HOUSE OF LORDS

Thursday, 25th March, 1965

The House met at three of the clock, The LORD CHANCELLOR on the Woolsack.

Prayers—Read by the Lord Bishop of Liverpool

DEEP-SEA DIVERS

3.5 p.m.

LORD WAKEFIELD OF KENDAL: My Lords, I beg leave to ask the Question which stands in my name on the Order Paper.

[The Question was as follows:

To ask Her Majesty's Government what steps are being taken to ensure that there is an adequate supply of British divers qualified to operate in deep water in view of the under-water developments taking place in the North Sea and in view of the fact that there are such qualified deep-water water divers available in the U.S.A., France and Germany.]

THE PARLIAMENTARY SECRETARY, MINISTRY OF TRANSPORT (LORD LINDGREN): My Lords, the recruitment of suitably qualified workers is, in the first instance, a matter for the managements concerned. I am, however, informed that no representations have been received suggesting that the supply of qualified British divers is inadequate to meet the relatively small demand for this type of work in connection with the under-water operations now being planned in the North Sea.

LORD WAKEFIELD OF KENDAL: My Lords, I thank the noble Lord for that reply. Is he not aware that, while at the present time the demand may be small, nevertheless, because of the rapid developments which are taking place in under-water activities, not only in the North Sea but in various other parts of the world, it is of vital importance for this country to take immediate steps to ensure that this important work is undertaken partly by British divers, and not just by divers from the United States of America, France and Germany?

LORD LINDGREN: My Lords, this, of course, is primarily a matter for the Ministry of Labour, and I can assure your Lordships that they are in close touch with the diving contractors and that co-operation between the two is close, and I am certain that, if at any time there was any need for further training or any difficulty in recruitment, there would be liaison between the Ministry of Labour and the diving contractors. It is equally true that there is a most efficient supply of divers from Service men on the completion of their service with the Royal Navy and the Royal Air Force.

LORD WAKEFIELD OF KENDAL: My Lords, I thank the noble Lord for that further reply. Does he not recollect that from time to time the Government have given assistance to aid people to fly, and would Her Majesty's Government bear in mind that it might be useful to remember this precedent of the air in connection with deep diving under water?

LORD LINDGREN: My Lords, I am most grateful to the noble Lord for his interest in State enterprise. But at the moment diving operations by the diving contractors are private enterprise; recruitment is a matter for their own managements as, equally, is the training of their staff. But, as I have already said, if the assistance of the Ministry of Labour is required, they, in conjunction with the Royal Navy and the Royal Air Force, will be only too pleased to co-operate.

UNTINTED POLARISED SPECTACLES

3.9 p.m.

LORD SALTOUN: My Lords, I beg leave to ask the Question which stands in my name on the Order Paper.

[The Question was as follows:

To ask Her Majesty's Government whether they can say why it is not possible to obtain spectacles with untinted polarised lenses.]

THE PARLIAMENTARY UNDER-SECRETARY OF STATE FOR COMMONWEALTH RELATIONS AND FOR THE COLONIES (LORD TAYLOR): My Lords, I am advised that it is not impossible to obtain spectacles with untinted polarised lenses, but the

demand for them is very limited indeed and they are not readily available. I know of no medical indication for the supply of such lenses. Spectacles with lightly-tinted polarised lenses may be prescribed, on the advice of an ophthalmologist, under the National Health Service if they are required for the correction of an optical aberration. It is not a function of the Service to provide glasses of types which are needed solely for occupational or other non-clinical reasons, and if anyone wishes to have such glasses he must make his own arrangements with the suppliers.

LORD SALTOUN: My Lords, I should like to thank the noble Lord for his Answer. Perhaps I may ask him this further question—namely, is he aware that quite a short time ago these spectacles could not be obtained on a prescription, whether under the National Health Service or not, as I have proved by experiment, and the fact that it can be done now is due entirely to the noble Lord's own patient and persistent efforts which lay aside from his normal ministerial avocations? I have put my supplementary question in that form because I wish your Lordships to know of the reason I have to be grateful to the noble Lord.

LORD TAYLOR: My Lords, I thank the noble Lord very much for his kindness, and also indeed for sending me a pair of excellent tinted polarised spectacles. But I think I should not in fact take the credit for this. If there has been a change it has been due to the persistence of the noble Lord. But I believe that, in fact, the supply of such spectacles, where there was a clinical need, was always a possibility, provided one went to an ophthalmologist rather than to an optician under the Supplementary Ophthalmic Services.

BUSINESS OF THE HOUSE

THE MINISTER WITHOUT PORTFOLIO (LORD CHAMPION): My Lords, at a suitable moment after 3.30 my noble friend Lord Hobson will be making a Statement on Post Office charges. In view of the large number of speakers on the Second Reading of the War Damage Bill this afternoon, suppers will be available from 7.30 p.m.

MARKET DEVELOPMENT SCHEME (EXTENSION OF PERIOD) ORDER, 1965

3.12 p.m.

LORD CHAMPION: My Lords, I beg to move that the Market Development Scheme (Extension of Period) Order, 1965, be approved. The Market Development Scheme was introduced after the 1962 Annual Review and provides for grants for the promotion of efficient marketing of agricultural and horticultural produce. The arrangement then made was that the grants would, in the first place, be made for an experimental period of three years up to a total of £1½ million. This three-year period expires at the end of this month, and the grants so far approved total less than £700,000. One hundred and sixty projects have been approved covering a fairly wide field of activities, including market research, the promotion of grading, improvement of quality, and the development of efficient marketing, particularly by co-operatives and farmers' groups.

It was agreed with the National Farmers' Unions during the recent Review that, subject to Parliamentary approval, the Scheme should be extended with a view to making use of that part of the £1½ million which has so far not been allocated. The Agriculture (Miscellaneous Provisions) Act, 1963, which provides the power to extend the operation of the Scheme, stipulates that such extensions may not exceed three years at a time. The Order which I am asking your Lordships to approve provides for an extension of the Scheme for a further three years.

Grants under the Scheme vary, at present, from 25 per cent. to 75 per cent. of the cost, depending on the individual circumstances of the projects. The kind of projects put forward inevitably depend on the applicant seeing some potential benefit to himself. It may well be, therefore, that some desirable developments may lack the stimulus provided by the Scheme. It was consequently agreed with the Farmers' Unions that it would be desirable to provide for a higher rate of grant, which will be 90 per cent., towards the cost of research initiated by the Agricultural Market Development Executive Committee, which supervise the operation of the Scheme, under the

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chairmanship of Sir Richard Nugent. An Order, subject to Negative Resolution, will be laid before the House soon for this purpose. Such grants would enable desirable research to be undertaken in fields which would otherwise be neglected and for which there would be little if any pecuniary benefit to the applicant for grant. However, for the moment, I am asking your Lordships to agree to and approve the extension of the Scheme itself for a further three years.

Moved, That the Market Development Scheme (Extension of Period) Order 1965 be approved.—(*Lord Champion.*)

LORD ST. OSWALD: My Lords, I am always, individually, happier congratulating the noble Lord than criticising him. It is not his fault that the opportunity for the latter occurs more frequently. I would only point out—I hope that this will not be held to be particularly carping—that the present Government are fond of suggesting that the recent Government were oblivious of the needs of marketing. In fact, the Order which the noble Lord has been putting forward to-day is the result of an idea mooted by my right honourable friend, the then Minister of Agriculture, four years ago, and the scheme was in fact introduced three years ago. My honourable friend Sir Richard Nugent, whom the noble Lord very kindly mentioned, has called it a priming exercise. I think that that is a good description. I am pleased to hear that the Government intend to continue this priming exercise. I am sure that the farmers will be ready to take advantage of it. I only hope that it means that the Government are not intending to stop up the pipe-line itself leading to the marketing system.

LORD CHAMPION: My Lords, I think that I can give that assurance. I am very grateful to the noble Lord for what he said. I am as pleased, too, as he is, to be able to pay occasionally a compliment to the last Government for some little thing which they did, and certainly in this regard I am happy to return the compliment.

On Question, Motion agreed to.

CIVIL DEFENCE (SHELTER) (MAINTENANCE) (AMENDMENTS) REGULATIONS 1965

3.18 p.m.

THE JOINT PARLIAMENTARY UNDER-SECRETARY OF STATE, HOME OFFICE (LORD STONHAM): My Lords, I beg to move that the Civil Defence (Shelter) (Maintenance) (Amendments) Regulations 1965, a draft of which was laid before your Lordships' House on March 3, be approved. These Regulations are required because the London Government Act, 1963, comes into force on April 1 next. The Regulations have been prepared at the request of the Greater London Council and the London boroughs. The purpose of the Regulations is to confer on the Greater London Council the function of maintaining existing Civil Defence shelter for occupants of blocks of flats formerly owned by the London County Council. By reason of Section 23(1) of the 1963 Act, these blocks of flats ves in the Greater London Council on April 1 next.

Under Section 49(1) of the London Government Act, 1963, responsibility for Civil Defence functions generally is placed on the London borough councils. If, therefore, these Regulations were not made, responsibility for maintenance of the shelters, formerly the concern of the L.C.C., would pass on April 1 to the appropriate London boroughs. The Greater London Council and the new London borough councils consider, however, that it would be desirable and convenient that the work should continue to be done, as it was done by the L.C.C., as part of the normal maintenance of the estates. The draft Regulations are intended to give effect to this wish.

The opportunity has also been taken to omit the reference to Luton from the Schedule to the Civil Defence (Shelter) (Maintenance) Regulations of 1956, which lists certain county districts having the same functions under the Regulations as county boroughs. This is because, as Luton has become a county borough the reference has become redundant.

Moved, That the Draft Civil Defence (Shelter) (Maintenance) (Amendments) Regulations 1965, laid before the House on March 3, be approved.—(*Lord Stonham.*)

On Question, Motion agreed to.

HOUSE OF LORDS' OFFICES COMMITTEE

THE CHAIRMAN OF COMMITTEES (LORD MERTHYR): My Lords, I beg to move the Motion standing in my name.

Moved, That the Earl of Listowel be proposed to the House as a member of the House of Lords' Offices Committee. —(*Lord Merthyr.*)

On Question, Motion agreed to.

PROCEDURE OF THE HOUSE

3.20 p.m.

Order of the Day read for the consideration of the Second Report from the Select Committee.

The Committee's Report was as follows :

SPECIAL ORDERS COMMITTEE

The Committee have considered the terms in which the Special Orders Committee report to the House and recommend that the Committee should specify what are the important questions of policy or principle, if any, raised by any Special Order.

THE CHAIRMAN OF COMMITTEES (LORD MERTHYR): My Lords, I beg to move that this Report be now considered.

Moved, That the Report be now considered.—(*Lord Merthyr.*)

On Question, Motion agreed to.

LORD MERTHYR: My Lords, I beg to move that this Report be now agreed to.

Moved, That the Report be now agreed to.—(*Lord Merthyr.*)

On Question, Motion agreed to.

MINISTERIAL SALARIES AND MEMBERS' PENSIONS BILL

Read 3ª (according to Order), with the Amendments, and passed, and returned to the Commons.

ARMED FORCES (HOUSING LOANS) BILL

Read 3ª (according to Order), and passed, and returned to the Commons.

WAR DAMAGE BILL

3.22 p.m.

Order of the Day for the Second Reading read.

LORD SHEPHERD: My Lords, this is a short Bill consisting of one main clause and two subsections. It is a Bill which has aroused considerable interest and controversy. There are always two sides to every coin, and I am quite sure that any Member of this House will agree that this measure has resulted in a good deal of discussion in the corridors, and that there has been a good deal of correspondence and Press statements. Therefore, from my point of view, I think I must accept the fact that most of those who are listening to this debate this afternoon are likely to have heard only one side of the story. For that reason, I beg forgiveness if, in putting the Government's case, I have to speak at some length.

In view of all the circumstances, of the Press statements and the like, I think I should be right to appeal to your Lordships, as a Parliamentary Assembly, to cast aside any preconceived views or opinions that you may have held, and to judge this Bill after the case has been made. For my part, I shall try to obtain the greatest amount of common ground ; and I do not think that will be difficult. The issue this afternoon is really a question of public policy. If we strip the legal argument and the question of retrospection, the issue before this House this afternoon is simple. It is this. How best, after a major war with massive destruction, can a country assess the extent of the damage, assess and obtain the resources that are needed for rehabilitation and to get the economic life of the country going once again, and apportion compensation or make rehabilitation on a basis of need and priority. I would suggest, above all else, that this should be done on a basis of equity. One could have, perhaps, two choices. First, one could leave it to the courts. But I would suggest that they are ill-equipped, and that, administratively, it would perhaps be impossible for them to undertake this task. Bnt I suggest that the real alternative, the only alternative, lies within Government and Parliament: that it is for them to decide and to set up

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the right machinery for carrying out these major tasks.

Clause 1(1) restores the Common Law of England and of Scotland to what it was understood to be prior to the House of Lords' decision in the *Burmah Oil* case. The Common Law, as then understood, was that in respect of all war damage which arose where the Crown had acted lawfully in the defence of the Realm no claim lay against the Crown. The decision of the House of Lords, sitting in its Judicial capacity, changed this, and it might be helpful if I were to refer to what was said in their judgment in the *Burmah Oil* case. The taking or the destruction of property in the course of actually fighting the enemy does not give rise to any claim for compensation. That is the old Common Law. But these demolitions, it was said (those of the Burmah Oil Company's installations) did not fall under the head of battle damage, because although the enemy was approaching, the destructions did not arise out of military operations.

So, my Lords, after the Judgment of our noble friends the Law Lords, we had two divisions, shall we say, in Common Law as regards war damage. We had the case that where damage arose through actual fighting—which is called accidental—there would be no claim; but where property was damaged in order that it should be denied to the enemy, then at Common Law the claimants had a claim against the Crown. The Government have accepted that there is a moral responsibility for compensation, but in this Bill they seek to re-establish the principle of equity over the distribution of compensation, and are anxious that the law should reflect that principle.

We all know the changing character of war. We know the increased firepower of nations and the destruction that arises. But—and perhaps this is more significant when one considers civilian damage—there is the speed and mobility of forces to be borne in mind. In the old days one could say fairly well where a battle would take place; but to-day whole continents can suddenly be embroiled in war.

Let us consider the Japanese aggression in South-East Asia. It was not only British property which was involved. Malays, Chinese, Indians, Burmese, Siamese and Europeans of many countries were all affected, and one could say that they had a moral claim on this country, whose responsibility it was to defend those areas. To give an idea of the extent of the destruction let us just look at Burma, for example. The claims for war damage amount to about £165 million, of which £67 million represents damage to British and European property. Many of us who served in the Forces during the last war and had to undertake acts of destruction might have difficulty to-day, if we did not have it then, in saying what was denial damage and what was strictly battle damage—and I think this is true of all theatres of war. I have no apology to make in referring to the cost of war in human terms. Death and wounds, widows and orphaned children—we all know that we, as a State, like every other State, have never been able fully to compensate the people who suffered. When one turns again to property, it is true that there were many businesses in the Far East that never recovered from the war, and which would never have had a claim arising from war damage.

May I refer to a speech by Mr. Lloyd George on March 10, 1915? He said:

> "Instead of 'business as usual' we want 'victory as usual,' and you cannot have that unless everybody in the community is prepared to suffer all kinds of inconvenience and, if necessary, sacrifice. I do not think you can therefore hope to have the same complete measure of compensation which you would enforce in time of peace, where you take one man's property for the benefit of the public. After all, this is for the general defence of the realm."—[OFFICIAL REPORT, Commons, Vol. 70, col. 1460.]

Those were the words of Mr. Lloyd George in the First World War, when the country, perhaps for the first time, was beginning to understand what were going to be the demands upon it for victory.

Surely the guiding principle in this respect is that the burden of war should be borne by the nation as a whole, and that compensation or rehabilitation should be made to the limit of the nation's ability. But, if you accept that there shall be an equal burden, surely it also arises that no man should be in a privileged position. My Lords, I have had some interest in reading old *Hansards*, and I picked up these words

of the Attorney General on May 3, 1920—and I should like to read them, because I think they have a bearing on to-day's debate. He said:

"Are we to have two classes of persons in this country who have given up, voluntarily or involuntarily, their property for the defence and safety of the Realm; those who have taken their compensation at the hand of the Losses Commission, and those who have waited for the ultimate fighting out of certain cases, and then want by Petition of Right to insist upon their pound of flesh, and insist with success! I think that would be a deplorable result. I submit that in this case, as in all cases, the only proper standard for the Government is that there must be one weight and one measure."—[OFFICIAL REPORT, Commons, Vol. 128, col. 1845.]

My Lords, I think that those words in 1920, in reference to the First World War, have a great bearing to-day in reference to the scale of damages and the resources available.

May I refer your Lordships to the words of the noble Viscount, Lord Radcliffe, in his judgment on the *Burmah Oil* case? He said:

"But it is for those who fill and empty the public purse to decide when, by whom, on what conditions and within what limitations such compensation is to be made available. After all, States lose wars as well as win them: and at the conclusion of a war that has seen massive destruction, whether self-inflicted through the medium of a 'scorched earth' policy or inflicted by the enemy, there may well be urgent claims for reconstruction priorities that make it impossible in advance to mortgage the public treasury to legal claims for full individual compensation for such destruction as we have now to consider."

He went on:

"Has the law any principle for measuring compensation as a legal right when an act has been done in circumstances so special that the ordinary conceptions of property do not apply to it?"

My Lords, individuals and property should be safeguarded against any act of the Crown, and such safeguards do exist.

First, if the Crown or its officers unlawfully carry out some action, there is a right to damages. This Bill in no way affects that position. Where the Crown or its officers do something that is unlawful at Common Law but authorised by Statute, then damages are available within the terms of the Statute. Here we have in mind such actions as requisitioning ships and taking land for military requirements. But, my Lords, let us bear in mind—because it is significant—this fact: over both those things the Executive has some control, whereas war damage is beyond any exercisable or foreseeable control. It arises in an emergency, when all types of action are required; and it was for that reason that, under the Common Law as it was understood, the Crown could act lawfully in the defence of the Realm and no right of action could lie against it.

My Lords, that was the unchallenged view for many years. I will not read the words of the noble Viscount, Lord Radcliffe (I think the judgment is available to most noble Lords), except that passage in which he said:

"There is not in our history any known case in which a court of law has declared such compensation to be due as of right."

I think that statement is clear. I hope that the House will accept from me and the Government the guiding principle that the burden should be borne by the nation as a whole; that no privileged position should be enjoyed by any; but that the Government have a moral responsibility to compensate for war damage within their economic ability and to make proper provision by way of an equitable scheme. And I would suggest that in the last two world wars, Government and Parliament have provided the right sort of mechanism.

The decision of the House of Lords in the *Burmah Oil* case has brought about a major change, to which I have already referred: that, on the one hand, in respect of damage that arises from battle there shall be no claim, but in respect of damage which arises from denial operations there is a claim against the Crown. This is the first time in our history that there have been two classes of claimants. I think I should also point out that, I think for the first time, the Crown is put in the position that when it acts lawfully it will be in the same position as if it had acted unlawfully. This is a very strange position. My Lords, Her Majesty's Government believe that the law as it now stands, after the *Burmah Oil* judgment, is utterly wrong; it is opposed to the public interest; it is opposed to any system of equitable distribution towards the war sufferers; it is imprecise; it is arbitrary and administratively unworkable.

Consider for one moment the situation that arises from this judgment. Is it not

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a fact that it is the duty of all to defend the Realm, to deny to the enemy comfort and support? If the owners of an installation were to destroy their property to deny it to the enemy, and did so voluntarily, there would be no claim; but if they were to wait, perhaps to the very last moment, for an instruction, then they have a claim. Is that right or is that just? Consider that property if it is occupied by the enemy. If you were to destroy it by artillery, if you were to destroy it by bombers based 1,000 miles away with the clear intention that you will deny it to the enemy, then, as I understand the judgment, no claim would arise. Suppose you were to destroy it by saboteurs after it had been occupied by the enemy for some months or perhaps some years. It is questionable whether a claim would arise or not. Consider a factory. If you destroy it as a tank obstacle there is no claim; if you destroy it for denial then there is a claim; but if you mine it and wait for the enemy to occupy it, it is still questionable whether there would be a claim or not. That is why I said the decision that has now been made is imprecise.

I think that greater difficulty will occur when one considers the number of claimants that arise in war damage. How can the courts judge whether a piece of property had been destroyed for denial? It may well be that the person who had authorised it was dead. Perhaps in the case of an oil installation like that of the Burmah Oil Company, it is relatively easy to decide. But the law and judgments should be just to all. How are you to apply this to a rubber factory, a tin dredging factory or a godown? I think it would be very difficult indeed. Therefore I believe, and the Government believe, that all war damage arising in the face of the enemy should be treated alike under an equitable scheme. I think I have said enough in regard to this clause, at least to convey to the House the necessity of subsection (1), which would restore the Common Law to what it was generally understood to be. This would mean that all war damage would be treated alike and there would be a moral obligation on the State to provide compensation.

My Lords, I will now turn to subsection (2). If I may, I will leave aside the question of the principle of retrospective legislation. This issue has now become one between the Burmah Oil Company and Her Majesty's Government. I am sorry for that. Therefore your Lordships must judge to-day whether the Burmah Oil Company has been treated fairly or unfairly by previous Administrations. I think I should say that, apart from the Burmah Oil Company and its associates, there are eight other companies in Burma who have taken proceedings against the Government. It is only that number, out of the many thousands of manufacturers and traders who had claims for war damage, who have proceeded and who have not accepted what the Common Law was then understood to be. I hope I can satisfy the House—in fact I am sure that I shall—that the Burmah Oil Company and its associates have been treated neither better nor worse than any other claimant by the home Government.

The claims arose from the events of 1942. With the Japanese advancing through Burma, certain of the installations were, for economic and military purposes, destroyed on March 7, and the Japanese entered on the following day. Other installations were destroyed later; and, if my reading of the book of the noble Viscount, Lord Slim, is correct, they were destroyed under his orders. May I say how pleased we are to see him in his place and to know that he is going to take part in our debate this afternoon? There was massive damage in South-East Asia, and not only in Burma. These figures will give your Lordships an idea of the extent of the damage: in Burma, £165 million; in Malaya, £160 million; in Borneo and Sarawak, excluding oil damage, £8 million. At that time His Majesty's Government, the Coalition Government, would not be aware of what the full figure would be. They might have had some idea of what the damage had been in our retreat, but they could have had no idea of what the damage would be when we reoccupied.

