HOUSE OF LORDS

OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT IN THE CAUSE

Jackson and others (Appellants) *v.* Her Majesty's Attorney General (Respondent)

[2005] UKHL 56

LORD BINGHAM OF CORNHILL

My Lords,

1. The appellants all, in differing ways, have an interest in fox-hunting. They wish that activity to continue. They challenge the legal validity of the Hunting Act 2004 which, on its face, makes it an offence to hunt a wild mammal with a dog save in limited circumstances. The appellants acknowledge that the legislative procedure adopted to enact the Hunting Act was in accordance with the procedure laid down in the Parliament Act 1949. But they contend that the 1949 Act was itself invalid: it did not, as they correctly say, receive the consent of the House of Lords; and the Parliament Act 1911 did not, they submit, permit an Act such as the 1949 Act to be enacted without the consent of the House of Lords. Thus, although the Hunting Act gives rise to the present issue between the appellants and the Attorney General, the real question turns on the validity of the 1949 Act and that in turn depends on the true effect of the 1911 Act. The merits and demerits of the Hunting Act, on which opinion is sharply divided, have no bearing on the legal issue which the House, sitting judicially, must resolve.

2. In these proceedings the appellants sought a declaration that

> "1. The Parliament Act 1949 is not an Act of Parliament and is consequently of no legal effect.
>
> 2. Accordingly, the Hunting Act 2004 is not an Act of Parliament and is of no legal effect."

The Queen's Bench Divisional Court (Maurice Kay LJ and Collins J) declined to make such a declaration: [2005] EWHC 94 (Admin). So, on somewhat different grounds, did Lord Woolf CJ, Lord Phillips of Worth Matravers MR and May LJ sitting in the Court of Appeal: [2005] EWCA Civ 126, [2005] QB 579. On the appellants' behalf Sir Sydney Kentridge QC repeats detailed arguments advanced in the courts below. Lord Goldsmith QC, the Attorney General, resists those arguments. The League Against Cruel Sports make written submissions in support of the Attorney General.

The Hunting Act

3. The Hunting Act received the royal assent on 18 November 2004. Its words of enactment are:

> "Be it enacted by The Queen's most Excellent Majesty, by and with the advice and consent of the Commons in this present Parliament assembled, in accordance with the provisions of the Parliament Acts 1911 and 1949, and by the authority of the same, as follows …"

The House of Lords did not consent. As presented for the royal assent, the Hunting Bill bore two certifications by the Speaker of the House of Commons:

> "I hereby certify that this Bill as compared with the Hunting Bill 2003 contains only such alteration as is necessary owing to the time which has elapsed since the date of that Bill."
>
> "I certify, in reference to this Bill, that the provisions of section two of the Parliament Act 1911, as amended by section one of the Parliament Act 1949, have been duly complied with."

Neither of these certifications is questioned or challenged in any way.

The 1949 Act

4. The 1949 Act was very short. It was described in its long title as "An Act to amend the Parliament Act, 1911." Its words of enactment were as for the Hunting Act, save that the only statutory reference was to the 1911 Act. Its substantial effect was to reduce the number of successive sessions referred to in section 2(1) of the 1911 Act from three to two, and to reduce the lapse of time referred to in the proviso to section 2(1) of the 1911 Act from two years to one.

The 1911 Act

5. The 1911 Act was described in its long title as

> "An Act to make provision with respect to the powers of the House of Lords in relation to those of the House of Commons, and to limit the duration of Parliament."

The words of enactment were preceded by a preamble with three recitals, which read:

> "Whereas it is expedient that provision should be made for regulating the relations between the two Houses of Parliament:
>
> And whereas it is intended to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis, but such substitution cannot be immediately brought into operation:
>
> And whereas provision will require hereafter to be made by Parliament in a measure effecting such substitution for limiting and defining the powers of the new Second Chamber, but it is expedient to make such provision as in this Act appears for restricting the existing powers of the House of Lords:"

The second of these recitals has an historical explanation, given below. The standard words of enactment were used, since both Houses had consented to the measure:

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

6. Although this appeal turns on section 2(1) of the 1911 Act, which is considered in more detail below, that section must be understood in the context of the whole Act which, save for the short title in section 8, I think it necessary to recite:

"1.?

(1) 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.

(2) A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions 'taxation,' 'public money,' and 'loan' respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.

(3) There shall be endorsed on every Money Bill when it is sent up to the House of Lords and

when it is presented to His Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. Before giving his certificate, the Speaker shall consult, if practicable, two members to be appointed from the Chairmen's Panel at the beginning of each Session by the Committee of Selection.

2.?

(1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in three successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless two years have elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the third of those sessions.

(2) When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.

(3) A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.

(4) A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former

Bill or contains only such alterations as are certified by the Speaker of the House of Commons to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have been made by the House of Lords in the third session and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section:

Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House in the second or third session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords.

3. Any certificate of the Speaker of the House of Commons given under this Act shall be conclusive for all purposes, and shall not be questioned in any court of law.

4.?

(1) In every Bill presented to His Majesty under the preceding provisions of this Act, the words of enactment shall be as follows, that is to say:?

> ‘Be it enacted by the King’s most Excellent Majesty, by and with the advice and consent of the Commons in this present Parliament assembled, in accordance with the provisions of the Parliament Act, 1911, and by authority of the same, as follows.’

(2) Any alteration of a Bill necessary to give effect to this section shall not be deemed to be an amendment of the Bill.

5. In this Act the expression ‘Public Bill’ does not include any Bill for confirming a Provisional Order.

6. Nothing in this Act shall diminish or qualify the existing rights and privileges of the House of Commons.

7. Five years shall be substituted for seven years as the time fixed for the maximum duration of Parliament under the Septennial Act, 1715."

The appellants' submissions

7. Sir Sydney helpfully encapsulated the appellants' submissions in a series of key propositions, which he elaborated in written and oral argument. The propositions are these:

(1) Legislation made under the 1911 Act is delegated or subordinate, not primary.

(2) The legislative power conferred by section 2(1) of the 1911 Act is not unlimited in scope and must be read according to established principles of statutory interpretation.

(3) Among these is the principle that powers conferred on a body by an enabling Act may not be enlarged or modified by that body unless there are express words authorising such enlargement or modification.

(4) Accordingly, section 2(1) of the 1911 Act does not authorise the Commons to remove, attenuate or modify in any respect any of the conditions on which its law-making power is granted.

(5) Even if, contrary to the appellants' case, the Court of Appeal was right to regard section 2(1) of the 1911 Act as wide enough to authorise "modest" amendments of the Commons' law-making powers, the amendments in the 1949 Act were not "modest", but substantial and significant.

8. Before considering these submissions it is in my opinion important to describe in outline the constitutional background and historical context of the 1911 Act. For it was the product of a constitutional crisis, by some margin the most acute to afflict this country during the twentieth century. It generated a degree of political and personal acrimony rarely, if ever, seen before, and never since, in

the life of our parliamentary democracy. The Act must be interpreted and understood in that context.

The constitutional background and historical context of the 1911 Act

9. The bedrock of the British constitution is, and in 1911 was, the supremacy of the Crown in Parliament. It is, as Maurice Kay LJ observed in para 3 of his judgment, unnecessary for present purposes to touch on the difference, if any, made by our membership of the European Union. Then, as now, the Crown in Parliament was unconstrained by any entrenched or codified constitution. It could make or unmake any law it wished. Statutes, formally enacted as Acts of Parliament, properly interpreted, enjoyed the highest legal authority. But such Acts required the consent of both Houses, Lords and Commons: A V Dicey, *Introduction to the Study of the Law of the Constitution*, 6th edn (1902), pp 37-38, 350-351. Where such consent was given, the royal assent to the measure had become a constitutional formality. Where and so long as one or other House withheld its consent, the measure could not become an Act of Parliament.

10. Save for a relatively small number of archbishops, bishops, lords of appeal in ordinary and former lords of appeal in ordinary, the membership of the House of Lords in 1911 was wholly hereditary. The great majority of the members had either succeeded, or been appointed, to hereditary peerages. They were predominantly holders of Conservative opinions. Thus it was possible for the majority in the Lords to block the legislative programme of a government with which it disagreed. In 1831-1832 the Lords sought, in the event unsuccessfully, to block what has become known as the Great Reform Act. In 1893, by a majority of 419-41, it rejected a Home Rule Bill, the heart of the government's programme, which had been approved by the Commons. The only means which the constitution provided to ensure that the will of the elected house prevailed over that of the upper House where deadlock occurred was by the creation of enough new peers supportive of the government's measure to carry it in the Lords. Advice by the Prime Minister to create new peers was advice which a constitutional monarch was bound, ultimately, to accept. The threat to create new peers might, in the end, prove enough to secure the Lords' acquiescence, as it did in 1832. But it was seen as a nuclear option.

11. This situation was not regarded as satisfactory by the Liberal leaders. Mr Gladstone himself did not favour organic reform of the

House of Lords, and wished an hereditary House to continue for the avoidance of greater evils. But on 19 August 1884, in a paper prepared for Queen Victoria, he observed that

> "The House of Lords has for a long period been the habitual and vigilant enemy of every Liberal government …" (HCG Matthew, *The Gladstone Diaries*, vol XI, OUP, 1990, p 193).

12. His successors were less passive. Lord Rosebery, as Prime Minister in October 1894, proposed in a speech at Bradford to introduce a Commons resolution asserting the legislative supremacy of the Commons. He wished to reform the composition of the Lords. He had not, however, consulted his cabinet colleagues, a majority of whom preferred in principle to abolish rather than reform the Lords, and saw limitation of the Lords' veto as a more practical way of clipping their wings. This option was adopted in November, but no proposal appeared in the Queen's speech in 1895 (L McKinstry, *Rosebery* (2005), pp 327-332; Davis, 'Primrose, Archibald Philip, fifth earl of Rosebery', *Oxford Dictionary of National Biography*, 2004). Sir Henry Campbell-Bannerman, Rosebery's successor as Liberal leader, had advised the Queen in 1894 that one day the Lords' behaviour would inevitably lead to deadlock and constitutional chaos. But in 1907, as Prime Minister, he rejected a proposal from a cabinet committee to reform the composition of the Lords. Instead, recognising the need to resolve relations between the two Houses, he persuaded the Commons on 26 June 1907 to accept, by a large majority, a resolution that:

> "in order to give effect to the will of the people as expressed by their elected representatives, it is necessary that the power of the other House to alter or reject Bills passed by this House should be so restricted by Law as to secure that within the limits of a single Parliament the final decision of the Commons shall prevail." (House of Commons Journal, 26 June 1907).

13. Sir Henry Campbell-Bannerman had become Prime Minister on the resignation of Mr Balfour, in December 1905. A general election followed in January 1906, which the Liberal party won with a landslide majority. But a Bill introduced to reform education was "amended out of recognition" (G R Searle, *A New England ? Peace and War 1886 – 1918*, OUP (2004), p 362) by the House of Lords and had to be dropped.

The Licensing Bill 1908 was rejected. In all, ten Liberal Bills sent to the Lords between 1906 and 1909 were rejected or wrecked (Searle, *op cit*, p 409). Among these was the 1909 Finance Bill, introduced by Mr Lloyd George, which was passed by the Commons on 4 November 1909 by 379 votes to 149, but which, at the end of the month, the Lords rejected by 350 votes to 75. There had been no precedent for such a course for 150 years or perhaps longer (Searle, *op cit*, p 411; Ensor, *England 1870-1914*, (1936) p 416), since the voting of supply had come to be recognised as the all but exclusive preserve of the Commons. This was reflected in the enacting words of such measures, which departed from the wording found in other Acts and were (as in a modified form they still are) prefaced by language such as

> "We, Your Majesty's most dutiful and loyal subjects the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily [in former versions "cheerfully"] resolved to give and grant unto Your Majesty the several duties herein-after mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted …"

In modern times the same distinction has been consistently recognised in the speech of the monarch on opening a new session of Parliament. This rejection was described by Mr Asquith, now the Prime Minister, as "a breach of the Constitution and a usurpation of the rights of the Commons". A general election followed in January 1910. The issue on the platforms was the Lords' veto.

14. That election gave the Liberals a majority of only 2 over the Conservatives in the House of Commons. But the Liberals enjoyed the general support of 40 Labour and 82 Irish nationalist members. These three parties were united on two issues: they wanted to deal with the House of Lords on Campbell-Bannerman lines, not by altering its composition but by defining and limiting its power of veto; and they wanted to give Home Rule to Ireland (Ensor, *op cit*, p 418; Searle, *op cit*, p 417).

15. On 29 March 1910 the government introduced three resolutions to the House of Commons. After extensive debate, these resolutions

were approved by the House by large majorities on 14 April 1910. The first of these resolutions began:

> "That it is expedient that the House of Lords be disabled by Law from rejecting or amending a Money Bill, but that any such limitation by Law shall not be taken to diminish or qualify the existing rights and privileges of the House of Commons."

The resolution went on to define the meaning of "Money Bill." The second resolution began:

> "That it is expedient that the powers of the House of Lords, as respects Bills other than Money Bills, be restricted by Law, so that any such Bill which has passed the House of Commons in three successive Sessions and, having been sent up to the House of Lords at least one month before the end of the Session, has been rejected by that House in each of those Sessions, shall become Law without the consent of the House of Lords on the Royal Assent being declared: Provided that at least two years shall have elapsed between the date of the first introduction of the Bill in the House of Commons and the date on which it passes the House of Commons for the third time."

The resolution went on to define what amounted to rejection. In the course of debate it was sought to amend this second resolution by inserting, after "as respects Bills other than", the words "Bills further affecting the constitution or powers of the House of Lords and"; "Bills affecting the duration of Parliament and"; "Bills affecting the prerogative, rights and powers of the Crown and"; and "Bills for the delegation of administration or legislative powers to subordinate Parliaments within the United Kingdom and". All these amendments were rejected by large majorities. The third resolution was

> "That it is expedient to limit the duration of Parliament to five years."

On the acceptance of the three resolutions, a Parliament Bill was introduced, but it was not voted upon.

16. Meanwhile, in the House of Lords, Lord Rosebery had in March 1910 secured acceptance of a proposal to change the composition of the House, a cause he had espoused for many years and which he pursued further in November 1910. He was not alone among leading Liberals in favouring this course. It was one favoured by the Foreign Secretary, Sir Edward Grey, and the second recital to the 1911 Act, quoted above, was included to meet his wishes. The introduction of the Bill was followed by reintroduction of the Finance Bill rejected by the House of Lords. It was carried by a large majority in the Commons and was accepted by the Lords without a division on the following day. It used the introductory language quoted in para 13 above, and is cited as the Finance (1909-10) Act 1910.

17. Following the death of King Edward VII in May 1910, a Conference was held, in private, between four leading members of each of the Liberal and Conservative parties. Tentative agreement was reached on the future handling of money bills, and also "that other bills might be rejected by the second chamber, but that, if one was rejected two years running, a joint sitting of the two Houses should be held to determine its fate; and lastly that the representation for the Lords in the joint sitting should be so scaled down that a liberal government with a Commons majority of fifty would be able to pass its bills" (Ensor, *op cit*, p 423). The Conservatives, however, concerned above all to block Home Rule, wished to except from the joint-sitting scheme certain bills or classes of bills variously described as "constitutional", "organic" or "structural", which were to be the subject of a referendum. The Liberals were willing to except bills affecting the Crown or the Protestant succession or "the Act which is to embody this agreement", but would go no further, and in particular would not except any bill providing for Irish Home Rule (*ibid;* Searle, *op cit*, pp 418-419). On this the Conference broke down.

18. On 18 November 1910, following the breakdown of the Conference, the government announced its intention to seek the dissolution of Parliament on 28 November. The pause was to give the House of Lords time to consider the Parliament Bill, which it did. The first and second readings took place. At that point the Conservative leader (Lord Lansdowne) proposed, and the House of Lords adopted, resolutions based on the proposals made at the Conference. Parliament was then dissolved, and a further general election took place in

December. Unsurprisingly, given that the issues had not changed, the outcome of the election was almost exactly the same as in the preceding January: an equality of Liberal and Conservative seats, but a small increase for Labour and the Irish nationalists, giving a slight increase in the majority for the Parliament Bill and Home Rule.

19. The Parliament Bill was again introduced in the House of Commons by the Prime Minister on 21 February 1911. It was approved by a large majority on each of its three readings, the third of these on 15 May 1911. On 23 May it reached the House of Lords, which had meanwhile been considering alternative proposals. The Bill was debated at length in the Lords, and was very heavily amended before its return to the Commons. But by this time, if not before, the Conservative leaders knew of the King's willingness, if need be, to create enough peers to secure passage of the Bill and of the government's determination to secure passage of the Bill by that means if no other way was open. In the Commons, the Lords' amendments were almost all rejected. On its return to the Lords, with a threat that rejection must be followed by "a large and prompt creation of peers", the Bill was passed by the Lords on 10 August and the royal assent was given, with the consent of both Houses, eight days later.

20. It is not necessary to examine in any detail the passage of the Bill through Parliament. Two points are, however, noteworthy. First, the clause of the Bill which became section 2(1) of the Act had at first made reference only to "any Public Bill other than a Money Bill". The Lords amended this to read "other than a Money Bill or a Bill containing any provisions to extend the maximum duration of Parliament beyond five years". On 8 August 1911, just before the final return of the Bill to the Lords, the Commons accepted this amendment. Secondly, during the passage of the Bill through Parliament a number of attempts were made (as they had been in the earlier debates on the resolutions) to insert words after "other than a Money Bill": "or a Bill to establish a separate Parliament and Executive for Ireland" (rejected 24 April 1911, HC Hansard col 1434); "or a Bill affecting the continued existence or the prerogative rights, and powers of the Crown" (rejected 24 April 1911, HC Hansard col 1466); "or Bill for modifying this Act" (rejected 24 April 1911, HC Hansard, col 1498); "or a Bill which contains any provision affecting the qualification for the exercise of the parliamentary franchise or affecting the right to vote at any parliamentary election" (rejected 24 April 1911, HC Hansard col 1504); "or a Bill which contains any provision which affects the Constitution of the House of Lords" (rejected 24 April 1911, col 1516); "or a Bill affecting the establishment of the Church of England or the temporalities thereof, or

the Church of Scotland and the temporalities thereof" (rejected 24 April 1911, HC Hansard col 1538); "or a Bill affecting the independence of the judiciary or restricting the rights of the subject to trial by jury or appeal to a higher court" (rejected 24 April 1911, HC Hansard col 1548); "is passed with a majority of at least one hundred" (rejected 25 April 1911, HC Hansard col 1634). None of these amendments was acceptable to the majority in the Commons.

