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

VOLS. XI AND XII

FOR 1942 AND 1943

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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*											
	Travancore	*			*			*	*				
	Burma		*	*					*	*			
	Ceylon	*	*	*		*	*	*	*	*	*	*	*
	British Guiana				*	*	*				*	*	*
	Straits Settlements	*			*		*		*		*	*	*

CONTENTS

Note.—Where the text admits, the following abbreviations are used in this Volume:—

1 *R.*, 2 *R.*, 3 *R.* = First, Second and Third Readings of Bills;
C.W.H. = Committee of the Whole House;
Sel. Com. = Select Committee;
R.A. = Royal Assent; and
Hans. after the abbreviation for a House of Parliament or Chamber of a Legislature is used, in footnotes, in place of " Debates ".

Journal
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Society of Clerks-at-the-Table
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VOLS. XI & XII FOR 1942 & 1943

I. EDITORIAL

Introduction to Volumes XI and XII.—This Society, open as its membership is to all Clerks at the Tables of the Parliaments and Legislatures of the British Empire, has, we believe, the unique distinction of being the only instance of members of the same profession for the whole Empire being united in one organization for their mutual interest and benefit. The Society, founded in 1927, has now been established long enough for some of its senior foundation members to have been on the retired list for some time. Therefore, we regret to have to announce in this issue the passing of G. A. Mantle, G. H. Monahan, E. W. Parkes, and D. H. Visser, to whose memory obituary notices are included in this issue. Although the Chief Clerk at the Table who does not take that opportunity for further study and research may have some leisure during a Parliamentary Recess, his duties during Session must make greater demand upon his constitution than is generally imagined, as actual experience shews that few retired " Clerks of the House " are privileged to enjoy their retirement for any great length of time.

In consequence of our second War issue—Volume IX (reviewing 1940)—being late in publication, owing to War priorities and other restrictions, the issue of Volume X (for 1941) was in turn delayed. Therefore, to make up the leeway thus lost and in order to avoid the simultaneous issue of 2 separate Volumes dealing with the years 1942 and 1943, and the consequent duplication of the list of Members and index pages, Volumes XI and XII (reviewing both those years) have been combined in this present issue. It is hoped that world conditions generally in 1945 will ensure the publication of Volume XIII (for 1944) nearer pre-War time—namely, in September.

In this combined Volume the usual lay-out of the JOURNAL has been preserved and the Editorial matter under each House of Parliament or Legislature has been, as far as possible, arranged so that the material under the respective headings, for 1942, precedes that for 1943.

The Rulings of Speakers of the House of Commons, several years of which are now ready for publication, have had again to be postponed,

both on account of the considerable space such accumulated index would now require and because the question of the usefulness of such Rulings has been submitted to our members in item X of the *Questionnaire* for Volume XIII. Should they decide upon the continuance of this Index, then 2 Sessions' Rulings could be published each year, from where they were left off in Volume VII, until they have been brought up to date.

The main body of this issue contains the following Articles:—On the Amendment, made by the Imperial Parliament in 1943, of the Regency Act of 1937, which Act was dealt with in Volume IX of the JOURNAL; an up-to-date treatise on the Financial Procedure in the House of Commons; the long-delayed Article on " The Boothby Case "; further operations of the House of Commons Select Committee on National Expenditure (the operation of such Committees in Canada and Australia is dealt with under " Editorial "); the working of the House of Commons Members' Pensions Fund; the effect of War-time conditions in the United Kingdom upon electoral machinery and the holding of elections; recent Constitutional activities in the Isle of Man; an account of the proceedings, both at Canberra and in the 6 States, on the much-debated question of Commonwealth Powers, together with particulars of the Referendum thereon; the Australian Statute of Westminster Adoption Bill; the Prolongation of the New Zealand Parliament in War-time; Precedents and Unusual Points of Procedure in the Union House of Assembly; and the latest official developments in connection with India and her Federation issue. There are also several instances, both at Westminster and Overseas, of the application of Privilege—namely, the Conduct of a Member and a Newspaper Statement, both sequels to " the Boothby Case "; Libel on the House, the Whips and Mr. Speaker; alleged disclosure by Members of the House of Commons of Secret Session proceedings; imputation against the Public Accounts Committee by a Member; Letter and Cheque to Members—all being House of Commons cases. The Privilege instances in Overseas Legislatures have been:—Statement by Judge in non-judicial capacity (Australia); publication of Select Committee Proceedings (India); Attendance of Senators before Select Committees of the House of Assembly during Senate Adjournment; nature of Privileged Evidence; and Refusal of Witness to Reply to Questions—the 3 last occurring in the Union Parliament. In Ceylon the questions involved were—a Member's Freedom of Speech in the Legislature, and Contempt of the House.

Under Editorial many interesting points have been noted. A large number, however, closely relate to the prosecution of the War and how it has affected the working of Parliament, such as:—prolongation; the practice in regard to Secret Sessions, both at Westminster and in those Dominions and India where the system has been made use of. A number of questions have been noticed concerning Ministers and their powers; the service of M.P.s in H.M. Forces and in civilian capacities

as War workers; P.P.S.s; censorship of Members' correspondence and broadcasting; an amendment of the B.N.A. Act; Delegated Legislation; Offices of Profit under the Crown in the Union of South Africa, India and Southern Rhodesia; continuity in the Office of Speaker; Electoral Laws amendment as relating more closely to Parliament; the Oath of Allegiance; incorporation of the Mandated (C) Territory of S.W. Africa into the Union and the Amalgamation of the Rhodesias and Nyasaland. In the Indian States there has been investigation into the question of Privilege in Mysore and an account is given of Legislative Reforms in Travancore. Constitutional matters have been brought up in Ceylon as well as the question of considerations offered to Members of the Legislature. Reference has also been made to constitutional movements in Jamaica, British Guiana and additions to the Executive Councils in the Gold Coast, Sierra Leone and Nigeria.

A number of other questions have also been noted in "starred" items in the various *Questionnaires* to members, and it is hoped in the next issue of the JOURNAL to treat some of these in composite articles.

Acknowledgments to Contributors.—We have pleasure in acknowledging Articles in this Volume from Mr. E. A. Fellowes, M.C., Second Clerk-Assistant of the House of Commons; the Hon. Joseph D. Qualtrough, M.H.K., Speaker of the House of Keys; Mr. W. R. McCourt, C.M.G., Clerk of the N.S.W. Legislative Assembly; Mr. P. T. Pook, B.A., LL.M., J.P., Clerk of the Parliaments, and Mr. F. E. Wanke, Clerk of the Legislative Assembly, Victoria; Mr. T. Dickson, Clerk of the Parliament, Queensland; Captain F. L. Parker, F.R.G.S.A., Clerk of the Parliaments and Clerk of the House of Assembly, S. Australia; Mr. F. G. Steere, J.P., Clerk of the Legislative Assembly, W. Australia; Mr. C. H. D. Chepmell, Clerk of the Legislative Council, Tasmania; Mr. T. D. H. Hall, C.M.G., LL.B., Clerk of the House of Representatives, New Zealand; and Mr. Ralph Kilpin, J.P., Clerk of the Union House of Assembly.

We are also grateful for Editorial paragraphs from Mr. J. M. Parker, Clerk of the Legislative Assembly, Saskatchewan; Mr. John E. Edwards, Clerk of the Senate, Canberra; Mr. W. R. McCourt, C.M.G.; Mr. P. T. Pook, B.A., LL.M., J.P., and Mr. F. E. Wanke; Mr. T. Dickson, J.P.; Captain F. L. Parker, F.R.G.S.A.; Mr. F. G. Steere, J.P.; Mr. C. H. D. Chepmell; Mr. Ralph Kilpin, J.P.; Mr. J. P. Toerien, Clerk of the Cape of Good Hope Provincial Council; Mr. C. A. B. Peck, Clerk of the Natal Provincial Council; Mr. K. W. Schreve, Clerk of the S.W.A. Legislative Assembly; Mr. C. C. D. Ferris, Clerk of the Southern Rhodesia Legislative Assembly; the Hon. Mr. Shavex A. Lal, M.A., LL.B., Secretary of the Council of State of India, and Mian Muhammad Rafi, B.A., Secretary of her Central Legislative Assembly; S. Ali Haidar Shah, M.A., LL.B., Secretary of the Legislative Assembly of the N.W.F. Province of India; Shaikh A. Zafarali, B.A., LL.B., Secretary of the Sind Legislative Assembly; Mr. B. K. Ramakrishnaiya, M.A., LL.B., Secretary of the Representative Assembly and Legislative

Council of the State of Mysore; the Secretary of the Government of the State of Travancore; and Mr. D. C. R. Gunawardana, Secretary of the State Council of Ceylon. Indeed, contributed paragraphs by other members of the Society to our Editorial, in form ready for insertion, are gladly welcomed, not only because they lighten the duties of the Hon. Editor, but principally on account of their contributions being direct from " the man on the spot ".

Lastly, we are grateful to all other members for the valuable and interesting matter they have sent in and for the co-operation they have so willingly and generously rendered, notwithstanding the difficulties brought about by the War.

Special mention, however, must again be made of the help rendered by those of our members serving the Indian Provincial Legislatures in regard to the care taken by them to avoid any partisan attitude in reporting the facts in the case of the resignation of certain of their Ministries, which shews that the officials of those Legislatures are just as keen protectors as those long in Parliamentary service, of the principle of absolute detachment from politics of the Officers of the Legislature, whose duty it has always been to treat all Members of Parliament alike, no matter to what Party they may belong. Particularly, however, should we appreciate being allowed to mention the ready and willing assistance rendered by the Librarian and his Staff of the Parliament at Cape Town, where much of our reference work is carried out.

Questionnaires for Volumes XI and XII.—Most of the matter in response to the *Questionnaire* for Volume XI has been included in this combined issue, but in regard to the *Questionnaire* for Volume XII, as all the replies had not been received at the time of going to press, in regard to items VII and IX, both the questions of the actual practice in the various Parliaments relating to the reading of speeches by Legislators and the financial and other terms and authority in connection with the " Leader of the Opposition " are postponed for treatment in Volume XIII.

G. A. Mantle.—We regret to announce the death, on May 17, 1943, at Regina, Sask., of George Arthur Mantle, the highly capable and esteemed Clerk of the Legislative Assembly of that Province from 1916 until his retirement on superannuation in 1939. Mr. Mantle served through 6 Legislatures, and under 7 Speakers and 5 Premiers, during the 25 Sessions in which he held office.

Born in London, England, on August 8, 1874, Mr. Mantle came to Canada in 1902, and, for a time, was associated with the Hudson's Bay Company in Winnipeg. Later he joined the Land Department of the Canadian Northern Railway Company, and, in 1912, was appointed City Commissioner of Regina. A year later he became manager of the Assiniboia

Trust Company, a position he held until his appointment as Clerk of the Legislative Assembly in 1916.

A most efficient organizer, and a recognized authority on Parliamentary procedure, Mr. Mantle, who was an ex-member of this Society and a contributor to its JOURNAL, so guided the Saskatchewan Legislature that, during his tenure of the Clerkship, it had the distinction of being acknowledged as the best-conducted provincial " parliament " in the Dominion. A keen student of the historial background of Standing Orders, he impressed successive Speakers with his own respect for the Rules, and inspired a strict observance of Orders and Procedure in each successive Parliament. Despite a predilection for maintenance of traditional forms, in association with Hon. W. F. A. Turgeon, then Attorney-General and now Canadian Ambassador to Mexico, Mr. Mantle was responsible for the evolution and adoption of certain modifications of practice, particularly with respect to " Money " Bills, which not only conform with the principles of the recognized procedure but have also stood the test of time.

Perhaps no more fitting commentary on the quality of his work could be adduced than that contained in a testimonial given Mr. Mantle, on the occasion of his retirement, by those more directly associated with him, including the then Premier of Saskatchewan, Hon. W. J. Patterson. Adapting a sentence from that testimonial, it may be said of his service: " The Mantle Regime was synonymous with efficiency; its system stands to-day as his enduring monument; its methods as his supreme achievement." We wish to express, on behalf of all the members, their deepest sympathy with Mr. Mantle's family in their great bereavement.

G. H. Monahan, C.M.G., J.P.—We regret to announce the death at Sydney, N.S.W., Australia, on September 13, 1944, of George Monahan, for many years the able Clerk of the Commonwealth Senate. Mr. Monahan retired in 1938 after a total official service of nearly 49 years, of which 18 years were served as Clerk of the Senate. His record of service was published in Volume I of the JOURNAL (p. 134), and Volume VII (p. 9) recorded the many compliments paid him on his retirement, not only by the President of the Senate but by the Prime Minister of that time, when a Resolution of appreciation of Mr. Monahan's services was passed by the Senate on the Motion of the Vice-President of the Executive Council, seconded by the Leader of the Opposition in that House and supported by other prominent Senators.

This Society owes much to Mr. Monahan as one of its principal foundation members. His advice and the thorough reliability which could always be placed upon any material furnished by him was of infinite value in shaping the progress of the Society and its JOURNAL.

The members of the Society wish to convey their deepest sympathies to Mrs. Monahan and the other members of the family in their great bereavement.

E. W. Parkes, C.M.G.—We regret to announce the death at Canberra, Australia, on April 20, 1941, of E. W. Parkes, for many years the Clerk of the Commonwealth House of Representatives. Mr. Parkes retired from office in 1937 after a total service of 40 years, of which 10 years were served as Clerk of the House of Representatives. His record of service appeared in Volume I (p. 135) of the JOURNAL and his retirement notice in Volume V (p. 10). Great tribute was paid Mr. Parkes by the principal Statesmen of the Commonwealth Parliament, where he was held in high esteem by all. Mr. Parkes was a foundation member of the Society and an ardent supporter of its operations. He gave valuable assistance to us in respect of the proceedings, etc., of the Federal House of Representatives.

The members of the Society wish to convey their deepest sympathy to Mrs. Parkes and the members of the family in their great loss. The news of Mr. Parkes' death arrived too late for notice in the last issue of the JOURNAL.

D. H. Visser, J.P.—We regret to announce the death at Claremont, Cape Province, South Africa, on May 9, 1942, of Danl. Visser, who retired December 1, 1940, after an official service of 46 years, of which 23 years were spent at the Table of Parliament, both of the House of Assembly of the old Cape Colony and the Union, of which latter House he was the Clerk from 1920 to 1940. His record of service appeared in Volume I (p. 136) and his retirement notice in Volume IX (p. 10). Great tribute was paid him on his retirement, both by General Smuts and other prominent Statesmen as well as by Mr. Speaker Jansen. Mr. Visser was also a foundation member of the Society and an ardent collaborator in its work as well as in the production of the JOURNAL.

Alas, there are no immediate members of Mr. Visser's family to whom members of this Society may express their sympathies, as his widow did not long survive him.

Mr. H. H. W. Bense, for many years Clerk of the Legislative Assembly, Advisory Council and the Executive Committee of the South-West African Administration and until recently Clerk of the Provincial Council and to the Executive Committee of the Cape Province, relinquished the last-mentioned post on April 8, 1943, upon appointment as Senior Chief Clerk of the Secretariat, Cape Provincial Administration. Mr. Bense was born at Port Shepstone, Natal, June 16, 1880, where he spent the early years of his life, but resigned his commercial position there in 1914 to go on active service, joining the 4th Umvoti Mounted Rifles, with which he served in the 1914 Rebellion and later in the South-West Africa Campaign, 1914-15. After the surrender of the German Forces to General Louis Botha, Mr. Bense became temporary clerk in the Administrator's office, Windhoek, S.W.A., where, after occupying various posts in that Administration, such as Private Secretary to the Administrator, etc., he was in 1926 appointed Clerk of the Legislative Assembly of the Executive Committee and Advisory Council for South-West Africa, which post he retained until transfer on December 22, 1936, on promotion, to the post of Clerk of the Cape Provincial Council and Clerk to the Executive Committee of that Province at Cape Town.

In 1924 and in 1935 Mr. Bense accompanied the Administrator of S.W.A. (Mandate C) to Geneva to attend sittings of the permanent Mandates Commission and of the Assembly of the League of Nations. Mr. Bense has also acted as Secretary to various Government Commissions. In 1935 he was a recipient of the King's Silver Jubilee Medal.

On his transfer to the Cape Provincial Administration both the Legislative Assembly and the Executive Committee of S.W.A. passed a Resolution in appreciation of the valuable services Mr. Bense had rendered the Mandated Territory, which he had served since its conquest by the Union Forces in 1915.

On June 8, 1943, the Provincial Council of the Cape of Good Hope passed the following Resolution:

> Resolved:—That this Council places on record its sincere appreciation of the valuable services rendered to it by Mr. H. H. W. Bense, in his capacity as Clerk of the Council from December 22, 1936, to April 7, 1943, when he was transferred to another post in the service of the Cape Provincial Administration, and desires that this Resolution be conveyed to him.

A Resolution of appreciation and thanks was passed by the Executive Committee of the Cape Province in recognition of the valuable services he had rendered that Committee from 1936 to 1943 as its trusted Clerk.

We wish Mr. Bense the best of luck in his new sphere in full confidence that his character and high attainments will win for him still further promotion in the public service.

Major W. H. Langley, K.C.—On March 15, 1944, the Speaker of the Legislative Assembly, British Columbia, announced[1] that he had received the following letter from the Clerk of the House:

[1] 1944 VOTES, 6.

VICTORIA.
March 13, 1944.

SIR,

I have the honour to inform you that I desire to resign as Clerk of the Legislative Assembly, a position which I have had the honour to hold for over twenty-one years, such resignation to take effect on the 31st instant.

It is with regret that I leave the service of the House, and I should like to express to you, Sir, and to all Members of the House in this and previous Parliaments, my sincere gratitude for the unfailing kindness and courtesy shown to me, and also to express a hope that the performance of my duties in this honourable office has met with the approval of those whom it has been my privilege to serve.

I am, Sir,
Your obedient servant,
W. H. LANGLEY.

whereupon on Motion by the Attorney-General (Hon. R. L. Maitland, K.C.), seconded by Mr. H. E. Winch (Leader of the Opposition), it was

Resolved:—That Mr. Speaker be requested to convey to Major William Henry Langley, K.C., on his retirement from the office of Clerk of this House the assurance of its sincere appreciation of his devoted service for many years in the office of Clerk of the House at the Table, where his experience and advice have rendered constant assistance to the House and its Members in the conduct of its business.

Major Langley is one of the foundation members of this Society, in the work of which he has always taken a lively interest. He served during World War I as Major with the C.E.F. 1915-19 and in the 1st Canadian Division in Flanders and France 1916-17. Major Langley has been a member of the Active Militia of Canada for over 10 years. He is also one of the original members of the Navy League of Canada and was for several years after the last War·President of the British Columbia Division and of the Vancouver Island Branch. He has also taken an interest in municipal government and was Alderman of the City of Victoria for 2 years. Major Langley is a keen sportsman and an honorary life member of both the Royal Victoria Yacht Club and the Victoria Golf Club.

In our last issue we were happy to announce his appointment as K.C. We cannot imagine Major Langley settling down to a leisured life, and we wish him further success, not only in his own profession, but in any activities he may undertake. The writer had the pleasure of meeting Major Langley on the occasion of 2 visits to beautiful Victoria and has a happy recollection of some long and very interesting talks with him there. It is not yet known who will be Major Langley's successor in the Clerkship of the Legislature, but we are sure it will be comforting to him to know that Major Langley will be at hand to be consulted in the event of any complexities arising in which his long Parliamentary experience will be of value and usefulness. The members of this Society wish Major Langley good health and every happiness in the years to come in whatever direction his knowledge and experience may be utilized.

C. A. B. Peck.—Mr. Peck has been Clerk of the Executive Committee of the Province of Natal since 1918 and Clerk of the Provincial Council since 1927. He was enrolled a member of our Society in 1933.

After an official service of 42 years Mr. Peck was due to retire November 30, 1943, but his services are being retained until November 30, 1944. Owing, however, to the absence of a number of the junior staff on active service, Mr. Peck has very kindly consented to carry on in the meantime as Clerk-Assistant to the new Clerk of the Provincial Council. At the conclusion of the 1943 Session and anticipating his retirement, the Chairman and Members of the Council on November 18, 1943, presented Mr. Peck with a farewell gift of £100. His Honour the Administrator of the Province (Mr. G. H. Nicholls), who was also present, said that in the conduct of Parliament the Clerks had to rule by certain principles which they had to interpret in regard to any situation which might arise. His Honour said that the Natal Provincial Council was one of the most decorous Houses in the British Empire and it had achieved that position largely through the efforts of Mr. Peck and his predecessors. The presentation was made in the Refectory by Captain G. M. Botha, the Chairman of the Council (Mrs. Peck having been invited to be present), who paid tribute to both Mr. and Mrs. Peck. Laudatory messages were read from certain Senators and other ex-Members of the Natal Provincial Council.

In the Council Chamber at the last meeting of the Council in 1944 the Chairman stated:

> As this will be the last Session of the Council at which Mr. C. A. B. Peck will preside as Clerk at the Table, I desire to make the following statement to be incorporated in the minutes of the Council.
>
> Mr. Peck has been connected with the Council since 1913, first in the capacity of Clerk-Assistant and from 1927 as Clerk.
>
> I think I express the feeling of all Honourable Members when I state that Mr. Peck has been a most zealous and efficient official of the Council. At all times he has been most courteous and helpful to all Honourable Members who have had occasion to call on his valuable knowledge of procedure, and in this regard he has also been of inestimable value and assistance to the Chair.
>
> Mr. Peck lays down his office of Clerk at the Table on November 30 next with a splendid record, and he will continue temporarily as Clerk-Assistant.
>
> To Mr. Peck is extended the most sincere appreciation of his past services to this Council in particular and in general to the Province of Natal.
>
> We wish him well for the future.

The remarks of the Chairman were supported by the Administrator, the leaders of the United, Dominion and Labour Parties, as well as by the Deputy Chairman of the Council, who is " Father of the House ".

Mr. Peck responded in the customary manner by letter to the Chairman of the Council, thanking him and asking him to convey to the Administrator on his behalf his sincere appreciation of the very kind remarks, saying that he had always felt it an honour and a privilege to serve the Provincial Council of Natal. The Council has accorded to

Mr. Peck the privilege of the life use of the Reading Room and the Library of the Council.

Mr. Peck was a foundation member of this Society, in connection with the work of which he took a lively and helpful interest. We shall miss his interesting letters and contributions to the JOURNAL, but we wish him every happiness in his well-earned retirement, when he considers that the acting duty he has so unselfishly undertaken comes to an end.

United Kingdom (Prolongation of Parliament).[1]—A third Act[2] was passed in the (British) autumn of 1942 further to extend the life of the XXXVII Parliament. In moving 2 *R.* of the Bill on September 30, 1942,[3] the Secretary of State for the Home Department said that following the amendments previously made in the Parliament Act, 1911,[4] and the use of the Septennial Act, 1715, provision last year, it now became necessary to amend that Act by providing that the present Parliament shall last for 8 years instead of 7, provided for under that Act. The reasons for the continuance of the life of the present Parliament were the same as those given when the last Bill was introduced, but this Bill contained a Clause for the Parliament of Northern Ireland to come to its own decision as to prolongation of its Parliament. There was a division on this Clause (2) standing part of the Bill (Ayes, 215; Noes, 9) and the Bill was duly read 2 *R.* In *C.W.H.* an amendment was proposed,[5] but negatived, to substitute $7\frac{1}{2}$ for 8 years. There was also a division (Ayes, 220; Noes, 6) on Clause 3 of the Bill, which was reported without amendment, read 3 *R.*, transmitted to the Lords and duly received *R.A.*

On October 14, 1943,[6] another Bill was presented still further to prolong Parliament for the fourth year in succession, on the same grounds as before and substituting 9 years for 8 years in its application to the present Parliament, the fundamental reason for prolongation being that otherwise the prosecution of the War would be seriously prejudiced.[7] This Act also made provision for the substitution of 7 years for 6 years in the prolongation of the life of the House of Commons of Northern Ireland, provided such House so resolve. The further stages of the Bill were taken in both Houses without amendment and the Bill duly became 6 & 7 Geo. VI, c. 46.

House of Commons (Prime Minister: Attendance of).—On May 20, 1942,[8] a Question was asked as to the presence of the Prime Minister in the House, to which the Lord Privy Seal (Rt. Hon. Sir Stafford Cripps) replied that when the Government was rearranged in March the Prime Minister stated to the House that he wished to relieve himself of the burden of attending to Parliamentary business in order to devote himself to other pressing and urgent business and for that purpose he had appointed a Leader of the House of Commons to take

[1] *See also* JOURNAL, Vols. IX, 13; X, 12. [2] 5 & 6 Geo. VI, c. 37.
[3] 383 *Com. Hans.* 5, s. 810. [4] 1 & 2 Geo. V, c. 13. [5] 383 *Com. Hans.* 5, s. 1515. [6] 392 *Ib.*, 1096. [7] 393 *Ib.*, 110. [8] 380 *Com. Hans.* 5, s. 239.

his part in debate in the ordinary course. From time to time the Prime Minister had to come to the House to make important statements on the War situation. He recently made such a statement and he felt that there was nothing he could add to it at the present time. Therefore, in his opinion and that of the Government, debate should be conducted in the ordinary way, the Leader of the House taking the position of the Prime Minister.

House of Commons (Deputy Prime Minister).—On September 9, 1942,[1] in reply to a Question, the Secretary of State for the Dominions and Deputy Prime Minister (Rt. Hon. C. R. Attlee) said there was no title Deputy Minister of Defence as such. In the absence of the Prime Minister, the Deputy Prime Minister presided at all Cabinet meetings and meetings of the Defence Committee and was responsible for transacting all business usually done by the Prime Minister which could not be referred to him.

House of Commons (Ministers' Powers: Delegated Legislation).[2] —On January 21, 1942,[3] a Question was asked the Prime Minister with reference to the Donoughmore 1932 Report[4] on the subject of Ministers' powers, whether he could now set up a suitable Standing Committee of this House, or of both Houses, to examine Orders and Regulations and supervise subordinate legislation generally with a view to any necessary action, especially as regards the many Regulations, the modification of which could assist the War effort, to which the Lord President of the Council (Rt. Hon. Sir J. Anderson) replied that this particular proposal of the Report had not been put into operation and in present circumstances it would be impracticable, owing to the number of Regulations, etc., on which reports would have to be made. The hon. Member further asked whether, in view of the fact that, in present conditions, numerous and frequently important Regulations were put into operation without any adequate Parliamentary control or revision, should the Prime Minister's attention be drawn to the question of the great advantage of some subsequent Parliamentary revision of these Regulations.

United Kingdom (Ministers of the Crown: Cabinet Rank).—In answer to a Question in the House of Commons on February 9, 1943,[5] the Prime Minister said that there were 3 classes of Ministers. First the War Cabinet, who were collectively responsible for winning the War and for all high policy. Second, Ministers at the heads of Departments who would normally be included in a peace-time Cabinet and whose offices were therefore considered to be of " Cabinet Rank ". And thirdly, the Under-Ministers of varying rank. A full list of all the Ministers concerned was to be found in current official publications. " A substantial reduction in their numbers ", concluded Mr. Churchill, " must be included in a victorious peace."

[1] 383 *Ib.*, 168. [2] *See also* JOURNAL, Vols. I, 12; IV, 12; VII, 30; VIII, 26.
[3] 377 *Com. Hans.* 5, s. 349. [4] Cmd. 4060 (now to be reprinted).—[ED.]
[5] 386 *Com. Hans.* 5, s. 1185.

United Kingdom (Ministers of the Crown and House of Commons Disqualification Bill) : Offices of Profit.[1]—In addition to the amendment and extension of the House of Commons Disqualification (Temporary Provisions) Act, 1941,[2] as outlined in the succeeding Editorial note, the above-mentioned Bill provided that the Ministers of the Crown (Emergency Appointments) Act, 1939,[3] shall be repealed on such date as His Majesty may by Order in Council declare to be the date on which the emergency that was the occasion of the passing of the Act came to an end.

In moving 2 *R.* of the Bill in the House of Commons on February 18, 1942,[4] the Attorney-General (Rt. Hon. Sir D. Somervell) said that the Select Committee[5] suggested that the certificate which the Prime Minister issued in operating the Act should state, in addition to what it stated already, that the Member's retaining his membership in the House was required in the public interest, but the Government did not think it would be an appropriate or advisable proposition. There may be work, which Members in the public interest should be able to perform, if asked to do so by the Prime Minister or by the Government, without being forced to resign their seats. The case should be one in which, in the Prime Minister's opinion, the Member should not have to face the dilemma either to refuse the work offered him or resign. It was for the Member to decide whether he could properly accept the appointment and, if so, to apply for the certificate and so retain his membership.[6] Sir D. Somervell, continuing, said that he had no reason to suppose that any constituents had not approved and welcomed the course taken by their Member in accepting an appointment, accepting the certificate and remaining a Member of the House. Suppose, however, that some of his constituents objected and did what they were entitled to do, make representations to their Member on the subject, saying, " You are not to accept the appointment, or, if you do, you ought to resign your membership," those representations would be for the Member to consider. It would be constitutionally wrong if the Prime Minister were brought into that controversy.[7] The Government was therefore against inserting in the certificate the words suggested by the *Sel. Com.* in their Report.

The next suggestion by the Committee was what greater publicity might be desirable when certificates under the Act were given to individual Members, by arrangements made with Mr. Speaker's consent, for the granting of these certificates to be reported in *Hansard.* The presentation of such certificates already appears in the Proceedings sent to Members, but if, subject to Mr. Speaker's consent, such certificates were printed in *Hansard,* though he did not consider it should be regarded as a precedent, the Government believed that such a suggestion might commend itself to the House.[8]

[1] 5 & 6 Geo. VI, c. 11. [2] *See also* JOURNAL, Vol. X, 98. [3] See *Ib.*, VIII, 11. [4] 377 *Com. Hans.* 5, s. 1818. [5] *See* JOURNAL, Vol. X, 101. [6] 377 *Com. Hans.* 5, s. 1820. [7] *Ib.*, 1820. [8] *Ib.*, 1821.

Clause 3 of the Bill dealt with the Ministers of the Crown (Emergency Appointments) Act, 1939, which enabled a Minister appointed for purposes connected with the prosecution of the War to sit in this House, and, as applied to him, prevented the normal disqualification. It also contained a section enabling statutory powers to be transferred to him from another Minister and other consequential provisions. The wording of s. 1 of the 1939 Act is:

> His Majesty may by Order in Council direct that this Act shall apply to any Minister of the Crown appointed for the purpose of exercising functions connected with the prosecution of any war in which His Majesty may be engaged.[1]

Clause 3 therefore provides that the Act shall be repealed (as above indicated).[2] It might be necessary in some cases to go on dealing for a longer period with problems which have arisen directly out of the present emergency. In reply to a Question by an hon. Member, as to the precise meaning of the words " the emergency that was the occasion of the passing of the Act " in Clause 3 of the Bill, the Attorney-General said that in his view those words included what in one sense one might say had been added by the adherence to their then enemy of 2 new enemies, in the shape of Italy and Japan, and until those 3 enemies were disposed of the emergency which gave rise to the passing of the Act had not been concluded. Also some technical functions might require to be continued in a modified form after the emergency, as part of the permanent structure of the country.[3]

In *C.W.H.* after Clauses 1 to 4 had been " ordered to stand part of the Bill ", the Deputy Chairman selected the second new Clause on the Order Paper—namely:[3]

> NEW CLAUSE (*Limitation of period of Certificate*).—No certificate shall be issued to any Member who is appointed to an office or post involving residence abroad for more than 3 years unless an address shall have been presented to His Majesty by the Commons House of Parliament praying that the period shall be extended in any particular case. His Majesty may by Order in Council give effect to this.

which was brought up and read 1 *R.*, after which its proposer (Mr. Ernest Evans) begged to move, " That the Clause be read a Second Time ".

The Attorney-General, however, felt that the difficulty about this fixed-term proposal was that there was a certain unreality in fixing a term when they appointed a man to the sort of work or position that would be likely to come under the Bill.[4]

Question, " That the Clause be read a Second Time ", put and negatived.

The following new Clause was then proposed by another hon. Member:

[1] *See* JOURNAL, Vol. VIII, 11. [2] 377 *Com. Hans.* 5, s. 1823. [3] *Ib.* 1837. [4] *Ib.* 1838.

NEW CLAUSE (*Amendment of form of Certificate*).—The form of the certificate required by s. 1 of the House of Commons Disqualification (Temporary Provisions) Act, 1941, shall be amended in the second paragraph by inserting the words " while remaining a Member of the said House " before the words " is required in the public interest for purposes connected with the prosecution of the present war ".[1]

Upon which the same procedure followed as in the former new Clause. To this new Clause the Attorney-General observed that it suggested that the Prime Minister should go farther than that and should certify that it was in the public interest that the Member should remain a Member of the House, which the Attorney-General thought went beyond the realities of the situation, and, continuing, Sir D. Somervell said:[2]

> Naturally, every Member would consider the position *vis-à-vis* his constituents. It was pointed out that many Members of the House are serving in the Armed Forces, and that many of them may be abroad for the whole period of the War and that they might become prisoners of war, and so be cut off from their constituencies. . . . It is for the Member, in the first instance, to consider whether he will take the appointment or not, and then, if the appointment is abroad, he has to consider whether he can reconcile it with his duty to his constituents, just as every Member who joins the Forces has to consider whether it is consistent with his duty to his constituents to do so. These are matters that can be dealt and have to be dealt with in other connections.
>
> Then, following up the procedure, the Prime Minister expresses his willingness to give the certificate—and that may be of value to the Member in reinforcing his own judgment in the matter—that this is a case in which he considers the Member should be free to accept the position without being forced to resign.

Question, " That the Clause be read a Second Time ", put and negatived,[3] after which the Bill was reported without amendment, read 3 *R.*, passed and received the concurrence of the House of Lords, duly becoming 5 & 6 Geo. VI, c. 11.

House of Commons Disqualification (Temporary Provisions) Bill: Offices of Profit.[4] — This Bill, which is cited in s. 2 thereof as the House of Commons (Temporary Provisions) Act, 1943 (6 & 7 Geo. VI, c. 10), and the House of Commons Disqualification (Temporary Provisions) Act, 1941 (4 & 5 Geo. VI, c. 8),[5] the Ministers of the Crown and House of Commons Disqualification Act, 1942 (5 & 6 Geo. VI, c. 11), together as the House of Commons Disqualification (Temporary Provisions) Acts, 1941 to 1943 (6 & 7 Geo. VI, c. 10), was introduced into the House of Commons on February 10, 1943.[6] The Act of 1941 is continued in force for 3 years after the passing of such Act, s. 2 of which was amended by s. 2 of the Ministers of the Crown and House of Commons Disqualification Act, 1942, by the substitution of 3 for 2 years. The limit of M.P.s' certificates was put at 25, and the actual number as on February 10, 1943, was still, as in 1942, 18.

[1] *Ib.* 1840. [2] *Ib.* 1841. [3] *Ib.* 1849. [4] *Ib.* 1849.
[5] *See also* JOURNAL, Vol. X, 98. [6] 386 *Com. Hans.* 5, s. 1354.

United Kingdom (Minister of Works and Planning). — On April 29, 1942,[1] the Joint Parliamentary Secretary to the Ministry of Works and Buildings (Mr. H. Strauss) in moving 2 *R.* of the Minister of Works and Planning Bill[2] said that His Majesty did not require statutory authority to appoint a new Minister, but when one was appointed some legislation was almost invariably necessary. It was required for the transfer to the new Minister of any statutory functions performed by another Minister and for enabling the Minister and his Parliamentary Secretaries[3] to sit in the House of Commons without incurring disqualification as holders of Offices of Profit under the Crown[4] and for other purposes. It was also customary in such a Bill to insert a provision providing for the payment of the Minister and his staff out of moneys provided by Parliament. The new Minister would exercise the functions hitherto exercised by the Commissioner of Works, the Minister of Works and Buildings, and the Commissioner of Public Works in Ireland, together with the town and country planning functions hitherto exercised by the Minister of Health.[5] Mr. Strauss then went into the details of all the duties of the new Minister under the Bill, both in regard also to the transfer to the new Minister of Government buildings in the United Kingdom as well as in foreign countries. Regarding the transfer of such properties in the Dominions, however, since the passing of the Statute of Westminster, 1931, it has not been possible for an Act of Parliament of the United Kingdom to affect the law of certain Dominions unless the Act expressly declared that the Dominion in question has requested and consented to the passing of the Act. But any such requests and consents were for all practical purposes out of the question in War-time, and it was therefore intended that the property of the Commissioner of Works in the Dominions should be transferred to the new Minister by conveyances executed in the proper form. In regard to foreign countries it was proposed to execute a conveyance of the property in accordance with the law of the country concerned.[6]

The Bill was also necessary as it was intended that the Minister of Planning should be a permanent institution provided for by a permanent Act. Both the Emergency Powers (Defence) Acts, 1939 and 1940, an Order which legalized the position of the joint Parliamentary Secretary and the Ministers of the Crown (Emergency Appointments) Act, 1939, under which the Minister at present held office, were temporary Acts. In fact, the latter Act had been repealed by the Minister of the Crown and House of Commons Disqualification Act, 1942.[7]

The Bill was duly read 2 *R.*, after which the necessary Financial Resolution was reported from *C.W.H.*[8] and the Bill taken in Committee, where 2 amendments were made. First, in Clause 4 (Capacity to sit

[1] 379 *Com. Hans.* 5, s. 965-1039.
[2] *See also* JOURNAL, Vols. IV, 12; V, 19; VI, 12.
[3] 379 *Com. Hans.* 5, s. 965.
[4] *Ib.* 967.
[5] 5 & 6 Geo. VI, c. 23.
[6] *Ib.* X, 92.
[7] *Ib.* 969; which *see* above.
[8] 380 *Ib.* 550.

in the House of Commons) by the deletion of lines 26 and 27 and the addition of the Proviso given below, the Clause as agreed to reading:

> 4. Neither the Minister, nor any Parliamentary Secretary appointed by the Minister, shall, by reason of his office as such, be incapable of being elected as a Member of the Commons House of Parliament, or of sitting or voting as such a Member: Provided that during any period during which the Minister is a Member of that House not more than one such Parliamentary Secretary shall sit as a Member thereof, and, during any other period, not more than two such Parliamentary Secretaries shall sit as Members thereof.

The second amendment was in Clause 6 (Provisions as to Orders in Council) by the addition of the following sub-clause (8):

> (8) Any Order in Council under this Act repealing, modifying or adopting any enactment shall be laid before Parliament as soon as may be after it is made: Provided that no such Order in Council shall be deemed, for the purposes of s. 1 of the Rules Publication Act, 1893, to be a statutory rule to which that section applies.

House of Lords (Secret Sessions, 1941-42 and 1942-43).[1]—A Secret Session was held on November 12, 1941,[2] 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 December 3, 1941.[3]

On December 10, 1941,[4] the form of Motion was:

> That the House do now sit in Secret Session.

On the Question being put and agreed to the Official Reporter withdrew. Similar procedure was followed on January 8,[5] 20,[6] May 5,[7] August 4,[8] October 14,[9] 1942; January 26,[10] April 13,[11] May 5,[12] May 11,[13] May 18,[14] October 13,[15] November 4,[16] and November 23, 1943.[17]

The occasions during the 1941-42 and 1942-43 Sessions when the House of Lords sat in Secret Session to discuss stated Motions or Questions[18] (That the sitting of the House to consider the Motion [or Question] of the Lords be in Secret Session) by certain Peers were as given below, the entry in *Hansard* being:

> The Lord Chancellor (Viscount Simon): Strangers will withdraw.
> Then in pursuance of the Resolution that the sitting of the House to consider the Motion (or Question) of —— be in Secret Session, the Official Reporter withdrew.
> House in Secret Session.

[1] *See also* JOURNAL, Vols. VIII, 13; IX, 15; X, 15. [2] 121 *Lords Hans.* 29. [3] *Ib.* 196. [4] *Ib.* 255. [5] *Ib.* 406. [6] *Ib.* 411. [7] 122 *Ib.* 817. [8] 124 *Ib.* 155. [9] *Ib.* 658. [10] 125 *Ib.* 774. [11] 127 *Ib.* 139. [12] *Ib.* 425. [13] *Ib.* 449. [14] *Ib.* 509. [15] 129 *Ib.* 172. [16] *Ib.* 524. [17] *Ib.* 701. [18] When not starred, these are debatable in the Lords.—[ED.]

Session.	*Date.*	*Subject.*	*Peer.*
1941-42	Aug. 6[1]	To call attention to the conduct of the War at sea; and to move for Papers. (*Lord Winster.*)	Viscount Cranborne — *Lord Cecil.*
	Oct. 20[2]	That the House do resolve itself into Secret Session to consider a statement as to future business.	Secy. of State for Colonies (Viscount Cranborne — *Lord Cecil*).
1942-43	Dec. 1[3]	To ask His Majesty's Government, whether in view of the fact that they have accepted that the first and principal object of a maritime Power is to obtain and maintain the command of the sea, the House can now be assured that the Navy has been supplied with all the aircraft in numbers, type, armament and with all the technical equipment that the various naval commands consider essential in order to attain that object; and to move for Papers. (*Lord Boyle.*)	Secretary of State etc., as above.
	Dec. 15[4]	That the sitting of the House to receive a statement on developments in North Africa be in Secret Session. (*Lord Addison* by *Private Notice.*)	Lord Privy Seal (Viscount Cranborne — *Lord Cecil*).
	Jan. 19[5]	A Statement on business.	Lord Privy Seal.
	Feb. 4[6]	To call attention to the present position of the U-boat campaign; and to move for Papers. (*Lord Hankey.*)	Lord Privy Seal.
	Feb. 9[7]	To call attention to the work of the Ministry of Aircraft Production; and to move for Papers. (*Lord Beaverbrook.*)	Lord Snell on behalf of Lord Privy Seal.
	July 14[8]	To ask His Majesty's Government whether they are satisfied with the defensive fire-power of our heavy bombers; and to move for Papers. (*Earl of Mansfield.*)	Lord Privy Seal.
	July 28[9]	A Ministerial Statement.	Lord Privy Seal.

House of Commons (Secret Sessions).—In addition to the instances already given,[10] the House has during the 1941-42 and 1942-43 Sessions been in Secret Session on the following dates, and only where the information is given in parentheses has the subject been made known. In

[1] 124 *Lords Hans.* 259, 260. [2] *Ib.* 660.
[3] 125 *Ib.* 329, 340. This Motion, however, had been moved in Open Session on the same day by Lord Boyle (the Earl of Cork and Orrery), but a Government Motion was carried to consider the subject in Secret Session.—[ED.]
[4] 125 *Lords Hans.* 527.
[5] *Ib.* 627. [6] *Ib.* 945. [7] *Ib.* 947, 979. [8] 128 *Ib.* 481, 505.
[9] *Ib.* 817. [10] *See* JOURNAL, Vols. VIII, 13, 19, 98; IX, 16; X, 22.

1941: November 12 and December 19. In 1942: January 8, February 11, April 23, May 5 (Privilege),[1] 6, June 25 (Privilege),[2] July 16 (Shipping Situation), August 4 (Statement by Deputy Prime Minister), October 15, 22, November 11, 24, and December 10. In 1943: January 19, 20, 21, 26, March 30 (Business Arrangements), 31 (Sittings of the House), May 11, 18, November 4, 10 (Statement Public Business) and 23. In all cases, the form has been as on November 21, 1940.[3]

The House subsequently resumed in Public Session.

In regard to the Secret Session of March 31, 1943:[4]

Mr. SPEAKER *afterwards issued the following Report of the* PROCEEDINGS IN SECRET SESSION:

The House in Secret Session heard a statement from the Prime Minister on the Sittings of the House and debated a consequential Motion. A Division took place on an amendment which was defeated.

Proceedings in relation to Division.

Amendment proposed to the Prime Minister's Motion, in paragraph (i), to leave out sub-paragraph (*b*).—(*Sir Edward Grigg.*)

Question put, "That sub-paragraph (*b*) stand part of the Question." The House divided: Ayes, 24; Noes, 63.

The House subsequently resumed in Public Session.

Espying Strangers.—Upon the attention of Mr. Speaker being called to the fact that Strangers were present on the House of Commons going into Secret Session on November 23, 1943, an hon. Member rose on a point of order, but Mr. Speaker stated that as soon as Strangers were espied the Question had to be put.[5]

House of Commons (Secret Session : Reporting).—On December 19, 1941,[6] an hon. and gallant Member asked Mr. Speaker if it would not be desirable to have a record taken by an appropriate number of Official Reporters, sworn to secrecy, of the proceedings of Secret Sessions, the record to remain in Mr. Speaker's custody and be available to Members of the House of Commons if they desired to refer to it under conditions of secrecy. The hon. Member added that he understood it was the practice for secret Government conferences, at the present time, to take a note which is kept in secret custody. Also, he now understood that it was not open to a Member who was present at a Secret Session to discuss what has occurred at that Secret Session with another hon. Member who did not happen to have been present. It was important that Members of Parliament and members of the Government who may perhaps for one reason or another not be able to be present at Secret Sessions, should have an accurate account of what had occurred. At present they had to rely upon a possibly in-

[1] 379 *Com. Hans.* 5, s. 1218. [2] 38c *Ib.* 2173; *see also* Art. XIV, "Applications of Privilege—Alleged Disclosure, etc." [3] *See* JOURNAL, Vol. X, 22.
[4] 388 *Com. Hans.* 5, s. 200. [5] 393 *Ib.* 1475. [6] 376 *Com. Hans.* 5, s. 2246.

complete report of what had been remembered by a Minister who had been in the House, as no written report may be made by any Member of the House. It was obviously essential that absent Cabinet Ministers or members of the Government should have an accurate report of what took place.

Another hon. Member then asked if it was true that any Member took either a longhand or a shorthand note for anyone's information.

Mr. Speaker replied that it was not an accredited report of the Debate. In reply to the first Question, Mr. Speaker said that the matter of Secret Sessions was fully debated in the House some time ago. He would say that a Secret Session ought to be really secret. His experience of secrets was that the fewer the loopholes the better. As to the procedure suggested by the hon. and gallant Member, it was not for him (Mr. Speaker) to decide, and it was certainly not a matter which the House could decide on the spur of the moment. He believed it was understood that a Member should not discuss what had happened.

In regard to a further Question, Mr. Speaker said that it had been decided that on special occasions it was his duty to make a special report, after consultation with certain Members of the House. He was reminded that that was so in the case of a Division in a Secret Session. The House had put upon him the burden of making a statement as to what the Division was about.

Another hon. Member referred to the Speaker's Ruling given in the earlier stages of the War,[1] that it was competent for a Member to disclose to another Member what had taken place at a Secret Sitting and asked for a definite Ruling on the matter.

Mr. Speaker stated that there was a record of what he had said on December 12, 1939,[1] on the following Question of a Secret Session. The Question was then put to him:

> What would be the position of a Member who was present in the House if he conversed with a Member who was not present in a tone of voice loud enough to be heard by somebody else ?

" The answer was that that was a question which I could not answer."

Another hon. Member asked whether it was in order for a Member who was present to discuss what had happened with a Member who was not present. As far as the hon. Member could recollect, Mr. Speaker gave a further Ruling on that occasion, that it was in order for a Member of this House to discuss with a Member of the other House what had passed during a Secret Session of the House of Commons. That being so, he should have thought that there was certainly Privilege existing in a Member who had been present to reveal privately to another Member who had not been present what had passed in the course of a Secret Session.

Mr. Speaker stated:

[1] *See* JOURNAL, Vol. VIII, 21.

The Member has a right to be present, but he does not exercise that right, and is not present. The hon. and gallant Member asks me whether an hon. Member who was present could discuss what took place with another Member who was not present. I said that I thought that the fewer loopholes there were for making a Secret Session not secret, the better. Personally I should say that it would be much better that we should not discuss what took place at a Secret Session with anyone who was not present, although he might be a Member of this House.

The Lord Privy Seal observed that he understood from former discussions on this subject that the essential point was to keep these matters secret to Members of this House, as against members of the general public, and that they were not secret between Members of the House, provided they took all precautions to ensure that no one else should hear them, because it was impossible at times for Members of the Government to be present and, for the effect of the debate to be apprehended by Ministers, and the points raised to be brought before them, it was essential that there should be communication between Ministers on these subjects. He submitted, therefore, that, subject to all proper precautions, it should be held that it was open for Members to discuss these matters among themselves, and to tell other Members what had taken place.

The hon. and gallant Member who raised the subject then asked the Minister, in view of Mr. Speaker's Ruling, if the Government would give consideration that there should be a shorthand note taken and kept in secret. It was essential that absent Members of the Government should have an accurate account of what happened in Secret Session and in no other way could they get it.

In reply to further queries, Mr. Speaker said that he was asked his opinion on this matter and he gave it. He understood that it was certainly the wish of the House that Members who had not been present could discuss what took place with Members who had been present. If that was the wish of the House, he had no objection.

Upon another Member raising again the question of Members of the other House, Mr. Speaker said that that was enlarging the subject and he thought they had better leave it at that.

Another hon. Member asked if it did not really follow from what the Lord Privy Seal had said that if Members of the Government who were in another place were to be informed of what took place in Secret Session, permission must be granted for communication between Members of this House and Members of another place.

Mr. Speaker: I am quite agreeable that the House should have its own way in this matter.

House of Commons (Secret Questions : Awkward Questions).—On September 11, 1941,[1] Commander S. King-Hall (Ormskirk) asked

[1] 374 *Com. Hans.* 5, s. 293-5.

the Prime Minister whether any steps had recently been taken to improve the co-ordination of the several organizations responsible for political warfare and what was the nature of the reorganization, to which the Prime Minister replied that the Secretary of State for Foreign Affairs, the Minister of Information and the Minister of Economic Warfare had been in consultation on the subject of propaganda to enemy and enemy-occupied territories and that they had recommended (which recommendations had been approved of by him) that a small special executive for the conduct of political warfare be established, in lieu of the various agencies concerned, which had done very excellent work, to conduct such propaganda in all its forms.

The hon. Member then asked to which Minister Questions should be put. In reply Mr. Churchill stated that there could be no Questions on secret matters. On all other matters, to the Minister of Information.

In reply to Mr. P. J. Noel-Baker (Derby) as to which Ministers would the new body be responsible in a general sense, the Rt. Hon. the Prime Minister said that the executive would be responsible to the three Ministers sitting together, but that if those Ministers, who had different functions and who approached matters from different angles, did not agree, the matter would then come before him as Minister of Defence, and afterwards to the Cabinet.

Captain L. F. Plugge (Chatham) then asked if such Committee would be empowered to establish the special organization and acquire the material so much needed for the expansion of the broadcasting system? To this Mr. Churchill said that he was sure it would be able to make recommendations on these matters but that it must not be assumed that nothing had been done.

Mr. G. M. Garro-Jones (Stoke Newington) then asked when were non-secret Questions sifted from secret Questions and who decided whether a Question was secret or not? To this Mr. Churchill replied that a certain practice had grown up. In certain cases the Government was asked about matters which could not be put on the Paper until the Question had been considered. In such cases the regular practice of sifting Questions would be considered.

Mr. Garro-Jones then asked when the decision was made and what was the system? Suppose a Member desiring to put a Question felt that it had no secret aspect, would the Clerks-at-the-Table be empowered to reject the Question?

The Prime Minister:

> The Clerks at the Table exercise direct authority under Mr. Speaker. Therefore I should be presuming were I to attempt to speak upon that, but when I or other Ministers have heard of a Question which has been put down quite inadvertently by a Member who did not know what points would be touched upon, we have made representations, and those representations have been considered, under the general authority of the Chair. I trust I am not presuming.

Mr. Maxton (Glasgow, Bridgeton) then said that the use of the term "executive" raised the question in his mind as to whether this body,

which was to speak in the name of Great Britain, was to carry on their political warfare and be completely anonymous and unknown to Members of the House of Commons, to which Mr. Churchill replied that the persons who did the work were anonymous but the persons under whom they acted were Ministers of the Crown responsible to Parliament.

A Supplementary was asked as to the housing and staffing of the foreign broadcast service, after which Mr. R. de la Bere (Evesham) asked what was the difference between a secret Question and an awkward Question?

The Prime Minister:

> One is a danger to the country and the other is a nuisance to the Government.

House of Commons (Adjournment: Acceleration of Meeting; Form of Resolution).—On November 11, 1940,[1] on the Motion of the Prime Minister, it was

> Resolved:—That during the present Session whenever the House stands adjourned and it is represented to Mr. Speaker by His Majesty's Government that the public interest requires that the House should meet at any earlier time during the Adjournment, and Mr. Speaker is satisfied that the public interest does so require, he may give notice that he is so satisfied, and thereupon the House shall meet at the time stated in such notice and the Government Business to be transacted on the day on which the House shall so meet shall, subject to the publication of notice thereof in the Order Paper to be circulated on the day on which the House shall so meet, be such as the Government may appoint, but subject as aforesaid the House shall transact its business as if it had been duly adjourned to the day on which it shall so meet, and any Government Orders of the Day and Government Notices of Motions that may stand in the Order Book for any day shall be appointed for the day on which the House shall so meet; provided also that in the event of Mr. Speaker being unable to act owing to illness or other cause, the Chairman of Ways and Means, *in his capacity as Deputy-Speaker*, be authorized to act in his stead for the purposes of this Resolution,

and on August 6, 1941,[2] the Resolution above set forth was amended by leaving out the words "*in his capacity as Deputy-Speaker*" (shewn above in italics) and inserting "*or Deputy-Chairman, in order to authorize the Chairman or Deputy-Chairman of Ways and Means to act in place of Mr. Speaker, in calling the House together at an earlier date during Adjournment, if necessary*".

House of Commons (Arthur Jenkins Indemnity: Office of Profit).[3]—On December 9, 1941,[4] the Financial Secretary to the Treasury (Captain Crookshank) in moving 2 *R.* the above-mentioned Bill said:

[1] 367 *Com. Hans.* 5, s. 3. [2] 373 *Ib.* 1958. [3] *See also* JOURNAL, Vol. IX, 98.
[4] 376 *Com. Hans.* 5, s. 1408.

Under the Essential Work (General Provisions) Order, 1941, certain local appeal boards were set up, and in this particular case it was represented by all the parties who are likely to be concerned, that is to say, the work-people and their employers, that a suitable person to be chairman would be Mr. Arthur Jenkins, and he accepted that appointment. It is not an appointment to which there is a salary attached in the ordinary sense of the word, but there is a certain small sum payable per sitting, as in the case of the chairmen of similar boards. I understand that although Mr. Jenkins sat a good number of times as chairman, he did not take that fee, but for all that there is no doubt that, as the law now stands, it is an office of profit under the Crown, though it is not in the colloquial sense an office at all, and in this particular case, though the fee was payable, it was not accepted, so there was no profit for Mr. Jenkins. But as a result of accepting such office he automatically vacates his seat as a Member of Parliament and becomes liable to very heavy penalties if, after acceptance of the office, he sits and votes in this House. I am not sure whether he has actually sat and voted. I should think perhaps not, because there have been very few votes, and, in point of fact, he accompanied the Lord Privy Seal to the United States and therefore was not even in this country for a good deal of the period.

However, it is clearly right that we should put this matter straight, and for that reason this Bill is introduced. We are not helped by the legislation that we passed a little time ago under the name of the House of Commons' Disqualification (Temporary Provisions) Act, 1941, because all that Act did was to exempt from the operation of the general law with regard to offices of profit under the Crown Members who had accepted appointments between the outbreak of War and the passing of the Act, so that does not cover Mr. Jenkins. In subsequent cases the Act provides that if the First Lord of the Treasury issues his certificate to a Member of Parliament, he may then continue in the office, but in this case, as I hope I have made clear, Mr. Jenkins is technically not a Member of Parliament, because he has technically vacated his seat by accepting an office of profit under the Crown. Therefore, to get over all these difficulties this Bill, which is in the usual form on such occasions as this, is presented to the House.

The moral of the whole thing, if there is a moral, is that if any Member of Parliament is approached to take any kind of appointment, indeed, if any Department offers any kind of appointment to a Member, it will be as well if he takes the earliest opportunity, before accepting it, of consulting either myself, as representing the Treasury, and therefore the First Lord of the Treasury, or the Attorney-General, in order that we may have no more difficulties of this kind.

The Bill was amended in *C.W.H.*, reported and read 3 *R.*, passed by the House of Lords and became 5 & 6 Geo. VI, c. 1. Section 1 of the Act reads:

Arthur Jenkins, esquire, shall be and is hereby freed, discharged and indemnified from all penal consequences whatever incurred by him by sitting and voting as a Member of the Commons House of Parliament while holding the office of Chairman of the Local Appeal Board for a Royal Ordnance Factory and shall be deemed not to have been or to be capable of sitting or voting as a Member of that House by reason only of his having held that office at any time before the passing of the Act.

House of Commons (Ministerial Statement before Questions).—On December 10, 1941,[1] as the Prime Minister (Rt. Hon. Winston Churchill) had an important statement to make which should be made immediately, the House agreed that it should be made *before* Questions, which were then prolonged beyond the time fixed for them by the amount of time taken up by the statement.

House of Commons (Disposal and Custody of Documents).—Both in the 1941-42 and the 1942-43 Sessions Select Committees were set up to examine all documents and records in the custody or control of any Officer of the House; to report which of these might be destroyed and which were of sufficient historical interest to justify their preservation; and to recommend methods for securing the safe custody of any classes of documents which ought to be preserved. The Committee made 2 Reports in the 1941-42 Session[2] and 1 Report[3] in the 1942-43 Session.

The Committee took evidence from the Parliamentary and other officials (which was not printed) and made certain recommendations as to what classes of papers and records should be kept, and if so for what period, and what papers and records should be disposed of. The Committee went into the subject in detail, but space does not admit of such being given here. The subject, however, is quoted for reference should any overseas Parliament or Legislature with long-established records contemplate a review of them for record purposes or disposal.

House of Commons (Private Bill Standing Orders).—On July 30, 1941,[4] and November 18, 1942,[5] certain amendments (therein set forth) were made to the Standing Orders relating to Private Business.

House of Commons (Broadcasting of War Statement).—On January 20, 1942,[6] the Prime Minister (Rt. Hon. Winston Churchill) was asked whether he would consider the broadcasting of important speeches made in the House, in view of the fact that such arrangements were made in connection with recent speeches by him to Congress at Washington and in the Canadian Commons. Mr. Churchill replied that the proposal would be a great convenience and he believed would be welcomed by the public in regard to major statements about the War. The record could be used for subsequent broadcasting and that, as an innovation of this kind should be most carefully watched, he would propose that an experiment be made of a War statement he would

[1] 376 *Com. Hans.* 5, s. 1501.
[2] H.C. Papers 64 and 113. The First Report was debated and agreed to by the House of Commons on April 13, 1942 (379 *Com. Hans.* 5, s. 91-8). [3] *Ib.* 93.
[4] 376 *Com. Hans.* 5, s. 657. [5] 382 *Ib.* 657. [6] 388 *Ib.* 5, s. 199.

shortly be making. A Motion would therefore be placed on the Paper for this particular occasion only; a separate Motion would be required in each individual case, so that the House would have control of the practice and that if it were found to be objectionable, or not in the public interest, it could be dropped. The record would be the property of the House and its use, in case of any controversy arising, would be a matter for decision by the House under Mr. Speaker's guidance. As this, however, affected the customs of the House, the Prime Minister would leave the decision to a free vote.

Certain points were then raised in a series of Questions by hon. Members. Objections were made on the ground that the main function of the House was debate and criticism. If the proposed practice was adopted, ought not replies to such speeches to be similarly broadcast? The House was not a platform but a representative assembly intended to express the whole will of the nation. Would the Prime Minister see that an impartial and unbiased account of the proceedings would give expression to all points of view? The appointment of a Select Committee was suggested. Would the new practice be a precedent for broadcasting ordinary matters of Party politics? Would not criticism become divorced from speeches? Would the speech be edited by the Speaker or anybody else?

The Prime Minister then remarked that the proposed practice would be a convenience because of the great difference in time between the United Kingdom, the United States, Australasia, India, South Africa, etc., but that he was entirely in the hands of the House, which was as competent as any particular group of individuals to consider the matter. It would be a matter for Mr. Speaker's guidance as to whether anything should be left out or not be reproduced.

On the following day,[1] the following Motion stood upon the Order Paper in the name of the Prime Minister:

> That the statement on the War Situation to be made by the Prime Minister in this House on the First Sitting Day after 25th January be electrically recorded, with a view to being subsequently broadcast.

The Prime Minister, however, stated that as there appeared to be so much difference of opinion about this Motion, he did not intend to press it. Mr. Churchill was then asked if it was his intention to broadcast to the country on the same day he made his speech in the House of Commons, to which he replied in the affirmative. An hon. Member suggested that it was obviously a strain on the Prime Minister to make two speeches on the same day. Would it not be better to make his broadcast statements on days when he did not have to make an important speech in the House of Commons?

The Prime Minister was again asked if he would consider the appointment of a Select Committee to look more fully into the implications of the question. Was there not another member of the Govern-

[1] *Ib.* 382.

ment capable of undertaking these broadcasts? Did not the Prime Minister realize that the objections to the proposal arose from fears that it would set a precedent for ordinary matters of Party politics and would not democracy be well advised to show that it can adapt its procedure to deal with the times of national emergency?

When the Prime Minister indicated that he would not go on with the Motion, an hon. Member asked if the Prime Minister realized how much the House of Commons appreciated his democratic instinct and his desire to defer to the general feeling of the House.

House of Commons (Amendments to Motions of Confidence).—On January 28, 1942,[1] an hon. Member asked whether it was Mr. Speaker's intention, in relation to the Motion of Confidence standing upon the Order Paper in the name of His Majesty's Government, to accept any of the amendments to that Motion on the Order Paper, to which Mr. Speaker replied that it was not his intention to accept any of those amendments the subject of which could be discussed in the course of debate.

House of Commons (Front Opposition Bench).—On February 5, 1942,[2] Mr. Speaker's guidance was asked whether it was in accordance with the traditions and customs of the House for members of the Government to sit on the Front Opposition Bench.

In reply, Mr. Speaker, while stating that he had no direct authority in regard to the matter, said that no place in the House was allotted to any particular Member, but beyond that it was the usual custom for the Front Government Bench to be occupied by members of the Government and the Front Opposition Bench by members of the official Opposition. It had, however, been necessary to modify this, as there was no official Opposition, and, "as no man can serve two masters", it was undesirable for members of the Government to sit on the Front Opposition Bench.

House of Commons (Publications and Debates Reports).—On February 10, 1942,[3] the First Report[4] from the Select Committee on Publications and Debates Reports, 1941-42, was brought up, read, tabled and ordered to be printed. The Committee examined Mr. E. H. Keeling, M.C., a Member of the House, Sir W. Codling, C.B., Controller of H.M.S.O., Mr. F. W. Metcalfe, Clerk-Assistant of the House, and Mr. F. J. Turmaine, Superintendent of the printing of Votes and Proceedings, and came to the conclusion that, apart from increase in staff and the extra expense involved, neither of which could be justified at the present time, there were other difficulties in the way of an earlier delivery of the Vote, and it could not recommend any departure from the existing arrangements in order to deliver the Vote or "Blue Paper" to Members so as to reach them by the first post the following morning.

In regard to proposals for economy in paper the Committee recom-

[1] 377 *Ib.* 5, s. 725. [2] *Ib.* 1283. [3] *Ib.* 1409.
[4] H.C. Paper 43 of 1941-42.

mended that—(*a*) *Hansard* be issued in future without the blue cover and (*b*) that the reports of Select Committees should not be reprinted in the volume containing the Minutes of Evidence. The Committee did not recommend (*c*), the postponement in all instances of the printing of the Minutes of Evidence. It had always been the duty of a Select Committee to decide whether it was necessary to report the evidence to the House, and the Committee was confident, in view of the shortage of paper, that every Select Committee would give careful consideration as to whether the printing of such evidence was essential in each particular case.

The Committee did not propose to report the evidence taken before it to the House.

On July 21, 1942,[1] this Committee reported Resolutions to the House recommending that, as from the beginning of next Session, the size of the Private Business sheet be reduced from 11″ × 7½″ to 5½″ × 7½″; and that such sheet should no longer be circulated to Members, but that 250 copies be available in the Vote Office for their use. The Report was ordered to lie upon the Table.

On July 15, 1943,[2] a Special Report from the Select Committee was brought up and read to the following Resolution, which was ordered to lie upon the Table:

> That it is the opinion of this Committee, that the word " Hansard " should appear upon the title page of the Official Parliamentary Debates.

House of Commons (" Hansard on Scotland ").[3]—On October 6, 1942,[4] in reply to a Question, the Financial Secretary to the Treasury said that application was made to the Controller of H.M.S.O. for permission to publish a " Penguin " *Hansard* on Scotland and no objection was offered to the reproduction of material from the Official Report (*Hansard*).

House of Commons (Censorship of Letters to Members). — On March 25, 1942,[5] in reply to a Question, the Minister of Information said he did not favour the censoring of letters addressed by members of the Services to M.P.s, and that the letter in question was presumably contained in mails posted in a particular area selected for examination as an operational security measure.

On September 11, 1942,[6] a further Question was asked the same Minister as to whether he was aware that there continued to be an increasing censorship of letters addressed to M.P.s; and whether he was prepared to exempt from such censorship letters addressed to M.P.s, to which the Parliamentary Secretary for Information replied that it would be invidious to make distinction between M.P.s and other trustworthy citizens. At present no exceptions were made, otherwise other classes would be making demands on that account.

[1] 381 *Com. Hans.* 5, s. 1410.
[2] 391 *Ib.* 377.
[3] *See also* JOURNAL, Vol. IX, 55.
[4] 383 *Com. Hans.* 5, s. 1092.
[5] 378 *Ib.* 5, s. 1980.
[6] 383 *Ib.* 528.

House of Commons (" Blocking " Motion). — On September 11, 1942,[1] an hon. Member drew attention to a Notice of Motion which appeared on the Order Paper relating to India (quoting it), which he had yesterday given notice of intention to raise on the Adjournment today. He asked Mr. Speaker for a Ruling as to whether he was prevented or not from raising this Question at the beginning of their business. Mr. Speaker replied that such a Notice on the Paper was capable of " blocking " the discussion on the subject-matter of that Motion on the Adjournment. But under S.O. 9 he was directed, before deciding that a discussion was out of order on that ground, to have regard to the probability of the " blocking " Motion being brought up for a debate within a reasonable time. Now, the Government had been given control of the entire time of the House. But the Motion on India which might have " blocked " the discussion of the Indian situation on the Motion for the Adjournment had been put down, not by Ministers but by Private Members, and no undertaking had been given by the Government that time would be found for its discussion. He could not see any probability of its being discussed within a reasonable time, and he must rule therefore that it did not in any way prevent the discussion of any subject on the Motion for the Adjournment today.

House of Commons (P.P.S.s).[2]—On May 19, 1942,[3] the Prime Minister was asked whether he was now able to make a statement with reference to the recommendations by the Select Committee on Offices and Places of Profit Under the Crown[4] that the number of Parliamentary Private Secretaries be reduced, or that not more than one such be necessary for each Government Department, to which the Deputy Prime Minister (Rt. Hon. C. R. Attlee) replied that Members who performed the duties of " P.P.S.s " performed valuable services not only to Departments but to the House as a whole, and that reduction in their number would not serve the best interests of the House at the present time; " P.P.S.s " were unpaid. It was then remarked by the hon. Member that there were now no fewer than 80 Ministerial posts, to which the Deputy Prime Minister replied that not all Ministers sat in the House.

On January 26, 1943,[5] a Question was asked of the Prime Minister whether he would define the functions of those hon. Members acting as " P.P.S.s " to Ministers and whether, when communications were sent to Ministers, " P.P.S.s " were entitled to reply in their own names; also if he could state the relations between " P.P.S.s " and the respective Government Departments.

The Secretary of State for Foreign Affairs (Rt. Hon. A. Eden) replied, referring the hon. Member to the reply by the Prime Minister to a Question on June 24, 1941.[6]

In answer to Supplementaries, Mr. Eden said that the general practice of Ministers was that when communications were addressed

[1] 383 *Com. Hans.* 5, s. 553. [2] *See also* JOURNAL, Vol. X, 103.
[3] 380 *Com. Hans.* 5, s. 26. [4] H.C. Paper 120-1941. [5] 386 *Com. Hans.* 5, s. 354.
[6] *See* JOURNAL, Vol. X, 103.

to them personally they dealt with them personally, but he did not think that a Parliamentary Private Secretary could take responsibility for dealing with a communication addressed to a Minister. In cases of some Departments, however, the correspondence was so enormous that it was scarcely possible for Ministers to follow the above practice now.

House of Commons (Private Members' Motions, Selection of).—On June 18, 1942,[1] in a discussion upon " the Business of the House ", it transpired that there was a Private Members' Motion on the Paper in the names of about 200 Members, and that as a result of submission by the Government to the sponsors of that Motion it was agreed, by some, to accept another form of words and yet the original Motion remained on the Paper. It was asked for which Motion the Government accepted responsibility and would give facilities. The Minister was further asked:

> Does my rt. hon. and learned friend not appreciate also that Private Members have rights, and if they put a Motion on the Paper it ought not to be set aside by any decision of the Government on a purely private issue ?

The Minister then indicated for which Motion the Government would give facilities, subject to any amendments on the Paper. An hon. Member then inquired if they were to understand that the original Motion could not be discussed at all, to which the Minister replied that if any hon. Member wished to put the difference of the substance between the two Motions to the House, it would have to be done by amendment to the Motion on the Paper.

Mr. Speaker was then asked if the Government spokesman had now decided which of a series of Private Members' Motions on the Paper was to be called by the Chair, to which Mr. Speaker replied that the powers he had referred only to amendments. As regards Motions, it was entirely for the Government to decide which one it would give facilities for.

House of Commons (Closure).[2]—On November 18, 1942,[3] a Return was ordered respecting the application of S.O. 26 (Closure of Debate) during Sessions 1939-40, 1940-41 and 1942-43 in the House and in *C.W.H.* under the following heads: 1. Date when Closure moved and by whom; 2. Questions before House or Committee when moved; 3. Whether in House or Committee; 4. Whether assent given to Motion or withheld by Speaker or Chairman; 5. Assent withheld because, in the opinion of the Chair, a decision would shortly be arrived at without that Motion; and 6. Result of Motion and, if a division, numbers for and against. But at the time of going to press of this JOURNAL the Return was not available.

House of Commons (" Hansard " Corrections).—On January 20, 1943,[4] in answer to a point raised in connection with a Minister having

[1] 380 *Com. Hans.* 5, s. 1691-3.
[2] *See also* JOURNAL, Vol. I, 17.
[3] 385 *Com. Hans.* 5, s. 319.
[4] 386 *Ib.* 5, s. 217-8.

made a correction in *Hansard*, Mr. Speaker said that there was a Rule that Ministers and other Members could not alter substantially the meaning of anything which they had said in the House. They could merely make verbal alterations, perhaps to improve the grammar of what had been said, or to make clearer what they had intended. In the particular case in question the Minister was wrong in authorizing any alteration in, or additions to, what he had said, and he thought the answer as received put it more clearly. However, Mr. Speaker thought the Minister was wrong in making this alteration simply because it was open to misinterpretation.

House of Commons (Second Chamber).[1]—In reply to a Question on July 1, 1943,[2] as to whether the Government contemplated legislation to establish a Second Chamber more in keeping with the spirit of the times, the Prime Minister (Rt. Hon. Winston Churchill) said, " No, Sir. I stand upon the Parliament Act, including its Preamble, but I have no legislative aspirations in this sphere at the present time."

House of Commons (Reconstruction of Chamber).[3] — Following Questions[4] which had been asked from time to time, as to the provision of better accommodation for Members, both in the former Chamber and in the Library and Smoking Rooms as well as in regard to the absence of rooms where Members might interview visitors, and secretarial accommodation for Members;[5] the provision of a cinema for Members to view documentary and other topical films and suggestions that a *Sel. Com.* be appointed to go into the matter, the Prime Minister (Rt. Hon. Winston Churchill), on October 28, 1943,[6] moved:

> That a Select Committee be appointed to consider and report upon plans for the rebuilding of the House of Commons and upon such alterations as may be considered desirable while preserving all its essential features,

upon which there was considerable debate. The Prime Minister's desire was to see the old Commons Chamber reconstructed in all essentials to its old form, convenience and dignity. As a believer in the two-Party system, he adhered to the oblong as against the semi-circular form. Neither was he in favour of separate seats and desks for Members. Harangues from a rostrum would be a bad substitute for the conversational style in which so much of their business in the House of Commons was done and with such facility for quick, informal interruptions and interchanges in the intimacy of a small Chamber.

In the debate which followed, suggestions were put forward: that the new House should be built in parkland about 20 miles from London; that there should be private rooms for Members; that the building for the new House should be higher, with lifts to rooms for Members; that both lighting and ventilation should be improved; that the present

[1] *See also* JOURNAL, Vols. I, 9; II, 14; V, 14; VII, 29. [2] 390 *Com. Hans.* 5, s. 1782.
[3] *See also* JOURNAL, Vol. X, 19. [4] 376 *Com. Hans.* 5, s. 1120; 377 *Ib.* 255, 1278; 380 *Ib.* 674, 817, 1052; 383 *Ib.* 138; 386 *Ib.* 1936; 390 *Ib.* 1035; 396 *Ib.* 1524.
[5] 386 *Ib.* 1935. [6] 393 *Ib.* 403-74.

Libraries and Lobbies were too small; that the new seating should be semicircular in form; that there should be greater accommodation for the Press; that there should be a change of architecture; that the old House was too cramped; that the public galleries were inadequate; that the new Chamber be built by modern people with modern ideas; that there should be more seats for Members; and that houses for the poor first be built.

General feeling, however, was in favour of a return to the conditions of the old House of Commons. It was said that in the temporary Chamber in which they now sat there had been a lack of intimacy and a falling off in Members' speeches owing to its great size; that the two-Party system depended upon a rectangular Chamber; that the conditions in the London County Council chamber, which was fitted in the semicircular form, were deplorable; that it was a question whether the semicircular chamber had not been the death warrant of democracy on the Continent of Europe; and that the high esteem in which the House of Commons was held was due largely to the vitality of its debates.

Early in the debate Mr. Speaker announced that he did not propose to call any of the amendments on the Paper, but Mr. Tinker (Leigh) moved: to leave out all words from the word " That " to the end of the Question and to substitute the following:

> consideration of plans for the rebuilding of the House of Commons be deferred until the end of the War.

No seconder, however, was forthcoming, and when the Question on the original Motion was put a division was claimed, with the following result: Ayes, 127; Noes, 3. The Question was accordingly agreed to.

House of Commons (Quotation from Speeches in " Another Place ").—On June 3, 1943,[1] Mr. Speaker, when asked for guidance as to the conditions under which quotations could be made from speeches in " Another Place ", replied that the Rule (155 [iii]) was that hon. Members must not refer to any debate of the same Session in the House of Lords, but this Rule was not always easy of enforcement. His predecessor had ruled that an announcement of Government policy made in the House of Lords could be debated in the House of Commons. This therefore should be regarded as the only exception to the above Rule.

Canada : Senate (Accelerated Sitting).—On January 27, 1942,[2] the following was the form of Resolution taken:

That for the duration of the present Session of Parliament, should an emergency arise during any adjournment of the Senate which would, in the opinion of the Honourable the Speaker, warrant that the Senate meet prior to the time set forth in the Motion for such adjournment, the Honourable the Speaker be authorized to notify honourable Senators at their address as registered with the Clerk of the Senate to

[1] 390 *Com. Hans.* 5, s. 373. [2] 1942-43 *Sen. Hans.* 7.

meet at a time earlier than that set out in the Motion for such adjournment, and non-receipt by any one or more honourable Senators of such call shall not have any effect upon the sufficiency and validity thereof.

A similar Resolution was adopted on June 12, 1942,[1] August 1, 1942,[2] January 28, 1943,[3] and July 21, 1943.[4] The Senate, being under adjournment to March 2, was summoned in accordance with the Resolution passed on January 28, 1943, to meet on February 16 *idem*,[5] the purpose being certain supplementary War expenditure.

