Vol. 777
No. 79

Friday
9 December 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2016-12-09

The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Friday 9 December 2016

10 am

Prayers—read by the Lord Bishop of Bristol.

House of Lords Act 1999 (Amendment) Bill [HL]

Committee

10.06 am

Moved by ***Lord Grocott***

That the House do now resolve itself into Committee.

Lord Trefgarne (Con): My Lords—

Noble Lords: Order!

Lord Trefgarne: I had intended to speak to the Motion that the House do now resolve itself into Committee, but if your Lordships wish otherwise I will not do so.

A noble Lord: It is in order.

Lord Trefgarne: As your Lordships will be aware, my noble friend Lord Caithness and I have a number of amendments to the Bill, which we have in mind to move in a little while. I certainly have no intention of opposing the Motion that Committee stage do now commence, but I should explain—I have been asked to do so—that I and, I believe, my noble friend Lord Caithness, but he will speak for himself, do not oppose the principles of House of Lords reform—

Noble Lords: Order!

A noble Lord: You can say that later.

Lord Trefgarne: It would appear I do not have the overwhelming approval of your Lordships. I will keep my remarks for later.

Motion agreed.

Clause 1: Removal of by-election system

Amendment 1

Moved by ***Lord Trefgarne***

1: Clause 1, page 1, line 2, leave out subsection (1)

Lord Trefgarne: My Lords, Amendment 1 appears on the Marshalled List in my name and that of my noble friend Lord Caithness. The reason why my noble friend and I, particularly myself—again, I must not speak for him—have such strong views on the Bill relates to what happened in 1999. At that time the House of Lords Bill, as it then was, came to your Lordships. It had no provision for hereditary Peers' by-elections or temporary membership at all. It just removed the hereditary Peers in one fell swoop. After a lot of discussion, it was agreed there would be a remaining number of hereditary Peers and they would remain by virtue of the by-elections, which are now the subject of the Bill. To secure that, we had to make it clear that we would have had grave difficulty with the Bill had it not had those changes made to it.

The terms on which those changes were made were confirmed by the then noble and learned Lord the Lord Chancellor to be "binding in honour" on those who gave their assent to them until such time as House of Lords reform is complete. That was the undertaking given at that time. I agree with those undertakings. When the House of Lords Reform Bill came before Parliament three or four years ago for a largely elected House, I was not opposed to it and would not have sought to object to it, at least not in principle. That is not what happened. That Bill foundered in the other place, as your Lordships will recall. That is why we are very much not in favour of this Bill—in fact, we are wholly opposed to it—because it is piecemeal reform, to which we profoundly disagree.

The number of hereditary Peers was set at 92 back in 1999. It has remained 92 ever since. Since then, the number of life Peers has increased beyond all recognition, but that is another matter. In the meantime, I beg to move the amendment standing in my name on the Order Paper.

Lord Cormack (Con): My Lords, last Friday we had a debate introduced by the most reverend Primate the Archbishop of Canterbury that saw this House at its best. On Monday we had a debate on aspects of the future of your Lordships' House that again saw this House at its best. There is a real danger that this House is going to look absurd today.

We have some 60 amendments. Those who decided to put them down have clearly not agreed to their being grouped. That means we will have debate after debate. And to what purpose? At the end of the Second Reading on 9 September, my noble friend Lady Chisholm of Owlpen made it abundantly plain that this was not a Bill that the Government could support. I personally regretted that. I know the noble Lord, Lord Grocott, regretted it deeply. After all, he was not seeking to remove anyone from your Lordships' House. He sought to bring to an end a system of by-elections, where we had, just prior to that, had the ludicrous spectacle of three electors choosing from seven candidates—something that could hardly reflect great credit on your Lordships' House.

This is not an attack on hereditary Peers, many of whom have given staunch and sterling service to your Lordships' House. Among the Ministers on the Front Bench at the moment—not at this precise moment, although we have one of them—are a number of hereditary Peers who give public service of the highest quality and excellence. Indeed, my noble friend Lord Trefgarne himself has been a distinguished Minister and is at the moment chairman of an important committee. He surely cannot wish this House to look ridiculous.

There is a case for saying that what was agreed in 1999 should remain. I accept that it is a strong case. I believe that there are things that could be done to make it less absurd. For instance, if a retiring or

[Lord Cormack]
deceased Peer had been an officer of the House, everyone could have a vote. We could turn the House into an electoral college or, more sensibly perhaps, all the Members of the various groups, be they Cross Bench, Labour, Liberal Democrat or Conservative, could vote for vacancies. At least then you would have a three-figure electorate. To approach it in the way being suggested this morning can do nothing other than risk making this House look ridiculous. There is a real debate to be had and there are real points that can be made, but some of the amendments down today would certainly qualify for a parliamentary entry in Trivial Pursuit.

I do not intend to detain your Lordships long, but I urge the House to have a mind to its reputation. We are concerned about that. Those of us who believe passionately in the role of this House, as many of us tried to spell out on Monday of this week, do not wish to see our reputation trashed, least of all trashed from within. I hope that we can come to a reasonably speedy conclusion today.

10.15 am

Lord Hunt of Kings Heath (Lab): My Lords, I wonder if I might follow the noble Lord, Lord Cormack, because he spoke a great deal of sense, in terms both of the debate that we had about retirements and the impact of the noble Lord's amendment today. I remind the noble Lord, Lord Trefgarne, that I was the Government Whip on the 1999 House of Lords Bill and I well recall our debates. Like the noble Lord, Lord Cormack, I accept that the noble Lord has raised a point of principle which it is quite right for us to debate. Of course, we are nearly 18 years on from that Bill and much has happened in the meantime.

The noble Lord is a very distinguished Member of your Lordships' House. It is clear that he disagrees with the principle of my noble friend's Bill. Why on earth did he not challenge at Second Reading or put a Motion down and let the House come to a view? Why is he engaging in a clear filibuster not just in the context of the point that the noble Lord, Lord Cormack, has made about this House but at a time when we are very likely, depending on events, to be debating hugely important issues around Brexit? Does he really think it sensible to set a precedent that filibustering is to be allowed in your Lordships' House? I would caution him against that activity. I hope that when he comes to wind up he will explain what he is doing, why he has not allowed his amendments to be grouped and why he is not allowing the House essentially to come to a view on the principle.

Lord Dykes (CB): My Lords, I support the two previous interjections. I thank the noble Lord, Lord Cormack, for many years of toil, with others, in the modernisation and reform group which he has led. I came into this House in 2004. I have always regarded myself as a friend of the noble Lord, Lord Trefgarne, and he of me—we know each other well. I regard the noble Earl, Lord Caithness, as a man of great wisdom and as a hard-working and diligent Peer—in fact, we are all effectively full-time working Peers nowadays, which counts for a lot. However, I beg the noble Lord, Lord Trefgarne, as a friend, to reconsider pressing these amendments, with the damage that they will do to the reputation of this House. I ask him to think again and to bear in mind the suggestions that have been made already by people with more authority than me in these matters, hoping that he and the noble Earl, Lord Caithness, will have the courage and wisdom to respond.

Lord True (Con): My Lords, I apologise for intervening, but I had a small walk-on part—not as distinguished as that of the noble Lord, Lord Hunt—in 1999 and remember well the statesmanlike endeavour undertaken by the noble and learned Lord, Lord Irvine, and the then Lord Cranborne, now the noble Marquess, Lord Salisbury. They effected an extremely difficult compromise, which did not give satisfaction on all sides, to enable an important piece of constitutional reform to go forward. It was a distinguished piece of statesmanship, a compromise was made and the noble and learned Lord, Lord Irvine, said at the time in this House that it would remain "binding in honour" on all those who had taken any part in it. When I first came to this House, I was told that the one thing that a Member of your Lordships' House had to do was to stand on his or her honour. I would therefore find it extremely difficult, short of the final reform of this House, to accept the removal and breaking of that compromise which enabled a great piece of legislation to be passed by the party opposite.

It is disappointing that a mugging party has arisen attacking my noble friend even before we have entered fully into the debate on this subject. It is not much of a filibuster by my noble friend, who spoke for just two minutes. I have heard more effective filibusters in my time.

I would hope that a sensible spirit of compromise could emerge. I discussed these matters with the noble Lord, Lord Grocott, and I understand that people opposed to the hereditary principle want to see it removed from the House. Most hereditary Peers I speak to—I should make it clear to those who are not aware that I am certainly not a hereditary Peer—do not object to the principle being removed from the House. The question is how, when and in what circumstances.

I concede that another reason why you might wish to remove hereditary Peers—I know that the noble Lord, Lord Grocott, does not have this purpose—is to secure some party advantage. Clearly, these Benches and the Cross-Benches have more to lose from the removal of the hereditary Peers than the Labour Party or the Liberals. There is a party political issue that needs to be discussed. I know that the noble Lord, Lord Grocott, would consider that, but it is another matter to be considered.

I am pleased that the Government said—if it is what they said—that this Bill should not go forward. This chip needs to remain on the table. Of course, the ultimate intention of the noble and learned Lord, Lord Irvine, and my noble friend Lord Salisbury at the time was that we would get to a place where the House would be reformed.

My noble friend Lord Cormack is a rather more regular speaker than I am, so perhaps he will allow me some comment on this subject. He said what a scandal it is that some Peers are here on only three votes but I am here on the vote of one person, by patronage. We should be a bit more cautious in being high and mighty about the methods by which certain noble Lords get here, when each one of us was happy enough to catch the eye of a selector, be it Tony Blair, Mr Ashdown, Mr Cameron or whoever it might have been.

The hereditary system we have now is a funny one but I have only one amendment tabled and that is to draw attention to the disproportionate representation of the very Benches that said, "Hear, hear", when my noble friend Lord Cormack said that it was pretty odd that the hereditary Peers are here. I think it is pretty odd that there are a hundred of those chaps over there.

Lord Cormack: I said no such thing. I did not say that it was odd that they were here. I paid particular tribute to what they do. The Bill of the noble Lord, Lord Grocott, does not make any of them leave. I am concerned about the reputation of the House and the method by which they are selected. Also, I made it quite plain that the Government said the Bill would not pass, so why the worry?

Lord True: My Lords, I am responding to three speeches that said it was quite unnecessary for my noble friend Lord Trefgarne to do what he is doing. I will bring my remarks to a conclusion. I will leave the point of honour before the House. I will leave the point of selection by patronage before the House. I will leave the point that by pushing hereditary Peers out of the House, you will not end the House of Lords question. All that will happen is that we lose the successors of some very effective people in this House.

I just add one other thing. I have here before me what the noble and learned Lord, Lord Irvine, said on 30 March 1999. I agreed strongly with it then and agree with it now. One of the things we discussed in the official group was how the hereditary Peers should be replaced while this compromise continued. The noble and learned Lord, and the Government, said they were not prepared to accept a system whereby Members of this House would choose who stayed and who came in, in what he described as "rather invidious" club rules. In fact, he spoke of,

"The rather invidious proposition that life Peers should have a vote in these elections and pass judgment on the comparative merits of their … colleagues".—[*Official Report*, 30/3/1999; col. 207.]

