LECTURES ON THE ENGLISH CONSTITUTION

In the Government Law College Magazine, following observations are made in the ' College Notes, 8th January 1936 issue:—

> "We however note with satisfaction that Mr. Fyzee has handed over charge to no less a person than Dr. Ambedkar. A lawyer of repute, he is a close student of Economics, an authority on Constitutional Law and a personality known throughout India and elsewhere. To write more about him would be otiose. Expecting much from our Principal we shall not embarrass him *now*. We prefer to wait and see."

LECTURES ON THE ENGLISH CONSTITUTION

Contents

PREFACE

These are lectures on the English Constitution which I delivered to the students of the Government Law College, Bombay, in 1934-35. In publishing these lectures I have not forgotten how presumptuous it may be deemed for an Indian to attempt to expound the principles of the English Constitution. Sir Austen Chamberlain in the course of his cross-examination of a certain Indian witness who appeared before the Joint Committee on Indian Constitutional Reform observed : I listen to the witness with great respect when he talks of Indian conditions, but when he expounds the British Constitution he must permit me to remain of my own opinion (Minutes of Evidence, Vol. l1c, Q. 9812). There is undoubtedly a great deal of truth in this remark and it should make every Indian who wishes to write on the English Constitution pause. An Indian, however, who wishes to enter into the field may well take courage from the fact that much of the English Constitution have been expounded by foreigners who

have not only been heard with respect by Englishmen but whose writings have compelled a change of opinion. Be that as it may the remark made by Sir Austen Chamberlain need not come in my way. I am not expounding anything of my own. I am not expounding it to Englishmen. I am merely trying to make Dicey's English Constitution easier for Indian students to follow and to understand. From the stand-point of Indian students Dicey's treatise suffers from two defects. It presupposes a knowledge of certain parts of the English Constitution. For instance it presupposes a knowledge of what is Parliament, how it is constituted and how it functions. This presupposition, howsoever justifiable it may be in the case of English students, would be without warrant in the case of Indian students who are called upon to take up the study of Dicey for the first time. Without a complete knowledge of this part of the English Constitution Indian student feels completely bewildered and fails to grasp the full import of such fundamental principles as supremacy of the rule of law or the role of conventions in the working of the Constitution. In order that the Indian student may follow in an intelligent way the exposition of Dicey regarding the operation of these principles the teacher is forced at every turn to present to the student the framework of the English Constitution which finds no place in Dicey 's treatise. Secondly, the English Constitution has grown enormously both as regards rules of law and also as regards conventions since the last edition of Dicey 's English Constitution was published. The result of this growth has been felt in two different ways. It has rendered some of the illustrations given by Dicey quite inappropriate. Secondly, it has altered the character of the English Constitution especially the relations of the Crown and the British Parliament to the Dominions to such an extent that an Indian student who depends upon Dicey alone will not be up-to-date but will be missing a great deal that is vital in it. Except for additions of matter and changes of form there is nothing new in these lectures. They constitute a revision of Dicey's treatise on the English Constitution with a view to remove its defects and to adapt it to the needs of Indian students.

PRINCIPLES UNDERLYING THE ENGLISH CONSTITUTION

According to Dicey there are three principles which distinguish the English Constitution from the Constitution of other countries. These principles are :—

(1) The legislative supremacy of Parliament.
(2) The prevalence of the rule of law.

(3) The dependence of the Constitution on the conventions.

Two comments may be legitimately made on the assertion that these principles form distinguishing characteristics of the English Constitution. In the sense that they are not to be found in other Constitutions. One is this. That some of these characteristics have ceased to be true at any rate, to the extent they were true when Dicey wrote. For instance the legislative supremacy of Parliament is to some extent modified and circumscribed by the Statute of Westminster passed in the year 1930. The second comment that must be made that these characteristics, especially the prevalence of the rule of law and the dependence of the Constitution on conventions are not special to the English Constitution. Conventions are a feature of all Constitutions and the rule of law, in one of its senses at any rate, obtains in the United States. All the same it is Constitution in principles form a feature of the English Constitution in a manner and to an extent unknown in other Constitutions. And understood in that sense they no doubt serve to distinguish the English Constitution from other Constitutions.

(1) LEGISLATIVE SUPREMACY OF PARLIAMENT

One of the first and foremost of foreign Commentators on the English Constitution Hontessquie came to the conclusion as a result of his study that the English Constitution exhibited a feature which was absent from the Constitution of France as it existed at the time when he wrote. He found that under the English Constitution the three organs of the State, namely, the legislative, the executive and the judiciary were distinct and were separated from one another in their composition as well as their functions. Each was limited to its own sphere of activity and was not permitted to invade the dominion of another. Whatever liberty the Englishman had in the days when he was writing and which his countrymen did not possess, was attributed by him to this feature of the English Constitution. So convinced was he of the virtue of this principle of the English Constitution that he propounded it as a vital principle of political Organisation and recommended it to his countrymen for adoption in their own Constitution. This doctrine of separation of powers of Hontessquie has been laid at the base of every new Constitution made thereafter. This is an interesting illustration of how countries have been misled by the wrong conclusions of a student of politics, for there is no doubt about it that Hontessquie misunderstood the English Constitution. The English Constitution certainly does not recognise the principle of the separation of powers. The King is a part of the legislature, the head of the judiciary and the supreme executive authority in the land. The Ministry

which carries on the executive Government of the country in the name of the King are members of Parliament. There is, therefore, no separation between the executive and the legislature. The Lord Chancellor is the working head of the Judicature. He is also a member of the Cabinet. There is, therefore, no separation between the executive and the judiciary. Not only is there no separation between the three organs of the State, but there is no foundation for the statement that their authority is limited by the Constitution for the simple fact that there is no Constitution in the American sense of the word which allocates the functions of the different organs of the State and delimits their authority. Under the English Constitution there is one supreme authority under the law, and that is Parliament. If the functions of the executive and the judiciary are limited, it does not follow that the functions of Parliament are limited. It only means that Parliament has for the time being allotted certain functions to be discharged by certain bodies, in a certain manner. The limitations of the judiciary and the executive do not result in putting consequential limitation. On the other hand as the limitations proceed from the authority of Parliament, Parliament retains the authority to widen them or to curtail them.

MEANING OF THE LEGISLATIVE SUPREMACY OF PARLIAMENT

A complete idea of the legislative supremacy of Parliament must involve a grasp of the two parts which it must include. The first is that Parliament has, under the English Constitution, the right to make or unmake any law whatsoever. Secondly, no person or a body of persons is recognised by the law of England as having a right to override or set aside the law made by Parliament. It is unnecessary to recall that the words Parliament and law must be understood in their strictly legal sense. Parliament means as has been already explained, the King, the Lords and the Commons, and that none of them individually exercised the authority, belonged to them jointly so as to make it an Act of Parliament. The term law again must be understood in the strictly legal sense. It means only such rules as are enforced by the Courts. Having stated what is involved in the notion of the legislative supremacy of Parliament, we may next ask what is the proof of this legislative supremacy of Parliament?

The doctrine of legislative supremacy is accepted by all the lawyers who have written about the English Constitution. Sir Edward Coke, speaking of the power and jurisdiction of Parliament, agreed that it was so transcendent and absolute that it cannot be confined either for causes or persons, within

any bounds.

