



THE DE MANDATE IN THE SENATE HOUSE AT CAPE TOWN.

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

EDITED BY  
OWEN CLOUGH, C.M.G.

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

VOL. XV

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1947

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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 .. .. .				*	*	*				*	*	*	*	
New South Wales .. .. .		<i>No set rule now obtains.</i>												
AUSTRALIAN STATES	Queensland .. .. .			*	*					*	*	*	*	
	South Australia .. .. .							*	*	*	*	*	*	
	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 .. .. .				*	*	*	*	*				*	*	
INDIA CENTRAL .. .. .			*	*	*							*	*	
GOVERNORS' PROVINCES	Madras .. .. .	*	*	*					*	*	*	*	*	
	Bombay .. .. .	*	*	*	*					*	*	*	*	
	Bengal .. .. .	*	*	*	*				*	*	*	*	*	
	United Provinces .. .. .	*	*	*	*				*	*	*	*	*	
	The Punjab .. .. .	*	*	*	*			*			*	*	*	
	Bihar .. .. .													
	Central Provinces and Berar .. .. .													
	Assam .. .. .		*	*	*					*	*			
	North-West Frontier .. .. .		*	*						*	*			
	Orissa .. .. .		*	*					*	*				
	Sind .. .. .		*	*					*	*				
Hyderabad .. .. .		<i>No set rule obtains.</i>												
INDIAN STATES	Mysore .. .. .	*					*				*	*		
	Jammu and Kashmir .. .. .			*	*						*	*		
	Baroda .. .. .			*	*						*	*		
	Travancore .. .. .	*			*		*	*	*	*				
BURMA .. .. .			*	*					*	*				
BRITISH GUIANA .. .. .					*	*	*			*	*	*	*	
CEYLON .. .. .		*	*	*			*	*	*	*	*	*	*	
JAMAICA .. .. .							*	*	*	*	*	*	*	
KENYA COLONY .. .. .					*		*	*			*			
MALAYAN UNION .. .. .														
MALTA, &c. .. .. .		<i>No set rule obtains.</i>												
MAURITIUS .. .. .		<i>No set rule obtains.</i>												
SINGAPORE COLONY .. .. .		*			*	*	*	*	*	*	*	*	*	
TANGANYIKA TERRITORY .. .. .		<i>No set rule obtains.</i>												
TRINIDAD AND TOBAGO, B.W.I. ...		*	*	*	*						*	*	*	

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\* Questionnaire subject.



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

- Q.* =Question asked;  
*1 R., 2 R., 3 R.* =First, Second and Third Readings of Bills;  
*C.W.H.* =Committee of the Whole House;  
*O.P.* =Order Paper;  
*Sel. Com.* =Select Committee;  
*R.A.* =Royal Assent; and  
*H.M. Government* =His Majesty's Government.

*Hans.*, after the abbreviation for a House of Parliament or Chamber of a Legislature, is used in footnotes in place of " Debates ".

Where the year is not given, that under review in this Volume will be understood.

# Journal

of the

## Society of Clerks-at-the-Table

### in Empire Parliaments

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VOL. XV

FOR 1946

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#### H.R.H. THE PRINCESS ELIZABETH

The members of our Society serving the Parliaments and Legislatures of our Commonwealth and Empire desire humbly to offer our sincere congratulations to the Princess Elizabeth, Heir Presumptive to the Throne, and to Lieutenant Philip Mountbatten, Royal Navy, on their marriage.

It is our fervent Prayer that God may bless them with good health, long life and every happiness.

#### I. EDITORIAL

**Introduction to Volume XV.**—This post-war period is surely unprecedented in the extent to which constitution-building is taking place in the non-Dominion regions of our Overseas Empire. New constitutions have been inaugurated in the British West Indies where there is a growing desire for a Caribbean Union. The former Dominion of Newfoundland, by an elected Convention, is seeking a way out of her constitutional set-back.

In the Mediterranean, Malta, G.C., is anxious to return to her former constitutional status and in Cyprus changes are taking place. In the East Indies we have the creation of a Malayan Union out of the old Straits Settlements with the separation of Singapore into a Colony of her own.

In the Crown Colonies of Africa there is wide-spread development to give the Non-European peoples greater say in their own affairs.

In fact, even in the smallest Crown Colony, whether in the regions of the Pacific, Atlantic or Indian Oceans, there is a movement to increase the unofficial and decrease the official element in the legislature.

Ceylon is now launching forth as a Ship of State.

All the above activities, however, are eclipsed by the gigantic scale on which constitution-building is now going on in what was the Empire of India, where her millions of people are deeply engaged in hammering out their future into two great Dominions. The Indian States, now no longer to be in treaty with the King-Emperor, are open to decide to which Dominion their adherence shall be given. From press cable news received as this Volume goes to press, it is reported that Burma contemplates withdrawal from the British Commonwealth.

Surely there never was a period in the Parliamentary history of our Commonwealth and Empire when there was such a wide-spread desire to enjoy the fruits of democratic government, as understood by Western Democracy.

During all this time the United Kingdom and the Overseas Dominions are carrying on with the science of government, each, under her own constitution, maintaining principles and building up precedents—to suit her own people and country, all viewing the advance of this great constitutional wave in these other lands with deep interest. And in South Central Africa, Southern Rhodesia is seeking further democratic progress by amalgamation with her adjacent territories, for the constitution of another Dominion under the common Crown.

'Midst all these changes it is, therefore, more than appropriate that His Majesty the King, the pivot of all our constitutions, whose signature gives them birth, should have chosen the present time also to strike new constitutional ground by opening, in person, for the first time in history, a Session of a Dominion Parliament and similarly a Session of the Parliament of Southern Rhodesia.

With these prefatory remarks, we will now continue with the introduction to this Fifteenth issue of the JOURNAL, which our Society is glad to see growing in favour, both with our members and those concerned in the conduct of the proceedings of our Parliaments and Legislatures, as well as with constitutional students and Parliamentarians generally. In fact, even that great organization of Legislators, the Council of State Governments in the United States of America, recently invited us to contribute an Article on the office of "Clerk at the Table" and the operations of this Society, for their estimable *Journal State Government*. The Article duly appeared in their June issue, copies of which they have most generously supplied so that the group of Clerks at the Table in each one of the 50 Parliaments and Legislatures co-operating in the work of this Society may have a copy; a brotherly gesture which we can also here assure them is most warmly appreciated by all our members, both far and near.

Although the purpose of this Volume is to survey the year 1946 in regard to the particular events which have taken place in the Parliaments and Legislatures of our Commonwealth and Empire, it would scarcely accord with our allegiance to the Throne if accounts of the two Royal Openings of Parliament in 1947 were not included in the present Volume.

It has therefore been our pleasure to accept 2 Articles, the one describing the Opening of a Session of the Union Parliament from Mr. J. F. Knoll, J.P., the Clerk of the Senate, and the other from Mr. Claude C. D. Ferris, O.B.E., the Clerk of the unicameral Legislature of Southern Rhodesia, who were responsible for the arrangements in connection with these two Royal Opening Ceremonies in their respective countries.

"We" had the honour of being present at the Opening Ceremony at Cape Town and the writer, speaking as one who has been responsible for the arrangements in connection with over 25 such Ceremonies under various types of constitution, considers that Mr. Knoll and his able Staff deserve every praise for this well-organized Ceremony.

Knowing, as we do, the capabilities also of Mr. Ferris, there is no doubt that, although "we" were not present at the Opening Ceremony at Salisbury, its arrangements were, assisted by his excellent Staff, carried out with equal perfection.

These Opening Ceremonies, though actually themselves only taking a few minutes, require the most meticulous preparations extending over several months. Nothing can be left to chance or single check and even on the actual day, the various stages of the Ceremony have to be timed to split-seconds if success is to be achieved. It is only 8 years ago that the King with Her Most Gracious Majesty was present in His Parliament of Canada. May this further precedent in Southern Africa be the forerunner of similar visits to other parts of His Realm Overseas.

In addition to the accounts of the Royal Openings, the main body of this Volume contains Articles further demonstrating: the increasing necessity of closer scrutiny by Parliament over the ever-growing sphere of delegated legislation; the importance of a well-equipped and organized Parliamentary Library to the modern-day legislator, of whom more and more knowledge is required and over a much wider range of subjects; and, the increasing financial demands made upon the M.P. in the discharge of his duties—all of which Articles relate to the House of Commons.

There is also the Article on the Speaker's Rulings for their 1945-46 Session.

Overseas, the two Articles in regard to Canada deal with the ever-present problem in large-area countries under democratic government of Dominion-Provincial relationship in the legislative and taxation fields, and, a description of the operation of a machine-made *Hansard* system in the enterprising Province of Saskatchewan.

The subjects of the Australian Articles are: the Commonwealth Constitution Referendum Proposals of 1946, an important addition to the references on this subject in previous issues of the JOURNAL; the working of the system of "Parliament on the Air" at Canberra; and a further account of the operations of the Commonwealth Committee on War Expenditure. The contributions in respect of the States

give the New South Wales M.L.A.'s Pensions scheme and a report on the working of the M.L.A.'s Pensions Fund in Western Australia.

In regard to the Union of South Africa there is the usual and welcome Article on precedents and unusual points of procedure in the House of Assembly. There is also "the Malan Case", an Overseas inquiry into "conduct of a member", in which "the Boothby case" afforded useful precedents.

Overseas Constitutions for Ceylon, the Gold Coast and Ashanti and Nigeria form the subject of other Articles and there is the short one on "Expressions in Parliament".

Instances of "Applications of Privilege" during the year under review are collated under the usual heading on this subject and deal with: Letter to members; the "Face the Facts Association Poster"; and Service of a Writ of Summons on an Officer of the House within its precincts—all House of Commons cases. In Canada there has been the Official Secrets Acts case necessitating the arrest of an M.P., resulting in his expulsion from the House of Commons and in the Union of South Africa the case of "conduct of a member" (*already mentioned*) which is dealt with in a separate Article on account of the extent of the inquiry.

Under the usual heading appears a review of that further contribution to the subject of Parliamentary procedure, Sir Gilbert Campion's second edition of "An Introduction to the Procedure of the House of Commons", an up-to-date account, which all Clerks at the Table will gladly welcome.

Under "Editorial" a wide-spread range of subjects will be noted, including: references to Secret Sessions, both in the House of Lords and the Legislative Assembly of Southern Rhodesia; an amendment of the B.N.A. Act providing for the redistribution of seats in the Canadian Commons; a Report from the Special Committee of that House on the revision of their Standing Orders; and the 1946 operations of the Canadian War Expenditure Select Committee. There is also some interesting information in regard to the prerogatives of the Prime Minister of Canada and the functions of that office, as well as the practice in that Parliament of members having documents placed in *Hansard* by unanimous consent.

Instances are recorded of the appointment of M.P.s to act as Ministers of State Resident abroad during the War by the United Kingdom, Australia and New Zealand. In the Upper House of the last-mentioned Dominion, women have been made eligible for membership. The question of the reading of speeches has been brought up in Canada and Victoria and the Union House of Assembly gives some recent applications of the Guillotine. Steps have been taken during the year in regard to the control of delegated legislation also in Northern Ireland and the Province of Saskatchewan.

The Union Senate gives a recent example of proceedings at Bar in connection with an important measure, and the Legislative Assembly

of South-West Africa records its desire to be incorporated in the Union, its Mandatory power. The election of a Convention in Newfoundland marks an important milestone in her constitutional history.

The gigantic constitutional movements in India can, however, in a Volume reviewing the year 1946, only be taken a step further, and the same applies to Burma. References are also made to constitutional movements in many of the Crown Colonies.

The higher cost of living brought about by world economic disturbance has had its reflection on our Parliaments and Legislatures by causing, in many countries, increase in the salaries of Ministers and M.P.s as well as the granting to them of further facilities to aid them in their duties. Even the members of the House of Lords, at the suggestion of a Committee of the Commons, are to be given travelling facilities by the State.

The procedure points raised both at Westminster and Overseas cover a wide field, even to the question of the wearing of hats by women in the Gallery of the Canadian Commons, so gallantly disposed of by Mr. Speaker.

The Editorial section of this Volume also deals with many other questions of interest in connection with the running of the legislative machine in the Parliaments and Legislatures of our Commonwealth and Empire.

With these introductory remarks the Fifteenth Volume is presented to our readers with the hope that post-war conditions will have so far re-adjusted themselves in 1948 as to admit of the publication of our next Volume nearer to the pre-war month of September.

**Acknowledgments to Contributors.**—We have pleasure in acknowledging Articles in this Volume from: Mr. J. F. Knoll, J.P., Clerk of the Senate of the Union of South Africa; Mr. Claude C. D. Ferris, O.B.E., Clerk of the Legislative Assembly of Southern Rhodesia; Mr. Norman W. Wilding, Assistant Librarian, House of Commons; Mr. George Stephen, Assistant Clerk in Chamber, Legislative Assembly of Saskatchewan; Mr. A. A. Tregear, B.Com., A.I.C.A., Clerk-Assistant of the House of Representatives, Commonwealth of Australia; Mr. A. G. Turner, Secretary, Joint Committee on the Broadcasting of Parliamentary Proceedings; Mr. W. I. Emerton, Secretary of the Joint Committee on War Expenditure of the Commonwealth Parliament; Mr. F. G. Steere, Clerk of the Legislative Assembly of Western Australia; and Mr. Ralph Kilpin, J.P., Clerk of the Union House of Assembly.

We are also indebted for Editorial paragraphs to: Mr. G. Stephen, Assistant Clerk in Chamber, Legislative Assembly of Saskatchewan; Mr. John E. Edwards, J.P., Clerk of the Commonwealth Senate; Mr. F. B. Langley, Clerk of the Legislative Assembly of New South Wales; 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,

Australia; Mr. C. I. Clark, Clerk of the Legislative Council and Mr. C. K. Murphy, Clerk of the House of Assembly, of Tasmania; Mr. C. M. Bothamley, J.P., Clerk of the Parliaments and Mr. H. N. Dollimore, LL.B., Clerk of the House of Representatives, New Zealand; Mr. J. F. Knoll, J.P., Clerk of the Senate and Mr. Ralph Kilpin, J.P., Clerk of the House of Assembly, of the Union; Mr. Claude C. D. Ferris, O.B.E., Clerk of the Legislative Assembly of Southern Rhodesia; Mr. R. K. V. Varma, B.A., B.L., Secretary of the Legislature and Mr. M. Surya Rao, B.A., B.L., Deputy Secretary of the Legislature, Madras; Mr. Clinton Hart, Clerk of the Jamaica Legislature; Captain V. A. Trapani, Actg. and Deputy Clerk of the Council of Government, Malta G.C.

Indeed, contributed Editorial paragraphs by other members of the Society, in form ready for insertion, are gladly welcomed, not only because they lighten the work of the hon. Editor, but principally on account of their contributions coming 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 given. 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.

**Questionnaire for Volume XV.**—Three subjects of this Questionnaire have been prepared for this Volume, namely: "M.P.s and Government Contracts"; "Parliamentary Secretaries (Under Ministers)"; and "M.P.s and Pecuniary Interest", but so much space has had to be devoted to running subjects that the publication of these Articles in the JOURNAL has been deferred.

**Honours.**—On behalf of our fellow-members, we wish to congratulate the under-mentioned member of our Society, who has been honoured by His Majesty the King during the year:

O.B.E.—C. H. D. Chepmell, Clerk of the Legislative Council, State Parliament of Tasmania.

**W. R. McCourt, C.M.G.**—The death occurred in Sydney on February 16, 1947, of Mr. William Rupert McCourt, C.M.G., Clerk of the Legislative Assembly of New South Wales.

Mr. McCourt was the son of the late William McCourt, who represented the Electorates of Camden, Bowral and Wollondilly from 1882 until his death in 1910.

Mr. W. R. McCourt was educated at Newington College, Sydney, joined the Staff of the Legislative Assembly in 1901,

and served in various official positions until he was appointed Clerk of the House on November 21, 1930, which position he occupied with distinction for more than 16 years. In 1937 he had conferred upon him the C.M.G., and later that year attended, officially, the Coronation Celebrations in London.

Mr. McCourt's association with the Parliament of New South Wales extended over 46 years, and except for the period he served with the 17th Battalion A.I.F. during the War of 1914-18, his long Parliamentary service was unbroken. He was wounded at the Menin Road battle for the capture of Passchendaele in September, 1917.

At the conclusion of hostilities, Mr. McCourt was attached for some months to the Staff of the House of Commons at Westminster, where he gained valuable experience.

The name of McCourt has been associated with the public life of the State over a long period of years and its direct connection with the Parliament of New South Wales, through father and son, extended over 65 years.

Mr. McCourt was interested in all sporting activities, and was a member of the A.J.C.

The following address was delivered by the Revd. Canon Tugwell at the Memorial Service to the late William Rupert McCourt, C.M.G., at St. Michael's Church, Vacluse, February 18, 1947; which was such an outstanding tribute to our late Colleague that it is given at length:

I learned at Parliament House yesterday that Rupert McCourt was the friend of everybody in the House. I was not surprised, for in the 17th Battalion, of which he and I were members in the 1st A.I.F., he was also the friend of everybody. Another friend of mine was known as the Beloved Captain—Rupert McCourt could have been called the Beloved Lieutenant. He was always a man of influence—not the influence that mars but the influence which inspires and encourages.

I shall never forget old George Cannon, a former Head Messenger at Parliament House, saying to me on one occasion (he lived in my parish) that Mr. McCourt was always an encourager. That was a great tribute and especially in these days when there are so many critics and so few genuine encouragers. Not only was he a man of influence but a man of great tact and judgment. His tact, however, was not the spurious kind which ought to be called diplomacy, artfulness or even cunning. His tact was the tact that came from a heart of love: the tact that touched the lives of others delicately and understandingly. One of his fellow officers told me yesterday that he was a great student of human nature and he had learned to know men. I am sure that this was true. There was a love in the inner man which prompted it.



There was still another trait in Rupert McCourt which appealed to all of us. It was his magnificent spirit of courtesy—it is not easy, as we know, for human beings to live thus in constant mingling. Their little petty ways and streaks of coarseness come to the surface under continual contact. The only thing that renders a condition of intimacy tolerable is a careful observation of the courtesies of life. Those Rupert McCourt always gave.

He entered Parliament House in 1901 as a Junior Clerk. His father was William McCourt, a member of the Legislative Assembly for 31 years, Speaker for 10 years, and I was told that Rupert's death severs a McCourt association of 65 years with Parliament House. Rupert was Clerk of the Assembly for 16 years and it was good to read in yesterday's *Herald* of the high praise given to his ability by the Premier, Mr. McGirr, by the Speaker, Mr. Clyne, and by the Leader of the Opposition, Mr. Treatt.

I was glad that this meritorious service of Rupert McCourt's was recognized in 1937 by the award of the C.M.G. He was never a place seeker or a reward expecter, but when it came in recognition of his solid work, it must have encouraged him greatly. I understand, too, that he took a leading part in the Empire Parliamentary Association. I know it was a great joy to him, and the appreciation of his service in this important body was surely shown when he was sent to the Coronation as the guest of the Association.

In his very full life he found time to enjoy bush walks, and to follow the sport dearest to his heart. It may not be generally known, but in his day he was a good cricketer, holding, I believe, the batting and bowling averages for the Bowral District. Possibly he may have inspired the youthful Bradman in his early efforts. But this is, of course, only a conjecture of my own.

And so this active life has closed, at the age of 63 years, but closed with the assurance that there is a life of higher service beyond this life. Death can be promotion and I am sure it is that to him. Even in the Battalion of which I was the Padre, he was a constant worshipper at Service and he always had a very rich appeal to me. If a tree is known by its fruit, and Christ has shown us that it is, then the tree of Rupert's life must have had a very rich appeal for Christ. On behalf of the old Battalion I should like to offer his wife and daughter and his relatives our very deep sympathy. To the members of the Battalion Rupert was a good soldier, a beloved comrade and a true gentleman. On behalf of all present at this Service I offer to the relatives your sympathy too. We shall ever remember him as a man of outstanding ability, of most unique friendliness and a man of inspiring leadership.

In the first morning Session of Parliament on February 26, 1947, in the Legislative Assembly, the Premier and Colonial Treasurer (Hon. James McGirr) in moving:

- (1) That this House records its sincere regret at the death of William Rupert McCourt, Esquire, C.M.G., Clerk of the Legislative Assembly, expresses its appreciation of the loyalty

and ability with which he devoted himself to the duties of his office, and tenders its profound sympathy to Mrs. McCourt and family in their bereavement.

- (2) That as a mark of respect, this House do now adjourn until 4.30 p.m. This Day.

said that Mr. McCourt was a most capable and conscientious officer. He possessed a rich fund of knowledge on which he drew in the efficient performance of his duties, and in the smooth and efficient working of this House he played no small part. He was, however, more than an officer of the House; he was adviser, guide and friend to every member who sought his services. In all his work he displayed a natural courtesy and good fellowship which endeared him to us all. It was because of those qualities, his outstanding ability, his friendly disposition, his impartiality, that he enjoyed the highest respect in his position as Clerk of the Legislative Assembly. He will be greatly missed, not only by all his friends and associates and the members of this House, but also, I am sure, by the many officers whose work brought them into close contact with him. We who knew him well have a very keen appreciation of the loss sustained by his family and the State, and we tender to Mrs. McCourt and family our most sincere sympathy in their sad bereavement.

The Leader of the Opposition (Mr. Treatt) speaking with a knowledge based on his personal contact with Mr. McCourt and upon discussions with his colleagues concerning his conscientiousness and ability, made bold to say that one of his outstanding qualities was his complete impartiality in the performance of his duties.

The Leader of the Country Party (Lt.-Colonel Bruxner) associated himself with the sentiment that had prompted the Resolution. "Rupert McCourt was a great citizen and a zealous and distinguished officer of the State. To all of us, and certainly to me personally, he was a close personal friend. He was a wise counsellor and friend to every Speaker with whom he served and to every Minister and member who had reason to call upon him for advice and guidance. The rules that govern our debates and our conduct in this Chamber have been built up by generations of parliamentarians, but always in consultation with men such as Mr. McCourt, whose duty it was to assist in the fashioning and observance of our Standing Orders and procedure. I know, too, that he will be sadly missed by all the staff of this House."

Mr. O'Halloran said that he knew he was only stressing the obvious when he said that everybody was deeply grieved at the passing of their esteemed friend.

Mr. Macdonald observed that the passing of Mr. McCourt left the House the richer for a very fine tradition maintained and for the standard of perfection to which he raised the status of his office. Rupert McCourt was in a brigade known as "The Fighting Fifth" and the speaker had the honour to serve in the same Division. McCourt carried with him from the War that toll which at length was charged against him and was responsible for shortening his years of useful service.

Lt.-Colonel Robson remarked that the passing of their dear Friend meant a loss not only to the House but also to the community.

Mr. Booth joined with the speakers in tendering their deepest sympathy to Mrs. McCourt and her daughter in their very sad bereavement. They could truly say of Rupert McCourt, adapting a biblical quotation: "Thy gentleness hath made thee great." He was loved by all.

Mr. Speaker said: Before submitting the Motion to the House, I should like, as Speaker, to associate myself with the well-merited tributes that have been paid to the late Mr. William Rupert McCourt by the Premier, the Leader of the Opposition, the Leader of the Country Party and other hon. members. Mr. McCourt had a profound knowledge of the Standing Orders, and an intimate knowledge of parliamentary practice and procedure. As Speaker, I enjoyed not only his advice and assistance, but also his friendship. I know every member of this House feels that not only has the Parliamentary Institution lost a very capable and courteous officer, but also that each of us has lost a close personal friend. It could be said that Rupert McCourt was the friend of the rank and file members of Parliament. When a new member came into this House, Mr. McCourt's very first endeavour was to make him comfortable. He would introduce him to the Speaker, and to the Party Whip, find him a table and give him all kinds of friendly advice. If he could provide any additional facilities he would unhesitatingly do so and he would advise the newcomer of the officer from whom reports could be obtained.

The staff has lost not only a very loyal colleague, but also a helpful friend. I have never known of another case in which friendship played such a prominent part between a

senior officer and his colleagues as was the case with Mr. McCourt and his staff. There was not one member of it that did not love and respect him, and there was nobody, from the basement to the top floor, figuratively speaking, who would not do everything humanly possible to carry out the wishes and desires of his Chief. Mr. McCourt's gentle, kindly manner served only to strengthen discipline and inspire loyalty among the members of the staff.