Many of those who wish to end the election of hereditary Peers under the system we have now are the very same people who want a system where life Peers in this place pass judgment on who should stay—where the awkward squad and those who are independent minded might be pushed out. As this debate goes forward, that proposition deserves every bit as much scrutiny as the role and place of hereditary Peers in this House.

To conclude, I will stand on the point of honour. I have only one amendment and have not made a filibuster but made points that I believe are of great importance and which remain as valid today as they did in 1999.

Lord Anderson of Swansea (Lab): My Lords, the noble Lord, Lord True, said that the hereditary Peers are part of the awkward squad—difficult people. I would have thought that there were enough of that category all around in any event.

He said that there has not been a filibuster but how else should we construe virtually overnight putting down 59 amendments in an attempt to swamp this Bill and prevent it making any progress? Perhaps the noble Lord's speech was short but the plethora of amendments speaks eloquently in a different direction. I wholly endorse and adopt what has been said before, particularly by the noble Lord, Lord Cormack, about reputation. There is an old legal maxim or principle—perhaps no longer said in that way—that if one seeks to define intent it is the natural consequence of one's acts. What other intent can there be from the plethora of amendments than to effectively destroy this Bill and the reputation of the House?

I will let your Lordships into a secret. Once upon a time, I was in Whitehall for a brief and somewhat inglorious period. I recall a little department, somewhere stuck in Whitehall, the aim of which was to devise means of blocking Bills with an attempt at faint praise. Ministers were told and speeches were written on this basis: "We believe in the principle of what has been put down but now is not the time", "Rome was not built in a day", "We should not deal in little steps", or "We should look at all these matters comprehensively". I suspect that the noble Lord, Lord Trefgarne, and his friends delved into this same bran tub and will bring out a series of statements of that sort.

Yes, they are clearly against the principle of the Bill. I simply put this question to him: is he happy for this absurdity to continue indefinitely? It is an absurdity and anyone looking from outside must accept it as such. Is he content that by these spurious by-elections, the hereditaries are here by what is, of course, a game of chance—succession? On the other hand, the rest of us are here by—yes—patronage but at least there is an attempt in that patronage to choose people who in principle have a degree of merit. Many of the hereditaries indeed have merit but they may not; it is a game of chance. In my judgment, to continue with this system makes us a laughing stock. If we are serious about the reputation of the House we should wholly endorse this proposal by my noble friend Lord Grocott.

Lord Rennard (LD): My Lords, I associate these Benches with the opening remarks of the noble Lords, Lord Cormack, Lord Hunt of Kings Heath and Lord Dykes, and many others who want to see progress on this Bill. We should not repeat all the arguments we had at Second Reading. Any noble Lord speaking today should endeavour to be brief—I will certainly be.

In addressing the remarks made so far, first, many of those noble Lords who speak about Lords reform accept the principle of the primacy of the House of Commons. The principle of this Bill was approved in 2010 in the then Labour Government's Constitutional Reform and Governance Act. That received a majority in the Commons and those who are sincere in their belief in the primacy of the Commons should allow this Bill to go forward for Commons consideration.

[Lord Rennard]

Secondly, there was the principle about what was said in 1999 and for how many decades or centuries that should be deemed to be binding. There was a principle, which we often refer to and agree with, that no Prime Minister and no Parliament can bind their successors. So I challenge those who are trying to prevent the Bill being properly considered to say whether or not they accept that principle. There is little point in the legislative process unless you accept that you can change a previous decision of a Prime Minister or a Parliament.

The noble Lord, Lord True, suggested that this is about trying to pack the House of Lords or change its composition. He is perhaps a little sore at the moment about the position of the Liberal Democrats after the by-election in the area for which he is the council leader. But it is not realistic to suggest that the Bill is about changing the composition of the House since the power of patronage remains with the Prime Minister to appoint more Peers. On Monday a very strong will was expressed across the House that we must do something to improve our credibility and reduce our numbers overall, but there is no point taking such action unless we prevent top-ups. The first way of preventing such top-ups is by supporting the Bill.

10.30 am

Lord True: The noble Lord referred to my speech. He said that we have to prevent top-ups. A few sentences before, he said that of course the Prime Minister could appoint others to replace those who go. By his own words, the question of size is not relevant. He also said that no Parliament can bind its successors. Perhaps that is why the Liberal Democrats have been so quick to remember their policy that numbers here should reflect votes cast in the previous general election.

Lord Rennard: If the noble Lord accepts the principle that representation here should be reflective of votes cast in the past election, I would welcome his support for that principle in the House of Commons also.

Lord Northbrook (Con): My Lords, I apologise to the Committee for being unable to take part at Second Reading. I believe the Bill is unnecessary unless part of a full stage two reform, and breaches the undertaking that has already been referred to.

Contrary to the words of the noble Lord, Lord Anderson of Swansea, I maintain that by-elections produce very capable replacement Peers, such as the noble Lords, Lord Grantchester, Lord De Mauley and Lord Ashton of Hyde, the noble Earl, Lord Cathcart, and the noble Viscount, Lord Younger, all of whom are or have been on the Front Bench of their respective parties. In addition, the number of hereditaries is capped, unlike the number of life Peers. Surely it is this that needs attention, to be included in a total package of reform, which may indeed incorporate a change to the by-election system, but that should not happen until then.

The Campaign for an Effective Second Chamber does a lot of good work but the Bill makes the Chamber much less effective.

Viscount Trenchard (Con): My Lords, I, too, support the amendment in the name of my noble friend Lord Trefgarne. I apologise to the Committee for not having spoken at Second Reading but I was unable to be here because I had to attend a memorial service. I entirely agree with my noble friend Lord Trefgarne. My understanding in 1999 was that this was a deal that would enable the important piece of constitutional legislation to pass, which would be honoured by all sides of the House—that 92 hereditary Peers would remain in the House until substantive reform were to take place. It was clearly understood at that time that the intention was that the House should be reformed on to a largely elected basis.

Most of those who now support the Bill of the noble Lord, Lord Grocott, believe that to end the principle of hereditary by-elections and therefore eventually end the right to sit in this House by any hereditary Peer will actually strengthen their own tenure under the appointed system. They believe that the least acceptable part of the composition of your Lordships' House is the hereditary Peers. I beg to differ. I have no wish to defend the hereditary principle as having any particular legitimacy but I do not think that the practice of appointment by patronage has very much legitimacy either. I do not believe that in the country at large it is regarded as having such. Rather, I believe that the presence of 92 hereditary Peers in your Lordships' House actually makes this House, in the minds of the public at large, more interesting and more legitimate. The link with history is regarded by many people as having legitimacy. There are many means by which members of any institution in the country gain legitimacy. To argue that any Peer who sits in your Lordships' House by succession is not there legitimately would not be supported by the public at large.

Noble Lords: Oh!

Viscount Trenchard: Noble Lords opposite tend to disagree but when I discuss this with people—with taxi drivers, people in shops, people on the Underground—I find that the presence of the hereditaries in this House is seen as a continuation of a great tradition. It is a link with history. Therefore, I think that those who wish to end the hereditary principle for topping up the 92 hereditary Peers are mistaken.

The noble Lord, Lord Anderson, stated that the hereditary by-elections are absurd. They are no more absurd than any other elections in many bodies around the country. Very often a small group of people decides between one, two or several candidates. Indeed, I think Her Majesty the Queen still chooses between two candidates for the position of Archbishop of York or Canterbury. I am not sure whether that system still exists but it certainly did so.

I disagree with part of my noble friend Lord Cormack's speech but I agree with his proposal that the by-elections could be made rather less arcane—I think that is a better word than absurd—simply by stating that the electoral college for each group should be amended to include all the Peers of that party grouping. I have always thought that there was not much logic in the Standing Orders as established in 1999 which provided

that those originally elected as Deputy Speakers should be replaced by hereditary Peers elected by the whole House rather than by only the survivors of the electoral college.

I have spoken on this for long enough. I earnestly support the amendment in the name of my noble friend Lord Trefgarne.

Lord Strathclyde (Con): I hope that those who were joshing and jeering at my noble friend Lord Trenchard will think very carefully about what they have done. He is entirely entitled to his view, whatever it is. We have had some rather pious expressions about the reputation of the House. What is the reputation of this House if my noble friend cannot say what he strongly believes without being jeered by Members of the Opposition? They should reflect very carefully as we continue the debate.

On the question of the reputation of the House, the noble Lord, Lord Grocott, was not to know, when he agreed to this Friday being an opportunity for Committee on the Bill, that it would bookend a week in which it might appear to many outside that we spent a great deal of time talking about ourselves. We spent Monday talking about ourselves. We are going to spend today talking about ourselves. Noble Lords around the House have pleaded that we should try to finish today's proceedings as quickly as possible.

The Government have made it utterly clear that the Bill is not going to become law. The noble Lord, Lord Grocott, knows that. I know that. The rest of the Committee knows that. Would not the easiest thing be for the noble Lord to say that he was not going to continue with these proceedings? The reputation of the House would then be saved and we could continue to discuss some of the real and serious issues that face this country and the rest of the world, which are the issues that shine a light on this House in the brightest and most sensible possible way.

Some noble Lords have asked why we are where we now are. Perhaps next to the noble and learned Lord, Lord Irvine of Lairg, I know more about this anybody else. When at the end of 1998 I became Leader of the Opposition it was for me to close the final agreement, if I can call it that, with the noble and learned Lord, who was responsible for the Bill that removed two-thirds of the Conservative Party from this House at a stroke and left patronage intact with the Prime Minister. My then noble friends—in fact, noble Lords from all round the House—were not very keen on that. They were not prepared to go unless some sort of signal was made about the seriousness of a stage two reform, which was to move towards a democratic House.

I will now cut a very long story short. On the final afternoon, the noble and learned Lord and I made the agreement on what came to be known as the Weatherill amendment—although perhaps it should now be called the Irvine compromise; they are two great servants of Parliament who acted seriously to help the governance of this country. The noble and learned Lord then said to me, "You know, these by-elections will never happen because we intend to come forward with a reform". We had built in a fail-safe that no by-election would take place until the year after the following general election, which would have given the Labour Party three or four years to come forward with a proper reform.

My noble friend Lord Wakeham, who sadly is not here today, was invited to set up a royal commission to look at all these things, which would form the basis of new legislation. This was well understood and I said to the noble and learned Lord, Lord Irvine, that I, too, was happy to make this agreement because if that reform did not take place, then we would have the by-elections. It was a small price to pay to get the Bill, which became the House of Lords Act 1999, through this House as quickly and sensibly as possible, thus retaining the reputation of this House—and we have been waiting all this time.

My noble friend Lord Cormack reflected that we were bringing an end to this system but in doing so, we would also create something new: the only way into this House would now be by party or prime ministerial patronage, and many of us object to that. In the very good debate that took place on Monday, there seemed to be the start of a consensus that there should be a better way of getting into this House. Should we not then work together? Should the noble Lord, Lord Grocott, with all his experience, knowledge and time in both Houses, and I and others not come forward with a proposal for a proper and serious independent Appointments Commission, with all the other things that are required? As part of that, we could remove these by-elections.

The other thing that the noble Lord, Lord Grocott, was not to know when he wrote and introduced this Bill and agreed to today's Committee was that the House of Commons would now take an interest in these issues. We have recently had an email from the chairman of the Public Administration and Constitutional Affairs Committee, Bernard Jenkin, saying that he will carry out an investigation into all aspects of how people get into this House. If we were to pass the Bill and send it to the House of Commons, it would immediately be thrown out because the Government would quite rightly say, "We've got an important committee of the House of Commons looking at these things. Let us wait until then before we come to a decision".