Canada : House of Commons (Censorship of M.P.s' Letters, etc.).—On February 13, 1942,[6] the Hon. R. B. Hansen (Leader of the Opposition in the House of Commons), as a question of Privilege, raised the censorship of mail addressed to M.P.s. (On January 21 the hon. Member for Rosstown-Biggar, Mr. Caldwell, had raised a similar question and registered his firmest and most emphatic protest against it.) The instance in question was a letter addressed " . . . Hansen, Esq., M.P., Leader of the Opposition, Parliament Buildings, Ottawa, Ont." Mr. Hansen drew the attention of the House to the reply made by the Postmaster-General (Mr. Mullock) to the hon. Member for Parkdale (Mr. Bruce) on January 21 last (*Hansard*, 4663), in which the hon. Member asked the following Question:

> If any criticism of a department of government has been found, has such criticism been extracted from letters and sent with the name of the writer to the department involved ?

The answer of the Postmaster-General was:

> Such extracts are referred in confidence to the head of the department concerned, when it is considered in the public interest to do so.

In other words, continued Mr. Hansen:

> if this letter from the constituency of the Minister of Finance, addressed to me as a Member of Parliament and as Leader of the Opposition, had contained critical reference to the Minister's conduct of his department, shall I say, it might have been referred to the Minister.
>
> Mr. Speaker, this is an intolerable situation and one which the Members of this House cannot permit to continue. This practice converts a censorship, which exists solely for the purpose of securing the safety of the State in War-time, into a petty Gestapo spying upon Members of Parliament and others.

Mr. Hansen said that his letter was merely a condensation of the plebiscite which he would have no hesitation in reading to the House. His protest was based upon a principle that mail addressed to any Member of Parliament or dispatched by any Member of Parliament must be considered inviolate and free from any interference by any servant of the Crown. Unless that principle was firmly established he

[1] *Ib.* 202. [2] *Ib.* 398. [3] 1943-44 *Ib.* 3. [4] *Ib.* 336.
[5] *Ib.* 65, 66. [6] CCXXIX, *Com. Hans.* 591-3.

did not believe it was possible for Members of Parliament adequately to perform their duties and unless he had an unequivocal assurance that such practice would be stopped immediately he would take the earliest opportunity to assert, by Motion, the rights and privileges of M.P.s.

The Prime Minister (Rt. Hon. W. L. Mackenzie King) replied that with respect to the underlying question of principle, which was vital in the matter, he was entirely in agreement with his hon. friend. If what he (the Prime Minister) had been told was correct, some of his own mail had been similarly opened by censors, to which he wished to protest just as strongly. He believed these were air-mail letters and that the one in question came from an area known for certain military reasons as a prohibited defence area, which he thought might be the reason for opening the letter in question. The Prime Minister assured Mr. Hansen that the last thing any member of the Administration would wish was to have his mail or that of any other hon. Member opened for purposes of espionage or anything of that kind, and he would at once take up the question with the Minister concerned.

On February 20, 1942,[1] the same subject was raised again by Mr. Hansen, who gave further instances, including the tapping of telephone messages, and said that the matter had gone beyond all reason. They had reached the stage when any telegram he sent to his political friends was copied and the contents submitted to some Minister across the way. He found out that so far as the Parliament building was concerned there was no tapping.

Mr. Mackenzie King said that, so far as the safety of the State would permit, all the hon. Members' confidential correspondence should be kept so. Every precaution must be taken to preserve the absolute right of every citizen to have his mail kept free from censorship as far as possible, but there were certain military obligations which had to be observed at the present time; spying was not part of what the Government was seeking in that connection. He would make a full statement when the review which was now being made of the situation was completed. He had expressed to the Postmaster-General that he thought all letters addressed to Members of Parliament should go without censorship altogether and that he would like him to have that aspect of the situation inquired into and let him know if there was any reason why that rule should not prevail.

Other hon. Members supported Mr. Hansen in his remonstrance.

On March 3, 1942,[2] the Prime Minister made a statement on the subject of Mr. Hansen's complaint and invited the leaders of the various political Parties to meet him so that he might place before them the different aspects of the question. Such censorship as existed in regard to Members' letters had related only to matters of immediate concern to the War effort of the Allies. There had been no attempt, so far as he could ascertain, on the part of the censors to seek any

[1] *Ib.* 743. [2] *Ib.* 973.

information other than that which had immediate relationship to some War activity. Censors had very explicit instructions to pay no attention to matters other than those affecting the War and they had carefully refrained from passing on any information in any letter relating to political matters. The only excerpts which could be taken from any letter to be sent to the head of any department were those which related to some matter pertaining to the War. It would not be possible to lay the Regulations regarding censorship on the Table, as such might reveal vital information to the enemy.

Canada : House of Commons (Secret Session).—On February 20, 1942,[1] the Prime Minister (Rt. Hon. W. L. Mackenzie King), in moving:

> That on any day set aside for that purpose by the House without notice having been previously given, the sitting of the House shall be a Secret Session until the House shall then otherwise order, and that all strangers be ordered to withdraw during such Secret Session; provided however that this order shall not affect the privilege enjoyed by Members of the Senate of being present at debates in this House.

said that this was similar to a Resolution passed in 1918, but that fixed a definite date whereas the above Motion left the date to be arranged by agreement. The above Motion was based upon the following Emergency Regulation:

> If the Senate or House of Commons in pursuance of a Resolution, holds a Secret Session, no person shall in any newspaper, periodical, circular, or other publication, or in any public speech, publish any report or description of the proceedings of that Session, except such report or description thereof as may be officially communicated through the Speaker of the House.

Mr. Mackenzie King said that he had conferred with the leaders of the other 3 Parties and that Tuesday had been selected as the Senate was adjourned until that day and Senators would have the privilege of being present in the gallery when the Secret Session was held.

Later in the debate the Prime Minister asked leave to amend his Motion to read:

> That on Tuesday the twenty-fourth instant the sitting of the House shall be a Secret Session until the House, etc., etc.

On February 23, 1942,[2] Mr. Mackenzie King stated that with reference to the Secret Session called for tomorrow, one phase of the procedure would be the resolving of the House into Committee of the Whole House to permit of greater freedom of discussion on the matters which may come before the House, when one item relating to War or defence would be before the Committee, not for the discussion of that

[1] CCXXIX, *Com. Hans.* 733. [2] *Ib.* 782.

particular item but simply to have before the Committee at a later stage an item which may, with the consent of the Committee, be regarded as broad enough to enable its members to discuss generally matters relating to the War.

The following was the record in *Hansard* of the Secret Session of the House of Commons on February 24, 1942:[1]

SECRET SESSION OF THE HOUSE.

The House, in conformity with a Resolution agreed to, on Motion of the Right Hon. the Prime Minister on Friday, the 20th day of February instant, went into Secret Session, until the House should otherwise order.

At the conclusion of the Secret Session, the following report of its proceedings was issued under the authority of Mr. Speaker.

A Secret Session of the House of Commons was held at 3 o'clock p.m. on Tuesday the 24th February 1942. The sitting was devoted to the question of the defence of Canada in its widest qualification. Statements were made by the Honourable Messrs. Ralston, Power and Macdonald, the Ministers in charge of National Defence. A variety of questions dealing with different aspects of the War were asked and answered. Many details were given the Members of the House.

J. ALLISON GLEN,
Speaker.

It being twenty minutes after eleven o'clock, the House adjourned, without question put pursuant to standing order.

A Secret Session was also held on July 18, 1942.[2]

Canada (The Senate and Secret Session).—On February 24, 1942,[3] the Acting Speaker of the Senate informed the House of the following Resolution which had been passed by the House of Commons:

Friday, February 20, 1942.

Resolved, that on Tuesday the 24th of February, 1942, the sitting of the House shall be a Secret Session until the House shall then otherwise order, and that all strangers be ordered to withdraw during such Secret Session: provided, however, that this order shall not affect the privilege enjoyed by Members of the Senate of being present at debates in this House.

ARTHUR BEAUCHESNE,
Clerk of the House of Commons.

Canada : House of Commons (War Expenditure Committee).—On April 29, 1942,[4] the Prime Minister (Rt. Hon. W. L. Mackenzie King) moved:

That a Select Committee be appointed to examine the expenditure defrayed out of moneys provided by Parliament for the defence services, and for other services directly connected with the War, and to report what, if any, economies consistent with the execution of the policy decided by the Government may be effected therein, and that notwithstanding S.O. 65[5] the Committee shall consist of 24

[1] *Ib.* 809.
[2] CCXXXII, *Ib.* 4327-8, 4290. Unfortunately this Volume did not come through.—[ED.] [3] 1942-43 *Sen. Hans.* 57. [4] CCXXX, *Com. Hans.* 1984-2001; 2009-48.
[5] Limiting Special Committees to 15 Members.—[ED.]

members as follows: (*here follow the names*) with power to send for persons, papers and records; to examine witnesses and to report from time to time to the House.

This Special Committee was first set up in 1941 (CCXXVI, *Com. Hans.* 1218-50, 1262-74) as the result of a conference between the Prime Minister and the Leader and other members of the Opposition in the House of Commons by which the Government was invited to consider the appointment of a Committee for the control of national expenditure, on all fours with the similar Committee in the United Kingdom.

This Committee made 11 Reports: The First Report, which was concurred in by the House, made recommendations as to its printing and quorum and asked leave to sit while the House was sitting and to adjourn from place to place and that the Committee be empowered to appoint sub-committees, to fix the quorum of any such sub-committees and to refer to them any matters referred to the Committee, the sub-committees to have power to send for persons, etc., to examine witnesses, to sit while the House was sitting, to adjourn from place to place and to report from time to time.[1] The 5th Report, which recommended that the Committee continue inquiry during adjournment, was also concurred in.[2] The other Reports dealt with the following subjects:—2nd (Munitions contracts)[3]; 3rd (Gun Production)[4]; 4th (War-time Housing)[5]; 5th (To sit during adjournment)[6]; 6th (Salvage)[6]; 7th (Catering and Messing)[7]; 8th (Production of Tanks, Small-Arms Ammunition, Chemicals and Explosives)[8]; 9th (Conservation and Salvage)[9]; 10th (Acquisition of Air Port Sites)[10]; 11th (Aircraft Production and Shipbuilding)[11]; 12th (Proceedings, etc.)[12].

In the case of Reports 2, 3, 4, and 6 to 11 inclusive, the Report incorporated the Report of the sub-committee on the subject.

As the information in respect of any operation of this Committee in 1943 has, owing to enemy action, not come through, the subject will be dealt with in Volume XIII of the JOURNAL.

Canada (Dominion-Provincial Relations).[13]—In reply to a Question in the House of Commons on May 11, 1942,[14] the Minister of Trade and Commerce (Hon. J. A. MacKinnon) said that the statistical compilation on public finance made for the Report of the Rowell-Sirois Commission was being carried on in the finance statistics branch of the Dominion Bureau of Statistics.

Canada (Constitutional : Postponement of Redistribution).

A—In the Canadian Parliament.—The British North America Act[15] requires that on completion of each decennial census the representation of the Provinces in the House of Commons shall be adjusted,

[1] LXXXII C.J. 275. [2] *Ib.* 643. [3] *Ib.* 423. [4] *Ib.* 523.
[5] *Ib.* 539. [6] *Ib.* 553. [7] *Ib.* 565. [8] *Ib.* 717. [9] *Ib.* 738.
[10] *Ib.* 755. [11] *Ib.* 756. [12] *Ib.* 760.
[13] *See also* JOURNAL, Vol. IX, 97-128. [14] CCXXXI *Com. Hans.* 2287.
[15] 30 Vict., c. 3, and amendments.

involving the determination of the number of M.P.s to represent each Province, the number of electoral divisions within each and their delimitation. In consequence of the likelihood of hostilities continuing for an indefinite period and the fact that the last census was taken (1941) during the progress of hostilities, as well as on account of the removal of large numbers of voters from their homes on active service or within Canada in War industries, it was considered undesirable that such readjustment on the 1941 Census should be made during the War in which Canada is engaged. A Resolution was therefore passed by the Senate on June 29[1] and by the House of Commons on July 5, 1943,[2] for an Address to His Majesty praying that he may graciously be pleased to cause a measure to be laid before the Imperial Parliament providing in para. 2 of the Resolution that:

> Notwithstanding anything in the British North America Acts 1867 to 1940, it shall not be necessary that the representation of the Provinces in the House of Commons be readjusted, in consequence of the completion of the decennial census taken in the year one thousand nine hundred and forty-one, until the first Session of the Parliament of Canada commencing after the cessation of hostilities between Canada and the German Reich, the Kingdom of Italy and the Empire of Japan.

There was considerable debate upon the subject in the Canadian Commons, the Resolution being affirmed after division: Ayes, 115; Noes, 9.

B—In the United Kingdom Parliament.—Consequent upon the Address to the King from the two Houses of Parliament at Ottawa, a British North American Bill was initiated in the House of Lords on July 20, 1943,[3] by the Lord Privy Seal (Viscount Cranborne—*Lord Cecil*) (Leader of the House). The 2 *R.* was taken on the following day and S.O. 39 being suspended the Bill was taken through its remaining stages and transmitted to the House of Commons. In moving 2 *R.* in that House on July 22, 1943,[4] the Secretary of State for Dominion Affairs said that under s. 8 of the British North America Act a census of the population of Canada was required to be taken in 1871 and every tenth year thereafter. Thus a census was taken in 1941. Section 51 of the Act provided that on the completion of the census in any year the representation of the Canadian Provinces in the House of Commons of Canada must be adjusted in terms of such Section. The Canadian Government and Parliament considered that under War conditions it was unnecessary and undesirable to have a change in representation until after the cessation of hostilities, and an Address had been duly presented to the King by both Houses of the Canadian Parliament that the redistribution should be postponed until after the War. This procedure for amending the British North

[1] 1943-44 *Sen. Hans.* 281.
[2] LXXXI, No. 103, 4429-61.
[3] 128 *Lords Hans.* 607.
[4] 391 *Com. Hans.* 5, s. 1130.

America Act, at the express wish of Canada, remained as it was before the passing of the Statute of Westminster. The Clauses of the Bill followed substantially the terms of the Address passed by both Houses of the Canadian Parliament and the recital followed closely with that adopted on the last occasion[1] on which similar legislation was passed.

During the debate[2] in the House of Commons at Westminster, it was mentioned that the Measure was objected to by one of the Provinces and met with a certain amount of opposition in the two Houses of Parliament at Ottawa.[3] The Secretary of State was asked to what extent there appeared to be any differences among the Provinces on the subject, to which he said his information was that the Bill was passed in both Houses by very large majorities, but that in any case the matter was brought before the Imperial Parliament by an Address voted by both Houses of the Canadian Parliament and therefore it was difficult for the Parliament at Westminster to look behind that fact.

Another hon. Member remarked that a Constitution should not be interfered with if there was a substantial minority objecting. It was then observed by another hon. Member that it was really improper in present circumstances for the House to query the discretion of a sovereign Parliament in the Commonwealth of Nations and that it was only owing to a technical legislative peculiarity that this Bill came before the House at all. It would therefore be very improper for it to question the discretion of a national and sovereign Parliament. He hoped therefore that the Bill would be passed without further comment. The Bill was then passed through the remaining stages without further debate, *R.A.* being announced the same day.

Canada : Saskatchewan (Active Service Voters).—During the 1942 Session an Act was passed to provide for the voting of active service voters in elections for Members of the Legislative Assembly.[3]

Canada : Saskatchewan (Representation in Dominion Parliament).—On March 20, 1942, the following Resolution was passed unanimously by the Legislative Assembly:

That in view of the shifting of population in our country due to the exigencies of our War effort, this Assembly request the Government of the Dominion of Canada to postpone consideration of any legislation which would have the effect of reducing the representation of the Province of Saskatchewan in the Federal Parliament until the conclusion of the War.[4]

Canada : Saskatchewan (Prolongation of the Legislature).—During the 1943 Session, an Act[5] was passed to extend the life of the Legislative Assembly until July 10, 1944, with the saving provision that the right of His Honour the Lieutenant-Governor to dissolve the Assembly at an earlier date and the prerogative of the Crown shall not be affected or abridged.[6]

[1] *See* JOURNAL, Vol. IX, 124. [2] 391 *Com. Hans.* 5, s. 1101-4.
[3] *Sask. J.*, 1942, 121. As contributed by the Clerk of the Legislative Assembly.—[ED.]
[4] *Ib.* 85. As contributed by the Clerk of the Legislative Assembly.—[ED.]
[5] No. 13 of 1943. [6] As contributed by the Clerk of the Legislative Assembly.—[ED.]

Australia (Ministers of State).—In 1941 an Act[1] was passed by the Commonwealth Parliament amending the Ministers of State Act, 1935-38, by the increase of the number of Ministers of State (which under statutory provision is 11, but was increased to 12 under the National Security Act[2]). So far as such Act was concerned, however, the number was 11. The actual number was now, however, not 12, but 16, as 4 of that number were Assistant Ministers, a post devised in the Commonwealth 30 years ago. It was desirable, said the then Prime Minister (Rt. Hon. R. G. Menzies), that every person who sat in the Cabinet should do so as a Minister of State with a specific responsibility for some Department of State. The post of Assistant Minister had therefore been dispensed with, in order that special Ministerial responsibility may be established for 3 War activities (aircraft production, civil defence and civil resources). The number of Ministers of State would therefore be 19, 12 remunerated as were Ministers of State at present and 7 remunerated as Assistant Ministers were remunerated.[3]

Australia (National Security : Secret Joint Meetings of Members of both Houses of the Commonwealth Parliament).—On February 19, 1942, the National Security (Supplementary) Regulations[4] issued under the National Security Act, 1939-40, were amended by the addition of the following Regulation published in the *Commonwealth Gazette* on February 20, 1942:

37.—(1) The proceedings at any joint meeting of Members of the Senate and of the House of Representatives convened by the Prime Minister, the President of the Senate or the Speaker of the House of Representatives, or by any or all of those persons, for the purpose of discussing in secret the present War and hearing confidential reports in relation thereto shall be kept secret.

(2) A person shall not divulge any information made known at any such meeting, or publish, or cause to be published, any report being, or purporting to be, a report of any such proceedings or of any portion thereof, except a report made officially by the Prime Minister.

(3) This regulation shall not apply to any joint meeting of Members of the Senate and of the House of Representatives unless each House has carried a Resolution—That a joint meeting of Members of the Senate and of the House of Representatives be convened for the purpose of discussing in secret the present War and hearing confidential reports in relation thereto.[5]

Secret Meetings of the Members of the two Houses were held during 1942 on February 20, 21, September 3 and October 8, the subject being the present War and hearing confidential reports in regard thereto.

Australia (*Hansard* War Censorship).—On May 8, 1942,[6] in the Commonwealth House of Representatives, in reply to a Question to

[1] Act No. 24 of 1941. [2] Act No. 44 of 1940. [3] 167 *C'th Hans.* 322.

[4] Statutory Rules 1940, No. 126, as amended by Statutory Rules 1940, Nos. 151, 169, 213, 228, 233, 234, 245 and 257; 1941, Nos 75, 88, 100, 140, 197, 200 and 223; and 1942, Nos. 16, 20, 21, 36, 40, 50, 57, 62, 63 and 72.

[5] As contributed by the Clerk of the Senate.—[ED.]

[6] 170 *C'th Hans.* 1030; *see also Ib.* 1322.

him as to whether he exercised any authority in respect of the censorship or alteration of *Hansard* reports of speeches of Members of the House at the request of military or other authorities, Mr. Speaker said that no such censorship was exercised by any authority outside the House, but that it had been long understood that any remarks considered likely to be of advantage to the enemy shall be expunged at Mr. Speaker's direction, after consultation with and the agreement of the Member concerned.

On January 28, 1943,[1] in the House of Representatives, an hon. Member drew attention to the omission of part of a speech of another hon. Member having reference to a certain War map, and asked whether it was within the province of an hon. Member to delete from a report of his speech in *Hansard* a lengthy statement, part of which was of purely political importance. Did not this incident establish a dangerous precedent?

Mr. Speaker, in referring to that part of the speech concerning the War map, said that the Prime Minister had immediately interpolated that the statements should be censored, in which Mr. Speaker said he held the same opinion, as containing matter which should not be disclosed to the public. Mr. Speaker remarked that he had consulted the hon. Member in question, who had agreed that the matter should not be published, upon which Mr. Speaker then gave the necessary instructions.

Another hon. Member then raised the question as to whether, in such an instance, it was not customary for an indication of the deletion to be given. Mr. Speaker replied that such would only draw further attention to the matter.

The hon. Member who made the original speech referring to the War map then supported what Mr. Speaker had said, but observed that he (the hon. Member) had since discovered that the War map in question had been published in an U.S.A. newspaper a long time before, and he remarked that, in such case, he did not see how his reference to the map could be regarded as prejudicial to national security.

In reply to a Question by another hon. Member, as to how it had come about that a direction from a security officer could be conveyed through Mr. Speaker to a Member of the House, Mr. Speaker said that he took no instructions from the censor, or from anyone else, but if the censor, in the interests of national security, said that in his opinion something ought to be deleted from the record, he was prepared to consider it, but in the final analysis he (Mr. Speaker) had to make up his own mind, although he might consider taking advice from a Minister or other Member.

In reply to a Question by another hon. Member, Mr. Speaker said that no hon. Member's speech was censored except after consultation with the hon. Member concerned and with his approval. Should an hon. Member decline to fall in with his (Mr. Speaker's) proposals in

[1] 174 *Ib.* 100.

regard to such censoring, Mr. Speaker would then have to deal with the matter as best he could. Up to the present, however, he had been fortunate enough to come to agreement with hon. Members on every occasion, and he hoped to be able to do so in future.

Australia (Examination of War Expenditure by Joint Committee).—With reference to Volume X, p. 45, of the JOURNAL, on May 13, 1942,[1] in the Senate and in the House of Representatives, the Fourth Progress Report of the Joint Committee for War Expenditure was tabled and ordered to be printed. The Fifth and Sixth Reports were similarly dealt with on December 10 and 11,[2] respectively. On June 30, 1943,[3] Senator A. J. McLachlan, as Chairman of the Committee, presented in the Senate a statement of the confidential reports which had been addressed by the Committee to the Prime Minister for the consideration of the Cabinet, which same procedure was followed on the same day by Mr. Johnson in respect of the House of Representatives.[4]

Australia (Delegated Legislation).—On March 26, 1942,[5] in the Commonwealth Senate, Senator McLeay (S. Australia) (Leader of the Opposition) in drawing attention to a decision (quoted in the Senate) of the High Court of Australia which held that it was not a condition essential to the validity or operation of a Resolution of disallowance that the Regulations should first be laid before the House and notice of such Resolution given, said that the Acts Interpretation Act was amended in 1937[6] after the High Court had given such decision, and that s. 48 (1) (*C*) of that Act read:

> Where an Act confers power to make regulations then unless the contrary intention appears, all regulations made accordingly—
>
> * * * * *
>
> (*C*) shall be laid before each House of the Parliament within 15 sitting days of that House after the making of the Regulations.

and that s. 48 (3) and (4) thereof read:

> (3) If any regulations are not laid before each House of the Parliament in accordance with the provisions of sub-section (1) of this section they shall be void and of no effect.
>
> (4) If either House of the Parliament passes a Resolution (of which notice has been given at any time within fifteen sitting days after any regulations have been laid before that House) disallowing any of those regulations, the regulation so disallowed shall thereupon cease to have effect.

On the same day[7] an hon. Senator moved:

> That Regulation No. 25 of the National Security (Landlord and Tenant) Regulations issued under the National Security Act, 1939-40, and included in Statutory Rules, 1941, No. 275, be disallowed

and said that sub-regulation 3 provided that:

[1] 170 *C'th Hans.* 1074, 1141. [2] 172 *Ib.* 1650, 1793. [3] 175 *Ib.* 509.
[4] *Ib.* 575. [5] 170 *C'th Hans.* 432. [6] No. 10 of 1937. [7] *Ib.* 444-8.

The agent shall not, without the consent of all parties or persons affected, or, unless the Attorney-General has intervened by counsel, be a barrister or solicitor or a clerk of a barrister or solicitor.

The hon. Senator advanced arguments in favour of the disallowance of Regulation No. 25, which were controverted by the Minister for Trade and Customs (Senator Keane), who failed to see why legal advice should be needed either by the landlord or the applicant before the Fair Rents Courts. On the Question being put it was Resolved in the negative: Ayes, 15; Noes, 16. (Pairs, 2.)

On March 26, 1942,[1] in the Commonwealth Senate, Senator McLeay (Leader of the Opposition) moved:,

That Statutory Rules, 1942, No. 77, under the National Security Act, 1939-40 (National Security [Mobilization of Services and Property] Regulations) be disallowed.

for the purpose of debating the Regulations in question. He trusted that Parliament would be given an opportunity to consider the far-reaching effects of the numerous Regulations that were now being issued, quoting instances and suggesting the danger of misunderstanding in times of emergency as well as giving power to any one of the 19 Ministers to do certain things. Regulation 1 read:

1. A Minister, or any person authorized by a Minister, to give directions under these Regulations, may direct any person resident in Australia—

(*a*) to perform such services as are specified in the direction;

(*b*) to perform such duties in relation to his trade, business, calling or profession as are so specified;

(*c*) to place his property, in accordance with the direction, at the disposal of the Commonwealth.

Regulation 2 then gave 8 heads to which such direction might apply and Regulation 3 laid it down that—Every person to whom any such direction was applicable shall comply herewith.

The hon. Senator then suggested that there should be a right of appeal to a tribunal in order to prevent personal vindictiveness and injustice and gave instances in which such might occur.

The same subject (Mobilization of Services and Property) had, however, been raised in the House of Representatives[2] on the previous day upon an Adjournment (urgency) Motion, which procedure was utilized instead of the method above adopted in the Senate. The Prime Minister in the House of Representatives explained the urgency of the subject-matter of the Regulations in view of the War and stated that the delegation had been exercised only 5 times so far, and in each case he, as Minister for Defence Co-ordination (designation changed April 14, 1942, to Minister for Defence), himself signed the delegation to a specific person for a specific purpose. There was no general

[1] 170 *C'th Hans.* 448-53. [2] *Ib.* 390-408.

delegation whatsoever, and he undertook to issue to each Minister a direction that every oral instruction shall be followed immediately by written confirmation. Debate in the House of Representatives on this Motion, however, was eventually interrupted under S.O. 257B, but on April 29[1] a similar Motion to the one in the Senate was moved, where it had, on the same day, been *by leave* withdrawn in view of the Prime Minister's above assurance given in the House of Representatives, and after some discussion the debate was adjourned. Ayes, 37; Noes, 30. (Pairs, 4.)[2]

The debate was resumed on April 30,[3] and after discussion continuing into May 1 the Motion was defeated—Ayes, 7; Noes, 54. The arguments both for and against the Motion will be found in *Hansard* (of which the references are given below).

The following are other instances of consideration in one or the other House of the Commonwealth Parliament of statutory Regulations during 1942:

Subject.	*House.*	*Date in 1942.*	*Decision.*
Coal Control (No. 27B)	Senate	March 5	Disallowance negatived (Majority 2).
Waterside Employment (Nos. 5 and 15)	Senate	March 5	*
Contracts Adjustments	Senate	March 25	Disallowance negatived.
Conscientious Objectors	Senate	March 26 April 9	Disallowance affirmed.
Employment of Women	Senate	March 26 May 13	Disallowance negatived (Majority 1).
Employment of Women	Representatives	May 20, 21, 30	Disallowance negatived (Majority 47).
Man-power (No. 102)	Representatives	March 27 April 29	Disallowance negatived.
Waterside Employment (No. 19)	Representatives	March 26	Disallowance negatived (Majority 4).
Values for Land Tax	Representatives	May 6	Disallowance negatived.
Commonwealth Bank Accounts (Nos. 111 and 123)	Representatives	May 6	Disallowance negatived.

* Ayes, 17; Noes, 17 (Pairs 2), whereupon Mr. President stated (*vide* S.O. 178) that, the numbers being equal, the Question was resolved in the negative.—[ED.]

Australia : Senate (Procedure at Election of Presiding Officers of Legislative Houses).[4]—In continuance of information already given in previous issues of the JOURNAL[5] on this subject, on July 4, 1943, after the Senate had risen for the Elections, the President (Senator James Cunningham) died suddenly. There is no provision in the Australian Constitution, or in any Act of Parliament, or in the Senate Standing

[1] *Ib.* 628. [2] *Ib.* 635. [3] *Ib.* 714-68.
[4] As contributed by the Clerk of the Senate.—[ED.]
[5] *See* JOURNAL, Vols. II, 114; III, 10; IV, 35; and X, 44.

Orders, for an Acting President in such circumstances. The Standing Orders provided for the filling of the office of President whenever it became vacant, but the Senate must be called together for the purpose. In the case under notice the Session had ended, the House of Representatives had been dissolved, and an Election was about to take place. From July 4 until September 23, 1943, the Senate was without a President. Standing Order No. 29 provided that the Deputy-President (the Chairman of Committees) should continue to perform the duties and exercise the authority of President for 24 hours only after the adjournment of the Senate. All administrative responsibility, therefore, devolved on the Clerk. When the Senate met on September 23, the Clerk acted as Chairman, under S.O. 16, during the election of a new President.

Australia : Federal (Remuneration and Free Facilities to M.P.s).—The postage stamp allowance to Members of the Commonwealth Parliament, published in Volume V, p. 39, was on December 10, 1941, increased to £8 *p.m.*

Australia (Ceremonial and Regalia).—With reference to the Editorial note on this subject in Volume X, p. 109, of this JOURNAL, as from July 1, 1941, the wearing of wig and gown by the President of the Commonwealth Senate was discontinued and as from June 22, 1943, the same practice has been followed by the Speaker of the Commonwealth House of Representatives. This in accordance with Labour practice.

Australia (Parliamentary Catering Services).—With reference to the Editorial note on this subject in Volume III, p. 91, of this JOURNAL, owing to the shortage of man power, it was found necessary during 1942 to introduce waitresses in the Commonwealth Parliament Refreshment Rooms. These women, a large number of whom have husbands in the fighting services, have proved most capable, and the standard of service to Members has been maintained.

In common with other catering establishments these Refreshment Rooms suffer from the shortage of various commodities. Rationing applies in Parliament House to the same extent as elsewhere. Prices of meals have had to be increased.

Australia : Victoria (War Legislation affecting Parliament itself and its Members).—The National Security (Emergency Powers) Act, 1939 (No. 4645), particulars of which have been given in the JOURNAL,[1] was, by enactment in 1942, continued for another year.

Australia : South Australia (Deputy for Crown Representative and Governor's Warrant).—The Constitution Act Amendment Act (No. 8 of 1942) makes it clear that a deputy can act for the Governor or the Lieutenant-Governor during the illness of either. (The Constitution Act referred previously only to temporary absence from the seat of Government or from the State.)

The Act also increases from £200,000 to £300,000 normally, and to

[1] *See* JOURNAL, Vol. IX, 32.

£400,000 during the War, the amount which the Governor is empowered to appropriate to the service of the State in any financial year pending the granting of supply by Parliament. Of the amount so appropriated, the sum available for purposes not mentioned in the estimates of expenditure for that year or the preceding year is increased from £50,000 to £100,000.[1]

Australia : South Australia (Compulsory Voting).—During 1942, the Electoral Act Amendment Act (No. 37 of 1942) was passed making voting compulsory at any election for the House of Assembly.

Australia : South Australia (Constitutional).[1]—The following two Acts relating to the Constitution were passed in the 1943 Session:

Legislative Council Vacancy.—The purpose of the Legislative Council Vacancy Act[2] was to remove any doubt as to the regularity of not filling a vacancy in the representation of the Southern District in the Legislative Council which was caused in July by the resignation of a Member. The decision not to hold a by-election was made on the grounds of expense and the approach of the General Election. It is the practice not to fill a casual vacancy occurring just prior to a General Election, but in this case the intervening period included the whole of the final Session of Parliament.

Active Service Vote.—The Constitution Act Amendment Act[3] revised the franchise based on War service, as enacted in 1940.[4] In that year members of naval, military and air forces of the Commonwealth who served outside Australia in the present War were given a vote for both Houses. The suffrage is now extended to persons, including seamen and members of Empire forces, serving in any War, and—as regards members of Australian forces who enlisted voluntarily—irrespective of whether they served overseas or not. So far as the House of Assembly is concerned, of course, only persons not entitled to vote under adult suffrage are affected.

One other amendment is contained in this Act. The provisions governing disqualification from voting for the election of Members of the Legislative Council, which varied somewhat from those relating to the House of Assembly, have been made uniform with the latter.

Australia : Western Australia (Prolongation of Parliament).[5]—By Acts Nos. 18 and 19 of 1942[6] the life of the Legislative Council and of the Legislative Assembly have been further prolonged, the paragraph under this subject in our last issue[7] having application, subject to the substitution of April 10, 1943, for April 10, 1942, and February 21, 1943, for February 21, 1942, and the expression " the periodical retirement of the Senior Member of each Province of the Legislative Council by the effluxion of time " should read " the periodical retire-

[1] As contributed by the Clerk of the House of Assembly and Clerk of the Parliaments.—[ED.]
[2] No. 40 of 1943. [3] No. 41 of 1943.
[4] *See* JOURNAL, Vol. IX, 33.
[5] As contributed by the Clerk of the Legislative Assembly.—[ED.]
[6] 6 Geo. VI, XVIII and XIX. [7] JOURNAL, Vol. X, 51.

ment of the Member of each Province of the Legislative Council due to retire by the effluxion of time ".

Australia : Western Australia (" Other Ranks ", M.P.s on Military Service).—Act No. 29 of 1942[1] was passed to remove the doubt which existed as to whether a Member of either House of Parliament who had enlisted as a member of the military forces as a private or non-commissioned officer could retain his seat in Parliament (an officer is protected). This Act also protected such a Member called to assist the Federal Government in a civil capacity for work which he was specially qualified to perform and for which he received remuneration.[1]

Australia : Tasmania (Constitutional).—Two Bills proposing amendments to the Constitution were passed by the House of Assembly during the 1942 Session but rejected by the Legislative Council. The Constitution Bill (No. 35), which was on the lines of the British Parliament Act, had 2 *R.* put off for 6 months. The second Bill (No. 55) proposed the following alterations in respect of the Legislative Council:

(*a*) The number of Members to be raised from 18 to 20.

(*b*) Five electorates each returning 4 Members instead of 15 Divisions as at present each returning 1 Member with the exception of the Divisions of Hobart and Launceston, which return 3 and 2 Members respectively.

(*c*) A General Election of the Council to be held on the first Saturday in May, 1946, and thereafter on the corresponding day in every fifth year, instead of Members holding their seats for 6 years as at present, and 3 Members retiring each year.

(*d*) And amendments consequential on these alterations.

and was negatived on 2 *R.* More detailed particulars upon this subject will be given in a future issue of the JOURNAL should an actual Constitutional amendment be made.

New Zealand : House of Representatives (Secret Sessions).[2]—The procedure in regard to Secret Sessions of the Lower House in New Zealand has been for the Prime Minister to call Mr. Speaker's attention to the fact that Strangers are present, upon which Mr. Speaker consults the pleasure of the House, the Question being—" That strangers be ordered to withdraw ", which after being agreed to the Prime Minister moves—" That the remainder of this day's sitting be a Secret Session." A report of the proceedings at the Secret Session is then issued under the authority of Mr. Speaker, which, with the names of the Members taking part in the debate, is published in *Hansard.*

This practice was observed on June 5, July 9 and 10, August 22 and December 5, 1940, and also from December 11, 1941, to June 24, 1942, during which period Secret Sessions of the House of Representatives were held on December 11, 1941, February 5, 10, March 17, April 29, August 18 and October 22, 1942.

[1] 6 & 7 Geo. VI, XXIX. [2] *See also* JOURNAL, Vol. IX, 33.

In the Legislative Council, it is the practice for its Speaker to intimate, to that House, the time of a Secret Session in another place, frequently by reading a letter to him from the Speaker of the House of Representatives, in which House there is a gallery set apart for Members of the Legislative Council. In cases of urgency the intimation has been by the subsequent posting of a notice on the notice board in the corridor. On June 5, 1940,[1] the Speaker of the Legislative Council announced that:

> Owing to the necessity for the most stringent safeguards it is asked that Councillors proceed to their gallery by one route only—namely, up the main staircase and along the corridor containing the portraits of British Prime Ministres. Every other point of entry will be locked. There will be a guard at the entrance to the corridor and members of the Council must show their badge. Some of them may not be known to the men on guard. Their co-operation in preventing unauthorized persons reaching their gallery will be appreciated. Members may leave their gallery if so desired and may return by the same route.

The attention of Councillors is directed to the following Order in Council relating to Secret Sessions:

> 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 report or description of any of the proceedings of that Session or any matter purporting to be a report or a description thereof, except such report or description thereof as may be officially authorized by the Speaker of that House. This applies to every one who may be permitted to attend the Secret Session and no special privilege attaches to any Member of Parliament or Legislative Councillor in respect of his action outside Parliament.

On June 30, 1942,[2] the Prime Minister (Rt. Hon. P. Fraser) said: "Sir, as I desire to make a very brief statement to the House in secret, I beg to call your attention to the fact that strangers are present; but on this occasion I would suggest that the Members of the Legislative Council, the Director of Publicity, the members of the Press Gallery and the members of the *Hansard* staff be allowed to remain, on condition that they treat what is said in confidence."

> Mr. SPEAKER: The question is, *That strangers, other than the Members of the Legislative Council, the Director of Publicity, the members of the Press Gallery and the members of the Hansard staff be ordered to withdraw.*

Motion agreed to.

[1] 257 *N.Z. Hans.* 122.

[2] 261 *N.Z. Hans.* 423.

On December 3, 1942, the Rt. Hon. P. Fraser (Prime Minister) said that he had certain matters to put before the House and could only do so in Secret Session. However, as the time taken would be very short, instead of moving the usual Motion as to strangers, he would ask only that steps be taken to have the galleries cleared.

In reply to a Question the Prime Minister said that he did not wish to mention the subjects he would discuss until the House was in Secret Session. The time taken in Secret Session would be very short and then the War situation could be discussed in Open Session. He felt that the House should be in possession of certain information before it started such discussion. He moved, *That the time of the sitting be extended beyond half-past ten o'clock p.m. if necessary.* Motion agreed to.

Mr. Speaker: I understand from the rt. hon. gentleman that he desires the galleries to be cleared for a short period and that the House will resume in Open Session?

The Rt. Hon. P. Fraser said that was so.

Mr. Speaker: "Let the galleries be cleared." The galleries were accordingly cleared.

On May 20, 1943,[1] the Rt. Hon. P. Fraser (Prime Minister) called the attention of Mr. Speaker to the fact that strangers were present and said that he would be moving a Motion later regarding certain officers whom he considered should be permitted to remain. National Service and man-power officers would have to be present that night, as on previous occasions, and he proposed to ask the House to agree to members of the Press Gallery being present on that occasion, without, of course, any reports being taken. He considered it to the advantage of the country that Press representatives should remain, because he knew from past experience that he could trust them.

Upon an hon. Member asking what sort of Secret Session that would become, Mr. Fraser said that Press representatives had been present on previous occasions, but if the hon. Member objected that would end the matter right away. Press representatives were associated with them very closely and the background of the information to be given that night would be useful to them and to those to whom they were responsible. The usual procedure was then followed in regard to the withdrawal of strangers with a subsequent report of the proceedings by the Speaker of the House of Representatives.

Union of South Africa: House of Assembly (Executive Government Control over Expenditure).[2]—In conformity with the Ruling given by Mr. Speaker during the 1940-41 Session,[3] the Governor-General's recommendation was given to the recommendations of the Pensions Committee before the Report of the Committee was considered.[4] The Governor-General's recommendation was also given to

[1] 262 *N.Z. Hans.* 516.
[2] As contributed by the Clerk of the House of Assembly.—[ED.]
[3] *See* JOURNAL, Vol. X, 54.
[4] 1942 VOTES, 637.

items in the Pensions (Supplementary) Bill which were not included in the *Sel. Com.* Report[1] and the Governor-General's consent to the recommendations of the Select Committee on Crown lands.[2] The anomalies in the practice of the House referred to in our last issue have thus been removed.[3]

Union of South Africa (Continuity of Speakership in the Cape and Union Parliaments).[4]—This subject, in general, has been referred to in previous issues of this JOURNAL.[5]

Colony of Cape of Good Hope.—Sir Christoffel Brand was Speaker for 20 years (1854-1874) and represented Stellenbosch during that whole period. He resigned owing to ill-health and was granted a special pension.

Sir David Tennant was Speaker for 22 years (1874-1896). He represented Piquetberg during the whole period and resigned on accepting the appointment as Agent-General in London. He was also granted a special pension.

Sir Henry Juta was Speaker for 2 years (1896-1898). He represented Oudtshoorn during that period but was defeated at a general election.

Sir Bisset Berry was Speaker for 10 years (1898-1908). He represented Queenstown during that period but was also defeated at a general election.

Sir James Molteno was Speaker for 2 years in the Cape Parliament (1908-1910).

Union.—Sir James Molteno was also for 5 years Speaker in the Union Parliament (1910-1915). He represented Somerset East while in the Cape Parliament and Ceres in the Union Parliament. He did not stand for re-election at the ensuing general election.

Mr. Joel Krige was Speaker for 9 years (1915-1924). He retained his seat as Member for Caledon but was not re-elected Speaker.

Dr. Jansen held office for 15 years (1924-1929 and again from 1933 to 1943).[6] During the interval he was Minister of Native Affairs and represented Vryheid[6] during the whole of that time.

Dr. de Waal was Speaker for 4 years (1929-1933). He retained his seat as Member for Piquetberg but was not re-elected Speaker.

Proposals not requiring Legislation.[7]—If a Speaker is likely to be faced with opposition at a general election there are two ways in which the position can be met without legislation. One way is for the political parties concerned to come to a mutual arrangement, with the assistance of the Prime Minister and the Leader of the Opposition, to return him as an independent for his existing constituency. The other way is to find a " safe " seat in another constituency.

Proposals requiring Legislation.[8]—Instances are those of: (i) the

[1] *Ib.* 702. [2] *Ib.* 651.
[3] *See* JOURNAL, Vol. X, 54.
[4] As contributed by the Clerk of the House of Assembly.—[ED.]
[5] Vols. III, 48, 53; IV, 11; VII, 150-8; X, 95-7. [6] *See* JOURNAL, Vol. X, 96-7.
[7] *See* H.C. Paper 98 of 1939, §§ 32, 55-7. [8] *Ib.* 45-54.

Transvaal and Orange River Colonies;[1] (ii) Southern Ireland (Eire);[2] (iii) Southern Rhodesia;[3] and (iv) Sir Bryan Fell's suggestion.[4] The objections to these are: (i) that the Speaker's constituency is put to the trouble of 2 elections and that at the next general election the Speaker is left without a seat and cannot be re-elected Speaker unless he finds another; (ii) that under a system of single-member constituencies such as exists in the Union of South Africa, the Speaker's constituency would be virtually disfranchised; (iii) that the person elected may never have been a Member, in which event he would probably be regarded as an official who had not had the same experience or been through the same mill as Members themselves; and (iv) that the total number of seats would be increased and that the Speaker's seat would have only a fictitious value.

The Contributor suggests that, if it is found impracticable to arrange for a Speaker to be returned unopposed in his constituency or for a "safe" seat to be found for him elsewhere, another way out of the difficulty might be found—namely, in the first instance to choose a Speaker from among the Members of the House as at present; but that once he has been chosen as Speaker he may again be chosen although he has not been elected as a Member of the House of Assembly at the ensuing or any successive general election. This proposal is based on the four proposals mentioned above.

The Contributor remarks that it is, of course, open to the objection that it would leave the Speaker without a place in Parliament if he should not seek re-election as a Member and not be re-elected as Speaker; but he would always have the option of seeking re-election as a Member and it is probable that any Speaker who conscientiously strives to uphold the high ideals of his office would prefer to remain out of Parliament—at all events for the time being—than to jeopardize those ideals in the political turmoil of a general election. The Contributor concludes by remarking that if this suggestion were adopted it would require only a slight amendment of the South Africa Act and a few consequential amendments of the Standing Rules and Orders of the House of Assembly.

Union of South Africa (Offices of Profit under the Crown).—Section 53 of the Constitution[5] provides that:

> No person shall be capable of being chosen or of sitting as a Senator or Member of the House of Assembly who holds any office of profit under the Crown within the Union.

and s. 55 thereof reads:

> If any person who is by law incapable of sitting as a Senator or Member of the House of Assembly shall, while so disqualified, and knowing or having reasonable grounds for knowing that he is so disqualified, sit or vote as a Member of the Senate or the House of Assembly, he shall be liable to

[1] *See* JOURNAL, Vol. III, 49-50. [2] *Ib.* VI, 62-3. [3] *Ib.* III, 50-51; VII, 153.
[4] *Ib.* VII, 152, 156. [5] 9 Edw. VII, c. 9.

a penalty of £100 for each day on which he shall so sit or vote, to be recovered on behalf of the Treasury of the Union by action in any superior court of the Union.

In 1915 the Disabilities War and Rebellion Act[1] was passed, s. 1 (*a*) of which provides that no Member of either House of Parliament or of any Provincial Council shall be deemed to have held or to be holding an office of profit under the Crown by reason that he had held or holds any rank in any of the Forces which have taken part in Naval or Military operations against His Majesty's enemies during the present War or in military operations for the suppression of the recent Rebellion.

In 1920 a Native Affairs Act[2] constituting a Native Affairs Commission, the 5 members of which each receive a salary of £1,000 *p.a.*, provided that, notwithstanding the provision of the Union Constitution above quoted, a Member of either House of Parliament may be appointed a member of such Commission, " and though he receive remuneration as such " he shall not be deemed to hold an office of profit under the Crown.

In 1933, s. 2 of the South Africa Amendment Act[3] amended s. 53 of the Constitution by exempting from offices of profit under the Crown Members of either House of Parliament who were appointed or became J.P.s under s. 2 of Act No. 16 of 1914, as well as any such Member appointed a J.P. before the commencement of the said Act, performing his functions as such under s. 5 thereof.

In 1943 an Offices of Profit Amendment Act[4] was passed exempting under s. 1 (1) thereof, from offices of profit under the Crown, in terms of s. 53 of the Constitution, or of s. 53 read with s. 72 thereof,[5] any Member of either House of Parliament appointed before or after the passing of such Act, a member of: (i) the Council of Public Health under s. 4 of the Public Health Act (No. 36 of 1919); or (ii) the South Africa Medical Council or the South African Pharmacy Board under s. 2 of the Medical, Dental and Pharmacy Act (No. 13 of 1928); or (iii) the National Nutrition Council under s. 2 of the Public Health Amendment Act (No. 14 of 1940); or (iv) the Social and Economic Planning Council, who in each case receives no payment in respect of his services as such in excess of £3 3s. od. for each day on which he renders such services together with reimbursement of any travelling expenses incurred by him in the course of such services.

Section 1 (2) applies the above provisions to persons who, after the commencement of the Act of 1943, hold an office of profit under the Crown by virtue of an appointment as a member of any Council, Committee, Board, or similar body, not referred to in s. 1 (1) of the Act, and in respect of his services on any such body receives no payment— " in excess of the expenses actually and reasonably incurred by him in the course of such services "—notwithstanding any provision in any law authorizing or requiring the payment of any remuneration or allowance to members of such bodies.

[1] No. 10 of 1915. [2] No. 23 of 1920. [3] No. 17 of 1933.
[4] No. 19 of 1943. [5] Which applies to Members of Provincial Councils.—[ED.]

Section 1 (3) of the Act makes s. 1 (1) retrospective.

The Minister of the Interior (Hon. H. G. Lawrence, K.C.), in moving[1] 2 *R.* of the Bill of 1943, said that the conclusion arrived at was that " an office of profit under the Crown should be a situation or employment not merely ' transient, occasional or accidental ', such as a Parliamentary Commission. There were, however, bodies such as the Food Supply Board, the Dried Fruit Council, the Wheat Control Board, the Wool Council and Tobacco Council which were not bodies receiving their funds from the State. Those bodies, however, were certainly not excluded from the definition in s. 1 of the Bill, but it may well be that the fact that the moneys, salaries or emoluments paid came from levies and not from State funds may place membership of such bodies outside the category of offices of profit. Hon. Members, continued the Minister, would have to be on their guard and apply the test in the light of all the circumstances. The whole idea underlying the measure was to prevent an abuse of patronage by the Government of the day, by favouring an individual Member of Parliament and so securing his allegiance.

The opinion was expressed that there should be a provision enabling a Member of Parliament to serve on a Committee or Council or a similar body, provided he received no payment in excess of his out-of-pocket expenses in the course of such service. The Bill was designed to remove any ambiguities. The amount to be reimbursed would be in respect of actual expenses incurred as assessed by the Department concerned. The Member would be permitted to receive his travelling and out-of-pocket expenses, but no allowance over and above those particular expenses.[2]

Union of South Africa (Constitutional : Electoral Quota).[3]—The Constitution (9 Edw. VII, c. 9) was amended in the 1942 Session by the omission of ss. 33 and 34, dealing respectively with the original number of Members of the House of Assembly and their increase, and by the amendment of ss. 32 (Constitution of House of Assembly) and 41 (Alteration of electoral divisions) in order to clarify and consolidate the existing law relating to the number of such Members to be elected in each Province, the delimitation of the Union into electoral divisions and the taking of a census in so far as it affected such delimitation. Sections 33 and 34 were omitted owing to the maximum number of Members under the Act—namely, 150—having been reached in 1933 and fixed provision being made in ss. 32 and 41. The table on page 57 is a comparison of the Provincial and total representation of the House of Assembly[4] since Union in 1910.

Union of South Africa (Representation of Natives).[5]—Section 18 of the South Africa Act, 1909, is, by the above-mentioned s. 2 of Act No. 2 of 1942, amended by extending the tenure of office of Members

[1] 45 *Assem. Hans.* 2282-6. [2] 46 *Ib.* 4145-7.
[3] *See also* JOURNAL, Vols. V, 35; VI, 58; IX, 37; X, 56. [4] As contributed by the Clerk of the House of Assembly.—[ED.] [5] *See* JOURNAL, Vol. V, 35-9.

Parliament and Date of Duration.	*Cape of Good Hope.*	*Natal.*	*Transvaal.*	*Orange Free State.*	*Total Representation.*
First (1910-15)	51	17	36	17	121
Second (1915-19) ..	51	17	45	17	130
Third and Fourth (1920-24)	51	17	49	17	134
Fifth (1924-29)	51	17	50	17	135
Sixth (1929-33)	58	17	55	18	148
Seventh (1933-38) ..	64[1]	16	57	16	153[1]
Eighth (1938-43) ..	62[1]	16	60	15	153[1]
Ninth (1944-) ..	59[1]	16	64	14	153[1]

of the Provincial Council of the Cape of Good Hope elected under the Representation of Natives Act, 1936,[2] who were elected Members of that Council on September 1, 1941, to June 30, 1943.

Union of South Africa (Electoral Law Amendment).—During the 1943 Session the Electoral Laws Amendment Act (No. 20 of 1943) was passed amending the Principal Act (No. 12 of 1918) in certain respects, the main object of which was, in view of conditions brought about by the War, to postpone the biennial registration due in April, 1943, the next such registration being in 1945, but provision is made for supplementary registrations in May and September, 1943, in January, May and September, 1944, and January, 1945. These supplementary lists will therefore be added to the biennial registration of 1941 and made the complete roll for the Union until replaced. The 1943 Act also amends the law in regard to postal voting by widening the definition of "competent witness" to include any "Union National" and is no longer limited to special or ordinary J.P.s, Commissioners of Oaths (in their own districts), etc. Consequently upon the suspension of the biennial registration and the continued supplementary registration, the law is also amended in regard to liquor licences. Minor amendments are also made in regard to electoral machinery.[3]

Union of South Africa: Provincial Councils (Prolongation).—By s. 1 of the Provincial Councils Continuation Act,[4] the life of the 4 Provincial Councils of the Union elected in 1936 for 5 years[5] from their first meeting, as provided in s. 73 of the South Africa Act, 1909, was extended as a War measure to June 30, 1943. These first meetings were held on different dates in 1941. In order to avoid summoning Parliament specially for that purpose, the Prime Minister (Field-Marshal the Right Hon. J. C. Smuts) announced on September 3, 1941, that all the Provincial Councils would be allowed to lapse and that legislation would be introduced with retrospective effect. Since the passing of the Statute of Westminster, said the Minister of the Interior (Hon. H. G. Lawrence, K.C.),[6] Parliament was the supreme and sovereign law-making body in the Union; it was therefore quite open for Parliament to pass a law to such effect. In the normal course the Provincial

[1] Including 3 European Members elected under the Representation of Natives Act, 1936. (*See* JOURNAL, Vol. V, 35.—[ED.])
[2] Act No. 12 of 1936.
[3] 1943 *Sen. Hans.* 153-41.
[4] No. 2 of 1942.
[5] Extended from 3 to 5 years by s. 2, Act 43, 1935.—[ED.]
[6] 43 *Assem. Hans.* 751-3.

Council General Elections would have taken place late in 1941 or early in 1942.

Union of South Africa : Cape of Good Hope (Reading Aloud of Notices of Questions).[1]—Provincial Council S. Rule 40, which previously had provided *inter alia* for the reading aloud by a Member of any Notice of Question, was amended in order to bring it into line with S.O. 47,[2] Union House of Assembly, which provides as below. The reading aloud of such Notices of Questions resulted in much valuable time being lost.

Union of South Africa : Cape of Good Hope Provincial Council (Oath of Allegiance).[3]—In the Orange Free State Provincial Council, in consequence of a judgment given on June 20, 1920, by the O.F.S. Provincial Division of the Supreme Court, the Standing Rule providing for the taking of the Oath or the Affirmation by newly elected Members of a Provincial Council has been a dead letter ever since 1923 owing to its having been declared *ultra vires* the South Africa Act, 1909. Although such Act provides for the Oath, etc., to be taken by a newly elected Senator or a Member of the Union House of Assembly (s. 51), it does not specifically provide for the Oath to be taken by Members of any of the four Provincial Councils. Until recently, however, the Cape, Natal and Transvaal Provincial Councils have observed their Rule providing for an Oath or Affirmation. However, at the swearing in of the Tenth Cape Provincial Council on December 14, 1943, by the Administrator, the latter, when administering the oath, prior to the election of the Chairman of the Council, ruled, upon the question being put to him by a Member, that in view of the decision of the Supreme Court (O.F.S. Provincial Division) it was not incumbent on any Member to take and subscribe the Oath or make the Affirmation in order to be permitted to sit in the House and to take part in its proceedings. Forty Members belonging to the pro-Government group nevertheless took the Oath, whilst the Opposition Party, consist-

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

[2] The Standing Order reads:

47. (1) Every member, in giving notice of a question (to be put to a Minister relating to public affairs or to another member relating to any bill, motion, or other public matter connected with the business of this House in which such member may be concerned) shall deliver before a quarter to three o'clock p.m. to the Clerk a copy of such notice, fairly written, subscribed with his name and the day proposed for bringing on such question. Subject to S.O. No. 48, it shall be the duty of the Clerk to place the questions on the order paper in the order in which they are handed to him. Such notice of question shall not be read to this House by the member who hands in the same, unless the consent of Mr. Speaker to the reading of any particular question has been previously obtained, in which case such question must be read before Mr. Speaker proceeds to motions or orders of the day, as the case may be.

(2) Every member, in giving notice of a motion, shall read it aloud and deliver at the Table a copy of such notice fairly written, subscribed with his name and the day proposed for bringing on such motion.

(3) No question shall be asked and no motion shall be moved on the same day on which the notice thereof is given, and no notice shall be set down for any day beyond fourteen consecutive sitting days of this House following the day upon which it is given. (See S.O. No. 86.)

[3] *See also* JOURNAL, Vol. X, 60.

ing of 18 Members, abstained. In so far as the Cape Provincial Council was concerned no steps are contemplated to omit from its Rules of Procedure the provision therein, regarding the Oath or Affirmation. It will therefore be left to Members in future to subscribe thereto if they so desire.[1]

Union of South Africa : Cape of Good Hope (Non-M.P.C.s on Provincial Executive Committees).[2]—A further instance has occurred where a person who was not a Member of a Provincial Council was elected a member of a Provincial Executive Committee. He is Mr. B. Muller, who lost his seat as a Member of the Provincial Council of the Cape of Good Hope at the General Election held on October 13, 1943, but who remained a member of the Executive Committee, in terms of s. 78 (1) of the South Africa Act, 1909, until the first meeting of the new Council on December 14, 1943, when he was re-elected by P.R. to the Executive Committee of the above-mentioned Province.[3]

Union of South Africa : Natal (Administration of Oath of Allegiance).[3]—Hitherto the practice has been for Members of the Provincial Council to subscribe to the Oath of Allegiance[4] in the presence of the Clerk of the Provincial Council, the Clerk signing each page.

At the opening of the Tenth Council at the end of 1943, His Honour the Administrator (Mr. G. Heaton Nicholls), however, decided to ask the Judge-President of the Natal Division of the Supreme Court to administer the Oath to Members of that Council. The procedure, therefore, was that, after the Members had taken their seats, the Clerk of the Council called the roll. He then read the intimation from the Administrator that he had commissioned the Judge-President to administer the Oath. After the Oath had been taken, the Clerks proceeded to the Bar of the Council, where they met the Judge-President, who had been escorted there by the Chief Messenger. They then preceded him to the Clerk's Chair at the Table and Members came up 5 at a time and took the Oath. At the conclusion, the Clerks escorted the Judge-President to the Bar of the House, after which the election of the Chairman took place.

South-West Africa (Incorporation of, into the Union).[5]—On May 14, 1943,[6] the following Resolution was passed by the Legislative Assembly of this Mandated (C) Territory and the extracts from the Votes and Proceedings thereanent are given below:

> That this House respectfully requests His Honour the Administrator to forthwith urge upon the Government of the Union of South Africa that the time has arrived for the termination of its Mandate over the Territory of South-West Africa, and that it is the earnest desire of the inhabitants of this Territory that upon such termination

[1] As contributed by the Clerk of the Cape Provincial Council.—[ED.]
[2] *See also* JOURNAL, Vol. IX, 41.
[3] As contributed by the Clerk of the Provincial Council.—[ED.]
[4] *See also* JOURNAL, Vol. X, 60.
[5] As contributed by the Clerk of the Legislative Assembly.—[ED.]
[6] 1943 S.W.A. VOTES, May 14.

of the Mandate the Territory of South-West Africa be formally annexed to and incorporated in the Union of South Africa upon such terms as to financial relations and political representation as may be mutually agreed upon between the Government of the Union of South Africa and representatives nominated by this House.

After discussion, the Motion was put and the following Members voted in favour thereof: (*here follow* 15 *names.*)

Mr. Chairman directed that his vote be recorded in favour of the Motion, which was accordingly unanimously agreed to.

There was no discussion on the Motion, the mover formally moving it and the seconder declaring his pleasure in seconding it. The Chairman confined his remarks to the direction as above recorded.

The following reply (which was published in the South-West Africa press) was received by the South-West Africa Administration from the office of the Prime Minister of the Union:

> The adoption by the House of a Resolution regarding the termination of the Mandate and the incorporation of the Territory in the Union is noted. General Smuts gratefully acknowledges the reassurance of the House's loyalty to the Union and its support of the Government's War policy as well as its congratulatory messages.[1]

Ireland (Eire) (Constitutional Practice).—On December 3, 1940,[2] an hon. Member in the House of Commons asked the Secretary of State for Dominion Affairs whether all important decisions of the Cabinet were immediately conveyed to Eire as well as to the representatives of the other Dominions in view of the fact that there are German and Italian Legations in Dublin in constant touch with Berlin and Rome, to which Viscount Cranborne answered: " No, Sir."

Southern Rhodesia (Prolongation of Legislature).[3]—In terms of s. 18 (2) of the Constitution,[4] the Governor must dissolve the Legislative Assembly at the expiration of 5 years from the date of its first meeting. In the case of the present Parliament, this period expired May 3, 1944, but this Act[5] has extended its life until May 3, 1945. Such date, however, may be altered by Governor's proclamation following a Resolution of the House affirmed by not less than $\frac{2}{3}$ the total number of Members. This procedure avoids the necessity of passing a reserved Act for every extension. This Act is a reserved measure. The present Legislative Assembly therefore will, during the present War, be able to extend its possible life for successive periods of not exceeding 12 months; but the final date of dissolution must be less than 2 years after the end of the War. The power of the Governor to dissolve Parliament at any time is preserved.

[1] The latter sentence refers to another Resolution also passed by the House.
[2] 367 *Com. Hans.* 5, s. 428.
[3] As contributed by the Clerk of the Legislative Assembly.—[ED.]
[4] Letters Patent 1923. [5] No. 15 of 1943.

Southern Rhodesia (Voting Disqualification : Office of Profit under Crown).[1]—In terms of s. 49 (4) of the Electoral Act. (Chapter 2),[2] any British subject by birth or naturalization who is qualified to be registered or is registered as a voter for any electoral district shall be eligible for election as a Member of Parliament, subject to the following provisions.

The Civil Disabilities Act[3] imposes "certain disabilities upon persons who are guilty of treasonable or seditious practices, or who desert or are cashiered or discharged with ignominy from the armed forces of the Colony or other His Majesty's Forces, or who fail to take an oath of allegiance, or who evade or refuse to render service in such forces". If an order of civil disability is made against any person by the High Court, it has certain automatic effects, one of which is that it disqualifies the person against whom the order is made from being registered as a voter and from voting at any election. The disqualification is notified by the Registrar to the Chief Registering Officer.

The effect of this measure, therefore, is to render such persons ineligible for election as Members of Parliament.[4]

Southern Rhodesia (Hansard).—With reference to Volume III, p. 89, Members of the Legislature now each receive 6 gratis copies instead of 4, the daily requirements for all purposes being 500 copies.

Southern Rhodesia (Catering).—With reference to Volume III, p. 99, the practice of serving afternoon teas to Members and their guests has now been extended to the supplying of refreshments to members of Select Committees meeting in the mornings.

The Rhodesias and Nyasaland (Amalgamation).[5]—This question was the subject of debate on the Address on November 20, 1941,[6] and on December 9, 1941,[7] an hon. Member asked the Under-Secretary of State for Dominion Affairs whether he was aware that the Southern Rhodesian Prime Minister had arranged a Conference with Members of the Legislative Council of Northern Rhodesia to discuss amalgamation of the Rhodesias and Nyasaland and the shaping of a Constitution; and whether he would undertake to cancel this Conference, seeing that such action is an interference with the prerogatives of the British Government and Parliament and calculated to create disaffection and disturbance in territories for which the House was responsible.

The Under-Secretary of State for Dominion Affairs (Sir Geoffrey Shakespeare) said that the Prime Minister of Southern Rhodesia had invited unofficial Members of the Legislative Council of Northern

[1] *See* JOURNAL, Vol. VII, 79. [2] No. 12 of 1942.

[3] Section 6 of the Act also disqualifies such person from being enrolled or voting at elections for municipal councils, town management or road boards, and from being elected or as sitting as a member thereof. Neither may such person hold any office of profit under the Crown, but the Minister (under the Act) may authorize the employment of such person in Government service. Such person is also debarred from receiving or being given any Government loan or the acquisition of land on special terms.—[ED.]

[4] As contributed by the Clerk of the Legislative Assembly.—[ED.]

[5] *See* JOURNAL, Vols. IV, 30; V, 50; VI, 66, VIII, 54; IX, 49.

[6] 376 *Com. Hans.* 5, s. 514. [7] *Ib.* 1379.

Rhodesia and Nyasaland to a Conference to ascertain what constitutional, financial and administrative arrangements were likely to prove acceptable to the unofficial Members with a view to proposals relating to the amalgamation of the three Territories being formulated for submission to H.M. Government. As regards the second part of the Question, the hon. Member could rest assured that H.M. Government were as jealous of the prerogatives as the hon. Member himself.

On December 11, 1941,[1] a further Question was asked in the House of Commons in regard to a meeting of the Conference early next year, such Conference to consider a Constitution for the Territories, native representation and Parliamentary machinery, whether the Governments of Northern Rhodesia and Nyasaland would be present or represented at the Conference, and whether he could make a statement on this development; in reply to which the hon. Member was referred to the reply given above, by the Under-Secretary for the Colonies (Mr. G. Hall), who added that the Governments of these two Territories will not be present or represented at the Conference nor in any way committed to any conclusions which may be reached at the Conference.

British India : Central Legislature (Offices of Profit under the Crown).—Section 3 of the India and Burma (Temporary and Miscellaneous Provisions) Bill introduced into the House of Commons, September 30, 1942, enabled the Central Legislature to declare that an office of profit under the Crown did not disqualify its holder from being a Member of either House. This power had already been conferred on both the Federal and Provincial Legislatures under the Constitution;[2] but pending the inauguration of Federation the Ninth Schedule thereof continued the application to the Central Legislature of the 1919 Act,[3] which disqualified a non-official Member from retaining his seat if he accepted office in the service of the Crown in India. The Government of India had found that the absence of power to remove this disqualification hampered their War effort as several Members of the Central Legislature had been deterred from accepting War-time appointments, including commissions in the Army, for fear of losing their seats. Retrospective effect was required to cover the cases of certain Members.[4] This Bill became 5 & 6 Geo. VI, c. 39.

British India : Council of State (Members on Service).[5]—The Indian Legislature (Prevention of Disqualification) Ordinance, 1942,[6] promulgated by H.E. the Governor-General (*Gazette of India Extraordinary*, November 28, 1942), provides that a person shall not be disqualified for election as or continuance as a Member of either Chamber of the Indian Legislature by reason only that he holds or accepts an office in the naval, military or air forces of, or raised in, British India on behalf of His Majesty or an office in the service of the Crown in India certified by the Central Government to be an office created for a pur-

[1] *Ib.* 1534. [2] 383 *Com. Hans.* 5, s. 777; *see also* JOURNAL, Vol. IV, 85. [3] *Ib.* 98.
[4] *Explanatory Memorandum of the Bill* (43).
[5] As contributed by the Secretary of the Council of State.—[ED.]
[6] Ordinance No. LXII of 1942.

pose connected with the prosecution of the War. The promulgation of this Ordinance was made possible consequent on the amendment of the Ninth Schedule of the Government of India Act, 1935, by the India and Burma (Temporary and Miscellaneous Provisions) Act, 1942, 5 & 6 Geo. VI, c. 39. The Ordinance will remain in force till the termination of the present hostilities and for 6 months thereafter.[1]

On February 16, 1943, the following Question was asked in the Federal Legislative Assembly:

Mr. K. C. Neogy: (*a*) With reference to the Governor-General's Ordinance No. LXII of 1942 (Indian Legislature [Prevention of Disqualification] Ordinance), will the Honourable the Law Member please state if it is a fact that the Ordinance was promulgated in pursuance of a proviso added to sub-section (1) of s. 63-E of the Ninth Schedule to the Government of India Act, 1935, by a Parliamentary Statute enacted in October, 1942; and that the said proviso merely permits the Indian Legislature to pass an Act declaring any office in the service of the Crown in India to be an office the holding of which does not disqualify the holder thereof for election as, or continuance as, a Member of either Chamber of the Indian Legislature ?

(*b*) Did Government, at any time, consider the desirability of introducing the necessary legislative measure in the Central Legislature, in terms of the intention of Parliament, to implement the proviso mentioned above ? If so, what were the reasons for an Ordinance being promulgated on this subject ?

(*c*) Which Members of the Central Legislature are at present benefited by the operation of this Ordinance, and what are the reasons for giving effect to the Ordinance retrospectively from the 3rd day of September, 1939 ?

The Honourable Sir Sultan Ahmed: (*a*) Yes. In enabling the relevant provision to be made by Act of the Indian Legislature, the proviso inserted by sub-section (1) of s. 3 of the India and Burma (Temporary and Miscellaneous Provisions) Act, 1942, brought the same provision within the scope of the ordinance-making power conferred by s. 72 of the Government of India Act, as set out in the ninth Schedule to the Government of India Act, 1935, which provides that any ordinance made thereunder shall have the like force of law as an Act passed by the Indian Government.

(*b*) If the hon. Member intends to suggest that the expression of the proviso in terms of an Act of the Indian Legislature indicates an intention that resort should not be had to the ordinance-making power, I am unable to agree with him. The question whether the matter should be left to be dealt with by a Bill in the course of the present Session was carefully considered, but the immediate regularization of the position of certain hon. Members was felt to be imperative.

(*c*) The hon. Member then tabled a list of the Members whose

[1] Ordinance No. LXII of 1942.

position was believed to require regularization. Retrospective effect from September 3, 1939, was necessary because in some cases the acceptance of office, assuming such to be involved, took place shortly after the outbreak of War.[1]

India (Viceroy's Executive Council).[2]—In reply to a Question in the House of Commons on November 10, 1942,[3] the Secretary of State for India (Rt. Hon. L. S. Amery) gave the composition of the Viceroy's Executive Council as follows:

War : Sir A. P. Wavell, G.C.B., C.M.G., M.C.
Home : Sir R. M. Maxwell, K.C.S.I., C.I.E.
Finance : Sir J. Raisman, K.C.S.I., C.I.E.
Commerce : Mr. N. R. Sarker.
Supply : Sir H. P. Mody.
Law : Sir Sultan Ahmed.
Civil Defence : Sir J. P. Srivastava, K.B.E.
Indians Overseas and Leader in the Legislature : Mr. M. S. Aney.
Defence : Malik Sir Firoz Khan Noon, K.C.S.I., K.C.I.E.
Education, Health and Lands : Sir Jogendra Singh.
Labour : Dr. B. R. Ambedkar.
War Transport : Sir E. C. Benthall.
Posts and Air : Khan Bahadur Sir Mohammad Usman, K.C.I.E.
Member without Portfolio and accredited Representative of India at the War Cabinet : Sir Ramaswami Mudaliar.
Information : Vacant.

In reply to another Question on the same day, Mr. Amery said that the total electorate for the last General Election (1934) for the Central Legislative Assembly was 1,415,892 and for the Provincial Legislatures for the last General Election (1937) was 30,000,000 men; the estimated number of women qualified to vote was 4,500,000.

India : Central Assembly (Appeal against Mr. Speaker's Ruling).[4]—With reference to Volume I, p. 58, l. 9, of the JOURNAL, the number of the Rule there quoted is " 63 " not " 15 ".

India : Central Assembly (Time Limit of Speeches).[4]—With reference to Volume I, p. 58, of the JOURNAL, l. 18, " Rule 46 " should be substituted for " Rule 154 ".

India : Central Assembly (Remuneration and Free Facilities granted M.P.s).[4]—With reference to Volume I, p. 105, l. 6, " $1\frac{1}{2}$ " should be substituted for " $1\frac{1}{2}$ first-class fare ", and at the end of the paragraph on p. 106 *idem* the following note should be added:—

Note.—For the period beginning with October 5, 1942, and ending with such date as the Governor-General in Council may declare to be the date on which transport difficulties have ceased, the operation of the concession of free haulage of motor-car has been suspended and the following provisions take effect in lieu thereof:

[1] As contributed by the Secretary of the Federal Legislative Assembly.—[ED.]
[2] *See* JOURNAL, Vol. X, 70.
[3] 383 *Com. Hans.* 5, s. 2293.
[4] As contributed by the Secretary of the Central Legislative Assembly.—[ED.]

When attending a Session at New Delhi, Members are allowed a conveyance allowance of *Rs.* 10 *p.d.* for the period for which they are entitled to draw daily allowance.

When attending meetings of Committees of the Indian Legislature at New Delhi, Members are allowed for the duration of the War with effect from January 9, 1943, a conveyance allowance of *Rs.* 5 *p.d.* for such days for which they are entitled to draw daily allowance for attending meetings of Committees. This concession is applicable to all Committees of the Indian Legislature other than those held immediately before the commencement or immediately after the close of a Session for which conveyance allowance is admissible on the same terms as for a Session.

India : Central Assembly (Parliamentary Running Costs).—With reference to Volume III of the JOURNAL, p. 84, dealing with India, against " Legislative Assembly " the figure " 141 " should be substituted for " 145 " and " *Rs.* 7,03,000 " for " *Rs.* 7,65,000 ".

British India: N.W.F. Province (Language Rights).—With reference to Volume IV, p. 111, of the JOURNAL, under s. 85 of the Government of India Act, all legislative proceedings are to be conducted in the English language. In order, however, to safeguard the rights of those Members who are unacquainted or not sufficiently acquainted with the English language, the proviso to s. 85 of the Act lays down that the Rules of Procedure may enable such Members to use another language (Urdu or Pashtu under Rule 43 of the N.W.F. Province Legislative Assembly Rules). For further facility of Members not sufficiently acquainted with English, Rule 43 mentioned above provides that any speech may, immediately after its delivery, be translated in abstract from English into Urdu or Pashtu by an Official Translator who is always on duty inside the Chamber.

British India : N.W.F. Province (War Service of M.L.A.s).—An Act was also passed in 1943, with retrospective effect to September 3, 1939, and for the duration of the War and for such other period as the Provincial Government may by notification in the *Official Gazette* fix, provided that M.L.A.s shall not be disqualified from such membership by being a member of H.M. Forces or the holder of an office under the Defence Department.

British India : N.W.F. Province (Appeal against Rulings of Speaker).—With reference to Volume I, p. 53, of the JOURNAL, Rule 54 (3), Appendix 1, of the Legislative Assembly provides that all points of order shall be decided by the Speaker or the person acting as such.

British India : N.W.F. Province (Closure).—With reference to Volume I, p. 66, of the JOURNAL, Rule 52 of the Legislative Assembly provides that the closure may be applied unless it appears to the Speaker that such is an abuse of the Rules or an infringement of the right of reasonable debate; provided that a Member shall have any right of reply he has under the Rules.

The closure is also applied after 2 hours allotted for an adjournment (urgency) Motion.

The guillotine closure is used for the timely completion of financial business (s. 84, Prov. [*b*], Government of India Act, 1935) and can be applied under Rule 15 (2) of the Governor's Rules by the Speaker one hour before the termination of business on the last of the days allotted for voting on Budget demands.

British India : N.W.F. Province (Time Limit of Speeches).—With reference to Volume I, p. 67, of the JOURNAL, Rule 63 of the Legislative Assembly lays down the following time for the limit of speeches:

(1) Except as otherwise provided by the Rules, the maximum period for which a Member may speak on any question and the maximum period of any debate shall not exceed the period specified against each of the items mentioned below:—

Budget Speeches.	*Member's Limit.*	*Total Limit of Time.*
General discussion	—	2 days
Finance Member and Leader of Opposition..	1 hour	—
Other Members	25 mins.	—
Discussion on one demand	—	1 day
Mover and Member of Government first speaking	30 mins.	—
Other Members	15 „	—
Motion to reduce or omit a demand	—	2 hrs. on each motion
Mover and Member of Government	30 mins.	—
Other Members	10 „	—
Bills.		
Substantive motion including motion for circulation and reference to *Sel. Com.*	—	4 hrs.
Mover and Member of Government first speaking	60 mins.	—
Other Members	20 „	—
Amendment to a clause	—	2 hrs.
Mover and Member of Government first speaking	20 mins.	—
Other Members	10 „	—
Resolutions	—	2 hrs.
Mover and Member of Government first speaking	30 mins.	—
Other Members	15 „	—
No-confidence Motion	—	4 hrs.
Mover and Member of Government first speaking	30 mins.	—
Other Members	15 „	—

(2) At the expiry of the time prescribed for the debate, the discussion shall terminate and the Speaker shall forthwith put the Question. But he shall allow a Member a right of reply under the Rules if he has not already exercised it; " Provided that the Speaker may extend the time-limits prescribed in this Rule."

British India : N.W.F. Province (Mode of Putting Amendments).—With reference to Volume I, p. 91, of the JOURNAL, amendments in the Legislative Assembly are put direct; the Westminster practice is not followed.

British India : N.W.F. Province (Method of Taking Divisions).—Under Rule 46, when a division is claimed the division bells are rung for 3 minutes, after which the Question is again put from the Chair, when, if the Question is again challenged, the Members repair to the " Ayes " and " Noes " Lobbies, as the case may be, the doors of which are unlocked, after which no Member not then in the Chamber may take part in the Division. Votes are told by the tellers. Two minutes are allowed for Members to go into the Lobbies. Speaker's Rule 8 (under Rule 46) provides that if in the opinion of the Speaker any Member is regarded as having been taken to the Lobbies by force or in any other unseemly manner, the vote of that Member shall be expunged.

British India : N.W.F. Province (Use of Legislative Chamber, etc., for other Purposes).—With reference to Volume VIII, p. 212, of the JOURNAL, in the middle of 1940, when the Constitution was under suspension, a few War-time offices were accommodated in the Assembly Office and Ministers' rooms. These offices were, however, evacuated in 1943 when a new Ministry was formed.