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Blackstone the author of the celebrated commentaries agrees that,"Parliament has sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving and expounding of laws concerning matters of all possible denominations ecclesiastical or temporal, civil, military, maritime or criminal. This being the place where that absolute despotic power, which must in all Governments must reside somewhere, is entrusted by the Constitution of those Kingdoms. All mischiefs and grievances, operations and remedies that transcend the ordinary course of laws are within the reach of this extra-ordinary tribunal. It can regulate the succession to the crown, as was done in the reign of Henry VIII and William III. It can alter the established religion of the land, as was done in a variety of instances in the reigns of Henry VIII and his three children. True it is that"what the Parliament doth no authority upon earth can do."

Delome, a French lawyer agrees with Coke and with Blackstone. He observes,"that Parliament can do everything but make a woman a man and a man a woman". a woman a man and a man a woman".

This legislative supremacy of Parliament which is acknowledged by all lawyers can be proved by reference to a large number of instances drawn from the history of the British Parliament. But the following may suffice.

(1) *Parliamentary sovereignty and the Acts of Union.*—The Acts of Union with Scotland and Ireland are in the nature of treaties and contain certain clauses which were then regarded as fundamental and essential conditions of Union and which were understood as not being liable to abrogation by the Parliament of Great Britain. The Act of Union with Scotland stipulated that every professor of a Scotch University shall acknowledge and confess and subscribe the confession of faith as his profession of faith. This was regarded as a fundamental condition of the treaty of Union with Scotland. But this very provision has been repeated by the Universities Scotland Act, 1853, which relieves most professors in Scotch Universities from the necessity of subscribing the confession of faith. The Act of Union with Ireland stipulated"that the Churches of England and Ireland as now by law established, be united into one Protestant Episcopal Church, to be called the United Church of England and Ireland, and that the doctrine, worship, discipline and the Government of the said United Church shall be and shall remain in full force forever as the same are now by law established for the

Church of England and that the continuance and preservation of the said United Church, as the established Church of England and Ireland shall be deemed and be taken to be an essential and fundamental part of the Union". There is no doubt that from the language of the clause that it was intended to limit the legislative supremacy of Parliament and yet Parliament by the Irish Church Act of 1869 disestablished the Church in Ireland and its legislative competency to enact such a measure was not questioned.

II

The Septenial Act of 1707 is another illustration of the legislative supremacy of Parliament. Under the Act of 1694, the duration of Parliament was limited to 3 years. In the year 1716 a new election was due. But both the King and the Ministry were convinced that under the political circumstances of the day, a new election would be disastrous to the ministry and to the state and ministry of the day persuaded Parliament to pass an Act extending the duration of Parliament from 3 years to 7 years. The House of Commons was accused by the critics of a breach of trust, as representatives of the electors and even the peers joined in the protest on the ground that this Act deprived the people of their remedy against their M.P's, who had failed to do their duty. In the wake of political criticism against the Act, the legal connotation was missed altogether. Whether such an Act was proper or improper was one thing. Whether Parliament could alter the law governing its life was another question. It should be noted that while the Act was attacked from the first point of view it was never questioned from the second. Indeed it was taken for granted that the Septenial Act was within the legislative competence of Parliament.

There is another feature of the Septenial Act which should be noted because it helps to explain the extent of the legislative supremacy of Parliament. Parliament could have passed a law extending the life of Parliament and probably no question would have been raised if the Act was made applicable to future Parliaments. But the Septenial Act not only extended the life of all future Parliaments, but it also enlarged the terms of the very Parliament which passed the Act. It was undoubtedly an Act of usurpation of political power not contemplated and not given by law to the Parliament which passed the Act and yet such an Act of usurpation was a legal Act. It is unnecessary to go back so far in the past to cite an authority of the Legislative supremacy of Parliament, as the Septenial Act. A similar exercise of the legislative supremacy was resorted to by Parliament during the late war when the sitting Parliament in 1914 instead of dissolving itself passed an Act extending its own life.

Acts of Indemnity are examples which constantly occur and which serve as

sharp reminders of the legislative supremacy of Parliament An Act of Indemnity is a statute the object of which is to free individuals from penalties imposed upon them by law. This is the highest proof of the legislative supremacy of Parliament, for it imports the legalisation of an illegality. legalisation of an illegality.

INTERFERENCE WITH PRIVATE RIGHTS

Most legislative assemblies confine their legislative powers to the regulation of the rights of the public in general. Private rights and domestic rights are deemed either to be too particular and too sacred to be interfered with by Parliament. But the British Parliament has never accepted these limitations upon its legislative authority. In the case of the lives of the Duke of Clarence and Clocester, Parliament passed an Act declaring that their daughters and wives should inherit their property although they were alive. In the case of the Duke of Buckingham, he was an infant but Parliament passed an Act declaring that he should be treated as a major for all legal purposes. Sir Robert Playfinston was dead yet long after his death. Parliament passed an Act holding him guilty of treason. The case of the Marquis *of* Winchester is an illustration in which Parliament by law declared a legitimate child to be illegitimate. A contrary illustration in which illegitimate children born before marriage were declared legitimate, is supplied by the law passed by Parliament in respect of the issues born to Catherine Swinfoid by John of Gaunt, the Duke of Lancaster. Catherine had, before marriage from the Duke four illegitimate children, Henry, John, Thomas and a daughter, Joan. The King by an Act of Parliament in the form of charter legitimised these children. These illustrations that Parliament cannot only regulate by law the affairs of a single individual but it may also alter the course of general law.

II
CHAPTER I
WHAT IS PARLIAMENT?

1. With a large, mass of the people Parliament in these days means the House of Commons. It does not include in it the House of Lords, and certainly not the King. This popular notion is due largely to the fact that the House of Commons has become the most dominant element in the working of the English Constitution. But however justifiable such a notion may be, speaking in terms of law it is a wrong notion. Legally Parliament consists of three constituent elements, the King, the House of Lords and the House of Commons. All legislative power belongs to the King, the House of Lords and the House of Commons jointly. It is vested in the

King in Parliament, *i.e.,* in the King acting in consent with the two Houses of Parliament. Legally, every Act before it can become the law of the land, requires the King's assent. How important element the King is in the Constitution of Parliament will be evident, if it is borne in mind that the two Houses of Parliament can transact their business only if they are summoned by the King. They cannot meet on their own initiative and authority and transact business. How important place the King occupies will also be obvious if it is remembered that the power to summon, prorogue and to dissolve the Houses of Parliament vests in the King and is exercisable at any time according to his pleasure. On the other hand, it is usually true that without the consent of the two Houses of Parliament, the King has no inherent power of legislation whatever within the United Kingdom. Every act of the King to be law must have the assent of the House of Commons and the House of Lords, unless it is otherwise provided by Statute.

2. The proposition, that all legislative power is vested in the King in Parliament and that no law could be passed without the concurrence of the King, the House of Lords and the House of Commons's subject to two qualifications.

