Journal
of the
Society of Clerks-at-the-Table
in
Empire Parliaments

EDITED BY

OWEN CLOUGH, C.M.G.

"Our Parliamentary procedure is nothing but a mass of conventional law."—DICEY

VOL. X

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USUAL SESSION MONTHS OF EMPIRE PARLIAMENTS

	Parliament.	Jan.	Feb.	Mar.	April.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
	United Kingdom		*	*	*	*	*	*				*	*
	Canadian Dominion	*	*	*	*	*							
Canadian Provinces	Ontario		*	*									*
	Quebec	*	*	*									
	Nova Scotia			*	*								
	New Brunswick		*	*	*								
	Manitoba		*	*	*						*	*	*
	British Columbia												
	Prince Edward Island			*	*								*
	Saskatchewan	*	*	*									
	Alberta		*	*	*								
	Australian Commonwealth			*	*	*				*	*	*	*
Australian States	New South Wales			*No*	*set*	*rule*	*now*	*ob*	*tai*	*ns.*			
	Queensland					*	*	*	*	*	*	*	*
	South Australia			*No*	*set*	*rule*	*now*	*ob*	*tai*	*ns.*			
	Tasmania							*	*	*	*	*	*
	Victoria							*	*	*	*	*	*
	Western Australia							*	*	*	*	*	*
	New Zealand						*	*	*	*	*	*	
	Union of South Africa	*	*	*	*	*							
Union Provinces	Cape of Good Hope		*			*				*			
	Natal			*	*	*	*						
	Transvaal			*	*	*							
	Orange Free State			*			*						
	South-West Africa			*	*	*							
	Ireland (Eire)	*	*	*	*	*	*	*			*	*	*
	Southern Rhodesia			*	*	*					*		
	Indian Central	*	*	*	*						*	*	
Governor's Provinces	Madras	*	*	*					*	*	*	*	*
	Bombay		*	*	*					*	*		
	Bengal			*	*				*	*			
	United Provinces	*	*	*	*				*		*	*	*
	The Punjab		*	*				*		*		*	
	Bihar	*	*	*					*	*			
	Central Provinces and Berar	*	*	*					*				
	Assam		*	*	*					*	*		
	North-West Frontier				*						*	*	
	Orissa		*	*					*	*			
	Sind		*	*					*	*			
Indian States	Hyderabad												
	Mysore	*						*			*		
	Jammu and Kashmir			*	*					*	*		
	Gwalior												
	Baroda	*Four quarterly Sessions: specific months not fixed*											
	Burma			*	*				*	*			
	Bermuda												
	Ceylon	*	*	*		*	*	*	*	*	*	*	*
	British Guiana					*	*	*			*	*	*
	Jamaica												
	Straits Settlements	*			*		*		*		*	*	*

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VOL. X. FOR 1941

I. EDITORIAL

Introduction to Volume X.—The opening words of this issue could not be more fittingly employed than by paying tribute to the ships of our Allies and especially to our own Navy and Merchant Fleet, as well as to the officers and men who man them, for securing for our members, living in all quarters of the globe, communication across the seven seas. This Society therefore tenders its warmest gratitude to those sons of the sea for their undaunted service so heroically rendered. In no smaller measure is this mark of gratitude due to our Merchant sailors and those of our brave Allies, as, on account of the relentless method of modern warfare, for which we still have to thank our enemy of 1914-18, Merchant ships are running, every whit, the same danger as their fighting sisters and without their greater protection and better means of attack.

Except for a few copies of Volume IX of the JOURNAL, which it is hoped have duly intrigued good old " Davy Jones " and his colleagues in the vasty deep, our organization has carried on with " business (almost) as usual " and, moreover, without appreciably taking up cargo space. Therefore, to those stout hearts of oak who keep the world's sea-ways for us and our Allies we say—God-speed and Victory so that the democratic institutions, which our members serve in so many parts of the world, may continue to guard the freedom of their peoples and spread civilization, that they may live their own lives in peace and security and that this great heritage be guaranteed to their children, and their children's children, for all time.

War economies and want of space, coupled with the greater

labour involved, have still further postponed the appearance in this issue of the usual article on Rulings of Speakers of the House of Commons, but every effort will be made to include such article in Volume XI with the additional advantage of dealing in one article with these Rulings for three years. For the same reason, what is known as " the Boothy case " has also had to be postponed.

The main body of this issue contains articles on Offices and Places of Profit under the Crown; further operations of the Select Committee of the House of Commons on National Expenditure; Public Administration and Parliamentary Procedure in New Zealand; a South African experiment in overcoming the constitutional restrictions upon the Second Chamber in regard to public finance; the highly interesting article on Precedents and Unusual Points of Procedure in the Union House of Assembly; and a description of the new constitution for Sarawak, which country is now, alas, for the time being in enemy hands. There are also several instances of the application of Privilege.

With deep regret we have to announce that Parliamentary Procedure throughout the Empire has lost a great authority in the death, early in 1943, of Mr. Speaker FitzRoy, and, in paying tribute to his memory, the article in which the expressions of sympathy from our members are tendered to the bereaved has also reference to a subject very dear to the late Speaker—namely, the principle that the seat of the Speaker should be free from political contest at all elections in his constituency.

Under Editorial, many interesting points have been noted. A large number of them closely relate to the prosecution of the war and the problems it has brought about for Parliaments, such as their prolongation; censorship; the service of M.P.s in H.M. forces; Secret Sessions; the soldier's vote; " 18B "; Parliament and Executive control of finance; the position of the War-time Ministers of State in the United Kingdom; examination of War Expenditure by Joint Committee; constitutional amendments in Eire; complexities caused by the present political situation in India; constitutional developments in Jamaica and Trinidad; legislation by reference; and operation of the guillotine. The text of the Atlantic Charter is also given for reference.

Acknowledgements to Contributors.—We have pleasure in acknowledging articles in this volume from Mr. T. D. H. Hall, Clerk of the House of Representatives, New Zealand, Mr. S. F. du Toit, Clerk of the Union Senate, as well as by his colleague, Mr. Ralph Kilpin, the Clerk of the Union House of Assembly.

We are also grateful, for contributing Editorial paragraphs, to

Mr. W. R. McCourt, the Clerk of the New South Wales Legislative Assembly; Mr. P. T. Pook, Clerk of the Parliaments, Victoria; Captain F. L. Parker, Clerk of the House of Assembly and Clerk of the Parliaments, South Australia; Mr. C. D. H. Chepmell, Clerk of the Legislative Council, Tasmania; Mr. S. F. du Toit, Clerk of the Union Senate; Mr. Ralph Kilpin, Clerk of the Union House of Assembly; Mr. J. P. Toerien, Clerk of the Orange Free State Provincial Council; Mr. K. W. Schreve, Clerk of the Legislative Assembly, South-West Africa; Mian Muhammad Rafi, Secretary of the Indian Legislative Assembly; and Mr. N. R. Chainani, Secretary of the Legislative Council, Bombay. Indeed, contributed paragraphs by other members of the Society to our Editorial, in form ready for insertion, are always welcome, not only because they lighten the duty of the Editor, but principally on account of their contribution being direct from " the man on the spot ".

Lastly, we are grateful to all our members for the valuable and interesting matter they have sent in and the co-operation they have so willingly and generously rendered notwithstanding the handicap of war.

Questionnaire for Volume X.—The *Questionnaire* for this Volume contained 8 items, most of which were perennial, dealing with automatic information in regard to constitutional amendments and unusual points of Parliamentary Procedure.

There is, however, much information in reply to the *Questionnaire* to this as well as to previous Volumes which it has no yet been possible to publish in the JOURNAL, purely on account of the difficulty in finding more space without increasing the printing cost. As the revenue of the Society increases, however, it is hoped to deal with these outstandings, many of which would be of considerable interest and practical usefulness to our members.

R. A. Broinowski, J.P.—Mr. Broinowski, the Clerk of the Commonwealth Senate, retired on November 30, 1942, and, although this notice would be more appropriate to Volume XI, in view of our late publication it will be included in the Volume for 1941. On October 9, 1942, the last sitting of the Senate before Mr. Broinowski's retirement, Mr. President announced to the House that Mr. Broinowski would retire on November 30, and that this was therefore the last occasion when he would be present in this Chamber in that capacity. Mr. President then said:

> I take this opportunity to extend to you, Mr. Broinowski, my very sincere thanks for the many courtesies extended to me by you during

> the period in which I have been President of the Senate. I also wish to thank you for your readiness to give advice whenever it has been sought by me as President with a view to assist the smooth working of this branch of the Commonwealth Parliament.

The Minister for the Interior (Senator Collings), in moving the following Motion to place on record the Senate's high appreciation of Mr. Broinowski's long and meritorious service to the Commonwealth Parliament, said that Mr. Broinowski entered the Commonwealth Public Service on February 10, 1902. He was Private Secretary to various Ministers of Defence from 1907 until his appointment to the staff of the Senate in 1911. He rose through the various positions to the high office of Clerk of the Senate, a position he had filled with distinction since January 1, 1939. In addition, he was for 8 years the administrative head of the Joint House Department of Parliament, so that he could be said to have rendered service to the whole of the Parliament. The Hon. the Minister of the Interior then moved:

> That on the occasion of the retirement of Robert Arthur Broinowski from the position of Clerk of the Senate, the Senate places on record its appreciation of the long and valuable service rendered by him to the Commonwealth Parliament and conveys to him good wishes for a happy retirement.

The Leader of the Opposition (Senator McLeay), on behalf of his side of the House, supported the Motion, which he believed adequately expressed their appreciation of Mr. Broinowski's services to this Parliament and to the Commonwealth. The Hon. Senator said that he had always been impressed by the very high standard of efficiency displayed by him in the performance of his duties. He had always been most courteous to Hon. Senators, and he regretted that the time had arrived for him to retire. The Senator then extended to Mr. Broinowski his grateful thanks for the splendid service he had rendered to the Commonwealth Parliament and wished him every success in the future.

The Question was Resolved in the Affirmative.

Mr. President then said:

> On behalf of Mr. Broinowski I thank the Minister for the Interior and the Leader of the Opposition for their expressions of appreciation of the service he has rendered the Commonwealth Parliament. It affords him great pleasure to realize that he has the respect and appreciation of the Senate. I understand that at a later date Mr. Broinowski proposes to offer his services to the Commonwealth Government in some other capacity and in that way assist Australia's War effort.

A Record of the proceedings was also entered in the Journals of the House.[1]

Mr. Broinowski was later entertained at dinner by the Members of the Senate and presented by them with an inscribed silver salver.

As a member of this Society, Mr. Broinowski was always keen and willing to help with his experienced advice as well as being a valuable contributor to this JOURNAL. He joined the Society as soon as he was appointed to the Commonwealth Senate Table. We wish him all the best of good wishes in retirement, and every success in his proposed assistance to the Commonwealth Government in the War effort. Any assistance he may give will not only be sound and thorough, but his services will be rendered in a true spirit of loyalty and devotion to duty.

Captain M. J. Green, V.D., R.N.V.R.—In the year under review in this Volume, Captain Green, the Clerk of the Union Senate, retired from office after a service in the Parliaments of the old Cape Colony and the Union of South Africa of over 45 years, of which 15 were spent at the Table.

On April 28[2] a Motion was moved by the Rt. Hon. the Prime Minister, who assured the retiring Clerk of the sincere appreciation which they all felt for the distinguished service he had rendered the country. The Prime Minister also referred to the honourable service Captain Green had rendered to the R.N.V.R., and said that in all those directions he deserved their respect and gratitude.

Senator Fourie, in seconding the Motion, on behalf of his side of the House underlined the great services which the retiring Clerk had rendered to the Parliamentary institution and the nation for many years.

Senator van Niekerk, in supporting the Motion, said that during the 10 years he had occupied the Chair as President he had had the assistance of one upon whom he could fully depend. Any measure of success in his work in that office was due to the loyalty and helpfulness he had always received from Captain Green, who was not only faithful but courteous, and every Senator, whether Afrikaans- or English-speaking, was at all times treated with the utmost courtesy. Senator van Niekerk referred to Captain Green's knowledge of procedure and Parliamentary precedent.

Senators representative of other sections of the House also warmly supported the Motion and spoke of Captain Green's great helpfulness to them. They saw in him something which linked them with the genesis of Parliamentary government. Before the

[1] 83 S.J. 267. [2] 1940-41, Sen. Deb., c. 1766.

Question was put, Mr. President associated himself with the Motion and expressed his appreciation of the great sense of duty and unfailing courtesy which the retiring Clerk had shown both to himself and his predecessor in the Chair, to Members of all parties in all sections of the House and to the members of the Staff serving the Senate House of Parliament.

The Question was Resolved—*nemine dissentiente*—in the Affirmative, all Senators standing. The President then conveyed the Clerk's sincere gratitude to the House for the Resolution just passed.

During the closing part of the Session, Members of the Senate gave Captain Green a complimentary dinner in the Parliamentary Dining Room (Mr. President in the Chair), at which the Prime Minister (Field-Marshal the Rt. Hon. J. C. Smuts) was present.

The writer of this appreciation had the pleasure of Captain Green's services as a colleague at the Senate Table for many years and can testify to his loyalty and his many personal qualities. We wish him long life and good health in his well-earned retirement.

Krishna, R. V., Dewan Bahadur, Ayyar, C.I.E., B.A., M.L.—Dewan Bahadur Krishna retired from the Secretaryship of the Madras Legislature on August 16, 1941, a position he had held since his appointment thereto, March 14, 1937. His record of service has already been published in the JOURNAL.[1] The Dewan Bahadur was a foundation member of this Society, in connection with the work of which he took a lively and helpful interest. Owing to the working of the Madras Legislature having been suspended by virtue of a Proclamation issued under s. 93 of the Government of India Act, 1935, there have been no meetings of either House of the Legislature since September, 1939, and the establishment of its Secretariat had been practically disbanded, most of its members now working in various other offices. In view of this suspension, the Hon. Members of such Legislature were debarred from paying the Dewan Bahadur those tributes to his long and distinguished service and work which he would undoubtedly have received had his Legislature not been under suspension. His Majesty the King-Emperor, however, showed his appreciation of the Dewan Bahadur's invaluable services in both the Judicial and the Parliamentary services—extending over 17 years—by conferring upon him the Birthday Honour of C.I.E. (June 12, 1941), a distinction it is hoped he will adorn for many years to come. We shall miss his interesting letters and contributions to the JOURNAL, but we wish him every happiness in his well-earned retirement.

[1] *See* Vol. VI, 253.

Honours.—On behalf of their fellow-members, we wish to congratulate the undermentioned member and retired member of our Society who have been honoured:

C.I.E.—Dewan Bahadur R. V. Krishna Ayyar, B.A., M.L., *formerly Secretary of the Madras Legislature;* and

K.C.—Major W. H. Langley, *Clerk of the Legislative Assembly of British Columbia.*

The Atlantic Charter.[1]—Although this subject is not of particular application to Parliament, it is of first-rank importance as an International Instrument; it is therefore given in full for purpose of reference:

Joint Declaration by the President of the United States of America and Mr. Winston Churchill, representing His Majesty's Government in the United Kingdom, known as THE ATLANTIC CHARTER. August 14, 1941.

The President of the United States and the Prime Minister, Mr. Churchill, representing His Majesty's Government in the United Kingdom, being met together, deem it right to make known certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world.

First, their countries seek no aggrandisement, territorial or other.

Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned.

Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them.

Fourth, they will endeavour, with due respect for their existing obligations, to further the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity.

Fifth, they desire to bring about the fullest collaboration between all nations in the economic field, with the object of securing for all improved labour standards, economic advancement and social security.

Sixth, after the final destruction of Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want.

Seventh, such a peace should enable all men to traverse the high seas and oceans without hindrance.

Eighth, they believe all of the nations of the world, for realistic as well as spiritual reasons, must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea or air

[1] United States No. 3 (1941) and United Kingdom, Cmd. 6321.

armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. They will likewise aid and encourage all other practicable measures which will lighten for peace-loving peoples the crushing burden of armaments.

United Kingdom (Prolongation of Parliament).[1]—An Act[2] was passed towards the end of 1941 enacting that s. 7 of the Parliament Act, 1911 (which provides that 5 years shall be substituted for 7 years as the time fixed for the maximum duration of Parliament under the Septennial Act, 1715),[3] shall not apply to the present Parliament. The form of amendment is slightly different from last year, but had to be altered as the length of the present Parliament will now be for the period of 7 years laid down by the Act of 1715. The register existing at the time of the passing of the Prolongation of Parliament Act, 1940, is still in force, a renewal of it being impracticable at the present time. In moving the Second Reading of the Bill in 1941, the Secretary of State for the Home Department said it would be generally agreed by the House that in the midst of a great War, and a War of this particular nature, it would be undesirable to hold a general election and indeed that it would be almost impossible to produce a representative result.[4]

United Kingdom (Ministers of State).—On May 7, 1941,[5] in the House of Commons, the Prime Minister was asked whether it was intended to introduce legislation to legalize the new office of Minister of State, to which the Prime Minister replied that no legislation was necessary for that purpose. The Questioner then asked if such office was not wholly a novel one under their Constitution.

The Prime Minister replied:

> No, Sir, His Majesty has from time immemorial appointed what Ministers he thinks desirable to whatever office he thinks appropriate. Legislation is only necessary where it is desired that the holder of a newly created office should sit in the House of Commons. The Minister of State lately appointed sits, of course, in the other place, but no fresh legislation would be required, even if it were desired to appoint a Minister of State who is a Member of this House, because provision has already been made by s. 2 of the Re-election of Ministers Act, 1919,[6] whereby a Member of the Privy Council may be appointed a Minister of the Crown at a salary and may sit and vote in this House, provided that not more than 3 such Ministers are so appointed at the same time.

[1] *See also* JOURNAL, Vol. IX, 13.
[2] 1 Geo. I, St. 2, c. 38.
[3] 4 and 5 Geo. VI, c. 48.
[4] 374 H.C. Deb. 5, s. 867, 868.
[5] 371 H.C. Deb. 5, s. 856.
[6] 9 and 10 Geo. V, c. 2.

In reply to a further Supplementary as to what was the distinction between a Minister without Portfolio and a Minister of State, the Prime Minister said that the advantage in the new term lay not so much in the distinction as in the difference. They had the same power and authority. They are both members of the War Cabinet and have both general and particular spheres of duty assigned to them. The salary of a Minister of State was the same as that of other members of the War Cabinet, but he did not know whether the Minister of State took it or not.

On May 13, 1941,[1] the Prime Minister was asked in the House of Commons what were the precise functions which would be discharged by the holder of the office of Minister of State. The Prime Minister replied that the Minister of State will discharge general Cabinet duties and the special duties assigned to a member of the Defence Committee of the War Cabinet. The Defence Committee worked in 2 sections: the Defence Committee (Operations) and Defence Committee (Supply). In future the Lord Privy Seal would act as Deputy Chairman of the former and the Minister of State of the latter body. The Minister of State would also act as Reference on priority questions.

Another Hon. Member asked if this Minister would have a seal, and the reply of the Prime Minister was to the effect that, if in the course of the discharge of his important functions it was found that the use of a seal was helpful in the public interest, he had not the slightest doubt that timely measures would be taken to provide it.

On July 8, 1941,[2] a Question was asked the Prime Minister as to what procedure Members should follow when putting Questions pertaining to the action of the Minister of State newly appointed for residence in the Near East, to which the Prime Minister replied that such Questions should be addressed to himself. To a Supplementary, as to whether that meant that the Minister of State in the Middle East was acting as deputy to the Prime Minister, the Prime Minister answered: " No, Sir."

On July 9, 1941,[3] an Hon. Member asked the Prime Minister whether he would define the duties which the Minister of State would discharge in the Middle East; in particular, his relations with, and his authority over, the Commander-in-Chief, H.M. Ambassador in Cairo, and the representatives of this country in the Middle East, who now received their instructions through the Government Departments, and whether the responsibilities of the Secretaries of State for Foreign Affairs, War, Air, the

[1] 371 H.C. Deb. 5, s. 1074.
[2] 373 *Ib.* 28.
[3] *Ib.* 165.

Colonies, and the Minister of Information, were in any way qualified by the new appointment.

The Prime Minister said the principal tasks of the Minister of State are, first, to facilitate the conduct of operations by the Commanders-in-Chief in the Middle East by relieving them, so far as possible, of a number of extraneous responsibilities with which they had hitherto been burdened, and, secondly, to settle promptly matters within the policy of H.M. Government but which involved several home departments or local authorities. The appointment of the Minister of State would not interfere with the existing relationships between the Commanders-in-Chief in the Middle East and the Service Ministers, or between H.M. Ambassador, Cairo, and other representatives of H.M. Government in the Middle East and the Ministers in this country to whom they were responsible. The Minister of State would make reference home whenever necessary on important issues of policy, but it was to be hoped that the presence of a War Cabinet Minister with wide discretionary powers would smooth, hasten and correct action in the Middle East between the various authorities in that area.

The Questioner then asked, in a Supplementary, whether the Minister of State had authority over the Commander-in-Chief and H.M. Ambassador, or whether it was entirely a matter for consultation in the smoothing out of difficulties.

The Prime Minister said that the Minister of State had authority in matters which were not concerned with the conduct of operations, but that authority was derived from his position as a Member of the War Cabinet and could no doubt be exercised in harmony with that fundamental principle.

Another Hon. Member asked, in a Supplementary, if the power of the Minister of State to decide priority questions in the matter of military supplies would not be contingent on the operational functions of the Commander-in-Chief.

The Prime Minister replied that they had set up in the Middle East a new Officer-General, Sir Robert Hansing, as Intendant-General, whose business it was to serve the Commander-in-Chief with the largest possible measure of supplies in accordance with the wishes of the Commander-in-Chief and the needs of the Army, and also in accordance with the practical business of handling the great mass of supplies arriving from the United Kingdom and the United States; the Minister of State would have the benefit of the advice of Sir Robert in anything which might touch this point of his duty. The kind of relations he hoped to see between the Minister of State and the Intendant-General on the one hand

and the Commander-in-Chief of the Army on the other was very largely the sort of relation which prevailed in the matter of supplies between the War Office and the Ministry of Supplies in the United Kingdom and General Sir Alan Brooke, Commanding the Army in the United Kingdom. Another Hon. Member inquired if the Minister of State would be armed with plenary powers or would he be expected to consult with the War Cabinet every now and again?

The Prime Minister:

> Yes, Sir. Nobody in this country has plenary powers except in accordance with the constant supervision of Parliament exercised through the War Cabinet.

In reply to further Supplementaries, the Prime Minister said that the responsibilities for the defence of Iraq had been transferred to the India Command and would be exercised by General Wavell as Commander-in-Chief, India. The Minister of State does not control those areas. He is in the closest touch with the Government of India and could communicate direct with them if he wished, reporting at the same time "to us", and the Prime Minister had no doubt that the closest contact would be arranged by the Minister. The relations of the Minister of State with the representatives of the Dominions on the spot would be of close contact and continuous courtesy and good will.

On July 31, 1941,[1] the Prime Minister was asked whether he would give an assurance that whenever a Minister of State was recalled to the United Kingdom for consultation the House of Commons, if sitting, would be afforded an opportunity of hearing a statement from him and that so far as possible the old constitutional rule would be observed, that a Minister, especially a Cabinet Minister, was answerable for his official actions in this House or in another place.

The Lord Privy Seal:

> Certainly, the constitutional principle remained the same.

House of Lords (Secret Sessions, 1941).[2]—A Secret Session took place on November 21, 1940,[3] the Motion being:

> That the further sitting of the House this day be secret.

On the Question being put and agreed to, the Official Reporter withdrew. Similar procedure was followed on November 27;[4] December 3;[5] December 10;[6] December 11;[7] December 17,

[1] 373 H.C. Deb. 5, s. 1529.
[2] *See also* JOURNAL, Vols. VIII, 13-17 and 99 *n.*; IX, 15.
[3] 118 H.L. Deb. 5, s. 30. [4] *Ib.* 46. [5] *Ib.* 62. [6] *Ib.* 91. [7] *Ib.* 102.

1940;[1] February 26;[2] March 12;[3] June 11;[4] and on June 24, 1941;[5] on which two last-mentioned dates the form of Motion was:

> That the House do now sit in secret.

On September 10, 1941,[6] when the first form of Motion was used, and on October 16, 1941,[7] the form of Motion was:

> That the House do now resolve itself into Secret Session.

House of Lords (Censorship of Questions).—On June 24, 1941,[8] in connection with the asking of a Question concerning the number of enrolled cadets, another Peer, before the Question was replied to, asked whether there was any censorship of Questions, to which the Leader of the House (the Secretary of State for the Colonies) said that there was no censorship in their Lordships' House to correspond with the censorship exercised by the Speaker in another place. Questions which were improper were submitted to the Leader of the House, and, in the event of any recalcitrance on the part of the noble Lord, the way to resolve the difference would be to bring it to the notice of their Lordships' House; but it was fortunately a matter which, so far as he knew, had not arisen.

House of Lords (Supplementary Questions).[9]—When the Fifth Report of the Select Committee on the Procedure of the House of Lords in consideration of starred Questions was noted in our last issue, the debate upon this subject was not available. Such debate took place on December 17, 1940,[10] when the Earl of Onslow remarked that the object of the starred Question was to avoid a lengthy discussion. The whole object of a starred Question was to use that method simply for obtaining information and not for the purpose of discussion upon the matter indicated in the Question.

Lord Davies suggested that the starred Question should have priority on the Order Paper. The form of Motion in adopting the Report was:

> That the Fifth Report from the Select Committee on the Procedure of the House of Lords be now considered and agreed to.

House of Lords (Death by Enemy Action of Resident Superintendent).—On May 13, 1941,[11] the Rt. Hon. the Secretary of State for the Colonies (The Leader of the House, Lord Moyne)

[1] 118 H.L. Deb. 5, s. 186. [2] *Ib.* 516. [3] *Ib.* 705. [4] 119 *Ib.* 380.
[5] *Ib.* 485. [6] 120 *Ib.* 74. [7] *Ib.* 485. [8] 119 *Ib.* 490.
[9] *See also* JOURNAL, Vol. IX, 15. (This Select Committee Report was incorrectly described as a S/C. on "House of Lords" Offices.—ED.)
[10] 118 H.L. Deb. 5, s. 142. [11] 119 *Ib.* 156.

made reference to the air raid of May 10 and the damage done to His Lordship's Chamber as well as the far greater destruction in the Chamber of the House of Commons. Lord Moyne then referred to the death of Captain Elliott, a very old and valued member of the Staff, in that raid and also to the deaths of 2 Police Officers detailed for special fire-fighting duties in the Palace of Westminster. His Lordship said that Captain Elliott had been Resident Superintendent for 20 years, and many of their Lordships both knew and liked him. He was always very helpful and anxious to do anything he could for their Lordships, who would long miss him. Lord Moyne then asked their Lordships to join with him in an expression of deep sympathy with his widow and children. Their Lordships expressed their sympathies with the relatives of the 2 Police Officers who had also lost their lives whilst on duty in the Palace of Westminster. The Earl of Listowel also expressed sympathy on the part of the Opposition Members. The Marquess of Crewe remarked that those who had been killed had lost their lives on the field of honour just as much as those who lie in the valleys and mountains of Greece or in the sands of Africa. His Lordship was sure that they all wished to pay tribute to the service they had done.

Upon the adoption by the House of the Third Report[1] by the House on July 9, 1941,[2] a death gratuity and War injury pension was authorized to Captain Elliott's widow.

House of Commons (Extension of Sitting).—On June 10, 1941,[3] during the course of certain oral Questions, an Hon. Member asked the Prime Minister whether . . . he was going to move that the Rule be suspended to-day in order to enable the debate to be extended; and, further, would he bear in mind that in the 2 days' debate which took place on the fighting in Greece there were at least 3 Government speakers who took part, and that in 2 days only 22 Members had an opportunity of speaking.

After further Supplementary Questions, Mr. Speaker, in reply to an Hon. Member, said: As a matter of fact, the Prime Minister could not move that the House should extend the Sitting by an hour without having given notice, but the Rt. Hon. Gentleman could move that the Rule (1) be suspended indefinitely at this Sitting.

> *Ordered.*—That the Proceedings on any Motion for the Adjournment of the House that may be moved by a Minister of the Crown at this day's Sitting be exempted from the provisions of the Standing Orders (Sittings of the House).—(*The Prime Minister.*)

[1] H.L. Paper (25) of 1941.
[2] 119 H.L. Deb. 5, s. 728.
[3] 372 H.C. Deb. 5, s. 39.

House of Commons (Destruction of Chamber).[1]—On May 15, 1941,[2] the following Resolution, *nemine dissentiente*, was received from the House of Lords and read to the House by Mr. Speaker:

> That this House, taking note with sorrow of the destruction of the Chamber of the House of Commons by wanton act of the enemy, wishes to assure that Honourable House that the House of Peers shares to the full the grief and indignation aroused by the ruin of the place of meeting so long and intimately associated with the liberties of Britain and the spread of free institutions under the Crown.

Whereupon the Rt. Hon. the Prime Minister, after first moving for the consideration of the Lords' Message, which was Ordered accordingly, moved:

> That this House expresses its grateful thanks to the House of Peers for their Message relating to the destruction of the Chamber of the House of Commons, and assures the House of Peers of its determination that the long tradition of our Parliamentary institutions will remain unbroken by the violence of the enemy, and that the War will be prosecuted to a successful conclusion.

The Prime Minister, in moving this Motion, said he felt that the House would not wish this kindly message from the other Branch of the Legislature to pass without formal recognition in the Journals of the House, so that it might be upon record for future generations. The House of Lords had also suffered loss in this last attack in the death of Captain Elliott, so many years custodian of the House of Lords, and of 2 Police Officers who, in the discharge of their duties, fell under the fire of the enemy.

The Question was then put and agreed to *nemine contradicente*, Mr. Speaker stating that he would see that the Resolution was entered in that form in the Journals.

Message to the Lords was then Ordered.

On May 22, 1941,[3] Mr. Speaker stated that he had received a letter from the Chairman of the Press Gallery, enclosing copy of a message to the House from the Members of the Press Gallery, which the Speaker read to the House as follows:

> The Parliamentary Press Gallery desire to offer their sympathy with the House of Commons in the loss it has suffered by the destruction of its historic Chamber, for nearly a century associated with the principles of free speech and a free Press. Members of the Press Gallery, sharing as they do in this loss, feel confident that the great traditions which the House of Commons enshrines are beyond the power of any enemy to destroy.
>
> [*Signed*] ARTHUR BAKER (*Chairman*).

[1] *See also* JOURNAL, Vol. IX, 5.
[2] 371 H.C. Deb. 5, s. 1268; 119 H.L. Deb. 5, s. 171.
[3] 371 H.C. Deb. 5, s. 1553.

In reply to a Question, Mr. Speaker said that the letter would be entered in the Journals of the House.

House of Commons (Reconstruction).—On June 18, 1941,[1] in reply to a Question whether debate would be allowed upon the subject of the form and site for the reconstructed Chamber of the House, the Rt. Hon. the Prime Minister said that he could not conceive that anyone would wish to make the slightest structural alteration in the House of Commons other than perhaps some improvement in the ventilation or some minor readjustment of the accommodation in the Galleries not affecting the size, shape or character.

Another Hon. Member then observed what a relief to many people the Prime Minister's statement would be, in view of the ill-informed suggestions which had been made in regard to the matter.

It was reported in *The Times*[2] that drawings found during a paper salvage hunt at Cheam, Surrey, have been identified as original drawings by Sir Charles Barry, the Architect of the Palace of Westminster, which include drawings of parts of the destroyed House of Commons Chamber. These drawings have lain in the attic of one of the pupils of Mr. Edward Barry, the son of Sir Charles. These plans have been looked over by an expert, and are said to be just the sort of drawings that are wanted.

House of Commons (Staff Losses of Personal Effects).—On May 21, 1941,[3] an Hon. Member asked the President of the Board of Trade whether he would consider compensating in full those members of the Commons staff, who, owing to the bombing of the House, had lost clothes and effects, habitually used by them in the course of their duties. The Parliamentary Secretary to the Board of Trade replied that such members of the Staff were entitled to the same rights under the private chattels scheme in regard both to free compensation and insurance as any other persons and that Staff claims would receive immediate consideration.

House of Commons (Soldier's Vote).—On October 14, 1941,[4] in reply to a Question, the Under-Secretary of State for the Home Department said that all male members of the Forces and the Mercantile Marine who are on the register are entitled to vote as absent voters either by being classified as such when the register is compiled or by subsequent application. They may vote by post or, if they state that they expect to be out of the country, they may nominate a proxy. In the case of voting by

[1] 372 H.C. Deb. 5, s. 814.
[2] Dec. 12, 1941.
[3] 373 H.C. Deb. 5, s. 1524.
[4] 374 *Ib.* 1256.

post, officers must notify registration officers of the addresses to which their ballot papers are to be sent. The addresses of other members of the forces, enrolled when the register was compiled, are supplied through the respective record offices. Those who have joined subsequently are required to give their addresses in claiming to vote as absent voters. Members of the Mercantile Marine must also supply their addresses. Women members of the forces may vote as absent voters if serving abroad or afloat.

In reply to the second part of the Question, whether an approximate indication could be given of the percentage of soldiers, sailors and airmen who have voted at by-elections since the War started, the Under-Secretary replied that the information was not obtainable.

House of Commons (Time Allowed for Divisions).—On October 14, 1941,[1] an Hon. Member on a point of Order said he was in a Select Committee when the Division Bells sounded and on coming into the House he found he was too late to get into the Division Lobby. The Hon. Member asked whether the time allowed for a Division " in these precincts is precisely the same as it was in the other place ". The Deputy Chairman of Committees stated that he allowed 2 minutes between the first and the second call, and after the second call he allowed an extra minute—that is to say, 5 minutes. He thought this would give plenty of time, " but I was keeping my eye open, and if I had seen further Members coming in, I would have extended the time further."

House of Commons (Division in Secret Session).—On October 23, 1941,[2] Mr. Speaker, in explaining the procedure in regard to this subject, stated that Divisions arising upon Questions debated in Secret Session must take place in secret and not in public. A record of the voting would be taken by the Division Clerks, who would be admitted for that purpose only. The Serjeant-at-Arms would be responsible for locking and unlocking the doors. The records of Divisions would be kept in the custody of Mr. Speaker. Defence Regulation No. 1762 provided that:

> (2) If either House of Parliament in pursuance of a Resolution passed by that House holds a Secret Session, it shall not be lawful for any person in any newspaper, periodical, circular or other publication, or in any public speech, to publish any reports of, or to purport to describe, the proceedings at that Session, except such report or description thereof as may be officially communicated through the Press and Censorship Bureau.

Reports of proceedings at a Secret Session are issued under his authority as Speaker. A similar Defence Regulation was in

[1] 374 H.C. Deb. 5, s. 1283. [2] *Ib.* 1912.

force during the last War and similar procedure was followed. (Mr. Bonar Law dealt with this on May 11, 1917, adding that " Mr. Speaker made himself responsible for the report ".) Mr. Speaker considered it his duty to consult with representative opinion from all sections of the House to decide, by conference among them, upon such version of what had taken place in Secret Session as might be in accord with the public interest. If it were desired to publish the record of a Division taken in Secret Session, a Motion could be immediately moved proposing that Mr. Speaker do include the record of the Division in his report of the proceedings. Such Motion would, of course, be debatable. The question upon which the Division took place should, if necessary, be redrafted at Mr. Speaker's discretion so as to exclude any secret matter.

Hon. Members would see, continued Mr. Speaker, that there was one drawback in the last Regulation he had read with regard to debating whether a record of a Division should be published, and it was that, if the Division took place on a Motion for the Adjournment, immediately after it took place, if the " Ayes " had it, the House would adjourn, and there would be no opportunity for any further Motion as to whether a record of the Division should be made public. The only thing to meet that difficulty would be that the House on the next Sitting Day should go into Secret Session and decide whether the record should be made public after a Motion.

In reply to a Question as to whether what Mr. Speaker had said would mean that in future, after every Secret Session, Mr. Speaker would consult with representative opinion in the House as to whether a report should be issued or not, Mr. Speaker said:

> No, it would mean that Mr. Speaker would consult with representative opinion as to whether the record of the Division which had taken place in secret should be included in the report.

In reply to another Question, Mr. Speaker said that the only instance of a Division taking place in Secret Session (*Interruption*) —I am reminded that I am perhaps giving away something which took place in Secret Session—is the one which took place recently.

In reply to a further Question as to whether Mr. Speaker would be prepared to receive representations not only from a group, but even from an individual, Mr. Speaker said: " I should be only too glad to receive representations from any Member of the House."

Another Member inquired, if a Division took place in Secret Session which involved the fall of the Government, would there

be any question of not publishing the names of Members and how they voted? "Surely the public would insist on knowing."

Mr. Speaker:

> In considering these questions, curiously enough, that kind of case did occur to me. Of course, after a Division which caused the fall of the Government it would have to be published anyhow, because, naturally, the country would have to know what was the cause of the fall of the Government.

In reply to a further Question, Mr. Speaker said that in a Secret Session the Division must be held in secret.

House of Commons (Ministers and Secret Sessions).—On May 28, 1941,[1] an Hon. Member asked the Prime Minister whether, when there was any Secret Session of that House and the Minister for the Department under discussion happened to be in the House of Lords, he would consider, prior to the Session, arranging for the Minister to address Members of the House of Commons on any essential features of his departmental working.

The Lord Privy Seal replied that Ministers were always ready to address Members of all parties on the work of their Departments, but he did not think that the Hon. Member's suggestion in relation particularly to matters which were to be debated in Secret Session was a practicable one.

House of Commons (Secret Sessions).[2]—During the year 1941, a Secret Session was held by the House of Commons on November 21, 1940,[3] the entry in *Hansard* being:

> *Notice taken that strangers were present.*
> *Whereupon*, Mr. Speaker, *pursuant to S.O. 89, put the Question*
> "That strangers be ordered to withdraw."
> Question agreed to.
> *Strangers withdrew accordingly.*
> (The remainder of the Sitting was in Secret Session.)

On November 28, 1940, the above procedure was also followed, but the following record of the subsequent proceedings appeared in the Votes and Proceedings:

> Resolved: That the remainder of this day's Sitting be in Secret Session.—(*Mr. Attlee.*)

After which the debate upon the Motion for the Address-in-Reply was resumed.[4]

A Secret Session was held on December 12, 1940,[5] when the same procedure was followed as on November 21, 1940. This procedure was also followed on February 4, 1941,[6] but the

[1] 371 H.C. Deb. 5, s. 1851.
[2] *See also* JOURNAL, Vols. VIII, 19, 98; IX, 16-19.
[3] 367 H.C. Deb. 5, s. 50. [4] *Ib.* 369. [5] *Ib.* 1046. [6] 368 *Ib.* 827.

following record of the Proceedings in Secret Session appeared in the Votes and Proceedings:

> Resolved: That the proceedings in connection with the Motion relating to the Sittings and Business of the House, to be moved by the Lord Privy Seal, be held in Secret Session.—(*Mr. Attlee.*)

The remainder of the day's Sitting on March 13, 1941,[1] was held in Secret Session.

The following record of the Proceedings in Secret Session appeared in the Votes and Proceedings of March 26, 1941[2]:

> Resolved: That the Proceedings in connection with a statement to be made by the Prime Minister and upon any consequential Motion relating to the Sittings of the House, be held in Secret Session.—(*The Prime Minister.*)

A similar Resolution was passed at the Secret Session on April 2, 1941,[3] the statement on that occasion being by the Lord Privy Seal.

Further Secret Sessions were held on May 14,[4] May 21,[5] July 21,[6] August 6,[7] September 10,[8] October 9,[9] 16[10] and 23,[11] 1941. The House was also in Secret Session on July 23, 1941,[12] for the purpose of a Ministerial Statement in regard to the Sittings of the House.

House of Commons (Debates).—On April 8, 1941,[13] the Financial Secretary to the Treasury was asked whether he would consider the advisability of carrying out the recommendations of the First Report from the Select Committee on Publications and Debates Reports 1939-40,[14] with regard to increasing the circulation of the Official Report in particular through the publicity of the B.B.C., as the wider knowledge of the activities of Parliament would be of permanent value to the democratic system and newspaper space was greatly restricted? The Financial Secretary replied that while experience indicated that the circulation of the Official Report was not likely to be materially increased by advertising, the Departments concerned would use any convenient opportunity which might occur, including the broadcast.

On March 11, 1941,[15] the Financial Secretary, in reply to a Question, said that the average number of copies sold of the Commons Debates for February, 1939 and 1940, was—1939, 1,169, and 1940, 1,325 copies respectively. On September 30, 1941,[16] in reply to a Question on this subject, the Financial Secretary

[1] 369 H.C. Deb. 5, s. 1441. [2] 370 *Ib.* 603. [3] *Ib.* 1025. [4] 371 *Ib.* 1230. [5] *Ib.* 1552. [6] 373 *Ib.* 760. [7] *Ib.* 1958. [8] 374 *Ib.* 203. [9] *Ib.* 1149. [10] *Ib.* 1531. [11] 373 *Ib.* 895. [12] *Ib.* 1943. [13] 370 *Ib.* 1414. [14] *See* JOURNAL, Vol. IX, 89. [15] 369 H.C. Deb. 5, s. 1152. [16] 374 *Ib.* 504.

said that the subscription rates for Libraries was £1 *p.a.*, which worked out at about 2*d.* a copy.

House of Commons (Publications and Debates Reports).—The First Report[1] from this Select Committee was tabled and ordered to be printed on December 19, 1940.[2] The Committee considered the arrangements for the printing of the official Report of Parliamentary Debates and of the Minutes of Evidence of Select Committees.

Sir William Codling, the Controller of H.M.S.O., was examined upon the new arrangements made to overcome recent delays in printing and the delivery of the Official Report and Minutes of Evidence. In para. 4 of its Report, the Committee stated:

> These new arrangements involved the acquisition of premises and plant. Suitable premises and plant have been found; the publication of *Hansard* to time has continued without interruption and an improvement in the printing of other Parliamentary documents may be expected. Type faces of the customary size and character will be available at an early date. Your Committee are hopeful that these arrangements will prove satisfactory.

House of Commons (Legislation by Reference).—On May 22, 1941,[3] in the House of Commons, the Prime Minister was asked whether he was aware that his predecessor's instructions to Parliamentary counsel[4] to mitigate the inconveniences of legislation by reference, whenever possible, by using typographical devices to indicate the changes proposed, and by setting out in a schedule the law as it would be when amended, rendered such legislation more intelligible, both to Hon. Members before enactment and to lawyers and the public after enactment; whether he was aware that the Finance Bill reverted to the old practice.

The Lord Privy Seal replied that it was assumed the Hon. Member referred to the answer given by the Rt. Hon. the Prime Minister's predecessor on July 26, 1938,[5] but that statement

[1] H.C. Paper 8 of 1940-41.
[2] 367 H.C. Deb. 5, s. 1361.
[3] 371 *Ib.* 1581.
[4] *I.e.*, Govt. Legal Draftsmen.
[5] 338 H.C. Deb. 5, s. 2922. On July 26, 1938, Mr. Keeling asked the Prime Minister whether he has considered a memorandum on the evils of legislation by reference submitted to him by a number of Members; and whether he has any statement to make?

The Prime Minister: I have every sympathy with the Hon. Members who submitted a memorandum to me in their desire to find a method of making legislation by reference more intelligible. I have considered the memorandum with interest, and I am grateful to them for their suggestion, which is more promising than many that I have previously considered. The suggestion made is, in effect, that a Bill amending or applying an existing enactment by reference should contain a schedule setting out the enactment as it will read when amended by the Bill and showing by typographical devices the amend-

did not bear the interpretation the present Question put upon it. The Lord Privy Seal, however, assured the Hon. Member that the suggestions made by him in 1938 had not been overlooked, even though the number of cases in which Parliamentary Counsel were able to proceed experimentally in accordance with his predecessor's instructions would necessarily be limited for the reasons stated in the answer to which reference had been made.

The Questioner then asked whether it was appreciated that a number of Bills had been printed in this improved form showing in a Schedule the alterations to be made in the law and using different typographical devices. That practice had now been abandoned, and he understood the idea was to save paper. Would his Rt. Hon. Friend consider any evidence that he (the Questioner) sent him that Hon. Members would really like to understand Bills?

Another Hon. Member remarked that, in these days when discussions on Bills had to be curtailed, it was more than ever necessary that amendments in the law should be made clear to Members and the public without elaborate search, especially in a Bill like the Finance Bill, which severely touched all classes of the community.

The Lord Privy Seal replied that he would certainly consider any points which the Questioner offered to send him.

House of Commons (Privilege: Detention of Members under "18B").—On December 19, 1940,[1] in the House of Commons, the Prime Minister was asked whether he would consider the

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ments proposed. This method is not, I understand, put forward as a panacea to be used in all cases, and I think it is conceded by all who have studied this question, that it would be quite impracticable to attempt to lay down any standard method of uniform application. For instance, in many cases, the suggested schedule would be misleading because, owing to intervening legislation and other causes, the reproduction of the original enactment as amended by the Bill would not state the law as it would be when the Bill passed. Moreover, in other cases, the amendment proposed by the Clause can be made intelligible to any reader by adopting the well-known practice of inserting in the Clause words in brackets describing the effect of the enactment to be amended.

There are, however, undoubtedly some cases where the method suggested by the memorandum would be both practicable and advantageous, and I have instructed the Parliamentary Counsel to proceed experimentally on the lines suggested in suitable cases. I hope that as a result some progress may be made towards making amending legislation more readily intelligible; but I cannot allow my hope to become too sanguine because I realize that much of our amending legislation has to be grafted into so complex a body of existing law that it cannot always be expressed in such a way as to be easily understood without specialized knowledge and some research, if it is accurately to produce the desired result.

[1] 367 H.C. Deb. 5, s. 1346.

advisability of amending Regulation 18B made under 1 (2) (*a*) of the Emergency Powers Defence Act, with a view to including the principles of the Act of 1715, which laid down that an M.P. shall not be detained until the consent of the House has been obtained.

The Prime Minister replied that he hoped it would not be necessary again[1] to exercise this power in the case of a Member of Parliament, but if in the course of this War—a War in which Parliamentary liberties and all other liberties were at stake—it should be necessary for purposes of public safety to make an order for the detention of a Member, he did not think it would be right for the Minister charged with this grave responsibility to be powerless to take action—however urgent the need might be—unless Parliament were sitting or were specially summoned, and until after there had been a Parliamentary Debate and a disclosure of the information available to the Government, information which might possibly relate to matters of a most secret character.

In a Supplementary the Prime Minister was then asked whether he could consider giving an assurance that if any future case should happen it would be automatically referred to the Committee of Privileges, so as to enable the House to keep a check on the actions, not of this but of any possible future Government.

The Prime Minister replied that such course was found convenient and appropriate in the only case that had arisen, and, without committing himself to some absolute general rule, he imagined it was the course which the House would desire to be followed.

In a Supplementary by another Hon. Member, the Prime Minister was asked if his attention had been called to the following Motion standing on the Order Paper:

> [*That, in the opinion of this House, Regulation 18B of the Defence (General) Regulations should be modified so as to provide that the detention of a Member of this House, under the powers conferred by that Regulation, should be reported immediately to the House and should not continue without the approval of the House after consideration of the charges against the Member and his defence against them.*]

Another Member then asked the Prime Minister whether, in view of his well-known support of all constitutional principles, he did not think Regulation 18B could now be amended to introduce safeguards of a general nature, to which the Prime Minister replied that he did not think the time had yet come when their dangers had receded sufficiently far for them to be able to

[1] *See* JOURNAL, Vol. IX, 64, for "The Ramsay Case".

relax the special precautions which the House had thought necessary, and to withdraw the exceptional powers which Parliament had entrusted to the Executive under the constant supervision and control of Parliament. The time might come, but it had not come yet.

On January 21, 1941,[1] the Question was asked the Prime Minister, whether he would consider making immediate arrangements to secure that, in the event of any further Hon. Member being detained under Regulation 18B, the Advisory Committee to consider his case should be composed of his colleagues of this House, with a view to safeguarding him against any possible misuse of the powers conferred.

The Prime Minister said that he was most anxious that there should be full safeguards against any possible abuse of those powers, not only in the exceptional case of a Member of Parliament, but in every case where a citizen was detained under that Regulation. He could not accept the suggestion that the existing procedure did not provide adequate safeguards.

Another Member then asked the Prime Minister whether he could consider the possibility of giving time for the discussion of the Motion given above.

The Prime Minister replied that this was one of the matters which was settled through the usual channels.

House of Commons ("18B": Judicial Decision).—On November 11, 1941,[2] an Hon. Member asked the Prime Minister whether, having regard to the constitutional position revealed by the judgment of the House of Lords in the case of *Liversedge* v. *Anderson* and another, he could himself introduce legislation (1) to provide safeguards against abuse of the absolute powers of arrest and detention at present possessed by the Secretary of State for the Home Department; (2) to give effect to the interpretation of the wording of Regulation 18B supported by Lord Atkin in his dissenting speech.

The Prime Minister replied that it was not proposed to introduce such legislation. Those powers were conferred upon H.M. Government by the House and they were not yet in a sufficiently secure position to abandon them.

The Hon. Member then asked in a Supplementary whether it was not a fact that, when those Regulations were originally introduced, the House took the strongest possible exception to the liberty of the subject being placed at the sole discretion of the Home Secretary, with the result that the Regulations were changed, but that now this decision of the ultimate Court of

[1] 368 H.C. Deb. 5, s. 24. [2] 374 *Ib.* 2040.

Appeal had established the fact that the new words meant exactly the same as the old ones; and therefore, should not there be some change? To which the Prime Minister replied that he was advised that the Hon. Member was incorrectly informed.

Another Hon. Member then asked if the Prime Minister's attention had been drawn to the Motion on the Order Paper signed by some 60 Members of the House who represented all shades of political opinion calling for a modification of Regulation 18B.

An Hon. Member then asked Mr. Speaker if the Prime Minister's answer did not show that the present procedure of the House in making known to Ministers the existence of Private Members' Motions on the Order Paper and the names of the Members appended thereto was at present quite inadequate.

Mr. Speaker:

> That is not a question to which I can give an answer at this moment.

Another Hon. Member in a Supplementary asked the Prime Minister whether he was aware that the interpretation given to Regulation 18B by Lord Atkin in his dissenting judgment was precisely the interpretation placed upon it by the then Home Secretary when the new Regulations were presented to the House, and had not the House accepted those Regulations on the basis of an interpretation which the House of Lords, by a majority, had held to be wrong?