The noble Lord, Lord Grocott, had a good debate at Second Reading. We had an excellent debate earlier in the week and have had a short debate today. I urge him: would it not be better, for all our sakes, to pull back from the Bill now and work together on a proper consensus that unites government and opposition in providing a proper, long-lasting reform to the House of Lords?

10.45 am

The Earl of Caithness (Con): My Lords, as I have my name to this amendment I would like to say a few words and follow up the closing words of my noble friend Lord Strathclyde—and this was not planned. I say to the noble Lord, Lord Grocott, that if he withdraws the Bill we will be very happy not to move any further amendments at all.

Noble Lords: Oh!

The Earl of Caithness: My Lords, the whole situation in which we were going to discuss the Bill has changed as a result of the useful debate that we had on Monday. We did not all agree but at least we were able to express our views without some of the intolerance that is creeping into the Chamber today. Indeed, as my noble friend Lord Strathclyde said, there is a committee looking at this in the other place.

Mention has been made of the system of appointing hereditary Peers, and we have tabled amendments. The noble Lord, Lord Grocott, said at Second Reading—I apologise to him and to the House for not being able to be here for that—that the appointments system was beyond ludicrous. There is a very good argument for saying that, but we have amendments to make it considerably less ludicrous.

Lord Grocott: My Lords, the noble Earl was not here at Second Reading and he may not have read *Hansard*. I did not say that the appointments system was beyond ludicrous, I said that the current system of by-elections for hereditary Peers was beyond ludicrous.

The Earl of Caithness: My Lords, I did read *Hansard*, and in fact I have it beside me—which is no surprise to the noble Lord because he knew that I would. Yes, he said that the succession system was beyond ludicrous. We have amendments down to make it less so and I hope that he will be able to accept them.

I am also against what the noble Lord, Lord Grocott, proposes because of what happened in 1999. I have spoken and written to the noble and learned Lord, Lord Irvine of Lairg, who was Lord Chancellor at the time—it was really his amendment rather than Weatherill's. He had said:

"The amendment reflects a compromise negotiated between Privy Councillors on Privy Council terms and binding in honour on all those who have come to give it their assent".—[*Official Report*, 30/3/1999; col. 207.]

My last letter to the noble and learned Lord was on 31 March 2014, when I wrote seeking elucidation as to what those words meant. I spoke to him afterwards and he said, "You're not going to get an answer from me", so I had to interpret them myself. I believe that those words "binding in honour" apply to all the 308 Peers who are still in the Chamber and were here during the debate in 1999, and they also apply to the 109 former MPs who were in the House of Commons when that debate took place and are now in this House. I believe that because they are binding in honour and the agreement was on Privy Council terms, it is not for me to break that agreement. Others may—that is up to them and their consciences—but for me it is a point of principle. What the noble Lord, Lord Grocott, wishes to do is a major constitutional change and I believe that major constitutional change should be undertaken by the Government, not by Back-Benchers.

This House has had an elected element for 273 out of the last 309 years. There was a gap between 1963 and 1999. Removing the hereditaries, which is the inevitable result of removing the succession to them, would leave a solely appointed House. That is not what the public want. The latest opinion poll that I could find shows that 60% of the public want an elected House. Those figures replicate earlier opinion polls.

An appointed House is not what the House of Commons wants either. It voted against it on 4 February 2003 by a majority of 78. There was an even larger majority on 7 March 2007 of 179. The Commons also voted for an elected Chamber. I know that did not come to pass in the 2012 Bill, but if that Bill had come to this House, I would have supported it because I have said in this House before that I am a firm believer in having an elected second Chamber and have voted for that. I support what the House of Commons said. Yes, let us remove all us hereditaries, but only on the condition that all the life Peers go too. Do not remove one without the other. I believe that keeping the hereditaries will help us to achieve a democratic, elected House sooner rather than later.

I discussed this with the noble Lord, Lord Grocott, over breakfast downstairs. He is entitled to his view, and he has been a firm and totally consistent advocate of an appointed House. I take a different view. I want an elected House, and I think that the retention of the hereditaries will bring that about sooner rather than later.

The appointment system has been criticised. If we remove the hereditaries with this Bill, we will be left with an appointment system. In 1999, my now noble friend Lord Cormack said:

"We are witnessing a crude exercise of patronage".—[*Official Report*, Commons, 10/11/1999; col. 1200.]

If that was true in 1999, how much more true is it today?

The appointment system was condemned by many during our debate on Monday. Since 1997, 25% of those appointed to this House have been ex-MPs, and a further 7% have been affiliated to parties either by working in them or by taking party positions. That is more than 30%. I have tabled Amendment 45A, which seeks to draw attention to this. In order to help the House, I shall speak to it now.

I do not think that the noble Lord, Lord Grocott, would ever accept an amendment that restricted the appointment system to such a disproportionate percentage of former MPs. We have become the dumping ground for MPs.

Noble Lords: Oh!

The Earl of Caithness: It is true, my Lords. Some 33% or 34% of those appointed are ex-politicians. We are a pretty good dumping ground. The appointment system has also failed us in that only 22% of appointments were women.

I am sorry that my noble friend Lord Cormack is going—I need to refer to him again. He is coming back; wonderful. Our average age now is 69 to 70. I took my seat here when I was 21. Where are the youth represented in this House? We have only two Members under 39, and 29 under 50. I do not think that is a good recommendation for an appointment system.

It seems to me that the best chance of getting into this House in future will be to become an MP. You could possibly increase your chances if you change

party as an MP. I have a friend in Scotland who changed from the Conservative Party to the SDP-Liberal party; he was promised a peerage. He did not get it so he changed to the Labour Party. He was promised a peerage, but he did not get it. He is disillusioned with politics now. There is a serious point in there which we need to consider, and I hope it will come up as a result of Monday's debate.

These words were spoken in 1999: the hereditaries are,

"the ones who sit in the second Chamber not as a result of patronage".

Lord Hunt of Kings Heath: My Lords, will the noble Earl tell the House how hereditaries got here in the first place? Were they elected or appointed by the monarch?

The Earl of Caithness: My ancestor was given a title. I cannot remember quite what it was for; I did not talk to him about it. It was 500 or so years ago. That is why I want to get rid of us—but I also want to get rid of the life Peers as well.

Let me continue. The important quote from 1999 is that,

"the House … will be the stronger, the more independent of patronage and the better",

and:

"I believe without equivocation … that the House of Lords will be better for the 92".—[*Official Report*, Commons, 10/11/99; cols. 1200-01.]

Those words were spoken by my now noble friend Lord Cormack, who clearly does not now believe that.

He is not the only former MP to change his mind about this House. On Monday, we heard a very good speech from the noble Lord, Lord Rooker, who admitted that when he was in the House of Commons he was totally ignorant about this House and did not pay any attention to it. I totally concur with that. When I was a Minister in the 1980s, I found that my Secretaries of State were not very conversant with the procedures of this House and found us an irritation—there were then far more hereditaries—but subsequently changed their mind.

Baroness Farrington of Ribbleton (Lab): Will the noble Earl assist me? I wish to listen to all the arguments. Has he just regrouped the amendments in front of us? He has spoken to a later amendment. It would be helpful to the House if such groupings were made more formal.

The Earl of Caithness: I certainly apologise to the House for not grouping the amendment. I put the amendment down yesterday, which was rather later than I should have put it down. It came to my mind as a result of the debate we had on Monday.

As I said, my noble friend Lord Cormack is not the only one to have changed his mind about this House. The noble Lord, Lord Steel, when he was leader of the Liberal Party, carried the Asquith banner for the abolition of the House of Lords. When he came here, he had the chance to fulfil that, and we all hoped he would. The next leader, Mr Clegg, scuppered the next attempt to reform the House almost single-handedly. It was a great shame.

I warned the Lord Speaker—he is no longer my noble friend because he is the Lord Speaker—that I would refer to him. He quite rightly suggested when he took his position that the House of Lords was a little large. He was in favour of an elected House in 1999. He said so in the debate. He also voted for and against the amendment in the same year. It was at different times: one was February or March of 1999 and the other was in November. My noble friend Lord Hailsham voted against the amendment in 1999—but he stood for election as a hereditary Peer, so he obviously thought it was quite a good idea.

As my noble friend Lord Strathclyde said, the debate on Monday has brought a sort of consensus that all these areas need to be looked at. I remain of the opinion that keeping the hereditaries here will bring about a speedier and more radical reform of the House of Lords, which I firmly believe is needed.

Lord Cromwell (CB): My Lords, I am the beneficiary of one of these by-elections, and that has made me very shy about participating in our debate today—even more shy than I normally am. I was in two minds right up to this morning as to whether I should do so. I know that a good number of others in my position are not here, partly because they are too anxious of being branded reactionary, whatever their actual position on House of Lords reform may be. Some of the barracking we are hearing probably means they were right. On balance, I have decided that, as a beneficiary of such a system, I ought to be able to stand here and debate it. There are certainly some points I would like to make, and we may get to those, but beyond that I would like to emphasise one thing: I am going to be guided by what emerges in the debate. That is how we should do things. I am not here as a wrecker; I am here to participate in a debate, as I hope we all are.

11 am

I will make three quick, final points. First, when the Minister stands up, it might take some of the heat out of the debate if she just confirms the position of the Government as regards this Bill, which I am sure she will do anyway.

Secondly, I regret to say this, but I took some offence at how the Bill was pitched to us, the hereditaries who came out of the by-election system. There was a kind of, "You'll be all right, Jack" mentality, of "Don't worry, you're safe, just cut the rope behind you". I would much rather have been appealed to on a question of principle or constitutional reform, not told that I was going to be all right, so I could just get rid of the system. Maybe that is a cosmetic point to the noble Lord, and I am sure he intended no offence, but he has certainly given some to me and to others.

Finally, I cannot resist a comment about patronage. I am not going to refer to taxi drivers or what people's butlers say to them, but it has been said to me a couple of times by ordinary people—whatever they are—that at least I have been through some sort of electoral process. What do the life Peers have to go through? I am sure this point will be made repeatedly, but one point that people quite like is that the people I owe

[Lord Cromwell]
favours to all died about 700 years ago. The people owed favours to by some life Peers are not very far from where we sit this morning.

Baroness Chisholm of Owlpen (Con): My Lords, I start by congratulating the noble Lord, Lord Grocott, for steering his Bill, which has provoked an interesting and engaging debate, into Committee. The whole House recognises his understanding of Parliament and his commitment to ensuring its work continues to be relevant. Given the number of amendments before us, many of which are related, if not grouped together, it may be for the convenience of the House if I set out the Government's position at this point. I do not intend to comment on subsequent amendments, solely because I would be repeating myself.

As we have seen in the past, if reform of this House is to succeed, we must be able to work constructively together to make progress. It is clear from the Second Reading debate and comments from noble Lords today that this is an issue on which there are strong feelings on both sides, and no clear consensus as to the way forward. With that in mind, and as the noble Lord, Lord Hunt, and my noble friend Lord Strathclyde said, with so many other pressing legislative priorities to deliver over this Parliament, noble Lords will perhaps not be surprised to hear that as a Government we express reservations about this Bill.

