is made that it be read a third time. On this being carried the bill has completed all the steps necessary for its passage through the House of Commons, and is then sent on to the House of Lords.

§ 50. **A Public Bill in the Lords.**—Procedure in the House of Lords is very similar to that in the House of Commons. On a bill being brought up from the Commons it is read a first time. Within twelve days of this, notice of the second reading must be given otherwise the bill gets no further. After its third reading, if there are no amendments, the Lords send a message to that effect to the Commons. If, however, amendments have been made, the bill is returned as amended. The Commons then consider the amendments and send the bill back to the Lords with a message stating their agreement or disagreement. If the two Houses could not agree, it was formerly the practice to hold a formal Conference between representative members, but it is now more usual for Committees of each House to draw up a statement of the reasons for their disagreement. If neither House will give way and no compromise can be arranged, the bill may be dealt with in accordance with the provisions of the Parliament Act, 1911

(see § 51). When the two Houses agree it only remains for the Royal assent to be given.

§ 51. **Conflict between the Houses.**—Though, in theory, the two Houses are of co-ordinate authority with regard to legislation, yet, in practice, the House of Commons on account of its representative character has become the more powerful of the two Houses and is the predominant partner in legislation. In the years before 1911 the problem whether the House of Lords ought to oppose the will of the House of Commons as expressed in a bill passed by that assembly had frequently to be considered.

Disagreements between the two Houses were very often settled by a compromise, as was the case with regard to the Reform of the Franchise and the Redistribution of Seats in 1884-5. If no compromise could be arranged, two courses were then available. The Government of the day could advise the King to dissolve Parliament. The dissolution and the consequent election of members to a new Parliament would show which of the Houses more correctly represented the opinion of the people. If, however, there was no doubt that the House of Commons did represent the opinion of the people and the Lords still refused to yield, the only way out of the difficulty was to create a sufficient number of peers to support the bill so that the minority might be changed into a majority. This was actually done in 1711; and the threat of using this power caused the Lords to give up their opposition to the Reform Bill in 1832 and to the Parliament Bill in 1911.

The Parliament Act of 1911 has rendered obsolete these methods of dealing with conflicts between the two Houses. By the provisions of that measure it is enacted that if a money bill is passed by the House of Commons and sent up to the House of Lords at least one month before the end of the session it may become an Act on the Royal assent being signified, even though it may not be passed without amendment in the House of Lords. In the case of any other public bill (with the exception of a bill containing a provision to extend the duration of Parliament beyond five years) which may have passed the House of Commons in three 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 or unacceptably amended by the House of Lords in each of these sessions, the bill may receive the Royal assent provided that two years have elapsed between the second reading in the first of the three sessions and the third reading in the third. It is now, consequently, an established principle of the constitution that the chief function of the House of Lords is that of acting as a check on rash, hasty or undigested legislation.

Having passed both Houses or having complied with the provisions of the Parliament Act, 1911, the bill is ready for the Royal assent. The Royal assent is given either in person or by commission. The form of assent for ordinary bills is "le roy le veult," for money bills "le roy remercie ses bons sujets, accepte leur benevolence, et ainsi le veulte." Assent is refused by the words "le roy s'avisera." Royal assent has been uniformly granted since 1707, when Queen Anne refused it to the Scotch Militia Bill.

The Crown possesses the prerogative right of dismissing a ministry if there is reason to believe that it has lost the confidence of the electorate. This power was exercised by George III. in 1783-4 and in 1807, and his action was justified by the result of the elections to the new Parliament. The constitutional usage, however, now seems to be that the sovereign should dissolve Parliament only on the advice of the existing responsible minister.

§ 52. **Money Bills** may be defined as those which have for

their object the grant of public money or the imposition of taxes. Procedure on such bills differs from that on ordinary bills. In the first place all such legislation must be founded on resolutions passed by a Committee of the whole House. The revenue and expenditure are settled in the following way. The Ministers of the Crown put forward resolutions stating what money shall be allotted for the national expenditure and how it shall be spent. These Estimates are discussed by the House in what is known as Committee of Supply. Other resolutions are also passed by the House in what is known as Committee of Ways and Means, and these determine whence the money voted in Supply shall be drawn, whether from the permanent taxation which is paid into the Consolidated Fund or from fresh taxation to be imposed. When these various resolutions have been agreed to they are embodied in bills which are passed in the usual way. But before a money bill can become law it has to be passed by the Lords and receive the assent of the King.

Grants of money have always been the peculiar prerogative of the Commons. This was recognised as early as 1407, and again in 1593. In 1671 and 1678 the Commons declared that the Lords had no right of amendment, and thenceforth this has always been acquiesced in. As late as 1904 a Lords' amendment to the Licensing Bill of that year was objected to by the Commons because it conflicted indirectly with this principle. For a long period the Lords had also refrained from rejecting any money bill, but in 1860 they threw out a bill for the repeal of the paper duty, although they had already passed the bills creating the taxes which were to take its place. This bill had only passed the Commons by a narrow majority, but some six weeks later three resolutions were passed by the Commons which affirmed their former rights

as to taxation and stated that the exercise by the Lords of their power of rejecting such bills would be looked upon with "peculiar jealousy."

The rejection by the Lords of the Finance Bill of 1909 led to a struggle between the two Houses, with the result that the Parliament Act 1911 (§ 55) definitely provided that the Lords can neither reject nor delay a money bill.

Another important point with regard to money bills is that the proposal for the grant to be made must come from the Crown through its Ministers. This rule is only a "Convention of the Constitution" and could at any time be altered, but while it is in existence it prevents irresponsible private members from introducing legislation imposing greater burdens on the taxpayers of the country.

§ 53. **Private Bills** arose from the custom of presenting petitions to Parliament to obtain some alteration of the laws in favour of a private individual. At the present day they are of a private, local, or corporate character. Examples of these various classes may be found in Acts to administer a trust estate, to regulate a harbour, or to confer powers on a railway company. They differ from public bills in procedure in certain respects. A private bill commences by petition which must satisfy certain requirements If passed by the examiners it is sent on to the House and read a first time. Even if the special requirements are not complied with, however, this may be condoned and the bill proceed. Between its first and second readings its form is examined, and after the second reading it is considered by a small committee, who hear its promoters and also those who can show that they have a right to object. If passed by the committee it is read a third time. It then goes through the same stages in the other House, and finally becomes law with the assent of the King.

In 1899 a special method of dealing with Scottish private bills was inaugurated. The Secretary for Scotland is empowered to grant Provisional Orders where a private bill would formerly have been necessary. These are then confirmed by an Act of Parliament which on introduction is "deemed to have passed through all its stages up to and including Committee." Provision is made for the necessary examination of the various projects and for the hearing of objections. Important schemes can still be passed like an ordinary private bill. This innovation has considerably decreased the cost of Scottish private bill legislation, and has also relieved Parliament from a good deal of unnecessary work.

§ 54. Other Methods of Legislation depend ultimately on statutory authority. One important class of enactments is that of Provisional Orders. These are schemes of a local nature similar to a private bill, which have obtained the sanction of a Government department. They are confirmed by an Act of Parliament in which they are merely mentioned in a schedule. As a general rule they pass without opposition, being accepted on the authority of the Government department.

In other cases power is given to various bodies such as the Government departments, the Charity Commissioners, and the Rule Committee to make rules and regulations. These may acquire binding force immediately they are made in some cases, while in others it is necessary for them to lie on the tables of the Houses of Parliament for a certain time without objection.

Bye-laws form another class of legislative enactments of which the ultimate validity depends on the statutory authority given to their authors. All these forms of legislation must keep within the powers under which they are enacted.

§ 55. General Procedure.—It must not be thought that the sole function of Parliament is to pass bills. It also controls the Executive, and expresses its opinion on various questions of administration in the form of motions. If it is dissatisfied with the conduct of any Minister, it may vote to reduce his salary by some nominal amount to show its displeasure. By means of questions to Ministers every member has a right to inquire into all the details of the administration of the Empire, and thus to ventilate any grievance that may arise. This power is exercised to a considerable extent, and is really one of the chief means by which the growing power of the Executive is kept in check. It is also utilised by Ministers themselves when they wish to make some official pronouncement. This is done by arranging with some member to ask a question to which the desired statement may be made as an answer. Previous notice must be given of all questions, and Ministers may refuse to answer in the interests of the State.

