

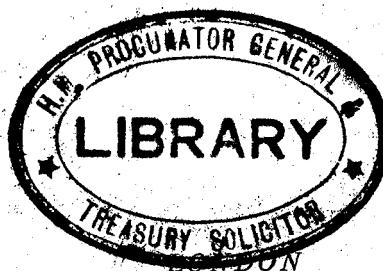


ROYAL COMMISSION ON TRIBUNALS OF INQUIRY

1966

Report of the Commission under the Chairmanship
of The Rt. Hon. Lord Justice Salmon

Presented to Parliament by Command of Her Majesty
November 1966



HER MAJESTY'S STATIONERY OFFICE

FIVE SHILLINGS NET

Cmnd. 3121



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The estimated gross total expenditure of the Commission is £15,053. Of this sum, £638 represents the estimated cost of printing and publishing this Report and £2,615 the estimated cost of printing and publishing the Evidence.

THE ROYAL WARRANT

ELIZABETH R.

MARGARET

Signed on behalf of
Her Majesty

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories QUEEN, Head of the Commonwealth, Defender of the Faith to

Our Right Trusty and Well-beloved Counsellor Sir Cyril Barnet Salmon, knight, one of Our Lords Justices of Appeal ;

Our Right Trusty and Well-beloved Cousin and Counsellor James Gray, Viscount Stuart of Findhorn, Member of the Order of the Companions of Honour, Member of Our Royal Victorian Order, upon whom has been conferred the Decoration of the Military Cross ;

Our Right Trusty and Well-beloved Arnold Abraham, Baron Goodman ;

Our Trusty and Well-beloved :—Wilfred Lanceley Heywood, Esquire, Commander of Our Most Excellent Order of the British Empire ;

John Blackstock Butterworth, Esquire ;

Dick Taverne, Esquire, one of Our Counsel learned in the Law ; and

Henry William Rawson Wade, Esquire ;

Greeting !

WHEREAS WE have deemed it expedient that a Commission should forthwith issue, to review the working of the Tribunals of Inquiry (Evidence) Act, 1921, and to consider whether it should be retained or replaced by some other procedure, and, if retained, whether any changes are necessary or desirable ; and to make recommendations.

NOW KNOW YE that We, reposing great trust and confidence in your knowledge and ability, have authorized and appointed, and do by these Presents authorize and appoint you the said Sir Cyril Barnet Salmon (Chairman) ; James Gray, Viscount Stuart of Findhorn ; Arnold Abraham, Baron Goodman ; Wilfred Lanceley Heywood ; John Blackstock Butterworth ; Dick Taverne ; and Henry William Rawson Wade to be Our Commissioners for the purposes of the said inquiry :

AND for the better effecting the purposes of this Our Commission, We do by these Presents give and grant unto you, or any three or more of you,

full power to call before you such persons as you shall judge likely to afford you any information upon the subject of this our Commission ; to call for information in writing ; and also to call for, have access to and examine all such books, documents, registers and records as may afford you the fullest information on the subject and to inquire of and concerning the premises by all other lawful ways and means whatsoever:

AND We do by these Presents authorize and empower you, or any of you, to visit and personally inspect such places as you may deem it expedient so to inspect for the more effectual carrying out of the purposes aforesaid:

AND We do by these Presents will and ordain that this Our Commission shall continue in full force and virtue, and that you, Our said Commissioners, or any three or more of you may from time to time proceed in the execution thereof, and of every matter and thing therein contained, although the same be not continued from time to time by adjournment:

AND We do further ordain that you, or any three or more of you, have liberty to report your proceedings under this Our Commission from time to time if you shall judge it expedient so to do:

AND Our further will and pleasure is that you do, with as little delay as possible, report to Us your opinion upon the matters herein submitted for your consideration.

Given at Our Court at Saint James's the twenty-eighth day of February, 1966: In the Fifteenth Year of Our Reign.

By Her Majesty's Command,
ROY JENKINS.

Royal Commission on the working of the Tribunals of Inquiry (Evidence) Act, 1921.

Mr. Dick Taverne, Q.C., M.P., resigned from the Commission on 7th April, 1966 on his appointment as Joint Parliamentary Under Secretary of State for the Home Department.

TABLE OF CONTENTS

THE ROYAL WARRANT

THE REPORT

<i>Paragraph</i>										<i>Page</i>
	CHAPTER I									
1	INTRODUCTION	9
	CHAPTER II									
6	HISTORY	10

CHAPTER III

SHOULD THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT 1921 BE RETAINED?

22	(i) The circumstances in which the need for an inquisitorial inquiry arises	15
32	(ii) The six cardinal principles	17
33	(iii) Alternative procedures									
34	(a) A Royal Commission	18
35	(b) A Select Parliamentary Committee of Inquiry	18
37	(c) An inquiry of the type carried out by Lord Denning into the Profumo Case	19
43	(d) Departmental Inquiries	21
44	(e) Accident Inquiries	21
45	(f) The Security Commission	21
47	(iv) Conclusion	22

CHAPTER IV

HOW TO IMPROVE THE SAFEGUARDS FOR WITNESSES AND INTERESTED PARTIES

48	(i) Strict observance of the six cardinal principles	22
49	(ii) More time	22
54	(iii) Right to be legally represented	23
57	(iv) Examination by own solicitor or counsel	24
58	(v) Right to have further evidence called	25
59	(vi) Right to costs	25

<i>Paragraph</i>		<i>Page</i>
63 (vii) Further immunity	26	
65 (viii) Opportunity to make an early statement	27	
66 (ix) Criminal Records	28	
CHAPTER V		
68 SHOULD THERE BE STATUTORY RULES OF PROCEDURE?	28	
CHAPTER VI		
71 PROCEDURE BY WHICH A TRIBUNAL IS SET UP ...	29	
CHAPTER VII		
72 COMPOSITION, STATUS AND IMMUNITY OF THE TRIBUNAL...	29	
CHAPTER VIII		
77 TERMS OF REFERENCE	30	
CHAPTER IX		
80 THE CASE FOR AND AGAINST A PRELIMINARY HEARING OF EVIDENCE IN PRIVATE	31	
CHAPTER X		
BY WHOM SHALL THE TRIBUNAL BE REPRESENTED ?		
84 (i) The Treasury Solicitor?	32	
90 (ii) The Attorney-General?	33	
CHAPTER XI		
PROCEEDINGS OF THE TRIBUNAL		
98 (i) Preliminary meeting of the Tribunal in public... ...	36	
108 (ii) Hearing of Evidence by the Tribunal	37	
CHAPTER XII		
115 PUBLICITY	38	
CHAPTER XIII		
123 POWER TO COMPEL EVIDENCE: COMMITTAL FOR CONTEMPT	40	

<i>Paragraph</i>							<i>Page</i>
	CHAPTER XIV						
133	REPORT OF THE TRIBUNAL	43
	CHAPTER XV						
134	SHOULD THERE BE AN APPEAL FROM THE FINDINGS OF THE TRIBUNAL?	43
	SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS						44
	APPENDICES						
A	Tribunals of Inquiry (Evidence) Act, 1921	49
B	Special Commission Act, 1888	50
C	List of inquiries held under the Tribunals of Inquiry (Evidence) Act, 1921	52
D	List of witnesses who gave oral evidence	54
E	List of witnesses who submitted memoranda of evidence...		55
F	Commonwealth legislation considered by the Commission		56

INDEX TO THE REPORT

ROYAL COMMISSION ON TRIBUNALS OF INQUIRY

1966

REPORT

To The Queen's Most Excellent Majesty.

MAY IT PLEASE YOUR MAJESTY

We, the undersigned Commissioners, having been appointed by Royal Warrant "to review the working of the Tribunals of Inquiry (Evidence) Act, 1921, and to consider whether it should be retained or replaced by some other procedure, and, if retained, whether any changes are necessary or desirable ; and to make recommendations "

HUMBLY SUBMIT TO YOUR MAJESTY THE FOLLOWING REPORT.

CHAPTER 1

INTRODUCTION

1. Following the appointment of the Commission on 28th February, 1966, a questionnaire, together with an invitation to give evidence either orally or in the form of a memorandum, was sent to a number of persons, and certain councils, societies, and associations, whose evidence it was thought would be helpful in considering the matter under inquiry. At the same time it was made known through the correspondence column of *The Times* that the Commission was ready to receive written evidence from any member of the public who wished to offer it.

2. A list of witnesses who gave oral or written evidence is given at Appendices D and E. It was decided generally to hear oral evidence in public and to defer the publication of evidence, both written and oral, to the end of the inquiry. The list of witnesses includes three former Lord Chancellors, the Lord Chief Justice of England, the Master of the Rolls, past and present members of the Judiciary and Law Officers of the Crown, many persons who have been members of Tribunals of Inquiry or who have been engaged as solicitor or counsel or appeared as witnesses before Tribunals of Inquiry, newspaper trades unions, journalists, and representatives of the editorial and managerial sides of the newspaper industry, representatives of Government Departments, and members of both Houses of Parliament. Memoranda were also submitted by the Bar Council and the Council of the Law Society. We must express our indebtedness to Prof. Arthur L. Goodhart and Prof. George W. Keeton for their valuable publications. In addition, it was decided that information should be obtained on comparable forms of inquiry in other countries, particularly the United States of America, Norway, France, Sweden, and Denmark, and we acknowledge the helpfulness of those concerned in the respective Embassies and others who arranged for this information to be

provided or for representatives to give oral evidence. We have also heard evidence relating to similar tribunals of inquiry held in Canada, Australia, India and Hong Kong.

3. The Commission held twenty-two meetings, of which sixteen were devoted to the hearing of oral evidence, and six to discussion and consideration of the terms of this report. We have to record our regret at the resignation from the Commission of Mr. Dick Taverne, Q.C., M.P., in April, 1966, consequent upon his appointment as Joint Parliamentary Under Secretary to the Home Office.

Form of the Report

4. (a) The evidence that we have received has shown that the criticisms of the working of the Act of 1921 were not such as to call for its replacement by some other procedure. We have however recommended certain alterations in the present procedure to improve its efficiency and particularly to safeguard persons called to give evidence before Tribunals and also persons who may otherwise be interested in the subject matter of the inquiry. Some of these alterations will involve legislation.

4. (b) This report is sub-divided into chapters in each of which we examine a particular aspect of the working of the Act of 1921 which has been, rightly or wrongly, the subject of criticism. Our main conclusions and our recommendations for the improvement of the existing statutory and procedural arrangements are summarised at the end of the report.

5. We have been exceptionally fortunate in our secretarial assistance. Mr. J. H. Humphreys has performed the duties of a secretary with unfailing efficiency and imaginative helpfulness. He has been indefatigable in the help that he has given us. We owe a great deal to his unrivalled experience and knowledge of the subject matter of our inquiries and to his rare qualities of mind. Mr. T. G. Mead has carried out his many duties as assistant secretary with remarkable thoroughness and ability. No Commission could have been better served by their secretarial staff.

CHAPTER II

HISTORY

6. From the middle of the 17th century until 1921, the usual method of investigating events giving rise to public disquiet about the alleged misconduct of ministers or other public servants was by a Select Parliamentary Committee or Commission of Inquiry. Some of the serious disadvantages of this procedure are illustrated by the following examples from the history of the last 300 years.

7. In 1679 a Select Committee of the House of Commons was appointed to inquire into allegations, made by what was then called the Republican Opposition, to the effect that the Navy was riddled with Popery and that the Lord High Admiral, the Duke of York, had wantonly wasted public funds. The accusations were no doubt made with the object of excluding the Duke from the succession to the Throne. After a general election

in which the Republican Opposition came to power, the Duke went into voluntary exile abroad, and Samuel Pepys, the Secretary for the Navy, was left to bear the brunt of the attack. The Committee most unjustly found Pepys guilty of Piracy, Popery, and Treachery, and he was committed to the Tower of London on the Speaker's warrant. The sole evidence against him had been that of professional informers, whom he had not been allowed to cross-examine. When the matter was referred to the Attorney-General for the purpose of prosecuting Pepys, it was found that the evidence was so tenuous and suspect that it did not even justify putting him on trial; and he was released. That Committee of Inquiry had no claim to impartiality. It was actuated solely by party political motives. This is a characteristic defect of such Committees inquiring into matters of this kind which has persisted throughout their history.

8. Later in the same century there were further Select Parliamentary Committees of Inquiry to investigate the alleged mismanagement of Irish affairs and charges of widespread corruption, including charges against Sir John Trevor, the Speaker of the House of Commons.

9. In the 18th century, a number of Select Parliamentary Committees of Inquiry were appointed. Amongst these was a committee set up in 1715 to investigate circumstances leading to the signing of the Treaty of Utrecht. This Committee was set up by the Whigs under the chairmanship of Sir Robert Walpole with the object of discrediting members of the Tory Opposition. Twenty-seven years later, a committee was set up to investigate allegations of incompetence and mismanagement by Sir Robert Walpole, who, although retired from political life after twenty-two years as Prime Minister, was still bitterly hated by his political opponents.

10. In the 19th century there were Select Parliamentary Committees of Inquiry to investigate the conduct of the expedition to the island of Walcheren, the war with Napoleon, and the Crimean War.

11. Early in the present century there occurred what became known as the Marconi Scandal. In 1912 the Postmaster General in a Liberal Government accepted a tender by the English Marconi Company for the construction of a chain of State owned wireless telegraph stations throughout the Empire. There followed widespread rumours that the Government had corruptly favoured the Marconi Company and that certain prominent members of the Government had improperly profited by the transaction. The Select Committee appointed to investigate these rumours represented the respective strengths of the Liberal and Conservative parties. The majority report by the Liberal members of the committee exonerated the members of the Government concerned whereas a minority report by the Conservative members of the Committee found that these members of the Government had been guilty of gross impropriety. When the reports came to be debated in the House of Commons, the House divided on strictly party lines and exonerated the Ministers from all blame. This is the last instance of a matter of this kind being investigated by a Select Committee of Parliament.

12. Even as long ago as 1888 the shortcomings of Select Parliamentary Committees of Inquiry had been recognised. In that year, serious allegations had been made against a prominent Parliamentarian and leader of the

Irish Nationalists, Charles Stewart Parnell and others. Rather than refer the matter for investigation to a Select Parliamentary Committee, a Special Commission with special powers was set up by the Special Commission Act 1888.¹ (See Appendix B.)