The Coalition Government made a statement in the House of Commons on February 18, 1943, and I think the House should have it before them:

"It will be the general aim of His Majesty's Government after the war that, with a view to the wellbeing of the people and the resumption of productive activity, property

and goods destroyed or damaged in the Colonial Empire should be replaced or repaired to such an extent and over such a period of time as resources permit. If the resources of any part of the Colonial Empire are insufficient to enable this purpose to be achieved without aid, His Majesty's Government would be ready to give what assistance they can in conjunction with such Common fund or organisation that may be established for post-war reconstruction."—[OFFICIAL REPORT, Commons, Vol. 386, col. 1942, February 18, 1943.]

When we re-occupied the Far East we returned the property to its owners and set up the War Claims Commissions to assess the amount of damage. But it is perfectly clear from all the papers I have seen that there was no liability, either to His Majesty's Government or to the local Government. It may be of interest to the House to know of the procedure in Malaya. I have already mentioned that claims were assessed at £160 million. Payment was made from two sources: £20 million from the home Government and £35 million raised by taxes and levies upon businesses within the country. All types of damage in that claim were assessed and paid for on a basis of equity; and, to the best of my knowledge, as I was living there at that time, this basis was acceptable to all there.

The Burma War Claims Commission was set up in 1946, again to register and assess. The total claims were £165 million. The British Europeans' claims were £67 million, of which £60 million represented denial damage. Burma obtained her independence in 1948 and immediately disclaimed any responsibility for damages that arose out of the war and signified that she had no intention of setting up a war damage scheme—although it is interesting to note that she was prepared to accept reparations from Japan. It became clear that a war claims scheme was unlikely, in view of the attitude of the Burma Government. Her Majesty's Government took the view that there was a claim in equity and there were strong moral grounds for assistance to be given, particularly as the Government were giving assistance to other colonial territories. They offered, and finally paid, £10 million as a final settlement to the British community only. The Burmah Oil Company received some £4,600,000.

How did this gesture by Her Majesty's Government compare with that to other territories? In Malaya, our contribution represented one-eighth of the claims; in Burma, it was about one-seventh of the British European claims; and in Borneo it was one-sixth. So one might say that in Burma the British Europeans were slightly better off than those in Malaya and slightly worse off than the Borneo claimants, but generally one could say that they were treated equally. It might now be said that what was given was too small. I think that your Lordships should remember the circumstances under which we came out of the war. We were economically exhausted, with severe economic and balance-of-payments difficulties and with heavy demands on our economic resources. I think that in what we did, not only in the Far East, but also in other colonial and Commonwealth territories, we acted generously. Again I must stress that, apart from these twelve companies, all the claimants in Malaya, Borneo, Sarawak and Burma accepted the schemes and all were prepared to work on the basis of Common Law as it was then understood.

The Burmah Oil Company and others lodged claims against the Government of Burma. In 1960 the Burma High Court rejected those claims, on the ground that the Military Governor had acted under military necessity and in a national emergency, and that this gave no right to a claim in law. In the following year the Burmah Oil Company and eight other companies took proceedings in the Scottish courts. They were able to do so—I say this in no way as criticism, but merely to show the particular advantage these companies enjoyed over others—because they were registered companies in Scotland and therefore not time-barred. The Government of the day decided that the Crown should defend on an important point of law—whether or not claims at Common Law should lie against the Crown for actions lawfully carried out under the Prerogative. No evidence was called for in any of the hearings and, in spite of the judgment of noble and learned Lords, sitting in their judicial capacity, there is still a long way to go in legal proceedings. The previous Government felt it right to warn the Burmah Oil Company of their intention in this matter. Since the question might arise, I think I should read that letter.

[Lord Shepherd.]

It is addressed to the Burmah Oil Company and signed by a Deputy Treasury Solicitor:

"I have been instructed to inform you that Her Majesty's Government, having carefully considered the action now pending in the court of session at the instance of your Company against the Crown, have been advised that the claim in this action is wholly unfounded in law and that it is likely to be rejected by the courts. Her Majesty's Government are moreover satisfied that the claim made is not in any event one which ought to be met by the British taxpayer.

"Her Majesty's Government have accordingly decided that, in the unlikely event of your company succeeding, legislation would be introduced to indemnify the Crown and its officers, servants and agents against your company's claim. If your company should decide to abandon its claim at this stage, Her Majesty's Government are prepared to consider the question of contributing towards the expenses which your company has incurred up to this date in the course of the present legislation."

This has proved to be a controversial letter. I have read it for two reasons. First, in it the Government clearly established their intentions. They may be criticised for that, but equally they would have been criticised if they had decided to take action should the company succeed and had done so without giving warning to the company. The Government can be attacked from both sides. I think that the Government were right in warning the company of their intentions. Secondly, this is a political decision involving policy, and this warning could not have been sent without the highest possible authority within the Government of the day.

We know the story of the judgment. The Burmah Oil Company obtained judgment in the first court, then the case went to the Appeal Court in Scotland, which found unanimously in favour of the Government. Then the question came to your Lordships' House where, on a three-to-two judgment, the first judgment was reinstated. May I, as a layman, say that, of all the Judges who considered this matter, six found one way and four the other? It is true that your Lordships' House is the highest court and its decision is binding, but, from the layman's point of view, I think it is still a matter of doubt.

It is not only a question of the principle involved; I think that account must be taken of the size of the claim. The figure I have shows that the Burmah Oil Company's claim amounted to £31 million, plus 5 per cent. per annum from 1942—and there are eight other companies who are now commencing to take action. It might well be, if these claims were sustained in the courts and judgment was given to the full, that the Exchequer would have to find a sum of between £100 and £160 million. This is a matter to which I think Parliament must give very careful attention.

In a Press statement the Burmah Oil Company said that if they had been in Sarawak or Borneo they would have been treated on a different basis than they were in Burma. I am glad they have said this, because it gives me the opportunity of giving to your Lordships the conclusive evidence that the Burmah Oil Company were in fact treated as well as, if not better than, other claimants. But the circumstances were different, because the Anglo-Saxon Petroleum Company at Miri and Seria destroyed their property under contract. It was clear very early on, before the Japanese came into the war, that these properties were militarily untenable, and therefore a contract was made.

I would ask your Lordships to remember the claims of the Burmah Oil Company. They claimed £31 million, but their claims were assessed by an independent body—namely, the Carter Committee—set up by the Government, not only to consider their claims but also to consider the other claims in Burma. They assessed the assets of the Burmah Oil Company that were destroyed at £17 million. The Burmah Oil Company received from the Government just on £4¾ million; that is, 27 per cent. of their damages. Consider the Anglo-Saxon Company, who had their property destroyed under contract. Their contract was for rebuilding and carrying out improvements, and the total figure was £12½ million. We contributed £2½ million towards that, which, if my arithmetic is correct, is 20 per cent. So you have two installations, both destroyed for the same economic and military purposes. The one that is content and did it under contract received 20 per cent., and was satisfied; and the Burmah Oil Company, who received 27 per cent., are dissatisfied.

There has been some discussion as to whether the Burmah Oil Company did, in

fact, receive compensation. I believe it is maintained that they received it as rehabilitation, and that this is not compensation. I should judge—and I think most of your Lordships would—that if a figure was given strictly for rehabilitation there would be some strings to it as to the manner in which it was to be used and spent. In the case of Burmah Oil, and in all other claims in Burma, there were no strings whatsoever: the company could spend, deploy and use that money as best they could. In fact, there was a marine club that decided to retain the money in the United Kingdom, and we have recently heard that it used it to provide a provident fund for its secretary. There were no strings. So whether or not it is described as rehabilitation—perhaps for reasons that the Burmah Oil Company were carrying on litigation—it is, in the view of the Government, compensation.

In conclusion on this particular side, I would put these questions to your Lordships. Do you accept the view that the Common Law on war damage should be restored to what everyone believed it to be? Do you accept that the Burmah Oil Company and their associates have been treated on the same basis by the home Government as all the other British-European claimants in Borneo, and all the other claimants of all nationalities in Malaya and Borneo, both in regard to denial and battle damage? Do you accept that other Burma claimants, and claimants from Malaya and Borneo, have accepted the equitable schemes offered either by the home Government or the local Government? I think the answer, on the facts I have given, can be only, Yes.

Therefore we now have to make up our minds whether this company, or group of companies, should be permitted to enjoy a privileged position which they have obtained. No doubt we shall hear words about justice. I am not a lawyer, and therefore I looked up the definition of "justice". I looked up *Jowitt's Law Dictionary,* and it says this—no doubt many noble Lords who are lawyers will remember it:

> "The virtue by which we give to every man what is his due; opposed to injury or wrong."

I use a layman's phrase: "To one man no more and no less than his due as compared with another man". There are all these many thousands of sufferers of war damage who have been content with the arrangements that were made under the Common Law at it was then understood. I would ask the House not only to take the view that the law should be restored, but that there should be no special privileged position.

I appreciate that there will be some discussion on retrospection. I must admit that when I heard of the Bill, before I started to read of the circumstances, I shared the repugnance of perhaps all Members of a British Parliament towards retrospective legislation. It is certainly not a regular feature of our proceedings. I think it is true that any Government of any political persuasion would hesitate before introducing such legislation and only do so when there is a great piece of public policy involved.

It has been said that this and other retrospective legislation is a contempt of the law and of the courts. Her Majesty's Government do not accept that view. The Government would not be party to it. I am quite sure that the noble and learned Lord on the Woolsack would not be party to it. I am sure that Lord Birkenhead, when he introduced the Indemnity Bill in 1920, would not have been party to it. And I am sure the noble and learned Viscount, Lord Dilhorne, would not have been party to it when he introduced and defended Clause 39 of the Finance Bill, 1960, and used the words:

> "There are occasions when it is right and proper that it should be done."

I think I should quote a precedent for the present Government's action. I, in my readings, have taken the view that the Indemnity Act, 1920, has a very close relationship to the measure now before your Lordships' House. Both arise from events of war; both are retrospective; and both intervene in legal cases and declare null and void any further proceedings. Section 1(1) of the Indemity Act, 1920, says:

> "No action or other legal proceeding whatsoever whether civil or criminal, shall be instituted in any court of law for or on account of or in respect of any act, matter or thing done, whether within or without His Majesty's dominions, during the war before the passing of this Act, if done in good faith. . . ."

[Lord Shepherd.]

Its concluding words are these:

". . . and, if any such proceeding has been instituted, whether before or after the passing of this Act, it shall be discharged and made void. . . ."

This Act dealt with other cases, and I would refer your Lordships to *Newcastle Breweries* v. *The Crown*. This action arose because the Admiralty had acquired rum under Defence Regulation 2B. The judge found that the Regulation was *ultra vires*, and he maintained in his judgment that Newcastle Breweries had a right, in the event of a dispute which had arisen as to the amount of the market price, to have the same fixed by a county court judge.

To pause here for one moment, Newcastle Breweries had established a point of law, but had not got its full fruits because it had still to establish a case against the Crown. The same position applies in this Bill. It is clear if your Lordships read the *Hansards* of the day, and I will quote the Attorney General. He was asked: Does the Act have the effect of overriding a judgment given by His Majesty's courts of law? And the Attorney General replied:

"It would override the decisions of the *Newcastle Breweries* case."

In his words:

"Certainly the intention of this Bill is to say that, although proceedings have been taken and have gone so far as to be heard in the court of the first instance and in the Court of Appeal, the persons who have got judgment are not entitled to have any priority or difference in payment."

The Government of the day decided to act, and took retrospective action.

There are many other cases. The noble Earl, Lord Swinton, drew attention to his own Bill which he piloted through the House, the War Charges Validity Act, 1925. The Act to which I have referred, the Indemnity Act, was wide and sweeping—far wider and far more sweeping than the Bill before your Lordships to-day. I would put this question—because it will no doubt arise: Can it be said that the courts and the British law stand in less regard because of the passing of the Indemnity Act? I do not believe so; and I do not accept the view that the passing of this Bill will in any way diminish respect for British law and the British courts in this country.

But, my Lords, as I said in my first words, there is another side to the coin. Remember those many people, those many thousands of companies and individuals, who were prepared to accept the law as it was then understood; who received payment for war damage; who contributed to schemes from which war damage was paid, and who accepted all these schemes. What would they say of British law, of British Parliament, if, 23 years later, a small group of individuals and companies were able to proceed and continue in a privileged position? I would suggest that that would bring into the eyes of those people far greater disrespect for British law and British Parliament than any action which we might take this afternoon.

This is a matter of public policy. This is no attack, no criticism, of the Judges or of the noble and learned Lords who sit in a Judicial capacity. Her Majesty's Government believe that, as a matter of public policy, the Common Law, as it was understood, should be restored, and that no individual should stand in a privileged position above all the other claimants. I beg to move.

Moved, That the Bill be now read 2ª.—(*Lord Shepherd.*)

POSTAL CHARGES

4.15 p.m.

LORD HOBSON: My Lords, it may be for your Lordships' convenience if I now repeat a Statement on Post Office charges that has just been made in another place by my right honourable friend the Postmaster General. If I may, I will use his own words:

"As I warned the House last November, I discovered upon taking office that the finances of the postal services were in a serious condition and were deteriorating. Projections over the five-year period then indicated a shortfall of more than £120 million below the target set by the previous Government. The latest assessment is that, in terms of their share of the Post Office financial target for the five years beginning 1963-64, there will be a cumulative shortfall amounting to some £32 million at the end of this month, some £64 million by March, 1966, and about £150 million by March, 1968. This situation arises for two main reasons. First, there is an inherited burden due

to the failure of the previous Government to take obviously necessary steps at the proper time. Second, there is the fundamental character of the postal services, with their heavy dependence on men to collect, handle and deliver the mail, which makes it very difficult to absorb rapidly rising costs, especially in the field of wages.

"The first and most important task is, therefore, to improve the productivity and profitability of the postal services. I have accordingly commissioned a fundamental and far-reaching examination of the problem by Messrs. McKinsey—the eminent management consultants. We have proposed a joint working party with the staff to work in parallel with them. I shall also press forward with modernisation, to speed up postal mechanisation and prepare the way for its more effective application by firmly encouraging the use of standardised envelopes and progressively extending the use of postal codes to the country as a whole.

"But these and other measures which I have in mind cannot yield the substantial sums now required to meet the shortfall. Nor would drastic and immediate cuts in service provide a remedy even if they were acceptable to the community. The Telecommunications Services are in no position to fill the gap (even if it were right for them to do so) because they are only just about achieving the financial target themselves.

"The Government have, therefore, reluctantly concluded that an increase in postal charges is inescapable. The extent of these increases has been decided in the light of the Joint Statement of Intent on Productivity, Prices and Incomes. My colleagues and I thought it right that the principles of price reviews which it is intended to establish should be both tested out and applied as vigorously in this case as in the private sector. The proposals on productivity and modernisation must be seen in this context. The main change proposed is an increase in the minimum charge for inland letters to 4d. The first weight step will, in future, be 2 oz. thus actually reducing the cost of the 2 oz. letter by ½d. This is estimated to yield £21 million in a full year. Other proposed increases affect inland postcards, printed papers and samples, newspapers, parcels and express service. Commonwealth rates which are linked with inland rates will be brought into line, but, to help exporters, overseas rates generally will not be increased. I propose to abolish inland charges on articles for the blind. The total yield of the change is estimated to be £37 million in a full year. These changes will come into force on May 17 next.

"A White Paper, giving details of the proposed changes and explaining the situation more fully, is now available in the Vote Office. Regulations to give effect to the proposals are being laid before Parliament to-day."

My Lords, that is the end of the Statement. The White Paper referred to is now available in the Printed Paper Office.

4.20 p.m.

VISCOUNT DILHORNE: My Lords, I am grateful to the noble Lord for reading out this very long Statement. May I ask him to take note of the fact that the endeavour of Her Majesty's Government to place any responsibility for any unpopular action that the Government are taking, after six months of office, on the shoulders of the previous Administration, is most objectionable and wholly unacceptable? It seems to be becoming a constant habit to use Statements and White Papers for the purpose of political propaganda.

The second reason put forward in this Statement is:

"the fundamental character of the postal services, with their heavy dependence on men to collect, handle and deliver the mail, which makes it very difficult to absorb rapidly rising costs, especially in the field of wages."

Would the noble Lord confirm, as I think he can, that the main reason for these increases in postal charges that he is announcing is wage increases? I should like to ask him to give a positive answer to that question.

The Statement goes on to say that the first and most important task is, therefore, to improve productivity, and that the step which has been taken in relation to that is to call in a firm engaged in private enterprise. Of course, one welcomes any step which is taken to improve productivity, but is it the case

[Viscount Dilhorne.]

that there are any restrictive practices in existence which restrict modernisasion? I should be grateful if the noble Lord would tell us.

One cannot debate the matter now, but I think that one is entitled to ask these questions. I must say I find the end of the Statement, which refers to the Joint Statement of Intent on Productivity, Prices and Incomes, not quite as clear as it might have been, particularly when it says, after that reference to the Joint Statement, that

> "The proposals on productivity and modernisation must be seen in this context."

The only proposals of which we have been told in this Statement are the use of standardised envelopes and the use of postal codes. I am not quite sure how one puts those in that context. Perhaps the noble Lord, if I might ask him this finally, can say—as I cannot say from memory—whether the regulations to which he referred are subject to Affirmative Resolution. But presumably, whether or not they are subject to the Affirmative Resolution, we shall have an opportunity of debating them if we so wish.

4.23 p.m.

LORD HOBSON: My Lords, I shall endeavour to answer the somewhat short speech that the noble Viscount has made. First, let me say that these regulations will be subject to the Negative Resolution procedure. In answer to the first question —and I trust my memory will serve me aright—this was one of the many skeletons that we found hanging from the chandeliers at No. 10 Downing Street. There was in the last year a loss of £8 million on the postal services, and, frankly, this had to be met. The reason action was not taken more quickly was that we were having a look at the whole working of the postal service with a view to effecting economies. Nobody likes to put costs of anything up, but this is an inescapable duty, particularly in the light of the Command Paper on Nationalised Industries, which presupposes an 8 per cent. return.

LORD CONESFORD: My Lords, may I ask a question purely for information? Was the 3d. post making a profit or a loss? If it was making a loss, what was the point of the advertisements asking people to write more letters?

LORD HOBSON: The answer to the more facetious part of the question is, of course, in order to get more revenue. With regard to the first part of the question, frankly, I should need notice of that.

LORD ALPORT: My Lords, may I ask the noble Lord whether he recollects that very much the same sort of skeleton was found in the cupboard by the Government in 1951 after the noble Lord himself, I think, had been at the Post Office as Assistant Postmaster General? Is not this problem of the viability of the postal services a continuing one, and is it not a fact that the greatest losses are in the telegraph services, whereas the postal services on the whole are not doing too badly? Why, therefore, has no additional charge been made on telegrams?

LORD HOBSON: My Lords, the telegraph services are not affected by this Statement; they are a social service. With regard to what happened prior to 1951, I remember once being described as "Britain's profiteer No. 1" because of the amount of profit made by the Post Office.

VISCOUNT STUART OF FINDHORN: My Lords, I am getting quite used to the present Government putting the blame for everything on the late Administration. Would the Minister give a definite undertaking that when he nexts comes to this House for increased charges in the Post Office or in other directions the present Government will take the blame?

LORD HOBSON: My Lords, we will always endeavour to be truthful.

WAR DAMAGE BILL

4.25 p.m.

Debate resumed.

VISCOUNT DILHORNE: My Lords, this Bill, as the noble Lord, Lord Shepherd, said, gave rise to controversy in another place and it would be optimistic for the Government to think that it will have an easy passage through all its stages in your Lordships' House. But I am sure that the whole Honse is grateful to the noble Lord, Lord Shepherd, for the very clear exposition he gave of what the Bill is intended to do and of

the background which has to be considered in relation to this Bill. He has made it clear that the Bill has two main objectives: first, to change the law as it was declared to be in the recent case; and, secondly, to give that change a retrospective effect.

I think it would be convenient to consider these two aspects separately. But there are two important facts which should be borne in mind relative to both these objectives. The first is that mentioned by the noble Lord, Lord Shepherd: I do not say that it is the more important of the two, but it is more convenient to me to refer to it first; namely, that prior to this decision of the House of Lords it was generally thought to be the law that the Crown was under no legal liability at Common Law to pay compensation for a lawful act done by the Crown in the exercise of the prerogative in the course of war. We are all accustomed to the award of damages to compensate for the result of an illegal act or breach of the law, but this was the first case to decide that a subject had a legal right to compensation for lawful acts which the Crown does as if the acts had been unlawful.

I should also like to refer to some of the observations made by Lord Radcliffe in the *Burmah Oil* case. The noble Lord, Lord Shepherd, referred to some of his observations. It is true that the Opinion of the noble and learned Viscount was a dissenting Opinion, but, of course, it does not follow from that that what he said can be ignored or treated as of no importance; and it would be wrong particularly to ignore factual statements made by him. The noble Lord, Lord Shepherd, referred to Lord Radcliffe's statement that

> "There is not in our history any known case in which a court of law has declared such compensation to be due as of right."

If anyone wants to challenge that statement he must produce such a case, and I do not think that any case to the contrary effect was produced in the course of the argument before their Lordships in the *Burmah Oil* case.

Lord Radcliffe went on—and I think that these words are also important:

> "There is not any known instance in which a subject, having suffered from such a taking, has instituted legal proceedings for the recovery of such compensation in a court of law."

This, of course, referred to the position before the *Burmah Oil* case. He went on:

> "No payment has been identified as having been made by the Crown in recognition of a legal right to such compensation, irrespective of the institution of legal proceedings for its recovery. No text writer of authority has stated that there is this legal right under the law."

I repeat that those are factual statements which cannot be dismissed as of no account just because Lord Radcliffe differed in his conclusions from the majority. And those statements support the observation that I made a few moments ago; that prior to this case it was generally thought to be the law that there was no legal right at Common Law to obtain compensation from the Crown in respect of a lawful act done by the Crown.