(1) *The King's veto :*—Although in law the King's assent is necessary to every measure before it can become law, his power to refuse assent, *i.e.,* his power to veto has become absolute by misuse. The right of veto has not been exercised since the days of Queen Anne, who refused her assent to the Scotch Militia Bill of 1707. The impairment of this power of veto by the King is not a legal impairment. In law his power of veto exists in all its amplitude without any qualifications. This is due to forbearance founded on a convention whereby it is settled that when the two Houses agree, the King should not refuse his assent. It's disuse does not mean that it is buried beyond revival. Suppose a ministry resigns after a bill is passed by the House of Commons. The House of Lords insists upon passing the bill in spite of the opposition of the new ministry. It would be rash to assert that in such a case the Royal assent would not be withheld even though both the Houses have concurred in the legislation.

(2) *The veto of the House of Lords:*—The House of Lord was once a co-ordinate and co-equal branch of the legislation, and every measure before it could become an Act of Parliament depended upon it's assent, as much as upon that of the House of Commons. Although this was the position in law, the House of Commons had claimed in practice exclusive authority for themselves in finance and an overriding authority in other legislation.

In 1671, the House of Commons passed the following resolution :"That

in all aids given to the King by the Commons, the rate of tax ought not to be altered by the Lords."

In 1676, the Commons adapted another resolution as follows :"That all bills granting supplies ought to begin with the Commons, and it is the undoubted and the sole right of the Commons, to direct limit and appoint in such bills the ends, purposes, considerations, conditions, limitations and qualifications of such grants which ought not to be changed or altered by the House of Lords."

In ordinary legislation of a non-fiscal character, the Commons claimed that although the House of Lords might differ from the House of Commons, yet when a conflict arose between the two Houses the Lords should at some stage wield to the views of the Houses, the Lords should, at some stage, wield to the views of the claim. Ever since the Lords had never expressly admitted them, although in practice the Lords conformed to them, the practice was a mere matter of political understanding, a convention and was not reduced to law. The House of Lords was possessed in law of the power of veto, *i.e.,* the right to refuse assent to any measure fiscal or non-fiscal. Here again the case was not one of legal impairment of power. It was a case of forbearance in the exercise of it. In 1910, the House of Lords, contrary to established practice, insisted in asserting their right to refuse assent to the financial proposals in the budget of Mr. Lloyd George. A conflict between the House of Commons and the House of Lords arose. It was settled by the Parliament Act of 1911. The Act is a most important piece of legislation relating to the English Constitution inasmuch as it has affected the veto power of the House of Lords in certain matters in a vital manner.

The Parliament Act of 1911 applies to Public Bills only. It does not apply to Private Bills. In regard to Private Bills, the veto power of the House of Lords remains in tact. Even though this applies to Public Bills it does not apply to all of them. It does not apply to a Public Bill which affects the duration or life of Parliament. Under the Parliament Act the House of Commons retains the power of veto in respect of such bills. In the case of these Public Bills to which it does apply, its effect on the veto power of the House of Lords is not the same. It varies. The Parliament Act divides Public Bills into two classes. (1) Public Bills which are money bills and (2) Public Bills which are not money bills. A money bill is defined as a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely; imposition, repeal, remission, alteration or regulation of taxation, the imposition for the payment of debt or other financial purposes of

charges on the Consolidated Fund or on money provided by Parliament or the variation or repeal of any such charges, supply, the appropriation, receipt, custody, issue or audit of accounts of public money, the raising or guarantee of any loan or repayment thereof or subordinate matters incidental to those subjects of any of them. The Act lays down that if a Money Bill having been passed by the House of Commons and sent up to the House of Lords at least one month before the end of the Session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal assent being signified, notwithstanding that the House of Lords have not consented to the Bill.

With regard to other Public Bills, the Parliament Act of 1911 provides that if it is passed by the House of Commons in three successive sessions (whether of the same Parliament or not) and having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of these sessions, that bill shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill, provided that this provision shall not take effect unless two years have elapsed between the date of the second reading in the first of these Sessions of the Bill in the House of Commons and the date on which it is passed by the House of Commons in the third of those Sessions. House of Commons in the third of those sessions.

These are the main provisions of the Parliament Act of 1911. It has altered the character of that veto with regard to a Public Bill other than a money bill by making it a merely suspensory veto which has the effect of merely holding up the legislation passed by the House of Commons during the prescribed period. The power to block legislation, which the House of Lords once possessed as a co-equal member of Parliament, has now been taken away by the Act.

Subject to these deductions, conventional and legal, regarding the authority of the King and the Lords, the proposition that Parliament consists of King, Lords and the Commons and that without their consent a bill cannot become law, remains as true today as it was before the Act of 1911.

Ill
CHAPTER II

THE CROWN

(1) *The King's title to the Crown.*—Before the Resolution of 1688 when James II fled from the country, it was not certain by what right the King claimed the Crown, whether it was hereditary or elective. But there can be no doubt that thereafter the title to the Crown has become a Parliamentary title, in the sense that Parliament can alter the succession to the Crown. The title to the Crown is at present regulated by the provisions of the Act of Settlement passed in the year 1701. By that Act, the title to the Crown was conferred upon William and Mary and the heirs of their body. The title stipulates two conditions : One, the Successor must be an heir, male or female and two, the Successor must be a Protestant Christian by faith.

(2) *Rights and duties of the Crown.*—The rights of the King are either Statutory or Prerogative. Statutory rights are those which are conferred upon the King by an Act of Parliament. The prerogative rights are the Customary or Common Law Rights of the King which he has been exercising and which have not been taken away by law. It is unnecessary... with those rights and duties of the King which are statutory because they are capable of exact definition and ascertainment by reference to the Statute from which they are derived. The prerogative rights on the other hand are not capable of such ascertainment by reference to any statute because it is of the essence of a prerogative right that is not derived from Statute. Prerogative rights of the King are customary rights and are independent of Statute, and like all customary rights the nature and extent have to be investigated by a Court of Law whenever they are asserted. The King's prerogatives may be conveniently discussed under the following heads :

(A) Personal Prerogatives

(1) *The King can do no wrong.*—All acts are done in the name of the King, but by virtue of this Prerogative, the King is not responsible for any of his acts. The person responsible for his royal acts are his Ministers. The King, therefore, cannot be sued or otherwise held responsible for his executive acts. When a subject is aggrieved by a breach of contract, he cannot sue the King, nor can he sue the King in respect of a tort. A special provision is made to soften the rigour of the rule which is known as *the Petition of Right procedure.* Under it, a subject aggrieved may petition the Crown for redress and that petition will become justiciable only if the Attorney-General, who is the Law-Officer of the Crown, issues his fiat permitting justice to be done in which case alone, the Courts can proceed with the petition as though it was a plaint in a suit. Even then there are certain rules which though they are binding between private parties, would not be binding

upon the Crown, for instance it is a rule that the Crown cannot by contract hamper its future executive actions. As a result, the Crown can always dismiss a servant of the Crown at any time, no matter what the period of contract was, because such a contract would hamper the future executive action of the Crown. Consequently a servant of the Crown cannot sue the Crown for damages for wrongful dismissal even by a Petition of Rights.

(2) *The King never dies.*—The King has the attributing immortality. A particular person wearing the Crown may die. But the King survives. Immediately upon the decease of a reigning King, his Kingship, without any interregnum or interval, vests in his heirs. That is the law, and the popular cry—The King is dead ; Long live the King—is in conformity with the Law. The Coronation ceremony is not necessary to invest the King with Kingly power. A King can act as a King although he has not been coronated, provided he is the next heir of the last King. The Coronation ceremony has no other effect than to proclaim to the subjects and to the world at large, who the King is.