21. I can now return to the appellants' propositions summarised in para 7 above, which I shall consider in turn.

(1) *The status of legislation passed under the 1911 Act*

22. Sir Sydney submits that whereas legislation duly enacted by the Crown in Parliament commands general obedience and recognition as such, and is the ultimate political fact upon which the whole system of legislation hangs, legislation made under the 1911 Act is required to state on its face that it is made by the authority of the 1911 Act. Such legislation is not primary because it depends for its validity on a prior enactment, and legislation is not primary where that is so. Legislation under the 1911 Act is not similar to other delegated or subordinate legislation, such as statutory instruments and bylaws made under the authority of statute, but it is delegated or subordinate or derivative in the sense that its validity is open to investigation in the courts, which would not be permissible in the case of primary legislation. For this submission, necessarily abbreviated in summary, Sir Sydney cites an impressive range of authority including HLA Hart, *The Concept of Law* (Oxford, 1961), chaps 5-6; *Craies on Legislation*, 8th edn (2004), para 1.2.1; Bennion, *Statutory Interpretation*, 4th edn (2002), section 50; H W R Wade, *Constitutional Fundamentals* (1980), pp 27-28 and "The Basis of Legal Sovereignty" [1955] CLJ 172, 193-194; Wade and Forsyth, *Administrative Law*, 9th edn (2004), pp 26-27; Hood Phillips and Jackson, *Constitutional and Administrative Law* (8th edn, 2001), pp 79-80; Lord Donaldson of Lymington, formerly Master of the Rolls (HL Hansard, 19 January 2001, col 1309); and *Pickin v British Railways Board* [1974] AC 765.

23. The Divisional Court rejected this argument for reasons very clearly and succinctly given by Maurice Kay LJ (paras 23-25 of his judgment) and Collins J (paras 39-45). The Court of Appeal, in part at least, accepted it (paras 30-48).

24. Despite the skill with which the argument is advanced and the respect properly due to the authorities relied on, I am of opinion that the Divisional Court was right to reject it, for two main reasons. First, sections 1(1) and 2(1) of the 1911 Act provide that legislation made in accordance with those provisions respectively shall "become an Act of Parliament on the Royal Assent being signified". The meaning of the expression "Act of Parliament" is not doubtful, ambiguous or obscure. It is as clear and well understood as any expression in the lexicon of the law. It is used, and used only, to denote primary legislation. If there were room for doubt, which to my mind there is not, it would be resolved by comparing the language of the second resolution, quoted in para 15 above, with the language of section 2(1) as enacted. The resolution provided that a measure meeting the specified conditions "shall become Law without the consent of the House of Lords on the Royal Assent being declared". Section 2(1), as just noted, provides that a measure shall become an Act of Parliament. The change can only have been made to preclude just such an argument as the appellants are advancing. The 1911 Act did, of course, effect an important constitutional change, but the change lay not in authorising a new form of sub-primary parliamentary legislation but in creating a new way of enacting primary legislation.

25. I cannot, secondly, accept that the 1911 Act can be understood as a delegation of legislative power or authority by the House of Lords, or by Parliament, to the House of Commons. The implausibility of this interpretation can perhaps be most readily seen in relation to money bills. As noted in para 13, the Lords' rejection of the Finance Bill was a departure from convention and precedent because supply had come to be recognised as the all but exclusive preserve of the Commons. Section 1 of the 1911 Act involved no delegation of legislative power and authority to the Commons but a statutory recognition of where such power and authority in relation to supply had long been understood to lie. It would be hard to read the very similar language in section 2 as involving a delegation either, since the overall object of the Act was not to enlarge the powers of the Commons but to restrict those of the Lords. This is, in my opinion, clear from the historical context and from the Act itself. The first resolution (see para 15 above) was that "it is expedient that the House of Lords be disabled by Law from …" The second resolution (para 15 above) was that "it is expedient that the powers of the House of Lords, as respects Bills other than Money Bills, be restricted by Law …" The effect of section 1 of the 1911 Act is to restrict the power of the Lords to amend or reject money bills. The effect of section 2(1) is, despite the different conditions, the same, and is aptly summarised in the sidenote: "Restriction of the powers of the House of Lords as to Bills other than Money Bills". The certification of

a money bill by the Speaker under section 1 and of a bill other than a money bill under section 2 is mandatory, and the presentation of a bill to the monarch for the royal assent to be signified under sections 1(1) and 2(1) is automatic, "unless the House of Commons direct to the contrary". If it be permissible to resort to the preamble of the 1911 Act, one finds reference to the expediency of making "such provision as in this Act appears for restricting the existing powers of the House of Lords". The overall object of the 1911 Act was not to delegate power: it was to restrict, subject to compliance with the specified statutory conditions, the power of the Lords to defeat measures supported by a majority of the Commons, and thereby obviate the need for the monarch to create (or for any threat to be made that the monarch would create) peers to carry the government's programme in the Lords. This was a procedure necessarily unwelcome to a constitutional monarch, rightly anxious to avoid any appearance of participation in politics, and one which constitutionally-minded politicians were accordingly reluctant to invoke.

26. It is true, as the appellants point out, that section 4 of the 1911 Act requires the words of enactment of a Bill presented to the monarch under section 1 or section 2 of the Act, to record that the measure is enacted "in accordance with the Parliament Act 1911, and by authority of the same", and reference is now added to the 1949 Act also. But the inclusion of these words does not in my opinion mean that measures so enacted should be regarded as delegated or subordinate. The standard words of enactment make reference to the Lords Spiritual and Temporal and Commons and provide for the measure to be enacted "by the authority of the same". This language is plainly inappropriate where the Lords have not consented, and it is unsurprising that reference is instead made to the measure which makes it lawful to enact a measure in the absence of such consent. I do not think this reference can support the weight of argument the appellants seek to build on it.

27. Like the Court of Appeal (see paras 11-13 of its judgment), I feel some sense of strangeness at the exercise which the courts have (with the acquiescence of the Attorney General) been invited to undertake in these proceedings. The authority of *Pickin v British Railways Board* [1974] AC 765 is unquestioned, and it was there very clearly decided that "the courts in this country have no power to declare enacted law to be invalid" (per Lord Simon of Glaisdale at p 798). I am, however, persuaded that the present proceedings are legitimate, for two reasons. First, in *Pickin*, unlike the present case, it was sought to investigate the internal workings and procedures of Parliament to demonstrate that it had been misled and so had proceeded on a false basis. This was held to

be illegitimate: see Lord Reid at p 787, Lord Morris of Borth-y-Gest at p 790, Lord Wilberforce at p 796, Lord Simon of Glaisdale at p 800 and Lord Cross of Chelsea at p 802. Lord Reid quoted with approval a passage of Lord Campbell's opinion in *Edinburgh and Dalkeith Railway Co v Wauchope* (1842) 8 Cl & F 710, 725, where he said:

> "All that a Court of Justice can do is to look to the Parliamentary roll: if from that it should appear that a bill has passed both Houses and received the Royal assent, no Court of Justice can inquire into the mode in which it was introduced into Parliament, nor into what was done previous to its introduction, or what passed in Parliament during its various stages through both Houses".

Here, the court looks to the parliamentary roll and sees bills (the 1949 Act, and then the 2004 Act) which have not passed both Houses. The issue concerns no question of parliamentary procedure such as would, and could only, be the subject of parliamentary inquiry, but a question whether, in Lord Simon's language, these Acts are "enacted law". My second reason is more practical. The appellants have raised a question of law which cannot, as such, be resolved by Parliament. But it would not be satisfactory, or consistent with the rule of law, if it could not be resolved at all. So it seems to me necessary that the courts should resolve it, and that to do so involves no breach of constitutional propriety.

(2) *The scope of section 2(1)*

28. Sir Sydney submits that, in accordance with long-established principles of statutory interpretation, the courts will often imply qualifications into the literal meaning of wide and general words in order to prevent them having some unreasonable consequence which Parliament could not have intended. He cites such compelling authority as *Stradling v Morgan* (1560) 1 Plow 199; *R (Edison First Power Limited) v Central Valuation Officer* [2003] UKHL 20, [2003] 4 All ER 209, para 25; *R v Secretary of State for the Home Department, Ex p Pierson* [1998] AC 539, 573-575, 588; *R v Secretary of State for the Home Department, Ex p Simms* [2000] 2 AC 115, 131; and *R (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax* [2003] 1 AC 563, paras 8, 44-45. He relies on these authorities as establishing (as it is put in the appellants' printed case)

> "that general words such as section 2(1) should not be read as authorising the doing of acts which adversely affect the basic principles on which the law of the United Kingdom is based in the absence of clear words authorising such acts. There is no more fundamental principle of law in the UK than the identity of the sovereign body. Section 2(1) should not be read as modifying the identity of the sovereign body unless its language admits of no other interpretation".

The Divisional Court did not accept that the 1911 Act, properly construed, precluded use of the procedure laid down in that Act to amend the conditions specified in section 2: see Maurice Kay LJ in paras 17-19 of his judgment, and Collins J in paras 41-44 of his. The Court of Appeal took a different view (paras 40-41); it concluded that section 2(1) conferred powers which could be used for some purposes but not others (paras 42-45).

29. The Attorney General does not, I think, take issue with the general principles relied on by the appellants, which are indeed familiar and well-established. But he invites the House to focus on the language of the 1911 Act, and in this he is right, since a careful study of the statutory language, read in its statutory and historical context and with the benefit of permissible aids to interpretation, is the essential first step in any exercise of statutory interpretation. Here, section 2(1) makes provision, subject to three exceptions, for any public bill which satisfies the specified conditions to become an Act of Parliament without the consent of the Lords. The first exception relates to money bills, which are the subject of section 1 and to which different conditions apply. The second relates to bills containing any provision to extend the maximum duration of Parliament beyond five years. I consider this exception in detail below. The third relates to bills for confirming a provisional order, which do not fall within the expression "public bill" by virtue of section 5. Subject to these exceptions, section 2(1) applies to "any" public bill. I cannot think of any broader expression the draftsman could have used. Nor can I see any reason to infer that "any" is used in a sense other than its colloquial, and also its dictionary, sense of "no matter which, or what". The expression is repeatedly used in this sense in the 1911 Act, and it would be surprising if it were used in any other sense: see section 1(2) ("any of the following subjects", "any such charges", "any loan", "those subjects or any of them", "any taxation, money, or loan"); section 2(4) ("any amendments", "any further amendments", "any such suggested amendments"); section 3 ("Any certificate", "any court of law"); section 4(2) ("Any alteration"); section

5 ("any Bill"). "Any" is an expression used to indicate that the user does not intend to discriminate, or does not intend to discriminate save to such extent as is indicated.

30. Sir Sydney is of course correct in submitting that the literal meaning of even a very familiar expression may have to be rejected if it leads to an interpretation or consequence which Parliament could not have intended. But in this case it is clear from the historical background that Parliament did intend the word "any", subject to the noted exceptions, to mean exactly what it said. Sir Henry Campbell-Bannerman's resolution of June 1907, adopted by the Commons before rejection of the 1909 Finance Bill, referred quite generally to "Bills passed by this House" (para 12 above). The second of the resolutions adopted on 14 April 1910 (para 15 above) referred to "Bills other than Money Bills". Attempts to amend the resolution so as to enlarge the classes of bill to which the new procedure would not apply were all rejected (para 15 above). During the constitutional Conference which followed the death of the King there was provisional agreement to exclude "the Act which is to embody this agreement" from application of the new procedure, but such a provision was never included in the Bill (para 17 above). During the passage of the Bill through Parliament, there were again repeated attempts to enlarge the classes of bill to which the new procedure would not apply, but save for the amendment related to bills extending the maximum duration of Parliament they were uniformly rejected (para 20 above). The suggestion that Parliament intended the conditions laid down in section 2(1) to be incapable of amendment by use of the Act is in my opinion contradicted both by the language of the section and by the historical record. This was certainly the understanding of Dicey, who was no friend of the 1911 Act. In the first edition of his *Introduction* after 1911 (the 8th edition, 1915), he wrote at p xxiii:

> "The simple truth is that the Parliament Act has given to the House of Commons, or, in plain language, to the majority thereof, the power of passing any Bill whatever, provided always that the conditions of the Parliament Act, section 2, are complied with."

31. The Court of Appeal concluded (in paras 98-100 of its judgment) that there was power under the 1911 Act to make a "relatively modest and straightforward amendment" of the Act, including the amendment made by the 1949 Act, but not to making "changes of a fundamentally different nature to the relationship between the House of Lords and the

Commons from those which the 1911 Act had made". This was not, as I understand, a solution which any party advocated in the Court of Appeal, and none supported it in the House. I do not think, with respect, that it can be supported in principle. The known object of the Parliament Bill, strongly resisted by the Conservative party and the source of the bitterness and intransigence which characterised the struggle over the Bill, was to secure the grant of Home Rule to Ireland. This was, by any standards, a fundamental constitutional change. So was the disestablishment of the Anglican Church in Wales, also well known to be an objective of the government. Attempts to ensure that the 1911 Act could not be used to achieve these objects were repeatedly made and repeatedly defeated (paras 15 and 20 above). Whatever its practical merits, the Court of Appeal solution finds no support in the language of the Act, in principle or in the historical record. Had the government been willing to exclude changes of major constitutional significance from the operation of the new legislative scheme, it may very well be that the constitutional Conference of 1910 would not have broken down and the 1911 Act would never have been enacted.

32. It is unnecessary for resolution of the present case to decide whether the 1911 (and now the 1949) Act could be relied on to extend the maximum duration of Parliament beyond five years. It does not seem likely that such a proposal would command popular and parliamentary support (save in a national emergency such as led to extensions, by consent of both Houses, during both world wars), knowledge of parliamentary tyranny during the Long Parliament would weigh against such a proposal and article 3 of the First Protocol to the European Convention on Human Rights now requires elections at reasonable intervals. The Attorney General, however, submits that the 1911, and now the 1949, Act could in principle be used to amend or delete the reference to the maximum duration of Parliament in the parenthesis to section 2(1), and that a further measure could then be introduced to extend the maximum duration. Sir Sydney contends that this is a procedure which section 2(1) very clearly does not permit, stressing that the timetable in section 2(1) was very closely linked to the maximum duration of Parliament which the Act laid down. It is common ground that section 2(1) in its unamended form cannot without more be relied on to extend the maximum duration of Parliament, because a public bill to do so is outside the express terms of section 2(1). But there is nothing in the 1911 Act to provide that it cannot be amended, and even if there were such a provision it could not bind a successor Parliament. Once it is accepted, as I have accepted, that an Act passed pursuant to the procedures in section 2(1), as amended in 1949, is in every sense an Act of Parliament having effect and entitled to recognition as such, I see no basis in the language of section 2(1) or in

principle for holding that the parenthesis in that subsection, or for that matter section 7, are unamendable save with the consent of the Lords. It cannot have been contemplated that if, however improbably, the Houses found themselves in irreconcilable deadlock on this point, the government should have to resort to the creation of peers. However academic the point may be, I think the Attorney General is right.

(3) *Enlargement of powers*

33. Sir Sydney relies on what Hood Phillips and Jackson describe as the general principle of logic and law that delegates (the Queen and Commons) cannot enlarge the authority delegated to them: *Constitutional and Administrative Law*, 8th edn (2001), p 80. He also prays in aid the observations of Lord Donaldson of Lymington speaking extra-judicially in support of his Parliament Acts (Amendment) Bill (HL Hansard, 19 January 2001, cols 1308-1309):

> "As your Lordships well know, it is a fundamental tenet of constitutional law that, *prima facie*, where the sovereign Parliament – that is to say, the Monarch acting on the advice and with the consent of both Houses of Parliament – delegates power to legislate, whether to one House unilaterally, to the King or Queen in Council, to a Minister or to whomsoever, the delegate cannot use that power to enlarge or vary the powers delegated to him. The only exception is where the primary legislation, in this case the 1911 Act, expressly authorises the delegate to do so. In other words there has to be a Henry VIII clause."

To support his argument Sir Sydney cites a number of cases relating to colonial and Dominion legislatures, the most significant of these cases perhaps being *R v Burah* (1878) 3 App Cas 889, 904-905; *Taylor v Attorney General of Queensland* (1917) 23 CLR 457; *McCawley v The King* [1920] AC 691, 703-704, 710-711; *Minister of the Interior v Harris* 1952 (4) SA 769, 790; *Clayton v Heffron* (1960) 105 CLR 214 and *Bribery Commissioner v Ranasinghe* [1965] AC 172, 196-198. In written submissions in reply this argument was elaborated and the authorities further analysed.

34. The Divisional Court was not persuaded by this line of argument. Maurice Kay LJ, with whom Collins J agreed, said in para 27 of his judgment:

> "Moreover, the whole line of authority relied upon by the claimants, dealing as it does with the relationship between the Westminster Parliament and the devolved legislatures of former colonies with (in Lord Birkenhead's phrase – *McCawley*, p 703) "controlled constitutions", is not strictly analogous to the context of the Parliament Acts. In my judgment there is no established principle applicable to this case which denies a power of amendment of the earlier statute in the absence of the express conferral of one specifically dealing with amendment. What is important is the language of the earlier statute. I do not doubt that it is sufficient to permit amendment in the manner that was achieved by the 1949 Act."

35. The Court of Appeal (para 62) regarded this approach as being an over-simplification, but reached the same conclusion. It accepted (para 66) the Attorney General's submission that, although in many instances the relevant legislation discussed in the cases contained an express power to make amendments to the constitution, the authorities did not establish a principle that such constitutions may not be appropriately amended without such an express power. It found (para 68) no constitutional principle or principle of statutory construction which prevents a legislature from altering its own constitution by enacting alterations to the very instrument from which its powers derive by virtue of powers in that same instrument if the powers, properly understood, extend that far. The Court of Appeal adopted (para 69) the opinion of Lord Pearce on behalf of the Privy Council in *Bribery Commissioner v Ranasinghe*, above, at p 198, where he held that a constitution can be altered or amended by the legislature

> "if the regulating instrument so provides and if the terms of those provisions are complied with: and the alteration or amendment may include the change or abolition of those very provisions."

The question was one of construction (para 69), and the Court of Appeal did not detect anything in the language of section 2(1) which would prevent the amendment made by the 1949 Act.