Yet that does not mean we should simply set ourselves in aspic. As my noble friend the Leader made clear in the debate earlier this week, we want to work constructively with noble Lords to look at pragmatic ideas for change that can command broad consensus, just as we did in the last Parliament. Then, we worked with noble Lords to introduce some focused, important reforms. With government support, the Bill sponsored in this House by the noble Lord, Lord Steel, now the House of Lords Reform Act 2014, enabled Peers to retire permanently for the first time—54 Members so far have done so—and provided for Peers to be disqualified when they do not attend or are convicted of serious offences. The following year, through what is now the House of Lords (Expulsion and Suspension) Act 2015, we supported the Bill of the noble Baroness, Lady Hayman, which provided this House with the power to expel Members in cases of serious misconduct. Both were important reforms that have made tangible changes to the culture of this House.

We must now bring that same spirit—of pragmatic, incremental, consensual progress—to discussions in the coming weeks and months, keeping in mind the need for any further reform to both enhance our role as a Chamber of scrutiny and revision and enable us to continue to draw on a wealth of expertise and experience. We must do so together as a House, building on the sense of real partnership that the debate earlier this week demonstrated. Although there might not be consensus on this Bill, I look forward to the discussions we have to come in order to identify where that consensus might be found.

I finish by observing, as my noble friends Lord Cormack and Lord Strathclyde said, that the debate in the House on Monday on the size of the House was conducted in a friendly and constructive spirit, whatever the differences between noble Lords in their views on the right way forward. Monday showed this House at its best, and I am sure we will continue in that spirit today.

Lord Grocott (Lab): My Lords, it has been a varied debate, although the one thing that has united everyone who spoke, including the mover of the amendment, is that no one spoke to the amendment. I do not make a criticism on those grounds, but we have essentially had a Second Reading debate, and I fear that we would have that on all 60 amendments should we proceed. I shall be brief as I also note that this first group has taken an hour, and there are 60 amendments. Most of them were put down yesterday, which makes them quite difficult to deal with, and all of them have been degrouped, so we have to have nearly 60 separate debates. I think 60 hours on this would be a bit much and try the patience of all of us—quite apart from how we would appear to the world outside.

The first amendment simply removes Clause 1(1), and basically wrecks the Bill. It certainly does when considered with all the other amendments of that type. The noble Lord, Lord Trefgarne, has put down amendments to remove subsections (1), (2), (3), (4), (5) et cetera. He is perfectly entitled to do that. We are a Parliament with parliamentary procedures, and he is entitled to put down as many amendments as he likes, but he acknowledged in his opening remarks that he is totally opposed to the Bill. That again is a perfectly legitimate and honourable position to adopt, but if he wants to adopt that position, he either should have voted against the Second Reading or should vote against the Third Reading. He has another opportunity to do that, but instead he has just put down huge numbers of amendments, which I do not think he would be too proud of if they were read out one by one—as I have already mentioned, he did not actually move the first amendment. Seven or eight amendments simply vary the date at which the Bill comes into operation: one month, two months, three months. Let us have a serious debate on serious amendments if we are going to, but of course the problem that the noble Lord, and the House, face is that this is such a narrow and specific Bill. It is a two-clause Bill, dealing with a very specific problem, and it is almost impossible to amend sensibly. However, of course your Lordships can reject it. You either support the end of the hereditary by-election system or you do not, and I hope that the House will come rapidly to a decision on that.

Since everyone else has made something close to a Second Reading speech, I will just remind the House what my Bill does. It was motivated by a general feeling of unease, but was precipitated by the by-election on 18 April this year—I know most Liberal Democrats feel just the same about this as I do—where there were seven candidates and an electorate of three. That must be a world record. Of the seven candidates, six did not get any votes, and the seventh got all three votes—100%, which, as I said at the time, beats North Korea. That is not sustainable. It is so easy to get a laugh out of this, because the present system is laughable. Whatever the motives or arguments over why it came into operation, and we can rehearse those again and again, it is what has happened as a result of the decisions made in 1999

and the resulting section of the 1999 Act that has resulted in this by-election system, which has now been going on for 17 years and has led to 30 new Members being brought in via this mechanism.

The noble Earl, Lord Caithness, thinks that somehow the 92 hereditaries are precipitating a major reform of the House. "It is a long time coming", is all I can say to that, and he did not offer a timescale on which he expected that to be achieved. So the objective has not worked. We have had all these by-elections, and they will go on in perpetuity. If the noble Lord, Lord Trefgarne, is straightforward with the House about this, as I am sure he will be, he will acknowledge that if the Bill fails the by-elections will continue and we will end up at the stage where the grandchildren of the Peers who were first exempted find themselves in the House of Lords via this bizarre mechanism.

I repeat that my Bill hurts no one. I was mildly concerned about the comment from the noble Lord, Lord Cromwell; I am not trying to bribe anyone at all. I know many hereditary Peers who support what I am doing. I make no criticism whatever of the hereditary Peers in this House. The reason why they are excluded from the Bill is not that I am looking for their votes in passing it; frankly, I probably do not need them. It is because many of them, such as—it seems invidious to mention any of them, but I shall mention one—the noble Earl, Lord Howe, make a tremendous contribution to the work of this House.

So the Bill is nothing to do with that point. It is simply saying that any honest, straightforward person looking objectively at the system that exists would say, "Let's get rid of it with a clean break". Then, admittedly, over a period of 30 or 40 years, there would no longer be any hereditary Peers in the House. That is not the objective of the Bill but a consequence of it, and I do not think it is a revolutionary consequence. The noble Lord, Lord True, who I know very well, mentioned that it might result in a change in the party balance. I think 10 Tories have been elected so far under the by-election system over a period of 17 years. I know we move slowly in this place, but that does not strike me as a revolutionary overnight change. This is incremental reform in the best traditions of the group chaired by the noble Lord, Lord Cormack, which I have supported over many years. I am often criticised for that; I am called a "constitutional conservative", and I can live with that. It is common-sense incremental reform to a system that to want to sustain is, frankly, pretty indefensible.

The indications I have are that there is very strong support for this in the House. I would much prefer it if we could just acknowledge that, complete Committee stage and see what happens to the Bill. The worst of all solutions would be if we had hour after hour after hour of debate on amendments that, frankly, I do not think the noble Lord, Lord Trefgarne, or the noble Earl, Lord Caithness, would be terribly proud of if their biographies were to be written. That would not bring the House into disrepute but would not leave it looking very good, particularly after the splendid debate on Monday—I can say that as I did not take part in it, though I listened to most of it—when it was clear that the wish of the House was that it should be smaller. It must be pretty well a first in the world for an organisation to say, "We want fewer of us". I cannot think of any other organisation that I have had anything to do with that would say that. So the House realises that its size affects its performance and reputation, and that we should look for ways of reducing its numbers. Here is a way that would reduce its numbers over a period of 30 years to the tune of 92.

I make this appeal to the noble Lord, Lord Trefgarne, and I think I speak for most people here, whatever they feel about the Bill: I ask him not to persist with the remaining 59 amendments, most of which are in his name. I ask the noble Lord to acknowledge that when he stands up to speak.

We have had a good debate. We need to come to a conclusion on this amendment, which would remove subsection (1), which, as I have said, would wreck the Bill. The House needs to decide whether it wants to do that, and I hope the noble Lord tests the opinion of the House. Most of all, I would like to hear him acknowledge that we should move on and have a Report stage in due course, and formally move the rest of the amendments.

Lord Strathclyde: My Lords, the noble Lord said we should wait and see what happens to the Bill. We know what is going to happen to it. It has no prospect whatever of becoming law, so why is he bothering to continue with it?

11.15 am

Lord Grocott: The noble Lord, Lord Strathclyde, has been around longer than me. It is not me who is bothering to continue with today's proceedings. For the previous three months, since the Second Reading debate on 9 September, I have looked with joy to check how many amendments were being tabled. Until Tuesday of this week there were six, one of which was mine. Then, lo and behold, inspiration clearly struck two or three of our Members and 60 amendments were tabled overnight. I am sure they were considered—no, it is best not to be sarcastic. I will put it as neutrally as I can: I do not think they were done with the intention of improving the Bill. It is up to those who tabled them. The impetus today has not come from me. It has come from those who want to hold us here for hours discussing largely meaningless amendments, and I call on the noble Lord, Lord Trefgarne, to acknowledge that.

Lord Strathclyde: My Lords, the noble Lord did not answer the point that I made in my short contribution. Since he started this process, it has excited interest from the House of Commons. We are all being consulted by the Commons on what we think the future make-up of the House of Lords should be. The Government have said they are not going to support the Bill. He says it is not in his hands, but it is entirely in his hands; if he said he was happy to withdraw the Bill, I am sure my noble friend Lord Trefgarne would be very happy with that.

Lord Grocott: I really do not want to prolong this, but the noble Lord, Lord Strathclyde, suggests I have powers that I do not possess. The debate in the House

[Lord Grocott]
of Commons started in April this year, when a 10-minute rule Bill was unanimously passed at First Reading that would remove all hereditary Peers. That is the view of the House of Commons and it predates anything that I have done here. Let us get the chronology right.

Lord Trefgarne: My Lords, I start again with the position that I am not opposed to House of Lords reform. If the Bill that was introduced by the coalition Government three or four years ago had reached your Lordships' House, I would not have opposed it, and that would have been the end of the hereditary Peers. They were not provided for especially as far as that Bill was concerned, although they could of course have stood for election had they chosen to do so.

The future of this Bill is not for me to decide. If I can be assured that it is not going to reach the statute book, I may take a different view on the rest of the amendments before your Lordships. In the meantime, I beg leave to withdraw the amendment.

Some Lords objected to the request for leave to withdraw the amendment, so it was not granted.

11.18 am

Division on Amendment 1

Contents 12; Not-Contents 105.

Amendment 1 disagreed.

Division No. 1

CONTENTS

Caithness, E.
Campbell-Savours, L. [Teller]
Carrington of Fulham, L.
Erroll, E.
Hooper, B.
McIntosh of Pickering, B.
Maginnis of Drumglass, L.
Northbrook, L.
Snape, L. [Teller]
Trefgarne, L.
Trenchard, V.
Williams of Baglan, L.