(3) *Lapse of time will not as a rule bar the right of the Crown to sue or to prosecute.*—To put it in a different way, the law of limitation does not apply to the Crown, as it does to a private individual. The private individual must sue or prosecute within a stated period fixed by the law of limitation. The Crown is free from the time-bar. The statement of this prerogative right must now be qualified so far as the right to sue is concerned. The law of limitation has made the time-bar applicable to the Crown although the period of limitation is sixty years. The Prerogative of the Crown's right to prosecute remains in tact.

(4) When the right of the King and the right of the subject come in conflict, a subject's right must give way to the King's.

(5) The King is not bound by statutes unless expressly named in it.

(II)

Political Prerogatives

Now these may be divided into two categories into which they naturally fall '.those which relate to the internal Government of the country and those which relate to foreign affairs. As to the King's Political Prerogatives which relate to the internal Government of the country, they may be considered in relation to the three divisions of State activity, e.g., the executive, the judicial and the legislative. According to the English Constitutional law, the executive Government vests in the King. It is his Prerogative to be the supreme head of the executive. As such, he has the authority to appoint Ministers and other officers of the state, political as well as permanent. It is his prerogative to dismiss them. He is also the head

of the Army, the Navy, the Air-force and the Civil Service. Every one appointed to discharge the service of the State, no matter how he is appointed, is in law the servant of the Crown. Turning to his Judicial Prerogative, the King at one time actually sat in Court to dispense justice but this Prerogative the King has now lost. The King at one time could create any Court and invest it with jurisdiction to try any matter or any cause he chose to prescribe. The establishment of the Star Chamber and the Court of High Commission by Charles I is an illustration of how wide was the King's judicial Prerogative. But this Prerogative also, the King has now lost. The King can now only create by Prerogative, *i.e.,* without the Sanction of Parliament, Court to administer the Common law. Even this remnant of a Prerogative he cannot exercise, because of the necessity of financial legislation which such a course would involve, which would make it necessary for him to obtain the sanction of Parliament. Only four bits of his Judicial Prerogatives now remain. (1) He can grant leave to appeal to the Privy Council. (2) He can appoint judges. (3) He can pardon a criminal. (4) He can stifle the prosecution of a criminal, either by declining to offer evidence or by entering a formal *Grote Praseu.*

Coming to the legislative Prerogatives of the King, they extended at one time to vast proportions. The King at one time claimed the power to make laws independently of Parliament, to suspend laws in particular cases and to dispense with them generally. All this has now been altered. The right to suspend and dispense with laws made by Parliament is now completely lost. The right to legislate is also lost, except in so far as it relates to Crown Colonies. The only legislative Prerogatives that remains to the King are the Prerogatives right (1) to summon Parliament, (2) to prorogue Parliament, (3) to dissolve Parliament.

There are two other classes of Prerogatives which relate to the internal administration of the Country which must be referred to before considering the other classes of Prerogatives which relate to foreign affairs. They are Ecclesiastical Prerogatives and Revenue Prerogatives.

Ecclesiastical Prerogatives.—The King is the supreme head of the Church of England as established by law. As the head of the Church, he appoints on the recommendation of the Prime Minister, Archbishops, Bishops and certain other dignitaries of the Church. In his Prerogative right, the King convokes, prorogues and dissolves two Houses of the convocation and it is in his Prerogative right that the King can grant leave of appeal to the Privy Council from the decisions of the ecclesiastical Courts.

Revenue Prerogatives.—The revenues of the British Government fall into two classes, (1) the ordinary revenues and (2) the extraordinary revenues.

The ordinary revenues are called the Prerogative revenues and they are derived from the following sources, (1) The custody of a Bishop's temporalities, *i.e.,* the right of the King to take the profits which the episcopal sea is vacant, though these are held in trust for his successor. (2) The rights to annates and tenths. Annates were the first year's profits of church's benefits formerly paid to the Pope and afterwards to the Crown. Tenths were the tenth part of the annual profits of a church's benefit formerly paid to the Pope. These are now paid to the Governor of the Queen Anne's Bounty. (3) Profits derived from the Crown lands. (4) The right to Royal fish wreck, treasure-trove, waifs and cotrays, royal mines and escheats.

The foregoing items constituting the ordinary revenues of the Crown were collected by Prerogative and paid to the King until 1715 when the first Civil Lists Act was passed whereby an arrangement was made between the King and Parliament whereby the King surrendered his Prerogative revenues to the state which are since then paid into the Consolidated Fund and Parliament in consideration of this assignment granted to the Royal family for its maintenance a fixed sum, which is made an annual charge upon the Consolidated Fund and is called the Civil List. The Civil List is not a permanent arrangement but is a temporary agreement made between the reigning King and the Parliament and lasts during the life-time of that King. When a new King succeeds, a new agreement is made with him which again is to last during his life-time. If no agreement is made, the Prerogative of the King in respect of the ordinary revenue will revive. The Civil List arrangement does not abrogate it in any way. It merely affects the appropriation of the revenue. It does not affect the right to raise that revenue.

II. The King's Prerogatives in relation to the foreign relations of the Country.

The King possesses the right and the power to receive Ambassadors of foreign Countries and to send his Ambassadors to them. This is his Prerogative right. The right is important because of the immunity from Civil and Criminal process which Ambassadors, who are recognised as such by the King, enjoy. What those immunities are will be discussed at a later stage. It is enough here to note that they depend upon the recognition by the King of a person as an Ambassador and that recognition is a Prerogative Right of the King.

The King has also the right to make war and peace whenever he thinks fit to do so. This also is his Prerogative right.

The King possesses the power to make a treaty with any foreign nation. The treaty may be a political treaty or a commercial treaty. It is his Prerogative. The only limitation upon the King's Prerogative to make a treaty is that he must not in any manner affect the rights of his subjects given to them by law.

There are some questions that arise in connection with the question of the King's Prerogatives and which it would not be desirable to pass over without some consideration being bestowed upon them. The first question is this. What is the exact relation of the King's Prerogative to the authority of Parliament? The second question is what happens if the King becomes incapable of exercising his Prerogative or other Statutory rights?

Taking the first inquiry for consideration it is necessary to get a clear idea of what is exactly meant when it is said that it is the King's Prerogative to do this, that or other act. What is meant by this expression, that when the King acts on the authority of his Prerogative, he does not need the sanction of Parliament. His authority is inherent in him and is independent of Parliament. But while it is true that the Prerogative power of the King is inherent and independent of Parliament, it must not be supposed that it is on that account beyond the control of Parliament. On the other hand the Prerogative power of the King can be regulated, amended or abrogated by Parliament, so that the correct position would be that the King possesses Prerogative power so long as Parliament has not by law trenched upon it. A matter which was once a matter of Prerogative if subsequently regulated by law made by Parliament, then the King cannot resort to his Prerogative power, but must act within the law which has superseded the Prerogative. Therefore, so far as the first inquiry is concerned, the conclusion is that the King's Prerogative is a source of independent power to him so long as Parliament has not interfered with its existence.

What happens if the King becomes incapable of exercising his Prerogative and other Statutory rights. Now this is no idle inquiry because there are certain important duties which are attached to the Kingly office and the King may become incapable of discharging them. Four contingencies of incapacity may be visualised. *(1)* The King may be absent from his Kingdom. (2) The King may be a minor. (3) The King may be insane. (4) The King may be morally incapable.