The Prime Minister then observed that he could not attempt to answer that matter at Question Time as it raised a number of legal points and he would have to refresh his memory by reading what was said when the Regulations were passed. The position of the Government was that the House conferred certain powers on them of its own free will. Those powers were being exercised. They had not been abused in any way; otherwise, the House would certainly have brought the matter up. They did not propose, at the present time, while the danger continued to be so severe, to volunteer the return of such powers.

The Hon. Member who asked the Question then gave notice that, owing to the great change which had been made by this legal decision, he and his Hon. Friends would be bound to raise this matter at the earliest possible opportunity.

House of Commons (Absent M.P.s' Votes).—On April 8, 1941,[1] a Question was asked the Prime Minister whether he would consider the adoption of some method, similar to that provided in the Representation of the People Act, for absentee voters, thus

[1] 370 H.C. Deb. 5, s. 1411.

enabling those Members of the House who were absent therefrom, owing to the work on which they were engaged being regarded by the Government as of material importance, to record their votes.

The Lord Privy Seal replied: "No, Sir. This suggestion is contrary to the tradition and spirit of the House of Commons."

House of Commons (M.P.s Receiving Barrister's Fees).—On May 27, 1941,[1] an Hon. Member asked the Attorney-General for information regarding the sums received by individual M.P.s who were Barristers on account of Government briefs during the past 12 months, giving the number of briefs distributed and the total sums received in each case.

The Attorney-General gave the information in detail, which concerned 6 M.P.s, who had 8 briefs between them at a total fee of £111, the fees in one case (Mr. L. Gluckstein) not having yet been paid.

House of Commons (M.P.s and Legal Appointments).—On June 10, 1941,[2] the Attorney-General was asked for the names of M.P.s who were on the Attorney-General's list for Crown prosecutions in the several assize areas or held the position of standing counsel to a Government Department.

The Attorney-General replied that he was free to nominate any counsel whom he might think suitable for public prosecutions where the prosecution did not fall to be conducted by Treasury counsel or by any standing prosecuting counsel to a Government Department. There was no official list of those exclusively entitled to such nominations, though he kept for his own use a list of those junior counsel who from time to time he knew of as likely to be suitable. All practising barristers in the House were available for consideration for these nominations. The only M.P. who held the position of a standing counsel was the Hon. Member for Eccleshall, who was junior counsel for the Crown in peerage and baronetcy cases.

House of Commons (M.P.s' Speeches and Enemy Propaganda).—On July 23, 1941,[3] the Minister of Information was asked whether he could send to Members instances showing how their speeches on Questions were made use of for enemy propaganda.

The Minister, in his reply, said that his Rt. Hon. Friend the Chancellor of the Duchy of Lancaster promised to institute an arrangement of that kind. This has been done, and he would be glad to continue the practice.

House of Commons (M.P.s and Visits).—On October 14, 1941,[4] an Hon. Member asked the Secretary of State for the Home

[1] 371 H.C. Deb. 5, s. 1735. [2] 372 *Ib.* 49. [3] 373 *Ib.* 509.
[4] 374 *Ib.* 1248; *see also Ib.* 2078.

Department why he had refused permission for the Hon. Member for Shettleston to visit Ireland, for purposes arising out of his Parliamentary duties, and whether that was the general policy in regard to Members of Parliament.

In his replies to this and Supplementary Questions, the Under-Secretary said that War conditions had made it essential to reduce the volume of traffic and to restrict permits to cases where the applicant was travelling on business of national importance, or to his home. In the instance of the Hon. Member for Shettleston, in neither case did the reasons which he gave for the visit enable the application to be granted.

The general rule was that the reason for the visit must be that it is of national importance or for domestic purposes. The same principle applied to a Member of Parliament as to the general public, and if a Government Department was prepared to certify that the visit was in the national interest his permit would be granted. It was quite obvious that exceptions could not be made from these general rules in the cases of M.P.s.

House of Commons (Soldiers and M.P.s).—On May 20, 1941,[1] in the House of Commons, a Question was asked the Prime Minister as to whether it was contrary to the Regulations in force in Army, Navy or Air Force, for an officer or O/R to write direct to his Member of Parliament on any subject affecting the welfare of the Services, provided he did not make disclosures contrary to the Official Secrets Acts. Could a man be prevented from, or punished for, writing such a letter, and could he make sure that this information shall be received by those concerned, by including this information in the daily routine orders of the three Services as soon as possible ?

The Prime Minister replied that the King's Regulations required serving officers and men who wished to make any representations relating to Service matters to do so through the recognized Service channels and in no other way. The practice and principles of the Service in this respect were, however, well understood, as also were the reasons underlying them. These reasons were fully explained to the House on December 10 last.[2]

House of Commons (M.P.s on Active Service: Presumption of Death Procedure).—On February 6, 1941,[3] an Hon. Member (Major Sir Edward Cadogan) asked Mr. Speaker whether he had considered the position which had arisen through the existence of vacancies in respect of M.P.s gazetted as missing on active service and afterwards presumed to be dead, and whether he could

[1] 371 H.C. Deb. 5, s. 1410.
[2] 368 H.C. Deb. 5, s. 1088.
[3] *See* JOURNAL, Vol. IX, 21.

state what procedure should be adopted in deciding whether or not writs should be issued to fill such vacancies.

Mr. Speaker replied that he had been giving the question consideration. It did not arise during the last War and must be decided without precedent. He had made inquiries as to the procedure adopted by the Service Departments in such cases, and he was satisfied that all precautions were taken to ensure that such entries were not made until there was no longer any reason to doubt that presumption corresponded with fact. It seemed to him, therefore, that the House might accept a notification in the casualty lists that one of its Members was presumed to have been killed on active service as sufficient evidence of the existence of a vacancy in the seat of that Member through his death. But as some element of doubt, however slight, must persist about such cases and in view, further, of the obvious difficulties that might arise if such doubt proved in a particular case to be justified, he felt it his duty to give Members an opportunity of thinking over what was really a new departure in their practice before he decided to put it into effect.

Mr. Speaker, continuing, said:

> I propose, therefore, to wait for a week, during which any Member who has any objection to raise or suggestion to make with regard to this matter may communicate with me. If by the end of that period, I have received no such objection or suggestion, I will assume that Members generally are in agreement with the procedure which I have outlined and I will make a further statement to the House, proposing that this procedure be put into operation as from that date.

An Hon. Member then asked if it would be possible to convey to Members the way in which the War Office verified its information, to which Mr. Speaker replied that he would consider the matter.

Another Hon. Member then asked if Mr. Speaker's Ruling would cover a Member lost at sea (naming the Member), to which Mr. Speaker replied:

> That case would not be covered.

On February 13, 1941,[1] Mr. Speaker informed the House that two Hon. Members had submitted proposals to him, which he was considering, and he hoped to make a further statement at a future Sitting.

On February 20, 1941,[2] Mr. Speaker, during the course of a further statement on this subject, said that it had been suggested to him that it was desirable that the House should have a more

[1] 368 H.C. Deb. 5, s. 1527. [2] 369 *Ib.* 299.

direct responsibility for determining when a vacancy through presumption of death had arisen, and also that the procedure should be sufficiently comprehensive to include death through enemy action as well as of Members on active service. Mr. Speaker then suggested the following procedure:

> For the purpose of determining the existence of vacancies through presumption of death, I propose to secure the assistance of a panel of advisers, consisting of Members representative of the various sections of opinion in the House. When the presumed death of a Member through any form of enemy action has been notified to me, I will, at my discretion, consult two Members of this panel, and, if it is found necessary, inquire into the evidence on which the presumption of death is based. If satisfied, I will announce the presumed death of the Member to the House, according to my usual practice. I propose that a period of a week should then be allowed to elapse, during which it would be open to any Member of the House to address a request to me for further imformation. After the expiration of a week, it would be permissible to move a writ in the room of a Member presumed to be dead.

Mr. Speaker then informed the House that he had invited certain 5 Members, naming each, with his constituency, to serve on the proposed panel.

On February 25, 1941,[1] Mr. Speaker informed the House that the 5 Members had signified their willingness to serve on the panel, and that in addition he had invited a sixth Member, who had accepted, also to serve.

House of Commons (Court-Martial of M.P.).—On July 31, 1941,[2] the Secretary of State for War informed the House that he had received the command of His Majesty to acquaint the House that Major Sir Herbert Paul Latham, Baronet, a Member of this House, had been placed under arrest in order to be tried by court-martial in respect of alleged offences against Military Law; whereupon the following Resolution was passed:

> That an humble Address be presented to His Majesty to return the thanks of the House to His Majesty for His Most Gracious Message and for His tender regard for the Privileges of the House in the communication which he has been pleased to make to this House of the reason for putting Major Sir Herbert Paul Latham, Baronet, under arrest.
>
> *To be presented by Privy Councillors or Members of His Majesty's Household.*

House of Commons (Ministers' Visits to Constituencies).—On May 1, 1941,[3] in the House of Commons, an Hon. Member asked the Prime Minister whether he would arrange that Members would be given adequate notice of the intention of Ministers

[1] 369 H.C. Deb. 5, s. 375. [2] 373 *Ib.* 1540. [3] 371 *Ib.* 560.

visiting their constituencies and thus obviate the apparent discourtesy of Members not being able to welcome them personally.

The Lord Privy Seal said he would bring his Hon. Friend's suggestion to the notice of his colleagues.

The Questioner:

> Can we take it that something tangible will result, as my constituency was the subject of a recent visit by the Prime Minister, and as the Member, I did not know he was there ?

House of Commons (Minister's Attendance before Commons Select Committees).—On October 23, 1941,[1] in the House of Commons, an Hon. Member asked the Prime Minister whether he had any further statement to make regarding this subject, who, in the course of his reply, said he had no thought of laying down any new procedure or of interfering with the normal powers exercised by Select Committees of this House for the summoning of witnesses.

In a Supplementary, another Hon. Member asked:

> Is it not clear that Select Committees have a right to call for Ministers ?

to which the Prime Minister replied:

> Yes, Sir, they have a right, but I think if that right were unnecessarily exercised, it would be necessary for the Government to seek comfort from the House.

House of Commons (Elections and Register of Electors).—During the 1940-41 Session a Local Elections and Register of Electors (Temporary Provisions) Bill[2] was passed, continuing until December 31, 1941, the provisions of the Act[3] of the same name passed in the previous year, with certain additions and amendments. That Act suspended local elections until the end of 1940 and provided for the continuance in office of members of local councils whose time would otherwise have expired and for the filling of casual vacancies which might occur through death or resignation of members of local authorities by co-option.

The Act also suspended all steps towards the preparation of a register of electors and of a jurors' book. Although it is the intention of the Government that normal electoral activity should be suspended until the War is over, it is desirable to proceed by stages so that Parliament should have the matter under control. For that reason, it was also stated in the House of Commons,[4] the period during which local elections were suspended would be advanced from time to time by further legislation as was done

[1] 374 H.C. Deb. 5, s. 1911.
[2] 4 and 5 Geo. VI, c. 49.
[3] 3 and 4 Geo. VI, c. 3.
[4] 367 H.C. Deb. 5, s. 818.

during the last War. "Indeed," remarked the Minister, "the circumstances now prevailing are far more urgent in warranting the suspension of electoral activity than those which existed 12 months ago."[1]

The last Register of Electors was compiled in 1939.

During the same Session a local Elections and Register of Electors (Temporary Provisions) (No. 2) Bill was passed, continuing until December 31, 1941, the Act of 1939,[2] which was amended by the Act of a similar title already referred to.

Canada (Legislative Function of the Senate).—On April 1, 1941,[3] on the Order of the Day, in the Senate, the Rt. Hon. A. Meighan called attention to the treatment of Parliament and particularly of the House of Senate in regard to legislation. Apart from 3 or 4 Private Bills, there was nothing before the House, and they were now in the third or fourth month of the Session. The only measure they had had before them was a Money Bill, which they could not amend, and, traditionally at least, had no right to reject. He doubted whether there ever was a time in their history when more legislative problems were being dealt with than now, questions affecting vast sums of money, vast rights of property and the rights and liberties of the subject and questions touching everything sound and important in their national life. The rest was dealt with by Order-in-Council. Tremendous things were being done behind the closed doors of Government while Parliament was sitting. If this continued, what would become of Parliament or of their branch of Parliament?

The Leader of the House (The Hon. R. Dandurand), replying for the Government, said that this was a War Session. There was not a financial question without such a bearing. The men at the helm of what were called the War Departments were in the other House. It was for them to answer questions. The Ministers were overburdened with work and could not be expected to duplicate their work in the House of Senate.

Canada (Allocation of Business between the Two Houses).—On March 6, 1941,[4] on the Orders of the Day in the House of Commons, an Hon. Member inquired of the Prime Minister if the Government could, in view of the gravity of the War and the present financial situation, consider appointing a Committee of the House of Commons to meet Their Honours of the other Chamber to consider a reallocation or redivision of the work of the two Houses. The other House had adjourned for a further

[1] 367 H.C. Deb. 5, s. 818.
[2] 2 and 3 Geo. VI, c. 115.
[3] LXXIX Sen. Deb. No. 14, 115.
[4] CCXXVI Can. Com. Deb. 1279.

2 weeks and yet Parliament had an extensive legislative programme to deal with. In Washington and London the " other " Houses are co-operating and doing a great deal in connection with War work. The Hon. Member said he had brought up this matter in 1940,[1] and before that in 1939.[2] On both occasions the Prime Minister said that the matter would be given consideration.

The Hon. Member realized how busy members of the Government had been, but there were many learned gentlemen in the other House as well as former Members of this House, and he was sure that that House could relieve the Commons of a lot of work. Last Session the other House could have handled the questions having to do with subversive elements and enemy propaganda and all that kind of thing. There were many fine Members of Parliament in the other place, and the Hon. Member asked the Prime Minister to consider the matter and give him a reply.

The Prime Minister (The Rt. Hon. W. L. Mackenzie King) replied that the Government would carefully consider the matter to which the Hon. Member had referred. The Government had considered this matter repeatedly. The Leader of the Government in the Senate had brought up the subject time and again in meetings of the Cabinet. He did so only a few days ago with regard to the work of the present Session. Mr. Mackenzie King remarked that the answer which he had just given to the Leader of the Opposition as to the legislative programme for this Session answered, at least in part, the question the Hon. Member had asked. The important measures to be considered this Session were all financial measures, the War Appropriation Act, the Budget and Supply, and in the nature of things these must originate in the House of Commons. They could not reach the Senate until the Commons had disposed of them.

If there were other measures contemplated, the Government might consider having them introduced in the Senate, unless there was some special reason why they should first be introduced in the Commons. For this Session the Government is refraining from bringing down many measures which ordinarily it would wish to bring down, simply because it desired to have the attention of the House concentrated as exclusively as possible on matters pertaining immediately to the War.

There is nothing to prevent the Senate from taking any course with respect to its own proceedings which it might deem advisable. Mr. Mackenzie King agreed with the statement of his Hon. Friend that there was great talent in the other House,

[1] CCXXIII Can. Com. Deb. 1918. [2] CCXIX Can. Com. Deb. 1471.

but it was for the Hon. Members there to control their own business and to decide in what way they could, through their Membership, render the greatest service to the War effort. His Hon. Friend had suggested a conference between the Members of the two Houses, but the Prime Minister doubted if that procedure would be helpful at this time, for the simple reason that the Government itself must decide how its business could best be advanced. Having carefully reviewed the situation, they felt that, for the present Session at all events, they must hold to the particular course outlined, without placing restrictions either on this House or on the other, in order to make the most rapid headway they could with Government measures.

Canada: Saskatchewan (War: Attendance of Ministers and Payment of Members).—In Session IV (1942) of XIth Legislature, an Act[1] was passed amending the Legislative Assembly Act[2] providing for the payment of Secretarial Indemnities to Members temporarily "loaned" to the Canadian Dominion Government for War or other special work, not of a military character. For instance, the Minister of Agriculture (Hon. J. G. Taggart), who is Federal Food Administrator of the Dominions Wartime Prices and Trade Board, with H.Q. at Ottawa, and the Minister of Labour (Hon. R. J. M. Parker), Chairman of the Regional Labour Board for the Federal Government, are thus now able regularly to attend Parliament.

S. 56 of the Act dealing with payment of M.P.s (called in Canada "indemnity") is also amended by the addition of a subsection:

> (2) A certificate purporting to be signed by the Clerk of the Legislative Assembly and stating that, to the best of his knowledge or belief:
>
> (*a*) a named member of the Assembly has been on active service in consequence of War, during the whole session or a specified portion thereof;
>
> (*b*) such member is on duty outside Canada;
>
> (*c*) a specified sum is payable in respect of the Sessional allowance and travelling expenses of each member;
>
> shall be sufficient authority to the Provincial Treasurer to pay the sum so specified, either to such member or to his duly authorized attorney.

Canada: House of Commons (Status of Members of Parliament in His Majesty's Forces).—On May 28, 1941,[3] in the House of Commons, Mr. Alan Cockeram (York, South) rose to a question of personal privilege, stating that he was also an officer in His

[1] Chap. 4, Stat. Sask. *See also* JOURNAL, Vol. VII, 49.
[2] Rev. Stat., C. 3.
[3] CCXVII Can. Com. Deb. 3207.

Majesty's forces in the Canadian active Army. In his capacity as an M.P. he attended a meeting of the political party, to which he belonged, in his constituency. He was asked to discuss the status and development of Canada's War effort as he saw it and the present military situation in Canada. As an M.P. answerable to the people of this country and his constituency, he believed that it was his right and duty to comment on the situation as he appreciated it.

What he said, however, did not meet with the approval of the Minister of National Defence (Mr. Ralstson), who wrote a letter to him raising a very important question affecting his personal privileges as a Member of that House, and also the status of every Member of Parliament who wears His Majesty's uniform. The issue raised was of the utmost importance to him and to every Member who now wears, or may in future wear, His Majesty's uniform in any of their armed forces. As it affected others besides himself, and as the course to be followed was one which should be clearly understood, he placed the facts before the Members of the House and asked for their guidance.

The Hon. Member said he had deferred raising the question before, partly on account of his military duties and partly because, as he was free to confess, it seemed to him that the Minister's letter was more or less of an ultimatum demanding that he resigned his commission or kept quiet—that is, unless he undertook to avoid any discussion of the most important of all subjects for discussion at this time. After considerable thought, he decided that this was a question of great principle and magnitude, upon which he should not compromise, and he therefore rose not only for his own benefit but for the benefit of other Members of Parliament now in uniform, or who might be in uniform in the future, so that they might know what was really their position.

The Hon. Member then read the following letter written to him by the Minister of National Defence, delivered to him on April 22:

OTTAWA.
April 16, 1941.

DEAR MAJOR COCKERAM,

A newspaper report of a speech which you made in Toronto was brought to my attention the other day. I felt that it called for some notice by me.

I am writing you now not as Minister of National Defence but as a fellow Member of Parliament, and as one who has occupied the dual position which you now hold—namely, representing a constituency in the Legislature and at the same time being an officer in His Majesty's forces.

I know it is hard to define the line between these two functions, but I really think that there is a line and a very definite one between them. Your duties as a Member of Parliament entitle you to express your opinions in the fullest possible way on all public matters, but your obligations as an officer are governed by King's Regulations and Orders, which require that an officer restrain himself from any expression of opinion regarding the administration of the Army otherwise than through the recognized channels—namely, by way of complaint to superior officers.

Obviously, an officer who is not a Member of Parliament cannot, consistently with his obligations and while serving, express himself publicly as you have done at a political gathering, and if an officer, simply by being a Member of Parliament, is not bound by the Regulations, then officers who are so bound have a right to feel that they are being discriminated against in requiring that they adhere to the rules.

In this respect, the two functions, if you want to exercise them to the full, must inevitably come in conflict, and the only way in which a man can carry out his functions is to decide that the exercise of his rights as a Member of Parliament will be limited by his obligations to the service.

If he cannot do that, then obviously the " man-fashion " thing to do is to abandon the attempt to hold both positions. The Army obviously cannot make " fish of one and flesh of another ", and there is nothing in King's Regulations which excepts Members of Parliament, or anybody else for that matter, from the age-old restriction which prohibits officers discussing publicly matters which affect the administration of the service.

I think that it is possible for a man to perform his duty to his constituents and at the same time to refrain from exercising special privileges as an officer which are not open to his brother officers, but the individual must, of course, decide whether he is willing to do that.

I have already had before me the case of a Member of Parliament who did not happen to be of your political faith, who expressed opinions in public regarding administration and who was dealt with promptly and told that, if he felt that his duties as a Member of Parliament prevented him from observing his obligations as an officer, then there was no alternative but for him to choose which function he felt he should perform and that, in so far as there was conflict, the rules governing the conduct of officers would have to be observed while he remained an officer. I just mention this to let you know that you are not being singled out in any way for this note of caution. I want to believe that you did not understand just what the situation was, but, as I say, I am writing you as a fellow Member of Parliament to give you the views I have just expressed for your consideration as a citizen of Canada.

I trust that you can adapt yourself to the situation so that you can carry on in both capacities, but I did think that I should remind you of what you must realize and of what you may have inadvertently overlooked in the instance in question.

For obvious reasons, I have not discussed at all the merits of what you are reported to have said. If you are a Member of Parlia-

ment, these things will be discussed in the proper place, but if you are an officer, the subject is not open for discussion.

Yours very truly,
J. L. RALSTON.

The Hon. Member continued that he did not intend to discuss the viewpoint expressed in the letter, which spoke for itself. He merely wished to point out one very contradictory aspect of the letter. It started by saying that it was not being written to him by the Minister of National Defence in his capacity as Minister of National Defence, but merely as an M.P. It then went on to say, however, that disciplinary action had been taken against another Member of that House. The Minister of National Defence, who in his letter to the Hon. Member first assured him that he was not writing as such, then made this comment:

I just mention this to let you know that you are not being singled out in any way for this note of caution.

That comment made it abundantly clear that the Minister of National Defence did not intend him to treat the letter merely as an expression of his opinion as a private Member, but that he did intend it to be received as a note of caution and warning from the Minister of National Defence in his capacity as such. And as Minister of National Defence he then went on to lay before him the alternatives that he must remain silent upon the general public aspect of military matters, although they were an inseparable part of Canada's War effort, or resign his commission.

The Hon. Member challenged that position. The Minister of National Defence said that at least one other Hon. Member had been similarly threatened. He believed it his duty, therefore, to lay the facts before Mr. Speaker. The Hon. Member thought this a matter upon which there should be a clear understanding on the part of every Hon. Member of the House. It was a subject which would assume increasing importance as time went on. It was a matter of supreme importance that the democratic principle of the right and duty of Members of Parliament truly to express themselves on public matters must prevail. He had not criticized his superior officers. He had criticized matters of public policy, but had not divulged any information that had come to him in his capacity as a member of the armed forces, and on that basis his remarks were wholly in order and fully justified.

The Minister of National Defence said that he had not the faintest idea that this matter was to be brought up that day. He had seen the Hon. Member quite a number of times, but he had never mentioned the matter, which he felt was something with

regard to which some notice should have been given if it was to be discussed. He said to the Hon. Member quite frankly that before he wrote him the letter he did have some consultation, though not with anyone in authority in the Canadian forces; he endeavoured to find out what had been the practice in Great Britain, and he was informed that there, in a case which seemed to him somewhat similar, the course which he had adopted with regard to his Hon. Friend had been taken by the then Minister—that is to say, not to write him an official letter, not to give instructions to officers that he be brought up on the carpet, as it were, to answer for anything that had been said, but simply to write him a note in a personal capacity in order that he might have the views of one who happened to be a Member of this House and who also happened to occupy the position of Minister of National Defence—and who, some years ago, was in somewhat the same position when he happened to be a Member of the Provincial Legislature and at the same time an officer of His Majesty's forces. And he wrote the letter in that spirit.

His Hon. Friend said the letter was not written as the letter of a private Member at all, and that it was intended as a threat. He said to his Hon. Friend that if a threat had been intended he would not have bothered to write the letter; he would have taken the usual military procedure in this connection in order to have the matter properly dealt with by the military authorities. But he did not do that in this case; he wrote. (*Interruption.*) He wrote his Hon. Friend what he thought was a courteous letter; a letter which might go from one Member of the House to another; what e thought might be regarded as a letter from one officer and ntleman to another officer and gentleman. He was therefore ittle surprised that, without notice at all, his Hon. Friend should ing up the matter in the House in that way.

He was not going to deal with the merits of the case that afternoon. He did not know what disposition his Hon. Friend desired made of the matter. But he recognized, as well as anyone in that House, the difficulties which confronted Members who happened also to be officers of His Majesty's forces; and he thought he had been just as tolerant as he possibly could be in that respect, having regard to what he considered to be the public duties of Members. But he did feel that his Hon. Friend and Members of that House generally ought to realize that there could not be discrimination between those who are Members of His Majesty's forces; that a Member of Parliament could not put on the uniform and still transgress or infringe upon the usual regulations that govern officers in regard to the discussion of what may be

regarded as matters of administration and policy. It seemed to him that it would not be fair to the officers in the forces generally; and he really did not believe his Hon. Friend asserted that, as a proper principle upon which he might insist. As he said in his letter, he believed an officer could reconcile the two positions. He realized that he had to be a bit careful about it, because there might be questions on which he would like to express an opinion, but which might contravene what were regarded as the usual military regulations, regarding which he might have to keep silent; but that was a matter to be decided by himself. He had selected the two positions.

The other position—and perhaps this was the position that ought to be taken by the Department, though he did not think they had ever been forced to take it in England, and he hoped they would never be forced to take it in Canada—would be to call upon a Member of Parliament to choose one or the other, whether to continue as a member of His Majesty's forces or to continue as a Member of Parliament. He did not think there was need for that. But if his Hon. Friend felt that an issue should be made of it at this time, and some rule laid down, he supposed that would have to be done.

Since he had taken this matter up he found that a practice had existed in the British Parliament which might be of assistance to Hon. Members in that House—he was speaking not to his Hon. Friend alone, but also to any other Hon. Members who happened to be officers in the Army—under which the Secretary of State for War endeavoured to meet Members who happened to be officers as well, to discuss any problem with them frankly and clearly, but not in the public way in which his Hon. Friend sought to discuss matters of policy in the speech to which he referred. That might be the way out. It was only a compromise, of course, but it was one which, it seemed to him, sought to give a fair and reasonable opportunity for the expression of opinions on the part of a Member representing a constituency, and eliminated the discrimination which would otherwise exist if a Member of Parliament who was an officer were allowed to express his opinions, while other officers were not. (*Interruption.*)

Mr. Hanson (York, Sunbury) asked if it was true that members of His Majesty's armed forces in Great Britain who were also Members of Parliament had raised in the House of Commons questions of national public policy with respect to the defence of Great Britain, both before and since the War?

Mr. Ralston: In the House of Commons, yes.

Mr. Hanson (York, Sunbury) remarked that he did not know

that there was much distinction. There might be. They had, he understood, raised questions of public policy with respect to the defence of Great Britain and the armed forces, and in regard to public policy generally. But he was not aware that the question had arisen with respect to speeches made outside the House of Commons.

Mr. Ralston said he thought that quite correct. There had been occasions on which officers had raised questions of public policy in the House of Commons, when they stood in their places as Members of Parliament. But he had no information as to Members of Parliament who were officers in His Majesty's armed forces having gone outside to political meetings and discussed matters of policy with regard to the armed forces and the War policy generally.

Mr. Ralston, continuing, said:

> I say to you again, Mr. Speaker, what I said at the outset: I realize the difficult position in which Hon. Members are placed. I recognize their desire to serve. I know, too, that as Members of Parliament they have certain duties. But I repeat that I believe those duties and the duties incumbent upon them as officers can be reconciled, if one who is an officer and a Member desires to do so. The letter which I wrote, and which my Hon. Friend has read, I think in every line will indicate my desire that my Hon. Friend should see the possibility of that reconciliation. There was not in any clause of the letter a threat that my Hon. Friend had either to shut his mouth or to get out of the Army.
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> Mr. Hanson (York, Sunbury): I do not wish to prolong this discussion, but does the Minister not think that his reference to doing a man's part was most uncalled for?
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> Mr. Ralston: I did not say that.
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> Mr. Homuth: "Man-fashion."
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> Mr. Ralston: This is what I said: "In this respect, the two functions, if you want to exercise them to the full, must inevitably come in conflict, and the only way in which a man can carry out his functions is to decide that the exercise of his rights as a Member of Parliament will be limited by his obligations to the service.
>
> "If he cannot do that, then obviously the 'man-fashion' thing to do is to abandon the attempt to hold both positions. The Army obviously cannot make fish of one and flesh of another, and there is nothing in King's Regulations which excepts Members of Parliament, or anybody else for that matter, from the age-old restriction which prohibits officers discussing publicly matters which affect the administration of the service."
>
> Certainly nothing there was intended to be offensive, and I am sure that my Hon. Friend, having heard it read, will see that there is nothing offensive in it. I wrote the letter as one Member of Parliament to another. I can say to my Hon. Friend—and I rather expected my Hon. Friend might have mentioned it, although he may not regard it as much of a compliment—that he is the first officer to whom I have addressed a personal letter of that kind. It

is done generally through the officers of the department. But my Hon. Friend was a senior officer in the Canadian Army, and I thought perhaps he would not mind and that perhaps it was due to him as an efficient Member of Parliament that I wrote him that note.

I believe the position I took will commend itself to Hon. Members. If I am wrong in this, then of course we shall have to ascertain just what the situation is, and what my Hon. Friend desires to have done.

Mr. Slaght: Will the Minister permit a question?

Mr. Ralston: Yes.

Mr. Slaght: Did the Minister receive from the Hon. Member who has voiced his complaint, prior to his public statement, any communication with regard to the grievances he claimed on the public platform?

Mr. Ralston: I need hardly say to my Hon. Friend with regard to the point he is raising that the Hon. Member did not refer the matter to me or, so far as I know, to any officer in the department—nothing whatever with regard to the fact that he was going to make a speech, or what he was going to say.

(*Interruption.*)

* * * * *

Mr. Ralston: To the Hon. Member who has brought up the question of privilege I say that the letter was written in the spirit and in the light of the status which was set out therein. I regret that he has brought it up without notice to me or without any discussion whatever, or any reply or acknowledgment of the letter.

Mr. Ross (Souris): In reference to the Statement of the Minister as to the customary practice in Great Britain with respect to service Members of Parliament, may I quote Prime Minister Churchill as reported in Parliamentary Debates of November 19, 1940——

Some Hon. Members: Order.

Mr. Speaker: The Hon. Member has raised a question of privilege, and was entitled to do so. The Minister has replied. But no discussion or debate can take place, because there is nothing before the House. According to the rule stated some time ago, the letter which has been quoted should be tabled, and I ask the Hon. Member (Mr. Cockeram) to do so.

Canada (Senators and M.P.s on Active Service).[1]—During 1941 the Senate and House of Commons Act[2] was amended by 4 and 5 Geo. VI, c. 26, which substituted the following new s. 12, making it also eligible for Senators and M.P.s to serve in the Air Force:

> Nothing shall render ineligible, as aforesaid, any person serving in the Naval, Military or Air Forces of Canada, or in any other of the Naval, Military or Air Forces of the Crown, while such Forces are on Active Service in consequence of any War and receiving salary, pay or allowance as a member of such Forces while on such Active Service.

The Act is made retroactive to September 10, 1939.

[1] LXXIX Sen. Deb. No. 29, 284; CXXVIII Can. Com. Deb. 3854.
[2] C. 147, R.S. Can.

Canada : Saskatchewan (Active Service Vote).—During the same Session the Active Service Voters Act[1] was passed providing that no " active service voter "—namely, a member of the forces, even only residentially qualified within the meaning of the Saskatchewan Election Act—shall be disqualified from voting at any election only in the Province; and, no " extra-Provincial Active service voter " at the time of an election serving outside the Province shall be disqualified, subject to the exigencies of War, from voting at a Provincial General Election.

The vote of an " extra-Provincial active service voter " may only be counted in that division in which he was resident when he became a member of the forces, and before receiving his ballot paper he must state to the deputy returning officer the division and residential address when he joined up, as well as make an affidavit as provided by the Regulations under the Act.

Australia : The Senate (Election of its President).—On July 1, 1941,[2] the Minister of Supply and Development (Senator McLeay), addressing the Clerk of the Senate by name, reminded the Senate that the time had come when it was necessary for the Senate to choose one of its Members to be President. Whereupon the Minister moved that Senator J. B. Hayes " do take the Chair of this House as President ", and the Motion was duly seconded. Another Senator then moved that Senator J. Cunningham " do take the Chair of this House as President ", the Motion being also seconded. Both candidates then duly submitted themselves to the House, which proceeded to a ballot, upon which the Clerk reported that there was an equality of votes, whereupon, according to the Standing Orders, a second ballot was taken, revealing the same result. The votes being again equal the Clerk (*vide* S.O. 22) stated the matter would be decided by lot, the Clerk placing the names of both candidates in a box, from which he drew the name of Senator J. B. Hayes as the one to be withdrawn. Senator Cunningham was thereupon declared elected.

Similar proceedings took place in regard to the election of Chairman of Committees.

In connection with the election of President of the Commonwealth Senate, the Clerk of that House is in an interesting position. Prior to 1934, the procedure was that the Clerk should preside prior to the election of the President, but have no voice. He simply stood and pointed to the Senator desiring to speak. Owing to a minor disorder occurring on one such occasion, however, the Senate decided in 1934 to amend S.O. 16 by giving

[1] Chap. 5.

[2] 1941 SEN. JOURNALS, No. 24, p. 83.

the Clerk the powers of the President under Standing Orders, whilst acting as Chairman of the Senate.

Powers of the Clerk.—Under the Standing Order,[1] whenever the office of President of the Senate is vacant, the Clerk of the Senate acts as Chairman of the Senate prior to the election of President. The Clerk is vested with the power of President while so acting.

The Clerk of the Senate also presides at Joint Sittings of both Houses in the case of disagreement upon Bills, until a Presiding Member has been elected.[2]

Australia (Examination of War Expenditure by Joint Committee).—On July 3, 1941,[3] the following Message from the House of Representatives was read in the Senate:

MESSAGE No. 59.

MR. PRESIDENT,

The House of Representatives transmits to the Senate the following Resolution which was agreed to by the House of Representatives this day, and requests the concurrence of the Senate therein:

(1) That a Joint Committee be appointed to examine current expenditure defrayed out of moneys voted by the Parliament for the Defence Services and other Services directly connected with the War and to report what, if any, economies consistent with the execution of the policy decided on by the Government may be effected therein.

(2) That the following Members of the House of Representatives, Mr. Badman, Mr. Beck, Mr. Conelan, Mr. Johnson, Mr. Jolly, Mr. Lawson, Mr. McCall, Mr. Mulcahy and Mr. Paterson be appointed to serve on such Committee.

(3) That, notwithstanding anything contained in the Standing Orders—

(*a*) the Committee have power to appoint sub-committees consisting of four or more of its members; and to refer to any such sub-committees any of the matters which the Committee is empowered to examine;

(*b*) the Committee or any sub-committee have power to send for persons, papers and records, to adjourn from place to place, and to sit during any adjournment of the Parliament and during the sittings of either House of the Parliament; and have leave to report from time to time the evidence taken;

(*c*) the Committee have leave to report from time to time its proceedings, and any member of the Committee have power to add a protest or dissent to any report;

(*d*) five members of the Committee constitute a quorum of the Committee and three members of a sub-committee constitute a quorum of that sub-committee;

(*e*) in matters of procedure, the Chairman of the Committee have a deliberative vote and, in the event of an equality of voting, have a casting vote, and in other matters a deliberative vote only;

[1] S.O. 16. [2] J.S.O. (2). [3] 1941 SEN. JOURNALS, No. 26, p. 91.

(*f*) the Committee have power, in cases where considerations of National Security preclude the publication of any recommendations and of the arguments on which they are based, or both, to address a memorandum to the Prime Minister for the consideration of the War Cabinet, but, on every occasion when the Committee exercises this power, the Committee shall report to the Parliament accordingly; and

(*g*) a Message be sent to the Senate requesting its concurrence and asking that three Members of the Senate be appointed to serve on such Committee and that one of those Members be appointed as the Chairman of the Committee.

W M. NAIRN,
Speaker.

HOUSE OF REPRESENTATIVES,
CANBERRA.
July 3, 1941.

The Minister for Supply and Development (Senator McLeay), by leave, moved—

(1) That the Senate agrees to the appointment of a Joint Committee to examine current expenditure defrayed out of moneys voted by the Parliament for the Defence Services and other Services directly connected with the War and to report what, if any, economies consistent with the execution of the policy decided on by the Government may be effected therein.

(2) That Senators Ashley, Clothier, and A. J. McLachlan be appointed to serve on such Committee with Members of the House of Representatives.

(3) That, notwithstanding anything contained in the Standing Orders—

(*a*) Senator A. J. McLachlan be the Chairman of the Committee: (here follow paras. (*a*) to (*f*) inclusive of the Message above as paras. (*b*) to (*g*) of the Motion).

(4) That these Resolutions be communicated to the House of Representatives by Message.

Question put and agreed to.

Australia: New South Wales (Regulations: Summoning of Parliament on Petition of Members).—During 1941 a National Emergency Act[1] was passed for certain purposes, including a provision in s. 6 thereof dealing with Regulations under the Act, by which (s. 64 [*c*]) such Regulations must be laid before both Houses of Parliament as soon as may be after publication thereof. Such Regulations may also be revoked, either in whole or in part, by a resolution passed by both Houses of Parliament. A copy of such Regulations must be posted to every Member of both Houses. Sub-s. (6) of the Act reads as follows:

[1] No. 1 of 1941 (5 Geo. VI).

(6) (*a*) If during any period for which Parliament stands prorogued a petition signed by not less than thirty Members of the Legislative Assembly or by not less than twenty Members of the Legislative Council objecting to any regulation under this Act and requesting that Parliament should be summoned is addressed to the Speaker of the Legislative Assembly or the President of the Legislative Council, such petition shall be transmitted to the Governor by the Speaker or President as the case may be and Parliament shall be summoned to meet as soon as practicable thereafter.

(*b*) If during any period for which Parliament stands adjourned a petition signed by not less than thirty Members of the Legislative Assembly or by not less than twenty Members of the Legislative Council objecting to any regulation under this Act and requesting that Parliament should be summoned is addressed to the Speaker of the Legislative Assembly or the President of the Legislative Council, Parliament shall be summoned to meet as soon as practicable thereafter by the President of the Legislative Council and the Speaker of the Legislative Assembly.

(*c*) During the absence of the President of the Legislative Council or of the Speaker of the Legislative Assembly by reason of illness or any other cause the duties imposed by this section upon such President or Speaker shall be discharged by the Chairman of Committees of the Legislative Council or the Chairman of Committees of the Legislative Assembly as the case may be.

(*d*) The business at any meeting of Parliament held in pursuance of a petition under this sub-section shall be confined to the consideration of the regulation to which objection is taken in such petition.

Australia : New South Wales (Suspension of S.O.s).[1]—S.O. 395 of the Legislative Assembly read:

> Any Standing Order or Orders of the House may be suspended on Motion duly made and seconded in accordance with notice given, and in cases of urgent necessity such Standing Order or Orders may be suspended on Motion duly made and seconded without notice. Provided that the Speaker shall be entitled to put the Question when debate on any such Motion shall have exceeded one hour, and that no Member shall, without concurrence, speak to such Motion for more than 10 minutes. The question of urgency shall be decided by the House upon Motion, without notice or debate, except a statement by the Mover limited to 10 minutes.

As the Standing Order stood, the question of urgency was decided by the House after a statement by the Mover limited to 10 minutes. It was felt that a Member of the Government should be given an opportunity on the urgency Motion of making a short statement in reply, and the Standing Order was amended accordingly.

The new Standing Order reads:

[1] As contributed by the Clerk of the Legislative Assembly.—[Ed.]

395. Any Standing Order or Orders of the House may be suspended on Motion duly made and seconded in accordance with notice given, and in cases of urgent necessity such Standing Order or Orders may be suspended on Motion duly made and seconded without notice. Provided that the Speaker shall be entitled to put the Question when debate on any such Motion shall have exceeded one hour, and that no Member shall, without concurrence, speak to such Motion for more than 10 minutes.

The question of urgency shall be decided by the House upon Motion, without notice or debate, except a statement by the Mover and a statement by a Minister, each limited to 10 minutes. (Approved 10th April, 1942.)

Australia : New South Wales (" Other Ranks ", M.P.s on Military Service).—In order to accentuate the provision in the Constitution Amendment Act, 1914,[1] which extends to " other ranks " the right to Parliamentary allowance, whilst serving in the forces, ss. 26 and 27 of the Constitution,[2] s. 2 of the Act of 1914 has been inserted at p. 264 of the New South Wales Parliamentary Handbook (XIV Ed.):

2. Nothing in section twenty-six or section twenty-seven of the Constitution Act, 1902, shall be deemed to have extended or shall extend to any person who has accepted or held or may hereafter accept or hold any office of profit in His Majesty's Navy or Army.

Australia : Victoria (Members of Parliament and Military Service).[3]—No War legislation affecting Parliament or its Members was passed during 1940 or 1941, but in 1939 Act No. 4718 (s. 4) provided that Members and candidates shall not be disqualified by reason of having served in the present War as an officer or member of His Majesty's naval or military forces or the Australian naval or military forces, or by reason of having received for or in respect of that service any pay, half-pay, allowance or pension.

The object of this enactment was to exempt Members from the provision in the Victorian Constitution Act that, with certain specified exceptions, if any Member accept any office of profit under the Crown his seat shall thereupon become vacant.[4]

Australia : South Australia (War Emergency Powers).[5]—The Emergency Powers Act, 1941,[6] is similar to Acts in force in other Australian States and confers on the Governor power to make regulations for civil defence, covering, among other matters, evacuation of population, safeguarding of essential services and

[1] No. 33 of 1914.
[2] No. 32 of 1902 as amended.
[3] As contributed by the Clerk of the Parliaments.—[ED.]
[4] Act No. 3660, ss. 25 and 27.
[5] As contributed by the Clerk of the Parliaments.—[ED.]
[6] No. 4 of 1941: Anno Quinto Georgii VI Regis.

supplies, regulation of transport, black-outs, acquisition of property, air-raid precautions and powers and duties of local authorities and other bodies. An amount of £250,000 is appropriated for civil-defence purposes.

It is also provided that such regulations shall have effect notwithstanding anything inconsistent therewith contained in any other Act. For the purpose of " securing and maintaining the safety and well-being of the civil population of the State during the continuance of any war and maintaining public order during the continuance of any war ", therefore, regulations can be made on matters which in normal times would require to be dealt with by the Legislature as the subject of separate Acts of Parliament.

Australia : South Australia (Parliamentary Catering Services).[1]—An Act was passed in 1941[2] incorporating and defining the functions of the Joint Committee controlling the Parliamentary refreshment services, which previously had no definite legal status. This Committee will in future be appointed for the life of the Parliament and the Act extends the jurisdiction of the Committee to certain portions of Parliament House building which hitherto have been under the control of the President and Speaker respectively.

As, however, the details of this Act are of particular interest to those responsible for these services to Legislators, all the sections of the Act, with the exception of the short-title section, are given below *verbatim :*

Interpretation.

2. In this Act, unless the context otherwise requires—

" chairman " means chairman of the Committee:
" member " means member of the Committee:
" President " means President of the Legislative Council:
" rules " means rules made under this Act:
" Speaker " means Speaker of the House of Assembly:
" the Committee " means the Joint House Committee constituted by this Act:
" the existing Committee " means the Parliamentary Committee in existence at the time of the commencement of this Act and commonly called the Joint House Committee.

Constitution of Committee.

3. (1) a body corporate is hereby created to be known as the " Joint House Committee ".

(2) The Committee shall have perpetual succession and a common seal and shall be capable of holding and dealing with property of all kinds.

(3) The Committee shall consist of eight persons, namely, the President and three members of the Legislative Council, and the Speaker and three members of the House of Assembly.

[1] *See also* JOURNAL, Vol. III, 93.
[2] The Joint House Committee Act (No. 39 of 1941).

(4) The persons who are members of the existing Committee at the time of the passing of this Act shall be the first members of the Committee.

Election of members of the Committee.

4. As early as convenient after every general election of members of the House of Assembly, each House of Parliament shall appoint three of its members to act as members of the Committee.

Term of Office.

5. (1) Subject to subsection (2) of this section—

(*a*) the President and the Speaker shall hold office on the Committee until their respective successors to their offices as President and Speaker are chosen;

(*b*) every other member shall hold office on the Committee until a successor to his office on the Committee is appointed.

(2) A person shall cease to be a member of the Committee—

(*a*) if he resigns his seat in Parliament; or

(*b*) if he resigns from the Committee by writing delivered to the chairman; or

(*c*) if his term of office as a member of Parliament comes to an end and he either does not nominate for re-election to the House of which he was a member or, having so nominated, he is defeated at the election; or

(*d*) if he is removed from the Committee by resolution of the House of Parliament of which he is a member.

Casual vacancies.

6. A person appointed to fill a casual vacancy on the Committee shall hold office for the balance only of the term of the member in whose place he was appointed.

Chairman of the Committee.

7. The Committee may from time to time appoint the President or the Speaker to be the Chairman thereof. If neither the President nor the Speaker is willing to act as Chairman or if for the time being there is neither a Speaker or President in office, the Committee may appoint another member to be the Chairman thereof.

Quorum

8. Four members of the Committee, not being all members of the same House of Parliament, shall constitute a quorum of the Committee: Provided that if at any time all members of the Committee belong to the same House of Parliament or if there are fewer than four members of the Committee a majority of the members of the Committee shall constitute a quorum.

Meetings of the Committee.

9. Meetings of the Committee shall be called and held at the times and in the manner prescribed in the rules.

Sub-Committees.

10. The Committee may appoint sub-committees to deal with any matters or class of matters and may delegate to any sub-committee any of the powers of the Committee.

Executive officer and secretary.

11. (1) The Chairman shall be the executive officer of the Committee.

(2) The Committee shall appoint an officer of the staff of one of the Houses of Parliament to be the secretary to the Committee. The secretary shall carry out such duties as are allotted to him by the Chairman.

Vesting of property.

12. All funds and other property which at the passing of this Act are vested in the existing Committee or in any person on behalf of the existing Committee shall be transferred to and vested in the Committee and held by the Committee for the purposes of this Act.

13. The Committee shall have the control and management of the following parts of the buildings and premises of Parliament, namely, the entrances, corridors, lobbies, dining, refreshment and recreation rooms, lounges and garages. Premises under control of the Committee.

14. The Committee shall have the control, direction, and supervision of the members of the catering staff of Parliament. Persons under the control of the Committee.

15. The Committee may provide meals, refreshments, and other commodities and services for members and officers of Parliament and persons lawfully visiting the buildings of Parliament on such terms as the Committee thinks fit. Further powers of the Committee.

16. The Committee may expend any of its funds for any purpose connected with the execution of its powers and duties under this Act and for any purpose specified in the rules. Expenditure of the Committee's funds.

17. This Act shall not affect any power of the President, Speaker, or any other person, to remove from the buildings or premises of Parliament any person unlawfully in or upon them. Saving.

18. (1) The Committee may make any rules necessary or convenient to be made for the purpose of the administration of this Act and for any purpose specified in this Act. Rules.

(2) Section 38 of the Acts Interpretation Act, 1915-1936, shall not apply to any such rules.

19. Neither the Act numbered 2296 of 1936, nor any Act incorporated therewith, or substituted therefor, shall apply in relation to the Committee or its receipts. Non-application of certain Acts to Committee.

Australia : Tasmania (Active Service Vote).[1]—An amendment of the Constitution Act[2] was passed last year which extends the franchise for the Legislative Council to persons who have served in His Majesty's forces in any war in which His Majesty is or may be or has been engaged notwithstanding that such person has not attained the age of 21 years.

Australia : Tasmania (Parliamentary Running Costs).[3]—The total vote for the Legislative Council for 1940-41 is £2,080, and the total cost of printing for both Houses for that year £3,200.

Australia : Western Australia (Prolongation of Parliament).—By Acts Nos. 50 and 51 of 1941,[4] general elections for both the Legislative Council and the Legislative Assembly were postponed. The former Act provided, in respect of the periodical retirement of the Senior Member of each Province of the Legislative Council by the effluxion of time on May 21, 1942, that it shall not be necessary for the Governor to direct the Clerk of the Writs to issue a writ for the general election for the Legislative Council caused by such retirement, but the Governor shall, subject to the proviso following, issue his warrant for writs for such election at any time within 12 months from April 10, 1942; provided that such Council may at any time within the said 12

[1] As contributed by the Clerk of the Legislative Council.—[ED.]
[2] 5 Geo. V, No. 66.
[3] *See* JOURNAL, Vol. III, 84.
[4] 5 and 6 Geo. VI, Nos. L and LI.

months by resolution carried by an absolute majority recommend the Governor to issue such warrant.

The latter Act provided that the life of the Legislative Assembly which expired on January 31, 1942, shall continue until the completion of a general election therefor to be held after that date under the Electoral Law, but the Governor shall, subject to a similar proviso as above, issue his warrant for writs for the general election at any time within 12 months from February 21, 1942.

In the preamble of both Acts is recited:

AND WHEREAS, in view of the pressing national em rgency arising out of the War with Japan in which the Commonwealth of Australia is at present engaged. Etc., etc.

New Zealand (Women as Legislative Councillors).[1]—On October 17, 1941, in the Upper House, upon the First Reading of the Statutes Amendment Bill, clause 40 of which provided for the appointment of women to Membership of the Second Chamber, the Speaker was asked for his Ruling, as to whether this provision infringed the privileges of that House, a submission being that such provision should have been initiated in the Upper House. It was cited that in 1919, when the Women's Parliamentary Rights Bill was before that Council, the words making women eligible for the Council were ruled out by Mr. Speaker as an infringement of the privileges of the Council. Later in that Session a Bill was initiated in the Council for enabling women to be appointed to that Chamber, but was defeated on division.

Mr. Speaker said that the powers and privileges of that Council were not the same as the House of Lords, though, in regard to the relations between the two Chambers of the New Zealand Parliament, or General Assembly, they looked to the constitutional principle in Great Britain for their guidance. In making other comparisons between the two Second Chambers, Mr. Speaker said that the privileges, immunities and powers conferred on the Council were not those enjoyed by the House of Lords, but by the House of Commons as at a certain date, but in regard to the respective rights of the two Chambers the constitutional practice of the British Parliament was to be observed. Express power was contained in s. 5 of the Legislature Act for the Council to determine matters which arose within it in respect of vacancies. May was quoted as stating that a Bill which concerned the privileges or proceedings of either House should, in courtesy, commence in the House to which it related. But the Commons passed Bills which excluded Irish and Welsh Bishops from sitting in the House

[1] N.Z. Deb. 17.10.41, c. 1231-33.

of Lords. Then there was the Parliament Act of 1911. In 1919, when the Sex Disqualification (Removal) Bill was before that Parliament, the Commons inserted the provision for women to sit and vote in the House of Lords on a division by a substantial majority and apparently did not doubt its right to send such a provision forward without infringing privilege. The Lords, however, rejected the provision, not on account of privilege, but for the reason that

> they do not consider that this alteration in the constitution of the House of Lords should be made at this time or in this manner.