The Assembly Chamber itself is never used for any purpose other than for the meetings of the House. Committee Rooms are very sparingly allowed to be used for Departmental Committees on request. The lawns are placed at the disposal of private persons to receive distinguished visitors to the Province.

British India : N.W.F. Province (Remuneration and Free Facilities Granted to M.P.s).—With reference to Volume I, p. 106, the remuneration of M.L.A.s attending Legislative Assembly meetings has been raised from *Rs.* 10 to *Rs.* 20 in plains and *Rs.* 22 annas 8 in hills, a day. While *en route* to and from their residences, they are entitled to 1½ first-class railway fare and 6 annas a mile for journeys performed by road. Their travelling and daily allowances in hill tracts are slightly higher. Members are entitled to the same privileges while attending Committees of the House. They make their own arrangements for lodging while at the place of meeting. Government rest-houses are, however, available for their use both at Peshawar and Abbottabad.

The Members of the Assembly used to be supplied certain periodical Government publications and Gazettes free of charge. Owing to War, and as an economy measure, the supply of these publications has been suspended for the time being. They, however, continue to receive Assembly debates and other Parliamentary papers.

There is an up-to-date Assembly Library and Members are entitled to free loan of books. They are also supplied stationery by the Assembly Office during Sessions.

By amending Acts passed in the 1943 Session, the Speaker's and Deputy Speaker's salaries have been raised to *Rs.* 1250 and those of Chief Minister and Ministers to *Rs.* 1750 and *Rs.* 1500 respectively, and the Provincial Government is given authority to purchase and provide suitable conveyances for the use of Ministers, subject to such Rules as to repair, etc., as such Government may lay down.

British India : N.W.F. Province (Ceremonial and Regalia).—With reference to Volume I, p. 111, the following is the prescribed dress for the Speaker:—A Judge's coat and waistcoat. Overall—A black silk gown, white cambric bands, or, for Indians (in the alternative), black chapkan, with black or white trousers. The Speaker also wears the wig.

British India : Sind (Questions).—Under s. 84 (1) of the Government of India Act, 1935,[1] a new Rule for the Legislative Assembly was on June 30, 1943, substituted for present Rule 64 requiring a Member to give 10 clear days' notice before the date appointed for the Session, or adjourned Session, of any Question. Mr. Speaker, however, may allow a Question of an urgent nature relating to an occurrence of great public importance upon shorter notice than 10 days, provided the Member has been advised by him to ascertain from the Minister-in-Charge of the Department concerned whether he agrees to give an immediate reply to the Question. Should the Minister concerned so agree, the Question may be asked and answered in the Legislative Assembly on any day convenient to him.

British India : Sind (Remuneration and Free Facilities Granted M.P.s).[2]—With reference to Volume I of this JOURNAL, p. 106, the remuneration granted M.L.A.s of this Province is laid down by the Sind Legislative Assembly Members' Salaries and Allowances Act, 1938, as amended.[3] "Member" excludes Ministers, Parliamentary Secretary and the Speaker. The salary of M.L.A.s is *Rs.* 125 *p.m.*, with a daily attendance at meetings of the Assembly or any Committee thereof, and, in addition, the following allowances:

(1) *Travelling Allowance.*—(i) For journey performed by rail, 1½ first-class railway fare to and from their usual place of residence to the place of the meeting and (ii) for journey by road 4 annas per mile.

(2) *Subsistence allowance* of *Rs.* 7 annas 8 *p.d.* for each day of residence at the place of the meeting.

(3) *Daily allowance* of *Rs.* 2 annas 8 *p.d.* for each day of attendance at the meeting.

Members are further entitled to travelling allowances as above during intervals when the adjournment period exceeds 14 days.

Free telephone facility is provided. Embossed stationery is supplied to them on nominal charges.

[1] 26 Geo. V and 1 Edw. VIII, c. 2.
[2] As contributed by the Secretary of the Legislative Assembly.—[ED.]
[3] Acts Nos. V of 1938; XV of 1941; and XIV of 1943.

Indian States : Mysore (Privilege).—On January 6, 1943, the Government of H.H. the Maharaja directed certain amendments of the Mysore Legislative Rules, 1941, by the insertion, after Rule 77, of Rules 78, 79 and 80, which provide for the setting up of Committees of Privileges in both the Legislative Council and the Representative Assembly.[1] These Committees consist, in the case of the Council, of a Chairman or any other person nominated by him and 6 other Members, of whom 4 are elected by the Council by P.R., with the single transferable vote, and, in the case of the Assembly, of a Chairman appointed by the President and 10 other Members, of whom 8 are elected by the Assembly in the same manner. Quorums are fixed and the Committees have authority to " invite " any person to appear before them. Reports from the Committees must be confined to statements of opinion, with or without any reasons. The President of either Chamber may, of his own accord, bring a matter touching Privilege to the notice of his Chamber, whereupon the procedure laid down by these Rules applies. Only if the President holds that there is a *prima facie* case of Privilege shall he refer it to the Committee.

On December 6 of that year, however, a Report[2] was made from the Committee of Privileges of the Legislative Council upon certain general questions connected with the rights and privileges of the Council referred to such Committee by the President at a meeting of the Council on June 28, 1943. The terms of reference were:

(1) What is the present position of the rights and privileges of the Members of the Council, both individually and collectively ?

(2) What are the other rights and privileges and modifications of the existing rights and privileges such as may be deemed necessary for the due discharge of the functions of the Members ?

(3) What are the ways to consider and adjudge the breaches of the rights and privileges ?

(4) What is the course of action that should be taken to protect and enforce its rights and privileges ?

This Committee, with the President of the Council (D. H. Chandrasekharaiya, B.A., LL.B.) as Chairman, sat 4 times, and considered a wealth of information on the subject which he had collected to place before it.

The Committee recommended that a Bill be introduced into the Council on the subject, the provisions of which will be dealt with in the JOURNAL when it becomes law.

India: State of Travancore (Legislative Reforms).—We have received from our member in this State a publication containing the Travancore Legislative Reforms Act 11 of 1108 (1932), Legislative Rules and Standing Orders passed thereunder, as amended to date.

Travancore is one of the 3 Madras States which are in relation with the Crown Representative through a Resident with his headquarters at

[1] For the functions of these two bodies *see* JOURNAL, Vols. VII, 92-3; VIII, 72-3.—[ED.]

[2] *Mysore Leg. Co.: Report Committee of Privileges, Dec.* 6, 1943.

Trivandrum. It has an area of 7,662 sq. miles and in 1941 its population was 6,070,018. Hindus form $\frac{3}{4}$ of the population and Christians nearly $\frac{1}{5}$, with an approximate revenue of *Rs.* 3.85 crores.

To quote from the India Office List, 1940, the full title of the Ruler is—His Highness Sri Sir Rama Varma Maharaja Raja Ramaraja Bahadur Shamsher Jang, G.C.I.E. The present Ruler was born in 1912 and succeeded to the Throne in 1924 but was not invested with ruling powers until November 6, 1931.

Travancore is matriarchate. The succession to the Throne and to the big estates goes to the female line and the title of Maharani belongs, not to the wife of the Ruler, but to his mother, his aunt or his elder sister. In effect, every male of the Royal House has the right to reign, but none can transmit that right.

The Rulers of Travancore trace their descent back to the old Chera Kings who were independent in the 3rd century B.C. The Rajah Martanda Varma, who reigned 1729-58, allied himself with the East India Company, and his successors maintained the alliance and fought with Britain, with the result that, in the middle of the 19th century, the title of Maharaja was bestowed in perpetuity upon the Rulers of Travancore.

The State is cut off from easy communication with India by the mountains of the Western Ghats. Travancore has never been conquered. She has always been ruled by one Hindu line.

Travancore ranks next in population to the States of Hyderabad and Mysore. About half the State is covered with forests and a network of backwaters. So the cultivated lands, growing rice, coconut, pepper, tapioca and jack fruit on the plains and cardamom, coffee and tea in the hills, show a population of about 800 to the sq. mile. One-fifth of the revenue is devoted to education and the University of Travancore was established in 1937. Female literacy is 4 times higher than the rest of India. The principal exports are minerals and timber. The revenues of the State are treated as public funds, His Highness retaining quite a small percentage for his own use.[1]

The Travancore Legislative Reforms Act (No. 11 of 1108 [*i.e.*, 1932]) is described as " an Act to place the Sri Mulam Popular Assembly on a statutory basis with enlarged functions and powers and to amend the law relating to the Legislative Council in such manner that the Assembly and the Council shall function as two Chambers of Legislature," and was passed by H.H. the Maharaja of Travancore " under date the 12th Thulam 1108 " (corresponding to October 28, 1932).

The Act provides for a Dewan and a Legislature of 2 Chambers, consisting of the Sri Chitra State Council and Sri Mulam Assembly.

Wherever the words " the Government " are used, they mean the Government of His Highness the Maharaja.

The Dewan.—In most of the Indian States this office is of very con-

[1] *India and the Princes*, Rosita Forbes, Gifford, 1939; *The Indian States and Princes*, Lt.-Gen. Sir G. McMunn (Jarrolds, 1936); and *Statesman's Year Book*, 1944.

siderable importance and power, to which only persons of great trust and ability are appointed. Under the Reforms Act of Travancore the office combines the duties of a Prime Minister, Speaker, and the representative of the Ruler of the State. He is *ex officio* President both of the State Council and of the Assembly, and appoints a panel of Chairmen in each Chamber. He has the right to address both the Council and the Assembly as well as a Joint Sitting of the two Chambers and " to require the attendance " of the respective Members thereat (ss. 5, 6, 7 and 8). In regard to legislation, certain reserved subjects stated in ss. 17 and 18, such as affect the Ruling Family of Travancore, treaties, the Reforms Act and Rules thereunder, may not be considered without the previous sanction in writing of the Dewan. Similar authority is also required before any Member in either Chamber may introduce any measure dealing with charges or revenue, religion or the Reforms Act.

Sessions of both the Council and Assembly are summoned and prorogued by the Dewan. Under s. 19 of the Constitution, the Dewan has power to certify any Bill, clause or amendment thereof affecting the safety or tranquillity of the State in any part thereof, and can direct that no further proceedings be taken thereon by either Chamber. The Budget cannot be discussed without his direction, and should any question arise, whether any appropriation of revenue or moneys does or does not relate to any matter not liable to be voted upon by the Legislature, the decision rests with the Dewan. In event of bicameral disagreement he may also refer a demand to a Joint Committee of the two Chambers (s. 21). He may likewise so refer an Assembly Motion for a reduction of a grant should he consider that it requires further consideration (ss. 29-30). He may also authorize a grant notwithstanding its refusal by the Council, Assembly or Joint Committee (s. 31). Notwithstanding anything in the Act he has power in cases of emergency to authorize such expenditure as the Government may consider necessary or for the safety or tranquillity of the State or any part thereof. The Dewan may also refer a Bill back for reconsideration by either Chamber (s. 22) and in cases of emergency he has the right to submit a measure to the Ruler for Assent and such Bill shall have the force of law for 6 months from the date of its promulgation in the *Gazette* (s. 24). And should any dispute arise as to the interpretation of the Reforms Act or any Rules thereunder the decision of the Dewan is final (s. 29).

The Legislature.—Every Council and Assembly continues for 4 years from its first meeting, but either Chamber may be sooner dissolved by the Government, which may also in special circumstances extend such period. The Dewan appoints a date for the first meeting of either Chamber, which must not be more than 6 months after its dissolution. Either Chamber is adjourned by the person presiding. Questions in both Chambers are decided by a majority of the votes of the Members present, including the Presiding Member, who in the case of an equality of votes has, in the Council, also a casting vote, but in the Assembly

a casting vote only. Questions before a Joint Committee of both Chambers must be determined by a clear majority of not less than 5 Members (ss. 9 and 10). Section 16 authorizes the passing of Rules of Procedure for both Chambers.

The Sri Chitra State Council.—This Chamber is composed of 37 Members, 22 elected and the remainder nominated, 10 of whom must be officials, but by Rules made under the Act these numbers may be increased and the proportion which the classes of Members bear to one another varied, provided not less than 55% are elected and not more than one-third are officials. The Government may, however, for the purpose of any Bill, nominate not more than 2 Members having special knowledge or experience of its subject-matter, which additional Members have all the rights of other Members.

The Sri Mulam Assembly consists of 72 Members, 60 of whom are unofficial and 48 of that number must be elected. There are 24 nominated Members, of whom 12 must be officials. By Rules made under the Act the number of Members of the Assembly may be increased and the classes varied as in the case of the Council, provided 65 Members are elected and at least 80% are non-official Members. As in the case of the Council, 2 additional Members of the Assembly may be nominated for special purposes. There is a Deputy President of the Assembly who is elected by his fellow Members with the approval of the Government and presides in the absence of the President. The Deputy President ceases to hold office if he ceases to be a Member, but he resigns by letter addressed to the Dewan. The Deputy President may be removed from office by vote of the Assembly with the concurrence of the Government. His salary is fixed by the Assembly with the concurrence of the Government (s. 7).

Membership.—An official is not qualified for election as a Member of either Chamber and should any non-official Member become a Member of either Chamber his seat therein forthwith becomes vacant. If an elected Member of either Chamber becomes a Member of the other Chamber his seat in the first-named Chamber becomes vacant (ss. 12 and 13).

An official Member of either Chamber has the right of addressing the other Chamber but without the right to vote. Provision is made by Rules under the Act as to the terms of office of nominated Members, casual vacancies, death, etc., the qualification of electors, disputed elections, etc.

Subject to the Rules under the Act any Member of either Chamber may ask Questions and move Motions (s. 33).

Any Member of either Chamber may resign his office to the Dewan and if any Member is absent from the State for 6 consecutive months or unable to attend to the duties of his office the Government may by notification in the *Travancore Government Gazette* declare that seat vacant (s. 36).

Legislation.—Neither the Council nor the Assembly may consider

any measures relating to: (i) The Ruling Family of Travancore or any Member thereof or the management of their household; (ii) the relations of His Highness' Government by treaty or otherwise with the Paramount Power or with Foreign Princes of States; or (iii) the Constitution and any Rules made thereunder. Neither may any measures affecting (i) H.H.'s Military Forces, Nair Brigade or Body Guard; (ii) Devaswoms; (iii) State revenue or taxes; (iv) religion or religious rights; or (v) affecting the Constitution—be considered without the previous sanction of the Dewan in writing (ss. 17-18). Every Bill requires the Assent of the Ruler to become law (s. 22).

Section 37 is a saving clause against any law being invalid by reason of the requisite proportion of non-official Members not being complete at the time of its introduction into either Chamber.

Standing Orders, Freedom of Speech.—Section 25 provides for Joint Committees, s. 26 for Standing Orders and s. 27 states that " there shall be freedom of speech in both Chambers of the Legislature" and that " no person shall be liable to any proceedings in any Court by reason of his speech or vote in either Chamber or by reason of anything contained in any official report of the proceedings of either Chamber."

Budget.—Sections 28-32 require that the annual Budget must be laid before both Chambers each year at a Joint Sitting, and that the Council and the Assembly may deal with it subject to such conditions as are laid down. Appropriations require the recommendation of the Government. The Government's proposals for the appropriation of revenue or moneys relating to the following heads are not, however, submitted to the vote of either Chamber, nor, unless the Dewan directs, are they open to discussion therein, at the time the Budget is under consideration:—(i) expenditure under s. 17 of the Act; (ii) obligatory by law; (iii) pensions and gratuities granted by the Ruler; (iv) salaries and allowances of officers appointed by the Ruler; (v) interest on loans and sinking fund charges; (vi) contributions by the Ruler; and (vii) expenditure classified by the Government, as: Maramat; and political. Subject to s. 28 (4) Government proposals for appropriation of revenue or moneys relating to expenditure not specified in (i) to (vi) above are submitted to the 2 Chambers in the form of Demand for Grants.

The Assembly may assent or refuse any Demand or may reduce it, and the Council may do likewise but may not reduce the amount referred to in any Demand either by a lump sum reduction or by the reduction of any particular item of which the Grant is composed (s. 28 [7] and [8]).

The Joint Committee procedure is also used in case of disagreement between the 2 Chambers as to Demands.

Rules.—Sections 34 and 35 give the Government power to make Rules under the Act.

Repeal.—Section 38 repeals Act 11 of 1097.

Ruler's Prerogative.—Section 40 safeguards the Prerogatives of His Highness the Maharaja—" to make and pass Acts and Proclamations

independent of the Legislature, which right is hereby declared to be and to have been always possessed and retained by Us."

This official publication also contains the Legislative Rules as well as the Standing Orders of both Chambers, which are framed mostly on the India model. The 3 Readings of a Bill are also dispensed with for the simpler form, and long notice is required of Questions and Motions, etc.

Language.—L.R. 26 provides that the business of the Legislature shall be transacted in English, but the President of either Chamber may permit a Member to address the Chamber in Malayalam or Tamil.

General.—There are stringent Rules for the limitation of speeches. The Council must accept or reject each Demand for a Grant as a whole and may not amend it. The ballot is used both for Bills and non-official Members (Notices of Motions). The Members of each Chamber sit in such order as the President may appoint. Bills do not lapse on prorogation provided the Member-in-charge takes up the Bill within 2 complete Sessions. There is provision for non-Government Bills being taken up after dissolution by the Member-in-Charge or, if not returned, by some other Member. The arrangement of Business in both Chambers rests with the Dewan, who may in all cases address the Council before putting a Question to the vote. Except in regard to the special provisions required by Indian conditions, both the Legislative Rules and the Standing Orders for each Chamber are on the established Parliamentary lines.

Burma (Government Functioning on Soil of India).—Section 5 of the India and Burma (Temporary and Miscellaneous Provisions) Bill,[1] 1942, makes certain emergency provisions while the Government of Burma is in India. Section 5 (1) enables recruitment for the Burma Army to be carried on in India and makes provision for the Government of Burma regarding civil services, etc. Section 5 (2) in order to avoid unnecessary hardship to a considerable number of persons, provides that the Indian Courts have jurisdiction in certain matters which would be dealt with in the Burma Courts were they still functioning.[2]

Ceylon (Considerations Offered, etc., to Members).—In 1942, an Ordinance (No. 25 of 1942)[3] was passed but amended in respect of s. 12 thereof by Ordinance No. 26 of the same year. These Ordinances supplement the Commissions of Inquiry Ordinance (Cap. 276) for inquiries held in pursuance of a Commission dated August 13, 1941, set forth in the Schedule to the above Ordinance (No. 25) issued by the Governor. This Commission appoints a Counsel as Commissioner for such inquiries and reporting upon the following questions:

(*a*) whether gratifications by way of gift,[4] loan, fee, reward, or otherwise, are or have been offered, promised, given or paid to Mem-

[1] 5 & 6 Geo. VI, c. 39. [2] *Explanatory Memorandum on Bill* (43).

[3] The Special Commission (Auxiliary Provisions) Ordinance No. 25 of 1942 and the State Council Powers and Privileges Ordinance (No. 27 of 1942) were passed in 1942 and 1939 respectively, but were assented to in 1942 after the amending Ordinances were passed.—[ED.] [4] *See also* JOURNAL, Vol. X, 78-9.

bers of the existing State Council, with the object or for the purpose of influencing their judgment or conduct in respect of any matter or transaction for which they, in their capacity as Members of that Council or of any Executive or other Committee thereof, are, have been, may be, or may claim to be, concerned, whether as of right or otherwise; and

(*b*) whether such gratifications are or have been solicited, demanded, received or accepted by Members of the existing State Council as a reward or recompense, for any services rendered to any person or cause, or for any action taken for the advantage or disadvantage of any person or cause, or in consideration of any promise or agreement to render any such services or to take any such action, whether as of right or otherwise, in their capacity as Members of that Council or of any Executive or other Committee thereof.

Sections of the Ordinance (No. 25) provide for the protection and immunity of witnesses; inadmissibility in courts of law of evidence given before the Commission; power of the Commissioner to hear evidence *in camera*; name and evidence of person giving evidence *in camera* not to be published; power of Commissioner summarily to punish persons giving false information or evidence; Commissioner to be a public servant; protection and immunity of Commissioner; savings of penalties and proceedings for perjury before the Commissioner; offences; and power of the Commissioner to order payment of costs (s. 12). The last-named section is, however, substituted by a new s. 12 in the amending Ordinance (No. 26) as follows:—

12. (1) Where the Commissioner finds that a charge or allegation made or preferred against a Member of the State Council has not been established, the Commissioner in his discretion may, if that Member has been represented by counsel at the inquiry into such charge or allegation, award to that Member, by order under his hand, such sum as the Commissioner may fix as the costs of such representation.

In fixing such sum, the Commissioner shall be guided, so far as may be, by the scales of costs and charges prescribed for proceedings in Class V in Parts I and II of the Second Schedule to the Civil Procedure Code unless, in any particular case, the Commissioner is of opinion that costs should be awarded otherwise than in accordance with such scales. In this sub-section, " counsel " includes a proctor.

(2) The payment of any sum awarded by the Commissioner by order under sub-section (1) shall be made out of public revenue and is hereby charged upon such revenue; and any such payment shall be deemed to be a payment authorized by law for the purposes of the application of the provisions of Article 61 of the Ceylon (State Council) Order in Council, 1931.

Ceylon (Emergency Standing Orders). — On March 24, 1942, the State Council passed certain (8) Emergency Standing Orders for the expeditious dispatch of business, both public and private, which came into operation forthwith and form part of the Standing Orders of the Council until December 31, 1944. Any provision in the Standing Orders of the Council inconsistent with any Emergency S.O. shall, to the extent of such inconsistency, be suspended, so long as the Emergency S.O. is in operation. The Emergency S.O.s deal with hours of meeting, business, adjournments (including power in Mr. Speaker to accelerate meetings on the request of the Board of Ministers) and suspension of Standing Orders.

Ceylon (Constitutional).[1]—The following is the gist of an assurance given to the Board of Ministers in Ceylon in regard to constitutional changes for the Island and quoted by the Minister in the House of Commons on May 26, 1943[2]:—

H.M. Government recognize the urgency and importance of constitutional reform in Ceylon, but before making decisions upon the present proposals for reform, concerning which there has been so little unanimity, they would like the position to be further examined and made the subject of further consultation by Commission or Conference. This cannot be arranged, however, under War conditions, but it will be taken up with the least possible delay after the War.

1. The Imperial Government stand pledged to the post-War re-examination of the reform of the Constitution, directed towards the grant, by Order of H.M. in Council, of full responsible government under the Crown.

2. H.M. Government to retain defence and the use of defences, etc., for the naval, military and air security of the Commonwealth, including Ceylon, the cost being shared by the two Governments in agreed proportions.

3. Ceylon's relations with foreign countries and other parts of the Commonwealth to be subject to the control and direction of H.M. Government.

4. The Governor to be vested with the necessary powers to enact any direction of H.M. Government in regard to matters coming under 2 and 3 above; his assent to local measures on these matters to be subject to reference to such Government.

5. The present classes of reserved Bills in the R.I. to be reduced under the new Constitution, which, apart from Defence and External Relations, it is intended to restrict to classes of Bills which:

(*a*) relate to the Royal Prerogative, the rights and property of H.M. subjects not residing in the Island and the trade and shipping of any part of the Commonwealth;

(*b*) have evoked serious opposition by any racial or religious com-

[1] *See also* JOURNAL, Vols. II, 9; III, 25; VI, 81; VII, 98; VIII, 83; X, 76.
[2] 389 *Com. Hans.* 5, s. 1555; 391 *Ib.* 501.

munity and which in the Governor's opinion are likely to involve oppression or unfairness to any community; or

(*c*) relate to currency.

6. The limitation in the preceding paragraph not to prevent the Governor from assenting in the King's name to any measure concerning any trade agreement concluded with the approval of H.M. Government by Ceylon with other parts of the Commonwealth.

7. The framing of this Constitution, however, cannot be made so long as the whole energies of H.M. Government are focused on the War, but once victory is achieved such detailed proposals will be examined by a suitable Commission or Conference as the Ministers may in the meantime have formulated in the way of a complete constitutional scheme, subject to the clear understanding that acceptance by H.M. Government of any proposals will depend—

First, upon H.M. Government being satisfied that they are in full compliance with the preceding portions of this Statement; and

Secondly, upon their subsequent approval by three-quarters of all Members of the State Council of Ceylon, excluding the Officers of State and the Speaker or other Presiding Officer.

8. In their consideration of this problem, H.M. Government fully appreciate and value the co-operation and contribution Ceylon has shewn towards the War effort.

Newfoundland (Constitutional).[1]—On August 5, 1941,[2] in answer to a Question in the House of Commons as to whether steps were being taken to adjust the present Commission Government of Newfoundland so as to make it representative of the people of that Dominion, the Under-Secretary of State for Dominion Affairs replied that the Constitution of the Commission Government in Newfoundland was formed by Letters Patent issued in accordance with the provisions of the Newfoundland Act, 1933, and that no change in that respect was contemplated at the present.

Jamaica (Constitutional).[3]—Many Questions have been asked and debate has taken place in the House of Commons, during 1942 and 1943, on the subject of the constitutional changes in the island, but the actual information will be found in the White Paper[4] presented to Parliament by the Secretary of State for the Colonies (Colonel the Rt. Hon. Oliver Stanley) and made available to M.P.s in the Vote Office on February 23, 1943. It contains: (1) the Memorandum signed by the 14 Elected Members of the Legislative Council of the Colony, 3 Representatives of the People's National Party, and 3 Representatives of the Federation of Citizens' Associations; and (2) the Report from the Select Committee of the Legislative Council appointed to prepare and draft a political Constitution for Jamaica for approval and transmission to the

[1] *See also* JOURNAL, Vols. II, 8; IV, 35; V, 61; and VII, 106.
[2] 373 *Com. Hans.* 5, s. 1764.
[3] *See also* JOURNAL, Vols. IX, 62; X, 81.
[4] Cmd. 6427.

Secretary of State. In a dispatch (Jamaica No. 33A) of February 10, 1943, to the Governor of the Colony, Colonel Stanley makes certain comments on some of the proposals put forward and the general outline of the new Constitution which, it was announced in the House of Commons on May 19, 1943,[1] had by a unanimous vote been accepted by the Legislative Council of Jamaica with submission of certain points of detail as follow:—

(*a*) a bicameral Legislature, consisting of a nominated Legislative Council of 15 and House of Assembly of 24 Members directly elected on a basis of universal adult suffrage. The Legislative Council to consist of unofficial Members.

(*b*) an Executive Committee of 10 Members, 5 elected by the House of Assembly from amongst its Members with 3 official Members and 2 unofficial Members of the Legislative Council nominated by the Governor. This body to be the principal instrument of policy, with power to initiate all laws, financial or otherwise, to prepare the Budget; in fact this Committee is to absorb the functions (except matters of Royal Prerogative) of the Privy Council, which would disappear from the Constitution. All financial measures are to have the approval of the majority of the Executive before proposal or discussion in either House. The Governor is to preside over this Committee but to have only a casting vote. The Secretary of State suggested (for trial) that the 5 elected Members concentrate respectively on general purposes; agriculture and lands; education; social welfare; communications—the 5 Chairmen of these Committees to be appointed to the Executive Committee as above. The powers of certification are to be exercised by the Governor on the advice of the Executive, he to have the power of veto.

(*c*) Both Houses to continue for 5 years, when the Constitution will be reviewed in the light of its working and justification of further advance.

(*d*) Each House to have a Presiding Member, President and Speaker respectively, elected by those bodies, with a casting vote only.

On concluding this dispatch the Secretary of State remarked that:

> this offer represented a far-reaching constitutional advance and had been actuated by a desire to meet as far as possible the views placed before him on behalf of the people of Jamaica, to bring controversy to an end, and to create an atmosphere in which the post-War problems of the Island would be faced in a spirit of mutual co-operation and goodwill.

There are some interesting constitutional sidelights in the Report from the Select Committee above mentioned, but reference to them will be withheld until it is seen whether they are actually included in the new Constitution of the Island.

[1] 389 *Com. Hans.* 5, s. 1089.

British Guiana (Constitutional).[1]—In reply to a Question in the House of Commons on April 22, 1943,[2] following other Questions on the subject in 1942, the Secretary of State for the Colonies replied that the Constitution of the Colony, the British Guiana Act, 1928, had been amended by the reconstitution of the Legislative Council as follows: All the 8 nominated official Members thereof had been withdrawn except the Colonial Secretary, the Attorney-General and the Colonial Treasurer, who are *ex officio* Members of the Legislative Council; the 5 nominated Members had been increased to 7, to widen the field, which meant that the 14 elected Members will now hold a decisive majority. The Executive Council has also been reconstituted and will now be composed of the Colonial Secretary and Attorney-General *ex officio* and 5 unofficial Members of the Legislative Council. The British Guiana Constitution Order (S. R. and O. No. 1792 of 1943) was approved by the Privy Council, March 11, 1943.[3] The question of the franchise is under reference to a Commission which had not reported up to the time of writing.

Gold Coast, Sierra Leone and Nigeria. — On July 13, 1943,[4] the Secretary of State for the Colonies (Rt. Hon. Oliver Stanley) stated that in political advance of these Colonies there had recently been the following additions to their respective Executive Councils: Gold Coast, 2; Sierra Leone, 2; and Nigeria, 3; all, except in one instance, were Africans.

O. C.

December 31, 1944.

[1] *See also* JOURNAL, Vols. IV, 34; VII, 109.
[2] 388 *Com. Hans.* 5, s. 1858
[3] 396 *Ib.* 1750.
[4] 391 *Ib.* 51-2.

II. REGENCY ACT, 1943

By the Editor

The Bill to amend the Regency Act of 1937[1] as to the delegation of Royal Functions to Counsellors of State was introduced upon His Majesty the King expressing to both Houses of Parliament by Message:

> " the earnest desire of the Queen and myself that our beloved daughter, the Princess Elizabeth, should have every opportunity of gaining experience in the duties which would fall upon her in the event of her accession to the Throne."

The Princess Elizabeth, though about to become of qualifying age to ascend the Throne without a Regent, was yet not of sufficient age to be appointed a Counsellor of State. This amending Act has now made such appointment possible.

The other Royal desire was expressed, on account of Her Majesty, who is one of the Counsellors of State, when with the King in Canada in 1939,[2] being still a Counsellor of State, notwithstanding her absence from the United Kingdom. The amending Act, therefore, enables persons who are absent or intend to be absent from the United Kingdom to be excepted from among the number of Counsellors of State.

The action taken by the two Houses of Parliament upon receipt of His Majesty's desire was as follows:

The Lords.—On September 22, 1943,[3] the Lord Great Chamberlain (the Earl of Clarendon) announced in the House of Lords that he had " a Message from the King signed with his own hand " which referred to recommendations His Majesty had made in the first year of his reign for permanent provision to be enacted to facilitate the uninterrupted exercise of the Royal Authority during incapacity or absence of the Sovereign from the Realm, as well as in the event of the minority of the Sovereign on his Accession. His Majesty's Message then expressed the desires above mentioned, which led His Majesty to recommend that the House:

> " should take into consideration the amendment of the Act mentioned so as to provide for including among the Counsellors of State the person who is Heir Apparent or Heir Presumptive to the Throne if over the age at which the accession of a Sovereign does not necessitate a Regency, namely the age of eighteen."

Further, that it was necessary:

> " to recommend that you should also take into consideration the amendment of the Act mentioned in such manner as to enable persons who are absent from the United Kingdom to be excepted from the number of the Counsellors of State."

[1] *See* JOURNAL, Vols. VI, 89; IX, 12.
[2] *Ib.* Vol. VII, 111.
[3] 129 *Lords Hans.* 59.

The Message concluded:

" I shall be prepared to concur with you in any measures which may appear to you to be necessary or expedient for securing the purposes to which I have alluded."

The Lord Privy Seal (Viscount Cranborne—sitting as *Lord Cecil*) then moved:

That an humble Address be presented to His Majesty to return thanks to His Majesty for his most gracious communication recommending this House to consider certain contingencies which are not provided for in the Regency Act, 1937, and to assure His Majesty that this House will, with the least possible delay, proceed to discussion of the important questions which His Majesty has been pleased to recommend to its consideration and will provide such measures as may appear necessary or expedient for securing the purposes to which His Majesty has alluded.

On Question, the Motion was agreed to *nemine dissentiente*: " the said Address to be presented to His Majesty by the Lords with White Staves."

On the following day, the Lord Chancellor (Viscount Simon) asked their Lordships' leave to introduce a Bill " to amend the law as to the delegation of Royal Functions to Counsellors of State ", which, after Question had been put and agreed to, the Bill was read 1 *R.*[1]

On October 12, 1943,[2] in moving 2 *R.* of the Bill, the Lord Chancellor said that, as the law stood, the Counsellors were all over 21 years of age. The Lord Chancellor reminded their Lordships that the difference between the Regency Act of 1937 and previous Regency Acts was that the latter were each passed to meet a particular emergency, and gave as instances those in respect of Edward VI, George III, Victoria, and the former Prince of Wales, afterwards Edward VIII, whereas the Act of 1937 was a general Act, which provided for: (1) the Succession of a Sovereign under 18 years; (2) the incapacity of a Sovereign while reigning; and (3) the absence of a Sovereign from the United Kingdom, when Counsellors of State are appointed. The present Bill dealt with the last-mentioned case. The duties of a Counsellor of State were almost entirely formal. They were expressly debarred from dissolving Parliament, save by the express authority, communicated to them, of the King and they were not authorized to grant any rank, title or dignity of the Peerage, but there was a great deal of necessary work to be done, largely in the nature of signing documents. The Bill also provided that the Queen (or the Queen's Consort, as the case may be) shall not be a Counsellor of State except in the case where the individual is staying in the United Kingdom. The Bill was then read 2 *R.* and committed to *C.W.H.*, from which it was reported without amendment, read 3 *R.* and sent to the Commons.

The Commons.—On the same day that the Royal Message was delivered in the Lords, the Prime Minister, at the Bar in the Commons, presented the Royal Message to the House, where it was read by Mr.

[1] *Ib.* 111. [2] *Ib.* 163.

Speaker, " all the Members of the House being uncovered ". The Prime Minister thereupon moved for " an humble Address " in reply to His Majesty, " the Address to be presented by Privy Councillors or members of His Majesty's household ".

The Bill was received by the Commons from the Lords on October 13,[1] and read 1 *R.* On the 19th *idem*[2] 2 *R.* was moved by the Secretary of State for the Home Department (Rt. Hon. H. Morrison), after which it duly passed through all its stages,[3] was returned to the Lords on October 28, receiving *R.A.*[4] (on November 11, 1943, signified by the Lords Commissioners to both Houses. Upon the prorogation of Parliament closing the Eighth Session of the Thirty-seventh Parliament on November 23 of that year, His Majesty's Speech, delivered to both Houses of Parliament by the Lord Chancellor (in pursuance of His Majesty's command), said:

> *It is a matter of especial satisfaction to the Queen and Myself that Parliament has complied with My request that the Regency Act should be so amended as to enable Our beloved daughter, Princess Elizabeth, when she attains the age of eighteen, to serve as one of the Counsellors of State should occasion arise for their appointment.*[5]

[1] 392 *Com. Hans.* 5, s. 887. [2] *Ib.* 1247. [3] 393 *Ib.* 403.
[4] 6 & 7 Geo. VI, c. 42. [5] 129 *Lords Hans.* 705.

III. FINANCIAL PROCEDURE IN THE HOUSE OF COMMONS[1]

By E. A. Fellowes, M.C.
Second Clerk-Assistant of the House of Commons

The financial procedure of the House of Commons is based upon two of its oldest Standing Orders and follows a regular course from year to year. The two Standing Orders are No. 63, which dates from 1713, and reads:

> This House will receive no petition for any sum relating to public service or proceed upon any motion for a grant or charge upon the public revenue whether payable out of the Consolidated Fund or out of money to be provided by Parliament unless recommended by the Crown;

and No. 64, dating from 1707 and reading:

> This House will not proceed upon any petition, motion or bill for granting any money or for releasing or compounding any sum of money owing to the Crown, but in a Committee of the Whole House.

The machinery which the House uses for its financial business is first of all the King's Speech, then the Committees of Supply and Ways and Means, and lastly *ad hoc* committees for financial Resolutions in connection with Bills. The Speech, or rather that paragraph of it which informs Members of the House of Commons that they will be asked to make financial provision for the year, is the recommendation of the Crown which starts the year's financial business. Nowadays this takes place in November.

The conclusion of the Debate on the Address is followed by the setting up under S.O. 13 of the Committees of Supply and Ways and Means. Their terms of reference are as follows: Committee of Supply, "a Committee to consider of the supply to be granted to His Majesty." The Committee of Ways and Means, "a Committee to consider of the ways and means for raising the supply to be granted to His Majesty." These two Committees are set up early in December, and the Estimates for the following financial year, which starts on April 1, are presented by command in January or early February.

The last two months of a financial year are occupied in a double process of winding up the old year and preparing for the new. The winding up of the old year consists in the consideration and passage of Supplementary Estimates, but it will be more convenient to deal with these later. The preparation for the new year consists of granting enough money to the Government to enable it to carry on for some months after April 1, until in fact the House has time to examine the Estimates. For this purpose a Vote on Account for the Civil Services is granted and several Votes in each of the Fighting Services obtained. The reason for this difference between the Fighting Services and the Civil Service consists in the fact that, under power given to the Treasury by the Appropriation Act, moneys may be transferred from

[1] *See also* JOURNAL, Vols. VI, 97; VIII, 170.—[Ed.]

one Vote of the Army, say, to another Vote in that Service. In other words, the Parliamentary grant for the Army is considered as a whole and not, as in the case of the Civil Services, as being rigidly limited by each Vote. This power of transference from one Vote to another is technically known as " virement " and is the reason for the Fighting Services not requiring a Vote on Account. The difference can be illustrated thus: it is not permissible for the Treasury to transfer savings on the Home Office Vote to meet an excess on the Prisons Department Vote, while it is permissible for it to authorize savings on the Vote for Military Stores to be used for an increase in the Army Pay Vote. This difference also necessitates getting the Speaker out of the Chair on the three Fighting Services Estimates before March 31. Standing Order 16, which reads,

> Whenever an Order of the Day is read for the House to resolve itself into Committee, Mr. Speaker shall leave the Chair without putting any question, and the House shall thereupon resolve itself into such Committee, unless . . . on first going into Committee of Supply on the Navy, Army, Air or Civil Estimates respectively, or on any Vote of Credit, an Amendment be moved or Question raised relating to the Estimates proposed to be taken in Supply,

is comparatively modern, for until 1872 the Speaker had always to be got out of the Chair every time that the House wished to resolve itself into Committee of Supply, and amendments to the Question for his leaving the Chair were more often than not moved and debated at length. The procedure, though useful for raising grievances, was found to be a great handicap on the consideration of Supply, and this Private Members' right was gradually whittled down, until in 1896 it was reduced to its present form. On the day on which the Speaker is got out of the Chair on each of the Fighting Services Estimates a number of Votes, usually Vote A, Vote 1 and two or three others, are taken, and these provide sufficient money for the Service concerned until towards the end of July or the beginning of August the rest of the Estimates are passed. In the same way the Vote on Account for the Civil Services provides money for 4 to 5 months' expenditure and enables the Government to carry on until all the Estimates are voted. But in this case in the Schedule attached to the Vote on Account each Vote in the Civil Service Estimates is granted its sum of money on account. That is because in the case of Civil Estimates the Treasury has not the power of virement between Vote and Vote. It will also be noted that the Speaker has not to be got out of the Chair on the Civil Estimates before the Vote on Account is taken.

The Committee of Supply having granted 4 to 5 months' money to the Government, and having wound up the financial business of the old year by passing Supplementary Estimates, the Committee of Ways and Means then performs its first function—namely, to give the Treasury a draft on the Consolidated Fund, by resolving that certain sums be granted it out of the Consolidated Fund. When these Resolutions have

been reported and agreed to by the House, they form the foundation for the Consolidated Fund Bill, which gives statutory authority for the issue of the voted money to the Treasury. This Bill also includes the Supplementary Estimates to which passing reference has been made and which will be dealt with more fully later. That brings us to March 31, the conclusion of the financial year. Very soon after that, almost always in the first half of April, and necessarily before May 4, the Committee of Ways and Means is called upon to exercise its second function, that of considering how sufficient money can be raised and put into the Consolidated Fund to meet the demands which the Government is making on that Fund. In other words, the Chancellor of the Exchequer opens his Budget to the Committee.

The Budget statement gives the public its first intimation of the sum estimated to be spent on Consolidated Fund Services. These Services consist of items like the judges' salaries, the Civil List, the interest on the national debt, etc., which are permanently charged on that Fund by Acts of Parliament and do not have to be voted year by year, and it is only after that sum is known that the Committee can arrive at the total amount of expenditure for which they will have to provide the money.

When the Chancellor has revealed his taxation proposals he concludes his speech by moving a number of Resolutions. Every imposition of a new tax or increase in an existing tax requires a Resolution and two taxes may not be dealt with in the same Resolution. Owing to the necessity for variations to or renewals of the existing taxes, customs, excise and income taxes getting the benefit of the Provisional Collection of Taxes Act, 1913, it has now become customary for the Committee to pass all the Resolutions save one on the day on which the Chancellor opens his Budget.

The debate on the last of the Resolutions authorizing taxation by practice affords an opportunity for a general review of the financial condition of the country, but always, of course, from the revenue aspect and not from the spending aspect. When all the Resolutions have been agreed to by the Committee they are reported to the House, and at this stage are debated one by one in detail. When the last of them is agreed to the Finance Bill is introduced. Every item in the Finance Bill must be covered by one or other of the Ways and Means Resolutions. The second reading of the Finance Bill affords the House its opportunity for a general debate on the finances of the country, but thereafter debates on the Finance Bill, like those on any other Bill, are confined to its contents. As taxation is only to meet the expenditure asked for by the Crown for a particular year, no Private Member may suggest an increase of taxation, nor impose a charge upon any individual except within the scope of one of the Ways and Means Resolutions. The Private Member may, of course, suggest remissions of taxation or changes of taxation, provided that they are within the existing law or do not impose an additional charge upon any single individual.

Concurrent with the process of the passing of the Finance Bill, the House continues its discussions in Committee of Supply, and in April usually gets the Speaker out of the Chair on the Civil Estimates. Under S.O. 14, 20 days in all are allotted to the business of Supply, and the Standing Order sets out in considerable detail in Sections 1, 2 and 4 exactly what business may be taken on any one of those days, and in sub-sections 6 and 7 makes provisions for the last two allotted days, and what is commonly called the guillotine of Supply. Standing Order 15 used to fix Thursdays as the day on which Supply must stand as first Order of the day. As, however, for some reason or other the Government always seemed to wish to take Supply on Mondays, Tuesdays and Wednesdays, but never on Thursdays, it was thought better to make the Standing Order conform to practice, and in 1933 the Standing Order was altered to read that the Committees of Supply and Ways and Means may be fixed for any day on which the House shall meet for dispatch of business.

The ordinary form in which a Vote in Supply is put before the Committee is that an amount not exceeding a certain sum be granted to His Majesty to defray the charge which will come in course of payment during the year ending on March 31 for a certain year in respect of certain subjects (reproducing Part I of Estimate). To that two types of amendment may be moved: (1) to reduce the total Vote by a specific sum, say £1,000, and in that case after the amendment has been moved the Question is proposed from the Chair that a reduced sum not exceeding (the original sum of money less £1,000) be granted, etc., or an amendment may be moved to a particular item in the Vote, in which case the Question proposed from the Chair after the amendment has been moved is that item —— be reduced by £1,000. In the former of these amendments the debate is as wide as the original Question, but in the latter debate is strictly limited to the item to which the reduction has been moved, and should a reduction be moved to item C in a Vote no subsequent reduction can be moved in items A and B, though, of course, D, E, F and G, etc., are open to amendment. Once an amendment has been moved to reduce the total Vote no amendment to reduce an item is admissible, nor after a reduction has been moved to item C can a reduction be moved to the whole Vote in order to discuss item A or B.

Debate on a Vote in Committee of Supply must be relevant to the particular Vote and must be confined to administration and not refer to the necessity for legislation or matters involving legislation. But in this respect it is perhaps worth pointing out that delegated legislation, such as Orders in Council, Royal Warrants, Departmental Orders, etc., are not legislative but administrative acts and can therefore be discussed in Committee of Supply.

After the conclusion of the committee stage of all the Votes on the nineteenth allotted day, the Committee of Ways and Means is again called upon to grant the Treasury credit for the sums passed in Com-

mittee of Supply, and, as before, these Ways and Means Resolutions, when reported and agreed to by the House, form the basis for another Bill. The Appropriation Bill not only grants the Treasury the statutory right to draw the sum from the Consolidated Fund, but appropriates the actual sum voted for every single Vote, and it is the duty of the Comptroller and Auditor-General to see that no more money is spent on any Vote than has actually been appropriated to it. The passage of the Appropriation Bill concludes the financial business until after the summer recess.

In the last two months of a financial year the Committee of Supply has to wind up the business of the old year by considering and passing Supplementary Estimates. In the autumn, Departments review their expenditure for the first half-year and their probable requirements for the second half and, if their original provision seems likely to prove inadequate, notify the Treasury that they may require a Supplementary Estimate. They are not popular and have to prove their case to the hilt before the Treasury consents to present a Supplementary on their behalf. These Estimates are presented in the winter and are usually considered in the last two months of the financial year. Unlike the main Estimates, each single one of these Votes, and with all the care in the world there are usually quite a number, have to be passed separately. There is no provision for a guillotine, but on the other hand debate on a Supplementary Estimate is very much more limited. Only the details mentioned in each Estimate may be discussed, not the policy behind the Estimate, unless it is a new service, or the grant asked for is of such magnitude that the policy of the Vote is thereby reopened. But unpopular though Supplementaries are with the Treasury, woe betide the Department which fails to realize its position in time and at the end of the year finds it has outrun the constable. That Department has incurred an Excess and the Treasury will probably have something rude to say to it, while some 9 months after the end of the financial year, when all the facts have been examined by the Comptroller and Auditor-General, the Department has to come before the Public Accounts Committee and explain how the Excess arose. When the Committee has reported to the House, an Excess Vote is presented and agreed to by the Committee of Supply and the Department retires, having been, like the elephant's child, well spanked by all concerned. Both Supplementaries and Excess Votes are included in the March Consolidated Fund Bill and in the Appropriation Bill of the following July.

There is one further aspect of financial procedure which I have not yet dealt with. Those are the *ad hoc* committees for financial Resolutions authorizing expenditure in connection with a Bill. Like every other item in the House of Commons financial procedure, these proposed Resolutions must conform to S.O.s 63 and 64, but under S.O. 69, when notice has been given of a Resolution authorizing expenditure in connection with a Bill, the House may, if the recommendation of the Crown is signified thereto, at any time after such notice appears on the paper,

resolve itself into Committee to consider the Resolution. Those are the Resolutions which nowadays accompany almost every Bill. Unlike a Resolution in Committee of Supply, it is unnecessary to name a sum of money in these Resolutions, and they may either impose a charge upon the Consolidated Fund, usual in the case of loan guarantee Bills, etc., or they may authorize a charge upon moneys provided by Parliament, in which case the actual sum required by the Department to carry out its duties will subsequently have to be voted in Committee of Supply.

These Resolutions, which govern the amendments which it is possible to make in Committee to the financial portion of the Bill, are hard to amend, because, the King's Recommendation being given to the actual terms of the Resolution, it is difficult thereafter to alter either the object or the conditions governing the expenditure recommended. From time to time the House has quarrelled with the Government over the alleged tight way in which such Resolutions are drawn, and from time to time the Government has promised to amend its conduct in this respect.

Attention is drawn to the principal financial papers which are presented to Parliament throughout the financial cycle of the years. As regards future expenditure there are, of course, the 5 volumes of Estimates—one for each of the Fighting Services, one for the Civil Services and one for the Revenue Departments, and there is also the Financial Statement which deals with future expenditure on the Consolidated Fund Charges. As regards past expenditure there is the Financial Statement followed by the Public Income and Expenditure account, the first audited account, followed by the Finance Accounts, containing considerable detail regarding revenue and debt, followed by the Appropriation accounts, dealing with expenditure in great detail, and the Reports of the Public Accounts Committee thereon. The attached table shows how long the whole financial cycle is.

TIME TABLE ILLUSTRATING FINANCIAL CYCLE FOR FINANCIAL YEAR APRIL 1, 1940—MARCH 31, 1941

1940. February	Presentation of Estimates for Financial Year ending March 31, 1941.
March to April	Vote on Account for Civil Estimates. Speaker out of the Chair on each of the Fighting Services, together with Votes A, 1, etc. Ways and Means Resolutions authorizing grants out of Consolidated Fund for above. Consolidated Fund Bill, giving statutory authority for above. Financial Statement. Estimates of Revenue and Expenditure for year ending March 31, 1941.
April to August	Consideration of Estimates in Committee of Supply. Guillotine before August 5.
August	Appropriation Act.

1941.	
January	Supplementary Estimates.
March	Ways and Means and Consolidated Fund Bill authorizing above.
April	Financial Statement giving figures for Revenue and Expenditure for year ended March 31, 1941.
May	Public Income and Expenditure Account giving audited figures of receipts into and issues from the Consolidated Fund.
August	Appropriation Bill appropriating Supplementaries.
September	Finance Accounts giving details of Expenditure and Revenue, particular Consolidated Fund Services, Revenue and Debt.
1942.	
January	Appropriation Accounts for year ended March 31, 1941, presented, giving details of expenditure.
February-July	Consideration of Appropriation Accounts by Committee of Public Accounts.
March	Excess Votes presented, passed in Committee of Supply, Ways and Means and Consolidated Fund Bill authorizing issue from Consolidated Fund therefor.
July	Report of Public Accounts Committee.
August	Appropriation Bill appropriating Excess Votes.
1943.	
February	Presentation by Treasury to Public Accounts Committee of Statement showing comparison between audited accounts and Exchequer issues.
July	Report of Public Accounts Committee containing above as Appendix I.

IV. "THE BOOTHBY CASE"

By the Editor

It has always been an object of this JOURNAL to give prominence to any proceedings in our Parliaments and Legislatures which deal with the maintenance of the highest traditions in Parliamentary life. The Prime Minister (the Rt. Hon. Winston Churchill), in his speech on January 8, 1941,[1] upon the adoption of the Report from the Select Committee on the Conduct of a Member, said:

> We have set a very high standard for the House of Commons, and we have to try to live up to that standard.

His speech was also, unwittingly, a tribute to himself, for although Mr. Boothby was a personal friend, a political colleague of many years' standing and one of his Ministers, it did not deter him from the path where he considered his duty lay.

The subject of inquiry now under review is an infrequent one in the annals of the Imperial Parliament, and the House of Commons, in this case, fully realized the important principle at stake by ordering the inquiry as well as by appointing to the Select Committee thereon—representative of all parties—Members of considerable Parliamentary experience. The personnel of the Committee may briefly be described as follows:

Mr. G. Benson had been an M.P. for over 7 years.

The Hon. R. D. Denman (Second Church Estates Commissioner) is a scholar of distinction and had been Parliamentary Secretary to several Ministers and an M.P. for over 10 years.

Mr. Ernest Evans is a barrister-at-law and was from time to time Private Secretary to a Prime Minister; he had been an M.P. for over 19 years; was subsequently appointed a County Court Judge.

The Rt. Hon. F. W. Pethick-Lawrence is an ex-Financial Secretary to the Treasury, a barrister-at-law, and was formerly a newspaper editor; he had been a Member over 16 years.

Mr. K. W. M. Pickthorne is President of Corpus Christi College and Lecturer in History, Cambridge University; his membership dates back to 1935.

Sir George Schuster, K.C.M.G., K.C.S.I., K.C.I.E., C.B.E., M.C., is a barrister-at-law, a director of many banks and limited liability companies. He was also a Financial Secretary to the Sudan Government 1922-7, Financial Adviser Colonial Office 1927-9, and Member of the Executive Council of the Viceroy of India 1928-34.

Mr. W. P. Spens, O.B.E., had been a K.C. since 1925, was Master of the Bench, Inner Temple, 1934, and an M.P. of long standing; he has since been appointed Chief Justice of India.

Colonel the Rt. Hon. J. Gretton was appointed a Privy Councillor

[1] 368 *Com. Hans.* 5, s. 461.

in 1926 and had been an M.P. for over 44 years, with great experience of the working of Select Committees. In regard to him, the Prime Minister said in his speech already quoted that he was well known to all of them, " and it is a tribute to our system and to him that all parties in this House should have agreed in appointing him."

Another factor in this inquiry is that there was no change in the personnel of the Committee throughout the inquiry, which was conducted with expedition, in spite of the fact that it began in the Vth Session of the XXXVII Parliament, was continued in the VIth Session, and that when a great deal of the matter was already in type—in the normal course—the type was completely destroyed by fire, necessitating arrangements being made for the printing process to be begun afresh.[1]

Unlike " the Sandys[2] and Ramsay[3] cases " of recent years, " the Boothby Case " is not one of Privilege, but concerns one of those unwritten traditions at Westminster which govern the standard of conduct which both Houses of Parliament consider themselves entitled to expect of their Members. The same principle cropped up in 1941 in the House of Lords[4] in the case of Lord Strabolgi, and strangely enough upon a similar subject. In that instance, however, it was dealt with without inquiry, the noble Peer in question having by his own admission disclosed his interest.

Bearing in mind that the bulk of our readers are familiar with the details of Select Committee practice, it will not be necessary to note everyday procedure at this inquiry, but only those points which it is thought might serve as precedents in the event of any similar inquiry being instituted in any overseas Parliament or Legislature.

A careful study of H.C. Paper 5 of 1940-41 is suggested as there are many points in connection with this inquiry of especial interest to those concerned with the operation of the Parliamentary machine. As chronology is rather a feature in the subject of this Report, care should be taken when referring to this Parliamentary Paper, as it contains also the minutes of proceedings and evidence of the Select Committee of the 1939-40 Session.

The questions in the evidence do not run on. Those of November 5-19, 1940 (Nos. 1-214), apply to the 1939-40 Session and those of November 7 to December 4, 1940 (Nos. 1-1461), apply to the 1940-41 Session. Therefore, when quoting any question numbers which duplicate, the date of the meeting of the Committee must follow.

The documents in Appendix 1 of the Report (frequently referred to in the proceedings as " the Bundle ") are described as " Original MSS. Page No. . . ." and their numbers run from 1 to 141. The documents in Appendix 6 are similarly described, and their numbers run from 1 to 107. Appendixes 2 to 7 are referred to by their number only. It will therefore save time if readers of the Parliamentary Paper bear the above in mind.

[1] 367 *Com. Hans.* 5. s. 1360.
[2] *Ib.* Vol. IX, 64.
[3] *See* JOURNAL, Vol. VII, 122.
[4] *Ib.* Vol. X, 172.

It is now proposed to deal with the subject chronologically, first shewing the part taken in debate upon the subject of the inquiry by Mr. Boothby, and thereafter taking the matter through its various stages until disposed of.

Perhaps this account of the proceedings might have been made more interesting had other relevant parts of the evidence been also quoted, but there was the danger of not so strictly adhering to the lines upon which the investigation was conducted with the attendant stressing of facts in a direction which the Committee might not have had in mind. This case has been gone into at greater length than space usually admits, but in view of the importance of the principle at stake it was felt that its fuller treatment was justified.

Mr. R. J. G. Boothby (Aberdeen and Kincardine East) shewed considerable interest in Czecho-Slovak affairs both by Question[1] and in debate[2] in the House of Commons, in regard to Czech refugees and trade, Czech holdings in London, British holdings in Prague, blocked Czech assets in the United Kingdom, British balances in Czech banks, compensation to British holders of balances in Prague and to *bona fide* Czech residents in the United Kingdom with cash or bond claims. Mr. Boothby also took part in the debate upon the Czecho-Slovakia (Financial Assistances),[3] the Czecho-Slovakia (Restrictions on Banking Accounts, etc.)[4] and the Czecho-Slovakia (Financial Claims and Refugees)[5] Bills. He was also chairman of an unofficial—the Czech Holders—committee in London.

Mr. Boothby has been a Member of the House of Commons 16 years and until about 1936 was a member of the firm of Chase, Henderson and Tennant, stockholders, of London; he left them to join a new firm of merchant bankers, the First British-American Corporation Ltd., of which he became one of the managing directors.[6]

During 1938[7] Mr. Boothby, who had previously taken an interest in the affairs of Czecho-Slovakia, wrote letters to *The Daily Telegraph* upon the politics of Middle and Eastern Europe, and he made at least one speech on the same subject in the House of Commons. He visited Czecho-Slovakia during August and September, 1938, met some of the leading men, including Dr. Benes, and wrote a long memorandum to Mr. Chamberlain, the Prime Minister, giving his experiences and observations.

Question.—On August 1, 1939,[8] in reply to a Question by Sir J. Mellor, the Chancellor of the Exchequer said that:

> . . The Bank which issued the sterling 8% bonds of the Czecho-Slovak Government Loan asked H.M. Government to take note of the rights of the bondholders, but it is desirable that the bondholders

[1] 355 *Com. Hans.* 5, s. 439, 1017, 1318; 356 *Ib.* 20; 358 *Ib.* 220.
[2] 343 *Ib.* 812-7, 1197-8, 1463; 345 *Ib.* 1314-7, 1486; 347 *Ib.* 2719-22; 356 *Ib.* 450-7, 469, 614-5, 620-1, 628.
[3] 2 & 3 Geo. VI, c. 6.
[4] *Ib.* c. 11.
[5] 3 & 4 Geo. VI, c. 4.
[6] H.C. Paper No. 5 of 1940-41 (hereinafter referred to as "Rep. § . . . on p. . . ."), p. v, § 10.
[7] *Ib.* § 12.
[8] 350 *Com. Hans.* 5, s. 2155.

should lodge their claims individually as requested in the notice published on April 3 last. The attention of H.M. Government has been drawn to the contingent claim of the Trustees of the Austrian Government Guaranteed Conversion Loan, 1934-59, under the guarantee given by the former Czecho-Slovak Government. The service of this loan, however, is being met without any call upon the guarantee Governments. There do not appear to be any grounds for individual holders of bonds of this loan to lodge claims. In answering the specific questions put to me by my hon. friend, I do so, as he himself suggests, without prejudice to subsequent definitions of the scope of the scheme to be submitted.

* * * * *

To this Mr. Boothby asked, as a Supplementary, whether, in view of the uncertainty in regard to the matter, would his hon. friend bear in mind the desirability of producing a scheme as soon as possible after the recess.

Mr. Kirkwood:

May I ask whether there is any truth in the rumours going round that there are individuals in this country who are more concerned about the money lost in Czecho-Slovakia than they are about the Czecho-Slovak people losing their liberty ?

Select Committee (1939-40 Session).—On October 17, 1940,[1] the Rt. Hon. the Prime Minister (Mr. Winston Churchill) moved in the House of Commons:

That a Select Committee be appointed to investigate the conduct and activities of Mr. Boothby in connection with the payment out of assets in this country of claims against the Government of and institutions in the Republic of Czecho-Slovakia: to report generally on these matters and in particular to consider and report whether the conduct of the honourable Member was contrary to the usage or derogatory to the dignity of the House or inconsistent with the standards which Parliament is entitled to expect from its Members.

Mr. Churchill stated that after the occupation of Prague certain Czech assets were blocked in this country and there arose the question of payments from these assets to those who had claims against the Czech Government or institutions in that country. The hon. Member for East Aberdeen (Mr. Boothby) took a very active part interviewing Ministers in this matter, pressing for legislation and speaking in the House. He became chairman of an informal committee of Czech claimants and pressed for payment of claims. Evidence had recently been placed before the Government indicating that the hon. Member had a financial interest in one large claim, which appeared to be inconsistent with a statement he had made to the former Chancellor of the Exchequer, and, together with other evidence, it seemed to raise the

[1] 365 *Ib.* 829.

question whether his action had been in accordance with the usages of Parliament or the standards it was entitled to expect from its Members. The Prime Minister also said that when he communicated these apprehensions to the hon. Member it became clear that there was a conflict between the evidence in the possession of H.M. Government and the facts as he described them. The matter therefore required to be investigated by a Committee of the House. Mr. Churchill considered whether he should move that the matter should be referred to the Committee of Privileges, but after obtaining guidance as to precedents he had come to the conclusion that as the case appeared to raise other issues besides that of Privilege it was better that it should go to a Select Committee so that the truth could be ascertained and the conduct of the hon. Member considered. The Prime Minister stated that the hon. Member had assured him that he concurred in the course proposed and that he submitted himself willingly to the Committee and would assist them in every way. Mr. Churchill did not consider it fitting at this stage to call for the hon. Member's resignation of the office[1] which he held with distinction in the Government, as that might appear in the eyes of the public to prejudice the issue. The hon. Member had asked, however, to be suspended from his duties in the meanwhile and Mr. Churchill was prepared to make the necessary arrangements.

After a speech by another hon. Member, the Question was put and agreed to.

On October 23, 1940,[2] Order was given for the appointment of the personnel of the Select Committee on the Conduct of a Member, for power to send for persons, papers and records, 5 to be a quorum, for permission to sit notwithstanding any adjournment of the House and to adjourn from place to place, the Select Committee also to have power to report from time to time.

On November 5, 1940,[3] the Chairman brought up the Report[4] from the Committee, which had agreed to the following Resolutions:

(1) That the Committee desire to be assisted by a Law Officer of the Crown in order to present evidence in the possession of His Majesty's Government and to examine witnesses.

(2) That Mr. Boothby have leave to be heard himself or by counsel if he think fit.

(3) That the Committee have leave to hear counsel to such extent as they think fit on behalf of any other persons.

The Clerk-Assistant (Mr. F. W. Metcalfe, C.B.) then read the Report, after which the Chairman moved:

That the Attorney-General do attend the Select Committee on the Conduct of a Member, to present to the Committee the evidence relevant to the subject-matter of the inquiry in the possession of His

[1] *I.e.*, Parliamentary Secretary, Ministry of Food, appointed May 16, 1940.—[ED.]
[2] 365 *Com. Hans.* 5, s. 1045. [3] *Ib.* 1205. [4] H.C. Paper 172 of 1940-41.

Majesty's Government and to examine witnesses. (Paragraphs [2] and [3] above were also moved.)

An hon. Member inquired if all the evidence would be taken on oath, to which Mr. Speaker replied that such would be a matter for the Committee to decide for themselves.

Another hon. Member asked whether the words should not be " and counsel " instead of " or counsel ", to which Mr. Speaker said that that would be a matter for Mr. Boothby himself. Other hon. Members asked whether it would be in order for the House to give an instruction that the evidence be taken on oath.

Question on the Chairman's Motion was put and it was ordered accordingly.

On November 19, 1940,[1] a Special Report[2] from the Select Committee which was brought up and ordered to lie on the Table and be printed stated that:

> Your Committee have considered the matters to them referred and being unable to complete their inquiry have agreed to recommend that a Committee on the same subject be appointed in the next Session of Parliament.

Select Committee, 1940-41.—Early in the following Session, the Prime Minister moved on November 26, 1940,[3] the same Motion appointing the Committee as on October 17, 1940. Questions were asked the Prime Minister by Mr. Shinwell (Seaham) as to how long the Committee was to function in order to avoid the hon. Member, whose conduct was under review, being kept in a state of suspense for a long period, to which Mr. Churchill replied that that question lay entirely with the Committee and that the House had no power of directing how the Committee should conduct its business. To a further Question as to expedition by the same hon. Member, Mr. Speaker said:

> The hon. Member knows that any delay in the Committee's work is due to the Session having come to an end and a new Session begun. The Committee is being set up again today.

The same hon. Member then asked Mr. Speaker if it would be in order if he were to move an amendment giving an Instruction, to which Mr. Speaker replied that that would require notice. Question on the Prime Minister's Motion was put and agreed to.

The same Members of the Committee were appointed and the same Orders made as to papers, quorum, sittings, reporting, as on October 23, 1940, as well as in regard to Mr. Boothby's counsel and counsel generally and the attendance of the Attorney-General as on November 5, 1940.

Later, the following Motion was moved by the Chairman of the Select Committee:

> That the Governor of His Majesty's Prison at Brixton, or other officer in whose custody Mr. Richard Weininger may be, do bring

[1] 365 *Com. Hans.* 5, s. 1834. [2] H.C. 177 of 1939-40. [3] 367 *Com. Hans.* 5, s. 95.

the said Mr. Richard Weininger in safe custody on Thursday, at a quarter past eleven o'clock to the Select Committee on the Conduct of a Member, in order to his being examined as a witness before the Select Committee, and so, from time to time, as often as his attendance shall be thought necessary by the said Committee, and that Mr. Speaker do issue his Warrants to the said Governors and to the Serjeant-at-Arms attending this House accordingly

—the person in question (under detention under the Defence of the Realm Regulations) being an essential witness to the inquiry. Question was put and agreed to.

On December 12, 1940,[1] Mr. Boothby drew attention to the following Motion on the Order Paper standing in the name of Sir E. Graham-Little (London University):

That it be an instruction to the Select Committee on the Conduct of a Member to inquire into and report on the circumstances in which the company known as Roche Products Limited secured a contract for the supply of synthetic Vitamin B1, to reinforce the loaf to be provided by the Ministry of Food as mentioned in the debate on July 18 last.

The hon. Member (Mr. Boothby) submitted to the House that the Motion ought either to be withdrawn or moved without delay. The hon. Member said that the House would recollect that during the debate on the Ministry of Food Vote[2] he made a personal statement on the subject referred to in the Motion. If any doubts in this connection still existed in any quarter he thought it only fair to him that they should be immediately cleared up. For his part he was only too willing that this point should also be referred to the Select Committee.

The Prime Minister, in reply to a Question by an hon. Member, said that it was not possible to give time for the Motion at present. The full facts were laid out on July 18, 1940, and the Government assented to the statement his friend (Mr. Boothby) then made. Further, the Prime Minister considered it unfortunate that the Motion should remain on the Paper when his friend was defending his conduct before the Select Committee. Moreover, the Committee ought not to be intruded upon with topics other than those which the House had decided to remit to them. He hoped therefore that the Motion would be withdrawn.

Mr. W. J. Thorne asked if the information could not be conveyed to the hon. Member for London University (who was not in the House) with a view to asking whether the Motion could be withdrawn, to which the Prime Minister stated that he had no power over any Member but that he would cause a letter to be written expressing the view put forward, with, he thought, the general consent of the House.

Sir Patrick Hannon asked if it was not a grave discourtesy to the

[1] *Ib.* 1044. [2] 363 *Ib.* 458.

House that the hon. Member for London University was not present while this personal statement was being made.[1]

On December 17, 1940,[2] it was ordered that the minutes of proceedings and the minutes of evidence taken before the Select Committee on the Conduct of a Member in the last Session of Parliament be laid before the House.

Report and Evidence.—The Report from the Select Committee of 1940-41, with minutes of evidence and appendixes,[3] was brought up in the House on December 18, 1940,[4] read, and ordered to lie upon the Table and be printed.

This H.C. Paper contained the Report, evidence and appendixes of this Committee together with the minutes of proceedings and evidence of the 1939-40 Committee (which had not hitherto been published). Such Committee sat 4 times, was addressed by the Attorney-General on evidence in possession of His Majesty's Government and heard evidence from 3 official witnesses (Sir Thomas Barnes, K.C.B., K.B.E., the Treasury Solicitor, Sir Stanley Wyatt, in charge of the Czecho-Slovak Settlement of Financial Claims Office, Mr. S. D. Waley, C.B., M.C., Under-Secretary of the Treasury), and from the Lord High Chancellor, in his capacity as the former Chancellor of the Exchequer.

In the 1940-41 Session the Committee sat 8 times and heard evidence from 13 witnesses, including the Lord Chancellor and Mr. Boothby, M.P., himself.

Procedure.—The procedure followed was that all evidence was taken on oath; the sittings were held in private. Counsel for Mr. Boothby was in attendance, was called in and heard, as also was the Attorney-General. The Home Secretary was requested by the Committee to permit Mr. Richard Weininger, in custody under the Aliens Order, 1940, to appear before the Committee from Brixton Prison to assist Mr. Boothby in preparing his case as well as to give evidence. A firm of solicitors asked leave for Mr. Weininger to be represented by counsel, which the Committee refused, but the counsel for Mr. Boothby was authorized to disclose to Mr. Weininger the contents of documents relative to the subject-matter of the inquiry. Upon a further request by Mr. Weininger's solicitors to be heard by counsel, the Committee ordered that if Mr. Weininger was called as a witness counsel be admitted during the examination of Mr. Weininger. Counsel in each instance were called in. All strangers withdrew whenever the Committee was deliberating.

The proceedings were opened by the Attorney-General presenting

[1] In a letter to *The Times* (Dec. 12, 1940) Sir E. Graham-Little (London Univ.) said it was the invariable custom that when one Member proposed to bring the action of another Member into debate he should inform his colleague of that purpose and that although he was in the House as recently as late afternoon of Wednesday he had received no notice of Mr. Boothby's intention to raise the matter on the following day, and he submitted in those circumstances the accusation of " grave discourtesy " must be transferred from himself to the hon. Member for East Aberdeen.—[ED.]

[2] 367 *Com. Hans.* 5, s. 1107. [3] H.C. Paper 5 of 1940-41. [4] 367 *Com. Hans.* 5, s. 1231.

evidence in possession of His Majesty's Government and examining witnesses. The Attorney-General, who appeared gownless and juniorless, was not in the capacity of counsel for the prosecution but to assist the Committee as suggested in the House by the Prime Minister. The first witness was Sir Thomas Barnes, who put in a memorandum together with documents constituting Appendix A, which were frequently referred to in the course of evidence as " the Bundle ". This evidence having been put in, copies were furnished to Mr. Boothby's representatives.

At the second meeting of the Committee the Attorney-General was asked to take the Committee through the evidence in an explanatory address to the Committee, and at the end to formulate such questions as in his opinion might arise from the evidence. The Attorney-General more than once asked for the guidance of the Committee as to the interpretation of his functions. All the witnesses not already mentioned were called either by Mr. Boothby's counsel or by the Committee. The Attorney-General was not called upon to undertake anything in the nature of cross-examination.

The witnesses called by Mr. Boothby's counsel, including Mr. Boothby himself, were questioned by members of the Committee, after their examination-in-chief, and the examination of witnesses called by the Committee was conducted by members of the Committee, the counsel for Mr. Boothby being given an opportunity to cross-examine all witnesses other than those called by him. Finally, when the counsel for Mr. Boothby on his behalf had addressed the Committee at the end of the evidence, the Attorney-General was not called upon to make what in a Court of Law would have been the final speech for the prosecution.[1]

The Committee afforded Mr. Boothby every facility in connection with the inquiry. The Treasury Solicitor's memorandum[2] shewed that his documentary evidence came in mainly from the papers of Mr. Richard Weininger, a Czech subject resident in Great Britain, who was detained in custody, quite apart from this case,[3] as already mentioned. His papers were seized and sent by the Claims Office to the Treasury Solicitor. Mr. Weininger was a close friend of Mr. Boothby and obviously an important witness in the inquiry. Mr. Boothby's counsel, having been asked whether he wished to call Mr. Weininger, replied, after reflection, that he wished to do so. The Committee therefore applied for an Order of the House for him to be brought in custody to give evidence, and he was brought up by the Governor of Brixton Prison and handed over to the custody of the Deputy Serjeant-at-Arms of the House of Commons to be examined by the Committee and thereafter withdrawn in such custody, the Deputy Serjeant-at-Arms handing him back to the Brixton Prison authorities. The Committee also caused a letter to be written to the Home Secretary asking that every facility be given Mr. Weininger to enable him to assist Mr.

[1] *Rep.* § 6. [2] *Ib.* p. 163. [3] *Ib.* Qs. 1014, 1017.

Boothby in preparing his case and to give evidence, if required. The Committee also asked if Mr. Weininger could be released on parole for the purpose of the inquiry, but the Home Secretary could not, consistently with his public duty, grant such parole. However, when it appeared that Mr. Boothby's legal representatives thought they were unduly hampered by the difficulty of interviewing Mr. Weininger at Brixton Prison, arrangements were made for him to meet his own legal representatives, Mr. Boothby and his legal representatives at the Treasury Solicitor's office. When Mr. Weininger appeared before the Committee his solicitor and 2 counsel were also present and sat beside him to give him any advice they considered necessary, but they were not asked to address the Committee, since the Committee considered that Mr. Weininger's conduct was in no way in question and irrelevant to its inquiry. He therefore appeared solely as a material witness in the presentation of Mr. Boothby's case.

Mr. Boothby's counsel called other witnesses, including Dr. Jansa, the Commercial Counsellor to the Czecho-Slovak Legation, Dr. Calmon, a Czech, and Mr. Gordon, Mr. Boothby's solicitor. The witnesses called by the Committee were: Mr. H. P. Chase, of Messrs. Chase, Henderson and Co., stockbrokers, in which firm Mr. Boothby formerly was; Mr. G. F. Pitt-Lewis, of Messrs. Coward, Chance and Co., solicitors to Mr. Chase and the Zota Co. Ltd.; Mr. G. B. Brooks, of Messrs. Gery and Brooks, solicitors to Sir Alfred Butt; and Lord Nathan (by leave of the House of Lords), a member of the firm of solicitors whose letter to Dr. W. Petschek of August 1, 1939, had been brought to the attention of Lord Simon when Chancellor of the Exchequer.

Both Mr. Chase and Mr. Pitt-Lewis were, like Mr. Weininger, allowed to have their counsel present while they were being examined.

Evidence.—In the course of business, Mr. Boothby met Mr. Richard Weininger, an international financier with wide connections and many activities; their business association developed into personal friendship. Mr. Weininger was born an Austrian subject and changed to Czech nationality about the time Austria was occupied by the Germans. His wife, Mrs. Truda Weininger, and 2 stepdaughters, Miss Edith and Miss Lottie Kahler, had large interests, including cash balances in that country, Mr. Weininger having himself some much smaller assets. The ladies claimed that they were resident in Great Britain, which was not disputed.[1]

In August, 1938, Sir Alfred Butt made a temporary unsecured loan to Mr. Boothby of £5,000, and in the evidence a member of the firm of Sir Alfred Butt's solicitors replied to the following question by the Attorney-General.[2]

By January, 1939,[3] Mr. Weininger had become anxious as to the security of his and the family's assets in Czecho-Slovakia, where they had very large funds blocked by certain Prague banks. Mr. Weininger then proposed to Mr. Boothby that he should assist in endeavouring

[1] *Rep.* § 11. [2] *Ib.* § 13, Q. 1036, App. 6, p. 98 of original. [3] *Rep.* § 14.

to get the Weininger funds unfrozen and should go out to Czecho-Slovakia, if necessary, to negotiate for their release. To this proposal Mr. Boothby agreed and Mr. Weininger then verbally agreed to pay him for his services 10% of the amount of any assets released from the bank block in Prague, and Mr. Weininger paid over to Mr. Boothby a cheque for £1,000 stated to be on account of expenses. Mr. Boothby said he corresponded with certain people in Prague and arranged that he should arrive there about the beginning of April.[1]

In order[2] to facilitate the release of the Weininger funds in Prague, it was agreed between Mr. Boothby and Mr. Weininger to set up in connection with the Weininger funds " a façade of British interests ".[3] By about February 23, 1939, an arrangement for this purpose had been agreed between Mr. Boothby and Mr. Weininger and Mr. Chase. The arrangement was that a private British limited company, the Zota Company Limited, of which Mr. Chase was governing director, was to agree to make a fictitious loan of £120,000 to Mrs. Weininger and her 2 daughters against the security of a charge by the ladies in favour of the Zota Co. Ltd. on the ladies' assets in the Boehmische Union Bank of Prague amounting approximately to the value of £240,000 sterling, and that the Zota Co. Ltd. was then to claim against the assets in Prague by virtue of this charge. The agreement for the loan was to be fictitious, for, by a contemporaneous document (referred to as a trust deed), the Zota Co. Ltd. was to be relieved of the obligation to lend the money, but was to constitute itself a trustee of any moneys received in respect of the company's claims under the charge and Mr. Weininger was to be given power to give directions as to the disposal by the Zota Co. Ltd. of any moneys so received by that company.[4]

The Report goes on to state[5] that, according to Mr. Weininger, the terms of arrangement were agreed by the Weininger ladies on March 6, 1939, and instructions were given for such terms to be executed on the 7th *idem*, but, in fact, none of them were executed until after the 23rd *idem*. They were executed in France.[6]

On March 15[7] the Germans occupied Prague and in consequence Mr. Boothby told the committee that he was unable to make the journey to Prague proposed for the beginning of April. He and Mr. Weininger stated in their evidence[8] that as a result of such occupation they regarded the verbal arrangement for the payment of the 10% to Mr. Boothby as automatically coming to an end; and, according to Mr. Boothby,[9] it was then that he agreed to give Mr. Weininger a promissory note for the £1,000 advanced for the expenses of this journey. It is, however, to be noted, states the Report, that Miss Frances, Mr. Weininger's private secretary, stated in her evidence[10] that a promissory note

[1] Qs. 54-8 (*Nov.* 27); 443-7. [2] *Rep.* § 15. [3] Qs. 60-3 (*Nov.* 27).
[4] *See* App. 1 at end. [5] *Rep.* § 16, Q. 452.
[6] *Ib.* § 17, Qs. 68-70 (*Nov.* 27); App. 1, pp. 5 and 7 of original.
[7] *Rep.* § 18. [8] Qs. 76 (*Nov.* 27), 462. [9] Q. 74.
[10] Qs. 842, 1060, 1076.

was (*vide* her office diaries, which were produced) given on March 7, 1939, when the £1,000 was originally advanced.