The absence of the King from the Kingdom cannot raise any very great difficulty. Modern means of communication have annihilated distance and have facilitated quick dispatch. The King, therefore, could discharge his Kingly duties from a distance with expedition at any rate without delay. There is also the other possibility of the King delegating his powers to

somebody who could exercise them on his behalf when he is away.

Minority of the King cannot create any difficulty so far as the law is concerned. The law holds that the King is never an infant and is capable of transacting business even though he is a minor. A minor King, therefore, can exercise all his powers and discharge all his duties lawfully. Ordinarily if the reigning King is expected to die leaving an infant as his heir, Parliament always takes the precaution of appointing by law a regent. But this is by way of prudence and not by way of any requirement by law.

Insanity makes a hard case. The King cannot delegate his powers if he is insane. Parliament cannot pass a law, appointing a regent because the King being insane cannot give his assent to the Bill. There are two cases of English Monarchs having gone insane, while on the throne, Henry VI (1454) and George 111(1788). The procedure then adopted was a very crude one and certainly could be deemed to be strictly in conformity with the law of the Constitution, which requires the assent of all three elements which constitute Parliament.

The moral incapacity of the King is another hard case. Can the King resign supposing people do not want him? Can the King be deposed if he does not resign? There is no legal provision regulating the insanity or the moral incapacity of the King. Question of moral incapacity may not perhaps arise under the English Constitution owing to the development of responsible Government. But the question of insanity might.

Effect of the death of the King

1. On Parliament

The original rule was that Parliament was automatically dissolved by the death of the King. The Constitution and theory of which this was a consequence regarded members of Parliament as councillors of the King who summoned them. The tie of summons was regarded as a personal tie between the King who summoned and the members who assembled in return and that tie was broken by the death of the King. The members called by deceased King could not be on this account be called the councillors of the new King, and the King was entitled to call new councillors, which could happen only when the old Parliament was dissolved and the new King obtained an opportunity to call a new Parliament. This rule was first amended in

mk:@MSITStore:C:\Important\Writing_Of_Babasaheb.chm::/50. Lectures on the English Constitution.htm - _msocom_2* by 7-8 William III Chapter XV whereby it was provided that the existing Parliament was to work for six months after the death of the King if not sooner dissolved by his successor. Subsequently in the year 1867, (30, 31 Victoria, Chapter II 102), the rule was altogether

abrogated and the life of Parliament was made independent of the death of the king.

II. On the tenure of office

The original rule was that all executive officers were to vacate their offices on the death of the King, and for the same reasons whereby the death of the King resulted in the dissolution of Parliament. Here again the law has gradually altered the theory. The Succession to the Crown Act of 1707 extended the tenure of executive Officers to six months after the death of the King. By another Act passed in the year * the period was again extended and finally the Demise of the Crown Act of 1901 made the tenure of office independent of the death of the King.

IV
CHAPTER III
THE HOUSE OF LORDS

The House of Lords consists of three different classes of Peers. (1) Hereditary Peers of England and United Kingdom, (2) Representative Peers and (3) Peers by virtue of Office.

The first question that must be raised and answered in order to understand the Constitution of the House of Lords is this. What is the title of the Peers to sit in the House of Lords?

Peers of England and the United Kingdom

The title of the English Peers and the Peers of the United Kingdom is founded on the King's writ of summons addressed to each Peer individually to come and to attend Parliament. The English Peerage is created by the King by Letters Patent. No difficulty arises, therefore, with regard to persons holding Peerage by Letters Patent. The only question that arises is whether the King could create a Peerage for life. This was at one time a matter of controversy and the controversy was whether a life-Peer created by the King entitles the Peer to sit in the House of Lords. But the issue was decided finally in the Weynesdale Peerage case in 1856 in which two things were decided. (1) That the King had the right to create any class of life-peer or hereditary but (2) the life-Peer cannot sit as a member of the House of the Lords and the King could not send such a Peer a writ of summons. The reason assigned was that the hereditary character of the Peerage was by custom, if not by law, an integral feature of the Peerage and the King while entitled to exercise his right to create a Peerage was not entitled to abrogate the custom.

What about the right of the Peers whose Peerage was not created by

Letters Patent? Their right also was founded upon the King's writ of summons.

Two questions, however, were long agitated with regard to the writ of summons to such Peers. Could every Peer claim the writ of Summons? Was the King free to address or not to address the summons to any Peer? On behalf of the Peers it was contended that only Peers who held their Peerage by what is called tenure by Barony were entitled to summons and that no other Peer was entitled to summons, nor was the King free to address the summons to a Peer who fell outside that class. On the other hand it was contended on behalf of the King that the writ was not a special privilege confined to Peers by Barony nor was there any limitation upon the King's right to address the summons to the Peers. The controversy was in the long run settled and two rules can now be laid down as rules governing the right to writ by Peers whose Peerage is not evidenced by Letters Patent.

(1) Tenure by Barony is no ground for a claim to a writ from the King.

(2) The King was bound to summon by a writ to sit in the House of Lords a descendant of a person, who had received a writ and taken his seat in that House in. accordance therewith. In other words the descendant of a person, however distant and whatever the break in the interval, who can be proved to have received a writ from the King can claim a similar writ by a hereditary right. The English Peerage, therefore, is a hereditary Peerage and all hereditary English Peers are, therefore, entitled by their hereditary right to a writ of summons from the king and be members of the House of Lords.

(3) Although the right is a hereditary right it is subject to two rules, (1) The rule of Primogeniture and (2) The rule of male descendant.

Representative Peers

The representative peers fall into two classes. Representative Peers of Scotland and representative Peers of Ireland. The title of the representative Peers of Scotland is founded on the treaty of Union between England and Scotland which took place in 1707 and which made them into a Common Kingdom under a Common King and was called the United Kingdom of Great Britain. Prior to its Union with England, Scotland had its own Peerage with its hereditary right to sit. The Union of Ireland with Great Britain took place in 1800. As in the case of Scotland, Ireland has also its own Peerage with hereditary right to sit in the old Irish Parliament. On the amalgamation of Ireland and Scotland by their respective treaties of Union with England, the question arose as to how much representation was to be allowed to the old Scottish and Irish Peers in the new Parliament of Great

Britain and Ireland. The English Peers claimed for every one of themselves the right to sit in the new Parliament. The Scottish and the Irish Peers claimed similar right for every member of their own class.

In the settlement that was arrived at, it was agreed (1) that the English Peers should be allowed each to sit in the new Parliament. (2) The Scottish Peers were allowed to elect sixteen (16) out of their number as their representatives in the new Parliament. (3) The Irish Peers were allowed to elect 28 out of their number. The Scottish Peers are elected for the duration of a single Parliament., When Parliament is dissolved, there takes place a new election of the 16 representative Scottish Peers by the Peers of Scotland. The Irish representative Peers on the other hand are elected for their lives, and there is no new election of Irish Peers when Parliament is dissolved. A new election takes place only when a vacancy takes place in the representative Irish Peers by death or by any other disqualifying cause.

In addition to these three ancient territorial Peerages existing from before the time of the Union, there has been created a fourth category of Peerage known as the Peers of the United Kingdom with a right to sit in the House of Lords. Such a Peerage could be conferred by the King even on a Scottish Peer or an Irish Peer in which case if the Peerage is hereditary, the holder would be entitled to sit in the House of Lords notwithstanding of the treaties of Union with Ireland and Scotland.