The House of Lords also rejected a proposal by the Commons that Peeresses in their own right should sit in the Lords.

The Speaker, in conclusion, said that he could not agree with the Ruling of his predecessor and therefore ruled that the submission of the clause to the Council by the other place was not a breach of the privileges of the Council, which warranted him ruling it out. The Council, of course, had the undoubted right of rejecting the clause if it chose to do so.

New Zealand (Diplomatic Representative).—In the 1942 Session of Parliament, in order to make provision for the Hon. Mr. Nash, Minister of Finance, to proceed to Washington as New Zealand's representative there, the Overseas Representatives Act was passed, which was made to come into operation on January 1, 1942, and provided for the appointment of a Diplomatic Representative for New Zealand or a representative of the Government of New Zealand in any other country, including the High Commissioner appointed under the High Commissioner Act of 1908. S. 3 of the Act provided that the office of such oversea diplomatic representative was not to be an Office of Profit under the Crown as far as Members of both Houses of Parliament were concerned, and that non-attendance on Parliament was not to be a disqualification, nor was his name to be removed from the voters' roll. The Act further provided that no payment under Part I or II of the Civil Lists Act, 1920, may be made to any person for any period during which he was in receipt of a salary as an oversea representative.

New Zealand (Special War Appropriation).—It was provided,[1] in an Act passed by Parliament in 1942, " to make provision for the re-establishment in civil life of persons who have served with His Majesty's armed forces, for the re-constitution of war-time industries on a peace-time basis and for matters incidental thereto ";

that any moneys required for the administration of Part I of this Act (Establishment of Servicemen in Civil Life) and any moneys expended or advanced by or on behalf of the Board may, with the approval of the Minister of Finance, be paid without further appropriation than this section out of the War Expenses Account or out of such other fund or account as that Minister may direct.

Union of South Africa : House of Assembly (Executive Government Control over Expenditure).[1]

Pensions Proposals.—Reference was made in our last issue[2] to the anomalies which had arisen in the application of a Ruling given by Speaker Molteno in 1912.[3] Under this Ruling several exceptions were made from the provisions of the South Africa Act and those Standing Rules and Orders which preclude the House from originating or passing proposals involving expenditure from public revenue without the Governor-General's recommendation or interfering with Crown Lands without the Governor-General's consent.

Most of the exceptions disappeared in the course of time owing to changes in practice, but the exceptions in regard to proposals made by the Pensions Committee and the Crown Lands Committee remained and often gave rise to considerable confusion. A case in point arose during the 1940-41 Session, when the House was in Committee on the First Report of the Select Committee on Pensions. The Chairman ruled that, without the Governor-General's recommendation, he was unable to put an amendment increasing one of the Committee's proposals, although, as a Member pointed out, the proposals themselves had not received the Governor-General's recommendation. Mr. Speaker, on being asked for his Ruling, upheld the Chairman's decision and said he thought that, in view of the explicit provisions of s. 62 of the South Africa Act[4] and of S.O. 99, the Governor-General's recommendation should in future be given to the recommendations of the Pensions Committee before Motions for their adoption were entertained.[5] In view of this Ruling it is assumed that a similar practice will be observed on Reports of the Select Committee on Crown Lands, and that in future the Governor-General's consent will be given to the recommendations of the Committee before Motions for their adoption are entertained. If this is done the only exceptions referred to by Speaker Molteno which will remain are those well-recognized and well-established exceptions under which the Governor-General's recommendation is not required for Motions touching expenditure but couched in

[1] As contributed by the Clerk of the House of Assembly.—[ED.]
[2] *See* JOURNAL, Vol. IX, 34.
[3] 1912 ASSEM. VOTES, 256.
[4] 9 Edw. VII, c. 9.
[5] 1940-41 ASSEM. VOTES, 718.

general terms and resolutions dealing with what may be termed " House matters ".[1]

Public Revenue and Private Institutions.—As mentioned above, s. 62 of the South Africa Act and S.O. 99 require the Governor-General's recommendation to be given to proposals involving expenditure from *public* revenue. Proposals involving expenditure from sources other than the Consolidated Revenue Fund or the Railways and Harbours Fund do not require the Governor-General's recommendation; but two Bills introduced during the 1940-41 Session which *primâ facie* dealt with expenditure from private sources on private institutions were unexpectedly found to involve expenditure from public revenue on State institutions.

The first was the Factories, Machinery and Building Work Bill,[2] which placed financial obligations on every employer of labour in a factory. Clause 56, however, provided that " This Act shall bind the Crown except in respect of the activities of the Railway Administration." As the Government employed a number of persons in departments, such as the Printing Department, which fell under the definition of a factory in Clause 3, the Governor-General's recommendation was obtained for these provisions. The Chairman of Committees had also to declin several amendments which were moved without the Governor General's recommendation to increase the financial obligation. of all employers.[3]

The second Bill was the Workmen's Compensation Bill.[4] Clause 5 of this Bill expressly defined " employer " to be " a person who employs a workman and includes the State ", and, as the State pays for the compensation for accidents to its workmen from the Consolidated Revenue Fund, the Chairman of Committees pointed out that any proposal which had the effect of increasing existing expenditure by the State as an employer required the Governor-General's recommendation.[5]

Part Appropriation Bills.—In 1935[6] attention was drawn to two Clauses of the Finance Bill introduced in that year which sought to do away with the practice of passing " Part Appropriation Bills " which authorize the expenditure of public money pending the passing of the annual " Appropriation Bill ". These Clauses were dropped in Committee owing to their " contentious and controversial nature ". Similar provision for the financial year 1942-43 was made in Clause 2 of the Finance Bill[7] introduced

[1] May, XI, 572; Todd's *Parliamentary Government in England*, 1st ed., Vol. I, 406; Durell's *Parliamentary Grants*, 264.
[2] Act No. 22 of 1941.
[3] 1940-41 ASSEM. VOTES, 484, 486.
[4] Act No. 30 of 1941.
[5] 1940-41 ASSEM. VOTES, 689, 691, 693
[6] *See* JOURNAL, Vol. IV, 59.
[7] Act No. 43 of 1941.

during the 1940-41 Session, but on the Second Reading of the Bill the Minister of Finance stated that to expedite the work of the House he was prepared to drop the Clause " which would otherwise have evoked considerable debate ", and when the Clause was reached it was negatived without discussion.[1]

Union of South Africa (Electoral Constitutional Changes).[2]— The electoral divisions of the House of Assembly are delimitated from time to time by a Judicial Commission appointed by the Executive Government, the Commission working according to certain factors laid down in the South Africa Act, 1909,[3] including the number of " adult Union nationals " as ascertained at a duly appointed census of the European population, which at present takes place quinquennially, but after 1951 is to be decennial. The Census, Delimitation and Electoral Act, 1941,[4] amends s. 34 of the South Africa Act by no longer requiring the issue of a Proclamation to apply the provisions of the Census Act of 1910 for delimitation purposes. Act No. 23 of 1941 also amends by ss. 3 and 4, which require the Judicial Delimitation Commission for the Census of 1941 also to include in such census " adult Union nationals " serving with the defence forces or employed by the State in connection with the War, who, on the night of the census, were absent from the Province in which they resided or had a house immediately before the service date, whether or not they were within the Union, or any dependants of any such persons.

Union of South Africa (Acting Judges).—S. 97 of the South Africa Act, 1909 (as amended by Act No. 12 of 1920), which deals with the filling of temporary vacancies on the Bench of the Appellate Division, has been repealed by the Judges Act of 1941,[5] and the following section has been substituted, with retrospective effect to June 24, 1936:

Appointment of acting Judges.

97. Whenever for any reason it is expedient to do so, the Governor-General may appoint some fit and proper person to act as a Judge of any division of the Supreme Court of South Africa in the place of any judge of that division, or in addition to the judges of that division: Provided that no person other than a judge or former judge of the said Supreme Court shall be appointed to act as the Chief Justice of South Africa or as a judge of appeal.

Union of South Africa : House of Assembly (The Guillotine).[6]— During the first part of Session 1940-41, an " emergency order " was passed under which debate on a Guillotine Motion was

[1] Assem. Bill 40-41; 42 Union Assem. Deb., 8117.
[2] *See also* JOURNAL, Vols. V, 35; VI, 58; IX, 37.
[3] 9 Edw. VII, c. 9. [4] No. 23 of 1941. [5] No. 41 of 1941.
[6] As contributed by the Clerk of the House of Assembly.—[ED.]

limited to 3 hours.[1] Under this order two Guillotine Motions were passed before the long adjournment.[2]

During the second part of the 1940-41 Session the " emergency order " remained in force, and as efforts to allot time by agreement through the Whips met with little success it was again found necessary to resort to Guillotine Motions. Three were passed, but none of them occupied the time allowed under the " emergency order ". The following are the measures on which the Guillotine Motions were used in the second part of the Session:

Second Additional Appropriation Bill and Preceding Financial Stages.—This Motion[3] was based on the Motion adopted during the first part of the Session for regulating the time to be occupied on the First Additional Appropriation Bill,[4] but the time was allotted in hours instead of days, and in response to a request made by the Leader of the Opposition in the first half of the Session[5] the Minister in charge of the Bill was given the right of reply at the conclusion of the time allotted. Provision was also made for taking the Committee stage of the Bill immediately after the Second Reading instead of on a future day. Owing to the liberal amount of time allotted, this was the only provision which came into operation.[6]

Factories, Machinery and Building Work Bill.—The Guillotine Motion on this Bill was passed after the Second Reading.[7] It was based on the Resolution passed in connection with the War Measures Bill (Act No. 32 of 1940), but, like the Motion referred to in para. (1) above, the time was calculated in hours instead of days and a right of reply given to the Minister in charge. This Resolution was applied to conclude the Committee stage, for which only 5 hours were given,[8] the Report stage, for which 2 hours were given,[9] and the Third Reading, for which 2 hours were given.[10]

Committee of Supply.—This Motion was entirely new.[11] It was originally drafted in a form allotting time for each set of Estimates, but after consultation with the Whips a period was allotted for all proceedings in Committee of Supply and the Whips were left to make their own arrangements. The period allotted was 100 hours, which was slightly more than the average time occupied during the last 9 Sessions, and nearly all of it was spent on the main Estimates.[12]

[1] 1940-41 VOTES, 25.
[2] *See also* JOURNAL, Vol. IX, 39.
[3] 1940-41 VOTES, 150.
[4] *Ib.* 61.
[5] 1940 Union Assem. Deb., 1372.
[6] 1940-41 VOTES, 168.
[7] *Ib.* 473.
[8] *Ib.* 486.
[9] *Ib.* 523.
[10] *Ib.* 530.
[11] *Ib.* 510.
[12] *Ib.* 739.

Union of South Africa (Parliamentary Catering Services).[1]—Under the Union Constitution,[2] the South African Railways and Harbours (a State-owned concern) has to be conducted on business principles. The S.A.R. and H. is run separately from other Government Finance. For instance, it has its own separate Revenue Fund and Appropriation Acts, with a separate Budget.

Since the establishment of the Union, with the exception of the year 1924, when the Parliamentary Dining Room was let out to private contract, and run without a loss, there has always been a loss on this part of the Parliamentary Vote (No. 2), on an average of £750 *p.a.*

The present system of running the Parliamentary Catering Services is based upon an agreement between the Joint Committee of Both Houses (3 Senators and 3 M.P.s with one of their number elected as Chairman) and the S.A.R. and H. Administration concluded in 1941.

The Controller and Auditor-General, however, in his Report for the Financial Year 1940-41 (U.G. 35—'41), in referring to the undertaking by S.A.R. and H. of Parliamentary Catering, stated *inter alia* :

> The Law Advisers have, however, now ruled that it is not competent for the Administration to accept any liability in connection with the catering at the Houses of Parliament, since this is a matter which falls outside the scope of its functions as defined by Act No. 22 of 1916, as amended. Therefore, if it is proposed to continue the arrangement it will be necessary to introduce enabling legislation.

Act No. 22 of 1916, as amended, only applies to " any refreshment room at any place under the control of the Administration approved by the Minister "; hence the above Ruling by the Law Advisers.

Enabling legislation (Railways and Harbours Management Amendment Act, 1942) was introduced in 1942, and s. 3 of that Act reads:

> The Administration may undertake or provide for the sale of food and drink and smokers' requisites in the Houses of Parliament.

These Services enjoy " Parliamentary Privilege " in regard to freedom from licence of any kind,[3] hours of opening and other control exercised over hotel and liquor licence holders.

Union of South Africa (Non-M.P.C.s on Provincial Executive Committees).[4]—It may be of interest to Members to note that

[1] As contributed by the Clerk of the Senate.
[2] South Africa Act, 1909, s. 127.
[3] Act 30 of 1928, s. 5 (*d*).
[4] As contributed by the Clerk of the Provincial Council.—[ED.; *see also* JOURNAL, Vol. IX, 41.]

in the Provincial Council of the Orange Free State a certain Member of the Executive Committee, who is not an elected Member of the Provincial Council, at a recent Session called for a division on a certain Motion, which call for a division was allowed by Mr. Chairman, the Member in question immediately withdrawing from the Chamber as he had no vote therein, not being an elected Member. Mr. Chairman's attention was subsequently invited by the Clerk to the fact that this call for a division should have been disallowed by him, and the following Ruling was prepared for him, but not given, although this Ruling was shown to the Member concerned for his future guidance:

> Mr. Chairman: On March 13, 1942, at the previous Session, on the Motion of the Hon. Member for Bloemfontein (West) (Mr. Reitz), regarding the internment policy of the Union Government, being put, a division was called for by Mr. Buys, M.E.C., who is not an elected Member of this House and who had also spoken in favour of the Motion.
>
> At the time, I permitted this call for a division. Since then, however, I have given careful consideration to this matter and would like to invite the attention of Hon. Members to S.O. 135, which provides that the Member calling for a division shall not leave the Chamber until after the division has been taken, and shall vote with those who, in the opinion of Mr. Chairman, were in the minority. In this case, however, Mr. Buys, not being an elected Member of this House and thus not having a vote, immediately withdrew from the Chamber after having called for a division.
>
> S.O. 16, which is identical with s. 79 of the South Africa Act, 1909, provides that the Administrator and every other Member of the Executive Committee, who is not a Member of the Council, shall have the right to take part in the proceedings of the Council, but shall not have the right to vote. The question, therefore, arises whether Mr. Buys was in order to call for a division although not having the right to vote.
>
> In a similar case to this which occurred in the Union Senate, it was Ruled by Mr. President on April 14, 1916, that a Minister of the Crown, not being a Member of the Senate and therefore not having a vote in that House, was precluded from calling for a division in the Senate, although having the right to sit and speak in both Houses of Parliament.
>
> In the circumstances, therefore, I shall be unable to allow in future any call for a division by Mr. Buys.

Union of South Africa : Orange Free State Province (Use of Legislative Chamber for Other Purposes).[1]—The Chamber, which formerly was the old Raadsaal in Republican days, was erected in 1890, and is to-day looked upon as an historical landmark, is used for Provincial Council Sessions, for Sittings of Joint Provincial Committees, and for elections of Senators for

[1] *See also* JOURNAL, Vol. VIII, 206.

the Union Senate by P.R. with the single transferable vote, the electorate being the Union M.P.s and the M.P.C.s for the Province. In this Chamber the National Convention, which led to the unification of the four S.A. Colonies and the establishment of the Union of South Africa, held its final Sittings (May 3 to 11, 1909). The other rooms attached to the Chamber, such as the Caucus Room, the Library, etc., are often used by Union and Provincial Commissions and Committees.[1]

Union of South Africa : Province of Orange Free State (Oath of Allegiance).[1]—In the Standing Rules and Orders of the Orange Free State Provincial Council, as well as those of the 3 other Provincial Councils in South Africa, it is provided that every Member of a Provincial Council shall, before being permitted to sit or vote therein, take and subscribe the following oath or make the following affirmation:

Oath.

I do swear that I will be faithful and bear true allegiance to His Majesty King George VI, his heirs and successors according to law So Help me God.

Affirmation.

I do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to His Majesty King George VI, his heirs and successors according to law.

Since 1923, however, the Rule providing for the taking of the Oath, etc., by every Provincial Council Member has not been observed in the Orange Free State Provincial Council as the result of a decision given on June 26, 1920, by the Orange Free State Division of the Supreme Court in the case Conradie (Member) *v.* Vermeulen (Chairman of the Provincial Council), which was to the effect that the relevant Rule (No. 2(*b*)) of the Provincial Council of the Orange Free State was *ultra vires* in that the South Africa Act, 1909, which provides for the establishment of a Provincial Council for each one of the four Provinces—namely, the Cape, Natal, Transvaal and the Orange Free State—does not specifically provide for the taking of the Oath by Provincial Council Members, but only by Members of both Houses of the Union Parliament; *vide* ss. 51 and 75 of the relevant Act.

In the Provincial Councils of the Cape, Transvaal and Natal the Rule is, however, still being observed.

The following is the Law Report on the case in the Orange Free State Division of the Supreme Court of the Union:

[1] As contributed by the Clerk of the Provincial Council.—[ED.]

SCHEDULE.

Conradie vs Vermeulen N.O.

(Civil Record 228 of 1920.)

1920. June 26, de Villiers, J.P., and McGregor, J.

Public Office.—Member of Provincial Council.—Oath of allegiance.—Rule of Procedure 2(*b*).—*Ultra vires.*—Ss. 75 and 53 of the South Africa Act.

A Member of the Provincial Council need not take the oath of allegiance before taking part in the proceedings, and Rule 2(*b*) of the Rules for the conduct of the proceedings of the Council, purporting to have been framed under s. 75 of the South Africa Act, which required all Members to take such oath, was not a rule made for the conduct of the proceedings of the Provincial Council, and was therefore not authorized by s. 75 of the South Africa Act.

de Villiers, J.P.: If a Member of the Provincial Council is duly qualified, has been duly elected, and does not fall within any of the disqualifications mentioned in s. 53 of the South Africa Act he is entitled *ipso jure* and *ipso facto* to sit and vote and to take par in the proceedings of the Provincial Council, and any condition precedent which may be imposed upon him by the rules is *ultra vires* as in effect introducing a further necessary qualification before a Member shall be entitled to sit.

The applicant, a duly elected Member of the Provincial Council, had been called upon by the respondent—the Chairman of the Council—to take the oath of allegiance as required by Rule 2(*b*) of the Rules for the conduct of the proceedings of the Council purporting to have been formulated under s. 75 of the South Africa Act. The applicant had refused to take the oath on the ground that the Rule was *ultra vires* and was excluded from the Council Chamber on the ruling of the Chairman. The applicant applied for an order directing the Chairman to allow him to sit and vote as a Member of the Council without taking the oath.

C. F. Steyn, for the applicant: Rule 2(*b*) is *ultra vires.*

S. 51 of the South Africa Act prescribes the oath of allegiance for Members of the Senate and the House of Assembly but no section of the Act requires a Provincial Councillor to take the oath.

S. 75 does not authorize the framing of a Rule such as Rule 2(*b*). That section only contemplates rules in regard to procedure to be followed in discussions, voting, the passing of laws, divisions, etc.

Rule 2(*b*) in making the oath a condition precedent to the exercise of the power of a Provincial Councillor in effect seeks to make an additional qualification not laid down by the Legislature and is therefore *ultra vires.*

de Villiers, J.P.: One is relieved to find in this case that the matter is not of a political complexion, and that the applicant objects to the oath simply on the ground that, apart from the substance of the oath, there is not authority in law which can entitle the Provincial Council to require an oath from its members as a condition precedent to their sitting and voting.

The relevant section of the South Africa Act is s. 75, which provides that the Provincial Council shall elect from among its Members

a Chairman, and may make rules for the conduct of its proceedings.

Amongst the rules made under this section is Rule 2(*b*), which provides that "Every member of the Provincial Council shall, before being permitted to sit or vote therein, take and subscribe the following oath before the Chairman of the Provincial Council"; and then follows the oath of allegiance. The point now taken is that s. 75 of the South Africa Act does not authorize this rule, and that a rule which provides for the taking of an oath as a condition precedent to the right of sitting and voting is *ultra vires* of s. 75.

I must say that it seems to me that that is a sound contention. One can gather from the Act what are the powers of the Provincial Council and one must take it that the proceedings which are referred to in s. 75 are the ordinary proceedings of a legislative body, that is to say, discussion, voting, and the passing of laws; and rules may be made for the conduct of discussion, and for the manner of dividing, and the different reading of laws, and so forth. But it seems to me that this regulation which requires an oath before a Member can take part in the proceedings at all cannot be said to be a rule made for the conduct of the proceedings.

Every European male adult is qualified to become a Member of the Provincial Council subject to the disqualifications laid down by s. 53 of the South Africa Act. It follows that, if a Member is duly qualified, and has been duly elected, and does not fall within any of the disqualifications mentioned in s. 53 of the Act, he is entitled *ipso jure* and *ipso facto* to sit and vote and to take part in the proceedings of the Provincial Council; and that any condition precedent which may be imposed upon him by the rules is *ultra vires*, as in effect introducing a further necessary qualification before a Member shall be entitled to sit. This regulation seems to me to be as much *ultra vires* as would be, for instance, a regulation which required that before a Member should be entitled to sit or vote he should prove that he was bilingual or that he could read and write.

We have been referred to s. 51 of the South Africa Act, which, in the case of a Member of the House of Parliament, specifically requires that an oath of allegiance should be taken, whereas in the case of the Provincial Council there is no such requirement by the South Africa Act, and although I do not think that is conclusive, and an argument can be drawn from it in either direction, yet on the whole it seems to me that it tends to support the view which I have already expressed, that no such oath is required by law, or was contemplated as being required in the case of Provincial Councils.

We have also the analogy of the Municipal Councils and the Divisional Councils. I do not say that the Provincial Council falls under the same genus as Municipal Councils and Divisional Councils, but they are at any rate bodies which may be compared to Provincial Councils, and in their case it is clear that no oath of allegiance is required, or could be required by any regulation.

By way of aiding in the construction of s. 75, I might refer to the Irrigation Act, No. 8 of 1912, by s. 45 of which the Governor-General is empowered to make regulations, not inconsistent with the Act, providing for (*a*) the procedure of water courts, and (*b*) the

oath to be taken by members of water courts. That seems to show that the oath to be taken by the members of water courts was not considered to be embraced within the term the " procedure of water courts ". That is some indication also that, under s. 75 of the South Africa Act, rules for the conduct of the proceedings do not embrace a rule insisting upon an oath.

For these reasons it appears to me that the regulation 2(*b*) must be considered by the Court to be *ultra vires*. It is not necessary to make any declaration to that effect. It may not even be proper, on this form of proceedings, to make a declaration to that effect. It is my opinion that it is *ultra vires*, and that the order may accordingly be granted, directing the Chairman of the Provincial Council to allow the applicant to take his seat and to vote.

With regard to the matter of the costs asked for in the application, this does not seem to me to be a case in which costs should be allowed. I realize that it may sometimes be hard upon individuals that they should have to bear the costs of a matter which is really of general interest, and in which they are themselves not at fault at all, in which there is some defect in the law, or some incorrect view taken by a public official. One would, therefore, in many cases, tend to throw the costs on the community by making the costs payable by the official in his official capacity. But in this case it seems to me that that would be going rather far, because the respondent acted properly. He did what was necessary according to the regulations, by requesting the applicant not to sit or vote until he had taken the oath. In these circumstances I reluctantly feel that there should be no order as to the costs.

McGregor, J.: I agree. The fact that no oath is taken by member of the Divisional Council, or of the Municipality—which is state by Mr. Steyn, and I have no reason to think that it is incorrect—would seem to show that speaking generally the taking of the oati is not a necessary preliminary to the honest discharge of public functions. Then as regards the question whether this regulation is something which can be based upon the phrase " conduct of proceedings ", that has been sufficiently discussed by the Judge President, and I agree with his views, and do not propose to say more upon that point, excepting this: that, having regard to the subject-matter of this petition, if it were a matter of doubt whether one should seek to extract out of these words power to frame the regulation now in question, the more correct course, it appears to me, would be that it should be left to the Legislature to supply the deficiency, and not for the Court, where the matter is *in dubio*, to give what might be a strained interpretation. It has already been pointed out in argument that the Provincial Council is a subordinate law-making body, and its proceedings are subject, if I recollect aright, to the veto of the Governor-General-in-Council. But more than that, it is a body which is subordinate to the Legislature of the Union, and if the Legislature consider it proper that a body to which they have delegated certain functions (*i.e.*, the Provincial Council) should, before proceeding to enter upon its business, be under a duty of taking the same oath as is encumbent on the Members of the Legislature, then it would be quite competent for the Legislature of the Union to make that provision in

definite terms. I think I am correct in saying that they have full power to make any such provision if they thought proper to do so.

The only other point as to which I would remark is the matter of the attitude taken up by the Chairman. In this connection, we have to bear in mind that he is in the first place, in a sense, the mouthpiece of the body over which he presides. The Speaker is in theory the mouthpiece of the House of Commons; so I take it the Chairman would be the mouthpiece. He would, therefore, correctly, as it were, take up the position that he must not sit as a court of appeal, as it were, over the resolutions of his own body; and when he finds that there is a certain regulation which had been formally drawn up some years previously, during the life of the first Provincial Council, and which had been acted upon since, it appears to me that he acted properly in not himself seeking to override the resolution, and treating it as one which was good and binding upon him until it should be otherwise declared by a competent authority.

South-West Africa (Members on Military Service).—By Union Act No. 19 of 1940, the Constitution of S.W. Africa[1] was amended by providing that the absence of a Member of the Executive Committee, the Legislative Assembly or the Advisory Council, due to his serving, while the Union is at war, with the military, air or naval forces of the Union, or any other force or service established by or under the S.A. Defence Act, 1912,[2] shall not vacate his seat on any such bodies. Neither shall such service of such a Member constitute an "Office of profit under the Crown".

South-West Africa (Members: Payment and Free Facilities).[3] —The particulars given upon this subject in regard to the Mandated Territory of South-West Africa have been revised as follows:

A Member of the Legislative Assembly in South-West Africa received £180 *p.a.*, plus free transport when attending Sessions or Sittings, together with a free railway travelling pass in the Territory and in the Union of South Africa throughout the year. A deduction at the rate of £2 per day, from the remuneration, is made in respect of any absence, except under certain circumstances, from a Sitting of the House (or a Committee thereof) in excess of 5 days. A Member certifying that postal correspondence is on Parliamentary business is entitled to send such letters through the post free of charge. He is also entitled *ex officio* to frank telegrams on public service. Members are also allowed free non-trunk telephone calls from the instruments in the Assembly apartments.[4]

[1] No. 42 of 1925, s. 2 (4), (*c*); 7 (4) (*d*) (*e*); 17 (2) (*d*).
[2] No. 13 of 1912.
[3] *See* JOURNAL, Vol. I, 106.
[4] As contributed by the Clerk of the Legislative Assembly.—[ED.]

Ireland (Eire) (Constitutional[1]) (Second Amendment).[2]—An Act was passed by the Oireachtas in 1941, entitled "Second Amendment of the Constitution Act, 1941". The 30 amendments made by this Act are embodied in a Schedule to it. The method of amending the Eire Constitution is laid down in Art. 46 thereof, which provides that every proposal therefor requires to be initiated in Dáil Eireann (Chamber of Deputies) as a Bill, and after being passed by both Houses to be submitted by Referendum to the decision of the people in accordance with the law at that time in force in regard to the Referendum. But there is a transitory provision in Art. 51 of the Constitution by which a constitutional amendment may be made within 3 years after the first President has entered upon his office (June 25, 1938) by the Oireachtas (Parliament). The amendments therefore contained in the Act of 1941 are in accordance with this transitory provision.

Some of the amendments provided for in this Act are of textual nature in the English or Irish version respectively. The actual amendments, which will be quoted under their Reference Nos. in the Schedule, are as follow:

The President.—Art. 12 is amended by providing that an election shall take place within 60 days after his removal from office, death, resignation or permanent incapacity duly established "whether occurring before or after he enters upon his office".[3] In Art. 14 the powers and functions conferred on the President, instead of being "by this Constitution", are to be conferred "by or under this Constitution".[4] The same amendment is made in s. 4 of Art. 14 in regard to the powers of the Council of State in the event of the incapacity, etc., of the President.

Seanad Eireann.—In addition to elected Members, the Senate also includes Members nominated by the Taoiseach (Prime Minister). Art. 18 of the Constitution is amended by the stipulation that it shall be the Prime Minister who is appointed next after the reassembly of the Dáil Eireann following the dissolution which necessitates such nomination.[5]

Time for Consideration of Bills.—Section 2 of Art. 24 has now been deleted and a new section substituted which provides that where a Bill the time for consideration of which has been abridged under the Article within the period specified by Resolution, the Bill shall be deemed to have passed both Houses of Parliament at the expiration of that period, if—

[1] *See also* JOURNAL, Vols. V, 125; VI, 60, 62; VII, 66, 68, 71, 72, 76; VIII, 53; IX, 43. [2] The First Amendment was in 1939; *see* JOURNAL, Vol. VIII, 53.
[3] Ref. No. 2. [4] *Ib.* 4. [5] *Ib.* 6.

(*a*) in the case of a Non-Money Bill it is rejected by the Senate or passed by it with amendments to which Dail Eireann does not agree, or is neither passed nor rejected by the Senate; or

(*b*) in the case of a Money Bill it is either returned by the Senate to Dail Eireann with recommendations which the latter House will not accept or a Bill is not returned to Dail Eireann.[1]

Signing and Promulgation of Laws.—Art. 25 is amended by making the period within which the President shall sign a Bill not earlier than the fifth and not later than the seventh day after its presentation to him, instead of not earlier than " five " and not later than " seven " days after the date on which the Bill has been presented to him.[2]

Section 4 of this Article is also substituted by a new section providing that, unless the contrary intention appears, a Bill shall become law on the day it is signed by the President and is promulgated by him as a law under notice in the *Gazette*. The Bill must be signed by the President in the text in which it is passed, or, if passed in both official languages, in both those languages. Should the President sign the Bill in only one official language, an official translation must be issued in the other official language. Such signed texts have to be enrolled for record in the office of the Registrar of the Supreme Court. In case of conflict between the texts of a law enrolled in both official languages, the text in the national language is to prevail.[3]

This Article is further amended by the addition of a new section (5) empowering the Prime Minister, from time to time, to have a text of the Constitution prepared embodying all the amendments, a copy of which, authenticated by the Prime Minister and the Chief Justice, shall be signed by the President and enrolled as above mentioned, which copy is to be accepted as evidence.[4]

Reference of Bills to Supreme Court.—Art. 26 of the Constitution is amended,[5] making it the duty of the Prime Minister to present Bills to the President for signature. The period within which a Bill may be referred to the Supreme Court is now extended to not later than the seventh day after it has passed both Houses.[6] Judicial decisions in regard to such referred Bills must now be pronounced by such one of the judges " as the Court shall direct, and no other opinion, whether assenting or dissenting, shall be pronounced nor shall the existence of any such other opinion be disclosed."[7]

Referendum.—Art. 26 also provides that, in regard to reference by a non-constitutional Bill to a Referendum, should a petition be addressed to the President in connection therewith, the pro-

[1] Ref. No. 9. [2] *Ib.* 10. [3] *Ib.* 11. [4] *Ib.* 12.
[5] *Ib.* 13. [6] *Ib.* 14. [7] *Ib.* 15.

visions of Art. 27 are to apply.[1] Such petitions are also required to be in writing and signed by their petitioners, whose signatures must be verified by law.[2]

A new sub-section is added to this Article not making it necessary for the President to consider such a petition before the Supreme Court has announced its decision on such reference to the effect that the Bill is not repugnant to the Constitution or any provision thereof. Should such decision have already been pronounced it is not obligatory upon the President to pronounce his decision before the expiration of 6 days after decision of the Court.[3] A further amendment is made to this Article by which it is applied to a proposal contained in a Bill, the subject of a petition under this Article, instead of to the Bill as a whole.[4] The same amendment is also made to Art. 47,[5] the actual Referendum Article.

The Government.—Art. 28 has been amended,[6] making more definite the expression " in the time of war or armed rebellion", which expression by another amendment[7] to this Article is defined as including " such time after the termination of any war, or of any such armed conflict, or of an armed rebellion, as may elapse until each of the Houses of the Oireachtas shall have resolved that the national emergency occasioned by such war, armed conflict, or armed rebellion has ceased to exist ".

The Courts.—Art. 34 provides for justice being administered in courts established by law and by duly appointed judges. This Article is now amended[8] by providing that the administration of justice shall be in public, " save in such special cases as may be prescribed by law ".

This Article is further amended[9] by the deletion of s.s. 3, 2° and the substitution of the following 2 new sub-sections:

> 2°. Save as otherwise provided by this Article, the jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this Constitution, and no such question shall be raised (whether by pleading, argument or otherwise) in any Court established under this or any other Article of this Constitution other than the High Court or the Supreme Court.
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> 3°. No Court whatever shall have jurisdiction to question the validity of a law, or any provision of a law, the Bill for which shall have been referred to the Supreme Court by the President under Article 26 of this Constitution, or to question the validity of a provision of a law where the corresponding provision in the Bill for such law shall have been referred to the Supreme Court by the President under the said Article 26.

[1] Ref. No. 16. [2] *Ib.* 17. [3] *Ib.* 18. [4] *Ib.* 19. [5] *Ib.* 28.
[6] *Ib.* 20. [7] *Ib.* 22. [8] *Ib.* 23. [9] *Ib.* 24.

A new sub-section 5°[1] is also added to s. 4 as follows:

> 5°. The decision of the Supreme Court on a question as to the validity of a law having regard to the provisions of this Constitution shall be pronounced by such one of the judges of that Court as that Court shall direct, and no other opinion on such question, whether assenting or dissenting, shall be pronounced, nor shall the existence of any such other opinion be disclosed.

Fundamental Rights (*Personal Rights*).—Art. 40, which embodies the personal rights of the citizen, is amended by the deletion of sub-section 2°[2] and the insertion of the following 4 new sub-sections:

> 2°. Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention and the High Court shall, upon the body of such person being produced before that Court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law.
>
> 3°. Where a body of a person alleged to be unlawfully detained is produced before the High Court in pursuance of an order in that behalf made under this section and that Court is satisfied that such person is being detained in accordance with a law but that such law is invalid having regard to the provisions of this Constitution, the High Court shall refer the question of the validity of such law to the Supreme Court by way of case stated and may, at the time of such reference or at any time thereafter, allow the said person to be at liberty on such bail and subject to such conditions as the High Court shall fix until the Supreme Court has determined the question so referred to it.
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> 4°. The High Court before which the body of a person alleged to be unlawfully detained is to be produced in pursuance of an order in that behalf made under this section shall, if the President of the High Court or, if he is not available, the senior judge of that Court who is available, so directs in respect of any particular case, consist of three judges and shall, in every other case, consist of one judge only.
>
> 5°. Where an order is made under this section by the High Court or a judge thereof for the production of the body of a person who is under sentence of death, the High Court or such judge thereof shall further order that the execution of the said sentence of death shall be deferred until after the body of such person has been produced before the High Court and the lawfulness of his detention has been determined and if, after such deferment, the detention of

[1] Ref. No. 25. [2] *Ib.* 27.

such person is determined to be lawful, the High Court shall appoint a day for the execution of the said sentence of death and that sentence shall have effect with the substitution of the day so appointed for the day originally fixed for the execution thereof.

Transitory Provisions.—These are laid down in Arts. 51 to 63 inclusive, but Art. 52 provides that Arts. 52 to 63 inclusive shall be omitted from every official text of the Constitution published after the date on which the first President shall have entered upon his office (June 25, 1938). Section 2 of Art. 52 also provides that every Article of the Constitution which is hereafter omitted from the official text thereof in accordance with the foregoing provisions shall, notwithstanding such omission, continue to have the force of law. The Second Amendment of the Constitution Act of 1941 amends one of these omitted Articles—namely, 56—in respect of its s. 5, which reads:

> 5. Nothing in this Constitution shall prejudice or affect the [terms, conditions, remuneration or tenure] of any person who was in any Governmental employment immediately prior to the coming into operation of the Constitution,

by substituting the words

> "terms and conditions of service, or the tenure of office or remuneration",

for the words given in square brackets above.[1]

The following new sub-section 2°[2] is added to s. 5 of Art. 56:

> 2°. Nothing in this Article shall operate to invalidate or restrict any legislation whatsoever which has been enacted or may be enacted hereafter applying to or prejudicing or affecting all or any of the matters contained in the next preceding sub-section.

Southern Rhodesia (Standing Orders).—S.O. 145 was amended on May 20, 1941, in regard to amendments in Committee of the Whole House. Previously, the Committee, after amending later lines or clauses in a Bill, could not resume consideration of earlier lines or clauses "except with the unanimous consent of the Committee". The amendment omits the quoted words.

In regard to Members making extracts from tabled papers, S.O. 247 now reads:

> Every Member of the House shall be entitled to read, and, if he shall so desire, take extracts from or copies of, all papers laid on the Table, unless the Minister, when laying papers on the Table, states that such papers are confidential to Members, in which case no Member shall divulge them under pain of breach of privilege.

[1] Ref. No. 29. [2] *Ib.* 30.

India (Enlargement of the Governor-General's Executive Council).—The following was a Press Communiqué issued from the Viceregal Lodge, Simla, on July 23, 1941:

As a result of the increased pressure of work in connection with the War it has been decided to enlarge the Executive Council of the Governor-General of India in order to permit the separation of portfolios of Law and Supply and Commerce and Labour; the division of the present portfolio of Education, Health and Lands into separate portfolios of Education, Health and Lands and Indians Overseas; and the creation of portfolios of Information and of Civil Defence. His Majesty the King has approved the following appointments to the five new seats on the Council:

Member for Supply—Sir Hormusji P. Mody, K.B.E., M.L.A. (Central).
Member for Information—The Rt. Hon'ble Sir Akbar Hydari, P.C.
Member for Civil Defence—Mr. E. Raghavendra Rao.
Member for Labour—Malik Sir Firoz Khan Noon, K.C.I.E.
Member for Indians Overseas—Mr. M. S. Aney, M.L.A. (Central).

For the vacancies which will occur when Sir Muhammad Zafrulla Khan and Sir Girja Shankar Bajpai take up the posts to which they have recently been appointed, His Majesty has approved the appointment of:

Sir Sultan Ahmed to be Law Member, and
Mr. Nalini Ranjan Sarker, M.L.A., to be Member for Education, Health and Lands.

In pursuance of the desire of His Majesty's Government to associate Indian non-official opinion as fully as possible with the prosecution of the War, approval, on the recommendation of the Viceroy, has also been given to the establishment of a National Defence Council, the first meeting of which will take place next month. The Council, the strength of which will be about 30 members, will include representatives of Indian States as well as of provinces and of other elements in the national life of British India in its relation to the War effort. The following will be the members from British India:

Ambedkar, Dr. B. R., M.L.A.
Assam, Chief Minister of (The Hon'ble Maulavi Saiyid Sir Muhammad Saadulla, M.L.A.).
Bengal, Chief Minister of (The Hon'ble Mr. A. K. Fazlul Huq, M.L.A.
Chhatari, Sir Muhammad Ahmad Sa'id Khan, Nawab of ——, K.C.S.I., K.C.I.E., M.B.E.
Chettiyar, Kumararajah Sir Muthia, of Chettinad, M.L.A.
Darbhanga, The Hon'ble Maharajadhiraja of ——, K.C.I.E.
Deshmukh, Mr. Ramrao Madhavrao, M.L.A.
Gidney, Lieut.-Colonel Sir Henry, M.L.A.
Jehangir, Sir Cowasjee, Bart., K.C.I.E., O.B.E., M.L.A.
Khallikote, Raja Bahadur of ——, M.L.A.
Khuda Bakhsh Khan, The Hon'ble Malik, M.L.A.

Mehta, Mr. Jamnadas M., M.L.A.
Morton, Mr. G. B., O.B.E.
Mukerjee, Mr. Biren.
Naunihal Singh Man, Lieutenant Sardar, M.B.E., M.L.A.
Nawaz, Begum Shah ——, M.L.A.
Punjab, Premier of the —— (The Hon'ble Khan Bahadur Major Sirdar Sir Sikander Hyat Khan, K.B.E., M.L.A.).
Rajah, Rao Bahadur, M.A.
Shah, Professor E. Ahmad.
Sind, Chief Minister of (The Hon'ble Khan Bahadur Allah Bakhsh Muhammad Umar Soomro, O.B.E., M.L.A.).
Srivastava, Sir Jwala Prasad, M.L.A.
Usman, Khan Bahadur Sir Muhammad, K.C.I.E.

The names of the Indian States Members were not available.

Although the following information does not actually apply to the year (1941) under review in this Volume, notice appeared in the Press[1] that the Viceroy's Council had been enlarged from 12 to 15 Members. The official statement read as follows:

> His Majesty's Government have invited the Government of India, if they so desire, to arrange for the representation of India at the War Cabinet and on the Pacific War Council in London.
>
> This invitation has been accepted, and the Governor-General in Council has accordingly nominated Sir Ramaswami Mudaliar for this purpose, and has suggested to the Crown Representative that he should invite a member of the Order of Princes to join Sir Ramaswami Mudaliar in representing India at the War Cabinet and on the Pacific War Council. His Excellency, in consultation with the Governor-General in Council, has invited the Maharaja Jam Sahib of Nawanagar to serve for the present in this capacity, and His Highness has accepted the invitation.
>
> New Council Members.—The King has been pleased to approve the appointment of Sir C. P. Ramaswami Aiyar, Dr. B. R. Ambedkar, Sir E. C. Benthall, Sir Jogendra Singh, Sir J. P. Srivastava, and Sir Muhammad Usman to the Executive Council of the Governor-General of India.
>
> The following appointments to portfolios have been made by the Governor-General:
>
> Mr. N. R. Sarker—Commerce; Sir Firoz Khan Noon—Defence; Sir Edward Benthall—War Transport; Sir C. P. Ramaswami Aiyar—Information; Dr. B. R. Ambedkar—Labour; Sir Jogendra Singh—Education, Health and Lands; Sir Jwala P. Srivastava—Civil Defence; Sir Muhammad Usman—Posts and Air.
>
> The portfolio of the Commander-in-Chief (Sir Archibald Wavell) will in future be designated the War Portfolio. The new Defence Member will be responsible for work at present discharged by the Defence Co-ordination Department, together with such other matters relating to the defence of India as are not included in the portfolios of War and Civil Defence.

[1] *The Times*, July 3, 1942.

Sir Ramaswami Mudaliar, the new representative of India in the War Cabinet, remains a member of the Viceroy's Executive Council without portfolio.

India (First Secret Session of the Central Legislative Assembly.[1]—With the approach of War to the frontiers of India by the outbreak of hostilities between Japan and His Majesty, a large number of members of the Central Legislative Assembly submitted a written representation in February, 1942, to the Government for the holding of a secret session of the Assembly at which the War situation could be discussed with greater freedom and at which more information could be given by Government spokesmen than would be possible under normal conditions. The Government welcomed the proposal and agreed to allot February 27, 1942, for the purpose. Thus for the first time in the history of the Central Legislative Assembly a secret session of the House was held.

With a view to enabling the House to deliberate on the War situation in absolute secrecy, the Government of India had in advance by an amendment of Rule 24 of the Defence of India Rules, 1939, made the publication or divulging of the proceedings of any secret meeting of either Chamber of the Indian Legislature a penal offence punishable with imprisonment for a term which may extend to 5 years (or with fine or with both): *vide* Rules 4 (2) (*a*) and 38 (5) of the Defence of India Rules.

The various other measures adopted and the arrangements made with a view to ensuring the secrecy of the proceedings of the sitting *in camera* are detailed in the succeeding paragraphs.

In order to enable the members to discuss the War situation the Hon. the Leader of the House gave notice of a Motion under Rule 24A of the Indian Legislative Rules: " That the War situation be taken into consideration." This Motion was set down in the agenda for February 27, which in addition to this Motion also contained the usual item relating to answering of questions, one entry for laying a statement on the Table, and two Motions for the introduction of a Government Bill.

As the other items of business which preceded the Motion in the List of Business for February 27 were expected not to take more than 15 minutes for their disposal, to save inconvenience to all concerned no admission cards were issued for the Visitors' Galleries for that day. After these items of business had been disposed of and before the Motion was taken up the Hon. the President, in exercise of the powers vested in him under S.O. 36 of the Legislative Assembly, directed that all galleries, with the

[1] As contributed by the Secretary of the Legislative Assembly.—[ED.]

exception of the Council of State Gallery, be cleared of strangers. In pursuance of this direction all galleries and lobbies were cleared of strangers and all the doors leading to the various galleries were securely bolted and locked. The Official Gallery and His Excellency the Governor-General's Box were also cleared and locked. The door leading to the Council of State Gallery was closed but not locked, and one Member of the Watch and Ward staff was appointed outside the door to admit Members of that Chamber only. As regards the Members' Lobby, no person, whether holding a Lobby Pass or a sessional card, was admitted; only the Members of either Chamber or the Central Legislature were allowed. All doors leading to the Members' Lobby were bolted and locked, with the exception of one door which was closed but not locked, and the Watch and Ward Officer was appointed to sit outside the door to control the entry of Members into the Lobby and the Chamber during the discussion of this Motion. After all these precautions had been taken and a thorough search of the Chamber's galleries and lobbies had been made by the Watch and Ward staff, the Watch and Ward Officer entered the Chamber and informed the Secretary, who thereupor informed the President, that all the galleries and lobbies had bee cleared of strangers. The Watch and Ward Officer then wer out. The Hon. the President then called upon the Leader c the House to move the Motion standing in his name.

Apart from the Members of the two Houses, the only persons allowed to remain in the Assembly Chamber during the Secret Session were the Secretary of the Assembly, his two Assistants—namely, the Deputy Secretary and the Assistant Secretary of the Assembly—and the Marshal.

Under S.O. 75 of the Legislative Assembly, the Hon. the President directed that no report of the proceedings on the Motion should be taken down, recorded or published. No record of the proceedings of the Secret Sitting was accordingly prepared and published for purposes of record. The only report which, under the orders of the Hon. the President, was printed in the debates was as follows:

> The remainder of the sitting was in secret session and the Assembly discussed the following Motion by the Hon. Mr. M. S. Aney:
>
> That the War situation be taken into consideration.

India (Governor-General's Emergency Powers).[1]—In the year 1940, the British Parliament passed an Act, known as the India and Burma (Emergency Provisions) Act, 1940 (3 and 4 Geo. VI,

[1] As contributed by the Secretary of the Central Legislative Assembly.—[ED.]

c. 33), which introduced a change in s. 72 of the Government of India Act (as set out in the Ninth Schedule to the Government of India Act, 1935) in so far as it relates to the promulgation of Ordinances by the Governor-General.

British India (Suspension of Certain Provisions of the Constitution in regard to Meetings of the Legislature).—In view of the suspension of certain sections of the Government of India Act, 1935, relating to meetings of the Legislature, under s. 93 of such Act, there have been no Sessions of the Legislatures of Madras, Bombay, the United Provinces, Bihar, Central Provinces and Berar, and of the North-West Frontier Province and Orissa, during 1941, government being conducted by the Governors of the respective Provinces.

In the Provinces of Bengal, the Punjab, Assam and Sind, and recently (1942) in Orissa, however, the Governors, with their respective Legislative Assemblies, have been carrying on as usual each under their responsible Ministries.

British India: Bombay (Military Service of Members).—In 1940, the Governor made an Act (No. X of 1940) amending the Bombay Legislative Members (Removal of Disqualifications) Act, 1937, by which a person shall not be disqualified for membership of the Bombay Legislature merely by reason of the fact that he holds any office in the Army in India, Reserve of Officers, the Auxiliary Force, India, the Indian Territorial Force or in any branch of H.M.'s naval, military or air forces.

British India: Bombay (Joint and Select Committees).[1]—Rule 113 (4) and Rule 118 of Bombay Legislative Council Rules were amended in the year 1939. Rule 113 (4) was amended in order to provide that the number of Members to be nominated by the Council on a joint committee of the two Houses should be not less than one-third of the total number of members of such Committee. Rule 118 was amended with a view to making the Minister in charge of the Legal Department one of the members of the Select Committee for the consideration of the draft amendments of Rules.

British India: Bengal (Parliamentary Library Administration).[2]—A Joint Library Committee has been formed consisting of 3 Members of each House and 1 from the Legislative Department, but no rules have yet been prepared to regulate the functions of the Committee.

British India: Bengal (Military Service of Members).—In 1940 the Bengal Legislature (Removal of Disqualifications)

[1] As contributed by the Secretary of the Legislative Council.—[ED.]
[2] *See also* JOURNAL, Vols. V, 166; VIII, 216.

(Amendment) Act was passed by the Legislature to amend the Bengal Legislature (Removal of Disqualifications) Act of 1937.[1] The amending Act is only to be in force during the continuance of the present War and for 12 months thereafter and provides that the following s. 2 (*d*) shall be added:

> (*d*) an office in any of His Majesty's naval, military or air forces in India, or an office under the Central Government, connected with the equipment or administration of any of those forces or otherwise connected with the defence of India, provided that this clause shall not apply in the case of any person who has, since the 2nd day of September, 1939, been continuously in whole-time service of the Crown in India.

British India : Assam (Military Service of Members).—By the Assam Provincial Legislature (Removal of Disqualifications) (Amendment) Act, 1940, persons holding office in any of H.M.'s military, naval or air forces, etc., are not to be disqualified from being chosen as Members of the Legislature.

British India : Orissa (Military Service of Members).—In 1940 the Orissa Legislative Assembly (War Service) Act, 1940, was passed to prevent membership of any of His Majesty's forces or the holding of an office under the Defence Department in connection with the present War being a disqualification for membership of the Orissa Legislative Assembly.

British India : Sind (Military Service of Members).—In 1940 the Sind Legislature passed a Bill[2] further to amend the Sind Legislative Assembly (Removal of Disqualifications) Act, 1937, by which they protected the Members of the Assembly serving in the Army, in the India Reserve of Officers, Indian Territorial Force, or any other branch of His Majesty's naval, military or air forces, from disqualification which they would otherwise incur under clause (*a*) of sub-section (1) of s. 69 of the Government of India Act, 1935. The Bill was assented to by the Governor on December 19 and first published as Sind Act XVII on January 23, 1941.