36. I cannot accept the appellants' submissions on this issue, for three main reasons. First, for reasons given in para 25 above, the 1911 Act did not involve a delegation of power and the Commons, when invoking the 1911 Act, cannot be regarded as in any sense a subordinate body. Secondly, the historical context of the 1911 Act was unique. The situation was factually and constitutionally so remote from the grant of legislative authority to a colonial or Dominion legislature as to render analogies drawn from the latter situation of little if any value when considering the former. Thirdly, the Court of Appeal distilled from the authorities what is in my judgment the correct principle. The question is one of construction. There was nothing in the 1911 Act to preclude use of the procedure laid down by the Act to amend the Act. As explained in paras 29-32 above, the language of the Act was wide enough, as the Divisional Court and the Court of Appeal held, to permit the amendment made by the 1949 Act, and also (in my opinion) to make much more far-reaching changes. For the past half century it has been generally, even if not universally, believed that the 1949 Act had been validly enacted, as evidenced by the use made of it by governments of different political persuasions. In my opinion that belief was well-founded.

(4) *The scope of the power to amend the conditions to which section 2(1) is subject*

37. This submission is in essence a conclusion drawn from the propositions which precede it: see the summary in para 7 above. It necessarily follows from the reasons I have given for rejecting those propositions that I cannot accept that section 2(1) of the 1911 Act "does not authorise the Commons to remove, attenuate or modify in any respect any of the conditions on which its law-making power is granted". As should be clear, I reject the premises on which that conclusion is founded. If the appellants were right, it would, I think, follow that the 1911 Act could not be invoked, for instance, to shorten (or even, perhaps, lengthen) the period allowed in section 1(1) for passing money bills, or to provide that a bill for confirming a provisional order should rank as a public bill: a government bent on achieving such an object with a clear and recent mandate to do so would have either to accept the veto of the Lords or resort to the creation of peers. That would seem an extravagant, and unhistorical, intention to attribute to Parliament.

(5) *The significance of the 1949 Act*

38. I agree with the appellants that the change made by the 1949 Act was not, as the Court of Appeal described it (para 98), "relatively modest", but was substantial and significant. But I also agree with them and also the Attorney General that the breadth of the power to amend the 1911 Act in reliance on section 2(1) cannot depend on whether the amendment in question is or is not relatively modest. I have given my reasons for sharing that conclusion in paras 29-32 above. Such a test would be vague in the extreme, and impose on the Speaker a judgment which Parliament cannot have contemplated imposing.

Conclusion

39. I would dismiss this appeal for the reasons I have given. The 1949 Act and the 2004 Act are Acts of Parliament of full legal effect. In so concluding I take no account of any challenge under the Human Rights Act 1998 to the compatibility of the 2004 Act with the European Convention on Human Rights. That is not before the House. I would invite the parties to make written submissions on costs within 14 days.

40. I have reached my conclusion without reliance on statements made in the course of parliamentary debate on the 1911 or the 1949 Act. Were the language of the 1911 Act ambiguous or obscure it would have been necessary to decide, in the light of *Pepper v Hart* [1993] AC 593 and later authority, whether resort to Hansard would be permissible. In the event, I do not find the language of the 1911 Act to be ambiguous or obscure. It is similarly unnecessary to consider what, if any, legal effect flows from parliamentary approbation of the 1949 Act, as evidenced by amendment and consolidation of Acts passed under it.

41. It has been a source of concern to some constitutionalists (among them the late Lord Scarman) that the effect of the 1911, and more particularly the 1949, Act has been to erode the checks and balances inherent in the British constitution when Crown, Lords and Commons were independent and substantial bases of power, leaving the Commons, dominated by the executive, as the ultimately unconstrained power in the state. There is nothing novel in this perception. What, perhaps, is novel is the willingness of successive governments of different political colours to invoke the 1949 Act not for the major constitutional purposes for which the 1911 Act was invoked (the Government of Ireland Act

1914, the Welsh Church Act 1914, the 1949 Act) but to achieve objects of more minor or no constitutional import (the War Crimes Act 1991, the European Parliamentary Elections Act 1999, the Sexual Offences (Amendment) Act 2000 and now the 2004 Act). There are issues here which merit serious and objective thought and study. But it would be quite inappropriate for the House in its judicial capacity to express or appear to express any opinion upon them, and I do not do so.

LORD NICHOLLS OF BIRKENHEAD

My Lords,

42. The Hunting Act 2004 banned hunting foxes with dogs. It was enacted amidst fierce controversy. The Bill aroused strong feelings, both for and against. Thousands marched through the streets of London in protest. The House of Commons and the House of Lords could not see eye to eye. Neither would give way. So the Commons pushed through the Hunting Bill without the consent of the Lords, by resort to the procedure prescribed by the Parliament Act 1911 as amended by the Parliament Act 1949.

43. Opposition to the new law did not stop there. Political opposition was followed by legal challenge. The Hunting Bill received the royal assent on 18 November 2004. On the following day the claimants started these judicial review proceedings. Other proceedings were also started.

44. In the present proceedings the legal challenge is not based on the content of the new Act. The challenge is to the validity of the parliamentary procedure by which the Act reached the statute book. This procedure appeared from the words of enactment. The words of enactment, set out on the face of the Act, lacked the customary reference to enactment by the Sovereign 'by and with the advice and consent of the Lords Spiritual and Temporal and Commons'. Instead the Hunting Act 2004 was made by the 'Queen's most Excellent Majesty by and with the advice and consent of the Commons in accordance with the provisions of the Parliament Acts 1911 and 1949'. There was no mention of the advice or consent of the Lords, either Spiritual or Temporal.

45. The first claimant, Mr John Jackson, is the chairman of the Countryside Alliance, an organisation which campaigns on hunting with dogs and other rural issues. He brings these proceedings in his personal capacity. The second claimant, Mr Patrick Martin, is a professional huntsman employed by the Bicester Hunt. The third claimant, Mrs Harriet Hughes, works with her husband and son in a family farriery business. The claimants seek a decision that the Parliament Act 1949 was invalid and ineffective to amend the provisions of the Parliament Act 1911 and that, consequently, the Hunting Act 2004, which was enacted in accordance with the 1911 Act as amended by the 1949 Act, is invalid.

The issue in this case

46. The central issue of law raised by this appeal is a question of interpretation of section 2 of the Parliament Act 1911. The issue can be identified quite shortly, although the parties' submissions ranged widely. The 1911 Act, section 2, prescribed circumstances where in future a Bill could become law without the consent of the House of Lords. In future, with stated exceptions, the approval of the House of Lords to a public Bill could be dispensed with if the Bill was passed by the Commons but rejected by the Lords in three successive sessions, two years having elapsed between the date of the second reading in the Commons in the first of those sessions and the date when the Bill passed the Commons in the third. In other words, the Lords could hold up legislation for three sessions spread over a minimum period of two years from the effective introduction of a Bill. The 1911 Act was enacted with the consent of both Houses.

47. In 1949 the Parliament Act of that year reduced from three to two the number of sessions in which a Bill had to pass the Commons and from two to one the number of years which had to elapse. But, unlike the 1911 Act, the 1949 Act was not passed by both Lords and Commons. Instead the 1949 Act was passed by the Commons alone and enacted in reliance on the procedure set in place by section 2 of the 1911 Act.

48. In these proceedings the claimants challenge the lawfulness of the use of the 1911 Act procedure for this purpose. The effect of the 1911 Act was to restrict the power of the House of Lords and, correspondingly, to increase in practice the power of the House of Commons. This enlarged power of the Commons, it is said, did not

enable the Commons to enlarge its own power still more by further restricting the delaying power of the Lords. A power given in limited terms cannot be used to enlarge itself. The 1911 Act contained no provision enabling this to be done. Further restriction on the power of the Lords required their consent. Unilateral extension of the powers of the Commons was outside the scope of section 2 of the 1911 Act. Otherwise the limitations set in place by the 1911 Act would be legally meaningless. Such a unilateral extension was no more within the legal power of the Commons than an individual is able to elevate himself by tugging on his own bootstraps.

The jurisdiction of the courts

49. Before considering this issue of interpretation I must first say something about the jurisdiction of the court to entertain these proceedings at all. These proceedings are highly unusual. At first sight a challenge in court to the validity of a statute seems to offend the fundamental constitutional principle that courts will not look behind an Act of Parliament and investigate the process by which it was enacted. Those are matters for Parliament, not the courts. It is for each House to judge the lawfulness of its own proceedings. The authorities establishing this principle can be found gathered in *Pickin v British Railways Board* [1974] AC 765. This principle is a reflection of article 9 of the Bill of Rights 1689: '… proceedings in Parliament ought not to be impeached or questioned in any court'.

50. In accordance with this principle it would not be open to a court to investigate the conduct of the proceedings in Parliament on the Bill for the 1949 Act to see whether they complied with section 2 of the 1911 Act. Indeed, the 1911 Act makes express provision to this effect. Section 2(2) provides for the Speaker to endorse on a Bill presented to His Majesty for assent pursuant to section 2 a certificate signed by him that the provisions of the section have been duly complied with. Section 3 provides this certificate shall be conclusive 'for all purposes' and 'shall not be questioned in any court of law'.

51. In the present case the claimants do not dispute this constitutional principle. Nor do they seek to gainsay the conclusiveness of the certificate endorsed by the Speaker on the Bill for the Parliament Act 1949 as required by section 2(2) of the 1911 Act. Their challenge to the lawfulness of the 1949 Act is founded on a different and prior ground: the proper interpretation of section 2(1) of the 1911 Act. On this issue the court's jurisdiction cannot be doubted. This question of statutory

interpretation is properly cognisable by a court of law even though it relates to the legislative process. Statutes create law. The proper interpretation of a statute is a matter for the courts, not Parliament. This principle is as fundamental in this country's constitution as the principle that Parliament has exclusive cognisance (jurisdiction) over its own affairs.

The Parliament Act 1911

52. For centuries the unwritten constitution of this country had at its heart the principle that legislation requires the concurrence of the Sovereign, the House of Lords and the House of Commons. As every student of modern history knows, early in the 20th century the political imbalance in the composition of these two chambers of Parliament gave rise to a prolonged constitutional crisis. The legislative programme of successive Liberal governments was thwarted time and again by sustained opposition from the Conservative and Unionist dominated House of Lords. The Lords rejected items as important as Gladstone's Irish 'Home Rule' Bill in 1893. Matters came to a head with the rejection of Lloyd George's Finance Bill ('the peoples' budget') of 1909. A government cannot govern without the supply of money.

53. The crisis was resolved eventually by the Parliament Act 1911. This Act was passed by the House of Lords under overt threat from the government to create sufficient Liberal peers to achieve the Bill's passage through the Lords if opposition in that House continued.

54. The new procedure was then used to enact two important constitutional measures, on 'Home Rule' in Ireland and the disestablishment of the Anglican Church in Wales: the Government of Ireland Act 1914 and the Welsh Church Act 1914. The third statute enacted by use of this procedure was the Act whose validity is now under challenge: the Parliament Act 1949.

The scope of the 1911 Act: the exceptions from section 2

55. Against this historical background, set out more fully by your Lordships, I turn to the interpretation of the 1911 Act. The starting point is to note the express limitations on the types of Bills falling within section 2. The opening words of section 2(1) read:

> 'If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in three successive sessions ..[etc]'

56. Thus, to be within section 2 a Bill must be a public Bill. A private Bill is outside the scope of the section. Section 5 clarifies that in this context a provisional order Bill does not count as a public Bill. This type of legislation seems now to have fallen into disuse. Further the Bill must not be a money Bill. Money Bills are dealt with separately in section 1. Also excluded is any Bill containing a provision extending the life of a Parliament beyond five years. In summary, leaving aside money Bills, for which the Act makes separate provision, the sole significant exception from the generality of 'any public Bill' in section 2 is a Bill extending the duration of Parliament.

57. This latter exclusion is a provision of major constitutional importance. Section 7 of the 1911 Act substituted five years for seven years as the time fixed for the maximum duration of Parliament under the Septennial Act 1715. The wording of section 2(1) of the 1911 Act makes clear beyond a peradventure that when enacting this statute Parliament intended the Commons should not be able, by use of the new section 2 procedure, unilaterally to extend the duration of Parliament beyond this newly-reduced limit of five years. The political party currently in control of the House of Commons, whichever it might be, could not use its majority in that House as the means whereby to postpone accountability to the electorate. The government could not, of itself, prolong its period in office beyond a maximum of five years. Despite the 1911 Act, such an extension would still require the approval of the House of Lords.

58. So much is apparent from the express language of the Act. But would it be open to the House of Commons to do indirectly by two stages what the House cannot do directly in one stage? In other words, could the section 2 procedure be used to force through a Bill deleting from section 2 the words 'or a Bill containing any provision to extend the maximum duration of Parliament beyond five years'? If this were possible, the Commons could then use the section 2 procedure to pass a Bill extending the duration of Parliament.

59. In my view the answer to these questions is a firm 'no'. The Act setting up the new procedure expressly excludes its use for legislation

extending the duration of Parliament. That express exclusion carries with it, by necessary implication, a like exclusion in respect of legislation aimed at achieving the same result by two steps rather than one. If this were not so the express legislative intention could readily be defeated.

60. Thus far, therefore, it is apparent that in one significant respect there is to be found in section 2 an implied restriction on the type of legislation for which the new procedure may be employed. The crucial question for the purposes of this appeal is whether any other restriction is implicit in section 2.

61. I consider there is none. Section 2 specifically excludes from its scope legislation extending the duration of Parliament. The implied exclusion, or restriction, discussed above is based on the existence of this express exclusion. This *implied* restriction is necessary in order to render the *express* restriction effectual. It is ancillary to the express exclusion. Section 2 contains no other significant express restriction on the types of legislation for which the new procedure may be employed. I can see no warrant for implying into section 2 any further restriction in this regard.

62. In particular, there is no express exclusion of a Bill amending the terms of section 2 itself. On the face of the Act section 2 is as much applicable to a Bill of the latter character as it is to any other public Bill (save for those specifically excepted). Lacking the base afforded by an express exception, I can see no good reason for implying an exception in respect of such a Bill. The 1911 Act marked the legal recognition of the primacy of the House of Commons over the House of Lords. This primacy is to be cut down only to the extent the statute so provides either expressly or by necessary implication.

'Delegated legislation'

63. This interpretation of section 2 provides the answer to the claimants' submission that legislation made under the 1911 Act is 'delegated legislation' and that those to whom power to make legislation is delegated cannot enlarge that power unless there are express words of authorisation. No doubt, as a matter of jurisprudential analysis, the source of validity of legislation made under the 1911 Act is not quite the same as the source of validity of legislation enacted by the monarch with

the advice and consent of both Houses of Parliament. In the latter case the validity of the legislation does not depend on satisfying the criteria set by some identifiable anterior legal rule. An Act passed by both Houses is accepted by the courts as speaking for itself. In the former case, of a statute enacted pursuant to the 1911 Act procedure, the legislation must accord with the requirements of that Act.

64. In the present context, however, this difference in source of legal validity leads nowhere. Ultimately, in all these cases the question is one of interpretation of the scope of the enabling power; here, section 2 of the 1911 Act. As to that, the product of the section 2 procedure is an Act of Parliament. Section 2 so provides. To describe an Act of Parliament made by this procedure as 'delegated' or 'subordinate' legislation, with all the connotations attendant on those expressions, would be an absurd and confusing mis-characterisation. It would be equally inappropriate to liken the House of Commons to a 'delegate' or 'agent' when applying the 1911 Act procedure. The appropriate approach, rather, is to recognise that in enacting section 2 the intention of Parliament was to create a second, parallel route by which, with the stated exceptions ('other than …'), any public Bill introduced in the Commons could become law as an Act of Parliament. It would be inconsistent with this intention to interpret section 2 as subject to an inherent, over-arching limitation comparable to that applicable to delegated legislation.

Hansard: the need for transparency

65. If required, confirmation of this interpretation of section 2 is readily to hand, from two sources. The first comprises ministerial statements, made during the parliamentary passage of the Bill for the 1911 Act, on the purpose sought to be achieved by section 2. In some quarters the *Pepper v Hart* principle is currently under something of a judicial cloud. In part this is due to judicial experience that references to Hansard seldom assist. In part this seems also to be due to continuing misunderstanding of the limited role ministerial statements have in this field. This is a matter I explored in *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, 399, and *Wilson v First County Trust Ltd (No 2)* [2004] 1 AC 816, 841. Suffice to say, it would be unfortunate if *Pepper v Hart* were now to be sidelined. The *Pepper v Hart* ruling is sound in principle, removing as it did a self-created judicial anomaly. There are occasions when ministerial statements are useful in practice as an interpretive aid, perhaps especially as a confirmatory aid.

66. The present case is such an occasion. In 1911 amendments were moved in both Houses of Parliament to the effect that a Bill for amending the terms of the 1911 Act was excepted from section 2. In successfully resisting these amendments ministers made plain that, apart from money Bills, the rule laid down in section 2 was intended to be applicable to all legislation: see, in the House of Commons, the Prime Minister (Mr Asquith), Hansard HC 24 April 1911, cols 1473 and 1494 and, in the House of Lords, Viscount Morley of Blackburn and Viscount Haldane, Hansard HL 29 June 1911, cols 1188 and 1196. (At a later stage the Bill was amended to add the exception in respect of a Bill containing a provision extending the duration of Parliament.) These ministerial statements are useful in practice as confirmatory evidence of the object sought to be achieved by section 2. Transparency requires this should be recognised openly.

Subsequent legislation

67. The second source of confirmation is the use Parliament has subsequently made of the amended section 2 procedure. In addition to the Hunting Act 2004 the procedure prescribed by the 1911 Act as amended by the 1949 Act has been used to enact three statutes: the War Crimes Act 1991, the European Parliamentary Elections Act 1999 and the Sexual Offences (Amendment) Act 2000. Each of these Acts has itself been recognised and treated as valid legislation in later statutes enacted by the Sovereign with the consent of both Houses. Details appear in the judgment of the Court of Appeal [2005] QB 579, 606, paras 93 to 96.

68. In this way both Houses of Parliament have unequivocally and repeatedly recognised the validity and effectiveness of the 1949 Act. Both Houses have recognised that the procedure prescribed by the 1911 Act was effectually amended by the 1949 Act. Both Houses have acted on this footing. In the ordinary course the enactment of legislation on the basis of a particular interpretation of earlier legislation does not preclude the courts from ruling that the parliamentary understanding was mistaken: see *West Midland Baptist (Trust) Association Inc v Birmingham Corporation* [1970] AC 874, 898, per Lord Reid. But in the present case the involvement of the legislature goes much deeper. In the present case the later legislation, for instance, the legislation amending the Sexual Offences (Amendment) Act 2000, simply could not have had effect if the earlier legislation was not validly enacted.