Peers by virtue of Office

The Peers who sit in the House of Lords by virtue of office fell into two divisions (1) The Lords spiritual and (2) the Lords of appeal in ordinary. By law twenty-six, officials of the Church are entitled to sit in the house of Lords. Of these, the Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester have the right to sit in the House of Lords as Lords Spiritual. Of the remaining 21 spiritual Peers, 21 diocesan Bishops in order of seniority of appointment have a right to sit in the House of Lords. So when one of the 21 Bishops dies or resigns, his place in the House of Lords is taken not by his successor but by the next senior diocesan Bishop.

The Lords of Appeal in ordinary

The House of Lords, besides being a Legislative Assembly, is also a Court of Judicature. It is for most purposes, the final and the highest Court of Appeal from the King's Courts in England, Scotland and Ireland. This judicial function being the function of the House of Lords as such, there is nothing to prevent any Peer of Parliament from taking part in the decisions of any appeal that would be brought before the House in its judicial

capacity. The House of Lords in the main is a body of lay Peers not versed in the intricacies of law and not possessing any legal training. To allow such a body to permit to discharge the functions of the highest Judiciary involved a great danger to the cause of justice. It was, however, not possible to take away this jurisdiction from the House of Lords altogether. As a compromise, the Act of 1876 called the Appellate Jurisdiction Act was passed. It retained the Jurisdiction of the House of Lords as the final Court of Appeal but provided that no appeal should be heard and determined by the House of Lords unless there were present at such hearing and determination at least three Lords of Appeal. The Lords of Appeal consist of (1) The Lord Chancellor for the time being, (2) such sitting Lords in the House as have held high judicial office and (3) the Lords of Appeal inordinary, appointed by the King.

The Appellate Jurisdiction Act of 1876 which gave the power to the Crown to appoint Lords of Appeal inordinary to sit in the House of Lords, made the tenure of those Lords of Appeal as Peers dependent on the continuance of his discharge of his judicial functions as a Lord of Appeal. In 1887, however, this was altered and the tenure of a Lord of Appeal in ordinary is now a life tenure.

Having stated the composition of the House of Lords, we may next proceed to consider certain questions that arrive in connection therewith. The first is this. What is the title of the Peers to sit in the House of Lords? The title of the Peers to sit in the House of Lords is not founded upon election by a Constituency as is the case with the members of the House of Commons. Their title is founded by a writ of summons addressed to each Peer individually to come and attend Parliament. It is a kind of nomination by the King although the power to nominate is strictly regulated and does not leave any discretion in the King to revoke and alter the course of nominations from Parliament to Parliament

While the right of the Peer is founded on the writ of summons issued by the King, there are certain restrictions on the King's right to summon Peers. An Alien Peer that is a Peer who is not a British subject cannot be summoned to sit in Parliament.

A second question that must also be considered relates to the admissibility and divesting by the Peer of his title. A Peerage is a non-transferrable dignity and the title to it cannot be transferred by sale or by gift to another. It can be claimed by another only by inheritance in accordance with the rules of heritage. Similarly a Peer cannot surrender his title and cease to be a Peer. The principle which govern the Peerage is, once a Peer always a Peer.

A third question must relate to the difference between Peerage and the House of Lords. Popularly the expression Peers of the Realm and the House of Lords are used synonymously. Legally speaking there is a difference between the two. A person may be a Peer of the Realm and yet not be a member of the House of Lords. The case of a life-Peer is an illustration in point. A life-Peer is a Peer of the Realm and yet he cannot be a member of the House of Lords, because of the rule that the Peer who is a Peer otherwise than by virtue of office must be a hereditary Peer in order that he may get a right to sit in the House of Lords. Contrariwise, a person may be a member of the House of Lords, although he is not a hereditary Peer. The case of the spiritual Lords and the Lords of Appeal inordinary is an illustration in point. The Archbishops and Bishops as also the Lords of Appeal inordinary are entitled to writ of summons from the King to the House of Lords, the former while they hold their offices and the latter during their life-time. Yet they are not Peers in the legal sense of the term inasmuch as Peerage connotes a hereditary right.

V

THE POWERS AND PRIVILEGES OF THE LORDS AND THE COMMONS

Both Houses of Parliament enjoy certain privileges in their collective capacity as constituent parts of Parliament and which are necessary for the support of their authority and for the proper exercise of their functions. Besides the privileges enjoyed collectively as members of the two Houses of Parliament, there are other privileges enjoyed by members in their individual capacity and which are intended to protect their person and secure their independence and dignity.

SECTION I

(1) PRIVILEGES OF PARLIAMENT

(1) Privileges of the House of Commons.—The right to exclude strangers and to debate within closed doors is one of the privileges claimed by the House of Commons. The origin of this privilege lies in the existence of two different circumstances. One circumstance related to the seating arrangements for members in the House of Commons, which was so defective that strangers and members of Parliament were often mixed together. The result was that the strangers were often counted along with the members in divisions. To prevent this, the House claimed the right to exclude strangers. The second circumstance related to the system of espionage practised by the King over members of the House of Commons. In those days, as reporting of the speeches by the members in the House had not become systematic the King was anxious to know who were his

friends and who were his enemies, employed spies, whose duty it was to report to the King the speeches made by members on the floor of the House. This was followed by intimidation of the members by the King or by other acts of displeasure, which had the effect of curtailing the independence of the members. And the only way by which the House could protect itself against the system of espionage practised by the King was to claim the right to exclude strangers.

Under this privilege it did not follow that strangers could not enter the House and listen to the debates. As a matter of fact, they did enter and listen to the debates. The effect of the privilege was that if a member took notice of their presence, the Speaker was obliged to order them to withdraw. This worked inconveniently because the objection of one member to the presence of strangers was enough to compel the Speaker to order them to withdraw. In 1875, therefore, the rule was altered by are solution of the House, which prescribed that if any member took notice of the presence of the strangers or to use technical language rose to address the Speaker"Sir, I spy strangers", the Speaker shall forthwith put the question that strangers be ordered to withdraw without permitting debate or amendment and take the sense of the House and act accordingly. This resolution while retaining the privilege of excluding strangers, makes its exercise subject to the wishes of the majority of the House, and not to the caprice of an individual member. The rule, however, gives the Speaker the power to order the withdrawal of strangers at any time on his own initiative and without a motion from any member of the House.

The House of Commons claims the privilege of secrecy of debates and have the right to prohibit the publication of their debates and their proceedings. In 1771, an incident occurred which put the privilege beyond debate. A certain printer who resided in the city of London printed the debates of the Commons without their permit. The Commons, having taken offence at this breach of their privilege, sent a messenger under the authority of the Speaker to arrest the printer. The printer in his turn handed over the messenger of the House of Commons to the custody of a constable for assaulting him in his own house. In the criminal proceedings that took place, the Mayor and the two aldermen of the city of London who constituted the bench held that the warrant of arrest issued by the House of Commons was not operative within the city on account of its charter and committed the messenger of the Commons though they left him out on bail. The Commons sent for the Mayor and the aldermen who constituted the bench and their clerk who recorded the recognisance of the messenger in his book. They erased from the book the entry relating

to the messenger's recognisance by tearing the page and committed the Mayor and the aldermen to the Tower of London for challenging the authority of the Warrant. Since then no one has ventured to offend against the privilege of the Commons relating to the secrecy of debates. The reports of the debates which one sees today are made on sufferance and published on sufferance, and they could be prohibited any time by the order of the House in that behalf. This was done on some occasions during the last war when many subjects were discussed on the floor of the House in secrecy without any reports being published of the debates.