British India (Prolongation of Legislatures).—Under the India and Burma (Postponement of Elections) Act of 1941,[3] notwithstanding the provisions of s. 61 (2) of the Government of India Act, 1935,[4] the first Provincial Legislative Assemblies of the Provinces are to continue until 12 months after the end of the War period, unless previously dissolved under s. 62 (2) of such Act. The "War period" is defined as the period for which the Emergency Powers (Defence) Act, 1939,[5] is in force.

[1] Act III of 1937. [2] Act XVII of 1940. [3] 4 and 5 Geo. VI, c. 44.
[4] 26 Geo. V and 1 Edw. VIII, c. 2. [5] 2 and 3 Geo. VI, c. 62.

Burma (Prolongation of the House of Representatives).—Similar provision is also made, as in the preceding paragraph, in respect of the first House of Representatives under the Government of Burma Act, 1935.[1]

Ceylon (Constitutional).[2]—A Question was asked in the House of Commons on November 11, 1941,[3] as to what was the present constitutional position in the Island; whether any Ordinances or amendments to the Constitution had increased the powers of the Government; whether any portions of the Constitution had been suspended; and what Ordinances had been promulgated. The Under-Secretary of State for the Colonies replied that an Order-in-Council had been enacted prolonging the life of the State Council.[4] Its object was to provide further time for the consideration of the whole position. On October 28, 1941, the following statement was issued both in Ceylon and in the United Kingdom:

> His Majesty's Government have had under further consideration the question of constitutional reform in Ceylon. The urgency and importance of the reform of the Constitution are fully recognized by H.M. Government, but before taking decisions upon the present proposals for reform concerning which there has been so little unanimity, but which are of such importance to the well-being of Ceylon, H.M. Government would desire that the position be further examined and made the subject of further consultation by means of a commission or conference. This cannot be arranged under War conditions, but the matter would be taken up with the least possible delay after the War.

Ceylon (Powers and Privileges of the State Council).[5]—The State Council Powers and Privileges Ordinance No. 27 of 1942 was passed in 1939 but was not assented to by H.M. the King until 1942. This Ordinance declared and defined certain powers, privileges and immunities of the State Council and of its members; secured freedom of speech in the State Council; regulated admittance to the State Council Chamber;[6] gave protection to persons employed in the publication of the reports and other papers of the State Council; and provided for purposes incidental to or connected with the above-mentioned matters. In the same year, however, the State Council Powers and Privileges (Amendment) Ordinance (No. 28 of 1942) was passed, s. 2 of which provided that in the event of the Bill for Ordinance No. 27

> taking effect as an Ordinance upon the signification of His Majesty's assent thereto by Proclamation published in the *Govern-*

[1] 26 Geo. V and I Edw. VIII, c. 3.
[2] *See also* JOURNAL, Vols. II, 9; III, 25; VI, 83; VII, 98; VIII, 81, 83.
[3] 374 H.C. Deb. 5, s. 2066.
[4] *See* JOURNAL, Vol. IX, 62.
[5] *See also* JOURNAL, Vol. IX, 34.
[6] *Ib.* Vol. VIII, 183.

ment Gazette, that Ordinance shall, with effect from the date of publication of such Proclamation, be amended, as set out in such Ordinance and dealt with below under the respective sections of Ordinance No. 27.

Ordinance No. 27 contains 33 sections.

Freedom of Speech.—Section 2 provides for freedom of speech in the Council, which may not be questioned in any court or place out of the Council. Section 3 confers immunity from any civil or criminal proceedings in any court, or to arrest, fine, imprisonment or damages in respect of anything said or of any vote given by a Member in the Council, or in respect of any matter brought by him before the Council by Bill, Motion, Petition, Resolution or otherwise.

Witnesses.—Section 4 of Ordinance No. 27 was, however, repealed by Ordinance No. 28,[1] and a new section substituted which provided that the Council, any standing Committee thereof or any other Committee specially authorized by Resolution of the Council to exercise such powers in respect of any matter or question specified in the Resolution may, subject to the provisions of ss. 9 and 31, order any person to attend before the Council or any Committee thereof and to produce any paper, etc., in the possession or under the control of such person.

Section 5 of Ordinance No. 27 provides for the attendance of witnesses to be notified by summons and for such witnesses to be examined on oath.[2] Objection by such witnesses to answer such questions or produce papers before the Council or any Committee thereof may either be allowed or ordered by Mr. Speaker and, in the case of Committees of the Council, upon report to him, by the Chairman.[3]

Section 8 provides that any person committing perjury before the Council or any Committee thereof is guilty of an offence under s. 190 of the Penal Code.[4]

Section 9 of Ordinance No. 27, as amended by s. 2 (2) of Ordinance No. 28, provides that the evidence of every witness before the Council or any Committee thereof shall be privileged, to which the evidence Ordinance shall apply. Ordinance No. 28, however, amended this section by the addition of a sub-section (2):

> (2) Except with the consent of the Governor, no public officer shall—
>
> (*a*) produce before the Council or a committee any such paper, book, record or document, or
>
> (*b*) give before the Council or a committee evidence on any such matter,

[1] No. 28 of 1942. [2] S. 6. [3] S. 7. [4] Cap. 15.

as relates to or is connected with the exercise by the Governor or by any public officer of any power or authority conferred or delegated by or under the provisions of Article 86 of the Order in Council; nor shall secondary evidence be received by or produced before the Council or a committee of the contents of any such paper, book, record or document.

In this sub-section " secondary evidence " has the same meaning as in the Evidence Ordinance.

Section 10 provides that the certificate issued to a witness making full disclosure is to be a bar to civil or criminal proceedings. Evidence of proceedings in the Council or Committee is also not to be given without special leave of the State Council. After a dissolution such leave may be given by the Speaker or, in his absence or other incapacity, by the Clerk.

Regulation of Admittance to the Council Chamber.—Sections 12, 13 and 14 do not acknowledge the right of a stranger to enter or remain within the Council Chamber, and the Speaker is empowered to issue such orders in that regard as he may consider necessary. Copies of such orders duly authenticated by the Clerk of the Council are to be exhibited in conspicuous positions in the Chamber, which are deemed to be sufficient notice to all persons affected thereby. The Speaker may at any time order any stranger to withdraw from the Council Chamber.

Offences and Penalties.—Any stranger entering or attempting to enter the Council Chamber in contravention of an order by the Speaker, or who refuses to withdraw when ordered by the Speaker, or who contravenes any rule made by the Speaker, or who attends any Sitting of the State Council as a Press representative after general permission granted under the Standing Orders to him has been revoked, is guilty of an offence and, on conviction after summary trial by a magistrate, is liable to a fine not exceeding *Rs.* 300, or to imprisonment for a period not exceeding 6 months, or to both such fine and imprisonment.[1]

Other Offences.—Any person who disobeys an order of the Council to attend or produce papers before the Council or a Committee thereof; refuses to give evidence; offers any Member or Officer of the Council any bribe, etc., in order to influence such Officer or Member in the promotion of, or opposition to, any Bill, etc., before the Council; assaults, etc., a Member or compels him by force, etc., to declare himself for or against any proposition before the Council; or assaults, etc., any Officer of the Council, is on conviction liable to a fine of not more than *Rs.* 1,000.[2] For the purposes of the Ordinance, every Officer of the House has all the powers of a Police Officer under the

[1] S. 15. [2] S. 16.

Criminal Procedure Code.[1] And every offence under the Ordinance is cognizable for the application of such Code notwithstanding anything in Schedule 2 thereof.[2] No prosecution for an offence under the Ordinance, however, shall be instituted without the written sanction of the Attorney-General.

Bribery.—Section 20 of the Act reads:

> (1) No member shall accept or receive either directly or indirectly any fee, compensation, gift or reward for or in respect of the promotion of or opposition to any Bill, resolution, matter or thing submitted or intended to be submitted for the consideration of the Council.
>
> (2) Any person acting in contravention of this section shall be liable to a penalty not exceeding five thousand rupees, and, in addition, to repay the amount of the value of the fee, compensation, gift or reward accepted or received by him.

Recovery of Penalties.—Section 21 empowers only the Attorney-General to recover in any civil court of competent jurisdiction any penalty incurred under the Ordinance, which shall be paid into the general revenue of the Island.

Miscellaneous.—The Commons Journals are to be *primâ facie* evidence in inquiries touching privilege.[3] Journals printed by order of the Council are to be admitted as evidence.[4] The penalty for printing false copy of the Journals, Ordinances, etc., is imprisonment for not more than 3 years.[5] Persons responsible for publications authorized by the Council are protected by the power to stay proceedings.[6] In cases of the publication of proceedings without malice, the judgment or verdict may be given for the defendant or accused.[7] Section 27 provides that the power of the Speaker under the Ordinance shall be supplementary to his powers under the Order-in-Council. Neither the Speaker nor any Officer of the Council shall be subject to the jurisdiction of any court in respect of the exercise of any power conferred on or vested in the Speaker or such Officer under the Ordinance.[8] Section 29 of Ordinance No. 27, providing that the Speaker should act notwithstanding any dissolution of the Council, was struck out of Ordinance No. 27 by Ordinance No. 28. Civil processes are not allowed to be served in the Chamber, or served through the Speaker, etc., while the Council is sitting.[9] Privileges are to be judicially noticed.[10]

Section 32 contains the interpretations of " Clerk ", " Committee ", "Council ", " Council Chamber ", "Journals ", " Members ",

[1] Cap. 16. [2] Ss. 17-19. [3] S. 22. [4] S. 23.
[5] S. 24. [6] S. 25. [7] S. 26. [8] S. 28.
[9] S. 30 of Act 27 of 1942 as amended by s. 2 of Act 28 of 1942.
[10] S. 31 of Act 27 of 1942.

" Order-in-Council ", " Speaker ", and " Standing Orders ". " Stranger " means any person other than a Member or Officer of the Council, and " Officer of the Council " means the Clerk of the Council or any other officer or person acting within the Council Chamber under the orders of the Speaker and includes any Police Officer on duty within the Council Chamber.

Sub-section (2) of s. 32 reads:

> Any reference to a Board, Committee or person mentioned in the Order in Council by name, designation, or office, shall be construed as a reference to the Board or Committee which for the time being is entitled to function under that name under the Order in Council, or to the person for the time being holding that office or entitled to that designation under the Order in Council, as the case may be.

The following new s. 31 was inserted after renumbered s. 30, which reads as follows:

Questions relating to evidence and production of documents before the Council or a Committee to be determined in accordance with usage of Parliament.

> Where at any time any question arises in the Council or in a committee in regard to—
>
> (*a*) the right or power of the Council or a committee to hear, admit or receive oral evidence; or
>
> (*b*) the right or power of the Council or a committee to peruse or examine any paper, book, record or document or to summon, direct or call upon any person to produce any paper, book, record, or document or to lay such paper, book, record or document before the Council or committee; or
>
> (*c*) the right or privilege of any person (including a member of the Council or committee) to refuse to produce any paper, book, record or document or to lay any paper, book, record or document before the Council or committee,
>
> that question shall, subject to the preceding provisions of this Ordinance, and except in so far as express provision is made in those provisions for the determination of that question, be determined in accordance with the usage and practice of the Commons House of Parliament of the United Kingdom of Great Britain and Northern Ireland.

Ordinance No. 28 of 1942 also substituted the following definition of " committee ":

> " committee " means any Executive, standing, select or other committee of the Council; and in sections 5 to 11 and section 16 means a standing committee or any other committee duly authorized by a resolution of the Council under section 4.

The saving clause of the Bill, new s. 33 of Ordinance No. 27 of 1942, is as follows:

> Nothing in this Ordinance shall be deemed, directly or indirectly, by implication or otherwise, in any way to diminish the rights,

privileges, or powers of the Council, whether such rights, privileges or powers are held by custom, statute, or otherwise; and the omission to define by this Ordinance all privileges, immunities and powers which could have been so defined in the exercise of the powers conferred by Art. 73 of the Order in Council shall not at any time for any purpose be construed in derogation of the right hereafter to define by Ordinance any such privilege, power or immunity which is not expressly mentioned in this Ordinance.

Jamaica (Constitutional).[1]—In reply to Questions in the House of Commons, the Under-Secretary of State for the Colonies made a statement at the end of Questions in regard to this subject on March 12, 1941,[2] the gist of which was that in response to a demand there had been in Jamaica in recent years for a reform of the Constitution so that the people might take a greater part in the responsibilities of government, as a result the following changes had been recommended: (1) Universal adult suffrage; (2) an enlarged Legislative Council of double the present number of elected Members (14) with nominated Members (at present 10) and 3 instead of 5 *ex officio* Members, the total to be not less than 40. Official representation in the Legislative Council is to be confined to the Colonial Secretary, the Treasurer and the Attorney-General, the resulting vacancies to be filled by nominations, in which care will be taken to ensure that all important sections and interests of the community receive adequate representation. Concurrently with the reduction of the official representation the powers of the Governor will be in some degree enlarged, but the special powers of veto at present held by the elected Members are to be retained. If these changes are accepted, the Council will be presided over by a Speaker, in place of the Governor, but appointed by him in the first instance and later to be elected by such Council, subject to his presentation to the Governor for approval. Two difficulties, however, present themselves in carrying out these changes: the absence of trustworthy statistics of population and the standard of local government, which has resulted in unsatisfactory social services. A census is therefore being considered in order to organize local government. Until this is done and the elections are held on the new franchise, the reconstitution of the Legislative Council proposed cannot take place.

On October 1, 1941,[3] in reply to a Question in the House of Commons, the Comptroller of the Household, on behalf of the Under-Secretary of State for the Colonies, said that the proposals

[1] *See also* JOURNAL, Vols. III, 27; IX, 62.
[2] 369 H.C. Deb. 5, s. 1265; *see also* 118 H.L. Deb. 5, s. 659.
[3] 374 H.C. Deb. 5, s. 565.

for a reform of the Constitution which were submitted to the Legislative Council, which had passed a Resolution for a bicameral Legislature, had been rejected as in the scheme proposed by them in 1939. The question of future action was under consideration but no decision had yet been taken.

Trinidad (Constitutional).[1]—In reply to a Question in the House of Commons on February 19, 1941,[2] the Under-Secretary of State for the Colonies said that the announcement of the proposed changes in the Trinidad Constitution had been widely welcomed and had received the unanimous support of the elected Members of the Legislative Council, in consultation with whom they had been framed. Such proposals included the appointment of a Franchise Committee as recommended by the West Indies Royal Commission. The results of the working of such a Committee, however, could not be available in the immediate future, and there appeared to be no good reason to await them before introducing the agreed changes in the composition of such Council.

In reply to a Question in the House of Commons on March 11, 1941,[3] the Under-Secretary of State for the Colonies said that Lord Lloyd had accepted for early action certain recommendations submitted by the Governor of Trinidad with the agreement of the Unofficial Members of the Legislative Council. These were that such Council should be reconstituted, first, by the emoval of 9 out of the 12 Official Members now on such Council, nd secondly by the addition of 2 Elected Members, and that he Franchise Committee should also consider the question of Members' qualifications. It was suggested by the Governor, with the concurrence of the Unofficial Members, that, apart from the matters mentioned above, any further constitutional changes should be deferred until 1948, but that if possible they should be put into effect in time for the next elections due in 1943. It was also suggested by the Governor, with the concurrence of such Unofficial Members, that, apart from matters mentioned above, any further constitutional changes should be deferred until after 1948—that is, until there had been 5 years' experience with the reconstituted Council elected on such new procedure as may result from the work of the Franchise Committee. While the proposals had been generally welcomed in Trinidad, the Under-Secretary was aware that there had been some criticism, but some at least of this had been based on misapprehension of their nature.

O. C.

April 29, 1943.

[1] *See also* JOURNAL, Vols. III, 27; IX, 62.
[2] 369 H.C. Deb. 5, s. 135. [3] *Ib.* 1161.

II. PARLIAMENTARY CONTROL OF DELEGATED LEGISLATION; OR, WESTMINSTER *VERSUS* WHITEHALL

BY "ONLOOKER"

WHEN the Parliament at Westminster hurriedly passed the Emergency Powers (Defence) Act some ten days before the War began, there was nothing niggardly about its delegation of legislative power. The legislators, reflecting the mood of their constituents, wanted to arm the Executive with every imaginable weapon to defeat the aggressors. The Act was necessarily framed in the widest terms because nobody could foresee the impending perils or the possible disorganization of the peacetime way of life. The months of May and June, 1940, intensified the eagerness of Britons to hold back nothing of "themselves, their services and their property", to quote the dedicatory language of the amending Act of that year. But at length, in 1943, with the corner seemingly turned, the House of Commons has grown conscious of its constitutional duty to supervise and check the Executive. Many of the criticisms and protests by Members of Parliament are almost equivalent to a demand for the repudiation of their own delegation. We know by now, they seem to say, the worst that we have to meet in aerial bombardment, the black-out, the evacuation and billeting of the population, the requisitioning of property, food rationing and other inconveniences. Powers need no longer be so vaguely wide, nor ministerial actions so self-sufficiently unchallengeable. Yet there are admissions that delegated legislation of a restrictive nature will be needed after the guns cease firing, and that the vast projects of post-war reconstruction will not be enacted unless the direct law-making of Parliament be supplemented by departmental schemes, rules, regulations and orders having the effect of law.

To return to the Emergency Powers (Defence) Act of 1939, it enabled His Majesty in Council to make such "Defence Regulations"

> as appear to him to be necessary or expedient for securing the public safety, the defence of the realm, the maintenance of public order and the efficient prosecution of any war in which His Majesty may be engaged, and for maintaining supplies and services essential to the life of the community.

These Regulations might modify statutes, sub-delegate legislative authority to make orders, rules and by-laws for the pur-

poses already recited, provide for the detention (inferentially without trial) of persons whom the Secretary of State thinks it expedient to detain in the interests of the public safety or the defence of the realm, and authorize the requisitioning of property. The Orders in Council containing these Defence Regulations needed no positive Parliamentary approval; they could, however, be cancelled if either House passed an address praying for their annulment within 28 days after they were made. The law courts were not debarred from ruling that the parent regulations or the resultant orders were *ultra vires* because outside the scope of the delegated power. But the prescribed purposes, cited above, were so widely stated, and the draftsman (inevitably and no doubt rightly) has framed the departmental exercise of the power to give so much authority to a Minister's discretion, that the judges have seldom found occasion to declare a Regulation or Order *ultra vires*. In all the litigation over the persons detained under Regulation 18B, for example, the legal validity of the Regulation itself was never open to question. The detention (which in the last War was held by the courts to be impliedly within the scope of the regulation-making power given by the Defence of the Realm Act) was expressly authorized by the Act of 1939. But the Parliamentary control remained. "In our modern system of government", said Lord Wright in the Liversidge Case ([1941] 3 All Eng. Rep., p. 388), "the Home Secretary, though he is not in these matters amenable to the court, and though impeachment has been obsolete for over a century, still is generally responsible to Parliament, quite independently of his duty under Regulation 18B (6) to report to Parliament at least once a month the number of persons detained. . . . If the sense of the country was outraged by the system or practice of making detention orders, or, indeed, by any particular order, it could make itself sufficiently felt in the Press and in Parliament to put an end to any abuse; and Parliament can always amend the Regulation." Those last words, of course, mean "amend by statute"; there is no power for the House to amend a Regulation on the prayer for annulment.

What, then, of the constitutional methods of Parliamentary control? How far are they adequate? Is any new safeguard required?

Control by Parliamentary Debate

The ordinary opportunities of criticizing the Executive, from the debate on the King's Speech onward throughout the Session, need not here be set out. The following, however, are the

occasions which have been utilized in the present War for discussing the Regulations and Orders flowing from the Emergency Powers (Defence) Act.

(A) *The Annual Continuance of the Statute.*—In the first place, the 1939 Act is temporary. It was to expire on August 23, 1940, after a year's duration, unless continued for another twelve months at a time by an Order in Council issued at the request of both Houses of Parliament. There must, therefore, be a fixed annual debate. In 1941 the House of Commons agreed to the continuance without a division, but the discussion, largely concerned with 18B, occupied 80 columns of *Hansard*. In July, 1942, half a column sufficed to record the whole proceeding; the Home Office spokesman's seven-line speech was the only speech made. In 1943 some twenty speeches ranged over a wide field. In the House of Lords the debates on the continuance Motion have been quieter. The use of this annual opportunity varies, of course, with the mood of the Legislature.

(B) *Motions for the Adjournment.*—During the present War many matters have been usefully raised on the Motion " That this House do now adjourn ". The effect of detention of civilians under Regulation 18B has been raised at least twice on the adjournment Motion—on December 10, 1940, by Mr. R. R. Stokes, and February 10, 1943, by Sir Irving Albery. Debates on the adjournment cannot decide anything, but they can extract from a Minister valuable statements and even concessions.

(C) *In Committee of Supply.*—As in peace-time, the consideration of a departmental Vote in Committee of Supply has been an apt occasion for criticism. Thus, on July 21, 1942, a Member moved to reduce the Home Office Vote by £100 in order to ventilate complaints against 18B.

(D) *Motions for which the Government finds Time.*—Though private Members' time has been raided, the Government will arrange through the usual channels a debate on a matter on which Members feel strongly. Such a debate occurred this year on Major Petherick's Motion of May 20. Its terms, so mildly hortatory that the Government had no quarrel with them, were as follows:

> That this House, admitting the necessity for war purposes of giving abnormal powers to the Executive, is of opinion that Parliament should vigilantly maintain its ancient right and duty of examining legislation, whether delegated or otherwise.

The private Members who brought this matter forward were believed to favour the institution of a Parliamentary committee to scrutinize the Orders made under Defence Regulations, but

they shrank from demanding it outright. They had good points to make. The Regulations themselves must be laid before Parliament, and, as already emphasized, are liable to be annulled on adverse address within 28 sitting days. The Regulations are sometimes self-contained and complete statements of law; often they are mere general sanctions for the making of departmental Orders; it is these subsidiary Orders by which the citizen feels harassed. There is no obligation to lay these Orders before the House; the opportunities of Parliamentary protest against them are much more restricted than in the case of the Regulations, owing to the rules about "exempted business". A Standing Committee to sift all delegated legislation, so as to bring to Members' notice those rules and orders (possibly only 1 *p.c.* of the total issued) which ought to receive special attention from Parliament, was recommended by the 1932 report of the "Donoughmore" Committee on Ministers' Powers. This body was set up by the Lord Chancellor in 1929, with Lord Donoughmore as its first chairman, just when the eloquent pen of the late Lord Hewart had disturbingly dramatized the perils of the "New Despotism", with which—as law officer and legal adviser to Government departments from 1916 to 1922, a period of bureaucratic heyday—he had himself an intimate acquaintance. To this recommendation of a committee we shall presently return.

To Major Petherick's Motion of last May the Home Secretary made an able and conciliatory reply. The grievances were many. It was said that departments proceeded by subsidiary order when the topic was important enough to be dealt with by a major Defence Regulation. Promising that the point should be borne in mind, the Home Secretary was able to claim that recently a much criticized Order (enabling the Board of Trade to inspect premises and obtain information) had been replaced by a new Defence Regulation (55AA). Regulations and Orders would henceforth be made more clear and self-contained, though it was inevitable that, having to be interpreted by judges, they should be formally and indeed awkwardly phrased. Explanatory notes were to be added, where required, but care would have to be taken that they should not pretend to give a legal interpretation (the task of the judges) or to defend the Government's policy by anything like propaganda. The scope of the subordinate orders would henceforth be narrowed to the specific purpose in hand. Orders in Council containing Defence Regulations would be framed in such a way that the Regulations could be objected to separately; previously anyone challenging a single Regulation might find that he brought down with it several others against

which there was no complaint. Critics disliked the system whereby a Regulation begat an order, an Order begat a Direction, and a Direction begat a Licence; this pedigree of successive generations was puzzling, raised questions of validity, and gave the impression that, at the level of Directions and Licences, some minor official could worry the citizen irresponsibly without the Minister's knowledge or approval. Another practice to be remedied was the delay in publication; Orders were sometimes coming into force before the public had a chance to see them. This, it will be realized, was a fruitful debate. Especially valuable was the Home Secretary's assurance that Parliamentary time would be given for a debate on any subordinate Order which a substantial number of Members wanted to discuss.

(E) *Addresses for Annulment of Particular Defence Regulations.*— The fact that the Government Whips will mobilize support to rescue any Order in Council containing Defence Regulations, if attacked by a prayer for its annulment, has not prevented such prayers from being successful. Even when the addresses are not persisted in, they may elicit explanations and the promise of modification. An important occasion of this kind was the adverse Motion of October 31, 1939, when the Home Secretar undertook to reconsider several challenged Regulations, among which was the much discussed Regulation 18B in its original form It may be recalled that the new form of 18B, resulting from th debate and the reconsideration, changed the initial words " The Home Secretary of State, if satisfied . . ." to " If the Secretary of State has reasonable cause to believe . . .". The question for the House of Lords in the Liversidge Case was whether this possibly significant change still left the Home Secretary a complete executive discretion (provided, of course, that it was properly exercised in good faith and without bias) or whether the reasonableness of the cause of belief was a fact which judges and juries could investigate and review. It is clear that the critics at the time never thought that the latter position had been achieved by their protest, and it was the former alternative which, in spite of Lord Atkin's vigorous dissent, the House of Lords judgments confirmed. Needless to say, the English courts maintained their invariable principle that, in interpreting the Regulation, they would not refer for guidance to anything said in Parliament for any light it might throw on the intention of the Legislature.

In 1941 a successful prayer for annulment led to the formal revocation of Regulation 42BA, which was to permit theatres to be opened on Sundays in certain areas in England. This saved the law courts the trouble of deciding whether such

a provision was within the scope of the regulation-making power.

Coming down to the year 1943, we find, in its first seven months, no fewer than seven prayers against orders in Council containing Defence Regulations. One succeeded; one, which concerned a provision to protect allotment gardens from trespassers, was negatived; the other five were withdrawn. The successful prayer appeared well justified, although there was a queer muddle on the division. The Government spokesman had promised to reconsider and replace the challenged Order in Council; the mover of the prayer seemed ready to withdraw his Motion, and some Government supporters were said to have voted for the prayer in the mistaken belief that they were voting to allow its withdrawal. The Ministry of War Transport was asking for a curiously vague amendment to Regulation 70, dealing with traffic on highways. The existing Regulation allowed the Minister to make orders for various purposes; the proposed amendment was to add to these purposes the following words: "for removing or modifying, or for limiting the application of, any prohibition or restriction imposed by or under any Act."

Naturally the critics pounced upon this " blank cheque ". It would enable the Minister, they said, to ban the use of perambulators on the road or to compel all traffic to drive on the right side of the highway, instead of the left, because so many Americans were in the country. On the prayer for annulment the Joint Parliamentary Secretary to the Ministry explained that the department merely wanted to alter speed limits. The existing law allowed the Minister to vary them downwards—*e.g.*, to reduce a maximum speed of 20 miles an hour to one of 15 miles—but not upwards. The Minister wanted to allow certain steel-wheeled trailers used in agriculture to travel up to 10 instead of 5 miles an hour; he wanted to exempt fire engines, ambulances and police vehicles from all speed limits, and to vary other arrangements—for example, to get rid of certain one-way-traffic schemes. If only this information had been given by making the proposed amendment state its purport particularly or by adding an explanatory note, the proposal might well have escaped attack. The critics could plume themselves upon their alertness in administering a well-deserved check to a grasping department.

The Proposed Scrutinizing Committee

Private Members of the House of Commons are believed sometimes to murmur that they are treated as mere voting machines

and are allowed too trifling a share in contributing to the administration of the country. In the first place they feel that they ought to keep an eye on the thousands of Orders which flow from departments. If this task is physically impossible for the individual M.P., a Parliamentary committee, with aid from the staff of the Clerk at the House, could roughly sift the mass of material and draw attention to anything of which the M.P. ought to take notice. In the second place, though it is not the function of legislators to govern the country, the M.P. may feel that, if he could but be appointed a member of some committee attached to a particular department, he could study its work at close quarters and equip himself to criticize it more efficiently on the floor of the House. The argument against any such system of committees is that, if they sit to supervise the departments, they violate the convention of ministerial responsibility. A recent writer on this subject puts it thus:

> Either the Standing Committee would be tolerant and therefore otiose, or else it would be dominant and therefore constitutionally disturbing.[1]

The Donoughmore Committee did not mean the scrutinizing committee to go into merits, but merely to report *inter alia* "whether any matter of principle is involved". Sticklers for ministerial responsibility say they can hardly distinguish merits from principle; the Minister would be taking shelter behind the committee's approval. To that extent the House of Commons would be surrendering its duty to supervise the Executive, the Minister would be the less ready to display initiative, and his staff would spend its time fortifying itself against the committee's curiosity. The traditional House of Commons committee is not a team of experts but a microcosm of the whole House, though the Select Committee on National Expenditure is developing *expertise* through the researches of the specialized groups into which it is subdivided.

During the debate on the Petherick Motion last May Sir Charles Macandrew, well versed in the work of the committee room, bluntly said that the Donoughmore Committee had shown ignorance of Parliamentary procedure, and that a Standing Committee, containing not fewer than thirty members, simply spelt delay. "We know how long it takes a Standing Committee upstairs in ordinary times to go through a Bill." He regarded as absurd the idea that the preliminary work would be done by officials instead of by Members of the House. The advocates of

[1] Sir Cecil Carr, *Concerning English Administrative Law*, p. 63; see *ibid.*, pp. 60-63.

a scrutinizing committee seem now to favour a Select Committee. Whatever its nature, the British constitution demands that it should have no executive power. Though Ministers have hitherto staved off the proposal, the suggestion will doubtless be revived after the War. Lord Justice Scott, a member of the Donoughmore Committee and its final chairman, has stated in *The Times* (June 2, 1943) that he was invited by the late Mr. Speaker FitzRoy to discuss the proposal, and that the latter assured him of his unqualified approval and whole-hearted support for the plan if he should be consulted by the Government. The advocates of the plan can point to S.O. 191 of the House of Lords under which a special committee of peers gives a preliminary examination to all those Rules, Regulations or Orders which require a positive confirmatory Resolution of the House. The number of such documents is small; their importance may be taken for granted, since the exceptional procedure of a positive Resolution has been imposed; and they are not likely to escape notice. No one seems to have drawn attention to the control of delegated legislation in the Australian Senate, so admirably described in the JOURNAL by Mr. J. E. Edwards in the volume for 1938. Neither at Westminster nor in Australia has the other House copied this experimental procedure. The members of second chambers have perhaps more leisure for a service of this kind.

The System as it is

Whether the device of a scrutinizing committee be adopted or not, the foregoing details indicate that Members of the House of Commons have managed to exercise a healthy supervision. During 1943 they have developed a new technique of vigilance. A small unofficial committee has—to beguile the tedious hours of fire-watching duty, it is rumoured—voluntarily scrutinized the output of Statutory Rules and Orders, unaided by any clerical staff. The Members hammer away at Ministers with incessant questions about Regulations and Orders. Why has this Order been made? Why has that Order not got an explanatory note? Why has yet another been issued with a corrigendum slip attached to it, and what is the legal value of the attachment? An M.P. wants to know what are the "flaps" mentioned in a Fish Distribution Order made by the Minister of Food. The Minister imperturbably replies that "flaps, including dog-fish flaps, are lugs or belly-walls". This last interpellation, by the way, may be an instance of the fact, sometimes privately asserted by de-

partmental officials, that the men and women engaged in the trade concerned need much less enlightenment than the M.P. who is active on their behalf. But perhaps a little ignorance on the part of a legislator is no disgrace to him. The Donoughmore Committee report, possibly to lighten its solid pages, referred to a statute of Henry VIII which enacted that the Bishop of Rochester's cook, accused of poisoning, should be boiled to death (22 Hen. VIII, c. 9). A prominent speaker on the Petherick Motion said that Henry VIII had made this law by Order or Proclamation. He had not read his brief. Other speakers gave currency to the figure of 15,000 as the number of war-time Defence Regulations and Orders. This was a wild exaggeration. At that date the total of Rules, Regulations and Orders of all kinds made since war began, whether under peace-time or war-time powers, was far less than 10,000. Parliament, however, exists in part to remove misunderstandings.

Parliamentary control of the Executive, to sum up, has no bad record at Westminster in the present War. It is obviously stiffening as Britain settles down into what may paradoxically be called the normality of emergency conditions. " Experience must have taught us all ", said Lord Sumner in the De Keyser's Hotel case in 1920, " that many things are done in the name of the Executive in such times, purporting to be for the common good, which Englishmen have been too patriotic to contest." In spite of the delayed General Election, the House of Commons continues to reflect the mood of the country. The post-war demand for the curtailment of the legislative powers now delegated to the Government departments is likely to surprise any parties or politicians proposing to prolong them when the emergency has at last disappeared.

III. MR. SPEAKER FITZ ROY

By the Editor

Although the Parliamentarian who is the subject of this Article was not eligible for membership of our Society, its members have often studied his Rulings as Speaker of that great bulwark of British constitutional liberty, the House of Commons. For, whether the Lower Houses of Parliament oversea sit under the same title, as at Ottawa, under one more familiar to our American cousins, as at Canberra and Wellington, under the more modest House of Assembly at Cape Town, as Legislative Assemblies in most of the States of Australia, the Provinces of Canada, British India and many of the Colonies, or as Legislative or Provincial Councils under a more restricted form of government, a close relationship in Parliamentary procedure exists between the Lower Chambers oversea and the " Nether House " at Westminster.

Therefore, when " the Clerk of the House " in any of these Legislative Chambers is in want of a precedent, for which the more recent growth of his own Parliament does not afford authority, he turns mostly to the Journals and *Hansards* of the House of Commons, which House, we are glad to see, is still carrying on with " business as usual ", although only the shell of its usual meeting-place has been left by the enemy to mark their respect for democratic institutions.

Our members were, in most cases, unknown to the late Mr. Speaker FitzRoy, but he was nevertheless a familiar figure to them. Through his Rulings could be seen his meticulous desire for absolute justice, his tact in difficult situations, his protection of minorities and, in all these, his great talents as a Speaker. In fact, our members had come to know Mr. Speaker FitzRoy in a particular way.

Those who have sat for many years at the Tables of our Parliaments and Legislatures oversea have seen how gradually and consistently have responsibilities of great personal authority been vested in the Speaker at Westminster, duties of a character which it would have been impossible to confer upon a Speaker of poor talents or lacking in the knowledge of and respect for those high traditions associated with the Speakership of the House of Commons.

The year of grace—1941—which Volume X of our JOURNAL reviews from this Society's special standpoint was verily a fateful one for Mr. Speaker FitzRoy. First, the august building in which

he so ably presided was on May 10 destroyed by enemy action; secondly, he was, on July 24, congratulated formally in the House on his seventy-second birthday;[1] and thirdly, on November 19, on the occasion of his golden wedding, a presentation was made to him from the Members of the Commons, by the Father of the House (The Rt. Hon. Lloyd George).

The writer of this Article is sitting, in uniform, off duty, in a part of the Empire far distant from the sound of " Big Ben ". He has, therefore, only cuttings from *The Times*[2] and the *Hansard* to guide him. The former gives an account of the unofficial presentation to Speaker FitzRoy upon his golden wedding; the latter the report of the debate on that occasion.

On November 19, 1941,[3] the Prime Minister (The Rt. Hon. Winston Churchill), after Questions, rose in the House of Commons, as he said, " to commit an irregularity " for which he asked the indulgence of the House. He remarked that in all the long range of Parliamentary history, at any rate until the time of Mr. Speaker Rous in 1653, there had been no occasion when a Speaker of the House of Commons had celebrated his golden wedding while occupying the Chair.

The Prime Minister assured Mr. Speaker that he was generally beloved throughout the House of Commons, which affection extended to Mr. Speaker's home and family. The House had in 13 years gained complete confidence in his impartiality, in the manner in which he had vindicated and championed the rights of the House of Commons, in the way in which he had protected minorities and the kindliness and courtesy with which he had treated all Members who had access to him. The Prime Minister stressed that he would be expressing the sentiments of the whole House when he said that they wished to share with Mr. Speaker in this joyous spirit, and he moved that their expressions should be borne upon the records of the House, and stand as a precedent for future times.

The next speaker was the Rt. Hon. F. W. Pethick-Lawrence, who, at the request also of those who sat behind him, said what a great pleasure it was to associate themselves with what had fallen from the Prime Minister, and to tell Mr. Speaker of the esteem and affection in which he was held. The Rt. Hon. Gentleman remarked that he expressed the universal feeling of all Members in every part of the House when he said that Mr. Speaker had upheld the high traditions of his office with conspicuous fairness to all.

[1] 373 H. C. Deb. 5, s. 1025; Mr. Speaker was also congratulated by the same Member on his seventy-third birthday (382 H.C. Deb. 5, s. 139).
[2] Nov. 11, 1941. [3] 376 H.C. Deb. 5, s. 320.

The Rt. Hon. Sir Percy Harris, Bt., then addressing the Chair, observed that Mr. Speaker was the 134th occupier of the Chair and that it was their good fortune to have been given this special opportunity of expressing not only their confidence in him as Speaker but their affection and friendship for him. The Speaker occupied a difficult position and in it he had gained the complete confidence of the House. He then took the opportunity to wish Mr. Speaker and his Lady God-speed on this important occasion of their golden wedding.

Mr. W. J. Thorne, the oldest Member, though not the Father of the House, then offered Mr. Speaker his heartiest congratulations. The Hon. Member hoped and prayed that Mr. Speaker might live to see his diamond wedding day.

Mr. J. Maxton was the next to congratulate Mr. Speaker, "as one spokesman of a minority in the House". Mr. Maxton said that it was now almost 20 years since he had sat under the Chairmanship of Mr. Speaker, first when he was Chairman of Committees, and during that reign he had gained a tremendous regard for him.

Mr. Maxton, who had frequently come under Mr. Speaker's Ruling, continued:

> Your period of Speakership has been a striking one and will have a great place in history. You have seen the death of a Monarch, the Abdication of a Monarch, the Coronation of a Monarch. You have seen the declaration of a Great War. You have seen the historic Chamber in which we were accustomed to meet shattered practically about your ears. You saw the Chair in which you sat smashed to matchwood. The Chambers of stone and brick vanished, but under your guidance and direction the living flesh and blood, the sentient thinking House of Commons, continued in its daily task with no break in continuity. To you, Sir, we owe a debt of gratitude for the fact that our work in these difficult days has continued. I wish to add my appreciation and I hope that many years will lie ahead of you, many years of happy union with your good Lady, to whom we send our friendly greetings, and that you will still be there to see this House carry this country into happier and better days.

Mr. Speaker, in the course of his reply, said it was true that during his term of Speakership a greater number of precedents had been set than during the time of almost any other Speaker. This one was certainly his happiest. Remarks had been made as to the services he had rendered. There were two things which stood out in his life which called to mind the reasons why he had in most cases succeeded. The first was the loving care of his wife and the invariable encouragement she had given him in his work. The second was that any success he had attained in the Chair was not of his doing but entirely due to the kindness

and goodwill shown to him by Hon. Members and every colleague of the House of Commons. During his course as Speaker, Members had always been blind to his faults and kind to his virtues.

Mr. Speaker concluded by saying:

> This is a very happy event and I should like on this occasion to take the opportunity of not only thanking the Members of this House, but all those who have contributed to my success while I have been in the Chair—the gentlemen at the Table, my Secretary, the whole staff of the House of Commons, clerks, door-keepers, messengers and those gentlemen who keep the records of the House in *Hansard*. The Press have always been kind to me, the Police, everybody. I want to thank them all. It is the knowledge of the goodwill of all those with whom I have come into contact that has been my greatest reward as Speaker in this House. In conclusion, I should like to say this: My great regret is that this event has taken place when the whole world is distracted. I wish we could have held it when this country was at peace.
>
> The Clerk will now proceed to read the Orders of the day.

Now, in the early part of 1943, he has gone to rest. Speaker FitzRoy has joined that long line of Speakers of the House of Commons, for on March 3, 1943, death took him from his important place in the Imperial Parliament, but his name and reputation will remain in the hearts and memories of all those, not only at Westminster but throughout the Empire, whose work has closely connected them with the conduct of the proceedings of the House of Commons during the last 15 years. Particularly do the members of this Society mourn his loss and offer to his Lady and the members of the late Speaker's family the deepest sympathy in their great bereavement, and this expression of condolence comes from across the great oceans and from every country where members of this Society carry on their work for Parliament.

In view of the nature of the Society and the close association of its members with the Parliaments of the Empire, it might be interesting to refer to an article which appeared in this JOURNAL[1] upon the Speaker's seat, in which Mr. Speaker FitzRoy showed a keen interest. He was much concerned with the departure from precedent made at the general election in the United Kingdom in 1935,[2] by a candidate being put up to contest the Speaker's seat. It was the outcome of this contest which caused the appointment of the Select Committee of the House of Commons[3] to investigate the question of a contested election in the Speaker's constituency. At that election Speaker FitzRoy refused to canvass or address political meetings, contenting

[1] *See* Vol. III, 48. [2] *Ib.* IV, 11. [3] *Ib.* VII, 150.

himself only with reading letters from the Leaders of Parties in the House. He was re-elected M.P. for the fourth time in succession both for Daventry and to the Speakership of the House of Commons in 1935, his last election.

It is interesting to point out that this principle which Speaker FitzRoy was so anxious to see maintained and respected has, at the time of writing,[1] cropped up in South Africa, where Speaker Jansen is likely to be opposed at the promised forthcoming general election.

Although there have been instances of considerable continuity in office, the practice of not contesting the Speaker in his constituency has not been followed since the establishment of Union (1910).

The first Union Speaker, Sir James Molteno, occupied the Chair for 5 years but did not receive his party nomination at the general election in 1915. Speaker Krige was 3 times in succession elected Speaker, but each of the three elections in his constituency was contested and, upon a change of Party in power, a follower of that Party—Speaker Jansen—was in 1924 elected Speaker and again elected at the following general election in 1929. In that year, however, he joined the Cabinet and remained a Minister until March 30, 1933. On May 26 of that year he was, however, again elected Speaker, as well as at the last general election, July 22, 1938.

Speaker Jansen's case, therefore, is not on all fours with that of Speaker FitzRoy, who at no time was a prominent politician, but preserved the tradition of the House of Commons which, in recent years, has not favoured the election of outstanding politicians to the Speaker's Chair.

This question of avoiding a contest in Speaker Jansen's constituency at the forthcoming general election has attracted considerable attention, consequent upon a statement he made to the Press on March 18, in which he said

> that there have been references in the Press and rumours regarding his nomination as candidate for Vryheid (his constituency) at the next general election. Speaker Jansen, therefore, in stating what the true position was, said that when a general election approached the position of the Speaker became very difficult. After having kept aloof from party politics for a number of years, he was confronted with the prospect of having to fight an election, and if he wished to seek nomination for re-election as a Member of the House of Assembly, he had to associate himself with a political Party.
>
> That was the position under present conditions; it had become

[1] April 29, 1943.

clear to him that nothing was to be done to ensure that the Speaker would be kept out of the political arena in a general election.

Under the circumstances he had replied to a request from Vryheid that he was prepared to accept nomination by the Herenigde Party and that was where the matter stood at present.[1]

This Press statement by Speaker Jansen brought forth several references to the subject of the Speaker's seat, among which are quoted the following:

Dr. E. G. Jansen, who has held office for fifteen years and has shown himself most admirably fitted to carry out its functions. He is a Nationalist in politics but as Speaker he has earned golden opinions for his fairness and impartiality from every section in the House. (*Daily Representative :* March 22, 1943.)

The Speaker must before a general election declare for what Party he wishes to be a candidate. For the honour then paid to that Party must it be the duty of that Party to find a Seat which is safe for that Party, so that it shall not be necessary for him to make political speeches there. He had simply to remain away and his Party to see that he wins the election. (Tr.) (*Die Suiderstem :* March 18, 1943.)

It is too much to expect that in the case of Vryheid the Leader of the United Party (now in power) shall see that Speaker Jansen at the forthcoming election shall be returned unopposed. (Tr.) (*Die Burger :* March 18, 1943.)

Mutual sacrifices should be made, as occasion arises, by al Parties, to keep the question of the Speakership out of the arena o: party politics, if only because the traditions of Parliament under a democratic system should transcend in public regard the periodic ebb and flow of party majorities. (*The Star :* March 18, 1943.)

An able, impartial, respected and experienced Speaker is a democratic asset and Parliament and its expert advisers ought to be able to devise ways and means to retain his services for the State without doing violence to any of the traditions of democratic government. (*Cape Times :* March 18, 1943.)

No doubt, in time, the tradition of not contesting the Speaker in his constituency will become as strong a tradition in all the oversea Parliaments as in the United Kingdom and New Zealand. The very fact of not having a contest in the Speaker's constituency throws a halo of political impartiality around the Speaker's Chair, ensures that important factor, continuity of office, with all its practical value to the House as a whole, both Government and Opposition, and places in the Chair a Member with political detachment, thus maintaining the high principles for which Mr. Speaker FitzRoy always stood.

[1] *Cape Times*, March 18, 1943.

IV. OFFICES OR PLACES OF PROFIT UNDER THE CROWN

By the Editor

During the year under review in this issue three interesting actions were taken in regard to the above-mentioned subject. A White Paper[1] was published showing those Members of both Houses of Parliament serving in H.M. forces or assisting H.M. Government in a civil capacity; the House of Commons Disqualifications (Temporary Provisions) Act[2] was passed; and a Select Committee[3] of the House of Commons was set up to investigate and report.

Members of Both Houses in H.M. Forces or assisting H.M. Government in a Civil Capacity.—The White Paper above mentioned was issued in February, 1941, and gave a list of the above-mentioned Members. The list does not, however, include (i) Ministers; (ii) Parliamentary Secretaries in their capacity as such; (iii) Members of the Lords holding judicial appointments; (iv) Members of either House serving in the Home Guard or who have served in capacities included in the list but have now ceased to do so, or were then dead; and (v) Members of the House of Commons appointed to Offices of Profit since the outbreak of War and have in consequence vacated their seats.

Part I of the list shows 19 Peers and 12 M.P.s serving in the Navy; 138 Peers and 87 M.P.s serving in the Army; and 9 Peers and 17 M.P.s in the Air Force.

Part II of the list shows the Members of both Houses serving the Government in a civil capacity as 163 Peers and 172 M.P.s.

These figures show a total of 166 Members of the House of Lords with the fighting forces and 163 serving H.M. Government in a civil capacity, out of a total of about 775. The figures for the House of Commons show 116 Members in the fighting forces and 172 serving in such civil capacity, out of a total of a House of 615 Members.

In certain cases, marked in both lists as honorary, travelling and subsistence allowances are paid, but in a large proportion of such cases no claim is in practice made.

House of Commons Disqualification (Temporary Provisions) Bill.[4]—In moving the Second Reading of this Bill on February 27, 1941,[5] the Attorney-General stated that this Bill, which only operates for a year, is limited to the War period and deals only

[1] Cmd. 6255. [2] 4 and 5 Geo. VI, c. 8. [3] H.C. Paper 120 of 1941.
[4] 4 and 5 Geo. VI, c. 8. [5] 369 H.C. Deb. 5, s. 655.

with cases where a Member was anxious to give his services to the State for purposes connected with the prosecution of the War. It recognizes the principle that Members should be free to serve the State on the active list in the armed forces of the Crown.

The Ministers of the Crown (Emergency Appointments) Act, 1939,[1] removed the statutory limit on the appointment of Ministers and their Secretaries to sit in the House.

Whether Members could so serve or not depended at present on old Statutes, the principles of which were archaic, obscure, illogical and in all respects unsatisfactory. Certain service of this kind was allowable and certain other service disqualified. The main relevant disqualifying provision was contained in the Succession to the Crown Act, 1707 (" Statute of Anne "), enacted in 1705, but re-enacted in 1707 as a consequence of the Union with Scotland. Under the Act of Settlement of 1700 Parliament precluded any person holding office under the Crown from sitting in that House. Under the Act of 1705, which distinguished between new and old offices, the holding of an office was not regarded as a disqualification, though on appointment there had to be re-election. The holding of a new office disqualified altogether and there was no doubt that such provision was to prevent the possible apprehended evil of the creation of *ad hoc* sinecure posts by the Government of the day and future excesses in the multiplying of offices not necessarily in the interest of the country. Applying the principle, however, to-day, the position was very different. Now, a Member could only sit and vote if the office had been in existence for 236 years. These things might come to the Courts because the industrious common informer might be anxious to pick up £500.

An unpaid Lord of the Treasury held an " office of profit " as did also a retiring M.P. in his brief occupation of the Stewardship of H.M. Chiltern Hundreds, etc., who resigned such office no richer than when he accepted it.[2]

Another special disqualification Act was that of 1741, which dealt with various departments, many of which had now ceased to exist, but it still applied to some of the older Departments of State. An M.P. served on a Commission in the West Indies, etc. Did that sort of position become a " place of profit " because the M.P. got a contribution towards his expenses ?

The Attorney-General asked: " Is ' a place ' the same as ' an office ', because the words are ' office or place ' ? On the whole, it has been thought ' yes ', though I do not know that there is any decision of the Courts on the matter."

[1] *See* JOURNAL, Vol. VIII, 11.

[2] 369 H.C. Deb. 5, s. 657.

Many obscure border-line problems arose.[1] Old offices were legal and did not disqualify even if profit was attached, and there was no need for a by-election.[2]

Continuing, the Attorney-General said that the Government was prepared, if it was the desire of the House, and as a condition the Bill was passed as a matter of urgency arising out of the necessities of War, to agree to examination of these archaic rules by a Select Committee,[3] and how far it might be necessary to tighten them up in one direction or relax them in another.[4]

The Prime Minister referred to " what every Speaker has accepted, the confusion of accident and anomaly of legal fiction and Parliamentary circumnavigation into which we have fallen over generations quite innocently and for good reasons and in which we now lie."

The House went into Committee on the Bill on March 4, 1941,[5] when various amendments were proposed, some of which were withdrawn, but one of them, dealing with the omission of words after repeal in s. 2 (2) (*which see below*) in connection with the duration of the Act was carried to a division and made a " vote of confidence " by the Government (Ayes 135, Noes 36).[6] The Third Reading of the Bill was taken the same day, after a short debate. The Act contains 2 sections. Section 1 requires the appointment of any M.P. to any office or place under the Crown to be certified by the First Lord of the Treasury that such appointment is required in the public interest for purposes connected with any War in which His Majesty may be engaged. Such an M.P. is not deemed to be a person incapable of election to the House of Commons or of sitting or voting as such, by reason only of his holding that office or place at any time during the present War period. A copy of the certificate is to be tabled in the House of Commons.

Neither shall it be a disqualification if an M.P. has been, since September 3, 1939, appointed to any office or place under the Crown other than one scheduled in the Re-election of Ministers Act, 1919,[7] or a judicial office. Nothing in the Act affects any powers exercisable under the prerogative of the Crown with respect to employment in H.M. service.