On the morning of March 15, 1939,[1] Mr. Waley, Under-Secretary to the Treasury, on his arrival at the Treasury at 9 o'clock, telephoned to the Bank of England to block payment of all Czech balances in the United Kingdom, and he telephoned to the other banks to like effect.[2] When the Chancellor of the Exchequer (as he then was), Sir John Simon, arrived at the Treasury about an hour later, he was informed of this action, which he approved and confirmed.[3]

On March 16, 1939,[4] Mr. Boothby lunched with Mr. Weininger at the Carlton Grill.[5] During lunch there was a conversation as to the danger that the Germans would obtain possession of all Czech assets in London as they had done previously when they entered Vienna, were not immediate action taken to block these assets. Mr. Boothby telephoned to the Treasury urging that they should immediately be blocked, and also rang up certain banks.[6] Mr. Waley did not reveal to Mr. Boothby that the Czech assets were already blocked, but it was stated that he may have said that he, personally, was in favour of doing so.[7] Subsequently Mr. Boothby rang up the Patronage Secretary on the political side of the question.[8] On March 17 or 18 Mr. Boothby discovered that action had been taken.

On March 27, 1939,[9] an Act[10] was passed confirming the blocking of such assets in the United Kingdom. Owing to the German occupation of Prague and the blocking of such assets, it became apparent that if sterling were to be realized in respect of the Weininger claims the most practical course was that the blocked Czech assets in London should be used to satisfy such claims. Early in April, 1939, the Bank of England issued instructions to ascertain the amount of such claims of British holders (including persons not of British nationality but ordinarily resident or carrying on business in the United Kingdom) in respect of obligations due from Czecho-Slovakia held at the close of business on March 14, 1939, but obligations due from Sudetenland were not to be included.[11] Messrs. Ashurst, Morris, Crisp and Co., solicitors, advised Mr. Weininger and Mr. Chase that, having regard to the date on which the deeds dated March 7, 1939, were, in fact, executed, it was not practicable that claims should be made by the Zota Co. Ltd., but that they must be lodged in the names of the 3 Weininger ladies.[12] This was done, but at a later date intimation was given to the Bank of England of the interest claimed by the Zota Co. Ltd., and this was noted on the claim forms originally put in by the ladies (reproduced in Appendix 1).

A Dutch company (N.V. Financiele Maatschappij (" De Bernisse ") had been made a party to the second deed in a fiduciary capacity, but

[1] *Rep.* § 19. [2] Q. 66 (*Nov.* 19). [3] Q. 144 (*Nov.* 19). [4] *Rep.* § 19. [5] Qs. 415-7. [6] Qs. 83-5 (*Nov.* 27), 46-7. [7] Q. 94 (*Nov.* 27). [8] Qs. 92-3 (*Nov.* 27). [9] *Rep.* § 20. [10] 2 & 3 Geo. VI, c. 11. [11] *Rep.* App. 1, p. 9 of original. [12] *Ib.* pp. 11 and 12 of original.

at no time did this company take any material part in the matters under investigation.[1]

On May 3, 1939,[2] Mr. Weininger wrote to Mr. Chase on behalf of the Zota Co. Ltd. as follows:

> " I hereby authorize you on behalf of Mrs. Truda Weininger, Miss Edith Kahler and Miss Lottie Kahler, to employ 10% of the sterling proceeds of the Czech balances held by these three parties, according to orders which will be given to you by your chairman, Mr. H. P. Chase."[3]

The Committee[4] observed that this authority, which appeared to them to have been given by Mr. Weininger under the powers conferred on him by the trust deed, was made with the object of securing to Mr. Boothby the 10% of the sterling proceeds referred to in Mr. Weininger's letter above set forth. Accordingly on the same day Mr. Chase wrote to Mr. Boothby (copy of which he sent to Mr. Weininger) as follows:

> "Mr. Richard Weininger has authorized the Zota Company Limited, of which I am Governing Director, to pay out of the sterling proceeds of our Czech holdings the sum of ten per cent. of the total amount. These balances and holdings, which are comprised entirely of cash and Czech Government bonds, amounted on the 15th of March to £242,000. The sterling value of the balances in Prague which we now hold on your behalf therefore amounts to £24,200."[5]

Neither of these letters had ever been cancelled or withdrawn.[6]

On receiving the letter of May 3, 1939, from Mr. Chase, Mr. Boothby stated that he asked Mr. Weininger to come to see him.[7] He said he was not certain of his position—whether claims were to be made by direct negotiation with the German Government, in which case he considered he would be entitled to remuneration, acting professionally, or whether claims would have to be prosecuted through Parliamentary action there. Mr. Boothby said he therefore " left the matter in the air ", but " did not turn down the offer ".[8] He did not tell Mr. Chase or the Zota Co. that he was not accepting the offer.[9]

Mr. Weininger and Mr. Boothby both stated in their evidence[10] that in June, 1939, Mr. Weininger offered to Mr. Boothby some written form of contract involving the payment of 10% of the assets recovered on account of the Weininger claim. The Report of the Committee further stated that:

> " It was not made clear what were the services for which this payment was offered. They both stated that Mr. Boothby tore up the paper. There is no other evidence to confirm this incident. Both Mr. Boothby and Mr. Weininger repeatedly emphasized that, in their

[1] *Rep.* § 21. [2] *Ib.* § 22. [3] *Ib.*, App. 1, p. 29 of original. [4] *Rep.* § 23.
[5] *Ib.*, App. 1, p. 31 of original. [6] *Rep.* § 23, Qs. 481-3, 1103, 1142-5.
[7] Qs. 133-4 (*Nov.* 27). [8] Q. 137 (*Nov.* 27). [9] *Rep.* § 24.
[10] Qs. 138, 144 (*Nov.* 27), 480.

view, Mr. Boothby, Mr. Weininger and Mr. Chase were all friends together and that legal or other documents were of little consequence."[1]

Mr. Boothby informed the Committee[2] that from the time of the occupation of Prague, when the original arrangement for the payment of the 10% commission, in his view, automatically came to an end, until some date in September, 1939, when Mr. Weininger made some promise to pay his debts, he did not regard himself as having any personal interest of any sort in the Weininger family claims.

On June 30, 1939, Mr. Boothby wrote a letter to Sir Alfred Butt containing the following paragraphs:[3]

" As a result, however, of certain events which I will recount to you, I am, at the moment, the possessor of assets amounting to approximately £20,000 in the form of cash and bonds in Prague." . . .

" Either way, it is a matter of days, but I cannot guarantee that I shall have the money by the 15th. I might be able to raise a loan against these assets, but it would be difficult to do so without breach of confidence; as I have been taking part in the negotiations with the Treasury."

Paragraph 27 of the Committee's Report reads as follows:

" Shortly before these events, on some date early in April, 1939, the suggestion was made for the setting up of a committee in London representing claimants against the Czech assets, and a meeting was held at the offices of Messrs. Herbert Oppenheimer, Nathan and Vandyk, solicitors, of which Colonel (now Lord) Nathan is a partner, on or about April 18, 1939. Colonel Nathan and his firm had given professional advice in London to Czechs with business interests in this country over a number of years. A number of Czechs, including Mr. Weininger, met in Colonel Nathan's office, and Mr. Boothby was invited to become, and agreed to become, chairman of this committee."[4]

The Committee stated[5] that early in May the Treasury asked the Council of Foreign Bondholders to nominate an Advisory Committee to assist the Treasury in dealing with claims of British holders against Czech assets in London. A committee was set up accordingly under the chairmanship of Mr. Lever.[6]

Two[7] of the largest claims were those of the Petschek family and the Weininger ladies. The Petscheks were not represented on Mr. Boothby's committee. Mr. Weininger's personal claim was a comparatively small one, as his assets at the banks in Prague were not large. He finally received payment on account of his claim of about £120.[8]

The Committee remarked[9] that at the meeting of Mr. Boothby's committee on April 18, 1939, or one day shortly after, there appeared

[1] *Rep.* § 25. [2] *Ib.* § 25, Qs. 251, 281, 282, 310. [3] *Ib.* § 26.
[4] *See* evidence of Dr. Jansa, Dr. Calmon and Lord Nathan. [5] *Rep.* § 28.
[6] *Ib.* § 28, Qs. 1-3 (*Nov.* 27). [7] *Ib.* § 29. [8] Q. 630. [9] *Rep.* § 30.

to have been some general discussion as to how Czech claims should be dealt with, what claims should be paid and in what priority. On May 1, 1939, Mr. Boothby, as chairman of this committee, wrote to the Chancellor of the Exchequer urging certain views on these subjects,[1] and he wrote further letters to the Chancellor on May 3, 31, and July 17. On July 19 the Chancellor wrote a letter[2] to him indicating some of the classes of payment which were likely to be included in the Government scheme and authorizing the letter to be shewn to banks whose clients possessed claims in this connection, but directing that, apart from this, the letter was to be treated as confidential. By this date Mr. Boothby and Mr. Weininger had agreed that it was desirable that efforts should be made to persuade the Petscheks to join Mr. Boothby's committee. Mr. Boothby failed to obtain an interview with Dr. Paul Petschek, who was in this country, and in reply to letters from Mr. Weininger the Petscheks declined to join the committee or to be represented on it.[3] Mr. Boothby resented this attitude, and on July 23, 1939, wrote the following letter[4] to Mr. Weininger:

" DEAR RICHARD,

The more I think about it, the more impregnable my case becomes.

(1) I got the Czech assets blocked at your request; and can bring Chase to give evidence of this.

(2) I accepted the position of chairman of the committee of Czech holders, at their invitation.

(3) I received assurances from you that I would be compensated out of the larger holdings for what I had done and proposed to do.

(4) As chairman of the committee I conducted long and arduous negotiations with the Chancellor and with Treasury officials *on behalf of Czech holders, including the Petscheks*; and was accepted by the Treasury as representing their interests.

(5) I continued these negotiations with Wohltat himself.

In these circumstances it is really incredible that the P's—whose case is by no means a cast-iron one, and *not yet decided*—should seek to evade the whole of their obligations."[5]

On August 1, 1939, a letter[6] was written by Colonel Nathan to Dr. Walter Petschek for the purpose of pressing him to join Mr. Boothby's committee.

The receipt of this letter, taken in conjunction with the letters which the Petscheks had already received from Mr. Weininger, obviously caused them great anxiety[7] in case, by refusing to be represented on Mr. Boothby's committee, their claims might be prejudiced. As a result, the Petscheks took advice and the letters from Mr. Weininger and Colonel Nathan were sent to the Chancellor of the Exchequer.[7] The Chancellor took a serious view of the correspondence.

[1] *Ib.* App. 1, p. 28 of original. [2] *Ib.*, p. 47 of original. [3] *Ib.*, pp. 49-50 of original. [4] *Ib.*, p. 48 of original. [5] *Rep.* § 31. [6] *Rep.* § 32, App. 1, p. 53 of original. [7] *Rep.* § 32.

The letter written by Colonel Nathan was stated by him to have been founded on a letter from Mr. Boothby to Mr. Weininger of the previous day. The Petscheks were old clients of Colonel Nathan's firm.[1]

On August 3, 1939,[2] the Chancellor of the Exchequer sent for Mr. Boothby and complained that the letter from Colonel Nathan to Dr. Walter Petschek plainly conveyed that Mr. Boothby was the authorized and recognized channel for negotiating Czech claims with the Treasury, and further conveyed that the Treasury regarded him as speaking for all claimants, and that if Dr. Petschek refused to be represented by him his claim would suffer. The Chancellor of the Exchequer emphasized that such suggestions were quite unfounded, and that all claims would be considered on their merits and that Mr. Boothby's committee was not the authorized channel. Mr. Boothby did not dissent from this, and he stated that he had not seen Colonel Nathan's letter. In the course of the conversation, Mr. Boothby protested that he had no financial interest in the subject-matter of the interview.

On August 4, 1939,[3] Mr. Boothby wrote a letter[4] to the Chancellor of the Exchequer with further explanations, which ended:

> " I have received no remuneration and have no financial interests of any sort or kind in the work of the committee."

On the same day Mr. Boothby wrote[5] to Mr. Weininger enclosing a copy of his letter to the Chancellor and containing the following paragraph:

> " I am afraid it will not now be possible for me to have an agreement of any kind with you or Zota, because legislation may be necessary, and if I do I shall not be able to take any further part."[6]

Meantime, on leaving the Chancellor on August 3, Mr. Boothby had gone straight to a meeting of his committee, where he told them that their activities were no longer acceptable to the Treasury and that they had better dissolve; this was done.[7] The committee had met only 3 times.[8]

In explanation of the approaches to the Petscheks it was stated by Mr. Boothby and Mr. Weininger that one of their ideas was that the larger claimants, if paid substantial sums, should make a contribution to, or for the benefit of, the poorer Czechs.[9] There is no evidence that any such proposal was ever brought home before Mr. Boothby's committee; but in support of some such idea the committee was informed that a cable[10] had been sent on November 21, 1940, to Mr. Hans Weinmann in Toronto in the following terms:

> " Please confirm immediately by cable to me that your arrangement with Richard Weininger concerning his participation in proceeds of Czech assets was that this participation was destined for

[1] *Rep.* § 32 and Qs. 1351, 1352, 1382. [2] *Rep.* § 33 and App. 1, pp. 59-60 of original, and Viscount Simon's evidence.
[3] *Ib.* § 34. [4] *Ib.* App. 1, pp. 63-5.
[5] Q. 203 (*Nov.* 27). [6] *Rep.* § 35. [7] Qs. 193-7 (*Nov.* 27). [8] *Rep.* § 36.
[9] Qs. 119 (*Nov.* 27), 572. [10] *Rep.* § 37, Qs. 119 (*Nov.* 27), 572.

Czech national purposes to be proven either by signature Doctor Benes or Jan Masaryk ";

and that a cable giving this information had been received from Mr. Hans Weinmann. At a later stage in the evidence a letter[1] from Mr. Weininger to Mr. Chase dated December 25, 1939, was produced, enclosing a letter of the same date to the Zota Co. Ltd. This was to the effect that Messrs. Fritz and Hans Weinmann had promised Mr. Weininger, in case they received 100% of their claims in pounds, to pay 5% to Mr. Weininger, and in Mr. Weininger's letter to Mr. Chase he explained that: " Another 5% in this case means about £3,000 to Bob in the first instance." Mr. Chase explained to the Committee that on receipt of this money he would have regarded himself as a trustee of the same up to an amount of £3,000 for Mr. Boothby.[2]

On August 9, 1939,[3] being further pressed by Sir Alfred Butt in respect of his loan, Mr. Boothby requested Mr. Chase to confirm his letter to him of May 3, 1939, and accordingly Mr. Chase wrote on that day the following letter to Mr. Boothby:

" Mr. Richard Weininger has authorized the Zota Company Limited, of which I am Governing Director, to pay out of the sterling proceeds of our Czech holdings the sum of ten per cent. of the total amount. These balances and holdings, which are comprised entirely of cash and Czech Government bonds, amounted on the 15th of March last to £242,000. The sterling value of the balances in Prague which we now hold on your behalf therefore amounts to £24,200."[4]

On or about August 10, 1939,[5] Mr. Boothby handed to Sir Alfred Butt a document purporting to be a copy of a letter of that date addressed to Mr. Chase as follows:[6]

" I have to acknowledge, with thanks, your letter of the 9th instant. I should be obliged if, immediately upon receipt of payment from the Treasury in respect of my assets, you would pay to the account of Sir Alfred Butt, Bt., at the Midland Bank Ltd., Cambridge Circus Branch, 138 Shaftesbury Avenue, W.C.2, the sum of £5,000 (five thousand pounds); and regard this as a prior charge against all my assets."

Mr. Chase informed the Committee that he had never received any such letter.[7] Sir Alfred Butt continued to press, and on October 27, 1939, Mr. Boothby signed a further document as follows:

" I, Robert John Graham Boothby, M.P., of 17, Pall Mall, London, S.W.1, hereby assign to Sir Alfred Butt, Baronet, the sum of £5,000 sterling (five thousand pounds) out of the Czech assets now held on my behalf by the Zota Company Limited. And I hereby pledge these assets as security for the payment of the said five thousand

[1] Q. 497 and *Rep.*, App. 6. [2] *Rep.* § 37, Qs. 1113-5. [3] *Ib.*, § 38.
[4] *Ib.*, App. 6. [5] *Ib.*, § 39. [6] *Ib.*, App. 7. [7] Qs. 1139, 1140, 1172.

pounds, so that in effect, until such payment is made, they are mortgaged to Sir Alfred Butt."[1]

This was given to Sir Alfred Butt.

On November 1, 1939, Mr. Chase wrote to Mr. Boothby, in answer to a request from him, a letter as follows:[2]

" In reply to your letter of yesterday, I confirm the contents of my letter to you of August 9 to the effect that if and when the sterling equivalents of the various Czech holdings, to which this company is entitled, are received, the percentage agreed upon will, immediately, be paid to you in full."[3]

Mr. Boothby told the Committee[4] that about September or October, 1939, he informed Mr. Weininger that he was being pressed by his creditors and that Mr. Weininger promised that he would pay Mr. Boothby's debts out of any Czech assets which Mr. Weininger might receive. There is no documentary evidence of this promise.[5]

In December, 1939,[6] Mr. Boothby was being pressed by other creditors for the payment of a debt of £5,400. He applied to Mr. Chase for assistance, and on January 30, 1940, the Zota Co. Ltd. made a loan to Mr. Boothby of this amount against a promise by Mr. Boothby that he would charge in favour of the Zota Co. Ltd. the 10% share of the sterling proceeds of the Weininger claims, when received by the Zota Co. Ltd.[7] Mr. Boothby did not on that occasion inform Mr. Chase of the loan from Sir Alfred Butt or of the documents purporting to charge Mr. Boothby's interest in these funds in favour of Sir Alfred Butt.

The £5,400[8] advanced by the Zota Co. Ltd. was not all the company's own money, but had been contributed in part by other individuals. Mr. Chase informed the Committee that had he known of any prior charges in favour of Sir Alfred Butt he would never have allowed the Zota Co. Ltd. to make this advance.[9]

On April 15, 1940,[10] the solicitors of Sir Alfred Butt, Messrs. Gery and Brooks, wrote a letter to the secretary of the Zota Co. Ltd. informing that company of the letter of August 10, 1939, and the document of October 27, 1939, hereinbefore referred to.[11] This was the first intimation which the Zota Co. Ltd., or Mr. Chase, had received of any charges made in favour of Sir Alfred Butt.[12] After some controversy between the solicitors of the various parties, a formal document[13] was executed by the Zota Co. Ltd. and Sir Alfred Butt, on May 27, 1940, under which the Zota Co. Ltd. agreed that Sir Alfred Butt's charge should rank in priority to any charge in favour of the Zota Co. Ltd.; and on May 25, 1940, Mr. Boothby signed a charge[14] in favour of the Zota Co. Ltd. to secure the £5,400 and interest—

[1] *Rep.* App. 7. [2] *Ib.*, App. 6. [3] *Ib.*, § 40. [4] Qs. 225-31, 346-55.
[5] *Rep.* § 41. [6] *Ib.*, § 42. [7] Qs. 1116-23. [8] *Rep.* § 43. [9] Q. 1124.
[10] *Rep.* § 44. [11] *Ib.*, App. 6, p. 9 of original. [12] Q. 1125.
[13] *Rep.* App. 7. [14] *Ib.*, App. 6, pp. 97-8 of original.

" on all that my interest in 10% of the moneys which will ultimately be collected by you from the Bank of England when Treasury sanction has been granted in respect of the said Czech assets charged to you by Mrs. Weininger and the two Miss Kahlers."

About the same time,[1] Sir Robert Boothby, Mr. Boothby's father, became aware of the debts owing to Sir Alfred Butt and the Zota Co. Ltd., and he took steps to pay off these debts, including interest and expenses claimed by Sir Alfred Butt.[2]

When this was being done,[3] Mr. Chase wrote to Sir Robert Boothby and explained that the Zota Co. Ltd. was trustee of part of the Weininger funds for Mr. Boothby, and suggested that Sir Robert might eventually be reimbursed out of this share as and when received.[4] Sir Robert refused this suggestion.

After August, 1939,[5] Mr. Boothby did not take any very active political steps in respect of the Czech claims until January 23, 1940, when he made a very material speech on 2 *R.* of the Czecho-Slovakia (Financial Claims and Refugees) Bill. Subsequently, on March 4, 1940, Mr. Boothby at an interview with Sir Stanley Wyatt,[6] who had been appointed head of the Czecho-Slovak Financial Claims Office, urged similar views to those expressed in his speech in January in the House of Commons, and stated that while he had been interested generally in the claims from the beginning he was not, of course, interested in individual claims. Right up to August, 1940, Mr. Boothby continued, from time to time, to urge on this Office the early settlement of claims.[7]

Mr. Boothby[8] admits that at no time did he disclose to the House of Commons, the Chancellor of the Exchequer, or any official, that he had any personal interests in any claim.[9]

The *Conclusions*[10] *of the Select Committee* were as follow:

Your Committee find that throughout the whole of the period in question subsequent to May 3, 1939, Mr. Boothby had a claim to participation to the extent of £24,200 in the realization of the Czech assets belonging to the Weininger ladies which, whether legally enforcible or not, Mr. Boothby was assured the Weininger family would be prepared to honour. In addition Mr. Boothby had further expectations in respect of the Hans Weinmann claims.

Your Committee are satisfied that, generous as Mr. Weininger may have been and anxious as he was to help his friend whose political activities he admired, the promise to pay him such a considerable sum of money was given on the understanding that Mr. Boothby would render services in return. Such services included political speeches and pressure on Ministers of the Crown and Treasury officials.

[1] *Rep.* § 45. [2] Q. 1289; *Rep.*, App. 6. [3] *Rep.* § 46.
[4] Q. 1212, *Rep.*, App. 6, pp. 103-7 of original. [5] *Rep.* § 47.
[6] Q. 14 (*Nov.* 19), App. 2. [7] Q. 49 (*Nov.* 19), App. 1, pp. 132, 134, 137-9 of original; and last 3 letters of App. 2. [8] *Rep.* § 48.
[9] Qs. 311, 326, and Mr. Boothby's final statement, December 5. [10] *Rep.*, p. xiii.

Mr. Boothby could not fail to be influenced in his advocacy by this fact; and the knowledge that Mr. Weininger might withdraw his promise or be unable to fulfil it would make Mr. Boothby all the more anxious to get Mr. Weininger his money and to get it promptly. In all his speeches in Parliament, in his interviews with Treasury officials and in his letters to the Chancellor of the Exchequer Mr. Boothby did, in fact, urge early satisfaction in full of the class of claims to which that of the Weininger ladies belonged.

As to whether Mr. Boothby had expectations of payment for his services as chairman of the committee, the Select Committee find the evidence inconclusive.

Mr. Boothby took no steps at any time to disclose to the House of Commons as a whole or to those Members to whom he wrote urging particular action or to the Treasury that his private interests were in any way affected by what might be done about the Czech assets. Further than this, in an interview with the Chancellor of the Exchequer on August 3, 1939, regarding the affairs of the committee of which Mr. Boothby was chairman, he expressly protested on his honour that he had no financial interest.

Your Committee do not accept the plea that this interview occurred in an interval in Mr. Boothby's affairs when his expectation of reward was of such tenuous character as entitled him to deny it. This plea is not in accord with the view expressed in evidence by Mr. Chase, and in fact the interview came between the letter of June 30, 1939, to Sir Alfred Butt in which Mr. Boothby stated positively that he was the possessor of assets amounting to approximately £20,000 in Prague and the request to Mr. Chase on August 9, 1939, for a letter confirming the original letter of May 3, 1939. This was followed on October 27, 1939, by the document in which Mr. Boothby assigned £5,000 out of these assets to Sir Alfred.

Your Committee equally do not accept the plea that Mr. Boothby's disclaimer related only to the question of whether he was to receive special remuneration as chairman of the committee of Czech claimants. It was certainly not so understood by the Chancellor of the Exchequer, and the letter which Mr. Boothby wrote on August 4, using the words "I have no financial interests of any sort or kind in the work of the committee", was not likely to undeceive him. If Mr. Boothby intended to delimit his disclaimer it was essential that he should have stated explicitly what his interest was and what it was not in the whole matter of the Czech assets.

The finding of your Committee is that Mr. Boothby's conduct was contrary to the usage and derogatory to the dignity of the House and inconsistent with the standards which Parliament is entitled to expect from its Members.

The following letters appeared in *The Times* of January 22, 1941:

17, PALL MALL,
LONDON, S.W.1.
January 21, 1941.

DEAR PRIME MINISTER,

I beg herewith to tender you my resignation as Parliamentary Secretary to the Ministry of Food.

This decision is not dictated by the findings of the Select Committee. I have felt for some time that it would be my duty to resign even if the Committee had exonerated me, for I consider that the way the case against me was prepared and presented is without parallel or precedent in Parliamentary history.

My only regret is that the way in which I have been treated has prevented me rendering service to a cause for which I have fought as long as you have yourself.

I reserve all further comment on these matters for my constituents and for the House of Commons. I profoundly deplore this interruption of an association with you which I have deeply and sincerely valued.

Yours sincerely,
ROBERT BOOTHBY.

10, DOWNING STREET.
January 21, 1941.

MY DEAR BOOTHBY,

I have received your letter of to-day resigning your office in the Government with very great regret, on personal and on public grounds. No other course was, however, possible in view of the Report of the Select Committee to which you refer.

I take this opportunity of thanking you for the industry and ability with which you discharged your duties while a member of the Administration.

Yours sincerely,
WINSTON S. CHURCHILL.

Question.—On January 22, 1941,[1] an hon. Member asked the Prime Minister by *Private Notice* whether he had any statement to make in regard to the Report from the Select Committee, to which Mr. Churchill replied that the Report had only come into their hands yesterday afternoon and he was sure the House would require time to consider it before any question of debate arose. If a debate was desired arrangements would be made for an early date. The Prime Minister also said that, as the House was aware, " my hon. friend the Member for East Aberdeen (Mr. Boothby) has resigned his office as Parliamentary Secretary to the Ministry of Food."

Debate on the Report.—Immediately after Questions on the 28th *idem*[2] the Prime Minister moved :

> That the Report of the Select Committee on the Conduct of a Member be now considered.

Mr. Boothby (Aberdeen, East) then, in a general statement to the House, said he did not ask the House to reject the Report, which came as a very great shock to him, but there were certain things in the Report which he found himself unable to accept and owed it to himself for the future to explain why, but on the main issue he must abide by the

[1] 368 *Com. Hans.* 5, s. 190. [2] *Ib.* 447-63.

Report and submit himself to the judgment of the House, which he gladly did.

What struck him most forcibly was the very sharp divergence between the impression formed in the minds of the Committee by the evidence and the impression formed in his mind during the period—now nearly 2 years ago—when these events were taking place. The reading of the Committee's documents had produced in his mind an effect of surprise and dismay and events covering a period presented in this telescoped form seemed to throw a sinister light upon his activities which appeared to him at the time as not only wholly innocent but actually praiseworthy. The Committee had found that he did in fact deceive the Chancellor of the Exchequer and he wanted to convince the House that it had never been his intention to deceive the Chancellor, or anyone else.

The hon. Member wished the House to accept the fact that his interest in Czecho-Slovakia began and grew steadily long before any question of his personal financial affairs arose. He had made clear in the House and elsewhere his deep feelings about German intentions towards Czecho-Slovakia, and he could not easily forget the morning after Munich when Mr. Weininger and Dr. Jansa presented themselves in his flat to ask for assistance in obtaining a loan for their unfortunate country in its dark hour. It was in these circumstances that Mr. Weininger came to him at the beginning of 1939 and told him of the family fortune in Czecho-Slovakia and that if he could help him (Mr. Weininger) it might provide an avenue of escape from his own (Mr. Boothby's) financial difficulties. Mr. Weininger then made him a payment of £1,000 for which he (Mr. Boothby) gave a promissory note and he (Mr. Boothby) regarded this as a loan to enable him to do the work which was necessary. The loan he had received some months previously from Sir Alfred Butt was offered him at a moment of financial panic in the City to tide him over a difficult period; it was unsecured and had nothing to do with any business transaction. He took full responsibility for the setting up of the " façade of British interests " in the Weininger funds, which he wanted to have rescued from the Germans who, he was convinced, would take over the whole country. That was the sole reason for this transaction. The hon. Member confessed he was astonished that Mr. Waley, of the Treasury, had no clearer recollection of the number of times he (Mr. Boothby) had telephoned him the day after the German occupation of Prague, because he had also pestered him and others, including the present Secretary of State for War, that Czech assets in this country should be blocked. The important thing was to stop £17,000,000 falling into Nazi hands, and that was done. He only wished they had subsequently been able to prevent a further £6,000,000 of gold going to them through the Bank of International Settlements.

As the House knew, Mr. Weininger offered to renew his contract with him after the occupation of Prague, but he (Mr. Boothby) did not accept that offer, first because he (Mr. Boothby) thought he (Mr.

Weininger) was being unduly generous, and secondly because he (Mr. Boothby) had accepted an obligation to advocate the cause and claims of Czech residents, including refugees, in this country in the House and elsewhere and had become chairman of the informal committee of Czech claimants. He hoped to form a scheme to bring all Czech claimants together in a scheme to cover them all. This plan was, however, shattered at his interview with Lord Simon on August 3. All he wanted to say to the House was that his own impression of that conversation was quite clear and he could not alter it. The sole topic under discussion was his (Mr. Boothby's) position as chairman of the committee, and the allegation of the Chancellor was that he (Mr. Boothby) had been using that position for making money. Had he been entrusted at a later stage with the conduct of negotiations on behalf of the whole body of Czech claimants with the Germans he might well have accepted remuneration for his work, subject of course to proper disclosure, but in no other circumstances would he have done so as chairman of the committee. Mr. Boothby then quoted from the letter he had written to Mr. Weininger (already given).[1] His response was that, quite apart from Czech assets, he would pay all his (Mr. Boothby's) debts as soon as he was in a position to do so and further offered to place the whole of his funds in Czecho-Slovakia at Mr. Boothby's disposal, terms of repayment to be discussed later. It was not until after he had said this that he (Mr. Boothby) gave the charges he did to his creditors. The Select Committee had taken the view that it was inconceivable that Mr. Weininger should make such an offer unless it was in return for political services to be rendered. The hon. Member could now see clearly that one of the mistakes he had made was to have thought of Mr. Weininger always as a friend rather than a claimant. But the House should not suppose that the friendship was one-sided, as, immediately after the outbreak of War, he had asked Mr. Weininger to co-operate with him in work of considerable potential importance and magnitude.

The hon. Member referred to the distress he had felt at the arrest of Mr. Weininger in his (Mr. Boothby's) flat and the seizure of his files upon which the whole case against him had been built up. The hon. Member wished to point out to the House that he could scarcely have protested so violently against the arrest and imprisonment[2] if he (Mr. Boothby) had been conscious of the slightest guilt in respect of any transaction he had had with Mr. Weininger. The hon. Member then referred to certain items in the evidence.

As to the Enclosure of the Report Mr. Boothby expressed his personal dissent from the first 5 items. In regard to (1) he did not know of Mr. Weininger's proposal that his brother-in-law should join him in any financial assistance until the inquiry took place; (2) in paragraph 5 the Committee found that Mr. Weininger promised to pay him this

[1] Q. 203 (*Nov.* 27). [2] This arrest and detention was quite unconnected with the subject of the inquiry.—[ED.]

considerable sum of money on the understanding that he would render services in return, including political speeches, pressure on Ministers of the Crown and Treasury officials. If that were the case the hon. Member said he would retire from public life, and he gave the House an absolute and unqualified assurance that the question of his rendering political services to Mr. Weininger was never at any time even mentioned; page 182 of the Report gives a letter to him from the former Chancellor of the Exchequer of July 19 already quoted (Appendix 1, p. 88 of original). After receipt of that letter there was no doubt that Mr. Weininger's claims, if valid, must be met. There was no possibility in those circumstances of his (Mr. Boothby's) assisting in any way by political effort, and yet it was not until after the receipt of this letter that he accepted Mr. Weininger's offer of financial assistance. It might conceivably be argued that he (Mr. Boothby) did subsequently render Mr. Weininger a service by continuing to press for the payment of Czech claims as a whole, but he could not think that hon. Members would consider that anyone would offer to pay such a large sum of money simply in return for asking a Government Department to hurry up; (3) as to paragraph 51 of the Report, all the evidence shewed that Mr. Weininger was continually pressing him to accept financial assistance and he (Mr Boothby) only agreed to take advantage of his generosity when his (Mr. Boothby's) own financial position became acute; (4) as to paragraph 52 of the Report he must say that the evidence of Dr. Calmon was decisive—namely, on page 101, on which he said:

> " There never was, in any member of the committee's mind, any idea that Mr. Boothby should get anything from the committee or in connection with the money we got from the British Governmen for our claims."

And (5) as to paragraph 53, the only conceivable interest he had was i Mr. Weininger's promise to help him with his debts. The Committee said that if he (Mr. Boothby) had intended to delimit his disclaimer to the Chancellor on August 4 it was essential that he should have stated explicitly what his interest was in the whole matter of the Czech assets. That conclusion he accepted.

On looking back he could see that he had been guilty of a tragic error of judgment, but when he wrote those 2 letters he had absolutely no doubt in his mind, not only that he had no financial interest in the Czech claims as such, but that in view of the attitude of the Chancellor he could no longer render the services he had hoped to render in the cause he had so much at heart.

The hon. Member then went on to point out that the powers of a Select Committee far exceeded those of a Court of Law, and that much of the evidence which had been put in would have been inadmissible in such Court.

The finding of the Committee, said the hon. Member, was that he ought to have made a full disclosure of any financial interest he may

have had in regard to the Czech claims and by not doing so he had failed to come up to the standard of conduct required by this House of its Members. His two main objectives throughout were to prevent the money going to the Germans and to secure its distribution among Czech residents in this country.

After reviewing further his own personal conduct in the matter, the hon. Member said:

> It is not true that I have received one single penny for anything I said or did with regard to the Czech claims. Knowing all this I cannot, of my own free will, take any action that might even imply an acknowledgment of guilt on my part.
>
> In accordance with precedent, Mr. Speaker, I now propose to withdraw from the Chamber.

The hon. Member then withdrew from the Chamber.

Question put and agreed to and Report considered accordingly.

The Prime Minister: I beg to move

> That this House doth agree with the Report of the Committee.

The Prime Minister:

We cannot, I think, with any advantage attempt to re-try a matter to which the Committee have devoted so many days and so much thought and attention. The House, as a whole, cannot, in the nature of things, deal with these complicated matters except by the practice which is settled and has been so long adopted of referring them to a Committee of the House. It would be, I venture to think, fatal to the whole of that practice if the House were to disregard the opinion of the Committee unless something had been brought to their notice which shewed that the Committee had been misinformed, or unless they had reason to doubt the competence or the impartiality of their Committee. Therefore, I do not propose to enter upon the arguments, and I am bound to say that I do not believe any great advantage will be derived if that should be done in other quarters.

The Committee commended itself to the House by its composition and its high character. It has discharged its distasteful task with efficiency and expedition, and it came unanimously to the conclusions which are contained in the Report. The Chairman of the Committee, one of the oldest Members of the House, is well known to all of us, and it is a tribute to our system and to him that all parties in the House should have agreed in appointing him. The task was an unenviable one, but everybody will agree that it has been discharged to the satisfaction of the House. I do not think that any choice was open to the head of the Government, when the evidence came into our possession by somewhat unusual events connected with War-time conditions, but to bring the matter before a Select Committee and to ask the House to concur in that course. My hon. friend was a Minister, and the reputation of the Government as well

as the House might have been seriously affected if we had neglected to take any further step.

I shall not attempt to add anything to the Report or comment on it in any way. It sets a very high standard, but we have to set a very high standard in the House of Commons, and we have to try to live up to that standard. The fault of my hon. friend may have been serious. The penalty is most severe. It is at least the interruption of a career of high Parliamentary promise. It causes pain to all. I am sure that the House has been quite exceptionally distressed by this affair and all that is connected with it; and especially it is a source of great pain to me because, over a good many years, my hon. friend, as he has reminded the House, has been one of my personal friends, often a supporter at lonely and difficult moments, and I have always entertained a warm personal regard for him. If it is painful to us, it is also a loss to all. It is a loss to His Majesty's Government, who lose a highly competent and industrious Minister, one of the few of that generation who has attained advancement and who has discharged his tasks with admitted and recognized distinction. It is also a loss to the House. We are none too fertile in talents of the order that have just been displayed to us. Altogether it is a heart-breaking business. The popularity of my hon. friend, his abilities, and the manner in which during his short tenure of office he conducted himself, all add to the poignancy of our feelings, but I do not think they can influence our course of action. There we must leave this matter. We should accept the Report of the Committee, and that is all we have to do. As for my hon. friend, one can only say that there are paths of service open in War time which are not open in times of peace; and some of these paths may be paths to honour.

Mr. Elliot (Glasgow, Kelvingrove): I think it would be a pity if no word from the back benches were spoken in this occasion. While all must concur in the verdict which the Committee has given, yet, as the Prime Minister and Leader of the House has said, my hon. friend the Member for East Aberdeen (Mr. Boothby) has paid a heavy forfeit. He has tholed his assize, as we say in Scotland, and I hope it will not in future be impossible for him to render service to the State. I should hope that it would be possible for the message to come to him today for the future, that the past being the past, tomorrow is also a day, and great opportunities for service may still be open to him.

Mr. Mander (Wolverhampton, East): I entirely agree with the Prime Minister that there is no point in going into the investigations of the Select Committee, which no doubt will be accepted unanimously by the House, but there is one passage, to which I think the House ought to give attention, in the final speech made by my hon. friend the Member for East Aberdeen (Mr. Boothby) to the Select Committee. He used the following words:

As I say, I have been here for 16 years, and while I would demand a high standard from Private Members, and a much higher standard from Ministers of the Crown, I do venture to suggest to the Committee that it is inadvisable in view of what we all know does go on and has gone on for years, to set a standard that is not likely, in practice, to be generally attained.

There are two comments that I wish to make on that. Surely, there can be only one standard for Members of the House, whether they are Private Members or Ministers. We are all on the same level, and the standard should be the highest possible one. The other comment I want to make is this: Many of us are not aware of anything that has been going on for years. If there is evidence of any kind of a similar nature, let it be produced and investigated, but let us not have these general charges made that this sort of thing is going on among Members of the House. It is a reflection on the whole House which we have reason to resent. I believe this is the first time in Parliamentary history that the conduct of a Member has been definitely brought before a Select Committee and a conclusion arrived at. I venture to hope that one result of this most unhappy business will be that a definite and high standard will be set for all Members of this House in the future.

Earl Winterton (Horsham and Worthing): I desire to associate myself with what has been said by the hon. Member for East Wolverhampton (Mr. Mander). I do not wish to make any comment on the case put by the Prime Minister, because I entirely agree with him. We must not allow sympathy for any individual to obscure our sense of duty to the House as a whole, and I invite the hon. Member for East Aberdeen (Mr. Boothby), if he has any specific instances of the character to which he referred in his speech, to bring them to the notice of the House. That is all I have to say, although I leave myself perfectly free to put a Motion down on the Order Paper.

Question, " That this House doth agree with the Report of the Committee ", put, and agreed to.

As *The Times* in a leader[1] on the subject of this inquiry remarked, " It is indeed a stern warning of the scrupulous care and candour which public life demands."

For sequels to this case, see Article XIV hereof: " Applications of Privilege ": Conduct of a Member (Question of Privilege) and Newspaper Statement, both under " at Westminster ".

[1] *Jan.* 22, 1941.

V. HOUSE OF COMMONS: NATIONAL EXPENDITURE

(SESSIONS 1941-42 AND 1942-43)

BY THE EDITOR

As remarked when dealing with this subject in previous issues[1] national expenditure *per se* is not a matter coming within the orbit of this Society's investigations. What we are concerned with as officials of Parliament is the principle of active supervision and investigation of expenditure defrayed out of moneys provided by Parliament for Defence, Civil and other services directly connected with the War, by this Parliamentary Select Committee on National Expenditure, assisted by its Co-ordinating Sub-Committee and other sub-committees, exercising delegated authority, all composed of Members selected from the wide membership of the House of Commons.

Space does not admit of more than a broad outline being given of the far-reaching task performed by this Select Committee and its also very active subordinate bodies, but each one of these many and comprehensive Reports is well worthy of study, especially those indicated below, as containing the replies from Government Departments to the recommendations of the Committee. There are also some very informative debates both in the Lords and in the Commons, which it has not been possible to find space to summarize in this Article, but of which the *Hansard* references are given by footnote.

Session 1941-42.

Reports.—During the above-mentioned Session this Committee submitted in all 21 Reports and 1 Special Report, of which the following are the House of Commons Paper Numbers, the respective subjects being given in parentheses:—*First.*—20. (Replies from Departments to the Recommendations in the 14th to 24th Reports excluding the 18th of the 1940-41 Session.) *Second.*—50. (War-time Social Survey: Ministry of Information.) *Third.*—54. (Coal Production.) *Fourth.*—55. (Sub-Committees.) *Fifth.*—58. (N.A.A.F.I.) *Sixth.*—72. (Medical Services—W.R.N.S., A.T.S., and W.A.A.F.) *Seventh.*—75. (Supply of Labour.) *Eighth.*—76. (Organization of Production.) *Ninth.*—85. (An Investigation into certain complaints regarding two Royal Ordnance Factories.) *Tenth and Fourteenth.*—95 and 112. (Replies from Departments to Recommendations in Reports 2, 3 and 5 and 6, 7, 8, 9, 14 and 23 of Session 1941-42.) *Eleventh.*—102. (Royal Ordnance Factories.) *Twelfth.*—103. (Two Appointments in the Ministry of Works and Buildings.) *Thirteenth.*—105. (National Fire Service.) *Fifteenth.*—114. (Passenger Transport Facilities.) *Sixteenth.*—120. (Organization and Control of the Civil Service.) *Seventeenth.*—121. (Merchant Ship Building and Repairs.) *Eighteenth.*—122. (Production—War Materials.) *Nineteenth.*—123. (Aerodrome

[1] JOURNAL, Vols. IX, 8; X, 112.

Construction.) *Twentieth.*—124. (Housing Work: Ministry of Aircraft Production.) And *Twenty-First.*—125. (Work of the Committee in the current Session.) *The Special.*—19. (Report) and 55 (the Fourth Report) will be referred to later. Paper No. 126 contains the Minutes of the Proceedings of the Committee together with Index to the Reports for Session 1941-42.

Work and Orders of Reference.—To give some idea of the volume of work performed by this Committee, these 23 papers total 409 printed pages and Paper 125, in summarizing the work of the Session, reports that the Committee and the second sub-committee held 396 meetings, made 89 visits to establishments under Government control or private management and examined 1,205 witnesses. The Committee also addressed 4 Memorandums to the Prime Minister for the consideration of the War Cabinet. Since the setting up of this Committee in the 1940-41 Session and only up to the 13th Report of the 1941-42 Session, over 100,000 copies of these Reports had been sold. In addition to the Co-ordinating Sub-Committee, the Committee has been assisted by the sub-committees hereinafter mentioned. The Committee itself held 27 meetings.

This Select Committee of 32 Members was appointed November 19, 1941,[1] under the same terms of reference as before[2] except that: (i) the quorum of a sub-committee was not less than one-third of their number with 2 as a minimum, and (ii) the Order given at the foot of page 112 of Volume X in respect of the Select Committee of 1941-42 was amended to read:

> That the Committee 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 Committee shall, whenever they have exercised such powers, report the fact as soon as possible to the House.

Special Report (*Co-ordinating Sub-Committee*).—The Special Report—No. 19—above mentioned, was considered by the House on February 5, 1942,[3] when the following authorities were sought:

> That the Select Committee on National Expenditure have power to appoint a Co-ordinating Sub-Committee to review, co-ordinate and direct the work of the investigating sub-committees, and to refer to such sub-committees any of the matters referred to the Committee.
>
> That the Co-ordinating Sub-Committee so appointed shall have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House; and to adjourn from place to place; and shall report any evidence taken by them to the Committee.
>
> That the Committee have power to give such Co-ordinating Sub-

[1] 376 *Com. Hans.* 5, s. 424.
[2] *See* JOURNAL, Vols. IX, 82; X, 112.
[3] 377 *Com. Hans.* 5, s. 1335.

Committee power to alter the order of reference of any sub-committee, to appoint such further sub-committees as may seem to them desirable and to refer to such sub-committees any of the matters referred to the Committee, to nominate members of the Committee for service on any sub-committee, to appoint the chairman of any sub-committee, to discharge the members of any sub-committee and to appoint others in substitution for those discharged: Provided that any action taken by the Co-ordinating Sub-Committee in the exercise of any of the powers referred to in this Order shall be invalid unless approved by the Committee within 21 days.

That where the Committee have nominated any members of the Co-ordinating Sub-Committee to serve also as additional members of all other sub-committees, the number of such additional members shall not be taken into account for the purpose of determining the quorum of any sub-committee, nor shall any such additional members be counted for the purpose of establishing the presence of a quorum at any meeting of a sub-committee.

That when 2 sub-committees sit jointly they shall constitute a single sub-committee whose quorum shall be one-third (any fraction counting as a whole number) of the total number of persons (exclusive of additional members) who are either members of both sub-committees or members of one or other sub-committee only.

This action on the part of the Committee was found in actual experience of the present Committee to be a necessary change in procedure and the Co-ordinating Sub-Committee had a special right to make representations direct to the War Cabinet. The following were some of the comments made during the debate upon the working of this Committee and its sub-committees: That in taking the wider view of the problems of Government from the point of view of expenditure, the Committee would not divorce itself from direct contact with Departments; that one of the greatest gains to Parliament from the operations of this Committee had been that Members, for the first time, were getting into the Departments, making contact with officials and seeing the working of the machine from inside; that the valuable experience of this Committee should be continued, not only during the War but in the post-War Government;[1] that the powers now to be conferred on this Committee (which had hitherto been given only to the parent Committee) were new to any procedure of Committee control;[2] why should the Co-ordinating Committee have power to set itself up as a parallel body; that the Committee would do better service if it confined its inquiries to the inspection of Departmental waste which had been the traditional and effective task of the Select Committee on National Expenditure;[3] that the lack of notice taken by the House of the Committee's Reports was to be deplored; that there had been 46 Reports, and one or two special ones, but not one had been discussed in the middle of the War

[1] *Ib.* 1340-1. [2] *Ib.* 1342. [3] *Ib.* 1346.

when they were spending £12,000,000 a day; and that the sole purpose of the Committee was to economize.[1]

The Chairman in the course of his reply said that a good many of the things which the Committee had investigated were put right before they came before the House of Commons at all.[2]

Question was then put upon the first paragraph of the Select Committee's recommendations, and agreed to, after which Orders were made in regard to the remainder.

Sub-Committees.—In its *Fourth Report*[3] the Committee informed the House, with reference to the powers obtained under the Special Report above mentioned, of the composition and the terms of reference of the sub-committees, which were as follow:

Sub-Committee.	*Subjects allocated.*	*Membership.*	*Quorum.*
Finance and Establishments.	Financial control: subsidies; general financial questions; Departmental organization and staff.	4	2
Production and Supply (A).	Production and supply of raw materials and tools; weapons and mechanized vehicles; aircraft and ships.	9	3
Production and Supply (B).	Warlike stores and equipment; general stores and clothing; the associated labour; transport; repair and salvage problems.	9	3
Works (A).[4]	Building and constructional work for civil Departments and Fighting Services; selection and requisitioning of land and buildings.	4	2
Works (B).[4]	Claims and compensation; allocation of material and plant; coal, oil and electricity; the associated labour, transport, repair and salvage problems.	4	2
Fighting Services.	General expenditure of the Fighting Services not referred to other sub-committees.	5	2
Special Inquiries.	Any matter specifically referred to the sub-committee.	6	2

[1] *Ib.* 1350. [2] *Ib.* 1354. [3] H.C. Paper 55 of 1941-42. [4] The 6 additional members who have a right to attend are not included in these numbers.—[ED.]

The further terms of reference and instruction to each of these sub-committees are that:

(i) it shall report to the Committee what economies, if any, consistent with the execution of the policy decided by the Government may be effected in the expenditure of the Departments concerned;
(ii) it shall sit in private;
(iii) it shall report from time to time whenever it considers it advisable to do so;
(iv) any 2 or more sub-committees may, by mutual agreement, sit together and take evidence on any matter of joint interest; and
(v) the examination of officials shall be as brief as possible and the compilation of new statistical returns shall be asked for only when essential.

Co-ordinating Sub-Committee.—The membership of the Co-ordinating Sub-Committee is 13 (quorum 5) and, as in the last 2 Sessions, the Chairman of the Committee is Chairman of the Co-ordinating Sub-Committee and an additional member of all other sub-committees. The Chairmen of the other sub-committees continue members of the Co-ordinating Sub-Committee. But under the new constitution of this Sub-committee, 5 members who are not Chairmen of sub-committees have been nominated members of the Co-ordinating Sub-Committee and also additional members of all other sub-committees.

Session 1942-43.

Work and Order of Reference.—With the exception of those given below, the Orders in respect of the appointment, on November 17, 1942,[1] of the Select Committee on National Expenditure for the 1942-43 Session were the same as for the 1941-42 Session:

That the Committee have power to give such Co-ordinating Sub-Committee power to appoint such sub-committees as may seem to them desirable and to refer to such sub-committees any of the matters referred to the Committee, to alter the order of reference of any sub-committee, to direct two or more sub-committees to sit jointly, to nominate members of the Committee for service on any sub-committee, to appoint the Chairman of any sub-committee, to discharge the members of any sub-committee amd to appoint others in substitution for those discharged: Provided that any action taken by the Co-ordinating Sub-Committee in the exercise of any of the powers referred to in this Order shall be invalid unless approved by the Committee within 21 days.

That every sub-committee, including any Co-ordinating Sub-Committee, so appointed, have power to send for persons, papers and records; to sit notwithstanding any adjournment of the House;

[1] 385 *Com. Hans.* 5, s. 311.

to adjourn from place to place; and that every sub-committee shall report any evidence taken by them to the Committee.

That the quorum of any sub-committee so appointed shall be 2 except that the quorum of any Co-ordinating Sub-Committee so appointed shall be 3.

That when 2 or more sub-committees have been directed to sit jointly, they shall constitute a single sub-committee, whose quorum shall be composed of 2 members of each of the sub-committees so directed to sit jointly.

These powers, conferred upon the Select Committee by the House, place the Select Committee in regard to its sub-committees very much in the same position as the House stands in regard to the Select Committee itself.

The Reports of this Committee total 390 printed pages, and Paper 132, summarizing the work of the Session, reports that the Committee and the several sub-committees held a total of 265 meetings, including 41 visits to factories, and examined 554 witnesses. The Committee addressed a Memorandum to the Prime Minister for the consideration of the War Cabinet, and the Report also gives a detailed account of the meetings and work of the Co-ordinating Sub-Committee as well as of the other sub-committees. The Committee itself sat 21 times.

Reports.—During the above-named Session this Committee submitted in all 18 Reports, of which the following are the House of Commons Paper Numbers, the respective subject being given in parentheses:—*First.*—17. (The Organization of the Committee.) *Second, Seventh, Ninth and Seventeenth.*—18, 79, 96, 131. (Replies from Departments to Recommendations in Reports.) *Third.*—19. (Health and Welfare of Women in War Factories.) *Fourth.*—68. (Public Relations Branches of Service Departments.) *Fifth.*—69. (Home Flax Production.) *Sixth.*—78. (Payment of Fire Guards.) *Eighth.*—90. (Fuel and Power.) *Tenth.*—104. (Aircraft Production.) *Eleventh.*—105. (The War Office Claims Commission.) *Twelfth.*—118. (Central Ordnance Depots and Production of Obsolete Stores.) *Thirteenth.*—122. (An Investigation into certain complaints about a factory near Glasgow.) *Fourteenth.*—(of which see later) 126. (War Production: Methods of Settling Prices for War Stores.) *Fifteenth.*—127. (The Salvage of Ships and Cargoes.) *Sixteenth.*—128. (State-owned Assets.) And *Eighteenth.*—132. (The Work of the Committee in Session 1942-43.)

Paper No. 133 contains the Minutes of Proceedings of the Committee together with an Index to the Reports.

Fourteenth Report (Civil Service).—On January 28, 1943,[1] the following Motion was moved in the House of Commons by the Chairman of the Select Committee (Sir J. Wardlaw-Milne):

> That the Sixteenth Report[2] from the Select Committee on National Expenditure in the last Session of Parliament on Organization and Control of the Civil Service be now considered.

[1] 386 *Com. Hans.* 5, ss. 639-716. [2] H.C. Paper 12 of 1941-42.

which, after being seconded, was put and agreed to. The debate upon this Report in the Commons upon this subject will be both interesting and illuminating to those authorities under overseas Governments having the responsibility of Civil Service administration.

At the conclusion of the debate in the Commons it was Resolved:

> That this House recommends the Report from the Select Committee on National Expenditure on Organization and Control of the Civil Service to the consideration of His Majesty's Government.

Questions.—On May 12, 1943,[1] a Question was asked in the House of Commons as to what steps the First Lord of the Admiralty (Rt. Hon. A. V. Alexander) had taken towards implementing recommendations 18 and 19 of the 17th Report of the Select Committee on National Expenditure that an organization should be established for directing and co-ordinating all research and development relating to merchant shipbuilding, to which the First Lord replied that after full consideration the Admiralty were unable to accept the Committee's conclusion that the present arrangements for the direction and co-ordination in research in respect of merchant shipping were unsatisfactory, at the same time describing the details of the present organization for dealing with the question. Mr. Alexander concluded by saying that a reply to the Report of the Select Committee was now on its way to it.

On June 8, 1943,[2] a Question was asked in the House of Commons of the Minister of Fuel and Power (Major Lloyd George) as to whether he had noted the remarks of the Select Committee to reduce absenteeism in the mines, etc., and if he intended to act upon the Select Committee's suggestion, to which he replied that the experiment referred to by such Committee had been put into effect.

There were other references to the work of this Select Committee in the Commons *Hansard* for the same Session, but only of an incidental or inconclusive nature.

[1] 389 *Com. Hans.* 5, s. 639. [2] 390 *Ib.*, 506.

VI. HOUSE OF COMMONS: WORKING OF MEMBERS' PENSIONS FUND

(1939-43)

BY THE EDITOR

IT will be remembered[1] that neither the pensions awarded to qualified ex-M.P.s and to qualified ex-M.P.s' widows nor the cost of the administration of the Fund constituted under the House of Commons Members' Fund Act[2] make any demand upon public money. These pensions are awarded, under a means test, by the Managing Trustees of the Fund—M.P.s appointed under the Act—out of money provided by statutory contributions from the M.P.s themselves.

Upon the passing of the Act in 1939 Trustees were appointed in accordance with the provisions of s. 2 thereof, and as vacancies have occurred they have been filled by Order of the House[3] in pursuance of such section.

The accounts of the Fund have been audited and reported upon to Parliament by the Comptroller and Auditor-General, in regard to: I, Income and Expenditure Account; II, The Investments Account; and III, The Balance Sheet for the year ended September 30 (covering a period of 1 year from October 1, 1939 (the date from which the salaries of M.P.s first became liable to deductions payable to the Fund), presented to the House of Commons in accordance with s. 3 (6) of the Act; shewing that for each of the years below given the income exceeded the expenditure of the amount set out below in column 2, which amounts had been carried to the Capital Account, bringing the total of that Account to the sum shewn in column 3; the sum invested is shown in column 4:[4]

Year.	2. £	3. £	4. £
1939-40 ..	6,972 10 4	7,122 16 4	4,700 0 0
1940-41 ..	6,917 12 8	13,890 3 0	11,698 10 6
1941-42 ..	7,598 2 0	21,488 5 0	21,488 5 0
1942-43 ..	6,880 3 6[5]	28,468 8 6	25,790 2 1

In all four years, the Comptroller and Auditor-General reported that no gifts, devises or bequests had been received by the Trustees under s. 3 (2) of the Act.

The following proceedings which have occurred in the House on this subject from the date of the passing of the Act to the end of the 1942-43 Session are of especial interest as throwing some light on the working and administration of the Fund and the attitude of the Members toward it.

[1] *See* JOURNAL, Vols. VI, 139; VII, 38; VIII, 103. [2] 2 & 3 Geo. VI, c. 49.
[3] 377 *Com. Hans.* 5, s. 890; 382 *Ib.* 474; 386 *Ib.* 1359.
[4] H.C. Papers Nos. 99 of 1939-40; 36 of 1940-41; 41 of 1941-42; 25 of 1942-43.
[5] £952 16*s.* 9*d.* was paid out of the Fund in pensions by the Managing Trustees compared with £661 4*s.* 4*d.* the previous year.—[ED.]

As, owing to repeated prolongations of Parliament, no General Election has taken place since November 14, 1935, the accumulation of funds under this pension scheme has attracted attention in the House both by Question and in debate.

Questions.—On June 26, 1941,[1] the Chancellor of the Exchequer was asked whether, in regard to payment of sums free of income tax as expressed in the Finance Bill as amended, he would take steps to amend s. 1 (3) of the Act in order to reduce the deductions therein prescribed by 2½ during any year of assessment. To this he demurred on the ground that such deductions were not analogous to tax-free payments but simply contributions not allowable as a deduction for income-tax purposes to the contributors.

Questions in regard to the administration of the Fund under the Act were addressed to Colonel the Rt. Hon. Sir George Courthope, as the Member representing himself and the other Managing Trustees of the Fund. In reply to a Question on April 30, 1942,[2] as to how many ex-M.P.s had benefited under the Act, he said that 3 ex-M.P.s and 7 widows had been awarded grants amounting to about £1,000. In reply to a Supplementary, whether, in view of the very considerable increase in the cost-of-living scale, the payments could not be revised, he said that such did not rest with the Trustees, as the scale was laid down by the Act, and that the applicant had to be serving in the House at the time of the passing of the Act—namely, in the present Parliament; also that the Trustees anticipated an increase after a General Election. In reply to another Supplementary he said that a widow could be given a pension irrespective of age, which did not come into the Question, but means did.

On May 19, 1943,[3] a point of procedure arose in connection with a Question put to the same Managing Trustee, as to whether he was aware that the income from the Fund derived from the statutory contributions of Members was proving to be ten times as great as the calls on the Fund, and if an early report could be obtained from the Government Actuary as provided under s. 3 of the Act. Sir G. Courthope, however, not being in the House, another Member, when asking if steps could be taken for having a debate on the subject, suggested that an invitation be sent to Sir G. Courthope to be present. Upon which Mr. Speaker remarked that it was customary when a Minister was not present that the Question be asked later and that he would allow it in this case. At the end of Questions, therefore, the questioner, as Sir G. Courthope was still not present, asked on a point of order whether he could put his Question again in the next series of Sittings, to which Mr. Speaker replied in the affirmative. Therefore, the hon. Member on May 25, 1943,[4] again put his Question, to which Sir G. Courthope replied, after apologizing for his absence on the former occasion, that the interim report from the Government Actuary was obtained in January last, and that the actual status of the Fund

[1] 372 *Com. Hans.* 5, s. 1101. [2] 379 *Ib.* 1090. [3] 389 *Ib.* 1093. [4] 390 *Ib.* 1398.

was that the accumulated reserve was not yet sufficient to meet all estimated demands which might be expected in the near future. Another Member then asked if Sir G. Courthope would consult with the Patronage Secretary with a view to their having an occasional discussion about it, say once every two years, as they had not had any opportunity of discussing the management of the Fund, or the position, since the Act had been passed. Another Supplementary was as to raising the minimum limit for giving pensions, to which the reply was that the limits were laid down by the Act and that the Fund had not yet been in operation over a General Election.

On June 2, 1943,[1] an extract was Ordered from the Minutes of the 11th Meeting of the Trustees held at the House of Commons on August 4, 1942, and copy of a letter from the Government Actuary to the Secretary of the Fund dated January 16, 1943, relative to the extension of eligibility for pension to widows of Members.

On the same day Sir G. Courthope, in reply to a Question,[2] said that copies of the Report of the Government Actuary relative to the Fund would be in the Library and available to Members tomorrow; the Return was duly presented the following day.[3]

Debate.—The desired Debate was arranged on the Motion for the Adjournment on June 10, 1943,[4] when the following facts and arguments were put forward, but to avoid repetition matter already given in this Article will not be repeated. As in the case of pensions Questions and Answers, Sir G. Courthope represented the Managing Trustees. The hon. Member (Mr. Brooks [Lewisham]) opening the Debate, after paying tribute to the Trustees of the Fund, observed that, as only about $\frac{1}{10}$ of the contributions had been paid out and that so long as the present Parliament continued this balance would continue to grow at the rate of about £7,000 a year, only 3 pensions having been granted to ex-M.P.s and 10 to widows of ex-M.P.s. The fact that no bequests had been made to the Fund was testimony to the unfortunately well-known fact that the moment a statutory obligation was put on people they ceased to make charitable gifts in the same direction. Owing to the change in taxation the real value of the £12 contribution stood at £23-24, which meant that the salary of a Member was no longer £600 but £576 a year. The accumulated sum of £21,500 in the Fund, as pointed out by the Government Actuary, was not disposable surplus as half of it represented the capitalized value of the pensions now in payment. It was therefore necessary to build up a considerable Fund to meet the pensions payable. A General Election lay ahead and Members did not know what their path would be, but taking the hypothesis of Parliament running the remainder of a 10-year life, then every Member who had survived the last General Election would become a potential beneficiary of the Fund upon which, by the autumn of 1945, there might be 400 possible claimants and that a free surplus, say of £23,000, would suffice to pay pensions at the full rate

[1] *Ib.* 171. [2] *Ib.* 218. [3] *Ib.* 374. [4] *Ib.* 917-28.

of £150 a year to about 16 Members. As a result of this long Parliament, the peak demand on the Fund would be reached earlier than had been anticipated. Before the Act was passed there were some 450 M.P.s and ex-M.P.s of 10 years' service in the House, therefore the time of the peak demand on the Fund would soon be reached, thus enabling them to estimate what demands there would be upon it. A General Election, however, should not affect in the same way the number of widows' claims. At a relatively early date, however, the Trustees should be able to judge the average annual demand that was going to be made on their resources and consider how any disposable surplus which had accumulated should be dealt with. When that time came the House should be consulted, and it might then be found that there was a stronger case for reducing the contributions than for seeking to extend the limits of eligibility for pension.

A point of order arose during the Debate as to what matters could be discussed in regard to this subject, on the Adjournment, upon which Mr. Speaker ruled that legislation was excluded and in so far as the contribution to the Fund was already dealt with by legislation it was also wrong to suggest that it should be altered, but that discussion of the administration of the Fund by the Trustees was in order.

Sir G. Courthope, as representing the Trustees, stated that their inquiry with the Government Actuary did not contemplate amending legislation but dealt with power to moderate the 10 years' qualification in meeting one or two distressing cases by considering a pension to a widow of a Member who had not served the 10 years. As a result of the answer, however, the Trustees had decided not to do so.

Another hon. Member urged that any substantial relaxation of the 10 years' rule would be undesirable. This permissive paragraph was put into the Act to meet a case where a man had sat in the House for 9 years and 11 months. It seemed to him a change of principle to raise the question whether 10 years could in certain cases be reduced to a 7½ years' limit because, in normal times, no one could sit in the House for 10 years without having been a Member of 3 Parliaments. Should that be reduced to 7½ years, it would reduce the number of Parliaments necessary for qualification from 3 to 2, and before any change like that was contemplated the House as a whole should be consulted.

Sir G. Courthope, in closing the Debate, said that the normal income of the Fund was £7,300 a year, less certain amounts due to casual vacancies. On a Dissolution there would be another gap when the Fund for a short time would receive no contribution at all. The general expectation upon which the Departmental Committee[1] made its recommendations and upon which the Act was drawn was an average length of Parliament of about 4 years, and the Actuary was able to calculate the average number of Members who would either retire at the end of each Parliament or fail to be re-elected. The service laid down both for the Member and his widow was 10 years. Should they

[1] *See* JOURNAL, Vol. VI, 141.

continue for another 2 years or a little longer, every Member who had served throughout this Parliament would qualify for a pension, and as many Members were getting older there would be a larger than average number of retirements. Who could foresee how many unsuccessful attempts there would be to obtain re-election? Still less could they foresee what proportion there would be of those who either did not seek re-election or failed to obtain it and would be in the position of having to apply for pensions from the Fund.

The Trustees felt they must anticipate a rather heavy demand upon the Fund after the next General Election. Three pensions to ex-M.P.s and 10 to ex-M.P.s' widows had been awarded. Two of those Members had passed away. Two of the widows had passed away and one had had an improvement in her financial position and no longer asked for a pension. Therefore, at the present time the cost of pensions was £765 a year. The administration, including the expenses of the Fees Office and Public Trustee, was about £170 a year. The Trustees were under an obligation to prevent any charge falling upon the Treasury and he was satisfied that the Fund was cheaply administered. The pension to a qualified ex-Member was £150 a year and must not bring his net income to more than £225 a year. In the case of widows the figures were £75 and £125. An inquiry was necessitated into the means. If they went on at the present rate for another 3 years they would probably accumulate the £50,000 Fund which the Departmental Committee recommended as the minimum reserve at which they should aim before coming to the House to authorize any variation.

The Report of the Government Actuary contemplated that a very substantial portion of their existing accumulation represented the capital value of the pensions already paid. The mere nature of the Fund led them to believe that at a time immediately following a General Election there would be a run of some kind on the Fund and that subsequently, during the existence of the succeeding Parliament, there would be an addition to the accumulation, unless the pensions paid year by year exceeded the revenue of the Fund. It was felt by himself and his co-Trustees that if at any time—as after a Dissolution—there were a number of applications from qualified ex-M.P.s or from the widows of qualified ex-M.P.s they ought not to be restrained by the capital actuarial position so long as they did not exceed the annual revenue. He felt they were entitled to assume that as the revenue was provided by Act of Parliament that revenue would continue until Parliament repealed the Act.

In conclusion, Sir G. Courthope observed that back-bench M.P.s had their contributions deducted by the officials of the Fees Office, but in the case of Ministers the matter was not so simple, as the late arrival of any such contribution complicated the accounts. At the present moment the interest received on their annual investments—which were tax-free—practically covered the pensions they were paying, so that they got practically the whole of the contributions of £7,300 a year, less

fluctuations owing to vacancies, as an addition to the accumulated Fund, but when a Dissolution came, followed by a flood of applications—although he hoped that no M.P. would be in such a position that he would have to seek a pension—it would be a different matter. Therefore, so long as their present reserve was kept intact and only pensions awarded which did not exceed the annual contributions, they would not be going beyond the limits of reasonable safety.

VII. UNITED KINGDOM: WAR-TIME AND ELECTORAL MACHINERY

By the Editor

In view of the magnificent response of the people of the United Kingdom of Great Britain and Northern Ireland to the call for service, both in War industries and defence at home, as well as in the Fighting Services abroad, it is not surprising to hear from the Secretary of State for Home Affairs and Home Security (Rt. Hon. H. Morrison) when moving 2 *R.* of the Parliament (Elections and Meeting) Bill in the House of Commons on October 26, 1943, and referring to the Voters' Roll for a General Election, that:

> In addition to the movements of the civil population, we have the very considerable movements of millions of men and women in the Armed Forces of the Crown, both in this country and in the theatres of war abroad. That brings up another problem which it is desirable should be met, and which this Bill seeks to meet. A further complication is the large demand on man-power in the country, which is organized to a degree beyond anything previously known in our experience, and one of the consequences is that we cannot afford the amount of man-power that would be involved in making the usual annual register, with all the canvassing staff, which this would require, while we should be faced with a considerable printing problem, if we had to compile an annual printed register.[1]

Other difficulties in connection with the normal operation of electoral machinery in the United Kingdom at the present time are the vast movements of population, both in War industries and defence at home, and the absence of millions of fighting men abroad, all of which is reflected in the repeated prolongations of Parliament and the undesirability of throwing the country into the turmoil of a General Election, when all Parties are concentrated upon the one dominating issue—their determination to win the War, no matter at what sacrifice of their comfort or freedom.

In addition to the Acts passed each year continuing the life of Parliament, which now exceeds the time originally laid down in the Septennial Act of 1715, three major actions in the electoral arena were taken by the Imperial Government during 1942 and 1943. First, in order to prepare the ground, as far as possible, for a General Election after the defeat of Germany, a Departmental Committee on Electoral Machinery was set up; secondly, in consequence of such Committee's report the Parliament (Elections and Meeting) Bill was passed; and thirdly, and for the fifth consecutive year, a Local Elections and Register of Electors (Temporary Provisions) Bill was enacted postponing also local government elections until the end of 1944.

A brief description will now be given of the proceedings upon these 3 actions taken by the Government, leaving the subsequent Speaker's Conference on Electoral Reform and the House of Commons (Redis-

[1] 393 *Com. Hans.* 5, s. 60.

tribution of Seats) Bill, 1944, for notice in the next Volume of the JOURNAL in review of that year.

Departmental Committee on Electoral Machinery.—On January 8, 1942,[1] the Home Secretary (Rt. Hon. H. Morrison) stated in the House of Commons that the terms of reference of the Committee appointed on the above subject, *vide* the Warrant of Appointment dated January 2, 1942,[2] were:

> to consider whether for effecting the purposes of the present system of electoral registration improved methods and machinery can be devised, having regard especially to the circumstances likely to obtain in the period following the termination of hostilities;
>
> and to examine the technical problems involved in any scheme of redistribution of Parliamentary seats by way of preparation for consideration of the principles on which any scheme should be based;
>
> and to report on both these matters.

This Committee consisted of 15 Members and a Chairman, of whom 4 were M.P.s, the 2 Joint Secretaries being Government officials.

The Report contains 47 pp., including the Reservation by 3 Members of the Committee to Part I, and other 3 Members to Part II; and Appendixes A-F.

Part I (paras. 1-62) deals with electoral registration, population movement, continuous registration, and an emergency War-time General Election. The Committee considered that in regard to population movement, War-time conditions were likely to continue for some time after an armistice. This movement, according to the National Register, at the end of September, 1939, showed that 2¼ million people (5% of the population) left their homes during the first month of the War, and in the last quarter of 1940, when the Battle of Britain was at its height, these changes rose to 3 million. At the date of the Report the level was over 1 million per quarter and by the end of 1941 the number of civilian adults residing outside their constituencies totalled ⅛ the total electorate, not including the armed forces. The Committee suggested a continuous (in the same Parliamentary Borough or County) as against a periodical registration.

The scheme is given in Appendix A, but the Committee could not find a means of including the local government franchise, to which it was thought that periodical registration was more applicable. The 3 Members who signed the Reservation to Part I of the Report, however, considered it would be both wasteful and unjustifiable to carry out an annual census for local government purposes and make no use of it with the Parliamentary register. If the two franchises remained as at present, they therefore recommended the scheme outlined in Appendix B.

The Committee recommended a 2 months' residential qualification as an additional safeguard against disfranchisement, an elector not to be removed from one register until included in that of another constituency, but only one residential qualification to be allowed.

[1] 377 *Ib.* 21. [2] Cmd. 6408.

The Committee came to the conclusion that there should be no obligatory fixed-date "freezing" and publication, except for annual purposes of local government elections, but that the Government should have power at any time to direct the "freezing" and publication of the register at short intervals during a given period.

With regard to the system of a permanent system of registration, the Committee considered it impossible to forecast whether a continuous system would be able to function. As it was not known whether the War-time National Register would be continued, it was suggested that the decision as to the adoption of the continuous system for the post-War period be deferred until experience of its working had been obtained.

The Committee strongly deprecated the holding of a General Election in War-time, but should that be inevitable the provisions outlined in paras. 41-44 of the Report in Appendix C were recommended.

Part II (paras. 63-140) deals with the Redistribution of Seats on the basis of equal representative status on a territorial basis (excepting the Universities), with seats assigned, as near as may be, in equal share to the total number of persons to be represented. Appendix D reproduces the Resolution dealing with the redistribution of seats in the Report of the Speaker's Conference on Electoral Reform of 1917, with the instructions to Boundary Commissions as subsequently modified.

The quota system was recommended for any scheme of re-distribution, measured by a quota or average of the number of persons represented per Member, arrived at by dividing the total of such persons by the total number of seats, with certain limits of toleration, and bearing in mind the continuity of constituencies. Appendix E to the Report contained the redistribution arrangements in some of the Overseas Dominions. The total number of Members, it was also recommended, should remain substantially as at present.

The Committee stressed the need for standing machinery to deal with redistribution, etc., in the form of a Statutory Commission comprising representatives of the Government Departments concerned, M.P.s appointed to represent the principal political Parties, with the Speaker as Chairman to guard against political bias. The 3 Commissioners, for England and Wales, Scotland and N. Ireland, are to sit as one on certain prescribed occasions or whenever the Chairman might deem it expedient, detailed requirements to be met by Statutory Rules and Orders under the present Act.

In dealing with the present state of constituencies it was shown that, in 1941, percentages of electorate to quota ranged from 30 to 258%, and that if all the constituency electorates in excess, and in defect, for 1939 were separately aggregated, the former would be found to retain 9, and the latter 30, M.P.s per million electors.

The Committee saw no necessity for the inclusion of N. Ireland in any arrangements for a 1939 distribution.

Three other members of the Committee made a Reservation to

paras. 120-124 of Part II of the Report, to the effect that, owing to the wide dispersal brought about by War conditions, a full redistribution of seats was not a practical proposition until a resettlement of the population had taken place.

Appendix F gives a table showing the form for statistics required for Parliamentary constituencies and groups thereof, (1) in respect of the Parliamentary electorates (all qualifications) for the 1939 and 1941 registers, with the relative increase and decrease, number and percentage, and (2) giving the actual number of seats and the representation equivalent to the electors on a quota basis, for the registers for 1921, 1935 and 1939, respectively, with an estimate for 1941.

The Parliament (Elections and Meeting) Bill.—This Bill (59) was introduced into the House of Commons on October 13, 1943,[1] and in moving 2 *R.*[2] the Home Secretary (Rt. Hon. H. Morrison) said that the purpose of the Bill was to provide an efficient and effective system of registration of electors despite the difficulties which had been brought about by War-time conditions and to provide an even more up-to-date register than before the War. The modern registration system dated from the Reform Act of 1832. There was a further Act in 1843 and more recently the Representation of the People Act, 1918.[3] The basis of representation of the Act of 1918 was a residence qualification of 2 months, April 1 to June 1 of each year—with the publication of the first list on July 15 and the publication of the final annual register on October 15. This system of registration was suspended by the Local Elections and Register of Electors (Temporary Provisions) Act of 1939[4] as renewed, and therefore the October, 1939, register was still in force in October, 1943, notwithstanding the many population movements and the possible still further movements in the years following the War. It was because of the War-time difficulties that the above-mentioned Departmental Committee had been appointed,[5] the proposals of which had been embodied in the Bill.[6] The Bill, however, did not provide for a General Election, but for by-elections to be contested with an up-to-date register. The new scheme was based on the War-time National Registration of the population, which had been of the greatest value in arranging food rationing, etc. Without that system the Bill would hardly have been possible, but the system provided in the Bill could last only as long as National Registration.