I should like also to pay him tribute for his extremely valuable work as hon. secretary of the Empire Parliamentary Association.

I extend to Mrs. McCourt and her family my very deepest sympathy and sincerely hope that God will give them strength to bear their great sorrow with the same fortitude and courage that was displayed by the late Mr. McCourt during his strenuous parliamentary life and, more especially, during the last days of his illness.

Question was then put and carried unanimously, members and officers of the House standing.

Mr. McCourt was a Foundation member of our Society and a very ardent supporter of its JOURNAL to which he made contributions from time to time. He was a distinguished Parliamentarian and a high authority on all that pertains to Parliament.

On behalf of all members, we wish to express our deepest sympathy with his widow and his daughter.

**Commander G. F. Bothamley, R.N.V.R.(Rtd.).**—On October 31, 1946, Commander Bothamley relinquished the Clerkship of the New Zealand House of Representatives, a position to which he succeeded upon the retirement of his predecessor<sup>1</sup> in 1945. On October 12, the last day of the last Session of the XXVIIth Parliament, members of the various staffs in the Houses of Parliament met to bid him farewell, and the Rt. Hon. Peter Fraser, the Prime Minister, on behalf of the staff, made a presentation to Commander Bothamley of a leather upholstered chair, the chair which he had used for over 30 years and for which he had developed a sentimental attachment. This chair was once used by Sir Charles Bowen, a former Speaker of the Legislative Council. The retiring Clerk was also presented with a silver tray. Mr. H. N. Dollimore, the Clerk-Designate, presided at this ceremony and tributes were paid to the retiring Clerk by Dr. G. H. Scholefield, the Chief Librarian of Parliament, and Mr. C. E. Wheeler, Chairman of the Parliamentary Press Gallery. The function was largely attended

<sup>1</sup> See JOURNAL, Vol. XIII, 18.

and the retiring Clerk made suitable reply. The Prime Minister, when making the presentation, made eulogistic reference to Commander Bothamley's long career in the Legislative Department.

On the same day in the House of Representatives, the Rt. Hon. the Prime Minister, when moving:

*That the House do now adjourn*, said that Commander Bothamley had a record of almost 40 years' service in the Legislative Department. He had grown up in the atmosphere of Parliament and served that House faithfully and well during all those years. Now, by the effluxion of time, his retirement had arrived. Mr. Fraser then tendered the thanks of the House to Commander Bothamley for his fine, conscientious service, broken only for War Service, in which he had done very good work indeed. The Leader of the Opposition, the Hon. S. G. Holland, associated himself with the remarks by the Prime Minister.

Mr. Speaker paid tribute to the retiring Clerk of the House and said that his association with Commander Bothamley had always been a very happy one. They had got along very well together and he was sorry that he was leaving and wished that his retirement would be spent in good surroundings.

In World War I Commander Bothamley served with the Royal Navy, being in charge of Drifters in the Auxiliary Patrol, Scapa Flow and Firth of Forth. In World War II he served for a time as Shipping Identification Officer at the Port of Wellington and latterly as Second-in-Command of H.M.N.Z.A. "Cook", a shore establishment at Wellington.

Commander Bothamley had been a member of this Society ever since he came to the Table of the House of Representatives as Clerk-Assistant in 1933, but his succession to the Clerk's Chair came late. His previous service in Parliament was as Committee Clerk, Reader and Clerk of Bills and Papers, and prior to that, as acting Serjeant-at-Arms.

He was an ardent and valued member of our Society, and on behalf of all its members, both far and near, we wish him a happy retirement and long life in Picton, situated at the head of the beautiful Queen Charlotte Sound, where he can indulge in his hobbies to his heart's delight.

Commander Bothamley joins a long line of distinguished Clerks: Major F. E. Campbell, 1854-89; G. Friend, 1889-98; H. Otterson, C.M.G., 1898-1915; A. F. Lowe, C.M.G., 1915-20;<sup>1</sup> E. W. Kane, C.M.G., 1920-30;<sup>2</sup> and T. D. H. Hall, C.M.G., LL.B., 1930-45.<sup>3</sup>

C. H. D. Chepmell, O.B.E.—On July 31, 1946, after service of 50 years and one month as an Officer of Parliament, Mr. C. H. D. Chepmell retired from the office of Clerk of the Legislative Council of the Parliament of Tasmania, which office he held for 35 years and 4 months. He may therefore claim to hold the record for length of

<sup>1</sup> See JOURNAL, Vol I, 13.

<sup>2</sup> *Ib.* III, 7.

<sup>3</sup> *Ib.* XIV, 18.

service in our Commonwealth and Empire as the Clerk of a House of Parliament.

Appointed Clerk-Assistant of the House of Assembly in July, 1896, he served in that office till March, 1911, when he succeeded that profound authority on Parliamentary Practice, E. C. Nowell (*Parliamentary Handbook*, 1887, and *Monetary Powers of the Legislative Councils Tasmania and South Australia*, 1890) as Clerk of the Legislative Council. As Mr. Nowell served over 49 years in that office thus the combined services of Mr. Nowell and Mr. Chepmell covered 84 years of the 90 since the establishment of the bicameral system of Parliamentary Government in Tasmania (1856-1946), while three Clerks only have guided the deliberations of the Council during that period: perhaps an unique record in the annals of Dominion Parliaments.

Mr. Chepmell's service to Tasmania began before the Federation of the Australian Colonies into a Commonwealth and after 16 months in the Meteorological Department he was appointed Clerk-Assistant of the House of Assembly on July 1, 1896, which office he held until March 1, 1911, when he was translated to the Clerkship of the Legislative Council.

During World War I, Mr. Chepmell served from 1917-19 with the A.I.F., part of which time he was a gunner with a Mobile Battery on the Western Front. In 1920, he married Mona, daughter of the Hon. William Moore. He had also been the hon. Secretary of the Tasmania Branch of the Empire Parliamentary Association from its formation in 1927 until 1937 when he resigned on account of ill health.

At the commencement of the 1946-47 Session, Mr. Chepmell was the guest at a luncheon of the members of both Houses, when they presented him with a wallet containing notes subscribed by members. Previously at the end of July, the members of the Parliamentary staff of both Houses had presented Mr. Chepmell with a handsome writing table and inkstand.

By his retirement the public service of Tasmania loses an officer of proved capacity and wide knowledge of the procedure and practice of Parliament; and the Resolution agreed to by the Council on May 16, 1946, accurately epitomises those services:

*Resolved, Nemine contradicente*, That the Council places upon record its appreciation of the services of Charles Havilland Douglas Chepmell, Esquire, as an Officer of Parliament for over 50 years, of his services as Clerk of this Council for over 35 years, of his wide and accurate knowledge of Parliamentary Practice which was readily placed at the services of Members of the Council, of his unflinching courtesy to Members, and of his character as a Public Servant.

Mr. Chepmell was a foundation member of our Society, and a valued contributor to its JOURNAL. His knowledge of both constitutional matters and Parliamentary procedure was mature.

On behalf of all our members, both far and near, we wish him a happy retirement, although his sense of duty has already called him back to

carry on during the temporary illness of Mr. Carrel Inglis Clark, his successor, whose health we trust will be speedily restored.

The following is a list of those who have occupied the Clerk's Chair in the Legislative Council since the establishment of Parliamentary Government:

Robert Charles Chester Eardley-Wilmot, 1856-64.

Edwin Craddock Nowell, I.S.O., 1864-1911.

Charles Havilland Douglas Chepmell, O.B.E., 1911-46.

(During his absence on active service 1917-19, the Hon. Arthur Morrisby, M.L.C., 1899-1916, and Chairman of Committees, 1909-16, acted as Clerk.)

Carrel Inglis Clark, 1946 to-date.

#### United Kingdom (Houses of Parliament: Places of Sitting).—

On Friday, August 3, 1945,<sup>1</sup> a Message was received by the House of Commons to attend the Lords Commissioners. The House went and having returned Mr. Speaker reported that the Lords Commissioners under the Great Seal for opening and holding this Parliament had made a communication to both Houses, and read it to the House as follows:

My Lords and Members of the House of Commons, We have it further to Command from His Majesty to acquaint you that the causes of His Majesty's calling this Parliament will be declared to you on the 15th day of this instant August, in the Chamber assigned to the House of Commons as their temporary place of sitting, and not in the present Parliamentary Chamber, and that for this purpose, His Majesty has directed the Chamber assigned to the House of Commons as their temporary place of sitting to be made ready for the House of Peers, and St. Stephen's Hall for the House of Commons.

And we have it further in Command from His Majesty to declare that it is His Majesty's pleasure that, as soon as may be after the causes of the calling of this Parliament have been declared, the Chamber assigned to the House of Commons as their temporary place of sitting be again made ready for the House of Commons for the better and more convenient transacting of their business and that His Majesty has been pleased to give directions accordingly.

United Kingdom (Ministers of the Crown (Transfer of Functions) Act, 1946).<sup>2</sup>—In moving 2 R. of the Bill on January 25, 1946,<sup>3</sup> the Lord President of the Council (Rt. Hon. H. Morrison) said that this was a Bill to give elasticity to the machinery of government. A great many ministerial functions were not regulated by statute and could be redistributed among Ministers as administrative needs might, from time to time, require. These functions assigned to particular Ministers by statute cannot however, under the present law, be transferred to another Minister without full-dress legislation, unless they happen to fall within the scope of temporary emergency provisions.<sup>4</sup>

In the Government's view, the simple issue was whether a particular function should be transferred from one Minister to another and presented to Parliament, for their yea or nay, as an Order in Council and subject to negative Resolution, which is provided for in Clauses 1 (1) and 3 (2) of the Bill.

<sup>1</sup> 413 *Com. Hans.* 5, s. 39.

<sup>2</sup> See also *JOURNAL*, Vols. VIII, 11; X, 12, 99; XI-XII, 16, 19; XIII, 20; XIV, 34.

<sup>3</sup> 418 *Com. Hans.* 5, s. 454-89. <sup>4</sup> *Ib.* 454.

Clause 1 (2) provides that a Department may be dissolved and its functions transferred elsewhere by Order in Council. The complete disappearance of a State Department was a more serious matter. Clause 3 (1) therefore provides that such Orders in Council shall be subject to affirmative Resolution—*i.e.*, they cannot come into force without specific approval of both Houses of Parliament.

Clause 3 (5) preserves the constitutional position in regard to functions not regulated by Statute.<sup>1</sup>

Clause 2 enables the title of a Minister to be changed by Order instead of by Statute.<sup>2</sup> Before 1914-18 there was not a single Minister with the title of "Minister of—". In those days the designations of Ministers had some charm about them. The title of Minister without Portfolio really meant "Minister of Nothing".<sup>3</sup> It was a great sorrow to him when the "President of the Board of Education" became "Minister of Education", said Mr. Morrison, who continued giving similar examples.<sup>3</sup>

Mr. Morrison then pointed out what the Executive Council cannot do under the Bill. They cannot:

- (1) set up a new Ministry nor re-create one which has been dissolved;
- (2) increase (but may reduce) the number of Ministers entitled to sit in the House of Commons or to draw salaries;
- (3) make a temporary function permanent nor add to its duration;
- (4) grant to any Minister any new function which would require statutory cover and is not already on the Statute Book;
- (5) abolish or modify any statutory duty or restriction which Parliament has imposed on Ministers, and
- (6) as the Bill deals only with Ministers, be used to re-allocate the functions of statutory boards or commissions set up by Parliament.

If the Government desired to do any of these things they would, at present, have to come to Parliament with specific legislation.<sup>4</sup>

The Bill also enables the position of the temporary war-time departments to be cleared up on a permanent basis. The passing of the Bill therefore clears the way for the repeal of the 1939 Act, which will take place shortly after *R.A.*<sup>5</sup>

Mr. Morrison then quoted the Ministries to lapse, those to continue and some the duties of which would be transferred. Only 3 of the 10 Ministries set up in 1939 survived as separate entities. On the other hand the 3 Ministries of Town and Country Planning, Civil Aviation and National Insurance would continue, as they were set up at the outset by permanent legislation.<sup>6</sup>

The method of Orders in Council had been adopted in order to avoid a long and detailed Bill, but the Orders would all come before the House for Affirmative Resolution, after having first been examined by

<sup>1</sup> *Ib.* 455.  
<sup>6</sup> *Ib.* 461.

<sup>2</sup> *Ib.* 456.

<sup>3</sup> *Ib.* 457.

<sup>4</sup> *Ib.* 458.

<sup>5</sup> *Ib.* 459.



the "Scrutinizing Committee" (*i.e.*, S.R. & O. *Sel. Com.*). The Bill will not increase but diminish the present size of the administrative machine.<sup>1</sup>

The debate which followed is interesting both from the historical and constitutional standpoint.<sup>2</sup>

After passing 2 R. the Bill was committed for the following Monday and the Financial Resolution required by S.O. 69 was thereupon taken in *C.W.H.*, the King's recommendation having been signified.

The House went into *C.W.H.* on the Bill on February 4,<sup>3</sup> during which certain *amds.* were made, including a new Clause providing that the Act shall continue in force for 2 years and then expire (negated after a Division: Ayes, 100; Noes, 223), and the insertion in the definition of the "Minister of the Crown" of the words, "means the holder of an office in His Majesty's Government in the United Kingdom, and", in order to include Ministers of the Crown of Northern Ireland.

The Bill was then reported with *amds.*<sup>4</sup>

On February 8<sup>5</sup> the Bill as amended was considered, further amended, passed 3 R. and sent to the Lords, who amended Clause 3 as shown below, the omission within [square brackets] and the substitution *in italics*:

- (2) An Order in Council under this Act, not being an Order made in pursuance of such an Address as aforesaid, shall not come into operation until copies thereof have been laid before Parliament, and if either House, within the period of 40 days beginning with the day on which a copy thereof is laid before it, resolves that [the Order in Council be annulled it shall thenceforth become void but] *an Address be presented to His Majesty praying that the Order in Council be annulled, no further proceedings shall be taken thereunder after the date of the resolution, and His Majesty may by Order in Council revoke the Order, so, however, that any such resolution and revocation shall be without prejudice to the validity of anything previously done thereunder or to the making of a new Order.*

The Solicitor-General (Major Sir F. Soskice) in moving "That this House doth agree with the Lords in the said amendment" said the amendment made the form of wording constitutionally proper and decorous and more easy for reference in the S. R. & O. Volume.

Question put and agreed and the Lords informed, the Bill becoming 9 & 10 Geo. IV. c. 31.

On March 19<sup>6</sup>, the following 3 Addresses were agreed to:

That an humble Address be presented to His Majesty, praying that the . . . (Dissolution) Order, 1946, be made in the form of a draft laid before Parliament,

in respect of the Department of Overseas Trade, the Ministry of Aircraft Production and the Ministry of War Transport.

*To be presented by Privy Councillors or Members of His Majesty's Household.*

<sup>1</sup> *Ib.* 462.

<sup>2</sup> *Ib.* 454-89.

<sup>3</sup> *Ib.* 1377-1429.

<sup>4</sup> *Ib.* 1429.

<sup>5</sup> *Ib.* 2015-43.

<sup>6</sup> 420 *ib.* 1834.

On March 21,<sup>1</sup> the following Message from the King was reported in both Houses:

*I have received your Addresses praying that the Department of Overseas Trade (Dissolution) Order, 1946, the Ministry of Aircraft Production (Dissolution) Order, 1946 and the Ministry of War Transport (Dissolution) Order, 1946, be made in the form of the respective drafts laid before Parliament.*

*I have complied with your request.*

**United Kingdom (Ministers of the Crown (Emergency Appointments) Act).**<sup>2</sup>—In reply to a Q. in the House of Commons on May 2, 1946,<sup>3</sup> the Lord President of the Council (Rt. Hon. H. Morrison) said that S. R. & O., 1946, No. 563 made on April 18, declared April 1, 1946, to have been the end of the emergency that was the occasion of the passing of the Ministers of the Crown (Emergency Appointments) Act, 1939, instead of February 24, 1946, the date upon which the Emergency Powers (Defence) Act, 1939, expired, because April 1, 1946, was the date on which the necessary arrangements came into operation under the Ministers of the Crown (Transfer of Functions) Act, 1946, for the change-over from the surviving temporary war-time Ministries to permanent Ministries. Until provision had been made for the change-over, the emergency situation dealt with by the 1939 Act had not come to an end.

**United Kingdom (Ministerial Salaries).**<sup>4</sup>—On April 30, 1946,<sup>5</sup> the Chancellor of the Exchequer during the course of a statement on the Report from the Committee on Members' Salaries and Expenses (*which see below*) announced that the Government had carefully considered the Report and had made certain proposals in regard to certain Ministerial Salaries, which were subsequently embodied in the Ministerial Salaries Act, 1946.<sup>6</sup>

Under this Act the salaries of the following Ministers are raised:

Postmaster-General .. .. .	from £3,000 to £5,000.
Minister of Pensions .. .. .	„ 2,000 „ 3,000.
Chancellor of the Duchy of Lancaster ..	„ 2,000 „ 3,000.
Assistant Postmaster-General .. .. .	„ 1,200 „ 1,500.
Parliamentary Secretary of the Minister of Pensions .. .. .	„ 1,200 „ 1,500.

The salaries of the Treasurer, the Comptroller and the Vice-Chamberlain of H.M. Household, who also perform the Parliamentary duties of Whips in the Lords and of the Junior Lords of the Treasury, who perform similar duties in the Commons, are increased to £1,000. The salaries of the Captain of the Honourable Corps of Gentlemen-at-Arms and the Captain of the King's Bodyguard are increased to £1,200 and of such of the Lords in Waiting, not exceeding 3, as the Treasury may determine, to £1,000.

The Act also provides that an M.P. in receipt of salary as a Minister

<sup>1</sup> *Ib.* 2001.      <sup>2</sup> See also JOURNAL, Vols. VIII, 11; X, 12, 99; XI-XII, 16, 19; XIII, 20; XIV, 34.      <sup>3</sup> 422 *Com. Hans.* 5, s. 337.      <sup>4</sup> See also JOURNAL, Vols. V, 18; VI, 12; XIII, 13.      <sup>5</sup> 422 *Com. Hans.* 5, s. 38.      <sup>6</sup> 9 & 10 *Geo. VI.* c. 55.

(if less than £5,000 *p.a.*) or as Chairman or Deputy Chairman of Ways and Means, or as Leader of the Opposition, or is in receipt of pension as ex Prime Minister or ex First Lord of the Treasury, is entitled, in addition to such salary or pension, to £500 *p.a.* by way of salary or allowance in respect of his membership of the House of Commons.

The Bill for this Act was introduced on May 23, 1946,<sup>1</sup> passed 2 R. on May 29,<sup>2</sup> and after the requisite Financial Resolution had been adopted by the House on June 3,<sup>3</sup> was considered in *C.W.H.* on the same day, reported without *amdi.* and passed 3 R. The Bill was then sent to the Lords and concurred in by them.

As part of the salary of the Chancellor of the Duchy of Lancaster will now be out of the Consolidated Revenue Fund, his salary can, in future, be questionable in the House.

During the *C.W.H.* stage, Mr. Dalton stated that in practice, no doubt, Junior Ministers would be able to put up a case if not for the exemption of the whole £500 from income tax, then for nearly all of it, by specific statements made as to expenses incurred.<sup>4</sup>

House of Lords (Recording of Secret Sessions).<sup>5</sup>—On December 19, 1945,<sup>6</sup> Lord Ammon formally moved:

That the proceedings in Secret Session of the House during the last Session of Parliament be recorded in the Journals of the House.

Viscount Cranborne, however, inquired if the Motion meant that from now on, any member of their Lordships' House would be free to quote his remembrance of what was said in Secret Session 2 or 3 years before? After all there was an official record in existence to check any statement which might be made.

Lord Ammon said that all that was required was a record of the bare Resolutions passed. There was no verbatim report of Secret Sessions.

Viscount Swinton observed that the Motion before "another place" was entirely different and that in future anybody could give an account anywhere of what he believed took place in Secret Session. The whole essence of a Secret Session was that it should be secret. What was the object in recording the subjects under discussion and the names of the speakers? The noble Viscount took it that that was all to be recorded, since the Clerk of the Parliaments was the only person other than members who attended a Secret Session. Other noble Lords also objected to the Motion, which was then, by leave, withdrawn.

On February 6,<sup>7</sup> the Secretary of State for Dominion Affairs (Viscount Addison) moved to resolve:

That the meetings of the House held during Secret Sessions of the last Parliament, and the Resolutions come to therein, be now recorded in the Journals of the House;

<sup>1</sup> 423 *Com. Hans.* 5, s. 561.

<sup>2</sup> *Ib.* 1317.

<sup>3</sup> *Ib.* 1739.

<sup>4</sup> *Ib.* 1756.

<sup>5</sup> See also *JOURNAL*, Vols. VIII, 13; IX, 15; X, 15; XI-XII, 20; XIII, 13.

<sup>6</sup> 135 *Lords Hans.* 5, s. 902-7.

<sup>7</sup> 139 *Ib.* 233.

and explained that as there was no shorthand record of the speeches, and therefore except for any memoranda which anyone might have himself prepared, there was no record. It would be to the advantage of everyone that nothing should be based on personal recollection. In that way it would form an adequate record. The noble Viscount then gave some examples of the type of record it would be, naming the subject of discussion and the name of the mover. Viscount Swinton then said that if it was surely to mean a record in the Journals of the House in the shortest possible way of what took place, and not even a statement of who made speeches, he could say nothing on the subject.

On Question, Resolution agreed to.

**House of Lords (House of Lords Reform).**<sup>1</sup>—An interesting debate took place in the Lords on March 4, 1946,<sup>2</sup> on certain measures of House of Lords Reform as indicated in the following 2 Motions (or Resolutions as they are termed) and an amendment to No. (2), all being considered together:

- (1) That Peeresses in their own right should be eligible to sit and vote in this House. (*Earl of Mansfield.*)
- (2) (a) That women should be eligible to be made Peers on the same terms as men.
  - (b) That it is expedient to create a limited number of Life Peers to sit and vote in this House.
  - (c) That on the Motion of a Minister of the Crown this House may permit any Minister of the Crown not being a Peer to attend and speak at a debate on any specified question. (*Viscount Cecil of Chelwood.*)

The *Amendment* to No. (2), (a), (b), (c) was moved as one Motion—namely, to leave out all words after the first word "That" and to substitute the words, "it is inexpedient to decide upon isolated proposals for changing the composition of this House". (*Lord Chesham.*)

Viscount Cecil of Chelwood explained that the Motion, No. 2(a), (b) and (c), standing in his name was not designed as a contribution to what may be called the House of Lords question, the present phase of which had its origin in the Parliament Act, 1911.<sup>3</sup>

The noble Viscount's Motion was not concerned with the legislative, but deliberative, part of their functions. Their Lordships' House afforded special advantages for non-Party discussion. It contained among its members those who had great knowledge on a number of subjects—on science and art, commerce and industry, finance, law and religion—especially in their relation to public matters. They had amongst them the greatest soldiers, sailors and airmen of the day sitting side by side with bishops and judges, diplomats and doctors,

<sup>1</sup> See also JOURNAL, Vols. I, 9; II, 14; IV, 10; V, 14; VI, 7; VII, 29; XI-XII, 34.

<sup>2</sup> 139 *Lords Hans.* 5, s. 1019.

<sup>3</sup> 1 & 2 *Geo. V.* c. 13.

bankers and industrialists, not to speak of administrators and statesmen. It would be difficult to find a topic on which they could not receive expert advice from their members, equal to any that could be found elsewhere.

Their House could not turn out a Government, one result of which was that the Party ties were much less strong than in the other House. There was no Whip to put pressure on them, whatever their opinions might be. No caucus would pass votes of censure or threaten them with political annihilation, if they did not toe the Party line.<sup>1</sup> That made debates in their Lordships' House more open and genuine than they could be where the Party spirit was supreme. They needed no closure. Their rules of debate were happily free from technicalities. They required no absolute President to prevent them from disorderly conduct or irrelevant speech. Even the Leader of the House, who to some extent directed their debates, never went beyond tendering advice as to what they should do on rare occasions when some technical difficulty arose. All that made for great freedom of speech and created a general atmosphere, in which the object was not to demolish their opponents but to convert them from the error of their ways.