13. When in 1921 grave allegations were made by a Member of Parliament against officials in the Ministry of Munitions, the favourable impression made by the Parnell Commission and the unpleasant flavour left behind by the Marconi Committee of Inquiry were remembered. It was felt that the investigation by Parliamentary Committees of Inquiry of alleged public misconduct was entirely discredited, and that accordingly new machinery should be created more appropriate to deal not only with the current matter but with any similar matters which might arise in the future. Thus the Tribunals of Inquiry (Evidence) Act, 1921² was born. (See Appendix A.) The widely differing nature of the circumstances in which the statute would be invoked in the future could not all be foreseen and as a matter of necessity the passage of the Bill through Parliament was somewhat hurried. As a result, there are certain omissions and shortcomings in the Act of 1921 which are dealt with later. The Act did, however, bring into existence a method of inquiry into allegations of public misconduct far superior to the method which had hitherto been in vogue. The Act provides that if both Houses of Parliament resolve that it is expedient that a Tribunal be established for inquiring into a definite matter described in the resolution as of urgent public importance, and in pursuance of such resolution a Tribunal is appointed either by the Crown or by a Secretary of State, then such a Tribunal for certain purposes shall have all the powers, rights, and privileges that are vested in the High Court. It can enforce the attendance of witnesses whom it may examine under oath, and it may compel the production of documents. If any person summoned as a witness fails to attend, or if he does attend refuses to answer any question to which the Tribunal may legally require an answer or fails to produce any document in his power or control which the Tribunal legally requires him to produce or does anything which would constitute contempt of court in a court of law, then the Chairman may certify the offence to the High Court which may inquire into the facts and hear evidence, including any statements that may be offered in defence. If the witness is found guilty he may be punished in the same manner as if he had committed a contempt of court. A witness before the Tribunal has the same privileges and immunities as in a court of law. The Tribunal may authorise any person appearing before it who appears to it to be interested to be represented by solicitor or counsel or otherwise. It is expressly provided that the public are to be admitted to all hearings unless the Tribunal finds that this is against the public interest. The Act of 1921 contains no provisions concerning the procedure to be followed by the Tribunal, nor is the Tribunal subject to the Tribunals and Inquiries Act, 1958.³ Nor does the Act of 1921 confer any immunity upon members of the Tribunal for what they may say in the course of the inquiry or in their report, nor upon solicitors or counsel for what they say before the Tribunal. Nor is there any provision (as there

¹ 51 & 52 Vict. Chap. 35.

² 11 Geo. 5. Chap. 7.

³ 6 & 7 Eliz. 2, Chap. 66.

was in the Act of 1888) that answers given by a witness cannot be used against him in any criminal or civil proceedings.

14. Fifteen inquiries have been held under the provisions of the Act of 1921, and these are listed in Appendix C to this Report. Five of these were concerned with allegations against the police and would now presumably be held pursuant to the powers vested in the Secretary of State for the Home Department by Section 32 of the Police Act, 1964.¹ Of the others, four are of special importance. They were inquiries known as the Budget Leak Tribunal (1936),² the Lynskey Tribunal (1948),³ the Bank Rate Tribunal (1957),⁴ and the Vassall Tribunal (1962).⁵ The procedure adopted in this last inquiry had evolved naturally from the experience gained in the other three inquiries.

15. Immediately prior to the Budget of 1936, there had been substantial dealings in the City of such a nature that they gave rise to widespread rumours that the impending changes in taxation proposed in the Budget had been improperly disclosed. Following resolutions of both Houses of Parliament, a Tribunal consisting of Mr. Justice Porter, Mr. Gavin Simonds, K.C. (as he then was) and Mr. Roland Oliver, K.C. (as he then was) was appointed to inquire into the alleged unauthorised disclosures. Two of the persons who had had dealings in the City, out of which they had made considerable profits, were friends of Mr. J. H. Thomas, the Colonial Secretary. It was not until a late stage of the inquiry however that his name was first mentioned. It then appeared from the evidence which had come to light during the course of the hearing that it was he who had made the disclosures. Accordingly he was called as a witness at short notice and those representing him had very little time in which to prepare his case. The Tribunal found that there had been unauthorised disclosure by Mr. J. H. Thomas of information relating to the Budget to his friends, Sir Alfred Butt, M.P. and Mr. Alfred Bates and that these two had made use of this information for private gain.

16. This inquiry is of interest from a procedural point of view. The Attorney-General and junior counsel were present to assist the Tribunal. At the opening of the inquiry the Attorney-General stated briefly the effect of the information and evidence which was then available to him. The Attorney-General then examined the majority of the witnesses and during their evidence the members of the Tribunal asked them questions by way of cross-examination. They were further examined by counsel representing interested parties. When Mr. Thomas was called, the Tribunal directed that it would be desirable that he should be examined by his own counsel. At the close of this examination the Attorney-General declined to cross-examine the witness. No questions were asked by counsel representing other interested parties and the Tribunal had no alternative but to descend into the arena and itself undertake the cross-examination. A similar procedure was followed in the case of the other principal suspect, Sir Alfred Butt, who was also represented by counsel. Junior counsel instructed by the Treasury Solicitor stated he had no question to ask the witness and the Tribunal again had to undertake the cross-examination.

¹ 1964, Chap. 48.

² Cmd. 5184.

³ Cmd. 7616.

⁴ Cmnd. 350.

⁵ Cmnd. 2009.

17. This assumption of the cross-examining role proved to be a heavy burden for the Tribunal to bear. Moreover it had the inherent disadvantage that it tended to make the Tribunal appear hostile to the witnesses whose conduct was being investigated. Accordingly, the procedure was reconsidered when allegations of bribery of Ministers and other public servants were investigated by the Tribunal presided over by Mr. Justice Lynskey in 1948. The Treasury Solicitor on behalf of the Tribunal instructed a team of counsel, headed by the Attorney-General, to present the evidence and to ascertain the facts by examination and cross-examination of the witnesses. The Attorney-General himself first examined in chief and then cross-examined the most important witnesses. Counsel who were acting on behalf of other witnesses were then given an opportunity of cross-examining, and if the witness giving evidence was represented by counsel, his counsel was then given an opportunity of examining him; in conclusion, there was a final examination by one of the counsel appearing for the Tribunal.

18. The procedure adopted by the Lynskey Tribunal was generally followed in the inquiry in 1957 presided over by Lord Justice Parker (as he then was) into allegations of improper disclosure of information relating to the raising of the Bank Rate.

19. In 1962, a Tribunal consisting of Lord Radcliffe (who presided), Mr. Justice Barry, and Sir Milner Holland, Q.C. was appointed with wide terms of reference to inquire into the circumstances in which the spy Vassall had been employed in the Admiralty and ". . . allegations . . . reflecting on the honour and integrity of persons who as Ministers, naval officers and civil servants were concerned in the case." In this inquiry the procedure which had already evolved was further developed. The team of counsel representing the Tribunal included in addition to the Attorney-General an independent leading counsel who dealt with any evidence which, because of its political character, might have been embarrassing to the Attorney-General. Nor did the same counsel for the Tribunal both examine and cross-examine the same witness. So far as possible the witnesses who appeared to be prejudicially affected by statements in the Press or by statements obtained by the Treasury Solicitor were informed before they gave evidence of the substance of the allegations which might be made against them. This Tribunal is notable also in that for the first time the powers to certify offences to the High Court for punishment under Section 1(2) of the Act of 1921 were invoked, and the public was excluded for security reasons from part of the proceedings in accordance with Section 2(a) of the Act, and on recommendation by the Tribunal, certain witnesses were offered an ex gratia contribution towards their costs. This was the last inquiry so far held under the Act.

20. It was evident from these inquiries, which all had highly charged political backgrounds, that although none of the findings had given rise to dissatisfaction, yet certain matters of procedure were nevertheless causing grave concern. These related, amongst other things, to the role played by the Attorney-General as leading counsel for the Tribunal and to the hardship which might be caused to innocent individuals by the nature of the proceedings.

21. In 1963 Mr. Profumo, the Secretary of State for War, made a personal statement in the House of Commons denying that there was any truth in the story that he had had a liaison with Christine Keeler. He afterwards admitted

that this statement was untrue. There followed wide-spread rumours. It was alleged that there had been a serious security risk in that Mr. Profumo had been sharing Christine Keeler as a mistress with the Russian naval attaché ; that the Government knew or ought to have known that the personal statement made by Mr. Profumo was untrue ; that certain members of the Government failed in their duty by approving the personal statement before it had been made, particularly as they had done so without taking any steps to check whether or not it was true. There were also many other rumours relating to this case. The Government decided that to allay the very widespread public concern, an inquiry should be held. They decided however not to set up a Tribunal for this purpose under the Act of 1921 ; instead they appointed Lord Denning, the Master of the Rolls, to hold this inquiry. This task he performed with conspicuous success despite the difficulties inherent in the procedure which he followed. The inquiry was conducted behind closed doors. None of the witnesses heard any of the evidence given against him by others or had any opportunity of testing such evidence. The transcript of the evidence was never published. Lord Denning had in effect to act as detective, solicitor, counsel and judge. In spite of the many serious defects in this procedure, Lord Denning's Report¹ was generally accepted by the public. But this was only because of Lord Denning's rare qualities and high reputation. Even so, the public acceptance of the Report may be regarded as a brilliant exception to what would normally occur when an inquiry is carried out under such conditions.

CHAPTER III

SHOULD THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT, 1921 BE RETAINED?

(i) The circumstances in which the need for an inquisitorial inquiry arises

22. The history of inquiries to which reference has been made shows that from time to time cases arise concerning rumoured instances of lapses in accepted standards of public administration and other matters causing public concern which cannot be dealt with by ordinary civil or criminal processes but which require investigation in order to allay public anxiety.

23. These cases vary in importance, urgency and complexity and may relate to matters of local or national concern. In the past they have been dealt with by a variety of tribunals of inquiry. Our terms of reference require us to consider in particular whether or not there is a need for any permanent machinery of inquisitorial inquiry such as that which is at present provided by the Act of 1921.

24. In considering whether the Act of 1921 should be retained or replaced by some other procedure, we have had to decide whether the inquisitorial method followed by Tribunals under the Act is so objectionable in principle that the Act should be repealed ; and, if so, whether the type of cases which have hitherto been dealt with under the Act should be investigated by some alternative method.

¹ Cmnd. 2152.

25. Several of the inquiries such as the Thurso case (1959)¹ which have taken place under the Act of 1921 would and should now be dealt with under the Police Act, 1964. There are other inquiries, such as the inquiry into the disposal of land at Crichel Down (1954)² and the inquiry into the Evans case (1966)³ which can be dealt with by a Departmental Inquiry. There are minor local inquiries, such as the inquiry into conditions with regard to mining and drainage in Doncaster (1926-28) which certainly are not of such public importance as to require the exceptional procedure which we have to consider. The type of inquiry undertaken by the investigation into the circumstances surrounding the loss of H.M. Submarine "Thetis" (1939)⁴ in normal circumstances would be carried out satisfactorily under the Shipping Casualties and Appeals and Rehearing Rules 1923⁵.

26. There remain, however, exceptional cases, such as the Budget Leak Tribunal (1936), the Lynskey Tribunal (1948), the Bank Rate Tribunal (1957), the Vassall Tribunal (1962) and the inquiry by Lord Denning into the Profumo case (1963) which, although happily they occur only very rarely, do in our view require some permanent form of inquisitorial machinery without the necessity of recourse to legislation at the time when they arise.

27. The exceptional inquisitorial powers conferred upon a Tribunal of Inquiry under the Act of 1921 necessarily expose the ordinary citizen to the risk of having aspects of his private life uncovered which would otherwise remain private, and to the risk of having baseless allegations made against him. This may cause distress and injury to reputation. For these reasons, we are strongly of the opinion that the inquisitorial machinery set up under the Act of 1921 should never be used for matters of local or minor public importance but always be confined to matters of vital public importance concerning which there is something in the nature of a nation-wide crisis of confidence. In such cases we consider that no other method of investigation would be adequate.

28. Normally persons cannot be brought before a tribunal and questioned save in civil or criminal proceedings. Such proceedings are hedged around by long standing and effective safeguards to protect the individual. The inquisitorial procedure is alien to the concept of justice generally accepted in the United Kingdom. There are, however, exceptional cases in which such procedures must be used to preserve the purity and integrity of our public life without which a successful democracy is impossible. It is essential that on the very rare occasions when crises of public confidence occur, the evil, if it exists, shall be exposed so that it may be rooted out; or if it does not exist, the public shall be satisfied that in reality there is no substance in the prevalent rumours and suspicions by which they have been disturbed. We are satisfied that this would be difficult if not impossible without public investigation by an inquisitorial Tribunal possessing the powers conferred by the Act of 1921. Such a Tribunal is appointed by Parliament to inquire and report. The task of inquiring cannot be delegated

¹ Cmnd. 718.

² Cmd. 9176.

³ Cmnd. 3101.

⁴ Cmd. 6190.

⁵ SRO No. 752(L.9).

by the Tribunal for it is the Tribunal which is appointed to inquire as well as to report. The public reposes its confidence not in some other body or person but in the Tribunal to make and direct all the necessary searching investigations and to produce the witnesses in order to arrive at the truth. It is only thus that public confidence can be fully restored.

29. During the last 30 years some of the safeguards of our ordinary judicial processes against causing unnecessary pain and injustice to individuals have been incorporated in this inquisitorial procedure. If this procedure is to be retained, it becomes an important part of our duties to consider how these safeguards can be maintained, extended and improved. We are convinced that much can be done in this direction. In the end, however, one must accept that it is impossible to eliminate all risk of personal hurt and injustice. This risk is inherent in any procedure which is effective for arriving at the truth, but the risk can and should be minimised. Even in the normal judicial processes innocent persons are sometimes forced to attend court and give evidence and are subjected to accusations which may be hurtful to them and damaging to their reputations. This is the inevitable price that has to be paid for arriving at the truth. And in matters with which Tribunals of Inquiry are concerned it is vital in the public interest that the truth should be established.

30. There are important distinctions between inquisitorial procedure and the procedure in an ordinary civil or criminal case. It is inherent in the inquisitorial procedure that there is no *lis*. The Tribunal directs the inquiry and the witnesses are necessarily the Tribunal's witnesses. There is no plaintiff or defendant, no prosecutor or accused; there are no pleadings defining issues to be tried, no charges, indictments, or depositions. The inquiry may take a fresh turn at any moment. It is therefore difficult for persons involved to know in advance of the hearing what allegations may be made against them.

31. It is appropriate at this stage to refer to the inquiries which have been held in Scotland and the evidence which we have received from the Crown Office and the Scottish Home and Health Department. In our view it is essential that all Tribunals set up to investigate the exceptional cases to which we have referred in paragraph 26 should observe the principles we recommend. Accordingly we recommend that the necessary changes in procedure should be made in Scotland to conform with these principles. These changes are considered further in paragraphs 53, 89, and 97.

(ii) The six cardinal principles

32. The difficulty and injustice with which persons involved in an inquiry may be faced can however be largely removed if the following cardinal principles which we discuss in Chapter IV are strictly observed:—

1. Before any person becomes involved in an inquiry, the Tribunal must be satisfied that there are circumstances which affect him and which the Tribunal proposes to investigate.

2. Before any person who is involved in an inquiry is called as a witness he should be informed of any allegations which are made against him and the substance of the evidence in support of them.

3. (a) He should be given an adequate opportunity of preparing his case and of being assisted by legal advisers.
- (b) His legal expenses should normally be met out of public funds.
4. He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the inquiry.
5. Any material witnesses he wishes called at the inquiry should, if reasonably practicable, be heard.
6. He should have the opportunity of testing by cross-examination conducted by his own solicitor or counsel any evidence which may affect him.