69. Moreover, and importantly, the Attorney General was right when he submitted that the impact of the 1949 Act has been much wider than its use on four specific occasions. For the last half century legislative business has been conducted in both Houses against a background awareness that the 1911 Act procedure as amended in 1949 is available to be used should this become necessary and be appropriate. This general understanding of the effect of the 1911 Act, coupled with the actual use of the amended procedure on several occasions, is a strong pointer away from the claimants' interpretation of the 1911 Act. (There is, I might add, an analogy here with the use of parties' subsequent conduct as an aid to the interpretation of their contract. In principle such conduct is, or should be, admissible for this purpose: see (2005) 121 LQR 577, 588-589.)

70. For these reasons I agree with all your Lordships that this appeal must fail. The Bill to the Parliament Act 1949 was within the scope of section 2 of the 1911 Act. From this it follows that the legal challenge to the enactment of the Hunting Act 2004 also fails.

LORD STEYN

My Lords,

1. The Dominance of the Government.

71. The power of a government with a large majority in the House of Commons is redoubtable. That has been the pattern for almost 25 years. In 1979, 1983 and 1987 Conservative governments were elected respectively with majorities of 43, 144 and 100. In 1997, 2001 and 2005 New Labour was elected with majorities of respectively 177, 165 and 67. As Lord Hailsham explained in *The Dilemma of Democracy* (Collins, London, 1978), 126 the dominance of a government elected with a large majority over Parliament has progressively become greater. This process has continued and strengthened inexorably since Lord Hailsham warned of its dangers in 1978.

II. The Hunting Act 2004.

72. The New Labour government decided that it would abolish the ancient liberty of the British people, regularly exercised by a great many individuals up and down the land, to take part in fox hunting. It was a deeply controversial measure. Bills passed by the House of Commons were rejected by the House of Lords. The government decided to use the Parliament Acts 1911 and 1949 to enact this measure. That is how the Hunting Act 2004 came to be enrolled as a statute passed by the United Kingdom Parliament.

III. Is the Hunting Act 2004 valid?

73. The central question on this appeal is whether the Hunting Act 2004 is a valid Act of Parliament. It is important at the outset to explain what this appeal is about and what falls beyond the issues presently before the House. There is a clear distinction between two questions: (1) what Parliament may do by legislation, and (2) what the constituent elements of Parliament must do to legislate. The first question involves the domain of the supremacy or sovereignty of Parliament. It is a question to which I will return at the end of this opinion. It is, however, not directly in issue on this appeal. The focus of this appeal is the second question, namely what the constituent elements of Parliament must do to legislate.

IV. Did the 1949 Act validly amend the 1911 Act?

74. Upon closer examination the question before the House resolves itself into the issue whether the Parliament Act 1949 validly amended the 1911 Act, and therefore whether the Hunting Act 2004 was a valid statute having been enacted under the Parliament Act procedure.

75. Nobody doubts that Parliament as ordinarily constituted, involving the House of Commons, House of Lords and the Monarch, validly enacted the 1911 Act. This statute created a new method of ascertaining the declared will of Parliament. It restated the manner and form in which laws may be made in respect of what I will call "delayed Bills", i.e. Public Bills passed three times by the House of Commons and rejected on each occasion by the House of Lords. In respect of such Public Bills the new method of making law involved, subject to the

precise conditions of the 1911 Act, the elimination of the House of Lords as a constituent element of Parliament. In the words of the 1911 Act, upon its conditions being fulfilled the "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 of an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill . . .". While it will be necessary to examine how this new method of expressing the will of Parliament should, as a matter of constitutional law and statutory interpretation be categorised, and what the limitations upon its use are, its essential validity is not disputed.

V. The 1911 Act.

76. The attack on the validity of the Hunting Act 2004 asserts that the limitations contained in the 1911 Act were ignored. The restrictions on the powers of the House of Lords in the 1911 Act, and the limitations on the use of the 1911 Act, must be set out. Before doing so I would make a general comment on the 1911 Act. The 1911 Act bears the hallmark of precise drafting. First Parliamentary Counsel explained in 1997 the unique function of legislation:

> "a Bill is not there to inform, to explain, to entertain or to perform any of the other usual functions of literature. A Bill's sole reason for existence is to change the law. The resulting Act *is* the law. A consequence of this unique function is that a Bill cannot set about communicating with the reader in the same way that other forms of writing do. It cannot use the same range of tools. In particular, it cannot repeat important points simply to emphasise their importance or safely explain itself by restating a proposition in different words. To do so would risk creating doubts and ambiguities that would fuel litigation. As a result, legislation speaks in a monotone and its language is compressed."

See: An Extract from a Note from First Parliamentary Counsel to the Select Committee on the Modernisation of the House of Commons: Second Report, HC 389 (3 December 1997), Appendix, p 2, Annex A, para 35. The 1911 Act was drafted in this traditional style. This factor makes it *prima facie* likely that the 1911 Act contains all the material provisions relevant to its operation.

77. Section 2 of the 1911 Act provides in part as follows:

> "(1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons in three successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless two years have elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the third of those sessions.
>
> (2) When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with."

Section 5 provides:

> "In this Act the expression 'Public Bill' does not include any Bill for confirming a Provisional Order."

Section 7 provides:

> "Five years shall be substituted for seven years as the time fixed for the maximum duration of Parliament under the Septennial Act, 1715."

78. *Prima facie* the 1911 Act applies to "any Public Bill". But it is a matter of controversy what the limitations on the use of the 1911 Act

are. Three points must be mentioned. First, by long standing arrangement Money Bills were specially provided for by placing it beyond the power of the House of Lords to delay them: *Erskine May, The Constitutional History of England since the Accession of George The Third, 1760-1860,* 11th ed (1896), Vol II, Chapter VII, pp 98-99. Section 1 of the 1911 Act provides that if a Money Bill is sent up to the House of Lords in due time and not passed by them, it is to 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." Secondly, the status of the limitation on the duration of Parliament is a matter of controversy in these proceedings. Thirdly, it is common ground that the 1911 Act could not be used for the purpose of "confirming a Provisional Order". This refers to a bill to confirm a provisional order issued by a Minister under the authority of an Act of Parliament: *Wilding & Laundy, An Encyclopaedia of Parliament,* 4th ed (1972), 619. This procedure has now fallen in disuse: *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords,* (2005), para 7.68. But its place in the scheme of the 1911 Act is still relevant to issues of interpretation.

79. There are two possible views about the limitation on the duration of Parliament. First, it may be a strict condition which must be complied with at all times. Secondly, it may be possible, by use of the 1911 Act to eliminate this limitation albeit in two stages. It is a point of construction. In the context of a Parliamentary democracy the language of section 2(1) and section 7 supports the former interpretation. I would so rule.

VI. Is modification of the conditions of the 1911 Act permissible only by Parliament as ordinarily constituted?

80. It is argued by those who challenge the 2004 Act that inherent in the 1911 Act there is another fundamental limitation on its use, namely that the Parliamentary intendment reflected in the 1911 Act precludes modification of the conditions specified in it without the consent of Parliament as ordinarily constituted. In other words Parliament as specially constituted under the 1911 Act may not alter the conditions prescribed for its use. This is an argument of substance, powerfully presented to the House by Sir Sydney Kentridge QC. Before I examine it directly it may be useful if I tried to state what is involved in the concept of Parliament as ordinarily constituted legislating for its own reconstitution for specific purposes.

VII. What is Parliament?

81. The word Parliament involves both static and dynamic concepts. The static concept refers to the constituent elements which make up Parliament: the House of Commons, the House of Lords, and the Monarch. The dynamic concept involves the constituent elements functioning together as a law making body. The inquiry is: has Parliament spoken? The law and custom of Parliament regulates what the constituent elements must do to legislate: all three must signify consent to the measure. But, apart from the traditional method of law making, Parliament acting as ordinarily constituted may functionally redistribute legislative power in different ways. For example, Parliament could for specific purposes provide for a two-thirds majority in the House of Commons and the House of Lords. This would involve a redefinition of Parliament for a specific purpose. Such redefinition could not be disregarded. Owen Dixon neatly summarised this idea in 1935:

> ". . . The very power of constitutional alteration cannot be exercised except in the form and manner which the law for the time being prescribes. Unless the Legislature observes that manner and form, its attempt to alter its constitution is void. It may amend or abrogate for the future the law which prescribes that form or that manner. But, in doing so, it must comply with its very requirements."

See: *The Law and the Constitution,* 51 LQR 590, 601. This formulation can be traced to the majority judgment in *Attorney General for New South Wales v Trethowan* (1931) 44 CLR 394, and in particular to the judgment of Dixon J at 424. The Parliament of New South Wales had amended the Constitution to require that any Bill to abolish the Upper House had to be approved at a referendum before being presented for Royal Assent, and that any Bill to remove this requirement also had to be submitted to a referendum. A non-conforming statute was held to be void.

VIII. The practical application of the theory.

82. So far I have discussed a possible theoretical approach to this case in terms which are a little abstract. In formulating it I have drawn

on the incisive analysis of *Professor D V Cowen, Parliamentary Sovereignty and the Entrenched Sections of the South Africa Act (1951).*

83. The circumstances of some important constitutional cases, and the decisions in them, give some actuality to the analysis. In *Taylor v Attorney General of Queensland* (1917) 23 CLR 457 the Parliamentary Bills Referendum Act of 1908 in respect of Queensland provided that when a Bill passed by the Legislative Assembly in two successive sessions had in the same two sessions been rejected by the Legislative Council, it might be submitted by referendum to the electors, and if affirmed by them, would require the Governor to seek the assent of the King, and upon receiving such assent, the Bill would become an Act of Parliament as if passed by both Houses of Parliament. The Australian High Court held unanimously in several judgments that there was power to abolish the Legislative Council by an Act passed by the Legislative Assembly and affirmed by the electors in accordance with the Parliamentary Bill Referendum Act 1908. The decision of the Australian High Court in *Clayton v Heffron*, (1960) 105 CLR 214 (which involved a referendum to abolish the Upper House of New South Wales) is in the same line of authority.

84. Possibly even more instructive are the trilogy of cases associated with the South African constitutional crisis in the 1950s. Under the South Africa Act there was a provision entrenching the right of Cape Coloured voters to be on the same voters roll as white voters. The entrenchment was achieved by sections 63 and the proviso to section 152 of the South Africa Act which provided that the voting rights of Cape Coloured voters could only be removed by a two-thirds majority of both Houses of Parliament sitting together. In furtherance of its racist ideology the Nationalist government decided to abolish this right. Its attempt to do so was contested. In *Harris v Minister of the Interior* 1952 (2) 428 (AD) the issue came before the Appellate Division, as it was then known. The court had in mind (at 431C) the clear distinction between what Parliament may do by legislation and what the constituent elements must do to legislate. Ruling unanimously that the government's attempt to by-pass the entrenched provisions was invalid, Centlivres CJ speaking for the Appellate Division observed (at 464E-F):

> "A State can be unquestionably sovereign although it has no legislature which is completely sovereign. As Bryce points out in his *Studies in History and Jurisprudence* (1901 ed, vol II, p 53) legal sovereignty may be divided between two authorities. In the case of the Union, legal

> sovereignty is or may be divided between Parliament as ordinarily constituted and Parliament as constituted under section 63 and the proviso to section 152. Such a division of legislative powers is no derogation from the sovereignty of the Union and the mere fact that that division was enacted in a British Statute (viz, the South Africa Act) which is still in force in the Union cannot affect the question in issue."

Subsequently, a further attempt to elide the entrenched provisions by the charade of a High Court of Parliament was rejected in *Minister of the Interior v Harris* 1952 (4) 769. Although not strictly relevant to the matter under discussion the Nationalist government then achieved its objective by packing the Senate and the Appellate Division itself: *Collins v Minister of the Interior* 1957 (1) 552 (AD).

85. The decision of the Privy Council in *Bribery Commissioner v Ranasinghe* [1965] AC 172 is also important. It was an appeal from Ceylon. An Act was passed but not in conformity with the constitutional legislative procedure. Lord Pearce delivered the judgment of the Privy Council. He observed, at pp197-198:

> "A legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself regulates its power to make law. This restriction exists independently of the question whether the legislature is sovereign, as is the legislature of Ceylon, or whether the constitution is 'uncontrolled,' as the board [in *McCawley's* case [1920] AC 691] held the constitution of Queensland to be. Such a constitution can, indeed, be altered or amended by the legislature, if the regulating instrument so provides and if the terms of those provisions are complied with: and the alteration or amendment may include the change or abolition of those very provisions. But the proposition which is not acceptable is that a legislature, once established, has some inherent power derived from the mere fact of its establishment to make a valid law by the resolution of a bare majority which its own constituent instrument has said shall not be a valid law unless made by a different type of majority or by a different legislative process."

This dictum is consistent with the analysis already explained.

IX. A prima facie view.

86. The Parliament Act 1911 spells out when it may be used and what must be done in order to legislate under it. Parliament as ordinarily constituted enacted the 1911 Act. Acting in accordance with the conditions appearing on the face of the 1911 Act Parliament as redefined in that Act for limited and specific purposes enacted the Parliament Act 1949. *Prima facie* the Parliament Act 1949 is valid.

X. The Alleged Limitation on the Use of the Parliament Act 1911.

87. Sir Sydney submits, however, that the route of the procedure under the 1911 Act could not be used to secure an amendment of the 1911 Act. He contends that this is so because of an express limitation on the use of the 1911 Act. Although he eschews reliance on an implication, I suppose the argument could alternatively be based on a constructional implication. If such a limitation on either basis is established, the effect would indeed be that the Parliament Act 1949 could not be used to enact the Hunting Act 2004.

88. The question is whether such a construction, express or implied, is permissible. In my view there is no such limitation in the 1911 Act. Sir Sydney emphasises the conditionality of the language of section 2(1) introduced by the word "If …". That feature cannot, however, by itself support the suggested limitation. The existence of express limitations in respect of Money Bills, the duration of Parliament, and Provisional Orders make it impossible to accommodate the further limitation suggested. Mention of these three limitations by necessary implication excludes any other limitation. Moreover, the duty placed on the Speaker under section 2(2) to certify that "the provisions of this section have been duly complied with" militates against a construction requiring the Speaker to act in accordance with unstated limitations. The printed case for the League Against Cruel Sports brought out the force of this point (para 6(3)):

> "It would be very surprising were Parliament to have intended other than that 'the provisions' there referred to are those *expressly* stated in section 2(1) (as amended from

> time to time). Parliament cannot have intended that the Speaker should ask himself whether there are *implicit* provisions relevant to the validity of legislation enacted under section 2(1). His task is simply to identify whether the Act complied with the express words of section 2(1). The 1949 Act did so comply: it amended the 1911 Act by following the procedure specified in section 2(1) of the 1911 Act. Any obligation on the Speaker to consider other matters would introduce a degree of uncertainty into the operation of the Act that cannot have been intended."

In my view the substantive provisions of the 1911 Act rule out the limitation contended for.

89. Sir Sydney also relies on the preamble of the 1911 Act. He suggested that in the second preamble the legislature's use of the word "Parliament" denoted Parliament as ordinarily constituted. It follows, he submitted, that any legislation to restrict the powers of the House of Lords would have to be passed by Parliament as ordinarily constituted. In my view this contention is convincingly answered by the fact that in section 1(2), in the context of Money Bills, reference is made to "money provided by Parliament". This contemplates money provided by Parliament in its reduced form. Moreover, by section 2(1) itself, a Bill thereby enacted becomes "an Act of Parliament". In any event, arguments based on the preamble cannot possibly prevail against the clear language of the substantive provisions.

90. I would, therefore, rule that the limitations put forward by Sir Sydney are not sustainable.

XII. The conclusion of Maurice Kay LJ.

91. In a precise judgment Maurice Kay LJ in the Administrative Court summarised his central conclusion as follows ([2005] EWHC 94 (Admin), para 24):

> "In my judgment, the correct way to describe the 1911 Act is as a statute which redefined or remodelled the legislature in such a way that there were thenceforth two routes through which Acts of Parliament could be enacted

> - the traditional way involving the Sovereign, the House of Commons and the House of Lords and the 1911 Act way emanating from the Sovereign and the House of Commons provided that the conditions imposed by the 1911 Act are met."

In a separate judgment Collins J expressed general agreement with the reasoning of Maurice Kay LJ. And it is clear from his reasons that he specifically endorsed the passage from the judgment of Maurice Kay LJ which I have cited.

92. Sir Sydney did not accept this analysis. It would have been near fatal to his case if he had done so. Subject to what I have said about the proper construction of the provisions of the 1911 Act, I do not, however, detect a logical flaw in the reasoning of the Administrative Court.

93. I would respectfully endorse this way of analysing the problem before the House.

XII. Delegated legislation?

94. Sir Sydney had another string to his bow. He relied on eminent legal scholars who described legislation under the 1911 Act as a species of delegated legislation. If this is right, it would tend to support his submission that the 1949 Act may not be used to enact the Hunting Act 2004. On the other hand, other eminent lawyers have taken the opposite view. The 1911 Act does not use the language of delegated legislation. It has none of the attributes or trappings of delegated legislation. Functionally, there was no reason for Parliament as ordinarily constituted to force the Bill in question into the mould of delegated legislation. In any event, in manner and form the 1911 Act simply provides for an alternative mode by which Parliament, as reconstituted for specific purposes, may make laws. Constitutionally, it is an authentic and authoritative expression of the will of Parliament. It is contrary to the very essence of this legislative objective of Parliament as ordinarily constituted to describe the 1949 Act as delegated legislation. It is also wrong to describe Parliament as redefined as a subordinate legislature.

95. Not surprisingly, A V Dicey, our greatest constitutional lawyer, writing a few years after the events which led to enactment Parliament Act 1911 stated that the House of Lords "cannot prevent the House of Commons from, in effect, passing under the Parliament Act [1911] any change of the constitution, provided always that the requirements of the Parliament Act [1911] are complied with": *The Law of the Constitution*, 8th ed (1915), p xliii. I would respectfully follow Dicey on this point. The method of enacting legislation authorised by Parliament, as ordinarily constituted, by section 2(1) of the 1911 Act was validly used in the 1949 Act to amend section 2(1) of the 1911 Act.