The order of business in the House of Commons on an ordinary day is (1) Private business, *e.g.* private bills. (2) The presentment of petitions. (3) Questions. (4) Matters taken at the commencement of public business, *e.g.* the introduction of new members. (5) Orders of the Day and Notices of Motion. An Order of the Day is some matter which the House has ordered to be considered on a particular day, *e.g.* a reading of a bill. The Government determines what shall be the business for the day, but on Fridays bills introduced by private members have priority over Government business. Notices of motion also have priority over Government business on Tuesdays and Wednesdays after 8.15. But these arrangements are subject to interference by the Government and rarely obtain after Easter or Whitsuntide. The House sits from 2.45 p.m. until 11.30 p.m., no opposed business being taken after

11 p.m.; but on Fridays the hours are from noon to 5.30 p.m. The observance of these times may be suspended on any occasion by resolution of the House and this may give rise to an "all-night sitting." Forty members constitute a quorum, but this is not necessary unless some member calls attention to the fact that there are not forty members present, when the House may be "counted out."

PART II.

THE EXECUTIVE.

CHAPTER VI.

THE GROWTH OF THE EXECUTIVE.

§ 56. **The Nature of the Executive.**—The functions of government are not exhausted with the mere passing of laws. Those laws have to be carried out and enforced. The duty of doing this falls upon the Executive. It also has to determine the conduct of the various interests of the State, its relations with foreign countries and the colonies, the magnitude of its defensive forces, the amount of its expenditure and how the revenue necessary to meet it shall be raised, and generally its policy with regard to all the questions of the day.

In the beginning of our history the King personally took part in all branches of the government. Now he does no administrative act by himself, but everything is done through his responsible Ministers. There has never been a time, however, when his action has not been controlled to some extent by a council, and the history of the Executive is best shown by tracing the history of that council, and with it the gradual limitation of the King's power or prerogative and the gradual acquisition of control by the

Parliament. The tendency of the council in its various forms to increase gradually in size and then for an inner committee to develop from it should be carefully noted.

§ 57. **Saxon Administration.**—Before the Norman Conquest the administrative powers of the King were not defined. Their extent depended on his character and his ability. In theory, "the work of the Witena-gemot was at once administrative, legislative, and judicial; laws were promulgated with its counsel and consent; taxation, when required, was raised by its authority; it shared in the decisions of high questions of State, such as the declaration of war and the conclusion of peace; it witnessed grants of land and acted as the Supreme Court of Justice." Though these powers were extensive, yet it was only through the will of the King that the decisions of the Witena-gemot could become effective.

§ 58. **The Effects of Feudalism.**—After the Norman Conquest the power of the King tended to increase. This was due to several causes, not least of which was the strong and energetic character of the occupants of the throne. The introduction of the feudal system made the Norman Kings the supreme landowners of the kingdom, while the oath of fealty to the King which all landowners had to take, whether holding directly from the King or not, brought the subjects into a much closer and more subservient relation to their monarch than had been the case in Saxon times. Moreover, the fact that his subjects owed allegiance primarily to him and not to the lords of whom they held their lands prevented those lords from obtaining the same independent position in administration which they had acquired in Normandy. Again, while the King always had to rely to some extent on national taxation, yet the increase in wealth which he obtained from the feudal dues made him more independent of the National Council.

This independence was further strengthened by the King's right to call upon his subjects for military service. All these various causes united, therefore, to make the Norman much more powerful than the Saxon King. All the branches of the administration were completely subject to the royal power, and the King could do whatever he felt himself strong enough to do.

§ 59. **The Curia Regis.**—It has been already pointed out that the Magnum (or Commune) Concilium superseded the Witan. This new body usually met three times a year —at Christmas, Easter and Whitsuntide—when it considered the King's legislative and financial proposals and decided appeals which were brought before it. But administrative acts could not wait to be considered at one of these meetings: frequently a decision had to be made at once. And so a permanent committee of the Great Council was evolved which was always near by for the King to consult and which took off his hands a good many of the less important details of government. This committee was called the Curia Regis. It hardly had an official position, and its members were rather personal advisers of the King chosen by him at his pleasure, than persons having a permanent right to attend. This council was usually composed of the officials of the royal household, such as the steward and marshal, whose positions tended to become hereditary, and also certain other officials who were purely royal nominees. The most important of the latter were the Justiciar, the Chancellor, and the Treasurer.

The Justiciar was the King's chief executive officer and presided over all legal business. When the King was abroad the Justiciar acted as his representative. By the reign of Edward I., however, this official had developed into the Lord Chief Justice, who was solely concerned with

the administration of the law. The Chancellor was originally a private secretary of the King, and had charge of his correspondence. As this increased in bulk the authority of the Chancellor over it increased also until he determined its contents. He displaced the Justiciar as chief executive officer in the thirteenth century. By the seventeenth century his duties had become mainly legal, but his appointment is now made on political grounds, and he resigns office with the Ministry of which he is a member. The Treasurer, as his name implies, was mostly concerned with the royal revenue.

From this Curia Regis various permanent bodies gradually broke off for the purposes of revenue and justice. One of these bodies was also called Curia Regis, a name which is also sometimes applied to the Great Council out of which the Curia Regis proper had sprung. The history and powers of these offshoots of the Curia Regis will be further considered in a later chapter,

§ 60. **The King's Council until 1295.**—Until the Exchequer and the various common law courts had become definitely separated from the Curia Regis the same body of advisers had been concerned with all the various classes of business it conducted. Up to that time its functions had not been differentiated. But when the fiscal and judicial functions had been removed, the consultative and deliberative remained, and the assembly became the King's Council, following his person, but still with ill-defined constitution and powers. It is not until the reign of Henry III. that one can be at all sure as to the exact powers which it possessed. The minority of that King and his consequent inability to carry on the administration of the country necessitated the doing of that work by the Council. Accordingly its importance greatly increased. Its composition varied from time to time, but

the officers of State and of the household, besides other councillors, the judges, and certain bishops and barons were always of its number. It acted in the King's name and was permanently concerned in every part of the administration. It differed in composition from the Great or Common Council of the realm which was now gradually developing into the Parliament, some persons being common to the two Councils, while others belonged to one or the other alone. Moreover its functions were administrative and executive rather than fiscal or legislative.

After Henry III.'s minority the Council still continued in existence and was now a check on the King's power rather than a medium through which he might act. The councillors had become guides. Its importance is shown by the elaborate regulations laid down by the Provisions of Oxford for its choice. The councillors had to take an oath to advise faithfully. This oath gradually grew in extent and was intended as a kind of check. Meanwhile the barons endeavoured to control the appointment of the King's Ministers and hence the administration; indeed they tried to turn the Council into a committee of themselves.

§ 61. **From Edward I. to Richard II.**—Under Edward I. the Council assumed a recognised position of great importance, and became more definitely organised. Its powers were very large, being practically co-extensive with those of the King, who in all administrative matters acted through it. It was essentially a royal body, being composed of those persons whom the King chose to advise and help him. As yet, however, it was not a separate, well-defined body; it was intimately connected both with the law courts, which had sprung from the Curia Regis, and with Parliament, which under Edward I. was in form a specially constituted meeting of the King's Council or

Court. There was no clear distinction between Executive, Legislature and Judiciary; in the Council as in Parliament the King would legislate and take advice on matters of administration and policy, and the Council exercised wide judicial functions.

In the fourteenth century the King's Council acquired a much more distinct character, and gradually separated from the law courts and from Parliament; and as the Council became more distinct, Parliament became jealous of its powers and activities. It has already been pointed out that Parliament acquired, nominally at least, the sole power over taxation and legislation. It remains to be seen how Parliament acquired control over the Executive by securing that its approval should be necessary for the appointment of the King's Ministers.