" The present War period " is defined as that " period beginning September 3, 1939, and ending with the expiry of the Emergency Powers (Defence) Act, 1939 ".[8]

The Proviso to s. 2 (2) reads as follows:

[1] 369 H.C. Deb. 5, s. 658. [2] *Ib.* 659.
[3] H.C. Paper 120 of 1941. [4] 369 H.C. Deb. 5, s. 661. [5] *Ib.* 795.
[6] *Ib.* 854. [7] 9 and 10 Geo. V, c. 2. [8] 2 and 3 Geo. VI, c. 62.

> Provided that upon the expiry of this Act subsection (2) of section thirty-eight of the Interpretation Act, 1889[1] (which relates to the effect of repeals), shall apply as if this Act had then been repealed, and the provisions of this Act shall, notwithstanding such expiry, continue to apply with respect to the holding by any Member of the Commons House of Parliament of any office or place then held by him.

Select Committee on Offices or Places of Profit under the Crown.[2]—On the same day that the House of Commons Disqualification (Temporary Provisions) Bill, 1941, was read the third time, a Select Committee on the above subject was appointed,[3] according to the Government undertaking, with the following terms of reference:

> To enquire into the law and practice governing the disqualifications for membership of the House of Commons by reason of the holding, or the acceptance of, Offices or Places of Profit under the Crown, and to make recommendations.

The Report[4] was tabled and ordered to be printed October 14, 1941.[5]

The Committee held 16 sittings and examined the Attorney-General, the Clerk of the House of Commons, the Vinerian Professor of English Law of Oxford University and Fellow and Tutor of Merton College, the Lord Chancellor and other witnesses, from whom was heard evidence of great value on the constitutional and legal history of offices and places of profit under the Crown as well as on the present law and practice.

This authoritative opinion was had by the Committee on a number of constitutional questions of importance which arose in the course of the inquiry.

The Committee confined its investigations in the first instance to ascertaining the pre-War position, and Part I of its Report deals with the historical survey; sources of the law; office-holding as an impediment to the service of the House; appointment to office as a means of increasing the influence of the Crown over Parliament; office-holding as a link between Parliament and the Crown; and the Succession to the Crown Act, 1707.

In the above historical survey, the Committee, in para. 19 of its Report, observed

> that there can be traced the genesis and gradual development of the three chief principles which by the beginning of the eighteenth century had become, and have since been, and should still be, the main considerations affecting the law on this subject: these, in the

[1] 52 and 53 Vict., c. 63.
[2] H.C. Paper 120 of 1941.
[3] 369 H.C. Deb. 5, s. 863.
[4] H.C. Paper 120 of 1941.
[5] 374 H.C. Deb. 5, s. 1251.

order of historical sequence, are (1) incompatibility of certain non-ministerial offices with membership of the House of Commons (which must be taken to cover questions of a Member's relations with, and duties to, his constituents); (2) the need to limit the control or influence of the executive government over the House by means of an undue proportion of office-holders being members of the House; and (3) the essential condition of a certain number of ministers being members of the House for the purpose of ensuring control of the executive by Parliament. The Act of 1707 was the first effective attempt to establish these principles in an Act of Parliament.

In regard to the construction to be placed upon its terms of reference para. 20 of its Report reads:

> Your Committee were faced at an early stage of their proceedings with some uncertainty as to the proper construction to be placed on the expression " Offices or Places of Profit under the Crown " in their terms of reference, owing to the number and variety of offices which have been, and of others which might be, regarded as covered by that expression. They have thought it convenient and right and in accordance with the wishes of the House, judging from the debates on the subject, that they should put a fairly wide interpretation on their terms of reference. This enables them to include in their considerations all such offices and places as appear to have been included in past legislation on the subject, even though the element of " profit " is negligible or practically non-existent; and also to include certain cases of persons holding positions which, while possibly not strictly speaking offices or places of profit from or under the Crown, are so analogous to some of such offices that it would be illogical as well as inconvenient to exclude them from the consideration of Your Committee. On the other hand Your Committee have not thought it right or convenient to include in their consideration the position of persons from time to time in contractual relations with the Crown, where such contractual relations do not result from a definite appointment directly or indirectly by the Crown to what is generally regarded as " an office ". Your Committee recognize that persons in certain contractual relations (like those of standing counsel to government departments, barristers employed on government briefs, technical and scientific advisers, and regular speakers for the British Broadcasting Corporation) may be in a position somewhat analogous to that of office-holders. The position of such persons, however, appears to Your Committee to be a distinct and separate problem affecting questions of conflict between an individual Member's personal interests and his duty as a Member, rather than affecting the relations between the Crown, or executive government, and the House of Commons, and calculated to lead to considerations other than those which are properly within the purview of Your Committee.

The Report then remarks upon the method of dealing with the problem; Parliamentary Private Secretaries; limit of number of Ministers in the Commons; re-election on appointment to office;

Stewardship of Chiltern Hundreds, etc.; non-ministerial office-holders exempted from disqualification; officers and men in the armed forces; Lords Lieutenant, etc.; High Sheriffs; M.P.s not to be appointed to disqualifying office without their consent; Recorders; J.P.s; certain offices with judicial functions; Regius Professors and holders of other academic offices appointed by the Crown; the King's Printer; pensioners; certain office-holders to be expressly disqualified; Judges; Recorder of London, the Common Serjeant; Judges of Appeal of the Isle of Man; Stipendiary Magistrates; the Civil Service; Ambassadors; offices connected with statutory authorities; Scottish offices; common informers, penalties and jurisdiction; Clergy; and the B.B.C.

"P.P.S.s" (Parliamentary Private Secretaries) were also the subject of the following Question in the House to the Prime Minister; both his reply and para. 24 of the Committee's Report are therefore given below:

> On June 24, 1941,[1] in reply to a Question on "P.P.S.s" to the Rt. Hon. the Prime Minister, Mr. Churchill said that such Secretaries occupied a position which was not always understood by the general public. These Secretaries were not members of the Government. They were Private Members and should therefore be afforded as much liberty of action as possible, but their close and confidential association with Ministers necessarily imposed certain obligations upon them and had led to the following generally accepted practice: That Parliamentary Private Secretaries should not make statements in the House or put Questions on matters affecting the department with which they were connected. They should also exercise great discretion in any speeches or broadcasts which they made outside the House, bearing in mind that, however careful they might be to make it clear that they were speaking only as Private Members, they were nevertheless liable to be regarded as speaking with some of the knowledge and authority which attached to a member of the Government.
>
> 24. There is quite naturally a tendency (possibly an unavoidable need) with the growing complexity of affairs generally, and government administration in particular, for government departments to extend and for the number of ministers to increase; but Your Committee consider that there is not, and so far as it is possible to foresee the future, not likely to be, any necessity for a long period to make any appreciable increase in the number of ministers whose membership of the House of Commons is essential to the present system of relations between the executive government and Parliament. If this opinion is correct, it would certainly seem desirable that definite steps should be taken in the direction of checking the tendency to increase the number of ministers with seats in the House of Commons. In this connection reference should be made to the class of members known as "Parliamentary Private Secretaries (unpaid)". The "P.P.S.", as he has come to be called, is

[1] 372 H.C. Deb. 5, s. 952.

a modern institution, but it has become the custom for nearly every minister in the House of Commons to get a private member of the House to act as his P.P.S. The P.P.S. has no recognized official position: he acts as the confidential friend and assistant of his minister and necessarily enjoys in very large measure the confidence not only of the minister personally, but of the minister's department and the officials in it. Thus he must necessarily be to some extent imbued with the " team spirit " which is part of the life blood of the ministry; thus, too, his independence as a member of the House must be liable to be impaired to a somewhat greater degree than that of an ordinary member of the party supporting the Government in office for the time being, although it would be a great mistake to regard his relations with the Government as being as close or intimate as in the case of even the least important under-secretary in the Government. Your Committee cannot disregard the fact that the existence of parliamentary private secretaries is, not without reason, regarded as increasing the voting strength and influence of the Government in the House of Commons; it might (however improbably) be improperly used for this purpose, and there is nothing to prevent a minister appointing more than one parliamentary private secretary. Being unpaid and appointed by the minister personally he is not the holder of an office or place of profit from or under the Crown; moreover, he could not be disqualified for membership, even if that were desired, as the whole essence of his position is his membership of the House, and to abolish him does not appear practicable nor indeed particularly desirable. He performs functions very useful not only to his minister but to members of the House of all parties and groups as a liaison between the minister and Members. Your Committee are therefore of opinion that some steps should be taken, otherwise than by legislation, to reduce or at least limit the number of parliamentary private secretaries. It should usually be unnecessary for more than one parliamentary private secretary to be appointed in respect of one government department, and where more than one ministerial representative sits in the House of Commons, one parliamentary private secretary should be sufficient. It is suggested that a statement on the subject in the House on behalf of the Government might establish a convention which would be generally followed, or, if thought necessary at any time, the House might deal with the matter by a resolution.

It is regretted that the Report cannot be dealt with more fully on account of the want of space, but it is a document of exceptional interest and the highest importance, especially at the present time, which every Clerk-at-the-Table should make himself conversant with.

The Committee recommended the passing of a Bill the chief provisions of which should be as follows:

1. Except as hereinafter provided all persons holding an office from or under the Crown shall be disqualified for election to or for sitting as a Member of the House of Commons.

Note.—The expression "an office from or under the Crown", or whatever expression may be used for the purpose, should be carefully defined and should be widely inclusive so as to cover as far as possible all the positions specifically referred to in this Report as ones which should disqualify. It may be impossible to frame a definition which will cover all such cases, in which event they must be dealt with by a special provision in the Bill. As to the form of disqualification, reference should be made to the latter part of para. 51—namely :

Your Committee therefore recommend that, with the exception of holders of political or ministerial offices, all persons employed in civilian service under the Crown should be disqualified for membership, unless of course they be included in any specific recommendations in this Report for exemption from disqualification.

2. There shall be excepted from disqualification the holders of any of the ministerial offices set out in the schedule contained in para. 26 of this Report, but with a proviso to the effect that not more than 60 such persons shall at any one time be Members of the House of Commons and that the proportions between Ministers and Parliamentary Secretaries laid down in the Ministers of the Crown Act, 1937, shall be maintained.

The scheduled names[1] are as follows : Prime Minister ; First Lord of the Treasury ; Lord Privy Seal ; Lord President of the Council ; Minister without Portfolio ; Minister of State ; Secretary of State for the Home Department ; Parliamentary Under-Secretary of State for the Home Department ; Minister of Home Security ; Parliamentary Secretary to the Ministry of Home Security ; Secretary of State for Foreign Affairs ; Parliamentary Under-Secretary of State for Foreign Affairs ; Secretary of State for the Dominions ; Parliamentary Under-Secretary of State for the Dominions ; Secretary of State for the Colonies ; Parliamentary Under-Secretary of State for the Colonies ; Secretary of State for War ; Parliamentary Under-Secretary of State for War ; Financial Secretary of the War Office ; Secretary of State for Air ; Parliamentary Under-Secretary of State for Air ; Minister of Aircraft Production ; Parliamentary Secretary to the Ministry of Aircraft Production ; Secretary of State for India ; Parliamentary Under-Secretary of State for India ; Secretary of State for Burma ; Parliamentary Under-Secretary of State for Burma ; Minister of Information ; Parliamentary Secretary to the Ministry of Information ; First Lord of the Admiralty ; Parliamentary and Financial Secretary to the Admiralty ; Civil Lord of the Admiralty ; Secretary of State for Scotland ; Parliamentary Under-Secretary of State for Scotland ; Minister of Shipping ; Parliamentary Secretary to the Ministry of Shipping ; Minister of Supply ; Parliamentary Secretary to the Ministry of Supply ; President of the Board of Trade ; Parliamentary Secretary to the Board of Trade ; Parliamentary Secretary or Minister of Mines ; Parliamentary Secretary or Minister for Overseas Trade ;

[1] Para. 26 of Report.

Minister of Transport ; Parliamentary Secretary of the Ministry of Transport ; Minister of Health ; Parliamentary Secretary of the Ministry of Health ; Minister of Agriculture and Fisheries ; Parliamentary Secretary of the Ministry of Agriculture and Fisheries ; President of the Board of Education ; Parliamentary Secretary of the Board of Education ; Minister of Food ; Parliamentary Secretary of the Ministry of Food ; Minister of Labour ; Parliamentary Secretary of the Ministry of Labour ; Minister of National Service ; Parliamentary Secretary of the Ministry of National Service ; Minister of Pensions ; Parliamentary Secretary of the Ministry of Pensions ; Chancellor of the Duchy of Lancaster ; Minister of Economic Warfare ; Parliamentary Secretary of the Ministry of Economic Warfare ; Minister of Works and Buildings ; Parliamentary Secretary of the Ministry of Works and Buildings ; Attorney-General ; Solicitor-General ; Lord Advocate ; Solicitor-General for Scotland ; Postmaster-General ; Assistant Postmaster-General ; Paymaster-General ; Chancellor of the Exchequer ; Parliamentary Secretary of the Treasury ; Financial Secretary of the Treasury ; Lord Commissioner of the Treasury ; Treasurer of the Household ; Comptroller of the Household ; Vice-Chamberlain of the Household ; Any other office of similar ministerial character.

Note.—This exemption from disqualification should include freedom from any necessity for resignation or re-election on appointment to office. A holder of more than one ministerial office shall only count as one in reckoning the 60 holders of office so permitted to be members. The provisions of the Ministers of the Crown Act, 1937, should not be interfered with except so far as any adjustments may be necessary.

3. There should be exempted from disqualification the holders of the non-ministerial offices set out in the schedule contained in para. 30 of this Report but with such limitations (if any) as are set out in that schedule, which are as follows:

Officers and men of the regular forces of the Crown who are on the Reserve, Retired or Emergency lists, or on half-pay or otherwise not on the active service lists, and officers and men of any of the auxiliary or reserve forces (including officers in any reserve of officers) as such, and Admirals of the Fleet, Field-Marshals and Marshals of the Royal Air Force while not holding any appointment in the Royal Navy, the Army or the Royal Air Force respectively.

Lord Lieutenant otherwise than in respect of the county of which he is Lord Lieutenant.

Deputy Lieutenant and Lieutenant of the City of London.

High Sheriff otherwise than in respect of constituencies for which he is returning officer in Parliamentary elections and of boroughs within the administrative county of which he is High Sheriff.

Recorder (except the Recorder of London) otherwise than in respect of the city or borough of which he is Recorder.

Justice of the Peace. Commissioner of Assize. Chairman and Deputy Chairman of Quarter Sessions other than London Quarter Sessions.

Lord Warden of the Cinque Ports. Members of His Majesty's Corps of Gentlemen-at-Arms. Regius Professors of the Universities of Oxford and Cambridge, heads of colleges in Universities, the Provost of Eton, and any other academic offices the appointment to which is in the hands of the Crown or a Minister of the Crown.

First Church Estates Commissioner. Unpaid member of the Forestry Commission. Unpaid member of the Charity Commission. The King's Printer appointed for the printing and publishing of Bibles and Prayer Books by letters patent of May 25, 1901.

Note.—It should be made clear that the exemption from disqualification provided for in this and the preceding clause includes exemption from any necessity for resignation or re-election on appointment to office.

4. It should be specially provided that the offices of steward or bailiff of His Majesty's three Chiltern Hundreds of Stoke, Desborough and Burnham, and steward or bailiff of the Manors of East Hendred, Northstead or Hempholme, are to continue to be deemed to be offices of profit under the Crown, acceptance of which by a Member of the House of Commons causes him to vacate his seat.

5. No Member of the House of Commons shall be appointed to a disqualifying office while he is a Member, without his consent.

6. Pensions should not be a disqualification, unless they are pensions which can be determined at the will of the Crown otherwise than for good reason such as misconduct on the part of the pensioner.

7. Any of the offices or places mentioned in the list in para. 43 of this Report which are not quite clearly covered by the provision for disqualification should be specifically mentioned as deemed to be disqualifying offices—*i.e.*,

The Recorder of London; the Common Serjeant (City of London); all Stipendiary Magistrates, including those paid out of local funds; the Judge of the Appeal Court of the Isle of Man; Ambassadors, High Commissioners.

8. Provision should be made for protecting a Member against inadvertently losing his seat as mentioned in para. 58.

9. The sections of the Succession to the Crown Act, 1707, dealing with disqualification for membership of the House of Commons or vacation of a seat in the House of Commons by reason of the holding of, or appointment to, an office or place of profit from or under the Crown, including clauses prescribing or relating to penalties for sitting or voting when disqualified, and all other relevant enactments on the same subject (the effect of which with or without alteration or

amendment is re-enacted by the proposed Bill), should be repealed, the provisions as to penalties being repealed without any re-enactment or substituted provisions.

Note.—It should be observed that the purpose of repealing and not re-enacting provisions as to penalties is to abolish the rights of the common informer. The reasons for this and for making no alternative provisions for penalties are set out in paras. 55 to 58 of this Report.

10. The Act shall come into operation forthwith, subject to such provisions as may be necessary to avoid interference with existing emergency legislation.

Your Committee further recommend:

(i) That Standing Orders should be passed or procedure set up in the House of Commons to enable the House to deal efficiently with questions or matters relating to vacation of seats through acceptance of office as proposed in paras. 57 and 58 of this Report;

(ii) That steps should be taken to reduce or limit the number of Parliamentary Private Secretaries to Ministers as proposed in para. 24 of this Report.

Part II of the Report deals with the present emergency position; emergency period legislation; termination thereof; and M.P.s holding positions which would normally disqualify.

In regard to the House of Commons Disqualification (Temporary Provisions) Act, 1941, which has been referred to above, the Committee report:

87. Your Committee have carefully considered the House of Commons Disqualification (Temporary Provisions) Act, 1941, which will expire on March 6 next.

The principle which has been followed since 1707, and which has been adhered to by Your Committee, is that, subject to two recognized exceptions (a limited number of holders of ministerial offices, and holders of offices regarded as ones which may be reasonably and properly held by Members), the appointment to, or holding of, an office of profit under the Crown should disqualify for membership of the House of Commons. The two main considerations affecting the practical operation of this principle are (1) the tendency to increase the power of the Crown or the executive Government, and (2) the compatibility or incompatibility of the office with membership of the House of Commons.

This Act enables the Government to suspend the operation of this law of disqualification, subject only to three limitations: the power is limited in point of time by the provision that the Act expires in one year unless renewed; the appointment must, in the opinion of the Government, be required in the public interest for purposes connected with the prosecution of the War; a certificate

must be given by the First Lord of the Treasury, the effect of which is to give notice to the House of Commons of the appointment.

In the event of its being considered desirable in the national interest for the better prosecution of the War that the Act should be renewed in some form when it expires next March, Your Committee consider that certain additional safeguards might suitably be inserted.

The House may well think that the Government should not be unduly hampered in making appointments by having to give *previous* notice to the House, or to obtain the consent of the House to the Member's retention of his seat. If the question of retention of his seat were left to the House, it would be a serious obstacle to the efficient working of the Act, as the Member might be unwilling to accept the office unless he knew he would not thereby lose his seat. If Parliament does not desire thus to hamper the Government, it is difficult to conceive a method of enabling the House of Commons to retain any direct control over the immunity from disqualification of Members appointed to Government posts: the most effective safeguard lies in the powers of the House to criticize and pass judgment on the Government's exercise of its powers.

For reasons which will appear from what follows, Your Committee contemplate that any renewal of the powers given to the Government by the existing Act should take the form of a renewal of the Act with amendments, or the passing of another Act in an amended form. They definitely recommend the preservation of the three limitations already mentioned. (1) The Act should again expire at the end of another 12 months, unless again renewed (with or without amendment) for another period not exceeding 12 months they do not consider it would be satisfactory that the Act should b made to continue in force for the period of the present emergency the necessity for renewal at intervals of not longer than a year would be a useful method of keeping the matter under the notice of the House and bringing it up for reconsideration at intervals of not longer than a year. Moreover, Your Committee hope that at the conclusion of active hostilities it will be unnecessary to continue the provisions of the Act during the remainder of the emergency period. (2) The certificate should still have to state that the appointment is required in the public interest for purposes connected with the prosecution of the War. The form of the requisite certificate might be reconsidered. At present it might be thought to cover only the *appointment* of a member of the House of Commons to an office or place under the Crown; it might be altered so as to state that the Member's retaining his membership was also required in the public interest. (3) There should still be provision for giving notice to the House of appointments (this is at present provided by the certificate of the First Lord of the Treasury): the importance of this notice is that it gives the House the opportunity of criticizing the exercise of the power and taking steps in case of need to terminate or limit it.

As regards new additional safeguards Your Committee have already called attention to the difficulty of making any provisions of this kind which shall not unduly hamper the Government in

making such appointments as it may think necessary. How anything of this kind can be done will doubtless be carefully considered by the House when the renewal of these powers comes to be considered on the expiry of the present Act. Your Committee refrain from making definite recommendations (other than those which have already been made), but think that the following suggestions which are submitted for consideration by the House are the most practicable: (*a*) Under the existing Act appointments made are brought to the notice of the House by the certificate of the First Lord of the Treasury being laid on the Table and so appearing in the printed Votes. It might be provided that the certificate should be formally communicated to Mr. Speaker; then, in addition to the certificate appearing in the Votes, Mr. Speaker would inform the House thereof from the Chair, and thus attention would be more effectively drawn to the certificate. (*b*) A reasonably wide limit might be placed on the number of certificates permitted to be given during the year the Act is to be in force; it should not be difficult to fix a limit which would not be regarded by the Government as unduly restrictive; but any fear as to that might perhaps be met by a provision enabling the permitted number of certificates to be increased by an order in council on an Address by the House. (*c*) Much attention has been directed to the appointment of members of the House to offices or posts involving long residence abroad and consequent enforced absence from the House. In this connection, the House might consider whether the exemption from disqualification should not be limited to some stated period of time unless extended in any particular case by a similar order in council or resolution of the House.

The Committee's summary[1] of their recommendations in regard to Part II of the Report is as follows:

1. That the legislation recommended in Part I of this Report be introduced as soon as practicable.

2. That emergency legislation relating to disqualification for membership of the House of Commons by reason of holding of office under the Crown be repealed or otherwise terminated as soon as practicable after or even before the cessation of active hostilities.

3. That the Ministers of the Crown (Emergency Appointments) Act, 1939, be amended so as to limit its duration.

4. That the attention of all Members of the House of Commons be specially drawn to para. 86 of this Report relating to restriction on and protection of Members holding offices or places such as would in normal times disqualify them from membership.

5. That the House of Commons Disqualification (Temporary Provisions) Act, 1941, be continued or re-enacted for a further limited period after it expires, subject to such amendments

[1] Report, para. 88.

as the House may think fit after consideration of para. 87 of this Report.

Finally,[1] Your Committee would suggest that, if the conclusions they have reached regarding the matters referred to their consideration commend themselves to the House, the House should, for the removal of doubts, come to a Resolution expressing its agreement with those conclusions.

[1] Report, para. 89.

V. HOUSE OF COMMONS: NATIONAL EXPENDITURE

By the Editor

As was remarked at the beginning of the Article on this subject in the previous issue of this JOURNAL,[1] national expenditure *per se* is not a matter falling within the orbit of this Society's investigations. What we are concerned with, as Parliamentary officials, is the principle of active supervision and investigation of Government expenditure by a Parliamentary Select Committee, assisted, as it is, in this instance, by its Sub-Committees, including a Co-ordinating Sub-Committee, all composed of private Members, selected from the wide membership of the House of Commons.

The brief outline it has only been possible to give of the activities of this Select Committee and its subordinate bodies will show the range of subjects they have dealt with and give some idea of the magnitude of their work. What it has also been attempted to show are the lines upon which these investigations have been conducted and the power these bodies have exercised.

The only subject which has been noticed in any detail is that of Contract procedure, which, on account of its close relationship to public expenditure, is of particular interest to those connected with Parliament.

Select Committee.

This Committee was again set up in the 1940-41 Session (November 26, 1940) to deal with the subject of National Expenditure, under the same terms of reference and authority as before.[2]

The Reports of the Select Committee on National Expenditure in Sessions 1917-18, 1918, 1919 and 1920, together with the Minutes of Evidence taken before the said Committees, as well as those referred during last Session,[3] were referred to the Committee.

It was also ordered:

> That if the Committee shall appoint a Sub-Committee to co-ordinate the work of other Sub-Committees, such Sub-Committee shall have power, in cases where considerations of national security preclude the publishing of certain recommendations and of the arguments upon which they are based, to address a memorandum to the Prime Minister for the consideration of the War Cabinet; provided that the Select Committee do report[4] to the House on every occasion when this power shall be exercised.[5]

[1] Vol. IX, 80. [2] *See* JOURNAL, Vol. IX, 82. [3] *Ib.* 80-88.
[4] 374 H.C. Deb. 5, ss. 730, 1501, 2046.
[5] *Ib.* 87. *See also* 362 H.C. Deb. 5, s.s 1002, 1347.

Reports.

First Report.—The First Report[1] from this Committee was tabled and ordered to be printed on December 19, 1940.[2] The Committee reported that it had succeeded to the work of the Committee of last Session. In order to attain continuity in the work of the Committee of last Session, the Committee had re-appointed the Co-ordinating Sub-Committee composed of the Chairmen of the Committee and of the 7 Sub-Committees with the same terms of reference as last year, with the further terms of reference and instructions to each Sub-Committee to report what economies, if any, consistent with the policy of the Government, may be effected in the expenditure of the Departments concerned.[3] All these up to the time of prorogation had held 408 meetings, of which 40 were visits to various establishments, under both Government and private control; 713 witnesses had been examined. As all the Sub-Committees were, at the date of prorogation, engaged in uncompleted inquiries, a similar procedure was adopted by the Committee of 1940-41.

The Co-ordinating Sub-Committee held 17 meetings and examined 24 witnesses, including 2 M.P.s and 1 Minister as well as representatives from the Treasury and industry. This Sub-Committee directed its attention particularly to the priority organization, to contract procedure and to the staffing of Departments.

The Sub-Committee on Army Services held 62 meetings, including visits, and examined 134 witnesses, including the Under-Secretary for War, the Q.M.G., Ad.-G., Secretary of the Ministry for Food, and officials from the War and other Departments. They had visited Defence works, camps, Ordnance Depots and the H.Q. of various Commands.

The Sub-Committee on Navy Services held 62 meetings, including 7 visits, and examined 60 witnesses, representing the Navy, Army and Air Force Institutes, employers' federations, trade unions and shipping firms, and including the Civil Lord of the Admiralty, Third Sea Lord, Parliamentary and Financial Secretary to the Admiralty, Directors of Merchant Shipping and Reports, Aircraft Maintenance, Naval Intelligence, Small Vessels Pool and W.R.N.S., the Superintendent of Contract Works, the Principal Accountant and Waste Prevention Officer. The Sub-Committee visited 2 naval dockyards as well as private yards, Fleet Air Arm Stations, Naval Training Camps, victualling yards, etc.

[1] H.C. Paper 9 of 1940-41.
[2] 367 H.C. Deb. 5, s. 136.
[3] *See* JOURNAL, Vol. IX, 83.

The Sub-Committee on Air Services held 58 meetings, including 18 visits, and examined 65 witnesses, including the Minister of Aircraft Production and his officials, M.P.s, officials of the Air Ministry, N.A.A.F.I., etc. Their visits included factories, aerodromes and Flying Training Schools.

The Sub-Committee on Supply Services held 64 meetings and examined 61 witnesses, including representatives from the Ministry of Supply, the Director-General of Tanks and Transport, Director-General of Explosives and the Senior Military Adviser, Minister of Works and Buildings, etc.

The Sub-Committee on Home Defence Services held 55 meetings and examined 117 witnesses, including those from the casualty services, the Central Registry and the Central Registry for Aliens, Ministry of Information and, on the subject of camouflage, from the 3 War Ministries, Home Security and Supply, as well as from the various Regional Organizations and Civil Defence Services and the clearance of debris in London.

The Sub-Committee on Trade, Agriculture and Economic Warfare held 61 meetings and examined 127 witnesses, including the Permanent Secretaries for Agriculture and Fisheries, etc.

The Sub-Committee on Transport Services, which was only appointed in April, held 13 meetings and examined 22 witnesses, including the Under-Secretaries for Mines and Petroleum and the Permanent Secretary for Transport.

Second Report.—This Report,[1] which was the sixteenth Report in the series of Reports from Select Committees on National Expenditure originally set up in Session 1939-40, was tabled and ordered to be printed on December 19, 1940,[2] and dealt with a Report from the Sub-Committee on Air Services, covering such subjects as Sites and Properties acquired by the Balloon Command and the Settlement of Claims.

Third Report.—This Report[3] was tabled and ordered to be printed on the same date as the preceding Report, and dealt with Enticement of Labour, Overtime, Dilution and Training of Labour, Effect of Overtime on Costs, Costs and Contracts.

Contract Procedure.—In regard to the above-mentioned subject, the Report stated that one of the major problems of the placing of contracts is the avoidance of any break in production, and the Contracts Department stated that it was the usual practice to place a further contract with a firm about 10 weeks before the current contract was completed, but that the difficulty or otherwise of obtaining raw materials may lead to variations in this practice.

[1] H.C. Paper 10 of 1940-41.
[2] 367 H.C. Deb. 5, s. 136.
[3] H.C. Paper 11 of 1940-41.

Fourth Report.—This Report,[1] which dealt with Contracts, was tabled and ordered to be printed January 23, 1941,[2] and, as the question of War Contracts and the procedure thereanent is closely related to national expenditure, the subject will be dealt with at length.

Contracts Procedure.[3]—The Committee considered the question of strengthening the machinery designed to secure co-ordination between the main contracting departments. The various types of contracts are briefly summarized as follows:

Running Contract, or Term Contract.—A contract providing for the supply of a commodity over a specified period (usually a long period) within which the buyer may from time to time order quantities of the commodity on the terms laid down in the contract. The contract contains a specification of the commodity, but does not state the quantity to be supplied at any particular time.

Agency Agreement.—An agency agreement may provide for the employment of a particular firm, either:

(i) to erect and manage a State-owned factory, or
(ii) to provide additional manufacturing capacity at the Government expense, to be the property of the Government, but to be operated by the firm as contractors.

Agency Contract.—This term is sometimes applied to a contract for production made with a firm which is operating a State-owned factory, or with State-owned plant, under a previous Agency Agreement (as described above).

Sub-Contract.—A contract made by the main contractor with another firm for the supply of a finished product, or for the processing of a product, or for the service (such as cartage), which is a part or component of the subject of the main contract.

Fixed Price Contract.—A contract for a specific output at a price which should be fixed before production begins, or at a very early stage in production.

The price may be fixed in terms of units of output, or as a total which will cover the whole output. So long as the output concerned is specified, this distinction is unimportant.

Lump Sum Contract.—A contract in which a total price is fixed to cover the whole of a specified output.

There is no difference in kind between this form and the fixed-price contract; but the term " lump sum contract " is usually applied to a contract which concerns building construction (*e.g.*, a camp or factory unit).

[1] H.C. Paper 33 of 1940-41.
[2] 368 H.C. Deb. 5, s. 306.
[3] *See also* JOURNAL, Vol. IX, 85, and H.C. Paper 105 of 1941.

Bills of Quantities.—Lists of the items of completed work required to make up a finished building, prepared by quantity surveyors from the drawings. The lists are subdivided so that each contractor invited to tender can be presented in convenient form with a complete bill of the quantities of work of each main type.

Schedule of Prices, or of Rates.—A list of items of work, prepared similarly to a Bill of Quantities (see above) but without reference to the actual quantities required.

Tenders for such a contract can be arranged in two ways:

Maximum Price Contract, or Limiting Price Contract.—A contract in which a maximum price (which includes both cost and profit) is set before production, and the contractor is paid the costs actually ascertained by post costing plus an agreed profit, subject to the maximum price not being exceeded.

(*a*) the Schedule can be issued without prices, and the prospective contractor asked to insert prices; or

(*b*) the Schedule can be priced before issue, and the prospective contractor asked to quote a percentage above or below the listed prices as a whole.

Target Cost or Target Price Contract.—In this form of contract a standard or basic figure is agreed before production (or at an early stage in production), and the contract provides that, if the costs ascertained by post costing are below this target figure, the contractor is paid, in addition to the ascertained costs and the agreed profit, a share of the difference between ascertained cost and the target figure (*i.e.*, saving), so long as this saving is due to the contractor's own efforts.

Target Measurement Contract.—This form of target is based on measurements (according to a schedule of prices) of material and labour used, and therefore the target figure cannot be calculated as a definite sum until completion of the work.

"*Cost Plus*" *and* "*Time and Lime*" *Contract.*—This form of contract is sometimes called "Time and Materials" or—inaccurately—"Time and *Line*". It is one in which the contractor is paid the ascertained costs of production together with an agreed profit, without any attempt to arrive at a fixed price before production or to limit payments by reference to a target or a maximum price.

Variation Clauses ("*Rise and Fall*" *Clauses*).—Clauses inserted in contracts which provide that, in the event of certain alterations in costs which are outside the contractor's control, there shall be adjustment of the payments made to him.

Changes in rates of wages and prices of materials are commonly specified in such clauses.

Break Clause.—A clause which permits the contract to be determined by the buyer, and defines the extent to which the contractor is entitled to indemnity for work in hand, and for liabilities legitimately incurred, if this power is exercised.

The Committee were generally agreed that contracts of the fixed-price type surpassed all others in securing efficiency and economy; and that, when competition was fully effective, the analysis of the elements making up the price largely became the preoccupation of the contractor rather than of the Department. When the checks imposed by competition could not be relied on, some check on the estimated costs was necessary, and the question arose: What is a reasonable profit?

The basis of a fixed-price contract was less easily obtained in War. The main characteristic of this type of contract was its inelasticity. The running contract had the convenience that it avoided the necessity for accurate forecasts of future needs. War conditions naturally encouraged the use of more elastic forms of contract which provided for the adjustment of the final price after the actual costs of production were known. Though his profit may not be so great, the contractor was safeguarded against loss; whereas under the fixed-price contract he, not the State, bore such losses or enjoyed such profits as might occur, and thus provided a stimulus to increased efficiency of production in future. The type of contract falling into this defined or adjusted price group varied in the degree of elasticity introduced and might be placed in the following order:[1]

(i) cost plus a percentage;
(ii) cost plus a fixed profit (or a management fee);
(iii) maximum price;
(iv) target cost (with a limit on payment of excess over the target).

In the last of these, the degree of elasticity was reduced to the point where part of the incentive to cheap production, which characterized the fixed-price contract, was offered to the contractor. In the other 3 types there was no incentive to efficient, and therefore cheap, production, and in the first there was even an incentive to waste because higher costs brought greater profit.

These contracts providing for price adjustment had become common, but cost-plus contracts (whether plus a percentage or plus a fixed fee) had no other merit than simplicity. They provided in themselves no incentive to efficiency, economy or speed.

[1] H.C. Paper 33 of 1940-41, p. 7.

They were decried by Departments and responsible contractors alike in all spheres of production. Yet as soon as urgency became the dominant note, or rapidly increased output was required of a class of work for dealing with which, in huge quantities, the Department was perhaps ill-equipped, both in staff and in experience, the cost-plus method was reintroduced.[1]

The Committee also observed that, where an order was placed with a contractor who had a high regard for efficiency and his own prestige, costs would be kept low. The fixing of a maximum price was an attempt to limit the extravagance that might arise from the simple cost-plus arrangement. The maximum-price contract was an improvement on the unrestricted cost-plus. The target cost and the so-called target measurement contracts both required the determination of actual costs incurred (post costing) before final payment could be made. But the true target-cost contract, like the maximum-price contract, also required an estimation of probable cost before work was begun.

The main failure of the target measurement scheme was that the " target " could not be fixed as a determinate figure until the work was completed.

The general weakness in all costed forms of contract lay in the reduction of the incentive to produce at lowest cost, since the contractor was always given some degree of protection against rising costs. The object of a target cost was to improve on the maximum-price principle by supplying an incentive to economy.[2]

The only alternative to competition on the basis of a fair fixed-price contract was the estimation of the costs to be increased, either by means of technical costing or by the application of the results of post-costing past contracts, or a construction of both methods.

The Sub-Committee recommended that a system of " spot checks " by departmental accountants should replace in some degree the costing of every contract, but it doubted whether this system was entirely compatible with that form of contract, which made post costing an essential.[3]

The Committee further observed that cheapness of price was not the only consideration in economy, as the price quoted might often be of less importance than reliability of delivery. Failures and delays in one contract might heavily increase expenditure in other fields. The Sub-Committee recommended that Departmental Intelligence Branches should draw up lists of contractors in order of their performance and that those who had not come up to a sufficiently high standard should not, if possible, receive

[1] H.C. Paper 8 of 1940-41. [2] *Ib.* 8, 9. [3] *Ib.* 16.

further orders.[1] It was still true that the use of the fixed-price contract would do more than any other force to ensure the cheapest production.[2]

The general conclusions and summary of recommendations of the Select Committee may briefly be summarized as follows:[3]

(*a*) their recognition of the vital part which sound principles of procedure must play in the efficient and economical provision of war supplies and of the need for strengthening the independence of contracts branches, so that they had both the information and the power to carry out to the full their duty of securing economy in Government buying;

(*b*) cost plus contracts should not be made for any work or product which was not novel in character;

(*c*) maximum price contracts might be necessary when enough experience had not already been gained to arrive at a closer estimate and wherever possible they should be associated with a target figure below the maximum. When a target figure was used, sufficient inducement, direct or indirect, should be given to the contractor to effect savings. The real use of both these methods was a prelude to the fixing of a fair price for future contracts;

(*d*) apart from special circumstances every effort should be made to place contracts on a fixed price basis;

(*e*) in applying competitive tendering, regard should be paid to idle capacity and to the question whether this was the quickest and most efficient method of arriving at a fair fixed price;

(*f*) post costing should be recognized as a means of providing information leading to fixed prices based on technical costing;

(*g*) closer scrutiny should be given by Departments to costs allowed for labour on costed contracts, so that it was employed in the most efficient manner;

(*h*) greater uniformity should be adopted in allocating overheads to particular work within groups of firms engaged on similar work and under similar conditions;

(*i*) systems of cost accounting already in use by contracting firms should be studied;

(*j*) greater use should be made of current costings by getting periodical returns of the figures taken out by firms during production, or snap audits should be taken before completion for fixing future prices and that, where applicable, process costing, rather than unit costing, should be used; and

(*k*) that lists of contractors graded in accordance with equality of work be drawn up to guide Contracts Branch in placing further orders.

The Committee's summary then went on to deal with profits, sub-contracting and the employment of small firms; and departmental organization, in connection with which the Committee recommended:[4]

(i) that arrangements be made for Intelligence and Statistical Branches to collect information and to analyse and compare figures

[1] H.C. Paper 19 of 1940-41. [2] *Ib.* 21. [3] *Ib.* 34, 35. [4] *Ib.* 35-37.

received from costing and other sources so as to provide contract officers as early as possible with a sound basis for their negotiations and criticisms;

(ii) that contract procedure be brought under more direct and unified control with sufficient authority to overcome departmental prejudices; and

(iii) that the Contracts Co-ordinating Committee should, with the help of industrial representatives, consider the greater standardization of general conditions of contract and draw up common form clauses which should not be varied in individual contracts without the authority of the permanent Chairman of the Main Committee.

Fifth Report.—This Report,[1] which dealt with militia camps and contracts therefor,[2] was tabled and ordered to be printed on February 25, 1941.

Sixth Report.—This Report,[3] which dealt with the Ministry of Agriculture and Fisheries, was tabled and ordered to be printed on February 27, 1941.[4]

Seventh Report.—This Report[5] was tabled and ordered to be printed on February 27, 1941,[6] and dealt with the construction of factories.

Eighth Report.—This Report,[7] which dealt with coal, its transport, etc., was tabled and ordered to be printed on March 6, 1941.[8]

Ninth Report.—This Report,[9] which dealt with aerodromes, was tabled and ordered to be printed on March 20, 1941.[10]

Tenth Report.—This Report,[11] which dealt with the handling of shipping in home and oversea ports, ship repairs, salvaging, etc., was tabled and ordered to be printed on March 20, 1941.[12]

Eleventh Report.—This Report,[13] which dealt with emergency building stores, leather for army boots, railway profits and the purchase of second-hand cars, was tabled and ordered to be printed on March 27, 1941.[14]

Twelfth Report.—This Report,[15] which was tabled and ordered to be printed on April 29, 1941,[16] covered the further replies from Departments to the recommendations in the National Expenditure Reports of the former Session.[17]

Thirteenth Report.—This Report,[18] which dealt with the operation of a contract for road work, was tabled and ordered to be printed on April 29, 1941.[19]

[1] H.C. Paper 56 of 1940-41.
[2] H.C. Paper 59 of 1940-41.
[3] H.C. Paper 60 of 1940-41.
[4] H.C. Paper 63 of 1940-41.
[5] H.C. Paper 70 of 1940-41.
[6] H.C. Paper 71 of 1940-41.
[7] H.C. Paper 75 of 1940-41.
[8] H.C. Paper 80 of 1940-41.
[9] *See* JOURNAL, Vol. IX, 83.
[10] 371 H.C. Deb. 5, s. 35.
[11] 369 H.C. Deb. 5, s. 375.
[12] 369 H.C. Deb. 5, s. 643.
[13] 369 H.C. Deb. 5, s. 643.
[14] 369 H.C. Deb. 5, s. 1028.
[15] 370 H.C. Deb. 5, s. 302.
[16] 370 H.C. Deb. 5, s. 302.
[17] 370 H.C. Deb. 5, s. 713.
[18] 371 H.C. Deb. 5, s. 351.
[19] H.C. Paper 81 of 1940-41.

Fourteenth Report.—This Report[1] dealt with Civil Defence and was tabled and ordered to be printed on May 13, 1941.[2]

Fifteenth Report.—This Report[3] dealt with the distribution of the labour force and was tabled and ordered to be printed on May 13, 1941.[4]

Sixteenth Report.—This Report,[5] which dealt with examination at the ports, coal production and War costs of railway operations, was tabled and ordered to be printed on June 12, 1941.[6]

Seventeenth Report.—This Report,[7] which dealt with labour problems in filling factories, was tabled and ordered to be printed on July 10, 1941.[8]

Eighteenth Report.—This Report,[9] which also dealt with replies from Departments to the recommendations in Reports, was tabled and ordered to be printed on August 6, 1941.[10]

Nineteenth Report.—This Report[11] dealt with the construction and equipment of a factory and was tabled and ordered to be printed on August 6, 1941.[12]

Twentieth Report.—This Report[13] dealt with delay in merchant ship repairs, merchant ship building, their design, speed and cost, the G.P.O. and the Petroleum Department. The Report was tabled and ordered to be printed on August 6, 1941.[14] (*See also* H.C. Paper 123 of 1940-41.)

Twenty-first Report.—This Report,[15] which dealt with the output of labour, was tabled and ordered to be printed on August 6, 1941.[1]

Twenty-second Report.—This Report,[17] which dealt with th allocation of man power in the Army, was tabled and ordere to be printed on August 7, 1941.[18]

Twenty-third Report.—This Report,[19] which dealt with the conditions of employment in the production of home-grown timber and the use of waste forest products, was tabled and ordered to be printed on October 23, 1941.[20]

Twenty-fourth Report.—This Report[21] dealt with the position and conservation of coal, administration at the ports and certain misrepresentations in regard to the Twentieth Report, and was tabled and ordered to be printed on October 23, 1941.[22]

[1] H.C. Paper 86 of 1940-41.
[2] H.C. Paper 88 of 1940-41.
[3] H.C. Paper 95 of 1940-41.
[4] 371 H.C. Deb. 5, s. 1087.
[5] 371 H.C. Deb. 5, s. 108.
[6] 372 H.C. Deb. 5, s. 344.
[7] H.C. Paper 102 of 1940-41.
[8] 373 H.C. Deb. 5, s. 324.
[9] H.C. Paper 106 of 1940-41.
[10] 373 H.C. Deb. 5, s. 1958.
[11] H.C. Paper 107 of 1940-41.
[12] 373 H.C. Deb. 5, s. 1958.
[13] H.C. Paper 108 of 1940-41.
[14] 373 H.C. Deb. 5, s. 1959.
[15] H.C. Paper 109 of 1940-41.
[16] 373 H.C. Deb. 5, s. 1959.
[17] H.C. Paper 110 of 1940-41.
[18] 373 H.C. Deb. 5, s. 2101.
[19] H.C. Paper 122 of 1940-41.
[20] 374 H.C. Deb. 5, s. 1915.
[21] H.C. Paper 123 of 1940-41.
[22] 374 H.C. Deb. 5, s. 1915.

Twenty-fifth Report.—This Report,[1] which was tabled and ordered to be printed on November 11, 1941,[2] dealt with a paper entitled "Statement relating to Production," by the Government, being a comprehensive reply upon the 32 recommendations of the Twenty-first Report.

Twenty-sixth Report.—This Report[3] set out the number of meetings held by certain Sub-Committees, the evidence heard by them, etc., and was tabled and ordered to be printed on November 11, 1941.[4]

The Chairman of the Committee, pursuant to the Order of the House (November 26, 1940) already quoted, on October 2, 16, and November 11, 1941, reported that the Committee had addressed Memoranda to the Prime Minister for the consideration of the War Cabinet. Upon such report on October 16,[5] the Rt. Hon. the Prime Minister, in the course of his reply, said that he could not agree as a general rule that Ministers in charge of Departments should attend before the Select Committee, as this might be unduly burdensome, but both the late and present Ministers of Aircraft Production would be willing to attend the Committee and explain the position to it.

Questions.

On November 26, 1940, in the House of Commons, the Chancellor of the Exchequer was asked whether he would state the action taken as a result of the Reports of the Select Committee on National Expenditure and give an estimate of the economies and savings achieved thereby, to which he replied that the reports of the Committee and its Sub-Committees had been carefully considered by the Departments concerned, and that information on the action taken up to August last was in the Eleventh Report of the Committee, but they covered such a wide range that it would be impossible briefly to summarize the results or to evaluate them in terms of cash saving. The House was very much indebted to the Committee, but it was impossible to value the results in money terms.[6]

In reply to a Question in the House of Commons on April 22, 1941,[7] the Prime Minister said that the Government would do its utmost to profit by any of the recommendations in cases where action had not already been taken in that sense.

[1] H.C. Paper 124 of 1940-41.
[2] H.C. Paper 125 of 1940-41.
[3] 374 H.C. Deb. 5, s. 2046.
[4] 374 H.C. Deb. 5, s. 2046.
[5] *Ib.* 1501-2.
[6] 367 H.C. Deb. 5, s. 87.
[7] 371 H.C. Deb. 5, s. 24.

VI. PUBLIC ADMINISTRATION AND PARLIAMENTARY PROCEDURE IN NEW ZEALAND[1]

By T. D. H. Hall, C.M.G., LL.B.
Barrister-at-Law and Clerk of the House of Representatives

For many departmental officers, Parliamentary practice is a mystery and apparently meaningless. It is necessary therefore to touch briefly on its history and underlying principles. Public administration should be concerned with such things because, unlike business administration, which is largely influenced by profit-making, public administration is a branch of the art of government whose aim must be the preservation of human values and the maintenance of national unity.

Attention is drawn to certain striking contrasts that have arisen in the course of the acquisition by Parliament of control over finance. In the early days when Parliament was in the main an assembly of the estates of the realm it was summoned to hear the demands of the King for some national undertaking, be it war or other business, which he could not finance from his kingly revenues under his sole control. The proposal was considered and if approved each section determined the financial aid it would provide for the undertaking. This principle survives in our ratepayers' poll on loan proposals for which their properties will be pledged as security. To-day the accounting device of the Consolidated Fund and the introduction of indirect taxation have tended to obscure the position, but the general attitude towards Budget proposals is how much can be got out of the common pool for each project. Again, the proceeds of taxation came into the hands of the King and were administered by his officers of State. It was the aim of Parliament for many years to acquire control over expenditure. It did so by way of appropriation with the elaborate preliminaries we are now familiar with of passing the Estimates and levying sufficient taxation. But by a constitutional change the King's officers became the servants of Parliament, a committee of Parliament, which we call the Cabinet. Cabinet to survive must retain the confidence of a majority in the House of Representatives, which, as the Party caucus, deals with the policy of the Government. Again, there is a vital change of emphasis from the time when King and Parliament often confronted each other. That check is gone. A third

[1] This Article embodies Lectures given by the author at the Victoria University College, Wellington, in 1941 as part of a series by Professor L. M. Lipson for students in their Diploma Course.—[Ed.]

contrast which relates not to revenue or expenditure but to administration is a contrast which is perhaps only foreshadowed and not yet fully developed. It may apply only to the Dominions whose Legislatures are small and may have no application in Great Britain. Our House, for instance, has 80 Members as against 615 in the Commons at Westminster. There have been, however, definite indications of a changed outlook, both in speeches and in practice. The traditional view is that the administrative officers are not the servants of King or Parliament. They are the servants of the State. Since their appointment was removed from Royal or political control they have established a high tradition of independent and efficient service. They are, or should be, carefully selected and trained for the growing complexities of governmental administration. The work of the Legislature is to overhaul the financial proposals, make provision for the year's work, and settle matters of national moment which might or might not require legislation. Elected representatives were drawn from the active life of the community and returned to it when their Parliamentary labours were completed. Policy being settled, its carrying out was left to the Public Service under the direction of the Cabinet. To-day, increasing complexity of State activities, the changed attitude of the electorate towards their representatives, and the payment of *honoraria* have tended to make the work of a Member of Parliament a whole-time job. The fact of selection by the electors to represent a constituency is held to set the seal on one's capacity both to formulate policy and to carry it out, and a demand is being made for the opportunity of carrying out administrative work.

There are many other developments, but those three points alone must raise a query. As with all national institutions, there must be erected at the beginning, though it may be over a period of time, a formal superstructure which is designed from a functional point of view. Is this ancient superstructure which retains so many of its original features capable of providing working quarters for what is almost a new tenant, judging from present attributes and functions? We may answer the query, not finally perhaps, by saying that our national genius for conservative readjustment has made it serve our needs pretty well up to the present. The custom of Parliament is like the common law in that, being based on sound natural principles, it can be applied to changing circumstances. We may note one or two such readjustments in relation to the points raised above. With the decline of the power of the King and the exercise of executive functions through a Cabinet responsible to Parliament we find

a two-party system arise and an official Opposition. It is His Majesty's Opposition as the Government is His Majesty's Government. The Parties recognize each other as necessary elements in the nation. The Opposition acts as a check and promotes good government. A change of government is regarded as a normal event in our national life and not a revolutionary change. Again, when Parliament acquired the power not only to vote taxes and supplies but to appropriate and control expenditure it passed a self-denying ordinance in that it took out of its own hands the power of initiating expenditure. No charge on the national revenues by way of expenditure and no charge on the people by way of taxation can be initiated except on the recommendation of the Crown, given of course through its advisers. A competent and sympathetic foreign student of our Parliamentary system has given the following reasons for its successful working over so long a period and through so many changes.