XIII. The decisions of the Administrative Court and the Court of Appeal.

96. It follows that I am in agreement with the decision of the Administrative Court on the principal point. The Court of Appeal approached the matter differently. It held:

> "98 For the reasons we have given we have accepted that there was power to amend the 1911 Act to the extent of the amendment contained in the 1949 Act. We have not been prepared to go further than that. This is because, to an extent, we have been prepared to accept part of the argument that Sir Sydney advanced so eloquently. Once the 1911 Act had made the fundamental change of allowing the consent of the House of Lords to be dispensed with as long as the conditions in section 2(1) of the 1911 Act were complied with, the reduction of the period referred to in section 2(1) in its original form to those contained in the 1949 Act, was a relatively modest and straightforward amendment.
>
> 99 However, accepting a power of amendment of this nature exists is quite different to allowing the power of amendment to extend to making changes of a fundamentally different nature to the relationship between the House of Lords and the Commons from those which the 1911 Act had made. The 1949 Act left the relationship between the House of Lords and the House of Commons substantially the same as it was before the 1949 Act. It reduced the length of the period for which the House of Lords could delay legislation proposed by the Commons.
>
> 100 What, if any, further power of amending the 1911 Act that Act authorises should not be determined in

> advance of an attempt to make a more significant amendment than that contained in the 1949 Act. It is, however, obvious that, on our approach, the greater the scale of the constitutional change proposed by any amendment, the more likely it is that it will fall outside the powers contained in the 1911 Act. Our decision is limited to indicating that if what is involved is properly described as a modification of the 1911 Act it is legally effective. We dismiss the appeal."

This reasoning is not supported by either side. In my view the distinction between modest and fundamental constitutional changes cannot be achieved by a process of interpretation of the statute. In agreement with other members of the House I also cannot accept it.

XIV. The resort to Hansard.

97. The Court of Appeal made extensive use of materials from Hansard. If it were necessary to do so, I would be inclined to hold that the time has come to rule, as Lord Hope of Craighead apparently did in *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, that *Pepper v Hart* [1993] AC 593 should be confined to the situation which was before the House in *Pepper v Hart.* That would leave unaffected the use of Hansard material to identify the mischief at which legislation was directed and its objective setting. But trying to discover the intentions of the Government from Ministerial statements in Parliament is constitutionally unacceptable. That was the submission made by Sir Sydney. If it were necessary to rule on the matter I would be inclined to accept the submission.

98. I am content, however, in this case to judge the use made by the Court of Appeal of Hansard materials by the strict criteria of *Pepper v Hart: R (Jackson) v Attorney General* [2005] QB 579, paras 73-87. Sir Sydney subjected the reliance on references in Hansard to detailed criticism. Having taken into account the contrary submissions of the Attorney General my view is that the present case does not satisfy the requirements of *Pepper v Hart.* In the first place the legislation is not obscure or ambiguous. No member of the House has come to a different conclusion on this point. It follows that the principle in *Pepper v Hart* is inapplicable. In any event, the references to Hansard contain no important indications on the very point in issue. Alternatively, if it is

right to admit such material, I would hold that its weight is minimal and cannot possibly prevail over the words used by the Parliamentary text.

XV. The post 1911 history.

99. The Court of Appeal further relied on the history after 1911: paras 88-97. Lord Woolf CJ, observed (in para 97):

> "These are cogent examples of the general recognition by Parliament, the Queen, the courts and the populace, that the 1949 Act was a proper exercise of sovereign legislative power and that the same is true of legislation enacted pursuant to the provisions of the 1949 Act. . . .
>
> The restrictions on the exercise of the powers of the House of Lords that the 1949 Act purported to make have been so widely recognised and relied upon that they are today a political fact."

So far as it may be necessary to do so, I deal with the points mentioned in the first sentence in reverse order. I cannot accept that "the populace" manifested the general recognition attributed to it. The courts, which have not been faced with an issue on the point, have not expressed the view ascribed to them. Moreover, the Queen, who as a constitutional Monarch acts in such matters on the advice of the government, has not made known her recognition of the asserted fact. And, beyond the relevant legislative texts, Parliament has not spoken. This does not, however, mean that I question that, in the language of Kelsen, political events may create for a state, and a legal system, a new grundnorm. That is a truism but not relevant in the present case.

XVI. The consequences of the decision.

100. The Administrative Court did not comment on the drastic implications of its decision. Rightly, the Court of Appeal was intensely aware of the consequences of its decision. That is the context in which the Court of Appeal held that abolishing the House of Lords would be a constitutional change so fundamental that it could only be enacted by Parliament as ordinarily constituted and not by the attenuated process: paras 98-100.

101. The potential consequences of a decision in favour of the Attorney General are far-reaching. The Attorney General said at the hearing that the government might wish to use the 1949 Act to bring about constitutional changes such as altering the composition of the House of Lords. The logic of this proposition is that the procedure of the 1949 Act could be used by the government to abolish the House of Lords. Strict legalism suggests that the Attorney General may be right. But I am deeply troubled about assenting to the validity of such an exorbitant assertion of government power in our bi-cameral system. It may be that such an issue would test the relative merits of strict legalism and constitutional legal principle in the courts at the most fundamental level.

102. But the implications are much wider. If the Attorney General is right the 1949 Act could also be used to introduce oppressive and wholly undemocratic legislation. For example, it could theoretically be used to abolish judicial review of flagrant abuse of power by a government or even the role of the ordinary courts in standing between the executive and citizens. This is where we may have to come back to the point about the supremacy of Parliament. We do not in the United Kingdom have an uncontrolled constitution as the Attorney General implausibly asserts. In the European context the second *Factortame* decision made that clear: [1991] 1 AC 603. The settlement contained in the Scotland Act 1998 also point to a divided sovereignty. Moreover, the European Convention on Human Rights as incorporated into our law by the Human Rights Act, 1998, created a new legal order. One must not assimilate the ECHR with multilateral treaties of the traditional type. Instead it is a legal order in which the United Kingdom assumes obligations to protect fundamental rights, not in relation to other states, but towards all individuals within its jurisdiction. The classic account given by Dicey of the doctrine of the supremacy of Parliament, pure and absolute as it was, can now be seen to be out of place in the modern United Kingdom. Nevertheless, the supremacy of Parliament is still the *general* principle of our constitution. It is a construct of the common law. The judges created this principle. If that is so, it is not unthinkable that circumstances could arise where the courts may have to qualify a principle established on a different hypothesis of constitutionalism. In exceptional circumstances involving an attempt to abolish judicial review or the ordinary role of the courts, the Appellate Committee of the House of Lords or a new Supreme Court may have to consider whether this is a constitutional fundamental which even a sovereign Parliament acting at the behest of a complaisant House of Commons cannot abolish. It is not necessary to explore the ramifications of this question in this opinion. No such issues arise on the present appeal.

XVII. Disposal.

103. I would dismiss the appeal.

LORD HOPE OF CRAIGHEAD

My Lords,

104. I start where my learned friend Lord Steyn has just ended. Our constitution is dominated by the sovereignty of Parliament. But Parliamentary sovereignty is no longer, if it ever was, absolute. It is not uncontrolled in the sense referred to by Lord Birkenhead LC in *McCawley v The King* [1920] AC 691, 720. It is no longer right to say that its freedom to legislate admits of no qualification whatever. Step by step, gradually but surely, the English principle of the absolute legislative sovereignty of Parliament which Dicey derived from Coke and Blackstone is being qualified.

105. For the most part these qualifications are themselves the product of measures enacted by Parliament. Part I of the European Communities Act 1972 is perhaps the prime example. Although Parliament was careful not to say in terms that it could not enact legislation which was in conflict with Community law, that in practice is the effect of section 2(1) when read with section 2 (4) of that Act. The direction in section 2(1) that Community law is to be recognised and available in law and is to be given legal effect without further enactment, which is the method by which the Community Treaties have been implemented, concedes the last word in this matter to the courts. The doctrine of the supremacy of Community law restricts the absolute authority of Parliament to legislate as it wants in this area. This plainly is how the matter would be viewed in Luxembourg: see Professor David Feldman, *None, One or Several? Perspectives on the UK's Constitution(s)* [2005] CLJ 329, 346-347; see also, for the practical effects in this country, *R v Secretary of State for Transport, Ex p Factortame Ltd (No 2)* [1991] 1 AC 603. Section 3(1) of the Human Rights Act 1998 has introduced a further qualification, as it directs the courts to read and give effect to legislation in a way that is compatible with the Convention rights. So long as it is possible to do so, the interpretative obligation enables the courts to give a meaning to legislation which is compatible even if this appears to differ from what Parliament had in mind when enacting it.

106. It has been suggested that some of the provisions of the Acts of Union of 1707 are so fundamental that they lie beyond Parliament's power to legislate. Lord President Cooper in *MacCormick v Lord Advocate*, 1953 SC 396, 411, 412 reserved his opinion on the question whether the provisions in article XIX of the Treaty of Union which purport to preserve the Court of Session and the laws relating to private right which are administered in Scotland are fundamental law which Parliament is not free to alter. Nevertheless by expressing himself as he did he went further than Dicey, *The Law of the Constitution*, 10th ed (1959), p 82 was prepared to go when he said simply that it would be rash of Parliament to abolish Scots law courts and assimilate the law of Scotland to that of England. In *Gibson v Lord Advocate*, 1975 SC 136, 144, Lord Keith too reserved his opinion on this question and as to the justiciability of legislation purporting to abolish the Church of Scotland. In *Pringle, Petitioner,* 1991 SLT 330, the First Division of the Court of Session again reserved its position on the effect of the Treaty of Union in a case which had been brought to challenge legislation which introduced the community charge in Scotland before it was introduced in England. But even Dicey himself was prepared to recognise that the statesmen of 1707 believed in the possibility of creating an absolutely sovereign legislature which should yet be bound by unalterable laws: *Thoughts on the Scottish Union*, pp 252-253, quoted by Lord President Cooper in *MacCormick* at p 412. So here too it may be said that the concept of a Parliament that is absolutely sovereign is not entirely in accord with the reality.

107. Nor should we overlook the fact that one of the guiding principles that were identified by Dicey at p 35 was the universal rule or supremacy throughout the constitution of ordinary law. Owen Dixon, "The Law and Constitution" (1935) 51 LQR 590, 596 was making the same point when he said that it is of the essence of supremacy of the law that the courts shall disregard as unauthorised and void the acts of any organ of government, whether legislative or administrative, which exceed the limits of the power that organ derives from the law. In its modern form, now reinforced by the European Convention on Human Rights and the enactment by Parliament of the Human Rights Act 1998, this principle protects the individual from arbitrary government. The rule of law enforced by the courts is the ultimate controlling factor on which our constitution is based. The fact that your Lordships have been willing to hear this appeal and to give judgment upon it is another indication that the courts have a part to play in defining the limits of Parliament's legislative sovereignty.

108. Dicey at pp 47-48 said that the Septennial Act 1715 by which the legal duration of Parliament was extended from three to seven years, and by which an existing Parliament by its own authority prolonged its own existence, was at once the result and the standing proof of Parliamentary sovereignty. No-one doubts, of course, that it was open to Parliament to restrict its maximum duration to five years, which is the current rule: see section 7 of the Parliament Act 1911. But what are we to make of the fact that the restriction of the powers of the House of Lords which is set out in section 2(1) of that Act is expressly stated not to apply to a Money Bill and, more importantly, to a Bill containing any provision to extend the maximum duration of Parliament beyond five years. Is this to be regarded simply as a self-denying ordinance? Or is this another instance where Parliament has conceded the last word as to what it can do to the courts? And if it is the latter, how much further can the courts go in controlling the use of the procedure that section 2(1) has enacted? These are the questions that lie at the heart of this appeal.

109. It is as well that I should stress however, before I go further, that this case is not about a contest between the courts and the executive. The Bill which has become the Hunting Act 2004 was a concession by the government to prolonged and vigorous pressure from its own back benchers, notably Mr Tony Banks MP. It commanded a large majority in the House of Commons. The Speaker then took his own decision to endorse the Bill with his certificate under section 2(2) of the 1911 Act. This enabled the Bill to be presented for the Royal Assent to Her Majesty – although, by a curious twist of circumstances, it was in the House of Lords that the Royal Assent was declared to both Houses together by the Lords Commissioners under the procedure that applied immediately before Parliament was prorogued on 18 November 2004: see Erskine May, *Parliamentary Practice*, 23rd ed (2004), p 653. The Speaker was not directed to endorse the Bill by the executive. He was asserting the right of the House of Commons to get its measure through in the face of repeated refusals by the House of Lords to give its assent to it. What this case is about therefore is the place which the court occupies in our constitution with regard to the legislative sovereignty of Parliament.

Is there a justiciable issue?

110. The Attorney General said that it was for the elected legislature to have the final say in all matters of legislation. But he has not disputed that the courts can properly adjudicate on the issue raised in this appeal. In the Divisional Court Maurice Kay LJ said that he was wise not to do

so: [2005] EWHC 94 (Admin), para 12. Doubt was cast on his position by the Court of Appeal. It said that the Attorney General had given no convincing answer to its question whether the issue was justiciable: [2005] QB 579, para 11. The answer which was given was that there was no absolute rule that the courts could not consider the validity of a statute and that the issue as to the validity of the Hunting Act 2004 was one of statutory interpretation. For my part I would regard this as a sufficient explanation for the position that the Attorney General has taken. It is reinforced by an examination of sections 3 and 4 of the 1911 Act. Section 3 provides that any certificate of the Speaker of the House of Commons given under the Act shall be conclusive for all purposes, and shall not be questioned in any court of law. The fact that this provision was enacted at all is an indication that Parliament itself appreciated that the question whether a Bill passed by the House of Commons alone was to receive effect as an Act of Parliament was in the final analysis one for the courts. As my noble and learned friend Lord Bingham of Cornhill has said, for the courts to entertain this question involves no breach of constitutional propriety. The words "in accordance with the provisions of the Parliament Act 1911 and by authority of the same" which appear in the preamble to the 1949 Act, as directed by section 4 of the 1911 Act, provide courts with an issue that is justiciable.

111. The debate as to whether the Parliament Act 1949 is a species of delegated legislation, as Sir Sydney Kentridge QC submitted, did not seem to me to be helpful in these circumstances. It is easy to see why a measure which purports to have been enacted in accordance with and with the authority of the 1911 Act cannot be described as delegated legislation, despite the support which, contrary to the position adopted by Professor de Smith, Professor Sir William Wade and Professor Hood Phillips gave to this argument: *Constitutional Fundamentals*, (1980), pp 27-28. It is declared by section 2(1) of the 1911 Act that a Bill which has undergone the procedure that it describes, on the Royal Assent having been signified thereto, shall become an Act of Parliament. The status which is given to it is the antithesis of delegated legislation, the hallmark of which is that it is subordinate to legislation which has been enacted by Parliament. It is primary legislation, albeit enacted in a way that is different.

112. But it does not follow from a rejection of this part of Sir Sydney's argument that the 1949 Act is immune from judicial scrutiny. It is enough for his purposes that the power of enactment on which the purported Act of Parliament relies is derived not from the common law but from another statute. If that is the case it is essential to the validity

of the measure which purports to have been so enacted that it should indeed be what it purports to be. A document on the Parliamentary Roll is conclusive as to its validity as an Act if it shows on its face that everything has been done which the common law of the United Kingdom has prescribed for the making of an Act of Parliament – that the Queen, the Lords and the Commons have assented to it: *The Prince's Case* (1606) 8 Co Rep 1a, at p 505. All the court can do is look to the Parliamentary Roll. If it appears to have passed both Houses and received the Royal Assent that is the end of the inquiry, as Lord Campbell explained in *Edinburgh and Dalkeith Railway Co v Wauchope* (1842) 8 Cl & F 710, 724-725. But an Act passed under the 1911 Act does not measure up to that test. The enacting words "carry its death's wound in itself", as it was put in *R v Countess of Arundel* (1617) Hobart 109, 111; 80 ER, at p 260, in the second paragraph. This is not to say that the law may not be changed by a measure passed by one House of Legislature alone if this has been provided for by Parliament. But the common law does not say that the mere fact that such a measure asserts that it is such a measure is conclusive as its validity.

113. Nor does it seem to me to be helpful, against this background, to describe the 1911 Act as having remodelled or re-defined Parliament. The concept is not an easy one to grasp, because it is a fundamental aspect of the rule of sovereignty that no Parliament can bind its successors. There are no means by whereby, even with the assistance of the most skilful draftsman, it can entrench an Act of Parliament. It is impossible for Parliament to enact something which a subsequent statute dealing with the same subject matter cannot repeal. But there is no doubt that, in practice and as a matter of political reality, the 1911 Act did have that effect. As its long title states, it made provision with respect to the powers of the House of Lords in relation to those of the House of Commons. It did what it was designed to do. It has limited the power of the House of Lords to legislate. In practice it has altered the balance of power between the two Houses.

114. In his introduction to the 10th edition (1959) of Dicey's *The Law of the Constitution*, p xcvi, Professor E C S Wade said that it was difficult to assess the validity of Dicey's conclusion that the Act greatly increased the share of sovereignty possessed by the House of Commons so long as the House of Lords of its own accord accepted the rule that it is not entitled to reject legislation which has been passed by the House of Commons. At pp clxix-clxx he noted that, as from 1915 to 1945 coalition or national governments held office for the greater part of the time, the causes which produced this type of government were unlikely to produce the conditions which would lead to a conflict between the

two Houses. More recent experience of governments elected by a substantial majority has created the conditions for this conflict. The way the House of Lords has reacted to this situation suggests that the sovereignty of the elected House has indeed been strengthened, despite the fact that since the change its composition by the exclusion of hereditary peers by section 1 of the House of Lords Act 1999 the House of Lords has tended to be more vigorous in its opposition to legislation of which it disapproves.

115. Nevertheless the question still remains whether a measure which purports to have been passed into law under the procedure, and for that reason to be an Act of Parliament, is what it bears to be. The House of Commons, acting alone, has no inherent power to legislate. The only power which it has to legislate on its own is that described in section 2(1).