We are not here concerned with the question of whether a person who suffers loss in this way should not receive some compensation from the State. But we are concerned with the question of whether there is any legal right to it. In this connection, there is an interesting passage in a judgment of the Supreme Court of the United States, delivered in 1887 and relating to damage suffered in the Civil War. It reads as follows:

> "The war, whether considered with reference to the number of troops in the field, the extent of military operations, and the number and character of the engagements, attained proportions unequalled in the history of the present century. More than a million of men were in the armies on each side. The injury and destruction of private property caused by their operations and by measures necessary for their safety and efficiency were almost beyond calculation."

Those words, slightly adapted, could well have been applied to the 1914-18 war, and the last war. The Supreme Court went on to say:

> "For all injuries and destruction which followed necessarily from these causes no compensation could be claimed from the Government. By the well settled doctrines of public law it was not responsible for them. The destruction or injury of private property in battle, or in the bombardment of cities and towns, and in many other ways in the war, had to be borne by the sufferers alone as one of its consequences. Whatever would embarrass or impede the advance of the enemy, as the breaking up of roads, or would cripple and defeat him as destroying his means of subsistence"—

what would now be called "denial damage"—

> "were lawfully ordered by the commanding general. Indeed, it was his imperative duty

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to direct their destruction. The necessities of the war called for and justified this. The safety of the State in such cases overrides all considerations of private loss. *Salus populi* is then, in truth, *suprema lex*."

I have read that passage because I think it well expresses what was thought to be the position here until the decision in the *Burmah Oil* case. And it is still the position here, of course, that there is no Common Law right to compensation from the State for battle damage or for damage done by the enemy in pursuit of a "scorched earth" policy. But it has now been held that, under the law of Scotland (and I say of Scotland, because this was an appeal from the Scottish Courts, and on the law of Scotland), there is a legal right to such compensation, to full compensation, if the damage is caused in one particular way—namely, by the State acting lawfully in denying the use of property to an enemy, and even though the damage be inflicted only a few moments before capture of that property by the enemy, and even when, if it had been shelled or bombed by the State, there would have been no legal right at Common Law to compensation.

The first object of this Bill is to take away this special right, and we have to decide whether or not it should continue for the future. I am certainly not saying that the State should not, so far as possible, pay some compensation to sufferers from war damage, and pay it quite irrespective of the way in which it came to be sustained. And this brings me to the second important fact, relevant, I think, to consideration of both parts of this Bill.

It was, I am sure your Lordships will agree, quite beyond the resources of this country at the end of the 1914-18 war, and at the end of the last war, to pay 100 per cent. compensation for all war damage, however caused; and the noble Lord, Lord Shepherd, has referred to this. What happened at the end of the 1914-18 war was that a statutory scheme for compensation was enacted, and in the same Act, the Act of Indemnity, 1920, all legal proceedings in respect of anything done in the prosecution of the war were prohibited; and, as the noble Lord pointed out, all legal proceedings which had been instituted at the time of the passing of that Act were made void. There can be no doubt or dispute about it: that Act took away any legal rights to compensation arising out of the war, and took them away retrospectively. But compensation was claimable under the statutory scheme. If the damage suffered by the Burmah Oil Company, and the other claimants in these actions, had been suffered in that war, there can be no doubt at all that their claims would have been barred, and completely barred.

It may be asked why a similar Act was not passed at the end of the last war. I was not a member of the Government in those days, but I understand that this question was considered as early as 1943—at what level of the Government in 1943, I do not know. I understand, too, that it was decided that such an Act would not be necessary at the end of the last war, for it was thought then that existing legislation sufficed to prevent claims based on legal rights at Common Law against the Crown. It was not thought that there was a legal right to compensation for lawful acts of the Crown. Furthermore, it was, I gather, thought that in relation to Burma the Defence of Burma Act and the rules made under it prevented any reliance on Common Law rights in relation to damage in Burma. The noble Lord, Lord Shepherd, has referred to the statement made by the Government in 1943, and it is interesting to note that that statement promised only compensation or rehabilitation to such an extent and over such period of time as resources permitted. So that even at that date it was realised and accepted that it was wholly improbable that there could be payment of 100 per cent. compensation. The rules under the Defence of Burma Act, I understand, made provision for the payment of some compensation.

If it be the right approach to seek to secure equitable compensation over the whole field, without regard to the existence or non-existence of legal rights; and if, of necessity, 100 per cent. compensation cannot be paid, then surely it must be quite inconsistent that a particular category of people, who suffered a particular kind of damage, should have a legal right to 100 per cent. compensation. Surely it is an anachronism that such a legal right to 100 per cent. compensation for denial damage should exist when, if the property had been destroyed only

a few minutes later in the hands of the enemy, or by shell fire, there would have been no right at all to it.

In the controversy over this Bill a great deal has been said about the rule of law and about the Executive reversing a decision of the Judiciary. There is surely nothing contrary to the rule of law in reversing a judicial decision for the future. Revision of judge-made law is, after all, one facet of law reform. It is also said that the effect of this Bill on our interests overseas will be very serious ; and this argument, if I understand it correctly, and so far as I can appreciate it, is put in two ways.

First, it is said that if this legal right is abolished the prospects of getting denial damage from the Government of an overseas territory will be seriously impaired. I must confess that I do not understand why it should be thought that to make the law in this country accord in the future with what it was thought to be in the past should have that effect. Nor, conversely, do I understand why it should be thought that the decision of the House of Lords declaring the existence of this legal right to compensation should be thought likely to lead to other countries' recognising the existence of this legal right.

It is also argued that the retrospective element in the Bill will have a serious effect in relation to our overseas interests. If I may, I will say something about that later, but I am now dealing with the first object of this Bill, to change the law and to change it for the future. I feel that a strong case can be made out for making the law in the future accord with what, over the years, it has been thought to be. Whatever may be the view on the retrospective part of this Bill, I suggest that to reject this Bill now, when it seeks to make this general change in the law, would be wrong.

I should like now to turn to what is the more controversial part of the measure, and the part which, as the noble Lord, Lord Shepherd, said, really raises, in addition to questions of legal propriety, important questions of policy—the question whether, if this change is made for the future, it should have retrospective effect and apply also to the past. May I just say a word or two about retrospective legislation in general? To some, the mere words " retrospective legislation " are like a red rag to a bull, but I certainly could not agree with the proposition, if anyone sought to put it forward, that all retrospective legislation is necessarily bad. It must depend on its content and on what it does.

Retrospective legislation, to quote from the judgment of Mr. Justice Wills in the well-known case of *Phillips* v. *Eyre*

" ought not to change the character of past transactions carried on upon the faith of the then existing law."

Such legislation is always bad. But were the denial actions of the Burmah Oil Company and of the other eight claimants for compensation for denial damage carried out in the belief that there was at Common Law a legal right to compensation? The answer must surely be, No. As I have said, the general view at the time was that no such right existed and when the representatives of the European commercial interests in Burma saw Sir Stafford Cripps in 1947, the most that they suggested was that there was a moral liability on Her Majesty's Government, and not a legal one.

I have had, on occasion, as a Law Officer, to defend in another place retrospective legislation. I do not think I have ever sought to defend retrospective legislation which sought

" to change the character of past transactions carried on upon the faith of the then existing law ".

But may I mention two cases of retrospective legislation which I think illustrate a principle? I think they were both cases during the time when my noble friend Lord Chandos was a member of the Government. In one case it was discovered that the Postmaster General had no right to charge for wireless licences, and people had paid for wireless licences for years. The Post Office had had power to make regulations imposing charges for wireless licences, but unfortunately they had omitted to make them. When these matters came to light in 1954, as the result of the decision in a case, many people were entitled to repayment of the sums that they had paid for wireless licences. The liability of the Post Office ran into many millions and might have led to an

[Viscount Dilhorne.]

increase in postal charges. The Government announced that they would legislate, and they later did so. The Wireless Telegraphy (Validation of Charges) Act was passed in 1954, validating retrospectively the charges made for wireless licences. I thought then, and I think now, that that was wholly justified retrospective legislation. It made the law what everyone thought it to be until that case was brought and decided.

Then, in 1960, it was held in the House of Lords that income tax had been wrongly deducted at source from interim payments of compensation under the Coal Industry (Nationalisation) Act, and following that case a nnmber of writs were issued by people who had suffered similar deductions. In the Finance Bill of that year, a provision was inserted defeating these claims. In defending the retrospective effect of that provision I said then, and perhaps I may be allowed to say it again now:

> "There is nothing unusual or wrong, in my submission, in making the law accord with what everyone has for years thought it to be, and in accordance with which people have acted without the slightest complaint."

I still adhere to that view, and if the retrospective legislation does no more than that, it is not, I think, objectionable.

But perhaps the most signal application of this principle was in the Charitable Trusts (Validation) Act 1954. There the courts had given a decision which meant that a large number of what for years had been thought to be charitable trusts were invalid, with the consequence that the rights to the moneys which had gone to them passed to the residuary legatees and next of kin, and those rights became vested in them. There, again, the Act made the law accord retrospectively with what everyone thought it had been. The Bill was passed with little debate, with the result that the residuary legatees and next of kin were deprived of the rights that had passed to them.

That Act applied in relation to all pending proceedings—you will find that in the Act—other than those started more than two years before; and where actions had been started less than two years before and judgments or orders had been obtained on the basis that a trust was invalid, the Act made provision for the setting aside of the judgments or orders. I do not remember anyone then, in 1954, saying how monstrous it was for the Executive to overrule the Judiciary, or anything being said about the rule of law, and this Bill, retrospective in its operation, was generally welcomed. No doubt many other instances could be mentioned. The noble Lord has referred to the Act of Indemnity, 1920.

Now may I turn back to what has happened in this matter? In 1949, as your Lordships know, the British Government offered £10 million, I will not use the word "compensation", but for rehabilitation, which is, after all, one form of compensation. Of that, the noble Lord has told us the Burmah Oil Corporation received some £4¾ million. That brings me on to 1962. The then Government had to consider the position, and at that time the view was, as it had been in 1943, that there was no Common Law legal right to compensation from the Crown for lawful acts done in the prosecution of the war. That Government came to the conclusion, rightly or wrongly—I would say rightly—bearing in mind that the £10 million was distributed *pro rata* to all the interested European claimants in Burma, that it would be wholly inequitable, when all these other interests had received far less than 100 per cent. of their registered claims, that those who suffered denial damage should have a legal right, if a legal right existed, to 100 per cent. payment.

Having reached that conclusion, a difficult choice had to be made by the Government of that day. There were various possibilities. They could have introduced a Bill like the Act of Indemnity of 1920, barring the claims of the Burmah Oil Company and all the other claimants—and perhaps that Bill might have had an easy passage; one does not know. But it is not all that easy to justify the introduction of a Bill in Parliament and the passage of the Bill through Parliament, when the general view at that time was that there was nothing to be indemnified against. For there was no claim at Common Law recognised in any decided case, by any textbook writer, or by the Crown.

That was one course that might have been taken. Looking back with hindsight, I think perhaps it would have been better if it had been taken. It would

certainly have saved a lot of trouble. If that was rejected, the choice was between either doing nothing and letting the litigation go on and, if the litigation was successful, taking action at the end of it; or the course of frankness—of telling the other side the Government's decision, and telling them perfectly frankly and without delay. Of one thing I am certain: that if it was the Government's decision, be it right or wrong, it would have been absolutely indefensible to let the litigation go on and then seek to legislate thereafter in the event of the company's being successful.

I myself believe that the Government were quite right to be entirely frank and to write the letter, the terms of which the noble Lord read your Lordships. It was, of course, a mistake not to send it to the solicitors on the other side, and that was commented upon adversely in the Scottish courts. That was no doubt extremely regrettable, but I certainly do not think that the criticisms which have been directed to the despatch of that letter disclosing the Government's position can be accepted. It is no secret that this Bill, or one like it, was drafted on the instructions of the last Government and at the very end of the last Parliament. It had not been approved by that Government, and if we had won the Election the new Tory Government would have had to decide whether or not to introduce it. I say that to make quite certain that when the noble and learned Lord, the Lord Chancellor, comes to reply he does not try to say that we in the late Administration were responsible for the introduction of this Bill.

If, in 1962, the then Government, instead of sending the warning letter, had introduced a Bill, would there have been any objection to that Bill? I doubt it very much. I am confirmed in this view by the fact that one of the chief critics, if not the chief critic, of this measure has said that in 1962 he would have been in favour of a Bill barring the Burmah Oil claim and the claim of the other claimants. Does not the question which has to be considered in relation to the retrospective part of the Bill come to this: has anything happened since 1962 which makes it wrong to do now what it would have been right to do then?

The Burmah Oil Company have won their case in the House of Lords. They have, so it is said, succeeded, and it is contended that retrospective legislation should never deprive a person of the fruits of his victory. That is a phrase which has been repeated almost *ad nauseam*—"the fruits of victory". It is well worth while considering for a moment: in what have Burmah Oil succeeded? What are the "fruits of victory"? They have established—and this is all they have established—that under the law of Scotland there is a legal right to compensation from the Crown for loss suffered as a result of lawful acts by the Crown. That is all. They have established a principle on a hypothetical question which the House of Lords, under Scottish procedure, had to determine.

From what has been said about the "fruits of victory", one might imagine that if the litigation went on, all that would remain to be done would be to assess the sum which the Crown should pay. But that is not the case. There are a number of defences to this claim which have not yet been considered in the courts. There is the question of whether the Defence of Burma Act is not an answer to the claimants. The claimants, if the litigation goes on, have still a lot of fences to jump before they get in sight of the winning post and the "fruits of victory".

May I remind those of your Lordships who are not lawyers that many years ago there was another case decided on appeal in the House of Lords from Scotland on a similar procedure. That, too, made history. It was the famous case of the snail and the ginger beer bottle. There the plaintiff sued the manufacturer of the ginger beer for damages because, after drinking some of the ginger beer, when they came to pour out the next glass it was alleged that the decomposed remains of a snail came out with the beer. The question was whether the manufacturer had any duty to her. It was held they had, and the establishment of that principle was the fruits of her victory in the House of Lords.

When the case was tried, the plaintiff failed, as it was held that there had never been a snail in the ginger beer bottle at all. If this case goes on, it might also meet that fate. Surely

[Viscount Dilhorne.]
it is important to avoid exaggeration when dealing with this matter. To talk of "the fruits of victory" when all that has been established is a principle of Scottish law is utterly misleading. The question which we have to decide is whether the establishment of that principle makes it utterly wrong to do now what, it is agreed, it would have been permissible to do in 1962. Views no doubt differ as to the correct answer to that question.

Here I want to say a word on the argument that to do it retrospectively is damaging to our interests overseas. I must confess that I myself do not see much substance in this argument. Many instances can be given—and I myself have given some—of retrospective legislation. I do not think that they have had any adverse consequences abroad. If other countries want to engage in retrospective legislation of an objectionable character, are they likely to be encouraged to do so because this Bill seeks to secure that the law was regarded as having been what it was generally thought to be? If this Bill were not made retrospective, then Burmah Oil and the eight other claimants would, if they won, get 100 per cent. compensation; whereas, as I have pointed out, other European interests have received far less.

In conclusion—because there are many of your Lordships who wish to speak—I would say this. I would urge that, if the view is held that this Bill should not be retrospective, then that is no ground for rejecting it now. That question can be debated and decided in Committee. For the reasons I have given, I would advise my noble friends not to vote against the Second Reading of this measure.

4.58 p.m.

LORD MCNAIR: My Lords, I would begin by making a comment on the final remark of the noble and learned Viscount, Lord Dilhorne, who has just addressed us. I should like to make it clear to him that we on these Benches are not moving the rejection of the Bill. The objectionable features of the Bill can be eliminated in Committee. My interest in this matter is solely one of principle, and I should feel just the same about it if the claimant seeking compensation from the Crown was a man who had been knocked down by a Government lorry. We have heard far too much about the Burmah Oil Company.

SEVERAL NOBLE LORDS: Hear, hear!

LORD MCNAIR: It is a very dangerous matter to decide questions of principle with reference to one particular incident.

Recent litigation has shown that there is room for a variety of opinion as to the kinds of damage which should be the subject of compensation, and as to the difficulty of differentiating between particular kinds of damage, such as denial damage, battle damage, and so forth. There is much to be said for a Bill abolishing for the future any of our Common Law rights to compensation for war damage, if at the same time such compensation is placed on a statutory basis, and, perhaps, some administrative tribunal is created for its assessment. So on the purely creative side of this Bill in the future, there is much that we have in common with the intentions underlying it. But there are certain provisions of this Bill which we find objectionable, and which we shall try to eliminate in Committee.

I am going to say very little upon the retrospective aspect of this Bill, because on the list of speakers I see the names of a number of noble and learned Lords who can deal much more effectively with that matter than I can, and my objections are rather different. Subsection (2) of Clause 1 involves something which is, in my opinion, very much more objectionable than mere retrospection, because it empowers the Crown to stop actually pending proceedings against it. In order to discuss this matter coolly, I think it is very desirable to get the question of compensation cut down to its proper size, because there has been an attempt, in fact there have been a good many attempts, to frighten public opinion, and perhaps also Members either of this House or of the other place, by exaggerating the compensation that is likely to become payable if this litigation is allowed to continue.

Therefore, I would emphasise the fact that the demolition of these installations took place on March 7, 1942, and that capture of the site of those installations took place on March 8—the next day.

The proximity of those two dates has an obvious bearing on the amount of compensation, and that was indicated by two noble and learned Lords, Lord Reid and Lord Pearce, in their speeches when giving judgment. Lord Pearce said:

"It must not be thought that by compensation I mean the full cost of reinstatement."

Later he said:

"it would seem that the value of property that is about to pass, possibly for ever, into the hands of the enemy must depend on the nature of the property and the chances of its survival and restoration, intact or damaged, to the Pursuers"

—that is, the plaintiffs. We have heard to-day, and we have heard before, mention of a fantastic sum of millions—£30 million. I think that £31 million, plus compound interest, was the sum mentioned by the noble Lord, Lord Shepherd. I would ask your Lordships to get that compensation bogy out of your minds, and not to allow it to divert you from the true character of this Bill.

It would be hard to find anywhere more learned and exhaustive judgments than those given in this case, in the Court of Session and in our Appellate Committee. Every relevant aspect of Scots law, English law, International Law and the civil law was examined, together with much history of great interest. I may seem to your Lordships to be lacking in respect for the great learning embodied in these judgments, if I do not attempt to give you even a summary of their contents, which, to my regret, time does not permit me to do. But I am not going to ask your Lordships to consider whether the majority of three Lords of Appeal, or the minority of two, was right. I should regard it as quite improper to consider such a question. For us, the judgment of our Appellate Committee in this case is a fact which we, at any rate, cannot question. Any intervention by this House, as part of the Legislature, in the work of our Appellate Committee would lead straight to the loss of our appellate jurisdiction which contributes so much prestige to this House.

Therefore, I deprecate many of the things that have been said in this debate, such as the counting of heads and this continual insistence upon the law as it was always understood to be before this decision. It frequently happens that we co-operate with another place in legislation which changes the law for the future; which changes the law as the result of some decision, possibly by the Appellate Committee of this House. But that is an entirely different matter from passing a Bill which definitely states that a decision of our Appellate Committee was wrong.

I do not regard this Bill as a Labour Party Bill or as a Conservative Party Bill. It was fathered by the Conservative Party and adopted by the Labour Party, but it has not completely evoked the natural emotions of family life in either family. In fact, it emanates from a source deeper and more permanent than any political Party—namely the Crown, the Executive. This Bill must take its place in the story of the relations between the Crown and the subject. It raises issues which, in my judgment, transcend Party politics: questions of the correct balance between the rights of the subject and the rights of the Crown; questions of the relations between the Judiciary and the Legislature, and certain international questions.

My first constitutional objection is that Clause 1(2) drives a coach and four through the Crown Proceedings Act, 1947. For at least six centuries before that date no subject could bring proceedings against the Crown to recover compensation for what is called a tort in England, or a delict in Scotland—that is, a civil wrong not arising out of contract. This was a serious injustice. The Labour Lord Chancellor, Lord Jowitt, when introducing that Bill into this House, said:

"The object of the Bill, in a sense, is to put the Crown, so far as may be, in matters of litigation in the same position as the subject, so that a subject who wants to bring an action against the Crown may proceed as though he were proceeding against another subject."—[OFFICIAL REPORT, Vol. 416, col. 60, March 4, 1947.]

The Bill was welcomed on all sides. The noble and learned Viscount, Lord Simonds, gave it his "unqualified approval and welcome"; and in the other place the Labour Attorney General, now a Member of your Lordships' House, described the general effect of that Bill to be to place the Crown in exactly the same position as the subject.

I am unable to reconcile Clause 1(2) of the Bill now before us with the promptings of justice which underlay the Crown Proceedings Act. What is the use

[Lord McNair.]

of that Act if the claimant against the Crown knows that he is liable to be robbed of the benefit of his action by means of legislation promoted by the defendant, the Crown, to enable the Crown to stop an action against it? How can that be described as placing the Crown in the same position as its subjects? The stopping by the Crown of an action against the Crown makes nonsense of that Act, and will undermine confidence in that valuable guarantee of the rights of the subject.

My second constitutional objection is that this Bill confuses the separate functions of the Judiciary and the Legislature, and threatens the independence of the Judges—and I think we have had some sign of that in this debate. Parliament is supreme, and can legally do anything that is physically possible. But my submission is that it is a most dangerous thing for Parliament to abrogate the right of action possessed by a subject who is seeking to enforce it in a court of law. The particular feature of this Bill which causes me so much anxiety is not merely the retrospective factor but the proposal that Parliament should, by means of this subsection, empower the Crown to compel a court in which it is being sued to

" . . . forthwith set aside or dismiss the proceedings . . "—

the words of the Bill—and thus deprive the plaintiff of an acquired right, namely, the decision which he has obtained from our Appellate Committee. We are now invited by this Bill, and in particular by this subsection, to stop in mid-career an action which our Appellate Committee, after deciding the law, has remitted to the Court of Session for proof of the facts and assessment of compensation, if awarded. I do not think it right that the Court of Session or our Appellate Committee should be treated in this dictatorial fashion after devoting such long and careful consideration to the case.