They seldom heard angry interjections and never tumultuous applause. Even the dullest of them were heard with exemplary politeness and if they had any novel fact or argument to communicate to the House it would always be received with careful attention.

These were some of the circumstances which made their House extremely well qualified to act as a Council of State.<sup>2</sup>

The noble Viscount, continuing, said that his first Resolution No. 2 (a), was in general terms. No doubt, if it was passed, it would be necessary to pass legislation dealing with the details.<sup>3</sup> His short reason for urging the abolition of this qualification was simply that: there were women who would be admirable members of the House and strengthen it on its deliberative side by being able to put forward a woman's point of view especially on social questions such as food and housing.

Women could vote and sit on all other administrative bodies. They could be policemen and judges and doctors and they had shown that they could discharge the very highest functions of government with outstanding success; he ventured to think that they would be equally valuable as Peers of Parliament.

In regard to his second Resolution 2 (b), there were individuals who would be generally regarded as useful members of the House, but they were unwilling to accept hereditary Peerages. He knew that this question raised controversy on political grounds; he therefore proposed that the number of Life Peerages should be limited to some 20 or 30.<sup>4</sup>

The noble Viscount, in regard to his third Resolution No. 2 (c), said that, owing to various reasons some of the Departments had no representatives in their Lordships' House. The result was that

<sup>1</sup> 139 *Lords Hans.* 5, s. 1020.

<sup>2</sup> *Ib.* 1021.

<sup>3</sup> *Ib.* 1022.

<sup>4</sup> *Ib.* 1023.

when a question was brought up affecting one of those unrepresented Departments the only resource had been to ask another member of the Government, often, though not always, a junior member, to give a reply. Departments were not particularly pleased if their case was put forward by an individual who was not officially connected with them. His only resource was to read out the views given him by the Department and if they did not happen to deal with the points raised in debate, politely to evade an answer.

The noble Viscount's suggestion was that in order to deal with a particular case, where a Department had no Peer attached to it, the Government of the day should be entitled to ask their House to allow some Minister with a seat in the Commons to attend any special debate on that question, so that the matters raised might be dealt with adequately.<sup>1</sup>

The noble Viscount then moved his Resolution No. 2 (a), (b), and (c).

Lord Chesham, in moving his *amdt.* (which see above) thought it would be a great pity to alter the existing composition of their Chamber. Very much more complicated legislation would be necessary than for one simple Bill. Moreover, these Resolutions involved the question of the Royal Prerogative. Were such drastic changes really necessary? It would be foolish to alter the composition of their House. "Keep it as it is, with its wealth of knowledge and experience."

The Secretary of State for Dominion Affairs and Leader of the House of Lords (Viscount Addison) observed that in considering any proposed changes in the constitution of the House, they were bound to have regard for all its functions and powers. The Government had given very careful consideration to the implications of any such alterations and the Government, with regard to the Resolution put forward by the noble Viscount, had come to the conclusion that, so far as they were concerned, they did not wish to initiate any alterations. Some of these issues would involve much wider ones, some of an exceedingly controversial character.<sup>2</sup>

The Government's view was that they should leave it for the House to decide.<sup>3</sup> It was not a question of the constitution of the House of Peers, but whether a woman should have this remaining disqualification attached to her because she was a woman. Speaking only for himself, his view was that she ought not. If the House decided to adopt Lord Mansfield's Resolution to remove sex disqualification in the case of Viscountess Rhondda, the Government suggested that it should be left freely to the vote of the House and if the House said that it wanted the change made, the Government was prepared to take it into consideration, given facilities for the necessary procedures. It would require a Bill.

Viscount Addison concluded by stating that personally he would vote with the noble Earl, Lord Mansfield (Resolution No. 1). As to

<sup>1</sup> *Ib.* 1024.

<sup>2</sup> *Ib.* 1025, 6.

<sup>3</sup> *Ib.* 1029, 1030.

<sup>4</sup> *Ib.* 1031.

the other matters he was sorry that the Government could not see its way to accept the Resolution moved by the noble Viscount for the reasons he had already given.<sup>1</sup>

Viscount Samuel observed that the rapidity with which business was necessarily passed through the first House of Parliament necessitated exceedingly careful and detailed revision by the Second Chamber. In the time of a Coalition Government, active political controversy was suspended and little action needed to be taken by their House which was likely to arouse antagonism. The powers of amendment, of rejection, and what history has sometimes proved, the powers of delay,<sup>2</sup> were of no less importance. When controversy revived, opinions clashed, political forces were in conflict and great issues were being fought out before the electorate, the consequences of the present constitution of the House of Lords might become manifest.

Should the House pass these Resolutions, instantly a very profound political controversy would arise. For what was the composition of their House? The Clerks at the Table had given him the figures at the present time. The number of Peers on the Roll now was 842. Of those, 210 were new creations. There were also the Scottish and Irish representative Peers, the Law Lords and the Bishops, who numbered together 64. These 210 and 64 were all members who had personal qualifications. There remained 568 whose qualifications were hereditary, deducting a small number who were minors or bankrupts.

Of the 840, a very usual attendance of the House day by day, was about 80. Many of those absent were engaged on public service at Home and abroad.<sup>3</sup>

With respect to the Resolution relating to Peeresses in their own right, the change would be so small as to make no appreciable political difference and the inequality was so obvious, that it was an injustice which ought to be remedied. The noble Viscount therefore supported the amendment.

The Earl of Mansfield stated that he had given Notice of his Resolution No. 1, and stated that he had no desire to see the other sex there at all. Furthermore, he had no intention of actually moving his Resolution. The only reason he had put it on the Paper was the wording of Resolution No. 2 as he considered it would be a totally uncalled-for insult to the Hereditary Peeresses that they should be debarred, if other women were to be created on the same terms as men.<sup>4</sup> No major scheme of reform could be brought forward which would be acceptable to their Lordships' House, because were there to be any question of a restoration of the powers which existed before the Parliament Act, 1911, such a restoration would be accompanied undoubtedly by an alteration in the composition of the House, which he thought most of their Lordships would not be willing to face and with which he himself would certainly not agree.<sup>5</sup> He did not think the incursion of women into the arena of violent Party politics had shown that any

<sup>1</sup> *Ib.* 1032.

<sup>2</sup> *Ib.* 1033.

<sup>3</sup> *Ib.* 1034.

<sup>4</sup> *Ib.* 1036, 7.

<sup>5</sup> *Ib.* 1038.

advantage had accrued either to the Parliamentary system or to the female sex itself.

In regard to Resolution 2 (c), there were many reasons why facilities should be given whereby a Minister of the Crown, by invitation, should speak in the House to which he did not belong,<sup>1</sup> the Motion to read: "That the Minister of Blank be invited to attend the proceedings of this House this day upon such and such a Bill." It would also make possible a smaller number of Ministers. They all knew that as the number of Ministers and Parliamentary Secretaries increased, the power of the Executive over the Legislature grew in an alarming and dangerous fashion.<sup>2</sup>

The Marquess of Salisbury considered that reform was called for. The actual purpose of Resolution No. 1 was really a very small one, but involved a very big principle. The proposal of Viscount Cecil (No. 2), however, was a very much wider one. One wondered whether the words "heirs male" ought to be continued in the Patent, if women and men were to stand upon a precisely equal footing in those respects. There were more women than men electors and yet how had public opinion dealt with women's actual representation in the House of Commons? There were only 22 women M.P.'s at that moment, which meant that the electors preferred male representation.<sup>3</sup> They should therefore not decide to place women on the same footing as men in their House. The noble Marquess had the greatest sympathy with Resolution No. 2 (c) but it might have the effect that Prime Ministers acting under great pressure from their followers, in another place, would allow it almost to monopolize all the offices of State, and when one considered the amount of talent in the House of Lords, that would be very unfortunate. Therefore, they ought to be careful before they adopted that plan.<sup>4</sup>

Then there was the Resolution No. 2 (c)—that Ministers in this House be allowed to speak in another place—which might have precisely the converse effect and take a very large number of Ministers from their Lordships' House and, he thought, be extremely unpopular in "another place". There was the remaining Resolution No. 2 (b), the speaker agreeing that a limited number of Life Peerages would be useful, but what would the limitation be? Proposals on this question were intricate and difficult and if his noble relative were successful in placing women upon the same position as men in the House of Lords, then the qualifications which a woman Life Peer would need would have to be considered. He thought that if he endeavoured to define what special qualifications a woman would need in that connection he would find it very difficult. The noble Marquess therefore thought that Lord Chesham's amendment was the right one for the House to adopt, but he hoped the noble Viscount (Cecil) would not press them to come to a decision.<sup>5</sup>

Viscount Simon said that if they looked at the Patent which created

<sup>1</sup> *Ib.* 1039.

<sup>2</sup> *Ib.* 1040.

<sup>3</sup> *Ib.* 1041, 2.

<sup>4</sup> *Ib.* 1043.

<sup>5</sup> *Ib.* 1044.



the Lord Rhondda Peerage<sup>1</sup> they would see that in the event of him leaving no heirs male there was a special remainder to his daughter and after that to heirs male, but the Patent deliberately left out, in reference to Lady Rhondda, that she was to have a right to hold and possess a "seat, place and voice" in the Parliaments. What was pointed out was that the Patent gave the right to sit in Parliament to the heirs male of Lord Rhondda and to the heirs male of his daughter, but that it did not give the right to sit to Lady Rhondda. Therefore Lord Birkenhead and a great body of about 20 people agreed with him (except Lords Haldane and Wrenbury) that this Lady had no right of summons, as by the very Patent granted to her father she was excluded from a seat, place and voice in Parliament. Therefore it would be very difficult to devise legislation to alter that. Nobody suggested, because a Peer was married that therefore his wife should sit here.<sup>2</sup>

Lord Semphill suggested that it might be possible to take a leaf out of their book in Scotland where they had some 13 Law Lords, who were Lords of the Court of Session, not Lords of Privy Council, so that the nation could through their Lordships' House hear the views of eminent scientists of the day. Therefore he supported Resolution No. 2 (b).

The Lord Chancellor considered that in all the Resolutions legislation would be required. If a lady were made a Viscountess in her own right, it would be possible (it might not be logical) to introduce legislation conferring the right upon those ladies who inherited Peerages which had been conferred upon their ancestors.<sup>3</sup>

Lord Saltoun quoted the works of the Frenchman, Gustav le Bon, who spent a whole life examining the composition and the behaviour of assemblies. One of the conclusions he came to was that a very small infusion of an alien element totally altered the character of an assembly. If they examined such records as were available on assemblies which had admitted women to their councils, it would be found that the speakers, the arguments and—what showed the temper of an assembly more than anything—the interjections in those assemblies were of a more emotional and less judicial type than they were before the admission of those ladies.<sup>3</sup> He therefore supported Lord Chesham's amendment.

Viscount Cecil of Chelwood recognized that it was no use putting something forward which the Leader of the House, the Leader of the Opposition and the Leader of the Liberal Party, as well as other influential Peers, rejected. He would therefore like to move that the debate be adjourned.

The Earl of Selbourne hoped, however, that they would not adjourn the debate.

Viscount Cecil of Chelwood concluded by saying that in the circumstances he would not be justified in dividing the House because it was

<sup>1</sup> See Reports of Committee of Privileges, 1921 and 1922.  
5, s. 1047, 8.

<sup>2</sup> *Ib.* 1055.

<sup>3</sup> 139 *Lords Hans.*

quite evident, wrongly, as he thought, that it was against him. He accordingly asked leave to withdraw his Motion, and the House, after some formal business, adjourned.

House of Lords (Delegated Legislation).<sup>1</sup>—The Special Orders Select Committee was appointed August 21, 1945,<sup>2</sup> with the same Order of Reference as before.<sup>3</sup> Particular action was taken by the Committee in regard to the following:

*Special Orders laid before the House (pursuant to Act) or otherwise for Affirmative Resolution and reference to Special Orders Committee.*

Electoral Registration (Local Elections (Scotland)) Regulations, 1945.<sup>4</sup>

*Report of Special Orders Committee.*

That in their opinion the provisions of the Order raise questions of policy and principle which have been accepted already by the House when passing the Representation of the People Act, 1945; that the Order is founded on precedent inasmuch as other Regulations have been submitted for approval under that Act; that in the opinion of the Committee the Order cannot be passed by the House without special attention, but that no further inquiry is necessary before the House proceeds to a decision on the Resolution to approve the said Order.<sup>5</sup>

(Approved by House, August 23, 1945.) 137 *Lords Hans.* 5, s. 153.

Distribution of Industry (Development of Areas) Order, 1946.<sup>6</sup>

That in their opinion the Order raises questions of policy and principle which have been accepted already by the House when passing the Distribution of Industry Act, 1945, under which the Order is submitted for approval; that the Order is not founded on precedent inasmuch as it is the first Order which has been presented to Parliament under the Act; that in the opinion of the Committee the Order cannot be passed by the House without special attention, but that no further inquiry is necessary before the House proceeds to a decision on the Resolution to approve the said Order.<sup>7</sup>

(Approved by House, March 12, 1946.) 140 *Lords Hans.* 5, s. 4.

<sup>1</sup> See also *JOURNAL*, Vols. XIII, 14; XIV, 25.

<sup>2</sup> 137 *Lords Hans.* 5, s. 93.

<sup>3</sup> See *JOURNAL*, Vol. XIII, 14.

<sup>4</sup> 137 *Lords Hans.* 5, s. 186.

<sup>6</sup> *Ib.* 150.

<sup>6</sup> 139 *Ib.* 828.

<sup>7</sup> *Ib.* 1015.

**House of Lords (Travelling Expenses of Peers).**—On July 16, 1946,<sup>1</sup> upon the adoption of the Seventh Report from the Select Committee the following recommendation was agreed to by the House:

The Committee were informed that an additional estimate on the House of Lords Vote had been approved for the re-imbusement of travelling expenses incurred by members of the House of Lords in their attendance on Parliamentary duties.

**House of Commons (M.P.s acting as Ministers of State abroad during the War).**—With reference to the House of Commons Return<sup>2</sup> quoted in the previous issue of the JOURNAL,<sup>3</sup> the following above-mentioned appointments were made:

The office of Minister of State (in the Middle East) was created July 1, 1941, on which day Rt. Hon. Oliver Lyttelton, M.P., was appointed thereto. This office was vacant between the appointment of Mr. Lyttelton as Minister of Production, February 19, 1942, and the appointment of his successor, March 18, 1942. On September 25, 1943, the title of the office was changed to Minister of State Resident in the Middle East. The next M.P. to hold this office was Sir Edward Grigg, who was appointed thereto in November, 1944.

The office of Minister Resident for Supply in Washington was created November 22, 1942, on which day Col. J. J. Llewellyn, M.P., was appointed and held office until relieved by Rt. Hon. Sir Ben Smith, M.P., on November 12, 1943.

The office of Minister at Allied Force Headquarters in North-West Africa was created December 30, 1942, on which day Mr. Harold MacMillan, M.P., was appointed.

The office of Minister Resident in West Africa was created June 8, 1942, and the first M.P. to be appointed was Captain H. Balfour, in November, 1944.

Non-M.P.s were appointed to the offices of Minister of State Resident in the Middle East in 1942 and 1944, and to the office of Minister Resident in West Africa in 1942 and 1943.

The office of Deputy Minister of State (in the Middle East) was created on August 28, 1942, and on a new appointment to the office on September 25, 1943, its title was changed to Deputy Minister of State Resident in the Middle East. Upon the appointment of a new incumbent on January 29, 1944, the office lapsed.<sup>4</sup>

**House of Commons (Legislation: Parliamentary Control).**—On July 4,<sup>5</sup> the Prime Minister was asked whether he was aware that the present volume of legislation was overburdening the Civil Service and endangering the proper control by Parliament over the Executive in respect of delegated legislation; and what action was being taken with a view to ameliorating the position.

<sup>1</sup> 142 *Lords Hans.* 5, s. 520; see also Article herein—"House of Commons: M.P.s' Salaries and Expenses." <sup>2</sup> H.C. (1944-45) 49. <sup>3</sup> Vol. XIV, 35 and Vol. X, 12.

<sup>4</sup> From information contributed by the Clerk of the House of Commons.—[Ed.]

<sup>5</sup> 424 *Com. Hans.* 5, s. 2314.

The Prime Minister (Rt. Hon. C. R. Attlee) replied that the Government's programme of legislation was urgently required in the national interest. He could not agree that the control of Parliament over the Executive was being endangered. The coincidence of reconstruction work with the clearing up of matters arising out of the War had certainly put a heavy burden on the Civil Service and they were doing all they could to alleviate it.

**House of Commons (Delegated Legislation<sup>1</sup> Statutory Instruments Bill.)**—This Bill has nothing to do with the Statutory Orders (Special Procedure) Act, 1945,<sup>2</sup> of which note has been made in the JOURNAL.<sup>3</sup>

In moving 2 R. of the Bill "to repeal the Rules Publications Act, 1893, and to make further provision as to the instruments by which statutory powers to make orders, rules, regulations and other subordinate legislation are exercised" on November 6, 1945,<sup>3</sup> the Solicitor-General (Major Sir F. Soskice) said that the Bill was designed to clarify and introduce uniformity in the laying before the House of Orders made by Ministers and Orders in Council conferred by an Act and the machinery for requiring for the numbering, publication and sale of copies of such Orders, so as to be accessible to all.

The Minister referred to the work of the "Scrutinizing Committee"—namely, the Select Committee on Statutory Rules and Orders<sup>1</sup> appointed "to keep an eye" on delegation and statutory rules made under powers conferred on Ministers, now to be called "Statutory Instruments" by which he meant all rules, orders, by-laws and Orders in Council, made hereafter by Ministers under any Acts of Parliament or by His Majesty in Council pursuant to powers under any Act. The Bill was to remove anomalies and to repeal and reproduce what was valuable in the Rules Publications Act, 1893.<sup>4</sup>

Normally a statutory instrument has to remain before the House of Commons or before Parliament for so many days and there has to be either a Negative Resolution to put an end to it, or alternatively to be brought into life by an Affirmative Resolution. The Bill makes the many previous periods of days now uniform at 40, no account being taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days,<sup>5</sup> so that there is a uniform period and a uniform method of reckoning that period. Applying that to Clause 4, that Clause relates only to the negative class, because in such cases the instrument is effective and remains so unless and until within the specified period there is a Negative Resolution which puts an end to its life.

In the case of the Affirmative Resolution the instrument is of no effect, until at some time or other an Affirmative Resolution is introduced to bring it in to life.<sup>6</sup>

The vague provision that the Minister shall lay the statutory instru-

<sup>1</sup> See also JOURNAL, Vols. XIII, 160; XIV, 152.

<sup>2</sup> See Dr. Orlo Williams'

Article, Vol. XIV, 133-4.

<sup>3</sup> 415 *Com. Hans.* 5, s. 1095-1163.

<sup>4</sup> 56 & 57

Vict. c. 66.

<sup>5</sup> 415 *Com. Hans.* 5, s. 1098, 1110.

<sup>6</sup> *Ib.* 1110.

ment before the House "as soon as may be" Clause 3 of the Bill is now designed to remedy. The sanction imposed upon Ministers by this Clause provides that in the printed copies which are printed by the King's Printer, there will always be printed information shown on the outside of the Bill—"Either a statement showing the date on which copies thereof were laid before Parliament or a statement that such copies are to be laid before Parliament."

The Clause says that the Treasury shall make a return to Parliament at specific periods, calling attention to any statutory instrument which has not been laid before Parliament, and explaining why such copies were not so laid. If the Minister forgets to lay it before the House there will be a report to that effect laid before the House by the Treasury and the Minister will have to explain why he has not complied with the requirements.

The Bill does not lay down the type of Resolution to be passed by the House as Parliament must in its choice of Affirmative or Negative procedure depend on the actual type of Regulation and enactment under which it is made.<sup>1</sup> The Provisional Rule specified by S. 2 of the 1893 Act has nothing whatever to do with the Provisional Order Procedure. Generally speaking, in future, all statutory instruments are to be covered by the Bill and its provisions will apply to all statutory instruments.<sup>2</sup>

The alteration made by the Bill is that now not only statutory instruments made by the Minister but also those confirmed or approved by him are brought within the ambit of the publications procedure.<sup>3</sup>

Upon the Question for 2 R. being put, the voting was: Ayes, 270; Noes, 134. Motion was then made: "That the Bill be committed to a Committee of the Whole House": Ayes, 127; Noes, 279.<sup>4</sup> The Bill therefore stood committed to a Standing Committee.

On December 18, 1945,<sup>5</sup> the Bill was amended (in the Standing Committee),<sup>6</sup> was considered and further amended.

Excluding the *amds.* negatived and those withdrawn, the following *amds.* made are noticed.

The following new Clause was inserted and became Clause 3 of the Bill:

*Supplementary provisions as to publication:*

- (1) Regulations made for the purposes of this Act shall make provision for the publication by His Majesty's Stationery Office of lists showing the date upon which every statutory instrument printed and sold by the King's Printer of Acts of Parliament was first issued by that office; and in any legal proceedings a copy of any list so published purporting to bear the imprint of the King's Printer shall be received in evidence as a true copy, and an entry therein shall be conclusive evidence of the date on which any statutory instrument was first issued by His Majesty's Stationery Office.
- (2) In any proceedings against any person for an offence consisting of a contravention of any such statutory instrument, it shall be a defence

<sup>1</sup> *Ib.* 1099.

<sup>2</sup> *Ib.* 1101.

<sup>3</sup> *Ib.* 1102.

<sup>4</sup> *Ib.* 1156-63.

<sup>5</sup> 417 *Ib.* 1127-91.

<sup>6</sup> H. C. (1945-46) 23.

to prove that the instrument had not been issued by His Majesty's Stationery Office at the date of the alleged contravention unless it is proved that at that date reasonable steps had been taken for the purpose of bringing the purport of the instrument to the notice of the public, or of persons likely to be affected by it, or of the person charged.

- (3) Save as therein otherwise expressly provided nothing in this section shall affect any enactment or rule of law relating to the time at which any statutory instrument comes into operation. (*Solicitor-General*).<sup>1</sup>

An amendment (in italics, *which see below*) was made, on the Motion of the Chairman of the S. R. & O. Committee, in Clause 2, by which, with certain savings, copies of any statutory instrument sent to the King's Printer and numbered, shall *as soon as possible* be printed and sold by the King's Printer.

On 3 R., which was immediately taken, the Solicitor-General pointed out that Clause 1 was limited in its effect. It applied to instruments which were made by Rule-making authorities within the Rules & Publications Act, 1893. That is one class of Statutory Instruments. The other class to which it applies are those instruments which, in the Act which gives power to make them, are actually called Statutory Instruments. It was not every Act which gave power to make a subordinate instrument which resulted in Statutory Instruments being made, but only those Acts which specifically said that the power given to bring into operation subordinate legislation was to be exercised in the form of Statutory Instruments.<sup>2</sup>

The Bill then passed 3 R., was sent to the Lords and returned<sup>3</sup> with certain drafting *admts.* and the following *amdt.* of substance, the insertion being shown *underlined* and the omission within [square brackets].

- 5.—(1). Whereby this Act or any Act passed after the commencement of this Act, it is provided that any statutory instrument shall be subject to annulment by resolution of either House of Parliament, the instrument shall be laid before Parliament after being made and the provisions of the last foregoing section shall apply thereto accordingly, and if either House, within the period of 40 days beginning with the day on which a copy thereof is laid before it, resolves that an Address be presented to His Majesty praying that the instrument be annulled no further proceedings shall be taken thereunder after the date of the resolution, and His Majesty may by Order in Council revoke the instrument, so, however, that any such resolution and revocation shall be [the instrument be annulled it shall thenceforth become void but,] without prejudice to the validity of anything previously done thereunder or to the making of a new statutory instrument.

All the Lords *amds.* were agreed to, and the Bill became 9 & 10 Geo. VI. c. 36.

House of Commons (Parliament Act, 1911:<sup>4</sup> Chairman's Panel).— On October 18, 1945,<sup>5</sup> it was reported by an hon. member from the Committee of Selection that, in pursuance of S. 1 (3) of the above-

<sup>1</sup> 417 *Com. Hans.* 5, s. 1128.