NOT CONTENTS

Addington, L.
Alderdice, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Armstrong of Ilminster, L.
Ashdown of Norton-sub-Hamdon, L.
Balfe, L.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Brooke of Alverthorpe, L.
Brookman, L.
Brown of Eaton-under-Heywood, L.
Butler of Brockwell, L.
Chakrabarti, B.
Chandos, V.
Clinton-Davis, L.
Collins of Highbury, L.
Cormack, L.
Davies of Oldham, L.
Dean of Thornton-le-Fylde, B.
Donaghy, B. [Teller]
D'Souza, B.
Dubs, L.
Dykes, L.
Elder, L.
Falkland, V.
Farrington of Ribbleton, B.
Featherstone, B.
Gale, B.
German, L.
Goddard of Stockport, L.
Grender, B.
Grocott, L.
Hamwee, B.
Harris of Haringey, L.
Harrison, L.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Howarth of Breckland, B. [Teller]
Hughes of Woodside, L.
Hunt of Kings Heath, L.
Hussein-Ece, B.
Irvine of Lairg, L.
Jolly, B.
Kennedy of Southwark, L.
Kingsmill, B.
Kramer, B.
Lipsey, L.
Livermore, L.
Loomba, L.
Low of Dalston, L.
MacKenzie of Culkein, L.
McKenzie of Luton, L.
Maclennan of Rogart, L.
McNally, L.
Maddock, B.
Marks of Henley-on-Thames, L.
Massey of Darwen, B.
Morgan, L.
Morris of Handsworth, L.
Murphy of Torfaen, L.
Naseby, L.
Northover, B.
Oates, L.
Paddick, L.
Patel of Bradford, L.
Pitkeathley, B.
Prosser, B.
Rees of Ludlow, L.
Rennard, L.
Rosser, L.
Rowe-Beddoe, L.
Royall of Blaisdon, B.
Sandwich, E.
Sharkey, L.
Sharples, B.
Sheehan, B.
Sherlock, B.
Simon, V.
Skelmersdale, L.
Slim, V.
Somerset, D.
Stirrup, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Symons of Vernham Dean, B.
Taverne, L.
Thomas of Winchester, B.
Thornton, B.
Touhig, L.
Turnberg, L.
Uddin, B.
Wall of New Barnet, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Watson of Invergowrie, L.
West of Spithead, L.
Wheeler, B.
Whitaker, B.
Wood of Anfield, L.
Woolf, L.
Young of Norwood Green, L.

11.28 am

Amendment 2

Moved by ***Lord Trefgarne***

2: Clause 1, page 1, line 3, leave out subsection (2)

Lord Trefgarne: My Lords, the arguments in favour of this amendment are very similar to those which we deployed at some length on the previous one. I again make it clear that I am not opposing reform. I refer back to the speech of my noble friend Lord Cormack, who drew attention to what he saw as some of the shortcomings of the existing by-election arrangements, but not objections in principle.

If the Bill was simply amending or improving by-elections and there was scope to do that, that would have been a different matter—we could have moved amendments for that purpose—but that would have been outside the scope of the Bill, because that is entirely clear in the Long Title: it is to stop the by-elections, no more and no less. Had we sought simply to improve the by-elections through the Bill, that would not have been allowed, and it is for that reason that we have opposed the Bill in principle.

Again, if I could be assured that the Bill will not reach the statute book, I might take a different view, but that is not the present position, it would seem.

Lord Grocott: My Lords, I hope that the House will reject the amendment, should the noble Lord, Lord Trefgarne, put it to the vote.

Lord Trefgarne: My Lords, I shall not withdraw this amendment. Apparently, the assurances that I seek are not available. The Government are not prepared to give an assurance, although I understand why that should be so. In that case, I beg to move.

11.31 am

Division on Amendment 2

Contents 26; Not-Contents 95.

Amendment 2 disagreed.

Division No. 2

CONTENTS

Borwick, L.
Bridgeman, V.
Brougham and Vaux, L.
Caithness, E. [Teller]
Carrington of Fulham, L.
Colwyn, L.
Denham, L.
Eccles, V.
Erroll, E.
Fairfax of Cameron, L.
Fraser of Corriegarth, L.
Goschen, V.
Holmes of Richmond, L.
Hooper, B.
Kirkham, L.
McIntosh of Pickering, B.
Maginnis of Drumglass, L.
Neville-Jones, B.
Nicholson of Winterbourne, B.
Northbrook, L.
Selsdon, L.
Strathclyde, L.
Trefgarne, L. [Teller]
Trenchard, V.
Walker of Aldringham, L.
Wellington, D.

NOT CONTENTS

Addington, L.
Anderson of Swansea, L.
Andrews, B.
Armstrong of Hill Top, B.
Armstrong of Ilminster, L.
Ashdown of Norton-sub-Hamdon, L.
Balfe, L.
Barker, B.
Bassam of Brighton, L.
Beith, L.
Benjamin, B.
Brooke of Alverthorpe, L.
Brookman, L.
Brown of Eaton-under-Heywood, L.
Butler of Brockwell, L.
Campbell-Savours, L.
Chakrabarti, B.
Chandos, V.
Clinton-Davis, L.
Cormack, L.
Davies of Oldham, L.
Dean of Thornton-le-Fylde, B.
Donaghy, B. [Teller]
Doocey, B.
D'Souza, B.
Dubs, L.
Dykes, L.
Elder, L.
Falkland, V.
Farrington of Ribbleton, B.
Featherstone, B.
German, L.
Giddens, L.
Glasgow, E.
Goddard of Stockport, L.
Grender, B.
Grocott, L.
Hamwee, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Howarth of Breckland, B. [Teller]
Hughes of Woodside, L.
Hunt of Kings Heath, L.
Hussein-Ece, B.
Irvine of Lairg, L.
Jolly, B.
Jones of Cheltenham, L.
Kennedy of Southwark, L.
Kerr of Kinlochard, L.
Kingsmill, B.
Lipsey, L.
Livermore, L.
Loomba, L.
Low of Dalston, L.
MacKenzie of Culkein, L.
McKenzie of Luton, L.
Maddock, B.
Marks of Henley-on-Thames, L.
Morgan, L.
Morris of Handsworth, L.
Murphy of Torfaen, L.
Naseby, L.
Northover, B.
Oates, L.
Paddick, L.
Patel of Bradford, L.
Pitkeathley, B.
Prosser, B.
Redesdale, L.
Rees of Ludlow, L.
Rennard, L.
Rosser, L.
Rowe-Beddoe, L.
Royall of Blaisdon, B.
Sharkey, L.
Sheehan, B.
Simon, V.
Skelmersdale, L.
Slim, V.
Snape, L.
Somerset, D.
Stirrup, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Thornton, B.
Touhig, L.
Turnberg, L.
Wall of New Barnet, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
West of Spithead, L.
Wheeler, B.
Williams of Baglan, L.
Wood of Anfield, L.
Young of Norwood Green, L.

11.42 am

Amendments 3 and 4 not moved.

Amendment 5

Moved by ***Lord Trefgarne***

5: Clause 1, page 1, line 3, leave out subsections (2) and (3) and insert—

"( ) In section 2, after subsection (4) insert—

"(4A) Standing Orders must provide that vacancies amongst the 90 excepted hereditary peers which are reserved for a political party must be filled by a method which increases the representation of the party which is most under-represented in the House comparing the proportion of politically affiliated Members of the House who are members of that party with the proportion of votes cast for that party at the most recent general election.""

Lord Strathclyde: My Lords, I hope that nobody will think I am filibustering when I say this, but we had a really interesting debate on Amendment 1, which to some extent was a repeat of Second Reading, and we have had a couple of Divisions. The noble Lord, Lord Grocott, pointed out that we could carry on like this for another 60 hours or 50 hours—it is becoming pointless. I take nothing away from what the noble Lord has done; he is a distinguished and experienced parliamentarian and he believes very strongly in all this. But he will recognise that although he is winning Divisions and putting in Tellers from the other side, it is not an edifying spectacle on a Friday morning—still morning, just. I hope that the Government might indicate whether this debate is going to change their minds, and if there is not another and better way in which to resolve the differences between the two sides.

Lord Snape (Lab): The noble Lord, Lord Strathclyde, is being a bit negative about proceedings this morning. After all, if we look at the result of the two Divisions, we can see that the persuasive powers of the noble Lord, Lord Trefgarne, are enormous—he has doubled the number of noble Lords in his Lobby. If we go on like this with a few amendments, he could well carry the day. Then of course his colleague, the noble Earl, Lord Caithness, who has 500 years of heritage and favours to repay, also deserves another crack at it. I am not sure about the noble Lord, Lord Trefgarne, because his father was of course a Labour Peer. Maybe it is our fault that he is here. I do not want to class him as an arriviste—

Lord Trefgarne: My Lords—

Lord Snape: I will come to the noble Lord in a moment, if I may. I do not want to sound offensive at all or to call him an arriviste, but compared to his noble friend the noble Earl, Lord Caithness, it is difficult to find any other description for him. Comparatively speaking, he has been here only five minutes, yet he is anxious to destroy my noble friend's innocuous piece of legislation. I shall give way to him now.

Lord Trefgarne: Just to correct the noble Lord, my late noble father was actually a member of the Liberal Party.

Lord Snape: According to Wikipedia, which is not always accurate, he left the Liberal Party to join the Labour Party. The noble Lord inherited his title at 19 after his father's early and untimely death, but I believe that dinner party conversations in the Trefgarne household must have been fairly lively as far as politics were concerned. But whether he was Liberal or Labour, the fact is, I am not sure to whom the noble Lord, Lord Trefgarne, owes his presence in your Lordships' House. If it was anything to do with the Labour Party, let me apologise to all and sundry now.

Lord Mackay of Clashfern (Con): My Lords, there are procedures in this House by which one can indicate one's opposition in principle to a Bill at two stages: Second Reading and Third Reading. But I have always understood—and I have been here for a little time now—that the Committee stage is not for that purpose. If indeed, in Committee, a Second Reading speech—whatever that is—is made, it is thought to be inappropriate. It is absolutely plain from what my noble friend Lord Trefgarne said, that he is seeking to oppose the principle of this Bill. If that is what he wants to do, the correct time and place for that is if the Bill goes as far as Third Reading. Second Reading has passed. I submit to him and to others who have amendments laid down for today that this is not the place or the manner in which to express one's opposition to the principle of a Bill. The opportunity to do that will be on a single vote in due course, if the Bill goes to that length. I sincerely hope that in the spirit of loyalty to the practices of this House, which over the years I have found to be very amendable to dealing with all sorts of questions, noble Lords will accept that this procedure is appropriate only for those who are at least thinking that the Bill could be improved to pass at Third Reading. I understand plainly from what my noble friend Lord Trefgarne said at the outset that that is not so. Therefore, I strongly implore those who have amendments to withdraw them now.

Baroness Chisholm of Owlpen: My Lords, I thank my noble friend Lord Strathclyde for what he said. At this point, I feel it is important for me to say as a point of clarity that the Government cannot support this Bill. I have made the Government's position clear and I hope that all noble Lords will find other ways of resolving the issues, particularly following the very successful debates that we had on Monday. This is not the way we should be doing things.

Lord Trefgarne: My Lords, I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendment 6

Moved by ***Lord Trefgarne***

6: Clause 1, page 1, line 3, leave out subsections (2) and (3) and insert—

"( ) In section 2, after subsection (4) insert—

"(4A) Standing Orders must provide that in any by-election to fill a vacancy for a specified party or group, the electorate shall consist of any hereditary peer (whether or not excepted under this section) who has registered with the Clerk of the Parliaments as a member or supporter of that group.""

Lord Trefgarne: I do not intend to detain your Lordships. I am slightly reassured, and assisted, by the most recent remarks of my noble friend the Minister, when she said that this Bill does not have government support. Can she assure me, therefore, that the Bill will be objected to in the Commons by the Government, when and if it were to go there? I beg to move.