(iii) Alternative Procedures

33. We will now consider methods of investigation which might be regarded as possible alternatives to the procedure set up under the Act of 1921. These alternative methods of investigation are:—

1. A Royal Commission.
2. A Select Parliamentary Committee of Inquiry.
3. An inquiry of the type carried out by Lord Denning in the Profumo case.
4. A Departmental Inquiry.
5. An inquiry of the type carried out in the case of accidents to ships or aircraft, and
6. An inquiry of the type carried out by the Security Commission.

1. A Royal Commission

34. In modern times Royal Commissions have not been used to carry out inquiries into the facts of a particular case. They have been used to make recommendations on matters of broad policy. It is for this alone that they are appropriate. Their members are not customarily called upon to become involved whole time and to sit on a day by day basis. The tempo of even the most expeditious Royal Commission is altogether too slow for the requirements of an investigation into matters with which the Act of 1921 is concerned. Moreover a Royal Commission has no real power to compel anyone to give evidence or produce documents. For these reasons, we consider that it does not afford any practicable alternative to the procedure under the Act of 1921.

2. A Select Parliamentary Committee of Inquiry

35. The record of such Committees appointed to investigate allegations of public misconduct is, to say the least, unfortunate, as we have shown in Chapter II. The Marconi scandal for this purpose sounded the death knell of this form of investigation, and because it was wholly discredited, the Act of 1921 was passed. To go back to it would, in our view, be a retrograde step. We of course recognise that there are many purposes for which Select Parliamentary Committees are most useful and indeed indispensable—but the investigation of allegations of public misconduct is not one of them. Such matters should be entirely removed from political influences. A Select Parliamentary Committee is constituted of members representing the relative strength of the parties in the House. Accordingly it may tend in its report to reflect the views of the party having the majority of members, or indeed, as in the Marconi case, it may produce two reports and when these are

debated in the House, the House may divide along party lines. On the other hand the reports of Tribunals under the Act of 1921, no doubt because of their excellence and the standing and political impartiality of their members, have invariably been accepted by Parliament without question. A further defect of a Select Parliamentary Committee is that it does not normally hear counsel and some if not all of its members will have had no experience of taking evidence or of cross-examining witnesses. Finally, witnesses who give evidence before a Select Parliamentary Committee may not be entitled to the same absolute privilege as they would enjoy before a Tribunal under the Act of 1921.

36. The procedure in the United States of America for investigating allegations of public misconduct is by Congressional Committees of Investigation consisting of the representatives of the majority and minority parties. These Committees insofar as they are constituted on a political basis are closely akin to our Select Parliamentary Committees. There are permanent Congressional standing committees of investigation for these matters and they seem to be constantly employed. No doubt this system of investigation is effective in the United States of America, but in our view it would not be appropriate in the United Kingdom. Moreover, the evidence shows that although on some occasions the reports of such Committees have been generally accepted by the American public, on others they have been received with considerable scepticism and have failed to allay public disquiet. Indeed, when any matter of vital importance with a political background arises for investigation, an *ad hoc* tribunal is not infrequently appointed to avoid the matter being referred to the Congressional Committee. An example of this practice is to be found in the appointment of the Warren Commission appointed by President Johnson to investigate the assassination of President Kennedy. There is no evidence from the United States or elsewhere that does anything but support our conclusion that in the United Kingdom investigations of the kind with which we are concerned should be by Tribunals free from political influences.

3. *An inquiry of the type carried out by Lord Denning into the Profumo case*

37. In the chapter dealing with the history of Tribunals of Inquiry in this country, we have referred to the difficult conditions under which this inquiry was carried out and expressed the view that the measure of acceptance which the report achieved was due to the exceptional qualities and standing of Lord Denning alone, and should be regarded as a brilliant exception to what would normally occur when an investigation is carried out under such conditions. Although Lord Denning considered that this type of inquiry had some advantages, he was most conscious of the disadvantages which were inseparable from it. Referring to the advantages he said at pages 2 and 3 of his Report . . . "there can be no dissent . . . in as much as it has been held in private and in strict confidence, the witnesses were, I am sure, much more frank than they would otherwise have been . . . I was able to check the evidence of one witness against that of another more freely . . . and more important, aspersions cast by witnesses against others (who are not able to defend themselves) do not achieve the publicity which is inevitable in a Court of Law or Tribunal of Inquiry. . . ." Referring to the disadvantages, Lord Denning said on the same pages of his Report ". . . it

has two great disadvantages: first, being in secret, it has not the appearance of justice; second, in carrying out the inquiry, I have had to be detective, inquisitor, advocate and judge, and it has been difficult to combine them . . . At every stage of this inquiry I have been faced with this great anxiety: How far should I go into matters which seem to show that someone or other has been guilty of a criminal offence, or of professional misconduct, or moral turpitude, or even incompetence? My inquiry is not a suitable body to determine guilt or innocence. I have not the means at my disposal. No witness has given evidence on oath. None has been cross-examined. No charge has been preferred. No opportunity to defend has been open. It poses for me an inescapable dilemma: on the one hand, if I refrain from going into such matters my inquiry will be thwarted. . . . Suspicions that have already fallen heavily on innocent persons may not be removed. Yet, on the other hand, if I do go into these matters I may well place persons under a cloud when it is undeserved; and I may impute to them offences or misconduct which they have never had the chance to rebut." Such a method of investigation is not so objectionable where there is, in truth, no foundation for the rumours or allegations causing a nation-wide crisis of confidence. The report will state the truth. The only defect in the procedure is that since everything takes place behind closed doors, the truth may not be generally accepted.

38. If, however, there is in reality an evil to be exposed and any of the allegations or rumours causing the nation-wide crisis of confidence are true, it is extremely difficult, if not practically impossible, for the report to establish the truth. When a person against whom allegations are made is not even allowed to hear the evidence brought against him, let alone to check it by cross-examination, when he has "never had the chance to rebut" the case against him, how can any judicially-minded Tribunal be satisfied, save in the most exceptional circumstances, that the allegations have been made out? In these most exceptional cases, if they ever occur, in which such a Tribunal felt justified in making an adverse finding against anyone, that person would feel and the public might also feel that he had a real grievance in that he had had no chance of defending himself. It follows that the odds against any such Tribunal being able to establish the truth, if the truth is black, are very heavy indeed, and accordingly the truth may remain hidden from the light of day.

39. We do not believe that it can ever be right for any inquiry of this kind to be held entirely in secret save on the grounds of security. It is true that a Tribunal does not hold a trial but only investigates and reports. Nevertheless reputations and careers may depend upon their findings, e.g., in the Budget Leak Tribunal which was held in public the Tribunal found that there had been an unauthorised disclosure by Mr. J. H. Thomas to Sir Alfred Butt of information relating to the Budget and that use was made by Sir Alfred Butt of that information for private gain; thus ended both their political careers.

40. It is said that sometimes witnesses are willing to give evidence only if they are allowed to give it in private or in confidence. This is no doubt true. But such evidence in matters of this kind is treated as suspect by the general public and, in our view, rightly so. Secrecy increases the quantity of evidence but tends to debase its quality.

41. It is possible that in the future the same type of salacious rumour as some of those which were in circulation at the time of the Profumo case may circulate again. No doubt it would be wrong to investigate them in public. The point is whether they should be investigated at all. It is no part of the duty of government to satisfy idle curiosity about scandalous gossip. It does not seem to us appropriate for a tribunal of any kind to inquire into such rumours. Gossip about such matters as these is hardly likely to cause a nation-wide crisis of confidence and is best ignored. It is an entirely different matter when it is alleged that a Minister has put himself in a situation which creates a real security risk, or that colleagues have allowed a Minister to make a personal statement which they ought to have known was untrue. If in the future there is a nation-wide crisis of confidence about any matters of this kind they should in our opinion be investigated before a Tribunal appointed under the Act of 1921.

42. We recommend that no Government in the future should ever in any circumstances whatsoever set up a Tribunal of the type adopted in the Profumo case to investigate any matter causing nation-wide public concern. For the reasons we have stated, we are satisfied that such a method of inquiry is inferior to, and certainly no acceptable substitute for, an inquiry under the Act of 1921.

4. Departmental Inquiries

43. These are normally used to investigate matters which are causing public concern, but which are not of such importance as to justify the appointment of a Tribunal under the Act of 1921. A Departmental inquiry is usually appointed by the responsible Minister to be conducted by an eminent lawyer alone or as chairman with others. These inquiries have no power to compel the attendance of witnesses or the production of documents and are not in our view suitable for dealing with the special type of case for which the Act of 1921 was framed.

5. Accident Inquiries

44. These are formal inquiries into air accidents and shipping casualties and are carried out respectively under Regulation 9 of the Civil Aviation (Investigation of Accidents) Regulations, 1951¹ and the Shipping Casualties and Appeal and Re-hearing Rules of 1923. These inquiries are highly technical and usually include something in the nature of a *lis*; there is not the same degree of urgency about them and they are certainly not concerned with a nation-wide crisis of confidence in the integrity of any public persons. They deal with wholly different matters from those dealt with by Tribunals of Inquiry and could not be any substitute for such Tribunals.

6. The Security Commission

45. It seems to us that an inquiry by the Security Commission could never be a suitable alternative to an inquiry by a Tribunal appointed under the Act of 1921. The respective purposes of the two forms of inquiry are wholly different. The purpose of inquiries by the Security Commission is to report to and advise the Prime Minister upon security arrangements within the public service. The subject matter of such inquiries may have caused no public concern and indeed may well be entirely unknown to the public. In the public interest these inquiries are of necessity held in private. The purpose of inquiries under the Act of 1921, as we have already

¹ S.I. 1951 No. 1653.

pointed out, is publicly to establish the truth when there is a nation-wide crisis of confidence about matters of urgent public importance. It is of the essence of these inquiries that they should be held in public although most exceptionally some part of them may be held in private. The only way in which the two types of inquiries may overlap is that some aspect of a matter referred to a Tribunal of Inquiry might (as in the Vassall case) by itself have been appropriate for reference to the Security Commission.

46. Although it is not within our province to advise on such a topic, we can readily appreciate that the vital importance to the nation of maintaining efficient security arrangements may require the arming of the Security Commission with powers to compel evidence similar to those enjoyed by a Tribunal of Inquiry. If such powers are conferred upon the Security Commission, we recommend that this should be done by a separate enactment and not by turning members of the Security Commission into a Tribunal of Inquiry for the purpose of any particular case. We do not consider that the Act of 1921 should be invoked for the purpose of giving teeth to the Security Commission or any other body. We consider that it should be used only for the purposes which we have stated. Whenever a Tribunal of Inquiry is appointed then, whatever its composition, it should in our view follow the principles which we recommend.

We consider that our terms of reference preclude us from making any recommendations about the procedure to be followed by any tribunals other than those set up under the Act of 1921.

(iv) Conclusion

47. Our conclusion is that, for the reasons we have indicated, it is essential in the national interest to retain the Tribunals of Inquiry (Evidence) Act, 1921, albeit with the amendments and safeguards recommended in this Report.

CHAPTER IV

HOW TO IMPROVE THE SAFEGUARDS FOR WITNESSES AND INTERESTED PARTIES

(i) Strict observance of the six cardinal principles

48. We consider it to be of the highest importance that the six cardinal principles which we have stated in paragraph 32 of this Report should always be strictly observed.

(ii) More time

49. The question arises, how is it possible to ensure that any allegations against witnesses and the substance of any evidence against them will be made known to them so as to give them an adequate opportunity of preparing their case (Cardinal principles 1, 2 and 3(a)). We believe that the answer to this question lies mainly in less haste. We are under the impression that the tempo of some of the post-war Tribunals, particularly in the early stages of an inquiry, was somewhat too hurried. We appreciate that there should be no dilatoriness in starting the inquiry and pushing it to a conclusion. It is urgent that the truth should be revealed to the public as speedily as possible. Nevertheless, a few weeks more in preparing the material for arriving at the truth is a small price to pay in order to avoid injustice.

50. Any potential witness from whom a statement is taken by the Treasury Solicitor should be told that, if he so wishes, his own solicitor may be present when the statement is taken. In many cases a witness will not require legal assistance. If, however, he does wish his solicitor to be present he should be given a reasonable opportunity to secure his solicitor's attendance even if this entails a day or two's delay. As soon as possible after he has given his statement, and certainly well in advance, usually not less than seven days before he gives evidence, he should be supplied with a document setting out the allegations against him and the substance of the evidence in support of those allegations.

51. There may be cases in which the Tribunal will consider that there is a real danger of witnesses being intimidated or influenced or of a witness making improper use of the information supplied to him. Accordingly, the form of the document disclosing to a witness the substance of the evidence against him must be left, in each case, to the discretion of the Tribunal. We realise that however thoroughly a case is prepared fresh evidence may emerge during the course of an inquiry which may give rise to further material allegations. In such circumstances, the witness concerned should be given a reasonable opportunity of meeting those allegations even if this means adjourning the inquiry for a few days. The time allowed to anyone at any stage for preparing his case against the allegations he has to meet must be left to the discretion of the Tribunal.

52. Further time in preparing for the public hearing would also give the Tribunal a better opportunity of discarding irrelevant evidence. It is of the greatest importance that irrelevant evidence should not be made public, particularly if it contains what are clearly groundless charges against anyone.

53. From this it will be seen that in our view it is essential for the Tribunal to consider the evidence which is collated by the Treasury Solicitor. It is understood that in Scotland the practice has been for the Tribunal not to see the statements or recognitions of the witnesses. We recommend that, for the reasons given earlier in this chapter in relation to practice in England, a similar procedure should be adopted in Scotland.

(iii) Right to be legally represented

54. Under the Act of 1921 as it now stands no one has the right to be legally represented before the Tribunal. The Tribunal, however, has a discretion as to whether or not to allow a person to be represented. In the past this discretion has always been exercised in favour of allowing any person to be represented if it appeared to the Tribunal that he might be prejudicially affected by the evidence or by any finding or comment in the Report. This means that a witness cannot be represented until he has satisfied the Tribunal that he may be in peril. We recommend that the Act should be amended so that anyone called as a witness would have the right to be legally represented. It is unlikely that any witness will go to this expense unless he considers that he is in real peril of being prejudicially affected by the inquiry—and he may know more about this peril than it would be possible for the Tribunal to know before the evidence is taken. We can see no reason why a witness who in the public interest has to be subjected to an inquisitorial form of inquiry and its attendant publicity should not be accorded this elementary right of being represented should he consider himself to be in peril. We do not think that to give him this right would

add significantly to the duration or costs of the inquiry. The control of the inquiry is in the hands of the Tribunal, and the Tribunal would no doubt rule out any irrelevant questions by whomsoever such questions might be asked. Moreover, costs should be in the discretion of the Tribunal as recommended in paragraph 60.

55. We consider that the Tribunal should have a discretion to allow anyone to be legally represented who is not a witness but who claims to be a person interested in the inquiry in that there is a real risk that he might be prejudicially affected by it. In order to succeed in his application to be legally represented such a person would have to satisfy the Tribunal about the existence of such a risk.