Under Edward II. the barons in Parliament renewed their earlier efforts to control the Council and even to make it representative of themselves. They forced the King to dismiss his unpopular favourites and ministers, Gaveston and the two Despensers. Various schemes for reform of the administration and of abuses were formulated by the barons, and in 1310 they set up the committee of twenty-one Lords Ordainers to check and control the King. This essentially baronial body issued ordinances aiming at a strict control over royal finance and administration, and providing that the great offices of State should be filled up with the counsel and consent of the barons. For most of the rest of the reign appointments to the Council were forced on the King, and in 1327 he was deposed on the charge of incompetence and negligence.

The reign of Edward III. was one of great constitutional development, and the Commons, now becoming organised as a separate House, began to claim the power to call officers of state to account for their acts and policy. As

yet, however, Parliament had little real power of checking the King or enforcing any concessions he made. The King's financial necessities arising out of the war with France might make it desirable for him to consult Parliament as to the conduct of the war, to listen to petitions against abuses and promise to reform them, to allow the royal accounts to be supervised by Parliament, and so forth, but the national assembly could do little more than protest and obstruct. The Government time and time again eluded parliamentary control by levying aids and customs without its consent, while the Council issued ordinances and exercised wide judicial powers in spite of continuous parliamentary petitions against it.

§ 62. **Impeachment.**—In 1376 occurs the first instance of impeachment. An impeachment is an accusation brought by the Commons against some individual who is alleged to have acted contrary to the interests of the State. The accused is tried by the Lords, who act as judges, but they cannot give judgment unless the Commons demand it. This allows the Commons an indirect power of pardoning after having made their protest against maladministration. The chief use of impeachment has been as a check on the action of the King's Ministers. The most important cases were those of Bacon 1621, Middlesex 1624, Buckingham 1626, Strafford and Laud 1640, Clarendon 1667, Danby 1678, and Warren Hastings 1788. This method of controlling the Executive has not now been used for over a hundred years, and, with the present system of Cabinet responsibility to Parliament, is not likely to be used in the future. However, there is nothing to prevent its being employed if necessity should arise. In 1376 Lords Latimer and Neville, the chamberlain and steward, besides several commoners, were impeached for extortion. They were found guilty and sentenced.

§ 63. **Richard II. to the Tudors.**—During the minority of Richard II. the Council was under the control of the Parliament, as the latter body chose the principal Ministers. The executive powers of the Council at the same time became of greater importance owing to the impossibility of the King taking part in administration. In 1385 the King refused to name his intended Ministers to the Commons, but in the next year his chancellor and adviser, Michael de la Pole, was impeached and convicted. The impeachment was solely for political purposes, the object being to ensure his removal.

For some time after this Richard was on amicable terms with the Parliament, but the despotic nature of his rule during the last two years of his reign caused his deposition, and once again showed that the barons in Parliament were too strong for the King.

The years which elapsed between the deposition of Richard II. and the commencement of the Wars of the Roses comprise a period of constitutional kingship. Parliament now enforced the rights which it had claimed from previous sovereigns. Henry IV. endeavoured to adjust the relations between the Executive and the Legislature, and in consequence the Council and Parliament worked together harmoniously. In 1404, 1406 and 1410 fresh councils were nominated at the request of the Parliament, and this appointment of councillors at the wish of Parliament continued for some time longer.

During the minority of Henry VI. the Council attained its maximum power. Its work in all branches of the administration was very great. It was composed mainly of lords, and its power is an index of the power of the nobility at the time. On certain occasions Great Councils were summoned to assist the Privy Council, as it had now begun to be called, and these show the consultative functions which the House of Lords had retained from earlier days. In 1437 Henry VI. undertook the duties of government personally and a change may be noticed. The Council ceased to be subordinate to Parliament, and, indeed, gradually tended to control the latter body. During the Wars of the Roses a large number of the nobility were killed and their power greatly decreased. At the same time the authority of the Commons, which had shown a premature growth under Henry IV., declined, and the whole government of the kingdom was in disorder. There were long gaps between the meetings of Parliament, and Edward IV., by introducing commoners into the Privy Council for the first time, increased his own power.

§ 64. **The Tudor Monarchy.**—When Henry VII. came to the throne a strong administration was necessary to free the country from the internal disorders created by the late war. During the reigns of his successors the dangers from without and the difficulties of the religious settlement within necessitated a strong hand at the helm. The sixteenth century is therefore one of nearly absolute monarchy. This was disguised under constitutional forms, but both Parliament and Council were subservient to the royal influence. The reason underlying this was, however, that the Tudor sovereigns identified their policy with the interests of the State, and the nation recognised that this was so. The executive government of the country was carried on by the King acting, in the main, through his council. This was not a large body, and its members were nominated by the sovereign. Much was left to the individual members, but the supreme control rested with the monarch.

The sixteenth century is remarkable for great progress in many directions. Not least may the change be noticed in matters of government. Before this period government was

coercive rather than regulative. "It consisted chiefly," as one writer puts it, "in collecting taxes, suppressing rebellions, and maintaining the authority of the common law." But new features of government now arose, and new machinery was invented for the administration of the laws, which were largely increasing in number and complexity.

§ 65. **The Secretaries of State** first acquired real importance during the personal rule of the Tudors. Originally the Secretary was the King's confidential clerk who kept the signet. The office gradually grew in importance, and under Henry VIII. and Elizabeth the Secretary was in fact, though not formally, the highest official of the Crown. In 1540, after the fall of Cromwell, two Secretaries with equal powers were appointed. The administrative functions of the post were steadily extended. Until 1782 each of them dealt with both Home and Foreign affairs, but in that year Home affairs and the Colonies were assigned to one Secretary, and the other became Secretary for Foreign Affairs. In 1794 a Secretary for War was appointed, and in 1801 the Colonies were transferred to his office. In 1854, however, a separate Secretary for the Colonies was appointed. In 1858 a Secretary for India was appointed, and in 1918 a Secretary for Air. It should be noted that there is only one office of Secretary of State, although it is held by several Secretaries. Their powers are equal, and each can, if necessary, exercise the power of any other, unless otherwise provided by statute. From the time of the Tudors the Secretaries were the channel through which subjects could approach the Crown, and the medium through which the Crown expressed its pleasure. Always members of the Privy Council, they became under the Cabinet system the responsible heads of departments of government.

§ 66. **The Stuart Period** witnessed the struggle between

the upholders of the theory of divine right—that the King's power was unlimited and above the control of Parliament—and those who maintained that the King's prerogative could be exercised only in accordance with the law. In the reigns of the first two Stuarts the causes of conflict were the efforts of the King to tax without the consent of Parliament, and to pervert the course of justice by influencing the judges and also by making use of the Court of Star Chamber. This court had grown out of the judicial functions of the Privy Council, and was now used to enforce the illegal proclamations of the King. It was abolished by the Long Parliament in 1641. The exercise of the suspending and dispensing powers provided the chief cause of quarrel during the last two Stuart reigns. The struggle ended in the Revolution of 1688-1689, and the final establishment of the authority of Parliament over the Executive.

The Council was still the means of government, and its power tended to become greater until, in 1641, it was shorn of nearly all its functions except those which were political and executive. In the reign of Edward VI. it had been divided into five committees for the better execution of the affairs of State. This division continued to be observed more or less, and in the reign of Charles II. several committees were formed to carry on the various departments of government, all being subject, however, to the full Council. Besides these committees an informal secret committee, which was called the Cabal, was also formed to advise the King in his conduct of the affairs of State. To this political adventurers were admitted and it became of bad repute. Several of its members were impeached, and in 1679 a scheme was formulated for making the Privy Council representative and bringing it more into harmony with Parliament. The old council was dissolved and the

new scheme tried, but the number of councillors was too large and the old conditions soon revived.

During this period Parliament lost to some extent its hold on the King's Ministers owing to the secret nature of the inner committee of the Council. The consequence was that it became necessary to assert control by means of several impeachments. An important point to note is that early in the reign of Charles II. supplies were appropriated to the particular purposes for which they were voted.