The Earl of Erroll (CB): My Lords, I wish to make a quick point and not detain noble Lords. This series of amendments—from Amendment 5 onwards—is about trying to modify the electoral system to make it more sensible. That is something I do not object to at all. If one wants to have a debate about the hereditary Peers election system, one should probably at some point do something. I am not sure that this Bill is the right place to do it but there is an effort here to have a more sensible system. The reason I voted previously in the way that I did was because until we remove the power of the head of the Executive—in other words, the Prime Minister—to appoint everyone, either directly or indirectly, to the Chamber that is passing laws to control that process, I think we must resist any reform. If you change the powers of the Prime Minister to appoint people to the Lords, then I am with you and we can move forward as a democracy.

Lord Butler of Brockwell (CB): My Lords, the noble Lord, Lord Trefgarne, has asked for an assurance from the Minister. She will correct me if I am wrong, but I think that she has given the assurance that the Government will not let this Bill pass, and that if it did pass in your Lordships' House, the Government would not allow it to pass in the House of Commons. If the Minister will repeat that, I think that we can bring this procedure, which does no credit to this House, to an end.

Baroness Chisholm of Owlpen: My Lords, I think noble Lords will understand that I cannot give assurances about what happens in the other place; I can only state from this Dispatch Box the Government's position at the moment.

Lord Butler of Brockwell: My Lords, surely, if the noble Baroness gives an assurance on the Government's position, that will determine what happens in another place.

Baroness Chisholm of Owlpen: I have nothing to add to what I said earlier.

Lord Cormack: My Lords, in the 46 years I have been in this building, no Private Member's Bill has ever got on to the statute book if the Government were opposed to it. We should bring these proceedings to a close.

Lord Taylor of Holbeach (Con): My Lords, I believe that the following business is tabled for two o'clock. Does the noble Lord agree that the House should adjourn and that the debate on this Bill should be concluded?

Lord Grocott: My Lords, the Government have stated their position, which has been consistent throughout. I never thought that they would throw their weight behind this Bill. However, I am frankly surprised at their reasoning. I do not think that the fact that they are having to sort out the economy and Brexit is a good reason for opposing a two-clause Bill, which I think has pretty universal support and would improve the workings of this House. However, the Minister's reassurance may be enough for the noble Lord, Lord Trefgarne, to not ask the opinion of the House on the amendment that he has just moved, and thereafter not to move his further amendments, so that we get through the Committee stage of this Bill and then proceed to Report, if that is permitted. I do not think the Bill is likely to proceed to Report, and that is not something I feel pressed to pursue. However, I obviously regret the fact that it is unlikely to proceed further if the Government say so. Bearing in mind the knowledge of the noble Lord, Lord Cormack, in relation to the high death rate of Private Members' Bills, from whichever House they emerge, I think that the ball is now in the court of the noble Lord, Lord Trefgarne.

The Earl of Caithness: My Lords, I congratulate the noble Lord, Lord Grocott, on putting in all four Tellers on the first amendment. He was, of course, beautifully educated by the late Walter Harrison, one of the great Whips of the Labour minority Government of the 1970s, and he must have learned at Mr Harrison's knee. Indeed, there is an extremely good play, which I recommend to all your Lordships, in which this is portrayed. The noble Lord has learned the arts of government extremely well, as indeed he did when he was PPS to a former Prime Minister. That was complemented by his excellent term as Chief Whip in this House. Therefore, we have a lot to learn from the noble Lord on handling parliamentary procedure. Is he prepared to accept any amendments to his Bill to improve the way that hereditary Peers are elected? In other words, is he set in his view that the banning of succession is the only thing that matters, not trying to get the system to work better?

Lord Grocott: My view is diametrically opposed to that of the noble Earl, Lord Caithness. I can see no compromise. You cannot half hang a man—you either have the by-elections or you do not. The noble Earl thinks that we should have them. I think that we should not. The Government cannot support the Bill at the moment but I think we could conclude the Committee stage, given that the noble Lord, Lord Trefgarne, has been given the assurances that he sought from the Government. Therefore, we can conclude these proceedings in 10 minutes through the remaining amendments not being moved. I have been around a long time and I know that in practical terms that means the Bill can proceed no further.

Viscount Trenchard: My Lords, I do not think the noble Lord quite answered the point made by my noble friend Lord Caithness. He asked whether the noble Lord would think it sensible that the House should consider some means of improving the Standing Orders, or changing the Standing Orders which govern the by-election procedure to make them less absurd. The noble Lord has pointed out that an election with an electoral college of two or three is seen as absurd, whereas I think the by-elections for the Conservative Benches and the Cross Benches are somewhat less absurd because there are about 30 electors in both cases. Therefore, the noble Lord did not answer the point made by my noble friend as to whether he would support an improvement in the Standing Orders for the by-election system. My noble friend asked him to state whether he was utterly opposed to the by-election system, however the Standing Orders might be improved to reduce the absurdity of the Liberal Democrat and Labour by-elections.

Lord Trefgarne: My Lords, I am minded to withdraw this amendment. I do so on the assumption, first, that the noble Lord, Lord Grocott, will not ask for a Report stage of the Bill and, secondly, when the Bill gets to the House of Commons—if it does by some accident—the Government will not support it. On that basis, I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

Lord Taylor of Holbeach: My Lords, I think we have reached a point where both sides have had an opportunity to discuss this matter. I proposed an adjournment because the noble Earl, Lord Lytton, who has tabled the next business, was not present at that time. However, I wish to withdraw my proposal for an adjournment on the ground that the noble Earl is now present. I propose that the House do now resume.

House resumed.

Property Boundaries (Resolution of Disputes) Bill [HL]

Second Reading

11.59 am

Moved by ***The Earl of Lytton***

Relevant document: 9th Report from the Delegated Powers Committee

The Earl of Lytton (CB): My Lords, before I get into the meat of the issue, I will express my thanks to the clerks for their cheerful and ready assistance in this matter, to the Library and its researchers for their excellent briefing notes, to the usual channels for their unfailing courtesy, and to the protagonists in the previous bit of business for allowing me a slot to introduce this Second Reading.

As your Lordships will know, I am a practising chartered surveyor, and one of the things I get involved with is boundaries, rights of way and title. I also chair the boundaries and party walls working group of my professional body, the Royal Institution of Chartered Surveyors. I pay tribute to a couple of people in the RICS, in particular Martin Burns and James Kavanagh,

[The Earl of Lytton]
who have been great supporters of the Bill, but also to a perhaps little-known organisation known as the Pyramus & Thisbe Club, which is primarily involved with things like party walls but which is also supportive of this. In that breath, I especially thank Andrew Schofield, who has been a great source of support, and that great international boundary expert David Powell. There have been some who do not support the Bill but do support the need to improve things. I am grateful to them, and to the members of the public who have spontaneously written to me to say what a lifesaver a Bill such as this would have been for them.

The Bill would provide, in fundamental terms, an alternative dispute resolution facility where boundary and rights of way disputes arise—something that does not involve the courts or tribunals, is more compelling and conclusive than mediation, saves time, cost and risk, reduces antagonism, and is rooted in the paper title but is evidenced with regard to the physical facts on the ground. In short, it puts the physical evidential basis first and the legal process second—because for most of these contentious cases involving boundaries, the on-site evidential basis is the most effective key to getting resolutions.

Many people have asked me about the scale of the problem, which is extraordinarily difficult to identify. Clearly, it is not large in the context of some 30 million or so titles in England and Wales. But it is likely—according to the best estimate I can obtain—to be in excess of 10,000 new cases annually, which is not an insignificant number. Not all of these turn into disputes that get into the courts. My long-standing acquaintance, Jon Maynard, maintains a marvellous boundaries information resource on the web and is able to identify unique new inquiries and downloads of various bits of information he has. On that basis, and having consulted with him, I believe that in excess of 10,000 cases is a fair estimate—and practitioners believe that the situation is getting worse.

Noble Lords may ask, why take a stand on a small percentage? Because clear boundaries are pivotal to the certainty that necessarily underpins ownership, and because of the contagious effects of disputes relating to them. It is a contaminant to the prospects of sale, to property values and to lending and borrowing, never mind the not inconsiderable human cost. The legal and judicial process and the absence of any available binding alternative dispute resolution process currently give rise to high costs, delays, inconvenience, the opportunity for lasting discord between neighbours, stress and the resultant adverse effects on families and relationships—in short, a general canker on what is often the most valuable asset most people will ever possess: their property.

The intrinsic value of what is in dispute is often small, but the costs in conventional litigation can quickly overtake all else and themselves become the main point of contention, at which point the original purpose of the argument and the ability of the parties to back out is severely impaired. Such patterns of inverse proportionality border on insanity. No wonder the judiciary often expresses its dislike of these cases. It also means that fair justice is often overtaken by financial muscle—in other words, the richest party wins.

Boundary disputes occur fundamentally as a modern response to a legacy of past procedures and processes which have not kept up with modern demands. This is not a criticism; it just so happens that that is where we are. More recent pioneering Administrations have been able to introduce other systems, such as cadastre, which for them can be more useful. But we have a long heritage of the way in which we have transacted properties in the past. The title plans at the Land Registry are based on Ordnance Survey mapping, which has evolved since the 19th century. The mapped data may of course be out of date, things may change on the ground or there may be subdivisions—and there may even be basic compilation or survey errors because the information has simply been carried forward from one edition to the next. That can mean that lines on the map are not shown where they should be, there may also be transposition errors from original deeds to more modern instruments, and deeds may be lost or even destroyed.

In any event, Ordnance Survey plans have inherent limitations in respect of scale, relative and absolute position and cartographic practices, which, as I mentioned, have changed over many years, and which certainly go back to long before modern digital survey techniques became commonplace. The baseline relative accuracy can easily mean a discrepancy of 225 millimetres—nine inches, to noble Lords who prefer imperial measurements—across a typical urban back garden width of some 7.6 metres, or 25 feet. In the countryside, this discrepancy can be much greater. As I say, this is the baseline discrepancy. Sometimes it can be much greater than that, even in urban areas, and sometimes of course it can be less. However, it shows up one of the problems we have with the increasing demands that are placed on boundary positions.

There is another legacy issue. Often, properties and their boundaries were badly described in the first place, with plans that did not tally with the description or were simply poorly drawn up—in other words, sloppy conveyancing practices for which my own professional forebears and those of conveyancers should rightly accept some criticism.

Both Ordnance Survey and the Land Registry couple their plans with disclaimers. Ordnance Survey states that a line on the plan is no indication of a boundary. In fact, it does not tell you what the line actually represents at all. That is where surveyor skills come in—to try to identify what was intended to be mapped. For its part, the Land Registry relies on something known as the general boundary rule, with no warranty as to boundary position or extent of land. Unfortunately, this whole process is not intuitive and requires an understanding of mapping and the finer points of relative and absolute positioning to make sense of it.

The Land Registry's website states that it,

"will reflect what we conclude to be a reasonable interpretation of the land in the pre-registration deeds in relation to the detail on Ordnance Survey mapping".

So no resurvey there. It continues:

"Unlike the tolerances applied to Ordnance Survey mapping, there is no standard tolerance, measurement or ratio that can be attributed to the relationship between the position of the general boundary mapped on a Land Registry title plan and the position of the legal boundary".

Such a guarantee of property title as there may be is thus governed by a somewhat "there or thereabouts" approach to registration. There is no particular harm to this in broad principle; only rarely is absolute precision required for title registration purposes, and then it is usually to prevent a dispute escalating. But the arrangement is ill understood by the layman and creates the opportunity for disputes because of the need for greater precision for other, more demanding situations, such as building extensions or control of boundary features such as trees or ditches.