116. The certificate of the Speaker under section 2(2) that the provisions of that section have been duly complied with cannot be questioned. That settles the issue as whether the procedure that the section sets out has been complied with. In the words of Professor J D B Mitchell, *Constitutional Law*, 2nd ed (1968), p 150, such matters of parliamentary procedure are reserved for decision by parliamentary machinery. But it does not settle the issue as to whether the Act can be said to have been presented to Her Majesty by authority of the 1911 Act. As Professor Denis V Cowen has suggested, the conclusiveness of a Speaker's certificate under this Act relates only to what it properly certifies: "Legislature and Judiciary" (1953) 16 MLR 273, 279, footnote 29. There remains the question what the 1911 Act has authorised, and this includes the question mentioned by Professor Cowen in the same footnote as to whether the Speaker could competently give a certificate under that Act if an attempt were to be made to prolong the life of Parliament beyond five years by legislation without the consent of both Houses. This is a question which has to be resolved upon a proper interpretation of the words used in section 2(1). This is a question of law for the courts, not for Parliament. Indeed, as Professor E C S Wade put it in his introduction to Dicey, pp xlvii-xlviii, by asserting their jurisdiction in this matter the courts can say that they are applying the express will of Parliament.

Are there limits to the use of section 2(1)?

117. The procedure which section 2(1) of the 1911 Act prescribes is available, as its opening words declare, in the case of

> "any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years)"

The words in parenthesis indicate that, whatever else the procedure that section 2(1) authorises, it does not extend to Bills which are Money Bills or to Bills extending the maximum duration of Parliament.

118. The exception in favour of Money Bills is explained by the fact that Money Bills are dealt separately in section 1. It would make no sense for the section 2(1) procedure to be used in their case. This is not a matter that need concern the courts. The exception in favour of Bills extending the maximum duration of Parliament falls into a different category. The Act does not provide a separate procedure for use in their case. The effect of this exception is that Bills of this kind require the consent of both Houses before they can pass into law. It is hard to imagine that such a measure that had not been passed by the House of Lords would receive the Speaker's certificate, without which it could not be presented for the Royal Assent to Her Majesty. But if it did, I think that it is clear that the court would have jurisdiction to declare that it was not authorised by section 2(1). I am in full agreement with what my noble and learned friends Lord Nicholls of Birkenhead, Lord Steyn and Baroness Hale of Richmond have said on this issue.

119. Beyond this point the argument that there are limits on what can be done under section 2(1) which are legal and not political runs into difficulty. I mention limits which are political here because, as Professor E C S Wade pointed out in his introduction to the 10th edition of Dicey, p xxvii, the Parliament Acts of 1911 and 1949 cannot be understood without reference to their political background. Lord Bingham has provided your Lordships with a valuable account of the constitutional background to the 1911 Act and its historical context, but for present purposes I would suggest that the political effects that resulted from what was done in 1911 and in 1949 are no less important. At p lxiii of his introduction Professor Wade said that the abdication of power – which is what the House of Lords agreed to in 1911 – is at least

as much a political as a legal event, and that it is only by accepting the political change which it has brought about that the courts can recognise the legality of the new situation.

120. Professor Sir William Wade, too, observed that sovereignty is a political fact for which no purely legal authority can be constituted even though an Act of Parliament is passed for the very purpose of transferring sovereign power: "The Basis of Legal Sovereignty" [1955] CLJ 172, 196. The open texture of the foundations of our legal system which Professor H L A Hart discusses in Chapter VI of *The Concept of Law* (1961), especially at pp 107-114, defies precise analysis in strictly legal terms. More recently other commentators have asserted that the rule of Parliamentary supremacy is ultimately based on political fact: Peter Mirfield, "Can the House of Lords Lawfully be Abolished?" (1979) 95 LQR 36, 42-44; George Winterton, "Is the House of Lords Immortal?" (1979) 95 LQR 386, 388. It is sufficient to note at this stage that a conclusion that there are no legal limits to what can be done under section 2(1) does not mean that the power to legislate which it contains is without any limits whatever. Parliamentary sovereignty is an empty principle if legislation is passed which is so absurd or so unacceptable that the populace at large refuses to recognise it as law.

121. The Attorney General was willing to accept that the words in parenthesis set limits to the use of the section 2(1) procedure, but he maintained that these express limitations did not harm his argument. Where limits were expressed, he said, there was no room for other limitations to be implied. If what has been done is legislation within the general scope of the words which give power to legislate, and it violates no express condition or restriction by which that power is limited, it is not for any court to inquire further or to enlarge these conditions or restrictions: per Lord Selborne, giving the judgment of the Board in *R v Burah* (1878) 3 App Cas 889, 905.

122. There is obvious force in this argument, but I do not think that the matter is as clear cut as he suggested. I would not go so far as to say that the stated limitations rule out limitations which are unstated. If that was the case, there would be no answer to the most obvious abuse of section 2(1). This, as Lord Nicholls has pointed out, is a two-stage approach to extending the life of Parliament. First, a Bill would be introduced deleting the reference in that subsection to a Bill containing any provision to extend the life of Parliament. A Bill which sought to do this would not be within the terms of the prohibition. Then, a second Bill would be introduced, to run in tandem with the first, which sought

to do what the provision which was to be deleted would have prohibited. So long as the first Bill passed into law before the second Bill was presented for the Royal Assent, so the argument would run, it could not be said to be a Bill that section 2(1) of the 1911 Act did not authorise. But I believe, in agreement with a majority of your Lordships, that such an obvious device to get round the express prohibition would be as vulnerable to a declaration of invalidity as a direct breach of it. In other words, there is an implied prohibition against the use of the section 2(1) procedure in such circumstances.

123. If then there is room for an implied prohibition in that most extreme of circumstances, how much more room is there for other prohibitions to be implied? Sir Sydney's argument is that there is an implied prohibition against the use of the procedure to amend the conditions which section 2(1) laid down for its exercise. The whole subsection, he says, is conditional as it is introduced by the word "if", and it is subject to a proviso in which it is declared that its provisions shall not take effect unless two years have elapsed between the two dates to which it refers. He seeks further support for his argument from the long title and from this statement in the preamble:

> "it is expedient to make such provision as *in this Act* appears for restricting the existing powers of the House of Lords." [his emphasis added]

124. These arguments are not unattractive and, like my noble and learned friend Lord Carswell, I would have wished to examine them in more detail had it not been for the fact that they overlook the political reality of the situation in which Parliament now finds itself. Three Acts were passed by reference to the 1949 Act prior to the passing of the Hunting Act. These are the War Crimes Act 1991 passed under a Conservative government and the European Parliamentary Elections Act 1999 and the Sexual Offences (Amendment) Act 2000, both passed under a Labour government. Each of the two main parties has made use of the 1949 Act's timetable, and in subsequent legislation passed by both Houses each of these Acts has been dealt with in a way that has acknowledged its validity. The War Crimes Act was amended by the Criminal Justice and Public Order Act 1994 and the Criminal Procedure and Investigations Act 1996. The European Parliamentary Elections Act was repealed by and consolidated in the European Parliamentary Elections Act 2002. And the Sexual Offences (Amendment) Act was amended by the Sexual Offences Act 2003. The political reality is that of a general acceptance by all the main parties and by both Houses of

the amended timetable which the 1949 Act introduced. I do not think that it is open to a court of law to ignore that reality.

Conclusion

125. It is not easy to identify a legal principle which declares that, when the court is faced with a challenge to the 1949 Act on legal grounds, it must give way to the way Parliament itself has made use of, and accepted the use of, it. A lawyer would say that if the 1949 Act was not validly enacted nothing that has happened to it subsequently can cure the invalidity. That would, of course, be true if it was delegated or subordinate legislation, in the true sense of these words, that the court was faced with. But the 1949 Act proclaims itself to be, and appears on the Parliamentary Roll as, an Act of Parliament. Parliament was the author of the way the powers of the House of Lords were limited by the 1911 Act. So great weight must be attached to the way that Parliament itself has viewed the purported exercise of those powers when the 1949 Act was enacted. In the field of constitutional law the delicate balance between the various institutions whose sound and lasting quality Dicey at p 3 likened to the work of bees when constructing a honeycomb is maintained to a large degree by the mutual respect which each institution has for the other. In *Pickin v British Railways Board* [1974] AC 765, 788A-B Lord Reid observed that for a century or more both Parliament and the courts have been careful to act so as not to cause conflict between them. This is as much a prescription for the future as it was for the past.

126. As Professor Hart, *The Concept of Law*, p 108, indicates, the categories which the law uses to identify what is law in these circumstances are too crude. There is a strong case for saying that the rule of recognition, which gives way to what people are prepared to recognise as law, is itself worth calling "law" and for applying it accordingly. It must never be forgotten that this rule, which is underpinned by what others have referred to as political reality, depends upon the legislature maintaining the trust of the electorate. In a democracy the need of the elected members to maintain this trust is a vitally important safeguard. The principle of parliamentary sovereignty which in the absence of higher authority, has been created by the common law is built upon the assumption that Parliament represents the people whom it exists to serve.

127. Like others of your Lordships I am unable to accept the distinction which the Court of Appeal drew between what it described [2005] QB 579, para 71 as relatively modest changes and changes which it described in para 99 as of a fundamentally different nature. The wording of section 2(1) does not invite such a distinction. It raises questions of fact and degree about the effect of legislation which are quite unsuited for adjudication by a court. The argument that some provisions of the Acts of Union of 1707 are fundamental law as they were based on a treaty which preceded the creation of the United Kingdom Parliament is a different argument. Of course, as Dicey at p 79 recognised, the sovereignty of Parliament is limited by the possibility of popular resistance to its exercise. Trust will be eroded if the section 2(1) procedure is used to enact measures which are, as Lord Steyn puts it, exorbitant or are not proportionate. Nevertheless the final exercise of judgment on these matters must be left to the House of Commons as the elected chamber. It is for that chamber to decide where the balance lies when that procedure is being resorted to.

128. But I agree with the Court of Appeal's conclusion in para 97 that the restrictions on the exercise of the power of the House of Lords that the 1949 Act purported to make have been so widely recognised and relied upon that these restrictions are, today, a political fact. It is no longer open to the courts, if it ever was, to say that that Act was not authorised by section 2(1) of the 1911 Act. I would dismiss the appeal.

LORD RODGER OF EARLSFERRY

My Lords,

129. The Hunting Act 2004 affects the appellants in different ways, all of them adverse. They have therefore brought these proceedings to have the Act declared invalid on the ground that the Parliament Act 1949, by virtue of which it was enacted, was itself invalid. In the arguments of counsel the Hunting Act and the very real political struggle that lay behind it were scarcely mentioned. Nevertheless, that political struggle, in which the majority view in the House of Commons eventually overcame the majority view in the House of Lords, really lay at the heart of the argument presented by the Attorney General. He portrayed the Parliament Act 1911 ("the 1911 Act") as a supremely important political document which secured that, from then on, if neither side yielded, the elected House of Commons would always prevail over the unelected

House of Lords. The Act embodied this political victory of the House of Commons. The courts should not undermine that victory by giving the Act an unduly narrow interpretation.

130. It also suited Sir Sydney Kentridge QC to emphasise how the 1911 Act was to be seen as a political settlement, one under which Parliament had conferred increased powers on the House of Commons – but powers that were to be exercised only if certain preconditions were fulfilled. The House of Commons could not unilaterally alter that settlement by using those powers to relax the very conditions on which they had been conferred.

131. To go back no further, one can see that the issue of the Lords' veto on legislation had been on the table ever since the Liberal government was elected in 1906. The Prime Minister, Sir Henry Campbell-Bannerman, moved a resolution on the subject in the Commons in June 1907. After his death, the tension between the two Houses was made worse by the Lords' rejection of the Budget in 1909. What actually brought matters to a head, however, was the reduced majority of Mr Asquith's Liberal government after the General Election of January 1910. The government was now dependent on the votes of the Irish Nationalist members who insisted on Home Rule as the price of their support for the Budget. Since the House of Lords would not pass a Home Rule Bill, this meant that their veto had to be removed. Hence the Veto Resolutions moved in the House of Commons in April 1910 and the Parliament Bill introduced in the House of Lords the following November, just before the second General Election. Hence too Dicey's increasingly frantic letters from All Souls to the editor of The Times: he rightly perceived that the Parliament Bill was designed to pave the way for Home Rule, to which he was passionately opposed. It is therefore no coincidence that the 1911 Act was immediately used to enact the Government of Ireland Act 1914 and the Welsh Church Act 1914 – another measure of constitutional reform which the House of Lords would not pass. Since the effecting of major constitutional change was thus one of the principal purposes behind the 1911 Act, there is no merit whatever in the Court of Appeal's view, [2005] QB 579, 607, para 100, that the touchstone for determining the scope of the power in section 2(1) to amend the 1911 Act itself should be the scale of the constitutional change involved.

132. With his emphasis on the political significance of the 1911 Act, the Attorney General was impatient of what he characterised as "literalist" points about its precise wording. But the legal forms which

are used to achieve peaceful revolutions in our national life are not unimportant. The Abdication Act 1936 and the European Communities Act 1972 both brought about major changes by a very few ingenious and meticulously crafted provisions. The same is true of the 1911 Act. Elements of the wording were already found in the Veto Resolutions and may well owe something to the skills of the ubiquitous Sir Courtenay Ilbert, formerly Parliamentary Counsel to the Treasury and, throughout the relevant period, Clerk of the House of Commons. The importance of the Bill could not have been greater. Its terms were before the electorate during the second election of 1910 and, on this basis, the government subsequently claimed a popular mandate to ensure that it passed. In these circumstances the Bill must have been drafted with particular care. Moreover, the draftsman was working in an age when lawyers and courts did not readily resort to external aids to construction but tended to concentrate on the plain text that Parliament had enacted. These factors combine to suggest that a close study of the precise wording of the 1911 Act may not be out of place.

133. Although Sir Sydney portrayed the provisions of the 1911 Act as conferring increased powers on the House of Commons, the actual emphasis in the text is on restricting the powers of the House of Lords. That is the declared purpose of the Act: to make provision "with respect to the powers of the House of Lords in relation to those of the House of Commons." The third recital in the preamble records that it is expedient to make provision "for restricting the existing powers of the House of Lords." The substantive provisions reflect that purpose. Under section 1(1), if sent up to the House of Lords in due time and not passed by them, a Money Bill is to 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." Under section 2(1), in the prescribed circumstances, Public Bills are similarly to become Acts of Parliament, "notwithstanding that the House of Lords have not consented to the Bill." In other words, in these circumstances the House of Lords lose their power to prevent the King from enacting the law by withholding their consent. What was needed, and what the Act was drafted to produce, was a restriction on this power of the House of Lords rather than a positive increase in the powers of the House of Commons. Sections 1(1) and 2(1) of the Act thus decisively altered the balance of power between the two Houses by restricting the powers of the Upper House. That having been done, the Act works mainly by deterring undue resistance by the House of Lords. Like any deterrent, its efficacy and significance are not to be gauged by how often it has to be used.

134. The basic mechanism in both sections 1(1) and 2(1) does not indeed depend on any additional, different, action by the House of Commons. Under section 2(1), for instance, they consider and pass the Bill in the normal way on three occasions. The House of Lords consider and reject the Bill in the normal way on three occasions. Then, provided that the appropriate two-year period has elapsed, the statute requires that the Bill be presented to His Majesty for the Royal Assent. In effect, this is a direction, telling the Clerk of the Parliaments and other officials what they must do in these circumstances. The Royal Assent will follow automatically. All this happens without the House of Commons taking any additional step. If anything, they may do less than usual, since their power of amendment is curtailed if section 2(1) is to apply. The only additional power which section 2(1) confers on the House of Commons is a power to stop a Bill from automatically becoming law by giving an appropriate direction.

135. My Lords, however one might describe the consequences which flow from this provision in political terms, in legal terms it seems to me impossible to say that section 2(1) operates by delegating a new power to the House of Commons or by giving that House a power to exercise on behalf of Parliament or some constituent element of Parliament. That might have been the case if, for instance, the draftsman had chosen to confer on the House of Commons a power to consent on behalf of the House of Lords or to override a refusal of consent by the House of Lords. Instead, he chose a scheme which, if anything, confers a novel duty on the Clerk of the Parliaments and other officials to present a Bill for the Royal Assent without the consent of the House of Lords – and, perhaps, a novel power on His Majesty to enact a Bill by assenting to it even though the House of Lords have not consented.

136. This analysis may be thought unduly literal. But it identifies how Parliament set about tackling the constitutional problem in question: too much power in the hereditary House of Lords preventing the decisions of the elected House of Commons from taking effect as law. In this case there is no need, and it may indeed be misleading, for the courts to go further and characterise the operation of the 1911 Act otherwise than in terms of what it actually provides.

137. Sir Sydney relied on the principle that, in the absence of express authority, a subordinate body cannot increase its own powers by striking down the conditions on which it was given those powers. Even if such a principle exists, it does not apply unless one can identify a grant of powers to a subordinate body. For the reasons I have given, I cannot do

so in the case of the 1911 Act. Therefore, any principle of the common law to that effect has no application. It follows that there is no basis for construing the words of section 2(1) of the Act as being impliedly limited by that principle.

138. One is left with the opening words of section 2(1): "If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years) is passed by the House of Commons…." Section 5, which was added by amendment at a late stage in the passage of the Parliament Bill, really introduces another exception by defining "Public Bill" as not including any Bill for confirming a Provisional Order. The effect of sections 2(1) and 5 is therefore to exclude expressly from the scope of the term "Public Bill" any Money Bill, or any Bill containing a provision to extend the maximum duration of Parliament beyond five years or any Bill for confirming a Provisional Order. Expressio unius exclusio alterius or exclusio unius inclusio alterius. Since Parliament has expressly excluded these three types of Bill from the scope of section 2(1), in the absence of any indication to the contrary, I would read that provision as applying to a Public Bill to amend section 2(1) itself. The Bill which led to the Parliament Act 1949 was such a Bill. In my view, it was within the scope of section 2(1), was passed in accordance with the provisions of section 2 and is accordingly "an Act of Parliament". It follows that the Hunting Act 2004 - which was enacted after the Speaker had certified that the provisions of section 2, as amended by the Parliament Act 1949, had been complied with - is a valid Act of Parliament.