The Bill provided for the Government to fix an appointed day,[7] on which a register for any by-election would be produced, but it might be that the register would have to be produced by a duplicating process, and not printed. The new register under the Bill was in 3 parts: (i) civilian residents with a 2 months' residence qualification before the qualifying date; (ii) business premises, for registration of which the business voter must apply, with the same 2 months' qualification; and (iii) the Service Register, including the Mercantile Marine and civilians

[1] 392 *Com. Hans.* 5, s. 919. [2] *Ib.* 58-70. [3] 7 & 8 Geo. V, c. 64.
[4] 2 & 3 Geo. VI, c. 115. [5] 393 *Com. Hans.* 5, ss. 59, 60. [6] *Ib.* 61. [7] *Ib.* 62.

engaged in War work abroad. Ordinarily there would be proxy voting for those overseas, and those at home would have the option of voting by post or in person. The existing law as to absent voters was retained.[1]

The qualifying date would be the last day in the month before that on which an election was initiated. At that date the records would be frozen and the 2 months' qualifying period would go backwards from that date. The publication of the register was not expected earlier than 36 days after the initiation of the election, with power to extend that period to 42 days in exceptional circumstances. The date of the initiation of the election in the case of a Parliamentary General Election would be the date of the Royal Proclamation, and in the case of a by-election the date of the receipt of the writ. Provision was therefore made for the minimum time between the initiation of the election and the actual polling, being of neither 36 nor even 42 days, but round about 7½ weeks, allowing for everything.

It was the custom that when His Majesty made a Proclamation dissolving Parliament, the dissolution took place forthwith, there being no Parliament until the meeting of the new Parliament, the date for which is also usually provided for in the Royal Proclamation. The usual interval was 3 to 4 weeks, but it would be open to constitutional objection if the country were left without a Parliament for 7½ weeks, as some matter might arise requiring urgent attention. It was therefore provided that the Royal Proclamation should fix a future date for the dissolution of Parliament, not later than the date the register came into force.[2] That was to say, although a Proclamation might be issued today to dissolve Parliament, there would be a provision in it that Parliament would not actually be dissolved until the date upon which the register to be made came into force. Thereafter there would be the usual period between the dissolution and the meeting of the new Parliament. It was their duty to see that that short break was not increased, or at any rate not materially increased. Therefore, taken in conjunction with Clause 3, Clause 4 (3) (*a*) provided that when the Proclamation was issued Parliament was not to be dissolved until 36 days thereafter, with the result that there would be a gap in which there was no Parliament of round about 20 days, much the same as at present.[3] Under Part III of the Bill Parliament when prorogued could be summoned at 1 day's notice.

With regard to the machinery of continuous registration, there would have to be close co-operation between the National Registration and the electoral registration officers. There were Regulations under the National Registration Act, 1939,[4] governing the duties of the National Registration officers.

Regulations would be issued to electoral registration officers under the Bill, and in order that the House might be as fully informed as possible as to the Government's intentions while the Bill was under considera-

[1] *Ib.* 64. [2] *Ib.* 65, 66. [3] *Ib.* 67.
[4] 2 & 3 Geo. VI, c. 91.

tion, a draft[1] of such Regulations would be placed before Members. The Regulations under the Bill could not come into operation until approved by Resolution of each House of Parliament.

Power was given N. Ireland to adopt the Bill. The Bill provided that the new system could last only as long as the National Registration Act lasted, unless Parliament was to take further action about that Act. But there must be provision for a possible interim period, and consequently the last register prepared under the new continuous registration system would remain temporarily in force until the new register came into operation, either under the Representation of the People Act, 1918,[2] or under such new legislation as might be passed between now and then. They could do nothing about local government elections, for various reasons. The only way to get a local government register was by a full canvass. If Parliament at any time decided that the local government franchise should be the same as for the Parliamentary electorate, that must await consideration by Mr. Speaker's Conference. The Minister also stated that the Bill tidied up the law in regard to Parliamentary writs. The Explanatory Memorandum on the Bill stated that the Bill provided that the Order-in-Council regulating the conveyance of writs should not be submitted to His Majesty until a draft had been laid before each House for a period of 40 days.

There was considerable debate on 2 *R.*,[3] and after consideration of a Financial Resolution in *C.W.H.* authorizing (under S.O. 69) the necessary expenditure of public money (Clause 14) for the purpose of the Bill and its adoption by the House,[4] the House went into *C.W.H.* on the Bill,[5] when amendments were made to Clauses 6, 8, 13, 14, 18, 19 and Schedules 1 to 4. An amendment was proposed in Clause 6 making it the duty of the registration officer to send to persons in respect of business premises a copy of the application and draw their attention to the provisions of the sub-section, but negatived (Ayes, 112; Noes, 146). A new Clause was inserted dealing with the appointment of proxies for service voters at University elections.[6] The First Schedule was amended allowing proxy voting for those who happen to be at sea or out of the United Kingdom. The Second Schedule was also amended in certain respects connected with the appointment of proxy voters. Para. 12 thereof provides that a person shall not vote as proxy unless he is a " British subject of full age and not subject to any legal incapacity ", and para. 13 limits a proxy voter at an election in any constituency " to 2 voters ", of whom that person is neither husband, wife, parent, brother or sister, to which an amendment was made adding " grandparent ". The Third and Fourth Schedules were also amended.

[1] Cmd. 6466. [2] 7 & 8 Geo. V, c. 64. [3] 393 *Com. Hans.* 5, ss. 70-107. [4] *Ib.* 108 and 685. [5] *Ib.* 685-812; in the Explanatory Memorandum on the Bill the total cost of printing the annual registers for the whole country in 1939 was £733,896.—[ED.]

[6] M.P.s for University constituencies will continue to be elected by P.R., with the single transferable vote.—[ED.]

Upon consideration of the Bill as amended, Clause 6 was amended providing that where a husband and wife were qualified to be registered in respect of any business premises, application might be made by either of them on behalf of both of them.[1]

At 3 *R.* stage the Minister acquainted the House:

> That His Majesty, having been informed of the purport of the Bill, gives his Consent, as far as His Majesty's Prerogative is concerned, that this House may do therein as they shall think fit,

after which, 3 *R.* was put and agreed to, the Bill sent to and concurred in by the Lords, and duly became 6 & 7 Geo. VI, c. 48.

Local Elections and Register of Electors (Temporary Provisions).—On December 7, 1943, the Under-Secretary of State in the Home Department (Mr. Peake), in moving 2 *R.* of the above-named Bill, referred to it as a hardy annual, this being the fifth occasion. Clause 1 postponed local elections until the end of 1944, and Clause 2 contained machinery provisions following the passing of the Parliament (Elections and Meeting) Act, dealt with above. Apart from the 7,000 parish councils there were 1,500 elected local authorities in England and Wales alone. The local government register was not the same as the Parliamentary register as it was based upon occupation and not residence. The register upon which local elections were to be held was based upon a register of 1939. It was understood that one of the subjects to be tackled by the Conference on Electoral Reform which will sit under the chairmanship of Mr. Speaker will be consideration of the advantages which would flow from the assimilation of the Parliamentary and local government register. This Bill duly became 7 & 8 Geo. VI, c. 2.

[1] 393 *Com. Hans.* 5, s. 1022.

VIII. "TYNWALD"—THE LEGISLATURE OF THE ISLE OF MAN

By the Hon. J. D. Qualtrough, M.H.K.,
Speaker of the House of Keys

The Legislature of the Isle of Man is called the Tynwald, which is another form of the Norse "Thing Vollr" or "open-air parliament", and was established by the Norsemen over 1,000 years ago. In spite of all the vicissitudes through which the island has passed this form of parliament has remained. During this period, it has frequently been reformed to meet the changing conditions of the times, but the Manx people still meet every 5th of July in the open air at Tynwald Hill, in the ancient manner, to hear their laws proclaimed both in English and the ancient Gaelic tongue.

In its actual form Tynwald today resembles very nearly the earliest form in which the "lord" of the island with his "barons in the first degree", his "worthiest men" and his "beneficed men" sat to administer justice and to enunciate new law. Instead of the "lord of the island" the King's Lieutenant-Governor sits in the chair of state "with his visage to the east". Instead of his barons, he has beside him the Legislative Council, and on the next step of the 4-tiered hill the place of "his worthiest men" is taken by the members of the House of Keys, the elected House, the chosen of the people.

Tynwald today, as it has been for many centuries, is a bicameral parliament with Upper and Lower Houses, which sit separately for purposes of legislation and sit together for purposes of administration, taxation and appropriation of finance.

Dealing with the House of Keys first, the origin of the name of this assembly, "The Keys", is uncertain. It is popularly supposed to be an abbreviation of the Gaelic word for 24—"kiare as feed"—24 being the number of members—but a distinguished Norwegian scholar surmises that it may have some connection with an old Norse word "Keise", meaning "chosen". The Keys were first elected by popular vote in 1866. Prior to that they were self-elected, by a curious system. Membership was for life, but on a vacancy arising the remaining members selected two names from which the Governor selected one to fill the vacant seat. The Keys usually secured the man they wanted by nominating as the alternative a man whom they knew to be unlikely to be appointed. This system was effective in obtaining a long succession of worthy men who fought a stalwart battle for Manx liberties. In 1866, however, the elected House came into being and Manxland had the distinction of being the first place where women exercised the vote, for widows and spinsters were admitted to the register on the same qualification as men. As the franchise was extended in Great Britain, the Isle of Man followed.

The Legislative Council today consists of 10 members and the

Lieutenant-Governor. Prior to 1920 it consisted entirely of officials of the State and Church, but in that year it was " reformed " by the exclusion of some of the officials and the introduction of members appointed by the House of Keys. Its present membership consists of 4 officials: the Lord Bishop, the 2 Deemsters (High Court Judges) and the Attorney-General. Four members are appointed by the Keys and 2 are appointed by the Governor, who also presides over its sessions. All laws must be passed by both branches and must receive 13 votes (a clear majority) of the Keys.

The Manx Constitution retains a curious survival from ancient times in the Tynwald—that is to say, both branches sitting together and voting separately, to consider all matters of administration and finance. It is Tynwald that levies taxes and makes appropriations. Tynwald receives the Lieutenant-Governor's statements of policy and appoints the members of the Boards of Tynwald—a feature which will be dealt with below. In Tynwald, too, legislative enactments are signed before going forward for *R.A.*, and must receive at least 13 signatures in the Keys. No tax or appropriation is effective until it is similarly signed. It will be seen, then, that in the island Government legislation and administration are dealt with by different machinery. The branches sitting separately do not normally—unless a matter of public urgency is raised—discuss administration, whilst Tynwald—both branches sitting together—has no say in the making of laws. The Speaker of the House of Keys must vote on all matters but cannot speak in the Keys, though he may, and often does so, in Tynwald, where he is generally regarded as the spokesman of the House *vis-à-vis* the Lieutenant-Governor.

Tynwald delegates much of its administrative work to Boards consisting usually of from 5 to 7 members. Matters such as harbours, highways, education, fisheries, national health, local government, afforestation and many others are dealt with in this way. Boards submit their estimates annually and provision for their requirements, as well as their general policy, must receive the approval of Tynwald.

The dominant position in the Manx Legislature is occupied by the Lieutenant-Governor, who is appointed by His Majesty the King on the advice of the Home Secretary. In law and in practice the Lieutenant-Governor is the Government of the Isle of Man. He is the sole responsible executive, he is Chancellor of the Exchequer, and no taxation proposal or appropriation can be submitted to Tynwald without his prior approval. He must sign all legislation before it is submitted for *R.A.* He is responsible for the order and good government of the island; and is head of the police and the Civil Service. During the War he has been the sole authority under D.O.R.A. for the issue of orders and regulations. He wields his powers under the surveillance of the Home Office, which retains and strictly interprets its responsibility for the Isle of Man. The wide powers vested in the Governor make him in a large degree independent

of Tynwald, though the necessity of securing the approval of Tynwald for any necessary legislation or finance gives Tynwald substantial check and secures generally a degree of consultation without which government would be impossible. The Governor's position is fortified by the fact that all the expenses of government are a " Reserved " service and do not come before Tynwald for approval, whilst the position of Tynwald is weakened by the fact that its main power lies in its right to refuse assent to expenditure on social and administrative services, the veto of which would bring the economic and social life of the island to chaos. The right of Tynwald to refuse supplies is like a boomerang which can only injure itself. In an ultimate clash of policy the Governor possesses in practice the means of remaining in power and of asserting his authority and policy.

The practice of Lieutenant-Governors in the last 25 years has been to secure, whenever possible, agreement by a system of consultation. At the suggestion of the Home Office, the Keys were asked to appoint a Finance Committee with whom the Governor could discuss, in advance, his Budget proposals, though the actual power of the Governor was not affected, as he retained the ultimate responsibility. In 1927 the Lieutenant-Governor, Sir Claude Hill, asked the Keys to set up an Advisory Committee to " advise " him on matters of general policy, though he was careful to reserve his final responsibility. These concessions were valuable to the Keys and contributed to smoother working as they gave them the advantage of submitting suggestions at the formative stage of policy, but they were equally valuable to the Governor as he had an opportunity of meeting objections and occasionally, too, of securing his wishes by some slight concession.

When war broke out the Lieutenant-Governor, Earl Granville, asked Tynwald to appoint a Committee to advise him on matters arising out of the War. He too was careful to reserve his personal responsibility. But the procedure has been of immense advantage as it placed at his disposal the benefit and advice of the best brains of the island and the knowledge of men who were particularly qualified to guide him in the intricate problems that arose as a result of the War. It can be recorded that the island has prospered under a long series of Lieutenant-Governors who in the main have been men of great ability whose chief ambition was to develop the best interests of its people.

For a long period the House of Keys has with more or less intensity conducted a campaign to remodel the powers of the Lieutenant-Governor on more democratic lines. The agitation came to a head in 1943 when a member of the House of Keys moved a resolution asking, among many other reforms, for the establishment of an Executive Committee to assume the responsibility of government and a modification of the Governor's powers to conform more nearly to those of the Governor-Generals in the Dominions. Proposals were adopted by the Keys and submitted to the Home Secretary asking for his approval of reforms along those lines. The Home Secretary invited the views

of the Legislative Council on the proposals and as a result, consultations took place between the branches which led, in the end, to the adoption of an agreed memorandum embodying the essential elements of the Keys' demand with the additional suggestion that Boards of Tynwald, which at present act in somewhat watertight compartments, should be brought into closer liaison with the Government of the island, and that the Governor should be more independent of control from London.

A deputation from Tynwald interviewed the Home Secretary in October of this year (1944) to press its claims and received a pleasant, though non-committal, reception. There the matter rests at the moment. On historical grounds the Keys are in a strong position as for over 1,000 years the island has enjoyed Home Rule under " lords " nominated by the Crown who ruled, in conjunction with Tynwald, without any interference from Westminster. In 1765 this form of government was interrupted though not suspended. In that year Parliament, as a result of the annoyance and injury caused by the smuggling of which the island was the base, took away its power to levy taxes and brought it under the British Customs Duties. Parliament also appropriated the proceeds, out of which it paid the island's expenses. It is said that a handsome profit was made. Manx people felt keenly the suspension of their historic powers and had a suspicion that the smuggling, which could easily have been crushed by a less drastic remedy, had been made the excuse for the destruction of their liberties. This curtailment of Manxland's constitution took place at a time when the word " Commonwealth " had not been applied to Imperial affairs and when the strength of the Empire was believed to depend on the force of central government. 1765 was the year of the introduction of the Stamp Bill, which led to the loss of the American colonies. After a century of struggle, the powers of Tynwald over finance were restored in 1866, though not entirely, for, as has been seen, much control was vested in the Lieutenant-Governor. The weakness of this constitution lies in the fact that, while power and responsibility are vested in the Governor, it does not give him a parliamentary majority in the elected House. He is in an anomalous position, because he must satisfy both the Imperial Government and Tynwald.

It is difficult to see how he can always fill the dual rôle of being the spokesman of the Imperial Government to the Manx people and at the same time their spokesman to the Imperial Government. What Tynwald now asks is that the Lieutenant-Governor should act on the advice of an executive responsible to Tynwald, and that the Imperial Government should delegate to him sufficient autonomy to do so, always, of course, reserving to him an overriding jurisdiction in the event of an extreme or undesirable policy being pressed upon him—a contingency which in a completely loyal community like the island is hardly likely to arise.

It is one of the curiosities of history that a small island of 50,000

people lying in the Irish Sea so close to England, Ireland and Scotland has been able to retain its own Parliament through the centuries, possessing as it does a constitution that is one of the " museum pieces " of the world's governments. So closely interwoven is the island with the economic life of the British Isles that it may seem almost an anachronism to advocates of strict uniformity that it has the power to frame its own budgets and adopt, if it chooses, scales of direct and indirect taxation different from the larger islands. But it has every reason to suppose that the Home Secretary, upon whose decision it now depends, is conscious of the significance of this old constitution in the progress of democracy. There can be no doubt about Manxland's desire to fashion its own development, under the beneficent protection of its great imperial neighbour, and to continue to be a bright, even if very tiny, star in the Imperial Crown.

IX. AUSTRALIA: COMMONWEALTH POWERS[1]

By the Editor and Other Members

A constitutional movement of first-rank national significance and Parliamentary importance took place in " the Commonwealth "—as the Continent of Australia is called by her people—for the purpose of obtaining the authority of the States of the Commonwealth for a " reference " (not transfer) by them, to the Commonwealth, or Federal Parliament and Government, for a stipulated period, of certain legislative powers concerning the general subject of post-War reconstruction.

Not since the days of Federation, 45 years ago, has there been a Convention, and before the Referendum, submitting these hotly con-

[1] *See also* JOURNAL, Vols. V, 100, 111; VI, 56.

tested subjects to the electors qualified to vote for the election of Members of the House of Representatives—the Commonwealth Lower House—4 drafts of the Bill, which became " the Proposed Law ", were under consideration. The short titles of these Bills were:

The Constitution Alteration (War Aims and Reconstruction) Bill, 1942;
The Constitution Alteration (Post-War Reconstruction) Bill, 1942;
The Commonwealth Powers Bill, 1942; and
The Constitution Alteration (Post-War Reconstruction and Democratic Rights) Bill, 1944.

The first two were the pioneer Bills, the third described as " the Canberra Bill ", and the fourth " the Referendum Bill ", but for brevity and printing economy these measures will be referred to hereinafter as Bills I, II, III and IV, in the above order.

It will be impossible to give anything even approaching a full account of the proceedings of these Bills. That would more than fill this volume, but every effort will be made to give as detached a bird's-eye view of this subject as possible, but from a constitutional and Parliamentary standpoint. Political arguments are not, as such, appropriate to this JOURNAL. They will therefore be introduced only when necessary to make the above-mentioned standpoint more clear. For a fuller insight into the whole subject, the Parliamentary or constitutional student is referred to the various documents in question, for which authorities are given throughout in the footnotes.

Probably on account of the War, that part of this Article dealing with the Commonwealth aspect of the subject has not arrived, so that it has necessarily devolved upon the hon. Editor of this JOURNAL to do his best in the circumstances, War mails being somewhat uncertain. His part of the Article has, however, been made more possible by the use of documents courteously supplied him from Canberra. The sections of the Article dealing with the actions taken by the 6 State Parliaments have been very kindly contributed by members of our Society sitting at the Tables of those Parliaments and the greatest care has been taken in any editing of their articles. The hon. Editor trusts, therefore, that he may be forgiven for any undue use of the blue pencil, necessitated by having to reduce these articles purely on grounds of economy.

First, let it be borne in mind that the basic principle of the Commonwealth Constitution[1] is a federal one. Unlike Canada, and still more unlike that of the Union of South Africa, in Australia it is in the States that the source of the legislative power lies. It was the States which decided at the National Convention, giving birth to the Commonwealth, what legislative powers should be granted to the Federal Parliament, and it is only from the States that authority for any extension, or " reference ", of those powers can be obtained. After reading this Article, our readers in the United Kingdom and New Zealand,

[1] 63 & 64 Vict., c. 12.

under unitary systems of government, may consider themselves fortunate in not having to live in large-area countries.

The subject of this Article is a vital one, both to the Commonwealth as well as to the States of a continent nearly as large as all the States of Europe combined and enclosed by a seaboard of over 12,000 miles. However, let the writer now take the reader over the ground to see for himself the problem confronting the King's second largest Dominion so nobly taking her part in this world struggle for freedom.

Bill I: *The Constitution Alteration (War Aims and Reconstruction) Bill*, 1942.

On October 1, 1942,[1] in the House of Representatives at Canberra, A.C.T., the Attorney-General of the Commonwealth (Rt. Hon. H. V. Evatt)[2] moved:

> That leave be given to bring in a Bill for an Act to alter the Constitution by empowering the Parliament to make laws for the purpose of carrying into effect the War aims and objects of Australia as one of the United Nations, including the attainment of economic security and social justice in the post-War world, and for the purpose of post-War reconstruction generally.

In Bill I it was proposed to insert a new section as Part IV of the Constitution, numbered 60A, under the heading " War Aims and Post-War Reconstruction ", as follows:

> 60A. (1) The Parliament shall have full power to make laws for the peace, order and good government of the Commonwealth, its territories and all places under its jurisdiction or control, for the purpose of carrying into effect the War aims and objects of Australia as one of the United Nations, including the attainment of economic security and social justice in the post-War world and for the purpose of post-War reconstruction generally.
>
> (2) Without limiting the generality of the foregoing sub-section, it is hereby declared that the power of the Parliament shall extend to all measures which in the declared opinion of the Parliament will tend to achieve economic security and social justice, including security of employment and the provision of useful occupation for all the people, and shall include power to make laws with respect to—
>
> (*a*) the reinstatement and advancement of those who have been members of the fighting services of the Commonwealth during the War and of the dependants of such members who have died or been disabled as a consequence of the War;
> (*b*) employment, including the transfer of workers from War-time industries;
> (*c*) the development of the country and the expansion of production and markets;
> (*d*) the production and manufacture of goods and the supply of goods and services, and the establishment and development of industries;
> (*e*) prices of goods and services, including their regulation and control;
> (*f*) profiteering;
> (*g*) the encouragement of population;
> (*h*) carrying into effect the guarantee of the four freedoms, that is to say—
>
> (i) freedom of speech and expression;
> (ii) religious freedom;
> (iii) freedom from want; and
> (iv) freedom from fear;

[1] 172 *C'th Hans.* 1338-41. [2] An ex-Judge of the High Court of Australia.—[ED.]

(*i*) national works and services, including water conservation and irrigation, afforestation and the protection of the soil;
(*j*) the improvement of the living standards in both rural and urban areas;
(*k*) transport, including air transport;
(*l*) national health and fitness; and
(*m*) child welfare.

(3) All the powers conferred upon the Parliament by this section may be exercised notwithstanding anything contained elsewhere in this Constitution or in the Constitution of any State and shall be exercisable as and from a date to be proclaimed by the Governor-General in Council.

In the course of his speech seeking leave to introduce the Bill, the Attorney-General said that the whole history of the Commonwealth Constitution showed that these problems could not be solved without wider powers in the hands of the central Government. They could not afford to have any doubt about the powers of the Commonwealth to deal with them directly or to delegate such functions as it desired to the States and local authorities. Divided authority caused hesitancy, irresponsibility and doubts. A national plan required national action. The Commonwealth Constitution adopted in 1910 was not flexible enough to serve Australia in the great task of post-War reorganization which the declared aims of the United Nations would involve. The peace-time powers of the Commonwealth were hedged round with severe limitations. Although they were written down in the 1890's, many of the words and phrases were simply transcribed from the American Constitution of 1787. For instance, " trade and commerce " was so divided between Commonwealth and State authority that neither could deal effectively with it. Such topics as production, employment, investment, industrial conditions, were either not committed to the national Government at all or were granted in jealous, limited, qualified or indirect terms. The Constitution of 1900 was outmoded. Every promise to the men and women of the fighting services must be honoured. The division of powers between the Commonwealth and the 6 States with divergent policies would be a fatal obstacle to speedy and effective national planning. This country, like all the other United Nations, had pledged itself to the task of achieving the broad objectives of the Atlantic Charter,[1] freedom of speech and expression, freedom of worship, freedom from want, freedom from fear—anywhere and everywhere in the world. The process of amending the Constitution took some time, and a great constitutional change should never be carried out without careful consideration.

In the 42 years of the Commonwealth's history 18 constitutional alterations had been submitted to the people at referendums[2] (as they are referred to in Australia). Only 3 had been accepted. The 15 proposals had been rejected because the people could not reasonably be sure how the powers would be exercised. The Government had rejected other constitutional examples for the plan of allotting to the Commonwealth a broad but pacific power to carry into effect the War

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

[2] *See* JOURNAL, Vol. V, 116.

aims and objects as expressed in the closing words of his Motion. (The list of subject-matters are contained in sub-clause (2) of the proposed new s. 60A in Bill I as given above.)

It was proposed to insert the alterations, not in Part V of Chapter I of the Constitution, which contains the principal existing powers of the Federal Parliament,[1] but in a separate part, immediately following it. None of the limitations in the rest of the Constitution would apply to the powers contained in the new s. 60A. No time-limit was fixed for the duration of the " War Aims and Reconstruction " powers. They would and should remain available as long as the needs that called them into being. If the amendment were accepted, the duties which would devolve upon the Federal Parliament in peace-time would be added to, and therefore some increase would be required in the number of Members of the Federal Parliament. A power new to the Commonwealth Constitution was proposed in the first paragraph of sub-section (2) of s. 60A, which was to empower the Federal Parliament to make any law which in its own declared opinion would tend to achieve economic security and social justice, including security of employment and the provision of useful occupation for all the people. For its decisions and actions under this new power, the Federal Parliament would be responsible to one authority only, the people of Australia. The Attorney-General concluded by saying:

> It is hoped that the States of Australia will see fit to co-operate with the Commonwealth in making a constitutional alteration which will assist the nation of today to prosecute the present War to a victorious conclusion and will also help to lay a sure foundation for the nation of tomorrow.

The Question was then put and agreed to, followed by the presentation of the Bill, which was read 1 *R.*

Special Committee—Convention.

On the 8th *idem*,[2] the Prime Minister of the Commonwealth (Rt. Hon. J. Curtin) *by leave* announced in the House of Representatives the decision of the Government that the debate on the Bill would not be proceeded with until after the measure had been referred to a Special Committee, of 8 Members of that House and 4 Members of the Senate, equally representative of the Government and the Opposition. The Government also desired that there shall be added to the Committee, the Premier and the Leader of the Opposition of each State Parliament, invitations to whom would be sent, which would make a body of 24 Members. The names of those to represent the two Houses of the Federal Parliament were then given.

In reply to a Question as to whether the Committee would act in a purely advisory capacity, or have mandatory powers, and if the Government had fixed in the preamble to the Bill a limit beyond which

[1] *Constitution*, ss. 51-60. [2] 172 *C'th Hans.* 1514.

it would not go, the Prime Minister said that the Committee would consider the Bill and make suggestions, but the form in which the Bill would become law would be entirely a matter for the Commonwealth Parliament.

Personnel.—The composition of the Special Committee which became the Convention was as follows:

House of Representatives :

The Rt. Hon. J. Curtin, M.P., Prime Minister.
The Hon. F. M. Forde, M.P., Minister for the Army and Deputy Prime Minister.
The Rt. Hon. A. W. Fadden, M.P., Leader of the Opposition and Leader of the Country Party.
The Rt. Hon. W. M. Hughes, C.H., K.C., M.P., Deputy Leader of the Opposition and Leader of the United Australia Party.
The Rt. Hon. H. V. Evatt, K.C., LL.D., M.P., Attorney-General and Minister for External Affairs.
The Rt. Hon. R. G. Menzies, K.C., M.P.
The Hon. J. B. Chifley, M.P., Treasurer.
The Rt. Hon. Sir Earle Page, G.C.M.G., C.H., M.P.

Senate.

Senator the Hon. J. S. Collings, Minister for the Interior.
Senator the Hon. R. V. Keane, Minister for Trade and Customs and Vice-President of the Executive Council.
Senator the Hon. G. McLeay, Leader of the Opposition.
Senator B. Sampson, D.S.O., V.D.

New South Wales.

The Hon. W. J. McKell, M.L.A., Premier and Colonial Treasurer.
The Hon. A. Mair, M.L.A., Leader of the Opposition.

Victoria.

The Hon. A. A. Dunstan, M.L.A., Premier, Treasurer and Solicitor-General.
The Hon. J. Cain, M.L.A., Leader of the Opposition.

Queensland.

The Hon. F. A. Cooper, M.L.A., Premier and Treasurer.
Mr. G. F. R. Nicklin, M.L.A., Leader of the Opposition.

South Australia.

The Hon. T. Playford, M.H.A., Premier, Treasurer and Minister for Immigration.
The Hon. R. S. Richards, M.H.A., Leader of the Opposition.

Western Australia.

The Hon. J. C. Willcock, M.L.A., Premier, Treasurer and Minister for Forests.
Mr. A. F. Watts, M.L.A., Leader of the Opposition.

Tasmania.

The Hon. R. Cosgrove, M.H.A., Premier and Minister for Education.
The Hon. H. S. Baker, D.S.O., M.H.A., Leader of the Opposition.

Proceedings of.—The Convention sat in the House of Representatives Chamber at Canberra, the Commonwealth Capital, on November 24, 25, 26, 27, 30, and December 1 and 2, of 1942, which days will be hereinafter referred to respectively as the First, Second, etc., Day.

On the First Day the Convention,[1] constituted as above and presided over by the Prime Minister, met at 2.30 p.m., pursuant to his invitation, when he welcomed the 24 representatives. In outlining the objects of the Convention, Mr. Curtin said that these representatives from all the 7 Parliaments of Australia were gathered to consider, from a non-party and national point of view, the course of action to be followed at one of the great turning points of their history. This Convention differed from that of 1897-98 because Federal union was now an accomplished fact and a constitution existed which defined the relations between the Commonwealth Parliament and those of the several States. The procedure for the amendment of the Federal Constitution involved action by two bodies only, the Federal Parliament and the people of Australia. There was no provision for a popularly elected convention or for the reference of proposed amendments to any assembly outside the Federal Parliament itself. It was the very special needs of the War which prompted the Government to convene this distinctive assembly, which in a real sense constituted, for the occasion, a special advisory council of the whole nation, in all its political groupings.

The question they had to examine was not an enlargement of the constitutional powers of the Commonwealth Parliament but of enlarging the self-governing rights of the people in the exercise of their rights of Australian citizenship. The Commonwealth had been in control of the War effort, but that control had been exercised with the co-operation and assistance of the Governments of all the 6 States. Mr. Curtin quoted Sir Isaac Isaacs[2] as saying that:

> Evidence is accumulating that thoughtful Australians believe our constitutional system is too complicated, costly and burdensome. Most of all, it is not competent to answer its highest purpose—that of adequately and promptly enabling the nation to deal with the vicissitudes of current life nor with the complex Australian conditions that must inevitably ensue when peace is proclaimed and the mobilization, the War work of one hand, is dissolved. Reconstruction, then, by constitutional necessity must fall almost completely into different hands, moved by different and differing minds. The Commonwealth, supreme in War, is in many directions helpless in peace.

The Prime Minister continuing said:

[1] *Record of Proceedings of the Convention of Representatives of the Commonwealth and State Parliaments on the Proposed Alteration of the Commonwealth Constitution*, 1942 (Commonwealth Govt. Printer, Canberra) (hereinafter referred to in footnotes as "*R.P.*"

[2] Rt. Hon. Sir Isaac Isaacs, G.C.B., G.C.M.G., ex-Chief Justice and ex-Governor-General of the Commonwealth.—[ED.]

I am firmly of opinion that the best form of government for modern Australia, having regard to all the circumstances, is one in which all major national questions are dealt with by the National Parliament, and that matters of minor importance, as well as the administration of national laws, should be left to the States.[1]

In concluding, Mr. Curtin said that both the Attorney-General and himself had emphasized 3 things:

(1) The Bill is designed to establish the principle that, in relation to post-War reconstruction, the Commonwealth Parliament should be invested by the people with a greater measure of constitutional power.

(2) The Bill[2] was not and is not definitive or final in form or substance.

(3) The main questions to be determined are—

(*a*) is the Australian nation to have the means of planning to solve the problems of post-War reconstruction and of carrying such plan into effect;

(*b*) are those means to be placed in the hands of the Commonwealth Parliament; and

(*c*) what means are required ?[3]

The Attorney-General of the Commonwealth (Rt. Hon. H. V. Evatt) then addressed the Convention and presented:

(1) Post-War Reconstruction. A case for greater Commonwealth powers. Prepared for the Constitutional Convention, November, 1942, by and under the direction of the Attorney-General of the Commonwealth of Australia, the Rt. Hon. H. V. Evatt, K.C., M.P., LL.D.

(2) Draft Bill[4] for an Act to alter the Constitution by empowering the Parliament to make laws for the purpose of post-War reconstruction and by guaranteeing religious freedom and freedom of expression (Constitution Alteration [Post-War Reconstruction], 1942).

Bill II: The Constitution Alteration (Post-War Reconstruction) Bill, 1942.

The following is the text of the draft Bill circulated by Dr. Evatt at the Convention, which differed materially from that presented to the House of Representatives on October 1:

A Bill for an Act

To alter the Constitution by empowering the Parliament to make Laws for the purpose of post-War reconstruction and by guaranteeing religious freedom and freedom of expression.

Preamble. Whereas the aims and objects of Australia as a member of the British Commonwealth of Nations and as one of the United Nations in the present War make it desirable that the Commonwealth should have power to carry out plans for post-War reconstruction and that the Constitution should guarantee both religious freedom and freedom of expression:

[1] *R.P.* 3. [2] For Bill II, see below.—[Ed.] [3] *R.P.* 7. [4] Bill II.

Be it therefore enacted by the King's most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution as follows:—

Short title. 1. This Act may be cited as Constitution Alteration (Post-War Reconstruction), 1942.

2. The Constitution is altered by inserting in Chapter I after Part V, the following Part and section:—

"PART VI.—POST-WAR RECONSTRUCTION.

"60A.—(1) The Parliament shall have power to make laws for the peace, order and good government of the Commonwealth, for the purpose of post-War reconstruction.

Power to carry out post-War reconstruction.

(2) It is hereby declared, without limiting the generality of the preceding sub-section, that the Parliament shall have power to make laws with respect to—

(*a*) the reinstatement and advancement of those who have been members of the fighting services of the Commonwealth during the War and of the dependants of such members who have died or been disabled as a consequence of the War;
(*b*) employment and unemployment, (security of employment, the improvement of standards of living and the relations between employer and employee:)
(*c*) trade commerce and industry (including the production, manufacture and supply of goods and the supply of services);
(*d*) companies;
(*e*) investment;
(*f*) profiteering and prices;
(*g*) the marketing of goods;
(*h*) transport;
(*i*) national works;
(*j*) social services and social welfare;
(*k*) health and housing; and
(*l*) the protection of the aboriginal natives of Australia.

(3) The power of the Parliament to make laws under paragraphs (*f*) and (*g*) of the last preceding sub-section may be exercised notwithstanding anything contained in s. 92 of this Constitution.

(4) The Parliament may make laws authorizing any State or any Minister, officer or instrumentality of a State, or any local authority constituted under a law of a State, to assist in the execution of any power conferred on the Parliament by this section."

3. Section one hundred and sixteen of the Constitution is altered to read as follows:—

"116. Neither the Commonwealth nor a State may make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth or a State."

Religious freedom.

4. The Constitution is altered by inserting after s. 116 the following section:—

Freedom of speech and of the Press.

"116A. Neither the Commonwealth nor a State may make any law abridging the freedom of speech, or of the Press."

Dr. Evatt, whose speech[1] was in many respects on the lines of that already outlined on the Motion for leave on Bill I in the House of Representatives, said that during the period that had since elapsed the

[1] *R.P.* 7-11.

proposals contained in that Bill had been subjected to exhaustive analysis in the Parliaments of the States and in the public Press and many citizens had been invited to make suggestions for improvement in the Bill. Accordingly they were sustaining several objections which had been raised and most of the 12 subject-matters now included in the Bill (II) were contained in the first draft Bill (I). He desired to emphasize, however, that, although they proposed to ask the people to confer important additional powers upon the Commonwealth Parliament, these powers would not become the exclusive concern of the Commonwealth Parliament. The States would still retain all their existing powers of legislation in relation to all the topics he had mentioned. In other words, the powers of the Commonwealth Parliament and the State Parliaments over such topics would become concurrent—which meant that if, and only if, there was a conflict between Commonwealth legislation and State legislation on the topic, the Commonwealth law would prevail by virtue of s. 109[1] of the Constitution.

At 3.27 p.m. on the First Day, the Convention adjourned until the Second Day at 2.30 p.m., when the Prime Minister (Rt. Hon. J. Curtin) stated that the Bill now submitted to the Convention had been considered by the Commonwealth Government in the light of the criticisms, referred to above by Dr. Evatt, and that the draft Bill (Bill II) as tabled yesterday was in fact now before the Convention at what they would call the 2 *R.* stage.[2]

The Convention sat on the Second Day from 2.30 to 9.42 p.m.; on the Third Day from 10.30 a.m. until 9.45 p.m.; on the Fourth Day from 10.30 a.m. until 3.48 p.m.; on the Fifth Day from 10.30 a.m. until 12.40 p.m.; on the Sixth Day from 10.30 a.m. until 3.58 p.m.; and on the Seventh Day from 2.15 to 6.25 p.m.

Mr. Fadden's Motion.—The alternative proposals contained in Bill II, however, were not proceeded with, and on the Second Day the Rt. Hon. A. W. Fadden, Leader of the Opposition and Leader of the United Australia Party in the Federal House of Representatives, moved the following Motion:

> That, while this Convention recognizes the need to confer increased powers upon the Commonwealth, it is of opinion that the War preoccupation of many hundreds of thousands of Australians (including those in the Fighting Services and Prisoners of War), who have a vital interest in improved post-War conditions and a right to an informed vote, renders it impracticable to secure a deliberate judgment on the complex problem of such a fundamental change in the whole system of government in Australia as is proposed. Accordingly, it expresses the view that:
>
> (*a*) The War powers of the Commonwealth being very extensive, advantage should be taken of the opportunity during the War of securing practical experience in co-operative Commonwealth and State action in relation to social and economic questions; so that in due course specific constitutional changes may be made with the greatest possible knowledge;

[1] (*Inconsistency of laws*).—109.—When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.—[ED.]

[2] *R.P.* 12-13.

(*b*) The consideration of what changes should be made in the Commonwealth Constitution to meet new circumstances should, at an appropriate date, be referred to an elective convention representative of the people.[1]

Mr. Cosgrove's Motion.—After lengthy debate, the Premier of Tasmania (Hon. R. Cosgrove, M.H.A.) gave notice to move, on the Third Day, the following amendment to Mr. Fadden's Motion—namely, to omit all words after the first word " That " and to substitute the following:

This Convention is of opinion that—

(*a*) Adequate powers to make laws in relation to post-War reconstruction should be conferred on the Parliament of the Commonwealth;

(*b*) It is undesirable that permanent alterations of the Constitution should be effected at this critical stage in Australia's history;

(*c*) For this reason legislative power with respect to suitable additional matters in relation to post-War reconstruction should be referred to the Parliament of the Commonwealth by the Parliaments of the States under s. 51 (xxxvii)[2] of the Constitution;

(*d*) Such reference should be for a period of seven years from the cessation of hostilities, and should not be revoked during that period;

(*e*) At the end of such period of seven years, or at an earlier date, a referendum should be held to secure the approval of the electors to the alterations of the Constitution on a permanent basis.[3]

Points in Debate.—Excluding the references to the speeches already given, the following were some of the arguments put forward in the Convention in debate both for and against the Bill (II) in what was virtually its 2 *R.*: That if the 12 subjects in s. 60A (2) were grafted on to the Constitution it would give the Commonwealth plenary powers; that the people of Australia were asked to hand over their destinies to whatever Party was in power; that it would introduce complete socialization; that an elected Convention should be held; that the people were not unanimous on the particular points; that the War would end without their being prepared to deal with post-War problems; that war was not the time for a referendum; that in a Federal Constitution the question was what powers should rest with the centre and what with the State; that it would be a cardinal blunder to try to confine a living principle within a formula; that it nullified the powers of the States; that the Commonwealth Parliament had no real power; that pre-Federation could not possibly have visualized present War conditions; that the States were the parents of the Commonwealth; that there should be co-operation between both; that it was necessary that the Commonwealth should have power to deal with trade, commerce and price control; that the powers under the Bill affected the people too

[1] *R.P.* 18.

[2] 51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to:—

(xxxvii). — Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State of States, but so that the Law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law.—[ED.]

[3] *R.P.* 51.

intimately to be taken from the States, whose interest should be safeguarded; that unification was opposed; that the Bill destroyed the Federal character of the Constitution; that new ss. 116 and 116A were protested against; that with 13 (Houses of) Parliament(s) there would be chaos in the post-War period unless they planned ahead; that a national council and secretariat should be appointed for co-operation in Federal State matters; that it destroyed the present guarantee of an open market; that a strong body of opinion was in favour of unification; that a Federal Constitution in a country the size of Australia gave better results than any centralized form; that notwithstanding the Federal character of the Constitution, certain additional powers should be given to the Commonwealth Parliament; and that it would deprive the States of the powers they now possessed.[1]

On the Fifth Day, Mr. Curtin announced that the Commonwealth Government was willing to accept Mr. Cosgrove's amendment, Mr. Fadden withdrawing his Motion. After debate, the Premier of Victoria (the Hon. A. A. Dunstan, M.L.A.) suggested an amendment in para. (*d*) —namely, to insert after the words " period of " the words " not less than five years and not more than ", which was agreed to, with a consequential amendment in para. (*e*), to omit " of seven years ". Paras. (*d*) and (*e*) then read:

> (*d*) Such reference should be for a period of not less than five years and not more than seven years from the cessation of hostilities and should not be revoked during that period;
>
> (*e*) At the end of such period, or at an earlier date, a referendum should be held to secure the approval of the electors to the alterations of the Constitution on a permanent basis.

Mr. Cosgrove's amendment as amended was then put and *Resolved unanimously*.[2]

Drafting Committee.—Mr. Curtin on the Fifth Day stated that the Government suggested to the Convention the immediate examination by a Drafting Committee of the matters stated in sub-section 2, paras. (*a*) to (*l*) inclusive, of Bill II, together with the suggestions made by members of the Convention, including the Premiers of New South Wales and Victoria and Mr. Hughes and Mr. Mair. The Government was also willing that the alternative method of " reference " made permissible by the Constitution be tried. It was then resolved:

> That a Committee of 8, consisting of the Premier of each State, together with Dr. Evatt and Mr. Hughes, be appointed to prepare, for submission to the Convention, proposals designed to give effect to paragraph (*a*) of Mr. Cosgrove's amendment and report to the Convention at 10.30 tomorrow.[3]

The Convention then adjourned. When it met on the Sixth Day, Mr. Curtin announced that the Drafting Committee was continuing its work, whereupon the sitting of the Convention was suspended from 10.30 a.m. until 4 p.m., whereupon the Convention adjourned at

[1] *R.P.* 14-128. [2] *Ib.* 144. [3] *Ib.* 151.

4.2 p.m. When it met at 2.15 p.m. on the Seventh Day, Dr. Evatt reported that the Committee after almost continuous sittings had reached finality. They had been assisted in their deliberations by the Prime Minister, Sir George Knowles, C.B.E., Solicitor-General of the Commonwealth, acting as Secretary. The decision of the Committee was unanimous, but Dr. Evatt reported that this had not been possible without a spirit of give and take. Dr. Evatt also said that the States Premiers had agreed that each of them would do his utmost to secure the passage of the Bill into law as early as possible and that the Drafting Committee recommended that the Convention approve of the following draft Bill:

Bill III: The Commonwealth Powers Bill, 1942.

The following is the text of Bill III:

A BILL for AN ACT to refer certain matters to the Parliament of the Commonwealth until the expiration of five years after Australia ceases to be engaged in hostilities in the present War.

Preamble.

WHEREAS it is enacted by the Constitution of the Commonwealth of Australia that the Parliament of the Commonwealth shall subject to the Constitution have power to make laws for the peace, order and good government of the Commonwealth with respect to matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:

AND WHEREAS at a Convention of representatives of the Commonwealth Government and of His Majesty's Opposition in the Parliament of the Commonwealth, and the Premiers and Leaders of the Opposition in the several States, which was convened to meet at Canberra on the twenty-fourth day of November, One thousand and nine hundred and forty-two, it was unanimously resolved that adequate powers to make laws in relation to post-War reconstruction should be referred to the Parliament of the Commonwealth by the Parliaments of the States:

AND WHEREAS it was further resolved that the reference should be for a period ending at the expiration of five years after Australia ceases to be engaged in hostilities in the present War:

AND WHEREAS it was also resolved that it was desirable that the reference should not be revoked during that period:

AND WHEREAS the Premiers of the several States have agreed to do their utmost to secure the passage through their respective Parliaments, as early as possible, of a Bill in this form, and in any event to introduce the Bill before the thirty-first day of January, One thousand nine hundred and forty-three:

AND WHEREAS it was also agreed that in the execution of laws made by the Parliament of the Commonwealth with respect to matters referred to it by s. 2 of this Act the Commonwealth should, so far as might be reasonably practicable, avail itself of the assistance of the States and their officers, authorities and instrumentalities, and, with the consent of the Governor-in-Council, of any authority constituted under a law of a State:

Be it therefore enacted by ———

Short title.

1. This Act may be cited as the Commonwealth Powers Act, 1942.

Reference of matters to Parliament of Commonwealth.

2. The following matters are hereby referred to the Parliament of the Commonwealth, that is to say—

(*a*) the reinstatement and advancement of those who have been members of the fighting services of the Commonwealth

during the War and the advancement of the dependants of those members who have died or been disabled as a consequence of the War;
(*b*) employment and unemployment;
(*c*) organized marketing of commodities;
(*d*) uniform company legislation;
(*e*) trusts, combines and monopolies;
(*f*) profiteering and prices (but not including prices or rates charged by State or semi-governmental or local governing bodies for goods or services);
(*g*) the production (other than primary production) and distribution of goods, and, with the consent of the Governor-in-Council, primary production, but so that no law made under this paragraph shall discriminate between States or parts of States;
(*h*) the control of overseas exchange and overseas investments and the regulation of the raising of money in accordance with such plans as are approved by a majority of members of the Australian Loan Council;
(*i*) air transport;
(*j*) uniformity of railway gauges;
(*k*) national works, but so that the consent of the Governor-in-Council shall be obtained in each case before the work is undertaken and that the work shall be carried out in co-operation with the State;
(*l*) national health in co-operation with the State;
(*m*) family allowances; and
(*n*) the people of the aboriginal race.

3. (1) This Act shall not be repealed or amended except in the manner provided in this section.

Act not to be repealed or amended without approval of electors.

(2) A Bill for repealing or amending this Act shall not be presented to the Governor for His Majesty's assent until the Bill has been approved by the electors in accordance with this section.

(3) On a day to be appointed by the Governor-in-Council, but not sooner than three months after the passage of the Bill through both Houses of the Legislature, the Bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly.

(4) When the Bill is submitted to the electors, the vote shall be taken in such manner as the Legislature provides.

(5) If a majority of the electors voting approve the Bill, it shall be presented to the Governor for His Majesty's assent.

4. This Act, and the reference made by this Act, shall commence on the date upon which it is assented to, and shall continue in force for a period ending at the expiration of five years after Australia ceases to be engaged in hostilities in the present War; and no law made by the Parliament of the Commonwealth with respect to matters referred to it by this Act shall continue to have any force or effect, by virtue of this Act or the reference made by this Act, after the expiration of that period.

Duration of Act.

Dr. Evatt then mentioned that the "reference" of powers by the State Legislatures was to operate as soon as the Bills were passed by them. Should dispute arise in regard to any of the 14 powers[1] interpretation would be a matter for the High Court.

The adoption of the Report of the Drafting Committee was then moved by the Prime Minister, Mr. Curtin stating that the carrying of the Motion was tantamount to 2 *R*. Senator McLeay recorded his opposition to the approval of the Bill by the Convention and said

[1] *See also Post-War Reconstruction: Temporary Alterations in the Constitution: Notes on the 14 Powers and the Three Safeguards.* Rt. Hon. H. V. Evatt (C'th Govt. Printer, Canberra).

that he approved of the Bill being submitted to the State Parliaments but he did not approve of the Bill as a member of the Convention.

The Motion was then agreed to, " Senator McLeay dissenting ".[1]

The Convention went into Committee on the Bill.

Clause 1 was agreed to.

Clause 2.—Mr. Watts moved in para. (*b*) to insert, after " employment ", the words " not including the fixation of wages and conditions of employment ", which was negatived.

The remaining paras. (*c*) to (*n*) were then taken *seriatim* and agreed to.

Clause 3.—Dr. Evatt mentioned that this Clause followed, almost verbatim, the provision in the Acts of New South Wales and Queensland, which were designed to prevent the repeal or amendment of a law without the consent of the electors of the State. This Clause was agreed to.

Clause 4, the preamble and the long Title were then agreed to.

The Bill (III), as submitted by the Drafting Committee, was then agreed to by the Convention.

Mr. Curtin stated that the Convention had decided that whatever powers were to be added to those already vested in the Commonwealth Parliament during the period of 5 years from the cessation of hostilities shall be the powers to be transferred by the States. There was to be no alteration of the Constitution in the general sense. It was the desire of the Commonwealth Government, as of the Convention, that the Parliaments of the States should pass the draft Bill into law at the earliest opportunity. They had met as an advisory committee of the whole nation. In thanking all the various representatives for their attendance at the Convention, the Prime Minister observed that this was the first Convention which had assembled during the history of federation. The Convention had agreed that, in order that Australia may face the post-War period properly equipped for the task, the Commonwealth Parliament should have more power than the existing Constitution vested in it. That there should emerge from the Drafting Committee a unanimous submission to this Convention was a great and splendid demonstration of Australia's capacity to deal with high political problems.

Mr. Fadden remarked that just as it was said that a bad compromise was better than a good lawsuit, so the compromise that had been agreed to by the States was far better than a Referendum.

At 6.25 p.m. on the Seventh Day the Prime Minister declared the proceedings of the Convention closed.

The States.

Accounts will now be given of the proceedings in connection with the submission of Bill III in the Parliaments of the 6 States.

[1] *R.P.* 166.

NEW SOUTH WALES

By W. R. McCourt, C.M.G.,
Clerk of the Legislative Assembly

Generally speaking, the attitude of the New South Wales Parliament was favourable to Bill III, which attitude was reflected in the debate that took place on the Bill in the Legislative Assembly.[1] So far as this State was concerned, no special investigation by a Commission or other official public inquiry took place, but, naturally, very considerable research and investigation was made.

There was considerable debate on the Motion for leave introduced by the Premier and Colonial Treasurer (Hon. W. J. McKell), after which the Bill was read 1 *R.* on December 10, 1942.[2] The 2 *R.* debate took place on the 15th *idem*[3] and was resumed on the following day,[4] when the Question for 2 *R.* was carried: Ayes, 61; Noes, 7. (12 Members on both sides were paired, 8 in consequence, in most cases, of military duties.) The House went into Committee forthwith[5] and the Bill was reported without amendment, after debate lasting only a few minutes, and, without debate, read 3 *R.* on the voices, after which it was transmitted to the Upper House.

In the Legislative Council on December 16, 1942,[6] Standing Orders were suspended for the remaining stages to be taken " during the present or any one sitting of the House ".

On the following day[7] the Minister of Justice moved 2 *R.*, after which the Bill was committed, reported without amendment and read 3 *R.*

The debate upon the Bill in both Houses, while comprehensive and having in view the great importance of the subject-matter discussed, developed on ordinary lines, with little adverse comment on broad principles, because, as indicated by the voting on 2 *R.* in the Assembly, the majority of Members were in favour of the " reference " being made.

R.A. was duly announced in both Houses and the Bill became N.S.W. Act No. 18 of 1943, in the same form as it had been received from the Convention.

VICTORIA

By P. T. Pook, B.A., LL.M., J.P., *Clerk of the Parliaments*, and F. E. Wanke, *Clerk of the Legislative Assembly*

The Commonwealth Powers Act was passed during Session 1942-43 and was regarded by some as amending the Constitution in one or two respects—viz.:

[1] Nos. 29-32, *N.S.W. Hans.*, 1942, 3rd Session.
[2] 169 *N.S.W. Hans.* 1222.
[3] *Ib.* 1297-1367.
[4] *Ib.* 1370-1413.
[5] *Ib.* 1530.
[6] *Ib.* 1369.
[7] *Ib.* 1437-93.

(*a*) The Act provided that certain specified matters shall be referred by the State Parliament to the Commonwealth Parliament under s. 51 (xxxvii) of the Commonwealth Constitution, which provides that the Commonwealth Parliament may make laws with respect to any matters so referred by a State Parliament.

The Commonwealth Constitution contains no specific provision as to what effect the reference of matters to the Commonwealth Parliament has upon the power of the State Parliament to legislate with respect to the matters so referred, but there is a general provision (in s. 109) that " when a law of a State is inconsistent with a law of the Commonwealth the latter shall prevail and the former shall to the extent of the inconsistency be invalid ".

It would appear therefore that though the reference of the matters to the Commonwealth Parliament may not of itself deprive the State Parliament of the power to legislate upon the matters so referred, yet if the Commonwealth Parliament made laws with respect to any of the matters so referred such laws would prevail over any State Acts with respect to such matters.

However, the better opinion seemed to be that such a reference of matters to the Commonwealth Parliament did not amount to an amendment of the State Constitution as it was no more than the exercise of an existing power.

(*b*) The Commonwealth Powers Act also contains a provision that no repeal or amendment of the Act shall be enacted unless such repeal or amendment has been approved by a majority of the electors voting at a referendum.

During the debate on the Bill it was urged that this provision amounted to an amendment of the constitution of the two Houses. In the Council the President ruled that it would be an amendment of the constitution of the Houses, but in the Assembly the Speaker ruled that it would not be such an amendment.

The argument was as follows: Prior to this provision the constitution of the Council and the Assembly was such that, subject to *R.A.*, they had the complete power of enacting laws, but if and when the provision in question came into operation the constitution of the two Houses would be altered to the extent that with regard to a special class of Bills (viz., Bills to repeal or alter the Commonwealth Powers Act) they would have to share the legislative powers with the newly created legislative body—the electors voting at a referendum.

Debate.—The main arguments put forward in debate both for and against the Bill were:

(*a*) *Arguments For :*

1. That the matters in the Bill were national in character and of common concern to all in Australia and could not be effectively dealt with by separate action in the various State Parliaments. It was

therefore necessary that the central Commonwealth Parliament should have power to deal with these matters.

2. That some of the matters specified in the Bill were, during the War, being dealt with by the Commonwealth Parliament under the Defence powers implied in the Commonwealth Constitution; but when hostilities ceased this Defence power would become uncertain in character, duration and extent. It was therefore necessary to make sure that the Commonwealth should have full power to deal with them in the post-War years, especially in the immediate post-War period of transition from War to peace.

3. That the Commonwealth had entered into certain international Agreements such as the International Wheat Agreement and the Mutual Aid Agreement, and it was necessary that the Commonwealth Parliament should have full power to honour Australia's obligations under such agreements, especially in regard to such matters as production, organized marketing, overseas exchange and overseas investment; and also to implement the conventions of the International Labour Organization, especially in regard to such matters as unemployment, national health, and family endowment.

4. That it was important to ensure that the Commonwealth Parliament should obtain the powers to deal with the matters specified in the Bill before the end of the War in order that it might plan ahead for the solution of the problems that would arise in the post-War period.

5. That the Commonwealth Parliament should be given the necessary additional legislative powers by the method proposed in the Bill—namely, reference of the specified matters to the Commonwealth Parliament by the State Parliaments under s. 51 (xxxvii) of the Commonwealth Constitution, because it would be very undesirable to adopt in War-time the only alternative method—namely, a referendum of the people of Australia under s. 128 of the Constitution.

(*b*) *Arguments Against :*

1. That it was undesirable to refer the specified matters to the Commonwealth Parliament, because to do so would be a departure from the Federal principle, which was the accepted system of government in Australia, and would be an ill-advised step in the direction of unification.

2. That Parliament already had power under the Commonwealth Constitution to deal with some of the matters, and the remaining matters could be most effectively dealt with by co-operation between the Commonwealth and the State Parliaments.

3. That the provision in the Commonwealth Constitution authorizing the State Parliaments to refer matters to the Commonwealth Parliament was never intended to be used to extend the area of Commonwealth legislation in a wholesale manner as was proposed in the Bill; to do so would, in effect, be amending the Commonwealth

Constitution, and the Constitution provided in s. 128 that it shall only be amended in the manner there set out.

4. That it was not constitutionally possible for a State Parliament to revoke or alter a reference of matters once made to the Commonwealth Parliament. Therefore the safeguard against revocation or alteration of the reference included in Clause 3 of the Bill was unnecessary.

5. (i) That in referring matters to the Commonwealth Parliament it was not constitutionally possible for a State Parliament to limit the " reference " to a period of time and therefore the Clause of the Bill providing for such limitation was invalid, with the result that either the whole reference would fail, or, if the limiting section was severable from the reference section, the reference would be a permanent reference of the matters.

(ii) That even if it were constitutionally possible to limit the reference to a period of time, the words used in the drafting of the Bill were not effective to so limit the reference; amendments should be made to give effect to the intention to limit the reference to a period of time.

Note.—In connection with this last-mentioned aspect of the Bill, 5 (i) and (ii), the opinions of several of the leading constitutional authorities in Australia were obtained by the State and Commonwealth Governments and *by other interested parties, which opinions were freely quoted or referred to by Members in debate.*

R.A.—When presented for *R.A.* the Governor reserved the Bill for the signification of His Majesty's pleasure thereon. *R.A.* was subsequently announced, and the Bill became Act No. 4950.

It has, however, not been brought into operation because the condition precedent to proclamation of the Act which was inserted by the Assembly as mentioned above has not been complied with—namely, that similar legislation was passed by all the other State Parliaments.

The proceedings upon Bill III in the two Houses of this State Parliament were as follow:

In the Legislative Assembly.—The Bill was very fully debated and many amendments were proposed in the list of matters to be referred to the Commonwealth Parliament, but no such amendments were carried.

The only amendments carried were the following, proposed by the Minister in charge of the Bill:

1. The " reference " section was amended to provide that the " reference " shall be " subject to the limitation and conditions in this Act contained ".

2. The section limiting the " reference " to the specified period of time was amended to provide that the Act as well as the reference shall continue in force until the expiration of the specified period " and no longer ".

3. A new Clause was inserted declaring that: (*a*) the Act shall not be construed as " referring " any matters permanently to the Commonwealth Parliament; (*b*) the matters " referred " shall be construed as matters limited in time, and the " reference " clause shall be construed as " referring " the matters so limited and not otherwise; (*c*) the section limiting the " reference " to the specified period shall not be construed as severable from the " reference " section; and (*d*) if the section limiting the " reference " to the specified period or any provision of that section was beyond the power of the Victorian Parliament or is inoperative or ineffective then the " reference " section shall be void.

Note.—The foregoing amendments 1, 2 and 3 were made to meet the constitutional arguments against the Bill mentioned above; 5 (i) and (ii) were designed to ensure that the most effective words be used to limit the " reference " to the specified period of time, and to ensure that if it be held constitutionally invalid to so limit the " reference " the " reference " section should be void and so prevent a permanent " reference ".

A new sub-clause was inserted providing that the Act should come into operation on a day on which the Governor-in-Council declared by notification published in the *Government Gazette* that he was satisfied that legislation, the same or substantially the same as the Act, had been enacted in each of the other States of the Commonwealth.

Note.—This amendment was inserted to ensure uniformity of action in all the States by providing that the Victorian Act should not come into operation until it was known that similar legislation had been passed by all the other State Parliaments.

In the Legislative Council.—The President ruled that the Bill was one by which an alteration may be made in the Constitution of the Council or the Assembly and that therefore 2 *R.* and 3 *R.* of the Bill were required by the Victorian Constitution Act to be passed by an absolute majority in both the Council and the Assembly. The Speaker had previously ruled in the Assembly that the Bill was not one which was required to be passed by an absolute majority. The Council thereupon passed a Resolution that, while not contesting the President's statement of the precedents established in respect of Bills which may have involved similar considerations, the Council was of opinion that the 2 and 3 *R.* of the Bill were not required to be passed by an absolute majority, and that the Bill should be proceeded with.

This Resolution was regarded as overriding the President's ruling and the Bill (including the amendments made by the Assembly as mentioned above) passed by the Council through all its stages without amendment.

QUEENSLAND

By T. Dickson, J.P., *Clerk of the Parliament*

The proceedings in the State Parliament were as follow. The Bill was introduced on January 13, 1943, read 1 *R.* and 2 *R.* moved. Debate continued on January 14 and 15; 2 *R.* was carried on division on January 15: Ayes, 29; Noes, 16; committed, reported without amendment, read 3 *R.* and passed that day, receiving *R.A.* on the 28th *idem.*

R.A.—Certain telegrams passed between the Dominions Office and the Governor of New South Wales in regard to the Assent given by him to the New South Wales Bill. It was stated by the Dominions Office that the Bill should have been reserved, but instructions were conveyed to the Governor to assent to the Bill under s. 1 (i) (*c*) proviso, Australian States Constitution Act, 1907. As the same position obtained in Queensland, the Governor sought instructions from His Majesty to assent to the Bill under the same authority. Instructions so to proceed were received and the Governor gave fresh Assent to the Bill on August 26, 1943.

Debate.—The arguments advanced, in debate, both for and against the measure were as follow:

(*a*) *Arguments For :*

That powers were merely being handed over to the Commonwealth under s. 51 (xxxvii) of the Commonwealth Constitution for a limited period; that the powers referred would come back to the States automatically—if the States wanted them. In certain matters—*e.g.*, uniform company legislation—States might agree to give Commonwealth the power in perpetuity; that in the Bill there was definite recognition of the States and of co-operation with the States—giving the people of Australia greater security; that the powers given were specific; that in reality the State did not lose the powers, but exercised them concurrently with the Commonwealth Parliament—only when there was a clash of powers would the Commonwealth exercise its supremacy; that giving the power over employment and unemployment to the Commonwealth was a more direct method than that at present in vogue—an indirect way of giving or lending money to the States whereby employment might be provided; that the Commonwealth Government would continue the existing practice of not interfering with the economic and industrial condition of the various States; that in the carrying out of large national works the Commonwealth should have the power to go into a State and to do what might be necessary to bring the work to completion; that at the War's end the Commonwealth Government might be so far involved in half-completed works that it would be essential to preserve those powers to them for a sufficient period to complete the works; that in no circumstances would the Commonwealth Government interfere with the legislation of the States; that Commonwealth aims were to get co-opera-

tion between Commonwealth and States and between public authorities and private enterprise; that in the post-War period it would be necessary for the Commonwealth to carry out national works of strategic value in North Australia having a big bearing on future development of the Commonwealth; and that for the conditions of 1943 a Constitution enacted in 1900 was not sufficient.

(*b*) *Arguments Against :*

That once the powers have been referred to the Commonwealth they became part of s. 51 of the Commonwealth Constitution, which could not be altered except by a Commonwealth Referendum; that there was no provision for a " transfer " of powers for a definite period and becoming part of the Commonwealth Constitution—therefore no State law could alter a period of " reference "; that a temporary transfer of powers was impracticable; that national works in progress, marketing schemes, arrangements of a contractual nature, production schemes involving bounties, suddenly discontinued after a period of years, would result in chaos; that a centralized Government would mean that States distant from large centres of population, such as Queensland and Western Australia, would not have their claims fully considered, States with larger populations getting undue benefit; that there was no limitation on the powers sought to be transferred; that the powers proposed to be referred were not clearly defined—such terms as." post-War planning ", " employment and unemployment " and " organized marketing of commodities " could mean anything; that the Premier and the Leader of the Opposition should have consulted their respective States after the Convention and then, at a following Convention, come to a decision on terms of a Bill; that certain powers not referred should have been referred, such as transport, education, marriage, divorce and industrial laws; that it would tend to a duplication of Government Offices—Commonwealth and State; that while in favour of increased Commonwealth powers, final power should be decided by a peace-time Convention and ratified by Referendum; that powers once referred became part of the Commonwealth Constitution and could not come back to the States except by Referendum, under s. 128 of the Commonwealth Constitution; that it was not possible for the powers to revert to the States because neither Commonwealth nor State law could alter the Commonwealth Constitution—therefore the reference was not temporary, but permanent; that the Commonwealth Government having exercised referred powers for a period would be loth to return them to the States; that the transfer of powers by a Sovereign Parliament should not be proceeded with without the consent of the people; that the knowledge and experience gained by Queensland over a long period of time in the successful marketing of primary products would be lost if replaced by a Commonwealth system; that the influence of big business concerns in New South Wales and Victoria

would militate against Queensland obtaining her just share of contracts in the post-War reconstruction period; that, in effect, the State would be run by a system of bureaucracy controlled by civil servants at Canberra, over whom the Queensland Parliament had no control; that it was a move to establish the socialistic plans of the Commonwealth Labour Government; that it was a definite step in the direction of unification; and that the Bill was unnecessary as greater co-operation between the Commonwealth and States could have been obtained without the reduction of State powers.

SOUTH AUSTRALIA

By Captain F. L. Parker, F.R.G.S.A.,
Clerk of the House of Assembly and Clerk of the Parliaments

The Commonwealth Powers Bill which was introduced into the Parliaments of all the States originated in a plethora of conflicting opinions by constitutional and political leaders.

As far back as 1939, when defence activities demanded, where necessary, the abandonment of State boundaries in the creation of new commands and training and administrative centres, the understanding of " for the duration " and " for the Empire's cause " helped to assuage the impact of official necessity.

The Commonwealth Government had full powers and authority to take whatever steps were considered necessary for the protection of Australia, and the multiplicity of restrictions incidental to an all-out War effort were accepted with good grace. The States were armed with emergency powers to supplement Commonwealth activities and to co-ordinate more effectively conditions peculiar to each State.

On the receipt by the Premier of the invitation to attend the Convention to meet on November 24, 1942, the following Motions were tabled in each House of the State Parliament:

1. That this House is opposed to the Constitution Alteration (War Aims and Reconstruction) Bill, 1942,[1] or any alterations which destroy the Federal character of the Constitution.
2. That the Federal Constitution is essential for the welfare, progress and development of Australia, particularly of the outlying parts.
3. That any great constitutional change should never be carried out without careful consideration and that such consideration should be free from the anxieties of a totalitarian war involving the entire concentration of the people of this nation on the struggle for its existence.

The Premier (Hon. T. Playford) said that the effect of the two main provisions of the Bill was really to confer sovereign and unrestricted legislative power upon the Commonwealth Parliament. If these pro-

[1] Bill I.—[Ed.]

visions became law the Commonwealth of Australia would at once cease to be a Federation and would become a unitary State with all power concentrated in one Parliament with power to abolish the Governor-General, the High Court and the Senate, and establish a unicameral system of government. To sum up: every safeguard in the Constitution for the rights of individuals and the rights of the States would cease to have effect and the Federal Parliament would become in Australia as sovereign as the Imperial Parliament in Great Britain, but without any of those safeguards and restraints which the tradition and experience of hundreds of years imposed upon the Imperial Parliament.

The Hon. R. S. Richards (Leader of the Opposition) asked for a conference to frame an amendment so as to obtain unanimity and leave the way open for any further possible Commonwealth suggestions. The Debate disclosed that the majority of opinion was that a Referendum was most undesirable at that time; that the national security powers which extended for 12 months after the War were ample for the continuance of economic security and social justice; and that post-War reconstruction problems could be more successfully solved with the co-operation of the States.

The Motions, as submitted, were carried by substantial majorities in both Houses.

Early in 1943, a specially adjourned meeting of the State Parliament was arranged, to deal solely with Bill III; it lasted a little over 2 months, and the debates ran into 500 pp. of *Hansard*. It is therefore impossible to give even the main arguments for and against each section and keep this Article within reasonable limits.

The Debate, however, disclosed that a majority favoured transferring matters regarding " repatriation, unemployment, national works, air transport, family allowances and aborigines ". In Committee the remaining matters were considerably restricted and a Clause was inserted by which the transfer of powers was not severable from the time limit and that if any limitation, restriction or condition applying to any referred matter was beyond the power of the State Parliament the reference of that matter shall be void.

The Legislative Council further drastically restricted the powers and finality was reached only after a long conference between that House and the House of Assembly.

The following information shows the fate of the various amendments moved in regard to Bill III, in both Houses of this State Parliament:

Clause 2 (*after* " *Reference of* " *matters to Parliament of Commonwealth*).

Para. (*a*).—The words " the " after " during " and " consequence of " respectively were substituted by " any ".

Para. (*b*) was amended to read:

the employment of unemployed persons on national works, public works and local government works, and the relief of unemployed

persons by grants and loans of money and goods and by unemployment insurance and occupational training.

Para. (*c*).—The following words were added: " of which there is normally a surplus exported from the Commonwealth ". The Upper House did not insist upon its amendment to insert the following words after (*c*): " the carrying into effect of schemes, approved by the Parliament of the State for the ".

Paras. (*d*) *and* (*e*).—The Upper House insisted upon these 2 paragraphs being struck out. The Lower House had amended para. (*d*) by inserting before " trusts " the words " the regulation of " and the addition of " other than those formed or to be formed under Acts of the State ".

Para. (*f*).—The Lower House struck out all words after " profiteering " and the Upper House insisted upon the paragraph being struck out. The Lower House amendments were then: to insert before " prices " the words " the regulation and control of " and to add after " services " the following: " in connection with transactions occurring within 3 years after the cessation of hostilities and within such further period not exceeding 2 years as the Parliament of the State approves ". The Upper House insisted upon this paragraph being struck out, and eventually the following paragraph represented the compromise arrived at:

> (*f*).—the regulation and control of prices in connection with transactions occurring within 3 years after the cessation of hostilities but so that no law made under this paragraph shall come into force until approved by the Governor-in-Council.

Para. (*g*).—The Upper House insisted upon this paragraph being struck out. The Lower House had amended the paragraph by omitting " (other than primary productions) " and the words " and with the consent of "; the substitution for the latter amendment of the words " but so that no law made under this paragraph shall come into force until approved by "; and the deletion of " primary production, but so that no law made under this paragraph "; and substitution of " or ". The Upper House, however, again insisted upon the striking out of this paragraph. The Lower House then amended the paragraph to read as follows:

> the encouragement of production and of the establishment of new industries and the continuance by the Commonwealth of the industries being carried on by the Commonwealth at the time of the cessation of hostilities, but so that no law made under this paragraph shall discriminate between States or parts of States,

upon which the Upper House did not insist.

Para. (*h*).—The Lower House amended this paragraph to read: " the control by the Commonwealth Bank of overseas investment and of the rate of overseas exchange and the fixing of maximum rates of interest by a majority of members of the Australian Loan Council ".

The Upper House amended the paragraph to read: " the control by the Commonwealth Bank of the rate of overseas exchange ", but the following was the compromise arrived at: " the control by the Commonwealth Bank of the rate of overseas exchange and of rates of interest ".

Paras. (*i*) *and* (*j*) were respectively amended by the House of Assembly to read: " the regulation of air transport " and " the conversion of any railways of the State to a uniform Australian gauge on terms approved by the Parliament of the State ".

Paras. (*k*), (*m*) *and* (*n*) were not amended, but para. (*l*) was amended by the Lower House to read: " national health, but so that no law made under this paragraph shall come into force until approved by the Governor-in-Council ". The Upper House struck out the paragraph but did not insist upon its amendment.

Clause 3 was not amended, but a new *Clause* 4 (Non-severability of certain provisions) was inserted to follow Clause 3 in the Bill, as follows:

> 4. Section 2 of this Act is not intended to refer permanently to the Parliament of the Commonwealth the matters therein mentioned, and therefore s. 5 of this Act shall not be severable from s. 2 of this Act; and if s. 5 of this Act or any provision of that section is beyond the power of the Parliament of the State, s. 2 of this Act shall be void,

to which the following sub-clause was added in Committee:

> (2) If any restriction, limitation or condition applying to any matter referred to the Parliament of the Commonwealth by s. 2 of this Act is beyond the power of the Parliament of the State, the reference of that matter to the Commonwealth shall be void.

Clause 5 (Duration of Act) was amended by the addition of the following sub-clause (2), which also appeared in the South Australian State Act as passed (No. 3 of 1943):

> (2) For the purposes of this Act, Australia shall cease to be engaged in hostilities on the day on which by reason of a general armistice or other arrangements all warlike operations against Germany, Italy and Japan, in the present War shall have ceased.

R.A.—A point of interest arose in connection with the *R.A.* given by the Governor. When the Bill was introduced the question was asked whether it would require an absolute majority for 2 and 3 *R.* Clause 8 of the South Australian Constitution Act reads (*inter alia*):

> (*a*) it shall not be lawful to present to the Governor, for His Majesty's Assent, any Bill by which an alteration in the constitution of the Legislative Council or House of Assembly is made, unless the second and third readings of that Bill have been passed with the concurrence of an absolute majority of the whole number of the Members of the Legislative Council and of the House of Assembly respectively:

(*b*) every such Bill which has been so passed shall be reserved for the signification of His Majesty's pleasure thereon.

It has been the practice to interpret this Clause widely and only in cases where the constitution of either House was altered has an absolute majority been insisted on and the Bill reserved for *R.A.*

Both the Houses accepted this view in connection with the Commonwealth Powers Bill—that only ordinary majorities were necessary.

The Crown Law Officers advised that it was competent for the Governor to give his assent, which he did on April 1, 1943, and it became South Australian State Act No. 1 of 1943. The Dominions Office, however, ruled that under Clause 1 of Imperial Act No. 7/1907 the Bill should have been reserved for His Majesty's Assent and transmitted (para. [*c*] of the proviso to Clause 1) His Majesty's instructions to the Governor to assent to the Bill, which he did on August 5, so that it became South Australian State Act No. 3 of 1943. This action therefore now registers two identical Acts with differing numbers and dates of Assent, but as the matter is not completely free from doubt either one can operate in the event of any future question as to procedure.

WESTERN AUSTRALIA

By F. G. Steere, J.P.,
Clerk of the Legislative Assembly

The experience of the Commonwealth Government during World War II had convinced it of the necessity of obtaining much wider powers than were conferred by the Commonwealth Constitution in its present form. Considerable discussion took place in both Houses of this State Parliament on Bill III, which was read 2 *R.* in the Legislative Assembly on January 26, 1943: Ayes, 30; Noes, 10.

On the Motion of Mr. A. F. Watts (Leader of the Opposition), the Bill was referred by the Assembly to a *Sel. Com.* of 4 Members (including the 2 State representatives at the Convention), the Committee being elected by ballot. This Committee had power to call for persons and papers and " to sit on days over which the House stands adjourned and report this day four weeks ". A Motion moved on the same day inviting the Legislative Council to appoint the same number of members with power to confer with the Assembly Committee was rejected: Ayes, 10; Noes, 28. The *Sel. Com.* was also given power to make authorized statements to the Press from time to time, and the Standing Orders were suspended for this special case.

This Committee sat 12 times and heard 16 witnesses, including the Solicitor-General (Mr. J. L. Walker, K.C.) and Mr. N. Keenan, K.C., M.L.A.[1] Notices were issued through the Press requiring any person desiring to give evidence to send in an outline thereof. Only one of

[1] Some legal opinions expressed are given below.—[Ed.]

the witnesses advocated acceptance of the Bill without amendment. One witness contended that the whole trend of Commonwealth activity was toward the acquisition of more power, which had proved detrimental to Western Australia. Another considered it unwise to clothe the Commonwealth Parliament with more authority and submitted that the best interests of the people would be served by a reduction rather than by an increase of power to that Parliament. Other witnesses quote the " Case for Secession ";[1] deplored the haste with which this legislation was being pushed through the Parliaments of Australia; believed that the respective powers of Federal and State Governments needed some orientation; that there was need for State control over certain products, without bureaucratic control; that if certain of the powers were to be granted they should be subject to the Atlantic Charter; and that in regard to Native Affairs uniform Commonwealth control was more desirable.

The *Sel. Com.* also remarked that the weight of evidence was not in favour of the Bill in its present form, which varied from a desire for its complete rejection to amendments to limit and restrict the powers to be transferred.

The *Sel. Com.* included the following recommended amendments in the Schedule to its Report:

1. In the preamble in line 10 on p. 2 omit the words " in this form " and substitute the words " in the form in which the Bill for this Act was approved at the said Convention ".

2. In Clause 2 in line 28 on p. 2 omit the words " the following matters " and substitute the words " subject to the limitations and conditions in this Act contained the following matters ".