My third objection is not constitutional, but is based on International Law and practice, and the probable international repercussions of this Bill. This objection is based on two reasons. First, British companies, not least British oil companies, are operating in very many countries throughout the world. From time to time they become involved in litigation in foreign courts with a foreign Government—say, upon a concession, or some other kind of contract. Is it prudent for the United Kingdom to set an example to foreign Governments as to the manner in which a litigant can be deprived of the fruits of a judgment, or prevented from obtaining a judgment, by means of legislation empowering a Government to stop an action brought against it?

International Law authorise Governments to exercise the right of diplomatic protection on behalf of their subjects in foreign countries. Is this Bill going to help us when our Government seek to protect a British company or subject engaged in a dispute with a foreign Government? If a British company were bringing an action of this character in a foreign country against a foreign Government, and that Government procured the dismissal of the action by means of a device such as this, I am sure that our Government would protest vigorously and would claim to protect the company against what is known in International Law as the tort or delict of denial of justice, of which denial of access to courts is a typical illustration. Moreover, some Governments would even claim to protect any of their nationals who were shareholders in a British company which was being treated in this manner.

The second reason is that Governments, when intervening to protect their subjects from injuries by foreign Governments, are entitled to invoke and rely upon a common international standard of national justice which it is incumbent upon all civilised States to maintain. In my judgment, a law empowering a Government to stop an action brought against it and to withdraw it from the courts falls below this common standard, and will make it difficult for our Government to rely upon this standard when seeking to protect British subjects from injustice in foreign countries. Incidentally, this international tort, this denial of justice, has rather a special interest for us because, in the leading textbook upon it, the author, in examining its national sources and analogues, mentions Chapter 40 of our Magna Carta:

"To none will we deny or delay right or justice "—

an article which was for a long time the subject of disputes between the Crown

and the Judiciary, and was the source of a great battle between Sir Edward Coke and James I.

Suppose that, in the future, some foreign Government passes an *ex post facto* decree injurious to British subjects operating in its territory whereby, for instance, a concession is revoked or an enterprise is nationalised; and suppose that the British Government seek to exercise their right of diplomatic protection on their behalf. How do we stand? What is our answer going to be when our protest is met by the question, "What about your War Damage Act, 1965?"

I have been much impressed by some remarks made in another place on the Second Reading of this Bill—not on the Report stage—by Mr. Selwyn Lloyd, a former Chancellor of the Exchequer, a former Foreign Secretary and a Queen's Counsel, who should be in a positiou to assess its international, financial and legal implications. He suggested that the Government should again examine the sums involved—which, if his information was correct, were very much smaller than they had been thought to be—and should open or reopen discussions with the companies in the hope of disposing of the matter by negotiation. I strongly urge the Government to act on this advice, which might result in a settlement that would avoid the dangers to which I have referred. In face of these dangers I must speak quite frankly. If former Ministers on this side of the House are going to use their great authority in the House to place the retrospective provisions of this Bill on the Statute Book, they are creating a grave risk for this country: the risk of hampering British Governments in the future in their right and duty to protect against injustice British subjects living or carrying on business in foreign countries. I beg them most earnestly to take another look at these provisions and to consider the suggestions of their former colleague, Mr. Selwyn Lloyd. These are some—but some only—of the reasons why we shall try to eliminate the retrospective elements of this Bill.

5.22 p.m.

VISCOUNT SLIM: My Lords, I rise for the first time to speak in your Lordships' House, and I am constrained to do so for two reasons. The first is that I am an ordinary Englishman and, in spite of the erudite legal arguments I have heard on this measure, I still think that it infringes what I have always understood to be the traditional and unquestioned rights of the ordinary Englishman. My second reason is that I took some part in the events which led to this Bill. During the retreat from Burma in 1942 I happened to be the military commander on the spot—and, believe me, it was a pretty uncomfortable spot. Under the command of Lord Alexander of Tunis, I was in charge at Yenang Young and I actually gave the executive order for the destruction. Perhaps it would be right for me here to say that although I am a member of the Queen's Household I am, of course, speaking purely as a private individual. I might add that I have no interest whatever, financial or otherwise, in the Burmah Oil Company or in the other eight companies who are claiming compensation.

I should like to remind your Lordships of some of the background to this measure and to this debate. Denial by destruction was carried out in Burma on the orders of what was at that time His Majesty's Government. It was not a Party Government but a Coalition, and therefore every one of the great company represented in this House has inherited not only the certain responsibility for that policy but also responsibility for seeing that no injustice is done to any of Her Majesty's subjects and, still more, that nothing is done as a result of action by this House which can be considered to lessen the established rights of the people of this country. There has been a good deal of talk—and I think a certain amount of smokescreening—to try to make this dispute just a bickering between big business and Government. I am not particularly interested in who gets compensation, or, indeed, whether anybody gets compensation; but I am very concerned about, and very interested in, anything that affects the right which we have (and which I have always held that we have) in this country to live under law. And I think that there are several ways in which this measure affects those rights.

First of all, let us consider this question of the difference between damage which is inflicted after preparation and damage incurred by actual battle. I can

[Viscount Slim.]

assure the House that none of the damage, at any rate in Yenang Young where I was, or anywhere in Central or Northern Burma was battle damage. The destruction of the installations there was prepared and was being prepared for some months before it was actually put into force. My orders to put it into force were on a time schedule directly related, of course, to the advance of the Japanese. We began the destruction when there were no Japanese within 100 miles. It was not battle damage. In fact, the Japanese had orders not to damage the oil installations. Any damage that was done to them was done by us, on the orders of the British Government. In passing, I should like to pay a tribute to the civilians of the oil companies and of the other companies, who remained behind, at great risk to themselves, and were an example, in courage and steadfastness, in carrying out these demolitions. When it is suggested that we are simply going to restore the law to what it was, I think it should be remembered that this destruction in Burma was not battle destruction.

The second manner in which I think this measure has a bad effect on the rights of the ordinary people of this country is demonstrated in this matter of sending a letter to the Burmah Oil Company telling them that if they won their action it would be no good to them, because retrospective legislation would be introduced to annul the verdict. That can be explained in as many ways as you like; but to me the most convincing explanation is that it was really in the nature of a threat to induce or urge a litigant not to go to the courts. I have always thought that it was the right of any subject who considered himself aggrieved to take his claim to the court, and that then, in open court, it was considered whether he had any right to feel aggrieved. If it was decided that he had, the court would decide what remedy should be given to him. I think that to send that letter was really inexcusable.

But perhaps the gravest of the charges that I could bring against this Bill is that it completely overrides the verdict of a court, the verdict of the highest Court in this land, the verdict of your Lordships' House. This, I think, is something in the nature of a slight which must be hard to swallow. We in this country have always prided ourselves (and boasted of it in front of other nations) that our courts were free from any interference by the Executive. Here is the greatest interference we can have —a verdict arrived at by the highest Court in the land pushed on one side. It may be only in this one case; but if it can be done in one case, it can be done in others. That, I think, constitutes a most serious danger to our way of life in this country.

As to the point about the Bill's being retrospective, we have had several cases in which retrospective laws have been presented. I am not a lawyer, and I am afraid that I am ignorant of these precedents and things. But I do not know whether a law has been made retrospectively, after the verdict of a High Court has been given in the case. There is no doubt that if this Bill is passed, and becomes the law of the land, it will have an effect in those countries which normally follow our methods of Parliamentary government. As the noble and learned Lord, Lord McNair, said, I do not think that we shall ever be able, without hypocrisy, to say to them, "You cannot do that", because we shall have done it. We shall have allowed the Executive to override the decision of the court. We do not have to look very far around the world to see where that is done.

This measure introduces things which, to me, are very foreign to this country: for example, the overriding of the courts; the endeavour to prevent people from going to the courts, and the retrospective effect—things which many of us in this House, and millions of our countrymen, have fought to prevent from being imposed on us by foreign nations. It would be a great tragedy, I think, if we allowed these things to happen through the indifference or carelessness of this House. Now, at this moment, your Lordships' House is the last defence for some of our most cherished English liberties. Defend them!

5.34 p.m.

LORD WADE: My Lords, I am sure that it will be the wish of all noble Lords that I should congratulate the noble and

gallant Viscount, Lord Slim, on the extremely interesting speech which he has just delivered. He is a man of very great distinction, and I feel it a privilege to have the opportunity of following him. No one could speak with greater knowledge of Burma than he does. Many of us have had the pleasure of reading his book; it gives us even greater enjoyment to hear him speak in person. I am sure that the noble Lords who follow me in this debate will join in congratulating him on his maiden speech. I have not only been interested to hear what the noble and gallant Viscount has had to say, but also been glad to hear the views he has expressed.

My noble friend Lord McNair has referred to the international repercussions of this Bill. I do not think that anyone can fail to recognise that serious consequences may follow from the retrospective clause in this Bill. Legislation of this kind may well be quoted against us in future by foreign Governments. It is, indeed, a denial of justice in the precise sense used in International Law, as well as in the more general sense. Very simply, the object of the Bill is to deprive the plaintiff of the benefits of a judgment he has obtained in the highest court of the land. There has been a great deal of serious legal argument as to the difference between battle damage and denial damage, and it may well be that there is a strong case for clarifying and altering the law for the future. But it is a different matter when the Government of the day comes to this House and states that the law is different from what they thought it was, that it is inconvenient to the Government, and that, therefore, they wish to amend it retrospectively.

I agree with my noble friend that it is a dangerous thing for Parliament to abrogate the right of action possessed by a subject who is seeking to enforce it in a court of law, particularly when the right of action is against the Crown. In the Second Reading debate in another place Mr. MacDermot said:

> "This is a purely domestic piece of legislation."—[OFFICIAL REPORT (Commons), Vol. 705 (No. 49), col. 1101, February 3, 1965.]

Surely, that is not so. It cannot seriously be contended that this is a purely domestic matter. In my view, we should hesitate, and hesitate long, before approving these retrospective provisions, since other Governments might well regard them as a precedent and deprive a litigant of his rights in claiming against the Government of the day.

It has been contended that there are precedents in this country for a law of this nature. But if legislation sets a bad precedent, there is no obligation to introduce similar legislation. In fact, however, I can find no convincing precedents for those provisions in this Bill to which objection has been taken. There are, of course, important distinctions between the retrospective elements in this Bill and various Acts of Indemnity which are to be found on the Statute Book. The object of most of those Acts of Indemnity has been to protect persons from the consequences of illegal acts, sometimes only technical illegalities, to validate certain governmental activities carried out in an emergency and to provide machinery for compensation. I emphasise the words "machinery for compensation".

In considering Acts of Indemnity, it is not necessary to go back so far as 1920. Several examples are to be found in the period 1945 to 1951 and later. The intention of these Acts was to protect individuals, sometimes Ministers, from the consequences of acts carried out in good faith. But I cannot find any legislation similar to that before us now. The noble Lord, Lord Shepherd, who introduced this Bill fully—and I thank him for doing so—referred to the 1914-18 War and the Act of Indemnity, 1920, that followed. Since the Act has been specifically referred to, it is worth while pointing out that the main object of that Act was to indemnify persons holding office under, or in the employment of, the Crown, and at the same time to set up a tribunal for assessing compensation. There is no similar provision in this Bill. Surely, we have a duty to examine most carefully any legislation by which a plaintiff is deprived of his rights retrospectively and without compensation. The noble and learned Lord, Lord McNair, has pointed out that it is not a question as to whether Parliament can do it, but whether Parliament should do it. In *Wade and Phillips Constitutional Law*, 5th edition, at page 385, after referring to the suspension of *habeas corpus*, the paragraph continues:

[Lord Wade.]

"Accordingly it was the practice at the close of the period of suspension to pass an Indemnity Act, in order to protect officials concerned from the consequences of any incidental illegal acts which they might have committed under cover of the suspension of the prerogative writ. During a period of emergency many illegalities may be committed by the Executive in their efforts to deal with a critical situation. The object of suspension was to enable the Government to take steps which, though politically expedient, were, or might be, not strictly legal. An Indemnity Act legalises all such illegalities and so supplements a Suspension Act which may not have given the Executive all the power that it required."

I think this indicates fairly the object and scope of these Indemnity Acts. Earlier, on page 41, *Wade and Phillips* after referring to various Acts of Indemnity, continue:

"Retrospective laws are, however, *prima facie* of questionable policy and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts and ought not to change the character of past transactions carried on upon the faith of the then existing law."

The words from "*prima facie*" to "*existing law*" are a quotation from Mr. Justice Willis in the case of *Phillips* v. *Eyre,* already referred to by the noble and learned Viscount, Lord Dilhorne.

It would seem to me that the provisions of this Bill are objectionable, not only because they are retrospective, but also because they interfere with the course of justice after proceedings have commenced and before the proceedings have been concluded, and in a case where the Crown is a party to those proceedings. The Government are thus trying to have the best of both worlds: they fight the case in the courts but, by using legislative powers, they wish to cancel out the effect of any decision in the courts if it goes against them. It is no answer to say that the plaintiffs have been warned. Mr. MacDermot, in the speech to which I have already referred, on the Second Reading of the Bill, said:

"By the time they"—

that is the Burmah Oil Company—

"won the first round of their action in the House of Lords last spring the previous Government had already made it clear that, if necessary, they would introduce legislation to defeat the claim."—[OFFICIAL REPORT, Commons, Vol. 705 (No. 49), col. 1102, Feb. 3, 1965.]

Reference has already been made to this matter. Is it not somewhat presumptuous on the part of the Treasury Solicitor to assume that Parliament will automatically carry out what the Executive wishes it to do? Is this not a case of the growing power of the Executive over Parliament?

I do not wish to spend a lot of time on detailed points of law. As I have said, reference has been made to the Indemnity Act, 1920; but the noble Lord, Lord Shepherd, did not, I think, refer to the case of *Robinson & Company* v. *Rex* (1921, 3 King's Bench Division, page 183), which is to be found quoted in *Halsbury's Statutes,* volume 26, at page 205. This is not quite on all fours with the case before the courts affected by this Bill, but it does raise an interesting point. The facts are these. Notice of appeal was given in that case on July 22, 1920, and the Indemnity Act, 1920, received its Royal Assent on August 16, 1920. The question was whether an appeal was a proceeding within the meaning of Section 1 and therefore was discharged and made void. It was held that the words did not include a final judgment before the passing of the Act. Lord Justice Bankes, at page 194, said:

"I consider, therefore, that the suppliant's right on the appeal is not interfered with by the Indemnity Act, 1920, and this court is not only entitled, but bound, to re-hear the case."

In the *Burmah Oil* case an appeal had actually been heard and judgment given in the House of Lords. What remained to be done was the assessment of claim. I recognise that there are differences between the case which I have quoted and the one before the courts. But one wonders whether that decision was arrived at because notice of appeal had been given. What about a case where the appeal has actually been heard? I think it makes one wonder whether doubts would not arise on the interpretation of subsection (2).

But I do not think we should rely on these legal points. To the ordinary layman, the question is this: Is it not unfair that a claimant who has had to go to the court, who has had to make the Crown the defendant, who has taken the case to the House of Lords, and has obtained a judgment in his favour, should then find it set aside because the Government find the decision inconvenient? Some of the arguments used in another place seem to me quite irrelevant. For

example, the total number of Judges has been counted up, and the number who thought the claim at Common Law was not proved set off against those who thought otherwise. It is like a kind of panel game: you consider the number of Judges from the court of first instance to the House of Lords and allocate one point to each Judge, and then you add up your sum at the end. Surely, my Lords, this approach does not deserve serious consideration.

Some noble Lords have been impressed, I think, by some of the legal arguments —for example, by that of the noble and learned Viscount, Lord Radcliffe. But that, surely, has nothing to do directly with this Bill. No Judge has suggested that retrospective legislation to deal with the issue was the right solution. I hope that no noble Lord (I certainly would not suggest that the noble Lord, Lord Shepherd, has made this point) will be swayed by the suggestion that the Burmah Oil Company, which is the claimant in this case, is a wealthy company and can afford the loss. We have reason to be proud of the fact that our Constitution is based on respect for the rule of law, and I have never heard it contended that the rule of law is an essential part of the British Constitution except where the plaintiff is wealthy. In fact, the amount of damage to which the Burmah Oil Company may be entitled seems likely to be considerably less than the figures that have been quoted. But, quite apart from that, it must be remembered that there are other cases pending. One cannot assume that the other claimants are all wealthy.

Take, for example (and I looked rather carefully into this), the case of one Alexander Dewar, the chief refinery engineer at Syriam. He had his own private workshop which he used as a spare-time hobby. It was his own property. When the Japanese approached it was decided that the machinery in his workshop ought to be dismantled. He was requested to dismantle it, and to prevent its falling into enemy hands. It was later sunk in the Irrawaddy River. I understand that Mr. Dewar got no share at all in the rehabilitation fund. He should have a right to compensation at Common Law if the decision in the House of Lords is upheld. But if this Bill is passed in its present form he will get nothing, after all these years of waiting. This, I think, will involve serious hardship, and I do not think this point is fully appreciated.

Many years ago I sat under my noble and learned friend Lord McNair as one of his law students. I think he will appreciate what I am going to say. What will some of the overseas students who come to study law think of this Bill if it is placed on the Statute Book? They are taught the high standards of British justice. This is just the sort of point which would interest them and I think it will be very difficult to explain to them the reasons for this Bill if it becomes an Act. It is not a matter to be brushed on one side, because it is these same students who, some day, may hold positions of importance in the countries to which they return.

In conclusion, I should like to say a word about procedure. I agree with my noble and learned friend, Lord McNair, that this Bill should be amended in Committee. I think it is capable of amendment. I am convinced that that is the best way of dealing with it. If Amendments removing the retrospective elements in the Bill were carried, that would ensure that the matter would be considered again in another place. The Amendments would have to go back to another place for approval, and Members of another place would have to give an unequivocal answer one way or the other on this important point of principle. My Lords, there has been much criticism of this Bill from many quarters. As at present drafted it is, I believe, deserving of strong criticism on three grounds: it is objectionable in principle; it may cause real hardship to individuals who have acted in good faith; and it may have serious international repercussions which this country may some day regret.

5.53 p.m.

VISCOUNT CHANDOS: My Lords, I intervene for only a very short time, and your Lordships will be relieved to see that I have no law books with me, and do not propose to refer to legal points. My only career at the Bar (which I have no doubt would have been highly successful!) was interrupted by the Germans in 1914. That is a piece of "war damage" which is very difficult to assess.

[Viscount Chandos.]

The noble Lord who opened this debate, and my noble and learned friend who followed, devoted a good deal of time to deploring that the law was not different from what it is. That is a very respectable kind of lament. I did not think it was particularly agreeable when the wireless licences were brought in; or the decision about snails in the ginger beer?—perhaps red herrings would have been a better thing to introduce at that point. But the real point is not that the law ought to have been something different: the point is that the House of Lords decided that this was the law; and that is the issue—nothing else. The issue is whether the law can be altered, set aside, and whether the decision of the highest Appellate Court in the country should be reversed by an act of the Executive.

In the course of my period of office as Secretary of State for the Colonies, I had to negotiate a number of Constitutions. The first thing I said was: "There are a number of points from which Her Majesty's Government are not prepared to negotiate. Unless you are prepared to accept them, we cannot help you." I will bore your Lordships with only one. The first is that the Judiciary must be entirely independent of the Executive, because, in my belief, this is the ark of the covenant of democracy; otherwise the whole thing falls to pieces. That is my first point.

I ought to say a word about the empirical aspect of this affair, which follows what I have been saying. I have been engaged in international business nearly all my life, and I assure your Lordships that it will become infinitely more hazardous if retrospective legislation like this is to become law. Let us look for one moment at the converse—the converse being how much good is done to a country by enforcing its laws without fear, favour or affection. Many disputes are settled in London because it is thought that there the law is impartial. I remember well the *Waterlow* case, which I expect many of your Lordships also remember, where swingeing damages were given by the British courts against Waterlow & Sons for negligence in printing banknotes for a foreign Government. I also remember the incredulity with which this decision was greeted, even in the United States and on the Continent of Europe. Everyone said, "At any rate in Great Britain the law is the law." To-day there are a great many Governments, fairly new to the problems and obligations of government, which genuinely wish to learn from this country how to conduct themselves, and others would have liked to have respectable precedents for setting aside the sanctity of confidence and that is what we are giving them—a respectable precedent.

We are not discussing whether the sum of money claimed by the Burmah Oil Company is a right one; and whether other people, thinking that the law was different, would have accepted smaller sums. A large part of the noble Lord's speech was a sort of apology for people who have taken less and hoping that everybody would be modest. But that has nothing to do with the point. I am not concerned with what the Burmah Oil Company gets, but I am concerned with whether a decision of the House of Lords should be set aside by an action of the Executive.

In the old days as an individual, you thought, when you read your passport, that if you were maltreated Her Majesty's Government would, by force or influence, protect you. The same thing, we imagine, happened over British property abroad. But now, if property is expropriated by some arbitrary, one-sided or retrospective act by a foreign Government, those who inflict the damage will claim to be at least as respectable as Her Majesty's Government in Great Britain. We can, of course, controvert this argument by saying that retrospective legislation is introduced in Great Britain only when the sums involved are inconveniently large. There used to be an old saying, "Let the heavens fall, but let justice be done!"—*Ruat cœlum fiat justitia.* We must now re-write that and say, "*Ruat cœlum fiat justitia*—always provided that it is not too expensive."

5.58 p.m.

LORD PARKER OF WADDINGTON: My Lords, I promise to be very short, as many of your Lordships desire to speak. But I should not be able to hold up my head again were I not to come here and remonstrate as strongly as possible against this Bill. Under the guise of altering the Common Law to meet a

situation which we hope will never occur again, it is about as blatant a piece of confiscatory legislation as it is possible to imagine. Let me say at once that I have no interest in the Burmah Oil Company. I do not mind what are the merits or demerits of their case: I will assume that they are all demerits. But the issue here is whether it is right to deprive the subject, without compensation, of a form of property—the property being a right to such damages as the company can prove, and a right which has been confirmed to them by your Lordships' House, sitting in its Judicial capacity.