<sup>2</sup> *Ib.* 1190.

<sup>3</sup> 420 *Ib.* 904.

<sup>4</sup> 1 & 2 Geo. V, c. 13.

<sup>5</sup> 414 *Com. Hans.* 5, s. 1372.

mentioned Act, they had appointed from the Chairman's Panel 2 hon- members (*naming them*) to be the 2 members whom Mr. Speaker shall consult, if practicable, before giving his certificate to a Money Bill.

#### House of Commons (Notices of Question).

*Sessional Order.*—On March 22,<sup>1</sup> the Lord President of the Council (Rt. Hon. H. Morrison) in moving:

That for the remainder of the present Session the following para- graph shall have effect in substitution for para. (4)<sup>2</sup> of Standing Order No. 7:

- (4) Any Member who desires an oral answer to his question may dis- tinguish it by an asterisk, but notice of any such question must appear at latest on the Notice Paper circulated two days (excluding Sundays) before that on which an answer is desired. Provided that questions received at the Table Office on Mondays and Tuesdays before 2.15 p.m., and on Fridays before 11 a.m., if so desired by the Members may be put down for oral answer on the following Wednesday, Thursday and Monday, respectively.

—said the object was to give effect to the Second Report from the Select Committee on Procedure,<sup>3</sup> that the period of notice for Questions for oral answer handed in during the sitting of the House, should be increased from 1 to 2 days, not counting Sundays; Questions received at the Table Office before the hour of sitting being deemed to have been received the day before.

Mr. Morrison remarked that in just over 100 years Questions had developed into one of the most valuable and characteristic of their Parliamentary institutions and had become a very effective method of exercising the historic functions of Parliament in relation to the Exe- cutive. Indeed Question-time, said the Minister, exemplified that close day-to-day relationship between Ministers and Legislature which was one of the main sources of strength of the Constitution. If any Minister was in danger of forgetting that Parliament was his master, Question-time was a sharp and healthy reminder to him of his responsi- bility to Parliament. If only the opposite numbers to the Foreign Secretary in other nations could be questioned it would do much to clear up misunderstandings. The American Congress still did not have Questions to Ministers, democratic though the Constitution of the United States undoubtedly was. He shared the view of the Select Committee in deprecating anything to diminish the effectiveness of the right of members to question Ministers. Questions this Session had already passed the 10,000 mark.<sup>4</sup>

The effect of the present S.O. 7 (4) was that Ministers and Depart- ments had only one clear day before that on which the answer was desired. Some raised high questions of policy calling for considered examination or consultation with other Departments. A number of

<sup>1</sup> 420 *Com. Hans.* 5, s. 2156.

<sup>2</sup> Which reads: (4) Any member who desires an oral answer to his question may distinguish it by an asterisk, but notice of any such question must appear at latest on the notice paper circulated on the day before that on which an answer is desired. <sup>3</sup> H.C. (1945-46), 58-1. <sup>4</sup> 420 *Com. Hans.* 5, s. 2157.

examples had been given the Select Committee<sup>1</sup> by the Financial Secretary to the Treasury.<sup>2</sup>

They felt that many Questions put down at the minimum period of notice did not merit such urgent treatment. They did not, however, feel able to accept the precise suggestion made by the Government's representative, because, as was pointed out in the Report, the effect of putting off a Question from the earliest day was usually to defer the answer for a whole week, hence the Committee's alternative proposal.<sup>3</sup> The object of the special procedure recommended was to enable members to get quick answers to really urgent Questions.

The Minister hoped that—not only from the point of view of the Departments but also that of the Clerks of the House who deal with Questions, and to whose willing shoulders the new arrangements would add extra burdens—members would do their best to hand in their Questions as long as possible before the hour of Sitting of the House.<sup>4</sup>

The Government thought that it would be more convenient to make the change a Sessional Order in the first instance and so get experience before making the change in the Standing Order.

The Government had also agreed to the recommendation<sup>5</sup> of the Select Committee that *Q.s* not for oral answer should be answered within 7 days after their appearance on the Order Paper and instructions had been accordingly sent to Departments. If members could be assured of more speedy answers to written *Q.s* they would make more use of them and relieve the pressure on Question-time. Given the co-operation of the House, the proposal should not only be of considerable benefit to the Government but should increase the effectiveness of one of the most valuable rights of the Private Member.<sup>6</sup>

The main points in the subsequent debate were:<sup>7</sup> that attention should be drawn to para. 3 of the Report which urged the importance of Questions, especially oral *Q.s*, being only put down when other and less formal methods had failed to produce satisfactory results or when some information or action was urgently desired;<sup>8</sup> it was stated that the astonishing custom had arisen of hon. members wasting time by rising to say: "May I thank the rt. hon. gentleman for his answer, which will give the greatest satisfaction to my constituents". If one sent a Government Department a letter it often took weeks to get a reply. Attention was called to the manner in which the number of *Q.s* had been cut down year after year—in 1909 they were limited to 8 per member.<sup>9</sup> Where a *Q.* was put down to the Prime Minister requiring prolonged inquiries before an answer could be given, surely the reply could be given that the rt. hon. gentleman was making inquiries and would communicate with his hon. friend.<sup>10</sup>

The real satisfaction which lay behind getting satisfactory answers at Question-time was the power of the Back Bench members to raise

<sup>1</sup> H. C. (1945-46) 58-1, p. 19.

<sup>2</sup> 420 *Com. Hans.* 5, s. 2158.

<sup>3</sup> *Ib.* 2159.

<sup>4</sup> *Ib.* 2161.

<sup>5</sup> H. C. (1945-46), 58-1, p. v.

<sup>6</sup> 420 *Com. Hans.* 5, s. 2161.

<sup>7</sup> *Ib.* 2161-84.

<sup>8</sup> *Ib.* 2162.

<sup>9</sup> Now 3.

<sup>10</sup> 420 *Com. Hans.* 5, s. 2164.



the Q. on the Adjournment and everyone knew very well that the chance of a Back-Bencher being able to get the Adjournment before the Q. was completely stale, was about 20, 30 or 40 to 1 against.

It was suggested that the House ought to require something in exchange from the Government for giving up their right to give one clear day's notice only for Q.s. They should ask the Government to give at least one day to private members *p.m.* for Motions balloted for in the old-fashioned way.<sup>1</sup>

The sequel to the announcement that the Minister was having inquiries made and would communicate with the hon. member, was the letter some weeks later, which was not on record in *Hansard*, and the contents of which were not usually communicated to the House. One way of getting a quick answer to a Q. from a Government Department without waiting weeks for a letter and without incurring Mr. Speaker's disapproval of oral answers about individual cases, was to put down a starred Q. for a day upon which it could not possibly be reached.<sup>2</sup>

It was also suggested they should continue to ballot for the Adjournment on Mondays, Tuesdays, Wednesdays and Thursdays, but that Fridays, when Business often ended early, should be a free day for the Adjournment, a day on which they could return to some of the earlier flexibility of their institution, and on which Mr. Speaker in his discretion might call one or more members who had really urgent matters to bring forward.<sup>3</sup>

It was urged that if Question-time were extended to Fridays, it would do away with the anomalous position that a difference of 1 minute in putting down a Q. would result in a difference of 4 days in answering it.

The Minister, in reply, said, that with regard to written answers steps had been taken by the Government to put it to Department firmly that answers to non-oral Q.s should not be given later than 7 days afterwards.<sup>4</sup>

The Adjournment had become a very popular and useful institution. The Motion has often been missed in previous Parliaments, but now it was rarely missed. His belief was that this half-hour Adjournment would become almost as outstanding a characteristic feature of the British Parliament as Q. time itself.<sup>5</sup> A *pukka* Question-time on Friday mornings would drive Ministers and Departments too hard. A lot of things were done by Departments on Friday mornings as well as Cabinet Committees from time to time.

Should something really urgent arise Mr. Speaker would no doubt be willing to consider, as in the past, the Private Notice Q. The risks they ran with these changes was that there might be a slight increase in such Q.s, which were entirely within the discretion of Mr. Speaker as to their urgency.

The Government were doing their very best about answers to members' letters which were extremely numerous and about which Departments took a lot of trouble.<sup>6</sup>

<sup>1</sup> *Ib.* 2165.<sup>2</sup> *Ib.* 2166.<sup>3</sup> *Ib.* 2167.<sup>4</sup> *Ib.* 2168.<sup>5</sup> *Ib.* 2172.<sup>6</sup> *Ib.* 2174.<sup>7</sup> *Ib.* 2175.

One hon. member suggested that members should be able to mark certain letters "Priority", which reminded the Minister of a story about a queue in Moscow. It was a long queue and some fellow came rushing up waving a paper and the whole queue shouted at him: "What are you doing going to the head of the queue?" He said: "I have got a priority." "Oh," they said, "we have all got priorities. This is the priority queue."<sup>1</sup>

The Question on the Sessional Order was then put and agreed to and it was Ordered accordingly.

*Mr. Speaker's Appeal.*—On March 25,<sup>2</sup> Mr. Speaker made an appeal to members in connection with the above-mentioned Sessional Order which came into operation that day and said that the House having considered that, generally speaking, longer notice of *Q.s* was desirable, he hoped hon. members would only use the machinery for shorter notice when they really only wanted an answer in a hurry. If, however, they did have to use it, then they would help the Clerks in the Table Office by marking all such *Q.s* clearly with the date on which the answer was required and by sending them in as early as possible in the morning.

"There was a danger of the Clerks getting snowed under, and if hon. members would mark the Questions clearly, it would help the Clerks a great deal."

**House of Commons (Questions to Ministers).**—On October 9 1945,<sup>3</sup> Mr. Speaker announced that:

Owing to the reversion to the pre-war practice of having Questions on Mondays, it had been necessary to issue a new order of Questions, which was circulated to members last Saturday (*which see above*). Members would therefore be well advised to study the Order Book and find out on which day their Questions appear. So long as the present number of Questions continue to be put down—over 700 have been handed in during the Recess—no list is likely to give complete satisfaction, but I hope Members will be willing to give the new list a fair trial.

**House of Commons (Adjournment Motion Debates).**<sup>4</sup>—On November 20, 1945,<sup>5</sup> Mr. Speaker stated that owing to the large number of hon. members desiring to raise subjects on the Adjournment and in order to avoid the inconvenience which he was afraid hon. members had in entering their names in the book at Noon, he proposed from next Monday, November 26, to arrange for the book to be available for this purpose in the Speaker's Secretary's office from 4 to 8 p.m. on the days when the House met at 2.15 p.m., and from Noon to 3 p.m. on Fridays.

A ballot would then be taken each day for a fortnight ahead, and the member successful in the ballot would be notified.

Members unsuccessful would have to enter their names again the following day, if they wished to book a date for another Adjournment.

<sup>1</sup> *Ib.* 2176.  
Vol. XIII, 31.

<sup>2</sup> 421 *Ib.* 45.

<sup>3</sup> 414 *Com. Hans.* 5, s. 3.

<sup>4</sup> See JOURNAL,

<sup>5</sup> 416 *Com. Hans.* 5, s. 235; see also 415 *Ib.* 2342.

On any day when Government Business was concluded at an hour which allowed considerable time for the Adjournment, the hon. member successful in booking that day would have the opportunity of being the first to catch his eye. It was only on days when the Government had notified the House that they proposed to discuss an important subject on the Motion for the Adjournment that the hon. member who had booked that day would be unlikely to catch his eye until the last half-hour.

**House of Commons (Seconding of Motions and Amendments).—**On May 21,<sup>1</sup> Mr. Speaker made the following announcement:

I have been considering the existing position as to the right of moving a Motion or Amendment without a seconder. The previous custom was that this could only be done by a Privy Counsellor. This was changed by my predecessor largely on the grounds that the Labour Party, in war-time, acting as a constitutional Opposition, had so few Privy Counsellors that a rigid adherence to the Rule was unfair. Times have changed, and I am now desirous of returning to the old procedure. It has always been understood that a junior Minister not being a Privy Counsellor could move an Amendment or Motion incidental to Government Business without a Seconder, but if any further exception is permitted I do not see how the Rule requiring a Seconder can be maintained. I therefore propose in future to enforce the Rule that, unless moved by a Privy Counsellor, a Motion or Amendment requires to be seconded—with the recognized exception in favour of junior Ministers not yet Privy Counsellors.

**House of Commons (M.P.s and Offices or Places of Profit under the Crown).—**An Article has been prepared on this subject which affected certain M.P.s elected in the 1945 General Election, but for want of space it has had to be omitted from this Volume. It will, however, appear in Volume XVI.

**House of Commons (Electoral).—**It is regretted that space does not admit of this subject being dealt with in this issue, but it is hoped to include it in the next Volume, together with any further information there may be in respect of 1947.

**House of Commons (Procedure).—**It was the intention to include in this issue an Article surveying the Procedure Select Committee Reports of 1945 and 1946, and the debates thereon. These, however, will be treated in Volume XVI, together with further proceedings on the subject in 1947.

**House of Commons (Broadcasting Speeches by M.P.s).<sup>2</sup>—**On October 23, 1945,<sup>3</sup> the Minister of Information was asked why the British Broadcasting Corporation's report on Parliament only mentioned the proceedings in one House; and whether he would take steps to remedy the omission, to which the reply was that important debates in the other place were reported in the British Broadcasting Corporation's survey "To-day in Parliament", but compression into 15 minutes made it impossible to give a summary of all debates in both Houses.

<sup>1</sup> 423 *Com. Hans.* 5, s. 700.

<sup>2</sup> See also *JOURNAL*, Vols. VI, 30; IX, 23; XI-XII, 28.

<sup>3</sup> 414 *Com. Hans.* 5, s. 1953.

On December 11, 1945,<sup>1</sup> the same Minister was asked as to the non-factual broadcast of the hon. member for Daventry (Mr. Manningham-Buller) on December 1; and whether he would see that in future the impartial standard of these accounts of Parliamentary proceedings was maintained. The Minister replied that in the series "The Week in Westminster" members of the main parties were invited in rotation to broadcast an account of the week's proceedings in which they had taken part. Arrangements for these broadcasts were entirely in the hands of the B.B.C. The Minister was informed that the understanding between the B.B.C. and the speaker was that he should give a broad personal impression of what he heard and saw in Parliament, but should not use the opportunity to state the views of parties or individuals other than those which had been expressed in Parliament during the week.

A Supplementary was asked if the Minister could state any inaccurate fact in the broadcast. Members on their side of the House thought that the hon. member for Daventry gave a most favourable impression.

Another Supplementary was: whether the Minister could tell them how members who were capable of doing this were discovered?

The hon. member for Daventry then rose to a point of Order as to whether it was not the custom to give notice to a member when intending to make a criticism of his personal conduct? No notice had been given him.

Mr. Speaker said: "It appears in the form of a Question that is the trouble. I think the hon. member might have been informed."

Another question asked the Minister was, whether, in view of the dissatisfaction of Scotland with the present system and quality of broadcasting, he would set up a Scottish board of directors for the control and development of this service in Scotland?

The Minister replied that he understood from the B.B.C. that the Scottish Regional programme, restarted in July, had been widely appreciated by Scottish listeners and he gathered that the people of Scotland were no more dissatisfied than the people of England and Wales.

The Minister was then asked in a further Supplementary if he would say who in Scotland was satisfied with the B.B.C.

On February 26,<sup>2</sup> the Minister was asked if he would take steps to secure a repeat during the following morning of the B.B.C. "To-day in Parliament" and a repeat at suitable times of "The Week in Westminster"?

To which the Assistant Postmaster-General replied that he would convey the hon. member's suggestion to the B.B.C.

Supplementary was then asked if the hon. gentleman did not realize that a considerable number of people who went to bed early liked to have "To-day in Parliament" given after the 9 o'clock news?

A further Supplementary was: "Would not the Minister agree that

<sup>1</sup> 417 *Ib.* 221.

<sup>2</sup> 419 *Ib.* 1747.

unless we have a more truthful and less biased statement than we had had recently in 'The Week in Westminster' we are far better without it"?

**House of Commons (Report of Resolution from Sel. Com. Publications and Debates).**<sup>1</sup>—This Committee met 4 times and heard as witnesses the Controller of H.M.S.O. (Sir Norman Scorgie) and the Editor of *Hansard* (Mr. P. F. Cole).

No Report from the Committee was made to the House, but the first Resolution given below was reported to the House on November 7, 1945:<sup>2</sup>

That in the opinion of this Committee the recommendation contained in the First Report of the Select Committee on Publications and Debates Reports in Session 1941-42<sup>3</sup> that Reports of Select Committees after having been printed once as a White Paper should not be printed a second time in the volume containing the Minutes of Evidence, should now cease to have effect in view of the inconvenience to Members and the public arising from the separation of the Report from the Minutes of Evidence.

Other Resolutions of particular interest were taken, but not reported to the House. They were to the effect: that a weekly edition of *Hansard* ought to be published at 1s. 6d. per copy; that commercial advertisements should not appear therein; and that in future the notepaper issued in the House of Commons should be die-stamped and be of better quality than formerly with improvement of the crest on the envelopes; that it was not desirable to include the party membership of each speaker in *Hansard*; that the deadline of the day's *Hansard* be raised by including therein speeches delivered after 10 p.m., except when the sitting had been suspended for more than one hour; that the inside covers of the weekly *Hansard* be used for the advertisement of Government publications, provided they were attractively set out and printed in borders; and that the Chairman acquaint Mr. Speaker with the said Resolution.

At the fourth meeting of the Committee after specimens had been submitted, it was resolved that the Commons notepaper be headed with a crest in red, blue and plain; that notepaper headed with a plain crest should bear the address of the House of Commons printed in 12 pt. Old English face black lettering on the octavo sheets.<sup>4</sup>

**House of Commons (Hansard).**

**Corrections.**—On May 24,<sup>5</sup> an hon. member in making a personal explanation to correct an error in *Hansard* asked for Mr. Speaker's permission to make the alteration.

**Transcript.**—On July 4,<sup>6</sup> an hon. member called the attention of Mr. Speaker to a Minister, through his Parliamentary Private Secretary, having had access to the transcript of another member's speech before

<sup>1</sup> See also JOURNAL, Vols. I, 45; II, 18; VI, 157; VII, 36; IX, 89; X, 23, 24, 42; XI-XII, 30, 33; XIII, 153; XIV, 48. <sup>2</sup> 415 *Com. Hans.* 5, s. 1289. <sup>3</sup> See JOURNAL, Vol. XI-XII, 31. <sup>4</sup> *Ib.* IV, 42; XIII, 154; XIV, 57. <sup>5</sup> 423 *Com. Hans.* 5, s. 699.

<sup>6</sup> 424 *Ib.* 2334.

publication, upon which the Minister acknowledged that he had done so in ignorance of Mr. Speaker's Ruling.

Mr. Speaker then remarked that the hon. Minister was in error, but that he (Mr. Speaker) did not know that any particular Ruling had been given by any Speaker, but it had undoubtedly been the custom. Indeed the reporters were not supposed to show hon. members other hon. members' speeches. Members might go and look at their own. The only mistake was that the Minister had said that for greater accuracy he had examined the sheet, but "quite possibly" said Mr. Speaker, "that when some remarks I have made are sent to me, I cannot help seeing what an hon. member speaking immediately before me has said".

*Written Answers.*—On October 18, 1945,<sup>1</sup> Mr. Speaker informed the House that written replies to Questions would appear, in future, at the end of *Hansard*, instead of immediately after Oral Questions. "This alteration is made in order to speed up the production of *Hansard*, and I do not think it will inconvenience hon. members in any way."

**House of Commons (Parliamentary Catering).**<sup>2</sup>—The "Select Committee on the Kitchen and Refreshment Rooms (House of Commons)" was set up on August 20, 1945,<sup>3</sup> with the same order of reference as given in Volume XIV, and power to send for persons, papers and records, with 3 as the quorum. An hon. member expressed surprise that only one doctor was on this important Committee.

*Q.* was asked the Chairman of the Committee on February 12,<sup>4</sup> 1946, as to what amount of the £1,000 legacy left by Sir A. Jacoby in 1909 for the benefit of the staff now stood to the credit of the Fund; how much had been paid out to the staff for illness or on retirement; and what was the annual income from investments.

The Chairman replied that the Charity Commissioners had ruled that it would not be possible to draw upon the corpus of the Fund. The legacy thereto therefore stood intact, it being invested in the name of the Official Trustees of Charitable Funds. The amount paid out to date was £1,144 2s. 6d., and the yearly income of the Fund £59 7s. 10d. Six retiring members of the staff received gratuities ranging from £21 to £50.<sup>5</sup>

In reply to a *Q.* on February 24, 1946,<sup>6</sup> the Chairman said that the rates of remuneration the staff of the Kitchen Committee received in addition to their standard rates, when the sittings of the House were extended beyond the normal hour, were a quarter of a day's pay for each hour or part thereof, for all persons detained after 11.30 p.m., who had during the particular day completed a tour of duty of 8 hours. These terms agreed upon by the Sub-Committee were subject to confirmation by the full Committee at their next meeting.

On March 4,<sup>7</sup> the Chairman, in reply to a *Q.*, said that the menus

<sup>1</sup> 414 *Ib.* 1372.      <sup>2</sup> See also JOURNAL, Vols. I, 11; II, 19; III, 36; IV, 40; V, 31; VII, 41; VIII, 29; XIII, 45; XIV, 53.      <sup>3</sup> 413 *Con. Hans.* 5, s. 412, 586.  
<sup>4</sup> 419 *Ib.* 4r.      <sup>5</sup> 417 *Ib.* 1702.      <sup>6</sup> 419 *Ib.* 162.      <sup>7</sup> 420 *Ib.* 33.

were strictly within the limits set by the Minister of Food. In buying food the Kitchen Committee enjoyed no priorities.

On March 11,<sup>1</sup> the Chairman was asked, in view of the fact that the banning of the provision of bread with main meals in catering establishments is under consideration, whether he would arrange not to serve bread in the House of Commons restaurant unless specially asked for. The reply was that that arrangement was still being carried out, and that if the hon. member would bring such a case to his notice, it would be stopped.

In reply to Q. on November 25,<sup>2</sup> the Chairman said that the penny per bill pension fund was now merged in the Staff Pension Fund and the amount in the Fund at October 31, 1946, was £1,456 12s. 6d.; 8 persons received pensions and the total weekly payment was £9 4s. 5d. The Committee did not consider it desirable to publish the names of the pensioners.

To a Q. on December 29,<sup>3</sup> the Chairman replied that the refreshment department Staff Christmas Fund up to 4 p.m. that day amounted to £984, and the number of staff it is to be divided amongst was 150.

*Report.*—A Special Report<sup>4</sup> was brought up and ordered to be printed, on April 30, 1947. The Committee remarked upon the many large-scale changes needed in administration and staff conditions, the depletion of stocks and equipment and the increase of prices, consequent upon the War. The damage caused by enemy action to the building made it necessary to provide a new dining room and bar for the Press, which in turn reduced the number of rooms for members, and great difficulties still remained for the Committee.<sup>5</sup>

*Tipping* had been abolished, the staff were being paid an adequate wage and were not dependent upon gratuities from those they served. This act alone had increased wages by approximately £6,400 for the year.<sup>6</sup>

It had also been decided to retain the Staff all through the year, and to pay them 52 weeks' wage instead of 38-40 as previously,<sup>7</sup> which had increased the wages bill by nearly £11,000 *p.a.* This had, however, been to some extent recovered by a greatly increased turn-over and the initiation of new services, including the opening of some of the dining and serving rooms during part of the time the House was not sitting, which had brought in a revenue of nearly £3,000.<sup>8</sup>

A new and distinctive uniform had been provided free for the serving staff, improvement had been made in the accommodation for the staff living on the premises, and a Staff Superannuation Scheme had been initiated.<sup>9</sup> The levy of 1d. on the charge for certain meals for the Staff Pensions Fund amounted during the year to £507 4s. 11d., while £31 6s. 11d. had been received on deposit account and investments. Payments of pensions amounted to £437 5s. od., and £1,278 11s. 4d. had been paid out of the Fund in respect of Employers'

<sup>1</sup> *Ib.* 773.

<sup>2</sup> § 1, 2.

<sup>3</sup> 430 *Ib.* 202.