139. It is unnecessary to go further and decide what limits, if any, there may be to the scope of section 2(1). I have already indicated that I would reject the test enunciated by the Court of Appeal. Not only is it inconsistent with the purpose of the Act but, as the Attorney General said, it would create uncertainties which Parliament certainly would never have intended. I would, however, specifically reserve my opinion on one type of Bill: to delete the exclusion, from section 2(1), of a Bill containing any provision to extend the maximum duration of Parliament. The Attorney General acknowledged that there was room for argument here. Extending the life of Parliament is a matter of fundamental constitutional importance. Not only could it undermine the democratic basis of the British system of government, but it would also affect the dynamic which underlies section 2 of the 1911 Act, even as amended by the Parliament Act 1949. The exclusion appears to recognise this. So even though, read literally, section 2(1) seems apt to cover a Bill to delete the exclusion, I would wish to hear full argument before

concluding that the safeguard of the consent of the House of Lords should not apply to such a Bill which can be said to form an integral step in a scheme of legislation to extend the maximum duration of Parliament.

140. For these reasons I too would dismiss the appeal.

LORD WALKER OF GESTINGTHORPE

My Lords,

141. I have had the privilege of reading in draft the opinions of my noble and learned friend, Lord Bingham of Cornhill and the other members of the Appellate Committee who heard this important appeal. I agree with them that the appeal should be dismissed. On the crucial points which have to be decided in order to dispose of the appeal there is, as I see it, a striking unanimity, in which I respectfully concur. Such differences of opinion as do appear (principally as to any ultimate restrictions on parliamentary sovereignty, and as to the application of the principle in *Pepper v Hart* [1993] AC 593) need not be resolved on this occasion, and I prefer to express no view on them.

BARONESS HALE OF RICHMOND

My Lords,

142. It is a long time since many of us learned our constitutional history, but I have found it impossible to consider the legal issue now before us without reminding myself of the events which led up to the passage of the Parliament Act in 1911. My noble and learned friend, Lord Bingham of Cornhill, has also recounted this history in some detail but certain salient features bear repetition or elaboration. In particular, the idea of removing the House of Lords' power to veto legislation dates back at least as far as their defeat of Mr Gladstone's Irish Home Rule Bill in 1893. The two issues were always inextricably linked.

143. During the General Election of January to February 1906, the Unionist leader Arthur Balfour declared that it was the duty of everyone to see that "the great Unionist party should still control, whether in power or whether in opposition, the destinies of this great Empire". The 1906 election resulted in a landslide victory for the Liberal party, with a majority over all other parties of 132 and a practical majority, with the support of the Labour and Irish Nationalist members, of 356. Yet the reality was that, however great the Liberal majority in the House of Commons, the permanent Unionist majority in the House of Lords meant that the Liberals could never achieve their policies against the Unionists' will. A Unionist government, on the other hand, however fragile its command of the House of Commons, could always gets its way.

144. From the beginning of the Liberal Government of 1906, "it quickly became clear that the opposition leaders in both Houses were prepared to accord no real primacy to the elected chamber" (Roy Jenkins, *Asquith*, 1964, 1967 paperback edition, p 187). In the first session of the new Parliament, the House of Lords destroyed the Education Bill, the Plural Voting Bill, and the Land Valuation Bill, although not the Trade Disputes Bill, and in the next session, they were expected to destroy the flagship Licensing Bill. Reform of the House of Lords was now firmly on the Government's agenda and various schemes were discussed: for differences to be settled at joint sittings of Lords and Commons, attended by all members of the Commons and 100 members of the Lords (as proposed by a Cabinet committee); for submitting bills held up by the Lords to a popular referendum; or for restricting the Lords' powers of delay to two sessions (as proposed by the Prime Minister, Sir Henry Campbell-Bannerman). In June 1907, the House of Commons passed a resolution in support of the Prime Minister's proposal by a huge majority. The Liberal party now had a policy on reform of the House of Lords to add to its radical Parliamentary programme. It was not, however, included in the King's speech for the next session of Parliament in 1908. Sir Henry Campbell-Bannerman was now seriously ill and Mr Asquith succeeded him as Prime Minister in April.

145. The Government's programme included old age pensions, which the Lords were reluctantly persuaded to accept when the Commons insisted that Lords' amendments to a money bill were inadmissible. For more than 250 years, the House of Lords had accepted that it could not block the Government's sources of supply. Yet in the following year they did just that, by rejecting Lloyd George's 'people's budget'. This would have raised the burden of taxation upon the rich and landed

classes in order to pay for old age pensions and other social reforms, as well as for the new warships demanded by the Admiralty.

146. A Government which is denied the resources needed even to carry on running the country has no alternative but to resign or to procure the dissolution of Parliament and seek a fresh mandate from the people at a general election. The Lords were thus deciding, not simply which Bills should pass, but whether the elected Government could continue to govern. When the Lords rejected the budget in November 1909, the Government decided that Parliament should be dissolved and a fresh mandate sought.

147. The general election of January 1910 left the Liberal government with no overall majority, but with a normal majority of 112 if it had the support of Labour and the Irish Nationalists. The Irish did not like the budget, but they did like the plan to curtail the House of Lords' veto, which they knew was the only way of securing a measure of Home Rule.

148. The King's speech at the opening of the new Parliament on 21 February announced that measures would be introduced to "define the relations between the Houses of Parliament, so as to secure the undivided authority of the House of Commons over finance, and its predominance in legislation". Those measures were put before the House of Commons in the shape of three resolutions. These reflected the Campbell-Bannerman plan, although there was also support within government, principally from the Foreign Secretary, Sir Edward Grey, and the President of the Board of Trade, Winston Churchill, for reform of the composition of the House of Lords. Otherwise, it was feared, the veto would simply be restored once a Unionist government was returned to power. The three resolutions were passed by the Commons on 14 April. First, the Lords would not be able either to amend or reject a money bill; second, other legislation would pass without the Lords' consent provided that it had been passed by the Commons in three successive sessions of Parliament and not less than two years had elapsed between its first introduction and final third reading in the Commons; and third, the maximum duration of Parliaments would be reduced from seven years to five. A Parliament Bill to give these resolutions legislative effect was tabled that same day. In deference to Sir Edward Grey, its Preamble declared the intention "to substitute for the House of Lords as it at present exists a Second Chamber constituted on a popular instead of hereditary basis".

149. The budget was passed by the new House of Commons on 27 April and by the Lords the following day. The battle now shifted to the Lords' veto. At that stage King Edward VII had not been asked whether he would agree to create enough new peers to secure the passage of the Parliament Bill through the House of Lords if need be. It was thought, however, that he would not refuse to follow the advice of his elected Government.

150. Matters were then thrown into confusion by the death of King Edward on 6 May. There was understandable reluctance to put his inexperienced successor, George V, in such a difficult and delicate situation so soon after his accession. A constitutional conference was called between four senior members of the Government and four senior members of the Opposition in the hope that a compromise solution could be found. It was a hopeless task. The Unionists wanted to divide Bills into three categories. First were money bills, which the Lords would have no right to reject or amend, but measures with "social or political consequences which go far beyond the mere raising of revenue" would not be considered money bills. Second were ordinary bills, which would be referred to a joint sitting of the two Houses after two rejections in the Lords. Third were constitutional or "organic" Bills; the Unionists wanted these submitted to a referendum after two rejections in the Lords; the Liberals favoured a short list of exclusions from the ordinary Bill procedure. But the parties were at odds over whether Irish Home Rule should be excluded. This was the eventual sticking point. By early November the constitutional conference had broken down. The Parliament Bill was nevertheless put before the House of Lords, so that they could put their alternative plan before the country.

151. Meanwhile, the King was asked to give a guarantee, which was not to be made public until the occasion arose, that if the Government were returned to power at the forthcoming election, he would create the peers needed to get the Parliament Bill through the House of Lords. The King's agreement was eventually obtained, although only because one of his Private Secretaries assured him that Mr Balfour would decline to form an administration if Mr Asquith resigned. This left the King with no alternative but to accept the Government's advice, reluctant though he was to do so.

152. Parliament was dissolved on 28 November and the electorate went to the polls for the second time in a year. Although more than fifty seats changed hands, the overall result was almost exactly the same as before. Liberals and Unionists held exactly the same number of seats,

but with the support of Labour and the Irish Nationalists, the Government's normal majority went up from 124 to 126. The Liberals had won three elections in a row and their majority in the popular vote, although not great, seemed secure. They had achieved a democratic mandate for the constitutional changes proposed in the April resolutions.

153. It took until May 1911 for the Parliament Bill to get through the House of Commons, with more than 900 amendments tabled for the committee stage. The House of Lords gave it a second reading without a vote. There was then an extended Whitsun recess because of King George's coronation. The Lords began the committee stage of the Bill at the end of June and passed a number of wrecking amendments. On July 14 the Government formally asked the King to create the necessary number of new peers. The King agreed but asked that this should not happen until after the Lords had been given an opportunity of deciding whether they would give in once the Commons had rejected their amendments. The opposition leaders were formally told the position on 20 July. The opposition gave vent to its frustration by making it impossible for the Prime Minister to deliver his speech to the House of Commons on 24 July.

154. But the real battle was among the opposition peers, the "ditchers" who were prepared to die in the ditch to preserve their powers, and the "hedgers" who were prepared to accept the bill for the sake of avoiding the worse fate of being swamped with Liberal peers. It was never quite clear how many were to be created – whether enough to make a permanent Liberal majority in the Lords, thus reversing the traditional position of the two parties, or simply enough to get the Bill through, or something in between (the King had suggested ennobling the elder sons of existing Liberal peers, which would have been the most modest solution, but not guaranteed to produce the right result; Asquith had in his possession a list of 249 possible candidates, some little known today but many of great distinction, including Bertrand Russell, Baden-Powell, and Joseph Rowntree). In the end, the "hedgers" won the day. On 10 August, the Lords voted by a majority of 131 to 114 not to insist on their amendments. The Parliament Act of 1911 became law.

155. The 1911 Act procedure was used for two measures introduced in the following session of Parliament, a Bill to provide for Home Rule for Ireland, and a Bill to provide for the disestablishment of the Anglican Church in Wales. The former was deeply controversial but the latter would never have passed the House of Lords had it not been for the 1911 Act. Both were passed into law as war broke out in August 1914

and immediately suspended because the nation had more important things to think about.

156. The history is important because it demonstrates clearly the mischief which the 1911 Act was meant to cure. The party with the permanent majority in the unelected House of Lords could forever thwart the will of the elected House of Commons no matter how clearly that will had been endorsed by the electorate. At that time this could not be called a necessary or even desirable check on the over-weening power of a Government which had the command of the House of Commons, because there was no equivalent check on the party which had the command of the House of Lords. The object was henceforth to ensure that the elected House could always get its way in the end. The United Kingdom would become a real democracy. The democratic element was reinforced by the reduction in the maximum length of a Parliament from seven years to five and the exception of a Bill to prolong the life of Parliament from the 1911 Act procedure. The elected chamber would have to submit itself to re-election at regular intervals.

157. The history also clearly demonstrates that it was always contemplated that the procedure might be used to bring about major constitutional change. At that time the fragmentation of the United Kingdom by allowing a measure of self-government to the people of Ireland was the most fundamental constitutional change imaginable. Yet one of the objects of the 1911 Act was to make it possible.

158. In my view, the history also makes the position adopted by the Court of Appeal, however attractive it may now appear to be, untenable. The Court of Appeal concluded that the 1911 Act procedure could not be used to effect fundamental constitutional change, but that the modifications to its procedure brought about by the 1949 Act were "modest" rather than fundamental. On the contrary, it seems to me that the 1911 Act procedure can be used to effect any constitutional change, with the one exception stated. Section 2(1) of the 1911 Act applies to "any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years)". There is no hint of any other exclusions. The expression of two exclusions would normally be read so as to include everything else. When one looks at the mischief which the Bill was designed to cure it is clear that anything else, no matter how fundamental or controversial, is in principle included.

159. The argument that the procedure cannot be used to amend itself has rather more substance, although in the end it too must be rejected. The question of the legislative competence of the United Kingdom Parliament is quite distinct from the question of the composition of Parliament for this purpose. The concept of Parliamentary sovereignty which has been fundamental to the constitution of England and Wales since the 17th century (I appreciate that Scotland may have taken a different view) means that Parliament can do anything. The courts will, of course, decline to hold that Parliament has interfered with fundamental rights unless it has made its intentions crystal clear. The courts will treat with particular suspicion (and might even reject) any attempt to subvert the rule of law by removing governmental action affecting the rights of the individual from all judicial scrutiny. Parliament has also, for the time being at least, limited its own powers by the European Communities Act 1972 and, in a different way, by the Human Rights Act 1998. It is possible that other qualifications may emerge in due course. In general, however, the constraints upon what Parliament can do are political and diplomatic rather than constitutional.

160. But that does not answer the question of what is meant by "Parliament". If Parliament can do anything, there is no reason why Parliament should not decide to re-design itself, either in general or for a particular purpose. The body which was Parliament in 1911 could decide, by the decision-making procedure of the day, to re-design itself. It decided that henceforward, money bills (certified as such by the Speaker of the House of Commons) could become law without any attempt to gain the consent of the House of Lords. No-one has suggested that it could not do this. No-one has challenged the legality of money bills passed under that procedure since then.

161. It also decided that henceforward, any public bill other than a money bill or a bill to extend the maximum duration of Parliament beyond five years could be passed either in the traditional way, with the consent of both Houses of Parliament and the Royal Assent, or in the new way, without the consent of the House of Lords, provided that various conditions had been fulfilled. Nothing in the Act said or suggested that those conditions could not be modified by the same procedure. If, as we must, we start from the proposition that Parliament can do anything, it follows that Parliament can allow its redesigned self further to modify the design.

162. The only question is whether that further permission has to be spelt out in the statute. Even if they were applicable to the Acts of the

United Kingdom Parliament, there is nothing in the Commonwealth cases to which we have been referred to suggest that it does. On the contrary, they suggest that it is enough that what has been done is within the general powers given to the legislative body in question: see *R v Burah* (1878) 3 App Cas 889; *Taylor v Attorney General of Queensland* (1917) 23 CLR 457; *McCawley v The King* [1920] AC 691; *Clayton v Heffron* (1960) 105 CLR 214.

163. What the Commonwealth cases do suggest, however, is the contrary proposition: that if Parliament is required to pass legislation on particular matters in a particular way, then Parliament is not permitted to ignore those requirements when passing legislation on those matters, nor is it permitted to remove or relax those requirements by passing legislation in the ordinary way: see *Harris v Minister of the Interior* 1952 (2) SA 428; *Bribery Commissioner v Ranasinghe* [1965] AC 172. If the sovereign Parliament can redefine itself downwards, to remove or modify the requirement for the consent of the Upper House, it may very well be that it can also redefine itself upwards, to require a particular Parliamentary majority or a popular referendum for particular types of measure. In each case, the courts would be respecting the will of the sovereign Parliament as constituted when that will had been expressed. But that is for another day.

164. I myself would be prepared to hold that, by excepting a Bill to prolong the maximum life of a Parliament from that procedure, Parliament was also disabled from using that procedure to remove the exception: that would be consistent with the principle in the *Harris* and *Ranasinghe* cases. But, not having excepted a Bill to modify the procedure in section 2, Parliament must be taken to have authorised the use of that procedure for that purpose.

165. That conclusion is entirely consistent with the mischief disclosed by the preceding events which the Parliament Act was designed to correct. As a democrat, I have no problem with that. Whether our system now has sufficient democratic checks upon the combined power of the elected House and the Government which commands that House is a quite different question and not for this court to decide.

166. It is quite clear from the words used by Parliament in section 2 of the Parliament Act 1911 that it intended no limit on the Bills which might be passed under that procedure other than those expressly stated

in that section. I would therefore dismiss this appeal, but for the reasons given by the Administrative Court rather than the Court of Appeal.

LORD CARSWELL

My Lords,

167. The issue at stake in the appeal before the House is the validity of the Hunting Act 2004, an enactment whose subject matter has provoked fierce passions on both sides of the debate. The argument before your Lordships was not, however, concerned at any stage with the rights or wrongs of the hunting question; no discussion took place about the content of the Act and none will be found in the opinions of your Lordships. The challenge was to the validity of the Hunting Act as an Act of Parliament, which in turn involved the validity of the Parliament Act 1949. The arguments were confined to this issue, which required extensive consideration of fundamental constitutional principles.

168. Your Lordships have referred to two of those fundamental principles, the sovereignty or supremacy of Parliament and the conclusiveness of the Parliamentary roll or the Speaker's certificate. The first is one of the pillars of the modern constitution of this country and has been so fully accepted by the courts and described by so many writers on the constitution from Dicey onwards that it needs no further elaboration. Both this principle and the second, which is discussed in paras 112 and 116 of the opinion of my noble and learned friend Lord Hope of Craighead, are judicial products of that carefully observed mutual respect which has long existed between the legislature and the courts. As a judge I am very conscious of the proper reluctance of the courts to intervene in issues of the validity of Acts of Parliament. I should be most unwilling to decide this or any other case in a way which would endanger that tradition of mutual respect. I do not, and I have no doubt your Lordships do not, have any wish to expand the role of the judiciary at the expense of any other organ of the State or to seek to frustrate the properly expressed wish of Parliament as contained in legislation. The attribution in certain quarters of such a wish to the judiciary is misconceived and appears to be the product of lack of understanding of the judicial function and the sources of law which the courts are bound to apply.

169. It was this instinct of respect which led the Court of Appeal to satisfy itself that it could properly pronounce upon the validity of the Parliament Act 1949, notwithstanding the acceptance both by the appellants and the Attorney General that it was justiciable in a court of law. I am myself satisfied that it was right to conclude that this particular issue is one which can and should be determined by the courts. It is correctly a question of statutory interpretation, determining the ambit of section 2(1) of the Parliament Act 1911, a question of law which falls within the scope of courts of law carrying out their regular function. In my opinion the Court of Appeal was right to conclude that it had jurisdiction to determine the issue raised in these proceedings.

170. It is unnecessary for me to dilate on the indicia of intention upon which the appellants' counsel Sir Sydney Kentridge QC relied in seeking to establish that the scope of section 2(1) of the 1911 Act is limited. He focused in particular on the opening word "If" and the meaning which he attributed to the word "Parliament" in the final recital to the Act. The Attorney General for his part maintained that the words "any Public Bill" meant literally what they said and that that phrase was apt to include a Bill which itself amended the conditions laid down in section 2(1). Several of your Lordships have dealt in detail with the issue of construction – I would refer in particular to para 29 of the opinion of my noble and learned friend Lord Bingham of Cornhill – and I am content to agree with their conclusions.