LORD SHEPHERD: My Lords, will the noble and learned Lord forgive me, because this point has been made two or three times, once by the noble and gallant Viscount, Lord Slim, and I could not intervene then because it was a maiden speech. The noble and learned Lord has said that we have denied this company compensation. Would he not agree that compensation has in fact been paid? That is the point I made in my speech.

LORD PARKER OF WADDINGTON: I think that the noble Lord's point would be met in my mind if the Bill had provided for some form of compensation.

LORD SHEPHERD: What was the £4$\frac{3}{4}$ million?

LORD PARKER OF WADDINGTON: This right, as I said, has been specifically confirmed by your Lordships' House, and I venture to think that, shorn of all frills, that is the simple issue before your Lordships. I again venture to think that the collective conscience of this House will recoil against the idea behind this Bill. I read the arguments advanced in another place in favour of it, and I listened to other arguments; and I confess that the more I hear, the more confirmed I am in complete abhorrence of this Bill.

It is said that there is ample precedent for legislating to change the law as announced by your Lordships' House in its Judicial capacity. Most certainly there is—nobody would controvert that. But so far as I know, there has never been legislation that has singled out a particular subject or subjects and deprived them of rights which had accrued before the legislation was introduced and which have been confirmed by a Judicial decision of yonr Lordships' House. Secondly, it is said that in some way this is akin to an Indemnity Bill. The noble Lord, Lord Wade, has really dealt with that point. One asks oneself: who is seeking to be indemnified in respect of some criminal liability which he has inadvertently incurred? Who has incurred a personal liability in the performance of some public duty which ought to be borne by the general public? Who, indeed, is asking to be indemnified, unless it is the oil company itself?

Then we have listened to other arguments: arguments based on the counting of heads; arguments based on the fact that the decision should depend on whether the prospective damages are large or small. And there was a suggestion in another place that really the oil company had no right at all of any value, because the shares had not fluctuated on the market when the Bill was introduced —matters of that sort. It is even said that the decision of the Appellate Committee of your Lordships' House is contrary to the law. Those arguments, I fancy, have only to be stated to be brushed aside.

Finally, to-day, we hear an argument based on the fact that the Executive have written a letter and warned the company that if they took a certain action legislation would be introduced. It is a frightening idea. We shall soon be without any laws at all. It will save legislative time. All the Executive have to do is to write a letter of warning and put them off.

Having said that, I would go to ask: what are the arguments that can be advanced in justification of this Bill? It is said that it is not a legal question; it is a political decision. Undoubtedly it is a political decision which has to be made on political considerations, but I certainly have always thought that one of the first considerations is the pursuit of justice. The courts respect, I hope, the expressed intention of the Legislature, and for my part I have always hoped that the Legislature, in turn, would respect and uphold the standards of justice adopted by the courts.

No doubt it is said that another consideration is political expediency. Of course it is. Bnt are we lightly to throw away our undoubted international reputation for any sum, be it small or large?

[Lord Parker of Waddington.]

On this question of political expediency, I venture to think that the Bill may well do the very opposite of what it is intended. So far from ameliorating any economic difficulties, it may well increase them, as the noble Viscount has been pointing out. It will certainly be a blow to those nationals carrying on business overseas, who, in the ultimate resort, depend upon the moral pressure brought to bear on any country seeking to expropriate the property of our nationals. I do remonstrate against this Bill and, while not seeking to divide the House on the Second Reading, I most earnestly hope that at a later stage your Lordships will vote against any part of the Bill which has this confiscatory character.

6.5 p.m.

LORD CONESFORD: My Lords, when I first saw this Bill I had no doubt at all that in its present form it was intolerable. The only question, I thought, for consideration was at what stage we should deal with this Bill. I have no doubt whatever that the reputation of this House as a revising Chamber depends entirely upon our decision in dealing with this Bill. If this Bill were allowed to survive in its present form this House would have shown on a most important occasion that as a revising Chamber it was quite useless.

SEVERAL NOBLE LORDS: Hear, hear!

LORD CONESFORD: There have been two speeches to which I should like briefly to allude. We have had a speech of the greatest distinction and value from the noble and learned Lord, Lord McNair. He speaks not only as a great jurist but as a great expert on international law; but while I would venture to put one or two legal considerations before the House, I shall certainly not embark on that. The other speech to which I would allude in passing was the splendid maiden speech of the noble and gallant Viscount, Lord Slim. He was a great soldier, and though he spoke as a layman where law was concerned, the principles he put forward, I think, were such as to command the support of lawyers.

The appeal that I would make is not to any one Party; it is an appeal to all Parties because the opposition to this Bill is based on a principle which I hope and believe we all share: that is, respect for the rule of law. I believe that this Bill is inconsistent with respect for the rule of law. I am glad to say that my belief was shared in another place by members of every Party. Indeed, one of the very best speeches against the Bill on Second Reading in another place was made from the Socialist Back Benches by the honourable member for the Cheetham Division of Manchester. An interesting fact about that, incidentally, is that he is a barrister in the chambers of the Attorney General.

Let me say at once, so as to make it quite clear that there is no political partisanship in what I am going to say, that the present Government in introducing this Bill are doing nothing worse, in my opinion, than their predecessors did in authorising the letter from the Deputy Treasury Solicitor to the Burmah Company of June 13, 1962. I am very grateful to the noble Lord, Lord Shepherd, for having read that letter to the House; it saves me the trouble. That letter was a threat by the Government to the litigant whose claim they were resisting in the courts that if, contrary to the Government's view, they succeeded, the Government would legislate to deprive them of their victory. I do not propose to say very much about that letter, except this: I think it makes the issues which we have to face to-day clearer to most people than even a perusal of the Bill itself. I heard with great regret my noble and learned friend Lord Dilhorne justify that letter, on grounds which I thought very odd. It was apparently that he and his Government had decided at that time that they would in due course introduce this Bill and thought they had better say so. It is not a thing that shows a very open mind on the merits.

But perhaps rather than give my own opinion I may read two passages from the judgments about that letter. Lord Kilbrandon, the Lord Ordinary, said this:

"There is one other matter with which I ought to deal. At the beginning of the hearing, there was laid before me a letter which had been written by the Deputy Treasury Solicitor to the pursuers on the 13th June 1962. I expressed at the time my opinion as to the propriety of the channel of communication selected and I say no more upon

that topic. The letter was written for the purpose of informing the pursuers that Her Majesty's Government had been advised that the pursuers' claim was wholly unfounded in law, but that in the unlikely event of their succeeding in their claim, legislation would be introduced to indemnify the Crown against that claim. The attitude of Her Majesty's Government as disclosed in that letter was severely criticised by Mr. Shearer for the pursuers, but at that juncture I thought it better to say nothing about the contents of the letter. I am now obliged, however, in consequence of the opinion which I have just expressed, to take it, until my judgment is reviewed by a higher Court, that Her Majesty's Government were wrong in saying that the pursuers' claim is wholly unfounded in law. What I have found in law is that the pursuers' claim is well founded, and is in accordance with the opinions which have been expressed, one after the other, by the most respected jurists and civilians, starting from a time earlier than the law of Scotland as we know it now, and proceeding from those days to all intents and purposes in unanimity. It is the express intention of Her Majesty's Government, in spite of my opinion, which, until it is corrected by a higher Court, has to be accepted as law, to obtain relief from Parliament against any claim which may arise from the position in law as I have found it to be. The reason given for this proposal is 'that the claim is not in any event one which ought to be met by the British tax-payer.' The use of the word 'ought' in this context appears to indicate that in the view of Her Majesty's Government there is some moral principle involved in their claim to indemnity which must override the common law of Scotland and the notions of justice of our forebears."

That is the judgment of the Lord Ordinary.

Let me now turn to what was said by the Lord President, Lord Clyde:

"There is only one other matter to which I should refer. At the end of his opinion the Lord Ordinary mentions a letter written by the Deputy Treasury Solicitor to the pursuers on 13th June, 1962, after the pleadings of both sides had been adjusted. I agree with the Lord Ordinary's observations on this letter. Before us Counsel appearing on the defender's behalf informed us that he had no instructions to express any observations on this letter. Perhaps this is not surprising. It is, of course, quite contrary to professional etiquette in Scotland for a solicitor on one side in the course of a litigation to communicate direct with the client on the other, and we have had no explanation as to why this was done. Moreover, the contents of the letter (bluntly informing the Burmah Oil Companies that, if they succeeded in their claim, legislation would be introduced to indemnify the Crown against that claim) seem to leave the Crown with little interest to defend these actions. Such a communication, however, will not deter a Scottish Court from endeavouring to reach a just conclusion on the merits of the dispute."

I hope it will also not deter a British Parliament from radically changing the Bill that was there being threatened.

Since then the House of Lords, as our highest judicial tribunal, has decided that the judgment of the Court of first instance was well founded. The House of Lords made this decision after the most careful argument and deliberation and a review of the authorities in many countries and the consideration of the writings of the most famous jurists, including Grotius and de Vattel. The House of Lords has decided that there is no general rule that the Prerogative can be exercised by taking and destroying property without payment. It is perfectly true that that precise point had never had to be decided by our courts before. It is quite untrue to state that the Bill will restore the law to what everybody thought it to be. There was no such unanimity on what the law was at any time. In fact, anybody who takes the trouble to read nearly 100 passages of the proceedings in the Lords and the arguments in all courts will know how greatly the principle was contested. If I may mention just one passage in an often cited judgment, Lord Dunedin said this in the *de Keyser* case:

"the texts give no certain sound as to whether this right to take is accompanied by an obligation to make compensation to him whose property is taken."

That was Lord Dunedin in the *de Keyser* case at the end of the First World War.

My noble and learned friend Lord Dilhorne mentioned a conference with the late Sir Stafford Cripps; and I think we are referring to the same conference. The one I refer to took place on October 20, 1947. In the course of that conference Sir Stafford Cripps, who apart from everything else was a distinguished lawyer, made it quite clear that he was aware of the two views that were prevalent on this question.

VISCOUNT DILHORNE: My Lords, may I interrupt the noble Lord? Am I not right in saying that at that meeting all the company said was that there was a moral obligation on Her Majesty's Government; that at that meeting it was never suggested by the company, or by any of the representatives, that there was a legal liability at all? And is not the noble Lord taking the statement about the two views completely out of context, when

[Viscount Dilhorne.]

the matter being considered was a claim against the Burma Government in relation to the Defence of Burma Act?

LORD CONESFORD: I quote it only on this one point—namely, the contention that everybody was agreed on what the Common Law was.

THE EARL OF LYTTON: My Lords, I am grateful to the noble Lord for allowing me to intervene. I have the Minute to which the noble and learned Lord has referred, and I will read it:

"As regards a legal liability for denial damage he was well aware that there were two views."

The reference is to Sir Stafford Cripps.

LORD CONESFORD: That was the only passage on which I was relying for this purpose.

VISCOUNT DILHORNE: The noble Lord was relying on it to show that a statement I made about the general view before this case was decided is inaccurate. If he will read the whole of that Minute he will see at the beginning that the representatives asserted merely that there was a moral obligation on Her Majesty's Government. There was no suggestion that there was a legal liability on the part of Her Majesty's Government. If the noble Lord will look at that matter in its context he will see that what was being considered was claims against the Burma Government under the Defence of Burma Act.

LORD CONESFORD: My Lords, I think that my noble and learned friend is under a complete misapprehension on the point I am making. I know that somewhere in this long two-page Minute there is a discussion of what will happen if, in the end, the courts decide something different. But the only point I am on at the present moment is that there was no generally agreed view on whether action under the Prerogative did or did not carry a right to damages. I fully accept that the view expressed by my noble and learned friend was a widely held view. I would only say that it was by no means a universal view. I quoted the well-known passage from Lord Dunedin's speech in the *de Keyser* case to prove my point, and it was quoted amply in the speeches in the *Burmah Oil* case. In the event, it was decided by the House of Lords, by a majority decision, that denial damage, but not battle damage, carried the right to compensation.

As a matter of interest, in the Supreme Court of the United States in 1952, facts not dissimilar to those in the *Burmah Oil* case were considered, and there again, in the *Caltex* case, the Supreme Court was divided; but the majority decision in that Court went against the claimant. It is a well-known fact that this is an extraordinarily difficult subject. Lest it be thought that the United States case was quite on all fours with the *Burmah* case I should say, of course, that the precise terms of the Fifth Amendment to the Constitution may have influenced their decision.

So much for what the House of Lords has decided about the general right to claim. What has the House of Lords decided about the Burmah Company's claim? They have decided that it has a right to claim compensation, and to succeed if it proves all the matters that it has pleaded. I want to avoid all the complicated phraseology of Scottish law, with which I am quite unfamiliar. I adopt the expression used, I think, by my noble and learned friend Lord Dilhorne, when he referred to what we know as "demurrer". When one side says: "Assuming that everything you have pleaded is true, you still would have no claim", that issue is tried. The House of Lords said: "Assuming that what they have pleaded is established, they have a claim and their claim is right".

My noble and learned friend Lord Dilhorne quite rightly said that often, when a case goes to final trial, it is found that the matters assumed in the pleadings cannot be proved. He mentioned the famous case of the snail in the ginger beer bottle, where it was eventually found that there was no snail in the ginger beer bottle. This was a famous case which went to the House of Lords. It was the case of *Donoghue* v. *Stevenson*. Perhaps, of all cases that have come before the courts in recent years, this decision has had the greatest effect on our law of torts. Parliament did not legislate to reverse the decision in *Donoghue* v. *Stevenson*. On the contrary, that case has enriched our law. The *Burmah* case is a great case on the rights

of the subject and the Executive under the Prerogative. It ought to enrich our law and ought not instantly to be wiped out, and certainly not wiped out retrospectively.

But what the House of Lords has not decided—here I absolutely agree with my noble and learned friend—is whether, if this case proceeds, as nearly all of us think it ought to proceed, the Burmah Oil companies will succeed when the matter comes to trial and whether they will prove all their allegations. Still less do we know, if they do prove them, what the measure of the damages will be. The House of Lords has certainly said nothing whatever about the measure of damages. The noble and learned Lord, Lord McNair, cited two passages from the decision of the House of Lords, and read one. I should like, if I may, later to read one more. The judgment obtained by the Company, though not a final judgment, is of course a valuable judgment; and the right to proceed with their claim is a valuable right which this Bill would take away.

This Bill, as has been pointed out, does two things. It changes the Common Law, and it makes the change retrospective. To change the Common Law is, of course, arguably right, though I think most jurists would say that such a change requires the most careful consideration, and could perhaps well have awaited that expert examination by lawyers which the noble and learned Lord on the Woolsack so often recommends in other connections. Nevertheless, I do not propose to condemn the Bill because it provides that, in future, the Common Law shall provide no remedy in a field in which, in the dissenting Opinion of Lord Radcliffe, there were good grounds for thinking that it ought not to do so.

When, however, we turn to the proposal to make the change retrospective, quite other considerations apply. It abolishes existing rights of value, and it abolishes them without compensation. That is clear from the language of the first subsection; and it is accentuated by the provisions of the second subsection. A right to compensation—and, indeed, a right to claim compensation—is as much a form of property as a tangible asset or the right enjoyed under a contract. To sweep away such a right without compensation is utterly unprincipled; and to set aside such a right, when it has not only accrued but been confirmed by judicial decision by the highest tribunal, seems to me to be monstrous.

Why is it being done? I believe that it is being done through a groundless fear of the extent of the damages which might be involved if the claims were to be dealt with by the courts. I will say nothing about the relevance of *quantum*, but I think that it may be a good thing to add one passage from the judgments on this question of damages to the passage read by the noble and learned Lord, Lord McNair. It will be recalled that the highest tribunal has decided that denial damage gives the right to compensation, and that battle damage does not. Of course, it may sometimes be thought that it is rather artificial if a great distinction is made because of what may be the fate of a particular property within a period of a few days. It is for that reason I should like to read a passage from Lord Kilbrandon's judgment. He said:

"On the analogy of the *Juragua Iron Company* case, and upon ordinary principles of law, had the pursuers' installations, after they had fallen into Japanese hands on 8th March, been destroyed by British aerial bombardment on 9th March, no such case as the present could have started. The bombardment of 9th March would have destroyed enemy property, not the property of a company registered in Scotland, and this would have been an ordinary incident of war indistinguishable in its consequences for present purposes from a destruction of the property by the enemy themselves. There is, accordingly, a certain artificiality in holding, as I have done, that the incidents averred in the pleadings give rise to a claim for compensation, whereas if substantially similar incidents had taken place a day later, they would not. It is not a sufficient answer to say that what I am considering is a question purely of law. When law and common sense find themselves taking different roads, it is time for law to suspect that she has missed the way.

"The real answer, I think, is that the line has to be drawn somewhere, and on one side of it, however artificial it may seem, legal consequences are different from what they are on the other. The practical consequences may differ very little, and this may be the kind of case in which that is specially true. Although the principles of the Common Law direct me to decide that this case falls on that side of the line which means that compensation is payable, my decision says nothing as to the value of such right to compensation. For example, supposing compensation is payable on the basis of restoring to the pursuers the value of the assets destroyed. it by no means follows that the necessary valuation will be one which ignores the battle of the Sittang River and its consequences, namely, that at

[Lord Conesford.]

the time of the destruction the assets were doomed to fall, and within a few hours did fall, into enemy hands. On a view of the facts, that does not call for consideration at this stage, and the consequence of falling on one side of the line or the other, although dramatic in law, may not be particularly important in the end."

My Lords, that statement reinforces very strongly the point made by the noble and learned Lord, Lord McNair: that it is utterly wrong to assume that the sums involved must be immense.

There is one other point in connection with damages. The noble Lord, Lord Shepherd, when introducing this matter, said, once or twice, "What about the payment of £4,600,000 that has already been made?" Of course, if the case proceeds, the court will be informed of that payment, and, if it thinks that nothing more is due, because that payment has been made, nothing more will be recovered. But if, on the other hand, the court thinks that more is due, then something more will be recovered.

The only other point that I would mention is that made by the noble Viscount, Lord Chandos, and, at the impressive conclusion of his speech, by the noble and learned Lord, Lord McNair. We in this country have our great enterprises trading in almost every country in the world. Some of these countries have not had an established system of law as good as ours, or for nearly as long as ours. If it becomes necessary for a British national, or a British company, to litigate in the courts of such a country, do we really wish that that country should be in a position not only to introduce legislation to defeat the claim, perhaps after it has been won, but to quote in justification of their action a precedent set by this country in the present year?

May I state my conclusions about our duty? I would urge the House tonight to give this Bill a Second Reading, because I believe that by amendment we can make it tolerable. If the House gives it a Second Reading, as I hope it will, I intend forthwith to table three Amendments to strike out the retrospective provisions. Those provisions, in my opinion, render the Bill as it stands an affront to a civilised Parliament.

6.35 p.m.

LORD GUEST: My Lords, it is with some diffidence that I intervene in this debate, because I have at the outset to state a perhaps unusual interest. It would be rare for a Counsel to have his opinion justified by the Appellate Committee of the House of Lords and then to have that opinion nullified by an Act of Parliament. If this Bill becomes law, that indeed would be my fate. For in 1957 I had the honour to be consulted by the Burmah Oil Company as to whether, in my opinion, they had a good claim at Scots Law. After consideration of the authorities, I expressed my opinion that they had a good claim.

At that time the company were litigating in the courts of Burma, to which they had been directed, I think, by Sir Stafford Cripps, and it was then not possible to bring an action until these proceedings had concluded. Therefore, it was not until 1960 that the company were able to proceed with their action in Scotland, as the action by that time was time-barred in England. I do not understand that it was suggested that there was anything improper in their suing, as they were entitled to do, the Lord Advocate in Scotland. I thought it right to disclose that interest in case it should be thought that my sympathy for my late clients could in any way affect the feeling that I have on this Bill. It also adds point to the fact that not every lawyer, as the noble and learned Viscount, Lord Dilhorne, said, thought that the Burmah Oil Company had no claim. The fact is that the Government at that time was wrongly advised and the Burmah Oil Company, as the House of Lords have decided, were correctly advised.

Your Lordships will bear in mind that all the Judges in Scotland, including the Judges in the Inner House, said that when in exercise of Prerogative a subject was deprived of property by the Sovereign in some emergency, he was entitled to be compensated. That was, they said, the general rule and had been for centuries. All they disagreed about was whether this was battle damage or denial damage. The Judges in the Inner House held that it was battle damage and said that that was an exception to the general rule. That was a decision which a majority of the House of Lords said was wrong. It was wrong to say, as has been said so often in this debate, that everybody thought the law was as

the Government were advised it was in 1947.

Clause 1(2) of the Bill has been quoted often in this House, and I would draw your Lordships' attention to the concluding passages. It says:

". . . the court shall, on the application of any party, forthwith set aside or dismiss the proceedings, subject only to the determination of any question arising as to costs or expenses."

This means that the Counsel for the Lord Advocate, or the Lord Advocate himself, because he was a party to the proceedings, can go before the Lord Ordinary and produce this Bill—or Act, if it comes into force—and demand the dismissal of the actiou. The Lord Ordinary has no discretion; he has no view as to whether the Act applies or not; he has no power to deal with it except in regard to costs. If that is not interference with the Judiciary, I do not know what is. In effect, the Lord Ordinary is being driven from the judgment seat by the Act of Parliament. I do not say this for any dramatic effect, because it must be remembered that these proceedings are still proceeding in the Court of Session, and it will of course be necessary to appear before the Lord Ordinary, even if this Bill becomes law, to deal with the question of costs. But I hope I have said sufficient to show the retrospective nature of the Bill.

It has up till now been assumed that, when a litigant obtains judgment in his favour, the Legislature will not retrospectively take away that right obtained, and it is, in my humble judgment, the retrospective nature of this Bill which is objectionable. That question should not be confused with the merits. The merits are a separate and entirely distinct question. The courts declare what the law is. Parliament can always change the law if it so wishes, and that is what is proposed in Clause 1(1), and upon that matter, which is a political question, I express no view at all.

It is a constitutional question which is raised by Clause 1(2), and it matters not, in my view, whether the judgment is obtained in the sheriff court, the county court, the High Court, the Court of Session or the House of Lords. It is the right of every litigant to have his rights determined in accordance with the law as it stands when judgment is obtained; and that, as I understand, is the rule of law. The position is tbat the Burmah Oil Company have established a right to compensation for denial damage, subject to their proving what they have set out in their pleading, and it is of this right that Clause 1(2) deprives them. It is, therefore, as has been said before, a clear case of confiscation.