3. Insert a new Clause after Clause 3 to stand as Clause 4, as follows:

4. (*a*) This Act shall not be construed as referring any matters permanently to the Parliament of the Commonwealth.

(*b*) The matters referred by s. 2 of this Act shall be construed as matters limited in time to the period mentioned in s. 5 of this Act to the intent that s. 2 of this Act shall be construed as referring the matters so limited and not otherwise.

(*c*) Section 5 of this Act shall not be construed as severable from s. 2 of this Act.

(*d*) If s. 5 of this Act or any provision of that section is beyond the power of the Parliament of the State or is inoperative or ineffective then s. 2 of this Act shall be void; and

(*e*) In so far as the provisions of s. 5 of this Act are inconsistent with any provision of s. 16 of the Interpretation Act, 1918, s. 5 of this Act shall prevail and take effect and s. 16 of the Interpretation Act, 1918, shall not apply.

4. Amend Clause 4 to read as follows:

[1] *See* JOURNAL, Vols. III, 15; IV, 20.

(1) Subject in all respects to the earlier repeal of this Act and to any amendment thereof this Act and the reference made by this Act shall commence on the date upon which this Act is assented to and shall continue in force for a period ending at the expiration of five years after Australia ceases to be engaged in hostilities in the present War and no longer, and the reference made by this Act is subject to the limitation that no law made by the Parliament of the Commonwealth with respect to matters referred to it by this Act shall continue to have any force or effect by virtue of this Act after the expiration of that period.

(2) For the purposes of this section, Australia shall be deemed to cease to be engaged in hostilities on the day on which by reason of a general armistice or other arrangement all warlike operations against Germany, Italy and Japan in the present War shall have ceased.

The following is the gist of those conclusions and recommendations which were unanimously agreed to:

(*a*) Assuming the above amendments are introduced there are good grounds for belief that the States would be safeguarded to this extent that the reference of powers as so amended would either be constitutionally valid as to limitation of time, or the whole reference would be wholly inoperative.

(*b*) It was desired that a declaratory judgment be obtained from the High Court of Australia as to the reference power being limited in time, but *Sel. Com.* did not see how such could be obtained.

(*c*) That unless the operation of s. 16 of the Western Australian Interpretation Act[1] be excluded from Bill III, it would have the effect of continuing the validity (after expiry of the limited period) of Commonwealth legislation passed by virtue of the reference contained in the Bill. (In this matter the Committee had accepted the advice of the State Solicitor-General.)

(*d*) The amendment to Clause 4 of Bill III as to cessation of hostilities (see above) was preferred to that made by the South Australian Parliament.

(*e*) The Committee was also of opinion that paras. (*a*), (*l*) and (*m*) of Clause 2 of Bill III be agreed to as printed in the Bill.

The Premier (Hon. J. C. Willcock) and the Minister for Labour (Hon. A. R. G. Hawke) in *their* Report[2] said there was urgent need to clarify the position as to the powers and degree of responsibility of the Commonwealth on the one hand and the States on the other hand in connection with these problems in order that planning might proceed rapidly and on an economic basis. Otherwise, Australia would face the post-War reconstruction period without a proper definition of the powers to be exercised and the responsibility to be shouldered by the

[1] 9 Geo. V, No. XX. [2] *Sel. Com. Rep.* 9-10.

Parliament of the Commonwealth and those of the States. Because the problems of post-War reconstruction would be nation-wide in character, it was thought that the Commonwealth Parliament should shoulder most of the responsibility. The Commonwealth was the only authority in Australia capable of dealing with the problems. It was willing and should certainly be given the necessary powers to enable its responsibility to be properly discharged. This placing of direct responsibility upon the Commonwealth in respect of Western Australia would cause the Commonwealth Parliament and Government to regard Western Australia, in fact as well as in name, as much a part of Australia as were New South Wales, Victoria and Queensland. If the powers be not referred the burden of responsibility upon the State in respect of post-War reconstruction problems would prove a crushing one, especially in regard to finance. These two gentlemen therefore considered there had not been sufficient evidence brought forward to warrant any amendments to the powers outlined in the Bill.

The Report of Mr. Willcock and Mr. Hawke is followed by a Statement of the Views[1] of Mr. A. F. Watts (Leader of the Opposition) and Mr. Ross McDonald (Leader of the National Party) in the Legislative Assembly, on matters upon which the *Sel. Com.* was not unanimous. They considered that the Federal Parliament, if granted the powers asked for in Bill III, would, during their currency, be able to supersede, to a great extent, the functions of the State Parliament and Government. The vestiges of sovereign power which the State would be able to claim as exclusively its own would be so slight and inconsiderable that the people of Western Australia could be said to have substantially lost, for all practical purposes, the existing sovereign powers of the State. Matters of State concern, especially those relating to trade and commerce and production and industry, should be regulated by a Parliament and Government in their midst, accessible to their representations and available and able to give prompt and final decisions on any matters referred to them. To hand over vast powers without machinery or safeguards against centralization and bureaucratic control could militate seriously against the future of this State. There was no indication of public opinion that would justify Parliament transferring powers in the form asked for by the Federal Government. They were therefore of opinion that the State Parliament should be guided by the following principles:

(*a*) Any powers referred should be in regard to matters substantially of national character.

(*b*) They should be referred in such a manner as to ensure that the exercise of them by the Federal Parliament would be for the benefit of Western Australia as well as the rest of Australia, so that if (in any adverse constitutional determination) they should prove to have been transferred permanently to the Federal Parliament no material elimination of the self-governing rights of this State could ensue.

[1] *Ib.* 11-16.

(*c*) The State Parliament should decline to refer any further or increased powers unless and until necessity for such an added reference should be plainly demonstrated.

These 2 Members then made detailed recommendations as to paras. (*a*) to (*l*) of Clause 2; the deletion of Clause 3; and the rejection of the Bill if their amendments were not substantially agreed to. It was also thought that, with reference to paras. (*d*) and (*e*) of Clause 2 and proposed new Clause 5, the reference of power to make uniform company laws was not apt in a Bill for a " reference " of a temporary nature.

The amendments subsequently made by Parliament in Clause 2 of Bill III were as follow: Paras. (*a*), (*k*) and (*m*) were agreed to; paras. (*b*), (*c*), (*e*) and (*j*) were amended; paras. (*d*) and (*e*) were deleted; of para. (*f*) only the word " profiteering " remained; in para. (*h*) all words were struck out with the exception of the words " overseas exchange "; in para. (*i*) the words " regulation of " were inserted; and in para. (*n*) the words " incorporation with the State " were added.

The Bill was then passed as amended.

TASMANIA

By C. H. D. Chepmell,
Clerk of the Legislative Council

The following were the proceedings in this State Parliament in Sessions 1942-43 and 1943 in regard to Bill III:

Bill III was introduced into the House of Assembly of Tasmania by the Premier on December 15, 1942, was read 2 *R.* on the following day with one dissentient voice, and passed through its remaining stages without amendment. The Bill was received by the Legislative Council the same day, and the suspension of the Standing Orders was moved to enable the Bill to be passed through its various stages at such times as the Council might appoint. The Council, however, refused to consider the Bill until after the Christmas recess on the ground that Members had not had the opportunity to study its provisions, and the 2 *R.* of the Bill was set down for January 19, 1943. The Debate on the Bill took several days and 2 *R.* was negatived on division: Ayes, 7; Noes, 10.

On March 30, 1943, the first day of a new Session, Bill III was again introduced in the House of Assembly by the Premier, which Bill contained the same provisions as that of the previous Session with the addition of the following new Clause 5:

> This Act shall be read and construed to the intent that if s. 4 of this Act or any part thereof shall exceed the legislative power of the State, this Act shall not be a valid enactment to the extent to which it is not in excess of that power, but the whole of this Act shall be void and of no effect; and s. 3 of the Acts Interpretation Act, 1831, shall not apply in relation to the interpretation and construction of this Act.

On April 1 this Bill was read 2 *R.* in the House of Assembly (Ayes, 20; Noes, 2) and a Resolution was agreed to for the appointment of a Joint Committee of both Houses to consider and report upon the provisions of the Bill. This proposal, however, was subsequently rejected by the Legislative Council. The Assembly at a later date passed the Bill with an amendment adding at the end of Clause 1 the following sub-sections:

(2) This Act shall not come into operation unless and until the Governor, by proclamation, certifies that the Bill for this Act has been approved by a majority of the electors at a poll of electors taken in accordance with a law enacted by Parliament in that behalf.

(3) In this section " electors " means persons qualified to vote for the election of Members of the House of Assembly.

The Bill was received by the Council on April 14, 1943, and on the 26th of the following month the Question for 2 *R.* was amended and the Bill ordered to be read 2 *R.* this day 6 months.

The arguments used in debate both for and against the Bill may be summarized as follow:

Arguments For :

That the Bill had the unanimous approval of all Federal leaders and State Premiers at the Convention; that the State was asked to hand over powers it could not use effectively itself; that the powers sought were necessary for post-War reconstruction and should be obtained as early as possible to enable planning and preparation for such work; that although the Commonwealth Government exercised some of the powers sought in the Bill by virtue of the regulations made under the National Security Act, such powers were not adequate to carry out reconstruction, and, moreover, they would cease to operate 6 months after the cessation of hostilities when reconstruction would still be in its early stages; that unless the Commonwealth Government were given power over employment and unemployment a depression might be expected after the War; that the powers were not to be given permanently to the Commonwealth Parliament, but for a period of 5 years after the cessation of hostilities, when the Act would cease to operate; that the objection to seeking the powers in question by Commonwealth Referendum was the undesirability of distracting the attention of the people from concentrating on the War effort by submitting for their approval highly controversial matters; moreover, if the powers sought were obtained by a Referendum they would be lost permanently to the States; and that if the Bill was rejected it would not prevent the Commonwealth Government from proceeding with plans for reconstruction from which Tasmania would derive no benefit.

Arguments Against :

That the Commonwealth Parliament already had powers in regard to members of the fighting forces and their dependants, as well as

other matters proposed to be referred, and the Commonwealth, in co-operation with the States, had, between them, the necessary powers to carry out the work of post-War reconstruction; that some of the powers proposed to be transferred were so vague and indefinite that their application would depend almost entirely on the whim of the administration; that the Clause limiting the duration of the operation of the Bill was, in the opinion of some constitutional lawyers, invalid, and, in any case, alterations in the economic and industrial organization of the people initiated during the period of reconstruction, and commitments entered into, could not be undone or set aside when the Act ceased to operate; that the Commonwealth Government had already made the War an excuse for putting into force its own policy whenever it had the power to do so, and if it obtained the powers sought it would use them extensively for the nationalization of industry, thus committing Australia irrevocably to becoming a socialist State; that if these powers were given to the Commonwealth it would deprive the States of some of their most important functions, and would be a great step towards unification; that, although the Convention was stated to be representative of all political Parties, in fact the Labour Party, as a whole, and some of the members of other Parties, such as Mr. Hughes and Mr. Fadden, were known to be in favour of reducing the powers of the State Parliaments, and, in some cases, of unification; and that the proper procedure for amendment of the Constitution was for the Commonwealth Parliament to submit the amendments to Commonwealth Referendum. Certain Members of the Legislative Council were in favour of referring some of the powers sought to the Commonwealth Parliament, but did not feel justified in handing over such extensive powers without a mandate from the electors of Australia; and that they could not accept a Tasmanian Referendum in lieu of a Commonwealth Referendum.

Some Legal Opinions.

On February 25, 1943,[1] a full text (about 30 pp.) of all the opinions on the Commonwealth Powers Bill given by the Legal Advisers of the Commonwealth, together with copies of opinions given on the Bill by State Legal Advisers and other counsel, was laid on the Table of the Senate.

An article also appeared on Bill III in the *Australian Law Journal*[2] in which it was stated that the Crown Solicitor for South Australia (Mr. Hannan, K.C.), when he returned from attendance at the Convention, found that the New South Wales Commonwealth Powers (War) Act, 1915, had been used as a precedent for Bill III, but with certain omissions, which caused him to express serious doubts as to the legal effect of such Bill. Most of the disputation, continued the article, turned on Clauses 2 and 4 of Bill III, from which the following words had been omitted:

[1] 173 *C'th Hans.* 1003. [2] *Mar.*, 1943.

2. " Subject to the limitations and conditions in this Act contained ".

4. " and no longer " and " are subject to the limitation that ".

Mr. G. Ligertwood, K.C., was of opinion that the Bill did not give legal effect to the intention that the reference should be limited in time, nor to the intention that laws passed under the reference should cease to have all force and effect after the expiration of the 5-year period. He therefore advised that the New South Wales words should be restored, otherwise the intention of the Convention would be defeated. He also suggested the addition of a provision requiring every Commonwealth Act passed, by virtue of the reference, to contain a provision limiting its operation, force and effect to the restricted period. In answer to specific questions, he was of opinion that the State could transfer powers for a limited time and that the State Bill must be passed by absolute majorities and be reserved for *R.A.* Further, he established that it appeared an incontrovertible legal proposition that " the Parliament of South Australia has no power to make a law directly fixing the period within which a law of the Commonwealth shall operate ".

The Commonwealth Legal Advisers (Sir Robert Garran, G.C.M.G., K.C., Sir George Knowles, C.B.E., and Professor K. H. Bailey) concluded that the Bill did effectively carry out the intentions of the Convention and disagreed with Mr. Ligertwood's opinion to the contrary. They considered the omitted New South Wales words in Clauses 2 and 4 superfluous. They objected to Mr. Ligertwood's proposed addition to Clause 4 as unnecessary and unworkable, because, by reason of such Clause, the " reference " would cease to support Commonwealth Law at the end of the prescribed period, no matter whether the law itself so provided or not.

In the meantime, the Victoria Government had apparently sought advice of its Legal Advisers, and the Crown Solicitor, Mr. F. G. Menzies, reported that he was unable to agree with Mr. Ligertwood's opinion that the Bill as drafted did not give effect to the intention of the Convention.

The Victorian Chamber of Commerce invited Mr. W. R. Fullager, K.C., to consider a number of questions. Some of the questions he was able to put aside on the ground that they were hardly of a legal character, but some constitutional questions he thought were " questions of great difficulty and attended by great doubt ", and he was dismayed to find no authority directly bearing upon them. However, he came to the conclusion that Bill III did not effectively refer anything to the Commonwealth at all, but there was a real danger that Clause 2 might be held to contain a valid reference, while 4, or at least the latter part of it, was held to be beyond the powers of the State. Mr. Fullager introduced a new idea into the discussion—namely, that a State could not constitutionally transfer powers to the Commonwealth for a limited time as the Bill sought to do.

In the meantime, the Victorian Government took opinion of Mr. Wilbur Ham, K.C., who held that it was not possible for a State Parliament to grant to that of the Commonwealth power to make laws in respect of matters proposed to be referred and at the same time to limit the period during which such laws may operate. " As soon as the State Act is duly passed the ' reference ' takes place and thereafter it is a fact which has happened. It cannot be said ' to continue in force '. It was a concluded result. The State Parliament could not revoke or cancel or destroy or affect it in any way." The Constitution authorized a gift but not a loan of powers by the States to the Commonwealth.

To this the Commonwealth Advisers retorted that " a gift need not be a monument more lasting than brass and higher than the Pyramids: it may be something perishable and insignificant. It rests with the giver to decide what he gives: a fee simple or a term of years." The Commonwealth Legal Advisers reported that they could " find no ground for suggesting that a State Parliament in referring a matter to the Commonwealth Parliament cannot define or limit the scope of the matter, or of the power to make laws with respect to the matter, in any way (not inconsistent with some express provision of the Constitution) so as effectively to restrict the exercise of the power granted by the " reference ".

The Commonwealth Legal Advisers explained that Clause 4 limited the virtue of the reference—*i.e.*, limited the reference and the scope of the reference.

Mr. Ham's view was that " no ingenuity could devise a way to get round the constitutional limitations " which stood in the way of giving effect to the intention of the Convention ". In a separate opinion, with which Mr. Fullager subsequently agreed, Mr. Ham advised that the power of the States to legislate in respect of matters referred would continue to exist concurrently with that of the Commonwealth Parliament. At the Convention Dr. Evatt had indicated his view that Commonwealth legislation passed in virtue of a reference limited in time would cease to operate at the expiration of that time.

Various other divergences of legal opinion on the Bill occurred, which space will not admit of being dealt with here.

In Western Australia, Mr. Norbert Keenan, K.C., M.L.A., considered that the power of reference included in the Constitution contemplated a permanent reference by a State or States, and as it contained no provision for a withdrawal of the reference the reference once made would be valid for all time. It was also pointed out that very wide powers could be exercised by the Commonwealth if the Bill were passed in the form in which it was presented to the House.

On the other hand, Mr. J. L. Walker, K.C., the Solicitor-General of the State and Senior Parliamentary Draftsman, held the view that a temporary reference could be made and that, provided the effect of s. 16 of the Acts Interpretation Act[1] were excluded from the Bill, the subse-

[1] 9 Geo. V, No. XX.

quent repeal by the State Parliament of the legislation conferring the powers would be valid.

Both these counsel, however, agreed that Clause 2 of the Bill should not be severable from Clause 4, so that if the time limit were subsequently held to be invalid the reference would be void. They both suggested amendments designed to make the provision. It is regretted that space does not admit of these opinions being gone into in detail.

Bill IV: The Constitution Alteration (Post-War Reconstruction) Bill, 1944—Proceedings in Commonwealth Parliament.

In consequence of only 2 of the 6 State Parliaments having supported Bill III as passed by the Convention, the Commonwealth Government introduced Bill IV, the text of which is given below, Motion for leave for which was made in the Commonwealth House of Representatives by the Attorney-General (Rt. Hon. H. V. Evatt) on February 10, 1944,[1] and agreed to without debate followed by 1 *R.*

On the following day[2] Dr. Evatt in moving 2 *R.* of the Bill said its object was to institute an alteration in the Constitution in the manner prescribed by s. 128 thereof—namely, by passage through both Houses of the Commonwealth Parliament by absolute majorities and submission to the electors of Australia for their support by Referendum.

After giving a summary of what had transpired in regard to this subject since the introduction of Bill I in that House on October 1, 1942, Dr. Evatt observed that, in actual practice, it had always been found exceedingly difficult to get all 6 State Legislatures to implement fully assurances given by State Premiers in relation to s. 51 (xxxvii)[3] of the Constitution, and he was convinced that under such *placitum* the reference of matters by a State Legislature may be restricted to a fixed period. The refusal of 4 States to pass Bill III had already created an anomalous and absurd situation, full of peril, not only for the Commonwealth, but also for the people of those 4 States. In view of all that had happened since, there was no practical method left but by an appeal to the people. It was therefore now the right and duty of the Commonwealth Parliament to initiate the grant of those very powers which the political leaders of Australia in conference assembled agreed were necessary to protect their people during the immediate post-War reconstruction period. No post-War planning could satisfactorily be continued until the Commonwealth's constitutional position was placed beyond doubt.[4] In substance this Bill was identical with Bill III, the only difference being a few verbal changes necessary to change a Bill for a State Act into a Commonwealth Bill for a formal constitutional alteration. In dealing with constitutional reform the legislative jurisdiction over any particular subject-matter must be kept

[1] 1944, No. 1 *C'th Hans.* 105. [2] No. 2 *ib.* 136-53.

[3] (xxxvii). Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law.—[ED.] [4] 1944, No. 2 *C'th Hans.* 139.

distinct from actual or possible exercise of that jurisdiction by the Commonwealth Parliament. Subject to the condition that the topic should be one of Australia-wide concern and interest, it should be axiomatic that, in making a grant to the Commonwealth of legislative power, its Parliament should, as a general rule, be given authority to pass legislation on a topic so as to carry into effect any political policy on that topic to which the electors have given their approval. The true issue was this—whether, in relation to the particular subject-matter, a national Commonwealth policy is preferable to 6 differing and almost certainly divergent policies operating in the several States.[1]

Dr. Evatt emphasized the limited character of the Bill in 3 respects. First, it was restricted in point of subject-matter. Secondly, there were special safeguards to ensure that certain agreed aspects of the national plan of reconstruction should be carried out in co-operation with the State. Thirdly, it was a temporary measure giving powers " on probation ".[2] The Government's considered opinion was that the 14 specified powers[3] taken together would provide a satisfactory minimum legal foundation for reconstruction policy.[4] If the present proposals were carried, an opportunity should be afforded for the complete revision of the Constitution before the end of the 5-year period and for the timely submission to the people of the necessary constitutional amendments. Dr. Evatt's personal view was that it would be proper to include in such a permanent revision some, at least, of the constitutional guarantees contained in the Constitution of the United States of America. The case for the Bill was that the Constitution, as it now stood, would not permit national action to meet the urgent practical needs of the post-War period.[5] During the present War the Court had had to interpret the defence power[6] on a number of occasions. Certain limits had been placed on the power, and an excellent illustration of the present position was a recent case where the High Court of Australia held that the National Security (Industrial Lighting) Regulations were beyond the defence power of the Commonwealth Parliament. Such power, even in time of War, had failed to reach the point where the State Legislatures had general jurisdiction over conditions of employment in industry. The cases of the Australian Commonwealth Shipping Board and the Commonwealth Clothing Factory were also quoted.[7] Dr. Evatt then dealt with the 14 powers under the Bill.

At this stage the rt. hon. Member's time had expired but Motion was made that he be granted time to conclude his speech.

Broadly speaking, Dr. Evatt continued, the Commonwealth Parliament was far more democratic and far more responsive to popular control than were the Legislatures of the States. In 5 of the 6 States there were Upper Houses which were not elected on the basis of full adult franchise and which could not possibly be described as democratic bodies. In

[1] *Ib.* 140. [2] *Ib.* 141. [3] S. 2, 60A (1) (i-xiv) of Bill IV.
[4] 1944, No. 2 *C'th Hans.* 142. [5] *Ib.* 143. [6] *Const.*, s. 51 (vi).
[7] 2 *C'th Hans.* 144-5.

some, property qualifications were still retained. Moreover, even in the Lower Houses, of some of the States, the method of electoral distribution was quite opposed to the democratic system embodied in the Commonwealth Constitution, under which the general rule was one of equal electorates. Further, the Commonwealth Parliament could not extend its own life without a Referendum. Most of the State Legislatures could do so; some had even done so during the present War. All the Commonwealth Government proposed was to ask the people of Australia to give to themselves additional powers of self-government so as to carry out a national job in a national way during the actual post-War years. If the proposals in the Bill were adopted there would be no direct loss of legislative power by any State Legislature. The great change would be that, in relation to the specified list of subject-matters, Commonwealth laws would prevail over State laws. Until the Commonwealth legislated the State law would remain effective.[1]

Upon resumption of debate on February 23,[2] the Prime Minister moved *by leave*

> That so much of the Standing Orders be suspended as would prevent the Leader of the Opposition (Mr. Menzies) concluding his speech without limitation of time.

Mr. Menzies' Amendment.—The Rt. Hon. R. G. Menzies (Leader of the Opposition), after thanking Mr. Curtin for the consideration shown him, said that it was undesirable in time of War to hold a Referendum on proposed changes of the Constitution. Amendments to the Constitution should not be approached on a party footing.[3] The Constitution was designed to accommodate contending political policies and the needs of contending or successive governments. But, at the present time, that may be regarded as a counsel of perfection, because the amendments now before the House were to operate for a limited period and for special purposes.[4] Under a federation the central power was always seeking to increase its authority. It was James Bryce who once referred to " the tremendous centripetal force in a federation ". Power always sought to add to itself. A writer in New South Wales had recently pointed out that one of the curses of Australia, administratively speaking, was that they had no adequate tradition of local government, local or regional administration. It was unfortunate that they had the growing tradition that, as the central power was located at Canberra, all questions must be referred to Canberra. " Centralized power with decentralized administration " focused epigrammatically a very striking view. They had no great tradition in Australia yet of decentralized administration. On the contrary, they almost invariably tended to accompany more centralized power with a more centralized administration. Thomas Jefferson preferred the liberty of the subject to the power of government, just as Alexander Hamilton seemed to prefer the power of government to the liberty of the subject. The rt. hon. gentleman then proceeded to put before the House and, through the House, to the

[1] *Ib.* 152-3. [2] No. 3, *ib.* 448. [3] *Ib.* 448. [4] *Ib.* 449.

people, for their consideration, the nature of the powers already possessed by the Commonwealth Parliament and Government to deal with immediate post-War problems, and the various powers now sought under the Bill.[1] He also remarked that he sometimes wondered whether there were any powers under the Constitution the limits of which could be defined with certainty because, in the last resort, all the powers in the Constitution meant what the High Court of Australia ultimately said they meant.[2] Referring to the case of Rex *v.* Burgers[3] Mr. Menzies observed that the prevailing view of the High Court was that the legislative power of the Commonwealth over " external affairs " was something infinitely more far-reaching than 99½ people out of 100 thought, at any rate in 1901. " It was a splendid example of the way in which great constitutional changes sometimes occur without any change in the language of the Constitution."[4] The answer to the question, whether the Commonwealth was so powerless to deal with the post-War period as they had been given to understand, was " No ". The Constitution had nothing to do with the last depression. That depression came to the world with equal severity in unitary countries, such as Great Britain and New Zealand; in federal countries with a very strong central power such as Canada; and in federal countries with more divided authority, such as the United States of America and Australia. Mr. Menzies then proceeded to deal in detail with the 14 powers sought under the Bill, which, he said, it was very unfortunate should be dealt with within the compass of one Bill.[5] Referring to the " defence power " under the Constitution, Mr. Menzies said that when in doubt the High Court of Australia had always upheld the validity of laws made under the defence power and had said quite consistently that only when, in its opinion, a regulation went beyond that point, it would declare such a regulation invalid. The Court had done so in a few relatively trifling cases. " We can say broadly that the defence power ", said Mr. Menzies, " has proved itself the most flexible and most extensible power ever written into this or any other Constitution."[6] The powers sought in this Bill, whilst containing certain matters of merit, were in excess of the requirements of the period to which the Bill related.

In conclusion Mr. Menzies said:

> The controls must be reduced slowly with the restoration of peace conditions. The Parliament had to be armed with greater powers which, in their nature, were needed in War-time. But if the Parliament is to be clothed with greater powers for use in peace-time, I believe that we have the right to demand that those powers shall be exercised by the Parliament and not by the executive, and that special steps shall be taken to see that they are so exercised. Consequently hon. Members on this side of the House consider that if additional post-War powers are to be granted they should be exercised primarily

[1] *Ib.* 450-1. [2] *Ib.* 453. [3] 55 C.L.R. 680; *see also* JOURNAL, Vol. V, 113.
[4] 1944, No. 3 *C'th Hans.* 455. [5] *Ib.* 458-9. [6] *Ib.* 465.

by the Parliament. If, in the administration of legislation passed under such additional powers, rules need to be made, they should be brought to the notice of the Parliament before they become operative, and not afterwards.

* * * * *

We do not desire to see the problem of constitutional reform exhausted by what is, after all, a temporary solution. That is why we press upon the Government the proposal that within two years after the end of the War it should take steps to convene a popular Convention in Australia to which it should say, " Now let us see what we can produce in the nature of a fundamental revision of the Constitution." It may be that some revision will be made which will alter the whole balance of power, by reversing the residual powers or by adopting the model of South Africa. Fundamental changes in the Constitution will never be passed in Australia if they proceed from any party. We may as well have our eyes open to that fact. Some changes have a chance of being made in Australia if they proceed from a popular Convention, which has had abundant time and opportunity to consider problems that have to be faced and to form reasonable conclusions in respect of them.

Mr. Menzies then moved the following amendment[1] to the Question for 2 *R.*:

That all the words after " that " be left out with a view to insert the following in lieu thereof:

1. The reinstatement and advancement of those who have been members of the fighting services of the Commonwealth in any war and the advancement of the dependants of those members who have died or been disabled as the consequence of such war, the reinstatement and rehabilitation of those other persons, who by reason of war conditions have been displaced from their normal peace-time occuaptions, the reconstruction of primary and secondary industry are the first obligations of government in the immediate period after the war;

2. That the existing powers of the Commonwealth are not shown to be inadequate for such purposes;

3. That it is, however, proper that any doubt on these points should be resolved by appropriate constitutional amendment;

4. That no amendment should be approved which would authorize the socialization of industry, the undue centralization of administration, or the maintenance of such laws as unnecessarily interfere with the liberty of citizens to choose their own means of living and to exercise their rights as free people;

5. Further, that the House is concerned at the extent of the surrender of legislative powers to administrative officials;

6. That, to afford adequate power to the Government and sufficient protection to the citizen, the Bill should be withdrawn and redrafted so as to declare or provide, over a period of 5 years from the termination of actual hostilities, that the Commonwealth Parliament has, or should have (as the case may be), power to make laws for the peace, order and good government of the Commonwealth with respect to the fullest repatriation powers; the use of grants, loans, insurance, training and public works for the provision

[1] *Ib.* 468-9.

of employment and the prevention or correction of unemployment; the organized marketing of primary products of which there is normally an export surplus; and notwithstanding anything contained in s. 92, the prevention of unreasonable restraint of trade; the prevention of inflation; the use of economic regulations only to the extent necessary to deal with the problem of transition from war to peace; air transport; national health; family endowment; and the people of the aboriginal race; but should not have power to enable the Executive to engage in any civil production, industry, or commercial process, not authorized by its now existing powers.

7. That provision should be made that during such period the exercise of such additional powers, when it possesses a legislative nature, should be by Parliament or if performed by virtue of some delegation by Parliament should be in terms which when Parliament is sitting have been first laid before and not disapproved by Parliament, and when Parliament is not sitting have been circulated to Members at least 14 days before becoming operative;

8. That provision should be made for the setting up, within a period of 2 years after the termination of actual hostilities, of an elective popular convention for the review of the structure and working of the Constitution.

At 11.15 p.m. the debate was adjourned,[1] and resumed on March 7,[2] and at 10.48 further adjourned and resumed on March 8,[3] 9,[4] 10,[5] 14,[6] and 15,[7] in which debate many speakers took part and permission to continue their speeches was repeatedly granted. On March 15, the Attorney-General in his reply on 2 *R.* said that it had been suggested in debate that the differences between the powers contained in Bill III (as recommended by the Canberra Convention) and the powers contained in the Bills which have been passed in South and Western Australia were relatively minor and insignificant matters. That was not so.[8] It was open for the 4 States which had not acceded to the agreement which their Premiers made at Canberra to pass the law in the approved form. If they had done that there would have been no need for a Referendum. Western and South Australia had made amendments which the Commonwealth Government could not accept.[9]

In regard to the Government's intention to call a Convention to revise the Constitution as a whole, it must not be forgotten that the normal Convention, under their Constitution, was the Parliament of the Commonwealth itself, which was the only body which could initiate alterations in the Constitution.[10] For all practical purposes, there was no present alternative to proceeding with a Referendum. One could not determine the ambit of a constitutional power by a precise formula, as though it were the area of a circle. The list of further powers drawn up at the Convention must be regarded as an indispensable minimum.[11] Let the House face again the fundamental issue, which was whether the Bill made effective provision for enabling Australia to deal, as a nation, with the acute employment problem that the aftermath of the War would leave. The amendment (Mr. Menzies') denied to the Commonwealth additional powers in the very fields that were essential to post-War reconstruction—employment, production and national works.[12]

[1] No. 4, *Ib.* 493. [2] No. 6, *Ib.* 1027-54. [3] No. 7, *Ib.* 1070-1121.
[4] No. 8, *Ib.* 1134-88. [5] *Ib.* 1198-1224. [6] *Ib.* 1253-95. [7] *Ib.* 1335-54.
[8] *Ib.* 1345. [9] *Ib.* 1348. [10] *Ib.* 1348. [11] *Ib.* 1349. [12] *Ib.* 1353.

Question was then put: " That the words proposed to be left out (Mr. Menzies' amendment) stand part of the Question." Ayes, 46; Noes, 18. (Pairs, 4.) The amendment was therefore negatived.

Mr. Speaker then put the Question: " That the Bill be now read a Second Time." Ayes, 55; Noes, 10. (Pairs, 4.)

Mr. Speaker then said:

> The result of the division being: Ayes, 55; Noes, 10; I certify that the Second Reading of the Bill has been agreed to by an absolute majority of the Members of the House.[1]

The House therefore went into Committee,[2] when an amendment was moved to the Motion to postpone Clause 1 that the following words be added: " as an instruction to the Government to call a further conference of States to attempt to remove the remaining points of disagreement " (Rt. Hon. A. W. Fadden). This amendment, however, was ruled out of order by the Chairman as being on all fours with the Motion. After some discussion as to procedure it was moved: " That the Ruling of the Chairman be dissented from," which was negatived: Ayes, 20; Noes, 43. (Pairs, 6.)

A similar amendment was then moved by another Member and received the same fate from the Chair, after which the postponement of Clause 1 was carried: Ayes, 42; Noes, 19. (Pairs, 8.) The same Motion to postpone Clause 1 with the above amendment was then moved on Clause 2, which was negatived.

Some disorder then arose in the Committee resulting in the naming of a Member (certain Members of the Opposition leaving the Chamber) who was subsequently (in the House) suspended. Ayes, 43 ; Noes, 21. (Pairs, 4.)

The Committee then resumed, when an amendment to omit all words in Clause 2 (xiv) after " works " was negatived and the amendments made as shown in Bill IV hereunder. The adoption of the Bill with amendments was carried in the House (Ayes, 43; Noes, 19. [Pairs, 4]), and 3 *R.* was agreed to by an absolute majority of the House: Ayes, 44; Noes, 18. (Pairs, 4.)

Mr. Speaker: " I certify that the 3 *R.* has been agreed to by an absolute majority of the House as required by the Constitution."

Bill read 3 *R.*[3] and transmitted to the Senate.

The Senate.—The Bill was received by the Senate March 16, 1944, and, on Motion, read 1 *R.*[4] On March 17,[5] S.O. 283 was by Motion suspended so as to enable a call of the Senate to be made without 21 days' notice. It was then moved:

> That there be a call of the Senate on Thursday the 23rd of March, 1944, at 3 p.m., for the purpose of considering the Third Reading of the Constitution Alteration (Post-War Reconstruction and Democratic Rights) Bill, 1944.

[1] *Ib.* 1353-4. [2] *Ib.* 1354-1414. [3] *Ib.* 1432.
[4] No. 9, *Ib.* 1470. [5] *Ib.* 1519-26.

There was considerable debate on 2 *R.*[1] which was resumed on March 21,[2] 22,[3] and 23,[4] on which last date 2 *R.* was agreed to (Ayes, 19; Noes, 17), upon which Mr. President declared:

> " There being 19 Ayes and 17 Noes the Question is so resolved in the Affirmative by an absolute majority of the Senate."

The Bill was accordingly read 2 *R.* In reply to a Question, Mr. President said that an absolute majority was only mandatory on the Question for 3 *R.*, and gave many similar instances where 2 *R.* of such Bills had been agreed to on ordinary majorities. The House went into Committee,[5] and on the same day reported the Bill without amendment, Standing and Sessional Orders being suspended.

In regard to the call of the Senate, Mr. President then announced that all Senators were present and the Bill was read 3 *R.*[6]: (Ayes, 19; Noes, 17); whereupon Mr. President stated:

> There being an absolute majority of Members of the Senate voting in the affirmative, as required by the Constitution, I declare the Question resolved in the affirmative.[7]

Text of Bill IV (" *The Proposed Law* ").—The following is the text of the Bill which became " a Proposed Law " under s. 128 of the Constitution. The amendments made by the House of Representatives are shown, the omissions in square brackets and the insertions and additions underlined.

The following is the endorsement above " the Proposed Law " after its passing as " a Bill ":

This proposed Law originated in the House of Representatives, and on the twenty-third day of March, One thousand nine hundred and forty-four, finally passed both Houses of the Parliament. There was an absolute majority of each House to the passing of this Proposed Law. It now awaits a Referendum to the people.

J. S. ROSEVEAR,
Speaker.

F. C. GREEN,
Clerk of the House of Representatives.
March 23, 1944.

A PROPOSED LAW

To alter the Constitution [by vesting in the Parliament certain additional powers until the expiration of five years after Australia ceases to be engaged in hostilities in the Present War] for a limited period by empowering the Parliament to make Laws in relation to Post-War Reconstruction, and by including Provisions to safeguard Freedom of Speech and Expression and Freedom of Religion.

[1] *Ib.* 1521-6, 1585-6 (No. 10).
[2] *Ib.* 1589-1636.
[3] *Ib.* 1698-1752.
[4] *Ib.* 1834-69.
[5] *Ib.* 1870-8.
[6] *Ib.* 1879.
[7] *Ib.* 1904.

Preamble.

BE it enacted by the King's Most Excellent Majesty, the Senate and the House of Representatives of the Commonwealth of Australia, with the approval of the electors, as required by the Constitution, as follows:

Short title.

1. This Act may be cited as Constitution Alteration (Post-War Reconstruction and Democratic Rights), 1944.

2. The Constitution is altered by inserting, after [section fifty-one the following section:—51A] Chapter I, the following Chapter and section:—

"CHAPTER IA.—TEMPORARY PROVISIONS.

Additional legislative powers and guarantees.

"[51A] 60A.—(1) The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to—

(i) the reinstatement and advancement of those who have been members of the fighting services of the Commonwealth during [the present] any war, and the advancement of the dependants of those members who have died or been disabled as a consequence of [the present] any war;
(ii) employment and unemployment;
(iii) organized marketing of commodities;
(iv) companies, but so that any such law shall be uniform throughout the Commonwealth;
(v) trusts, combines and monopolies;
(vi) profiteering and prices (but not including prices or rates charged by State or semi-governmental or local governing bodies for goods or services);
(vii) the production and distribution of goods, but so that—
  (*a*) no law made under this paragraph with respect to primary production shall have effect in a State until approved by the Governor in Council of that State; and
  (*b*) no law made under this paragraph shall discriminate between States or parts of States;
(viii) the control of overseas exchange and overseas investment; and the regulation of the raising of money in accordance with such plans as are approved by a majority of members of the Australian Loan Council;
(ix) air transport;
(x) uniformity of railway gauges;
(xi) national works, but so that, before any such work is undertaken in a State, the consent of the Governor in Council of that State shall be obtained and so that any such work so undertaken shall be carried out in co-operation with the State;
(xii) national health in co-operation with the States or any of them;

(xiii) family allowances; and
(xiv) the people of the aboriginal race.

(2) Neither the Commonwealth nor a State may make any law for abridging the freedom of speech or of expression.

(3) Section one hundred and sixteen of this Constitution shall apply to and in relation to every State in like manner as it applies to and in relation to the Commonwealth.

(4) A regulation of a legislative character under the authority of any law made by the Parliament in the exercise of any power conferred by [the last preceding section] sub-section (1) of this section—

(*a*) shall, subject to this section, take effect on the expiration of the fourteenth day after its contents have been notified in the manner provided by the Parliament to each Senator and each Member of the House of Representatives or on such later date as is specified in the regulation;

(*b*) shall not take effect if, within fourteen days after its contents have been so notified, either House of the Parliament passes a Resolution disapproving of the regulation; and

(*c*) shall take effect on the date of its making or on such later date as is specified in the regulation, if the Governor-General in Council declares on specified grounds that the making of the regulation is urgently required.

(5) This section shall continue in force until the expiration of a period of five years from the date upon which Australia ceases to be engaged in hostilities in the present war, and shall then cease to have effect, and no law made by the Parliament with respect to any matter specified in sub-section (1) of this section shall continue to have any force or effect by virtue of this section after this section has ceased to have effect."

The Referendum.[1]

Section 128 of the Constitution provides that " a Proposed Law " for the alteration of the Constitution, having been passed by an absolute majority (*i.e.*, of the total membership) of each House of the Commonwealth Parliament and not less than 2 nor more than 6 months after its passage through both Houses, shall be submitted in each State to the electors qualified to vote for the election of the 75 Members of the Commonwealth House of Representatives. Such " a Proposed Law " is then submitted to such electors and if in a majority of the States a majority of the electors voting approve the " proposed law " it is presented to the Governor-General for *R.A.*

The provisions for the electoral machinery in connection with a Commonwealth Referendum for submitting such " a Proposed Law "

[1] *See also* JOURNAL, Vol. V, 117.

are contained in a series of Commonwealth Acts of 1906-36,[2] but only a few points will be mentioned here. The writ for a Referendum is issued by the Governor-General, and attached thereto is the text of the proposed law as well as of the particular provisions (if any) of the Constitution proposed to be textually altered, which are all immediately

"*Proposed Law*" *for Constitutional Alteration.*

		Date of Referendum.	*Decision.*
The Constitution Alteration	(Senate Elections) 1906	12/12/06	*Affirmed.*
	(Finance) 1909 (State Debts) 1909	13/4/10	Rejected.
	Legislative Powers) 1910	26/4/11	*Affirmed.*
	(Monopolies) 1910	26/4/11	Rejected.
	(Trade and Commerce) 1912 (Corporations) 1912 (Industrial Matters) 1912 (Railway Disputes) 1912 (Trusts) 1912 (Nationalization of Monopolies) 1912	31/5/13	Rejected.
	(Legislative Powers) 1919 (Nationalization of Monopolies) 1919	31/12/19	Rejected.
	(Industry and Commerce) 1926 (Essential Services) 1926	4/9/26	Rejected.
	(State Debts) 1928	17/11/28	*Affirmed.*
	(Aviation) 1936 (Marketing) 1936	6/3/37	Rejected.[1]
	(Post-War Reconstruction and Democratic Rights) 1944	18/8/44	Rejected.

[1] *See* JOURNAL, Vol. V, 111.

[2] Act No. 11 of 1906 as amended by Act No. 20 of 1909; 31 of 1910; 17 and 35 of 1912; 38 of 1915; 14 of 1919; 23 of 1926; 42 of 1928; and 61 of 1936.

sent to the Governors of the 6 States. Voting is on the same day throughout the Commonwealth. Each elector has only one vote, which is by ballot. The administration of a Referendum is in the hands of the Chief Electoral Officer of the Commonwealth assisted by the Commonwealth Electoral Officer for each State. Disputed Returns are settled on petition to the High Court of Australia.[1] A return of expenses in connection with a Referendum has to be made by every trade union, organization, league, etc., which has within 3 months of the polling day expended any money thereon, and provision is made against corrupt practices.[2] Act No. 35 of 1912 as amended by Act No. 38 of 1915 makes provision for distribution to electors of arguments for and against " the proposed law ". Further provision is made for absent voters by Act No. 14 of 1919, which also provides that only those electors shall vote who would be entitled to vote if the Referendum were an election. Electoral machinery is further amended by Act No. 23 of 1926 and certain exemptions were made in respect of two named Referendums. Act No. 42 of 1928 makes further provision in regard to electoral machinery, including the marking of ballot papers, and Act No. 61 of 1936 makes certain alterations as to submission of arguments.

Previous Referendums.—There have been 18 Referendums (as they are described in Australia), of which only 3 have been affirmed. The Referendum of 1944 is therefore the 19th[3] Referendum and the 16th rejection. The subjects of the 19 Referendums were as shown on page 187.

The voting in the 3 Referendums affirmed was as follows:

" Proposed Law ".	*Votes For.*	*Votes Against.*	*Total Percentage of Votes to Formal Voters.*	
			For.	*Against.*
The Constitution Alteration (Senate Elections), 1906	774,011	162,471	82·65	17·35
The Constitution Alteration (State Debts), 1909 ..	715,053	586,271	54·95	45·05
The Constitution Alteration (State Debts), 1928 ..	2,237,391	773,852	74·30	64·95

Following is given the pamphlet which was issued to every elector in connection with the 1944 Constitutional Alteration Referendum:

[1] Act No. 11 of 1906. [2] Act No. 17 of 1912.

[3] There were also questions submitted to Referendum under s. 5 of the Military Service Referendum Act, 1916, and Reg. 6 of the War Precautions (Military Service Referendum) Regulations, 1917, both of which were rejected.—[ED.]

ALTERATION OF CONSTITUTION.

FEDERAL REFERENDUM

THE CASE FOR AND AGAINST

By Authority:
L. F. Johnston, Commonwealth Government Printer, Canberra.
(Printed in Australia.)

COMMONWEALTH OF AUSTRALIA

The Referendum (Constitution Alteration) Act.

REFERENDUM
to be taken on the Proposed Law

CONSTITUTION ALTERATION (POST-WAR RECONSTRUCTION AND DEMOCRATIC RIGHTS), 1944.

[The text of which appears on pages 184-6 hereof.]

Pamphlet containing—

AN ARGUMENT IN FAVOUR OF the Proposed Law authorized by a majority of the Members of both Houses of the Parliament who voted for the Proposed Law; and

AN ARGUMENT AGAINST the Proposed Law authorized by a majority of the Members of both Houses of the Parliament who voted against the Proposed Law.

V. F. TURNER,
Chief Electoral Officer for the Commonwealth.

CANBERRA, 20*th April*, 1944.

The Proposed Law is as follows:
(*See Proposed Law* [*Bill IV*] *above.*)

THE CASE FOR YES.

This Referendum will decide whether your national Parliament should guide post-War reconstruction. It concerns—

* your jobs;
* your homes;
* your children;
* your family security.

If you have faith in a better Australia, vote YES.

The Danger Ahead

Without national guidance, the change-over from War to Peace may cause a depression even worse than the terrible depression of 1931-32. Far more than a million men and women will be involved in the change-over.

We shall have won the War. But shall we win the Peace ?

War-Time Powers Shrink

The Commonwealth has had great powers in War-time. When peace comes, these powers will shrink. They will shrink fastest where we shall need them most—in providing employment, in protecting the primary producer.

The Commonwealth has saved you from disaster in War-time. If you vote YES, the Commonwealth can also save Australia from post-War inflation and post-War depression.

You must give power to your Commonwealth representatives, to help win the Peace.

We cannot leave the main job of post-War Reconstruction to the States. That was the mistake made after World War I. Six State Governments cannot act unitedly in the interests of all Australia.

Only Temporary Powers Required

The new powers are to last only for five years after the fighting stops. That will be the period of post-War Reconstruction. During that period, constitutional reform can be considered afresh. But temporary powers must be granted now, or chaos will result.

Post-War Reconstruction Period

During the post-War Reconstruction period, we should lay the foundations for a greater and happier Australia.

Servicemen and Servicewomen

Servicemen and servicewomen will face special difficulties. The Commonwealth Government will protect them in every possible way. We have a similar duty to their dependants.

Many soldiers of World War I got a very bad start in civil life, as a result of the 1921 slump. Many never recovered.

With these post-War Reconstruction powers, the Commonwealth can guard against a slump after this War.

Preference.

There is grave doubt about the legal powers of the Commonwealth for the advancement and preferential treatment of servicemen. The first of the post-War Reconstruction powers brings this subject plainly within the Commonwealth's responsibility.

Question.—Under these powers, could the Commonwealth grant preference in jobs to servicemen ?

Answer.—Yes, without doubt.

Question.—How will the new powers help a serviceman to earn his living on the land ?

Answer.—He could have prices stabilized on a national basis, as well as national marketing laws.

Workers

During the War, over a million and a half Australians have been employed in War activities. After the War, most of them will change their occupations. There is a danger of mass unemployment. In 1931-32, nearly 700,000 workers were on the dole. When this War broke out, 250,000 were unemployed. These depressions must not occur again.

Security of Employment.

During the War, the Commonwealth has shown that it can give security of employment to both salaried and wage workers, and still improve working conditions.

Question.—If YES is carried, will the Commonwealth Parliament be able to guarantee security of employment to workers on salaries or wages ?

Answer.—Yes. The post-War Reconstruction powers will enable the Commonwealth to prevent dismissals, without just cause. Moreover, the Commonwealth can see that there are enough jobs to keep everyone usefully employed.

Question.—Will the employment power mean a system of industrial conscription after the war ?

Answer.—Certainly not. That suggestion is a political scarecrow. The Labour Government is pledged to oppose industrial conscription in peace-time.

Question.—Can the good work of the Commonwealth Women's Employment Board be continued after the War ?

Answer.—Yes—provided you give the Commonwealth power over " employment " in the post-War Reconstruction period.

The Man on the Land

During the War, the financial position of primary producers has been improved, despite dislocated markets and man-power shortages. It is estimated that farmers' mortgages and bank overdrafts have been reduced by about £60,000,000. Most primary producers now enjoy guaranteed prices. Under the new powers, the Commonwealth can continue this policy in the post-War Reconstruction period. The man on the land will be assured of a reasonable income, just as the worker is assured of a reasonable wage. But—to do this—the Commonwealth must have post-War Reconstruction powers.

South Australia, Western Australia, Tasmania.

The Commonwealth is planning regional development and the decentralization of industry, particularly in the less industrialized States and in rural areas. This will increase opportunities of employment, and expand local markets.

Rural Housing.

The Government's housing programme will provide for the country as well as for the city.

Question.—Will the extra power help the farmer to catch up on the War-time deterioration of his property ?

Answer.—The Commonwealth could make vital supplies, like fertilizers and repair and maintenance materials, available to every farmer. In an uncontrolled market, prices would rocket, and the greedy and unscrupulous would profit.

Question.—Will s. 92 prevent organized marketing ?

Answer.—No. In view of important Court decisions, some methods of marketing by the Commonwealth will be possible. These methods can be used without interfering with the constitutional guarantee protecting the freedom of the interstate border.

BUSINESS MEN

In post-War Reconstruction, private enterprise will be required to employ all the initiative of which it is capable. The small business man will have little chance unless monopolies and combines are subject to national legislation.

The State and Private Enterprise.

While individual initiative will be essential, there are vital services that Governments must perform—*e.g.*, establishing the aluminium smelting industry in Tasmania and preventing a second collapse of the Australian shipbuilding industry.

Question.—Will the powers enable the Commonwealth to see that business men get supplies to carry on production ?

Answer.—Yes. The Commonwealth will have power to assist in re-establishing civilian production, and to make available supplies of materials and machinery.

Question.—In the post-War Reconstruction period, will business men be allowed to make fair profits ?

Answer.—Yes. The object of the " profiteering " power is to prevent extortionate profits.

HOUSEWIVES AND MOTHERS

Rocketing prices for food and clothing, and exorbitant rents, can be effectively checked only if the Commonwealth gets these new powers. You, not the profiteer, will benefit when the referendum is carried.

Question.—Will the powers help me to get the house I need for my family ?

Answer.—Yes. Your needs will come before the demands of the speculator.

Question.—Will Commonwealth allowances like child endowment, widows' pensions and University assistance continue after the War ?

Answer.—Yes. But the Commonwealth's legal power to continue these allowances in peace-time is doubtful. The only way to make sure is to vote YES.

Australia's Air Future

As Mr. Curtin pointed out long ago, Australia's defence will depend largely upon air power and a national aircraft industry. We must carry on the great air traditions of the R.A.A.F. and of pioneers like Kingsford Smith.

The Commonwealth should have authority over air transport. The referendum will give this.

Post-War Reconstruction Powers Necessary

The powers are necessary to protect the middle groups and wage-earners; the servicemen, workers, farmers, small business men, housewives and, above all, the children of Australia.

The Convention Thought So.

In December, 1942, the Canberra Convention unanimously resolved that the Commonwealth should be granted additional powers for post-War Reconstruction. The Convention included representatives of all parties and all States.

Those who put Australia before party politics will follow the lead of the Convention, and vote YES.

Not a Party Question.

At the Convention, Mr. Curtin, Mr. Hughes, Dr. Evatt and the Premiers of the six States, Messrs. McKell, Dunstan, Cooper, Playford, Willcock and Cosgrove, unanimously recommended the present fourteen powers as being necessary for the post-War Reconstruction period.

Show your faith in a greater Australia by endorsing their recommendation.

Great National Objectives.

The post-War Reconstruction powers are needed to—

* guard against another depression;
* facilitate the re-employment and rehabilitation of the servicemen and servicewomen;
* provide work for all;

* improve the housing of the people;
* ensure a good income to the man on the land;
* undertake a great works programme that will develop the national estate and raise the standard of rural life;
* prevent profiteering in the disturbed conditions after the War;
* arrange for an orderly withdrawal of the controls required solely to win the War.

Democratic Rights Safeguarded

For the agreed post-War Reconstruction period the Commonwealth's powers will be linked with three democratic safeguards, for—

* freedom of speech and expression;
* freedom of worship;
* greater control by the people's representatives of government by regulation.

The inclusion of such safeguards is supported by prominent Church leaders and leading newspapers.

Some argue that the safeguards are unnecessary. But reactionary Governments with fascist tendencies might arise in times of crisis. Therefore no possible harm can come, but great positive good may flow, from elevating these fundamental rights into supreme constitutional guarantees.

Look Behind the Smoke-Screens

Some opponents of the Referendum want to return to the " good old days "—of depression and exploitation. They dare not declare themselves openly against post-War Reconstruction. But they use smoke-screens.

War-time Planning is Essential.

One smoke-screen is that there should be no Referendum in War-time.

But a Referendum is necessary because, owing to the action of undemocratic Legislative Councils, several State Parliaments refused to carry out the Canberra Convention agreement. Therefore these Legislative Councils are responsible for the Referendum. Post-War Reconstruction plans cannot be delayed any longer.

Post-War Responsibilities Need Post-War Powers.

Another smoke-screen is that the fourteen powers may be misused by your national Parliament. But it is your vote which elects your M.P. and the Commonwealth Parliament is far more democratic than five of the State Parliaments.

Remember that the Parliaments of Britain, of South Africa, of New Zealand, and of every Australian State, have always had these fourteen powers, and more.

Abolish Poverty and Unemployment

The Commonwealth Parliament, armed with these powers for post-War Reconstruction, can prevent unemployment; maintain stable prices and markets; and increase the comfort, security and happiness of every Australian family.

Hard work will always be essential. But every Australian should have the right to work. Depression's vicious circle, **no jobs—no money —no purchases—no sales—no jobs,** must never come again.

Mass unemployment can and must be avoided. It is a tragedy that some people fear the end of the War because, for the first time in their lives, they now have secure jobs. The War has proved that the cry of the vested interests during the depression—" Where is the money to come from ?"—is false. Money has been found for the War effort, money can be found for post-War Reconstruction.

No More Depressions

When the Commonwealth gets these post-War Reconstruction powers, it will guard against another depression—

* By keeping up a high level of employment, which means a high level of purchasing power.
* By making money the servant of the people and not their master.
* By maintaining stabilized prices and organized marketing in primary industries.
* By national works such as housing, aerodromes, soil conservation, irrigation, afforestation and electricity undertakings.
* By ensuring that sufficient supplies of essential goods are available.
* By keeping prices and rents at a reasonable level and preventing profiteering.

Vote " Yes " for Post-War Reconstruction

We must work together for a greater and happier Australia. The considered decision of an absolute majority of both Commonwealth Houses of Parliament is that the necessary post-War Reconstruction in Australia can be effectively carried out only if you vote Yes.

Under vigorous Commonwealth Leadership, the Australian nation is **winning the War.** Vote Yes and give the Commonwealth power to **win the Peace.**

The powers are necessary to protect the serviceman, the worker, the farmer, the small business man, the housewife and, above all, the children of Australia.

* A " No " vote is a vote for unemployment and depression.
* A " Yes " vote is a vote for full employment and prosperity.

For Post-War Reconstruction and Democratic Rights vote Yes.

The Case Against " the Proposed Law "

The Labour Government, with a majority in both Houses, is asking you to give it additional powers in a Bill which contains seventeen proposals but allows you one vote only.

The proposed powers are to last for five years after the War. You may think that some ought to last for ever and that some are too dangerous to be granted for five minutes. You may like those powers which really deal with the problems of Reconstruction. You may detest those which would permit government by regulation and the rule of the petty dictators who now control our lives. You will certainly favour the doing of justice to those who have served us in War, the restoration of productive industry, good housing, the building up of a secure civil life. But it is certain that you do not want any form of dictatorship, whether of one man or of an army of officials.

This is because you believe in Democracy, not in Fascism.

These considerations might well lead you to favour some powers and reject others.

But the Government, by giving you one vote only, insists that you shall take them all or leave them all.

We say right away that you are quite safe to vote " No ", because the Commonwealth has enormous powers now. By voting " No " you will not be cramping the legitimate authority of Government; you will be curbing the illegitimate authority of bureaucrats.

Our reasons for asking you to vote " No " are now summarized:

1. These proposals are so framed as to mislead the electors. You will notice that the first amendment relates to Repatriation. If you are a member of one of the Services, the Government intends you to say: " I must vote for all these amendments, otherwise there will be no repatriation for me." **This is untrue.** There has never been any question of the power of the Commonwealth Parliament to make laws for repatriation. For 25 years all sorts of laws have been made on this subject—including those relating to pensions, medical treatment, vocational training, War service homes, land settlement, etc.—and **the power to pass such laws has never been successfully questioned.** The present Government, in fact, recently exercised this very power by passing through Parliament, with common consent, a comprehensive Repatriation Bill of the most far-reaching kind.

Putting this Repatriation power in the present proposals, as if it were being conferred upon the Commonwealth for the first time, is just putting a bait on the Constitutional hook. You swallow Repatriation, thinking wrongly that unless you vote " Yes " the Government will have no power to help you after the War and you get (willy-nilly) " production and distribution of goods " under which the Government will go into competition with and create unemployment in civil factories; or " employment and unemployment " which sounds quite reasonable but under which industrial conscription can be maintained after the War.

Pay no attention to the people who promise that new powers will not be exercised in certain ways. If there is Constitutional power to maintain industrial conscription, the decision to maintain it in fact will not be made by you, will it? If the Government, given the power, decides to carry out an extreme policy, Parliament will not be making the decisions; they will be already cut and dried by the Caucus, which will in turn be dictated to by small pressure groups outside. It will be too late then for you to protest. You can do so now by voting " No ".

2. The Government is warning you that it must have power to avoid another depression. It actually tells you that it is easy to prevent unemployment, provided the Constitution is amended.

Now the members of the Government's " Brains Trust ", its " crystal gazers ", are telling you that you shall all have jobs (though they may not be the ones you would like or that you would do well) if only you allow the Government Departments to " plan " your lives for you. It is all very simple as they explain it. All you have to do is to give up your right to choose your own way of living and take orders to go to the job selected for you (that is, accept industrial conscription) and the industries which are to give you your livelihood will be reorganized by men who, for the most part, have never had to organize or control a successful pie-stall!

3. This brings us to the real issue.

Under what system do you want to live after the War? Do you really believe that a decent and happy future, with wife and family and home and something always to look forward to, will be best assured by allowing Government Departments to run your life? Do you really believe that we shall succeed in our search for prosperity and the amenities of life if the Allied Works Council builds our houses and some Government Department controls our meat supplies, and iron and steel and cement and bricks and timber are produced by Departments under highly political control? If you do, you ought to vote " Yes ". But if you believe that Australia as a nation was made by thousands of individuals who took risks and made losses as well as profits; who settled land and fought droughts and ultimately made two blades of grass grow where one grew before; who started industries in spite of the critics and gave employment to thousands of people and made our munitions and aircraft industries possible, then you will preserve your liberties and your ambitions and vote " No ". Do not be induced to lose sight of this great issue.

4. If you are a primary producer you should notice particularly the extremely misleading character of the proposal supposed to enable marketing schemes to operate. You will find it in the paragraph dealing with " the production and distribution of goods ". But you will observe that this power, so far as it relates to primary products, does not operate in any State unless the State Government agrees (which, after all, it can equally well do to-day under the existing powers). You will also remember that before the War marketing schemes—for

example, in wheat and dried fruit—were constantly getting into trouble because of the existence of s. 92 of the Constitution which provides that inter-State trade shall be absolutely free.

The Attorney-General himself explained in November, 1942, that " some provision is obviously necessary to free the Parliament from the restrictions imposed on the Parliament by s. 92 . . . which stands as a perpetual menace to any scheme of compulsory marketing of primary products".

In spite of these strong and clear words, the Government's proposed amendments say nothing about s. 92 and therefore do nothing to remove the " menace " just referred to.

There can be no argument as to the need for the establishment of a new economic basis for primary industries, independent of the vagaries of politics and sufficiently sound to enable primary producers and those dependent on them to plan their economy and expansion over a period of years.

But do not be misled into believing that any such watertight schemes can be introduced if you vote " Yes ". Because of the effect of s. 92 there would still be the same uncertainty as to the ultimate validity of any scheme for compulsory marketing of primary products. You can well imagine the confusion and loss in your primary industry if the marketing scheme in which you participated was challenged and declared invalid, as well it might be !

In other words, the primary producer is being sold a " gold brick ". If the new powers are approved, the position of your industry will be exactly as it was before.

5. The " guarantees " proposed to be included—of freedom of speech and of expression and of religion—should not be taken too seriously. They were not in the Bill as it was introduced into Parliament but were inserted during an all-night sitting. They are designed to distract attention from the real objectives of the measure. The existence of guaranteed freedom of speech in the American Constitution—and it has been there for 150 years—has not prevented Congress from passing just the same kind of laws about censorship and sedition and subversive activities as we have in Australia. You will no doubt think it a curious thing that the Government under whose rule a threat to freedom of speech has developed comes to you and says, not that it will repeal any of its laws restricting freedom, but that it will give you for a limited future period a high-sounding guarantee which experience in other countries shows to be worth exactly nothing.

6. The argument will be dinned into your ears that the last depression was in some way caused or aggravated by the limits upon the powers of the Commonwealth Parliament, and that if you want to avoid another depression you must hand over far-reaching authority to Canberra. This is utter nonsense. The depression was a world affair and happened equally in countries like Great Britain and France and New Zealand (where the central Government has all power) and in Federal

countries like Australia, Canada and the United States (where there are divided powers). When you look back upon the events which occurred in Australia during the depression you will not want to entrust your fate to highly centralized administrations in a remote place like Canberra.

You have had a taste of centralized administration in War. Those who have wished to buy or build a house know of the multiplicity of forms to be filled in, the permits to be obtained and the delays in applying to Canberra for consent. The primary producer knows only too well of the tedious delay in even having an application for man-power or tyres or tractor parts, considered by officials hundreds of miles away. He knows that his case will probably be dealt with, and more often than not refused by an Assistant-Deputy-Director-General of Something or Other, in a central office in a capital city, with only a remote idea of the daily difficulties of the farmer in trying to maintain essential production.

7. It still remains true, as the founders of the Constitution so clearly saw, that a centralized administration is the last system to be applied to a continent like Australia, where the wheat-farmer of Western Australia and the sugar-grower of Queensland are separated by a distance greater than that which separates the hopfields of Kent from the frozen plains of Siberia.

8. We are not merely negative in our approach. We advocate a revision of the Constitution, but say that to conduct a Referendum in time of War on so fundamental a matter is to ignore the rights of hundreds of thousands of our best men and women to take a full and deliberate share in such revision. We offered to support proper Constitutional amendments to make it clear that on such matters as repatriation, the prevention of unemployment, the organized marketing of primary products, the prevention of inflation, and the stabilization of the country during its transition from War to Peace, there should be no question of ample powers to ensure a free and vigorous and enterprising future for Australia.

But the Government would have none of this. It said and says: "We shall have Constitutional amendments on our terms and no others."

Its terms, as we have briefly shown you, include the perpetuation of policies which have struck at the whole root of freedom in Australia—industrial conscription; the wholesale elimination of the small trader who has in the past earned such an honourable and useful place in the life of our nation; the control of industry by talkative amateurs who are at present filling the columns of the newspapers with subjects explaining how essential they are to our future.

We therefore urge you to vote "No".

When the Referendum Vote is taken each voter should indicate his vote on the ballot paper as follows:

(*a*) If HE APPROVES of the Proposed Law—by placing the number 1 in the square opposite the word "YES" and the number 2 in the square opposite the word "NO"; or

(*b*) If HE DOES NOT APPROVE of the Proposed Law—by placing the number 1 in the square opposite the word "NO" and the number 2 in the square opposite the word "YES".

Result.—The voting at the 1944 Referendum was as follows:

State.	Number of Votes given IN FAVOUR of the Proposed Law.	Number of Votes given NOT IN FAVOUR of the Proposed Law.	Number of Ballot Papers Rejected as INFORMAL.
New South Wales ..	759,211	911,680	23,228
Victoria	597,848	614,487	15,236
Queensland	216,262	375,862	7,444
South Australia	196,294	191,317	4,832
Western Australia ..	140,399	128,303	3,637
Tasmania	53,386	83,769	2,256
Totals for the Commonwealth	1,963,400	2,305,418	56,633

As, therefore, in a majority of the States, a majority of the electors voting, and a majority of all the electors voting also did not approve of the Proposed Law, it was rejected. The number of voters enrolled was 4,482,000.

X. AUSTRALIA AND THE STATUTE OF WESTMINSTER

By the Editor

A Statute of Westminster Adoption Bill was introduced into the House of Representatives of the Commonwealth of Australia on December 2, 1936,[1] but not further proceeded with that year. On June 22, 1937,[2] a Statute of Westminster Adoption Bill was again introduced into that House by the then Attorney-General (Rt. Hon. R. G. Menzies) but only reached the 2 *R.* stage. It is now proposed to deal with the proceedings upon the Statute of Westminster Adoption Bill introduced into the same House in 1942 by the present Attorney-General (Rt. Hon. H. V. Evatt) which became law.

Questions as to the introduction of a Statute of Westminster Bill have been asked from time to time in the Commonwealth Parliament in recent years, but in reply to a Question in the House of Representatives on September 22, 1942,[3] the Attorney-General (Rt. Hon. H. V. Evatt) said that it had been found that the failure to adopt certain sections of the Statute of Westminster, 1931, had led to many anomalies and administrative difficulties. The Government therefore proposed to bring in a Bill to adopt ss. 2 to 6 of that Statute. On the 29th[4] of that month the Attorney-General, in giving Notice of Motion for leave, said that he had prepared a memorandum[5] on the subject for circulation, which would be distributed to hon. Members before the matter came up for consideration.

Motion for Leave.—On October 1[6] of that year Dr. Evatt moved:

> That leave be given to bring in a Bill for an Act to remove doubts as to the validity of certain Commonwealth legislation, to obviate delays occurring in its passage and to effect certain related purposes; by adopting certain sections of the Statute of Westminster, 1931, as from the commencement of the War between His Majesty the King and Germany.

There was considerable objection, however, to the Motion by the Opposition, which wanted time to consider the subject, and an adjourned debate after 2 *R.* was proposed. Objection was also taken to the Attorney-General having circulated his monograph on the Bill before the Bill had been put before the House. Mr. Speaker, however, stated that the Attorney-General was so entitled although to do so before the Motion for leave had been granted was certainly unusual, but that any criticism of the propriety of the Minister's action was rather a matter for hon. Members themselves, whose decision would probably largely depend upon the motive which had prompted him to do so.

Dr. Evatt then gave practical instances why he considered the intro-

[1] *See* JOURNAL, Vol. V, 109, *n.* [2] *Ib.*, Vols. V, 102,106-9; VI, 201-8.
[3] 172 *C'th Hans.* 572. [4] *Ib.* 1065. [5] *A Monograph* (22 pp.) *setting forth the purpose and effect of the adoption by the Parliaments of ss.* 2, 3, 4, 5 and 6 *of the Statute of Westminster* (Commonwealth Govt. Printer, Canberra).
[6] 172 *C'th Hans.* 1321-38.

duction of the Bill was necessary, after which the Question on the Motion for leave was put and agreed to and the Bill read 1 *R.* without debate.

Second Reading.—On October 2, 1942,[1] the Attorney-General, in moving 2 *R.* of the Bill, said that it provided for the adoption by Parliament of ss. 2, 3, 4, 5 and 6 of the Statute of Westminster, 1931, in order to remove certain restrictions which had caused doubts, difficulties and anomalies, especially since the outbreak of War. Retention of the restrictions tended to obstruct the exercise by Parliament of the powers already granted to it by the Commonwealth Constitution, including the power to make regulations for shipping and ships which were urgently required from time to time under the National Security Act.

The phrase " Dominion Status " meant in substance that the self-governing Dominions were endowed with full autonomy in relation to both their internal and external affairs. This status, however, was not granted for the first time by the Statute of Westminster, 1931. The advance in status of the Dominions had been fully recognized towards the end of the last War and again defined authoritatively by the Imperial Conference of 1926. Consequently the adoption of the Statute or any of its clauses would not add to the status of Australia, which was fully recognized, not only by Britain, but throughout the world. The object of the Bill was set out in the long title (as above). The tie which bound the Dominions to Great Britain was not the legal inferiority of the Dominion Parliament to the Parliament of the United Kingdom, but the free association of the British countries and their common allegiance to the King.[2]

The Balfour Declaration of 1926 only asserted 2 simple facts. The Statute of Westminster, 1931, had nothing to do with these axioms of Constitutional relationship. It was passed because a Special Imperial Sub-Conference on the operation of Dominion Legislation in 1929,[3] consisting mainly of experts in law, had pointed out that in several important respects the British Dominions did not possess autonomy even in respect of their own domestic or internal affairs. From time to time their legislation was overridden by several out-of-date Imperial Statutes imposing awkward and onerous restrictions, which were enforced even by Dominion courts. In the realm of foreign affairs, the King was at liberty to exercise his common law prerogative without being controlled by the statute law. That, however, did not mean that the King acted personally, but through his Ministers. In the eyes of the law, the Parliament of the Commonwealth still remained subject to Imperial enactments dealing with Colonies. Grave doubts existed about the validity of some of the regulations under which they were acting at present and which might lack constitutional power in view of the Imperial Merchant Shipping Act. The passing of the Statute did not affect the deciding powers between the Commonwealth and the States. Several national security regulations, purporting to extend to

[1] *Ib.* 1387. [2] *Ib.* 1388-9. [3] Cmd. 3479.

ships other than Australian ships or ships engaged in the coasting trade, were probably invalid as applying to ships to which the Merchant Shipping Act applied.

The Statute of Westminster was passed by the Imperial Parliament in 1931 in the form in which it had been approved in substance by the Parliament of the Commonwealth.

Section 2 of the Statute of Westminster provided that the Colonial Laws Validity Act, 1865, shall no longer apply to a Dominion and that no Dominion law shall be void because of repugnance to past or future Imperial legislation and that the Dominion Parliament may amend or repeal any such Imperial legislation. At present the Colonial Laws Validity Act still operated to invalidate any Commonwealth legislation which was technically repugnant to any Imperial legislation which applied to Australia, thus restricting the free exercise of the Commonwealth legislative powers and endangering the validity of its legislation.[1]

The necessity of the application of s. 3 of the Statute was brought about by the Imperial Parliament in 1940 enacting a new section of the Army Act in application to Australia. Section 3 of the Statute enabled Australia to possess, beyond doubt, the powers which the United Kingdom and other countries, including H.M. Dominions, had to regulate matters belonging to its own peace, order and good government even though they took place outside its territorial limit.[2]

Section 4 provided that no future legislation of the Imperial Parliament shall extend to a Dominion unless the legislation contains a clause stating that the application had been requested and consented to by the Parliament of the Commonwealth. The practical effect of the adoption of this section was twofold. First, a ready indication to the Courts of whether or not the legislation applied to the Commonwealth—that is, did it contain the requesting and consenting clause or not? The request and consent must go from both the Parliament and the Government of the Commonwealth and not merely from the Government itself.[3]

Dr. Evatt remarked that yesterday he had received from the Premier of Victoria a letter in which he again suggested that there should be inserted, not in the section, but in the preamble, a provision to the effect that it would not be in accordance with practice that the Commonwealth should make such a request, unless the matter were within the exclusive jurisdiction of the Commonwealth, but Dr. Evatt considered that it should apply to matters within their jurisdiction. The Bill would not disturb the balance of power between the Commonwealth and the States. That could only be altered by the people acting under s. 128 of the Constitution.[4]

Section 5 of the Statute provided that ss. 735 and 736 of the Merchant Shipping Act and s. 6 of the Statute provided that s. 4 and parts of s. 7 of the Colonial Courts of Admiralty Act of 1890 shall not extend to a Dominion. The Imperial Merchant Shipping Act was too limited

[1] 172 *C'th Hans.* 1391. [2] *Ib.* 1394. [3] *Ib.* 1396. [4] *Ib.* 1396-7.

for the effective control of Australia's own shipping. Such Act was passed in 1884 and was based on the Act of 1854, when there was no colonial shipping. Great delays occurred by Australian Acts having to be reserved for the King's Assent, even where only a minor provision in the measure attracted the operation of the Imperial law. Failure to reserve such measures made them invalid. Moreover, the Merchant Shipping Act defined the shipping jurisdiction of the Dominion Parliament within limits which were difficult to observe.[1]

In conclusion, Dr. Evatt remarked that the case for the adoption of these 5 sections of the Statute was not a negative but a positive one—a case for fuller Australian self-government in matters affecting the internal affairs of Australia.[2] By removing rigid restrictions on their legislative power they removed what was a rigid control of their own Parliament and paved the way for that flexible and free co-operation which was the main foundation of the British Commonwealth of Nations. It would be a sorry day if the Australian people were told that their relationship with the people of Britain might be weakened merely because Australians desired that legislation in Australian affairs passed by their own representatives in their own Parliament should no longer run the risk of invalidation and annihilation by means of a British Act of Parliament which was quite suited to the colonial conditions of 1865 but was quite unsuited to the needs of Australia today. They needed this legislation in order to remove burdensome restrictions and unsatisfactory delays which still clogged the rights of Australians to control their own domestic affairs.

Dr. Evatt asked the House to make the adoption of these 5 sections operate as from the date of the outbreak of War with Germany, as it seemed necessary to remove doubts affecting War-time Regulations.[3] In reply to a Question, Dr. Evatt said that a special power had been inserted in the Statute of Westminster which enabled the Commonwealth Parliament to revoke the adoption of any of the ss. 2 to 6 should it so choose.[4]

Debate was resumed on October 7, when the Rt. Hon. W. M. Hughes (Leader of the United Australia Party) stated that he found himself unable to purge his mind of those deep-rooted sentiments which were the foundation of their relations with Great Britain. That his fears that the adoption of the Statute might imperil those relations were shared by many people in Australia was evident from the rt. hon. gentleman's (Dr. Evatt) efforts to reassure them on that point. Australia's Constitutional right to equality of status with Great Britain had been firmly established many years before the passing of the Statute of Westminster, by declarations by Imperial Cabinets and Conferences that placed the matter beyond all doubt. The 1926 Imperial Conference, so far as status was concerned, did no more than reaffirm the very definite and authoritative recognition of the equality of status of the Dominions with Great Britain made in the War Cabinet in 1919

[1] *Ib.* 1396-7. [2] *Ib.* 1398. [3] *Ib.* 1398-9. [4] *Ib.* 1400.

and restated in more precise terms by Mr. Lloyd George at the Imperial Conference in 1921, who said:[1]

> In recognition of their services and achievements in the War the British Dominions have now been accepted fully into the community of nations by the whole world. They are signatories to the Treaty of Versailles and of all the other treaties of peace. They are members of the Assembly of the League of Nations and their representatives have attended meetings of the League; in other words, they have full national status and they now stand beside the United Kingdom as equal powers in the dignities and the responsibilities of the British Commonwealth. If there are any means by which that status can be made clearer to their own communities and to the world at large, we should be glad to have them put forward at this Conference.

The 1926 Conference, continued Mr. Hughes, did not raise the status of the Dominions; it attempted to reduce inter-Imperial relations to a written formula. He had always opposed attempts to set out the relations between the Dominions and Britain in writing; to attempt to define them in a formula was dangerous folly. That the Report of the 1926 Conference confused rather than clarified the position was apparent from the Dominion representatives who attended the Conference.[2] In 1930 the then Prime Minister (Mr. Scullin) said:

> To my mind there is nothing to be gained and a great deal to be lost by attempting to crystallize our relations too closely within the confines of any legal document.

Mr. Menzies, the then Attorney-General, in 1938 said:

> It was highly dangerous experimentation to endeavour to reduce to a written formula, and therefore to rigid and legal terms, a relationship some of the supreme value of which had been its very vagueness and elasticity.

Only the Irish Free State and the Dominion of South Africa adopted in their fullest extent the powers which the Statute made available.[3]

Professor Keith (referring to the Statute) said:

> While it contains a complete renunciation by the Imperial authorities of any measure of control over, or interference with, Dominion affairs, it is at the same time a singular assertion of the sovereign authority of the British Parliament. For, as is well known, it is legally impossible for the sovereign Parliament to limit itself in this way and there is nothing to prevent a future Parliament from repealing the Statute either expressly or by inconsistent legislation, however unthinkable such an exercise of the Imperial power may be.