> (1) A conservatism natural to our genius which while recognizing the necessity for adjustment is opposed to violent changes and likes to maintain continuity with the past.
> (2) The recognition by all elements in the nation that the national interest is superior to any sectional interest, which must compromise if the former is threatened.
> (3) The recognition of the necessity to safeguard the rights of minorities, particularly the right of free speech.
> (4) The innate common sense of the people.

I think he is largely right. My only comment would be that all these elements in the working of our system have a moral basis which cannot be maintained by statute or mere custom.

Before proceeding to a detailed examination of the Parliamentary control of finance it must be realized that while the underlying principles are the same here as in Great Britain there are many differences in detail. British textbooks do not give an accurate picture of our procedure.

Privilege.—The Parliamentary Privileges (Imperial) Act, 1865, conferred on us the like privileges, immunities and powers as enjoyed by the House of Commons on January 1, 1865, whether by custom, statute or otherwise. This is now repeated in s. 242 of our Legislature Act, 1908. Similar powers are conferred on the Legislative Council, but of course not so as to disturb the constitutional relations between the two Houses.

Public Finance.—In our Parliament, therefore, the Lower House, the House of Representatives, inherits the powers in financial matters won by the House of Commons in the course of a long history with which you are doubtless familiar. We

declare those rights and powers in our Standing Orders. The first deals with our right as against the Upper House to initiate financial proposals:

> S.O. 249: All aids and supplies, and aids to His Majesty in Parliament, are the sole gift of the House of Representatives; and all Bills for the granting of any such aids and supplies are to begin with the House of Representatives, and it is the undoubted and sole right of the House of Representatives to direct, limit, and appoint in such Bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants; which may not be changed or altered by the Legislative Council.

The House waives privileges[1] in respect of the imposition of fines to enforce compliance with an Act and also in respect of charges imposed for services rendered pursuant to an Act, and a Bill will be received from the Legislative Council if matters of the above type are included in it.

It will be convenient here to deal with the position of the Legislative Council in financial matters. It has in theory the right to reject Money Bills or Bills containing financial provisions, but not to amend them. New Zealand has not adopted anything like the Parliament Act of 1911 passed by the British Parliament, which provides that if a " Money Bill " (a technical term) is sent to the House of Lords at least one month before the end of the Session and is not passed without amendment within one month it may be presented to His Majesty for assent and become law without the assent of the House of Lords. It cannot be laid down as an accepted principle, and perhaps a great deal depends on the personnel of the Council, but the view expressed by prominent members of the Council has been that the Council may register its protest against a Bill, but if the Government has indicated that the Bill submitted from the Lower House is a policy measure the Council should not reject it. This privilege[1] of the House of Representatives relating to Bills containing financial provisions has greatly restricted the power of the Council to initiate Bills in recent times, and we have not gone so far as the British Parliament has to make more effective its legislative powers.

The other two vital principles which we inherit and which are embodied in our Standing Orders lay down, first, that the House will not proceed upon any Motion for granting any money unless recommended by the Crown. This is the limitation imposed by the House on itself. The same rule applies to Motions for charges on the people. In the second place it is laid down that

[1] *I.e.*, monetary.—[ED.]

the House will not proceed upon any Motion or Bill for granting any money or for releasing or compounding any sum of money owing to the Crown except in a Committee of the Whole House. These two principles are of importance first of all in relation to the Budget proposals and the year's financial arrangements. They govern the presentation and consideration of the Estimates and of the Imprest Supply Bills and the Appropriation Bill and also of any taxing Bills. They also govern the presentation of Bills the carrying out of the provisions of which will involve expenditure.

Taking a leaf from a book on procedure by the present Clerk of the House of Commons I can perhaps give the clearest picture of the main financial proceedings of the year by relating them to the Consolidated Fund. This may be considered as consisting of the national revenues coming in from time to time throughout the year. These revenues come from various sources —as, for example, from revenue from Crown Lands, from the proceeds of permanent taxes, or from fees for services performed and so forth. From these revenues are made all the payments in connection with the machinery of government—for example for debt services, for the administration of Departments, etc. In the Budget the Minister of Finance reviews the financial operations of the past year and then outlines the proposals of the Government for the current year. Against the estimated cost of these proposals he sets his estimate of revenue from all existing permanent sources. He then balances the Budget by indicating the way in which any shortage in the existing revenues will be made up by new or additional taxation or by loans. By custom, the rate of land and income tax is fixed every year. Other sources of additional income are such things as customs duties, stamp and death duties. The Estimates of expenditure are submitted to the House, and these form the basis on which the Appropriation Bill is founded. New or additional taxes are levied in appropriate Bills and loans are authorized by Act.

Procedure in Parliament.—We can now consider the procedure in Parliament. Parliament is summoned to meet. The date for many years has been some time towards the end of June and the Session has run for varying periods according to the amount of business, but usually it completes its business in the period from the end of October to early in December. The necessities of the depression period and now the War have interfered with this routine and Parliament has met at different times throughout the year. This has not, however, interfered with the financial business.

This date of meeting at once differentiates our proceedings from those of the British Parliament. There Parliament normally meets at the beginning of the year and the Session is opened over three periods separated by adjournments. Special work is allotted to each period. The financial year ends, as with us, on March 31. Departmental estimates for the ensuing year are submitted in the first period, usually February. They are not considered until the second period, after Easter. Before March 31 a Consolidated Fund Bill must be passed providing a vote on account to bridge the gap between the beginning of the financial year and the passing of the Appropriation Bill in August.

What is done annually in Britain by means of the first Consolidated Fund Bill is done here by a permanent provision in the Public Revenues Act which authorizes issues from the Consolidated Fund for a period not exceeding three months. These issues are regulated as to amount and are restricted to services for which sums were voted the previous year. There is, however, still a gap before the Appropriation Bill is normally passed, and this must be met by the further grant of supply. This is usually granted by way of one or more Imprest Supply Bills.

What was the reason for fixing in New Zealand the June-November period for the meeting of Parliament? The business of Parliament was not of such volume or so complex as to warrant sittings extending over the whole year. It was possible, too, to balance our much smaller public accounts within a reasonable time after the close of the financial year so that the completed accounts for the past year, the Budget statement, and the Estimates for the current year could all be presented together. The later date made it possible to prepare a closer estimate of the year's requirements and if anything unexpected happened Departments had up to November to present Supplementary Estimates. We avoided the apparent complication which exists in Britain where the one Session extends over portions of two financial years so that financial arrangements commenced in one Session have to be completed in a new Session. There is evidence that the growth of the public accounts and the rapid extension of governmental activities is slowing up the finalizing of accounts at the close of the year and the Budget statement was being pushed back during the years before the present War.

There was, however, a practical reason for fixing the date of meetings. Many Members are farmers and the winter months are the most convenient for them to attend. An interesting point arises. The payment of an *honorarium* was justified on the ground that only wealthy men could afford to enter Parliament

and that large sections of the people were debarred from being adequately represented. If the *honorarium* is regarded by many as sufficient to live on and the work of a Member is looked on as a whole-time job, it will not matter when or how often Parliament meets. It may be then that conditions will arise which will again debar large and important sections of the people from being adequately represented by competent men. There are evidences that many suitable men engaged in farming, in business, or in professions take this view already.

Parliament then meets and its first business is to hear the Speech from the Governor-General indicating why it is called together. This includes a reference to the legislative programme and indicates that estimates will be submitted to the House of Representatives. The Address-in-Reply debate follows, and on its conclusion Motions are at once moved to set up the Committee of Supply and the Committee of Ways and Means. The Motions are " That this House will, to-morrow, resolve itself into a Committee to consider the Supply to be granted to His Majesty ", and in the case of Ways and Means " to consider the ways and means of raising the Supply to be granted to His Majesty ".

The Committee of Supply and the Committee of Ways and Means are Committees of the Whole House. The work of committees is important in the Parliamentary system of control, and this is perhaps the best place to give some details of their character, powers and functions. In New Zealand there are Committees of the Whole House and Select Committees. We have no Standing Committees such as the British Parliament has set up.

A Committee of the Whole House is the House without the Speaker in the Chair. The Chairman of Committees presides. The absence of the Speaker was a matter of some importance to freedom of debate at one time when the Speaker was the King's man and could report to the King what Members said. It was a reason for requiring financial Motions to be taken in Committee of the Whole House, which was one of the two fundamental principles relating to finance embodied in our Standing Orders. That reason has no validity to-day. The proceedings in Committee of the Whole House have, however, a greater freedom than those in the House. Instead of one long speech of, say, half an hour, or one hour, four short speeches of five and in one case ten minutes are allowed on each Question. This is much more suited to the examination of details, to Question and Reply, and to criticism of items.

Normally a Committee of the Whole House is set up to consider

a Bill in the course of its progress through the House at what is called the Committee stage—that is, between the Second and Third Readings. It is also set up to consider a Motion recommending that provision be made to give effect to a recommendation from the Crown for some legislative enactment which involves a charge upon the public revenue or upon the people. These Committees, being set up for a particular purpose, lapse when that purpose is achieved. The Committee of Supply and the Committee of Ways and Means have, however, special functions. The whole of the Estimates have to be considered in Supply and legislation imposing customs and excise duty in Ways and Means. The final Resolutions on which the Appropriation Bill is founded must also be passed in Ways and Means. These Committees are therefore kept alive throughout the Session until the final stage before the Appropriation Bill by the following device. When Estimates or other matter are considered in Supply or Ways and Means and a Resolution or Resolutions have been come to in Committee, the Chairman reports the Resolution or Resolutions to the House at the end of the Sitting and asks for leave to sit again. This is granted by the House, and the Committee of Supply and Committee of Ways and Means are placed by the Clerk of the House on the Order Paper under Orders of the Day. When it is desired to go into Committee of Supply again to consider, say, Estimates, the Order of the Day for Committee of Supply is put at the top of the Order Paper. When it is called, unless it is a day on which he leaves the Chair automatically, a Motion is moved " That Mr. Speaker do now leave the Chair in order that the House may resolve itself into the Committee of Supply." If carried, Mr. Speaker at once leaves the Chair and the Chairman of Committees takes over.

It is important to remember that a Committee of the Whole House comes to a Resolution or passes a Bill with or without amendment, but its decision must be reported to the House and agreed to before it becomes effective.

One Select Committee, the Public Accounts Committee, is of importance in connection with the control by Parliament of finance, and briefly its nature and function are as follows. A Select Committee is, as its name implies, selected by the House from amongst its Members to deal with certain classes of matters —as, for example, local Bills, or Petitions, or Reports relating to mining. It usually consists of 10 Members. Select Committees are usually set up after the Address-in-Reply debate has finished and they continue until the end of the Session, when they lapse unless they have previously made a final report, in which

they are deemed to be *functus officio*. They only deal with matters specifically referred to them or which stand referred to them under the Standing Orders. They are selected from all parties in the House, generally in the same numerical proportion as the parties bear to each other in the House. The Members are chosen by the Whips after consultation with the Members of their parties. The Committee has power to call for persons, papers and records. They can make no binding decisions, and they only report their opinion to the House. Their reports are not agreed to, as are Resolutions of a Committee of the Whole House. They are merely received at the Table and may be referred to the Government.

To return now to the progress of the financial programme. I referred to the setting up of the Committees of Supply and Ways and Means after the conclusion of the Address-in-Reply debate. In a normal Session, however, we would before this have made a grant of money by way of Imprest. An Imprest Supply Bill is founded on Resolutions carried in Supply and Ways and Means, in exactly the same way as the Appropriation Bill. There are, however, no detailed estimates to be considered in Committee of Supply. Instead, the Resolution provides, "that a sum not exceeding £ . . . be granted to His Majesty by way of Imprest for the service of the year." The Resolution is agreed to by the House, which then refers it to the Committee of Ways and Means. To-day this step is a pure formality. The Committee does not have to seek special ways and means of finding the money. It merely passes a Resolution enumerating the amounts to be paid out of the various funds and accounts maintained by statutory authority. The Resolution passed by the Committee is reported to the House and agreed to and a Bill is then ordered to be brought in and is passed through all its stages.

Imprest Supply is an important occasion. It is always passed at one Sitting as it is recognized that the King's government must be carried on. But it is the occasion for voicing grievances. It may be utilized by the Opposition to launch an attack on a major matter of policy. It is always used by individual Members to bring up any complaint from their own districts connected with administration. It was an accepted custom for Imprest to be granted for one month only, and there were several Bills each Session. Because of the opportunity for criticism that it gave, this right was jealously guarded. Lately, however, it has become the custom to ask for larger sums covering two months or more. It saves Treasury work and the Government is glad enough to avoid a full-dress debate on some inconvenient topic. It would

appear that, so far, the Opposition has acquiesced in this practice.

The Budget.—In due course the work of Departments and the Treasury is completed and the Minister of Finance is ready to present his Budget. This is regarded as the high light of the Session and is always the occasion for full galleries and a number of distinguished visitors. Whether the broadcasting[1] has made a difference I do not know, but in the last year or two not so much interest has been shown.

In Great Britain the practice is to introduce the Budget in Ways and Means. In New Zealand it is introduced in Supply unless the Government's financial proposals include any alterations in customs or excise duties. If so, it is introduced in Ways and Means. The reason is that the duties must be imposed at once, and immediately after the Budget has been delivered Resolutions imposing the duties are introduced. They are by custom of Parliament always passed that night even though there is considerable opposition. They have got to be confirmed by a later statute, and if in the interim the Government yields to representations duties may be reduced or new Resolutions introduced.

The preliminary to the delivery of the Budget is the receipt by the House of two Messages from the Governor-General, one transmitting what is known as the Consolidated Fund Estimates and the other the Public Works Estimates. They are ordered to be referred to the Committee of Supply. The Order of the Day is read for the Committee of Supply (or Ways and Means as the case may be). The Minister of Finance moves that Mr. Speaker do now leave the Chair in order that the House may resolve itself into Committee of Supply. This is carried, the Speaker leaves the Chair, the Chairman of Committees takes over and the Minister reads the Budget. The tradition for the first night is fixed. The Budget finished, the Chairman of Committees puts the Question "That a sum not exceeding £ . . . be granted to His Majesty to defray the costs and charges of the Legislative Department for the financial year ending . . . . . " and a further Question "That a sum not exceeding £ . . . be granted to His Majesty to defray the costs and charges of Public Works, Departmental, for the financial year ending . . . . . ." The Minister at once moves that the Committee report progress and that the Chairman move for leave to sit again. The Speaker is recalled. The Chairman of Committees reports progress and the House gives leave for the Committee to sit

[1] *See* JOURNAL, Vols. V, 80; VIII, 122.

again. The real consideration of Estimates will not begin until the Financial Debate has been concluded. This, the most important debate of the Session, for it is really a national audit of the administration, financial and otherwise, of the country, commences as a rule next day. The Order of the Day is called for Committee of Supply. The Minister of Finance moves "That Mr. Speaker do now leave the Chair, etc.", and on that Motion the debate is carried on.

It may be pointed out that the Message from the Governor-General covering the Estimates is the Crown's recommendation to the House for the grant of Supply, thus fulfilling the fundamental requirement of Parliamentary practice that the House will not proceed on any Motion for a grant except on the recommendation of the Crown. It is further dealt with, first, in a Committee of the Whole House. I gather that in Great Britain the reference to the Estimates in the King's Speech is taken for sufficient recommendation. The Committee reports from day to day the Resolutions it has come to granting Supply for the various votes. These Resolutions are set down for consideration by the House at a future date. This is in accordance with another important rule that Resolutions from a Committee of the Whole House shall not be taken into consideration at once but set down for a later date. In the days when there was conflict between Crown and Parliament it was most important that votes of Supply or Bills should not be unduly hurried. There should be ample time for consideration. So the House devised stages and provided for a space between each stage. These became irksome and many have been dropped. The House, too, often forgoe the delaying period between those stages that remain and ha provision for wiping them out compulsorily, so that every stage can be taken at one Sitting. At any time, however, they may become of the greatest importance in preserving the right of the Opposition, or of Members, of pressing home criticism or replying to misrepresentation.

The financial debate is largely based on the material supplied to the House in the Budget, the Estimates and other accounts and Reports. The material available to Members will now briefly be discussed from the point of view of Parliamentary control.

There are two sets, known as the Consolidated Fund Estimates and the Public Works Estimates, though these are not adequate descriptions.

It will be convenient here to refer to an important differentiation in the authorization of expenditure—namely, the distinction between annual charges and permanent charges. The normal

Parliamentary method is to secure the annual review of expenditure so as to ensure adequate control both of the authorization of the vote and of its subsequent expenditure. Some expenditure, however, must be incurred and little good would be served by bringing it up annually for review, as, for instance, the service of our debt. Judges, again, are given absolute security of office and their salaries are permanently charged. The formula in a statute is to authorize expenditure " without further appropriation than this Act ". Parliamentary tradition inclines against permanent appropriations and they have been reviewed at different times and some brought within the ambit of annual appropriations. These permanent appropriations are not outside Parliamentary control. They are all authorized by Parliament and can come up for criticism. They are now, however, directly voted each year in Estimates.

The nature of the two sets of Estimates is pretty well indicated by their title. The Public Works Estimates, if they are of large amount, are financed in the main from loans. The Estimates are divided into votes which are itemized in fairly considerable detail. Parliament has before it item by item in each vote the amount demanded for the current year, the amount voted for the previous year, and the amount expended. Notes are supplied where necessary in explanation of something unusual about an item—as, for instance, an over expenditure or under expenditure in an item, or an increased sum asked for in respect of an item for the current year. We are also shown the credits-in-aid which Department is likely to receive. This item is an example of ne greater check imposed on Departments; credits-in-aid are strictly appropriated. They are not now undisclosed reserves which can be held by a Department up its sleeve. It should be noted that while the House passes each Departmental vote in the itemized form presented in the Estimates it appropriates the money in a lump sum in the Appropriation Bill. Nevertheless, the items retain their place in the vote and fix limits for expenditure by Departments. There is, however, power for the Treasury to authorize transfers between items, utilizing the surplus from one to bolster up another. The total vote, however, must not be exceeded, as this involves unauthorized expenditure.

Credits-in-aid and transfers between items are illustrations of differing methods in Parliamentary control. Some control the House retains in its own hands, exercising it under its own rules as occasion seems to require. In other cases it lays down permanent rules in a statute and places an obligation on a Minister, or some official, to see that they are observed.

Material Available to Members.—At the same time as the Estimates, or soon after, the following financial papers are presented to the House:

1. An abstract of the Public Accounts containing—
   (*a*) Particulars of receipts and expenditure in the various funds and accounts.
   (*b*) Particulars of issues of money compared with the sums appropriated for the various votes.
   (*c*) Expenditure under the Civil List Act.
   (*d*) Particulars of unauthorized expenditure under the various funds and accounts.
   (*e*) Particulars of liabilities.
2. Controller and Auditor-General's report, covering a number of Statutory Statements relating to revenue receipts, recoveries and disbursements.
3. Statement showing the Public Debt outstanding, including advances from the Reserve Bank, with particulars of funding arrangements, sinking funds, etc.
4. Balance Sheets and Statements of Accounts of Departments.
5. Report of Public Debt Commission relating to repayment of public debt.
6. Statement of Public Securities held.

In addition to the strictly financial papers, there are presented to Parliament annual reports of each Department, for which a vote is provided on the Estimates. These reports deal generally with the operations of the Departments. There are also reports from some Sub-Departments. By an unwritten rule of the House the Estimates of a Department are not considered in Committee of Supply until the annual report of the Department has been tabled so that Members have before them particulars of its operations during the past financial year.

Can anything be done about these papers except read them if Members have the time and inclination? They are known as Parliamentary Papers and the House has made special provision for them. They are listed on the Order Paper under the heading "Papers for Consideration", and it is provided that they shall come up for consideration and debate at any time between 2.30 and 5.30 p.m. (10.30 a.m. and 1 p.m. on Fridays) after other business which has priority has been disposed of and if the Members indicate their wish to discuss a paper when its title or description is called. A paper may be referred to a Select Committee for investigation and report, or it could be referred to the Government with some appropriate tag attached. Actually, little use is made of this special opportunity of discussing papers. Members can discuss the work of a Department when dealing

with the items of its Estimates in Committee of Supply or on some general debate of wide range such as an Imprest Supply Bill.

So much for the material available to Members. The form in which it is presented is important, particularly the accounts, from the point of view of Members desiring to be fully informed. In England it has become established that the recommendations of the Public Accounts Committee shall be taken into consideration as to the form of the accounts and the manner in which the Estimates shall be presented. In New Zealand the power to fix the form is given to the Governor-General-in-Council, so that the Treasury really controls the matter. It seems to me that considerable research through different papers is necessary to get a clear picture of the financial operations, and this requires a good deal of knowledge and patience on the part of Members. There would appear to be inconsistencies. For instance, the External Affairs Department asks for a considerable sum for the purchase of bananas, etc., for its trading operations. The Marketing Department, however, has nothing on its vote to cover its purchases and presumably works by way of overdraft or advances from the Reserve Bank. The conduct of the trading venture would therefore not come under review. Again, the proceeds of the sale of some goods seems to rank as credits-in-aid but not others. For instance, the proceeds of the sale of coal are not shown as credits in aid of the State Coal Mines Department's vote. They appear in the abstract of revenue and expenditure. A Question was raised in the House as to whether unemployment funds were used to pay men employed on the railways. It is not known whether the Question was answered, but obviously if it were correct the railway accounts would not give an accurate picture of the cost of running the railways.

Controller and Auditor-General.—This is a convenient place to raise the question as to what steps Parliament has taken to prevent the misappropriation of public funds and to get for itself independent guidance as to the accuracy and soundness of the public accounting system. The answer is—the appointment of the Controller and Auditor-General. He is not an Officer of Parliament in the sense that the Clerk of the House is, but he is in a very definite way a Parliamentary Officer. He is appointed by the Governor-General and can only be removed from office on an Address to the latter from both Houses. His salary is permanently appropriated. His principal duties are set out in the Public Revenues Act. His primary duty is to audit all accounts and to see that all statutory requirements are complied with. For this purpose he and his officers are given wide powers

to call for and inspect books and accounts, to summon persons for examination, to take steps to recover moneys due to the public account, to impose surcharges and arrange collection. What is important to Parliament is his report, which is to be made each year. The report, which accompanies a statement of revenue and expenditure prepared by the Treasury, must declare any discrepancy between accounts and Treasury books, any failure to carry out the law relating to a matter of accounting, and other acts or omissions which come under the notice of the Auditor-General in the course of the audit of the public accounts. He may include in his report any other matter which he thinks desirable and in particular offer any suggestions for the better collection and payment of the public moneys, and the more effectually and economically auditing and examining the public accounts and stores, and any improvement in the mode of keeping such accounts.

The Controller and Auditor-General's report is one of the papers presented to the House through the Speaker, together with the audited accounts. This brings us to the *rôle* played by Select Committees in carrying out preliminary or special investigations of a subject which the House has got to come to a final decision upon. The Members are supposed to be selected for their special qualifications for carrying out the investigation in question and their report to the House naturally carries a great deal of weight, particularly if the matter is dealt with in a non-party way. The Public Accounts Committee is the one that plays a *rôle* in the control of the public finances in this country. Its work and effectiveness can best be understood against the background afforded by a brief description of the proceedings in the House of Commons.

Public Accounts Committee.—The Public Accounts Committee is one of the most important committees of the House of Commons. By custom its chairman is a Member of the Opposition, usually the Member who occupied the post of Financial Secretary to the Treasury in the last Government. This indicates the desire for knowledge on the part of Members of the Committee and of impartial scrutiny of accounts. What the Public Accounts Committee has referred to it are the audited accounts for the past year so that their job is to check up on irregularities or the application of moneys contrary to the appropriation. The Controller and Auditor-General is present, also officials of the Treasury. As each vote comes up the appropriate departmental head is called. The Committee has the accounts and the Controller's report on which to work. If there is anything difficult to under-

stand, questions can be addressed to the departmental head and the expert officers present can ensure that every point is cleared up in the answer. The Clerk of the Committee is a senior and responsible officer of the House with expert knowledge of the Parliamentary side. The Committee reports to the House. It is admitted that the Committee has been responsible for keeping Departments on the right road and it has a wholesome influence on departmental officers, who know that if they have overstepped the mark in any respect they have to face a well-primed chairman with a knowledge of the public accounts system, supported by experts from the Treasury and Audit. As a result the Controller and Auditor-General has very seldom anything to report and the standard of departmental practice is high. The Committee has been responsible for many improvements in the form of presentation of Estimates and accounts.

The Public Accounts Committee in Britain deals only with the accounts for the previous year. It comes into action after the money has been expended. It does not consider the proposals for expenditure for the current year with a view to eliminating waste. Over a long period representations were made that the Estimates should be examined by a small committee which could give greater attention to detail than the unwieldy Committee of Supply which is a Committee of the Whole House. There were difficulties, and several suggestions were made and some tried. Finally, an Estimates Committee was set up, but it is admitted on all sides that it has not been the success hoped for. The main reasons are that the Committee comes up against policy, which is a matter for the Government and against the principle of the responsibility of the Executive for initiating expenditure through the Crown's recommendation. The time factor also comes in. The Committee cannot examine exhaustively the huge bulk of Estimates and interrogate Departments in the time available. There is a difficulty, too, in making expert officials available to a Committee when policy measures are involved.

In New Zealand the Public Accounts Committee is set up with the following order of reference:

> To examine into and report upon such questions relating to the Public Accounts which may be referred to it by the House or the Government and also into all matters relating to the finances of the Dominion which the Government may refer to it.

We depart from the English practice because the Controller and Auditor-General's report and the audited accounts are not officially referred to the Committee for investigation and report. During my term his report has been referred only twice, being

occasions when something in his report had been seized upon by the Press and had become notorious. The main work of the Committee is to examine the Estimates. It will be noted that the Committee's order of reference authorizes it to consider matters referred to it by the Government. Actually it is the Government which refers the Estimates to the Committee. The reason for this is a technical one of procedure. The Estimates when received by the House are referred to the Committee of Supply. Officially there is only one copy of the Estimates and it cannot be referred to two Committees at the same time. But because the Estimates are referred by the Government, the Committee reports to the Government and the House does not hear officially of the results of its examination. The House of Commons had the same difficulty and on one occasion referred certain classes of the Estimates to a Standing Committee instead of to the Committee of Supply. This apparently was not satisfactory. From the order of reference quoted by Mr. Ivor Jennings in his work, the difficulty has been got over by the House of Commons boldly taking for granted that there are copies of the Estimates available without technically referring them, authorizing the Committee to examine such of the Estimates submitted to the House as it thinks fit and to report. This seems to be a common-sense solution.

The Chairman of the Committee is always a Member of the Government Party. It is not known whether any special care is taken in selecting personnel; as a rule, a farmer, a business man and a lawyer are on the Committee. Neither is it known whether anyone specializes to-day in the higher flights of public finance —as, for example, the effect of different types of taxation on the economy of the country. The Clerk of the House of Representatives does not know what goes on in the Committee except that he attends it as the head of the Legislative Department. The procedure is that an officer of the Treasury is in attendance in case any question is raised which he can answer. The departmental head is called and the Chairman takes the Estimates of the Department, page by page, asking each Member whether he has any question to ask in regard to any item on the page. Each question is answered by the departmental head, the Treasury official intervening if required. There may be a general discussion. The Chairman will accept a Motion in regard to any matter, and if carried the Resolution is forwarded to the Government for consideration. I do not know about other Departments, but nothing of moment is raised with me, but then my Department's expenditure is concerned with the running of Parliament and

Members' privileges. As a matter of practice the Public Accounts Committee endeavours to keep a little ahead of the Committee of Supply so that, when a departmental vote comes up in the latter, Members of the Committee have had the benefit of interrogating departmental officers. I do not know that I can say that the Public Accounts Committee fills us with a wholesome dread. We are perhaps a very efficient body of men.

The same difficulty presents itself here as in Great Britain in the matter of consideration of the Estimates by a Select Committee. Policy is a matter for the Government and responsibility must reside there. It might be more profitable to adopt the English practice of submitting the Controller and Auditor-General's report and the audited accounts for the past year to the Committee. Such things as the system adopted in the new marketing Departments might be elucidated and Members would benefit from closer contact with the Controller. In every country, however, the prime factors are a general desire in Parliament to ensure the efficiency and integrity of the public accounting system, and a willingness on the part of some Members to become familiar with the system, fearless and independent financial officers, and a public opinion that would insist on any revealed abuse being remedied. The reported utterances of prominent men in Great Britain would, I should say, correctly express the position here that Members are not as in olden days concerned with economy and cutting down the demands of the Crown, but in getting, if possible, more expenditure at any rate for their own districts.

Debate.—We are now in a position to finalize the matter by considering proceedings in the House itself. Taking first of all the time factor: we are not so overloaded as in Great Britain, nor so pressed for time. We have to dispose of the financial debate, any imprests necessary, the main Estimates and the Supplementary Estimates and the Appropriation Bill. We have no system of allotted days. As regards the Estimates the Government has the right to go into Supply on two days in the week without Motion put. It has already been mentioned that to get into Committee of Supply a Motion must be moved "That Mr. Speaker do now leave the Chair, etc." This may be debated and an amendment moved.

This might take up a considerable time. On two days a week, however, the Speaker leaves the Chair on the Order of the Day being called, without any Question being put. If things are dragging the Government can move for urgency for certain classes of the Estimates. This cannot be debated, and if opposed a division must be taken at once. If carried the House abandons

its set hours and sits until the classes are voted or the Government weakens. Urgency can be moved for the financial debate or the Appropriation Bill.

There is also provision in our Standing Orders for the use of the Closure. If the Speaker or Chairman of Committees is of opinion that there has been reasonable time given, he may accept a Motion for the Closure of a debate. This Motion is put at once and a decision obtained. The control exercised by the House can best be illustrated by the more important rules of debate and by the class of amendment that may be moved. We go back to the Financial Debate, which is preliminary to the detailed consideration of the Estimates. As indicated, this is the most important debate of the year. As finance is needed for every activity of Government, the debate has the widest range possible, from foreign policy to domestic affairs. Members may speak for an hour. The opportunity is usually taken by the Leader of the Opposition to review the operations for the past year and to point out any dangerous tendencies in the Government's policy as being likely to injure the stability of the country. It is in this debate that policy may be reviewed and criticized and suggestions made for new laws or amendments to existing laws. Amendments moved in the financial debate are powerful ways of focusing public attention on some particular point of national policy. Examples are amendments drawing attention to unemployment evils and inadequate remedies, the necessity for reconsideration of pensions, requesting a statement that the Government does not intend to repudiate the national debt. This type of amendment can be moved during the financial debate, on an Imprest Supply Bill and on any Motion to go into Supply. On the Appropriation Bill the debate is restricted more to administration and matters referred to in the Bill.

The Budget debate being disposed of, the Estimates are entered upon. On the Budget the widest debate is allowed, policy may be discussed and amendments or extensions of existing laws may be advocated. The Estimates provide the finance for the administration of Departments and the debate is confined to matters of administration. Matters requiring legislation may not be discussed. This is a salutary rule. The government of the country must be carried on and there must be an end of debate. If new legislation could be discussed, the Estimates would open up almost every Act on the Statute Book. It is, of course, impossible for any Member to move for an item to be increased. This would offend the fundamental rule that the Crown must recommend expenditure. It has been said that this

rule prevents a Member bringing forward in the most forcible way, and one likely to impress the electors, a proposal to give some necessary benefit under social legislation. The rule, however, is also salutary. Increased expenditure should not be proposed except with full knowledge of the effect on the budgetary position. The knowledge of the Treasury, the administrative wisdom of Departments should be available. The responsibility should be with the Government. A Member may advocate, but he should not initiate. A Member may move to reduce either an item or a whole vote. He may give his reasons for so moving a reduction and these may be discussed, but they are not put from the Chair nor recorded in the Minutes. This is the method by which attention can be drawn forcibly to abuses of administration. It is possible to move more than one amendment to reduce an item, a smaller amount being named each time so that good publicity can be obtained.

Appropriation Bill.—The main Estimate and Supplementary Estimate are in due course voted. All the Resolutions passed by Supply are gathered up, agreed to and referred to the Committee of Ways and Means. As already indicated, the proceedings here are purely formal. The money voted is authorized to be paid out of the Public Account and the other accounts. A Bill is ordered to be brought in based on the Resolutions of Ways and Means, and the Appropriation Bill follows. It should be noted that, in addition to the votes for the current year, Parliament has had before it particulars of unauthorized expenditure for the previous years, of surplus credits-in-aid used in excess of appropriation, of moneys owing and stores unaccounted for, which are to be written off. These are included in the Appropriation Bill, which also includes all the amounts voted in lump sums in advance by way of imprest. The Bill gives certain discretions as to the expenditure of the money voted—*e.g.*, transfers between kindred items—and authorizes the making of contracts. The authority of the Bill is strictly confined to the current financial year. After March 31 its authority for expenditure cannot be invoked. This custom of Parliament is confirmed in the Public Revenues Act (s. 45).

Governor-General's Warrant.—This is the final proceeding in Parliament as far as voting and appropriating supplies for the year are concerned. Before any issues are actually made from the various funds and accounts, the Governor-General's warrant must be obtained, and this is granted only on the certificate of Parliament's Officer, the Controller and Auditor-General, that the issue may be made according to law.

Taxation Measures.—Reference has already been made to the fact that customs and excise duties are taken first in Committee of Ways and Means. The Resolutions imposing them are passed in Committee and agreed to by the House, which orders them to be embodied in a Bill to be introduced later. The Bill must follow the Resolutions and not include anything not passed in Committee. An amendment may be moved by a Member reducing a proposed tax but not increasing it. If, however, the proposed tax is a reduction of an existing tax, a Member may move to restore the existing tax. The Resolutions imposing customs or excise duties come into force at once when passed by the House. We adopt a different practice from the House of Commons to achieve this. Instead of making them effective for a given period before the Bill is passed we forbid any application to the Courts for a refund of duties imposed by the Resolutions until the end of the Session. The effect is the same, as an importer must pay the duty demanded before he gets his goods. Customs and excise duties are the only ones that come into force immediately, and our practice has deviated somewhat from British practice. Other taxation measures are not introduced in Ways and Means, but the Crown's recommendation is considered in an ordinary Committee of the Whole House, as in the case of wha are commonly called Money Bills—that is, a Bill the carrying ou of the provisions of which will involve expenditure.

Money Bills.—The procedure here is that a Message is receive from the Governor-General in some such form as follows:

> The Governor-General transmits to the House of Representatives the draft of a Bill intituled a Bill to amend —— and on His Majesty's behalf recommends the House to make provision accordingly.

This recommendation is referred at once to a Committee of the Whole House, which recommends that provision be made accordingly and the Bill is introduced, read a First Time and ordered to be printed. Our procedure is different from that adopted in the House of Commons, where they have what is called a setting-up Resolution. At one time the Message stage was regarded as a pure formality and was seldom debated. The depression legislation brought about debates. The practice now is for the Minister to indicate briefly what the Bill is about. Some of the machinery clauses in a Bill of this kind may not affect expenditure and may be amended on a Member's Motion, but no amendment can be accepted by the Speaker if it involves even slight additional expenditure. The criticism levelled in Great Britain that a

debate on the Message was an unnecessary duplication of the Second Reading is sound. To-day, there is seldom much debate, beyond question and answer, as to the contents of the Bill. When there were debates, they were for the purposes of delay and publicity in regard to Bills likely to be obnoxious to many.

Loans.—Loans are authorized as a rule in a Finance Bill or some Act setting up a new administration or authorizing new works. Loans are raised in accordance with the machinery and safeguards laid down in a special Act.

History shows that institutions, however carefully devised and fruitful in operation, fall if the spirit fails. It has been indicated that a wise conservatism has been an essential element in the success of our Parliamentary institution. Conservatism is thought of to-day solely as the defence of privileges. There is some truth in that, but there has always been, in the best conservative elements in a community, a recognition of the value of principles. They have not been as fertile as they should in suggesting remedies of existing abuses, but there is an essential soundness in their views. An institution by itself is not a safeguard. Hitler used a democratic form to attain power. In these difficult days all the genius of the British race will be needed to preserve both our institutions and our place.

VII. THE FINANCIAL POWERS OF AN UPPER HOUSE: A SOUTH AFRICAN EXPERIMENT

By S. F. Du Toit, LL.B.
Clerk of the Union Senate

The financial powers of the two Houses of the Parliament of the Union of South Africa are set out in ss. 60 *et seq.* of the Constitution,[1] the powers of the Senate *vis à vis* those of the House of Assembly being more particularly laid down in s. 60, which reads as follows:

> (1) Bills appropriating revenue or moneys or imposing taxation shall originate only in the House of Assembly. But a Bill shall not be taken to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.
>
> (2) The Senate may not amend any Bills so far as they impose taxation or appropriate revenue or moneys for the service of the Government.
>
> (3) The Senate may not amend any Bills so as to increase any proposed charges or burden on the people.

The interpretation of this section in all its aspects has in more than thirty years of the existence of the Union Parliament frequently[2] been the subject of rulings given from the Chair in the Senate and has, moreover, given rise to disagreements[3] between the two Houses; an enactment of this nature, however carefully it may have been drafted, will in its practical application during years of legislation invariably give rise to such disagreements on its interpretation.

The first disagreement, in fact, arose as early as March, 1911, when the Senate made an amendment in the High Commissioner's Bill, which amendment the House of Assembly contended was in conflict with s. 60.[4] The Senate did not insist upon its amendment, but at the same time by means of a "Motion of disapproval" recorded in its journals that it was unable to agree that an increase of public expenditure could possibly result from what it called its "verbal" amendment.[5]

The record continues that "for other reasons", however, the Senate would not insist on its amendment. A perusal of *Hansard*[6]

[1] The South Africa Act, 1909 (9 Edw. VII, c. 9).
[2] 1911 Sen. Min., 270; 1912 *ib.*, 50, 113; 1913 *ib.*, 258; 1919 *ib.*, 279; 1925 *ib.*, 198; 1933 *ib.*, 30; 1934 *ib.*, 185.
[3] 1910-11 Sen. Min., 167, 223; 1912 *ib.*, 63, 76; 1932 *ib.*, 56, 67, 81, 90, 96, 109.
[4] 1910-11 Sen. Min., 167.
[5] *Ib.* 223.
[6] Sen. Deb., March 23, 1911, c. 297 *et seq.*

for the other reasons shows that it was felt by some Senators that the amendment was perhaps not worth a conflict inasmuch as the words deleted by the Senate were in any case " meaningless ". Other Senators, again, appear to have been swayed by a statement of the Minister-in-charge in which he advised the House first to decide not to insist on its amendment, whereafter he would move the Motion of disapproval above referred to.

A paraphrase from one speech in *Hansard*[1] may be given here as much for its sentiment as for its prophecy; to him who knew the characters on that early stage, their unremitting dignity as well as their unerring wisdom, and who has since their passing witnessed developments, the story of *Hansard* remains a charming reminiscence:

> He could not reconcile himself to the idea that the Senate must withdraw the amendment which it had unanimously put into the Bill. . . . This would be looked upon as a precedent, and he would fight to the last ditch. He would rather die on the floor of the House than submit. . . . He would go to a division, if necessary, because he was afraid they would sign their own death warrant unless they asserted themselves.

The die-hards did go to a division but lost, the voting being 12 " Not-Contents " to 27 " Contents ".

On the first day of the next Session (1912) a " Memorandum upon the power of the South African Senate with reference to matters relating to public money " by the Clerk of the Senate was tabled[2] in the Senate.

A recital of the procedure between the two Houses on financial matters would be incomplete without a cursory reference to the expedient adopted in the case of Bills originating in the Senate when such Bills contain incidental provisions which contravene sub-section (1) of s. 60.

This expedient—namely, that of the bracketing—may be formulated as follows:

In the case of Bills originating in the Senate, it has been the practice on Report Stage to place within brackets provisions which the Senate is unable constitutionally to initiate, a footnote indicating that such bracketed provisions do not form part of the Bill. The House of Assembly, if it so wishes, then inserts the bracketed provisions in the Bill and returns the Bill to the Senate for concurrence in the provisions so inserted.

It was first used as early as 1911[3] and has since been resorted to again *inter alia* as recently as 1942.[4]

[1] Sen. Deb., March 23, 1911, c. 297 *et seq.*
[2] S. 1, 1912. [3] Sen. S.C., 9, 1910-11. [4] 1942 Sen. Min., 132.

Having given the mere beginnings of this constitutional riddle, I now return to the history of its progress.

Section 25 of the South Africa Act provided that, after the expiration of 10 years from the date of the establishment of the Union, Parliament may provide for the manner in which the Senate shall be constituted. As this first decade drew to a close, there was naturally a distinct livening of interest in the subject of the constitution of the Senate and, coupled with its Constitution, also its powers.

In 1917 a "Memorandum relative to the Question of the Senate of South Africa after the expiration of the Period of Ten Years for which it was constituted in 1910"[1] from the pen of the Clerk of the Senate was laid upon the Table of the House. This Memorandum was followed by the appointment of a Senate Select Committee in 1918, the Report (Senate S.C., 4, 1918)[2] of which Committee was referred to the Government for consideration without the Senate expressing any opinion on the merits thereof. In its Report the Committee stated that it had *inter alia* arrived at the following two conclusions:

> (3) (*a*) That this Committee is in favour of a Senate mainly elected but partly nominated.
>
> (*b*) That any system of election decided upon for the constitution of the Senate shall be one of direct election.

Having pronounced itself in favour of the "direct" method of election—*i.e.*, election by popular vote as against the present "indirect" method of election by an electoral college—the Committee followed up with this recommendation:

> (8) With regard to the monetary powers of the Senate, your Committee resolved:
>
> That on account of the new Senate being a directly elected body, s. 60 of the South Africa Act, 1909, be amended so as to admit of (1) the origination in the Senate of bills for the demand or payment or appropriation of fees for licences or fees for services under such Bills, and (2) the amendment of bills by reduction so far as they appropriate revenue or moneys not for the ordinary annual services of the Government.
>
> That in regard to any bill containing provisions which the Senate is prohibited by the terms of sub-sections (2) and (3) of s. 60 of the South Africa Act, 1909, from amending, the Senate may during the stages of the passing of any such Bill return it to the House of Assembly suggesting by message the omission or amendment of any item or provisions therein and the House of Assembly may, if it thinks fit, make any of such omissions or amendments with or without modifications.

[1] S. 1, 1917.

[2] Report from the Select Committee on the Future Constitution of the Senate (Sen. S.C., 4, 1918); *see also* 1918 Sen. Min., 159, 160, and 1918 Sen. Deb., 924, 989.

During the years 1918-20 the question of the future constitution of the Senate was again frequently referred to in both Houses of Parliament.[1] In 1920[2] the Prime Minister stated that the Government had decided on a Speaker's Conference to be held during the Recess and announced the members of the Conference. The Conference[3] consisted of 21 members, including Mr. Speaker as Chairman, 7 Senators and 13 other members of the House of Assembly. The then Clerk of the Senate, now the Editor of this JOURNAL, was appointed Secretary of the Conference and his Memoranda previously mentioned were laid before the Conference to assist its deliberations.

The following extract from the Prime Minister's statement may serve to define the terms of reference of this Conference:

> The Conference will consider, and report to the Government, on the necessity, or otherwise, of any further provision in respect of the future constitution of the Senate, and in that connection make recommendations on the election or nomination, or both, of its members, and in what manner and for what periods, the dissolution of the Senate, the periodic retirement of Senators or groups of Senators, and the filling up of casual vacancies, and any incidental questions which may arise in connection with the above matters.

The Report of the Conference shows that the " Process of Suggestion " on the Australian precept once again came strongly to the fore. It states:[4]

> . . . the opinion prevailed that in actual practice the inconvenience and restriction which the Senate felt in regard to such matters could best be met by leaving the actual monetary powers of the Senate as they are at present (*vide* sub-sections (1), (2) and (3) of s. 60 of the Constitution), and to add to such section a provision introducing the system known as the " process of suggestion " which has found such favour with both Houses of Parliament during its many years' trial in Australia. . . .
>
> The Resolution adopted by the Conference in regard to this question was as follows:

Process of suggestion.

> That in regard to any Bill containing provisions which the Senate is prohibited by the terms of sub-sections (2) and (3) of s. 60 of the South Africa Act, 1909, from amending, the Senate may once during the passage of any such Bill return it to the House of Assembly, suggesting by message the omission or amendment of any item or provision therein (which shall be set forth in an accompanying schedule), and the House of Assembly may, if it thinks fit, make any such omissions or amendments with or without modifications.

The Report, which was dated November 1, 1920, was addressed by Mr. Speaker to the Prime Minister, and in 1921 was tabled

[1] Conference on the Future Constitution of the Senate (U.G. 65, 1920), 1.
[2] *Ib.* 1; *see also* 1920 Sen. Min., 255, and 1920 ASSEM. VOTES, 1094.
[3] *Ib.* iv 2. [4] *Ib.* 8.

in both Houses. No further mention of it is made in the Journals until 1922,[1] when the following Question was put to the Prime Minister in the Senate:

> Whether the recommendations contained in the Report of the Speaker's Conference concerning the future constitution of the Senate will be carried out by the Government.

The Prime Minister replied that the Government was not prepared to carry out the recommendations of the Conference; it considered the Senate as at present constituted admirably met the requirements, and a reconstruction as recommended by the Conference was therefore unnecessary.

There the matter rested until 1932, when a difference arose between the two Houses over an amendment made by the Senate in an Assembly Bill, which amendment the latter House held the Senate was, under s. 60 of the Constitution, precluded from making. The Bill in question was the Flood Distress Relief Bill.

Although space scarcely permits a reprint of the records, I feel a summary will not adequately reflect the issue, and the full course of the dispute is here set out in the following Messages which passed between the two Houses.

Message from the House of Assembly to the Honourable the Senate[2] (March 24, 1932):

> The House of Assembly returns to the Honourable the Senate the *Flood Distress Relief Bill* in which the Honourable the Senate has made an amendment, viz., the insertion of the following new *Clause Three*:
>
> 3. The word "implement" shall wherever it is used in the principal Act include a pumping plant.
>
> The House of Assembly respectfully submits that the effect of this proposed new *Clause* will be to bring pumping plants within the meaning of implements which under s. 3 (3) of the principal Act may be purchased "from moneys appropriated by Parliament", and must therefore be regarded as an Amendment which the Honourable the Senate is precluded from making under s. 60 of the South Africa Act.
>
> The House of Assembly therefore returns the Bill with endorsement made and trusts that the Honourable the Senate will not insist upon the Amendment.

Message from the Senate to the Honourable the House of Assembly[3] (May 6, 1932):

> The Senate acknowledges the receipt of the Message from the Honourable the House of Assembly, dated the 24th March, 1932, returning the *Flood Distress Relief Bill* in which the Senate had made an Amendment which the Honourable the House of Assembly submits must "be regarded as an Amendment which the Honourable the Senate is precluded from making under s. 60 of the South

[1] 1922 Sen. Min., 145, 147 [2] 1931-32 Sen. Min., 56. [3] *Ib.* 67.

Africa Act". The Senate respectfully requests the Honourable the House of Assembly to specify the sub-section of s. 60 of the South Africa Act under which it is claimed that the Senate is precluded from amending the Bill by inserting therein the proposed new *Clause*. The Senate further requests the Honourable the House of Assembly to state the reasons for its view more explicitly so as to enable the Senate before coming to a final decision on the question at issue to have before it the full reasons of the Honourable the House of Assembly.

Message from the House of Assembly to the Honourable the Senate[1] (May 11, 1932):

The House of Assembly has considered the Message of the Honourable the Senate, dated the 6th May, requesting the House of Assembly to specify the sub-section of s. 60 of the South Africa Act under which it is claimed that the Senate is precluded from amending the *Flood Distress Relief Bill* by inserting therein the proposed new *Clause Three*, and to state the reasons for its view more explicitly.

The House of Assembly in compliance with this request desires to draw attention to the fact that, for the relief of distress caused by drought, s. 3 (3) of the Drought Distress Relief Act, 1927, authorized the purchase and supply of certain livestock, implements, seed and fertilizers "from moneys appropriated by Parliament". In the *Flood Distress Relief Bill* of the current session, the House of Assembly, on the recommendation of the Governor-General under s. 62 of the South Africa Act, applied these provisions (with a limit of £200 for each applicant) for the relief of distress caused by flood. The Honourable the Senate, however, has amended the Bill by inserting a new *Clause Three* which extends the relief by authorizing the purchase and supply of pumping plants. Under this *Clause*, therefore, persons applying for pumping plants could be granted relief "from moneys appropriated by Parliament" which the Bill as passed by the House of Assembly did not contemplate. But under sub-section (3) of s. 60 of the South Africa Act the Senate may not amend any Bills so as to increase any proposed charges or burden on the people and under sub-section (2) the Senate may not amend any Bills so far as they appropriate moneys for the service of the Government.

The House of Assembly, although directly representing the people of the Union, is confined under s. 62 of the South Africa Act to the terms of the proposal recommended by the Governor-General. It cannot assume that the recommendation given under that section covers appropriation which is not apparent from the wording of the Bill and without a further recommendation from His Excellency it would itself have been unable to make the amendment proposed by the Honourable the Senate.

For these reasons the House of Assembly respectfully submits that the Honourable the Senate is precluded from making the amendment in question.

Message from the Senate to the Honourable the House of Assembly[2] (May 13, 1932):

[1] 1931-32 Sen. Min., 81.

[2] *Ib.* 89.

The Senate has considered the Message of the Honourable the House of Assembly, dated the 11th May, specifying the sub-sections of s. 60 of the South Africa Act under which the Honourable the House of Assembly claims that the Senate is precluded from amending the *Flood Distress Relief Bill* by inserting therein the proposed new *Clause Three*, and stating the reasons for its view.

The Message raises points of interpretation of s. 60 of the South Africa Act, 1909, which in the opinion of the Senate could better be discussed in conference than by Message. In order to arrive at an agreement as expeditiously as possible, the Senate therefore respectfully suggests that the Select Committees of the Two Houses on Standing Orders be authorized to confer on the matter.

Message from the House of Assembly to the Honourable the Senate[1] (May 16, 1932):

The House of Assembly has considered the Message of the Honourable the Senate, dated the 13th May, suggesting that the Select Committees of the two Houses on Standing Orders be authorized to confer on the question as to whether the Honourable the Senate is precluded under s. 60 of the South Africa Act from amending the *Flood Distress Relief Bill*, by inserting the proposed new *Clause Three*.