This raises the question which has been put forward in another place, that this is not really confiscation at all, because only a preliminary point has been decided; no award of damages has been made and, therefore, no right has been taken away. I ask the question: if it is not confiscation, then why is the Bill necessary? Why not wait and see, until the company are able to prove their claim? My Lords, it does not matter what amount is involved, whether it is 6d., £6 or £6 million. A vital question of principle is here concerned, and it affects the rule of law and, as I have hoped to show, the independence of the Judiciary.

In conclusion, I wish to refer to only one matter, and that is the letter of the Treasury Solicitor, written in 1962, which has already been referred to more than once. I would read a passage from the speech of the Financial Secretary to the Treasury in another place, when he said:

"We are not suggesting that the Burmah Oil Company has in any way acted improperly by bringing this claim."—[OFFICIAL REPORT, Standing Committee B, col. 25, February 23, 1965.]

That means that they are completely exonerated for proceeding in face of the letter of the Treasury Solicitor. If it be the case that they did not act improperly, how can it be suggested that the letter of the Treasury Solicitor was proper? The criticisms, and the way in which that letter has been characterised by the judges of the lower courts, have already been referred to. I sincerely hope that, as a result of the expressions of opinion in this House, the Government may have second thoughts before the Bill reaches another stage, and will delete the objectionable features from Clause 1.

6.44 p.m.

LORD MORTON OF HENRYTON: My Lords, I had intended to speak against the retrospective part of this Bill, but all that I intended to say has been better said by others, so I shall say exactly nothing.

6.45 p.m.

LORD SALTOUN: My Lords, I have heard every word that has been said so far, and I am in a certain difficulty. My difficulty arises from the fact that we have here a Public General Act which is of very great importance for the future, and it has hardly been debated at all. The noble and learned Viscount, Lord Dilhorne, devoted a few moments to it, and the noble Lord, Lord McNair, devoted more time to it, but apart from them it has not been debated at all, so far as I have heard, and it was very little debated in another place. The whole debate this afternoon has been about the retrospective provisions of the Bill with respect to Burmah Oil. I think that it is a very bad precedent, with a Bill of this importance, which deserves real consideration and which has very objectionable provisions in it, to draw the whole fire of Parliament so that a very important measure goes through practically unconsidered. That point puts me in a difficulty, as I shall explain.

With regard to my other point, I have only this to say. When Her Majesty's Government came in, they did a good many things which, whether they wished it or not, had the effect of drawing the eyes of the world very much upon them. One of the first things they did was to declare their faith in the United Nations, and they said that they were determined to uphold the principles of the United Nations. The first principle of the United Nations, and one that more than any other is on everybody's lips, is the substitution of the rule of law for the rule of force in the settlement of difference. When everybody in the world sees that impartial courts of justice in this country have given a decision which makes the Government liable to a debt, and the Government, who have made that declaration of belief in the rule of law as against the rule of force, bring in a law to enable them to avoid the payment of that debt, what are they going to think the rule of law means on British lips? Are not people going to say that, after all, there is something to be said for

> "The good old rule, the simple plan,
> That he can take who has the power
> And he should keep who can".

Because, after all, my Lords, you can make terms with a bully. The people of Finland have shown that one can do that and earn the admiration of the world. But you can never make terms with a man who alters the rule of the game as soon as he sees that it is going against him.

Every noble Lord who has spoken has said that we must give the Bill a Second Reading and try to amend it in Committee, and that is where my difficulty arises. I know it has been said, and bandied about the House, that your Lordships' House is not inclined to refuse a Second Reading to any Bill that comes up from another place. I think that to make that a hard and fast rule is to deny your Lordships one of our fundamental rights.

The fact remains that in 1945, when a Socialist Government was returned in the House of Commons with a large majority, and it had to deal with a large Conservative majority in the House of Lords, under the very wise and sensible guidance of the Leader of the Opposition the noble Marquess, Lord Salisbury—who a moment ago was sitting beside me—we always gave a Second Reading to Government measures and tried to amend them in Committee. That was our practice; and that it only went so far is suggested to your Lordships by that fact that in those days the debates very often centred on: "Was this matter or that matter mentioned in the Government's election manifesto? Had the Government a mandate for this measure or that measure?". Those matters were very often bandied across the Floor of the House, and I think they were always resolved fairly, because I remember at least one occasion—and I think more than one occasion—on which the Lord Chancellor thanked the House, and in particular the Opposition, for the way in which they had dealt with Government Bills. That is as far as that goes; and I do not think any rule of that kind affects a Bill of this nature.

There is one point about a Second Reading in your Lordships' House which is absolutely recognised and which is also recognised in the House of Commons. It is that if you give a Bill a Second Reading, you accept the principle of the Bill—and that is where my difficulty lies. In the House of Commons the matter is rather different in one way, because there, Party allegiance is very much stronger and Members are put to great strain in deciding between their

sense of what is right and their sense of allegiance to the Party. Things are a little different in your Lordships' House. I can illustrate it by mentioning what happened in another place the other day. Those of your Lordships who have followed the proceedings of this Bill will remember that when the Bill went to Committee, Amendments were moved which were ruled out of order because the principle of the Bill had been accepted, and therefore such Amendments were out of order. That rule does not apply in your Lordships' House, but I have never known the House accept a wrecking Amendment of that kind.

But the fact remains that if your Lordships' House gives this Bill a Second Reading, it accepts the principle underlying the Bill—and I do not think I can do that. Opposition in this House is very much easier than it is in the House of Commons, because in 1949 the Socialist Government came to our assistance when they enacted the second Parliament Act. If we deny this Bill a Second Reading, and if the Government are determined on it, they can, by reason of the Parliament Act, 1949, pass it in the course of about a year, and we shall still not have committed ourselves to approval of the principle. I feel very much inclined to take that line. I have not been very much impressed by the arguments to let the Bill go through and amend it in Committee, but I will listen to the rest of the debate as much as I can and see how I feel at the end.

My Lords, as I say, I have listened to every word that has been said in this debate, but I am going to crave the indulgence of the noble Lord, Lord Molson, unless he wishes to attack me. If he does not wish to attack me I am going to ask whether I may be absent for a few minutes, because I want to get something to eat.

6.53 p.m.

LORD MOLSON: My Lords, I fully understand that my noble friend has been sitting here with a diligence and a patience which is a model to all of us, and I certainly hope he will now go and obtain his long-overdue refreshment. I need not detain the House for many minutes. With the single exception of that of the mover of the Second Reading, I think that almost every speech made in this debate has been deeply critical of this Bill, and I shall try not to repeat anything that has been said.

I should have liked to confine myself to saying, as other noble Lords have done, that for the Executive to ask the Legislature to pass retrospective legislation, altering the law as it has been stated to be, in order to deprive a subject of the Crown of rights which he previously enjoyed, was something so completely wrong, from every constitutional point of view, that there was nothing more that need be said about it. But I have not the slightest doubt that your Lordships' House will make such Amendments to this Bill in Committee as will remove those most objectionable features. There have, however, been some arguments, which I can regard only as sophistries, seeking to justify the retrospective character of this Bill by comparing it with pieces of legislation that have been passed on previous occasions.

My Lords, if the Law Lords' decision had inflicted unexpected loss upon individuals, and had been obviously unfair or obviously absurd, then I think there would have been a case for the Executive to exercise some discretion, in order to do what the Law Lords had said was not necessary to be done, or even, in exceptional circumstances, to ask the Legislature to re-phrase the law. In this case, of course, it is exactly the opposite. In this case, the Executive is attempting to deprive the subject of rights which he enjoys—and I really could not consider the reference by my noble and learned friend Lord Dilhorne to the Charitable Trusts (Validation) Act, 1954, as being of any value whatsoever from his point of view.

As he explained to your Lordships, it was found that, owing to an unforeseen legal difficulty, money which testators had intended to leave to certain charities had not, in fact, gone to those charities but had gone to the residuary legatees. My Lords, I can hardly think that to legislate in order to give effect to the obvious intentions of testators, and to divert the money to those who had a reasonable expectation of receiving it, is any precedent for a Bill of this kind.

The noble and learned Viscount also compared this Bill to the Indemnity

[Lord Molson.]

Act, 1920, and he quoted the first section. He said that these claims would have been totally and completely barred had a measure of the same kind been passed at the end of the Second World War. If he was taking a mere debating point, and if he attached importance to the words " in the United Kingdom ", then no doubt he would be right. But I hardly think that, on the Second Reading of a Bill, it would have been his intention to take a small point of that kind. It is true that the Indemnity Act, 1920—passed, be it remembered, almost immediately after the war—deprived the subjects of any of their existing Common Law claims; but it went on, in Section 2, to provide for a fair system of compensation. It provided as follows:

> " Notwithstanding anything in the foregoing section "—

that is the section which deprived them of their rights—

> " . . . any person . .
>
> (*b*) who has otherwise incurred or sustained any direct loss or damage by reason of interference with his property or business in the United Kingdom through the exercise or purported exercise, during the war, of any prerogative right of His Majesty . . . shall be entitled to payment or compensation in respect of such loss or damage . . .".

And it goes on to say how that payment or compensation is to be assessed.

The remarkable thing about this legislation is that, because this damage was done in Burma, the Burmah Oil company was not able to claim the benefit of the two Acts passed to deal with damage, the Compensation (Defence) Act, 1939, and the War Damage Act, 1943. And be it also remembered that in the case of Brunei and Sarawak a special agreement had been entered into by the Government in 1940 contemplating the payment of compensation if the demolition of these oil installations took place. It is relevant to bear in mind that when the late Sir Stafford Cripps was Chancellor of the Exchequer he advised the Burmah Oil Company to sue the Government of Burma. I should not like to think that the late Sir Stafford Cripps gave advice of that kind unless he was convinced that the Burmah Oil Company had both a moral and a legal right.

When the Government of Burma obtained its independence, as the Financial Secretary has mentioned in another place, they refused to accept any liability for paying compensation in respect of the war. The British Government had previously made regulations and set up a Claims Commission to consider what compensation should be paid to persons in Burma who had suffered war damage. It appears to me a negation of justice that, owing to political developments of that kind, and the refusal of the independent Government of Burma to agree to provisions which had been in process of negotiation between the Government of the United Kingdom and the provisional Government of Burma, the Burmah Oil Company—or any other person who suffered damage—should be deprived of its remedy.

We have been told by the noble and learned Lord, Lord Guest, that the claim which was made by my noble friend Lord Dilhorne, that it had been generally accepted that there was no Common Law right to compensation, was not at all generally held. I quite recognise the force of what the noble Lord, Lord Shepherd, said about the narrow margin of difference between battle damage and the denial to the enemy of property by its demolition. That certainly sounded a reasonable argument. But it is not by any means necessarily a correct argument. You have only to look at it from another point of view to see that it really is impossible in these matters to draw any logical line which is not going to result in unequal treatment being given to claimants, with almost equally meritorious claims, on either side of the line.

It is accepted that even in time of war, if the Government take over the subject's property the Government are obliged to pay for it. Let us suppose that at the same time as the oil installations outside Rangoon were being demolished there were large stocks of oil in Rangoon, and that the British Government had enough tankers to remove only one-half of that oil. The oil which was removed in order to deny it to the Japanese would have been paid for. Can it seriously be argued that because the other oil could not be removed, and was therefore burnt, compensation should not be paid?

This is an extremely difficult matter, and there are very practical arguments in favour of the decision that was given. Therefore, for the Government now to

ask that the decision, a perfectly rational and reasonable one, should now be reversed is, in my view, quite unjustifiable. The fact of the matter is that successive Governments after this war ought to have passed an Act similar to the Act of 1920; and the fact that they were badly advised and did not do so is no justification now, when the subject has litigated and had rights declared to reside in him, for reversing that decision and taking away his rights, retrospectively, by legislation.

My Lords, I would conclude by asking the noble and learned Lord, the Lord Chancellor, a question, with which I hope he will be able to deal. I believe that before he became a member of the Government he was the very distinguished President of a society called "Justice". It holds a very high position in the thought of lawyers in this country; it is associated with law reform; it has interested itself very much in trying to promote throughout the world the supremacy of justice and the rule of law. "Justice" has condemned this Bill in very outspoken terms as completely in conflict with the principles for which that society, a branch of the International Commission of Jurists, has stood in the past. I hope that the noble and learned Lord who sits on the Woolsack will be able to explain how it is that, having for so long been associated with an impartial body of that kind, he now finds himself taking a view so entirely different from the principles with which he was previously associated.

7.8 p.m.

LORD MILVERTON: My Lords, were it not for the fact that I am, I think, almost the only speaker so far in this debate who is not either a lawyer or a politician, I would not have spoken at all; because I think most of the things which I should have liked to say have already been better said. But I have listened with deep interest to all the speeches so far and I have studied with equal interest what took place in another place. It may at first sight seem rather presumptuous that I should have the temerity to join in this debate after the opinions of so many distinguished lawyers have been expressed. But I take my stand on the principle that justice must be seen to be done; and I think it no bad thing that the view of the ordinary citizen, if I may claim to represent him, should be expressed in your Lordships' House. Indeed, where important principles aud moral issues are at stake affecting every citizen in the land, it is not, after all, only the lawyers who are entitled to a hearing.

May I declare at once that I have no interest whatever in the Burmah Oil Company, but, like every other Member of your Lordships' House, I have a vested interest in the reputation of the British Government and in the unwritten Constitution of this country. In the year when we are celebrating an anniversary of the Magna Carta, we might profitably remember that it is supposed to have established the subject's right to protection and redress under the law, regardless of the other parties involved. This distasteful little Bill has a totalitarian flavour, aiming to destroy one of the basic tenets of British freedom and to establish the Executive as the final court of appeal over the highest Court in the land.

There is no question of Party involved in this issue. I should have expressed what I want now to express—the apprehension, widely shared by the citizens of this country, over the substitution of expediency for the rule of law—whatever Government had been in power. I should have uttered the same opposition to a Bill of this kind whatever Government had introduced it. This Bill is the modern equivalent of the Trojan horse. The new Government came across it in Whitehall when they took over power and they saw an excellent opportunity of using this implement to gain entry into the citadel of freedom of the ordinary citizen, and they cleverly expected that it would be extremely embarrassing for the Conservative Opposition to oppose the Bill root and branch. I am under no such embarrassment.

The Bill does two things. It proposes to change a part of the law of the land which is of long standing and, on top of this, to carry out such nullification of rights into the distant past and force the Judiciary to nullify its own recent finding. I should have thought that if such a change of law were considered desirable, it would have been better to give it separate and very careful consideration, and not to get it mixed up with a particular case which has been before the court and with the obnoxious

[Lord Milverton.]

question of retrospective validation. As it is, it comes before us in such questionable guise that one is tempted to scrutinise the direction in which it is leading us.

We are concerned with whether the right to compensation established by the House of Lords decision should be wiped out by retrospective legislation. It may be, as has been said, that compensation, as finally assessed in court, would be negligible. We just do not know. Do we or do we not approve of legislation to alter the law to what the Government of the day would have liked it to be? Such a decision opens the way to very dangerous action and strikes at the roots of the rule of law. I agree with other speakers that we should try to disentangle the principle involved from the details about the Burmah Oil Company case, which, if I may say so with respect, is being used as a smokescreen to obscure the destruction of a vital principle. The fact that the law can be, and sometimes must be, properly altered to express the intention of the Legislature does not necessarily justify retrospective reversal of rights adjudged to exist under the existing law.

We are also faced with the threatening figure of political expediency, masquerading as the public interest. After failing to push off responsibility on to the Burma Government and failing to stop the litigant by a threatening letter, it is proposed to legislate to reverse the decision of the highest Court in the land. I saw it stated in another place that under the American, Canadian, Australian and New Zealand Constitutions, general retrospection of this kind is expressly not allowed; and as that statement was not contradicted I assume it to be true.

One wonders whether this Bill would ever have seen the light of day had the Burmah Oil Company lost its case in the House of Lords I should have thought that after the comprehensive debate in another place, and the anxiety felt on all sides of the House about the principles involved in this unlovely Bill, it would have been wiser for the Government to withdraw it, to leave the court to finish investigation of the compensation, if any, still due to the Burmah Oil Company or to any other companies legally entitled to proceed, to abandon all idea of retrospective legislation, and seriously to reconsider the need for any legislation at all on this subject.

We are accustomed to talk about

> "The ways of Freedom broadening down
> From precedent to precedent."

It is not only the ways of freedom that have a way of broadening down from precedent to precedent in this way. The ways of expediency may just as well broaden down, down the road which ends in the mortuary of dead principles. Under the deceptive title of a War Damage Bill and under the alleged need to block further claims, there lurks an ominous threat to the rights of the individual.

If this Bill is given a reluctant Second Reading—and I personally should like to throw it out and not give it a Second Reading at all—and reaches Committee Stage, I hope that at the very least it will be stripped of all reference to retrospection, although that would still leave what I regard as an extremely obnoxious principle in the first clause. It has been said, rightly, that it is bad ethics and bad law. It is certainly unjust, and some of the emotional and purely financial reasons given for the proposed treatment of the Burmah Oil Company reflect, in my view, very little credit on their authors. Most of them, to my mind, are irrelevant; and the plea that if the damages were negligible it would not matter but if they ran into millions steps must be taken to nullify the claim, seems to be applying a means test in order to qualify for injnstice.

In conclusion, I want to emphasise that I have tried to study the real implications of both clauses in this Bill and I have listened to the speeches in this debate. I am left with a distaste for the whole business—the future destruction of certain Common Law rights in relation to property, and the extension of confiscatory action to the distant past. I have said nothing, because sufficient has already been said, about the probably disastrous effect on British interests abroad of this unexpected example of authoritarian disrespect for legal safeguards. Therefore I cannot bring myself to support any part of the Bill, and, if I have the opportunity, I will vote against its having a Second Reading.

7.20 p.m.

THE EARL OF LYTTON: My Lords, I am, I think, the second layman to speak; but, like may of your Lordships who are laymen, I have from time to time had to listen to legal arguments and attempt to form a conclusion. To-day is Lady Day. With some it is associated with a religious festival, with some the collection of rents, and with some the payment of rents. In my case, I am a tenant, and it so happens that the landlords, who are trustees, have had the idea that my rent should be raised, and we have agreed to go to arbitration and to accept the verdict. That is our way of life. We accept the verdict of courts from the top to the bottom. I hold that to-day, on this Bill, we are undermining the principle at the top.

I have had experience of having land removed from me by the State for war purposes, and of being at the State end and arranging for the legislation and the actual negotiation for taking over thousands of sites for anti-aircraft guns, searchlights and every conceivable kind of ground installation. At the beginning of the war, the draft of the Emergency Powers (Defence) Act and the Compensation (Defence) Act came through my office; and later I had taken from family properties such things as an airfield, an area for an American artillery range, searchlight sites, radar sites. In due course, at the end of the war, they were restored, and under the Compensation (Defence) Act, compensation was paid. It was paid for destruction as well as for use. In other words, I was compensated for the obstrnctions which were put up, and paid a large part of the cost of the removing.

I think this Bill does more than its drafters contemplated doing. It would eliminate claims for destruction everywhere, for whatever purpose, whether for denial or to make an airfield. In future, one might be handed back 600 acres of unwanted tarmac, without compensation, after having had a farm destroyed. It seems to me that there is a mark of haste in the drafting of this Bill.

However, let us transpose this legislation with compensation for requisitioned property, from England to Burma. I understand that there was similar legislation in Burma. The Burmah Oil Company did not come under that, because, so far as one can see from reading the judgments, the Burma Government did not order this. It was not in the interests of Burma; it was His Majesty's Government here who made the order. The Emergency Powers (Defence) Act did not extend to Burma, and, therefore, it was done under some sovereign authority, by the authority here, in the territory of Burma, which was a Crown Colony at the time, and not under the Crown Colony Ordinances, which would have provided compensation.

I mention these things because it seems that people have been confused as to what is war damage and what is taking away property for use. I understand that there is no legal distinction between taking property for use and taking property for destruction, and that the difference of opinion is as to whether this taking for destruction, mainly denial, was in fact denial, or whether it was war damage. I have read the judgments, which extend in the House of Lords alone to 37,000 words; in fact, I have read them twice, and they present at least the conviction that there were two views.

In this connection, I want to refer more fully to this meeting with Sir Stafford Cripps, and the document in question is a minute of October 20, 1947. I want to read in full the part which I began reading when interrupting, and which, because it would have led me into something more than an interruption, I stopped quoting.

> "As regards legal liability for denial damage he"—

that is, Sir Stafford Cripps—

> "was well aware that there were two views."

It is clear from what went before that there were two views, and those two views were whether it was deniable damage and compensable (to use the word which they use), or war damage and not compensable.

> "He thought that the wise course for the firms to take would be at once to pursue a case in the appropriate court in Burma with a view to getting a decision as to where liability in fact legally lay."

I miss out quite a lot, and then it goes on:

> "If the outcome of the suit was to make it clear that legal liability rested on the Government of Burma, His Majesty's Government could then press the Government of Burma further through the diplomatic channel to secure the acceptance of all or some of the liability."

[The Earl of Lytton.]

I stop the quote in order to comment that if the verdict were to go against the Government of Burma, His Majesty's Government undertook to apply an appropriate squeeze to make them pay. The quotation goes on:

"In reply to a question as to whether there should be any legal ground for action against His Majesty's Government he replied that this would depend on the finding of the courts."

It was on that advice that the Burmah Oil Company went to litigation in Burma.

There is a memorandum which has a bearing on this. It is a memorandum of the same meeting, drawn up by the Burmah Oil interests. It is almost the same, but has the following remark in relation to Sir Stafford Cripps:

"He later went the length of saying that it might even be that the Burmese judgment would hold that the responsibility rested not on that Government, but because of the circumstances of denial, on His Majesty's Government; in this event he suggested that it might be then open to claimants to sue His Majesty's Government. When asked why this would be necessary he said it must be remembered that they would be dealing with 'public money'."

That, I think, rather ties up with what the noble and learned Viscount, Lord Dilhorne, said: I think he implied that some legal authority was desirable before large sums of public money were paid out, to prove that they were properly and legally due. This seems to me an important piece of advice.