The interval of the Commonwealth was one of a strong central administration, but it was premature. The nation as a whole did not wish for it, and shortly after Cromwell's death it expressed its dislike of his strong and autocratic government by its acquiescence in the Restoration.

§ 67. **The Executive since the Revolution.**—The history of English administration since 1688 is mainly concerned with the growth of the Cabinet and its general directing power. This will be considered separately in the next chapter. It will be sufficient here to notice that the Cabinet is really a private meeting of selected Privy Councillors, and thus continues the historical development of the executive power of the Crown in Council. The Privy Council itself at the present day consists of a large number of the most prominent men of the time, but it never meets as a whole, and any business which must be carried out by Order in Council is formally done at a meeting of a few of its members specially convened for the purpose. From its committees, however, have sprung a number of important departments of State. As will be seen in a later chapter the Boards of Trade, Works, and Education, and the Ministry of Agriculture and Fisheries, are all wholly or partially the outcome of its committees.

CHAPTER VII.

THE CABINET AND THE PARTY SYSTEM.

§ 68. **The Growth of Parties.**—A party may be defined as a body of individuals having similar views on the leading political questions of the day and combined together to further the adoption and maintenance of those views in the conduct of the business of the State. The Puritan members in the time of Elizabeth had common opinions, but we find the first trace of definite parliamentary parties in the Long Parliament when Roundheads and Cavaliers faced one another, being divided on the theory of Divine Right. Before this time circumstances had been against the formation of parties as they are now understood. Parliament met but rarely. There was little opportunity for its members to know one another or to agree on concerted action. There were few alternatives to the Ministers chosen by the Crown, as no others had any official experience. Consequently there was little real opposition unless the whole Parliament was united in defence of its power or privileges.

The Exclusion Bill of 1679 was the cause of the formation of two parties. By that measure it was proposed to exclude the Duke of York (afterwards James II.) from the throne on account of his professed Romanism. Charles II. dissolved Parliament. Many petitions for a new Parliament were then addressed to him, and their authors became known as "Petitioners." Their rivals and opposers were termed "Abhorrers," as abhorring the attempt to coerce

the King. These names, however, quickly gave place to those of "Whigs" and "Tories." "They differed," writes Hallam, "mainly in this: that to a Tory the constitution . . . was an ultimate point . . . from which he thought it almost impossible to swerve; whereas a Whig deemed all forms of government subordinate to the public good, and therefore liable to change when they should cease to promote that object. . . . The principle of the one, in short, was amelioration, of the other conservation." After the Revolution the extreme Tories became Jacobites, but in the main the country and the Parliament was divided into two great parties, although there was not much public enthusiasm for either side. During nearly the whole of the eighteenth century it was possible for the King and his Ministers, by the judicious use of bribery and their influence over rotten boroughs, to secure a parliamentary majority of the complexion desired. But as public interest increased the possibilities of bribery became less. The Reform Act of 1832, the new ideas as to representation which it inaugurated, and the publicity of debate have gradually emancipated the House of Commons from all traces of direct corruption.

§ 69. **Parties of To-day.**—During the nineteenth century the Whigs and Tories gradually developed into Liberals and Conservatives. As the terms came to be generally understood, a Liberal is one who is more or less dissatisfied with existing conditions and desires to see them reformed. A Conservative, on the other hand, desires to retain existing conditions and only to change them when it is clearly proved that the change will be beneficial. In methods of legislation the Liberal Party was inclined to accomplish its aims by sweeping measures, while the Conservative Party endeavoured to effect necessary changes by a process of gradual evolution and so to avoid a violent disruption of existing conditions. In

practice, however, the distinction was by no means so clearly defined as might have been expected.

Besides these two great parties there were, before the War, two other parties or groups, the Irish Nationalist party, consisting of about eighty members and advocating the creation of a separate Parliament and Executive for Ireland, and the Labour party, representing trade unions, co-operative societies and socialist bodies, and advocating a socialistic policy. Socialistic theories vary considerably even on important matters, but the idea underlying them all is the state organisation of individual life and industry for the common good. In this they are opposed by individualism, which aims at leaving to the individual citizen as much freedom of action, social and economic, as is consistent with the national welfare.

The recent War necessarily suspended normal party strife, and the rapidly growing strength of the Labour party has since transformed party positions. During the War a coalition between the Conservatives and a large section of Liberals was formed, the rest of the old Liberal party standing aloof. That coalition broke down in 1922, and the Liberal party has since re-united. After the general election of November 1922, however, the Labour party, now larger than the Liberal section, became the recognised "Opposition." After the election of November 1923, at which no one of the three parties obtained a majority over the other two, the Labour leader was called upon to form a Government which was maintained in power largely by the support of the Liberals. This precarious situation soon broke down, and in the autumn election of 1925, the Conservatives were returned with an absolute majority, the Liberal party being reduced to a mere cipher. Ireland, with the exception of Ulster, has ceased to be represented in the Imperial Parliament.

§ 70. **The Cabinet** is the centre of the whole system of government. In the words of Lord Macaulay: "The Ministry is, in fact, a committee of leading members of the two Houses. It is nominated by the Crown; but it consists exclusively of statesmen whose opinions on the passing questions of the time agree, in the main, with the opinions of the majority of the House of Commons. Among the members of this committee are distributed the great departments of the administration. Each Minister conducts the ordinary business of his own office without reference to his colleagues. But the most important business of every office, and especially such business as is likely to be the subject of discussion in Parliament, is brought under the consideration of the whole Ministry. In Parliament the Ministers are bound to act as one man on all questions relative to the executive government. If one of them dissents from the rest on a question too important to admit of compromise, it is his duty to retire. While the Ministers maintain the confidence of the parliamentary majority, that majority supports them against opposition and rejects every motion which reflects on them or is likely to embarrass them. If they forfeit that confidence, if the parliamentary majority is dissatisfied with the way in which patronage is distributed, with the way in which the prerogative of mercy is used, with the conduct of foreign affairs, with the conduct of a war, the remedy is simple. . . . They have merely to declare that they have ceased to trust the Ministry and to ask for a ministry which they can trust." It is true that this description refers to the Ministry as a whole, but it equally applies to the Cabinet, which is composed of the more important members of the Ministry and numbers variously from about twelve to twenty.

§ 71. **The History of the Cabinet.**—The Cabinet is the

direct descendant of the Cabal in the reign of Charles II. In its growth, however, it has undergone certain changes. The members of the Cabal were the agents of the King, acting with the object of furthering his wishes, whether those wishes were in accordance with the best interests of the State or not. Accordingly they frequently came into collision with Parliament. In 1678 Danby was impeached for having written a letter to the English Minister at Versailles offering that certain things should be done in return for the payment of a large sum of money. The letter was written by the King's orders, but this was held to be no excuse, and it was definitely laid down that a Minister cannot plead the command of the King to justify an illegal or unconstitutional act. This was confirmed in 1715 on the impeachment of Oxford and Bolingbroke. If therefore a Minister was liable to be impeached for conduct which was displeasing to the majority of the House of Commons for the time being, there is little wonder that the problem of safeguarding Ministers and, at the same time, permitting the free expression of the national opinion was solved by the parliamentary majority nominating the Ministers and thus keeping the national representatives and the Executive in harmony.

The Cabinet gradually separated from the Privy Council proper, from which it is really a selection. This separation had become definite by the accession of George I. William III. had at first chosen his ministers from both the parties in the State, but this method proved inconvenient, and by the end of his reign he had inaugurated the custom of choosing his Ministers from among the members of the party which was in power in the House of Commons. But although from this time onward it has become a convention of the Constitution that ministers must be able to command

a majority in the House of Commons, it was not until 1782 that the Cabinet contained no members who were out of harmony with the party in power. Down to that time Cabinet Ministers had been of two classes, efficient and non-efficient or honorary. Efficient Ministers were those belonging to the actual Ministry of the time and to them important State papers were communicated. The system of non-efficient members enabled those who had formerly been in office directing the affairs of State to retain their title of Cabinet Minister when their opponents took office. Lord Rockingham's Cabinet in 1782 was the first which was wholly composed of the members of one political party. This example has since been always followed, except that, where a coalition ministry has been formed, as during the war of 1914-18, the members of the Cabinet may have been taken from the parties united for the moment on certain definite aims.