Another privilege which the House of Commons claims is the right to provide for the proper Constitution of the House. Under this privilege, falls the consideration of three distinct questions.

(1) **Filling of Vacancies.**—While the holding of a general election for the summoning of a new Parliament is a Prerogative of the King, the filling up of vacancies during the continuance of a Parliament is a privilege of the House of Commons. Consequently, when a vacancy occurs, the writ for the return of a member to supply the vacancy is issued on a warrant by the Speaker in pursuance of an order by the House and not in pursuance of an order from the King. If Parliament is not sitting when the vacancy occurs, the Speaker is authorised to issue the writ subject to certain conditions.

The second question that falls within this privilege is the determination of disputed elections. This question formed for a long time a bone of contention between the King on the one hand and the Commons on the other. Each party claimed the right for itself to the exclusion of the other. Originally the writ issued to a constituency for an election was returned to Parliament, thereby recognizing the right of the Commons to fill a vacancy in that particular constituency. Since the reign of Henry IV, it was returned to Chancery, thereby recognizing the right of the King to fill the vacancy. The matter thus alternated till 1604 when the Commons insisted that the right was theirs and a quarrel arose between them and James 1. In that year, the King James I issued a proclamation directing that no bankrupt or out-law be elected to Parliament. The County of Bucks elected one Mr. Goodwin. He was an outlaw and the King declared his election void and issued another writ. And Mr. Fortesque was returned. The Commons on their own motion resolved that notwithstanding the avoidance of his election by the King, Mr. Goodwin was duly elected a member of the House. The King on the other hand claimed the right to determine the issue. At a conference held between the King, the Lords and the Commons, the Lords advised the King to accept defeat and recognise the right of the Commons. The trial of disputed elections by the House

became a source of trouble to the House and anxiety to the candidates because all such trials became matters of party politics and in 1868 the House was pleased by law to leave the adjudication of disputed elections to the Court of Law.

The third right which falls within the purview of this privilege is the right of the House to expel a member who has behaved in a manner which would render him unfit to sit in the House. Expulsion is not a disqualification and the member expelled may be again elected. It must be borne in mind that the right to be elected does not carry with it the right to sit. To be elected is a favour derived from the electors. To be allowed to sit is a favour within the competence of the House and cases have occurred in which persons have been duly elected to the House of Commons but who have not been able to take their seats in the House. The case of Wilkes is an illustration in point. Wilkes was elected four times in succession by the County of Middlesex and on all the four times, he was refused by the House a seat. The next important privilege claimed by the House of Commons is the right to exclusive cognisance of matters arising within the House. Under this privilege, the House has the exclusive right to regulate its internal proceedings and concerns and the mode and manner of carrying on its business and that no Court could take cognisance of that, which passes within its walls. The nature and extent of this privilege are well-illustrated by the case of *Bradlaugh* vs. *Gosset*. The facts of this case are simple. On the 3rd of May 1880, Mr. Bradlaugh, who was elected a member from Northampton claimed to make the affirmation instead of the oath as he was an atheist. A Committee of the House of Commons reported that affirmation was confined to proceedings in a Court of Law and that the members of Parliament could not resort to it. Oath was the only thing that was open to them. After this report, Mr. Bradlaugh came to the Speaker's table to take the oath. The house, however, objected on the ground that it would not be binding upon his conscience, and that it would be a mere formality. Another Committee was appointed to report whether Mr. Bradlaugh should be permitted to take the Oath. The Committee reported that he should not be permitted to take the oath but recommended that he should be allowed to affirm subject to its legality being tested in a Court of Law. In accordance with this, a motion was made to allow Mr. Bradlaugh to affirm to which an amendment was made disallowing him either to affirm or to take oath. Bradlaugh, however, insisted upon his right to take the oath, but the Speaker asked him to withdraw. He refused and the sergeant was asked to remove Mr. Bradlaugh. A scuffle ensued between Mr. Cosset, the sergeant and Mr.

Bradlaugh in which Mr. Bradlaugh was very badly injured. A standing order was passed allowing affirmation. Mr. Bradlaugh affirmed but the Court declared that affirmation was not permissible to a member of Parliament. His seat was thereafter vacated. Re-elected again in 1881, the same scene was repeated. Whenever he came to the table to take the oath, the House resolved that he be not allowed to do so. On one occasion by the direction of the Speaker, Mr. Bradlaugh was conducted by Sergeant Gosset beyond the precise of the House and subsequently expelled. Bradlaugh brought an action against Gosset in the Queen's bench division for an injunction to restrain Gosset from using force to prevent his taking the oath.. The House made the usual order for the defence of the sergeant. The Queen's bench division refused relief to Mr. Bradlaugh on the ground that the order under which Gosset acted related to the procedure of the House and that the Court had no power to interfere in such a matter.

The House of Commons claims the privilege to protect its dignity and authority. It would be in vain to attempt any enumeration of the acts which might be construed by the House as an insult or an affront to its dignity. But certain principles may be laid down:

(1) Disobedience of any of the orders or rules which regulate the proceedings of the House is a breach of the privilege. Publication of debates contrary to the resolution of the House, wilful misrepresentation of the debates, publication of evidence taken before a select Committee until it has been reported to the House are examples of the breach of this rule.

(2) Disobedience to particular orders. Resolutions are agreed to at the beginning of each session which declare that the House will proceed with the utmost severity against persons who tamper with. witnesses in respect of evidence to be given to the House or to any Committee thereof, who endeavour to deter or hinder persons from appearing or giving evidence and who give false evidence before the House on any Committee thereof, would be guilty of breach of privilege by reason of disobedience to particular orders.

(3) Indignities offered to the character or proceedings of Parliament or upon the honour of the House by libellous reflections would be a breach of the privilege. It is not to be supposed that only members of the public can be held guilty for a breach of privilege under this rule. Even members of Parliament could be made punishable if they commit the breach of this rule. In 1819, Mr. Hobhouse, who was an M. P., denounced the resistance offered by the House of Parliamentary Reforms, in a pamphlet which he published anonymously. After his

having acknowledged himself as the author of the pamphlet, the House held him guilty of the breach of privilege. In 1838, another instance occurred when Mr. Ocomed an M.P. at a public meeting laid a charge of foul perjury against members of the House in the discharge of their judicial duties in election committees.

(4) Interference with the members of the House in the discharge of their duties as members of the House.

It is an infringement of the privilege of the House to assault, insult or menace any member of the House in his coming or going from the House or on account of his behaviour in Parliament or to endeavour to compel members by force to declare themselves in favour of or against any proposition then pending or expected to be before the House or bribing members of parliament to vote in a particular manner.

SECTION II

PRIVILEGES OF INDIVIDUAL MEMBERS

(1) *Freedom from arrest.*—This privilege guarantees freedom from arrest for members during the continuance of the session and 40 days before the commencement and after its conclusion. Originally this privilege was not only enjoyed by members but also extended to their servants and their estates. It is now restricted to members only and that too to their persons.