<sup>4</sup> § 3.

<sup>5</sup> § 4.

<sup>6</sup> 431 *Ib.* 450.

<sup>7</sup> §§ 5, 6.

<sup>8</sup> § 7.

<sup>9</sup> H.C. (1946-47) 92.

contributions under the new Superannuation Scheme. It was estimated that the greater part of the Employers' contribution for 1947 would be met from the funds accumulated for that purpose and that in future years practically the whole of the Employers' contribution would be a charge on the Department.<sup>1</sup>

The following table compares significant figures for 1946 with corresponding figures for the two previous years. The figures exclude any period when the House was not in Session.<sup>2</sup>

	1944	1945	1946
Sittings of the House (Days) .. ..	152	145	177
Numbers of meals served .. ..	148,388	295,669	714,623
Turnover .. ..	£29,993	£47,146	£87,342
Takings per sitting .. ..	£197	£325	£493
Gross Profit .. ..	£12,500	£18,227	£35,303

In addition, 20,601 meals were served in 1946 during the period when the House was not in Session, the turn-over being £2,955.

As a matter of interest, the amounts of rationed food that the House of Commons as a catering establishment can obtain are appended below:<sup>3</sup>

MEAT .. ..	1½ pence (retail value) per main meal served.
BACON AND HAM .. ..	¼ oz. per breakfast, ¼ oz. per main meal, ⅛ oz. per subsidiary meal.
SUGAR .. ..	½ oz. per meal served, plus ¼ oz. per hot beverage served (whether or not with a meal); this includes sugar used for cooking purposes.
PRESERVES .. ..	¼ oz. per meal served. Jam and marmalade (excluding imported tinned jam and marmalade), honey and fruit curd are on the preserves ration.
BUTTER .. ..	Combined allowance of ¼ oz. per meal served. Not more than three-sevenths may be taken in butter and not more than one-seventh in cooking fats.
MARGARINE .. ..	
COOKING FATS .. ..	
CHEESE .. ..	¼ oz. per meal served.
TEA .. ..	1 lb. for every 224 hot beverages served.
MILK (liquid) .. ..	7½ pints for 100 hot beverages served.
POINTS FOODS .. ..	⅓ point per main meal; ⅙ point per subsidiary meal; ⅙ point per tea; and ⅓ point per breakfast. ("Points foods" are canned meats, fish, fruit, and vegetables, condensed milk, cereals, pulses, dried fruits, imported tinned jam and marmalade, syrup, treacle, table jellies and biscuits.)

A short study of these tables will make it possible to understand why there are not unlimited supplies of cheese, jam and cuts from the joint; why at times it is necessary for condensed milk to be used; and why sugar is restricted and biscuits are scarce.

Carrying on from the statistics given in Volume XIV in respect of 1945, those for 1946 were:

<sup>1</sup> § 8.<sup>2</sup> § 16.<sup>3</sup> § 17.



						1946		
						£	s.	d.
Income	..	..	..	..	..	90,297	4	3
Expenditure	..	..	..	..	..	96,924	2	3
+ or -	..	..	..	..	..	-6,626	18	0 <sup>1</sup>
Wages, etc.	..	..	..	..	..	39,677	1	7
Grant-in-aid from Treasury	..	..	..	..	..	nil.		

In view of the Refreshment Department being open for certain times during the period when the House of Commons was not sitting the following figures are of interest:

*INCOME.*

						<i>House in Session.</i>			<i>House not<sup>2</sup> in Session.</i>		
						£	s.	d.	£	s.	d.
By Sales	..	..	..	..	..	87,341	15	10	2,955	8	5
„ Deficit	..	..	..	..	..				9,518	7	4
						87,341	15	10	12,473	15	9

In reply to a *Q.* in the House of Commons on March 24, 1947,<sup>3</sup> the Chairman of the Committee said that food consumed by members and the staff was not being subsidized by the taxpayer.

There was also some debate and many other questions asked on this subject, which are embodied in the Special Report above referred to.

**United Kingdom: Northern Ireland (Delegated Legislation).**—The following Motion was moved in the House of Commons on November 28, 1946:<sup>4</sup>

That a Select Committee be appointed, with such members as may be added thereto by the Senate, to scrutinize every Statutory Order, Regulation or Rule laid or laid in draft before the House, in respect of which proceedings may or might have been taken in the House or in the Senate in pursuance of any Act of Parliament and to report on any matter contained therein or relating to such proceedings to which the special attention of the House should be drawn for any of the following reasons:

- (1) that the Order, Regulation, Rule or Draft appears to make an extraordinary use of the power conferred by the Statute under which it is made including (but without prejudice to the generality of the foregoing words) the use of that power to give retrospective effect to its provisions;
- (2) that there are special circumstances connected with its making or laying before Parliament which merit such attention;
- (3) that it involves a charge on public funds or prescribes that payments are to be made, or the amount of such payments, to public or local authorities in consideration of any action by such authorities;
- (4) that by reason of the relevant statutory provisions it is not open to challenge in the courts of law or that the right to make such a challenge is limited in duration or extent;
- (5) that for any special reasons its provisions, or the form in which they are cast, call for explanation.

<sup>1</sup> Taking the surplus during Session from the deficit when the House was not in Session.—[Ed.] <sup>2</sup> P. 6. <sup>3</sup> 435 *Com. Hans.* 5, s. 164. <sup>4</sup> N.I. *Com. Hans.* Vol. XXX, No. 55, 2967-82.

and, after debate, put and agreed to, together with the following Resolutions:

Question proposed: That 4 be the quorum of the committee.

Major Sinclair: I beg to move as an Amendment, "That 7 be the quorum of the committee" which was agreed to.

*Resolved.*—That the Committee have power to require any Government Department concerned to submit a memorandum explaining any Order, Rule, Regulation or Draft which may be under their consideration or to depute a representative to appear before them as a witness for the purpose of explaining any such instrument.

That the Committee be instructed that before reporting that the special attention of the House should be drawn to any Order, Rule, Regulation or Draft, the Committee do afford to any Government Department concerned therewith an opportunity of furnishing orally or in writing such explanation as the Department think fit.

That the Committee have leave to sit notwithstanding any adjournment of the House and to report from time to time.

The House of Commons personnel of the Committee (5 members) was then agreed to.

The Commons Resolution was considered by the Senate on December 10, 1946<sup>1</sup> and agreed to with an amendment fixing the quorum at 5, and 4 Senators were appointed to the Committee, after which a Message was sent by the Senate to the House of Commons acquainting them that the Senate had agreed to the said Resolution with an amendment to which they desired the concurrence of the Commons. In due course a Message was Ordered to be sent to the Senate acquainting them "that this House has agreed to the Amendment made by the Senate without any amendment"<sup>2,3</sup>

*Reports.*—On January 14, 1947<sup>3</sup> the Joint Committee made their *First* (H.C. 707) Report. That they had made Progress in the matter referred to them and directed that a Report thereof be made to the House.

*The Second Report* (H.C. 708) was made on January 22, 1947<sup>4</sup> reporting upon one Order in Council.

*The Third and Fourth Reports.*—(H.C. 709:711) were made on February 4, 1947<sup>5</sup> reporting upon 2 and 7 Regulations, respectively.

*Fifth Report.*—(H.C. 716) was made on February 25, 1947<sup>6</sup> reporting upon 5 matters.

In 18 out of the total number of 19 matters referred to them, the Committee were of opinion that there were no reasons for drawing the special attention of the House to them on any grounds set out in the order of reference to the Committee.

In regard, however, to one of the matters dealt with in the *Third Report* namely:

<sup>1</sup> N.I. *Sen. Hans.* Vol. XXX, No. 28, 502.

<sup>2</sup> N.I. *Com. Hans.* Vol. XXX

No. 60, 3483.

<sup>3</sup> *ib.* No. 65, 3764.

<sup>4</sup> *ib.* No. 68, 3935.

<sup>5</sup> *ib.* No. 70, 4025.

<sup>6</sup> *ib.* No. 76, 4351.

the Technical Teachers' (Salary Grants) Regulations (Northern Ireland), 1947, the Committee were of opinion that the special attention of the House should be drawn to these Regulations under sub-paragraph (3) of the Order of Reference on the grounds that they involve a charge upon public funds.

In regard also to one of the matters dealt with in the *Fifth Report*, namely:

the Fire Services (Emergency Provisions) National Fire Service (Northern Ireland) Regulations dated February 11, 1947, the Committee were of opinion that the special attention of the House should be drawn to these Regulations under sub-paragraph (3) of the Order of Reference on the grounds that they involve a charge upon public funds.

In the case of all 5 Reports the House Ordered that they be laid on the Table and be printed.

\* **United Kingdom—Northern Ireland (Ministerial Salaries and Payments to M.P.s).**—On November 20, 1945, by Resolution of the House of Commons of Northern Ireland, a Select Committee was appointed to consider:

- (1) whether any alterations ought to be made in the remuneration of Ministers (other than the Prime Minister), Parliamentary Secretaries and Assistant Parliamentary Secretaries; and
- (2) whether any alterations ought to be made in the payments and allowances made to members of the House of Commons in respect of their expenses as members of Parliament;

and to make recommendations.

The *Sel. Com.* to consist of 7 members.

It was ordered that the 7 members (names being given) be appointed, that the Committee have power to send for persons, papers and records and to have leave to sit notwithstanding any adjournment of the House. The Committee held 4 meetings and their Report<sup>1</sup> was Tabled and Ordered to be printed on December 13, 1945.

The Committee reported that they had considered all available documentary evidence, not only from the Imperial Parliament but also from the Parliaments of the British Commonwealth, the Isle of Man and Eire.

The recommendations of the Committee were as follow:

*Cabinet Ministers.*—The Committee unanimously recommended:<sup>2</sup>

- (i) that the £2,500 per annum at present divided equally between the members of the Cabinet (excluding the Prime Minister) should no longer be paid;
- (ii) that a sum of £2,000 be paid to each Cabinet Minister as head of a department;
- (iii) that in the case of a Cabinet Minister who is a member of the Senate and head of a department, the salary should be £2,000 *p.a.*, and that a further sum of £300 be paid to him as an allowance for expenses as Leader of the Senate;
- (iv) that travelling expenses and subsistence allowance at the usual rate be paid to Cabinet Ministers when travelling on official business to and from places in Great Britain and in Northern Ireland when the official car is not used for such official journey.

<sup>1</sup> H.C. 670.

<sup>2</sup> *Rep.* § 3.

*Parliamentary Secretaries and Assistant Parliamentary Secretaries.*—The Committee recommended:<sup>1</sup>

- (i) That the sum of £1,200 be paid to each Parliamentary Secretary in the House of Commons.
- (ii) That travelling expenses and subsistence allowances be paid to Parliamentary Secretaries and Assistant Parliamentary Secretaries at the usual rates when travelling on official business to and from places in Great Britain and in Northern Ireland when the official car is not used for the journey. Attending a sitting of the House of Commons only should not be regarded as an official journey for the purpose of claiming travelling expenses.
- (iii) That the sum of £800 be paid to a member of the Senate holding the office of Parliamentary Secretary, and that a similar amount be paid to a member of the House of Commons holding the office of Assistant Parliamentary Secretary.

*Attendance of Members at Committees.*—The Committee recommended:<sup>2</sup>

- (i) That a fee of £2 5s. od. be paid in respect of expenses for each attendance at Parliamentary Committees.
- (ii) That the present maximum limit of £52 10s. od. be removed and that members be paid for the full number of attendances.
- (iii) That in the event of a member attending two separate committees on the same day payment be allowed only in respect of attendance at one committee.
- (iv) That in the event of there being two sittings of the one committee on the same day one attendance only can be claimed.
- (v) That a member of the House of Commons who attends a committee on a day on which Parliament is sitting shall be entitled to claim payment for attendance at the committee on that day.

*Travelling Expenses of Members other than Ministers and Parliamentary Secretaries.*—The Committee recommended:<sup>3</sup>

- (i) That first-class travelling expenses between a member's residence and Belfast in respect of attendance either at sittings of the House or Parliamentary Committees be paid, subject to the following conditions:
  - (a) Where a member resides outside Belfast and carries on his business or profession at an address other than that of his residence, first-class rail fare from the address nearest Belfast only can be claimed.
  - (b) Travelling expenses will not be paid to a member who lives in Belfast or who has a permanent business address in Belfast.
  - (c) A member travelling by his own or hired car can claim only the equivalent rail fare.
  - (d) In any case where public service vehicles are not available and the distance between residence and railway station exceeds one mile, allowance for the use of a private car will be paid as follows:

<i>Over.</i>	<i>Up to and including.</i>	<i>Rate per Mile.</i>
—	8 H.P.	4½d.
8 H.P.	10 H.P.	5½d.
10 H.P.	—	6d.

- (ii) That these allowances should be paid on the certificate of the Clerk of Parliaments.

<sup>1</sup> *Ib.* § 4.

<sup>2</sup> *Ib.* § 5.

<sup>3</sup> *Ib.* § 6.

It was further recommended that the above have effect from July 17, 1945.<sup>1</sup>

*Debate.*—On February 13, 1946<sup>2</sup> the Chairman of the Select Committee (Mr. Midgeley) in moving:

That the Report of the Select Committee on Ministerial Salaries and Payments and Allowances of the Members of the House of Commons be now taken into consideration,

quoted the salaries members of Parliament drew at Westminster and Overseas, and stressed the common misunderstanding that Parliamentary responsibility began and ended with attendance in the House.<sup>3</sup>

He commended to the Cabinet the principle, operating in Great Britain, that Cabinet Ministers while holding office should give up interests elsewhere.<sup>4</sup>

The Minister of Finance (Major J. M. Sinclair, P.C.) said that to-day the House was only being asked to receive and take into consideration the Report, which did not commit hon. members to acceptance or otherwise of all or any of its recommendations.<sup>5</sup>

The first 2 recommendations were that the tax-free allowance to M.P.s be increased to £300 and the additional £200 be subject to tax at the rate of £200 *p.a.*, to be paid to all those who did not hold office. After informal discussions with back benchers of all, or most parties, the Government was prepared to accept these, recognizing that members' expenses were at least 50 *p.c.* higher than before the War.

The next recommendation was that the salaries of Cabinet Ministers, other than the Prime Minister, should be £2,000 plus tax-free allowance of £300. The Government considered that a total salary of £2,000 made up of £1,700 subject to tax and £300 free, given a sense of public service, should be adequate for the purpose and proposed accordingly.<sup>6</sup> This meant, in effect, the retention of the existing salary with the addition of the Expense allowance which the Committee proposed for all members, but it would do away with the present provision whereby Ministers were paid £1,300, originally £1,500 as Heads of Departments and as Cabinet Ministers' share in a sum of £2,500, the size of that share varying with the number of Ministers in post.

Furthermore, the Government was of opinion that a Cabinet Minister in the Senate should be paid at the same rate exactly as his colleagues in the Commons. From what he had said, the Government agreed with the second principle in the Report.

It was now suggested that Parliamentary Secretaries should receive the same salaries as at present, with the addition of the tax-free allowance common to all, but that the salary of a Parliamentary Secretary in the Senate should be increased from £600 to £800. In such cases the tax-free allowance would not apply.

The Government proposed that Assistant Parliamentary Secretaries,

<sup>1</sup> *Ib.* § 7.

<sup>2</sup> 29 N.I. *Com. Hans.* No. 47, 2162.

<sup>3</sup> *Ib.* 2166.

<sup>4</sup> *Ib.* 2169.

<sup>5</sup> *Ib.* 2171.

<sup>6</sup> *Ib.* 2172.

should remain as at present, but with the tax-free allowance, should they be members of the Commons. For many years, however, successive holders of the only Assistant Parliamentary Secretaries' posts had drawn no salary at all.

In regard to the payment of members for attendance at Committees, the Government felt that if the principle of a salary payable to back-bench members were admitted, those members should not expect extra remuneration for Committee work, which, after all, was only part of their Parliamentary duties.

While the Government was prepared to accept the main principles in the Report, it held other views about some of the details.<sup>1</sup>

Question (*on the consideration*) put and agreed to.

*Ministries Bill.*—In moving 2 R. of the Bill on March 12,<sup>2</sup> Major Sinclair said that it gave effect to the Government's proposals on the report of the Select Committee as outlined to the House on February 13. Such proposals, however, did not include the £300 paid to Ministers and others in accordance with the Resolution above-mentioned. The second part of the Bill altered the title of the present Minister of Labour to Minister of Labour and National Insurance.

The salaries scheduled in the Bill were: Prime Minister, £2,850; Ministers of Finance, Home Affairs, Labour, Education, Agriculture, Commerce, Health and Local Government (in each case being Head of a Department), £1,700 *p.a.*

Parliamentary Secretary of a Ministry, £1,000; Parliamentary Secretary of the Department of the Prime Minister, £800; Assistant Parliamentary Secretary to the Ministry of Finance, £600; and Attorney-General, £2,500.

On March 12 the necessary Financial Resolution under the Bill received the authority of a Committee of the Whole House under S.O. 66 and was reported and agreed to.<sup>3</sup> On the same day the House went into Committee on the Bill which contained 2 clauses and 2 schedules and the Bill was thereupon reported without amendment, read 3 R. and transmitted to the Senate.

The Bill was considered in the Senate on March 21,<sup>4</sup> read 2 R., the C.W.H. stage negatived and the Bill passed 3 R. March 26,<sup>5</sup> duly becoming 10 Geo. VI, c. 11, and operates from March 5, 1946.

*Canada: House of Commons (Quebec Provincial Boundaries Extension).*—On May 28,<sup>6</sup> the Minister of Justice (Rt. Hon. L. S. St. Laurent) in moving for leave to introduce Bill No. 156, to amend the Quebec Boundaries Extension Act, 1912,<sup>7</sup> said the Bill was an incident in the comprehensive proposals concerning redistribution expressed in the Resolution standing on the O.P. that day (*which see below*) in the name of the Prime Minister.

In 1912 Parliament provided for the extension of the boundaries of

<sup>1</sup> *Ib.* 2174.      <sup>2</sup> Vol. XXX, N.I. *Com. Hans.* No. 4, 233.      <sup>3</sup> *Ib.* No. 5, 238.  
<sup>4</sup> 30 N.I. *Sen. Hans.* No. 4, 50.      <sup>5</sup> *Ib.* No. 5, 75.      <sup>6</sup> LXXXV, *Com. Hans.*  
 No. 47, 1987.      <sup>7</sup> 2 Geo V, c. 45.

Quebec, Ontario and Manitoba to take in Northern portions. The Bill provided that the population of the new Territory would not be counted for the purpose of ascertaining the number to be divided by 65<sup>1</sup> to determine the unit of representation of the other Provinces in the Canadian Parliament. In the Resolution above referred to, it was suggested that hereafter the unit of population for purposes of representation should no longer be the population of Quebec divided by 65, but the population of all the Provinces of Canada divided by 254, as such new number as may be arrived at after providing for Provinces, when representation would be determined by the number of Senators they had in the other House.

The statute of 1912 provided that it would come into operation by proclamation not to be proclaimed until the passing of concurrent legislation by the Quebec Legislature and the Bill contained a similar provision. It would do away with that restriction in respect of the population of Quebec, but would contain a clause providing that it would not become operative until proclaimed, which would not take place until it was met by concurrent legislation in Quebec. No such conditions were expressed in the statutes enlarging the area of Ontario and Manitoba, because there was no similar reason for making any special provision in that regard. The House however, would not be asked to take 2 R. of the Bill until the Resolution above referred to had been disposed of.

An hon. member asked, through Mr. Speaker, if the Minister would give the present population of this area, to which Mr. Speaker reminded the hon. member that it was not proper to put Q.s<sup>2</sup> to the Minister at this stage, nor was it incumbent upon him to answer them. The Motion was then agreed to and 1 R. taken.<sup>3</sup>

On June 24,<sup>4</sup> the Bill passed 2 R. and the House went into C.W.H. when, in reply to questions, the Minister said that Quebec was no longer the determining factor to fix the representation and therefore it was felt that the restrictions in the 1912 Act should be removed. Before the Bill was introduced the Government of Quebec was advised of its introduction and the proposals the Bill contained. At the last census the population of the area was 3,067, namely  $\frac{1}{100}$  of 1 p.c. the population of Canada. Therefore the unit of representation was not affected. If it was included, such unit would be raised from 44,566 to 45,578, but a difference of 12 in the division had no effect when dividing the population of the other Provinces and Quebec would be left in exactly the same situation as all the other Provinces. It would leave the statute of 1912, which concerned Quebec, with the same conditions as those originally placed in the statutes extending the boundaries of Ontario and Manitoba, respectively.

In reply to a Q., Mr. St. Laurent remarked that should the people of Newfoundland come to the conclusion that they would be happy to

<sup>1</sup> Ss. 37 and 51, B.N.A. Act, 30 Vict. c. 3.

<sup>2</sup> S.O. 69; Beauséne III,

annotation 629.

<sup>3</sup> LXXXV, *Com. Hans.* No. 66, 1988.

<sup>4</sup> *Ib.* 2833.

throw in their lot with Canada, their representations would be given most earnest and sympathetic consideration. The Canadian Government would not wish to be interfering in the affairs of that Colony. Their delegates would be welcomed in Canada as cordially as they would welcome them. There were many Canadians who felt that it would be to the mutual advantage of Canada and Newfoundland to come together.

Another hon. member then urged that no effort be made to detach Labrador from Newfoundland, to which the people of that Colony were immovable in its retention as part of their Colony.

The Bill was then reported without *admt.*, passed 3 R., concurred in by the Senate, duly becoming 10 Geo. VI, c. 29.

**Canada (Amendment of the B.N.A. Act.<sup>1</sup>—Redistribution of Seats in the Commons).**—It will be remembered that the B.N.A. Act can only be amended by the Parliament of the United Kingdom upon address to the King from both Houses of the Parliament of Canada. The first and concurrent step which was taken in this instance was the introduction and passing of the Quebec Boundaries Extension Bill in the Canadian Parliament (*which see above*).

*A.—B.N.A. Bill in the Canadian Parliament.*

*Joint Address to the King.*—On May 28,<sup>2</sup> the Minister of Justice (Rt. Hon. L. S. St. Laurent) (for the Prime Minister) moved:

That, whereas by the British North America Act, 1867, it is provided that in respect of representation in the House of Commons the province of Quebec shall have the fixed number of sixty-five members;

And whereas the said Act provides that there shall be assigned to each of the other provinces such a number of members as will bear the same proportion to the number of its population as the number of sixty-five bears to the number of the population of Quebec;

And whereas the said Act provides for the readjustment of representation on the completion of each decennial census, and that on any such readjustment the number of members for a province shall not be reduced unless the proportion which the number of the population of the province bore to the number of the aggregate population of Canada at the then last preceding readjustment of the number of members for the province is ascertained at the then latest census to be diminished by one twentieth part or upwards;

And whereas the effect of the aforesaid provision has not been satisfactory in that proportionate representation of the provinces according to population has not been maintained;

And whereas it is considered that a more equitable apportionment of members to the various provinces could be effected if readjustment were made on the basis of the population of all the provinces taken as a whole.

A humble address be presented to His Majesty the King in the following words:

We, Your Majesty's most dutiful and loyal subjects, the Members of the House of Commons of Canada in Parliament assembled, humbly approach Your Majesty, praying that You may graciously be pleased to cause a measure to be laid before the Parliament of the United Kingdom to be expressed as follows:

<sup>1</sup> See also JOURNAL, Vols. V, 91; VI, 191; VIII, 30; IX, 124; XI-XII, 41.

<sup>2</sup> LXXXV, *Com. Hans.* No. 47, 1989-97.