56. Such cases would be rare indeed for it is difficult to imagine circumstances in which a person likely to be prejudicially affected by an inquiry would not be called as a witness. It is impossible however to foresee all circumstances which may arise in the future and the discretion should exist to deal with such a case should it occur.

(iv) Examination by own solicitor or counsel

57. We would here refer to the fourth cardinal principle stated in paragraph 32. We consider that when a witness is legally represented, he should be examined by his own solicitor or counsel on the written statement given to the Treasury Solicitor. The witness is no doubt a witness of the Tribunal, but it must be remembered that he is a witness who is probably at risk so far as his own reputation is concerned. We consider it right that in the first instance he should be allowed to tell his own story confident that the solicitor or counsel questioning him is doing so with the object of bringing out the evidence which he wishes to be placed before the Tribunal. There have been instances in the past in which witnesses have felt aggrieved that although their own counsel was present, they were both examined and cross-examined by counsel for the Tribunal before their own counsel had a chance of being heard. Some of them felt that this procedure was unfair, particularly as they were left with the impression, however wrongly, that their examination in chief—in sharp distinction to their cross-examination—had been perfunctorily carried out. If, when being examined by his own solicitor or counsel, a witness should seemingly depart from what he has said in his written statement to the Treasury Solicitor, his cross-examination by counsel for the Tribunal will be much more effective than if the witness had been examined in the first place by some other counsel for the Tribunal. When a witness is unrepresented, he should be examined by one of the team of counsel appearing for the Tribunal. If, as will no doubt usually be the case, there are no allegations against such a witness, there will be no necessity for him to be cross-examined on behalf of the Tribunal. If, however, such a necessity arises, the witness should be cross-examined by another member of the team representing the Tribunal. No witness should ever be examined and cross-examined by the same counsel. This presents an air of unreality. The purpose of examination in chief is to establish the evidence being given by the witness. The purpose of cross-examination is to test and if necessary to destroy it. If both these tasks are undertaken by the same counsel, however brilliant the tour de force, the witness may be perplexed and left with the feeling that he has not been fairly treated.

(v) Right to have further evidence called

58. This is the fifth cardinal principle stated in paragraph 32. If a witness wishes further evidence called, then a statement of the further evidence should be taken by the Treasury Solicitor. If the Tribunal in its discretion after seeing this statement considers that the evidence it contains may be material and that it is reasonably practicable to obtain it, that evidence should be called by counsel for the Tribunal. This matter must be left to the discretion of the Tribunal in each case, since it is not impossible that a plea for further evidence might be put forward merely for the purposes of delay or some other purpose irrelevant to the inquiry.

(vi) Right to costs

59. The Act of 1921 contains no provision giving the Tribunal power to order that a witness shall be paid his costs out of public funds (Cardinal principle 3(b)). We consider that it should be amended to do so.

60. It is a great hardship that a witness should be left to bear the very heavy expenses often incurred in being legally represented before the Tribunal. After all, the inquiry is in the public interest, the witness is the Tribunal's witness, it is usually just that the witness should be represented, and his solicitor or counsel are assisting the Tribunal in arriving at the truth. It is manifestly unfair that such a witness should be left to face what in a long inquiry is sometimes a crippling bill of costs. It was for this reason that in the last inquiry to be held under the Act of 1921 the Tribunal recommended that some of the witnesses should be paid all or part of their costs out of public funds. As a result the Treasury wrote to these witnesses advising them that it was proposed to make an *ex gratia* contribution towards their costs, and they were asked to submit their bills of costs. This, of course, was all that could be done under the Act in its present form and was an advance upon the previous practice of leaving all witnesses to pay their own costs. We do not consider however that it is satisfactory that the amount to be paid to a witness in respect of his costs should be offered *ex gratia*. It may put the witness in an embarrassing position. He may feel that he is accepting alms at the public expense. There should be power in the Tribunal to order in its discretion that any witness should be paid all or any proportion of his costs out of public funds on a Common Fund basis. Common Fund basis means that the amount of the costs must be reasonable. If their reasonableness is not agreed by the Treasury Solicitor, the costs should be taxed by a Taxing Master in accordance with the Rules of the Supreme Court. Once the Tribunal makes an Order for costs in favour of a witness, he should receive them as of right and not *ex gratia*.

61. It may be helpful if we state how, in our view, the Tribunal's discretion in respect of costs should be exercised. Normally the witness should be allowed his costs. It is only in exceptional circumstances that the Tribunal's discretion should be exercised to disallow costs. We have recommended in paragraph 54 that any witness should be entitled to be legally represented. If the Tribunal came to the conclusion in respect of any witness that there had never been any real ground for supposing that he might be prejudicially affected by the inquiry and that it was therefore unreasonable for him to have gone to the expense of legal representation, the Tribunal should leave him

to bear those expenses himself. In any case in which the Tribunal considered it reasonable for the witness to be legally represented, the practice should be to order that he should recover his costs out of public funds on a Common Fund basis, unless the Tribunal considered that there were good grounds for depriving him of all or part of his costs. It is impossible to catalogue what these grounds might be ; cases vary infinitely in their facts and the matter must be left entirely to the discretion of the Tribunal. It may be helpful, however, to give a few examples of the type of case in which a Tribunal might deprive a witness of part or all of his costs. If the witness during the course of the inquiry sought to obstruct the Tribunal in arriving at the truth or unreasonably delayed the inquiry. This does not mean that every departure in evidence from strict accuracy even if deliberate should be regarded as necessarily disqualifying a witness from recovering his costs. It would be a question of fact and degree in each case. The mere fact that a witness had committed a criminal offence—even a serious one—or was a disreputable person should not, of itself, be a ground for depriving him of his costs. We have no doubt that Tribunals can safely be left to exercise their discretion over costs wisely and justly.

62. In dealing with costs, we have hitherto dealt with the case in which the witness would not qualify for assistance under the Legal Aid Scheme. But what of these latter cases? No one should be disabled by comparative poverty from being legally represented if reason and justice require that he should be represented. We therefore recommend that any necessary amendments to the relevant statute or regulations should be made to give the Tribunal the same power to grant legal aid as the Criminal Courts exercise, i.e. the Tribunal would have to be satisfied that *prima facie* the witness's financial position qualified him for legal aid and that it was reasonable in all the circumstances that he should be represented.

(vii) Further Immunity

63. Section 1 (3) of the Act of 1921 provides that a witness before any Tribunal shall be entitled to the same immunities and privileges as if he were a witness before the High Court or the Court of Session. This means that he cannot be sued for anything he says in evidence, e.g. if he says "A is a liar. His evidence is untrue", A cannot sue him for defamation. It does not mean however that his answers as a witness cannot be used in evidence against him in any subsequent civil or criminal proceedings. We consider that the witness's immunity should be extended so that neither his evidence before the Tribunal, nor his statement to the Treasury Solicitor, nor any documents he is required to produce to the Tribunal, shall be used against him in any subsequent civil or criminal proceedings except in criminal proceedings in which he is charged with having given false evidence before the Tribunal or conspired with or procured others to do so. This extension of the witness's immunity would bring the law in this country into line in this respect with similar provisions in the legislation of Canada, Australia and India and indeed with Section 9 of the Special Commission Act, 1888. It would also, in our view, be of considerable assistance in obtaining relevant evidence, for persons may be chary of coming forward for fear of exposing themselves to the risk of prosecution or an action in the civil courts. Moreover,

the suggested extension of the immunity would make it difficult for a witness to refuse to answer a question on the ground that his answer might tend to incriminate him. Thus not only would the witness be afforded a further measure of protection but the Tribunal would also be helped in arriving at the truth.

64. No doubt this entails a risk that a guilty man may escape prosecution. This would be unfortunate, but it is much more important that everything reasonably possible is done to enable a Tribunal to establish and proclaim the truth about a matter which is causing a nation-wide crisis of confidence. Moreover the risk would be minimised by the fact that Tribunals have in the past and no doubt will in the future wherever practicable forbear from investigating any side issues when it is known that a prosecution is in contemplation or may be brought in respect of them. In any event, it has long been recognised that from a practical point of view it would be almost impossible to prosecute a witness in respect of anything which emerged against him in the course of a hearing before a Tribunal of Inquiry. The Rule against hearsay evidence, rightly in our view, is not applied by the Tribunal although the practice is for the Tribunal to ignore hearsay evidence for the purpose of arriving at any adverse finding against anyone appearing before it. The publicity however which such hearings usually attract is so wide and so overwhelming that it would be virtually impossible for any person against whom an adverse finding was made to obtain a fair trial afterwards. So far no such person has ever been prosecuted. This again may be justified in the public interest because Parliament having decided to set up an inquiry under the Act has clearly considered whether or not civil or criminal proceedings would resolve the matter and has decided that they would not.

(viii) Opportunity to make an early statement

65. We consider that it should be left to the Tribunal in every case to decide whether or not an opening statement should be made by counsel appearing for it. We can conceive of cases in which it would be most desirable that such a statement should be made and others in which it should not. This matter is dealt with further in paragraph 109. In the past the opening statement of counsel for the Tribunal has sometimes contained strong criticisms of persons to be called as witnesses before the Tribunal. These criticisms have been given the widest publicity yet it has not been possible to call the persons concerned until a much later stage in the inquiry. Accordingly they have been deprived, sometimes for weeks, of giving their side of the story and answering the criticisms that have been publicly made against them. This unfortunately is sometimes unavoidable. It is not however a feature peculiar to Tribunals of Inquiry but occurs equally in the ordinary civil and criminal courts. We consider that solicitor or counsel for any witness before the Tribunal should be given the opportunity of making a short speech of not more than about five minutes duration immediately after the conclusion of the opening speech by counsel for the Tribunal. In most cases we think it unlikely that anyone will wish to avail himself of this opportunity. There may however be cases in which the opportunity to make a particular point or refer to a document at an early stage will immediately put the case in an entirely different light and go far

to mitigate the effect upon the public of the criticism made in opening. It is for this reason that we recommend that it should be the practice of Tribunals to accord solicitor or counsel appearing for witnesses the opportunity of making a very short statement immediately after the opening. Whilst this is an advantage not enjoyed in the ordinary civil or criminal courts, it must be recognised that witnesses before an inquisitorial tribunal are sometimes in an exceptionally difficult position and should be accorded every possible safeguard.

(ix) Criminal Records

66. It is perhaps appropriate that at this stage we should deal with the subject of criminal records. Any information as to crimes committed by any of the witnesses must together with any other information obtained by the Treasury Solicitor be placed before the Tribunal in advance of the hearing. It is of the greatest importance that the credibility of any witness should be thoroughly tested, particularly if his evidence supports any of the allegations which are the subject matter of the inquiry. Sometimes a witness's criminal record may be of considerable assistance in this respect. On the other hand there are cases in which the crime was committed so long ago or was of such a nature that it could not materially affect the witness's credibility. In such circumstances it would be manifestly unfair that a witness who has come forward to help in a public inquiry should have his past dragged up and publicised. In each case it must be left to the Tribunal to use its discretion as to whether or not a man with a record should have it used again him.

67. We consider that with the adoption of the safeguards recommended in this Chapter—some of which would require legislation—most of the criticisms which have been made about the workings of the Act of 1921 would be met and all persons appearing before Tribunals would be adequately protected.

CHAPTER V

SHOULD THERE BE STATUTORY RULES OF PROCEDURE?

68. The question arises as to whether or not there should be statutory rules which lay down the procedure to be followed by Tribunals of Inquiry. The disadvantage of having such rules would be that they would necessarily be detailed and rigid. This would enable anyone who wished to obstruct or delay the proceedings of the Tribunal to take advantage of any supposed technical breach of the rules for this purpose. Any alleged failure to comply with the rules might be brought up for review by prerogative writ to the High Court and the inquiry thereby delayed or frustrated.

69. Moreover, the procedural requirements of Tribunals will differ according to the circumstances of each case and it is accordingly desirable to keep the procedure as flexible as possible so that it may be adapted by the Tribunal to meet the needs of the particular case.

70. Rather than have a rigid set of rules, we consider that it is sufficient to lay down the general principles to be followed as we sought to do in Chapter IV. We believe that Tribunals of Inquiry can safely be relied upon

to follow these principles in the future, and thus the interest of everyone will be safeguarded without the Tribunals being hampered in their inquiries.

CHAPTER VI

PROCEDURE BY WHICH A TRIBUNAL IS SET UP

71. The power to set up a Tribunal under the Act of 1921 can be exercised only on a resolution of both Houses of Parliament that it is expedient that a Tribunal be established for inquiring into a "definite matter" described in the resolution as of urgent public importance. We consider that this power to set up a Tribunal should not be extended. We do not agree with a suggestion which has been made to us that the power should be vested in some high officer of State. Because of the inquisitorial nature of the proceedings and the consequent pain which they may cause to individuals, Tribunals should be set up as sparingly as possible. Any temptation there may be to stifle awkward questions in either House by stating that a Tribunal of Inquiry will be appointed to look into the matter should be resisted. The fact that a resolution of both Houses of Parliament is required before a Tribunal can be set up affords some safeguard against this procedure being too readily invoked. Parliamentary time has to be given in both Houses to consider the desirability of appointing a Tribunal. Parliamentary time is in short supply, and unless a matter is really of great public importance—as it should be before it is inquired into by a Tribunal under the Act—it is unlikely that Parliamentary time will be spared. Moreover, before the necessary resolution can be passed, questions have to be answered and the matter fully debated on the floor of both Houses of Parliament. Thus the matter is ventilated and the Government has to justify before Parliament its decision to set up a Tribunal under the Act. For these reasons we recommend that the present procedure for setting up Tribunals under the Act be retained.

CHAPTER VII

COMPOSITION, STATUS AND IMMUNITY OF THE TRIBUNAL

72. The Act of 1921 lays down no requirements as to the composition of the Tribunal. Since 1948, however, it has been the practice for Tribunals to consist of members of the judiciary and eminent leading counsel. In our view the Act should be amended so that the chairman of any Tribunal set up under the Act shall be a person holding high judicial office. Apart from the assurance that having a judge as chairman gives to the public that the inquiry is being conducted impartially and efficiently, it offers the following advantages. It ensures that the powers of the Tribunal will be exercised judicially to compel the attendance of witnesses, the answer to questions and the production of documents, and to deal with anyone who disobeys its orders. We appreciate that the present practice of appointing a chairman from amongst the judiciary is unlikely to be departed from. We consider however that this practice is of such importance that legislative steps should be taken to ensure that it shall always be followed. Without a judge of high standing as chairman we think it unlikely that the findings of Tribunals would achieve the same measures of public confidence and acceptance as

they have in the past. The Act should not however lay down any requirement as to the qualifications of the other members of the Tribunal. These may or may not be lawyers, but none of them should have any close association with any political party. Counsel and solicitors of high standing are experienced in sifting and assessing evidence and exercising sound and impartial judgment. There may however well be cases in which it would be appropriate to appoint a layman as a member of the Tribunal. Much must depend upon the nature of the inquiry.