(2) *Freedom of speech.*—The statute of William and Mary S2 C2 enacts that members shall enjoy complete freedom of speech in Parliamentary debates and proceedings and that nothing said by them shall be questioned or impeached in any Court or place out of Parliament.

SECTION III

METHODS OF PUNISHING BREACHES OF PRIVILEGE

There are five different ways in which the House can punish persons who are guilty of a breach of privilege. Incases of breach of privilege which are not grave, the House may release a person arrested for breach of privilege on mere admonition if he is prepared to tender apology. Or secondly, may release him on a reprimand. In cases of a grave character, the House can commit him to prison or inflict a fine or expel him. It is obvious that the last form of punishment namely, expulsion, can apply only to members of parliament who are guilty of a breach of privilege.

SECTION IV

PRIVILEGES OF THE HOUSE OF LORDS

The privileges of the House of Lords are more or less the same as those

of the Commons. It is, therefore, unnecessary to discuss them separately in detail. There is only one point of difference between the privileges of the Lords and the Commons which need to be mentioned and which relates to the source of their privileges. The privileges of the Commons are a gift from the King. They have to be claimed by the Speaker in the name of the Commons in the beginning of every newly elected Parliament. The privileges of the Lords belong to them in their own right. They are not derived from the King.

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SECTION V
OFFICERS OF THE HOUSE

The House of Lords and the House of Commons possess certain Officers for the general conduct of their business and for the enforcement of their privileges. For the sake of clarity it might be desirable to discuss the status and the functions of the Officers of the two Houses separately.

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SECTION VI
THE HOUSE OF COMMONS

(1) (1) **The Speaker.**—The Speaker is now elected by the House of Commons at its first meeting after the general election and continues to hold the place till the life-time of the Parliament unless removed from Office by a resolution. Originally the King claimed and exercised a virtual right of selection. In 1679, there arose a conflict between the Charles II and the newly elected House of Commons on the right to choose the Speaker. The Commons chose Sir Edward Sey Mour and the King declined to accept him. The King suggested his own nominee to the Commons and the Commons in their turn refused to have him. Eventually a compromise was arrived at, and another person who was an independent choice of the Commons was adopted by them as their Speaker. To him the King raised no objection. From this time onward, the right of the Commons to chose their own Speaker was not contested by the Crown.

SECTION VII
THE FUNCTIONS OF THE SPEAKER

The Speaker of the House of Commons functions in three distinct capacities. As the Spokesman and representative of the House he performs the following duties.—

(1) He demands its privileges and communicates its resolutions of thanks, ensures admonitions and reprimands.

(2) He issues warrants of commitments whenever a person is punished *for* breach of privilege. He issues warrants for attendance at the bar for being rebuked or sentenced by the House or for any other purpose as provided for in the order of the House.

(3) He issues writs for filling up vacancies.—The Parliament Act of 1911 has imposed upon the Speaker a new function which did not belong to him before. Under the Act, he the functions as ajudicial officer and in that capacity he has to certify whether any particular bill is a money-bill or not.

The Speaker is also the Chairman of the House whenever the House meets to carry on its business. In his capacity as a Chairman he is required:

(1) To maintain order in debates.

(2) To decide questions upon points of order.

(3) To put the question under discussion to the House.

(4) To declare the determination of the House on the question.

SECTION VIII
OFFICERS UNDER THE SPEAKER

There are two Officers under the Speaker of the House of Commons. One is called the clerk of the House of Commons and the other is called the Sergeant at arms. The duty of the clerk of the Commons is to maintain a record of the proceedings of the House. He maintains what is called the journal of the House of Commons in which are noted all matters brought before the House and discusses by it in their order from day-to-day.

The Sergeant at arms is a sort of a Police Officer whose duty is to enforce the orders of the House and the Speaker in relation to internal order and to breach of privilege.

THE HOUSE OF LORDS

The Speaker.—The Speaker of the House of Lords is not an elected person and the House of Lords has no right to elect its own Speaker. The Speaker of the House of Lords is by prescription the Lord Chancellor or the Lord Keeper of the Great Seal, who can act as Speaker in the absence of the Lord Chancellor. In their absence the place is taken by any one of the Deputy-Speakers of whom there are always several appointed by the King's Commission and if they should all be absent, the Lords elect a Speaker for the time being. The Speaker of the House of Lords need not necessarily be a Peer, and that office may be discharged by a commoner and has been so discharged when a commoner happened to be the Lord Keeper of the Great Seal or when the Great Seal was in commission. It is

singular that the President of this deliberative body is not necessarily a member of it, and the Woolsack on which the Speaker sits is treated as being outside the limits of the House of Lords, so as to permit the office being discharged by a person who is not a member of the House.

THE DUTIES OF THE SPEAKER IN THE LORDS

The position of the Speaker of the House of Lords is totally different from the position of the Speaker of the House of Commons. There is nothing common between them as far as their authority and function is concerned except that both are Chairmen of a deliberative assembly. But so far as their function and authority is concerned, their position is fundamentally different. This is clear from standing order No. 20 which defines the duties of the Lord Chancellor as a Speaker of the House of Lords. The standing order says :"The Lord Chancellor when he speaks to the House is always to speak uncovered and is not to adjourn the House or to do anything else as mouth of the House, without the consent of the Lords first had, except the ordinary thing about bills which are of course wherein the Lords may likewise overrule, as for preferring one bill before another and such like, and in case of difference among the Lords, it is to be put to the question, and if the Lord Chancellor speak to anything particularly, he is to go to his own place as a Peer"and be it noted that the place of the Lord Chancellor if he is a Peer is to the left of the Chamber. It is clear from the standing order how limited is the authority of the Speaker in the Lords.

(1) In the enforcement of rules for maintaining order the Speaker of the House of Lords has no more authority than any other Peer.

(2) He cannot decide points of order as is done by the Speaker of the House of Commons. If he is a Peer he may address the House on any point of order raised. But the decision on it is the decision of the Majority of the House.

(3) Owing to the limited authority of the Speaker in the Lords in directing the proceedings of the House, the right of a Peer to address the House depends not upon him as it does in the House of Commons but depends solely upon the will of the House. When two Peers rise at the same time, unless one immediately gives way to the other, the House calls upon one of them to speak and if each is supported by a party, there is no alternative but division. The issue is not decided by the Speaker, as is done in the House of Commons.

The result of his imperfect powers is that a Peer who is disorderly is called to order by another Peer perhaps of an opposite party and that an

irregular argument is liable to ensue in which case, each last Speaker imputes disorder to his predecessor and recrimination takes the place of an orderly debate with the Lord Chancellor sitting but powerless to intervene, as his power is limited to the putting of questions and carrying on other formal business.

OTHER OFFICERS

There are three other officers under the Lord Chancellor as Speaker of the House of Lords.

(1) **The clerk of the Parliament.**—His duties are similar to those of the clerk of the House of Commons, namely, to keep the record of the proceedings and judgements of the House, of Lords in a journal.

(2) **The Gentleman Usher of the Black rod,** whose duties are analogous to those of the Sergeant at arms in the House of Commons. He does the policing of the House.

(3) **The Sergeant at arms** is the attendant on the Lord Chancellor.