§ 72. **The position of a Cabinet Minister** at the present day can be best described as one of joint and several liability. In his capacity as head of one of the great administrative departments of the State he is responsible for everything that is done or omitted by that department, and his colleagues in the Cabinet are also responsible with him. They must stand or fall together. The method by which the House of Commons expresses its disapproval of his conduct in any particular matter is by an adverse vote on the matter in question. If he does not agree with the policy of the Cabinet on any point it is necessary for him to resign, since, so long as he remains a member of the Cabinet, he is responsible for all that it does. As has been previously pointed out, a Minister is subject to the rule of law and is responsible for the legality of every act authorised by him.

Each Minister has the right to explain to the Sovereign

the working of his own department, but Cabinet decisions must be considered unanimous, and the general medium of communication between the Cabinet and the monarch is the Prime Minister.

§ 73. **The Prime Minister.**—The position of the Prime Minister was not officially recognised until the end of 1905. During the eighteenth century it frequently happened that there was considerable disunion within the Cabinet, and the royal favour was as necessary as popular support for the chief Minister of the Crown. In the early portion of the reign of George III. an attempt was made to reassert the power of the Crown, the object of the King being to choose such Ministers only as were acceptable to himself. This attempt failed, and by 1832 the position of Prime Minister as the leader of the predominant party in the House of Commons had become recognised.

On a new Government coming into power at the present day the King sends for that member of the political party from which the Government is to be formed who is recognised by it as its leader. If there are several members who have claims to be regarded as leader the King selects whom he thinks will be most acceptable to the party. This leader is then entrusted with the task of forming a Ministry. He selects the members of the Government from the prominent persons in his own party, subject to the approval of the King. If, however, he is undoubtedly leader he is practically able to enforce his own opinions in selection.

A new Government, with a change of party, becomes necessary owing to the defeat and resignation of the existing Government. When defeated in the House of Commons on any important question a Government has two courses open to it. It may, through the Prime

Minister, at once resign, or it may advise the King that Parliament should be dissolved, and so by means of a General Election test whether it has the country generally at its back or whether the vote of the House of Commons is a correct index of the people's opinion. If it does not come back with a majority it resigns on the first hostile vote. In such a case the way is clear for the formation of a Ministry from the other party which has a majority. But if a Prime Minister has been called upon to form a Ministry when his party is in a minority in the House of Commons, he usually advises the King to dissolve Parliament at the earliest opportunity. Sometimes, however, a Ministry is formed by a coalition of two parties, or of one party with a section of another. In such a case the posts in the Ministry are distributed by arrangement between the leaders of the two sections, the most influential man of the larger party being chosen as Prime Minister.

The recent rapid growth of the Labour party has changed our established two-party system into a three-party one. The situation after the election of 1923 (see § 73) for the time upset the position described above, and involved the necessarily precarious maintenance in power of a Ministry drawn from one party by means of the support of another separately organised party. The future evolution of our political system is as yet uncertain, and would seem to depend upon the fate of the greatly diminished Liberal party.

§ 74. Cabinet Devolution.—It is a noticeable feature in the history of the British Constitution that whenever any functions are fulfilled by a committee or council, that body first tends to increase in size and then delegates its business to a committee of itself. The old Curia Regis and the Privy Council are examples of this tendency, which is

also discernible in the Cabinet itself. For some time after the Cabinet was limited to efficient members its numbers rarely rose much above twelve. But this number has steadily tended to increase, especially of late. In these circumstances, while the responsibility of all remains unaltered, there is bound to be formed an inner circle or committee of the Cabinet who consult together apart from their colleagues and decide on important questions of policy.

This tendency led to an unusual state of affairs during the war of 1914-18. Prior to December 1916 the Cabinet consisted of the heads of the principal departments of state, and exceeded twenty in number. With the formation of Mr. Lloyd George's Government at that date, the Cabinet was reduced to five—later seven—members, several of whom were "ministers without portfolio." At the same time the ministry was greatly augmented by the addition of new departments and offices.

The small "War Cabinet" was responsible for the general policy of the Coalition Government and devoted its energies mainly to the prosecution of the war. It was afterwards expanded into an "Imperial War Cabinet" by the inclusion of the Prime Ministers and other representative Ministers of the various parts of the Empire. To ensure some measure of the old collective action, a "Standing Committee of Home Affairs" was formed in 1918 from among the political heads of Departments, to consider domestic questions requiring the co-operation of more than one Department or of such importance that they would otherwise call for the consideration of the War Cabinet. Since the War the old system has been practically re-established, and the Cabinet has resumed its old proportions. The Cabinet Secretariat, established as a result of these war-time conditions, has been continued after their cessation.

§ 75. The Position of the Monarch.—At first sight it might seem that the King had not much to do with the working of the machinery of government. He can do very little personally. At every turn he is hemmed in by rules and conventions which he must not break. On the other hand, his formal interposition is necessary in almost all matters of State. It is true that only in the most serious crisis would he venture to refuse to follow the counsel of his Ministers, but the fact remains that unless his consent is signified, numerous acts of government could not be carried out. He is entitled to be informed of the plans of his Ministers, before they are put into operation, and it was a breach of this duty that led to the dismissal of Lord Palmerston from office in 1851. All the plans and projects of the Cabinet are submitted to and discussed with him, and the influence exerted by the Monarch in shaping those plans and projects during the past century has been a strong and vigorous one. Nor is this surprising. While Ministers come and go, he remains, and thus carries on the thread of continuity in State affairs. He is a depositary of all State secrets. His experience of the working of policies and experiments must be greater than that of the majority of his Ministers, and he is thus able to point out the dangers and difficulties of any proposal and its probable effects. Much necessarily depends upon the gifts and character of the individual Sovereign, but it would be wrong to imagine that the King is a mere ornamental head of the State: he is one of the most hard-working of its directors. Another function of the Crown has grown to enormous importance in recent years. With the development of the self-governing Dominions, the Crown has become the visible bond of the British "Commonwealth of Nations," the symbol of imperial unity.

PART III.

THE JUDICIARY.

CHAPTER VIII.

THE HISTORY OF THE JUDICIARY.

§ 76. The Function of the Judiciary.—For the good government of a State it is not sufficient that the legislature should pass laws for the people to observe. It is necessary also for the State to select certain persons to decide whether in particular cases those laws have been observed. Such persons are termed judges. If any dispute arises between two or more persons as to the ownership of anything or as to the right of a person to claim compensation for an injury done to him or for the breach of some agreement, the person aggrieved may bring the matter before a judge and have the matter settled according to the justice of the case. In doing this it is the duty of the judge to say what the law is. The law in question may be laid down by an Act of Parliament, or it may be part of the Common Law, *i.e.* that portion of our law which is not set down in any written statute or ordinance but depends on immemorial usage. The Common Law is supposed to have a principle for every possible case, and its rules may be found in cases previously decided, on the analogy of which the judge rests his decision of fresh questions. In doing this it frequently happens

that the judge lays down what is really new law, or in other words performs the function of a legislator. But in theory he merely declares what always has been the law, although perhaps until the case before him it had not been necessary to lay it down definitely.

Besides the settlement of disputes, the judge has in another class of cases to determine whether a person brought before him has done something forbidden by law. This latter function is called his criminal jurisdiction in contradistinction to the former, which is called his civil jurisdiction. It is difficult to say exactly why some matters are considered civil injuries and others crimes, but broadly speaking the latter consist of such acts as militate directly against the public well-being and order, whether or not they also injure some particular person, while the former are merely infringements of some private right. In the earliest times many acts which are now considered crimes were regarded merely as civil injuries. But as the control of the State over peace and order has increased, the list of crimes has grown.

§ 77.. **The Early Administration of Justice.**—Before the Norman Conquest the principal courts were those of the hundred and the shire, although the Witan acted as an ultimate and supreme court of justice in both civil and criminal cases. Trial in local courts was the rule, but as the powers of the King increased he came to be looked upon as the fountain of justice, and all jurisdiction was exercised by him through his officers, or by landowners who held their title from him.