I move now to the essence of the Bill. First, the main change in the Bill from the previous version I introduced in the last Session is set out in Clause 8, which relates to the authority of surveyors. It was felt that this needed clarification. I hope that noble Lords will agree that it is a good deal clearer than what went before. There is also an amended reference to appeals to the High Court to take out a specific reference to the construction court. That amendment was made following representations to me from one of its senior judges.

The Bill provides a trigger for dispute resolution. This is set out in Clauses 1 and 2 in respect of situations where an action on a boundary dispute—in other words, legal proceedings—has already commenced. Clause 3, by contrast, applies where an action has not yet commenced but where an owner wishes to establish a boundary position. In other property areas such as party walls, with which I am very familiar, landlord and tenant, and so on, there are contractual or statutory triggers for dispute resolution—but not with boundary issues because no contractual arrangement as such exists. The Bill would change this—a fundamental shift that I need to point out. Clause 4 provides for a penalty for non-compliance. This is simply an anti-avoidance provision.

Clause 5 is the meat of the dispute resolution process. The antecedents for this are in the Party Wall etc. Act 1996, which I was privileged to take through your Lordships' House. This provides for a resolution between surveyors appointed by either party or by a single agreed surveyor acting for both. The costs do not fall on the public purse but are met by the parties. The mechanism is tried and tested. The clause contains measures to prevent the process being frustrated but also provides for an appeal mechanism to the courts, which is where one would expect the matter to go on points of law.

Clause 6 governs the types of persons who can be appointed as surveyors under Clause 5—namely, those who are members of, and are regulated by, an appropriate professional body and who are governed by regulations made by the Secretary of State. Clause 9 links to this by providing for a code of practice to be drawn up by the Secretary of State.

Clause 7 relates to service of notice and directly mirrors provisions in the party wall legislation. Clause 8 relates to essential powers of entry and, again, follows established party wall practice. Clause 9 I have just referred to. Clause 10 relates to offences, Clause 11 to recovery of sums due, Clause 12 to exemptions for the Inns of Court, and Clause 13 to Crown exemption. Clause 14 is the interpretation section. All of them follow closely the party wall legislation provisions. So I might ask: what is there not to like about a relatively short Bill that deals with all these issues? There have been criticisms and I will deal with some of them because I think it is only fair to give a complete picture.

The first is that boundaries touch and concern title and thus are the proper preserve of trained legal professionals. To put it another way, it is inappropriate that surveyors, as a professional group, should by virtue of "determining" the position of a boundary decide the ownership of real estate—ergo, this is the exclusive preserve of the legal system and lawyers. Property title consists, first, of a paper title, allied to the legal construct of ownership. This may indeed be a matter for lawyers—although, given that members of my profession frequently advise on legal documentation in cases concerning, for example, leases, options, planning agreements and other contractual matters of a legal nature, as well as property deeds, I do not concede the totality of the premise. Crucially, the parameters of property ownership also rely on physical evidence on the ground, requiring the identification of features, knowledge of cartography and possibly construction practice, and competence in evaluating these factors with the assessment and measurement of property—areas in which the surveying professions have uniquely relevant training and experience. And as the Bill allows for appeals, I fail to see the problem.

The third matter is that the Party Wall etc. Act 1996 and, now, this Bill provide a state-regulated way of giving a party a right that they did not have before—for instance, in allowing trespass. I regard "trespass" as a peculiarly tendentious term, but maybe the legal profession has a slightly different take on it. Boundaries embody the concept of a dividing line between ownerships, and it is axiomatic that there are thus two owners at any given point, each with an interest in it and in the facility of establishing its position with reasonable accuracy.

There is also an overriding public interest in not allowing disputes to arise that cannot readily be disposed of, thus becoming a contagion. Such situations also give rise to significant malpractices—opportunities for bullying and harassment, deliberate obstruction of property transactions, settling of old scores and the like. One such device is to veto reasonable and necessary access to check facts. It is noteworthy that the Access to Neighbouring Land Act 1992, which came out of a Law Commission report, also provides for access to a neighbour's property in certain prescribed circumstances. So I reject that criticism also.

The next criticism is that rules under the Land Registration Act 2002—especially Rules 118 and 119, which are to do with trying to register determined boundaries—could be adapted to provide a solution. Along with others, I looked at Rules 118 and 119, and it is clear that they effectively operate only where there is consensus—so there is a block on that.

[The Earl of Lytton]

What are the alternatives? Some have said to me that the Land Registry should be both registrar and adjudicator. However, it appears that the Land Registry stepped back from this position some while ago. Such a situation raises fundamental issues of an administrative nature which might be difficult to overcome and could give rise to liabilities of a very awkward nature, as well as to conflicts of purpose.

Some cases in default can be referred to the registrar of the Property Chamber Land Registration First-tier Tribunal. I am told that once all the material is lodged with the First-tier Tribunal it should be dealt with inside 70 weeks. Certainly this can be quicker than going to the county court but it might still take two years from beginning to end, which is quite a long time.

It is also claimed that mediation might resolve such issues. Indeed, this could be so if there were, as a generality, equal strength of position and both parties considered it in their interests to settle the matter informally. Sadly, such convergence of factors is rare and, without that, the basic ingredients for mediation success are lacking. There is no provision for enforcing a mediation settlement. Furthermore, by the time the parties get to mediation, the costs in relation to the value of the land under consideration are often so disproportionate that, as I said earlier, settlement is more often than not quite impossible.

My own professional body, the RICS, offers a dispute resolution service, which again can usefully lead to agreement—but it, too, relies on the parties' voluntary participation and wish to conclude the matter, which is not always a given. There are of course longer-term measures but, I am afraid, no short-term fixes. For instance, if better boundary descriptions formed part of the land registration process, it could be very useful, but on present transaction volumes it would take more than a lifetime to achieve.

A move to a cadastral system, which I referred to earlier, is, I am satisfied, not helpful in this case. It is not that it cannot be so but, in the context of a mature land registration system, retrofitting it would be expensive and highly risky—not to mention that it would not prevent disputes arising and might even flush out a whole raft of new ones.

To finalise, the point is that for all the talking, and for all the consultation and deliberation, not least by the Ministry of Justice—perhaps when the Minister comes to reply, he will be prepared to say whether any further progress has been made—nobody else, the legal profession in particular and despite its opposition, has come up with any other workable solution. In the light of all that, I feel compelled to seek an end to what I see as a policy of masterly inactivity—or, perhaps more colloquially, of kicking the can down the road—and I therefore commend this Bill to the House. I beg to move.

12.19 pm

The Earl of Caithness (Con): My Lords, I rise to support the noble Earl, Lord Lytton, in his Second Reading, and I hope the Bill makes its way on to the statute book. It is disappointing to see the House so empty. It was full a moment ago, and I had thought that all the noble Lords who came in had come to listen to this important Bill. It is sad that they are not here to participate.

I declare an interest: I was a chartered surveyor, and I was a court witness when it came to a boundary dispute—I remember the case extremely well. It was a case that should never have gone to the courts and that could have been solved by exactly the sort of mechanism that the noble Earl, Lord Lytton, proposes in this Bill. The sadness is that, having got the court to make the decision that it did, one party was offended for life. If I can perhaps generalise, that does not matter so much in an urban area, but it matters like mad in a rural area. It is highly divisive. The situation in question came about from some incorrect mapping. As the noble Earl, Lord Lytton, said, it was perfectly evident on the ground: one had only to walk the back boundary to see quite clearly where it was. It was not on the OS map, as one party was relying on a digital OS map and the other on the old-fashioned OS map. It is a pity that it happened like that, and it left me with an abiding thought: could not we change the system a little for the better? I hope that the noble Lord, who has changed the Bill substantially from its previous Second Reading in order to meet the concerns of the Government, might make more progress this time.

How nice it is to see my noble friend Lord Henley back on the Front Bench—I have not had a chance to say that yet. He has a background as a lawyer and he might not wish to allow us, as surveyors, to take some of the work away from the courts. However, I hope that he will take a fresh look at this and give it a fair wind. I have to say to the noble Earl, Lord Lytton, that I fear that the Government will not, but let us persevere and try to get a little sensible change in this area.

12.22 pm

Lord Mackay of Clashfern (Con): My Lords, it seems to me that the essential matter in a boundary dispute is: where is the boundary? That is not a legal question at first sight, but a question of what the situation on the ground is. Legal questions may arise in relation to the use that has been made of the land in the past and so on, but the fundamental question is where the boundary should be today. As far as I am concerned, the sort of qualification you need to decide that is to have some expertise in examining situations on the ground to see where the natural boundary is. In many cases, although not in all, it will be fairly obvious on examination of the ground where the boundary should be and is intended to be. It is often possible to relate it to the title, although the title in expression may be somewhat ambiguous. It therefore seems to me that the proposals in the Bill provide an excellent system for resolving disputes that can linger with great bitterness, and often for very little. It is usually not a huge difference in land but quite small differences can give rise to bitterness when people get very worked up about where their boundary is. A system that makes examination of the ground fundamental to solving the dispute is a good one.

I agree, of course, that questions of ownership are questions of law. However, the question of where the ownership is is not a question of law; it is a question of fact and of looking at what the situation is on the ground. It is usually where there is ambiguity in the title—of course the lawyers are extremely good at examining titles—that the dispute arises. I do not know of any way in which that can be resolved except by examining the situation on the ground to see where the natural boundary is, in the light of the expressions used in the title. Therefore, this Bill is a very worthwhile move to simplify the way in which these disputes are resolved.

I agree that, in this sort of situation, there is no pre-contract agreement, so there is nothing to bring this on unless there is some statutory emphasis behind it. Accordingly, as far as I am concerned, this seems a reasonable way of solving what is a not uncommon type of dispute. I do not feel inclined to say that the courts must have jurisdiction at every stage. Obviously, if a question of law arises out of the view that the surveyor or surveyors take of where the boundary is on the ground, then it may be right that that is settled by the courts. However, on the whole, most disputes will be resolved by the examination on the ground, with no residual question of law remaining. I therefore support the Bill and hope that the Government will see it as a way forward. If there are difficulties, perhaps they can be resolved, but I think that the Bill is a considerable improvement on the last one.

12.26 pm

Lord Kennedy of Southwark (Lab): My Lords, I thank the noble Earl, Lord Lytton, for bringing this Private Member's Bill forward for debate today. He is a man of great experience in this area and the intention of the Bill is to resolve property boundary disputes at the earliest opportunity and with the least cost to the individuals concerned. That is a very welcome intention indeed. We are all aware that matters concerning boundaries can lead to highly charged and protracted legal proceedings, which can be extremely expensive for the parties involved, and certainly far more expensive, as has been said before, than the value of the land in question or the boundary in dispute. That situation is of benefit to no one and we should all be concerned to remedy it. Being able to consider the revised Bill is very welcome. I generally welcome the Bill, as did the noble Earl, Lord Caithness, and the noble and learned Lord, Lord Mackay of Clashfern. That is not to say that there are no areas that could be improved and refined in your Lordships' House, and I hope we will have a day in Committee to do that.