An Act to provide for the readjustment of representation in the House of Commons of Canada on the basis of the population of Canada:

Whereas the Senate and House of Commons of Canada in Parliament assembled have submitted an address to His Majesty praying that His Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for the enactment of the provisions hereinafter set forth,

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

1. Section fifty-one of the British North America Act, 1867, is hereby repealed and the following substituted therefor:

51. (1) The number of members of the House of Commons shall be two hundred and fifty-five and the representation of the provinces therein shall forthwith upon the coming into force of this section and thereafter on the completion of each decennial census be readjusted by such authority, in such manner, and from such time as the Parliament of Canada from time to time provides, subject and according to the following rules:

1. Subject as hereinafter provided, there shall be assigned to each of the provinces a number of members computed by dividing the total population of the provinces by two hundred and fifty-four and by dividing the population of each province by the quotient so obtained, disregarding, except as hereinafter in this section provided, the remainder, if any, after the said process of division.
2. If the total number of members assigned to all the provinces pursuant to rule one is less than two hundred and fifty-four, additional members shall be assigned to the provinces (one to a province) having remainders in the computation under rule one commencing with the province having the largest remainder and continuing with the other provinces in the order of the magnitude of their respective remainders until the total number of members assigned is two hundred and fifty-four.
3. Notwithstanding anything in this section, if upon completion of a computation under rules one and two, the number of members to be assigned to a province is less than the number of senators representing the said province, rules one and two shall cease to apply in respect of the said province, and there shall be assigned to the said province a number of members equal to the said number of senators.
4. In the event that rules one and two cease to apply in respect of a province then, for the purpose of computing the number of members to be assigned to the provinces in respect of which rules one and two continue to apply, the total population of the provinces shall be reduced by the number of the population of the province in respect of which rules one and two have ceased to apply and the number two hundred and fifty-four shall be reduced by the number of members assigned to such province pursuant to rule three.
5. Such readjustment shall not take effect until the termination of the then existing parliament.

(2) The Yukon Territory, as constituted by chapter forty-one of the Statutes of Canada, 1901, together with any part of Canada not comprised within a province which may from time to time be included therein by the parliament of Canada for the purposes of representation in parliament, shall be entitled to one member.

2. This Act may be cited as the British North America Act, 1946, and the British North America Acts, 1867 to 1943, the British North America Act, 1907, and this Act may be cited together as the British North America Acts, 1867 to 1946.

The debate upon the Motion which was adjourned was resumed on June 6,<sup>1</sup> when the following *amdt.* was moved by the hon. member for Lake Centre (Mr. J. G. Diefenbaker):

That the motion be amended by deleting the words "A humble address be presented to His Majesty the King in the following words:" and substituting therefor:

And whereas it is desirable that the government should consult with the several provinces in respect of the said matter.

<sup>1</sup> *Ib.* No. 54, 2294-2335.

Now therefore be it resolved that the government be required to consult at once the several provinces and upon satisfactory conclusion of such consultations be authorized to present an humble address to His Majesty in the following terms.

The debate was again adjourned and resumed on June 11,<sup>1</sup> 12,<sup>2</sup> 13,<sup>3</sup> 19,<sup>4</sup> 20,<sup>5</sup> on which day the *amdt.* was put to the vote: Yeas, 42; Nays, 108. (Pairs furnished by the Chief Whips, 30.)

Another *amdt.* was then proposed by the hon. member for Vancouver N. (Mr. J. Sinclair) namely:

That the motion be amended:

- (1) By striking out the words "two hundred and fifty-five" in subsection (1) of the proposed Section 51 of the B.N.A. Act, 1867, as quoted in the resolution before the House, and substituting therefor the words "two hundred and fifty-one".
- (2) By striking out the words "two hundred and fifty-four" in Rules 1 and 2 of the proposed Section fifty-one and substituting therefor the words "two hundred and fifty".<sup>6</sup>
- (3) By deleting Rules 3 and 4 of the proposed Section.

After debate this *amdt.* was negatived on division.

After further debate the following *amdt.* was moved by the hon. member for Cariboo (Mr. W. Irvine):

That the Motion be amended by striking out the words "two hundred and fifty-five" as they appear in lines one and two of the proposed new Section 51, and substituting therefor the words "two hundred and fifty-six" and by striking out subsection 2 of the said proposed Section 51 and substituting therefor the following:

- (2) The Yukon Territory as constituted by Chapter 41 of the Statutes of Canada, 1901, shall be entitled to one Member, and the North-West Territories shall be entitled to one Member.<sup>7</sup>

Mr. Speaker, however, ruled the *amdt.* out of order, citing Beauchesne II, citation 413, p. 129, which reads:

No amendment shall call in question a principle on which the House has given a decision by its vote on a former amendment.

Another *amdt.* was then proposed which Mr. Speaker called upon the Clerk to read, Mr. Speaker regretting he could not accept the amendment as the Rules state that a Motion or amendment should be presented to the Chair in such a way that it could be read by Mr. Speaker.

The Main Motion was then agreed to: Yeas, 207; Nays, 22. (Pairs as furnished by the Chief Whips, 26.) Several paired members then stated how they would have voted.

The Resolution was then transmitted to the Senate for concurrence, concurred in and the necessary Bill was introduced into the Imperial Parliament, of which some account is given below.

The debate<sup>8</sup> on this Resolution is particularly interesting to the

<sup>1</sup> *Ib.* No. 57, 3473-84.

<sup>2</sup> *Ib.* No. 58, 2490-2511.

<sup>3</sup> *Ib.* No. 59, 2531-50.

<sup>4</sup> *Ib.* No. 63, 2172-2733.

<sup>5</sup> *Ib.* No. 64, 2738-76.

<sup>6</sup> *Ib.* 2760.

<sup>7</sup> *Ib.* 2762.

<sup>8</sup> LXXXV, No. 47, 1980-07.

constitutional student to whom the footnotes will serve as a guide. Another document which should certainly be studied is the Report of the Special Committee appointed by the Canadian House of Commons in 1935.<sup>1</sup>

*B.—B.N.A. Bill in the United Kingdom Parliament.*

The Bill originated, as usual, in the House of Lords when it was agreed to and sent to the House of Commons, for concurrence.

On July 26<sup>a</sup> in the House of Commons, the Solicitor-General (Major Sir F. Soskice) in moving 2 R. said that the object of the Bill was to give effect to an Address which had been presented to His Majesty by the Parliament of Canada praying that the above-mentioned alteration in the B.N.A. Act shall become effective. To give effect to this Address, said the Minister, it was necessary to repeal S. 51 of the B.N.A. Act, 1867, and to substitute the provisions set out in the Bill. That Act was expressly excluded from the provisions of the Statute of Westminster 1931 by S. 7(1) of that Act and in order to effect an amendment of the B.N.A. Act, it being an Act of the United Kingdom, an amending Act thereof was necessary. The matter was, of course, primarily within the discretion and judgment of the Canadian Parliament. The Minister hoped that the House would accede to the desire of the Canadian Parliament that the matter be dealt with expeditiously. The Bill thereupon passed through the remaining stages and became 9 & 10 Geo. VI, c. 63.

**Canada: House of Commons (Prerogatives of Prime Minister).**—On April 1,<sup>3</sup> an hon. member moved:

For a copy of all Orders in Council prescribing the special prerogatives of the Prime Minister.

The Prime Minister (Rt. Hon. W. L. Mackenzie King) said that the Motion was for a copy of all Orders in Council prescribing the special prerogatives of the Prime Minister. This was a usual order and was first adopted by Sir Charles Tupper when he came into office. It had been part of the normal procedure as each new administration came into office to enact similar orders. The first by Sir Charles Tupper was passed May 1, 1896. Then there was one by Sir Wilfred Laurier on July 13, 1896, one by Sir Robert Borden on October 10, 1911 and another by Sir Robert Borden when he was head of the Government. There was also one by the Rt. Hon. Arthur Meighen approved on August 7, 1930, one by Mr. Bennett approved on August 7, 1930, and then one by himself (Mr. Mackenzie King) on October 25, 1935.

The Prime Minister said he had overlooked passing a similar order between 1921 and 1926. Mr. Meighen also overlooked his opportunities from June to September, 1926.<sup>4</sup>

The Prime Minister said that he had recommended no order from 1926 to 1930. He was told that the Clerk of the Privy Council assumed

<sup>1</sup> See JOURNAL, Vol. IV, 14.   <sup>2</sup> 426 *Com. Hans.* 5, s. 389-92.   <sup>3</sup> *Ib.* No. 13, 449.  
<sup>4</sup> *Ib.* 449.

that where a Prime Minister had been in office on a previous occasion and was returned and continued in office, the old order still had force.

The only variation in the orders passed by himself and his predecessors since the time of Sir Charles Tupper had been that in the original recommendation of Sir Charles in which the Railway Committee was included in the list of appointments designated as the prerogative of the Prime Minister in S. 4 of the first 2 Orders in Council.

This Committee had been deleted for obvious reasons from the list of appointments under P.C. 2437 of October 10, 1911 and from subsequent Orders in Council.

Then in the case of the last 2 Orders in Council—namely, P.C. 1930 of 1930 and P.C. 3374 of 1935—the original wording of S. 3 had been slightly altered to read “ recommendations affecting the discipline of the department of another Minister ” instead of “ the discipline of another department ”.

That was the extent of the changes made. He had been told to be sure to inform the House that this list did not include all the prerogatives of the Prime Minister.

Mr. Mackenzie King then Tabled all the Orders, and the Motion was agreed to.

**Canada: House of Commons (Change of Ministerial Head-office of Prime Minister).**—On April 2,<sup>1</sup> the Secretary of State for External Affairs (Rt. Hon. W. L. Mackenzie King) in moving 2 R. of Bill (No. 6) to amend the Department of External Affairs Act, 1912, said that the Bill sought to repeal S. 3 of such Act which provided that:

The Member of the King's Privy Council for Canada holding the recognized position of First Minister shall be Secretary of State for External Affairs . . .

As it stood the section constituted a statutory requirement that the Secretary of State for External Affairs could be no one but the Prime Minister. The present Bill removed that limitation and made it possible for some other person to occupy the position. The result of the present Bill would be to place the Department of External Affairs in the same position as other Departments of Government in respect of which there was no requirement that any particular person must occupy the position of Minister.

Just before the question for 2 R. was put, the Prime Minister<sup>2</sup> said that he was not over-anxious to carry the extra burdens of the Department of External Affairs in addition to those of Prime Minister. He would certainly not be carrying both portfolios at the present time were it not that the questions uppermost in the world to-day were for the most part international questions which called for as much experience and knowledge as it was possible for one to command and also that the Department of Prime Minister and that of Secretary of State for External Affairs had been so interlocked for the past 30 or 40 years that their separation at a given moment was not something that could very readily be brought about.

<sup>1</sup> LXXXV, *Can. Com. Hans. No. 14, 494.*

<sup>2</sup> *Ib.* 506.

When a Minister other than the Prime Minister assumed a portfolio, he went into a department thoroughly organized and which had been organized for years past. His department had a deputy head, secretary and various branches; its staff of civil servants knew all the aspects of the work of the department and possessed the accumulated knowledge and information of which the department had become the repository over many years.

When the Prime Minister assumed office, he entered into what to all intents and purposes was an all but completely empty office. If he was fortunate enough to have them, he took with him one or two secretaries who had served him in his capacity as Leader of the Opposition, should he come into office after being Leader of the Opposition. Otherwise he had no officers whatever in his department until he had had an opportunity to organize the Prime Minister's office. He had no deputy head, no secretary of his department, no leading officials as such. There might be a few stenographers and typists and possibly a few members of the service who filed communications. He had to ask himself immediately whether those particular officials who had been seeing political opponents were the ones he wished to continue in office with him, having regard to the intimate affairs of Government with which the Prime Minister found himself confronted. He was happy to say that it had not been necessary to change these members of the service to any extent, one of the reasons being that they were so few in number.<sup>1</sup>

So far as the Prime Minister's office to-day was concerned, nearly all the officials on whom he relied in his Prime Minister's Office had been seconded to that office by the Department of External Affairs. Experienced officials with life qualifications were not to be found in any other Department of Government or outside the Government service. There could be no better field of training for the officials of the Department of External Affairs than the Prime Minister's Office. He thought it very desirable when these departments were separated, that some members of the Department of External Affairs should continue to serve in the Prime Minister's office and obtain all possible knowledge on questions all-important in government. It was the best school of training for the young men and women who were to be entrusted with the larger responsibility of later filling great positions and representing Canada in other lands.

The House then went into *C.W.H.* on the Bill where it was amended, reported with the amendment, passed 3 R., concurred in by the Senate and duly became 10 Geo. VI, c. 6.

**Canada: House of Commons (Standing Orders Revision).**<sup>2</sup>—(On April 10<sup>3</sup> Mr. Speaker, from the Special Committee appointed on March 26, to assist Mr. Speaker in revising the Standing Orders of the House, with a view to simplify, accelerate and expedite its business and to report to the House during the present Session, presented the First Report of the said Committee, which is as follows:

<sup>1</sup> *Ib.* 507.

<sup>2</sup> See also JOURNAL, Vol. XLII, 54.

<sup>3</sup> 1946 Can. C.J. 125.

Your Committee recommends for the consideration of the House the following Standing Orders dealing with protracted debates and with the reference to a Standing or Special Committee of any of the proposed Resolutions included in the yearly Estimates:

#### PROTRACTED DEBATES.

1. When a matter, including the main Motion and any amendment or amendments thereto, has been under debate for at least 30 hours, Mr. Speaker may, at such intervals as to him appears advisable, ask whether the House is ready for the question, and if no objection is taken, he shall proceed forthwith to put all such questions as may be necessary to determine the final decision of the House upon the original question.

2. If objection is taken, Mr. Speaker shall request the members who are in favour of the question or questions being put forthwith to rise. If at least five members rise, a Division shall take place, and if a majority vote in the affirmative, he shall proceed forthwith to put all such questions as may be necessary to determine the final decision of the House upon the original question.

#### REFERRING ESTIMATES TO STANDING OR SPECIAL COMMITTEES.

1. A Motion may be made without notice or debate to withdraw from the Committee of Supply any of the proposed Resolutions included in the yearly Estimates and to refer them to a Standing or Special Committee where they shall be considered under the same Rules of Procedure as in Committee of Supply.

2. A Minister who is not a member of such Standing or Special Committee shall be allowed, as well as his Deputy, to address the Committee when the Estimates of his Department are under consideration.

3. Any member of the House who is not a member of such Standing or Special Committee where Estimates are under consideration shall have the right to appear and take part in the discussions before the Committee.

4. The discussions and proceedings relating to Estimates under consideration in Standing and Special Committees shall be printed and distributed under the same rules as the Official Reports of Debates.

5. When Estimates have been passed by such Standing or Special Committee, they shall be reported to the House and referred back to the Committee of Supply.

The Report was ordered to lie on the Table.

**Canada: House of Commons (Debate on Resolutions preceding Money Bills).**—On April 11,<sup>1</sup> the Prime Minister (Rt. Hon. W. L. Mackenzie King) made the following statement respecting the procedure to be followed on the Resolution in regard to the loan to the United Kingdom—United Kingdom Financial Agreement Bill<sup>2</sup> (No. 28)—

<sup>1</sup> LXXXV, *Com. Hans.* No. 21, 783-4.

<sup>2</sup> 10 Geo. VI, c. 12.

saying that the Resolution was intended merely as a notice to the House that a money Bill was to be introduced. It was not intended that the notice should be debatable, but that it should be allowed to pass, the House to go into Committee and that in Committee a statement be made on the essential features of the Bill later to be introduced, this to follow, if so desired, by some brief discussion. The discussion on the Bill should come after the Bill itself was introduced. One of two things would be certain to follow if they did not observe the rule: either the discussion would take place on the Resolution, which might run along for days, and which might be repeated at great length in the discussion on the Bill, or, there would be lengthy discussion on the Resolution and then the House would take the view that the Bill need not then be discussed; and, as a consequence thereof, there would be some misunderstanding on the part of the public.

Mr. Mackenzie King then read the following statement furnished by the Clerk of the House:

The Motion for referring Money Resolutions to Committee of the Whole House is similar to First Reading of a Bill, which is not debatable under our S.O. 71. The object of the Resolution recommended by the Crown is to give the House a first opportunity to decide if there is a *prima facie* case for introduction of a Bill. The details of the projected measure are not then disclosed and the Resolution is necessarily short, although care is always taken that the terms used are sufficiently wide to cover the whole of the Bill which will be subsequently introduced.

This House confirmed on June 1, 1936, the Speaker's decision to the effect that the fundamental terms of the Resolution submitted to the House with the Governor-General's recommendation cannot be amended. In the United Kingdom Parliament, where the Standing Order governing the case is the same as ours, no Motion is made for the Speaker to leave the Chair when the Order is called. May says (506):

If a Resolution appears on the Notice Paper to be considered in Committee of the Whole House under this Standing Order, and a Minister of the Crown signifies the Royal recommendation, the Speaker leaves the Chair forthwith and the House resolves itself into Committee.

Continuing, the Prime Minister said that, as hon. members knew, the Clerk had been a long time in the House and had followed its proceedings closely. Moreover, he was an authority on the Rules. Mr. Mackenzie King then added the following paragraph:

When Sir Wilfred Laurier and Sir Robert Borden led political Parties in this House, either on the Treasury Benches or in opposition, they always took a firm stand against the discussion of a Money Resolution when the Speaker was in the Chair. Their contention was that the Motion was formal, and was only made because there was no other way for the House to go into Committee of the Whole.

The Prime Minister concluded by saying that he was sure that what he had suggested was the correct practice and if followed, would preserve all that the House might wish to preserve of the rights of members and help materially to expedite its business.

**Canada: House of Commons (Placing Tables and Documents on Hansard by Unanimous Consent).**—On May 6,<sup>1</sup> on the Motion to go into Committee of Supply an amendment was moved, relating to price-ceiling policies with respect to farm products, a subject which had been under investigation by a Committee of the House, whereupon, owing to the fact that many hon. members had found it difficult to get copies of the Committee's report, an hon. member asked Mr. Deputy Speaker whether permission would be given for the 36 points made by the Committee in their conclusions to be placed on record.

Mr. Deputy Speaker then asked whether the hon. member had the unanimous consent of the House to place the document on record?

Such consent being given, the conclusions and recommendations by the Committee were printed in the debate in *Hansard*.

In the same debate a similar request was made in respect of another report, to which the Minister objected, on the ground that if this practice were carried too far it obviously would result in gross abuse. The hon. member, however, then read the Committee's findings to the House, which duly appeared in *Hansard*.<sup>2</sup>

Later, a similar request was made in respect of Farm Machinery, to which the House gave unanimous consent and these statistical tables duly appeared in the debate in *Hansard*.<sup>3</sup>

On July 22, unanimous consent of the House was given to a Minister's request in respect of certain tables in regard to housing projects. The Acting Speaker asked the Minister if he had the consent of the House, and such being given, the tables duly appeared in *Hansard*.<sup>4</sup>

On July 15,<sup>5</sup> an hon. member asked if he might, through Mr. Speaker, have permission to place in *Hansard* the contrasting features between a joint stock company and a co-operative society as outlined by a gentleman when he presented a brief to the Royal Commission on the taxation of co-operatives at Winnipeg on February 5, 1945.

Mr. Speaker pointed out that permission to place memoranda on the record was one which was granted occasionally by the unanimous consent of the House, usually to members of the Government, to enable them to have certain official statements incorporated in the report. The privilege was, however, one which should not be taken advantage of generally. If the House were once to adopt the practice of placing documents and memoranda in *Hansard*, it would soon become over-encumbered. As the hon. member, however, did not obtain the unanimous consent of the House, he read the 11 contrasting points.

**Canada: House of Commons (Quoting Messages from outside reflecting on Proceedings of the House).**—On August 22,<sup>6</sup> upon the Prime Minister drawing Mr. Speaker's attention to an hon. member quoting a telegram containing a copy of a protest to the Minister of Labour . . . protesting against the Tabling of a Report, Mr. Speaker said that it was not allowed to read messages from outside the House reflect-

<sup>1</sup> LXXXV, Com. Hans. No. 31, 1304.

<sup>2</sup> *Ib.* 1306.

<sup>3</sup> *Ib.* 1307.

<sup>4</sup> *Ib.* 3749.

<sup>5</sup> LXXXV, Com. Hans. No. 80, 3514.

<sup>6</sup> LXXXV, Com. Hans. No. 110, 5294.



ing on its proceedings. The hon. member knew that it was a privilege to be a member of the House of Commons and that opinions in the House should come from the members themselves. The idea was not to have expressions used in debate which came from one who was not a member of the House.<sup>1</sup>

**Canada: House of Commons (Discussion on Divorce Bills).**—On May 3,<sup>2</sup> during discussion on a Motion for 2 R. of certain Divorce Bills, Mr. Speaker ruled that it was perfectly in order to discuss the principle of divorce in connection with these Bills. He was drawing the attention of the House to the fact that a number of divorce Bills came from the Province of Quebec, the only Province in which there was no Divorce Court and he was discussing the question whether it would be wise to take steps to correct a situation which might need to be corrected, which remarks were relevant to the Bills actually before the House.

\* **Canada: House of Commons (Reading of Speeches).**<sup>3</sup>—On July 9,<sup>4</sup> Mr. Speaker said:

Before adjourning the House, it is my duty to call the attention of hon. members to Beuchesne's Parliamentary Rules & Forms, III. Ed., p. 102, Article 239, in which they may read:

Besides the prohibitions contained in this standing order, it has been sanctioned by usage both in England and in Canada that a member while speaking must not: (a) read from a written, previously prepared speech.

Many times since the beginning of this Session, continued Mr. Speaker, I thought I should call the attention of hon. members to this rule; but I hesitated to do so. However, I feel that it is my duty now, particularly to-night, to draw the attention of hon. members on both sides of the House to this rule, and to tell them that I feel I should call to order in future members whenever they read their speeches.

**Canada: House of Commons (Practice when Government refuses to answer Q.).**—On April 1,<sup>5</sup> an hon member asked the Minister of Reconstruction and Supply (Rt. Hon. C. D. Howe) a Q. in regard to "Research Enterprises Ltd. Leaside Plant" who replied that as the Q. referred to current transactions as well as to those which had been completed, he would ask that the Q. be dropped and the information obtained before the Committee on the subject. Whereupon Mr. Speaker declared the Question—"Dropped".

An hon. member then rose to ask Mr. Speaker on what ground he had declared the Q. dropped, without the consent of the hon. member asking it.

Mr. Speaker reminded the hon. member that it had always been the practice when the Government refused to answer a Q. to declare the Q. dropped. It had been previously pointed out that hon. members who had asked Qs. which had been dropped would have an opportunity to submit them again.

Mr. Speaker considered that the Minister was entitled to ask that the Q. be dropped, and quoting May<sup>6</sup> and Beuchesne<sup>7</sup> stated that it was the

<sup>1</sup> Beuchesne II, 306. <sup>2</sup> LXXXV, *Com. Hans.* No. 30, 1235. <sup>3</sup> See also JOURNAL, Vols. V, 15-6; XIII, 216.

<sup>4</sup> LXXXV, *Com. Hans.* No. 13, 442-3. <sup>5</sup> XIV, 240. <sup>6</sup> LXXXV, *Com. Hans.* No. 76, 3357.

<sup>7</sup> III, 307.

privilege of Ministers to refuse to answer *Q.s.*, either on the ground of public interest or for the reason that members may have their *Q.s.* answered in the Committees which are appointed by the House. "The fact that the Minister asks that the *Q.* be dropped is, I think, an indication that he does not wish to answer it."

**Canada: House of Commons (War Expenditure Special Committee 1945 and 1946).**<sup>1</sup>—The information on this subject for the 1945 Session was not, owing to War delays, received at the time of going to press with Volume XIV. Some account of the operations of this Committee's operation in both 1945 and 1946 is therefore outlined below.

*Session 1945.*—This Committee was set up on November 6, 1945,<sup>2</sup> with terms of reference adopted to the change of circumstances, reading as follows:

That a select committee be appointed to examine the expenditure to be defrayed out of moneys provided by Parliament for national defence and demobilization, and for other services directly connected with the War, including the disposal of surplus war assets, 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 the Committee shall consist of 25 members, namely (*here naming them*), with power to send for persons, papers and records, to examine witnesses and to report from time to time to the House.

The Committee made 3 Reports, the *First* of which was presented November 13, 1945,<sup>3</sup> and dealt with language, printing of the Committee's minutes, etc., for the suspension of S.O. 64 and the reduction of the quorum from 13 to 10, which was concurred in by the House.<sup>4</sup> The *Second* Report, which asked for leave to sit while the House was sitting, was presented November 22, 1945 and similarly concurred in.<sup>5</sup>

The *Third* and *Final* Report was presented December 14, 1945<sup>6</sup> and stated that the Committee had endeavoured, with the co-operation of officials from the Crown Assets Allocation Committee and War Assets Corporation, to obtain a clear insight into the procedure governing the allocation and distribution of surplus war assets as well as to obtain a general survey of the operations of such Corporation in connection therewith.