73. A suggestion has been made that the members of the Tribunal should be named in the resolution of Parliament setting up the Tribunal. We are opposed to this suggestion. It would be invidious for the names of the proposed members of the Tribunal to be bandied about in Parliament and their suitability for appointment debated. The selection of individuals as past experience has shown can safely be left to the Government of the day. Moreover, it might well be difficult to find suitable persons willing to render these onerous duties if their suitability should be subject to debate.

74. The Act of 1921 omits to confer immunity upon the members of the Tribunal for anything said by them during the course of the inquiry or in their report. Although no doubt the Government would stand behind them in respect of any damages and costs for which they might be held liable in an action brought against them by persons whose conduct they had felt it their duty to criticise, it is manifestly undesirable that they should be exposed to the risks of being harassed by litigation arising out of the discharge of their duty. A convenient method of dealing with this situation might be by conferring upon the Tribunal the same privileges and immunities as those enjoyed by a Superior Court of Record.

75. Although this is outside our terms of reference, consideration might be given to conferring a similar immunity upon persons appointed to hold an inquiry on behalf of a Government Department. The evidence before us shows that, on occasion, such persons—and not the most timid amongst them—have felt inhibited in carrying out their duties by the lack of such immunity. It might be possible to take advantage of the amendments that will have to be made in the Act to introduce a short section dealing with such cases.

76. We would here point out that the Act also omits to confer any immunity upon solicitors or counsel or other representatives for what they say when appearing before Tribunals of Inquiry. The same immunity should be conferred upon them as they would enjoy if appearing before the High Court or the Court of Session.

CHAPTER VIII

TERMS OF REFERENCE

77. In view of the inquisitorial nature of the proceedings of the Tribunal, the terms of reference require careful consideration and should be drawn as precisely as possible.

78. As the agitation for an inquiry is very often the result of nothing more than general allegation and rumour, it is necessary to keep the Tribunal within reasonable bounds. It is not of urgent public importance

merely to satisfy idle public curiosity. The Act lays down, rightly in our view, that what is to be inquired into shall be a "definite matter". Accordingly no Tribunal should be set up to investigate a nebulous mass of vague and unspecified rumours. The reference should confine the inquiry to the investigation of the definite matter which is causing a crisis of public confidence. On the other hand it is essential that Tribunals should not be fettered by terms of reference which are too narrowly drawn.

79. The Tribunal should take an early opportunity of explaining in public its interpretation of its terms of reference and the extent to which the inquiry is likely to be pursued. As the inquiry proceeds, it may be necessary for the Tribunal to explain any further interpretation it may have placed on the terms of reference in the light of the facts that have emerged.

CHAPTER IX

THE CASE FOR AND AGAINST A PRELIMINARY HEARING OF EVIDENCE IN PRIVATE

80. The suggestion has been made that a private preliminary inquiry should be held by a Parliamentary Commissioner or other person to decide whether or not there was sufficient material for investigation by a Tribunal of Inquiry under the Act of 1921 or that there should be some other form of preliminary inquiry by a member of the Government before the Government sets up such a Tribunal. No doubt the Government of the day usually causes some informal inquiry to be made by the Lord Chancellor before it moves any resolution to set up a Tribunal under the Act. We do not think that it would be right to seek to fetter the Government's power to move such a resolution in any case in which it appeared to the Government that there was a nation-wide crisis of public confidence.

81. A further suggestion has been made by some witnesses, although many have disagreed with it, that the Tribunal should hold a preliminary investigation in private. At this investigation evidence should be called and submissions made to enable the Tribunal to decide whether or not there was a *prima facie* case to support any allegation against any of the persons concerned. The advantage of this course, so it is said, is that the Tribunal could thus protect innocent persons from having groundless allegations or rumours against them pursued in the fierce light of publicity. Whilst we fully recognise the importance of protecting innocent persons against any possible injury to their reputations which may be involved in a public hearing, we do not consider that a preliminary hearing in private is the best means of affording them this protection. Assuming that there are widespread rumours and allegations about the conduct of some innocent individual, it seems to us that if the evidence is heard in private at a preliminary hearing and the Tribunal thereafter announces that the rumours and allegations are groundless, there is a real risk that the public will not be convinced and may consider that something is being hushed up. Indeed a number of witnesses involved in recent Tribunals of Inquiry and those appearing on their behalf have stressed in evidence before us the importance they attach to being able to destroy the rumours and allegations by evidence given in public.

82. If on the other hand the Tribunal comes to the conclusion that there is enough in the rumours and allegations to warrant a public investigation, the impression that this would make upon the public might well be unfortunate from the point of view of the individual concerned. Moreover there is something unreal about evidence being taken in private and then being re-hashed before the same Tribunal in public. Besides the untruthful witness who has done badly under cross-examination at the first attempt would be forewarned. This procedure would also entail considerable unnecessary delay for the publication of the Report would be postponed by the time taken by the preliminary hearing without any corresponding advantage being secured.

83. It is for these reasons that we prefer the recommendation made in paragraph 49 under the heading of "More Time". It seems to us that if more time is given to collating the material evidence before the public hearing begins, the Tribunal should have an ample opportunity of defining the allegations, pinpointing the relevant matters to be investigated, and discarding any prejudicial testimony that is clearly immaterial. This will also make it possible for the Tribunal to comply with our recommendations for making known to witnesses the allegations and rumours they have to meet and the substance of the evidence upon which they are based. If a witness after he has been supplied with this material wishes to make a submission to the Tribunal in private, either personally or through solicitor or counsel, he should be allowed to do so. It is thus, rather than by a two tier investigation with a preliminary hearing of evidence in private, that we think that the interests of witnesses can best be protected.

CHAPTER X

BY WHOM SHALL THE TRIBUNAL BE REPRESENTED?

(i) The Treasury Solicitor?

84. It has always been the practice in England for the solicitor acting for the Tribunal to be the Treasury Solicitor. In our view, this practice should continue. It has great advantages. The Treasury Solicitor has vast experience of public administration and also the entree into all Government Departments. This is of great value to a Tribunal for in the course of their investigations, it is often important to have detailed knowledge of how Government administration normally functions. It is also often essential to acquire information or help which can be obtained only from Government Departments.

85. The Treasury Solicitor has accumulated over the years wide experience of Tribunals of Inquiry and is thoroughly familiar with all the important preparatory work to be carried out. Moreover, he has the staff available to cope with this most onerous task which it has always performed with the greatest thoroughness and efficiency. The evidence before us shows that it is unlikely that any firm of solicitors, however large their staff, would be willing to take on this work, for to do so would entail virtually ceasing to carry on their private practice, at any rate for a very long time. Moreover the cost would be very heavy indeed.

86. The Treasury Solicitor no doubt comes into close contact with the Government of the day. But Governments come and go. The Treasury Solicitor and his staff are, however, civil servants, and, like all civil servants, go on impartially carrying out their duties whatever Government happens to be in power; the work of the Civil Service is in no way affected by political influences, and this fact without doubt is well recognised by the public.

87. It is in our view essential that the practice should continue of the Treasury Solicitor, and indeed the counsel he instructs, being in constant consultation with the Tribunal. As we have pointed out in paragraph 28, the Tribunal's function is not only to report upon but to inquire into the matters which are disturbing the public. It is the Tribunal alone which is entrusted by Parliament to carry out this important duty on the public's behalf. And it is in the Tribunal alone which, for this purpose, the public reposes its confidence. The nature of the task of the Tribunal is therefore inescapably inquisitorial. In carrying out this task it cannot and should not be deprived of the services of solicitors and counsel, for their services are essential. But for them, the Tribunal would have to interview the witnesses personally before hearing their evidence and descend into the arena at the hearing as they did in the Budget Leak Tribunal. This would in our view be in the highest degree undesirable.

88. The Tribunal must therefore be in close contact with the Treasury Solicitor for the purpose of directing the lines of investigation and with counsel for the purpose of being advised upon them. The frequency with which these consultations will occur must depend upon the facts of each case. Experience has shown that such consultations are essential for the efficient discharge of the task of the Tribunal. Indeed, the chairmen of the last two Tribunals of Inquiry have stated in evidence that without such assistance their task would have been impossible. This system has not in the past and, in our view, will not in the future in any way hinder Tribunals from arriving at impartial findings.

89. Although in Scotland it might be feasible for private firms of solicitors to act for the Tribunal, we consider for much the same reasons as apply in England that it would be preferable for the Solicitor for the Scottish Department or the Procurator Fiscal to act.

(ii) The Attorney-General?

90. It is essential in our view for the Tribunal to be represented by counsel to make an opening speech if necessary and to make submissions relevant to any question that may arise for decision, to cross-examine and if necessary to examine witnesses in chief so as to avoid the difficulties which arose in the Budget Leak Tribunal to which we have referred in paragraph 17 of this report.

91. The practice or tradition that the Attorney-General should appear as counsel to conduct the proceedings on behalf of the Tribunal has grown up only since the last war. As we have recorded in paragraph 16 of this report, although Sir Donald Somervell, the Attorney-General of the day, attended before the Budget Leak Tribunal, he refused to take any leading

part in the proceedings, perhaps because he considered that the political background of the inquiry made it inappropriate for him to do so.

92. Every one of the post-war Tribunals of Inquiry in England has had a highly charged political background, yet in every case the Attorney-General of the day has played a leading role. This was because the Attorney-General at the time of the Lynskey Tribunal considered that it was his duty to do so and this view of the duties of his office was shared by each of his successors. We have listened with attention to the evidence of all of them upon this matter and they are unanimous in their views. These views are supported by some of the other witnesses. On the other hand there is an even larger body of evidence, including that of the Lord Chief Justice of England, Lord Radcliffe, Lord Devlin, the Bar Council, the Council of the Law Society and the Treasury Solicitor, to the effect that it would be better if the Tribunal were to instruct independent counsel of the highest standing to represent them.

93. The arguments in favour of retaining the present practice which has existed only since 1948 can be summarised as follows. The Attorney-General has a special responsibility for the public interest and as the protector of the public interest should ensure that the Tribunal has all relevant material before it since the subject matter of an inquiry is *ex hypothesi* of vital public importance. If the Attorney-General were to renounce or be deprived of this function, it would derogate from his high office, since it might be construed as a reflection upon his complete impartiality. This might call into question his constitutional function of deciding whether or not a prosecution should be instituted in important cases with a political background. The position of the Attorney-General and his reputation for fairness and impartiality in the conduct of legal proceedings would thus be undermined. The Attorney-General has a specialised knowledge of Government administration which helps in the investigations, and his part in the proceedings gives him an inside knowledge of what occurred before the Tribunal should there be any debate on the Report after its publication. Accordingly the Attorney-General should always conduct the proceedings before Tribunals of Inquiry unless he is personally involved or in his discretion decides that he might otherwise be seriously embarrassed. We are very conscious of the force of all these arguments just as we appreciate the admirable way in which all Attorneys-General appearing before Tribunals in the past have performed their onerous and self-imposed task. We have nothing but admiration for their impartiality and high sense of duty.

94. Nevertheless we consider that the arguments in favour of changing the present practice should undoubtedly prevail. Since the last war a Tribunal of Inquiry has only been appointed when political passions have been running high and public suspicion about the conduct of prominent persons, including members of the Government, has been rife. We have no reason to suppose that the picture is likely to be any different when future Tribunals are set up. In these circumstances we consider it advisable that counsel conducting the examination or cross-examination of witnesses on behalf of the Tribunal should have no connection whatsoever with the Government of the day or with any political party. Whilst we of course fully appreciate the distinction for all purposes between the position of the

Attorney-General as chief Law Officer of the Crown and his position as a member of the Government, this distinction is difficult for the public to understand in relation to a Tribunal of Inquiry investigating the conduct of the ministerial colleagues of the Attorney-General. Moreover, other witnesses before the inquiry whose interests are inimical to those of the Minister or Ministers concerned are liable, however wrongly, to gain the impression that the odds have been weighted against them. There was undoubtedly some criticism of all the Attorneys-General appearing before the post-war Tribunals of Inquiry; it was said by some that because of their political affiliations either they cross-examined too vigorously or not vigorously enough. It seems to us undesirable and unnecessary that Law Officers of the Crown should be exposed to such criticisms.

95. However groundless the criticisms that were made of past Attorneys-General and however slight the risk of bias in the future, in matters such as these when political passions are running high and there is a crisis of confidence in the conduct of some members of the Government, we consider that the confidence of the public in the report of the Tribunal would be enhanced if the Attorney-General, who is a member of the Government, were not to act for the Tribunal. It has been suggested that Tribunals of Inquiry may be set up to inquire into matters with no political content. If, however, Tribunals are set up, as they should be, only when there is a nation-wide crisis of confidence in matters of real public importance, it seems—and indeed experience shows—that the investigations will almost certainly have strong political overtones. Even if this were not so, there is no real reason why the Tribunal should not be represented by independent counsel of high standing rather than by a Law Officer of the Crown. It is true that the Law Officers of the Crown have specialised knowledge of the administration of Government Departments. But so has the Treasury Solicitor who will be acting for the Tribunal and instructing counsel on its behalf. If, after the report of a Tribunal is published, the matter is debated in the House of Commons, a full transcript of the proceedings would be available for the Attorney-General and he would be in just as good and possibly in a better position to deal with the matter than if he had been personally involved in the conduct of the proceedings.

96. We cannot accept the argument that if Law Officers no longer appear for the Tribunal this will in any way diminish the status of their office or cast doubt upon their suitability for performing their traditional non-political functions in relation to the institution and conduct of criminal proceedings. Even such criminal proceedings as have political implications bear no real resemblance to the sort of matters dealt with by Tribunals of Inquiry. In such cases there is no nation-wide crisis of public confidence, and the personal conduct of the ministerial colleagues of the Attorney-General is not normally involved. Moreover, in the matters with which the Law Officers usually deal as legal advisers to the Crown, they are the sole guardians of the public interest. They and they alone make the decisions, subject to no interference by any outside source. No one may dictate to them nor even advise them as to how they should discharge their duties. In the matters with which we are concerned, it is the Tribunal which is the guardian of the public interest, and which alone is charged by Parliament to investigate and report in the

interest of the public. If the Attorney-General is brought into such matters, it is difficult for him to divest himself of the attributes of his traditional role. His views may differ, and sometimes have differed, from those of the Tribunal upon the lines of inquiry to be pursued and upon other matters. Whilst we do not consider that there has been or is ever likely to be any major clash between a Tribunal and the Attorney-General, a duplication of functions is undesirable and should be avoided. We do not consider it would be right nor do we think it would be fair to the Attorney-General to leave him to decide whether or not he or the Solicitor-General rather than some other counsel should appear for the Tribunal. To leave the choice with him would be to put him in a most invidious position. If he decided not to appear, he might feel that he was shirking an unpleasant duty or that some sinister implication might be read into his decision. For all these reasons we have come to the conclusion that it would be much better that the present practice should be discontinued and that in future neither the Attorney-General nor the Solicitor-General should represent a Tribunal set up under the Act of 1921. The Tribunal should select its own counsel to be instructed by the Treasury Solicitor. There is however in our view no reason why a Law Officer, if he considered it right to do so, should not represent any minister or Government Department concerned in such proceedings.