After the Norman Conquest the local courts still continued and the Curia Regis or Council of the King became the supreme court of the kingdom. William I. separated the ecclesiastical from the secular jurisdiction and gave the control of the former to the clergy

§ 78. **Initerant Justices** date from the reign of Henry I. They were not, however, fully organised until the time of Henry II. They tried both judicial and financial matters. They are mentioned in Magna Carta, but their visitations were somewhat irregular until the time of Edward I., who reorganised them and appointed definite circuits. The present system of circuits, on which the judges have power to try all civil and criminal cases, is the direct outcome of the appointment of these earlier Justices in Eyre.

§ 79. **The Common Law Courts.**—The Exchequer was the financial side of the Curia Regis and determined matters relating to the revenue of the country. It separated definitely from the Curia Regis about the end of the twelfth century and acted as a court of law dealing with revenue cases and disputes concerning the national finance.

The Court of King's Bench was another offshoot of the Curia Regis and is itself sometimes known by the latter name. Its origin dates back to 1178, when Henry II. appointed five members of the Curia as a permanent court to hear the complaints of the people, reserving appeals to himself in Council.

The Court of Common Pleas had its origin in the clause of Magna Carta which provided that common pleas, *i.e.* suits between subjects, should be held at some fixed place.

These three last-mentioned courts all arose from the Curia Regis, but a general judicial power was still left in the King's Council. At first the three courts had the same staff of judges, but separate judges were assigned to them in the time of Henry III. Their functions, although at first diverse, became very similar by reason of certain fictions which were resorted to. Thus the Court of Exchequer obtained jurisdiction over a matter which should have

come before the Court of Common Pleas by the suitor alleging that he owed the King a debt which he could not pay owing to the refusal of his adversary to satisfy his claim. The three courts were united by the Judicature Act of 1873 and merged into one division of the High Court by an Act of 1881.

§ 80. **The Court of Chancery** arose out of the equitable jurisdiction of the Chancellor. When people could not obtain redress from the Common Law Courts they petitioned the King, and in 1280 matters of grace and favour were referred to the Chancellor to be reported on before coming before the King in Council. The Chancellor was directed to act in accordance with what was right and equitable. In 1348 all matters of grace were definitely assigned to the Chancellor, and this may be taken as the foundation of the Court of Chancery. It quickly grew in power, and was greatly aided in this respect by the writ of subpoena which compelled the attendance of persons summoned before it. This writ was devised in the reign of Richard II. Frequent quarrels as to the powers of the Court of Chancery occurred between it and the Courts of Common Law. At first the decisions of the Court varied according to the personal opinion of the Chancellor for the time being, but from the reign of Charles II. to the beginning of the nineteenth century the principles on which it acted became gradually as settled as those administered by the rival courts of Common Law. Its procedure, which was very dilatory, was revised in 1852, and in 1873 it became one of the divisions of the High Court. It was then laid down that in cases of conflict the principles it administered were to prevail over the rules of strict law.

§ 81. **The Judicial Powers of the Council.**—It has been seen that both the Common Law and the Chancery

Courts originally emanated from the King's Council. The King was considered to be the fountain of justice, and even after these courts had separated from the Council proper there was a residuary judicial authority left in it.

In 1487 a committee of the Council was established with considerable judicial powers. Various changes in its composition were made and it later became known as the Court of Star Chamber. In the reigns of the earlier Stuarts this court was used for political purposes and to oppress those who thought differently from the King. It was abolished by the Long Parliament in 1641. At the same time were abolished the Court of Requests, which was an earlier and less important offshoot of the Council, the Court of High Commission, a court for ecclesiastical offences established by Elizabeth, and the Council of the North.

There still remained, however, certain judicial powers in the King in Council. The principal of these was the determination of petitions brought before it by persons outside the kingdom. In 1833 the Judicial Committee of the Privy Council was constituted, and this is now the Supreme Court of Appeal from all courts in the British Dominions and Dependencies. It has also certain jurisdiction in ecclesiastical and other matters.

It must be remembered that the peers were members of the King's Council as well as of the Parliament, and it is to the former body therefore that must be assigned the origin of the present appellate jurisdiction of the House of Lords.

§ 82. **Various other Courts** had arisen before the final consolidation of the Courts into a definite system in 1873. Thus the Court of the Lord High Admiral had special jurisdiction over injuries at sea, and also a criminal jurisdiction which was taken away in 1844. Its origin

can be traced to the reign of Edward III. Its powers were defined in the time of Richard II., and after being regulated by various statutes passed in the reigns of Henry IV., Henry VIII. and Victoria its jurisdiction was transferred to one of the Divisions of the High Court in 1873.

The various ecclesiastical courts, although they form part of the English judicial organisation as having jurisdiction over matters relating to the State church, need not be further mentioned, but it should be noted that before 1857 they dealt with testamentary and matrimonial matters. In 1857 this jurisdiction was taken away and special courts were established for Probate and Divorce matters. These two latter courts were in 1873 merged in the Probate, Divorce and Admiralty Division of the High Court.

§ 83. **The Judges.**—It has already been seen that the judges were originally members of the Council of the King, and, indeed, even at the present day a writ is sent to them on the summons of a Parliament in order that they may attend and give advice if asked. In 1897 they were thus asked for their opinions on a difficult case which came before the House of Lords. They held their office at the King's pleasure, but from the time of Richard II. until the beginning of the Stuart period there was no attempt to influence their opinions by threats of dismissal. Indeed, on two occasions in Elizabeth's reign they made a stand against illegal acts of the Crown. In 1607 it was finally decided that, in accordance with the practice which had obtained since Henry VI., the King had no power to hear cases in person. This was followed in 1616 by the case of "Commendams" in which James I. had asked the judges to postpone their verdict until they had spoken with him and they had refused. All the judges except Coke were forced to apologise, and Coke's

refusal to do so caused his dismissal. Similar dismissals took place later, and for the remainder of the Stuart period the judges usually proved submissive to the wishes of the Crown. The power of dismissal was seen to be so dangerous that by the Act of Settlement, 1701, it was laid down that the judges should hold office as regarded the Crown during good behaviour, although in any case they might be removed on an address passed by both Houses of Parliament. This is the nature of their tenure to-day. All the judges except the Lord Chancellor are appointed by the Crown on the advice of the Lord Chancellor.

§ 84. **The Justices of the Peace** are the local criminal magistrates. The origin of their office can be traced back to 1195, when certain knights were chosen to receive oaths for the preservation of the peace. These "Conservators of the Peace" were appointed for every county in 1327, and in 1360 became known as Justices of the Peace, having certain criminal jurisdiction assigned to them. Powers to judge at Quarter Sessions were given in 1389, and in 1542 they were authorised to hold Petty Sessions. Their administrative powers were mostly transferred to County Councils by the Act of 1888. They are appointed by the Lord Chancellor, generally, for counties, on the nomination of the Lord Lieutenant. Local Advisory Committees representative of all political parties have recently been formed to assist the Lord Chancellor in these nominations. The Justices are unpaid.

§ 85. **Trial by Jury.**—It would be impossible to trace in this book the various forms of procedure which have from time to time obtained in our Courts, but a few notes as to the history of trial by jury which bulks so largely in our judicial system may not be out of place. Its exact origin is obscure. It is clear, however, that originally the jurymen were witnesses, rather than judges of the truth.