As has already been outlined, the Bill makes provision for the resolution of disputes concerning the location or placement of boundaries and of private rights of way relating to the title of an estate in land. It seeks to do this by requiring the owner of land who wishes to establish a boundary to serve notice on the adjoining landowner. If the adjoining landowner does not specifically consent to the notice, a dispute is deemed to have arisen. The dispute is then resolved by an agreed surveyor or, where there is no agreed surveyor, by a third surveyor who shall determine the precise location of the boundary. I very much agree that too many matters are driven towards the courts, and the Bill gives us a clear and straightforward way in which to resolve these disputes. The surveyor's findings would be considered conclusive and could be challenged only if an appeal was made within 28 days to the High Court. The Secretary of State shall have the power to make regulations regarding the process and the surveyors, and would specify that there would be no right of appeal to the county court. Where a party to the dispute seeks to disrupt or not co-operate with this process, the Bill sets out the rights of surveyors to be given reasonable access.

I am assuming that the Bill is not going to receive an enthusiastic welcome from the noble Lord, Lord Henley, but I hope he will recognise that this is a real issue and a real problem and that the noble Earl, Lord Lytton, is making a positive attempt to reduce the costs and have these boundary disputes determined quickly and efficiently for as little cost as possible to all the parties involved.

The noble Lord, Lord Faulks, who is not in his place today, said on a previous occasion that this proposal would not always return beneficial results. He suggested that this could be due to the adversarial nature of these disputes and the potential lack of legal expertise held by the appointed surveyors. If the noble Lord, Lord Henley, intends to pursue a similar opinion today, perhaps he could also address the argument that it is the expertise of surveyors in determining these matters that would make the likelihood of successful appeal proceedings less likely. That is because the determination will have been made by a qualified professional who is an expert in the field following regulations set out by the Secretary of State on how these matters must be determined. It would also be helpful if the noble Lord, Lord Henley, given that combination of factors, would express his view on the number of appeals he would expect.

I again thank the noble Earl, Lord Lytton, for bringing the Bill before your Lordships' House. It is a valuable contribution to the debate on these matters and a pointer to where we need to make improvements.

I have said before on many occasions that some very good Private Members' Bills come before your Lordships' House. We have a Second Reading and then pass a Motion to commit it to a Committee of the whole House—and then the Bills die and are never seen again. I ask the Minister to take back to the Government Chief Whip the suggestion that the Bills could be passed on to the Moses Room, where they could be debated in a more consensual way and make more progress. It is a shame that so many Bills are left sitting here and often die after Second Reading. With that, I bring my remarks to a close.

12.31 pm

Lord Henley (Con): My Lords, I am sorry that the Chief Whip is not in his place but my noble friend the Deputy Chief Whip will have heard the last point made by the noble Lord and will discuss it with him. It could be a way of debating Private Members' Bills which pursue matters of great importance and can often involve great bitterness, as both the noble Lord,

[LORD HENLEY]
Lord Kennedy, and my noble and learned friend Lord Mackay made clear. We would all like to avoid such matters and the issue is worthy of further discussion. My noble friend will take that suggestion back to the Chief Whip.

I congratulate the noble Earl, Lord Lytton, on securing a Second Reading for his debate and on the somewhat more decorous approach we have taken to it than to the previous business. It is an important issue. I also congratulate the noble Earl on securing such distinguished support from my noble friend Lord Caithness and my noble and learned friend Lord Mackay.

As the noble Earl said, the Bill is broadly similar to the Bill he introduced on an earlier occasion and I am grateful to him for explaining to the House how it differs from its predecessor. It has as its core aim that of making it easier to resolve property boundary disputes which, as all noble Lords have made clear, can involve deep bitterness. It proposes to do this through a system akin to that adopted in the Party Wall etc. Act 1996, with which the noble Earl, Lord Lytton, is very familiar. It would require that disputes about the exact location of a boundary between adjoining properties in England and Wales should be referred to a surveyor or surveyors acting as independent adjudicators, the final determination subject only to a right of appeal to the High Court. It also proposes to apply the system to disputes relating to the location and extent of private rights of way.

The noble Earl accused the Ministry of Justice of masterly inactivity. I hope to explain in my brief comments that that is not the case. The noble Earl considers that the procedure proposed in the Bill will make dispute resolution simpler, faster and more cost effective. Those are laudable aims which the Government share. Indeed, we have made, and continue to make, considerable efforts to control the cost of civil litigation to ensure that the costs incurred are proportionate to the subject matter of the dispute. However, we have significant reservations about the extent to which the proposals contained in this Bill would improve matters. We are concerned that they would have the unfortunate effect of making the resolution of these disputes more complex and costly than at present.

A similar Private Member's Bill relating to the resolution of boundary disputes was introduced in another place in 2012 by my honourable friend the Member for Dover, Charlie Elphicke. In the light of the concerns which that raised, the Government decided to carry out an initial scoping study on the issue, the results of which were published early in 2015. The core conclusions of the scoping study were that there would be merit in the Government carrying out further work to assess the feasibility of improvements to a number of aspects of the current system. These included, in particular, the use of mediation—I declare an interest as an accredited mediator with the Centre for Effective Dispute Resolution, CEDR—experts' termination, the spreading of best practice and the provision of better information. More radical reforms such as those proposed in this Bill and its predecessor would not currently be justified.

The noble Earl's Bill also covers disputes about the location and extent of rights of way. These disputes were not considered in the scoping study.

Before I update the House on possible improvements to the current system that the Government have encouraged, I would like to focus on the core difficulties we see in the approach proposed by the noble Earl. Responses to the scoping study confirm that boundary disputes can arise for a number of reasons. While some may follow from an unprincipled unilateral annexation of a strip of land, many more will derive from two honestly held beliefs as to where the boundary lies. At the root of those divergent views will frequently lie a conveyance which is poorly drafted or at least does not define the property to be transferred with sufficient clarity and precision.

My noble and learned friend Lord Mackay thinks that these are not necessarily legal matters and would be better resolved by surveyors. However, such disputes will ultimately hinge on the legal question of who owns a particular piece of land or is entitled to exercise a particular right of access and would fall to be decided on the interpretation of the evidence in the light of the law. In particular, the outcome will depend on the interpretation or construction of legal documents such as conveyances and the plans incorporated in them.

This is precisely the kind of dispute which the courts and the Land Registration division of the Property Chamber of the First-tier Tribunal are designed to determine. A surveyor, no matter how expert in technical issues, will not be able to give a ruling which is conclusive in legal terms and will not necessarily have the legal expertise to deal with the complex legal issues which might arise. This in itself would make it likely that many decisions would be appealed.

That prospect becomes even more likely when one takes account of the considerable bitterness and antagonism which such disputes can generate, to which we have all referred. Given that, unlike party wall cases, boundary disputes are generally likely to produce a winner and a loser. The chances that a loser will be determined to vindicate his or her view of what is right by bringing an appeal are high. A rigid system requiring referral in all cases at an early stage of the process set out in this Bill could also serve to raise the stakes in the dispute, increase hostility and entrench attitudes.

Taken together, these points would mean that the Bill would simply add a further layer to the proceedings, which would increase the costs involved rather than reducing them. In addition, in some cases, the early appointment of experts could in itself front-load costs where the disputes might have been resolved in other ways. We believe that a more effective and proportionate approach is to look at practical procedural improvements to the current system rather than to undertake a radical overhaul.

I hope the noble Earl and others who have spoken in support of the Bill will accept that the Government are committed to ensuring that boundary disputes can be resolved fairly and effectively and to minimising the adverse effect of adversarial behaviour and entrenched positions. We believe the work we are undertaking represents a more effective approach than radical reform

of the law. While the Government will not oppose the Motion to give the Bill a Second Reading, for the reasons I have given we have reservations about the changes to the law that it proposes.

If the noble Earl hopes to take this further, no doubt we will have further opportunities. This will depend on the skill of the noble Earl in persuading those who are in charge of such matters of the way in which the Bill should proceed. However, we will have further opportunities to discuss that.

As to the question of fact put to me by the noble Lord, Lord Kennedy, I have not yet received an answer. I will write to him in due course and give him those figures.

12.39 pm

The Earl of Lytton: My Lords, I am extremely grateful to all noble Lords who have spoken. I very much relate to what the noble Earl, Lord Caithness, had to say about the problems of sloppy drafting or mapping. The case he had knowledge of was obviously very acrimonious and, he says, would have been avoidable. Multiply that, if your Lordships would, by dozens of cases every year, probably costing at an absolute minimum some £50,000, and that starts to give one an idea of the issue.

I was very pleased to hear the comments of the noble and learned Lord, Lord Mackay of Clashfern, because he unpicked with total clarity the issue of what is the legal construct on the one hand, and the physical, evidential construct on the other. I thank him very much for that contribution because that is the point I have been trying to make in my rather inexpert way for some time.

I am very grateful to the noble Lord, Lord Kennedy of Southwark, for his support. Obviously, he was involved in this the previous time around. I am very glad that he is still there and sees the logic of what I am trying to achieve.

Turning to the Minister's comments, I am gratified that at least the point of principle I am trying to get at is not at issue—trying to make things quicker and faster. There are two little things I am always telling clients when I deal with these matters. As surveyors, we are trying to overcome basic failings in human nature. The first is that because disputes become so personal, because they very often relate to people's own homes, they grow, as I used to say, like little Johnny's porridge in the mouth. The point is that little Johnny goes red in the face, cannot swallow anything, and you reach gridlock. The other thing is that there is a direct inverse relationship between the objective value of what is at stake and the ferocity and cost with which it is pursued. These are two points I would like to get across. Also, rather like the Access to Neighbouring Land Act, there is nothing to prevent parties voluntarily agreeing, under the shadow of measures such as in the Bill.

To return to the Minister's more specific reservations, the core difficulty he refers to is the cases where, beyond peradventure, it is not possible to say from the documentary evidence where the boundary is: in other words, there is not that interrelationship between the facts on the ground and the paper title and the interpretation of the legal entitlement.

One main point is where there has effectively been adverse possession. I acknowledge that that is an issue, but it is also axiomatic in such circumstances that it is not possible for surveyors to divine as a matter of the physical evidence on the ground the circumstances which enable them to reach a conclusion. Surveyors are used to dealing with this sort of thing, with the principles of Civil Procedure Rule 35 and the evidential standards. They are used to being able to say what they can and cannot speak to and the evidential basis for it. Adverse possession is a classic case of a probable need to refer to the courts, because this Bill does not aim to deal with that. The Minister and perhaps his department are mistaken in their supposition that the Bill could deal with that; I do not think it can and nor is it intended to. So a bit of unpicking might be necessary there. Accordingly, the Ministry of Justice's concerns that the Bill might add to the number of appeals or exacerbate the situation in some way is misconceived. I would welcome the opportunity to discuss that with the department to find ways in which we could make it clearer that the Bill does not transgress in these areas, which I and everybody else admit are fundamentally matters of law and not physical, evidential criteria that can be seen on site.

I am grateful to all noble Lords who have spoken. I trust that we can move forward to a further stage of the Bill.

Bill read a second time and committed to a Committee of the Whole House.

House adjourned at 12.47 pm.

Volume 777
No. 79

Friday
9 December 2016

CONTENTS

Friday 9 December 2016