97. For the reasons we have indicated above we consider that it would be preferable for Tribunals in Scotland not to be represented by the Lord Advocate or the Solicitor-General, but by an independent counsel of the highest standing nominated by the Tribunal.

CHAPTER XI

PROCEEDINGS OF THE TRIBUNAL

(i) Preliminary meeting of the Tribunal in public

98. In previous inquiries the Tribunal has held a preliminary meeting in public before hearing the evidence. This is a useful practice but we think that the preliminary meeting should not be held until the Treasury Solicitor has collated the evidence and the Tribunal has had an opportunity to consider it. We are convinced that time spent at this stage will lead to the inquiry being more effective and will be a greater protection to those who are involved.

99. We have had a proposal that there should be an informal method of procedure before the Tribunal in public and one witness considered that discussion round the table rather than the usual method of examination and cross-examination might more likely lead to the truth.

100. There is however a real danger in departing from well tried and proved methods of arriving at the truth. Whilst therefore in our view examination and cross-examination should be retained, every effort should be made by the Tribunal and counsel appearing on its behalf to put witnesses at their ease. We have no doubt that this can be done.

101. At the preliminary meeting the Tribunal should read its terms of reference in public and give its interpretation of these terms of reference and the extent of the intended lines of inquiry.

102. The Tribunal should then proceed to give directions on matters of administration and procedure.

103. The Tribunal should explain the duties of the Treasury Solicitor and counsel instructed on behalf of the Tribunal, the duties of counsel appearing for witnesses and interested persons and the order of speeches by the counsel appearing at the inquiry.

104. The Tribunal should indicate so far as it is possible to do so, the allegations which will be investigated. The Tribunal will also indicate what, if any, parts of the proceedings they then intend to hold in private session and give directions as to the venue and times of hearing of the evidence.

105. It may be necessary for the Tribunal to entertain applications for representation earlier than the preliminary meeting in public and this can be done by writing to the Tribunal applying for the representation under the Act.

106. It is essential that sufficient time is given between the preliminary meeting and the hearing of evidence to enable the Treasury Solicitor to make any necessary further investigations and to give the persons involved adequate time to prepare their cases.

107. During the period between the preliminary meeting and the hearing of the evidence, if it has not been done already, the Treasury Solicitor should provide all witnesses with copies of their statements and all the witnesses and persons interested with a precis or a list of the allegations which they will be required to answer. The Tribunal should direct the Treasury Solicitor to provide witnesses and interested persons with a document containing the substance of any evidence which affects them. The form of any such document should in each case be at the discretion of the Tribunal for the reasons we have stated in paragraph 51.

(ii) Hearing of evidence by the Tribunal

108. The hearing of the evidence in public by the Tribunal should be held in premises which are easy of access to the public and provide sufficient accommodation to enable the greatest number of the public to attend.

109. In its discretion the Tribunal will direct whether or not counsel instructed on its behalf should make an opening statement indicating the progress which has been made in the investigation before the evidence is heard.

110. It has been suggested that it would be preferable to have no opening statement by counsel for the Tribunal otherwise allegations are made in the full glare of publicity when the Press and the public are most interested. By the time the allegations have been dealt with in the evidence and the report has been published the interest in the inquiry has waned.

111. Provided a sufficient time has been given to the preparation for the inquiry, an opening statement by counsel for the Tribunal is usually helpful as it is otherwise difficult for the persons who have been granted representation and the members of the public to understand the line of inquiry which is being followed. An opening statement will also assist the Press in reporting the proceedings. The statement should be an impartial summary of the investigation and avoid any comments likely to make sensational headlines.

It should be emphasised that until the evidence has been heard it would be wrong to draw any conclusions.

112. After submissions have been made by counsel, the witnesses should be called in the order directed by the Tribunal.

113. At the close of the examination in chief, the witness should, if necessary, be cross-examined by a member of the team of counsel instructed on behalf of the Tribunal. The Tribunal should then give leave in its discretion to other counsel representing interested persons to cross-examine the witness before the witness is finally re-examined by his own counsel. Members of the Tribunal will question the witness at any stage of his examination should they wish to do so.

114. There should be one counsel in the team of counsel acting on behalf of the Tribunal who is appointed to examine and re-examine any witness who is not legally represented.

CHAPTER XII

PUBLICITY

115. As we have already indicated it is, in our view, of the greatest importance that hearings before a Tribunal of Inquiry should be held in public. It is only when the public is present that the public will have complete confidence that everything possible has been done for the purpose of arriving at the truth.

116. When there is a crisis of public confidence about the alleged misconduct of persons in high places, the public naturally distrusts any investigation carried out behind closed doors. Investigations so conducted will always tend to promote the suspicion, however unjustified, that they are not being conducted sufficiently vigorously and thoroughly or that something is being hushed up. Publicity enables the public to see for itself how the investigation is being carried out and accordingly dispels suspicion. Unless these inquiries are held in public they are unlikely to achieve their main purpose, namely, that of restoring the confidence of the public in the integrity of our public life. And without this confidence no democracy can long survive.

117. It has been said that if the inquiry were held in private some witnesses would come forward with evidence which they would not be prepared to give in public. This may well be so. We consider, however, as we have said in paragraph 40, that although secret hearings may increase the quantity of the evidence they tend to debase its quality. The loss of the kind of evidence which might be withheld because the hearing is not in secret would, in our view, be a small price to pay for the great advantages of a public hearing. Moreover, experience shows that the Tribunals of Inquiry which have sat in public have not been hampered in their task by lack of any essential evidence.

118. We appreciate that publicity may be hurtful to some witnesses who are called before the Tribunal and indeed to some persons who are mentioned and perhaps not called to give evidence. But this is a risk which, on the rare occasions when such inquiries are necessary, must be accepted in the

national interest. We have already dealt with the measures which we recommend to safeguard the interests of persons called to give evidence. Careful preparation and sifting of the statements of witnesses before the witnesses are called will do much to eliminate the risks of groundless charges being thrown up for the first time by the evidence. It may be decided to discard some witnesses altogether as being immaterial. In other cases, where there is some material evidence which the witness can give, care must be taken whilst examining him in chief not to bring out in his evidence irrelevant and groundless allegations against anyone. Nevertheless the risk remains that such allegations might be made by the witness whilst under cross-examination. This is unavoidable, but it is not a risk peculiar to hearings before a Tribunal of Inquiry. It may equally well occur in any ordinary civil or criminal proceedings.

119. It has been suggested to us that the Press should be prohibited from reporting the proceedings day by day and that the evidence should be made public only after the publication of the Tribunal's report. This would no doubt eliminate the pain sometimes caused to innocent persons by the glare of publicity. On the other hand we are satisfied by the evidence that on balance it is in the interest of innocent persons against whom allegations have been made or rumours circulated to have the opportunity of giving their evidence and destroying the evidence against them in the full light of publicity. If, as we believe, it is essential for the inquiry to be held in public, it seems to us that those members of the public who are not able to attend the hearing in person are entitled to be kept informed through the national Press of what is taking place. Moreover, if the evidence is not published daily and the public has to wait for weeks or months for authentic information about what is occurring before the Tribunal, rumours will grow and multiply and the crisis of public confidence will be heightened.

120. When the evidence is published in bulk after the report, there is perhaps only a small percentage of the reading public which embarks upon the formidable task of reading and digesting it, certainly far fewer than read the newspaper reports of the Tribunal's proceedings.

121. We have also considered the suggestion that the Press tends to highlight sensational aspects of the evidence without providing the other side of the picture. No doubt when this occurs it is largely due to the difficulties which the newspaper has in giving an accurate account of the proceedings because of the roving nature of the investigations and the consequent problem for all concerned of distinguishing between what is important and what is not. We wish to emphasise the extreme care which the Press should exercise in reporting these matters. It should be made clear, particularly in the opening stages of an inquiry, that only one side is then being published. This is especially important in an inquisitorial inquiry when new facts may emerge suddenly during the proceedings. Care should also be taken to give the same prominence to the evidence of persons denying allegations or rumours made against them as was given to the allegations and rumours themselves. We are confident that the Press in general can safely be relied upon to be fair to all persons involved in an inquiry.

122. Although it is of the greatest importance that the hearing should be in public, it has been generally conceded in evidence that there may be most

exceptional circumstances in which justice demands that the Tribunal should have a discretion to hear some of the evidence in private. Under Section 2 of the Act of 1921 the Tribunal has no power to exclude the public unless it is of the opinion that "it is in the public interest expedient so to do for reasons connected with the subject matter of the inquiry or the nature of the evidence to be given". These words have so far only been construed as applying to cases in which hearing the evidence in public would constitute a security risk. This is because no question has yet arisen as to whether they may confer a wider discretion. We consider that the Tribunal should have a wider discretion, certainly as wide as the discretion of a Judge sitting in the High Court of Justice. This discretion enables the public to be excluded in circumstances in which a public hearing would defeat the ends of justice, e.g. where particulars of secret processes have to be disclosed and in infancy cases. We do not think however the discretion should necessarily be confined to infancy cases or to trade secrets. It is impossible to foresee the multifarious contingencies which may arise before a Tribunal of Inquiry. We can imagine cases in which for instance a name might be required of a witness and it would be just that he should be allowed to write it down rather than state it publicly. The Tribunal might consider it desirable to exclude the public from the inquiry for the purpose of making an explanation to a witness or admonishing him. The Tribunal might consider that the interests of justice and humanity required certain parts of evidence to be given in private. This would be only in the most exceptional circumstances which indeed may never occur. The discretion should however be wide enough to meet such cases in the unlikely event of their occurring. Clearly that discretion should be exercised with the greatest reluctance and care and then only most rarely. The words in Section 2 of the Act are very wide and should in our view be construed so as to confer such a discretion on the Tribunal.

CHAPTER XIII

POWER TO COMPEL EVIDENCE : COMMittal FOR CONTEMPT

123. We have no doubt that it is necessary that some power should exist, to be exercised only in the last resort, for the purpose of compelling persons to give evidence and preventing them from defying the Tribunal. This power is contained in Section 1(2) of the Act of 1921. No witness has doubted the necessity for such a power, nor suggested that journalists or anyone else should be exempted from its application. It has been invoked only once since the Act came into force in 1921. This was in the Vassall Tribunal when certain journalists refused to reveal the sources of their information. A question concerning the revelation of sources is rare although the risk of it arising is somewhat greater before Tribunals of Inquiry than in the ordinary courts where hearsay evidence is inadmissible and sources are seldom relevant. Even so, it has arisen before a Tribunal in an acute form only once in the last 45 years. It is true that in the Bank Rate Tribunal one of the journalist witnesses asked whether he had to answer a question put to him about the source of his information, but on being told by the Tribunal that he had to answer, he did so without demur.¹

¹ Page 12 of the Report of the Proceedings, December, 1957.

124. It has been said that, as a general rule, journalists should not be asked to compromise the source of their information. The Press is a watchdog of our liberties. They often reveal matters which should be disclosed in the public interest, and they might be hampered in this function if they were normally obliged to disclose the source of their information. It has also been urged in evidence on their behalf that as they are usually given information in strict confidence, it is against their conscience to reveal the name of the person who gave them the information, and that rather than disclose sources which they feel in honour bound to conceal, they would prefer to suffer a prison sentence. The matter has been put more prosaically by the chairman of a large group of newspapers who said in evidence that all these reasons are moonshine. He stated that the real reason for the reticence of journalists is that their living depends upon concealing their sources, because it is on these sources that their value as journalists depends. If it were thought that there was any risk in their revealing their sources, these would dry up. We consider that the real reason for the reticence of journalists to reveal their source is, as stated by the Chairman of the Press Council, an amalgam of all those given in evidence. In the ultimate analysis, it is unthinkable that a great institution such as the Press would seek to defy the law. The law clearly requires that any witness before a Tribunal should, in the national interest, reveal the source of his information if the revelation of that source is vital.

125. A witness sometimes thinks, quite mistakenly, that the person who has given him the information would object to his name being revealed, or a witness may not understand the vital importance of the identity of his source of information to the subject matter of the inquiry. Tribunals do not insist on the disclosure of the source of information unless it is of vital importance to the inquiry to do so. In such cases the Tribunal should, so far as practicable, fully explain to the witness precisely why the answer to the question asked is of vital importance and if necessary give the witness an opportunity of referring back to his source. In the appropriate case it might be well to point out to the witness that should he still refuse to disclose his source, the public may be left with the strong suspicion that there is none and that the journalist's story is an invention or a distortion of any information which he may have received.

126. We are confident that a clash will rarely occur between the Tribunal and a witness. But what if a clash does occur? What if any witness should contumaciously refuse to give evidence vital to the subject matter of the inquiry? The question then arises as to whether the matter should be referred to the High Court on the certificate of the Tribunal as is now provided by Section 1(2) of the Act of 1921 or whether the Tribunal should itself be empowered to deal with the matter and punish the offender. The arguments one way and the other are nicely balanced.

127. The arguments in favour of the present provisions of the Act of 1921 are that it might be considered inappropriate that the Tribunal should commit as this would reflect adversely upon the impression that the Tribunal makes upon the public. It is inappropriate that an inquisitorial tribunal should have power to commit. The Act of 1921 was amended in the Committee stage to take the power to commit away from the Tribunal and transfer it to the High Court, and this was for the protection of the individual. At that time, however, it was not known that chairmen of Tribunals would

be persons holding high judicial office. The process of certification to the court and the procedural steps which have to be taken give opportunity for reflection by the Tribunal and the offender. The offender has the advantage of being dealt with by a court approaching the matter with a fresh mind. If the Tribunal had the power to commit, provision would have to be made for an appeal from its decision to the High Court. This would have the effect of making a decision of the Tribunal directly subject to appeal to the High Court—perhaps an undesirable precedent. The present procedure was followed in the Vassall Tribunal and proved to be procedurally satisfactory. There is a further complication that if the power to commit were vested in the Tribunal, the sentence of imprisonment might exceed the time during which the Tribunal would be in office and it is clearly preferable that the authority which commits should be in existence and approachable by the offender at any time during which he is serving his sentence.

128. The arguments in favour of amending the Act of 1921 and giving the Tribunal the power to commit are as follows. The Tribunal will always be presided over by a holder of high judicial office and is in no sense to be compared with the usual *ad hoc* tribunal to which it might be considered inadvisable to grant the exceptional power of depriving a person of his liberty. It may be thought to be derogatory of such a Tribunal that it is not entrusted with the power to commit. The Restrictive Practices Court has such a power. Under the present practice, members of the Tribunal might find themselves liable to be called as witnesses and cross-examined in the High Court proceedings.

129. The power to commit if given to the Tribunal would no doubt be exercised only by a unanimous decision; and from the public point of view this would provide an additional safeguard to the individual. The Tribunal would be in the best position to assess the seriousness of the contempt and the effect it has upon the inquiry. It is in possession of all relevant material and has the advantage of seeing the witness concerned and judging his behaviour at the inquiry. If the matter is dealt with by the Tribunal, the delay which would be incurred in referring the matter to the court would be avoided.