Of local origin, they were first used to give information of local affairs, especially in financial enquiries. Later they had to determine local disputes, and if some of their number knew nothing about the matter fresh jurymen were added until twelve were unanimous. The Constitutions of Clarendon, 1164, provide the first statutory recognition of their position. In criminal matters they had to say from their local knowledge what men in their district were guilty of offences, and those whom they "presented" or stated to be guilty had to undergo the ordeal. When this method of establishing the guilt or innocence of the accused was abolished in 1215 the custom arose of having a second or petty jury to decide on the truth of the presentment. It was often found that these latter jurors did not know sufficient of the case to come to a decision, and a further custom arose of "afforcing" the jury, that is, adding to it persons who did know the facts. By the time of Edward III. these persons had no voice in the verdict, but merely gave evidence as to what they knew; thus was established the distinction between jurors and witnesses. In the reign of Henry IV. all evidence had to be given in court, and hence the judges had to control the methods in which it was given. Later still the jury entirely ceased to be composed of persons who knew the facts, and in the first half of the eighteenth century the last vestige of their former position as witnesses had disappeared. This jury is now known as the petty jury, while the jury of presentment mentioned above is called the grand jury. In the time of Edward III. it was decided that this petty jury must be unanimous in their verdict. For a grand jury, which varies in number from twelve to twenty-three, it is sufficient for twelve to agree.

CHAPTER IX

THE CIVIL LAW COURTS OF TO-DAY.

§ 86. **The Supreme Court of Judicature.**—By the Judicature Act of 1873, with the amending Act of 1875, the existing civil courts were consolidated into the Supreme Court of Judicature. This was divided into two parts, a High Court of Justice and a Court of Appeal. The former was again divided into five divisions for the sake of convenience, viz. Chancery, King's Bench, Common Pleas, Exchequer and Probate, Divorce and Admiralty. In 1881 the Common Pleas and Exchequer Divisions were merged in that of King's Bench, leaving only three divisions of the High Court. To these divisions has been given all the jurisdiction which was exercised before 1875 by the Courts which they succeeded. Practically, that is, they have jurisdiction in all civil actions, together with a certain amount of criminal jurisdiction and an appellate jurisdiction from inferior courts. Certain matters are for the sake of convenience assigned to the respective divisions, but each can give any relief that could be given by any other division, and any judge can, if necessary, sit in any division. The staff of the Chancery Division consists of the Lord Chancellor and six other judges; of the King's Bench Division, of the Lord Chief Justice of England and fifteen other judges; and of the Probate, Divorce and Admiralty Division, of the President of that Division and another judge.

The Court of Appeal hears appeals from the High Court, and also from the Railway and Canal Commissioners, and, on cases under the Workmen's Compensation Act, from the County Courts. Its staff consists of the Master of the Rolls and six Lords Justices of Appeal. The Lord Chancellor, the Lord Chief Justice of England, and the President of the Probate, Divorce and Admiralty Division also sometimes sit as judges in this court. Generally three judges of the court sit together to try an appeal, but in some cases two only are necessary.

The commissioners who as the successors of the Justices in Eyre went on circuit before 1875 are still appointed. Each is now "deemed to constitute a court of the said High Court of Justice." They can therefore do everything that a judge of the High Court can do. Under powers given by the Act of 1875 the circuits have been considerably re-arranged.

§ 87. **The House of Lords** is the final Court of Appeal, not only from the Courts of England and Wales, but also from those of Scotland. A case comes up to it from the Court of Appeal on the certificate of two counsel engaged in it that it is a fit one to be heard by the House. On the hearing of an appeal there must be present three at least of the following persons: (1) The Lord Chancellor of Great Britain, (2) the Lords of Appeal in Ordinary, (3) Peers of Parliament who hold, or have held, high judicial office. The late Lords Halsbury and Brampton are examples of the last class, while the position of the Lords of Appeal in Ordinary has already been explained. The hearing of the case is considered to be a sitting of the House, but other peers do not attend.

§ 88. **The Conduct of an Action.**—A code of rules has been drawn up to regulate the procedure of the Supreme Court. These rules are issued by a Rule Committee

appointed under the Act of 1875, and before coming into force have to be laid before Parliament. If there is no opposition for forty days they become binding. They are altered and amended from time to time.

An action is commenced by writ. This is a notice briefly setting out the claim of the person who brings the action, who is called the plaintiff. It must be served on the person against whom the action is brought, who is called the defendant. Special procedure is used where the claim is for a definite sum of money, and also where the defendant, after service of the writ, fails to put in an appearance. The procedure in the three divisions also varies to some extent. In the King's Bench Division what is known as a Summons for Directions is usually taken out, and under this one of the Masters, who are permanent Law Court officials, settles in what manner the action is to be prepared for trial. He directs what each side is to do, so that the matters in dispute between the parties may be defined ready for the trial. The trial may be before a judge alone or by judge and jury. The former method is more common in the Chancery Division, the latter in the other Divisions. The jury may be an ordinary or a special one. The latter are selected from a list of more responsible persons and are paid more.

The procedure at the trial, at which the parties are usually represented by counsel, is shortly as follows. After the nature of the action has been stated the plaintiff's counsel opens the case, *i.e.* makes a speech showing what is his client's claim, and how it is proposed to prove it. The plaintiff's witnesses are then called and examined. The defendant's counsel has the right of cross-examining each one in order to upset, if possible, the story they have told, or to get further details. If necessary the plaintiff's counsel re-examines the witness as to anything fresh

brought out in cross-examination. When all the plaintiff's witnesses have been examined the defendant's counsel opens his client's case. The defendant's witnesses are then examined, cross-examined and re-examined, and after this is finished his counsel addresses the jury on the evidence in detail and shows, as far as he can, that it is favourable to his client's case. The plaintiff's counsel then replies, and the judge sums up the evidence, and informs the jury on what points their verdict is required. The jury must be unanimous on their verdict unless the parties agree to accept the decision of the majority. When the jury have returned their verdict the judge pronounces judgment in accordance with their findings and deals with the question of costs. Generally the loser is made to pay the costs of the other party. This does not, however, indemnify the latter, as he has always to pay for a number of items which are necessary for the conduct of his case but for which he is not allowed to charge. Appeal is only allowed on a question of law, and not on one of fact. The appeal is in the first instance to the Court of Appeal, whence there is a further right of appeal to the House of Lords.

§ 89. **Inferior Courts.**—In 1846 a system of inferior courts for the trial of matters of minor importance was instituted. These courts are known as County Courts. England is divided into a number of districts, for each of which a County Court is constituted. The Courts are held at various places in the district at various times. The judges, who must be barristers of seven years' standing, are appointed by the Lord Chancellor and may be dismissed by him. Rules of procedure are laid down in a similar way to those for the High Court.

The jurisdiction of a County Court is limited generally to £50, but a recent statute has enlarged this in cases of

contract to £100 for certain Courts. Jurisdiction is also given specially under certain statutes, the most important of which is the Workmen's Compensation Act. Certain Courts also can determine bankruptcy matters, but none can try actions of libel, slander, breach of promise of marriage or seduction.

In cases where the subject-matter of the action exceeds £20 there is an appeal on a point of law to the High Court, but appeals under the Workmen's Compensation Act go straight to the Court of Appeal.

Besides the County Courts there are several other courts, such as the Mayor's Court in London, and the Court of Passage at Liverpool, which have a local jurisdiction. These courts are mostly of very ancient origin, and have so far escaped the hands of the reformer.

§ 89 *a*. **Other Courts of Appeal.**—Prior to 1907 a person who had been convicted on a criminal charge was unable to appeal against a conviction. In that year Parliament passed the Criminal Appeal Act, which established the Court of Criminal Appeal. To this court any person who considers himself wrongly convicted on indictment may appeal on a question of law, or, by leave, on a question of fact, or one of mixed law and fact. A further appeal by permission lies from this court to the House of Lords.

The Judicial Committee of the Privy Council, which is composed of those members of the Privy Council who have held high judicial office, together with the six Lords of Appeal in Ordinary, deals with appeals from the courts of the Channel Islands and from Consular Courts and Courts of Vice-Admiralty, and from the courts of India and the British colonies. Provision is now made for the inclusion of representatives of India and the self-governing Dominions.

CHAPTER X.

THE CRIMINAL LAW COURTS OF TO-DAY.

§ 90. **The Assizes.**—This is the popular designation of the Courts held by the judges who go on circuit through the various counties. Since 1875 there has been considerable rearrangement, and the country is now divided into eight districts or "circuits." The judges go to all the county and other assize towns three or four times every year and try the civil and criminal cases that have occurred in the district. Barristers accompany the judges on circuit in order to act as counsel for or against the prisoners. As a general rule only cases dealing with the more serious crimes are brought before these courts, but they have authority to try all crimes.