Professor H. Morgan said:

> The Balfour Report was a good empirical Statute and those who penned it were writing English and not law. Unfortunately it had been thought necessary to imprison the most delicate, the most

[1] *Ib.* 1424. [2] *Ib.* 1425. [3] *Ib.* 1426.

flexible and the most expansive thing in the British Empire—namely, its constitutional growth—in the strait-jacket of an Act of Parliament.

What was the urgency for the adoption of the Statute? asked Mr. Hughes. Dominion status was not in danger.[1]

As Professor Keith had pointed out, continued Mr. Hughes, the Statute did not, of course, limit the sovereign powers of the Parliament of the United Kingdom. The British Parliament could not bind its successors. What one had done the other could undo. The Statute did not apply to the Australian States. The Colonial Laws Validity Act and other Imperial statutes would continue to apply to them after the adoption of the Statute, as it did at present. Section 8 left the States in full possession of all their present powers.[2]

The Balfour Report was expansive and eloquent about the rights of the Dominions but evasive or silent about their obligations. It declared that " equality of status so far as the Dominions and Britain are concerned is the root principle governing inter-Imperial relations ". The vital principle upon which the very existence of the Empire and every one of the nations composing it depended was unity. And, concluded Mr. Hughes,

> it is because it passes the wit of man to devise a formula that can at once express the right of every member of the British Commonwealth of Nations to go its own way and yet ensure that all shall stand together in the hour of danger that I have opposed every attempt to define inter-Empire relations in a formula.
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> * * * * *
>
> But I hold, too, that these Dominion rights—equality of status, full autonomous powers over their own internal affairs, and an effective voice in shaping foreign affairs—carry with them corresponding obligations. Since without unity the Empire must disintegrate, it follows that we must exercise our self-governing powers in such a way as will ensure that this unity, without which our autonomous powers are only empty words, will be preserved. And although I do not deny the technical right of a Dominion to remain at peace when Britain and the loyal Dominions are at War, I most emphatically do not believe that membership of the Empire entitles a Dominion to protection from aggression and to all the benefits of Empire partnership, and at the same time leaves it free to remain aloof when the Empire is in danger.
>
> In these days, there is much talk about rights, but very little is heard about duties. This War has brought home to us that liberty is not to be had without money and without price, but that if men wish to remain free they must be prepared to fight and if needs be to die in defence of their freedom. . . . Membership of the Empire ought not to be granted to those nations which were not ready to pay this price.

[1] *Ib.* 1427. [2] *Ib.* 1429.

Mr. Hughes then moved that all words after the word " Bill " in the Question, " that the Bill be now read the second time ", be omitted in order to substitute the words " be referred to an all-party Committee of the House for report as to the urgency of its passage under the present circumstances of War ".

The Rt. Hon. R. G. Menzies (Kooyong) said that, just as in 1937 and 1938 there were many persons on the other (Government) side of the House who were unhappy about this legislation, so there were among his colleagues today many men who honestly and patriotically were troubled about this legislation in 1942.

A sharp distinction was to be drawn between those problems of status and Empire relations which were the subject of discussion in 1917, 1926 and 1930 and those matters which were left in the field of argument in ss. 2 to 6 inclusive of the Statute of Westminster.[1]

Mr. Menzies, continuing, said:

> I have an entirely different view of the effect of the Balfour Declaration from that which was entertained by Mr. Mackenzie King and from that which was most strongly entertained by General Hertzog. . . . I have always believed that the autonomy of the Dominions had to be reconciled entirely with the complete indivisibility of the Crown. I do not understand how the Crown can be the nexus between the Dominions of the British Empire unless it is one Crown. I do not understand the theory, which has had great currency in some Dominions, that there are six Kings and that the King of Australia is advised by his Australian Ministers, and that the King of the United Kingdom is advised by his United Kingdom Ministers, and that in each of those capacities he is distinct. . . . I believe in the indivisibility of the Throne and the Crown. It is true, as has been pointed out by the Attorney-General, that the King makes war and peace. Let us suppose that the King makes war. I have never been able to understand how the King may make war as King of the United Kingdom and remain at peace as the King of Australia.[2]
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> * * * * *
>
> But the position is that when we carry these fine theories about the divisibility of the Crown far enough, our enemies will decide and conquer us, and that will be the final arbitration. The doctrine of divisibility inevitably leads to the doctrine of neutrality; and to me the doctrine of neutrality in the British Empire is notice of termination of membership. Let me test that statement with one single proposition. If our relationship in the British Empire is not a relationship in which we are really bound to owe a single allegiance to a single Crown, we are simply a friendly group of nations. We are not even allies, because if a country makes a military alliance with another country it is bound to fight. There is no alliance of that kind between the members of the British Empire. If the theory of

[1] *Ib.* 1435. [2] *Ib.* 1436.

divisibility be right, then we are separate independent peoples with no common allegiance, because each of us owes allegiance to his own King in his own right and we are only friends. So long as that friendship lasts, we shall remain friends; so long as we are willing to fight, we shall fight.[1]

Dr. Evatt : Does not the Declaration state that the Dominions are united by a common allegiance ?

Mr. Menzies : It does. Is it the contention of the Attorney-General that it does not mean that they are to be united by a common allegiance ?

Dr. Evatt : No; there is a common allegiance.

Mr. Menzies : A common allegiance to a common Crown ?

Dr. Evatt : I prefer the word " King " to " Crown ".

Mr. Menzies : I accept the word " King " with pleasure because it emphasizes my contention. If there is to be a common allegiance to a King, there can be only one King. How one King—one person—can act in six different ways on one problem, because he gets six different sets of advice from six different lots of Ministers, I have never been able to understand.

Mr. Menzies, continuing, remarked that he was not saying these things because they, in his opinion, represented any objection whatever to the passing of the Bill. They did not. This was an opportunity for putting one's views on them on record.[2] Again, to quote Mr. Menzies' own words:

> The present is a very great national and international moment and of great significance in the British Empire. I emphasize that, in so far as the foundation for these arguments exists, it has existed for at least 11 years. The Balfour Declaration has been adopted. The Statute of Westminster has been passed; and it has been passed at the request of every British Dominion, including Australia. So I am looking at those problems retrospectively, but saying by way of fair warning that I am not abandoning my view of the Balfour Declaration, or the Statute of Westminster; and at the same time, I am not raising these matters in order to encumber the Attorney-General with new issues. ' I agree with what he says in his monograph—the question of status does not arise here. That is a past matter. It may have future complications; but it is a past matter.[3]

There was considerable further debate during the night of October 7-8, 1942,[4] and about 1 o'clock a.m. the division took place on the first part of Mr. Hughes' amendment—" That the words proposed to be left out stand part of the Question ": Ayes, 28; Noes, 24. (Pairs, 20.) On the Question—" That the Bill be now read the second time " the voting was: Ayes, 47; Noes, 7. (Pairs, 8.)

C.W.H. and 3 R.—The Bill was then committed, reported without

[1] *Ib.* 1437. [2] *Ib.* 1437. [3] *Ib.* 1437. [4] *Ib.* 1438-78.

amendment and read 3 *R.*, both without debate,[1] and sent to the Senate.

The Senate.—The Bill was received by the Senate on October 8,[2] when a Motion was passed (Ayes, 16; Noes, 14. [Pairs, 2.]) to take all stages. The 2 *R.* was debated forthwith[3] and resumed on October 9,[4] when the Bill was read 2 *R.* (Ayes, 19; Noes, 10. [Pairs, 4.]), committed and read 3 *R.* On the following day it was transmitted for certificate to the House of Representatives and received *R.A.*

No action was taken in any of the Parliaments of the 6 States in regard to the Bill, but the following is an extract from a broadcast by the Premier of South Australia on October 2, 1942:

> A Bill to adopt the Statute of Westminster is now before the Federal Parliament. This Statute was the outcome of the Imperial Conference held in London in 1926, when General Hertzog, then Prime Minister of the Union of South Africa, demanded the legal right to secede from the Empire. In other words, the Statute gives power to any Dominion which adopts it to pass a series of Acts severing all the links which legally bind the Dominions to the Crown. These include the right of appeal to the Privy Council, the Oath of Allegiance taken by persons holding public office, the Office of Governor-General, or, to express it in general language, to abolish all the direct ties between the Dominion and the Sovereign. Quite apart from the origin of the Statute, which was pressed by a Secessionist, a person who has always been hostile to the Imperial connection, and having in mind the fact that Australia and New Zealand have always been satisfied with the facts of freedom and equality—I quote Professor Hancock's term—I believe that the decision to now adopt this Statute is most ill-timed and mischievous, but you will notice that I have made no public statement on the matter, because the State's position is safeguarded under the Statute itself, and no matter what the Commonwealth Parliament may decide the State of South Australia will still uphold and cherish all the ties which bind us to the Motherland.

The general attitude of the States on the subject of a Statute of Westminster Adoption Bill has been referred to in previous issues of this JOURNAL.[5]

[1] *Ib.* 1478. [2] *Ib.* 1491. [3] *Ib.* 1492-1514. [4] *Ib.* 1551-69.
[5] *See* Vols. V, 106-9; VI, 206-8.

XI. PROLONGATION OF THE LIFE OF THE NEW ZEALAND PARLIAMENT DURING WAR-TIME

By T. D. H. Hall, C.M.G., LL.B.,
Barrister-at-Law and Clerk of the House of Representatives

The last General Election prior to the War took place in October, 1938, and under the Electoral Act, 1927, the next General Election would in the normal course have been held in 1941. By that time, however, the War, which broke out in 1939, had reached a very critical stage, and the Prime Minister (Rt. Hon. Peter Fraser), after consulting the Leader of the Opposition (Mr. S. C. Holland), introduced the Prolongation of Parliament Bill on October 15, 1941. The Bill was a short one and provided that the House of Representatives, as existing at the passing of the Act, should, unless the General Assembly was sooner dissolved, continue until November 1, 1942, and no longer. The Prime Minister reviewed the factors prompting the introduction of the Bill. Externally there was a critical situation in Russia and in North Africa. In the battle zones and in the Far East there was grave tension. In New Zealand he had endeavoured to ascertain the feeling of the people and could find nowhere a desire for a General Election; rather was there preoccupation with the immediate necessities of the War and a repugnance to adding the turmoil of an election campaign. He had explored the possibilities of a National Government, but it was not possible to achieve it. There was, however, the War Cabinet containing 2 members of the Opposition and a non-Party advisory War Council, both of which had done good work. The Leader of the Opposition concurred in the Bill. He said he favoured a National Government and offered the co-operation of his Party, but he agreed that, with the War situation as it was, nobody wanted an election campaign. The Prime Minister read correspondence he had had with the Leader of the Opposition on the subject. The latter had suggested that if the postponement of the election was agreed to the Government should undertake not to introduce contentious legilsation. The Government could not accept any proposal that all legislation should be concurred in by the Opposition before introduction, but the Prime Minister promised to consult with the Leader of the Opposition as far as possible and to use his influence to reduce legislation on Party lines to a minimum. Mr. J. A. Lee (Democratic Labour) said he would not oppose the Bill as he understood it did not mean the shutting down of criticism or putting democracy into cold storage. If circumstances warranted and the people expressed a clear desire, he understood that the Prime Minister would arrange for an election. This the Prime Minister had indicated. The Bill was accordingly passed through all its stages in both Houses.

The possibility of the closer association of the two Parties in the War effort was still being explored as there was a strong body of opinion in favour of a National Government. In June, 1942, after further negotiation, the formation of a War Administration was announced. This

replaced, as far as the conduct of the War was concerned, the old War Cabinet, which contained 2 members of the Opposition Party. Four more members of the Opposition were added, including the Leader, and the number of Government members was increased to 7. The domestic Cabinet was retained at full strength, but most of the Government members of the War Administration were members of it. There was one exception: a prominent trade-union leader was allotted the Man-power portfolio. He was appointed to the Legislative Council.

In announcing the setting up of the War Administration the Prime Minister said it had been agreed to prolong the life of Parliament until the end of the War and one year thereafter. This aroused opposition, and, though it was said that there was no intention to cling to office if the public showed a desire for an Election, the Bill prolonging the life of Parliament (Prolongation of Parliament Act, 1942) contained a proviso that the Prime Minister should once in each year move a Resolution either approving the continuation of the House of Representatives or fixing an earlier date for its expiry. There was more opposition to this Bill, and an amendment was moved by an Independent Member (Mr. H. Atmore) and seconded by Mr. J. A. Lee (Democratic Labour). The latter said he had no objection, while the War situation demanded it, to short extensions, but he did not like the suggestion in the Bill that a lengthy period was contemplated. Criticism of the unwieldy nature of the new Administration was raised by opponents of the proposal, including one Government member. A division was taken on the amendment, which proposed the setting up of a Committee to go into the matter. Only 3 voted for it—the mover and seconder and a member of the Opposition (Mr. Doidge).

The War Administration was dissolved after a comparatively short period by the withdrawal of the members of the Opposition owing to disagreement over the handling of a domestic matter. The 2 members of the Opposition who had been in the old War Cabinet almost immediately accepted the Prime Minister's invitation to rejoin the War Cabinet.

When Parliament assembled again on February 24 for a new Session after the breakdown of the War Administration, the Prime Minister moved on the 25th *idem* a Resolution pursuant to the Prolongation of Parliament Act, 1942, fixing the date of expiry of the House. It was in the following terms:

> That it is the opinion of this House that, in view of the continued improvement of the War situation, a General Election should be held during the present year to enable the people in accordance with their democratic rights to elect their representatives in Parliament, and it is resolved, therefore, that, pursuant to the proviso of s. 2 of the Prolongation of Parliament Act, 1942, the House of Representatives shall, unless the General Assembly is sooner dissolved, continue until the 1st day of November, 1943, and no longer.

The General Assembly was duly dissolved and the Election was held in September, 1943.

XII. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY

(1942 AND 1943)

By Ralph Kilpin, J,P.,
Clerk of the House of Assembly

THE following unusual points of procedure occurred during the 1942 and 1943 Sessions:

1942 Session.

Opening of Parliament.—Owing to the illness of the Governor-General the 1942 Session of Parliament was opened by the Chief Justice, who assumed all the duties devolving on the Governor-General on and for January 12, 1942, under s. VI of the Letters Patent relating to the office of the Governor-General. This was a departure from the constitutional practice followed in 1897, when, owing to illness, the Governor of the Cape Colony appointed Commissioners to read his opening speech.[1]

Rule of Anticipation.—On the opening day of the Session no fewer than 5 Notices of Motion were blocked by similar Notices given earlier in the day. These were subsequently printed as amendments to the Motions of which Notice was first given.[2]

Later in the Session, Mr. Speaker applied the principle that preference should be given to proposals having the greatest legislative effect. On the opening day a Member gave Notice of a Motion for the revision of legislation hampering industrial development, " and especially legislation relative to income tax and excess profits ". Subsequently the Minister of Finance gave notice of the Government's taxation proposals. As these proposals included income tax and excess profits and would ultimately be incorporated in the annual Income Tax Bill, Mr. Speaker stated that the words " and especially legislation relative to income tax and excess profits " must be omitted from the first Motion.[3]

Consolidation Bills.—In his reply to 2 *R.* debate on the Electoral Quota Consolidation Bill the Minister of the Interior stated that the Bill was a purely consolidating or clarifying measure and did not alter the existing law in any way. This gave rise to a series of important Rulings as to the scope of amendments which might be moved in *C.W.H.* on the Bill and the general procedure to be followed. In the course of a considered Ruling, Mr. Speaker held that such Bills should be referred to a *Sel. Com.* for examination and report as to whether they altered the existing law in any way, and that, if the Committee reported that they did not alter the existing law, discussion and amendments in *C.W.H.* must be confined to consolidating and clarifying the existing law and proposals to amend the existing law must be disallowed.[4]

The Order for 2 *R.* of the Bill was accordingly discharged, and after

[1] 1942 VOTES, 2. [2] *Ib.* 51, 52, 65, 67, 74. [3] *Ib.* 426. [4] *Ib.* 321.

it had been referred to *Sel. Com.* Mr. Speaker gave a further Ruling for the guidance of the Committee in which he emphasized that it was the function of the Committee to examine the Bill from a strictly legal point of view, and if the Committee considered that the Bill did alter the existing law it should state in its Report in what respects the law was altered and suggest amendments considered necessary to bring the Bill into conformity with the existing law.[1]

The Committee reported the Bill with certain amendments to bring it into conformity with the existing law. These were adopted in *C.W.H.*, but the Chairman declined to put an amendment moved by a Member which had the effect of altering the existing law.[2]

Similar decisions were given by the Chairman of Committees and Mr. President when the Bill was considered in *C.W.H.* of the Senate,[3] and it is hoped that advantage will be taken of the procedure adopted to introduce further consolidated legislation.

Leave to be Represented by Counsel.—Early in the Session a petition was presented from E. J. E. Lange, praying for leave to be represented by counsel on the Select Committee on Pensions, to which a petition for a pension or gratuity had already been referred. Such a course was unusual, but the petitioner had had difficulty in presenting his case on previous occasions and leave was granted.[4]

Unavoidable Absence of Mr. Speaker.—When the House met on Friday, January 23, 1942, the Clerk informed the House that Mr. Speaker (Dr. Jansen) was unavoidably absent, and that unless the House otherwise directed the Chairman of Committees would take the Chair of the House as Deputy-Speaker in terms of S.O. 17. The Chairman of Committees (Major G. B. van Zyl) was in his customary seat in the House at the time, and as no other nomination was made he took the Chair, and the mace which had been placed under the Table was placed on the Table by the Serjeant-at-Arms. The Chairman of Committees, as Deputy-Speaker, then bowed to the right and the left, read prayers and proceeded with the business of the House. This procedure was followed on two previous occasions—namely, in 1913, when Mr. Speaker Molteno was absent when the House met on March 5, but entered the House and took the Chair soon afterwards; and in 1921, when Mr. Speaker Krige was absent on Thursday, June 30, and Friday, July 1. On a third occasion, 1934, when Mr. Speaker Jansen was ill for some weeks from the commencement of the Session and both the Chairman of Committees and the Deputy-Chairman had died during the recess, an " Acting Speaker " was appointed during his absence.[5]

Paper Laid on Table by Minister on Behalf of Private Member.—Owing to the established practice which precludes Private Members from laying documents on the Table of the House, the Leader of the Opposition (Dr. Malan) handed the Minister of Justice an affidavit and requested him to lay it on the Table for the information of the House.

[1] *Sel. Com.* 9—'42, IX. [2] 1942 VOTES, 484. [3] 1942 SEN. MIN., 160.
[4] 1942 VOTES, 32, 221. [5] *Ib.* 111.

The Minister of Justice complied and the affidavit was subsequently printed in facsimile as an " A Paper " (A1–1942).[1]

Scope of Debate on Appropriation Bills.—On the principle that redress of grievances should be considered before the grant of supply the rule of relevancy is set aside on 2 *R.* and 3 *R.* of Appropriation Bills and Part Appropriation Bills just as it is set aside on the Motion to go into Committee of Supply. During a protracted debate on 2 *R.* of the Part Appropriation Bill, Mr. Speaker drew attention to this principle but pointed out that the debate had developed into an attack upon and a defence of the Leader of the Opposition, and suggested that the debate on the actions referred to should be restricted to matters falling within the sphere of Government.[2]

Reflections on Existing Form of Government.—In the same ruling as that referred to above Mr. Speaker drew attention " to the tendency of some hon. Members on every occasion when they happen to take part in a debate to belittle the democratic system on which this Parliament is based and to advocate another system ". He then pointed out that the present system of parliamentary government was embodied in the South Africa Act and said that, as S.O. 73 provided that no Member shall reflect upon any statute unless for the purpose of moving for its repeal, reflections on the existing system of parliamentary government would not be permitted unless a substantive Motion or Bill for the purpose of altering it was under discussion.[3]

Motions for Adjournment of House on Definite Matter of Urgent Public Importance.—Two such Motions were allowed and both gave rise to unusual points of procedure. The first Motion occupied a whole sitting day, and, as a Motion for the adjournment of the debate cannot be moved to a Motion for the adjournment of the House, the closure was moved. The Motion was then put and negatived, and immediately afterwards an ordinary Motion for the adjournment of the House in accordance with the precedent established in 1939[4] was agreed to.[5]

The other Motion was moved after a Question had been put to the Prime Minister. From the Prime Minister's reply the matter appeared to be urgent and the Motion was allowed, but when the mover was speaking on the Motion the Prime Minister, with leave of the House, was able to give further information which showed that the matter was not urgent. The mover thereupon stated that he was willing to leave the matter in abeyance, and the Motion dropped as it was not seconded.[6]

Bill received from Senate with Money Provisions in Brackets.—Clause 2 of the Native Administration Amendment Bill, which was introduced in the Senate, contained provisions for exemptions from the payment of certain fees of office and transfer duty. Strictly speaking, the Bill did not therefore fall under s. 60 (1) of the South Africa Act, which provides that Bills " appropriating revenue or moneys or imposing taxation shall originate only in the House of Assembly ". But sub-section (2) of that

[1] *Ib.* 177. [2] *Ib.* 197. [3] *Ib.* 198. [4] *See* JOURNAL, Vol. VIII, 123.
[5] 1942 VOTES, 312. [6] *Ib.* 468.

section provides that the Senate may not amend any Bills so far as they impose taxation or appropriate revenue or moneys for the services of the Government, and Mr. President pointed out that the " Senate cannot make a provision in an amending Bill introduced here which it could not have made in the principal Act when that came before the House ". In accordance with established practice the provisions were therefore placed in brackets when sent to the House of Assembly with a footnote indicating that they did not form part of the Bill.[1]

Ways and Means Resolutions.—A difficulty arose in connection with the introduction of a Bill to amend and consolidate the law relating to excise, as it was desired to introduce the Bill early in the Session and incorporate increases in the excise duties which would be made later in the Session by the Committee of Ways and Means. The difficulty was met by introducing the Excise Bill early in the Session and suspending the Committee stage until the Committee of Ways and Means had reported the Resolutions on excise. These Resolutions were then adopted in the usual way, but instead of a Committee being appointed to bring up a Bill to give effect to them they were referred to *C.W.H.* on the Excise Bill and subsequently incorporated in that Bill.[2]

Words of Enactment.—After the War Pensions Bill had been introduced it was found that the customary " words of enactment " had been inadvertently omitted. Under S.O. 166 only spelling or obvious grammatical mistakes or typographical errors may be corrected at the Table, but as the " words of enactment " are not put by the Chairman under S.O. 164 the Chairman informed *C.W.H.* on the Bill that he had directed that the necessary correction be made.[3]

Amendment by the Governor-General.—After the Income Tax Bill had been passed by both Houses of Parliament, it was discovered that a clause of great importance should have been included. The Governor-General was therefore advised to exercise his right of amendment under s. 64 of the Constitution, which he did by returning the Bill to the House in which it originated, upon submission to him for assent, whereupon he recommended that the clause be inserted. This was done on the last day of the Session.[4]

Absence of Quorum during Division.—The only occasion on which Mr. Speaker takes the initiative in ascertaining whether a quorum is present is at the time of meeting (May, 11th ed., p. 229, and S.O. 27). Otherwise Notice is taken by a Member or on the report of a division (S.O. 29). Thus in a division when it is apparent that there is no quorum but only the names of the minority are recorded under S.O. 126 and there are consequently no division lists, Mr. Speaker proceeds as though there were a quorum unless a Member directs attention to the fact that there is no quorum. This practice was observed in 1936,[5] when the Chairman was in the Chair, and on the last day of the Session of 1942, when Mr. Speaker was in the Chair.[6]

[1] 1942 SEN. MIN., 132; 1942 VOTES, 523. [2] *Ib.* 567, 574.
[3] *Ib.* 689. [4] *Ib.* 727, 728. [5] 1936 *Ib.*, 530. [6] 1942 *Ib.*, 729.

Budget Speech.—An innovation was made in connection with the Budget Speech which will probably be followed in future. By arrangement with the Treasury a printed summary of facts and figures in connection with the Budget statement was distributed in the House of Members just before the Minister of Finance made his Budget speech and was laid upon the Table by the Minister at the conclusion of his speech. By referring Members to the statement the Minister was in this way able to omit many of the facts and figures usually included in the Budget speech.[1]

Railways and Harbours Supplementary Estimates of Expenditure.—In the past the Railways and Harbours Administration disposed of their surplus revenue by means of " Supplementary Estimates " of Expenditure which were referred to Committee of Supply. As this procedure had obvious defects it was decided to adopt the same procedure as is followed by the Central Government and dispose of surplus revenue by means of a section in the Finance Bill.[2]

Charges against Members arising in a Select Committee.—During the investigations of the Select Committee on Public Accounts into certain land transactions which had been reported upon by the Controller and Auditor-General, it was found that 2 Members were involved and the question arose as to how far the Committee could inquire into their conduct and whether it should report to the House under S.O. 243 that information had come before it charging a Member. Mr. Speaker, in the course of a Ruling given to the Committee, said that if a member of the Committee wished to press a charge against a Member of the House he should do so by means of a substantive Motion in the House, but as evidence had already been taken Mr. Speaker suggested that the Member concerned should be given an opportunity of offering an explanation, after which, without further investigation, the Committee could decide whether the matter should be reported to the House. Mr. Speaker added that he thought this procedure would be in conformity with the provisions of S.O. 243, which, in his opinion, must be read to mean that a Committee should report to the House only if it is of opinion that there is some substance in the information charging the Member.[3]

Public Bill Overriding Private Acts.—The provisions of the Banking Bill affected many deposit-receiving institutions established under Private Acts. Some of these institutions sought to be exempted from such provisions, but the *Sel. Com.* to which the Bill was referred declined to accede to their request and, as it was considered necessary in the public interest to make general provision for the protection of depositors, inserted a clause making it quite clear that where the provisions of special Acts governing banking institutions were in conflict with the Bill the provisions of the Bill would prevail.[4]

Safeguarding of Interests affected by Private Bills.—Applying the principle that the House should itself exercise the duty of safeguarding

[1] *Ib.* 320. [2] 44 *Assem. Hans.*, c. 6249. [3] *Sel. Com.* I. C.—'42, XXXVIII.
[4] *Ib.* 8—'42, XXIV.

interests affected by Private Bills and should not delegate that duty to any other authority, Mr. Speaker disallowed a clause in the Durban Savings Department (Private) Bill which sought to empower the Natal Provincial Council to alter, amend or add to the provisions of the Bill after it had been passed by Parliament.[1]

1943 Session.

Opening of Parliament.—Owing to the illness of the Governor-General the ceremony was performed by the Chief Justice as Officer Administering the Government, who continued to act as such during the whole Session.[2]

Reference of Private Bill to Provincial Council.—When matters which require to be dealt with by Private Bill procedure are *ultra vires* a Provincial Council they may be dealt with by a Private Bill introduced in the House of Assembly and under s. 58 of the South Africa Act may be referred to the Provincial Council concerned for inquiry. The Durban Savings Department (Private) Bill fell into this category. It was introduced in the House of Assembly in 1942, and on a Motion to revive proceedings in 1943 a Member moved as an amendment that the Bill be referred to the Natal Provincial Council for inquiry and report. The amendment was negatived.[3]

Rule of Anticipation.—On the opening day of the Session, the Leader of the Opposition gave Notice of a Motion which in dealing with the general question of " social security " referred to a large number of social and economic questions. Subsequently on the same day several other Members gave Notices of Motion dealing with these questions specifically. Mr. Speaker in drawing attention to this fact said that under a strict interpretation of the rule of anticipation the general Motion should block discussion on any of the other Motions if the matters dealt with in them could be adequately debated on that Motion. " It seems to me ", he added, " that the best course to follow is to allow such Notices of Motion to remain on the Order Paper and hon. Members (in discussing the general Motion) should avoid as far as possible impinging on such Motions. Members are, of course, at liberty to withdraw their Notices of Motion, and if they do so full discussion will be allowed on the Motion by Dr. Malan " (*i.e.*, the general Motion).[4]

Early in the Session Mr. Oost gave Notice of a Motion requesting the Government to introduce legislation exempting " young industrial undertakings " from the excess profits duty. The Motion was moved on January 6, 1943,[5] and the debate was adjourned. Before the debate was resumed the Minister of Finance gave Notice of Motion to go into Committee of Ways and Means on taxation proposals which included excess profits duty, and Mr. Speaker stated that as these proposals had greater legislative effect than Mr. Oost's Motion the Order for the resumption of the debate would be discharged.[6]

[1] 1942 VOTES, 15. [2] 1943 VOTES, 2. [3] *Ib.* 40, 76. [4] *Ib.* 40.
[5] *Ib.* 94. [6] *Ib.* 264.

Message to Senate during its Adjournment.—On Thursday, February 25, 1943, the Senate, after passing the Additional Appropriation Bill, passed a Resolution authorizing the Clerk of the Senate to convey and receive messages in connection with the Bill although that House might not be sitting.[1] The Senate then adjourned until the following Monday. The message transmitting the Bill for certificate was received by the House of Assembly on Friday, February 26, and as S.O. 149 (2) prescribes that messages to the Senate must be delivered at the Bar of the Senate whilst both Houses are sitting the House specially authorized the Clerk of the House to return the Bill to the Clerk of the Senate.[2]

Estimates of Expenditure.—Owing to the difficulty in estimating the amount required for the Defence Vote the Treasury, rather than delay the printing of the Estimates, gave the same estimate for Defence as in the previous year—namely, £40,000,000. Before moving that the House go into Committee of Supply on the Estimates the Minister of Finance tabled an amended Vote showing an increase of £8,000,000.[3]

Petitions for Leave to be Heard at Bar on Public Bill.—Two petitions were presented from representatives of the Indian community for leave to be heard at the Bar of the House in opposition to the provisions of the Trading and Occupation of Land (Transvaal and Natal) Bill, which adversely affected their particular interests. Notice was given of a Motion granting leave in the case of the first petition,[4] but it was not reached and was subsequently withdrawn from the Notice Paper.[5]

Proclamation Dissolving House of Assembly.—On Saturday, May 29, 1943, such a Proclamation was issued, "with effect from May 31, 1943". This was the first occasion on which a Proclamation dissolving the House has been given effect from a day other than the day on which it was issued. (Proclamation No. 101, 1943.)

The Guillotine.—Without the "Emergency Order" having been adopted, a Guillotine Motion was agreed to limiting the proceedings in Committee of Supply to 110 hours, nearly all of which was taken up on the Main Estimates.[6]

Privileges Granted ex-Members.—On April 17, 1943, the Select Committee on Internal Arrangements, having considered the question of the admission of Strangers, passed a Resolution recommending that in addition to the use of the Parliamentary Library under the Joint Rules adopted in 1913 (S.O. Appdx. I, s. 7) ex-Members of the House of Assembly be allowed, on production of a ticket to be issued by Mr. Speaker on application, to enter the Lobby of the House of Assembly and to make use of the refreshment rooms (*i.e.*, the dining-room, coffee lounge and bar lounge), but that they be not allowed to invite other strangers into any part of the buildings. This recommendation was adopted by the House on April 24.[7] Similar recommendations were adopted by the Senate.[8]

[1] 1943 SEN. MIN., 27. [2] 1943 VOTES, 114. [3] *Ib.* 254. [4] *Ib.* 531.
[5] *Ib.* 521, 533. [6] *Ib.* 335. [7] *Ib.* 595. [8] 1943 SEN. MIN., 159.

XIII. INDIA AND FEDERATION

By the Editor

A.—The Wider Issue

The question of the operation of Federation in India has already been referred to in this JOURNAL.[1] The White Paper issued in 1942,[2] however, deals with the question of a wider constitutional issue than the full operation of Federation under the present Constitution[3] of India. It is proposed, therefore, in this Article, to give a brief summary of the White Paper in question, which covers certain proceedings in the House of Commons as well as correspondence between the Lord Privy Seal (Rt. Hon. Sir Stafford Cripps) and the leaders or representatives of the various political organizations in India, which transpired during his mission to that country in 1942.

During a discussion in the House of Commons on April 23, 1942,[4] upon the business of the House, the Lord Privy Seal, in reply to a Question as to when the House would be provided with a printed statement of the principal documents and correspondence in relation to India, said that the White Paper (Cmd. 6350)[5] was already available to Members in the Vote Office.

This Paper (Cmd. 6350) consists of 30 pp. and was issued in connection with Sir Stafford Cripps' mission to India. It is described as a " Statement and Draft Declaration by His Majesty's Government with correspondence and Resolutions connected therewith ". The Paper was presented by the Secretary of State for India to Parliament by command of His Majesty in April, 1942, and its main heads are:

(i) Statement by the Prime Minister in the House of Commons on March 11, 1942;[6]
(ii) Draft Declaration by H.M. Government for discussion with Indian leaders dated March 30, 1942;
(iii) Correspondence between Sir Stafford Cripps and Maulana Abul Kalam Azad and Mr. M. A. Jinnah;
(iv) Resolution of the Indian States Delegation, and Resolutions and statements by representative bodies in British India:
  (*a*) Indian States Delegation;
  (*b*) Congress Working Committee;
  (*c*) Muslim League Working Committee;
  (*d*) Hindu Mahasabha;
  (*e*) Depressed Classes;
  (*f*) Sikh All-Parties Committee; and
  (*g*) Sir T. B. Sapru and Mr. M. R. Jayakar.

Prime Minister's Statement.[6]—In the course of such statement, the Prime Minister (Rt. Hon. Winston Churchill) said that in August, 1940,[7] a full statement was made about the aims and policy they were pursuing in India. That amounted, in short—

[1] *See* JOURNAL, Vols. IV, 76-99; IX, 51-4; X, 70. [2] Cmd. 6350. [3] 26 Geo. V and 1 Edw. VIII, c. 2. [4] 379 *Com. Hans.* 5, s. 758. [5] An important White Paper—Cmd. 6430—was issued by the Government of India in March, 1943, concerning the responsibility for certain disturbances in India.—[Ed.]
[6] 378 *Com. Hans.* 5, s. 1069. [7] *See* JOURNAL, Vol. IX, 52.

to a promise that, as soon as possible after the War, India should attain Dominion status, in full freedom and equality with this country and the other Dominions, under a Constitution to be framed by Indians, by agreement among themselves and acceptable to the main elements in Indian national life. This was, of course, subject to the fulfilment of our obligations for the protection of minorities, including the depressed classes, and of our treaty obligations to the Indian States, and to the settlement of certain lesser matters arising out of our long association with the fortunes of the Indian sub-continent.

Mr. Churchill, continuing, said that the War Cabinet had agreed unitedly upon conclusions for present and further action which, if accepted by India as whole, would avoid the alternative dangers either that the resistance of a powerful minority might impose an indefinite veto upon the wishes of the majority or that a majority decision might be taken which would be resisted to a point destructive of internal harmony and fatal to the setting up of a new Constitution.[1]

Draft Declaration.—Here are the conclusions of the British War Cabinet which Sir Stafford Cripps took with him for discussion with the Indian leaders:[2]

His Majesty's Government, having considered the anxieties expressed in this country and in India as to the fulfilment of the promises made in regard to the future of India, have decided to lay down in precise and clear terms the steps which they propose shall be taken for the earliest possible realization of self-government in India. The object is the creation of a new Indian Union which shall constitute a Dominion, associated with the United Kingdom and the other Dominions by a common allegiance to the Crown, but equal to them in every respect, in no way subordinate in any aspect of its domestic or external affairs.

His Majesty's Government therefore make the following declaration:

(*a*) Immediately upon the cessation of hostilities, steps shall be taken to set up in India, in the manner described hereafter, an elected body charged with the task of framing a new Constitution for India.

(*b*) Provision shall be made, as set out below, for the participation of the Indian States in the Constitution-making body.

(*c*) His Majesty's Government undertake to accept and implement forthwith the Constitution so framed subject only to:

(i) the right of any Province of British India that is not prepared to accept the new Constitution to retain its present constitutional position, provision being made for its subsequent accession if it so decides.

With such non-acceding Provinces, should they so desire, His Majesty's Government will be prepared to agree upon a new Constitution, giving them the same full status as the Indian Union, and arrived at by a procedure analogous to that here laid down.

(ii) the signing of a Treaty which shall be negotiated between His Majesty's Government and the Constitution-making body. This Treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian hands; it will make provision, in accordance with the undertakings given by His Majesty's Government, for the protection of racial and religious minorities; but will not impose any restriction on the power of the Indian Union to decide in the future its relationship to the other Member States of the British Commonwealth.

[1] Cmd. 6350, p. 3. [2] *Ib.*, pp. 4-5.

Whether or not an Indian State elects to adhere to the Constitution, it will be necessary to negotiate a revision of its Treaty arrangements, so far as this may be required in the new situation.

(*d*) The Constitution-making body shall be composed as follows, unless the leaders of Indian opinion in the principal communities agree upon some other form before the end of hostilities:

Immediately upon the result being known of the provincial elections which will be necessary at the end of hostilities, the entire membership of the Lower Houses of the Provincial Legislatures shall, as a single electoral college, proceed to the election of the Constitution-making body by the system of proportional representation. This new body shall be in number about one-tenth of the number of the electoral college.

Indian States shall be invited to appoint representatives in the same proportion to their total population as in the case of the representatives of British India as a whole, and with the same powers as the British Indian members.

(*e*) During the critical period which now faces India and until the new Constitution can be framed His Majesty's Government must inevitably bear the responsibility for and retain control and direction of the defence of India as part of their world War effort, but the task of organizing to the full the military, moral and material resources of India must be the responsibility of the Government of India with the co-operation of the peoples of India. His Majesty's Government desire and invite the immediate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country, of the Commonwealth and of the United Nations. Thus they will be enabled to give their active and constructive help in the discharge of a task which is vital and essential for the future freedom of India.

Correspondence between Sir S. Cripps and Maulana Abul Kalam Azad and Mr. M. A. Jinnah.—In Paper (iii) above mentioned, it was suggested that, should a Province not reach its decision to join Indian Union by a vote in the Legislative Assembly of less than 60%, the minority should have the right to demand a plebiscite of the adult male population.[1] In a letter from Sir S. Cripps to Maulana Azad, the following was a proposal Sir S. Cripps was authorized to make in regard to Defence—namely, that:

I am therefore authorized to propose to you as a way out of the present difficulties that: (*a*) The Commander-in-Chief should retain a seat on the Viceroy's Executive Council as War Member and should retain his full control over all the War activities of the armed forces in India subject to the control of His Majesty's Government and the War Cabinet, upon which body a representative Indian should sit with equal powers in all matters relating to the defence of India. Membership of the Pacific Council would likewise be offered to a representative Indian. (*b*) An Indian representative Member would be added to the Viceroy's Executive who would take over those sections of the Department of Defence which can organizationally be separated immediately from the Commander-in-Chief's War Department and which are specified under head (I) of the annexure. In addition this member would take over the Defence Co-ordination

[1] *Ib.*, p. 6 (4).

Department which is at present directly under the Viceroy and certain other important functions of the Government of India which are directly related to defence and which do not fall under any of the other existing departments, and which are specified under head (II) of the annexure.[1]

Heads I and II of the Annexure give the details. In this correspondence these Indian leaders suggested that the National Government must be a Cabinet Government with full power and not merely a continuation of the Viceroy's Executive Council. Sir S. Cripps also remarked[2] that nothing further could have been done by way of giving responsibility for defence services to representative Indian Members without jeopardizing the immediate defence of India under the Commander-in-Chief. Defence was the paramount duty and responsibility of His Majesty's Government. In regard to the National Government suggestion, Sir S. Cripps observed that, were such a system introduced by convention under the existing circumstances, the nominated Cabinet (nominated presumably by the major political organizations), responsible to no one but itself, could not be removed and would in fact constitute an absolute dictatorship of the majority and that such suggestion would be rejected by all minorities in India, since it would subject all of them to a permanent and autocratic majority in the Cabinet; nor would it be consistent with the pledges already given by H.M. Government to protect the rights of minorities. In a country such as India, where communal divisions were still so deep, an irresponsible majority Government of that kind was not possible.[3] In his letter to Sir S. Cripps of April 11, 1942, Maulana Azad stated that the British Government's conception and theirs in regard to Defence differed greatly. For them it meant giving it a national character, it meant trusting their own people and seeking their full co-operation. The British Government's view seemed to be based on an utter lack of confidence in the Indian people and in withholding real power from them.[4]

Indian States[5] *Delegation.*—The following is a Resolution on the subject adopted unanimously at the Session of the Chamber of Princes, but in a covering letter by Digvijaysinhji Maharaja Jam Saheb of Nawanagar to Sir S. Cripps it was suggested that, in the event of a number of States not finding it possible to adhere, the non-adhering States, or groups of States, should have the right to form a union of their own, with full sovereign status:

(*a*) That this Chamber welcomes the announcement made in the House of Commons on March 11, 1942, by the Prime Minister and the forthcoming visit to India of the Lord Privy Seal and Leader of the House of Commons, and expresses the hope that it may help to unite India to intensify further her War effort and to strengthen the measures for defence of the Motherland.

[1] *Ib.*, p. 7 (7). [2] *Ib.*, p. 13. [3] *Ib.*, p. 13 (10). [4] *Ib.*, p. 14 (11).
[5] *See* references to Indian States in Index to this Volume.—[ED.]

(*b*) That this Chamber has repeatedly made it clear that any scheme to be acceptable to the States must effectively protect their rights arising from treaties, engagements and sanads or otherwise and ensure the future existence of sovereignty and autonomy of the States thereunder guaranteed, and leave them complete freedom duly to discharge their obligation to the Crown and to their subjects; it therefore notes with particular satisfaction the reference in the announcement of the Prime Minister to the fulfilment of the treaty obligations to the Indian States.

(*c*) That this Chamber authorizes its representatives to carry on the discussions and negotiations for Constitutional advance of India with due regard to successful prosecution of War and interests of the States, and subject to the final confirmation by the Chamber and without prejudice to the right of the individual States to be consulted in respect of any proposals affecting their treaty or other inherent rights.[1]

Congress Working Committee.—It was stated in the Resolution of this Committee issued April 11, 1942, that at the last meeting of the All-India Congress Committee after the commencement of the War in the Pacific it was laid down that—

> " Only a free and independent India can be in a position to undertake the defence of the country on a national basis and be able to help in the furtherance of the larger causes that are emerging from the form of War."

The Committee stated that the people of India had, as a whole, clearly demanded full independence and Congress had repeatedly declared that no other status except that of independence for the whole of India could be agreed to or could meet the essential requirements of the present situation.[2]

In regard to the Indian States this Committee observed that such States may in many ways become barriers to the growth of Indian freedom—" enclaves where foreign authority still prevails."

The Committee therefore stated that it was unable to accept the proposals put forward on behalf of the British War Cabinet.[3]

Muslim League Working Committee.—The Working Committee of the All-India Muslim League, in putting forward their Resolution, issued April 11, 1942, quoted the Declaration of August 8, 1940, which promised to the Moslems that neither the machinery for the framing of the Constitution should be set up, nor the Constitution itself should be enforced, without the approval and consent of Moslem India. This Committee stated that, while expressing its gratification that the possibility of Pakistan[4] was recognized by implication in providing for the establishment of 2 or more independent Unions in India, it regretted that the proposals of H.M. Government embodying the fundamentals were not open to any modification, in view of which the Committee had no

[1] *Cmd.* 6350, p. 16. [2] *Ib.*, p. 17. [3] *Ib.*, p. 18. [4] The partition of India into independent zones, one of which to be Moslem.—[ED.]

alternative but to say that the proposals in their present form were unacceptable, for which the reasons were stated in 6 numbered paragraphs dealing with Pakistan; the right of the Mussalmans to elect their own representatives to the Constitutional Convention, by means of separate electorates; decision by the Constitution-making body to be by majority, when the Moslems would be in a minority of about 25%; dissatisfaction with the procedure laid down in regard to the right of the Provinces of non-accession to the Union; the right of the Indian States themselves to decide whether or not to join the Union or form a Union; dissatisfaction with the procedure in regard to the suggested treaty; and the absence of any definite proposal in regard to the interim arrangements.

Hindu Mahasabha.—The Working Committee of this Assembly passed a Resolution, April 3, 1942, rejecting the proposals of H.M. Government in view of their having to be either accepted or rejected as a whole. The 7 paragraphs of this Resolution dealt with: the indivisibility of India; objection to the right of non-accession of the Provinces; the treaty completely to satisfy the minorities; the scheme nebulous, vague and unsatisfactory with regard to the interim arrangements; India to be an independent nation with free and equal status in the Indo-British Commonwealth; defence proposals unacceptable; against the Constitution-making body elected on the basis of the communal award; and that unless and until H.M. Government's proposals were radically altered and readjusted on the vital issues raised the Hindu Mahasabha could not be a party to a scheme which had to be accepted or rejected *in toto*.[1]

Depressed Classes.—In their letter of April 1, 1942, to Sir S. Cripps, the leaders of this Community, Dr. B. R. Ambedkar and Mr. M. C. Rajah, said that the proposals of H.M. Government relating to constitutional development of India were not acceptable to their Community, as such proposals would place them under an unmitigated system of Hindu rule and take them back to the black days of the ancient past. They would look upon it as a breach of faith if H.M. Government decided to force upon their Community a Constitution to which they had not given their free and voluntary consent and which did not contain within itself all the provisions necessary for safeguarding their interests.[2]

Sikh All-Parties Committee.—In a letter of March 31, 1942, to Sir S. Cripps from the leader of this Community representing this Committee, of which Balder Singh is President, it stated that the proposals of H.M. Government were unacceptable because (i) instead of maintaining and strengthening the integrity of India specific provision had been made for separation of Provinces and the constitution of Pakistan; and (ii) the cause of the Sikh Community had been betrayed. The letter went on to speak of the services Sikhs had given for England in every battlefield of the Empire. They asked:

[1] *Cmd.* 6350, pp. 20-22. [2] *Ib.*, p. 22.

> Why should a Province that fails to secure a three-fifths majority of its Legislature, in which a religious community enjoys a statutory majority, be allowed to hold a plebiscite and be given the benefit of a bare majority ?

In fairness, the letter continues, this right should have been conceded to Communities who were in permanent minority in the Legislature. Further, why should not the population of any area opposed to separation be given the right to record its verdict and to form an autonomous unit ? Figures were given in support of this. This Community stated that it would resist, by all possible means, separation of the Punjab from All-India Union. A long note was attached to the letter giving particulars in regard to the position of the Sikh Community in the Punjab.[1]

The Simon Commission was quoted as saying that: " Sikhism remained a pacific cult until the political tyranny of the Mussalmans and the social tyranny of the Hindus converted it into a military creed."[2] Out of a population of 6,000,000 the Sikh Community had furnished 121,000 fighting men in the Great War. They complained of their unfair representation in the Legislative Assembly of the Punjab under the " so-called " communal award of 1932, as well as in the Provincial Ministry of the Punjab and on the Viceroy's Council. They wished the Provinces to enjoy as wide a measure of autonomy as was compatible with good government in the country as a whole, but they felt that any weakness at the centre would expose India to internal and external dangers.[3] They were strongly opposed to the vivisection of India into 2 or 3 rival dominions or sovereign states. They felt that such a step would lead to a state of perpetual strife and civil war.

The Sikhs did not seek to dominate but they would not submit to the domination of a community bent upon breaking the unity of India.

Sir T. B. Sapru and Mr. M. R. Jayakar in a Memorandum of April 5, 1942, realized that the transfer of absolute control over Defence at the present juncture would not be in the best interests of England and India, but they failed to see how that end would not be achieved by the appointment of an Indian Defence Member of the Viceroy's Council.[4] They were convinced that the creation of more than one Union would be disastrous to the lasting interests of the country.[5] They feared that plebiscites were bound to lead to serious consequences and they opposed Provinces being allowed to combine into a separate Union. Lastly, they urged the necessity for the restoration in the Provinces of a popular form of government.

So much for the question of further extension of the present Federation Constitution of India under the Government of India Act, 1935.

B. The Present Breakdown

In the meantime, owing to the withdrawal, since 1939, of many of the Congress Party Ministries[6] in the Governor's Provinces of British

[1] *Ib.*, pp. 23-4. [2] *Ib.*, p. 24. [3] *Ib.*, p. 25. [4] *Ib.*, p. 28. [5] *Ib.*, p. 29.
[6] *See* JOURNAL, Vols. VIII, 63; X, 74.

India having continued for the period of 3 years laid down in the Government of India Act, 1935, as the limit within which the Governors have power under s. 93 of the Government of India Act, 1935, to make temporary provision for the administration of their Governments and Provinces in event of a failure of the normal constitutional machinery—and such resignations still continuing—it had become necessary, in order to carry on under the present Constitution, to pass an Act of the Imperial Parliament giving such Governors statutory power to continue such administration. The India and Burma (Temporary and Miscellaneous Provisions) Act (5 & 6 Geo. VI, c. 39) dealt with this emergency for the prolongation of the temporary arrangements by which the Governors of the Provinces of Madras, Bombay, the United Provinces, Bihar, Central Provinces and Berar and Orissa may continue to administer such Provinces without Provincial Legislatures. At the present date (October, 1944) Ministers with their Legislatures are officiating in the Provinces of Bengal, the Punjab, Assam, Sind and the North-West Frontier Province, with a combined population of about 106,000,000 (1941).

The temporary provision above mentioned had to be introduced in several Provinces in the autumn of 1939 after the resignation of the Congress Ministries, and failing the amendment of s. 93 this validity would have expired on varying dates between October 30 and November 10, 1942. As there was no immediate prospect of the resumption of Ministerial government in the Provinces concerned it was necessary to provide for the prolongation of the present temporary arrangements. The Act therefore extended the limiting period (subject always to the periodic review by Parliament) to a date 12 months from the end of the War period[1] in the case of any Proclamations issued under s. 93 which, but for this amendment, would have elapsed before that date.[2]

In his speech moving 2 *R.* the Secretary of State for India (Rt. Hon. L. S. Amery) said[3] that s. 1 of the Bill raised directly the whole issue of the present political deadlock in India. The origin of its provisions and the necessity for their continuance were indeed only intelligible in the light of the fundamental difference between the Congress Party on the one hand and the rest of India and H.M. Government on the other, as to the method by which India's freedom was to be attained.

" It is, I repeat, a difference, a divergence, as to the method to be pursued and not as to the aim in view. Indian nationalism, the desire to see India's destiny directed by Indian hands free from all external control, is not confined to any one Party in India. It is shared by all. To that aim, we in this country have solemnly pledged ourselves before India and before the world. In the name of His Majesty's Government I repeat that pledge today."[4]

[1] Defined in s. 6 of the Bill as the period beginning August 24, 1939, and ending when the Emergency Powers (Defence) Act, 1939, ceases to be in force.—[ED.]
[2] *Explanatory Memorandum* on s. 1 of the Bill (43).
[3] 383 *Com. Hans.* 5, s. 1388.
[4] *Ib.* 1387.

Continuing, Mr. Amery said:

" Our conviction is that India can only be truly free, truly secure against external aggression, truly prosperous, if she is at peace within her own borders. And she can only enjoy that peace under a Constitution which gives due regard to the profound differences of religion and culture, of history and tradition, of local interest and sentiment which make up the complex life of that vast country—I should rather say that vast continent. You cannot dispose of the great Moslem Community of 95,000,000 with its passionate sense of unity and distinctiveness in a spiritually alien world and with its memories of past domination, as a mere numerical minority. You cannot dispose of the Princes of India, Rulers over nearly half of the area of India and over nearly a quarter of its population, bound to the Crown by mutual loyalty based on treaties faithfully observed on both sides, as negligible excrescences on British India. You cannot ignore 50,000,000 of the Depressed Classes outside the pale of the Hindu caste system, not to speak of other lesser but still important elements. No simple arithmetical or unitary Constitution can ever reconcile the natural claims of these various elements to be free to express each its own character and defend its own peculiar ways and interests.[1]

" Only a Constitution based on balance and compromise can harmonize these claims. Such a Constitution this House attempted to devise for India in the Act of 1935. We have since come to the conclusion that no Constitution imposed from without can meet the case. It is for those who have to live under a Constitution to find the compromises and concessions which will enable them to work it. It is those who have framed a Constitution for themselves who will bring to it the good will without which it can never succeed.

" It is upon that principle that His Majesty's Government based the Draft Declaration of policy which my right hon. and learned friend, the Lord Privy Seal, took out to India to discuss with Indian political leaders. That Declaration offered to India complete and unqualified freedom, the same freedom as is enjoyed by the Dominions, or for that matter by ourselves, the same unfettered control over her future destiny within the partnership of the British Commonwealth—or without that partnership if she preferred to forgo its advantages—at the earliest possible moment after the War under a Constitution arrived at by free agreement and subject to fulfilment under treaty arrangements of our honourable obligations. What more could have been offered ? That offer stands. What more can we offer today ? What better plan has anyone suggested ?[2]

" In the meantime my rt. hon. and learned friend invited Indian political leaders to share the responsibility of conducting India's Government during the War to the fullest extent compatible with the existing Constitution—that is to say, subject to the ultimate responsibility, through the Viceroy, to Parliament."[3]

[1] *Ib.* 1389. [2] *Ib.* 1389-90. [3] *Ib.* 1390.

There was considerable further debate[1] on the Question for the 2 *R.*, to which an amendment was moved by Mr. Maxton (Glasgow, Bridgeton) to leave out all words after " That " to the end of the Question and to substitute the following:

> this House declines to give a Second Reading to a Bill which deals only with Provincial and secondary aspects of the Indian problem without attempting to solve the main difficulties of Central Government which are the cause of the deadlock in the Provinces.

Upon the Question being put at the conclusion of debate, " That the words proposed to be left out stand part of the Question ", the voting was: Ayes, 360; Noes, 17. The amendment was therefore negatived and the Bill was read 2 *R.*

The *C.W.H.* and 3 *R.* stages[2] were taken practically without debate and the Bill was concurred in by the Lords without amendment, receiving *R.A.* October 22, 1942.[3]

[1] *Ib.* 1390-1450. [2] *Ib.* 1569-71. [3] 5 & 6 Geo. VI, c. 39.

XIV. APPLICATIONS OF PRIVILEGE, 1942 AND 1943[1]

BY THE EDITOR

At Westminster.

Conduct of a Member.—(" The Boothby Case "—*see* Article IV.)

Conduct of a Member (*Question of Privilege*).—On February 4, 1941,[2] in the House of Commons, Colonel Gretton brought up a question of Privilege arising out of a letter published in *The Times* of January 31 by Joynson-Hicks and Co., solicitors, on behalf of their client Mr. Weininger, one of the witnesses who gave evidence before the Select Committee[3] on the Conduct of a Member, and inquired whether the Motion would be prejudiced if it were taken tomorrow or later, to which Mr. Deputy-Speaker replied that, in view of the very short notice and also of the importance of the question, he would be obliged if the rt. hon. gentleman would raise the matter tomorrow at the end of Questions.

Colonel Gretton: I will act accordingly.

On the morrow[4] Colonel Gretton said that as a member of the Committee of Privileges he felt a difficulty in carrying the matter further, as this might come before that Committee. He had therefore asked his hon. and learned friend the Member for Ashford (Mr. Spens) to move the Resolution that might be necessary.

Mr. Spens: I have here a copy of *The Times* of January 31 last containing the letter in question, to which I desire to draw your attention, Sir.

Mr. SPEAKER: Will the hon. Member bring it to the Table?

Whereupon the hon. and learned Member handed the document to the Clerk of the House, who proceeded to read it, as followeth:

LENNOX HOUSE,
NORFOLK STREET, W.C.
January 30.

" MR. WEININGER.

" To the Editor of *The Times*.

" SIR,

" In your issue of January 22, you publish the report made by the Boothby Select Committee, and now that the debate in the House of Commons has terminated we are asked by Mr. Weininger, for whom we act as solicitors, to refer to one of their conclusions which personally and seriously affects our client's character. The conclusion is that in which it is stated that our client promised to pay Mr. Boothby a considerable sum of money in return for services to be rendered by way of political speeches and pressure upon Ministers and Treasury officials. This, were it true, would be an odious as well as a serious charge. Mr. Weininger has, however, no means of dealing with it other than through

[1] Some cases standing over from 1941 are also included.—[ED.]
[2] 368 *Com. Hans.* 5, s. 805. [3] *See* Article IV. [4] 368 *Com. Hans.* 5, s. 950-4.

us, and as we trust we may expect, through the publicity which *The Times* always affords in a proper case.

" Mr. Weininger's answer is that there is absolutely no foundation for any such conclusion. He gave evidence at length before the Committee, and at no time, nor by any question addressed to him, was it suggested that such a bargain existed. We would recall that in the first instance our client, who had known Mr. Boothby for some years, approached him in a purely business capacity as a member of a well-known and reputable financial house in the City. Mr. Boothby was to try and negotiate with the Czech Government the release of the Weininger family assets locked in Prague. With the entry of Germany into Czecho-Slovakia this became impossible, and the agreement between Mr. Weininger and Mr. Boothby came to an end. Thereafter, the position of Mr. Boothby's personal finances became exceedingly acute and there followed the promises by Mr. Weininger to assist him to the whole extent of his personal fortune. This promise arose out of the undoubtedly deep and true friendship between the two men and was unclouded by any base suggestion of services to be rendered.

" These are the facts as we know them, and we trust you will deem it only fair that they shall be recorded through the medium of your newspaper.

" Yours, etc.,
JOYNSON-HICKS & Co."

Mr. Spens said:

" You, Mr. Speaker, and the House will appreciate that that letter was written for publication in order to challenge, on behalf of Mr. Weininger, the existence of any facts for one of the principal findings of the *Sel. Com.* In support of this challenge, there is a carefully prepared and concise statement of the story originally put before the *Sel. Com.* by Mr. Weininger and by the hon. Member for East Aberdeen (Mr. Boothby). That was the story which the *Sel. Com.* investigated and which they were unable to accept by reason of the existence of other evidence, contemporary and otherwise, which drove the Committee to find other and quite different facts. The facts so found by the Committee and the other evidence on which these facts were found were fully set out in the Report of the *Sel. Com.*, which was published on January 21 last and was approved by this House by the Resolution of January 28. None the less, in their letter, which is dated January 30, and was published on January 31, the writers repeat the Weininger version of the story and continue: ' These are the facts as we know them,' and they ask that they should be recorded through the medium of *The Times*. I respectfully suggest that for a responsible firm of solicitors to write a letter for publication in a newspaper directly challenging the existence of facts for the findings of a *Sel. Com.* of this House after the Report of the Committee has been approved by the unanimous Resolution of this House, to support the challenge by the statement that the facts are as they know them, and to put forward the version which has

been given in evidence and not accepted by the *Sel. Com.*, is a very serious matter. It clearly is intended to make the public believe, by the repetition of their partial statement, that there was no foundation for one of the principal conclusions formed by this Committee and approved by this House. It reflects, I submit, both on the manner in which the Committee fulfilled the task entrusted to it and the propriety of the approval by this House of the Report of the *Sel. Com.* I respectfully suggest that it raises a *prima facie* case of breach of Privilege, and I would request your Ruling on it."

Mr. Speaker then ruled that a *prima facie* case had been made for a breach of Privilege and Mr. Spens moved: " That the matter of the complaint be referred to the Committee of Privileges," after which Colonel Gretton, in moving " That the Debate be now adjourned " said that it had come to his knowledge through a most reliable channel that a letter offering an apology to this House for the matters complained of was in preparation by those concerned, and as it was not possible to produce the letter that day he suggested an adjournment of the discussion to a later sitting. After further debate Question was put and agreed to: " That the Debate be now adjourned."

On February 11, 1941,[1] debate was resumed, when, after the Question

> That the matter of the Complaint be referred to the Committee of Privileges

had been again proposed, Mr. Speaker said: I desire to read to the House two letters which I have received since the debate took place. The first is from Messrs. Joynson-Hicks & Co., and is as follows:

" To the Rt. Hon. the Speaker, House of Commons, S.W.1.

" SIR,

" Our attention has been called to the proceedings in Parliament arising out of our letter published under the heading of ' Mr. Weininger ' in *The Times* issue of January 31, 1941.

" As signatories to the letter, we seek leave on behalf of our client and ourselves to offer to the hon. Members of the House of Commons a sincere and humble apology for the matter in respect of which you have ruled that a *prima facie* case exists which may constitute a breach of Privilege.

" May we add that it would appear from the reports in the Press of the Proceedings in the House that a phrase which we used in our letter would seem to have been construed differently from our intention ? In using the words ' These are the facts as we know them ' we intended to convey that we had set out the facts which, having been communicated to us by our client in the form of instructions, were within our personal knowledge. It never occurred to us that this expression could be construed as a challenge to the existence of those facts which

[1] *Ib.* 1241-2.

were found by the Select Committee, and we appreciate and greatly regret that this phrase was open to such an interpretation.

" We have the honour to be,

" Your respectful and obedient servants,

" JOYNSON-HICKS & Co."

I have also received the following letter from the Editor of *The Times* newspaper:

" SIR,

" I have read the report of the discussion in the House of Commons on Wednesday last relating to the publication in *The Times* of January 31 of a letter from Messrs. Joynson-Hicks & Co. As Editor of *The Times* I naturally take full responsibility for the publication of the letter.

" I see that you, Sir, have come to the conclusion that Mr. Spens made a *prima facie* case that the letter, in the form in which it appeared, constituted a breach of Privilege, and in view of your Ruling, I am most ready to apologize to the House and to yourself for its publication.

" I have the honour to be, Sir,

" Your obedient servant,

" GEOFFREY DAWSON."

Colonel Gretton then suggested that the letters of withdrawal and apology be accepted and the incident closed.

Mr. Spens (Ashford) then asked the leave of the House to withdraw the Motion. Motion, by leave, withdrawn.

Newspaper Statement.—On March 20, 1941,[1] in the House of Commons, Mr. Mander called the attention of the Deputy-Speaker to certain remarks made by the hon. Member for E. Aberdeen (Mr. Boothby) in Scotland, the particular passage taken from the *Aberdeen Press and Journal* of March 17 being:

> After the meeting, Mr. Boothby said to a *Press and Journal* representative: " I am in course of preparing a confidential memorandum which contains the full story which could not be put before the Select Committee or anyone else at the present time. I propose to hand a copy of this memorandum to Colonel Duff " (Mr. Mander here remarked: ' I think he is Chairman of the Association ') " and as soon as the facts can be revealed I will gladly appeal to the judgment of the constituency as a whole."

Mr. Mander then submitted to Mr. Deputy-Speaker that that was treating the *Sel. Com.* of the House with contempt. The hon. Member for E. Aberdeen had the fullest opportunity of presenting the full facts to the *Sel. Com.* and he now disclosed that he deliberately did not do so, but was prepared to disclose them to the chairman of his local association. Mr. Mander: " I ask for your Ruling."

Mr. Deputy-Speaker said that it was clear to him that there was at least a *prima facie* case of a breach of Privilege on the part of the hon.

[1] 370 *Ib.* 296-302; *see also* Article IV.

Member for E. Aberdeen if the statement in the newspaper was correct. In those circumstances, it would be for the House to take such action as they thought fit, which must of course involve in the first instance ascertaining what the hon. Member for E. Aberdeen had to say, whether he admitted that he did make that statement or whether he denied that he had made it, and in that case any explanation he desired to make.

The Prime Minister (the Rt. Hon. Winston Churchill) then, in consequence of Mr. Deputy-Speaker's Ruling, moved:

> That the House do take into consideration on the next Sitting Day the statement which has just been made to the House, and that the hon. Member for East Aberdeen (Mr. Boothby) be ordered to be in his place on that occasion.

The following were some of the points raised in the debate. It was submitted that it would be more proper that the House should call before it the publisher of the statement before calling upon the Member concerned, but it was pointed out that such was only done when it was found that the newspaper statement was false. There was some suggestion that the hon. Member should be " invited " and not " ordered " to attend the House. Question was also raised as to whether notice had been given to the Member concerned by the Member who brought the matter up. The procedure adopted did not prejudge the hon. Member concerned in any way, and Mr. Mander said he had brought the matter before the House at the earliest possible moment. He was not the only Member interested in this matter, and it was only decided a very short time ago that the task of raising this matter should fall only upon him. It had to be done today or not at all, therefore he had had no opportunity of communicating with the hon. Member for E. Aberdeen. The case had been clearly stated to him, and it was explained that no action would be taken until the hon. Member was here. After further debate it was:

> *Ordered.*—That Mr. Boothby do attend in his place upon the next Sitting Day.—[The Prime Minister.]

On March 25, 1941,[1] the following proceedings took place:

> Order read for Consideration of the Complaint purporting to have been made by Mr. Boothby, Member for the County of Aberdeen and Kincardine (East Division) and published in the *Press and Journal* newspaper of March 17, 1941, as constituting a Breach of the Privileges of this House.

Mr. Boothby attended in his place pursuant to Order (*March* 20).

Mr. Mander (Wolverhampton, E.): I beg to hand in to the Table a copy of the journal containing the report to which I referred on the last Sitting Day.

The "Press and Journal" newspaper of March 17, 1941, was delivered in and the passage complained of was read as follows: (Here follows, also in italics, the newspaper statement already given on March 20, 1941.)

[1] 370 *Com. Hans.* 5, s. 451-5.

Mr. Boothby (Aberdeen and Kincardine, E.) first apologized to the House for not having been in his place on the last Sitting Day, but, owing to circumstances over which he was sure the hon. Member for E. Wolverhampton (Mr. Mander) had no control, he (Mr. Boothby) did in fact receive no notice that this matter was going to be raised, otherwise he would certainly have been here. The House might remember that in the House on January 28[1] he made reference to certain work on which he was engaged at the outbreak of War. He said:

> I gave some account of this work to the Select Committee, but they decided that it would not be in the public interest to disclose it at present and I bow to their decision. Some day the full story may be told.

The hon. Member, continuing, said he had told his constituents that in normal times he would have submitted himself at once for re-election, when he would have been able to present his case in full, but for many reasons that was quite impossible today. He was convinced that if all the facts could have been disclosed his own conduct would have appeared in a very different light. He could not remember precisely what he had said in the interview with the Press after the meeting with his association. To the best of his recollection he was asked when the full story could be told, to which he replied, " Not now ", and added that he was writing the full story in the form of a private and confidential memorandum to give to Colonel Duff. He confessed that it did not occur to him " that this would constitute a breach of the Privilege of this House ". He certainly intended no discourtesy either to the House or to the *Sel. Com.* His idea was quite simple, " that if I were knocked out, a copy of my memorandum should come to Colonel Duff ", the chairman of his association, under the seal of confidence, to survive in his safe keeping, and " that is all there was to it ". The hon. Member continued: " If I have transgressed the Rules of the House, I offer my most sincere apologies." He was willing to give his memorandum to the Chairman of the *Sel. Com.*, to whom, in any case, he had intended to send a copy. " I trust that this explanation may prove to be satisfactory to you, Sir, and to this House. I now beg once again to withdraw."

The hon. Member then withdrew.

Mr. Mander said he was sure no Member of the House would desire to continue the matter one moment longer than was actually necessary, but he felt that in fairness to the *Sel. Com.* some opportunity should be given to one of them to make some comment on what they had just heard, because it appeared to him that there was, at any rate, a suggestion that, if certain opportunities had been afforded which were not afforded, a different conclusion would have been arrived at.

Mr. Deputy-Speaker:

[1] 368 *Ib.* 450.

The hon. Member does not, I understand, desire to move a Motion. If the matter is to be discussed, there must be a Motion moved either by the hon. Member or by the rt. hon. gentleman who was Chairman of the Select Committee, or by the Leader of the House.

The Prime Minister then said that, in view of the appeal made by the hon. Member who raised the matter, he submitted that any statement made by the Chairman of the *Sel. Com.* might be considered as part of the statement made by the hon. Member who raised the matter and not require the immediate moving of a Motion. If, however, there was to be any discussion, he would of course move the necessary Motion.

Mr. Deputy-Speaker:

I do not think there would be any objection in the circumstances either to the Chairman or some other Member of the Select Committee making a statement in the same way as a statement made by way of personal explanation.

Colonel Gretton (Burton), as Chairman of the *Sel. Com.*, then said that the *Sel. Com.* came to an end when its Report was laid on the Table of the House. That Report lay there for some days, and, on the Motion of the Prime Minister, was adopted, so that it came to the decision of the House. The hon. Member for E. Aberdeen (Mr. Boothby) in his statement appeared to think that the Committee was not willing to hear evidence which he desired to put before it. That suggestion can be completely answered by an examination of the terms of reference, which were to inquire into transactions in regard to Czech assets in this country, and particularly the connection of the hon. Member for E. Aberdeen with those transactions. At the end of the proceedings, when all the witnesses had been heard, it would be found[1] that the further proceedings of the Committee were discussed. Counsel representing the hon. Member asked the Committee if they would be willing to hear his client at the conclusion of his own statement, as the hon. Member wished to address his fellow Members, particularly on the conduct of a Member. That was a new point, " which I said we would have to consider and decide ". On the following day counsel made his statement on behalf of the hon. Member.

At the conclusion of it I, as Chairman, asked the hon. Member if he desired the room to be cleared. He said he did not, and he then proceeded to address the Committee. If hon. Members examine the proceedings they will find that the Committee was at all times ready to hear all evidence relevant to the terms of reference.

I should like to add that it was a painful inquiry and that we came to our decision with reluctance. Every hon. Member desires that the matter may now end. We have no feelings of resentment or ill-will towards the hon. Member; we desired during the inquiry, and desire now, that he should have every opportunity to re-establish himself in the good opinion of the House.

The Prime Minister hoped that he would be interpreting the general sense of the House by moving that it did not feel itself called upon to proceed further in the matter.

[1] P. 148 of Report (H.C. 5 of 1940-41).

I think the hon. Member for East Aberdeen (Mr. Boothby) has given us the feeling that he intended no kind of disrespect or reflection upon the fair name and integrity of the House of Commons Committee, and in all the circumstances I believe that the House, having inquired with some particularity into it, would do well to let the matter drop.

Resolved : That, having heard the statement of Mr. Boothby and a statement by the Chairman of the Select Committee on the Conduct of a Member, this House does not desire to entertain the matter further. (*The Prime Minister.*)

Libel on the House, the Whips and Mr. Speaker.—On November 11, 1941[1] (the last day of the Session), in the House of Commons, Sir H. Williams (Croydon, S.) brought to the attention of Mr. Speaker a document purporting to be signed by Major Hammond Foot, which he had received during the Recess, certain paragraphs of which seemed to constitute a breach of the Privileges of the House, but in view of the circumstances of that day's Sitting he asked permission to defer raising the matter until the Sitting Day next but one after today.

Mr. Speaker stated that the hon. Member, seeing that the House had not been sitting, had raised this question at the earliest possible moment. It would be inconvenient at the end of a Session to raise a matter of that kind, because the procedure to be followed could hardly be carried out. " I am perfectly willing, therefore, to allow the hon. Member to raise this matter on the next but one Sitting Day."

On November 13, 1941,[2] the second Sitting Day after the opening of the next Session, Sir H. Williams said that he had received a letter purporting to be signed by Major E. Hammond Foot, Wilton Corner, Beaconsfield, of October 25, 1941, which among other things contained the following paragraph:

> Then came the blight of vested interest, high finance and International Socialism of a Bolshevik type, which infected the House, the Whips and the Speaker's Chair. . . .

In another paragraph the following appeared:

> I apologize for circulating this letter, but if Members of Parliament are tied by Party Whips and the Speaker's Chair to keep silent, then the elector has the right to criticize openly before them.

The hon. Member submitted that these statements constituted a " gross breach of the Privileges of this House ".

Mr. Speaker considered that a *prima facie* case had been made out and the Prime Minister therefore moved, " as his duty ":

> That the matter of the Complaint be referred to the Committee of Privileges.

Question put and agreed to.

On November 25, 1941,[3] the Report from the Committee of Privileges was brought up, which stated that a breach of the Privileges of this House had been committed and that the writer of the letter had addressed the following letter to the Chairman of the Committee:

[1] 374 *Com. Hans.* 5, s. 2046. [2] 376 *Ib.* 63. [3] *Ib.* 603.

WILTON CORNER,
WILTON CRESCENT,
BEACONSFIELD.
November 19, 1941.

"To The Chairman, Committee of Privileges, The House of Commons.

"SIR,

"It was with profound shock that I realized that in mentioning the Speaker's Chair I had committed a serious breach of Privilege.

"I had no intention whatsoever of reflecting on the action of the Speaker. In so far as my action bore that interpretation it arose from ignorance.

"I yield to none in my respect for the Speaker and the Privileges of the House of Commons. My grandfather, George Hammond Whalley, died as Member for Peterborough, having held that seat for 25 years, and I, his grandson, deeply regret that any action or word of mine should, even unintentionally, constitute an offence against the House of Commons.

"If, Sir, the Court can pardon this grave breach of Privilege, I solemnly promise never to commit such an offence again and will do my utmost to be worthy of the pardon of the Court.

"I am, Sir,
"Your obedient servant,
"E. HAMMOND FOOT."

The Committee recommended that the apology be accepted and the Report was ordered to be laid on the Table.

Alleged Disclosure by Members of Secret Session Proceedings-Debate.—On May 5, 1942,[1] in the House of Commons, Sir B. Beauchamp (Walthamstow, E.) raised a matter concerning the Privileges of the House which involved the disclosure of proceedings in Secret Session, which he would not be able to deal with fully in open Session.

Mr. Shakespeare (Norwich) said he wished to do the same thing, but the hon. Member for Shettleston (Mr. J. McGovern), whose speech he wished to bring to the attention of the House, was not able to be present although he had done his best to contact him. Mr. Shakespeare asked, should he let the opportunity slip, would he be ruled out of order if, on the first appropriate occasion when Mr. McGovern was present, he referred to it?

Mr. Shinwell (Seaham) asked whether there was any precedent for raising a question of Privilege affecting a Member in Secret Session and also whether it was competent for the Member who raised the matter himself to request a Secret Session. Was the latter not a

[1] 379 *Ib.* 1215-6.

matter for the Government? To which Mr. Speaker replied that any hon. Member could spy Strangers and that he did not think there was any precedent for raising a question of Privilege in Secret Session.

Mr. Hore-Belisha (Devonport) asked, with regard to the question of the hon. Member for Norwich, if it would not be very gravely prejudicial to a Member of the House to mention his name and then proceed to debate something concerning him in secret. Would it not have been more discreet to refrain from mentioning his name? If it was open for a Member to mention the name of another Member and then move to discuss his conduct in Secret Session, it was prejudicial because the public would never know what the charge against him might be.

Mr. Shakespeare then explained that he was afraid, it being a matter of Privilege and not raised at the first available opportunity, it might go by default.

Mr. N. Maclean (Glasgow, Govan): Would not the first available opportunity be that on which the hon. Member who is going to be challenged attends in the House?

Mr. Stokes (Ipswich): Once his name has been mentioned it is most unfair to him to have the matter discussed in secret.

Mr. Speaker:

> It is a very well-known Rule in regard to questions of Privilege that they must be raised at the earliest possible opportunity—everyone agrees to that—but perhaps it would have been as well in the circumstances if the hon. Member had not mentioned the name.

Mr. Davidson (Glasgow, Maryhill) asked that, in view of the circumstances and that the House should hear the discussion in secret, would it be within the power of Mr. Speaker to see that whatever decision the House came to was made public, to which Mr. Speaker replied that he would not like to give an undertaking without further consideration.[1]

Mr. Thorne (Plaistow) asked the Leader of the House if it would not be advisable to have the matter debated in open Session, to which he replied that he should have thought it was quite obvious that any matter that occurred in Secret Session could not be debated in open Session.

Mr. Stokes said that now that the hon. Member's name had been mentioned it was possible for them to go into Secret Session and discuss the matter in his absence, to which Mr. Speaker replied that it would not be right to raise the question in the absence of the hon. Member concerned.

Secret Session.—Sir S. Cripps: In these circumstances may I draw your attention, Sir, to the fact that Strangers are present?

Whereupon Mr. SPEAKER, *pursuant to S.O.* 89, *put the Question*, "That Strangers be ordered to withdraw." Question agreed to.

[1] *Ib.* 1217.

Strangers withdrew accordingly.

The following report of the Proceedings was issued under the authority of Mr. SPEAKER:

The attention of the House having been called by a Member to an alleged disclosure by another Member of a portion of the proceedings of the Secret Session of Thursday, 23rd April, 1942, the Question was put, "That the matter of the complaint be referred to the Committee of Privileges."

The House divided: Ayes, 137; Noes, 58.[1]

The House subsequently resumed in Public Session.