The Honourable the Senate in making this suggestion states that points of interpretation of s. 60 of the South Africa Act are raised by the Message of the House of Assembly. The House of Assembly, however, submits that any interpretation of the section which would permit of the amendment being made by the Honourable the Senate would have the effect of conferring wider powers upon that House than are enjoyed by the House of Assembly in the appropriation of public moneys.

The House of Assembly trusts that the Honourable the Senate will recognize that the House, directly representing the taxpayer, could not entertain interpretations having that effect, and, sharing the desire to arrive at an agreement as expeditiously as possible, feels sure that the Honourable the Senate will agree that under the circumstances no practical purpose would be served by further discussions on the point at issue.

Apart from other considerations the House of Assembly, therefore, regrets that it is unable to concur in the suggestion which has been made. Should the Honourable the Senate, however, desire to discuss the broad principle of closer co-operation between the two Houses on Bills falling under the provisions of s. 60, the House of Assembly would welcome a proposal for the consideration of that question by the committees of the two Houses conferring together.

Message from the Senate to the Honourable the House of Assembly[2] (May 19, 1932):

The Senate has considered the Message of the Honourable the House of Assembly, dated the 16th May, and regrets to learn that the Honourable the House of Assembly is unable to concur in the

[1] 1931-32 Sen. Min., 96. [2] *Ib.* 109.

Senate's suggestion that the Select Committees of the two Houses on Standing Orders be authorized to confer now on points of interpretation of s. 60 of the South Africa Act, 1909, raised in the House of Assembly Message, dated the 11th May.

The Senate, however, desires to record its appreciation of the attitude of the Honourable the House of Assembly expressed in the statement that it would welcome a proposal that the Committees of the two Houses should confer in order to discuss the broad principle of closer co-operation between the two Houses on Bills falling under the provisions of s. 60 of the South Africa Act, 1909.

Owing to the anticipated early termination of the Session, the Senate will submit its proposal at the commencement of the next Session; meanwhile it wishes to make it clear that it does not seek to obtain for itself wider powers than are now bestowed upon it by the Constitution.

With reference to the claim of the Honourable the House of Assembly that the Senate is precluded from amending the *Flood Distress Relief Bill* by inserting therein the proposed new *Clause Three*, and stating the reasons for its view in its Message of the 16th instant, the Senate is unable to agree that such Amendment can possibly increase any charge or burden on the people, or appropriate moneys for the service of the Government; nor that s. 62 precludes the Senate from making such Amendment, as such section does not apply to the Senate.

The Senate, however, has no desire to jeopardize the Bill and, in view of a statement made in the Senate on the 4th instant by the Minister in charge of the Bill that the Amendment was not essential as it had been found that the Bill without it was sufficient to cover the object the Senate sought to attain, it begs to inform the Honourable the House of Assembly that it does not insist upon the Amendment to which the House of Assembly has disagreed.

The Senate further transmits a fair copy of the said Bill passed by the Honourable the House of Assembly, and which has now also been agreed to by the Senate, and desires that the Honourable the House of Assembly will cause the same to be certified as correct, and will return it so certified to the Senate.

The outcome of the dispute accordingly was a meeting in 1934 of the Conferring Committees of the two Houses on Standing Orders " to discuss the broad principle of closer co-operation between the two Houses on Bills falling under the provisions of s. 60 of the South Africa Act, 1909.[1]

These deliberations were, however, not completed, but were reopened in 1935, when the Conferring Committees appointed a sub-committee consisting of Mr. President and Mr. Speaker with two Members of each House respectively selected by them; the sub-committee was enjoined to find a solution acceptable to the Committees.

Before this sub-committee was laid again on behalf of the

[1] 1934 Sen. Min., 25, 46, 135.

Senate the proposal of the " process of suggestion ", provided that a suggestion once made should not be pressed. On behalf of the House of Assembly, on the other hand, the proposal was that s. 60 of the South Africa Act should be so amended as to remove any possible doubt as to the meaning of that section and at the same time to give the House of Assembly the power to waive its privileges on amendments made by the Senate incidentally affecting taxation, etc., provided that such amendments did not materially infringe the privileges of the House of Assembly or were made for the purpose of giving effect to the legislative intentions of that House.

The sub-committee was unable to come to any conclusion and it made no report.

In the succeeding years the matter was kept alive and no more, until on February 4, 1941, the Senate Sessional Committee on Standing Orders in its Report again pressed for a resumption of the discussions.

Here I must digress for a moment and refer to a development parallel and kindred to the subject of these discussions. Perhaps not altogether unconnected with this question of the Senate's financial powers was the grievance frequently expressed in the Senate, that the main Appropriation Bill, almost without exception, came to the Senate from the House of Assembly on the day before the Session terminated, if not actually on the closing day; the result was that the Senate, already conscious of its curtailed financial powers, had little or no time in the concluding stages of the Session to discuss as fully as it wished the main financial measure of the Session.

On February 5, 1941, the Senate referred the following Motion to its Sessional Committee on Standing Orders:

> That in order that this House may be afforded a reasonable time to consider the annual Appropriation Bill, the Honourable the House of Assembly be requested by Message to take into consideration the practicability of dividing the annual Estimates of Expenditure into sections and to submit each section for the consideration of the Senate immediately it has been passed by the House of Assembly.[1]

Perhaps by coincidence—perhaps not without some significance—on that same day, the Committee's Report of the previous day dealing with the Senate's financial powers was referred back to the Committee. On that day, therefore, we witness these two parallel lines of thought—firstly, on the Senate's powers of amend-

[1] 1941 Sen. Min., 40.

ment in financial matters, and secondly its opportunities for debating such matters—merged into one.

In its next Report (April, 1941)[1] the Committee recommended that, in view of the advanced stage of the Session, the matter of the Senate's financial powers be allowed to stand over for further consideration when Parliament met again. With the development, however, of the War situation it now seems unlikely that a solution of this vexed constitutional question of long standing will be attempted during the present state of emergency.

With regard, however, to the second matter—*i.e.*, the Motion on the Senate's opportunity of debate—the Committee in the same Report recommended the following procedure:

> The Minister will introduce a Motion on the following lines: "That this House take into review the policy pursued by the Minister of . . ." If any amendment is moved to that Motion, it will be dealt with in the usual way. It is contemplated that after the Minister has replied to the debate on the Motion, he will ask leave of the House to withdraw it. The aforementioned Motions should be introduced sufficiently early in the Session to give the Senate adequate time to debate them. It will not be necessary for the Minister to wait until his Departmental Estimates have been dealt with in the House of Assembly, but the Motion can be introduced at any time after the annual Estimates of Expenditure have been laid on the Table and after the delivery of the Budget Speech. In the event of a Minister not availing himself of the opportunity of having his Estimates discussed in the way proposed, then that particular Minister's Estimates will be considered in Committee of the Whole House. If all Ministers adopt the proposed procedure the Senate will not go into Committee on the Appropriation Bill.

In parenthesis it must be mentioned here that the Senate can negative the Committee Stage of such Bills under its S.O. 130, which reads:

Committee Stage negatived.

> 130. When any bill the main object of which, in the opinion of Mr. President, falls within the provisions of section *sixty* of the South Africa Act, 1909, or any amendment thereof, has been read a second time, the next question which shall be put in connection with such bill is—"*Whether this bill shall be committed*"—and if this question (which shall be put immediately after the second reading has been agreed to and shall only be moved as an unopposed motion) pass in the negative the next stage of such bill shall be the third reading.

The recommendation of the Standing Orders Committee was adopted by the Senate, and the experiment—which as yet rests merely on mutual agreement and on no rule or Standing Order—was initiated during the 1942 Session.

[1] 1941 Sen. Min., 179.

An interesting symptom of how this innovation functions in practice can be gathered from the following extracts from *Hansard* :

1. Mr. President's Ruling on March 11, 1942,[1] which speaks for itself:

SCOPE OF DEBATE ON POLICY

The intention of this experiment as instituted by the Report of the Sessional Committee on Standing Orders (S.C., 1A, 1940-41) was to afford the House an opportunity to discuss the policy pursued by each Minister in the administration of his Department—an opportunity often in practice not available to the House on the annual Appropriation Bill. It must, however, be borne in mind that the said Report stated that the discussion under a Motion of this nature forms an alternative to the Committee Stage on the Appropriation Bill, and this indicates clearly that the intention was to confine the debate to the Vote under the control of the Minister as set out in the Estimates of Expenditure. In defining the scope of this Debate I shall therefore be guided by the Estimates of Expenditure, and I feel that such a course should give members ample opportunity for discussion.

I can accordingly not on each Motion of this nature allow a Debate on the general policy of the Government, for that would entail boundless overlapping and repetition. Nor can I here allow a Debate on the taxation proposals of the Government, the form of which, as it will eventually come before this House, is not yet determined, and in any case will form the subject of other legislation than the Appropriation Bill. The Hon. Senator will therefore be well advised to confine himself to the specific Votes under the Minister's control.

2. Speech of the Minister of Finance when on March 16, 1943,[2] he introduced the Part Appropriation Bill in the Senate:

It is of course permissible on a Bill of this kind to discuss any question affecting the administration, as is the case with all general financial measures, but I would take the liberty of pointing out to Hon. Senators that probably it would be correct to take the view as far as the Senate is concerned that that procedure should be modified because of the system now in operation. As Hon. Senators are aware, between the consideration of this Part Appropriation Bill and the main Appropriation Bill for next year each Minister in turn presents a policy motion and that gives the Senate the opportunity of discussing the policy of each department separately. Now it does seem to me that where that opportunity is available it should be unnecessary to raise on a Part Appropriation Bill individual questions which are much better dealt with on those motions, and I hope that the tradition will grow up that the discussion on the Part Appropriation Bill is in fact limited to financial questions and that would of course mean that it is unnecessary to require the presence of all Ministers here while the Part Appro-

[1] 1942 Sen. Min., 87.

[2] 1943 Sen. Deb., 544, 545.

priation Bill is considered. The fact that each Minister in turn comes here to submit his policy for consideration by the Senate appears to me to make it unnecessary that such discussion should be duplicated by matters of that kind being raised also on the Part Appropriation Bill. I would therefore with submission suggest that appropriately the discussions in this place on the Part Appropriation Bill should be limited to financial matters.

These two quotations indicate some difficulty which has been occasioned during the debate more particularly on the policy Motion of the Minister of Finance, aud the future will show in which direction the new practice will develop.

So far all Ministers have introduced what has become known as their " policy Motions " in the Senate, excepting the Minister of Railways and Harbours, who affords the Senate similar opportunities on his Railways and Harbours Part Appropriation Bill. In introducing this Bill in the 1943 Session on March 29, 1943,[2] he said:

Mr. President, it has been the custom in the past for the Minister of Railways and Harbours to move his Part Appropriation Bill and formally put it through, leaving his main Budget speech to be made upon the Budget itself, but the drawbacks of that procedure are that the Budget comes here very late in the Session, when everybody is in a hurry to get finished and when there is no time for proper discussion, and consequently, as far as the Hon. Senate is concerned, it has to pass the Budget and has to finish railway matters without, possibly, being given the proper opportunity for considering it. For this reason I am proposing this year not to worry very much about my Budget speech at the end of the Session, but to speak on railway matters and railway policy on the Part Appropriation Bill, and I hope that that will meet with the approval of the Hon. Senate.

The effect of this new system on the Sittings of the Senate, its procedure, its debates and its activities in general has been a marked one, but inasmuch as matters of procedure are matters of gradual evolution it would be unwise, after only one complete Session's trial, to express a precipitate opinion on how it functions. Reflections on its practicability must necessarily stand over for a later article.

[2] 1943 Sen. Deb., 1038, 1039.

VIII. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY

By Ralph Kilpin
Clerk of the House of Assembly

The following unusual points of procedure occurred during the second part of the 1940-41 Session:

Explanatory Memoranda to Bills.—During the 1940-41 Session no fewer than six explanatory memoranda to Bills were laid upon the Table, all of which considerably expedited the business of the House. In the memorandum on the Motor Carrier Transportation Amendment Bill not only were the provisions of the Bill itself explained but the principal Act was reprinted in a form showing the words proposed to be omitted and the words proposed to be inserted.[1]

Questions in lieu of Motion for adjournment of House on definite matter of urgent public importance.—After the House rose on Friday, January 31, 1941, serious rioting took place in Johannesburg. When the House met on Monday it was anticipated that this matter would be brought up on a Motion for the adjournment of the House on a definite matter of urgent public importance, but by arrangement with the Prime Minister and with leave of the House Questions were asked by the Leader of the Opposition and the Leader of the Afrikaner Party. A full statement was then made by the Prime Minister in reply to both Questions.[2]

Adjournment of debate proposed by Mr. Speaker on Private Members' day.—Mr. Speaker twice exercised the discretion vested in him by S.O. 40 of putting the Question " That the debate be now adjourned " on a Private Members' day. The first occasion was on a Motion for leave to introduce a Bill. On this occasion the Question was agreed to and the Motion for leave to introduce the Bill, although moved early in the Session, eventually dropped owing to prorogation.[3] The second occasion was on a Motion for the revival of a Bill. On this occasion the Question was negatived and the original Motion was agreed to.[4]

Closure applied on Motion for adjournment of House.—At a quarter to six on a Private Members' day a Minister moved the adjournment of the House. Objection was raised to adjourning before an opportunity had been given to discuss a Motion on the farming industry which stood next on the Order Paper. After

[1] 1940-41 VOTES, 175. [2] *Ib.* 185. [3] *Ib.* 194, 767. [4] *Ib.* 195.

the Question had been discussed for nearly an hour the Closure was applied on the Motion of a Government Whip.[1]

Governor-General's Consent.—S.O. 119 provides that the House " shall not proceed upon any Bill, Motion or proposal interfering with the Crown, its lands or prerogatives " without the Governor-General's consent. In practice this consent is almost always confined to matters relating to Crown Lands; but in 1934 it was required for the Status of the Union Bill and the Royal Executive Functions and Seals Bill, and during the 1940-41 Session it was given in connection with the Factories, Machinery and Building Work Bill, clause 56 of which provided that " This Act shall bind the Crown ".[2]

Eleven o'clock Rule.—S.O. 26 provides that at five minutes to eleven o'clock p.m. Mr. Speaker or the Chairman shall " interrupt the business under consideration " and that Mr. Speaker shall then adjourn the House. This Rule was twice applied under peculiar circumstances.

(i) On February 17, 1941, business under consideration was concluded at precisely five minutes to eleven o'clock and for the first time since the adoption of the Rule Mr. Speaker adjourned the House without actually interrupting such business.[3]

(ii) At six minutes to eleven o'clock on March 12, 1941, a Motion for the Second Reading of a Bill was agreed to. The Minister in charge then moved " That the House go into committee on the Bill on Monday, March 24 ". A Member rose to speak on the Motion and at five minutes to eleven o'clock Mr. Speaker interrupted the business. When the debate on the Motion for the House to go into Committee was resumed an amendment that the Bill be referred to a Select Committee was agreed to.[4]

Rule that same Question may not be twice offered.—On February 19, 1941, an amendment was negatived on the Second Reading of the Part Appropriation Bill calling upon the Government " immediately to suspend all expenditure under the heading ' Defence ' which is not strictly in accordance with the Defence Act and not within the limits thereof ".[5]

Subsequently on the Motion to go into Committee of Supply on the Estimates of Expenditure, an amendment was moved calling upon the Government " to omit from such Estimates all estimated amounts purporting to be for defence purposes, which

[1] 1940-41 VOTES, 356.
[2] *Ib.* 404.
[3] *Ib.* 269.
[4] *Ib.* 429.
[5] *Ib.* 287.

are intended to be utilized, either within or without the Union, for participation in the War ".[1]

Both of these amendments aimed at the conclusion of a separate peace, a Question upon which the House had given its decision on August 31, 1940, but as they differed in form and matter they were both allowed.

Speaker's casting vote.—On the Report Stage of the Divorced Persons' Maintenance Bill, Mr. Speaker had twice to give his casting vote. The first occurrence arose out of an equality of votes on an amendment to recommit the Bill, and Mr. Speaker gave his vote against the amendment in order that the Question would be left open for the House to decide on the Third Reading.[2]

The second occurrence arose out of an equality of votes on the original Motion—namely, " That the amendments made in Committee of the Whole House be now considered ", and Mr. Speaker gave his vote for the Motion in order to keep the Question open.[3]

The unusual feature of these precedents lies in the fact that they are not only the first recorded occasions on which a casting vote has been given in the Union House of Assembly,[4] but that they both occurred on the same day and that the total number of Members voting was different on each occasion.[5]

Adjournment of House moved as superseding Motion.—The adjournment of the House was twice moved as a superseding Motion. On April 8 it was negatived by one vote and on April 25 it was agreed to by one vote, with the result that the Divorced Persons' Maintenance Bill dropped.[6]

Report Stage of Bill.—At the conclusion of the Report Stage of a Bill it has always been the practice both in the Cape House of Assembly[7] and the Union House of Assembly for Mr. Speaker to put the Question " That the Bill as amended be adopted ". The Question is usually regarded as purely formal and is agreed to without discussion. There is no instance of its being negatived, but in 1929[8] it was agreed to after discussion; in 1931[9] it was agreed to after a division; and during the 1940-41 Session, when the Question was put at the conclusion of the Report Stage of the Divorced Persons' Maintenance Bill, a Member moved the adjournment of the debate and when that Motion had been negatived divided the House on the original Question.

[1] 1940-41 VOTES, 451. [2] *Ib.* 499. [3] *Ib.* 500.
[4] During the 1927-28 Session Mr. Speaker gave a casting vote, but the vote and his reasons were subsequently expunged from the Votes and Proceedings when it was discovered that an error had been made in the division lists. *Ib.*, 1927-28, 731. [5] 1940-41 VOTES, 499, 500. [6] *Ib.* 635, 678.
[7] *See* 1854 (Cape) VOTES, 255. [8] UNION VOTES, 321. [9] *Ib.* 752.

The practice of putting the Question " That the Bill as amended be adopted " has been followed by the Cape and Transvaal Provincial Councils and by the Legislative Assemblies of Southern Rhodesia and South-West Africa, but it was not followed either by the old Cape Legislative Council or by the Union Senate, nor does it appear to have been adopted elsewhere. It is, however, somewhat analogous to the practice in force in both Houses of the British Parliament until 1849 under which a Motion for the engrossment of the Bill was moved at the conclusion of the Report Stage. If this Motion was negatived the Bill was lost,[1] and there can be no doubt that if the Question " That the Bill as amended be adopted " were negatived the Bill would be regarded as being finally disposed of for the remainder of the Session.[2]

It may be of interest to note that the practice under which Mr. Speaker put the formal Question after the Third Reading of a Bill " That the Bill do now pass " was purposely discontinued when the Union Standing Orders were adopted in 1912. It created an unnecessary stage and had long before become obsolete in the House of Commons.[3]

Printing of Select Committee evidence.—Owing to the confidential character of evidence required by the Select Committee on Public Accounts, the Committee decided that certain evidence to be given by the Secretary for Defence and the Controller and Auditor-General " be recorded but not submitted to the House ". On Mr. Speaker's attention being drawn to this Resolution the Committee was informed that under S.O. 236 evidence given before a Select Committee must, when recorded, be reported to the House and that it is the function of the House to decide whether such evidence shall be printed.[4] The Chairman accordingly brought up the Report and evidence of the Committee, and on his Motion the House decided that " the Report, proceedings and evidence (with the exception of Questions 1053-1093) be printed and considered ".[5]

Application of Rules governing Debate.

(i) *Mr. Speaker's authority.*—In the course of a debate on March 12, 1941, a Member stated that he knew that he would be called upon to leave the Chamber but was going to say that another Hon. Member " says things which he knows are untrue ". On Mr. Speaker calling upon him to withdraw the words he said he preferred to leave the Chamber and pro-

[1] *See* Cushing's *Law and Practice of Legislative Assemblies*, p. 858.
[2] 1940-41 UNION VOTES, 635.
[3] May, 11th ed., 502.
[4] S.C., 1A, 1941, pp. liii, lv.
[5] 1940-41 VOTES, 632.

ceeded to do so. Mr. Speaker, however, called upon him to resume his place and informed him that he must not evade a Ruling from the Chair. The Hon. Member then withdrew what he had said.[1]

(ii) *Unparliamentary expressions.*—At the commencement of public business on March 28, 1941, Mr. Speaker drew attention to the use in debate of expressions imputing improper or unworthy motives, dishonesty, hypocrisy or want of sincerity to fellow-Members. These expressions, he pointed out, were unparliamentary and should not be used. They could not possibly strengthen an argument and only tended to lower the tone of debate.[2]

(iii) *Reference to previous debates.*—S.O. 74 provides that " no Member shall allude to any debate of the same Session upon a Question or Bill not being then under discussion except by the indulgence of this House for personal explanation ".

During discussion on the Third Reading of the Part Appropriation Bill Mr. Speaker drew attention to references which had been made to speeches in a previous debate, and in the course of a statement interpreting the Rule said: " I do not think that reference to a previous debate, especially where discussions on financial matters are concerned, should necessarily be debarred if it is relevant to the question before the House and does not tend to revive discussion on a matter that was definitely in issue in the previous debate."[3]

Application of Rules governing Instructions.

(i) The main object of the Mine Trading Amendment Bill was to make provision in the Transvaal mining laws for the continuation of trading by persons who had traded on land before it had become proclaimed mining land. For this purpose clause 3 of the Bill re-enacted a section of a Transvaal Act in an amended form which retained a principle applied in the Transvaal—namely, that the right of trading shall vest in the Government. After the Second Reading of the Bill notice was given of an instruction empowering the Committee of the Whole House on the Bill to insert a clause providing that in future the principle applicable in the Orange Free State—namely, that the right of trading shall vest in the owner of the land—should be applied in the Transvaal.

The question was then raised as to whether the instruction

[1] 41 Union Assem. Deb., 445.
[2] 1940-41 VOTES, 530. [3] *Ib.* 339.

was not foreign to the subject-matter of the Bill or in conflict with the principle of the Bill as read a second time.

Mr. Speaker, in a Private Ruling, decided that as clause 3 re-enacted the Transvaal principle of ownership the instruction was not foreign to the subject-matter of the Bill and that the Transvaal principle of ownership was not the principle of the Bill before the House. The instruction was accordingly allowed.[1]

(ii) The Active Service Voters' Bill was introduced to enable all enrolled voters, other than natives, who were serving outside the Union with the defence forces to vote at a general election during the War. At the Report Stage an amendment was moved which sought to exclude coloured persons, and the Minister in charge of the Bill asked whether the amendment was not out of order on the ground that it constituted a new and important principle (namely, the imposition of a "colour bar") not contemplated by the Bill as read a second time. Mr. Speaker stated that the amendment was in order "as it sought to limit, not to extend the scope of the Bill".[2]

(iii) The Census, Delimitation and Electoral Bill was referred to a Select Committee after the Second Reading. During the proceedings of the Select Committee a Member proposed to insert a clause which was relevant to the principal Act, but as it was foreign to the Bill before the Committee the Chairman pointed out that it could not be inserted even by means of an instruction from the House.[3]

Notice of Amendments to Bills.—S.O. 167 provides that amendments may be handed to the Clerk at any time after the First Reading of a Bill but shall not be placed upon the Order Paper until after the Bill has been read a second time. At the end of the Session, however, in order that the House might be able to take the Second Reading, the Committee Stage, the Report Stage and the Third Reading of the War Pensions Bill on the same day, the Minister of Finance took the precaution of having sheets printed which contained the amendments he proposed to move.[4]

Amendment or repeal of Acts passed during same Session.—Owing to the Session being divided into two parts it was necessary in the Customs and Excise Amendment Bill to augment, amend and repeal several sections of the Additional Taxation Act which had been passed early in the Session. As this was in accordance

[1] 1940-41 VOTES, 385.
[2] *Ib.* 742.
[3] S.C. 3, 1941, p. x.
[4] 42 Union Assem. Deb., 8147.

with a Ruling given from the Chair in the 1931-32 Session,[1] no exception was taken to it.[2]

Obligation of Members to fulfil duties imposed on them.—In 1923 and 1932 the obligation of Members to fulfil the duties imposed on them[3] was stated by Mr. Speaker in connection with their duty to serve on Select Committees.[3] In 1939 the principle was observed when Mr. Tom Naude, M.P., asked to be relieved of his duties as Deputy Chairman of Committees.[4] In 1935 it was applied in connection with the election of an acting Chairman of the Select Committee on Railways and Harbours;[5] in 1936 in connection with the election of the Chairman of the Select Committee on Public Accounts;[6] and during the present Session it was again observed on the election of a Chairman of the Select Committee on Public Accounts. On this occasion two Members were proposed. The second Member intimated that he was not desirous of accepting nomination, but the proposal was not withdrawn and only dropped when the first proposal was agreed to.[7]

[1] 1931-32 VOTES, 668.
[2] A.B. '39-'41, Clauses 12 and 17.
[3] 1923 VOTES, 850, and 1931-32 *ib.*, 197.
[4] 1939 VOTES, 304.
[5] S.C. 2, 1935, xxi.
[6] *Ib.* 1936, xxxiii.
[7] S.C. 1A, 1941, xli.

IX. CONSTITUTIONAL REFORMS IN SARAWAK

By the Editor

As in the Indian States,[1] in recent years, absolute rule by the reigning monarch has been giving place to measures of constitutional reform by which their peoples are being gradually introduced into a closer association with the government and administration of their countries.

In a *Government Gazette Extraordinary*[2] issued March 31, 1941, was published an Address delivered by His Highness the Rajah of Sarawak to the President and Members of the Supreme Council, the Members of the Committee of Administration and the Ladies and Gentlemen, the leaders of the Committees there assembled.

His Highness, in reminding them that 100 years had all but passed since the establishment of Brooke rule in Sarawak, announced that this centenary year would be commemorated by making a pronouncement declaring the Heir to the Raj of Sarawak, by proclaiming the termination of the era of absolute rule of the Rajahs of Sarawak, and by instituting measures divesting himself of the absolute legislative power, which in future would be vested in the Committee of Administration for a short period, which Committee was entrusted with the duty of framing a Constitution providing for a future Legislature in which all Native and other Peoples dwelling in Sarawak would be given adequate representation. Thereafter legislation by the Rajah would be by and with the advice of the Representative Legislature.

His Highness then pronounced his brother Bertram Brooke, the Tuan Muda of Sarawak, to be his Heir to the Raj and it would be the duty of the Chief Administrative Officer, at the time of the present Rajah's demise, publicly to proclaim the Tuan Muda Rajah of Sarawak. Should he predecease the present Rajah, his advisers at that time shall " after due and careful deliberation, and without reference to me, determine who is to be my Heir." In the event of any disparity arising, such as is envisaged in Article II of the Treaty between H.B.M. Victoria and the father of the present Rajah of 1888, it shall then be the duty of his advisers to refer the matter with their comments thereon to His Majesty's Government in the United Kingdom.

[1] Hyderabad, *see* JOURNAL, Vol. VI, 73; Mysore, *ib.* VII, 91; VIII, 70; IX, 59; Jammu and Kashmir, *ib.* VIII, 74; Gwalior, *ib.* VIII, 81; Indore, *ib.* IV, 33; and Baroda, *ib.* IX, 59.

[2] Vol. XXXIV, No. 11.

H.H. the Rajah then went on to say that it had never been the intention of his father, Sir James Brooke, to establish a line of absolute rulers, but to protect the Natives of Sarawak, the real but backward owners of the land, from exploitation and oppression, until such time as they could govern themselves, which aim in a large measure had already been achieved.

His Highness in his speech then proceeded particularly to address the Members of the Committee of Administration, impressing upon them the weighty duty he was thus imposing upon them, they, for the time being, becoming the custodians of the rights of the people of Sarawak. His Highness appealed to the Members of the Government and the leaders of the various communities to lend all the support in their power to the Committee formed to organize the Sarawak Centenary Celebrations to take place on September 24, 1941, any profits derived therefrom to be equally divided between the British War Fund and the China Relief Fund.

His Highness concluded his Address by thanking all the members of the senior and junior services, the officers and personnel of the constabulary forces, the heads and members of all the Native, Chinese and other communities as well as th people of Sarawak for their steadfast loyalty to himself and th Rajahs of the past.

A Proclamation (No. 383 of March 31, 1941) was then promulgated by the Rajah declaring the constitutional undertakings given by him in his Address.

The five Members of the Committee of Administration, in replying to His Highness, then thanked him for his gracious speech, assuring him that they, in carrying out their charge, would bear in mind the traditions associated with 100 years of just and beneficent rule by His Highness's family in Sarawak. On behalf of the Natives of Sarawak and the many thousands of alien race who had found haven within their shores, the Committee expressed their very great appreciation of His Highness's benevolent gesture, and assured him that they would always look back with heartfelt gratitude to the years of absolute rule by the three Rajahs which had led them to this day.

Reply was then made in his native tongue by the Hon. the Datu Patinggi. On the same day Order No. C-18 (Constitutional Reform [Provisional Measure]), 1941, was promulgated in the same *Gazette*, providing for the government of Sarawak " until the Enactment of certain Constitutional Reforms or for a period of one year ". This Order, together with Order No. XXIX of 1924, dated February 19, 1924, p. 78 of the Green

Book, 1933, was, however, repealed by Order No. C-19 (Constitutional Laws [Repeal]), 1941, enacted September 23, 1941, and a command was issued by the Rajah on that day, to the effect that all those persons other than Sarawak subjects who were Members of the Supreme Council, and all those persons other than Natives of Sarawak who were members of the Council Negri on that day, shall cease to be members of those bodies.

Sarawak is an independent State in North-West Borneo, area about 50,000 square miles, with a population of about 500,000. Sarawak was originally part of the Sultanate of Brunei. In 1840 Rajah Muda Hasim, the uncle and heir-presumptive of the Sultan, prevailed upon James Brooke, a British officer, to help suppress a rebellion, and in return for his services he ceded Sarawak to Brooke, who became Rajah in September, 1841. His appointment was acclaimed by the people and confirmed by the Sultan in the following year. In 1863 Sarawak was recognized by Great Britain as an independent State and in 1888 a treaty was concluded by which, in return for British protection, the British Government took control of the foreign relations of Sarawak, the internal government being left entirely in the hands of the Rajah, but the British Government is to determine any questions as to succession and to have the right to establish consular officers in the territory. British subjects are to have most-favoured-nation treatment and no part of the territory is to be alienated without the consent of the British Government.[1]

The status and government of Sarawak are unique in the Empire. There are Government offices in Westminster where the affairs of Sarawak in England are managed by an Agent in conjunction with an Advisory Council. Sir James Brooke was succeeded in 1868 by his nephew, Sir Charles Johnson Brooke, and then by his son, Sir (Charles) Vyner Brooke, in 1907. Thus three generations of Brookes have administered the territory with the aid of a Civil Service of British officials, and Sarawak is another notable instance of a native state which has been developed under an enlightened policy into a highly organized community. The seat of government is at the capital, Kuching.[1]

The New Constitution.—" An Order to provide for the future Government of Sarawak " was enacted on the following day. This instrument consists of 19 Sections, 2 Schedules and the Preamble, which latter reads as follows:

> WHEREAS IN A PROCLAMATION dated March 31, 1941, We pronounced Our WILL and INTENTION to commemorate this

[1] *Encyclopædia Britannica*, Vol. XIX; Dom. Off. and Col. Office List, 1940.

Centenary year of the government of Sarawak by English Rajahs by terminating for ever the Era of Autocratic Rule which has so far characterised OUR GOVERNMENT and by substituting therefor a CONSTITUTION whereby to bind Ourselves and Our Heirs and Successors in such manner as to ensure that Our BELOVED SUBJECTS shall ultimately enjoy their inherent right to control their own lives and destinies:

AND WHEREAS We are profoundly conscious of the responsibilities that are Ours by reason of the possession and enjoyment of Our UNIQUE HERITAGE by virtue of which We have become the TRUSTEE for the time being of the lives, welfare and future of persons of divers races and creeds who are Our Subjects:

AND WHEREAS it appears to Us that the people of Sarawak have not yet attained that sufficient degree of advancement and education which would permit Us, with a proper and conscientious regard for their benefit and interests, to release to them the power of the governance of themselves:

AND WHEREAS, nevertheless, it seems to Us to be now right and proper that a step forward should be taken in the direction of the ultimate goal of the self-government of Our people:

AND WHEREAS We do this day sign this Order which will not only give effect to the aforesaid decision but will inaugurate a CONSTITUTION designed to introduce into Sarawak a system of Government which we are convinced will contribute to the happiness, welfare and prosperity of Our people:

NOW THEREFORE IS IT MEET that We should PRONOUNCE and DECLARE the PRINCIPLES of GOVERNMENT which have actuated Our predecessors and Ourselves during the one hundred years of the Rule of the English Rajahs. And We do urge that these same PRINCIPLES which have brought peace and contentment to Our people may serve to guide the MEMBERS of the COUNCILS of STATE who will hereafter be responsible for the good government of Sarawak.

LET THE CARDINAL PRINCIPLES of the Rule of the English Rajahs as set out hereunder therefore ever be remembered—

1. That Sarawak is the heritage of Our Subjects and is held in trust by Ourselves for them.
2. That social and educational services shall be developed and improved and the standard of living of the people of Sarawak shall steadily be raised.

3. That never shall any person or persons be granted rights inconsistent with those of the people of this country or be in any way permitted to exploit Our Subjects or those who have sought Our protection and care.
4. That justice shall be easily obtainable and that the Rajah and every public servant shall be freely accessible to the public.
5. That freedom of expression both in speech and writing shall be permitted and encouraged and that everyone shall be entitled to worship as he pleases.
6. That public servants shall ever remember that they are but the servants of the people on whose goodwill and co-operation they are entirely dependent.
7. That so far as may be Our Subjects of whatever race or creed shall be freely and impartially admitted to offices in Our Service, the duties of which they may be qualified by their education, ability and integrity duly to discharge.
8. That the goal of self-government shall always be kept in mind, that the people of Sarawak shall be entrusted in due course with the governance of themselves, and that continuous efforts shall be made to hasten the reaching of this goal by educating them in the obligations, the responsibilities, and the privileges of citizenship.
9. That the general policy of Our predecessors and Ourselves whereby the various races of the State have been enabled to live in happiness and harmony together shall be adhered to by Our successors and Our servants and all who may follow them hereafter.

It is hereby enacted by His Highness the Rajah as follows:

Definitions.—Section 2 of the Constitution deals with definitions.

Supreme Council.—Under s. 3 a Supreme Council is constituted composed of not less than 5 members, a majority of whom shall be members of the Sarawak Civil Service, and a majority of whom shall be members of the Council Negri, in this instance including the ex-Council Negri. The Chief Secretary and the Treasurer of Sarawak are members of the Supreme Council *ex officio* and those Sarawak subjects who were members of the ex-Supreme Council are to remain members of the new Supreme Council for their lives. The other members of this Council are to be appointed by the Rajah. Members hold office for 3 years, but a member may be reappointed. A Civil Service member who is absent from Sarawak for more than 12 consecutive months must vacate office. Any member may resign

and 3 is a quorum. The Council expresses its advice by majority.[1]

Rajah-in-Council.—Only those powers purported to be conferred on the Rajah by any previous written law are conferred on the Rajah-in-Council, which also exercises all the Rajah's prerogatives, but the power of the Rajah to appoint members of the Supreme Council remains.[2]

Council Negri.—This Council consists of 25 members, 14 of whom are officials of the Sarawak Civil Service, and 11 are unofficial members representative, as far as practicable, of the several peoples dwelling within the State and of their various interests. The official members are the Chief Secretary, Treasurer, the Residents of the 5 Divisions and the Secretaries for Native and Chinese Affairs respectively. Five other official members are appointed by name by the Rajah-in-Council, who hold office during the pleasure of that body.

The unofficial members of this Council are also appointed by the Rajah-in-Council for 3 years, and a member may be re-appointed. If an unofficial member fails to attend 2 consecutive meetings, without reasonable excuse, his seat becomes vacant.

Native Members.—A member of this Council may resign and 5 constitute a quorum.[3] Five members of this Council must be Natives of Sarawak and they may be members of the Civil Service.[4] In the case of absence of such members for various reasons, the Rajah-in-Council may appoint someone to take his place until the absent member is able to rejoin again.[5] This Council also includes, for life, the members of the ex-Council Negri.[6]

The expression " Native of Sarawak " is defined as a subject of the Rajah of any race which is now considered to be indigenous to the State of Sarawak as set out in the First Schedule—namely:

Malays	Kenyahs
Ibans	Klemantans
Land Dayaks	Melanos
Kayans	Muruts

and any admixture of the above with each other.

Language.—The official language of the Council Negri is English and all its proceedings must be conducted in that language.[7]

Meetings, Standing Orders, etc.—The Council Negri, which must meet twice a year, meets as the Chief Secretary may notify in the *Gazette*. The Chief Secretary is its President, or in his

[1] No. 1236, Order No. C-19 (Constitutional Laws [Repeal]), 1941, s. 5.
[2] *Ib.* 4. [3] *Ib.* 6. [4] *Ib.* 7. [5] *Ib.* 8. [6] *Ib.* 9. [7] *Ib.* 10.

absence such officer as he may appoint. In case of an equality of votes the President has a second, or casting, vote. The meetings must be public, unless such Council otherwise determines, and its Standing Orders require the approval of the Rajah-in-Council. The Council may appoint Committees and delegate powers to them.[1]

The President may request any person not a member of the Council Negri to attend and assist in the discussion on any question, but without the power to vote.[2]

Oath.—Members of the Council Negri shall take the following oath:[3]

> I swear that I will well and truly serve His Highness the Rajah and the people of Sarawak as a member of the Council Negri; that in speaking my opinion and recording my vote I will uphold and ever be guided by those principles of Brooke Rule set out in the preamble to the constitution of the State of Sarawak; and that in all things I shall be a true and faithful servant of His Highness the Rajah and of His Highness's people.

Legislative Power.—The sole power of legislation by Orders is vested in the Rajah acting with the advice and consent of the Council Negri.[4]

Public Money.—As from January 1, 1942, no public money may be expended, or any charge made upon the revenues of the State, except with the consent of the Council Negri, but the Treasurer, with the consent of the Rajah-in-Council, may authorize the expenditure of any sum, subject to the subsequent consent of the Council Negri.[5]

Disallowance.—The Rajah may exercise the power of disallowance in regard to any Bill passed by the Council Negri, but he must forthwith refer the Bill back to the Council together with his views thereon. *Any Bill duly passed by such Council and submitted to the Rajah on 3 separate occasions shall forthwith be enacted by him* and the members shall be entitled to vote freely thereon.[6]

Decease, absence or incapacity of the Rajah.—In case of the death of the ruling Rajah the procedure has been outlined in the Rajah's address. Section 18 of the Constitution also provides that the succeeding Rajah shall be proclaimed by the Supreme Council within one calendar month, and until such proclamation the Supreme Council shall have and exercise all the powers of the Rajah-in-Council. Should the Rajah leave the State or be absent from the seat of government the Rajah-in-Council may appoint an officer to administer the Government, who shall have

[1] No. 1236, Order No. C-19 (Constitutional Laws [Repeal]), 1941, s. 11.
[2] *Ib.* 12. [3] *Ib.* 13. [4] *Ib.* 14, 15. [5] *Ib.* 16. [6] *Ib.* 17.

all the powers of the Rajah, subject to the Constitution. Should the Rajah become incapacitated, or be a minor, the Supreme Council may appoint an administrating officer during such times. No person who is not a British subject or a Native of Sarawak shall be competent to be, or to become, Rajah of Sarawak.[1]

Rules.—Section 19 provides for the Rajah-in-Council to make Rules—

> (*a*) to provide for the nomination by any bodies of persons, incorporated or unincorporated, or by the general public, or any part of such public, in such areas of the State as may be prescribed, of persons for appointment as unofficial members of the Council Negri.
>
> (*b*) to prescribe the payment of allowances to unofficial members of the Council Negri;
>
> (*c*) generally to carry out the provisions of this Order.

It is expected that some form of representative government will gradually be secured by the power vested in the Rajah-in-Council to make rules for the nomination of members to the Council Negri. The Constitution has purposely been drafted in the form of an ordinary Order to enable it to be amended without difficulty or, when the time is ripe, to be replaced by a more modern and popular model. The State of Sarawak is daily growing in prosperity and importance and it is desirable that we should keep a considerable amount of elasticity in our constitutional institutions in order to enable them to expand in accordance with the progress that is made in other spheres.

Until " business as usual " again becomes the order of the day, the State of Sarawak unfortunately remains in the hands of the enemy, while the seat of the Sarawak Government is in Sydney, N.S.W., Australia.

[1] No. 1236, Order No. C-19 (Constitutional Laws [Repeal]), 1941, s. 18.

X. APPLICATIONS OF PRIVILEGE, 1941

By the Editor

At Westminster.

Conduct of a Peer.—On February 12, 1941,[1] in the House of Lords, Lord Strabolgi begged leave to make a personal statement, stating that for many years he was a business associate of Dr. Fleming, a naturalized British subject who held the controlling interest in Ruths International Accumulators, an engineering company with wide European connections, of which and of its associated British company, Ruths-Arca, he was a director. As the international situation prior to the War damaged the European business, to assist the company's finances he waived certain moneys due to him as director's fees and expenses. It was an understanding that Dr. Fleming would compensate the noble Lord in some way for this sacrifice, when in a position to do so. At the beginning of 1939 Lord Strabolgi resigned his directorship in the two companies. In September of that year Dr. Fleming asked to see him urgently and explained that certain money due to him was blocked in Czecho-Slovakia. Dr. Fleming pressed to help and advise him as to how he could make good this claim under the arrangements which were being discussed to satisfy British claimants from certain Czech frozen assets. Lord Strabolgi had every reason to believe that his claim was a good one. From the documents he saw that the claim appeared good, and this view was confirmed by Sir Stanley Wyatt, of the Czecho-Slovak Financial Claims Office, after the papers had been investigated.

Dr. Fleming explained that if this claim was successful he would be glad to clear off his old understanding with Lord Strabolgi. The War had broken out and they discussed means of safeguarding Lord Strabolgi's position, so that if anything happened to him the trustees of his estate would be entitled to pay him. As a way of satisfying this need it was agreed that there should be a letter in which he undertook to pay Lord Strabolgi 5 *p.c.* of his claim when the money was paid, but this arrangement would only be in force for one year, after which other arrangements would be made. The amount involved so far as Lord Strabolgi was concerned was not large and he was not in need of money. The total amount represented by the 5 *p.c.* was rather more than the amount which Lord Strabolgi would have received if he had not

[1] 188 H.L. Deb. 5, s. 292.

waived his previous claims, though the original sums would have been owing for a considerable period. They consulted a barrister-at-law, who advised them that this arrangement was proper.

The first necessity was to find out how these claims could be preferred and what was the right procedure for approaching the Treasury. Lord Strabolgi asked Captain Crookshank, the Financial Secretary to the Treasury, to see him, explaining the purpose of his visit; he was good enough to grant Lord Strabolgi an interview in the presence of the permanent official concerned. Lord Strabolgi gave the name of the claimant and explained that he, Lord Strabolgi, was personally interested because he owed Lord Strabolgi certain moneys and that if the claim was paid he should benefit. Lord Strabolgi did not explain the arrangement in the letter agreeing to pay him a percentage of the claim, as this did not seem to him at the time to be necessary. Captain Crookshank was good enough to arrange for him to see Sir Stanley Wyatt, which he did, together with Sir Stanley's deputy, and Lord Strabolgi made exactly the same explanation about his personal interest as he did to Captain Crookshank. All the necessary advice was obtained for the preferment of the claim, which was duly passed on to Dr. Fleming and his lawyers.

In the only other interview which Lord Strabolgi had with Si Stanley Wyatt he told Lord Strabolgi that he had examined the claim, which seemed sound, but that he would like the opportunity of consulting Lord Strabolgi about the personal character of the claimant. Lord Strabolgi explained that Dr. Fleming had been a rich man in Germany, that he had lost his property under the Nazi régime, that he was a good business man and of good repute, and that Lord Strabolgi was in business with him before the present régime in Germany. Sir Stanley thanked Lord Strabolgi and said that that was just what he wanted to know and that he would inform Lord Strabolgi how matters progressed. There were considerable delays, and Lord Strabolgi wrote one more letter to Captain Crookshank asking for information, again reminding him in writing that Lord Strabolgi was indirectly interested in this claim. The last Lord Strabolgi heard of the matter was on July 5, 1940, when Sir Stanley wrote to him explaining that the delay was due to a question of Czecho-Slovak law. The letter agreeing to pay Lord Strabolgi a percentage expired in September of last year. Lord Strabolgi did not seek to renew and took no further steps in the matter.

When the Czecho-Slovakia (Financial Claims and Refugees) Bill came before the House of Lords on January 30, 1940, his noble friend Lord Snell, then Leader of the Opposition, asked

him to look after it, and Lord Strabolgi made a short speech.[1] When the Special Orders came before the House, Lord Strabolgi made another very short speech. Both were on the same lines as those which had been taken by his friends in another place, and the arguments were of a general nature. The Bill had already passed through the other place and there was no question of any vote; if there had been, Lord Strabolgi should have disclosed his interest. On reaching the report of the Select Committee of Inquiry on the conduct of a Member in another place,[2] Lord Strabolgi appreciated that the drawing up of the letter between Dr. Fleming and himself was capable of a damaging interpretation; and, after consulting his leader and again perusing the papers in this matter, he was taking his first convenient opportunity to make this personal explanation. On reflection he now saw that he should have made known to Captain Crookshank the exact nature of his interest when Lord Strabolgi sought information from him, and that he should have informed their Lordships of his interest in one of the claims when he referred to the matter in the course of business in their Lordships' house. Lord Strabolgi trusted their Lordships would see fit to accept this personal apology.

The Secretary of State for the Colonies (Lord Moyne) said that the noble Lord was good enough to give him warning that he intended to raise this matter of personal explanation, but necessarily no notice could be sent to the rest of the House. Obviously this matter raised unusual issues. The noble Lord referred to the proceedings in another place, but they would have to consider how far the noble Lord's position differed as a Peer from the position of a Minister who was sitting in another place, and he thought it would be very desirable for them to look at the Standing Orders and the precedents. Lord Moyne thought there was no doubt that the House would do better justice to itself and to the case which the noble Lord had put before it if they avoided any hasty expressions of opinion and adjourned any possible debate which might arise out of this statement until they had an opportunity of really looking at it in the Official Report. The Secretary of the Colonies then suggested consulting the Leaders of the various Parties in the House with a view to seeing whether any further action was thought to be necessary to satisfy the general opinion of the House.

Lord Addison expressed his concurrence with what the Leader of the House had said. For his part he never heard anything at

[1] 115 H.L. Deb. 5, s. 448.
[2] H.C. Paper No. 172 of 1940 and No. 5 of 1941.

all about this business until after the meeting of the House yesterday, but it was clearly necessary and right in his judgment that a statement should be made to the House by the noble Lord at the first possible moment. He was sure the wish would be common to them all to maintain the honour and credit of Parliament regardless of any other consideration, and he thought that the course suggested by the noble Lord, the Leader of the House, was, in the circumstances, the right course to adopt.

Viscount Samuel remarked that the House would no doubt agree that the noble Lord, Lord Strabolgi, had taken the right course in making a full disclosure to the House of the matters to which his statement related, as the subject was clearly one not only of personal but of public importance. No Member of the House would be in a position to form any judgment upon that statement until he had read it and reflected upon it. He felt sure that the noble Lord, the Leader of the House, had taken the right course in suggesting that to-day they should not pursue the matter further but give it their attention and decide on some subsequent date what course it would be right to pursue.

On February 26, 1941,[1] in the House of Lords, the Secretary of State for the Colonies (Lord Moyne) said that the Motion which stood in his name on the Paper arose from a personal explanation which the noble Lord, Lord Strabolgi, made a fortnight ago, and by the courtesy of the noble Viscount, Lord Samuel, who had the first Motion on the Paper, he was allowed to move his Resolution at the beginning of business. The House would remember that any action on the noble Lord's personal explanation was deferred to give them an opportunity of examining it in detail in the Official Report and also to look at precedents. No close precedent to the noble Lord's case was found in their House, but, as evident when he made the statement, the story had a great resemblance to a matter which was raised in another place and which was the subject of a Select Committee on the Conduct of a Member. The Select Committee found that this Member had a claim to participation in the realization of Czech assets, and the Committee were satisfied that the promise to pay was given on the understanding that the Member would render services in return. Such services included political speeches and pressure on Ministers of the Crown and Treasury officials. This statement was founded on the facts which were brought out in the inquiry, and the question arose whether their Lordships should be advised to set up an inquiry into the case which was disclosed to them by Lord Strabolgi.

[1] 188 H.L. Deb. 5, s. 483.

It seemed there was a very considerable difference because, whereas the facts were in dispute in another place, here they had been disclosed to them by the noble Lord's own admission, and it would appear that they had enough of the facts in his admission to enable them to form an opinion. He felt sure that their Lordships would wish to affirm as strict a standard of conduct for the Members of their House as was suggested in the conclusions of the Select Committee in another place and accepted by that House. Therefore they had followed the precedents in not attempting in the Resolution to define what was the proper standard of conduct or to generalize from a particular case; but he had the advantage of consulting the experience of the Leaders of the other Parties in their House, and, as they approved of the terms of the Resolution which he had set on the Paper, he hoped it would meet with their Lordships' general acceptance. He therefore:

> Moved to resolve, That this House, having heard the personal statement made by the Lord Strabolgi at its sitting on Wednesday, February 12, 1941, is of the opinion that it is not necessary to inquire further into the matters dealt with in his statement; but regrets that, having regard to the facts as presented in his own statement, he should have failed to observe that standard of conduct in matters of this nature which the House expects of its Members.—(*Lord Moyne.*)

Lord Addison observed that, as the noble Lord had just told them, he brought him with others into consultation on this matter, and they had very carefully examined the case. He only rose to say that, in the vital safeguarding of their Parliamentary institutions under the standards Parliament adopted and expected of its Members, he concurred in the suggestion.

Viscount Samuel said that the House would approach the unhappy incident that had occurred in a judicial spirit. The Leader of the House, after consultation with some of them who were regarded as representative Members, has just put down the Resolution now before them and he trusted their Lordships would regard it as meeting the necessities of the case.

On Question, Motion agreed to.

Newspaper Article on Secret Session.—On May 27, 1941,[1] in the House of Commons, an Hon. Member stated that last Wednesday the House went into Secret Session and *The Observer* on May 25 published an article entitled " Parliament and the War Output ". The Hon. Member suggested that, although the

[1] 371 H.C. Deb. 5, s. 1719.

article merely purported to give a report in brief form of their proceedings, to do even that might affect the Privileges of the House.