The Committee felt, however, that their inquiry had not reached the stage where further comment on the evidence could be made and recommended that a similar Committee be appointed immediately after the opening of the next Session to continue the inquiry. (*A copy of the evidence, etc., taken by the Committee was annexed to the Report, see Appendix to Journals No. 6.*)

*Session 1946.*—This Committee was again set up with the same terms of reference as in 1945.<sup>7</sup>

The Committee made 5 Reports, the *First* of which was presented

<sup>1</sup> See also JOURNAL, Vols. XI-XII, 39; XIII, 61.

<sup>2</sup> LXXXVI, C.J. 226.

<sup>3</sup> *Ib.* 256.

<sup>4</sup> *Ib.* 269.

<sup>5</sup> *Ib.* 302.

<sup>6</sup> *Ib.* 485.

<sup>7</sup> LXXXVII, C.J. 35.

March 27,<sup>1</sup> concurred in by the House of Commons March 29, 1946,<sup>2</sup> and the *Second* presented April 3,<sup>3</sup> and concurred in April 5.<sup>4</sup> These 2 Reports, dealt respectively with the same subjects as Reports 1 and 2 in the previous Session.

The *Third* Report, which was presented April 10,<sup>5</sup> dealt with their inquiries into the disposal of war assets and war material, suggesting that such disposal could be effected with greater expedition by revising the present method of granting priorities and recommended that the period of 30 days granted to federal, provincial and municipal governments be reduced to 10 days.

The Committee also suggested that when surpluses were to be declared by the armed services, etc., advance notice be given to the War Assets Corporation so that its representative be on hand to check and receive such surpluses. This Report was concurred in on April 12.<sup>6</sup>

The *Fourth* Report, presented July 23, asked leave for the Committee to sit while the House was sitting, which was concurred in.<sup>7</sup>

The *Fifth* and *Final* Report was presented August 17.<sup>8</sup> The Committee sat 41 times and heard 20 witnesses. Evidence was taken from the 3 armed services. A statement tabled by War Assets Corporation showed gross sales of declared surpluses 1944-46 at \$226,523,150.26, and the Royal Canadian Naval Services from V.J. Day to March 31, 1946, as \$250,247,639.60. Wide-ranging information was given the Committee by the armed services and witnesses.

The Committee drew the attention of the House and particularly the Minister of Defence to the increase in personal carrier vehicles from 93 pre-war to 4,132 to-day, which the Committee considered excessive.<sup>9</sup> The Committee were critical of the manner in which the R.C.A.F., acting under general authority from the War Assets Corporation, had destroyed equipment at the R.C.A.F. Depots, termed as unserviceable and listed as of no marketable value.<sup>10</sup>

The Committee recommended that equipment donated to certain Reserved Forces and still in store be disposed of and the revenue therefrom be used for the benefit of the personnel of the Armed Forces. The Committee felt that Press articles in regard to such destruction should not be left unchallenged.

Another subject which the Committee had under consideration was making war surpluses available for instructional and school purposes and recommended:

- (1) That the present policy of indefinite loan to educational institutions be broadened to include equipment not readily saleable;
- (2) That official educational representatives be permitted to visit and inspect such material and equipment as may be considered of educational value;
- (3) That there be granted to educational institutions a discount equal to that received by any dealer for similar lines.

In the interests of economy, it was recommended that additional outlets be found, etc., with a view to speeding up War Assets Corpora-

<sup>1</sup> *Ib.* 50.

<sup>2</sup> *Ib.* 69.

<sup>3</sup> *Ib.* 91.

<sup>4</sup> *Ib.* 113.

<sup>5</sup> *Ib.* 126.

<sup>6</sup> *Ib.* 136.

<sup>7</sup> *Ib.* 527.

<sup>8</sup> *Ib.* 727.

<sup>9</sup> *Ib.* 729.

<sup>10</sup> *Ib.* 730.

tion sales and thus save storage and maintenance charges as well as place much needed material on the market.

With a view to effecting economy in the armed services, it was further recommended that all branches review, before the end of 1946, or as early thereafter as possible, the need of retention of consumable stores, particularly with respect to the building up of reserves of clothing and equipment, bearing in mind the present shortage of many lines required for civilian consumption.

It was also recommended that a revision be made of post-war requirements.

In conclusion, the Committee recommended that a similar Committee be appointed immediately after the opening of the next Session and suggested that study be given to the advisability of merging the work of this Committee with that of the Standing Committee on Public Accounts, by broadening its reference to include all war expenditure, with the title of "Special Committee on National Expenditure".<sup>1</sup>

(A copy of the Minutes of Proceedings and Evidence consisting of 1130 pp. was annexed: Appendix to Journals No. 10.)

**Canada: House of Commons (Wearing of Hats by Women in attendance in Galleries).**—On May 29,<sup>2</sup> an hon. lady member drew the attention of the acting House leader, the Minister Veteran Affairs, to the custom not to allow women in the gallery without some form of head covering and, as so many women to-day went everywhere without hats that the observance of this regulation was enforcing indignity on the House.

Whereupon Mr. Speaker, after an interjection, remarked that as the Q. concerned the House, the hon. Minister should put the Question to the Speaker, but not from the floor of the House, as it was against the Rule and that he would be glad to give it consideration.

On June 4<sup>3</sup> Mr. Speaker stated what transpired above and said:

The practice of requiring women to wear hats in the Galleries of the House of Commons was probably borrowed from what was until recently the practice in all churches. Indeed in the churches it may very well have been looked upon as a rule promulgated by Saint Paul, both in the First Epistle to Timothy, in which he recommends that—

In like manner also that women adorn themselves in modest apparel, with shamefacedness and sobriety; not with braided hair, or gold, or jewels, or costly array. Let the woman learn in silence with all subjection.

But I suffer not a woman to teach nor to usurp authority over the man but to be in silence.

and also in his First Epistle to the Corinthians in which he ordered:

Let your women keep silence in the chamber; for it is not permitted unto them to speak; but they are commanded to be under obedience as also saith the law.

The fact that women have now become eligible to the House of Commons and been given the right to speak their minds there, even if it does involve "teaching and using authority over man", shows that the church rules need not necessarily apply to Parliament.

As a matter of fact, continued Mr. Speaker, I am informed that the Church of England dispensed, during the War, with the rule that women appear in

<sup>1</sup> *Ib.* 731.

<sup>2</sup> LXXXVI, *Com. Hans.* No. 48, 2043.

<sup>3</sup> *Ib.* No. 52, 2215.

church with the heads covered, and that it is not apt to be re-established there. As far as this House is concerned, I have made inquiries and I have found that there never was any written rule about the matter. I am not disposed to adopt any social decree; for I think it is advisable to leave the decision to the ladies themselves. I am sure that whether they are covered or hatless their presence in the Galleries will always be welcome.

\* **Canada: Quebec (Salaries of Prime Minister and Members of Executive Council).**—Section 6 of the Executive Power Act,<sup>1</sup> amended by the Legislature Act of 1946<sup>2</sup>, makes the Prime Minister *ex officio* President of the Executive Council, and, without prejudice to the Sessional indemnities and allowances, gives him annually an indemnity of \$10,000 plus an entertainment allowance of \$4,000.

Each member of the Executive mentioned in S. 5 of the Executive Power Act also receives annually an indemnity of \$6,000 plus \$2,000 for entertainment and the other members thereof an indemnity of \$2,000 plus \$2,000 for entertainment expenses. Should the Prime Minister hold any of the Portfolios enumerated in S. 5 he does not receive indemnity or allowance therefor, except his indemnity and allowance as an M.L.A.

\* **Canada: Quebec Legislative Council (Leader of Opposition).**—The Legislature Act<sup>3</sup> has been amended under the Legislature Act of 1946<sup>4</sup> by adding to the principal Act after S. 85, a new section, 85(a), which grants to the Legislative Councillor occupying the recognized position of Leader of the Opposition in such Council an allowance of \$2,000 for entertainment and general office expenses over and above the sessional indemnities and allowances provided for in S. 81 of the Act of 1925.

\* **Canada: Quebec Legislative Assembly (Leader of the Opposition).**—Section 86 of the Legislature Act of 1925 has been replaced, under the Legislature Act of 1946, by a new section granting annually to the M.L.A., occupying the recognized position of Leader of the Opposition in the Legislative Assembly, an indemnity of \$6,000 dollars plus an allowance of \$2,000 for entertainment expenses over and above the sessional indemnities and allowances provided under S. 81 of the Act of 1925.

**Canada: Nova Scotia (Executive Council).**—The Executive Council of this Province consists of such persons as His Honour the Lieutenant-Governor thereof thinks fit to appoint and they hold their offices during pleasure. The Portfolios given in the Act<sup>5</sup> are those of Attorney-General, Provincial Secretary, Ministers of Mines, of Highways and Public Works, of Agriculture and Marketing, of Public Health, of Labour, of Industry and Publicity, whose duties are prescribed by Order in Council from time to time. The Governor in Council may make acting appointments to the Executive Council. The annual salary of a Minister is \$6,000, with \$7,000 to the Premier or First

<sup>1</sup> R.S. 1941, c. 7.

<sup>2</sup> C. 11, S. 6.

<sup>3</sup> R.S. 1925, c. 4.

<sup>4</sup> C. 11.

<sup>5</sup> 8 Geo. VI, c. 3.

Minister, chargeable on the Consolidated Revenue Fund, all fees attached to such offices being paid into such Fund.

Minister without Portfolio receives \$15 *p.d.* for each day's attendance, including the days taken in travelling to and from Halifax, or such other place where the meeting may be held, as well as a sum sufficient to indemnify him for necessary travelling expenses. No such expenses are, however, allowable in respect of any Member of Executive attending Council meetings during Sessions of the Legislature.

Members of Executive are also allowed such travelling expenses incurred by them in discharge of their official duties and Ministers without Portfolio an indemnity of \$8 *p.d.*

All claims for allowances and expenses to any member of the Executive Council must be made in writing, stating particulars of the claim, signed by the claimant and filed in the office of the Provincial Treasurer.

**Canada: Nova Scotia (Tabling of Papers).**—The requirement to lay before the House of Assembly copies of Statutory Regulations is laid down in an Act of 1941,<sup>1</sup> within 20 days next after the coming into force of such Act, or should the House be not then sitting within 20 days after the meeting of the House next after the coming into force of such Act, or "in the case of rules or regulations hereafter made within twenty days next after the same are made" or if the House is not in Session then within 20 days after its next meeting. Failure to comply renders such rules or regulations *ipso facto* repealed. The Schedule to the Act contains the names of 6 public bodies to which the Act also applies.

**Canada: Saskatchewan (Delegated Legislation).**<sup>2</sup>—On February 19, 1946, the Legislative Assembly instructed the Select Standing Committee on Law Amendments to "review those Acts of the Province generally referred to as 'The Professional Acts', and the rules and regulations promulgated thereunder . . . for the purpose of: (1) ascertaining the powers and duties contained therein; (2) determining whether the exercise of such powers and the discharge of such duties by such Professional Societies is in the public interest; (3) determining whether the affairs of such societies are carried on in the public interest; (4) securing such uniformity in the provisions and administration of such Acts as may be found possible, and (5) recommending such amendments thereto as may seem expedient and advisable".

The so-called "Professional Acts" are those under which the various professional bodies (*e.g.*, legal profession, medical profession, etc.) operate.

The inquiry continued into the 1947 Session, the Committee reporting on March 29. The salient recommendation in the report (later concurred in by the Assembly) follows:

#### I.—BYLAWS, RULES OR REGULATIONS.

(1) That certified copies of the bylaws, rules or regulations, and amendments thereto, heretofore or hereafter made, of all professional associations or societies operating under Professional Acts of Saskatchewan, be required to be

<sup>1</sup> 5 Geo. VI, c. 9.  
Legislative Assembly.—[Ed.]

<sup>2</sup> Contributed by the Assistant Clerk in Chamber:

filed with the Provincial Secretary at least annually, and laid by him before the Assembly within 15 days after the commencement of each Session, and that, where subscription to, or observance of, a "Code of Ethics" is a condition of membership of a professional association or society, a certified copy of such "Code of Ethics" be also submitted, unless it be incorporated with the other material mentioned;

(2) That Standing Order 45 be amended by adding to the list of Select Standing Committees therein provided, a Select Standing Committee on Delegated Powers, the reference to which shall be the material mentioned in (1) and the duties of which shall be:

(a) to review and consider such bylaws, rules or regulations, and amendments, to determine:

- (i) whether or not they are within the powers delegated by the Assembly in the several Professional Acts, and
- (ii) whether or not they, or any of them, are in any way prejudicial to the public interest;

(b) to report to the Assembly from time to time the results of its deliberations, and to make recommendations on such of the said bylaws, rules or regulations, and amendments, as may be promulgated or nullified.

(3) That where bylaws, rules or regulations, or amendments thereto, are made under powers conferred by the Legislature, the same shall take effect as and from the date set by the Council or governing body of the professional association or society, but be subject to the approval of the Assembly at the next ensuing Session (if the Assembly be not then in Session), and to confirmation by the Lieutenant-Governor in Council: provided, however, that where in such legislative proceedings any bylaw, rule or regulation, or amendment, is annulled for either of the reasons set forth in (2) (a), it shall cease forthwith to have effect, but without prejudice to its previous operation or anything duly done thereunder.

**Canada: Saskatchewan (Disqualification of Members).**<sup>1</sup>—The Legislative Assembly Act<sup>2</sup> was amended, during the 1946 Session, by adding 2 Clauses to S. 15, relating to exceptions to disqualification of members. The first provides that persons required to collect a tax imposed by any Act of the Province (*e.g.*, the Education (Sales) Tax) and receives remuneration for so doing, shall not for that reason be disqualified. The second covers the case of persons entering into a bargain or contract with any Crown Corporation created under The Crown Corporations Act, 1945.

The Legislative Assembly Act was further amended, in the 1947 Session, to permit part of the \$2,000 Sessional indemnity paid to members to be considered as expenses, and thus tax-free so far as Dominion Income War Tax is concerned. The \$2,000 was re-allocated \$1,350 to indemnity, and \$650 to allowance for expenses, the proportion permitted by a 1946 amendment to the Dominion Income War Tax Act.<sup>3</sup>

**Canada: Saskatchewan (Voting Age Reduced).**<sup>4</sup>—The Saskatche-

<sup>1</sup> Contributed by the Assistant Clerk in Chamber: Legislative Assembly.—[Ed.]

<sup>2</sup> R.S.S., 1940, c. 3, S. 15.

<sup>3</sup> Statutes of Canada, 1946, c. 55.

<sup>4</sup> Contributed by the Assistant Clerk in Chamber, Legislative Assembly.—[Ed.]

wan Election Act was amended,<sup>1</sup> in the 1945 Session, to reduce the voting age in elections to the Provincial Assembly from 21 years to 18 years.

**Canada: Saskatchewan (Standing Orders).**<sup>2</sup>—Several industrial, commercial and service enterprises having been commenced by the Saskatchewan Government under the provisions of The Crown Corporation's Act, 1945, a committee on Crown Corporations has been added to the list of Select Standing Committees provided by S.O. 45. The reference to the Committee is "the annual reports and financial statements" of the various corporations.

**Canada: Saskatchewan (Radio Broadcasting of Debates).**<sup>3</sup>—Radio broadcasting of selected proceedings of the Saskatchewan Legislature was inaugurated in the 1946 Session, and continued in 1947. The Saskatchewan Assembly thus became the first of Canadian Provincial Legislatures to go "on the air" regularly. Selection of speeches and proceedings to be broadcast is made by a Select Special Committee under the chairmanship of Mr. Speaker. Allocation of time is made roughly on the basis of the composition of the House, which is: Government members (Co-operative Commonwealth Federation Party), 47; Opposition members (Liberal Party), 5; Active Service Voters' Representatives, 3.

Actual distribution of radio time available was:

1946 Session: Government members, 23 hours 20 minutes; Liberal members, 7 hours 40 minutes; A.S.V.R. members, 2 hours; Miscellaneous matters, 3 hours.

1947 Session: Government members, 29 hours 35 minutes; Liberal members, 10 hours 20 minutes; A.S.V.R. members, 2 hours; Miscellaneous matters, 2 hours 25 minutes.<sup>4</sup>

**Australia (Minister of State Abroad).**—The Rt. Hon. J. A. Beasley, M.P., was appointed Australian Minister Resident in London in 1945 but resigned his seat in the House of Representatives August 14, 1946, to be appointed Commonwealth High Commissioner in the United Kingdom on the following day.

The Rt. Hon. R. G. Casey, D.S.O., M.C., resigned his seat in the House of Representatives on appointment to an Australian Diplomatic post in Washington in 1940 as also did the Hon. N. J. O. Makin on appointment to the same post in 1946.

Six ex-members of the Commonwealth Parliament were appointed to Diplomatic and High Commission posts abroad during the War.<sup>5</sup>

\* **Australia (Remuneration and Free Facilities to Senators and M.P.s).**<sup>6</sup>

*Secretary-typists.*—By a decision of Cabinet, all Senators and

<sup>1</sup> Stat. Sask., 1945, c. 3.  
Legislative Assembly.—[ED.]

<sup>2</sup> Contributed by the Assistant Clerk in Chamber:  
<sup>3</sup> Contributed by the Assistant Clerk in Chamber:  
Legislative Assembly.—[ED.]

<sup>4</sup> See Article IX, hereof.—[ED.]

<sup>5</sup> Contributed by the Clerk of the Senate.—[ED.] <sup>6</sup> See also JOURNAL, Vols. IV, 39; VII, 56.



Members of the House of Representatives who desire such assistance are provided with secretary-typists—that is, an officer who would be at the same time both a secretary and a typist. The employment is on a temporary basis, and the member concerned makes his own selection. Some members have appointed their own relatives. It was decided that secretary-typists would not travel, and that travelling allowances and fares would not be paid. The present remuneration for adults is a flat rate of £301 *p.a.*

*Travelling Expenses.*—An addition to travelling facilities already in existence is the payment of an allowance at the rate of £1 2s. 6d. *p.d.*, to Senators and Members, other than Ministers, as travelling expenses in Canberra for each Parliamentary sitting day on which they are in attendance at the sittings of Parliament. In the case of Senators and Members from distant States the allowance is paid also for short adjournments.<sup>1</sup>

**\*Australia (Parliamentary Catering Services).<sup>2</sup>**

*Staff.*—During 1946 it was decided to replace waitresses, who had given valuable service during the war period, with ex-servicemen. The experiment, however, proved a failure mainly owing to difficulty of obtaining experienced staff. The difficulty was caused by the action of private employers who, in defiance of the Government's wage pegging regulations, offered wages far above those paid by the Government. As a result of the employment of inexperienced staff, the efficiency of the service provided in the Refreshment Rooms has fallen, and it has been decided to revert to the employment of female labour drawn mainly from residents of Canberra.

*Industrial Trouble.*—The first strike at Parliament House in its history occurred on August 20, 1946, when the entire temporary staff of the Parliamentary Refreshment Rooms ceased duty as a result of the action of the Secretary, Joint House Department, in dismissing the Chef.

Parliament was then in Recess, but a Conference of State Premiers, presided over by the Prime Minister (the Rt Hon. J. B. Chifley), was being held in the House of Representatives Chamber. The Prime Minister, without consulting the President of the Senate and the Speaker of the House of Representatives, who were absent from, but in telephonic communication with, Canberra, took immediate action and appointed a Conciliation Commissioner (Mr. G. A. Findlay) to hear and determine the dispute. The Prime Minister's direction to the Commissioner was made "in pursuance of Regulation 16 of the National Security (Industrial Peace) Regulations", and he was directed "forthwith to hear and determine the said industrial dispute".

At the hearing, which took place during the same afternoon, the Chef, contrary to the usual practice in such inquiries, was allowed to be represented by an official of the Trades and Labour Council. The Secretary, in his evidence before the Commissioner, stated that he had

<sup>1</sup> Contributed by the Clerk of the Senate.—[ED.]

<sup>2</sup> See also JOURNAL, Vols. III, 91; XI-XII, 48.

terminated the services of the Chef because of excessive drinking, and that by such action the Chef did not fulfil the requirements for permanent appointment which was promised him if considered suitable. For the Chef it was contended that though he drank more than the average man his work was never impaired by it. The Commissioner considered that the Chef had been wrongfully dismissed and ordered his re-instatement. The staff of the Refreshment Rooms thereupon returned to work and there was no further interruption during the remaining period of the Premier's Conference.

The right of the Prime Minister in appointing a Conciliation Commissioner to hear and determine the dispute has not been openly questioned in Parliament, but there appear to be grave doubts as to whether such action did not constitute a breach of Parliamentary privilege.

The next crisis in the Refreshment Rooms occurred when the Chef and the rest of the temporary kitchen staff gave two days' notice on November 4, 1946, just prior to the Opening of Parliament on November 6. The reason for the Chef's action in giving notice was that his demands for a tax-free salary of £15 a week and free board were refused by the President and the Speaker. The other members of the kitchen staff made similar demands for their wages to be tax-free, but these were likewise refused. The sudden cessation of duty on the part of the kitchen staff on the eve of the Opening of Parliament resulted in a great burden being thrown on the remaining employees in the Refreshment Rooms as they were required to provide Afternoon Tea for nearly a thousand Guests on the Opening Day and also meals for members and officers. However, offers of assistance which came from many sources were accepted, and the catering work connected with the Opening was carried out successfully.<sup>1</sup>

**Australia: New South Wales (Interpretation Act).**—The Acts Interpretation Act (No. 10) enacts as a general rule a provision already in a number of statutes that every Act shall be a valid enactment to the extent to which it does not exceed the Legislative power of the State. This is to avoid an entire Act being invalidated because some provision in it is outside the power of the State. Cognisance is taken of Saturday closing in many Government Departments and other premises by the inclusion of Saturday with Sunday and Public holidays in the provision which extends the time prescribed by any statute for doing something when the time falls on one of those days.<sup>2</sup>

**Australia: Victoria (Constitutional Amendments).**—During 1945, Parliament passed the National Security (Repeal) Act (No. 5073) which repeals the National Security (Emergency Powers) Act, 1939<sup>3</sup> and the Annual Acts which continued this Act in force during the War years. In repealing the Emergency Powers Acts Parliament provides that

<sup>1</sup> Contributed by the Clerk of the Senate.—[ED.]      <sup>2</sup> Contributed by the Clerk of the Parliaments and Clerk of the House of Assembly.—[ED.]      <sup>3</sup> See JOURNAL, Vol. IX, 32.

certain of the Regulations made thereunder shall be continued in force. The repealed Acts had provided that if at any time when Parliament was not sitting not less than 20 members of the Assembly or 30 members of Parliament addressed to the President or the Speaker a petition objecting to a regulation under the Emergency Powers Acts and requesting that Parliament be summoned, then Parliament shall be summoned to meet as soon as practicable.<sup>1</sup>

**Australia: Victoria (Death of M.L.A. on War Service).**—A member of the Legislative Assembly, Lieut. G. H. Lamb, who had enlisted for service abroad, died in December, 1943, while a P.O.W., in Malaya, but his death was not notified until September, 1944. Section 194 of The Constitution Act Amendment Act, 1928, provides that in the event of a vacancy occurring in the Legislative Assembly the Speaker shall *within one month after the occurrence of the vacancy* issue a new Writ.