130. It has been suggested that a further advantage of the Tribunal having the power to commit would be that the Tribunal would be unlikely to punish offenders as severely as the High Court. There is of course no basis upon which this contention can be judged, but it might be said that if punishment is to act as a deterrent against offenders placing personal considerations before the national interest, that interest may demand that they should be dealt with severely.

131. We have found this an intransigent problem to solve. On the whole, however, we incline to the view that the existing procedure might well be retained.

132. We unreservedly reject one suggestion which has been made, namely, that the question of committing to prison should be referred to Parliament. This would involve a cumbersome and long drawn out process with little to commend it. Parliament would have to find time which it can ill afford to deal with the matter; nor would it be easy for Parliament to inform itself of all the relevant facts. There is, moreover, no reason to suppose that the offender would fare any better before Parliament than he would before the courts or the Tribunal.

CHAPTER XIV

REPORT OF THE TRIBUNAL

133. There has been no criticism made to us of the findings of the reports of any of the Tribunals set up under the Act of 1921. We wish to emphasise, however, that if any allegations are made against witnesses or interested persons and are shown to be unfounded, Tribunals, as they always have done in the past, should make this abundantly clear in their report.

CHAPTER XV

SHOULD THERE BE AN APPEAL FROM THE FINDINGS OF THE TRIBUNAL?

134. The question has been canvassed before us as to whether or not there should be any appeal from the findings of Tribunals of Inquiry. The great preponderance of evidence is against such appeals. These Tribunals have no questions of law to decide. It is true that whether or not there is any evidence to support a finding is a question of law. Having regard, however, to the experience and high standing of the members appointed to these Tribunals and their natural reluctance to make any finding reflecting on any person unless it is established beyond doubt by the most cogent evidence, it seems to us highly unlikely that any such finding would ever be made without any evidence to support it. Any adverse finding which a Tribunal may make against any persons will depend upon what evidence the Tribunal believes. Accordingly it would be impossible to reverse such findings without setting up another Tribunal to hear the evidence all over again. This would be as undesirable as it would be impractical. In matters of the kind with which Tribunals are concerned, it is of the utmost importance that finality should be reached and confidence restored with the publication of the report.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. There is a need for standing legislation to permit the setting-up whenever necessary of an inquisitorial tribunal (paragraph 26), and for this purpose the Tribunals of Inquiry (Evidence) Act, 1921, subject to certain amendments and safeguards, should be retained (paragraph 47).
2. The Act should not be invoked for matters of local or minor importance, but confined to circumstances which occasion a nation-wide crisis of confidence (paragraph 27).
3. The following cardinal principles (paragraph 32) should be observed to minimise the risk of personal hurt and injustice to any person involved in the inquiries:—
 - (i) Before any person becomes involved in an inquiry, the Tribunal must be satisfied that there are circumstances which affect him and which the Tribunal proposes to investigate.
 - (ii) Before any person who is involved in an inquiry is called as a witness, he should be informed in advance of allegations against him and the substance of the evidence in support of them.
 - (iii) (a) He should have adequate opportunity of preparing his case and of being assisted by legal advisers.
(b) His legal expenses should normally be met out of public funds.
 - (iv) He should have the opportunity of being examined by his own solicitor or counsel and of stating his case in public at the inquiry.
 - (v) Any material witnesses he wishes called at the inquiry should, if reasonably practicable, be heard.
 - (vi) He should have the opportunity of testing by cross-examination conducted by his own solicitor or counsel any evidence which may affect him.
4. Investigation by Royal Commission would not afford a practicable alternative to procedure under the Act of 1921 (paragraph 34).
5. Investigation of allegations of public misconduct should be free of political influence and Select Parliamentary Committees of Inquiry would accordingly be inappropriate for dealing with circumstances hitherto dealt with under the Act (paragraph 35).
6. No Government should in future set up a tribunal of the type adopted in the Profumo case to investigate any matter causing nation-wide public concern (paragraph 42).
7. The procedure followed by Departmental and Accident Inquiries would not be suitable for dealing with the special type of case which the Act was designed to meet (paragraphs 43 and 44).
8. Inquiry by the Security Commission could not be regarded as a suitable alternative to inquiry by a 1921 Act Tribunal (paragraph 45).
9. Should the Security Commission or any other body require powers of compulsion similar to those provided by the Act, they should be furnished by separate enactment (paragraph 46).
10. More time than has been allowed in the past should be given to the preparation of an inquiry before public hearings begin (paragraph 49).

11. A witness should, if he wishes, have his own legal adviser present when his statement is taken by the Treasury Solicitor (paragraph 50).
12. Before giving his evidence in public, a witness should be supplied with a document setting out the allegations against him, and the substance of the evidence in support of those allegations (paragraph 50).
13. The form of disclosure of evidence to a witness should be in the discretion of the Tribunal; and where fresh evidence or allegations emerge in the course of the inquiry, the persons concerned should be given adequate opportunity for meeting the new situation (paragraph 51).
14. In Scotland, a procedure similar to that followed in England, should be adopted to permit the Tribunal to see the precognitions of witnesses (paragraph 53).
15. The Act should be amended so that anyone called as a witness would have the right to be legally represented (paragraph 54).
16. The Tribunal should have a discretion to allow anyone to be legally represented who is not a witness, but who claims to be an interested person in that he is at risk of being prejudicially affected by the inquiry (paragraph 55).
17. When a witness is legally represented, he should be examined by his own solicitor or counsel on his statement to the Treasury Solicitor. When he is not represented, he should be examined by one of the counsel appearing for the Tribunal. No witness should be examined and cross-examined by the same counsel (paragraph 57).
18. Subject to the discretion of the Tribunal, a witness should have the right to have evidence called on his behalf by counsel for the Tribunal (paragraph 58).
19. The Act should be amended so as to include a provision empowering the Tribunal to order payment of a witness's costs out of public funds (paragraph 59). This would enable witnesses to receive costs as of right and not *ex gratia* (paragraph 60).
20. The Tribunal should deprive a witness of all or part of his costs if, in their view, there are good grounds for doing so (paragraph 61).
21. The relevant statutes and regulations should be amended so as to permit a Tribunal to grant legal aid (paragraph 62).
22. The Act should be amended so as to extend the present immunity conferred on a witness so that neither his evidence nor statement to the Treasury Solicitor, nor documents he is required to produce shall be used against him in subsequent civil or criminal proceedings except where he is charged with giving false evidence before the Tribunal, or conspiring with or procuring others to do so (paragraph 63).
23. The Tribunal should decide, in its discretion, whether an opening statement should be made by counsel appearing for it; and counsel for any witness should have the opportunity of making a short speech following the opening speech by counsel for the Tribunal (paragraph 65).
24. Criminal records of persons involved should be made available to the Tribunal, who will decide in their discretion whether such evidence may be used in cross-examination (paragraph 66).

25. There should be no statutory rules of procedure, but Tribunals should follow the general principles laid down in this report (paragraphs 68-70).
26. The present procedure whereby the power to set up a Tribunal can be exercised only on a resolution of both Houses of Parliament should be retained (paragraph 71).
27. The Act should be amended so as to provide that the Chairman of a Tribunal must be a person holding high judicial office ; no requirement should be laid down as to the status or qualifications of the remaining members, but the possibility of a non-legal appointment should be considered (paragraph 72).
28. Members of a Tribunal should not be named or debated in the passage of the resolution through Parliament (paragraph 73).
29. The Act should be amended to provide immunity for members of Tribunals, similar to that enjoyed by a Superior Court of Record, for anything said by them in the course of the inquiry or in their report (paragraph 74).
30. Consideration should be given to conferring a similar immunity on persons appointed to conduct a Departmental inquiry (paragraph 75).
31. The Act should be amended to provide immunity for solicitors and counsel and others for what they may say before a Tribunal of Inquiry (paragraph 76).
32. The terms of reference of Tribunals should be drawn as precisely as possible (paragraph 77).
33. Tribunals should not be set up to investigate vague and unspecified rumours ; equally, they should not be fettered by terms of reference which are too narrowly drawn (paragraph 78).
34. Tribunals should explain in public their interpretation of their terms of reference at the earliest opportunity (paragraph 79).
35. A preliminary hearing of evidence in private, whether by the Tribunal (paragraph 81) or another agency (paragraph 80), would be inappropriate. The Tribunal should be afforded ample opportunity to define the allegations and discard irrelevant material before public hearings begin (paragraph 83).
36. The Treasury Solicitor should continue to be appointed as the solicitor acting for the Tribunal (paragraphs 84-88).
37. In Scotland, it would be preferable for the Solicitor for the Scottish Department or the Procurator Fiscal to act for the Tribunal rather than a private firm of solicitors (paragraph 89).
38. The Tribunal should nominate counsel other than a Law Officer of the Crown to be instructed by the Treasury Solicitor and to act on its behalf (paragraphs 90-96).
39. It would be preferable for Tribunals in Scotland to be represented by independent counsel rather than the Lord Advocate or Solicitor-General (paragraph 97).
40. The Tribunal should, at a preliminary meeting in public, give its interpretation of its terms of reference, and give directions as to procedure and intended lines of inquiry (paragraphs 101-107).
41. Adequate accommodation should be provided for the inquiry (paragraph 108).

42. One of the team of counsel acting on behalf of the Tribunal should be available to examine and re-examine any witness not legally represented (paragraph 114).
43. Proceedings should be conducted generally in public and reported day by day in the Press (paragraph 119).
44. The Press should exercise extreme care in reporting proceedings (paragraph 121).
45. Discretion of Tribunals to sit in private should be interpreted to extend beyond the hearing of evidence which would constitute a security risk; but nevertheless to be exercised with reluctance and only in most exceptional circumstances (paragraph 122).
46. Tribunals to insist on revelation of sources of information only where of vital importance, and to explain fully to witnesses concerned why the information is vital to the inquiry (paragraph 125).
47. Present procedure whereby cases of contempt are referred to the High Court on the certificate of a Tribunal should continue to be followed (paragraphs 126-131).
48. Questions concerning committal for contempt should in no circumstances be referred back to Parliament (paragraph 132).
49. Tribunals to give particular emphasis in their report to cases where allegations against witnesses or interested persons are shown to be unfounded (paragraph 133).
50. There should be no appeal from the findings of a Tribunal (paragraph 134).

ALL OF WHICH WE HUMBLY SUBMIT FOR YOUR MAJESTY'S
GRACIOUS CONSIDERATION.

CYRIL SALMON (*Chairman*).

STUART.

GOODMAN.

W. L. HEYWOOD.

J. B. BUTTERWORTH.

H. W. R. WADE.

J. H. HUMPHREYS (*Secretary*).

T. G. MEAD (*Assistant Secretary*).

1st November, 1966.

APPENDICES

APPENDIX A

[11 Geo. 5.]

Tribunals of Inquiry (Evidence) Act, 1921

[Ch. 7.]

CHAPTER 7

An Act to make provision with respect to the taking of evidence before and the procedure and powers of certain Tribunals of Inquiry. [24th March, 1921.]

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

1.—(1) Where it has been resolved (whether before or after the commencement of this Act) by both Houses of Parliament that it is expedient that a tribunal be established for inquiring into a definite matter described in the Resolution as of urgent public importance, and in pursuance of the Resolution a tribunal is appointed for the purpose either by His Majesty or a Secretary of State, the instrument by which the tribunal is appointed or any instrument supplemental thereto may provide that this Act shall apply, and in such case the tribunal shall have all such powers, rights, and privileges as are vested in the High Court, or in Scotland the Court of Session, or a judge of either such court, on the occasion of an action in respect of the following matters:—

- (a) The enforcing the attendance of witnesses and examining them on oath, affirmation, or otherwise ;
- (b) The compelling the production of documents ;
- (c) Subject to rules of court, the issuing of a commission or request to examine witnesses abroad ;

and a summons signed by one or more of the members of the tribunal may be substituted for and shall be equivalent to any formal process capable of being issued in any action for enforcing the attendance of witnesses and compelling the production of documents.

(2) If any person—

- (a) on being duly summoned as a witness before a tribunal makes default in attending ; or
- (b) being in attendance as a witness refuses to take an oath legally required by the tribunal to be taken, or to produce any document in his power or control legally required by the tribunal to be produced by him, or to answer any question to which the tribunal may legally require an answer ; or
- (c) does any other thing which would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court ;

the chairman of the tribunal may certify the offence of that person under his hand to the High Court, or in Scotland the Court of Session, and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court.

(3) A witness before any such tribunal shall be entitled to the same immunities and privileges as if he were a witness before the High Court or the Court of Session.

2. A tribunal to which this Act is so applied as aforesaid—

- (a) shall not refuse to allow the public or any portion of the public to be present at any of the proceedings of the tribunal unless in the opinion of the tribunal it is in the public interest expedient so to do for reasons connected with the subject matter of the inquiry or the nature of the evidence to be given ; and
- (b) shall have power to authorise the representation before them of any person appearing to them to be interested to be by counsel or solicitor or otherwise, or to refuse to allow such representation.

3. This Act may be cited as the Tribunals of Inquiry (Evidence) Act, 1921.

APPENDIX B

[51 and 52 Vict.]

Special Commission Act, 1888

[Ch. 35]

CHAPTER 35

An Act to constitute a Special Commission to inquire into the charges and allegations made against certain Members of Parliament and other persons by the Defendants in the recent trial of an action entitled O'Donnell v. Walter and another.

[13th August 1888.]

Whereas charges and allegations have been made against certain Members of Parliament and other persons by the defendants in the course of the proceedings in an action, entitled O'Donnell versus Walter and another, and it is expedient that a special commission should be appointed to inquire into the truth of those charges and allegations, and should have such powers as may be necessary for the effectual conducting of the inquiry:

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

1. (1) The three persons herein-after mentioned, namely, the Right Honourable Sir James Hannen, the Honourable Sir John Charles Day, and the Honourable Sir Archibald Levin Smith, are hereby appointed Commissioners for the purposes of this Act, and are in this Act referred to as the Commissioners.

(2) The Commissioners shall inquire into and report upon the charges and allegations made against certain Members of Parliament and other persons in the course of the proceedings in an action entitled O'Donnell versus Walter and another.

2. (1) The Commissioners shall, for the purposes of the inquiry under this Act, have, in addition to the special powers herein-after provided, all such powers, rights, and privileges as are vested in Her Majesty's High Court of Justice, or in any judge thereof, on the occasion of any action, including all powers, rights, and privileges in respect of the following matters:

(i) the enforcing the attendance of witnesses and examining them on oath, affirmation, or promise and declaration ; and

(ii) the compelling the production of documents ; and

(iii) the punishing persons guilty of contempt ; and

(iv) the issue of a commission or request to examine witnesses abroad ;

and a summons signed by one or more of the Commissioners may be substituted for, and shall be equivalent to, any form of process capable of being issued in any action for enforcing the attendance of witnesses or compelling the production of documents.