The Clerk (Sir Gilbert Campion) then read the article complained of, as follows:

Sir Andrew Duncan's Report

(1) Without divulging anything that passed behind closed doors, one can say that Members generally were well satisfied with the progress reported by Sir Andrew Duncan. He gave a clear and convincing account of his work at the Ministry of Supply, impressed even those who came to criticize and undoubtedly heightened his prestige.

(2) Production of material of all kinds has, in fact, increased by leaps and bounds, and still is increasing. Last quarter the number of tanks and guns delivered was half as great again as in the preceding quarter. The rate of increase cannot be maintained at this level, but a steady rise in output is looked for from quarter to quarter.

Training Scheme

(3) In recent months the Training Schemes have supplied factories both old and new with the personnel needed and the number of new factories coming into production is considerable. Sometimes one hears people ask when the maximum production will be reached

(4) Sir Andrew Duncan does not admit a maximum. H believes there is scarcely a limit to expansion—by new factorie additional labour and by getting a little more out of the machines Some machines are being run at 40 and even 50 *p.c.* above their rated capacity, but this can be done safely only under expert guidance to ensure that a machine shall not be strained to a point at which it will break down.

Mr. Speaker said: " This is a novel subject which does not appear to have arisen in connection with any of the Secret Sessions held during the last War. In the absence of any guidance from precedent, I must base myself upon Rules which the House has repeatedly laid down with regard to the publication of its Debates, and which are explained in May's *Parliamentary Practice*, pp. 82 and 83.

" Stated briefly, it is the undoubted right of the House to forbid the publication of reports of its Debates and to punish such publications as a disobedience of its Rules and a breach of its privileges. It is true that normally this right is waived, but it is open to the House to insist upon it at any time—as, for instance, when its proceedings are wilfully distorted or misrepresented, or when, as in the present case, the House, by ordering the withdrawal of strangers and by express Resolution, has plainly signified its intention of treating certain proceedings as secret.

"The extract from the newspaper of which complaint has been made seems designed to produce the impression that it is giving the substance of a speech delivered in the course of a Secret Sitting. And whether or not the views and statements apparently attributed to the Rt. Hon. Gentleman were actually expressed by him on that occasion, if, in the view of the House, the newspaper purports to disclose that they were so made, that fact would of itself render the newspaper guilty of a contempt of this House and of a breach of its Privileges. I have no hesitation in ruling that the Hon. Member has made out a *primâ facie* case."

The Prime Minister then moved:

> That the matter of the complaint be referred to the Committee of Privileges.

which was put and agreed to.[1]

On September 10, 1941, it was ordered:

> That the Report (June 11) of the Committee of Privileges be now considered.[2]

The Lord Privy Seal in moving

> That this House doth agree with the Committee in their Report

said that the Committee found that a breach of Privilege was committed. The persons responsible for it had expressed their unqualified regret and made full apology and the Committee recommended that no further action be taken.

The Report stated that originally all deliberations of the House of Commons were regarded as private and the House sat behind closed doors.[3]

This practice was gradually relaxed, but the publication of reports of debates and proceedings in newspapers was prohibited although the presence of strangers at the debate might have been allowed.

In the seventeenth and eighteenth centuries many orders were passed dealing with the matter—*e.g.*, on February 26, 1728, the House resolved, *nemine contradicente*:

> That it is an indignity to, and a breach of the privilege of, this House for any person to presume to give, in written or printed newspapers, any account or minutes of the debates or other proceedings of this House or any committee thereof; and

[1] 371 H.C. Deb. 5, s. 1719. [2] H.C. Paper 94 of 1941.

[3] John Hooker, "Usage of Keeping the Parliaments of England," printed in Lord Mountmorres' *History* of the Principal Transactions of the Irish Parliament, 1634-1666, Vol. I, p. 143; D'Ewes' *Journals*, pp. 156, 248, 332, 432; Scobell, *Memorials*, pp. 84, 86; Redlich's *Procedure of the House of Commons*, Vol. II, pp. 34, 36.

> That upon discovery of the author, printers or publishers of any such written or printed newspaper, this House will proceed against the offender with the utmost severity.[1]

Although the House has for a long time refrained from any attempt to prevent the publication of its ordinary debates, the orders are regarded as still in force should occasion require them. The House has, for example, on occasions taken action when debates have been wilfully distorted or misrepresented. In such cases the Motion for the punishment of the printer assumes that the publication of the debate at all is a breach of privilege.[2]

On May 4, 1875, the following Motion was moved by Lord Hartington:

> That this House will not entertain any complaint in respect of the publication of the debates or proceedings of the House, or of any Committee thereof, except when any such debates or proceedings shall have been conducted with closed doors or when such publication shall have been expressly prohibited by the House, or by any Committee, or in case of wilful misrepresentation or other offence in relation to such publication.[3]

The Motion, however, was rejected, showing that the Hou desired to perserve its control over all publications.

The Committee's Report went on to say that, when there w a disclosure or report of something which had taken place in Secret Session, it was unnecessary to rely on the fact that the publication of any report was still technically a breach of privilege. Before going into a Secret Session the House orders strangers to withdraw and then resolves:

> That the remainder of this day's sitting be in secret session.

A disclosure or report of proceedings in Secret Session, whether by a Member or any other person, was a breach of such Order and Resolution, and was, on that ground, a breach of Privilege. The question whether the report or account was accurate or inaccurate was irrelevant. The person responsible was purporting to disclose that which the House had ordered not to be disclosed. If it were necessary to prove the accuracy this could only be done by evidence as to what actually took place, which would defeat the purpose of the House in making the Order and passing the Resolution.

On December 11, 1939, the following Defence Regulation was made by Order-in-Council:

> If either House of Parliament in pursuance of a resolution passed by that House holds a secret session, it shall not be lawful for any

[1] C.J. (1727-32), 238. [2] May, XIII, 82, 83. [3] 224 Parlt. Deb., c. 48.

person in any newspaper, periodical, circular or other publication or in any public speech, to publish any report of, or to purport to describe the proceedings at, that Session, except such report or description thereof as may be officially communicated through the Press and Censorship Bureau.

The existence of this Regulation, however, in no way affected the right of Parliament to deal with these matters as matters of Privilege under the law of Parliament.

The Committee's Report then sets out in paragraphs numbered by it for reference the passages of the article complained of (as already given) and headed by the Committee as " The Case of *The Observer* ".

Mr. J. L. Garvin, the editor, and Mr. J. L. Nixon, the Lobby correspondent of *The Observer*, who wrote the article, attended and gave evidence before the Committee. After hearing their evidence the Committee found that paras. (2) to (4) were based on information given to the Press by the Minister of Supply at a Press Conference on May 22.

Mr. Nixon was not responsible for the cross-headings, which were inserted by one of the sub-editors. The fact that these paragraphs followed on a reference to the Secret Session, the cross-heading " Sir Andrew Duncan's Report ", and the reference to the progress " reported " by Sir A. Duncan in para. (1), would convey the impression that the paragraphs gave details of the " progress " which Sir A. Duncan had " reported " in Secret Session. The Committee accepted Mr. Nixon's statement that he did not so intend and that he had been given no information as to what Sir Andrew had said.[1]

Mr. Nixon told the Committee that para. (1) was based on casual conversation with Members whom he could not identify, from which he had gathered that Sir A. Duncan's speech had given satisfaction and that it was clear and concise, or words to that effect. He said that he had not regarded the reference which he had made in this paragraph as improper. He had taken the view that such a general description was innocuous, and that harm arose only if there was a report, or purported report, of what had been said. The Committee, however, did not take that view and Mr. Nixon expressed his regret when this was pointed out to him. In the view of the Committee the ban was absolute, and accounts which purported to state the good or bad impression created in the debate, or which in any way, however general, referred to what took place in the proceedings, were a breach of Privilege.[2]

[1] H.C. Paper No. 94 of 1941, § 10.

[2] *Ib.* § 11.

Mr. Garvin expressed the most complete and unqualified regret for what had happened. He did not in any way seek to minimize or excuse the effect which the article gave, printed as it was. He had not himself seen the article before publication, though he took full responsibility for it. He was anxious to satisfy the Committee on behalf of his Lobby correspondent that no offence had been intended.[1]

The Committee was of opinion that the publication of the article constituted a breach of Privilege and that it was of great importance that the rule, as they had stated it and believed it to be, should be rigidly observed and enforced. Having regard to the unqualified regret expressed by the editor and the explanation given by Mr. Nixon, the Committee recommended that no further action be taken in the case.

In conclusion, the Committee stated that Mr. Nixon should have realized that the paragraph referring to the Secret Session was open to objection and that if the Committee's Report was accepted it would remove any possibility of such misapprehension in the future.[2]

"*Libel*" *upon Members by Printed Circular Letter.*—On June 25, 1941,[3] in the House of Commons, the Chairman of Ways and Means drew attention to a printed circular letter dated the 11th of that month which had been addressed to all Members of Parliament as follows:

HIGHLANDS DEVELOPMENT LEAGUE,
100, WEST GEORGE STREET,
GLASGOW, C.2.

May 20, 1941.

TO ALL MEMBERS OF PARLIAMENT.

GRAMPIAN ESTATE SUPPLY BILL, 1941,
GLEN AFRIC SCHEME.

We understand that the above Order, having with certain modifications been approved by the Commission of Inquiry to which it was recently submitted, is now to be laid before Parliament as a confirmation Bill. The Highlands Development League, which for many years past has been entirely concerned with measures for the improvement of living conditions in the Scottish Highlands, was, in common with many others who have the interests of the Highlander at heart, strongly opposed to this measure. Ever since the publication of the draft Order last August, the Council of our League have examined it from time to time with great care and have been greatly perturbed, not only by the untimeliness of its introduction, when most of the Highland men whose future is affected are absent from their homes on military service, not only by the

[1] H.C. Paper No. 94 of 1941, § 12.
[2] *Ib.* § 13.
[3] 372 H.C. Deb. 5, s. 1054.

seeming irregularities in procedure by which it has been advanced to its present Parliamentary stage, but most of all by the prejudicial effect which it will have on the future development of the Highlands. In support of our views on that point we send you the accompanying pamphlet and respectfully ask you to give careful attention to its contents.

Your obedient servants,
On behalf of the Highlands Development League,
LACHLAN GRANT (*President*),
T. M. MURCHISON (*Vice-President*),
DONALD MACKAY (*Clerk and Treasurer*).

The Hon. Member said that it seemed to him probable that these " seeming irregularities " had reference to the conduct of the Lord Chairman in another place and the Chairman of Ways and Means of the House of Commons, in referring this Order to a Scottish Commission under the Private Legislation (Scotland) Act, 1936, and also to the conduct of the two Members of the House of Commons who were two of the Commissioners conducting this inquiry. The Chairman of Ways and Means then wrote a letter to the signatories to the circular asking them the meaning of the words " seeming irregularities ", to which he received a reply the gist of which he read to the House, and which referred to the words to which the Chairman of Ways and Means had taken objection, but the signatories above-named respectfully ssured him that no improper allegation was intended or conined in those words and that if the phrase in question seemed carry such implication the signatories much regretted it and endered their apologies.

The Chairman of Ways and Means then went on to say that it would be difficult to expect Hon. Members to undertake the responsible and onerous duties of sitting on these Commissions unless they had the protection of the House. He then suggested that there was a *primâ facie* case and

That the matter of the complaint be referred to the Committee of Privileges.

Mr. A. Bevan then observed that the only thing so far in support of the Motion had been the reading of a statement subsequently withdrawn and apologized for, and that it would be an extraordinary procedure if the House set up a Committee of Privileges on a matter because it was the opinion of the Chairman of Ways and Means that a breach of Privilege had occurred. Mr. Speaker said that undoubtedly a matter of principle was involved. Members had to carry out their duties very often in difficult circumstances and on controversial questions and it would not be right if no notice were taken when Members were per-

secuted by outsiders. He therefore considered that a *primâ facie* case had been made out that a breach of Privilege had been committed.

Question was then put and agreed.

Report.

The Second Report[1] of the Committee of Privileges, with evidence, was tabled and ordered to be printed on July 22, 1941.[2]

In regard to the Matter of Complaint of the circular letter above set forth, the Committee observed that it was clear that a " libel " upon a Member of the House of Commons which concerned his character or conduct in his capacity as a Member and based on matters arising in the actual transaction of the business of the House constituted a contempt of the House and a breach of Privilege,[3] and that the phrase in question in the Reference to the Committee—namely, " seeming irregularities in the procedure by which it has been advanced to its present Parliamentary stage "—was in very general terms and not specifically directed against any Member or officer of the House or the House collectively and that the Committee had therefore considered the phrase in the light of the procedure applicable to the Provisional Order in question to see whether there was a meaning which would constitute the use of the words a breach of Privilege.[4]

Under the Private Legislation Procedure (Scotland) Act, 1936, persons who desire to obtain Parliamentary powers for which they would, prior to the Private Legislation Procedure (Scotland) Act, 1899, have been entitled to apply to Parliament for leave to bring in a Private Bill, proceed by presenting a Petition to the Secretary of State praying him to issue a Provisional Order The Act imposes on the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the House of Commons certain dutues. The draft order comes before them and they report to the Secretary of State. If in their opinion the provisions, or some of the provisions, of the draft Order raise questions of public policy of such novelty and importance that they ought to be dealt with by Private Bill and not by a Provisional Order they so report, and the Secretary of State is enjoined in that event without further inquiry to refuse to issue a Provisional Order (Private Legislation Procedure [Scotland] Act, 1936, 26 Geo. V and 1 Edw. VIII, c. 52, ss. 1 and 2). If the Chairman report that the Provisional Order may proceed there is provision, subject to certain conditions, for an Inquiry before Commis-

[1] H.C. Paper No. 103 of 1941.
[2] May, XIII, 91, 267.
[3] 373 H.C. Deb. 5, s. 801.
[4] H.C. Paper No. 103 of 1941, § 2.

missioners. Subject to Standing Orders, two Commissioners are taken from the Parliamentary Panel of Members of the House of Lords and two from the Parliamentary Panel of Members of the House of Commons. In the present case, the Chairman decided that the matter could proceed by way of Provisional Order, the Secretary of State directed an Inquiry before Commissioners, and this Inquiry had taken place prior to the issue of the circular letter referred to.[1]

The Report then set out the relevant dates in connection with the Matter of Complaint and the letter from the Chairman of Ways and Means to the signatories to the circular, and their reply was set out at length,[2] and the Committee observed that it appreciated the reasons which led the Chairman of Ways and Means to take this course, but that, without laying down an absolute rule, it considered that, if a Member felt that he should bring before the House some matter as raising a *primâ facie* breach of Privilege, it was better that he should do so without making further inquiries on his own initiative. There might be cases in which general words of criticism are used which were reasonably capable of being construed as legitimate criticism and not as infringing the privileges of the House and it was the Committee's opinion that if such words could reasonably be so construed it were better, in general, to give the writer or publisher the benefit of that construction.

Reference was also made in the Report to the Inquiry before the Commissioners in Edinburgh being held *in camera*.

In para. 7 of Report the Committee observed that such case must stand upon its own facts and circumstances, and if corruption were alleged, or suggested, or improper motives were attributed, within the limits set out above, the House would clearly be well within its rights in dealing with the matter as a contempt.

The Committee therefore stated:

> Where, however, the words may reasonably be read as suggesting errors of judgment, or a failure to realize what should have been realized, we think that the House would be wrong in treating them as a contempt.[3]

The Committee, in para. 8 of its Report, states:

> With these general principles in mind we turn to the words "seeming irregularities in procedure". We do not think that the word "irregularity" necessarily implies a wilful dereliction of duty or the presence of improper motives. In some contexts it might be clear that it did so, but in the present context, and

[1] H.C. Paper No. 103 of 1941, § 3. [2] *Ib.* §§ 5, 6. [3] *Ib.* § 7.

particularly when qualified by the adjective " seeming ", we do not think that it does. It is relevant in this connection to consider what had happened with regard to this particular Order, and in any case this is necessary when we come to consider the statements in the letter of the 17th June. Under s. 6, sub-s. (1), of the Act already referred to it is laid down that if an Order is remitted to a Commission of Inquiry the Inquiry shall be held in public. This provision was amended by Regulation 6B of the Defence (General) Regulations, 1939, which suspended this provision and enabled the Secretary of State to certify in the interests of the defence of the realm that the Inquiry should not be held in public. The Order in Council making this Regulation was made on the 4th April, and was laid before the House on the 30th April. The Secretary of State did so certify in this case, and as a result of his certificate the proceedings were held in secret. The responsibility for this was the Secretary of State's and was in no way the responsibility of the Commissioners. Those familiar with the Act of Parliament who had not learnt of the Defence Regulation might legitimately think that the departure from the words of the Act appeared to be an irregularity. It is well known that the promotion of this Order in war-time has excited considerable opposition both in the House itself and outside. It is perhaps wrong to expect all critics to be familiar in detail with the procedure and practice of Parliament as from time to time controlling any particular matter. In the result we do not think the words in the original letter constituted a breach of privilege.

In turning to the letter of June 17 by the signatories, the Committee observes that the first matter referred to is the hearing being *in camera*. No question of a contempt of the House arises on properly expressed criticism, however strong, of ministerial acts. It is clear that the writing of the letter did not fully or accurately set out the relevant provisions of the Act. The Committee also came to the conclusion that the passages in the letter of June 17 which refer to the Chairman of Ways and Means did not constitute a contempt of the House.[1]

The last two paragraphs of the Committee's Report read as follows:

11. In view of our conclusion, the question whether Members of the House sitting as Commissioners are within the protection of the relevant privilege does not arise. It might be said that in view of the fact that the Act provides in certain cases for Commissioners being taken from an extra-Parliamentary Panel there was some doubt on this point. We do not desire to express an opinion on a matter which has not arisen in this case. We mention it to show that we have not overlooked a possible argument. In view of the fact that the Commissioners are in effect a substitute for a Private Bill Committee, we think it would be difficult to maintain that, if Members of the House serve as Commissioners, they would not be entitled to

[1] H.C. Paper No. 103 of 1941, § 9.

the protection of Members laid down in the Rule which we have cited.

12. Your Committee therefore are of opinion that no breach of privilege has been committed in the documents referred to them.

Debate.

On September 10, 1941, it was ordered:

That the Second Report (July 22) of the Committee of Privileges be now considered.

Report considered accordingly.

The Lord Privy Seal in moving

That this House doth agree with the Committee in their Report

said that the Committee had considered carefully the statement which had been made and had come to the conclusion that it was not specifically directed against Members but laid a general complaint against the Government. Therefore the Committee considered there had been no breach of Privilege.[1]

Australian Commonwealth.

Newspaper Reflection upon the Senate.—On July 3, 1941,[2] the Leader of the Opposition (Senator Collings), having called the attention of the Senate to certain reflections made upon the Senate in articles published in the *Mercury* newspaper of Hobart, and the *Examiner* newspaper of Launceston, on July 2, 1941, moved:

That this Senate expresses its extreme disapproval of the action of the Press and Mr. Arthur James Beck, a Member of the House of Representatives, in reflecting upon a secret ballot of this Senate as reported in the *Mercury* newspaper of Hobart of July 2, 1941, p. 1, and in the *Examiner* newspaper of Launceston of July 2, 1941, p. 4, and declares the following persons guilty of contempt, as provided for in S.O. 427—namely:

Arthur James Beck, M.H.R. for Denison, Tasmania;

Davies Brothers, Ltd., of 93, Macquarie Street, Hobart, publishers and proprietors of the *Mercury*; and

W. R. Rolph and Sons, Pty., Ltd., publishers and proprietors of the *Examiner* of Launceston, Tasmania.

Senator A. J. McLachlan submitted that the Motion was not in order in that S.O. 427 only provided that the printer or publisher of a newspaper could be declared guilty of contempt.

The President upheld the point of order, and directed that all reference to Mr. A. J. Beck, Member of the House of Representatives for the Division of Denison, be excluded from the Motion.

Senator Collings, by leave, amended his Motion accordingly

[1] 374 H.C. Deb. 5, s. 203.

[2] Sen. Journals, 1941, No. 26, 89.

That this Senate expresses its extreme disapproval of the action of the Press in reflecting upon a secret ballot as reported in the *Mercury* newspaper of Hobart of July 2, 1941, p. 1, and in the *Examiner* newspaper of Launceston of July 2, 1941, p. 4, and declares the following persons guilty of contempt, as provided for in S.O. 427 —namely:

Davies Brothers, Ltd., of 93, Macquarie Street, Hobart, publishers and proprietors of the *Mercury*; and

W. R. Rolph and Sons, Pty., Ltd., publishers and proprietors of the *Examiner* of Launceston, Tasmania.

The House, upon a division (Ayes 14, Noes 15), negatived the Question.

Newspaper Reflection upon a Member of the House of Representatives.—On July 3, 1941,[1] in the Senate, the Leader of the Opposition (Senator Collings), having called the attention of the Senate to the reported statement of Mr. A. J. Beck, Member of the House of Representatives for the Division of Denison, concerning a secret ballot of the Senate, moved:

That the Senate expresses its extreme disapproval of the action of Mr. Arthur James Beck, a Member of the House of Representatives, in reflecting upon a secret ballot of this Senate in a statement to the Tasmanian *Mercury* of July 2, 1941, on p. 1, and declares that the said Arthur James Beck, Member of the House of Representatives for Denison, Tasmania, is guilty of contempt.

After debate, a Senator asked that the President rule the Motion out of order in the interests of good relations between the two Houses and in the spirit of S.O.s 418 and 427, submitting that it was doubtful if the Senate could censure a Member of the House of Representatives. Whereupon the President ruled that as the statement complained of was not made on the floor of the House of Representatives, but in the State in which the newspaper was published, the Motion was in order.

Upon a division the Question was negatived (Ayes 14, Noes 16).

Union of South Africa.

Refusal of Witness to Answer Questions.[2]—During the course of the inquiry of the Select Committee on Public Accounts of the House of Assembly, the question arose of the refusal of a witness (the Secretary for Defence) to answer certain questions, and the Chairman, in a considered Ruling, upheld this refusal. It was submitted by a member of the Committee that the Chairman was irregularly divesting the Committee of its powers, and upon

[1] Sen. Journals, 1941, No. 26, 90.

[2] As contributed by the Clerk of the House of Assembly.—[ED.]

Mr. Speaker's attention being subsequently drawn to the incident the Committee was acquainted with the practice in such matters and informed that where the withholding of information was regarded by a Committee as unreasonable the proper course was to report the matter to the House. Arising out of the above incident the Committee decided that certain evidence, which the witness was prepared to give on condition that it was not published, be recorded but not submitted to the House.[1]

Protection of Witness.[2]—In connection with the Select Committee of the House of Assembly on the subject of the Insurance Bill, a prospective witness raised the question of his protection as a witness and inquired whether any memorandum submitted would be privileged evidence. He was referred to s. 23 of the Powers and Privileges of Parliament Act[3] (*Certificate issued to witness making full disclosure to be bar to civil or criminal proceedings*), but, in view of the importance he attached to the matter, the Committee decided not to request the witness to furnish copies of his memorandum in advance of his appearance but first to subpœna him as a witness so that he could personally put in the memorandum as evidence.

Precincts of Parliament.[2]—During the passage of the Workmen's Compensation Bill[4] it was noticed that Clause 17 empowered the Workmen's Compensation Commissioner or other authorized person to enter any premises for the purpose of carrying out his functions under the Bill and when there to question any person, demand the production of records and, if necessary, make extracts and require explanations. It was pointed out to the Minister of Labour that " premises " would include the Houses of Parliament and he at once agreed to insert the following proviso:

> Provided that neither the Commissioner nor any other person shall, without the previous permission of the President or the Speaker, exercise any of such powers within the precincts of Parliament.

The amendment was agreed to without discussion.[5]

British India : Bengal.

Arrest and Detention of Certain M.L.A.s.—As a result of the arrest and detention of some Members of the Bengal Legislative Assembly under the Defence of India Act, 1939, and rules made thereunder, the question whether such arrest and detention

[1] 1940-41 VOTES, 632; S.C. 1A, 1941, li-liii.
[2] As contributed by the Clerk of the House of Assembly.—[ED.]
[3] Act No. 19 of 1911.
[4] Act No. 30 of 1941.
[5] 1940-41 VOTES, 686.

amounts to a breach of Privilege was brought up before the House in the July-September Session of 1940.

As there is no authority or precedent for claiming such a privilege, the matter was referred to the Committee of Privileges, which, at its sitting on September 19, 1940, made some recommendations on the lines of the Bengal Assembly Powers and Privileges Bill, 1939.[1] It may, however, be noted that the Bill is still pending before the House.

The Committee of Privileges issued a Report[2] stating that in pursuance of an announcement made on September 18, 1940, in the Bengal Legislative Assembly by the Hon. Speaker, the Committee of Privileges of the Assembly for the year 1940-41 was summoned to consider the question of Privilege in respect of the arrest and detention of Members of the Assembly arising out of:

(1) a Special Motion tabled by Mr. Surendra Nath Biswas, M.L.A.,
(2) an Adjournment Motion tabled by Mr. Sasanka Sekhar Sanyal, M.L.A., and
(3) certain Short Notice Questions notified by Mr. Santosh Kumar Basu, M.L.A.

The Committee of Privileges made the following recommendations—namely:

(1) That immediate steps be taken by Government to pass the Bengal Legislative Assembly Powers and Privileges Bill, 1939, already introduced in the Assembly on July 12, 1939, by the Hon'ble Deputy Speaker, into law.

(2) That pending such legislation the following conventions be adopted—namely:

(i) If any member of the Assembly is arrested, detained, convicted or imprisoned on any criminal charge or otherwise, information of such arrest, detention, conviction or imprisonment together with the charges against such Member shall forthwith be sent to Mr. Speaker by the person or persons under whose authority or order the arrest, detention, conviction or imprisonment is effected.

(ii) If Mr. Speaker on information received as above or otherwise is of opinion and if he thinks necessary after consulting the wishes of the Assembly that the presence of a Member who has been arrested, detained, convicted or imprisoned is essential for the purpose of the proceedings of the Assembly or any Committee thereof, Mr. Speaker shall inform the Provincial Government accordingly, and the Provincial Government shall take necessary steps forthwith to bring such Member on such escort as they may consider necessary or in such other manner as they may deem necessary before Mr. Speaker, and such Member may attend such meeting of the Assembly or any Committee thereof as the

[1] *See* JOURNAL, Vol. IX, 57. [2] Sept. 19, 1940.

case may be on such day or days as may be required by Mr. Speaker, provided that the Provincial Government may take such steps as they may consider fit for the custody of the Member during the time the presence of such Member is not necessary in the Assembly or the Committee thereof.

(iii) That a Member should be entitled to exercise all his rights and privileges as such as far as this is possible while in custody, and

(iv) That such further privileges as may be agreed upon after discussion between Mr. Speaker and the Minister in charge of the Department of Constitution and Elections may also be extended to a Member who may be under arrest, detention, conviction or imprisonment.

XI. REVIEW

By the Editor

In our last issue we reviewed a book, *Concerning English Administrative Law.*[1] This year we have received from the Columbia University, N.Y.C., a pamphlet[2] by the same author, reprinted from the *Columbia Law Review* (Vol. XLII, p. 339 [March, 1942]), which deals with War-Time Regulations and Judicial Review in Great Britain.

It is not proposed to review this pamphlet so far as it deals with any War-Time Regulations other than 18B, full of interest as they are to the constitutional student. Regulation 18B, however, came so much into prominence in "the Ramsay Case",[3] that some references will be made to the author's treatment of this subject.

The introduction to Sir Cecil Carr's article dealing with the Legal Bases for War-Time Regulations, the *lex scripta* of war-time passed under powers voluntarily delegated by a representative and supreme Parliament.

The author quotes the elasticity of British freedom as explained by Lord Wright in the Liversidge case,[4] which arose out of Regulation 18B, Captain Archibald Henry Maule Ramsay, M.P., having been interned thereunder on grounds of public security. Lord Wright thus explained this elasticity:

> What is involved is the liberty of the subject. Your Lordships have had your attention called to the evils of the exercise of arbitrary powers of arrest by the executive and the necessity of subjecting all such powers to judicial control. Your Lordships have been reminded of the great constitutional conflicts in the seventeenth century, which culminated in the famous constitutional charters, the Petition of Rights, the Bill of Rights, and the Act of Settlement. These struggles did indeed involve the liberty of the subject and its vindication against arbitrary and unlawful power. They sprang (to state it very broadly) from the Stuart theory that the King was King by Divine Right and that his powers were above the law. Thus a warrant of arrest *per speciale mandatum Domini Regis* was claimed to be a sufficient justification for detention without trial. But by the end of the seventeenth century the old common-law rule of the supremacy of law was restored and substituted for any theory of royal supremacy. All the courts to-day, and not least this House,

[1] *See* JOURNAL, Vol. IX, 167.
[2] *A Regulated Liberty*, by Sir Cecil T. Carr, LL.D.
[3] *See* JOURNAL, Vol. IX, 64.
[4] Liversidge *v.* Sir John Anderson and another (1941) 3 All Eng. Rep. 338. For other discussions of the case, *see* (1942) 58 L.Q., Rev. 1; 28 A.B.A.J. 147; 22 Can. Bar. Rev. 57.

are as jealous as they have ever been in upholding the liberty of the subject. But that liberty is a liberty confined and controlled by law, whether common law or statute. It is, in Burke's words, a regulated freedom. It is not an abstract or absolute freedom. Parliament is supreme. It can enact extraordinary powers of interfering with personal liberty. If an Act of Parliament, or a statutory Regulation, like Regulation 18B, which has admittedly the force of a statute, because there is no suggestion that it is *ultra vires* or outside the Emergency Powers (Defence) Act, under which it was made, is alleged to limit or curtail the liberty of the subject or vest in the executive extraordinary powers of detaining a subject, the only question is what is the precise extent of the powers given. The answer to that question is only to be found by scrutinizing the language of the enactment in the light of the measure. I have ventured on these elementary and obvious observations because it seems to have been suggested on behalf of the appellant that this House was being asked to countenance arbitrary, despotic or tyrannous conduct. But in the constitution of this country there are no guaranteed or absolute rights. The safeguard of British liberty is in the good sense of the people and in the system of representative and responsible government which has been evolved. If extraordinary powers are here given, they are given because the emergency is extraordinary, and are limited to the period of emergency.[1]

The author observes that the above quotation from Lord Wright's speech in that case shows that no question of *vires* was possible there, and Sir Cecil goes on to say that Lord Atkin, who delivered a striking minority opinion, agreed.

> No one doubts that the Emergency Powers (Defence) Act, 1939, empowers His Majesty in Council to vest any Minister with unlimited powers over the person and property of the subjects. The only question is whether in this Regulation they have done so.[2]

The author also refers to the case of *Rex* v. *Controller-General of Patents, etc., ex parte Bayer Products* as testing the general authority to make Regulations. A statute had made war-time provision for trade marks registered in enemy names, and Lord Justice Clauson is quoted. "The test", said his Lordship, "was not whether the Regulation (60E)[3] was necessary or expedient for the purpose named, but whether it appeared to His Majesty to be necessary or expedient for that purpose to make the particular Regulation."

> In my view this court has no right or jurisdiction to investigate the reasons which moved His Majesty to reach the conclusion that it was necessary or expedient to make the Regulation. The legislature has left the matter to His Majesty and this court has no control over it. This court, in my view, has no duty and no right to

[1] (1941) 3 All Eng. Rep. at 372. [2] *Ib.* 375.
[3] S. R. & O., 1940, No. 1328, 11, pp. 9, 97.

investigate what was the advice which was given to His Majesty which moved him to the view that it was necessary or expedient for the purposes in question to make this Regulation; and I know of no authority which would justify the court in questioning the decision which His Majesty has (as I understand it) stated that he has come to—that this Regulation is necessary or expedient. If His Majesty has once reached that conclusion, that Regulation is the law of the land, subject to this, that the Act specially provides machinery by which, if either House of Parliament is disposed to take a view different from that upon which His Majesty has been pleased to act, the order can be annulled.[1]

Lord Justice Scott, the succeeding Chairman to Lord Donoughmore of the Committee on Ministers' Powers,[2] delivered an opinion to the like effect:

> "The principle upon which delegated legislation must rest in our constitution", he observed, "is that, where legislative discretion is left in plain language by Parliament, it is a discretion which is intended to be final and not subject to control subsequently by the courts."

In Part II of the author's article, which Part deals with Judicial Review in Detention Cases, the following extracts are of particular interest in regard to Regulation 18B.

> Regulation 18B is the 1939 equivalent of Regulation 14B[3] of the Defence of the Realm Regulations of the last War. Unlike the 1939 statute, the Defence of the Realm Acts of 1914 and 1915 made no specific delegation of a power to make Regulations authorizing temporary detention without trial.

Regulation 14B of the last War ran as follows:

> Where, on the recommendation of a competent naval or military authority or of one of the advisory committees hereinafter mentioned, it appears to the Secretary of State that, for securing the public safety or the defence of the realm, it is expedient in view of the hostile origin or associations of any person that he shall be subjected to such obligations and restrictions as are hereinafter mentioned, the Secretary of State may by order require that person, forthwith or from time to time, either to remain in, or to proceed to and reside in, such place as may be specified in the order and to comply with such directions as to reporting to the police, restriction of movement and otherwise as may be specified in the order or to be interned in such place as may be specified in the order.[4]

In the present War, the 1939 statute having explicitly enacted that Defence Regulations may authorize detention, Regulation 18B was issued on September 1, 1939,[5] in the following terms:

[1] Reports of Patent, Design and Trade Mark Cases (1941) at 268-9.
[2] *See* JOURNAL, Vol. VII, 30. Sir Cecil Carr gave important evidence before this Committee (Cmd. 4060 [1932]).
[3] S. R. & O., 1915, No. 551, I, pp. 159, 161. [4] *Ib.*
[5] S. R. & O., 1939, No. 1681, I, pp. 811, 815. *See* note 30 *infra.*

The Secretary of State, if satisfied with respect to any particular person that, with a view to preventing him acting in any manner prejudicial to the public safety or the defence of the realm, it is necessary so to do, may make an order—

(*a*) prohibiting . . . the possession . . . by that person of any specified articles;

(*b*) imposing upon him such restrictions as may be specified in the order in respect of his employment, association or communication with other persons and . . . his activities in relation to the dissemination of news or the propagation of opinions;

(*c*) directing that he be detained . . .

Contrasting 14B of 1915 with 18B of 1939, we note some marked differences. In the last War, the Home Secretary exercised his discretion to intern people if he thought it necessary for the public safety or the defence of the realm in view of their hostile origin or associations but only on a prior recommendation either from a competent naval or military authority or from a judicially guided advisory committee. In the present War the Home Secretary could make his detention order without anybody's recommendation, the reference to hostile origin or associations disappeared, and the advisory committee came upon the scene, if at all, only after the detention order had been made.[1]

The 1939 statute, unlike its predecessors in the last War, equipped the Legislature with a direct check upon Defence Regulations. They were to be laid before Parliament and, if either House within twenty-eight sitting days resolved that they should be annulled, the Order in Council containing them would cease to have effect (save as respects action already taken thereunder), without prejudice to the making of a new Order.[2]

During the autumn of 1939 hostilities were not yet quickened. Critics in the House of Commons felt themselves free to complain that the Order in Council of September 1 went too far and might be abused. An adverse resolution was moved[3] and the Government spokesman, stating the desire that the Regulations should command the general assent, offered to consult the Opposition parties with a view to reaching agreement. The Regulations could not safely be withdrawn; to withdraw 18B, for instance, would mean the immediate release of every internee; but they could be reconsidered. The critics did not press their Motion, the conference took place, and a fresh set of Regulations—amongst them a new 18B—was framed and issued on November 23. The new 18B began as follows:

> If the Secretary of State has reasonable cause to believe any person to be of hostile origin or associations or to have been recently concerned in acts prejudicial to the public safety or the

[1] Though no access to the law courts was provided, the Chairman of the Committee was Sir Norman Birkett, K.C. Appointed a judge of the High Court late in 1941, he continued to sit as Chairman.

[2] For a successful Motion for annulment, see House of Commons Debates, April 1, 1941, cols. 913-70; Regulation 42BA (Sunday opening of certain theatres) was annulled by O. in C. (S. R. & O., 1941, No. 478) after a close vote (144 to 136). For unsuccessful Motions, see note 19 *supra*. *See also* note 54 *infra* (amendment to the Address).

[3] *See* House of Commons Debates, Oct. 31, 1939, cols. 1827-1900.

> defence of the realm or in the preparation or instigation of such acts, and that by reason thereof it is necessary to exercise control over him, he may make an order against that person directing that he be detained.[1]

The new 18B, it will have been observed, replaced the initial words "if satisfied" with the words "if the Secretary of State has reasonable cause to believe"; it gave a right to object to an advisory committee, but only after the detention order was already in force; the Home Secretary was not obliged to follow the committee's advice; and there was nothing said of any right to appeal to a court of law.

Other cases are quoted in connection with the detention of persons and the power conferred by Parliament, under Regulation 18B, and the reader is referred to the article for a full study of this subject.

In conclusion, Sir Cecil Carr says:

> Both Lord Romer and Lord Macmillan cited in the *Liversidge* case the words of Lord Atkinson in *R.* v. *Halliday*:
>
> However precious the personal liberty of the subject may be, there is something for which it may well be, to some extent, sacrificed by legal enactment—namely, national success in the War or escape from national plunder or enslavement. . . .[2]
>
> The liberty which we so justly extol, added Lord Macmillan, is itself the gift of the law, and, as Magna Charta recognizes, may by the law be forfeited or abridged. At a time when it is the undoubted law of the land that a citizen may by conscription or requisition be compelled to give up his life and all that he possesses for his country's cause, it may well be no matter for surprise that there should be confided to the Secretary of State a discretionary power of enforcing the relatively mild precaution of detention.[3]

[1] S. R. & O., 1939, No. 1681, 1, pp. 811, 815.
[2] (1917) A.C. at 271.
[3] (1914) 3 All Eng. Rep. at 370.

XII. LIBRARY OF "THE CLERK OF THE HOUSE"

By the Editor

The Clerk of either House of Parliament, as the "Permanent Head of his Department" and the technical adviser to successive Presidents, Speakers, Chairmen of Committees and Members of Parliament generally, naturally requires an easy and rapid access to those books and records more closely connected with his work. Some of his works of reference, such as a complete set of the Journals of the Lords and Commons, the Reports of the Debates and the Statutes of the Imperial Parliament, are usually more conveniently situated in a central Library of Parliament. The same applies also to many other works of more historical Parliamentary interest. Volume I of the JOURNAL contained[1] a list of books suggested as the nucleus of the Library of the "Clerk of a House", including books of more particular usefulness to him in the course of his work and which could also be available during Recess, when he usually has leisure to conduct research into such problems in Parliamentary practice as have actually arisen or occurred to him during Session, or which are likely to present themselves for decision in the future.

Volume II[2] gave a list of works on Canadian Constitutional subjects and Volumes IV[3] and V[4] a similar list in regard to the Commonwealth and Union Constitutions respectively.

Volumes II,[2] III,[5] IV,[6] V,[7] VI,[8] VII,[9] VIII[10] and IX[11] gave lists of works for the Clerk's Library published during the respective years. Below is given a list of books for such a Library, published 1941:

Jennings, W. I.—Parliament must be Reformed—a Programme for Democratic Authority. 1941. (London: Paul, Trench, Trübner. 1*s.*)

Jennings, W. I.—The British Constitution. 1941. (Cambridge University Press. 8*s.* 6*d.*)

Kaltchas, N.—Introduction to the Constitutional History of Modern Greece. 1940. (N.Y.: Columbia University Press. 10*s.*)

Shottwell, J. J. (*Edited by*).—Governments of Continental Europe. (New York: Macmillan. 20*s.*)

[1] 123-126. [2] 137, 138 [3] 153-154. [4] 223.
[5] 133. [6] 152. [7] 222. [8] 243.
[9] 212 *et seq.* (starred items). [10] 223-226 (starred items). [11] 170.

XIII. LIST OF MEMBERS

JOINT PRESIDENTS.

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British India.

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A. N. Shah, Esq., I.C.S., Secretary of the Legislative Assembly, Nagpur, Central Provinces and Berar.

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Indian States.

Sir Mohammad Yaqub, Reforms Adviser, State of Hyderabad.

B. K. Ramakrishnaiya, Esq.,* M.A., LL.B., Secretary of the Representative Assembly and Legislative Council, Old Public Offices, Bangalore, Mysore State, India.

Pandit Hiranana Raina,* B.Sc., LL.B., Secretary to Government, Praja Sabha (Assembly) Department, Jammu, Jammu and Kashmir State, India.

* Barrister-at-law or Advocate.

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U. Ba Dun,* Secretary of the Burma Legislature and of the House of Representatives, Simla, India.

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The Clerk of the Councils, Singapore.

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J. G. Jearey, Esq., O.B.E. (Southern Rhodesia).

Office of the Society.

c/o The Senate, Houses of Parliament, Cape Town, South Africa.

Cable Address : CLERDOM CAPETOWN.

Honorary Secretary-Treasurer and Editor : Owen Clough.

* Barrister-at-law or Advocate.

XIV. MEMBERS' RECORDS OF SERVICE

Note. — *b.*=born; *ed.*=educated; *m.*=married; *s.*=son(s); *d.*=daughter(s); *c.*=children.

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat these records in subsequent issues of the JOURNAL, *except upon promotion, transfer or retirement, when it is requested that an amended record be sent in.*

Dalziel, W. W., I.C.S., B.A.(Oxon).—Secretary of the Legislative Assembly of the Province of Orissa, India; *b.* October 5, 1900; Barrister-at-Law; Indian Civil Service (Inferior Scale), December 7, 1924; Settlement Officer on Training, Dumka, October 14, 1925; in charge of Sub-Division, Dhalbhum (Singbhum), March 21, 1926; Assistant Settlement Officer, Cuttack, November 16, 1927, to February 7, 1929, when appointed Settlement Officer there until April 28, 1932, when appointed Judicial Commissioner, Ranchi; District and Sessional Judge, Manbhum-Sambalput, Purulia, November 2, 1932; District and Sessional Judge, Monghyr, January 3, 1933; Additional District Magistrate (Temporary), Monghyr, January 31, 1934; District and Sessional Judge, Purulia, April 12 (November 13), 1934; attached Legislative Department, Government of India, Simla, April, 1935; District and Sessional Judge, Manbhum-Singbhum, Purulia, October 31, 1935; services placed at disposal of Government of Orissa; District and Sessional Judge, Ganjum-Puri, Berhampur, October 25, 1938; Special Officer, Law, Commerce and Labour Department, Cuttack, November 3, 1938; Secretary to Government Revenue and Development Department (Temporary), April 11, 1939; Special Officer, Law, Commerce and Labour Department, Cuttack, November 15, 1939; Secretary to such Department and Legislative Assembly Department, January 2, 1940; appointed Publicity Officer, Provincial Press Adviser and Additional Secretary to Government in Home Department in addition to own duties, November 1, 1940, and ceased to be Publicity Officer to Government as from November 22, 1941. (*Revised notice from Volume VIII.*)

Franks, J. R., B.A., LL.B.—Second Clerk-Assistant of the Legislative Assembly, Southern Rhodesia; eldest *s.* of the late

F. R. Franks, Newcastle, Natal; *b.* 1906; *ed.* Rondebosch Boys' High School; University of Cape Town; *m.* Kathleen May, daughter of the late John Dell, of Durban; 2 *c.*; joined the Service March, 1928; Clerk, Magistrate's Office, Gwelo (1928), Fort Victoria (1930); Gwelo (1933); judicial appointments Gwelo, Enkeldoorn, Gatooma and Salisbury (1933-37); Acting Chief Industrial Inspector (1938); obtained degree LL.B. (University of S.A.) 1938; Public Prosecutor, Salisbury, 1939-40; seconded to the Legislative Assembly, April, 1940.

Ramakrishnaiya, B. K., M.A., LL.B.—Secretary to the Mysore Legislature, August 17, 1941; *b.* February 18, 1893; practised at the Bar; Member of the Representative Assembly, 1924-27; Member of the University Senate, 1925-29; entered Mysore Judicial Service, October 14, 1927; Assistant Secretary to Government in the Law Department, November, 1936; Secretary, Prison Reforms Committee, 1940-41; Secretary, Representative Assembly and Legislative Council, and also Assistant Secretary to the Government in the Legislation Department from August 17, 1941.

Robertson, J. A.—Serjeant-at-Arms, Legislative Assembly, Victoria, Australia, since March, 1941; *b.* 1903, Castlemaine, Victoria; Clerk in Lands Department, 1920; transferred to the Parliamentary Staff, 1923; Assistant Clerk of the Papers, 1927; Clerk of the Papers, 1937; Serjeant-at-Arms assisting at the Table and Clerk of the Papers, 1941.

Toerien, J. P.—Clerk of the Provincial Council and Secretary to the Executive Committee, Province of the Orange Free State, since 1941; *b.* Paarl, Cape Province, July 26, 1901, appointed to Union Public Service, Administrator's Office, Pietermaritzburg, Natal, as official translator, 1920; transferred to Cape Provincial Administration, 1923; appointed Chief Translator, 1928; appointed Clerk-Assistant to Cape Provincial Council, 1935.

Yusoof, S. Anwar.—Secretary of the Legislature of the Province of Bihar, India; called to the Bar (Middle Temple), 1912, and practised in the High Court at Fort William, Bengal, and the High Court at Patna; Assistant Secretary to the Bihar and Orissa Legislative Council, and Assistant Secretary to the Government in the Legislative Department, 1924; acted as Secretary to such Council and Deputy Secretary to the Government in the Legislative Department, 1926 and 1928; served on a Deputation to

India in the Legislative Department, 1929; Secretary of the Legislative Council of Bihar and Orissa, 1931-37; also officiated as Deputy Secretary to the Government in the Legislative Department, 1934; appointed Secretary of the Bihar Legislature (*i.e.*, combined office of Legislative Council and Legislative Assembly), June 1, 1937; in addition appointed as Administrator-General and Official Trustee, Bihar, August 19, 1937; has done civic work as member and Vice-Chairman of the Patna Administration Committee from 1931 to 1937 and is continuing as member with effect from January 8, 1941. (*Revised notice from Volume VIII.*)

XV. STATEMENT OF ACCOUNT AND AUDITOR'S REPORT, 1941-1942

I REPORT that I have audited the Statement of Account of " The Society of Clerks-at-the-Table in Empire Parliaments " in respect of *Volume IX*.

The Statement of Account covers a period from September 1, 1941, to September 30, 1942. All the amounts received during the period have been banked with the Standard Bank of South Africa, Ltd.

Receipts were duly produced for all payments for which such were obtainable, including remuneration to persons for typing and clerical assistance and roneoing, and postages were recorded in the fullest detail in the Petty Cash Book.

I have checked the Cash Book with the Standard Bank Pass Book in detail and have obtained a certificate verifying the balance at the Bank.

The Petty Cash Book has been checked to the Cash Account for amounts paid to the Editor to reimburse himself for money spent by him in postages and other expenses of a small nature. Amounts received and paid for Volume X, which are paid into a Special Account not operated upon, have been excluded from the Revenue and Expenditure Account.

The following amounts are owing:

	£	s.	d.
For printing Volume VIII	64	11	0*
Due to the Treasurer for advances and sundry disbursements	22	11	7
	87	2	7

Against this there is due and in hand:

	£	s.	d.
For grants	55	0	0
For subscriptions	61	0	0
At bank	19	4	11
In hand		7	10
	135	12	9

Accounts for printing Volume IX have not yet been received.

CECIL KILPIN,
Chartered Accountant (*S.A.*).

SUN BUILDING,
CAPE TOWN.
November 10, 1942.

* This has since been paid.—[ED.]

The Society of Clerks-at-the-Table in Empire Parliaments

STATEMENT OF ACCOUNT FOR THE PERIOD FROM SEPTEMBER 1, 1941, TO SEPTEMBER 30, 1942.

REVENUE.	£	s.	d.	£	s.	d.
Balance as at August 31, 1941, being excess of income over expenditure at that date					12	9
Parliamentary Grants:*						
New Zealand	10	0	0			
State of New South Wales	5	0	0			
Union of South Africa (Senate)	5	0	0			
Province of Cape of Good Hope	5	0	0			
Province of Natal	5	0	0			
Southern Rhodesia	10	0	0			
Hyderabad State†	5	0	0			
				45	0	0
Subscriptions:						
Volumes I to IX, inclusive				49	10	0
Sales:‡						
Volumes I to IX, inclusive				15	7	10
				110	10	7

EXPENDITURE.	£	s.	d.	£	s.	d.
Volume IX for 1940:						
Postages and Telephone	4	4	2			
Bank Charges	1	7	10			
Cables and Telegraphic Address	1	5	0			
Publications and Newspapers	10	10	6			
Typing and Clerical Assistance and Roneoing	37	11	6			
Printing and Publishing Volume VIII, on account	25	7	10			
Stationery	3	5	4			
Gratuities to Messengers	4	0	0			
Audit Fee	3	3	0			
Insurance		10	6			
				91	5	8
Cash Balance, being Excess of Receipts over Expenditure				19	4	11
				£110	10	7

OWEN CLOUGH,
Honorary Secretary-Treasurer and Editor.

Countersigned:
S. F. DU TOIT,
Clerk of the Senate,
RALPH KILPIN,
Clerk of the House of Assembly,
Parliament of the Union of South Africa.

Audited and certified correct:
CECIL KILPIN,
Chartered Accountant (S.A.),
Sun Building,
Cape Town,
South Africa.

November 10, 1942.

* Owing to War-time mail delays the other grants have not yet been received.—[ED.]
† The Indian State of Mysore has granted £5 in respect of Volume X.
‡ Sales for January-June, 1942, not yet received.—[ED.]

INDEX TO SUBJECTS DEALT WITH IN EARLIER VOLUMES

NOTE.—*The Roman numeral gives the Volume and the Arabic numeral the Page. For States and Provinces see the name of the supreme Government concerned. Procedure is arranged under Subject headings.*

S.R.=Speaker's Ruling. Amdts.=Amendments. Sel. Com.=Select Committee.

[1] *See also* "Australian States."

[2] For names of, *see* Table facing Contents, p. ii.

[2] *See also* Vol. V. 111-118.

[1] *See* "India," Constitution (1935) for provisions not dealt with here.

[1] *See also* " Canadian Provinces."
[2] For names of, *see* Table facing Contents, p. ii.

[1] For names of, *see* Table facing Contents, p. ii.
[2] These, both large and small, number 585, of which 149 are major and 436 non-salute States
[3] *See also* "Irish Free State."

[1] *See also* "Ireland."

[1] For Provinces of, *see* Table facing Contents, p. ii.

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