171. In construing an Act of Parliament it may be of assistance to have regard to the historical context, which may throw light upon the mischief to which the legislation is directed: see, eg, *R v Z (Attorney General for Northern Ireland*'s *Reference)* [2005] UKHL 35; [2005] 2 WLR 1286. Lord Bingham of Cornhill has dealt with this fully in his opinion and I cannot usefully add anything to his review of the events leading up to the enactment of the Parliament Act 1911. The extent to which use may be made of subsequent events is less clear cut, but at its lowest one may obtain reinforcement of one's construction of legislation from the fact that the same interpretation has been adopted over a considerable period. That is not to say that the courts may not reverse a long-held error of interpretation, if satisfied that it is right to do so: cf *Inland Revenue Comrs v Dowdall O'Mahoney & Co Ltd* [1952] AC 401; *West Midland Baptist (Trust) Association (Inc) v Birmingham Corporation* [1970] AC 874. The longevity of that construction will, however, cause them to be cautious about doing so and, as my noble and learned friend Lord Nicholls of Birkenhead has pointed out at para 68, in the present case the involvement of the legislature goes much deeper. Moreover, when subsequent legislation has been passed and acted upon

which depends for its validity upon the correctness of that construction, the effect may exceed that of demonstrating unanimity of opinion and become a piece of political fact and reality which cannot readily be set aside: see the opinion of Lord Hope of Craighead, paras 119 et seq and the academic commentaries to which he there refers.

172. I have reached my conclusion about the meaning of section 2(1) of the 1911 Act without resort to the practice of consulting Hansard developed in consequence of the decision of the House in *Pepper v Hart* [1993] AC 593. In particular, I have not taken into account the defeat of the amendment moved by Sir Philip Magnus and the withdrawal of that moved in the House of Lords by the Earl of Ancaster, described by the Court of Appeal in paras 79 to 87 of its judgment. I am not persuaded that the conditions for resort to Hansard have been satisfied in the present case. It would accordingly be incorrect for a court to draw conclusions from such elements of the Parliamentary history of the legislation as the proposal and rejection of amendments: see *Viscountess Rhondda's Claim* [1922] 2 AC 339, 383, per Viscount Haldane.

173. Sir Sydney sought to establish a limitation upon the freedom of Parliament to use section 2(1) of the 1911 Act to amend the terms of that subsection by reliance upon the proposition that legislation passed by the exercise of the powers contained in it is delegated or subordinate, not primary. The conclusion which he drew from this premise was that it was unlawful for the delegated body, the Sovereign and the House of Commons, to enlarge the scope of its own authority without the approval of the delegating body, which includes the House of Lords. I am unable to accept the validity of the premise. I do not think that it makes sense to regard the Sovereign and the House of Commons as delegates, when they themselves constituted two of the delegators.

174. Nor do I consider that the appellants derive assistance from the decisions in cases related to colonial legislatures set up under the authority of enactments of the Imperial Parliament such as the Colonial Laws Validity Act 1865. These decisions establish merely that where a legislature is given plenary powers by its founding legislation, it can pass such Acts as it sees fit, including enactments abolishing one of the houses of the legislature; where, on the other hand, the founding legislation contains limitations, the enactments of the body founded will not be valid if they contravene those limitations. This is the explanation for the decision of the Privy Council in *Bribery Commissioner v Ranasinghe* [1965] AC 172, upon which Sir Sydney particularly relied, as distinct from such cases as *McCawley v The King* [1920] AC 691, *R v*

Burah (1878) 3 App Cas 889 and *Hodge v The Queen* (1883) 9 App Cas 117, together with the Australian decisions in *Taylor v Attorney General of Queensland* (1917) 23 CLR 457 and *Clayton v Heffron* (1960) 105 CLR 214. In *Powell v Apollo Candle Co Ltd* (1885) 10 App Cas 282 at 289 the Privy Council declared firmly that the earlier decisions had put an end to the doctrine that a colonial legislature is a delegate of the Imperial legislature. The Court of Appeal in the present case, having accurately summarised the effect of the Commonwealth authorities at para 67 of its judgment, pointed out, again I think rightly, that the circumstances of these cases are not strictly analogous to those of the present appeal and went on in para 68 in a passage with which I agree:

> "There is, in our judgment, no constitutional principle or principle of statutory construction which prevents a legislature from altering its own constitution by enacting alterations to the very instrument from which its powers derive by virtue of powers in that same instrument, if the powers, properly understood, extend that far. This is not performing an act of bootstrap levitation, provided the power exercised is duly derived, directly or indirectly, from a sufficient original sovereign power and authority."

175. Assuming the correctness of the conclusion that the Parliament Act 1949 was validly enacted, which is sufficient to dispose of the appeal before the House, it is nevertheless germane to the issue of the construction of section 2(1) of the 1911 Act to inquire whether Parliament could resort to it to extend the life of a Parliament beyond five years, notwithstanding the exception contained at the beginning of the subsection. Your Lordships have expressed differing opinions on the issue and I shall not rehearse the arguments. It is sufficient for me to say that I support the view that section 2(1) cannot be so used. I agree with the reasoning set out in para 59 of the opinion of Lord Nicholls of Birkenhead:

> "The Act setting up the new procedure expressly excludes its use for legislation extending the duration of Parliament. That express exclusion carries with it, by necessary implication, a like exclusion in respect of legislation aimed at achieving the same result by two steps rather than one. If this were not so the express legislative intention could readily be defeated."

176. This leads me to one final question, which I find much the most difficult of those arising out of this appeal and to which I shall not attempt to give a definite answer. Are there any other implied limitations upon the freedom to use section 2(1) of the Parliament Act 1911? It is at this point that one enters the penumbra in which the boundary between political matters and legal entitlement becomes particularly indistinct. Various changes might be posed as theoretical possibilities: abolition of the House of Lords, radical change in its composition which would effect a fundamental change in its nature, substantial reduction of the powers of the House of Lords or the virtual removal of the braking mechanism contained in section 2(1) by amending the number of times that the House of Lords can reject a bill or reducing the time which must elapse to a minimal period. I would at once express the hope and belief that such possibilities are so unlikely to occur as to be purely theoretical. Our constitution has for the last 200 years developed by evolution rather than revolution. Successive governments, even those with massive majorities, have wisely recognised this in exercising the degree of moderation with which they have approached radical changes which some of their supporters ardently wished to put into effect, observing the principle expressed by Gladstone, that the constitution depends "on the good sense and good faith of those who work it." An unwritten constitution, even more than a written one, is a living organism and develops with changing times, but it is still a delicate plant and is capable of being damaged by over-vigorous treatment, which may have incalculable results. It is a corollary of the principle of the sovereignty of Parliament that Parliament as ordinarily constituted can enact even fundamental constitutional changes: the Kilbrandon Commission pointed to the legislation creating the Irish Free State in 1922 (Report of the Royal Commission on the Constitution 1969 - 1973 (1973), Cmnd 5460, para 56) and one can now add the removal of the hereditary peers from the House of Lords by the House of Lords Act 1999, which, it is to be noted, was passed in the customary fashion by both Houses.

177. Lord Reid in *Madzimbamuto v Lardner-Burke* [1969] 1 AC 645 at 723 expressed with his customary clarity the accepted principle governing the powers of Parliament:

> "It is often said that it would be unconstitutional for the United Kingdom Parliament to do certain things, meaning that the moral, political and other reasons against doing them are so strong that most people would regard it as highly improper if Parliament did these things. But that does not mean that it is beyond the power of Parliament to

> do such things. If Parliament chose to do any of them the courts could not hold the Act of Parliament invalid."

In so holding Lord Reid was referring to legislation passed by Parliament in the normal manner. The question now posed is whether this comprehensive principle applies with equal force to all legislation passed under the powers contained in the Parliament Act 1911. If the unlikely came to pass and the 1911 Act were used to put through legislation of the type I have suggested, would critics be restricted to terming it outrageous (the epithet applied by Mr Quintin Hogg MP and Captain Crookshank MP to the Parliament Act 1949: see Hansard (HC Debates) 14 November 1949, *cols* 1771, 1803), or would they be able to challenge its validity in a court of law?

178. The Court of Appeal suggested (para 99) a distinction between making changes of a fundamentally different nature to the relationship between the House of Lords and the Commons and making such changes of a less fundamental nature. As neither of the parties supported this distinction in argument before the House, and it has not found favour with any of your Lordships, I do not find it necessary to examine it further. Despite the general lack of enthusiasm for the proposition espoused by the Court of Appeal, however, I incline very tentatively to the view that its instinct may be right, that there may be a limit somewhere to the powers contained in section 2(1) of the 1911 Act, though the boundaries appear extremely difficult to define. If a fundamental disturbance of the building blocks of the constitution is contemplated at some time, it may well be that no government in the real political world would attempt to use those powers for the purpose. Whether a legal challenge to the use of the 1911 Act for such a purpose could succeed is a topic on which I should prefer to receive much more specifically directed argument and to give much more profound consideration before reaching a conclusion. All that I would say now is that I wish to reserve my position on it.

179. That said, I agree that the challenge to the validity of the Parliament Act 1949 and the Hunting Act 2004 has not been sustained and I would dismiss the appeal.

LORD BROWN OF EATON-UNDER-HEYWOOD

My Lords,

180. These proceedings attack the Hunting Act 2004. Odd as it may seem, however, whatever views we hold upon the merits or demerits of hunting, or of the legislation which now bans it, are quite immaterial. Instead the challenge is directed to the parliamentary procedure used to enact the ban, a procedure which invoked the Parliament Act 1949 (the 1949 Act). Put shortly, this attack upon the Hunting Act stands or falls entirely upon the validity of the 1949 Act and that in turn depends upon whether it was lawful to force that Act through Parliament by the use of the Parliament Act 1911 (the 1911 Act). The precise terms of section 2(1) of the 1911 Act are central to this dispute. Rather, however, than set them out yet again, I shall take them as read.

181. To many it will seem remarkable that your Lordships should now be asked, 56 years after the passage of the 1949 Act, to declare it invalid. At first blush, indeed, given that the 1949 Act is an Act of Parliament, it is somewhat surprising that the courts should be examining its validity at all. It was passed (as were two other Acts of Parliament before it) "in accordance with the provisions of the Parliament Act 1911 and by the authority of the same"—such being the words of enactment expressly provided for by section 4(1) of the 1911 Act. It became an Act of Parliament precisely in the circumstances and upon the fulfilment of the conditions provided for by section 2(1) of the 1911 Act. And when as a Bill it was presented to His Majesty for assent, it had endorsed on it, as section 2(2) of the 1911 Act required, the certificate of the Speaker of the House of Commons signed by him that the provisions of section 2 had been duly complied with—section 3 of the Act expressly providing that:

> "Any certificate of the Speaker of the House of Commons given under this Act shall be conclusive for all purposes, and shall not be questioned in any court of law."

182. Yet these considerations notwithstanding, the Attorney General accepts, as he has throughout this litigation, that the courts are properly seised of this challenge to the 1949 Act, and that the attack upon its validity is in no way foreclosed either by the endorsement upon it of the Speaker's certificate of compliance with the 1911 Act, or by the long

passage of time since its enactment, or by its subsequent invocation by both main political parties to enact other legislation too. Your Lordships must, therefore, cast aside any initial inhibitions about entering upon this unusual challenge. There is no need here for judicial reticence. Rather your Lordships must examine the challenge for all the world as if the 1949 Act had only recently received the Royal Assent.

183. The effect of the 1949 Act, as several of your Lordships have already made clear, was to amend the terms of the 1911 Act itself. Its sole purpose, indeed, was to weaken the conditions controlling the use of the 1911 Act. This it did by reducing from three sessions to two, and from two years to one, the period by which the House of Lords was thereafter able to delay the enactment of legislation promoted by the House of Commons. The side note to section 2(1) of the 1911 Act, as enacted, described its original purpose as the "Restriction of the powers of the House of Lords as to Bills . . .". The 1949 Act restricted those powers still further. That is the long and the short of it.

184. Was that something which the House of Commons was entitled to achieve by use of the 1911 Act itself? Was it, in other words, open to the House of Commons to use the 1911 Act (itself of course enacted with the consent of the House of Lords) to overcome the subsequent refusal by the House of Lords in 1949 to consent to the proposed further restriction of their powers? That is the core question raised in these proceedings. A related question too arises: what, if any, limitations are there upon the use of the 1911 Act to effect constitutional change?

185. The appellants' objection to the use of the 1911 Act to force through the 1949 Act is an obvious one. Put simply it is this. Here were the two main constituent elements of Parliament, the House of Commons and the House of Lords (the third, the Monarch, playing only a formal role in the legislative process) agreeing in 1911 to the specific conditions under which the House of Commons would thereafter be able to enact its legislative programme without the consent of the House of Lords. How could it then be right, thirty-eight years later, for the House of Commons, without the Lords' consent, to use the 1911 Act procedure to alter those very conditions, making it easier still for future House of Lords' objections to be overridden? The 1911 Act must be regarded as a "concordat" or "new constitutional settlement" (two of the terms coined by the Court of Appeal below), a consensual arrangement which could not then be changed at the instance of one party only. And not merely is the point an obvious one; so too are its attractions. To do

as the House of Commons did in 1949 must strike many as quite simply unfair, akin to reneging on a deal.

186. How, then, do the appellants give juridical expression to this central objection to the 1949 Act? It is their main submission in these proceedings that powers conferred on a body by an enabling Act may not be enlarged or modified by that body unless there are express words authorising such enlargement or modification. True it is, they must acknowledge, section 2(1) of the 1911 Act refers on its face to "any Public Bill". But, submits Sir Sydney Kentridge QC, that is not enough: express words were needed to permit the House of Commons to extend its powers still further. Sometimes (if rarely) legislation contains a Henry VIII clause, a power conferred on a delegate body to amend the enabling Act itself. But no such clause is to be found in the 1911 Act and without it that Act could not be amended save with the consent of both Houses of Parliament. The 1911 Act settled the conditions under which in future the House of Commons would be able to override the House of Lords' rejection of its Bills. Those conditions having been agreed, they could not thereafter be altered save with the further consent of the House of Lords.

187. Persuasive though I confess to having initially found this argument, I have finally reached the view that it must fail. Its central plank, the suggested analogy with delegated powers, I now think to be unsustainable. The 1911 Act was not like a statute by which Parliament as the sovereign legislative body confers, say, regulation-making powers upon a Minister—powers plainly then incapable of enlargement without a Henry VIII clause. The 1911 Act in truth conferred no further legislative powers upon the House of Commons. Rather it redefined the sovereign parliament's legislative process by providing in certain circumstances for main legislation without the need for the House of Lords' consent. Nor was the situation brought about by this re-definition of the legislative process analogous to the establishment of colonial legislatures by an imperial Parliament—the source of much of the case law put before us. An imperial Parliament conferring powers on a colonial legislature cannot realistically be equated to the House of Lords, under threat in 1911 that enough new Liberal peers would be created to secure the future enactment of the government's Bills, agreeing instead to a weakening of its powers of veto. The Commonwealth cases were in truth addressed to a very different political reality. The appellants' main argument must fail.

188. There was, however, as I understood it, a second string to the appellants' bow, Sir Sydney's argument that in any event, even if his principal argument as to the need for express words fails, Parliament cannot have intended the expression "any Public Bill" to be understood to encompass even proposed amendments to the 1911 Act itself so that the expression must be understood as to that extent qualified.

189. In support of this argument the appellants point to certain extreme possibilities open to the House of Commons if the Attorney General's arguments be right. Provided only that the 1911 Act procedure was used to achieve it, the House of Commons could have forced through in two years (and, if the 1949 Act is valid, can now force through in one) wholesale amendments to the conditions governing that Act's further use. For example, the Act could be amended to allow all future Bills to be treated just like money Bills and forced through within one month—see section 1 of the 1911 Act. Or, indeed, notwithstanding that "a Bill containing any provision to extend the maximum duration of Parliament beyond five years" is on its face excluded from the scope of section 2, that exclusion itself could be removed by amendment and the Act's procedure then be used afresh to extend Parliament's life.

190. Whilst, therefore, literally construed, the 1911 Act would have permitted its use to amend the very conditions to which that use had been made subject, the court could and should instead construe the phrase "any Public Bill" restrictively so as to guard against such politically unreasonable consequences.

191. It appears to have been this argument which found most favour with the Court of Appeal. But it was not, of course, accepted in full: the Court of Appeal was not prepared to construe the expression "any Public Bill" in the 1911 Act sufficiently restrictively to preclude any dilution whatever of the conditions governing the Act's future use. Rather the court held that modest amendments could be forced through but not fundamental ones. Concluding, however, that the 1949 Act had effected only a modest amendment to the 1911 Act, the appellants' case still failed.

192. It is this argument, of course, which raises the related question mentioned in para 184 above: what, if any, limitations are there upon the use to which the 1911 Act can be put to effect constitutional change? The ultimate logic of the Attorney General's argument is that there are no such limitations. Sir Sydney, for his part, however, must contend

that the 1911 Act procedure is certainly not available to abolish the House of Lords: for that would be to destroy the constitutional settlement embodied in the 1911 Act no less completely than any amendment, however fundamental, to the specified conditions governing its use.

193. It is not difficult to understand why the Court of Appeal reached the conclusion it did as to the kind of changes achievable by use of the 1911 Act. And it is easy to understand too why each side rejects that conclusion: Sir Sydney because his argument needs to succeed in full measure; the Attorney General because the Court of Appeal's judgment now casts real doubt over what use can be made of the 1911 Act to effect significant constitutional change in future.

194. In common, I think, with all your Lordships, I would reject the Court of Appeal's approach as unwarranted in law and unworkable in practice. But in common too, I think, with the majority of your Lordships I am not prepared to give such a ruling as would sanction in advance the use of the 1911 Act for all purposes, for example to abolish the House of Lords, (rather than, say, alter its constitution or method of selection) or to prolong the life of Parliament, two of the extreme ends to which theoretically this procedure could be put. Although, as I have said, the strict logic of the respondent's position suggests that the express bar on the House of Commons alone extending the life of Parliament could be overcome by a two-stage use of the 1911 Act procedure, the Attorney General acknowledged in argument that the contrary view might have to be preferred. Let us hope that these issues will never be put to the test. But if they are, they will certainly deserve fuller argument than time has allowed on the present appeal.

195. One thing, however, remains certain. There is no proper basis on which a qualification to the wide words "any Public Bill" could be implied into section 2 of the 1911 Act to bar its use to achieve the particular amendments effected by the 1949 Act. It is unnecessary to resort to Hansard to conclude that both Houses of Parliament must inevitably have recognised in 1911 the real possibility that that Act's procedure would thereafter be used to amend itself. I too, therefore, would dismiss this appeal.