I quote again from the Company's minute of the same meeting with Sir Stafford Cripps:

"Challenged about the advantage/need for this seeing that Burma is an obviously bankrupt country and that the whole history of denial operations lays the responsibility on His Majesty's Government"—

that is the view of the Burmah Oil Company—

"he explained (*a*) that it is not expected that Burma will remain a bankrupt country and (*b*) that it is necessary in the first place to obtain a judgment in the Burma court on rule 96 for on that would depend to some extent the attitude of His Majesty's Government and the procedure it would follow."

The Burmah Oil Company followed advice, which was not of their choosing, to take action in the Burmese courts. They were at it, I think, for twelve and a half years, with innumerable changes of officials and Attorney Generals, and delays of every kind before they had a verdict. This verdict, as I understand it, was not a repudiation on the political level of any of the edicts of the previous Colonial Government—it was a verdict of the courts in Burma. Anyway, it was by then time-barred in the English courts. Indeed, Sir Stafford Cripps gave his advice five years after the denial took place, and I think it is time-barred after six years, so there was no time to get it through. Naturally, the Company did not pursue litigation by appeals in Burma, where they had spent twelve and a half abortive years. They went to the courts in Scotland, where they were not time-barred for another two years. They only just did so in time, and were perfectly right to do so. That has been declared by everybody. That, I think, is most important, because it shows why they went there, that the delays were not of their choosing, and why the verdict has taken so long.

In 1962 there was what I call the dreadful letter from the Deputy Treasury Solicitor. It starts with contempt of court, it has a threat in the middle, and it ends with a bribe. It should never have been sent. It was sent after they had been litigating, on the advice of the Minister, for seventeen years. Therefore, the background of it makes it all the more repnlsive. It is a dreadful letter—a disgrace.

In connection with what has been said about the vast amount of the claim, the amount has never been determined. Nobody, I think, in any of the judgments I have read where comment was made on it—and several of the noble and learned Lords did make a comment—suggested that a 100 per cent. compensation or reinstatement was contemplated by them. There were all sorts of complex factors which could not be assessed. My suggestion is that the amount about which we are talking is probably of the order of £20 million for the Burmah Oil Company, of which 25 per cent. can be said to have been advanced in the *ex gratia* payments, to which reference has been made. But that will be offset by approximately the same amount in respect of the eight other companies, provided they succeed similarly in following on.

That is not an extravagant sum. After all, in the *Daily Telegraph* of yesterday or the day before, there was a report of a bankrupt who proposed to pay his shareholders the sum of £16 million. In

the sums which are dealt with nowadays, especially on State level, this sum is not prohibitive. In any case, we do not know what the sum is, and if a means test is necessary to judge whether Her Majesty's Government should pay, it cannot be done until we have some idea of the cost. I suggest that the estimates which have been made to-day are something like four or five times above the mark that is at all probable.

I want to end with a reference to a continent whose affairs I often speak about and constantly study in the B.B.C.'s monitored reports, and that is Africa. There are 36, mostly new, independent States in Africa. In a broadcast from Lagos a few weeks ago, reference was made to the fact that an official Opposition in 30 out of the 36 States is now more or less prohibited or impossible for one reason or the other. In every one of these new countries there is a struggle between the rule of law and the law of the ruler. With all our prestige as head of the Commonwealth, I think that if we give way in this matter we shall have sold the fort. There are in every one of these States people with our ideas. They may not be prevailing just at this moment, but they will if we stand fast and do not give way on this. I do not feel that I can possibly do anything but vote against this Bill because it starts off so badly—" An Act to abolish rights . . .".

7.36 p.m.

LORD FERRIER: My Lords, as other noble Lords have begun, I begin by expressing the view that this is a bad Bill. It sems to me, rather as it seemed to the noble and gallant Viscount, Lord Slim—whose impressive maiden speech we all so respected—that matters of principle here have been subordinated to expediency and to legal manœuvre and countermanœuvre. I never sought a place in your Lordships' House, but just as I could not have refused and preserved my self-respect, so I could not preserve my self-respect and remain silent in this debate. Why? Because, in addition to being opposed to the Bill for the reasons so roundly propounded by the noble Lord, Lord Milverton, I was a member of the business community in India, all conscripts, in those dark days of March, 1942. The noble Lord, Lord Shepherd, said that it was May, but I remember well that it was March when the events took place in Burma from which this Bill springs.

My thoughts go back to the decisions which some of us had to face, and to the men who, in the event, had to act upon them. The noble and gallant Viscount has paid proper tribute to those men, and my mind goes back also to the remaining members of the auxiliary forces who were lost in action while the demolitions were carried out, or who ended up in captivity. My mind also goes back to the dismay of the Burmans and the Indians whose world collapsed about their ears. That is why I stand and speak. I may say that I have no interest in the Company, other than friendship over many years with various members of it.

But I appreciate very strongly that the question is a more general one. It is not a matter of sentiment, as was so roundly and clearly stated by the noble and learned Lord, Lord McNair. This is indeed a wider matter. None disputes the wisdom of the action which was taken to destroy certain installations. None disputes that the work was properly carried out—and your Lordships can realise the burden of that decision. I will not go over again what might have happened if, and if, and if—which can be gone over time and time again, and has been gone over time and time again. What happened was that material sacrifices were made in the common interest; and subsection (1) of Clause 1 of the Bill seems to me to deny the right of any individual company, or the like, to turn at the end of the day to those whose livelihood has survived in ultimate victory, and to receive compensation for what they have lost, or would have lost, under the law of Scotland. Whether there should be any share at all, or, if so, what the share should be, I hope will be debated in the courts and, quite improperly perhaps, further in the Legislature. But the right to claim, I believe, cannot be denied.

I think that the noble and learned Viscount, Lord Dilhorne, was rather lighthearted about the Scottish courts. I try not to be touchy, a task rendered more easy by the speech of the noble and learned Lord, Lord Guest, who made the position clear as to advice in Scottish law. Perhaps when the noble and learned Lord the Lord Chancellor comes to reply

[Lord Ferrier.]

he will be able to say whether, if we pass Clause 1(1) of this Bill, we are, in fact, altering the law in Scotland but not the law in England, whatever that may be. I make no excuse for saying that I do not know, because it is clear that none of the lawyers know, either. But I should like clarification on that point. So much for Clause 1(1). I do not want to detain your Lordships long, except to make the points I deem not to have been made before.

As to Clause 1(2), it is in my view a denial of what I regard as British justice and what I feel on the subject has been better said by many noble Lords here this afternoon than I can possibly say it. So there is no need for me to take up your Lordships' time in going over the ground, and going over it much less effectively than others have done. Therefore, I end where I began. This is, in my view, and that of many of your Lordships who have spoken, a bad Bill, and I await with great interest the end of the debate. I hope that the House will not divide, and that if the Bill goes to the Committee, as I hope it will, I trust that it will be substantially amended. Nevertheless, if there is a Division I think, from what I have heard said here to-day, that I shall be bound to vote against it.

7.43 p.m.

LORD MILNE: My Lords, I intend at this late hour to be very brief, but I should like to add my tribute to the noble and gallant Viscount, Lord Slim, on his maiden speech. In spite of what has been said to-day, I can conceive of circumstances where any Government, as a matter of expediency, may be forced to pass a retrospective Bill in the manner of this one. This could occur, as was mentioned in another place, if claims were astronomical. I can further understand that a Statute of the nature of the first paragraph of Clause 1 may be required to define the position for the future. The circumstances warranting retrospective legislation have not, and may never, arise, and this Bill, having been waiting so long, is, in my opinion, now premature, and may in its present form never be required.

I would add only one other point. In any discussion of amounts that may be awarded, it is not the gross amount which matters but the net cost to the country. The chances are that in any award like this, so long delayed, a very material part will be interest, and on this interest not only will tax be deducted at source but, in the case of a company trading in this country, profits tax, or the equivalent in days past, will be suffered on the gross amount. It follows that a very material part of the award could be halved.

7.45 p.m.

THE LORD CHANCELLOR (LORD GARDINER): My Lords, we have had a most interesting discussion, not a minute of which, I am sure, has been too long. But your Lordships will, I hope, excuse me if I do not refer to every noble Lord who has spoken, because many of them have expressed the same kind of view and made the same sort of point, though I should like to express regret that the noble and gallant Viscount, Lord Slim, has not given us the advantage of hearing him in the past. I am sure we shall all look forward to hearing him again in the future.

This Bill, which, as your Lordships know, is in two clauses, Clause 2 of which is merely the Short Title, has two subsections to Clause 1 which raise entirely different matters. Subsection (1) merely seeks to alter the law for the future, and the question is whether the existing law since last April should remain as it is or whether we should go back (and I hope I shall not get into trouble if I say it) to the law as it was in practice before then; because in the course of a very long debate one thing on which no one has cast any doubt at all is this observation made by Lord Radcliffe to which the noble Lord, Lord Shepherd referred—and some of your Lordships I think were not here when he said it:

> "To begin with one must clear the ground with one or two short propositions. There is not in our history any known case in which a court of law has declared such compensation to be due as of right. There is not any known instance in which a subject, having suffered from such a taking, has instituted legal proceedings for the recovery of such compensation in a court of law. No payment has been identified as having been made by the Crown in recognition of a legal right to such compensation irrespective of the institution of legal proceedings for its recovery. No text writer of authority has stated that there is this legal right under our law."

In the course of this long debate no one has challenged those statements.

Of course, what your Lordships decide is the law, and to those of us who are lawyers this is without question. Naturally, we accept the law as being whatever your Lordships' House decides. It is not, of course, for me to congratulate the noble and learned Lord, Lord Guest, but this is a situation with which lawyers are not unfamiliar: you think you have a point which nobody has ever made before; you advise the clients to do it; a unanimous Court of Appeal or Court of Session of four Appellate Judges are dead against you; you still advise them to go on, and you win by three to two in the House of Lords. From a lawyer's point of view, this is always most satisfactory, especially if there has been absolutely no such case before, and you have not even a textbook writer to assist with the law.

But it has to be observed that although what your Lordships' House decides is what the law is, out of the nine Appeal Judges who heard the matter, six were of the opinion that the case was so clear that, whatever the facts might prove to be at the trial, the action ought to be dismissed *in limine,* because the Burmah Oil Company's case was hopeless. So the point, to put it very mildly, is one of very considerable doubt.

The question is, ought we now to go back to what has been called, I submit rightly, what the law had previously been thought to be?—and that was based on the very simple proposition that it is not right to single out some particular person who suffered damage in a war called denial damage, and that that class of person alone should have 100 per cent. compensation. The point is that you cannot tell in advance what the amount of damage in a war is going to be, and with the possibility of nuclear wars that will be even more true; but it has been true for a long time. That is why the law which has always been applied is this (and I am speaking now, of course, of lawful acts, such as were done in this case, not of unlawful acts): you wait till the war comes; you see what the damage is, what the economic condition of the country is, and you provide, usually by Statute, such compensation as the community can afford.

The real point which is now before your Lordships' House is whether or not to vote for the Second Reading of this Bill. All that the first subsection does is to make a change in the law back to what it was understood to be until last April. I have read the whole of the debates, Second Reading, Committee stage and Third Reading, in another place. I observe that there did not appear to be one single person who was of the opinion that there was anything wrong with this subsection or that the law ought not to be changed back in the sense to which I have referred. In your Lordships' House to-day, with, I think, the possible exceptions of the noble Lord, Lord Saltoun, and the noble Lord, Lord Milverton, nobody has questioned that that is what the law ought to be. I suggest, as a matter of common sense, that that is plainly right; and, if that is so, then this is a Bill which should be given a Second Reading.

There is, I know, another subsection which makes the change retrospective. I fully appreciate that there may be, and indeed there are, two views about this. But if you have a Bill which alters the law for the future in a way which you think is right, but you object to its being made retrospective, I would respectfully suggest that the ordinary course to take, and the proper course to take here, is to vote for the Second Reading, having given notice—certainly the Government cannot complain that ample notice has not been given—that some Amendment may be put down at the Committee stage.

If that is the position, I ought not to detain your Lordships long to-night on what, as I have submitted, is really a Committee stage point. But as so much has been said about retrospection, may I say this? I have not been the President of Justice, but I was at one time Chairman of the Executive Committee. In my opinion, retrospective legislation is wrong and contrary to the rule of law, and I think any lawyer would agree with that as a general proposition. The trouble with any question of ethics, at least I have always found, is that there is no principle which we should all accept which can be literally applied 100 per cent. I cannot think of any single principle, or for that matter of any of the Commandments, off-hand, which does not become nonsense if you apply it 100 per cent. Of course it is wrong to steal; but if here is a starving child and the only food available is a bottle of milk on

[The Lord Chancellor.]

a rich man's doorstep, and you ring the bell and politely ask if you can have the milk and he says "No", I should have said the right thing is to steal the milk and give it to the child. The whole difficulty is whether the particular circumstances are such as to justify an exception from the general principle that retrospective legislation is wrong.

I cannot think off-hand of any case in which I should think that retrospective legislation was right in the field of the criminal law. In the field of the civil law on the other hand, we have had a number of examples. I do not want to take up time with them, but I do want to refer to them, because I think they seriously affect a great many of the arguments which have been used. I am certainly not going to take an exhaustive list. I take, first, the Indemnity Act 1920. This goes very far indeed, because, first of all, it provides for the general validity of every sort of thing that was done during that war—it even includes criminal acts, and so forth. The only point that was made about this was made by the noble and learned Lord, Lord McNair, who said that that, in effect, did not count, because the Act went on to provide compensation. That is quite right; it did. But in this case the Government made up their minds in the case of all claims of this kind, whether in Malaya, Sarawak, Borneo or Burma, on what the country could afford and what would be equitable compensation, and they paid it. And the Burmah Oil Company has had the same compensation as everybody else has had.

The Act of 1920 was called the Indemnity Act because at that time you could not sue the Crown; you sued the individual; therefore it took the form of an indemnity Act. Would it be right to say of that Act that we were throwing away our international reputation; or talk about what other countries must have thought of "the rule of law on British lips", or to say that passing that Act was the destruction of a vital principle?

LORD MOLSON: My Lords, may I intervene? After Section 1, which takes away the Common Law rights, Section 2 sets up a whole system of compensation. It sets up the basis of compensation and the tribunal.

THE LORD CHANCELLOR: That is right. And in this case the British Government decided what was the fair compensation they should pay for damage of this kind, whether it happened in Burma, Sarawak or Borneo, and these companies, the Burmah Oil Company group, had the same compensation as everybody else. Therefore, to say that this Act is in some way exceptional because it provides compensation is not a material distinction.

In 1922 your Lordships' House heard a claim by the Milk Controller for about £15,000, twopence per gallon on milk purchased under licences. It was contended by the defendant that the licences were *ultra vires,* and it was so held. The Government apparently did not like that. It was found, I gather, that, apart from these orders, there were other orders making charges which had also been *ultra vires.* Accordingly, your Lordships and another place passed an Act called the War Charges Validity Act, 1925. This Act provided:

> "Subject as hereinafter provided, the imposition of the charges specified in the Schedule to this Act, and the levying of the sums thereby charged shall be, and shall be deemed always to have been, valid in law, and accordingly
>
> (*a*) any sums so charged on any person but not levied or paid before the commencement of this Act may be recovered as a debt due to His Majesty; and
>
> (*b*) no proceedings whatsover shall be instituted by any person in any court of law or before any other tribunal whatsoever for the repayment to him of any sums so levied as aforesaid, or for compensation in respect of the making of any such levy, and if any such proceedings have been instituted before the date of the passing of this Act, they shall be discharged and made void, and any judgment of any court or tribunal obtained after the eighteenth day of December, nineteen hundred and twenty-four, in any such proceedings shall be void".

The Act was passed on March 5, 1925, and related to charges imposed by the Food Controller on licences under the Flour and Bread (Prices) Order, and charges imposed by the Food Controller under the Wheat Order and under the Imported Meat (Requisition) Order and the Cattle (Feeding Stuffs) Scheme, as well as charges made in connection with the control of the supplies of cotton, and so forth.

Did our international reputation suffer severely as a result of that? Would it be

right to say that this was the destruction of a vital principle? Neither House apparently thought so. Would it be right to say that this was apparently a breach of the rule of law? I do not want to take up time with many other cases, but there are numerous cases in which, rightly or wrongly, our British Parliament has thought that in the exceptional circumstances although retrospective legislation in general was wrong, it was right to do so. If anybody is interested before the Committee stage, I might perhaps mention a matter to do with stocks of whisky, which was dealt with retrospectively in Section 24 of the Finance Act 1943.

Then there was a case under the Truck Acts. What happened was this. A Mr. Pratt had successfully contended that his employers were in breach of the Truck Acts in supplying him with food as part of his wages, and he received about £400 damages. The decision was given by the House of Lords in February, 1940. On April 18, 1940, the Home Secretary announced that a Bill would be introduced retrospectively making the employers' practice lawful, and he justified the retrospectivity by a Home Office circular of the 19th century which had expressed the view that the practice was lawful.

At the time of his announcement there were a large number of actions which had already been started before the courts, and in July, 1940, a Bill was introduced, which went through all its stages in seven days, retrospectively depriving all those claimants of their claims without any compensation. They were in the same position as the Burmah Oil Company: they had issued writs; they had started proceedings. After all, it is not as if any judgment has been given in favour of the Burmah Oil Company for any amount; indeed, there are still defences under the Burma Act, and so on, to be decided at the trial. But a number of your Lordships have spoken as if the Government, in putting forward subsection (2), are doing something which has never been done before; as though the skies would fall; that our international reputation will be mud, and so forth; as though some vital principle was at stake; as though everybody who had ever fought in a war had really been fighting for this vital principle which had been taken away by this Act.

But it does not stop there. Reference has already been made to the case in which it was held that money which the deceased had intended should go to charity should go instead to residuary legatees. So an Act was passed retrospectively. It is said that that is not a similar case. But, after all, it is a case in which the residuary legatees at that date had legal rights. They might not have been the people to whom the testator intended the money to go, but they had legal rights, under a decision of your Lordships' House—and here was Parliament altering a decision of yonr Lordships' House; and doing it retrospectively. It is really the same case over again.

Section 4 of that Act said:

"Subject to the next following subsection effect shall be given to the provisions of this Act in legal proceedings begun before commencement as well as in those begun afterwards."

Then it says:

"This Act shall not affect any order or judgment made or given before its commencement in legal proceedings begun before the sixteenth day of December Nineteen hundred and fifty-two"—

that, I think, is the date which the Government had announced. It was no good anybody else starting an action, because they were going to take all their rights away retrospectively. But the Act was not passed until July 30, 1954. Then it goes on:

"Where in legal proceedings begun on or after the said sixteenth day of December"—

that is, eighteen months previously—

"any order or judgment has been made or given before the commencement of this Act which would not have been made or given after that commencement, the court by which the order or judgment was made or given shall, on the application of any person aggrieved thereby, set it aside, in whole or in part, and make such further order as the court thinks equitable with a view to placing those concerned as nearly as may be in the position they ought to have been in having regard to the Act."

Well, that is a nice thing! You tell the court which has already given judgment, that it has got to set aside its own judgment, and act retrospectively in that way.

Then the noble and learned Viscount, Lord Dilhorne, referred to a case in which, if I remember correctly, we were both engaged; I was for the plaintiffs.

[The Lord Chancellor.]

What had really happened was that some people had paid money for wireless licences to use radios in vehicles. It was not a taxi-cab service; they had about 10,000 vehicles, and had a large number of vehicles so equipped that they could speak to headquarters. They had to pay fees for this and they had no objection to doing so; but they were annoyed at the Post Office because it was always changing the wavelength which they had to use. This caused a great deal of expense, and when they protested they could not get any attention paid to their protests.

Then junior counsel (who is now a Member of another place) discovered that there had never been any lawful demand for wireless licence fees of any kind, because somebody had forgotten to make the regulations. So an action was started for about £160 in order to get the fees back, not because the car people did not wish to pay them, but because they were annoyed at the Post Office always changing their wavelength. I remember well that five days (I think it was) before the hearing, a communication was received from the Post Office (which up to that point had always said that certainly it was not going to pay a penny) throwing in its hand and conceding that it had no defence to the claim. I may be wrong, but my recollection is that the noble and learned Viscount, Lord Dilhorne, appeared for the Post Office on that occasion.

What ought to be done in a case like this? The Government, in fact, publicly announced at the time when they threw in their hands—I think it was on November 11 of that year—that it would be no good anybody else issuing a writ from that date onwards because they proposed to take away their legal rights retrospectively. Those of us who think that retrospective legislation is wrong in general, and contrary to the rule of law, have to face this sort of case. The total amount involved was £17½ million, because everybody who had paid for his wireless licence was entitled to get back all the money paid for years. So what did it come to as a matter of common sense?

One of two decisions had to be made. Either all those who had wanted wireless facilities, had perfectly happily paid for them and enjoyed the wireless were to pay for them, or those who had not wanted the wireless, the general body of taxpayers had to pay. If retrospective legislation had not been introduced, hundreds of thousands of people—or even millions—would have been entitled to get their wireless money back, and few would have been able to resist suing for it when the Government had already said "We have no defence". It is not like the Burmah Oil Company case, where one did not know how the matter was going to end up. The Government had said publicly, "We have not a defence". Everybody would have wanted his money back, and this £17½ million would have been put on the taxpayers, even if they had not wanted wireless facilities and had not had them.

My Lords, does that decision really revolt the conscience? Did our international reputation really go down because of that action? As a matter of common sense, was not retrospective legislation in this case the obvious course? That is exactly what the Government did after (and this is relevant to this case) they had given public warning that "It is no good your bringing an action, because we are going to take your rights away from you." The Act said:

> "The preceding subsection shall have effect for the purposes of any proceedings begun on or after the eleventh day of November 1954"—

the date when they made the announcement, the warning—

> "whether before or after the passing of this Act but shall not affect any proceedings begun before that day. Where any proceedings have been begun on or after the eleventh day of November 1954 and a final order has been made in the proceedings before the passing of this Act, then if on the application of a party to those proceedings the court by which the order was made determines that the order would not have been made if this Act had been in operation when the proceedings were begun the court shall rescind the order, and if any sum has been paid thereunder before the rescission takes effect shall make an order directing the sum to be repaid."