A.—McGovern Case

Procedure.—On May 6, 1942,[2] in the House of Commons, Mr. Shakespeare (Norwich) again raised the question of Privilege, but as the hon. Member for Shettleston (Mr. McGovern) was not present, suggested he might be allowed to postpone it. He had done his best to find out where the hon. Member for Shettleston was but had failed. It was the practice of the House that these questions should be raised at the earliest possible moment, but of course that was liable to be extended according to the extent to which the hon. Member against whom a complaint was made had had an opportunity of being informed and of being present. Of course, if he had had the opportunity and did not attend, the question must be raised without him. Mr. Speaker then proposed that the matter should be left until the next Sitting Day.

Mr. Maxton remarked that his hon. friend could not be in his place on the next Sitting Day without cancelling certain engagements.

Mr. Speaker remarked that, provided the hon. Member had had due notice, his first duty was to attend in spite of anything unless he was ill. Therefore unless he attended on the next Sitting Day, or could show good cause why he should not attend, they must proceed without him.

Debate.—On May 7, 1942,[3] in the House of Commons, Mr. Shakespeare (Norwich) raised the question of Privilege arising out of a speech of the hon. gentleman the Member for Shettleston (Mr. McGovern) made in Cathcart, Scotland, on April 26 and reported in the *New Leader*, the Socialist weekly of the Independent Labour Party, on May 2, which was a protest against the secrecy under which the Prime Minister had reviewed the War situation in Parliament during a Secret Session. The hon. Member for Shettleston referred to the serious shipping losses suffered during the last 2 months, and it was alleged that as the figures had been published the hon. Member thought himself justified in giving them in public. The hon. Member speaking had made inquiries and could find no evidence that either a Minister or a Department had published these figures, as they were not accurate. The part of the speech which was the main subject of his submission stated that the Prime Minister had made a speech in Secret Session, and it went on to add that if that speech had been made in public certain political consequences would have followed. In contrast to the method

[1] *Ib.* 1218. The Division List is given.—[ED.] [2] *Ib.* 1352-5. [3] *Ib.* 1414.

employed by Ministers in Secret Session, it was alleged that Ministers in public lied to the people. He submitted to Mr. Speaker and to the House that the form of this speech put them all in a very difficult position. The Secret Session was a valuable part of their Parliamentary system. It enabled Ministers to speak freely and enabled Members in all parts of the House to raise questions which they would not dream of raising in Public Session for fear of giving information to the enemy.

Mr. Buchanan (Glasgow, Gorbals) observed that, while the passage might be read after the speech, it was not usual for an hon. Member raising an issue of that kind to start debating the merits at that stage.

Mr. Speaker stated that the difficulty in that case was that the complaint was related to matters which had arisen in a Secret Session, and the question whether a Member had committed a breach of Privilege or not must depend entirely on the merits of the speech rather than what was actually said.[1]

Mr. Shakespeare, continuing, said that if they gave the impressions made on their minds by those speeches, then the whole purpose of the Secret Session would be frustrated. Clearly the impressions of Members of particular speeches would differ. " I submit to you, Mr. Speaker, that a *prima facie* case has been made out for an inquiry by the only body that is competent to inquire into cases of this kind—namely, the Committee of Privileges."

The CLERK (Sir Gilbert Campion) *read the passages*[2] *complained of* (reported in the *New Leader* of May 2, 1942) as followeth:

> Speaking at Cathcart on Sunday, John McGovern protested against the secrecy under which the Premier's review of the War had been given in Parliament—(*a*) " If that speech had been given in public," he said, " the I.L.P. would have won this election." (*b*) " Mr. Churchill's review was made in secret, not to prevent Hitler knowing anything but to prevent the public of Britain knowing everything." (*c*) " In their public speeches Ministers had lied to the people and deluded them." (*d*) " I am able to say here, because it has been publicly announced," continued Mr. McGovern, " that during each of the last 2 months, over 800,000 tons of shipping have gone to the bottom of the ocean."

Mr. Speaker stated:

> It is not for me to decide whether a breach of Privilege has been committed or not. All I have to decide is whether the hon. Member who introduces the complaint has made out a *prima facie* case. I have given this matter great consideration as arising out of what has happened in a Secret Session and I have also taken into account the view of the Committee of Privileges upon a rather similar case which arose with regard to the *Observer*.[3] All that has influenced me in considering the decision to which I should come in this case. I have definitely come to the decision, that the hon. Member for Norwich has made out a *prima facie* case that a breach of Privilege has been committed.

The Chancellor of the Exchequer: I beg to move:

> That the matter of the complaint be referred to the Committee of Privileges.[4]

[1] *Ib.* 1415. [2] Certain passages are lettered by me in italics for more easy reference.—[ED.] [3] *See* JOURNAL, Vol. X, 176. [4] 379 *Com. Hans.* 5, s. 1417.

Mr. McGovern, after referring to an evident miscarriage which had occurred in connection with a message to him from Mr. Shakespeare that he was bringing forward this question of Privilege, observed that he failed to see the significance, the seriousness, of any statement he made in his speech. He suggested to the House that it was not his opinions which were being considered ultimately, but the question whether he had given any information of what happened in a Secret Session which he should not have given. There was one great clamour from all, even the Communist forces, for a second front, and that had led him to deal with the shipping question. He had tried to show the number of ships it took to convoy a division to various parts of the world. He had stated that the shipping position was in a very grave state. As to the figures, it was news to him to hear that that was a War secret. He had tuned in continually and had heard from Eire and Germany the very names of all the ships which had been sunk. He had heard things from Members of the House. He had also found out from American newspapers a whole list of ships sunk in the Atlantic and it appeared to him that the whole world was getting information denied to the British people. He had been against Secret Sessions because Secret Sessions could become a means for a Government to escape from a difficult situation, but, realizing all that, he was, at the same time, honourable enough not to give any military information because, although " we are anti-War, we are not out to increase the difficulties of men who are fighting or to endanger their lives ". Hon. Members could dissent from him, but he did not divulge any single thing that was said in Secret Session, not a single fact did he retail. Therefore he failed to see where there was any ground at all for any accusation of a breach of trust in his speech. He was as innocent now, after hearing the charge, as he was before he came into the House. " I leave it with hon. Members of the House, with the Committee of Privileges and with you, Mr. Speaker. I have made my statement and will leave it at that for the present."[1]

Mr. Speaker:

> Will the hon. Member please withdraw from the House while the matter is being considered ?
>
> *The hon. Member then withdrew.*

Mr. Lipson submitted that inaccurate figures would never have been given them by the Prime Minister in Secret Session, and therefore that the charge, so far as figures were concerned, must fall.

Mr. Maxton (Glasgow, Bridgeton) stated that he wanted to remove any impression that Mr. McGovern was not opposed to this matter going to the Committee of Privileges; they would both oppose such reference.

Mr. J. J. Davidson (Glasgow, Maryhill) inquired whether the Government had been approached as to whether the tonnage referred to by

[1] *Ib.* 1417-20.

the hon. Member for Shettleston was a repeat statement of what the Prime Minister had said in Secret Session ?

Sir I. Albery asked if the short extract from the speech by the hon. Member read by the Clerk of the House could be read again.

The CLERK *then read again the passages complained of.*

Captain Strickland considered that the House would be well advised to submit the matter to the Committee of Privileges, not for the purpose of finding a Member guilty, but, if possible, finding a man exonerated from any blame which may have accrued to him from the charge.[1]

Mr. Stephen (Glasgow, Camlachie) said he resented the charge being made against his hon. friend the Member for Shettleston, and therefore they intended to divide the House against the Motion.

Mr. A. Bevan (Ebbw Vale) observed that this was not a case where an investigation was required as there was no dispute about facts. He therefore proposed that the proposal to remit the matter to such Committee should be withdrawn and the Committee asked to give them general guidance as to how they should conduct themselves in regard to private Sessions.[2]

Sir W. H. Davison (S. Kensington) remarked that what was essential for the honour of the House, after a Secret Session, was that no Member should go abroad in the country and give his impression of what had been said in that Session, even should he give the facts wrongly or inaccurately.

Mr. Bevan asked Mr. Speaker if it would not be possible for him (Mr. Speaker) to ask the Committee of Privileges to consider the matter in a general form, for their guidance.[3]

Mr. SPEAKER: That would not be one of my duties.

Mr. Buchanan observed that there was hardly a Member who had never told who spoke at a Secret Session and suggested that the guiding principle should be that no one should say one word which might give the enemy countries anything which might be helpful to them. The Committee of Privileges was not a judicial body but composed of members of the Government, of leading members of the Opposition and one or two senior Members of the House. If they were to go on in this heresy-hunting way, there was not a single Cabinet Minister who would escape. " Who has not sat in the Smoke Room and discussed with Cabinet Ministers matters outside the ordinary range of conversation ?"[4]

Upon Mr. Speaker proceeding to put the Question[5] a point of procedure arose as to a certain Member who was anxious to speak not having caught the Speaker's eye before the Question had been adequately debated, upon which Mr. Speaker remarked that if the hon. Member was questioning the conduct of the Chair he must do so by a proper Motion. It was also remarked by another Member that as the Question had been put to the House and the voices collected, would not any Member who had not caught the Speaker's eye before he put the

[1] *Ib.* 1422. [2] *Ib.* 1423. [3] *Ib.* 1424. [4] *Ib.* 1425. [5] *Ib.* 1428-9.

Question be out of order in speaking? Mr. Speaker, however, said he was always willing to take the feeling of the House in general, and if it was thought that the hon. Member rose before the Question was put he was quite willing that he should be heard, upon which the hon. Member rose to speak and remarked that a Member may say something in a constituency, in a private gathering, or write an article and at once be charged with having committed some breach of Regulations or of the Official Secrets Act, or of Privilege, because unless they were careful that was the road to the negation of free speech. In his view this was not a case for the Committee of Privileges.

Question put and agreed to:

" That the Matter of the Complaint be referred to the Committee of Privileges."

The House divided: Ayes, 148; Noes, 113.[1]

Special Report (*Procedure*).—On June 9, 1942,[2] the Report from the Committee of Privileges[3] was brought up and read, after which it was ordered to lie on the Table and be printed. It began by stating that they could not discharge the duty imposed upon them properly without alluding to some of the things said, or alleged to have been said, in Secret Session (April 23). If the secrecy of such proceedings were to be preserved, it would be necessary to except their Report from the operation of the Resolution of the House of August 13, 1835.[4] They therefore suggested that their Report, etc., be ordered to be printed for the use of Members only, and that an order to such effect be made before it was presented, and that not more than 615 copies be printed. Moreover, it was not, in the opinion of the Committee, clear that, once the Report, etc., had been presented, the disclosure of its contents would constitute a breach of Privilege; " on the contrary, as the Speaker stated on July 4, 1893,[5] there has been a prevalent impression that when a Committee's Report is laid upon the Table of the House it at once became public property." It was therefore advisable that, before the Report was presented, the House should resolve that the disclosure of any of its contents or of the evidence would constitute a breach of Privilege. In order to obviate the risk of the contents of the Report and evidence being inadvertently disclosed, the Committee suggested the adoption of the procedure subsequently translated into paragraphs (4) to (7) of the Motion moved by Mr. Attlee on June 18, 1942.

The Committee therefore proposed to defer making any Report upon the subject-matter of their reference until the House had had an opportunity of considering their suggestions.

Questions.—On June 11, 1942,[6] the Lord Privy Seal was asked when there would be an opportunity to discuss the Special Report from the Committee of Privileges, to which the reply was that such Report would be dealt with in Public Session. The procedure suggested by the Chair-

[1] *Ib.* 1430. [2] 380 *Ib.* 929. [3] H.C. Paper 93 of 1942-43. [4] 30 *Parl. Hans.* 3, s. 473. [5] 14 *Parl. Hans.* 4, s. 820-5. [6] 380 *Com. Hans.* 5, s. 1250.

man of the Committee of Privileges was that he should put down a Motion that the Report, " which is now on the Paper ", be considered, when the House would have an opportunity of considering it.

On June 16, 1942,[1] in reply to a Question, the Lord Privy Seal said that the Report from the Committee of Privileges on the case of the hon. Member for Shettleston (Mr. J. McGovern) was now available at the Vote Office and that it would no doubt be convenient to consider it after they had considered the Special Report which related to another matter. In reply to a further Question, Sir S. Cripps said that it was proposed that the question of procedure be left to a free vote of the House. The subject was also incidentally referred to in the debate upon business of the House on June 18, 1942.[2]

Special Report.—On June 18, 1942,[3] after it had been ordered that the proceedings on Government business be exempted at this day's Sitting from the provisions of the Standing Order (Sittings of the House), it was ordered that the Special Report from the Committee of Privileges be now considered. Mr. Attlee, the Chairman of the Committee of Privileges, moved the following Motion:

> That, in the case of the Report to be made from the Committee of Privileges on the matter of the Complaint referred to their consideration on May 5, the following provisions shall apply:
>
> (1) Notwithstanding anything in the Fourteenth Resolution reported from the Select Committee or Printed Papers on July 16, 1835, and agreed to by the House on August 13, 1835, the Report and the Minutes of the Evidence taken before the Committee, if reported, shall be printed for the use of Members only;
>
> (2) Not more than 615 copies shall be printed;
>
> (3) Any Member, or any other person who discloses, or purports to disclose, the contents of the Report, or the Proceedings of, or the evidence taken before, the Committee, or any portion, or the substance thereof, except in a Secret Session of this House and thereafter to such extent as the House may in Secret Session have determined, shall be guilty of a breach of the Privileges of this House;
>
> (4) The printed copies of the Report shall be numbered and placed in envelopes bearing a corresponding number which shall be sealed and delivered at the Vote Office;
>
> (5) Every Member shall be entitled to obtain a copy of the Report on applying personally at the Vote Office and giving a receipt for the same;
>
> (6) When the consideration of the Report by the House has been concluded Members shall return their copies of the Report to the Vote Office under cover, such cover to bear the number of the copy of the Report therein contained;
>
> (7) The Clerk of the House shall preserve two copies of the Report and cause the remainder to be destroyed.

In moving the Motion, Mr. Attlee said that the Committee was faced with a position which had no precedent. They had taken advice from the Officers of the House, bearing in mind that this was not just a matter of one particular case. They were laying down a precedent for the future. Their proposals, although they looked rather cumbrous, were designed to safeguard, first, the right of the Member whose con-

[1] *Ib.* 1384. [2] *Ib.* 1386. [3] *Ib.* 1701-30.

duct was called in question; secondly, the rights of all Members of the House; and thirdly, the preservation, as far as possible, of the secrecy of Secret Sessions. The Report would also be printed by the printers who were accustomed to dealing with secret matters. This was really a matter for preserving secrecy and not a Government matter at all, but it was obvious that if there was to be a discussion it must be in Secret Session and be for the House itself to decide how much should be divulged.[1]

The debate[2] then dealt largely with the procedure to be adopted upon the Special Report and mention of the subject of the Report upon Mr. McGovern was not allowed, but it was suggested that Mr. Speaker should make some report upon the conclusion of the debate to show the public that the Member concerned had been exonerated or found to be at fault. An amendment as to procedure was proposed, and explanation was asked for as to why it was necessary for a member of the Committee to move the amendment. It was stated by another member that the Committee had had to draw up a novel procedure to meet the purposes they had in view—namely, to protect the secrecy of a secret debate. The difficulty in this matter was that the charge was made in public but the procedure and the trial were in secret. It was also suggested that only those parts of the Report contrary to the public interest to publish should be deleted.

At this stage in the debate Mr. Speaker pointed out that the procedure suggested in the Motion referred only to this particular case. It did not establish a case for all future occasions, as procedure for each case had to be considered separately.

. It was further suggested in the debate that if the Member were exonerated the witness in the inquiry should be acquainted with the decision. It was also asked how they were going to reconcile the double standards of treatment which had been in operation through the two cases which were brought before the House originally on the same day. In one there had been the most complete publicity of the name, offence, report and dismissal. In the other case there had been complete secrecy and every stage of the proceedings had been behind closed doors. They must have a procedure applicable with absolute equality to every Member of the House.

Mr. Denman then moved the following amendment in para. (6), line 19, of the Motion, at the end to insert:

> or, if the Report be not considered by the House, within fourteen days of the day on which it is available in the Vote Office.[3]

These Motions were not sent here by the Committee. A Report had been made from which these Motions had been drawn. The House did not refer to the Committee a complaint against a named Member of the House.

At this stage, Mr. Mander asked whether it was in order for a member

[1] *Ib.* 1702-4. [2] *Ib.* 1704-5. [3] *Ib.* 1716.

of the Committee of Privileges to move an amendment to the procedure of his own Committee, to which Mr. Speaker replied: " It may be unusual, but it is not out of order."

Mr. Denman, continuing, pointed out that these Motions had never come before the Committee of Privileges and they were not in the language which they would necessarily have suggested. They were a translation of a Report they had made.

Mr. Attlee then suggested that these Motions were put down as consequential upon the Report from the Committee of Privileges, and his hon. friend was mistaken in thinking that Reports from the Committee lay about and nothing was done to them. They were not necessarily debated. They were either accepted or rejected by the House. Mr. Attlee suggested that the hon. Member should withdraw his amendment.[1] Mr. Denman, however, remarked that the purpose of the amendment was not to prejudge the issue or to say whether there should or should not be a discussion but to give the House an alternative procedure. After the amendment had been seconded and further objection raised to it, it was put and negatived and the Motion, as moved, put and agreed to.

Report.—It was then ordered:[2]

> That the Report[3] (June 9) from the Committee of Privileges (on the matter of the Complaint made on May 7) be now considered.—[*Mr. Attlee.*]

Report considered accordingly.

The Report in its para. 1 quoted the passages from the *New Leader* already given. Para. 2 stated that Mr. McGovern appeared before the Committee. There was no dispute as to facts. Mr. McGovern agreed that the passages were a fair summary of a speech which lasted some 40 minutes. He explained that the figures of tonnage lost were quoted in the latter part of his speech and some time after he had referred to the Secret Session. He further stated that he had no other authority for these figures than publication in the American press. Mr. McGovern disclaimed any intention to infringe in any way the rules of the House. He did not consider he had done so, and based this view on the following answers given by the Prime Minister to Questions on May 15, 1941,[4] which arose on a statement as to the business of the House:

Col. 1266.

> Sir I. Albery: Are the Government asking the House to agree to a Secret Session because they have statements to make which cannot be made in public?
>
> The Prime Minister: Yes, Sir. So far as the Government are concerned, we should welcome a Public Session, but unhappily if a Public Session were held, we should not be able to make any statements of the precise character which would be of interest to the House and which are important factors in the formation of the judgment of the House. What we have to do is to tell the House all that can be told on these matters in Secret Session and then

[1] *Ib.* 1719. [2] *Ib.* 1720. [3] H.C. Paper 93 of 1941-42.
[4] 371 *Com. Hans.* 5, s. 1266, 1268.

the House will, according to whether it feels confidence or the reverse, convey assurance or alarm to the country.

Col. 1268.

Mr. Gallacher: The Prime Minister has just said that in Secret Session Ministers would make a statement to the House and that on the basis of the information and the discussion which took place Members could then convey to the country whether there was a feeling of assurance or disquiet. Does that mean that after this Private Session we can go to the country and say what we have heard ?

The Prime Minister: No, Sir, not all. It would be quite impossible for Members to quote what had occurred or to give away any secret information imparted, but it would be equally impossible for them wholly to conceal their feelings whether of enthusiasm or the reverse.

The Committee agreed[1] that the meaning which Mr. McGovern attached to these figures was a possible one. The answers could also be read as meaning that Members in general presentation of their own views would necessarily be influenced by what they had heard in Secret Session. On this view, the Committee considered, the words would not justify any express reference to a Secret Session as having created in the mind of the speaker confidence or the reverse. Subsequent to May 15, when these statements were made, the Report of the Committee of Privileges dealing with a publication in the *Observer* newspaper was presented to the House and para. 11 and the relevant part of para. 13 are quoted in the Report.[2]

Mr. McGovern said[3] he was aware of the contents of that Report but had regarded it as dealing only with articles by journalists. The Committee accepted Mr. McGovern's statement that he so regarded it, but it was not intended to be so limited, nor did they think that, on an examination of the words used, it was so limited. If the rule as laid down and accepted by the House was not treated as absolute difficulties were bound to arise. If a Member was free to give directly or indirectly a general impression of what had been said in Secret Session, other Members might disagree and would be free to say so. A controversy would thus be started which could not be conducted without going into what had in fact taken place. Moreover, continued the Committee, there was an obvious danger that if a Member referred to a Secret Session an abbreviated report of his speech might tend to give the impression that his own subsequent statement had been derived from its proceedings.

In the result the Committee were of opinion[4] that there was a breach of the Rule as accepted by the House, but entirely exonerated Mr. McGovern of any intention to infringe the Rules of the House. The Committee recommended that no further action be taken in this case.[4]

Before the debate on the Report Mr. McGovern first paid tribute to the fair-minded and unbiased Committee. His view in regard to the Report was that it did not state clearly that there was no secret information given by him in the speech he had delivered. It had been con-

[1] *Rep.* § 3. [2] *See* JOURNAL, Vol. X, 180-1. [3] *Rep.* § 4. [4] *Ib.*, § 5.

veyed to the country that he revealed secret information regarding shipping. He wanted to make it clear that the Prime Minister did not, at any Secret Session at which he (the hon. Member) was present, reveal any figures in regard to shipping losses. Therefore the figures given by him did not allude to anything that happened in Secret Session. Mr. McGovern then quoted the Col. 1266 statement already given in the Report and said that, up to the time the Committee sat, that statement was interpreted to mean that he was debarred in point of honour from conveying any military or naval information given in Secret Session to others outside the House, but that he was free to make observations of a political character to show whether the Secret Session allowed Members to give assurance or alarm to the country. The impression in regard to the Prime Minister's pledge was held for 12 months and had never previously been challenged. The hon. Member therefore assumed he was entitled to make a political observation in connection with the debate which had taken place. In conclusion the hon. Member said:

> I want to thank the Committee of Privileges for the consideration and courtesy, and I believe the fairness, with which they have dealt with this question and have written their Report. Although the Members of the Committee were drawn from various political parties opposed to me, the Committee's decision showed to me that, in this very limited world, this is the first Assembly in the world and that it is prepared to do justice to an hon. Member when it can be shown fairly and squarely that he had no evil intentions towards the interests of the country.[1]

Mr. SPEAKER: " Will the hon. Member for Shettleston (Mr. McGovern) please withdraw from the Chamber?" Mr. McGovern *withdrew.*

The following are points which occurred during the debate. The decision of the Committee did not altogether clear up the position and left the House in a difficult position with regard to its future guidance. They wanted to know where they were in the future, and it seemed that if a Member was found guilty, even technically, of a breach of Privilege it should be made quite clear in what respect he had been found guilty and in exactly what details he committed that breach of Privilege. No information of that kind could be found in the Report.[2] The decision laid down by the Committee was practically to the effect that once the House had entered into Secret Session, not only must nothing be disclosed which had been spoken in Secret Session, but that not even the subject-matter or even the subject concerning which the Secret Session was held, nor the impression made upon a Member, could be disclosed.[3]

It was also stated that much of the difficulty arose because they had so many Secret Sessions.[4]

The Attorney-General observed[5] that the principle to which the Report referred was one laid down and approved by the House in the

[1] 380 *Com. Hans.* 5, s. 1720-3. [2] *Ib.* 1724-5. [3] *Ib.* 1726.
[4] *Ib.* 1727. [5] *Ib.* 1728.

case which arose out of a paragraph in the *Observer*[1] newspaper and was set out in the present Report:

> . . . and accounts which purport to state the good or bad impression created in the debate, or which in any way, however general, refer to what took place in the proceedings, are a breach of Privilege.

The Attorney-General then quoted those passages in the newspaper extract (lettered *a* and *b*) in the *New Leader* read to the House by its Clerk, and stated that there were 2 statements from which inferences could be drawn, as to the general nature of what had been said and the impression created on the speaker's mind. It was for that reason, following the previous Ruling, that, while exonerating the hon. Member for Shettleston of any intention to infringe the Rules of the House, they considered that there was a technical breach. Their attitude as a Committee of Privileges was to do their best to protect the Privileges of the House and to say to the House what they thought their orders involved. So long as they did not refer to a particular Secret Session and relate that reference either to some feeling of elation or the reverse, they were not doing anything contrary to the Rules.[2]

Question put and agreed to.

> Resolved:—That this House doth agree with the Committee in their Report.

B.—Secret Session Case

On June 23, 1942, the Report from the Committee of Privileges (on the matter of the Complaint made on May 5) (with Minutes of Evidence) was brought up, ordered to lie upon the Table and be printed for the use of Members only (pursuant to the order of the House of June 18).[3]

Secret Session.—On June 25, 1942,[4] the following report appeared in *Hansard*:

> *Notice taken, that Strangers were present.*
>
> *Whereupon* Mr. Speaker, *pursuant to Standing Order No.* 89, *put the Question, " That Strangers be ordered to withdraw."*
>
> Question agreed to.
>
> *Strangers withdrew accordingly.*
>
> [Mr. Speaker *afterwards issued the following Report of the Proceedings in Secret Session :*
>
> The House considered the Report of the Committee of Privileges presented on June 23 upon the matter of the complaint referred to it on May 5, in respect of a Member charged with having committed a breach of Privilege by disclosing a portion of the proceedings of the Secret Session of April 23. The House agreed with the Report of the Committee of Privileges that the charge had not been proved and in the result absolved the Member of the charge.]
>
> *The House subsequently resumed in Public Session.*

Imputation against Public Accounts Committee by Member.—On July 28, 1942,[5] in the House of Commons, Lt.-Col. Elliot (Glasgow, Kelvingrove) submitted to Mr. Speaker that an imputation had been made

[1] *See* JOURNAL, Vol. X, 176. [2] 380 *Com. Hans.* 5, s. 1728-30.
[3] *Ib.* 1833. [4] *Ib.* 2173. [5] 382 *Ib.* 334-6.

against a Committee of the House, which constituted a breach of Privilege. The imputation was contained in a speech by the hon. Member for Grantham (Mr. Kendall) on July 25, and, as reported in the *Sunday Times* newspaper of July 26, contained the following passage:

> Very early in the inquiry of the Public Accounts Committee, the Chairman of that Committee was asked on what ground this company had been chosen for investigation. The Chairman gave a definite refusal to answer this question. Sometimes I wonder whether this Report is an inspired criticism. It is peculiar, in view of this company's exceptional production record, that it should be one of five chosen out of the original 45 for inclusion in the first report, and that now out of five my company is receiving the full blast of the publicity.

Erskine May (13 ed., 93) states:

> Scandalous charges or imputations directed against members of a Select Committee are directed against the House itself.

The rt. hon. and gallant Member raised the matter as Chairman of the Committee in question (Public Accounts), and stated that it would be out of order for him to go into the merits of the case or discuss the findings of the Committee in any way, but he submitted to Mr. Speaker, with respect, that the passage in question was most clearly an imputation against the Committee, in that it accused them of having produced a Report to the House which was an inspired criticism—that was to say, a Report not based solely on a *bona fide* investigation of the case. The rt. hon. Member said that implications of such a nature had, on many occasions, been regarded as a breach of Privilege and quoted a recent precedent,[1] after which he asked for Mr. Speaker's Ruling as to whether a *prima facie* case had been made out.

> Mr. SPEAKER: Will the rt. hon. and gallant gentleman please bring the paper to the Table.
>
> The CLERK (Sir Gilbert Campion) *read the passage complained of.*
>
> Mr. SPEAKER: Considering what the rt. hon. and gallant gentleman has said and the report in the newspaper named, it appears to me that a *prima facie* case of breach of Privilege has been made out.

Mr. Kendall (Grantham) said that the telegram he had received from the rt. hon. and gallant gentleman, the Member for Kelvingrove, was the first intimation that he had been accused of a breach of Privilege. He had only been in the House 31 working days, and it was not and it had never been his intention deliberately to affront the House by a breach of Privilege or of the Rules of the House. " I apologize most sincerely if this is the case and place myself in the hands of the Members of the House."

The Lord Privy Seal then moved:

> That in view of the apology made by the hon. Member for the County of Parts of Kesteven and Rutland (Grantham Division) this House will proceed no further in the matter.

Question put and agreed to and Resolved accordingly.

[1] 188 C.J. (1922-23), 126.

Letter and Cheque to Members.—On July 28, 1943,[1] in the House of Commons, Mr. Tom Smith asked for the guidance of Mr. Speaker with regard to a letter addressed to him at the House of Commons which he had received last week from the National Marketing Company, 339, Wellington Road North, Heaton Chapel, Stockport.

Mr. SPEAKER: I think it would be better if the hon. Member simply stated that he had received the letter and handed it in to be read by the Clerk.

Mr. Smith said he had received this letter with a cheque for £5, which he thought was of sufficient importance to justify bringing the matter to Mr. Speaker's notice and asking for his guidance.

The CLERK (Sir Gilbert Campion) *read the letter complained of as followeth :*

"Tom Smith, Esq., M.P.,
House of Commons,
London.

THE NATIONAL MARKETING COMPANY.
Directors: H. METCALFE, J. B. REID.
Secretary: J. B. McKINNON.
339, WELLINGTON ROAD NORTH,
HEATON CHAPEL, STOCKPORT,
CHESHIRE.

July 20, 1943.

"DEAR SIR,

"We are to be prosecuted by the Board of Trade at Stockport Police Court on Tuesday, 27th instant, at 11 *a.m.*, for acquiring Fuel Economizers without licence from the Board of Trade. From the enclosed I think you will agree this is a matter which ought to be raised in the House.

"Would you care to do this ? If so, I suggest that unless the prosecution is withdrawn in the meantime, you can secure first-hand evidence by attending the trial on the 27th.

"In such case it would be only right for us to stand your expenses in full. This we are quite willing to do, and as an earnest of our good faith enclose cheque for £5 herewith.

"We will arrange accommodation for you for Monday night if you desire and will let us know.

"If the prosecution is withdrawn or you decide not to attend you can always, of course, return the cheque, but if the necessity arises, it is hoped you will attend and secure first-hand evidence of this scandal.

"Thanking you in anticipation,

"Yours sincerely,
"H. METCALFE."

Col. Sir C. MacAndrew, on a point of order, submitted that, being a matter of Privilege, it should have been raised yesterday and that it was now out of order.

Mr. SPEAKER said: "I was informed of this case yesterday but I wanted time to consider it. I understand that the case referred to was to come before the court yesterday, and it seemed inadvisable that the

[1] 391 *Com. Hans.* 5, s. 1588.

matter should be raised here, in case anything might be said to prejudice the issue involved. Therefore, I am responsible for the question not having been raised yesterday. I rule that today is the earliest opportunity."

Captain Cunningham-Reid said that he also had received a similar letter and cheque, and Mr. Kirkwood said that several Members had received this letter and asked: " Why bother raising it in the House of Commons ?"

Mr. Speaker, with reference to the letter and cheque, said that he felt it was a matter which might be of great importance, and that if he were to give a Ruling that there was not a *prima facie* case for consideration by the Committee of Privileges he would be depriving the House of Commons of the opportunity of coming to its own decision on the matter. Therefore, as he thought it was important for the House to decide, he ruled that a *prima facie* case had been established.

Mr. Tom Smith then moved:

> That the matter of the complaint be referred to the Committee of Privileges.

Question put and agreed to.

Report.—On August 4, 1943,[1] the Report[2] from the Committee of Privileges with Minutes of Evidence, etc., was brought up, read and ordered to lie upon the Table and be printed.

The Report stated[3] that the Committee examined certain directors and the secretary of the National Marketing Company as well as an official from the Solicitor's Department of the Board of Trade.

A statement on precedents was submitted, at the request of the Committee, by the Clerk of the House.[4] The Resolution by the House of Commons, May 2, 1695, on the offering of bribes was:

> The offer of money, or other advantage, to a Member of Parliament, for the promoting of any matter whatsoever, depending or to be transacted in Parliament is a high crime and misdemeanour. . . .[5]

The first question the Committee had to consider was whether an offer to pay a Member's out-of-pocket expenses of a journey or visit in connection with the " promoting, etc. . . . Parliament " was an offer or other advantage within the Resolution and therefore a breach of Privilege by the person making the offer. The Committee were of opinion that it would be dangerous to rule too widely on the matter. It was conceivable there might be instances where the payment of expenses offended against the rule, but there were obviously occasions in which the offering of expenses was properly made in order to assist Members to inform themselves fully on matters of parliamentary or public interest.[6]

The letter was accompanied by an elaborate statement of alleged grievance by the company and an invitation to Members to make

[1] *Ib.* 2305. [2] H.C. Paper 103 of 1942-43. [3] *Ib.*, § 1.
[4] *Rep.*, Appendix. This cites 8 cases, in 2 of which Members were expelled the House.—[Ed.] [5] *See also* May, 13 ed., 93. [6] *Ib.*, § 3.

themselves more widely acquainted with the circumstances. A cheque for £5 was included. The letter was sent to the junior Member for Stockport, where the company had its office, and to 10 other Members selected as being Members of whom Mr. Metcalfe had heard.[1] The Committee observed that the last paragraph of the letter might be read as an invitation to retain the cheque whether expenses were incurred or not, but Mr. Metcalfe assured the Committee that he had no such intention. The wording was unfortunate, but the Committee decided to give him the benefit of the doubt.[2] In the Committee's view, from the evidence which had been laid before it, the real intention of Mr. Metcalfe was, not so much to get the matter raised in the House, as to bring pressure to bear on the Government Department concerned to withdraw the prosecution. The suggested presence of M.P.s and other persons in court was designed to do this. Whatever may be the Committee's opinion of this intention, says the Committee, " it would not appear to infringe the Privileges of the House ".[3]

Mr. Metcalfe in his evidence[4] said that his solicitor had made a communication to him, from which he understood that the Board of Trade, in connection with negotiations for an adjournment of the case at the Committee's request, had sought to stop further letters being sent to Members. The Committee inquired into this and heard evidence[5] of the members of the Solicitor's Department of the Board of Trade who conducted the conversation. The subject of this conversation was not the letter referred to the Committee but other letters sent to pupils of the National School of Salesmanship,[6] a related company, urging them to write to their Members and to the Minister of Fuel and Power, plainly with the same object, that of stopping the prosecution.

The conclusion which the Committee came to was that, in the present case, the defendant was ill-advised, both in his action and in the form of his letter, but, having heard his evidence, they came to the conclusion that no breach of Privilege had been committed.[7]

Australia.

Statement by Judge in Non-judicial Capacity.—On March 24, 1943,[8] in the Commonwealth Senate, Mr. President, as the guardian of the rights of the Senate, was asked if he had read the following paragraph reported in the Melbourne *Herald* of yesterday:

> " It is a tragedy that the work of this Board has been frustrated by the Senate ", said Judge Foster today at the Women's Employment Board sitting;

and the hon. Senator continued that the Judge spoke, not as a judicial personage, but as Chairman of a Board appointed under an Act of Parliament. " Do you not consider, Mr. President, that the remark to which I have referred is grossly impertinent and an insult to this

[1] *Ib.*, § 4, Q. 68. [2] *Ib.*, § 5. [3] *Ib.*, § 6. [4] Q. 25. [5] Qs. 75-127.
[6] Q. 87. [7] *Rep.* § 8. [8] 173 *C'th Hans.* 2224.

Parliament?" Mr. President said he would consider the matter and make a statement later.

Another hon. Senator then drew the attention of the Leader of the Senate to a similar report in the Sydney *Daily Telegraph* and asked what action had been taken by the Government to overcome the act of frustration by the Senate, upon which the Minister for the Interior assured the hon. Senator that action would be taken in regard to it, suggesting that they could leave the matter until Mr. President had had time to give it consideration.

On the Motion for the Adjournment that day,[1] Mr. President said that he had given consideration to the question raised by an hon. Senator earlier in the day regarding the statement by Judge Foster. Such statement, however, had been made by the Judge in his capacity as Chairman of the Women's Employment Board. Mr. President therefore did not consider that such reports could be placed in the category of a breach of Privilege under S.O. 427,[2] and that, while a Motion censoring the Judge would be in order, the question arose as to whether the Senate would be justified in passing it. On the other hand, whether such a Motion would be appropriate was a matter which the Senate itself should decide. For himself, Mr. President observed that he did not regard Judge Foster's remarks as a reflection on the Senate. A previous President had ruled that, as Chairman of a Royal Commission, a Judge should be no more free from criticism than any other citizen presiding over an inquiry. With that Mr. President agreed, and he would therefore not disallow criticism of Judge Foster, provided such criticism was confined to actions outside his judicial office. Such being so, " if we criticize him we should allow him to criticize us ".

Union of South Africa.

Attendance of Senators before Select Committees of House of Assembly during Senate Adjournment.[3]—During the proceedings of the Select Committee, House of Assembly, on the Durban Savings Department (Private) Bill, the promoters proposed to call Senator the Hon. S. J. Smith as a witness. The Chairman pointed out that as the Senate stood adjourned it would be necessary in terms of s. 6 of the Powers and Privileges of Parliament Act, 1911,[4] to obtain Mr. President's consent.[5]

Nature of Privileged Evidence.—The Select Committee on Public Accounts, when inquiring into the purchase of land for the Native Trust, desired information, relating to the purchase of a certain farm, from a witness (Mr. J. F. T. Naude, M.P.) who had acted in the matter on behalf of the firm Naude and Naude. The question then arose as to whether the information which passed between the witness and his

[1] *Ib.*, 2280.
[2] " Complaints against newspapers."—[ED.]
[3] As contributed by the Clerk of the House of Assembly.—[ED.]
[4] No. 19 of 1911.
[5] *Assem. Sel. Com.*, 7–1942, ix, xi.

client was privileged under ss. 20 and 22 of the Powers and Privileges of Parliament Act, 1911. The Chairman stated that, having considered the matter and having referred to Halsbury's *Laws of England* (2nd ed.), vol. 13, p. 725, para. 800, he had to rule that Privilege applied only to confidential communications between a client and his legal advisers and did not cover pecuniary transactions of the kind under investigation, more particularly where it appeared, as in the case under consideration, that the firm acted not as solicitors but as estate agents. The information required was subsequently furnished.[1]

Refusal of Witness to Reply to Questions.[2]—Relying on a Ruling given by the Speaker of the Union House of Assembly to the Select Committee on Public Accounts (S.C. I.C.–1942, pp. xxxvii-xxxix) that if a Member wished to press a charge against another Member it should be done by a substantive Motion in the House, a Member (Mr. S. Bekker), who appeared before the *Sel. Com.* as a witness, refused to reply to a question on the ground that he considered it contained an allegation against him. (S.C. I.C.–1942, Qs. 4508-9, p. 296.)

India : Central Assembly.

Publicity of Select Committee Proceedings.—On March 12, 1940 Session,[3] an hon. Member drew Mr. President's attention to the fact that certain decisions (which were described) purporting to have been arrived at by the Select Committee on the Excess Profits Tax Bill had been published by a press agency and had appeared in a number of newspapers and even been broadcast by the Government of India from the All-India Radio Station in Delhi several days before the *Sel. Com.* had presented its Report to the House.

Mr. President (Hon. Sir Abdul Rahim) in his Ruling explained that it had always been understood that the proceedings of a *Sel. Com.* were entirely confidential, so that what transpired during the deliberations of the Committee could not be discussed even on the floor of the House. The Press and the public were not admitted to the meetings of a *Sel. Com.*, and it had never been doubted that it was a breach of Privilege to publish the Committee's Report before it had been presented to the House. Mr. President then quoted from May (p. 482) and removed an impression which might have been created by a Ruling given on April 14, 1934, by Sir Shanmukham Chetty, by stating that it was equally a breach of Privilege whether the proceedings or the Report of a *Sel. Com.* were published *verbatim* or in detail before the presentation of the Report to the House. Mr. President concluded by stating that there had been a gross breach of Privilege of the Assembly, and, that being so, it would ordinarily have been incumbent on the Chair to take such appropriate and adequate action against those who had offended, but that after anxious consideration he had come to the conclusion that he should not take any further steps in the matter, since it

[1] *Ib.* I.C.–1942, 341-2. Qs. 4857-9A, 4979. [2] *See also* JOURNAL, Vol. X, 187.
[3] 1940 *Assem. Hans.*, Vol. II, 1183-4.

was possible that those who supplied and published the information in this case might not have realized the full scope of the Privilege of the Assembly.

During the 1943 Session Mr. President made the following statement:[1]

" I would like to draw the attention of hon. Members to my Ruling which I gave March 12, 1940 (above), and in which I made it quite clear that it is not permissible to the members of the *Sel. Com.*, or to anyone who has access to its proceedings, to communicate directly or indirectly to the Press any information regarding its proceedings, including its Report or any conclusions supposed to have been arrived at finally or tentatively, before the Report has been presented to the House. Recently a breach of this well-established convention has come to my notice, but as the editor of the newspaper and the hon. Member concerned have expressed their regret for departing from this practice and have assured me that care would be taken to avoid any recurrence of such a case in future, I do not consider it necessary to pursue this matter any further. I would, however, again emphasize that it is expected of the Press to co-operate with the House in this matter and to abstain from publishing such information from whatever source it may have been received."

Ceylon.

Member's Freedom of Speech in Legislature.—In 1942 a State Council Powers and Privileges Ordinance was passed (27 of 1942) and amended in certain respects by a further Ordinance (28 of 1942).[2] Section 2 provides that:

2. There shall be freedom of speech in the Council and such freedom of speech shall not be questioned in any court or place out of the Council.

On August 19, 1942, Mr. Susanta de Fonseka, Member of such Council (and its Deputy-Speaker) for Panadure and a Paymaster-Lieutenant in the Ceylon Naval Volunteer Force, read to the Council a letter addressed to him by H.E. the Governor of the Island dated 14th *idem* drawing attention to the following remarks made on the 13th *idem* by such Member in debate in the State Council on the Excess Profits Duty Bill:

> I, for one, feel very humiliated that in a War in which we were consulted we should be led like dumb cattle to the slaughter. It is bad enough that this country should be converted into a battlefield without the consent of the people, it is bad enough that our Constitution should be left to the tender mercies of a Dictator, most improperly mind you, but when we are called upon after all those wrongs also to vote a sum of money for a purpose like this, ignoring the other circumstances, I think it is time that we should cry a halt.

His Excellency then went on in his letter to say:

[1] 1943 *Ib.*, Vol. I, 35.

[2] *See* JOURNAL, Vol. X, 76.

These remarks are incompatible with your holding of my Commission in the Ceylon Naval Volunteer Force, and in exercise of the power vested in me by s. 8 of the Naval Volunteer Ordinance, I hereby dispense with your services therein. You will therefore cease forthwith to wear the uniform of that Force. The Commanding Officer is being informed accordingly.

On August 15, 1942,[1] Mr. de Fonseka replied to the Governor's letter, in which he observed that he (Mr. de Fonseka) did not consider that " my holding of your commission made me any less a Councillor. I never looked upon the uniform of the Force as a badge of tacit acquiescence in everything that may be done in the name of my country."

The hon. Member submitted that the Governor's action had created a situation which was unsatisfactory and uncertain for all Members of the Council, and asked for the Speaker's guidance as to what steps should be taken to clarify it in the interests of all concerned.

The Speaker replied that an important issue had been raised and suggested that notice be given of a Motion for the appointment of a *Sel. Com.* to go into the matter and report to the House.

On August 20, 1942, on the Motion of the Acting Leader of the Council, the following Resolution was agreed to:

That a Select Committee of this Council be appointed to inquire into the statement made to the Council by Mr. Susanta de Fonseka, Member for Panadure, on August 19, 1942, and to report on the question whether a situation has been created which is unsatisfactory in view of the provisions of s. 2 of the State Council Powers and Privileges Ordinance, No. 27 of 1942.

Question put and agreed to. The personnel (7) of the *Sel. Com.* was appointed, with the Legal Secretary (Hon. J. H. B. Nihill) as Chairman.

The Report of the *Sel. Com.* was presented to the State Council on March 23, 1943. The *Sel. Com.* held 6 meetings between August 27, 1942, and March 10, 1943, and on the 23rd of the latter month submitted its Report, which stated that the Legal Secretary had submitted a memorandum reviewing such English precedents as seemed relevant; Ceylon had none. This memorandum appears as Appendix A to the Report, para. 7 of which Appendix states:

To conclude: my recommendation to the Committee is, therefore, that s. 2 of the State Council Powers and Privileges Ordinance has no applicability to the present case and that a situation unsatisfactory to Members of the State Council has not arisen.

The Legal Secretary's memorandum gave rise to a long discussion in the Committee, as a result of which the Chairman invited another of the Committee members (Mr. B. H. Aluwihare) to submit a memorandum. In this memorandum, which is Appendix B to the Report, he does not consider that the Ceylon Naval Volunteer Reserve Ordinance vesting the Governor with the power of appointment and dis-

[1] *Sel. Com. Rep.*, Appdx. C.

missal of officers gives the Governor any right to disregard the privileges of Members of the State Council any more than the Crown's prerogative gives the King the liberty to disregard the privileges of Parliament. Mr. Aluwihare, however, recommended that the House resolve that though there has been a breach of Privilege it decides not to proceed in the matter.

It was found by the Committee that its members were divided, which meant that the Chairman's view prevailed, but the Committee authorized him to place before the State Council the two views on the question.

Debate.—On April 8, 1943,[1] the Leader of the State Council (Hon. D. S. Senanayake) moved:

> That the Report of the Select Committee of the State Council appointed to inquire into the statement made to the Council by Mr. Susanta de Fonseka, Member for Panadure, on August 19, 1942, and to report on the question whether a situation has been created which is unsatisfactory in view of the provisions of s. 2 of the State Council Powers and Privileges Ordinance, No. 27 of 1942, be taken into consideration.

which was put and agreed to.

The Legal Secretary then moved:

> That this Council agrees with the view expressed in paragraph 7 of Appendix A of the Report of the Select Committee of the State Council appointed to inquire into the statement made to the Council by Mr. Susanta de Fonseka, Member for Panadure, on August 19, 1942.

to which the following amendment was moved by Mr. Samarakkody: To delete all words after " view " and to substitute the following:

> in Appendix B of the Report of the Select Committee of the State Council appointed to inquire into the statement made to the Council by Mr. Susanta de Fonseka, Member for Panadure, on August 19, 1942, that:
>
> (*a*) the action of His Excellency the Governor in withdrawing the commission in the Ceylon Naval Volunteer Force held by Mr. Susanta de Fonseka, on account of remarks made by him in the course of a speech in the State Council constitutes a breach of the privileges of this Council; and
>
> (*b*) in view of all the circumstances of the particular case, this Council decides not to proceed with the matter.

A question arose as to whether the Legal Secretary, who as one of the " Officers of State " under the Constitution has no vote in the Council, had a vote in the *Sel. Com.*,[2] but in any case one of the members thereof (Mr. Katnayake) did not sign either Report. However, the Committee felt that both views should be placed before the House. This was the first case for consideration since the passing of the Privileges Bill.

[1] No. 15 *Cey. Hans.* 691.

[2] In the Union of South Africa, a Minister, although granted, by the Constitution, the right to sit and speak in that House of which he is not a Member, has no vote in such House, neither is he included in its quorum, nor can he claim a division there. The same practice is followed in the Provincial Councils in respect of a Member of Executive Committee who is not a Member of the Provincial Council, of both of which there have been instances.—[ED.]

The mover of the amendment interpreted " freedom of speech " in s. 2 thereof as unqualified, and said that the Governor, by directly referring to the statements made by Mr. de Fonseka on the floor of the House and depriving him of his commission, definitely committed a breach of Privilege.[1]

Continuing, the hon. Member said that no responsible officer holding a commission in the Army or Navy should ever have made that speech on the floor of the House. If one wanted to speak openly and unreservedly, it was desirable that one should not get into uniform. By getting into uniform a person submitted himself to certain restrictions of his right of speech and action. The question of Privilege would never have arisen if the Governor had not stated the reason for the withdrawal of the commission. As long as that Privilege remained so defined, the Committee could not recommend to the House that steps be taken against the Governor in the particular circumstances of the case.

Mr. S. Abeywickrama moved an amendment to delete sub-paragraph (*b*) of the proposed amendment.

The following were some of the other arguments put forward during the remainder of the debate. References were made to the Bill of Rights, Halsbury's *Laws of England*, the well-known definition by the Lord Keeper in the House of Commons in 1593, the Commons Resolution of 1621 and to the instances of the elder Pitt in 1735, General Conway and Colonel Barrie in 1764, of Lord Carson and Mr. F. E. Smith in 1914, and, more recently still, to that of Major Randolph Churchill.

It was further stated that a Member of the State Council had a right to be an officer too. It was a breach of Privilege to make such a Member feel that he could not exercise his freedom of speech in the House, and that if he did so he was going to suffer for it. It was understood that the urgency of the order was such that the hon. Member in question was asked to remove his uniform, which he immediately proceeded to do by sending home for civilian clothes.[2] It would be unwise on the part of the House to diminish in this way the privileges which it had obtained by Ordinance passed by the House and approved by the Governor and the Secretary of State.[3] The Governor was doing a legal act in cancelling the commission as much as the hon. Member for Panadure was acting legally.[4] It was their duty as legislators and representatives of the people to see that the privileges they enjoyed as Members of the State Council were not violated by the authorities, simply because they were powerful.[5] It was a primary privilege that every country had given to institutions of that kind. If they could not enjoy that freedom then they had no business in their House. One could not by any stretch of the imagination say that the Governor could act on a statement made by a Member on the floor of the House. Section 3 of the Ordinance was also quoted—namely:

[1] No. 15 *Cey. Hans.* 693. [2] *Ib.* 698. [3] *Ib.* 701. [4] *Ib.* 704. [5] *Ib.* 708.

> 3. No Member shall be liable to any civil or criminal proceedings in any court or to arrest, fine, imprisonment or damages in respect of anything said or any vote given by him in the Council or in respect of any matter or thing which he may have brought before the Council by bill, motion, petition, resolution or otherwise.[1]

During the further course of debate it was also suggested that no one would have had any right to question had the Governor withdrawn the commission from the hon. Member, but the point contested was that the Governor had no right to withdraw the commission because of a statement made on the floor of the House.[2] That was all the protection the House gave to its Members, so that when the Governor said, " on your statement made in the House I have withdrawn your commission ", he practically defied the rights conceded to the Members of the House.[3]

The adjourned debate was resumed on May 27, 1943,[4] and during his speech Mr. de Fonseka quoted from evidence given by Sir Gilbert Campion, Clerk of the House of Commons, in reply to a question, before a *Sel. Com.*, whether the word " place " covered the Army Council:

> In Stockdale *vs.* Hansard, Lord Denman said, speaking of the two Houses: Whatever is done within the walls of either assembly must pass without question in any other place.

Another quotation was from the Select Committee on the Official Secrets Act—namely:

> The privileges enjoyed by either House of Parliament or by Members of either House in their capacity as Members can be abrogated only by express words in a statute.

The hon. Member said that his uniform made the only distinction. On the floor of the House he was entitled to all the rights and privileges of the House. He did not appear as a naval officer, but only as Member for Panadure. The moment he left the Chamber, other hon. Members had greater freedom to take part in political discussions than he.[5] Constitutional development had gone to the extent of claiming that Privilege extended to any action taken by a Member anywhere, in his capacity as a Member. He quoted the cases of *Reg.* v. *Bunting* and the U.S.A. decisions of *Coffin* v. *Coffin* and *Kilbourn* v. *Thompson*.[6] These decisions went a long way towards establishing the proposition that Privilege extended to every act resulting from the nature of the office of a Member and done in the execution of that office, whether done in the House or out of it.[7] The hon. Member then quoted the case of Captain Ramsay while under detention in England under Emergency Reg. 18B,[8] and asked whether he had been decommissioned.

On March 6, 1940, Sir Baron Jayatilaka, with the full consent of the Board of Ministers, gave notice of the following Motion:

[1] *Ib.* 709. [2] *Ib.* 711. [3] *Ib.* 710. [4] No. 19 *Ib.* 847. [5] *Ib.* 853.
[6] *See* JOURNAL, Vol. VII, 142. [7] No. 19 *Cey. Hans.* 854.
[8] *See* JOURNAL, Vol. IX, 64.

That this Council condemns the ruling of His Excellency the Governor in upholding the action of the Inspector-General of Police in refusing to carry out the instructions issued to him by the Minister of Home Affairs.

The day before the Motion was to come up for debate, the hon. Member (Mr. de Fonseka) continued, he was, as a naval officer, sent for by the secretary to his Commanding Officer and informed that his voting in favour of that Motion would be an act of indiscipline.[1] The hon. Member also quoted the famous words of Pym: " Parliaments without parliamentary liberties are but a fair and plausible way into bondage, and freedom of debate if once foreclosed, the essence of the liberty of Parliament is withal dissolved."[2]

Mr. Aluwihare said that they must remember that the main responsibility for Defence under their Constitution lay with the Governor, although that responsibility was shared by the House as a whole.[3]

At the hour appointed the Closure was put and agreed to.

Mr. Speaker then put the first amendment (Mr. Samarakkody): " That the words proposed to be deleted stand part of the Question ", the result of the division being: Ayes, 11; Noes, 34.

Question was then put: " That sub-clause (*b*) of the words proposed to be inserted, be deleted ", and the result of the division was: Ayes, 27; Noes, 16; declined to vote, 3.

Question, " That the words proposed to be inserted as amended be there inserted ", was then put and agreed to.

Mr. Speaker then put the Question as amended—namely:[4]

That this Council agrees with the view *in Appendix B* of the Report of the Select Committee of the State Council appointed to inquire into the statement made to the Council by Mr. Susanta de Fonseka, Member for Panadure, on August 19, 1942, *that the action of His Excellency the Governor in withdrawing the commission in the Ceylon Naval Volunteer Force held by Mr. Susanta de Fonseka, on account of remarks made by him in the course of a speech in the State Council, constitutes a breach of the Privileges of this Council.*[5]

—which was agreed to.

Contempt of the House.—On June 22, 1943, Mr. Speaker made the following announcement to the State Council of Ceylon:

At the Sitting of the Council on the 9th instant, the Member for Dedigama drew my attention to the " Tea Time Tale " in *The Times of Ceylon* of June 8, and stated that he thought it was a serious libel and an indictment on all Members of this House. I then stated I would look into the matter. The passage in question was as follows:

Tram Inspector (to passengers): Don't crowd the doorways. Please sit down and don't expose your pockets.

Indignant Passenger : Dash it ! Is no place safe in Ceylon ? One would think this tram was the State Council.—THE TATLER.

[1] *Ib.* 855. [2] *Ib.* 856. *See also* JOURNAL, Vol. VII, 149. [3] *Ib.* 858.
[4] *Ib.* 864. [5] This amendment is shown in italics as in *Hansard.*—[ED.]

On the 10th instant Mr. Speaker said he had received the following communication from the Editor-in-Chief of the newspaper in question:

THE HON. SIR WAITIALINGAM DURAISWAMY,
SPEAKER, THE STATE COUNCIL, CEYLON.

June 10, 1943.

SIR,

The Member for Dedigama has drawn your attention to the Tea Time Tale published in *The Times of Ceylon* of Tuesday, June 8, and in doing so described it as a disparaging reference to the State Council and as a serious libel and indictment of all Members of the House.

It is enough that one hon. Member should regard the paragraph in that light for us to express our sincere regret for the publication.

We would explain that the paragraph was not intended to have any serious import, and you will be aware that the Tea Time Tale feature is always in lighter vein.

We hold the State Council as a body in the highest esteem, and we share the desire of Members that it should grow in honour and dignity.

Yours faithfully,

A. C. STEWART,
Editor-in-Chief.

Mr. Speaker then stated that he was of opinion that the paragraph in question was a breach of Privilege and a contempt of this House, but in view of the readiness with which the Editor-in-Chief had expressed his regret, perhaps it is advisable to accept the apology so tendered.

XV. REVIEWS

Canadian Parliamentary Practice.[1]—This third and much enlarged edition is a very different book from its two predecessors, which were more in the nature of handbooks published with the intention of furnishing ready quotations in hurried and unprepared arguments on points of procedure.

It is now 15 years since the second edition was published, and that well-known authority on the constitutional law and parliamentary practice of Canada, Dr. Arthur Beauchesne, the Clerk of the House of Commons, is to be congratulated upon this book of reference.

The first half of Dr. Beauchesne's book is divided into 16 chapters. Chapters I-XIII deal with groups of the Standing Orders of the House of Commons of Canada on Public Business, which are given *verbatim.* Except in the case of Standing Orders on Private Bills, where they are given individually, each group of Standing Orders is followed by a series of paragraphs of annotations, comments and precedents supported by their British, Canadian or United States authorities. When it is said that these paragraphs, which are numbered consecutively from 1 to 821 throughout the early part of the book, cover 249 pages, every one full of interest and valuable information to any Clerk-at-the-Table, the importance of the book will be realized.

The Introduction (39 pp.) is a treatise in itself on Privilege, the independence of the Parliament of Canada, the Senate and its powers, as well as many other subjects appertaining to the Canadian parliamentary system, and closes with references to political parties generally, as the basis of the British constitutional system.

Chapter XIV gives 38 pages of Forms and Formulæ which are really standards for entries in the Journals in respect of Motions, Addresses, appointment of Select Committees, etc.

Chapter XV (Preparation of Bills—Validity of Statutes) outlines the Canadian procedure in the preparation and presentation of Bills, their drafting, consideration by the Privy Council of Canada, cases of urgency, Money Bill Resolutions, etc., and the forms necessary to give validity to a statute.

Chapter XVI contains the text of the British North America Act, 1867 (the Constitution of Canada), as well as of the Acts of 1871, 1875, 1886 and 1915 amending that Act. The text of the Statute of Westminster, 1941, is also included.

The second half of the book (pp. 411-860, with its separate index) gives decisions of Speakers of the House of Commons of Canada over a wide range of subjects.

Lastly, there is a 28 pp. Index to the rest of the book, figures repre-

[1] *Rules and Forms of the House of Commons of Canada,* 3 ed. 899 pp. Roy. 8vo. 1943. By Dr. Arthur Beauchesne, C.M.G., M.A., K.C., LL.D., Litt.D., F.R.S.C. (Canada Law Book Coy. Ltd., Toronto, Ont.)

senting pages being preceded by the letter " p " to distinguish them from the figures representing the 822 annotated paragraphs.

In the Preface to the book the author offers some constructive criticism in regard to certain difficulties in respect of which, he urges, it is imperative that special orders be adopted if the House wants further to expedite the passage of legislation—namely:

> The number of questions placed on the Order Paper ought perhaps to be limited in the same way as are Private Members' Notices of Motion. It might be a good rule not to allow any Member to have more than two or three Questions at a time on the Order Paper. Answers to Questions being given on three Sitting Days per week, a Member would have ample time to seek all the information he desires in the course of a Session. Moreover, when the Clerk reports that the information sought is to be found in an official publication, the Speaker should have the authority to order that the Question shall not be placed on the Order Paper. There does not seem to be any necessity for printing answers in the official reports of Debates, but they ought to be kept in the Parliamentary Papers Branch where they would be available to Members like returns laid on the Table of the House. Copies of them could be made whenever required.

Under Canadian practice, appeals from the Speaker's decisions are permitted, any Member being entitled, after a Ruling has been given, to say: " I appeal from your decision ", which is sufficient for a division to take place. The decision is always sustained, says Dr. Beauchesne, but the mere fact that the appeal was taken shows a certain distrust in the Chair. The author suggests a support of 20 Members before the House can be called to vote upon the Question, or, that a vote be taken on the Question—" Shall an appeal be taken against the Speaker's decision ?" in which case a negative vote would be a confirmation of the decision and thus avoid the Speaker having to submit his judgment to the ruling of the House.

The author also suggests that:

> The rule that no Member may amend his own Motion should be relaxed for the benefit of Ministers of the Crown, particularly when Budget Resolutions are in Committee of Ways and Means. As the Ministers are jointly responsible for every Measure introduced on behalf of the Government it seems that, when Resolutions or Bills have been approved by the whole Cabinet, the Minister who sponsors them ought to be allowed to move any amendment when they are under consideration in the House.

Dr. Beauchesne, while not recommending the South African practice of no Address in Reply to the Speech from the Throne, however, suggests that a remedy might be applied in Canada of laying down the maximum number of days for this debate.

In regard to " the previous question ", which is debatable, but not amendable, and instead of shortening the discussion makes it longer, the author suggests that a better way would be to fix beforehand, by Motion, the number of sittings reserved for the discussion of a certain measure.

Dr. Beauchesne adds that many other suggestions have been made for amendments to the Standing Orders, and that there seems to be a general feeling that the resolution antecedent to a Money Bill should be abolished.

Dr. Arthur Beauchesne's work is a valuable treatise on the procedure of the House of Commons of Canada and a book no Clerk-at-the-Table in any Empire Parliament or Legislature should be without. To the constitutional student also this book contains a mine of valuable information.

O. C.

The Rebuilding of the House of Commons.—In a recent debate on the rebuilding of the House of Commons Mr. Churchill suggested that the archway into the Chamber from the Members' Lobby, blasted by German bombing, be left unrestored as a monument of Westminster's ordeal. The condition of that Lobby, of the Aye Division Lobby and of the Chamber itself after the raid of May 10, 1941, and the condition of the ancient cloisters after the raid of the previous December, are well shown in the photographs which illustrate the new edition of Sir Bryan Fell's little guide to the Houses of Parliament.[1] Anyone who reads this brief but authoritative summary of the origin of Parliament, the emergence of the Commons, the present composition of the two Houses, and the historic scenes enacted in Westminster Hall will already have acquired a substantial grounding in the British Constitution. Brought up to date with an account of the war damage, with a picture of the Lords' Chamber as now fitted up for the temporary occupation of the Commons, and with some fresh details about Big Ben and the maces, this modest booklet will benefit the increasing numbers of visitors to the Palace of Westminster. Why, by the way, is it the " Palace " ? And why is the Lord Great Chamberlain in charge ? To all such questions Sir Bryan gives a sufficient answer. He describes the routine of an average parliamentary day. For the atmosphere of the assembly we must go back to Mr. Winston Churchill. His suggestion to retain the Lobby intact was made in the debate of January 25, 1945, when the House adopted the recommendations of the Select Committee on rebuilding. These, advocating the substantial restoration of the old arrangements, give Mr. Churchill what he hoped for when he moved the setting up of the Select Committee on October 28, 1943—a chamber oblong, not semi-circular; no attempt to provide a seat for every Member; a deliberate preservation of the old

[1] *The Houses of Parliament.* A short guide to the Palace of Westminster. By Sir Bryan H. Fell, K.C.M.G., C.B., late Principal Clerk in the House of Commons. (Eyre and Spottiswoode, London. 1s. 6d.)

" intimate " conditions of discussion; and the sense of crowd and urgency and excitement upon great occasions.

> " We shape our buildings and afterwards our buildings shape us." " Logic is a poor guide compared with custom: logic has created in many countries semi-circular assemblies with buildings which give every member not only a seat to sit in but often a desk to write at and a lid to bang." " The essence of good House of Commons speaking is the conversational style, the facility for quick informal interruption and interchange; haranguing from a rostrum would be a bad substitute."

These are characteristic Churchilliana. The British Prime Minister is a good House of Commons man. He does not want the rebuilding to await the end of the War. To him the House is no less important " even in time of war " than a fortification or a battleship. Inadequate as the present and prospective accommodation for Private Members may be, they too, like their leader, prefer custom and tradition to logic and comfort.

XVI. 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[1] contained 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] IX[11] and X[12] 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 during 1942 and 1943:

Barker, Ernest.—Reflection on Government. 1942. (Oxford University Press. London: Milford. 21*s.*)

Carr, Sir Cecil T.—Concerning English Administrative Law. (Oxford University Press. London: Milford. 10*s.* 6*d.*)

Comin, Edward S.—The President: Office and Powers. History and Analysis of Practice and Opinion. 1941. (New York University Press. London: Milford. 28*s.*)

Copland, R.—Britain and India, 1600-1941. (Longmans. 6*d.*)

Copland, R.—Report on the Constitutional Problem in India. Part I: The Indian Problem, 1833-1935. Part II: Indian Politics, 1936-1942. (7*s.* 6*d.*) Part III: The Future of India. (London: Milford. 6*s.* 6*d.*)

Hancock, W. K.—Survey of British Commonwealth Affairs. Vol. II: Problems of Economic Policy, 1918-39. Part 2. 1942. (Oxford University Press. London: Milford. 16*s.*)

[1] 123-6. [2] 137, 138 [3] 153-4. [4] 223.
[5] 133. [6] 152. [7] 222. [8] 243.
[9] 212 *et seq* (starred items). [10] 223-6 (starred items). [11] 170.
[12] 196.

Hermens, F. A.—Democracy and Proportional Representation. 1941. (Oxford University Press. 1*s.* 6*d.*)

McLintock, A. H.—The Establishment of Constitutional Government in Newfoundland, 1783-1832. A Study of Retarded Colonization. 1941. (Longmans. 15*s.*)

Marriott, Sir J. A. R.—Federation and the Problem of the Small State. 1943. (Allen and Unwin. 5*s.*)

Montmorency, Sir Geoffrey de.—The Indian States and Indian Federation (Current Problems). 1942. (Oxford University Press. 3*s.* 6*d.*)

Needorff, Gwen.—Studies in the Evolution of Dominion Status. 1942. (Athenæum. 18*s.*)

The Journal of Sir Simonds D'Ewes.—From the First Recess of the Long Parliament to the withdrawal of King Charles from London. Ed. William Havelock Coates. 1943. (Yale University Press. London: Milford. 36*s.*)

Manual of Parliamentary Procedure in the Public Business: House of Commons, 1941. 7 ed. 1942. (H.M.S.O. 6*s.* 6*d.*)

XVII. LIST OF MEMBERS

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British India.

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Mian Muhammad Rafi,* B.A., Secretary of the Legislative Assembly, New Delhi.
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* Barrister-at-law or Advocate.

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R. S. Halliday, Esq., I.C.S., Secretary of the Legislative Assembly, Poona, Bombay.

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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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Khan Hidayatullah Khan,* M.A., Secretary of the Legislative Assembly, Peshawar, North-West Frontier Province.

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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.

S. A. Kamtekar, Esq., B.A., LL.B.,* Secretary of the Dhara Sabha, Baroda, Baroda State, India.

* Barrister-at-law or Advocate.

The Secretary of the Sri Mulam Assembly, Trivandrum, Travancore, South India.
The Secretary of the Sri Chitru State Council, Trivandrum, Travancore, South India.

Burma.

H. McG. Elliot, Esq., Secretary of the Burma Senate, Simla, India.
U. Ba Dun,* Secretary of the Burma Legislature and of the House of Representatives, Simla, India.

Jamaica, B.W.I.

Clinton Hart, Esq., Clerk of the Legislative Council, Kingston.

Ceylon.

D. C. R. Gunawardana, Esq., B.A.(Lond.), C.C.S., Clerk of the State Council, Colombo.

British Guiana.

J. J. Rodrigues, Esq., Clerk of the Legislative Council.

Mauritius.

Clerk of the Council of Government.

Straits Settlements.

The Clerk of the Councils, Singapore.

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H. H. W. Bense, Esq. (South Africa).
E. M. O. Clough, Esq., C.M.G. (South Africa).
Captain M. J. Green, V.D., R.N.V.R. (rtd.), (South Africa).
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.

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.*

Dhal, Sri G., B.A., B.L.—Secretary of the Legislative Assembly, Orissa, since August 20, 1943; Assistant Secretary, August 21, 1942.

Loof, R. H. C., B.Com.(Melb.). — Clerk-Assistant of the Senate, Commonwealth of Australia, since December, 1942; *b.* August 15, 1900; *ed.* Melbourne High School and Graduate University of Melbourne; clerical staff, Defence Administration, 1919; transferred to clerical staff of the Senate, 1926; Clerk of the Records and Papers, 1930; Usher of the Black Rod and Clerk of Committees, 1939.

Smit, Triegaardt Louis Gustave, B.A.—Appointed Clerk of the Natal Provincial Council, Union of South Africa, December 1, 1944; *b.* November 2, 1907, Pearston, C.P.; *ed.* Pearston Secondary School and Jeppe High School, Johannesburg; B.A. (extramural), Natal University College; appointed to the Public Service, November, 1928; Administrator's Office, Natal, 1928-35; Natal Education Department, 1935-37; Natal Provincial Audit Office, 1937-40; Clerk-Assistant, Provincial Council, October, 1940.

Wickenden, T. D., I.C.S.—Legal Remembrancer and Secretary to the Central Provinces and Berar Government in Judicial and Legal Departments, and Secretary to the Central Provinces and Berar Legislative Assembly, Nagpur, since December 10, 1943; *b.* March 2, 1903; Indian Civil Service, October 28, 1925; Deputy Commissioner and District and Sessions Judge, and on special duty in Defence Co-ordination Department and Home Department of Government of India in 1941 and 1943 respectively.

Zafarali, A. Shaikh, B.A., LL.B.—Secretary to the Legislative Assembly, Sind, since February 3, 1944; *b.* May 20, 1901; *ed.* at Shikarpur; graduated from the D. J. Sind College, Karachi, 1923; prize in History in the Intermediate Arts Examination, 1921; LL.B. (Bombay University from Government Law College, Bombay, 1925); Pleader in Sind Courts, 1925-30; Sub-Government Pleader, 1925; Sub-Judge, 1930; Officiating First Class Sub-Judge, 1941.

XIX. STATEMENT OF ACCOUNT AND AUDITOR'S REPORT, 1942-43

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 X*.

The Statement of Account covers a period from October 1, 1942, to August 31, 1943. 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 XI, 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 IX	77	16	2
Due to the Treasurer for advances and sundry disbursements	38	18	8
	116	14	10

Against this there is due and in hand:	£	s.	d.
For grants	65	0	0
For subscriptions	76	0	0
At Bank	1	5	10
In hand		1	9
	142	7	7

Accounts for printing Volume X have not yet been received, nor statement of Sales Return for the 6 months to 30th June, 1943.

CECIL KILPIN,
Chartered Accountant (*S.A.*).

SUN BUILDING,
CAPE TOWN.
September 17, 1943.

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

STATEMENT OF ACCOUNT FOR THE PERIOD FROM OCTOBER 1, 1942, TO AUGUST 31, 1943.

REVENUE.

	£ s. d.	£ s. d.
Balance as at September 30, 1942, being excess of income over expenditure at that date		19 4 11
Parliamentary Grants:*		
Canada	10 0 0	
Province of Nova Scotia, Volumes IX and X	20 0 0	
Australia (Senate)	5 0 0	
State of New South Wales	5 0 0	
State of Western Australia	5 0 0	
Union of South Africa, H.A.	5 0 0	
Province of Cape of Good Hope	5 0 0	
Province of Natal	5 0 0	
Province of Transvaal	10 0 0	
Southern Rhodesia	10 0 0	
Baroda State	5 0 0	
Mysore State	5 0 0	
		90 0 0
Subscriptions:		
Volumes VII to X inclusive		55 0 0
Sales:		
Volumes I to IX inclusive		39 18 8
		£204 3 7

EXPENDITURE.

	£ s. d.	£ s. d.
Volume X for 1941:		
Postages, Telegrams and Telephones	6 10 0	
Bank Charges	5 10	
Cables and Telegraphic Address	3 16 8	
Publications and Newspapers	10 0	
Typing and Clerical Assistance and Roneoing	52 9 1	
Printing and Publishing Vol. VIII—balance	64 11 0	
Vol. IX—on account	59 11 3	
	124 2 3	
Stationery	3 5 5	
Transport	3 3 0	
Gratuities to Messengers	4 16 0	
Audit Fee	3 3 0	
Insurance	16 6	
		202 17 9
Cash Balance, being Excess of Receipts over Expenditure		1 5 10
		£204 3 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.
September 17, 1943.

* The Province of Saskatchewan has granted £5 in respect of Volume XI.

XX. STATEMENT OF ACCOUNT AND AUDITOR'S REPORT, 1943-44

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 XI.*

The Statement of Account covers a period from September 1, 1943, to August 31, 1944. 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 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 XII, which are paid into a Special Account not operated upon, have been excluded from the Revenue and Expenditure Account.

	£	s.	d.
The following amounts are owing:			
For printing Volume X	121	10	4

Against this there is due and in hand:

	£	s.	d.
For grants	80	0	0
For subscriptions	80	0	0
At Bank	12	17	4
In hand	1	12	2
	174	9	6

CECIL KILPIN,
Chartered Accountant (S.A.).

SUN BUILDING,
CAPE TOWN.
September 18, 1944.

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

STATEMENT OF ACCOUNT FOR THE PERIOD FROM SEPTEMBER 1, 1943, TO AUGUST 31, 1944.

REVENUE.	£ s. d.	£ s. d.
Balance as at August 31, 1943, being excess of income over expenditure at that date		1 5 10
Parliamentary Grants:		
Canada, Volume X	10 0 0	
Province Saskatchewan, Volume XI	5 0 0	
Commonwealth of Australia, Volumes IX and X	15 0 0	
State of Western Australia, Volume X	5 0 0	
State of New South Wales, Volume XI	5 0 0	
New Zealand, Volume X	10 0 0	
Union of South Africa, Volume X	10 0 0	
Province of Cape of Good Hope, Volume XI	10 0 0	
Province of Transvaal, Volume XI	10 0 0	
Southern Rhodesia, Volume XI	10 0 0	
		90 0 0
Subscriptions:*		
Volumes VII to XI inclusive		57 0 0
Sales:		
Volumes I to X inclusive	83 8 8	
Pamphlets	6 15 6	
		90 4 2
		£238 10 0

EXPENDITURE.	£ s. d.	£ s. d.
Volume XI for 1942:		
Printing and Publishing:		
Volume IX—balance	77 16 2	
Volume X—on account	50 1 9	
		127 17 11
Postages, Telegrams, Telephone, Transport		13 14 6
Bank Charges		16 4
Cables and Telegraphic Address		3 18 0
Publications and Newspapers		19 7 6
Typing and Clerical Assistance		38 13 1
Printing Slips, Leaflets, etc.	3 11 5	
Printing Pamphlets	6 15 6	
		10 6 11
Stationery		2 6 5
Gratuities to Messengers		4 18 6
Insurance		10 6
Audit Fee		3 3 0
Cash Balance, being excess of Receipts over Expenditure		12 17 4
		£238 10 0

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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.

September 18, 1944.

* Owing to War-time mail delays the other grants and subscriptions to Volume X have not yet been received.—[ED.]
The third Annual Grant by H.H. the Gaekwar of Baroda for that State will appear in next Statement of Account.

INDEX TO SUBJECTS DEALT WITH IN EARLIER VOLUMES

NOTE.—*The Roman numeral gives the Volume and the Arabic numeral the Page Except in the case of the United Kingdom, constitutional matters are arranged under Countries and Procedure, etc., under Subject headings.*

(Art.) = Article in Journal. Amdts. = Amendments. Com. = Committee.
C.W.H. = Committee of the Whole House. Q. = Questions.
O.P. = Order Paper. Sel. Com. = Select Committee.

[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.

[2] *See* Index Vol. X.

[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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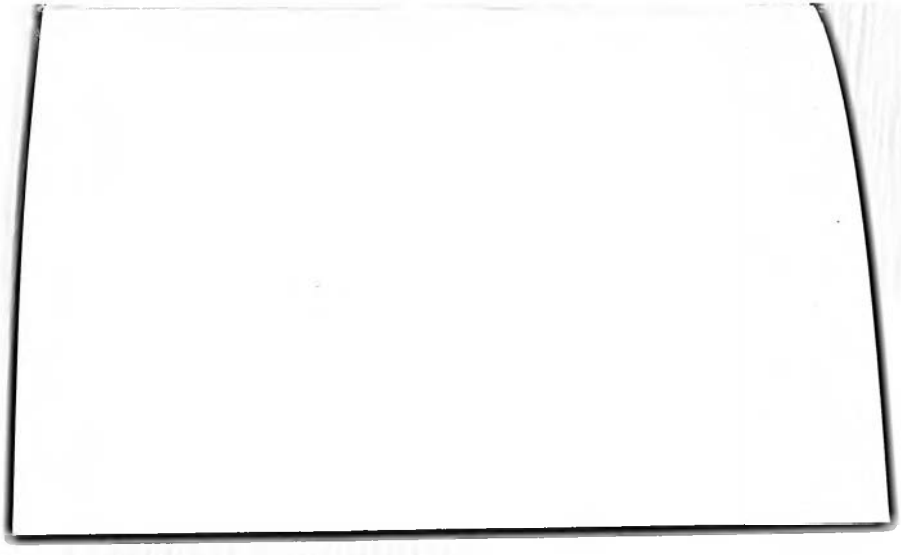

[1] For Provinces of, *see* Table facing Contents, p. ii.

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