In 1834 the Central Criminal Court, which is popularly known as "The Old Bailey," was established to take the place of the Assize Court for offences committed in the City of London, the County of Middlesex and certain specified parts of the counties of Essex, Kent, and Surrey. Practically it is the Assize Court for London and sits at least twelve times a year.

§ 91. **Quarter Sessions.**—These are courts held in every county once a quarter at stated times for the trial of offences of a less serious character than those usually tried at the Assizes. The Court is composed of two or more of the justices of the peace for the county. One of these is made chairman and acts as judge, consulting his

colleagues when he thinks fit. Certain boroughs have a Court of Quarter Sessions of their own. In these an official known as the Recorder, who must be a barrister of five years' standing, is the sole judge

Sessions for the Administrative County of London are held twice a month at Newington and Clerkenwell. They are presided over by a paid judge.

Besides trying various offenders Quarter Sessions acts as a Court of Appeal from justices sitting as courts of summary jurisdiction, and on matters of rating, licensing and poor-law administration. In these cases they sit without a jury.

§ 92. **Summary Jurisdiction** is the description given to the powers of justices of the peace in trying minor criminal offences. The absence of a jury is of the essence of the proceedings. The Court is termed Petty Sessions and is formed of two or more justices. Each county is divided into several districts, and in each a Petty Sessional Court is held. Boroughs which have a separate commission of the peace hold their own Petty Sessions presided over by their own justices. The justices are unpaid, but in London and certain other large towns their place is taken by paid magistrates, who must be barristers of a certain standing. One of these magistrates has the same powers as two justices.

The Petty Sessional Courts try and determine a very great number of cases, and their jurisdiction tends steadily to increase They have power to fine and also to imprison, but the whole of their powers are derived from statutes, and they must not exceed the limits there laid down. In the majority of cases they cannot award more than six months' imprisonment. The matters which come before them include petty assaults and thefts, applications for judicial separation, offences relating to game, offences

against order, such as drunkenness and vagrancy, cruelty to children, breaches of bye-laws and adulteration of food. In some cases which would otherwise have to go to Quarter Sessions or Assizes, the justices have jurisdiction if the accused consents to be tried by them.

By an Act passed in 1907 any court, instead of sentencing an offender, may discharge him if in view of all the circumstances it considers such a course desirable. It may place the offender under a probation officer and order him to comply with such regulations as it may lay down to secure his leading an honest and industrious life in the future. Acts of 1908 have created Borstal institutions for offenders under twenty-one and have given power to detain habitual criminals for lengthy terms (see Appendix III.)

One justice sitting alone has jurisdiction over certain very small offences, such as drunkenness, but he cannot inflict a higher fine than twenty shillings or greater imprisonment than fourteen days.

§ 93. **Procedure to Trial.**—Besides the determination of minor cases, as stated in the last paragraph, the justices have another duty to perform. In more serious cases they hold a preliminary enquiry to see if there is sufficient evidence to warrant sending the accused for trial to Quarter Sessions or Assizes. If the examining justice—for one is sufficient for this purpose—sends the accused for trial, a written accusation called a "Bill of Indictment" is drawn up. This is laid before the grand jury at the Quarter Sessions or Assizes as the case may be. The witnesses for the prosecution appear before the grand jury, and if the latter think there is sufficient evidence for the accused to be tried they return what is called a "True Bill." It is not necessary for the grand jury to be unanimous, but there must be at least twelve members in favour of the verdict.

As a general rule any person may bring an accusation before the grand jury, but for certain offences the preliminary examination before a justice which is usual in other cases becomes essential.

§ 94. **Procedure at the Trial.**—The trial takes place before the Judge at Assizes or the justices or Recorder at Quarter Sessions, sitting with a petty jury, which numbers twelve. Counsel usually appear both for the prosecution and the defence. Counsel for the prosecution opens the case by stating the principal facts it is intended to prove. His witnesses are then examined, cross-examined and re-examined. After the witnesses for the prosecution have been heard counsel for the defence opens his case, and his witnesses are examined, cross-examined and re-examined. Next counsel for the defence sums up his case and is followed by counsel for the prosecution in reply. If, however, no evidence is called for the accused, or he is the only witness, the final speech of counsel for the prosecution must precede that of counsel for the defence. Before 1898 the accused and his wife were not allowed to give evidence, but by a statute passed in that year this is now permitted if the accused desires it. They cannot, however, be compelled to give evidence. After the speeches of counsel the judge sums up the evidence and instructs the jury on the points of law involved. They then consider their verdict, which will be either "guilty" or "not guilty." They must be unanimous. If they cannot agree they are discharged and the prisoner is retried. If the jury have given a verdict of guilty the judge pronounces sentence. In the case of murder this must be death, but in other cases the judge has a discretion, provided that he does not exceed the maximum laid down for the offence.

§ 95. **Appeal.**—The Criminal Appeal Act of 1907 came into force on the 18th of April, 1908. Before this an

appeal was allowed only on a point of law, and then not unless the presiding judge or justices thought fit to reserve the point for the consideration of the Court for Crown Cases Reserved. But by the above-mentioned Act a Court of Criminal Appeal has been established, and every person convicted on indictment, *i.e.* convicted at Assizes or Quarter Sessions, may appeal against his conviction. This appeal may be on a point of law, or against his sentence, or, with the consent of the presiding judge or the Court of Criminal Appeal itself, on a question of fact. The Court has full powers as to evidence and other matters and will set aside the conviction if there has been in any way a miscarriage of justice, but it will not set aside any conviction even if there has been some technical mistake if no substantial miscarriage of justice has occurred. If a sentence is appealed against the Court may increase or diminish it. The judges of this Court consist of the Lord Chief Justice of England and the judges of the King's Bench Division of the High Court specially appointed for the purpose. Each appeal must be heard by an uneven number of judges, not less than three.

Where a point of law of exceptional public importance is involved an appeal may, with the sanction of the Attorney-General, be made against the decision of the Court of Criminal Appeal to the House of Lords, but otherwise the decision of the Court of Criminal Appeal is final.

§ 96. **Other Criminal Courts.**—The Coroner's Court is composed of the Coroner sitting with a jury which may number from twelve to twenty-three. Its business is to inquire into cases of violent or unnatural death, or sudden death where the cause is unknown. The Coroner must also hold an inquest where he has reason to believe that any death is due to a cause other than illness. If the jury by a majority of twelve return a verdict of murder or

manslaughter against any one, such person must immediately be committed for trial, but the preliminary hearing before the justices is usually carried out. The Coroner's Court has also jurisdiction as to treasure trove.

In cases of treason and felony, peers and peeresses are entitled to be tried before the House of Peers. If Parliament is sitting a Lord High Steward is appointed to act as chairman of the House of Lords for the trial. If Parliament is not sitting the court is called the Court of the Lord High Steward of Great Britain, and the Lord High Steward acts as a judge instead of merely chairman, the remaining peers practically forming a jury.

The position of Courts-Martial has already been considered.

§ 97. **Bail and Costs.**—When any person is accused of an offence he must be kept under the supervision of the proper officers unless he is admitted to bail. Bail consists of security given either by the accused or some friend that he will attend the court when required for the purposes of trying the accusation. The Bill of Rights states that excessive bail must not be demanded. Bail is not allowed in cases of treason, and the justices have a discretion as to allowing it in the case of the more serious crimes.

It may be noted that when a person has been charged with an indictable offence, an Act of 1908 has given power to the court to order the payment of certain costs of the prosecution or defence out of local funds. The court may also order the prisoner himself to pay the cost of the prosecution.

昭和十四年三月三十日印刷
昭和十四年四月十五日發行

不復許製

定價壹圓

編纂者　精興社出版部

發行者　岩瀨利吉
東京市神田區駿河臺三丁目七番地

印刷者　伊藤集
東京市神田區錦町二丁目九番地

發行所　精興社書店
東京市神田區駿河臺三丁目七番地
電話神田四二七一番
振替東京六六四九七番

特272
77