So here, if, in an action started after the warning but coming to trial before the Act is passed, the subject has obtained a judgment against the Post Office, and the Post Office has paid him the money back, then by this retrospective legislation the court is bound to reverse its own judgment, to enter judgment for the hitherto unsuccessful Post Office and against the hitherto successful citizen;

and the money which has been paid under the judgment has to be returned.

I hope that I have made it plain that I do not like retrospective legislation. But I ask your Lordships as a matter of common sense, ought the £17½ million to have been paid back to all the hundreds of thousands of people simply because a civil servant had made a slip-up in forgetting to remind the Minister that regulations were needed? Does not this case show that, while in principle retrospective legislation is wrong, there are cases in which it would be quite contrary to common sense to do anything else: cases in which our Legislature, looking at the facts, has said, "This is one of those exceptional cases in which we think that retrospective legislation is justified"? The real question every time is whether a particular case is a proper exception.

If I may mention two more examples, there is the curious case of the *Attorney General* v. *Prince Ernest Augustus of Hanover,* which came before your Lordships' House. The question was whether on the true construction of a 250-years-old Act of Parliament the descendants of a certain lady during her lifetime were intended to be referred to or succeeding generations. On the construction which your Lordships' House held to be the true one, the Act had the effect that the Kaiser and half the Crown heads in Europe became British subjects, and some Polish and German princelings thereupon started claims because that would have given them some financial advantage. Those were taken away by certain Foreign Compensation (Nationalisation Claims) Orders.

Lastly, there was a tax case involving the question of deductions of tax, where there were six other cases pending. Section 39 of the Finance Act 1960, took those rights away retrospectively. There are other examples, but I hope that I have said enough to make it plain that there have been cases in which those who think strongly that retrospective legislation in general is wrong, nevertheless thought that in the particular circumstances of the particular case it was justified. If Amendments on this point are put down on the Committee stage of the Bill—I do not want to argue it to-night—the Government will submit that this is such a case. What Mr. Selwyn Lloyd said in another place has already been referred to. It must be appreciated that the view taken by the present Government is in no way a new one. Sir Stafford Cripps said clearly and definitely, in rather more robust language than I like to quote, that the Government would not pay anything further than the £4,750,000. They tried Mr. Macmillan. He said, "Certainly not". They tried Mr. Butler. He said, "Certainly not". They tried Mr. Selwyn Lloyd. He said, "Certainly not". And they tried Mr. Maudling.

According to Mr. Selwyn Lloyd in another place, the four grounds on which they took that view were these. First, the principle that a lawful act might give rise to compensation could not be accepted. Secondly, it would be inequitable that somebody who for patriotic reasons destroyed his premises, because it was in the interests of his country to do so, should get no compensation, while the man who waits for an order before he does so does get compensation. Thirdly, the oil installations of the companies would have been destroyed in any event. Fourthly, it would not be right, in all the circumstances of the case, to put an onus, which may be something over £100 million, on the taxpayer. So that, in all the circumstances of the case, the Company has been fairly treated.

It is not often—and this to me has provided the great interest of this debate—that one has a view taken by this Government which is the same view as was taken by the last Government; the same view as the Government before that took, and (if my arithmetic is right) the same view as was taken by the Government before the Government before that. I recognise, of course, that a number of your Lordships have taken a different view, and we shall no doubt be able to argue it out further at the Committee stage. If the position were left as it is, these companies—and I do not seek to make anything against them because they are wealthy companies, though one might perhaps take a different view if they were very poor—would be the only people to receive compensation on a footing of 100 per cent. After all, they were treated in just the same way as all the people in the same position in that part of the world were treated, and they have had that compensation.

[The Lord Chancellor.]

My Lords, at the end of it all, is not the only sensible thing to do, so far as the law is concerned, if one seeks to be equitable, to treat everybody alike? In war, a very great many people suffer damage of one kind or another. Women lose their husbands; children lose their fathers, the breadwinners of the family; a man may lose both eyes; men lose legs and arms. Some, perhaps luckily, suffer only financial damage, but still they do. Your house may be bombed by the enemy; it may be blown up by your own side; you may be called on to destroy it yourself. What we can do about all that depends on our economic position at the time. In regard to everybody, whether they are being compensated for severe disabilities, widows' pensions, disability pensions, or financial damage, it is surely for the Government of the day to decide, in the light of the then economic situation, what the country can afford. It would, in the submission of the Government, be quite wrong that this company should, in all the circumstances, be put into a wholly exceptional position, having already been fairly treated in the same way as others on a voluntary and equitable basis.

I must apologise to your Lordships for having taken up the time I have taken up on the question of retrospection, but it has been dealt with by so many noble Lords that I thought I ought to say something about it in reply. But it is strictly irrelevant to the question your Lordships have to decide to-night, the answer to which, in my submission, is simple. As virtually everybody agrees that the law ought to be changed for the future, and that subsection (1) is right, surely the fact that in a later part of the Bill there is something which some of your Lordships may feel should be removed is not relevant to a Second Reading Division, but is a matter to be dealt with at the Committee stage. As I said before, nobody can suggest that Members of your Lordships' House have not given the Government fair notice that there may be such an Amendment at the Committee stage.

8.20 p.m.

On Question, Whether the Bill shall be now read 2ª?

Their Lordships divided: Contents, 45; Not-Contents, 22.

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Blyton, L.	Furness, V.	Royle, L.
Bowden, L.	Gaitskell, Bs.	St. Aldwyn, E.
Bowles, L. [*Teller.*]	Gardiner, L. (*L. Chancellor.*)	St. Davids, V.
Brown, L.	Goschen, V.	Shepherd, L.
Burden, L.	Hobson, L. [*Teller.*]	Snow, L.
Carrington, L.	Hurcomb, L.	Sorensen, L.
Chalfont, L.	Latham, L.	Stonham, L.
Champion, L.	Leatherland, L.	Summerskill, Bs.
Collison, L.	Lindgren, L.	Taylor, L.

NOT-CONTENTS

	Howard of Glossop, L.	Savile, L.
Belstead, L.	Inchyra, L.	Shawcross, L.
Burton, L.	Lytton, E. [*Teller.*]	Somers, L.
Congleton, L.	Milne, L.	Southborough, L.
Falkland, V.	Milverton, L.	Strange of Knokin, Bs.
Ferrier, L.	Redesdale, L.	Swanborough, Bs.
Grimston of Westbury, L.	Rowallan, L.	Wrenbury, L.
Headfort, M.	Saltoun, L. [*Teller.*]	

Resolved in the affirmative: Bill read 2ª accordingly, and committed to a Committee of the Whole House.

PENSIONLESS ELDERLY PERSONS

8.30 p.m.

VISCOUNT BARRINGTON rose to ask Her Majesty's Government how many persons, including wives and widows of persons of pensionable age, are not eligible to receive pensions under the existing scheme, and what steps are being taken to alleviate such hardship or injustice as these persons may be suffering in consequence. The noble Viscount said: My Lords, finding myself in a position probably as difficult as I have ever been in, with the danger of making myself more unpopular, if it is not contrary to your Lordships' Standing Orders I should like to begin the very few things I have to say with a devout, personal vote of thanks to the noble and learned Lord on the Woolsack for at least two things he said at the end of the last debate in his (if it is not impertinent for me to say so) particularly lucid statement. One was that, generally speaking, he disapproves of retrospective legislation, because I now need not put forward more than a formal prayer or hope that, if speaking in your Lordships' House after such a marathon debate as we have just had is made not only illegal (as it probably should be) but retrospectively punishable by dismemberment, sentence will be carried out as painlessly and as reverently as possible on my dead body rather than on my living one.

The other thing is that the noble and learned Lord introduced into his judgment (if I may so call it) a great many times the word "equity" when speaking on the principle of what is equitable. I mention this only because I am in the position of asking a Question in which I have used the words "hardship" and "injustice". The Question is very loosely worded, but I want to make it quite clear that when I used the word "injustice" I did not mean injustice in the sense in which it is rather commonly used now, simply to mean inconvenience. If I may take an example, were I debarred through some purely technical fault regarding my title from plaguing your Lordships' House at this hour of the night or any other hour, that might be a hardship for me (though it certainly would not be for your Lordships), but it would not be an injustice. What I should call an injustice would be if some noble Lord were debarred from exercising the right of speaking, which I am rightly or wrongly exercising tonight, owing to some technical fault regarding his title, based not on the fact that it was less ancient or less broadly based than mine but that it was more ancient and that, instead of having only one right to sit in this House, he had two. Because it has been suggested to me that that is the case that applies to a large number of people. In asking for a number in my Question, I expect only a very rough answer, but I have asked for it because I feel this is a subject which demands to be looked into more than it has yet been.

The persons about whom I am asking this Question—and this is why I used that rather extravagant example—are persons who, I am told, are not receiving old-age pensions for many technical reasons, and they are highly complicated reasons. I entirely sympathise with the need for the complications, and of course we cannot go into that to-night, but they all rest on the fact that these persons are too old—that is to say, persons who were born later are entitled to rights which these persons are not. Very roughly, I understand that, under the Pensions Act of 1926 (I believe it was) contributions were not compulsory, and indeed could not be made if one had an income of over £200; but when the 1948 Act was introduced there was a floor figure of £425. I also understand (and this is one of the points on which I should like to be corrected if I am wrong) that a very large number of people were thus affected.

I have received information which I am merely stating without in the least knowing whether it is true; but I have interviewed a man of 84 who spends a great deal of time collecting information on this subject from persons who have sent him letters. I am not going to plague your Lordships with the letters to-night, but this gentleman gives the number affected as being 250,000 persons, the youngest being over 80, and he says that these people are being denied all the usual benefits and privileges except medical benefits; that is to say, they are not entitled to old age pensions, widows' pensions, funeral allowances, and various other privileges which go to the older people by way of free or reduced price seats in parks and in cinemas and other such minor things. I am not going to argue or attempt to argue any of this on

[Viscount Barrington.]
the grounds of legal technicality, but am merely going to ask whether it is not possible to alleviate the hardship to these people, because I have satisfied myself by interviewing this man, although I cannot necessarily hope to satisfy your Lordships, that these people are treated unlike other people in what should be the same class, and, if anything, they have a priority.

I do not know if it is contravening your Lordships' Standing Orders to mention an article in the *New Statesman* this week. I am quite aware that to noble Lords opposite the *New Statesman* must be in rather the same position as Lord Beaverbrook's Press, perhaps, would be to certain noble Lords on the other side —that is, that, while not denying or doubting the vigour, energy and devoted loyalties of their pursuit of the Party line, they must occasionally wish they would go and help somebody else.

THE LORD PRIVY SEAL (THE EARL OF LONGFORD): My Lords, if I might interrupt the noble Viscount, I was only going to say, having come into the debate rather late (and I apologise to the noble Viscount for not having heard him in full) that I think most Labour people feel that, over the years, the *New Statesman* has been a great source of enlightenment. Therefore I should not like it to be regarded as a nuisance to the Labour Party.

VISCOUNT BARRINGTON: I apologise to the noble Earl if I have said anything derogatory. There is an article in it this week. I do not know if I am in order quoting from it two short extracts.

THE EARL OF LONGFORD: Yes.

VISCOUNT BARRINGTON: It is only to point out that I am not fabricating this case. The writer says:

> "On March 26 the Tory M.P. for Abingdon is presenting a Bill designed to provide retirement pensions for the over-age people who were excluded from the National Insurance Scheme in 1948."

The writer then gives his own views as to what the Government will do about it. That is clearly something I know nothing about, and it would be entirely out of order, I imagine, if I were to ask about it. But the writer makes the surprising remark that:

> "If politics were about truths and reason divorced from reality the Government might have a fair debating case in doing . . ."—

what the writer presumes they are going to do. I am not quite clear what is meant by the term "truths divorced from reality" but it seems to me to be a philosophical point hardly worth discussing.

But when the noble Lord, Lord Bowles, comes to reply, I should like him to give us some light on the steps that are being taken other than those which have been suggested a great many times; namely, that these people should go on National Assistance—which, of course, is not the same thing as a pension, in that a means test of some sort is applied. I understand that a great deal of hope is placed on what I think is the Bill of the Chancellor of the Duchy of Lancaster, which may take a considerable time to come in, for guaranteed incomes. I hope that we shall hear something about that measure, because my own feeling is that this is an urgent matter—for this reason: there are a limited number of these people, and soon there will be very few of them left. If something is not done for them in the very near future it will be too late. All that is assuming that my information is correct.

I know that the noble Lord, Lord Bowles, will correct me if I am wrong about this; but I have interviewed one of these persons and I am satisfied that this man was sincere. He showed me a great many letters which, owing to the lateness of the hour, I will not quote. I should feel much happier if I could be told, in so far as it is possible to know it, the immediate policy for dealing with these people. As it is rather late I will not go on to introduce a number of questions, mainly minor ones, which I should have done had the hour been earlier. I apologise to the House for keeping it so late, and I will simply ask the noble Lord to discount the deficiencies of presentation, to concentrate on the equitable side and to explain so far as possible in words that can be clearly understood the steps which the Government propose to take.

8.44 p.m.

LORD DRUMALBYN: My Lords, may I ask just one or two questions, because there is a matter that I should rather like to put to the noble Lord who is to reply. We are indebted to the noble Viscount, Lord Barrington, for asking this Question. I think it w s not by

any means wrong for the Government of the day to exclude certain people, in 1946, from the operation of the pensions scheme. Most of these people were those whose incomes had been above the level for the previous insurance schemes and who were too old to come into the present scheme. It was presumed at the time that their savings would be enough to see them through.

But the great problem, as we all know —and I am not trying to make a Party issue of this—is that since the war the cost of living has about doubled and many of these people's incomes have actually fallen in terms of pounds, shillings and pence, and they are very much worse off than they were before. I think we are all aware that the Government have an incomes guarantee scheme in contemplation. Of course it is very hard for these people who were excluded, because they see in the meantime that not only have earnings risen (and I note that average earnings have risen from £6 9s. 0d. a week in October, 1946, to £18 2s. 2d. in October, 1964), but the pensions have kept pace with the earnings and have tripled since 1946—or will have done so, more or less, by next week. It is very hard for them to feel that they are deprived of this payment as of right.

The incomes guarantee scheme, as I understand it, may be a payment as of right, but it has a built-in means test because it is a kind of deficiency payment. My own feeling about this is that the Treasury, naturally, tend to regard hardship in absolute terms, in terms of £ s. d. and the lack of a certain amount of £. s. d., whereas, in reality, hardship is very much a relative term. What one has to bear in mind is the tremendously sharp fall in the standards of living of people who in 1946 had saved enough to see them through and who now find their standards of living gravely affected.

While those most in need obviously need helping first, when we consider the increase in the standard of living that has taken place for most of the rest of us, most of those who have been earning since those days, it does not seem to me too much to expect those who have benefited from the rise in the standard of living to contribute in some way (I am not suggesting in what way it should be) to those whose standards of living have seriously fallen because of the increase in the cost of living and the decline in the value of money.

The incomes guarantee scheme—and we have discussed this before—has, I think, many defects. My purpose in intervening is to say that I see one particular defect: that it will not benefit those suffering a comparative hardship but who still have an income above the level of the incomes guarantee.

THE EARL OF LONGFORD: My Lords, may I intervene? This is an extarordinarily interesting point. I am intervening only out of personal curiosity Does the noble Lord consider that it would he possible to work out a scheme under which people who had suffered most in terms of expectation were given a kind of extra compensation for the expectation that they had lost? I can see it in human or psychological terms; but it is difficult to see it in administrative terms.

LORD DRUMALBYN: I think that, broadly, the choice must be whether some kind of flat-rate payment is given to all who feel they need it, or whether there is something like an incomes guarantee with deficiency payments only up to a certain level. In other words, are you to compensate everybody who suffered a sharp decline in standards of living to the point where he needs some assistance (and this hardship is a relative term) or are you going to sustain them up to a certain standard of living, leaving those who admittedly suffered a sharp decline in the standard of living, but who still have a little more over the level of the incomes guarantee, without anything at all? I think that that is the broad question and that is what I am suggesting to the noble Lord might be worth looking into.

8.50 p.m.

LORD BOWLES: My Lords, may I first of all say to the noble Lord, Lord Drumalbyn, that as my noble friend the Leader of the House is a member of the Cabinet, he will have his points looked at in connection with the examination of the minimum income guarantee scheme? May I congratulate the noble Lord, Lord Barrington, for his charming and graceful speech?

I am sure that your Lordships were very interested to hear the views which have been expressed on what is

[Lord Bowles.]

undoubtedly a real problem. I shall do my best to answer the various questions which have been put, but, in view of the lateness of the hour, I hope that I shall not detain your Lordships too long. The noble Lord, Lord Barrington, asked in his Question how many persons, including wives and widows of persons of pensionable age, are not eligible to receive pensions under the existing scheme. The short answer is that it is estimated that there are about 450,000, of whom about 210,000 are receiving payments from the National Assistance Board.

It may be convenient if I give your Lordships some further information about these people and show how they come to be in this position. The figure of 450,000 is made up of two groups of people, numbering 250,000 and 200,000 respectively. The first group, of 250,000, are people now living who were over minimum pensionable age—which, as your Lordships will know, is 65 for a man and 60 for a woman—on July 5, 1948, which is the date on which the existing National Insurance scheme began. These people are not eligible for a pension because they were too old to pay contributions to the existing scheme and, for reasons with which I will not trouble your Lordships to-night, since this is a very complex matter, they did not qualify for a pension under the old schemes of insurance. About 120,000 of the 250,000 are estimated to be receiving payments from the National Assistance Board.

The other 200,000 people who are without National Insurance pensions for one reason or another include several different groups of people: first, the wives and widows of men over pensionable age in July, 1948, who, although they were not themselves over the age of 60, did not become insured, though they could have done; secondly, people who, although they have paid some National Insurance contributions, could not have paid sufficient to qualify for pension and who have had their contributions refunded; and, thirdly, those "late-age" entrants who, under the special rules designed for these people who were within ten years of pensionable age in 1948, chose at pensionable age to take a refund of the pension element of their contributions rather than go on to complete the full ten years of contributions and qualify for a pension. About 90,000 of these 200,000 are estimated to be receiving payments from the National Assistance Board: and the figures add up, as I have already said, to 210,000 receiving payments from the National Assistance Board out of a total of 450,000.

The noble Lord, Lord Barrington, also asked what steps are being taken to alleviate such hardship or injustice as these persons may be suffering. As your Lordships know, there has been considerable interest recently in the subject of people without pensions, and a Private Member's Bill is due to be moved in another place to-morrow. I should not like to anticipate anything likely to be said in that debate, but I think I may say that the Bill seeks broadly to provide for a pension to be paid out of the National Insurance Fund to the 250,000 elderly people without National Insurance pensions who were over pension age and not insured in 1948, and to their wives or widows. There are, however, as I have said, another 200,000 old people without a National Insurance pension, and there are also nearly 300,000 other people who have paid some contributions, but not enough for a full National Insurance pension, and who thus get one at a reduced rate. I must tell your Lordships that the total cost of paying full pensions to all these people is estimated to be about £60 million in 1965-66, even after allowing for the savings to be expected on payments by the National Assistance Board which I have mentioned.

This expenditure from the National Insurance Fund would have to come from the pockets of the present contributors to the Fund—and I would remind your Lordships that, as from next Monday, the combined flat-rate contribution to the National Insurance Scheme for a man and his employer will be at least 26s. 7d. a week. A charge would also be imposed on the Exchequer through the Exchequer contribution to the Fund. And the expenditure proposed would be to people who have not paid the necessary premium to qualify for pension. That cannot, by any stretch of the imagination, be described as insurance in any accepted sense of the word.

I should not like your Lordships to think, however, that my only answer

is a negative one. Her Majesty's Government recognise that there is a real problem here. Some of these people without pensions are undoubtedly not well-off, as the National Assistance figures which I have quoted show. But, equally, others are quite well off, including ex-businessmen and land-owners. Her Majesty's Government think that it would be neither right nor financially sensible to pay out large sums of contributors' money from the National Insurance Fund indiscriminately and without regard to the recipient's income to people who have paid nothing. In our view, the right way to tackle this problem, which is one of the topics that is being considered in the major review of the schemes of social security, is through our plans for a guaranteed minimum income scheme for persons of retirement age whose incomes are small. I would here say to the noble Lord, Lord Drumalbyn, about a built-in means test, that we just cannot pay pensions to millionaires merely because they happen to be of this particular age. I cannot say more on this to-night, but I can assure your Lordships that Ministers are now actively studying the best way of putting their plans for a guaranteed minimum income into effect. It will cover pensioners and non-pensioners alike and will represent something new in the history of social security in this country.

In the meantime, there is National Assistance, which I would remind your Lordships is paid entirely out of the Exchequer and has no contribution tests at all. If there were more time, I could give your Lordships details of the great efforts which have been and will continue to be made by the Ministry of Pensions and National Insurance and the National Assistance Board to try to bring the National Assistance scheme to the notice of everyone who might be entitled to benefit from it. Post offices, doctors and health workers are given leaflets with the necessary details, to enable them, if they come across anybody who looks as if he needs National Assistance, to show him how to go about getting it. I can stress that the Government attach great importance to this. I may add that the National Assistance scale rates are themselves going up substantially on Monday next. They are going up by 12s. 6d. a week for a single person and 21s. a week for a married couple.

Moreover, there are all the other benefits of the Welfare State to which the non-pensioners are entitled in the same way as everyone else in the community. The fact that they do not receive a pension does not affect the matter in any way. There are the benefits of the National Health Service, which are so important to old people, particularly, and the various local authority and voluntary services, such as "Home helps" "Meals on Wheels", and there are the income tax age exemptions and reliefs. I should also like to make it clear to your Lordships that the fact that an old person has not got a pension book does not in general debar him or her from getting such concessions as are available to old people in any particular locality. In conclusion, I hope I have not detained your Lordships too long, and I welcome this chance of saying a few words on this subject.

MILFORD HAVEN CONSERVANCY BILL [H.L.]

Report from the Select Committee, That it is not expedient to proceed further with the Bill, read, and ordered to lie on the Table.

House adjourned at one minute past nine o'clock.