(2) A warrant of committal to prison issued for the purpose of enforcing the powers conferred by this section shall be signed by one or more of the Commissioners, and shall specify the prison to which the offender is to be committed.

(3) The Commissioners may, if they think fit, order that any document or documents in the possession of any party appearing at the inquiry shall be produced for the inspection of any other such party.

3. If any person, having been served with a summons under this Act, shall fail to appear according to the tenour of such summons, the Commissioners shall have power to issue a warrant for the arrest of such person.

4. Any person summoned to attend before the said Commissioners who shall refuse, neglect, or fail to attend in pursuance of any summons, shall, notwithstanding the dissolution of the Commission, be liable to punishment for contempt of the High Court of Justice, on the motion of any person who has appeared at the inquiry before such Commissioners.

5. A warrant or order for the arrest, detention, or imprisonment of a person for contempt of the Commissioners shall, notwithstanding the special Commission is dissolved or otherwise determined, be and remain as valid and effectual in all

respects as if the special Commission were not so dissolved or otherwise determined, and upon such dissolution or determination all the powers, rights, and privileges of the Commissioners with respect to such warrant or order, and to a person arrested, detained, or imprisoned, or to be arrested, detained, or imprisoned by virtue thereof, shall devolve upon and be exercised by the Queen's Bench Division of the High Court of Justice or a judge thereof; and such contempt, and a proceeding with respect thereto, shall not be in anywise affected by such dissolution or determination of the special Commission.

6. The persons implicated in the said charges and allegations, the parties to the said action, and any person authorised by the Commissioners, may appear at the inquiry, and any person so appearing may be represented by counsel or solicitor practising in Great Britain or Ireland. Where it shall appear to the Commissioners that any person affected by any of the said charges or allegations is at any time during the holding of the said inquiry detained or imprisoned, the Commissioners may order the attendance of such person at such inquiry in such manner, for such time, and subject to such conditions as regards bail, or otherwise, as to the Commissioners may seem fit.

7. The Commissioners shall have power, if they think fit, to make reports from time to time.

8. Every person who, on examination on oath, affirmation, or promise and declaration under this Act, wilfully gives false evidence, shall be liable to the penalties for perjury.

9. Any person examined as a witness under this Act before the Commissioners, or under a commission to examine witnesses abroad, may be cross-examined on behalf of any other person appearing before the Commissioners. A witness examined under this Act shall not be excused from answering any question put to him on the ground of any privilege or on the ground that the answer thereto may criminate or tend to criminate himself: Provided that no evidence taken under this Act shall be admissible against any person in any civil or criminal proceeding except in the case of a witness accused of having given false evidence in an inquiry under this Act, or of a person accused of having procured, or attempted or conspired to procure, the giving of such evidence.

10. (1) Every person examined as a witness under this Act who, in the opinion of the Commissioners, makes a full and true disclosure touching all the matters in respect of which he is examined, shall be entitled to receive a certificate signed by the Commissioners, stating that the witness has, on his examination, made a full and true disclosure as aforesaid.

(2) If any civil or criminal proceeding is at any time thereafter instituted against any such witness in respect of any matter touching which he has been so examined, the court having cognizance of the case shall, on proof of the certificate, stay the proceeding, and may in its discretion award to the witness such costs as he may be put to in or by reason of the proceeding: Provided that nothing in this section shall be deemed to apply in the case of proceedings for having given false evidence at an inquiry held under this Act, or of having procured, or attempted or conspired to procure, the giving of such evidence.

11. This Act may be cited as the Special Commission Act, 1888.

APPENDIX C

LIST OF INQUIRIES HELD UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT, 1921

<i>Year</i>	<i>Subject of Inquiry</i>	<i>Members of Tribunal</i>
1921	Destruction of documents by Ministry of Munitions officials. (Cmd. 1340.)	The Rt. Hon. Lord Cave, G.C.M.G. The Rt. Hon. Lord Inchcape, G.C.M.G. Sir William Plender.
1924	Royal Commission on Lunacy and Mental Disorder given powers under the Act. (Cmd. 2700.)	Royal Commission under chairmanship of The Rt. Hon. H. P. MacMillan, K.C., LL.D.
1925	Arrest of Major R. O. Sheppard, D.S.O., R.A.O.C. Inquiry into conduct of Metropolitan Police. (Cmd. 2497.)	Rt. Hon. J. P. F. Rawlinson, K.C., M.P.
1925	Allegations made against the Chief Constable of Kilmarnock in connection with the dismissal of Constables Hill and Moore from the Burgh Police Force. (Cmd. 2659.)	Mr. William Lyon Mackenzie, K.C.
1926/8	Conditions with regard to mining and drainage in an area around the County Borough of Doncaster.	Special Commission under chairmanship of Sir Horace Cecil Monro, K.C.B.
1928	Charges against the Chief Constable of St. Helens by the Watch Committee. (Cmd. 3103.)	Mr. T. H. Walker, K.C. (Recorder of Derby). Mr. C. de C. Parry, C.B.E. (H.M. Inspectorate of Constabulary).
1928	Interrogation of Miss Irene Savidge by Metropolitan Police at New Scotland Yard. (Cmd. 3147.)	The Rt. Hon. Sir John Eldon Banks, G.C.B. Mr. H. B. Lees-Smith, M.P. Mr. J. J. Withers, C.B.E., M.P.
1933	Allegations of bribery and corruption in connection with the letting and allocation of stances and other premises under the control of the Corporation of Glasgow. (Cmd. 4361.)	Lord Anderson. Sir Robert Boothby, K.B.E. Mr. J. M. Hunter, K.C.
1936	Unauthorised disclosure of information relating to the Budget. (Cmd. 5184.)	Mr. Justice Porter. Mr. Gavin Simonds, K.C. Mr. Roland Oliver, K.C.
1939	The circumstances surrounding the loss of H.M. Submarine "Thetis." (Cmd. 6190.)	Mr. Justice Bucknill, O.B.E.
1943	The conduct before the Hereford Juvenile Court Justices of the proceedings against Craddock and others. (Cmd. 6485.)	Lord Justice Goddard.
1944	The administration of the Newcastle-upon-Tyne Fire, Police and Civil Defence Services. (Cmd. 6522.)	Mr. Roland Burrows, K.C.

<i>Year</i>	<i>Subject of Inquiry</i>	<i>Members of Tribunal</i>
1948	Bribery of Ministers of the Crown or other public servants in connection with the grant of licences, etc. (Cmd. 7616.)	Mr. Justice Lynskey. Mr. G. Russell Vick, K.C. Mr. G. R. Upjohn, K.C.
1957	Allegations of improper disclosure of information relating to the raising of the Bank Rate. (Cmnd. 350.)	Lord Justice Parker. Mr. E. M. Holland, C.B.E., Q.C. Mr. G. Veale, Q.C.
1959	Allegations that John Waters was assaulted on 7th December, 1957, at Thurso and the action taken by Caithness Police in connection therewith. (Cmnd. 718.)	Lord Sorn, M.C. Sir James Robertson, O.B.E., J.P. Mr. J. N. Dandie, M.C.
1962	The circumstances in which offences under the Official Secrets Act were committed by William John Christopher Vassall. (Cmnd. 2009.)	The Rt. Hon. Lord Radcliffe, G.B.E. Mr. Justice Barry, M.C. Sir Edward Milner Holland, C.B.E., Q.C.

APPENDIX D

LIST OF WITNESSES WHO GAVE ORAL EVIDENCE

Mr. P. G. Benham }
Mr. J. W. Gauntlett } (Messrs. Linklaters and Paines).

Mr. Peter Bristow, Q.C.

Mr. F. N. Charlton, C.B., C.B.E.

Professor Abram Chayes.

The Rt. Hon. Lord Denning, Master of the Rolls.

The Rt. Hon. Lord Devlin, F.B.A.

Mr. H. M. Dickie (Messrs. Freshfields).

The Rt. Hon. Viscount Dilhorne.

Mr. John F. Donaldson, Q.C.

Sir Dingle Foot, Q.C., M.P.

The Hon. T. G. Galbraith, M.P.

The Rt. Hon. Sir John Hobson, O.B.E., Q.C., M.P.

Sir E. Milner Holland, K.C.V.O., C.B.E., Q.C.

Senator Jacob K. Javitz.

The Rt. Hon. Sir Elwyn Jones, Q.C., M.P.

Mr. T. D. Lucy.

Mr. George Viner }
Mr. Kenneth Morgan } National Union of Journalists.
Mr. Allan Lofts }

Professor G. W. Keeton, LL.D., F.B.A.

The Rt. Hon. Earl of Kilmuir, G.C.V.O.

Mr. Cecil King.

Mr. J. Emrys Lloyd (Farrer and Co.).

Mr. Maurice Lush.

Mr. D. H. McLachlan, O.B.E.

The Rt. Hon. Lord Morris of Borth-y-Gest, C.B.E., M.C.

Mr. A. D. M. Oulton.

The Rt. Hon. Lord Parker of Waddington, Lord Chief Justice of England.

Mr. E. D. Pickering.

The Rt. Hon. Lord Poole, C.B.E., T.D.

The Rt. Hon. Viscount Radcliffe, G.B.E.

The Hon. Mr. Justice Scarman, O.B.E.

The Rt. Hon. Lord Shawcross.

The Rt. Hon. Viscount Simonds.

The Rt. Hon. Sir Frank Soskice, Q.C., M.P.

Mr. H. S. Trembath (Richards, Butler and Co.).

Mr. D. C. W. Walsh (Sweptstone, Walsh and Son).

Dame Rebecca West, D.B.E.

The Rt. Hon. Lord Justice Winn, C.B., O.B.E.

APPENDIX E

LIST OF WITNESSES WHO SUBMITTED MEMORANDA OF EVIDENCE

The Hon. Mr. Justice Ashworth, M.B.E.
The General Council of the Bar.
The Hon. Mr. Justice Barry.
Mr. Peter Bristow, Q.C.
Sir Andrew Clark, M.B.E., M.C., Q.C.
The National Council for Civil Liberties.
Crown Office and Scottish Home and Health Department.
Mr. John F. Donaldson, Q.C.
Mr. Elliott Fitzgibbon, O.B.E., M.A., B.A.I., M.T.P.I.
The Rt. Hon. Sir Lionel Heald, Q.C., M.P.
The Rt. Hon. Sir Elwyn Jones, Q.C., M.P.
The Institute of Journalists.
The National Union of Journalists.
Justice.
The Law Society.
Mr. Mark Littman, Q.C.
Mr. D. H. McLachlan, O.B.E.
The Solicitor for the Metropolitan Police.
The Hon. Mr. Justice Milmo.
The Rt. Hon. Lord Parker of Waddington, Lord Chief Justice of England.
The Hon. Mr. Justice Paull.
The Press Council.
Mr. W. Emrys Pride, D.I.C., A.R.C. Sc., M.Sc. (London).
H.M. Procurator-General and Treasury Solicitor (in consultation with the Home Office, Lord Chancellor's Office and H.M. Treasury).
The Hon. Mr. Justice Roskill.
The Hon. Mr. Justice Scarman, O.B.E.
The Rt. Hon. Lord Shawcross.
H.M. Treasury.
The Rt. Hon. Lord Upjohn, C.B.E.
Mr. Neville D. Vandyk, B. Com., Ph.D. (London).
Dame Rebecca West, D.B.E.
Civil Service National Whitley Council (Staff Side).

APPENDIX F

COMMONWEALTH LEGISLATION CONSIDERED BY THE COMMISSION

CANADA

Inquiries Act, Revised Statutes of Canada 1952, ch. 154.
Public Inquiries Act, Revised Statutes of Ontario 1960, ch. 323.
Evidence Act, Revised Statutes of Canada 1952, ch. 397.

INDIA

Commissions of Inquiry Act, 1952.
Twenty-Fourth Report of the Law Commission of India.
Central Commissions of Inquiry (Procedure) Rules, 1960.

AUSTRALIA

Royal Commissions Act, 1902-1933.
Royal Commissions Acts, 1923-1934 (New South Wales).
Evidence Act, 1958 (Victoria).
Evidence Act, 1906 (Western Australia).

HONG KONG

Commissioners Powers Ordinance.
Commissions of Inquiry Bill, 1966.

INDEX TO THE REPORT

NOTE: Numbers in the index refer to paragraphs of the Report.

- Accident Inquiries 25, 44.
- Attorney-General 16, 17, 19, 20, 90-96.
- Bank Rate Tribunal (1957) 14, 18, 26, 123.
- Budget Leak Tribunal (1936) 14, 15, 26, 39, 87, 90, 91.
- Costs 59-62.
- Counsel
 - immunity of 76.
- Crichel Down Inquiry (1954) 25.
- Denning Report 21, 37.
- Departmental Inquiries 25, 43.
 - immunity of 75.
- Doncaster Mining and Drainage Inquiry (1926-28) 25.
- Evans Case (1966) 25.
- Inquisitorial Inquiry
 - need for 22-30.
 - alternative procedures 33-47.
- Lynskey Tribunal (1948) 14, 17, 26, 92.
- Marconi Scandal (1912) 11, 13.
- Parnell Inquiry (1888) 12.
- Person interested other than a witness
 - representation 55.
- Police Act, 1964 14, 25.
- Preliminary Hearing (in private) 80-83.
- Profumo Case (1963) 21, 26, 37-42.
- Publicity 115-122.
- Royal Commissions 34.
- Rules of Procedure 68-70.
- Scotland
 - procedure 31, 53.
 - representation of Tribunal 89, 97.
- Security Commission 45, 46.
- Select Parliamentary Committees 6-13, 35, 36.
- Solicitors
 - immunity of 76.
- Special Commission Act, 1888 12, 63, Appendix B.
- "Thetis" Inquiry (1939) 25.
- Thurso Case (1959) 25.
- Treasury Solicitor 16, 17, 19, 84-89.
- Tribunal of Inquiry
 - appeal from findings of 134.
 - composition and status of 72, 73.
 - immunity of 74.
 - premises 108.
 - proceedings of
 - exclusion of public 122.
 - hearings in public 108-114.
 - preliminary meeting in public 98-107.
 - report of 133.
 - representation of 84-97.
 - setting up 71.
 - terms of reference 77-79, 101.
- Tribunals of Inquiry (Evidence) Act, 1921
 - inquiries under 14, Appendix C.
 - power to compel evidence 19, 123-132.
 - power to exclude public 19, 122.
 - provisions 13, 59, 72, 74, 76, Appendix A.
 - recommended amendment of 59, 72, 74, 76.
- Vassall Tribunal (1962) 14, 19, 26, 123.
- Witnesses
 - allegations against 32, 49-52, 106, 107.
 - cardinal principles to be observed 32, 48.
 - criminal records 66.
 - costs 32, 59-62.
 - evidence in support of allegations against 50, 51, 107.
 - immunity 63, 64.
 - legal aid 62.
 - protection of sources of information 123-125.
 - representation 32, 50, 54-57, 65.
 - right to call evidence 32, 58.
 - statements of 50, 107.
 - witnesses to be the Tribunal's 57.

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