In order to validate the issue of a new Writ to fill the vacancy caused by Lieut. Lamb's death and to provide for similar cases, Parliament passed the Electoral (War Service Deaths) Act, 1944, which provides that where a vacancy arises as the result of the death of a member on War Service during the War which commenced in 1939, the vacancy shall for the purposes of the said S. 194 be deemed to have occurred when the fact of the death of the member becomes known to the Chief Secretary in Victoria.<sup>2</sup>

**\*Australia: Victoria (Power of King's Deputy to recommend Amendments to Bills submitted for Royal Assent).**—With reference to the starred Article on this subject in Volume XIV, p. 214, both Houses have, pursuant to S. XXXVI of the Constitution Act (18 & 19 Vict. c. 55), made Standing Orders prescribing the method of taking into consideration amendments transmitted by the Governor. These Standing Orders<sup>3</sup> assume or imply that the Governor will transmit the amendments he desires in any Bill to the House in which the Bill originated and the Standing Orders provide that when such amendments have been agreed to by the House to which they were transmitted they shall then be forwarded to the other House for its concurrence. The Council Standing Orders provide that amendments transmitted by the Governor shall be agreed to, or not agreed to, but no amendment shall be proposed therein. The Assembly Standing Orders, however, provide that amendments transmitted by the Governor shall be treated and considered in the same manner as amendments proposed by the Legislative Council; so that though the Council may not amend Governor's amendments the Assembly may do so and frequently has done so. When the Assembly have sent to the Council, Governor's amendment which they have amended the Council have agreed to the Governor's amendments as amended by the Assembly or have disagreed with the Assembly's amendments.<sup>4</sup> Both Houses have from time to time

<sup>1</sup> Contributed by the Clerk of the Legislative Council and the Clerk of the Legislative Assembly.—[ED.]

<sup>2</sup> Contributed by the Clerk of the Legislative Council and the Clerk of the Legislative Assembly.—[ED.]

<sup>3</sup> S.O. 296-8 (Council) and 262-3 (Assembly).

<sup>4</sup> 1863 *Vict. Hans.* 1180; 1865, 1107, 1119.

exercised their right under their Standing Orders to disagree with Governor's amendments and sometimes one House has disagreed with Governor's amendments to which the other House has agreed.<sup>1</sup> Under Joint S.O. 15A it is the duty of the Clerk of the Parliaments when a Governor's amendment has been agreed to by both Houses to endorse such amendment on the original Bill and to include it in the copies of the Bill presented to the Governor for Royal Assent.

There is no statutory limit to the Governor's power under the Constitution Act to transmit amendments for the consideration of Parliament and amendments of substance have frequently been so transmitted,<sup>2</sup> but it has from time to time been contended by both Houses that the exercise of the power should be restricted to formal amendments and the correction of errors. In 1865, the Council passed a Resolution to that effect, and on several occasions this view has been expressed in debate.<sup>3</sup> In a debate in the Council on Governor's amendments in 1941<sup>4</sup> there appears the most recent and most complete statement of the dangers to the Parliamentary system of transmitting amendments of substance as Governor's amendments, due to the absence of the usual safeguards of full notice in the successive stages of a Bill and in the case of certain constitutional Bills the avoidance of the necessity of an absolute majority vote on the second and third readings. The contrary view that the necessity of submitting Governor's amendments for the consideration of the Houses is a sufficient safeguard, was expressed in a debate in the Assembly in 1865.<sup>5</sup> In 1861, the Assembly rejected a Governor's amendment to an Appropriation Bill on the ground that it is contrary to the spirit of the Constitution that either the Legislative Council or the Governor should propose any alteration in an Appropriation Bill.<sup>6</sup> In this case the amendment was a substantial one.

\*Australia: Victoria (Leader of the Opposition).—With reference to the starred Article (XV) on this subject in Volume XIV of the JOURNAL, p. 228, the following information is substituted for that there given:

*Legislative Council.*—There is no "Leader of the Opposition" but there is an "Unofficial Leader of the Legislative Council". Information with regard to this office has already appeared in the JOURNAL.<sup>7</sup> To that information is now added that since January 1, 1940, an allowance at the rate of £250 *p.a.* has been provided in the annual Appropriation Act for the Unofficial Leader of the Legislative Council. Such provision might be regarded as giving some official recognition for this "unofficial" office. The allowance of £250 is payable in addition to the allowance paid to members of the Legislative Council as reimbursement of expenses.

*Legislative Assembly.*—Provision is made by S. 142 of The Constitu-

<sup>1</sup> 1865 *Vict. Hans.* p. 732, 745.

<sup>2</sup> 1865 *Vict. Hans.* p. 893, 913 and 985.

<sup>3</sup> 1865 *Vict. Hans.* p. 864; 1879 *ib.* 2261.

<sup>4</sup> 1941 *Vict. Hans.* p. 899-903.

<sup>5</sup> 1865 *Vict. Hans.* p. 1009.

<sup>6</sup> 1861 *Vict. Hans.* p. 1271-83.

<sup>7</sup> Vol. VIII, 48.

tion Act Amendment Act, 1928 for the payment to the member of the Legislative Assembly who is for the time being the "Leader of His Majesty's Opposition", of any sum provided by Parliament in consideration of his services as such Leader. The allowance at present provided is £350 and is payable in addition to the allowance paid to members of the Legislative Assembly as reimbursement of expenses.<sup>1</sup>

\*Australia: Victoria (Allowances to Ministers without Portfolio).<sup>2</sup>—Act No. 5052 passed during Session 1944 contained the following provisions:

The Act provides that there shall be paid out of the consolidated revenue an allowance at the rate of £250 *p.a.* to each of not more than 3 responsible Ministers of the Crown not receiving a salary as elsewhere provided in The Constitution Act Amendment Acts; such allowance being in addition to the allowance paid to Members as reimbursement of expenses. In explanation of this provision it should be mentioned that S. 15 of The Constitution Act Amendment Act, 1928 provides that not more than 9 salaried responsible Ministers of the Crown may be appointed at any time of whom not more than 2 may be members of the Council and not more than 7 may be members of the Assembly; but for many years past it has been the practice for the Governor to appoint 3 or 4 non-salaried Ministers in addition to the salaried Ministers (usually 2 in the Council and 1 or 2 in the Assembly). The new provision above referred to enables an allowance of £250 to be paid to each of 3 of the non-salaried Ministers.<sup>3</sup>

\*Australia: Victoria (Remuneration to M.L.C.s and M.L.A.s).<sup>1</sup>—Act No. 5052 of 1944 also increased the allowance to be paid to members as reimbursement of expenses:

- (a) M.L.C.s from £200 to £350;
- (b) M.L.A.s from £500 to £650.

Australia: Victoria (Pensions for M.L.C.s and M.L.A.s).—During 1946, Parliament passed a Parliamentary Contributory Retirement Fund Act<sup>4</sup> which created a Parliamentary Members' Pensions Fund to be managed by 6 Trustees of whom the Treasurer of Victoria, the President of the Council and the Speaker of the Assembly are *ex officio* Trustees, and 3 other members to be appointed Trustees by the Governor in Council (1 M.L.C. and 2 M.L.A.s).

All members must contribute to the Fund at the rate of £1 per fortnight, the contributions being deducted from the periodical payments to Ministers and members of their official salary or allowance. The Act provides also that there shall be paid into the Fund from consolidated revenue such amounts as are from time to time necessary to enable payments of pensions, etc., under the Act to be made out of the Fund.

<sup>1</sup> Contributed by the Clerk of the Legislative Council and the Clerk of the Legislative Assembly.—[ED.] <sup>2</sup> See also JOURNAL, Vol. V, 33. <sup>3</sup> Contributed by the Clerk of the Legislative Council and the Clerk of the Legislative Assembly.—[ED.]

<sup>4</sup> No. 5185.

Pensions and other benefits are payable out of the Fund as follows:

- (a) A pension fortnightly at the rate of the basic wage is payable to an ex-member (i) if he has served as a member for an aggregate period of 15 years or more; or (ii) if he has been a member in at least 3 consecutive Parliaments and has ceased to be a member as a result of defeat at an election or as the result of resignation for, or of not seeking re-election owing to, good and sufficient reasons which satisfy the trustees:
- (b) a retiring allowance is payable to a person who ceases to be a member as the result of defeat at an election or as the result of resignation for, or of not seeking re-election owing to, good and sufficient reasons which satisfy the trustees, but who is not entitled to a pension as aforesaid. In the case where such person has been a member in at least 2 consecutive Parliaments such retiring allowance shall be equal to the annual amount of the official allowance to which an M.L.A. is entitled as reimbursement of expenses, (£650), and in the case where such person has not been a member in at least 2 consecutive Parliaments such retiring allowance shall be equal to half such annual amount.
- (c) Upon the death of a person receiving a pension or of a member who would have been on ceasing to be a member entitled to a pension as aforesaid, his widow shall until her death or re-marriage be entitled to a pension equal to two-thirds of such pension.
- (d) If a member dies there shall, unless a pension is required to be paid to his widow as aforesaid, be paid to his legal personal representative a sum equal to the aggregate amount of his contributions to the Fund or the annual amount of the official allowance to which an M.L.A. is entitled as reimbursement of expenses (£650), whichever is the greater.

If a person who is receiving or is entitled to receive a pension as aforesaid becomes a member of the Parliament of the Commonwealth or of any Australian State his right to receive that pension shall, while he is such a member, be suspended; and if he accepts an office of profit under the Crown (other than a Parliamentary or Ministerial Office) he shall thereafter be disqualified from receiving that pension.

The "basic wage" which is fixed in the Act as the rate of the full pension means the basic wage from time to time for Melbourne as derived from the quarterly statement of "Court Series" retail price index numbers issued by the Industrial Registrar of the Commonwealth Court of Conciliation and Arbitration (together with any amount for the time being generally added as loading to the wage so derived). In December, 1946, this wage was £4 19s. od., and the loading was 7s.; making a total of £5 6s. od. per week.<sup>1</sup>

**Australia: Victoria (Offices of Profit).**—Section 27 of The Constitution Act Amendment Act, 1928 provides a penalty for the case of a person who accepts any office or place of profit under the Crown while he is a member of Parliament or within six months after ceasing to be such member. The amending Act repeated the words underlined.<sup>2</sup>

**Australia: Victoria (Standing Orders).**—During 1945, the Council made 2 amendments to the Standing Orders.<sup>3</sup>

<sup>1</sup> Contributed by the Clerk of the Legislative Council and the Clerk of the Legislative Assembly.—[ED.]

<sup>2</sup> Contributed by the Clerk of the Legislative Council and the Clerk of the Legislative Assembly.—[ED.]

<sup>3</sup> 1945, *Vict. Hans.* 3664.

*Precedence of debate on Address in Reply.*—The first amendment was to insert a new Standing Order No. 20A to give precedence to the debate on the Address in Reply, as follows:

On the Motion of the Hon. J. H. Lienhop, it was resolved:

That the following be adopted as a Standing Order of the Council to follow S. O. 20:

20A. The debate on the Address in Reply shall take precedence over all other business except questions, formal business, urgent motions, and urgent Bills. For the purposes of this Standing Order formal business shall be deemed to include motions for Sessional Orders, leave of absence to Members, appointment of Standing Committees, and introduction and first reading of Bills.

*Suspension of Standing Orders.*—The second amendment is consequential on the first and it provides that the existing S.O. 309 be repealed and re-inserted in an amplified form as two S.O.'s 309 and 309A, the latter setting out the procedure for determining the question of urgency as follows:

On the Motion of the Hon. J. H. Lienhop, it was resolved:

That S. O. 309 be repealed and that the following be adopted as Standing Order of the Council:

309. The foregoing Rules and Orders, or any of them, may at any time be suspended or dispensed with by the Council, but (except by leave of the Council or on the ground of urgency) no motion shall be made to dispense with any such Rule or Order without due notice thereof.

309A. When the question of urgency arises in relation to the application of the foregoing Standing Orders numbered 20A, 290, and 309, or any of them, such question shall be decided by the Council upon motion without notice or debate other than a statement by the mover of the particulars claimed to establish urgency. Provided that no such motion shall be allowed where the President declares that in his opinion the case could not reasonably be regarded as one of urgency.

Ordered.—That the new S.O. 20A, the revised S.O. 309, and the new S.O. 309A be laid before His Excellency the Governor and his approval requested thereto.

\**Australia: Victoria (Reading of Speeches).*—With reference to the starred Article on this subject in the JOURNAL,<sup>1</sup> the following information is added in respect of this State:

Neither in the Legislative Council nor in the Legislative Assembly is there a Standing Order prescribing a specific rule regarding the reading of speeches, but each House has a Standing Order providing that in the absence of a Standing Order the rules and practice of the House of Commons shall be followed. Accordingly the presiding officer of each House applies the rule stated in May XIV, 417-8. As in other Parliaments, difficulty is experienced in applying the rule strictly and exceptions are made in certain cases such as when information on technical matters is being conveyed to the House. Also in the case of the Council where Ministers have to sponsor Bills relating to

<sup>1</sup> Vol. XIII, 216.

many different Departments it is usual to allow considerable latitude in the reference to copious notes.

The following are references in the Victorian *Hansard* to Rulings which have been given in the Council and the Assembly:<sup>1</sup>

<i>Legislative Council.</i>	<i>Legislative Assembly.</i>
Vol. 165, p. 1700.	Vol. 132, p. 3561.
184, pp. 4059-60.	168, p. 1827.
190, p. 2986.	173, p. 997.
192, p. 2627.	211, p. 1130.
197, pp. 2244-5.	217, p. 377.
216, p. 1341.	

**Australia: Victoria (Legislative Assembly Electoral Delimitation).<sup>2</sup>**

—The Electoral Districts Act, 1944 (No. 5028) provided for the appointment of 3 Commissioners to submit to Parliament a proposed redivision of Victoria into Electoral Districts for the Assembly. The Commissioners' proposed redivision was submitted on May 2, 1945, and approved by Parliament on May 29—June 5, 1945, a General Election of members of the Assembly to represent the new Electorates being held on November 10 of that year.<sup>3</sup>

**Australia: Queensland (Electoral).—**During the year under review in this issue, a pamphlet of 219 pp.<sup>4</sup> with index has been published of "The Elections Acts, 1915-1944"; a Consolidation Act complete as at December 31, 1946, being the Elections Act of 1915 (6 Geo. V, No. 13) as amended by the Elections Act Amendment Act of 1925, 1930, 1932, 1936, 1940, 1942, 1943 and 1944.<sup>5</sup>

It is not proposed to deal with the electoral machinery provided for in this law, but reference will be made to certain of its provisions more closely related to Parliament and its members.

The franchise is enjoyed by every adult natural-born or naturalized British subject, with residence in Australia for a continuous period of 6 months and for 3 months in Queensland, who has lived in an electoral district of Queensland for a continuous period of one month immediately preceding the day on which he claims to be enrolled a voter, whose name is on the voters' roll<sup>6</sup> thereof. Special provision is made for members of the Fighting Forces and Merchant Seamen.<sup>7</sup> There are the usual disqualifications from voting—namely, aliens, persons under 21 years of age, each adult having only one vote,<sup>8</sup> unsound mind, or convicted of certain offences.

Except in regard to British Indians and naturalized Syrians with the qualifications required of Europeans,<sup>9</sup> Non-Europeans are barred in

<sup>1</sup> Contributed by the Clerk of the Legislative Council and the Clerk of the Legislative Assembly.—[ED.] <sup>2</sup> See also JOURNAL, Vols. VI, 52; VII, 57; VIII, 49; IX, 32.

<sup>3</sup> Contributed by the Clerk of the Legislative Council and the Clerk of the Legislative Assembly.—[ED.] <sup>4</sup> The Elections Acts, 1915 to 1944, and Regulations with Index, 1946. Compiled by Hon. D. A. Gledson, M.L.A., Attorney-General (Government Printer, Brisbane, Queensland).

<sup>5</sup> Respectively—16 Geo. V, No. 21; 21 Geo. V, No. 39; 23 Geo. V, No. 23; 1 Edw. VIII, No. 118; 4 Geo. VI, No. 15; 6 Geo. VI, No. 36; 7 Geo. VI, No. 31 and 8 Geo. VI, No. 6. <sup>6</sup> S. 9.

<sup>7</sup> Ss. 10 A and 10 B. <sup>8</sup> S. 12. <sup>9</sup> S. 11, 11 A.



respect of aboriginal Natives as well as aboriginal Natives of Australia, Asia, Africa or the Pacific Islands, as well as aboriginal Natives of the islands in the Torres Straits or whose parents are of that nationality, or half-castes as defined in the *Aboriginals Protection and Restriction of the Sale of Opium Act, 1897 to 1901*,<sup>1</sup> which half-castes are subject to the control of the Protector of Aboriginals, whether as inmates of institutions for them or of any mission station, etc., or hired out for employment with any employer and who, notwithstanding such hiring out, are still under the control and general supervision of such Protector.

The only qualification for a candidate is that, he or she, shall be a registered elector.<sup>2</sup> Voting is compulsory.<sup>3</sup>

In the case of uncontested elections, the provisions of the Act apply in such constituencies in order to enable voters of other districts to vote as absent voters in that district.<sup>4</sup>

Postal voting is provided for in case of sickness, infirmity or approaching maternity.<sup>5</sup> Special provision is also made for voters living on islands off the Coast<sup>6</sup> and members of the Fighting Services.<sup>7</sup> Political articles in the Press must be signed.<sup>8</sup>

Under Part VIII of the Act, provision is made for Election Tribunals constituted by a Judge of the Supreme Court and such Tribunals are courts of record. These Tribunals deal with election petitions, etc.,<sup>9</sup> and the Chief Justice of the State is required to certify annually the name of such Judge to Mr. Speaker,<sup>10</sup> which Judge is to certify determination to Mr. Speaker.<sup>11</sup>

The Legislative Assembly on being informed of the report of the Judge, orders it to be entered on the Journals and gives the necessary instructions.<sup>12</sup> Acceptance of office or prorogation does not stop a petition.<sup>13</sup>

The Regulations under Part III<sup>14</sup> of the Act relate to the enrolment of and voting by absent members of the Naval, Military and Air Forces and to voting by absent Merchant Seamen and absent electors in employment in the civil constructional corps or under the authority or direction of the Allied Works Council or by or in the execution of a contract with the Commonwealth for supplying munitions or for other purposes of Defence.

**Tasmania (Legislative Council: Electoral).**—The Constitution Act, 1946,<sup>15</sup> amends the Principal Act—the Constitution Act, 1934,<sup>16</sup> in regard to elections for and representation in the Upper House by increasing the membership of the Legislative Council from 18 to 19 members,<sup>17</sup> and all future M.L.C.s are to be elected, one to represent each of the 19 Council Electoral Divisions into which the Island is now delimited by Schedule II to the Act. The minimum age qualification for an M.L.C. is reduced from 30 to 25 years.<sup>18</sup>

<sup>1</sup> 61 Vict. No. 17 and 2 Edw. VII, No. 1; repeated *see now* 3 Geo. VI, No. 6.

<sup>2</sup> S. 39.

<sup>3</sup> S. 63.

<sup>4</sup> S. 69.

<sup>5</sup> S. 71.

<sup>6</sup> S. 71 A.

<sup>7</sup> S. 71 B.

<sup>8</sup> S. 91.

<sup>9</sup> S. 101.

<sup>10</sup> S. 102.

<sup>11</sup> S. 117.

<sup>12</sup> S. 123.

<sup>13</sup> S. 13.

<sup>14</sup> P. 133.

<sup>15</sup> 19 Geo. VI, No. 48.

<sup>16</sup> 25 Geo. V, No. 94, as amended by

Edw. VIII, and 1 Geo. VI, No. 61; 5 Geo. VI, No. 66; 7 & 8 Geo. VI, No. 74.

<sup>17</sup> Ss. 4, 6.

<sup>18</sup> S. 3.

Section 19 of the Principal Act is amended by S. 5 of the Act of 1946, sub-section (3) of which still provides for 3 M.L.C.s retiring every year and 3 to be elected in their place but at the periodical election in 1953, and each sixth successive year thereafter the retirement and replacement will be 4 M.L.C.s. There is also a change of polling day.

The franchise qualification of ownership of freehold estate in the Division is now to be "of an annual value of or exceeding ten pounds" and occupation is reduced from £30 to "an annual value of or exceeding twenty-six pounds".<sup>1</sup>

The franchise for the Upper House is further altered by defining "Member of His Majesty's Forces" as a—

member of any land, sea or air force raised in any part of His Majesty's Dominions for service in any war in which His Majesty was engaged prior to the third day of September, 1939, who served outside the part of His Majesty's Dominions in which such force was raised, and any person who was in the war which commenced on the third day of September, 1939 engaged on full-time service outside Tasmania as a member of any of the following services:

- The Permanent Forces of the Commonwealth;
- The Royal Australian Navy;
- The Australian Imperial Force;
- The Royal Australian Air Force;
- The Citizen Forces;
- The Royal Australian Naval Nursing Service;
- The Women's Royal Australian Naval Service;
- The Australian Army Nursing Service;
- The Australian Women's Army Service;
- The Australian Army Medical Women's Service;
- The Royal Australian Air Force Nursing Service;
- The Women's Auxiliary Australian Air Force,

or who was a member of the Naval, Military or Air Forces raised in any part of His Majesty's Dominions other than Australia, and was engaged on active service outside that part;

A further amendment to S. 28 is the addition of subsections limiting an elector's vote to one division, provided that an employee of the State, a local authority, corporation or company, required by duty, etc., to reside in any premises within the division for which his vote is to be given which are not separately assessed, is qualified to vote for an M.L.C. for that division.

Certain alterations are made in the delimitation of electoral divisions of the Legislative Council.<sup>2</sup>

Section 9 contains transitory provisions in regard to representation and 4 named M.L.C.s are to retire in 1947, '48, '50 and '51 respectively.

The Act came into operation on July 1, 1946.<sup>3</sup>

**\*Australia: Tasmania (Joint House and Library Committees).—** During the year under review in this Volume, S.O. 261 of the Legislative Council and S.O. 396 of the House of Assembly of the Island have been repealed and a Standing Order passed by each House providing for a Joint House Committee consisting of 3 members of each House, one of

<sup>1</sup> S. 7.

<sup>2</sup> S. 8.

<sup>3</sup> S. 2.

those from the Legislative Council and one from the House of Assembly to be Mr. President and Mr. Speaker respectively, to control the Parliament House and grounds, with power also to control: Parliamentary Catering; allotment of rooms, subject to the approval of Mr. President and Mr. Speaker, as the case may be; repairs, renewals, furniture, etc.; upkeep of the Parliamentary Gardens and roadways; and any other matter referred to them by Joint Resolution of both Houses.

Any expenditure incurred by this Committee in the exercise of their functions is to be defrayed out of moneys provided by Parliament for the purposes of the Committee.

Six M.L.A.'s are to be appointed by each House to serve on the Joint Committee of the Houses to manage the Library.

Each Committee has power to sit and act during any Recess of Parliament and 3 members irrespective of the House to which they belong are to form a quorum of each Committee.<sup>1</sup>

**\*Australia: Tasmania (Parliamentary Catering).**—During the Session S.O. 261, which provides for the appointment each Session of Joint Committees to manage the Refreshment Rooms and the Library, was amended by providing for the appointment of a House Committee as follows:

(1) A Committee of 3 members, one of whom shall be the President, to serve on a Joint Committee (to be known as the House Committee) to control the Parliament House and the grounds appurtenant thereto, with power to regulate and control all matters relating to—

- (a) Catering for Parliament.
- (b) Allotment of rooms, subject to the approval of the President or Speaker, as the case may be.
- (c) Repairs, renewals and alterations to Parliament House and all fittings and furniture therein or connected therewith.
- (d) Maintenance and upkeep of the gardens and roadways of Parliament Reserve.
- (e) Any other matters referred to the Committee by a Joint Resolution of both Houses.

Any expenditure incurred by the House Committee in the exercise of any of its functions shall be defrayed out of moneys to be provided by Parliament for the purposes of the Committee.<sup>2</sup>

**New Zealand (Members of Parliament acting as Ministers of State abroad during the War).**—The Hon. (now the Rt. Hon.) W. Nash was appointed Envoy Extraordinary and Minister Plenipotentiary to the United States of America on November 18, 1941. He took up residence in Washington on February 1, 1942 and occupied the post until June 30, 1944. He remained a member of the Ministry and continued to represent his constituency during his absence and returned to New Zealand from time to time to present the Budget and to take part in 1943 in the General Election Campaign. He was succeeded by Mr. C. A. (now Sir Carl) Berendsen, the then High Commissioner for New Zealand in Australia, and formerly Permanent Head of the Prime Minister's Department and Secretary of External Affairs in New Zealand.

<sup>1</sup> Contributed by the Clerk of the Legislative Council and the Clerk of The House of Assembly.—[ED.]    <sup>2</sup> Contributed by the Clerk of the Legislative Council.—[ED.]

The Hon. F. Langstone, Minister of Lands, was appointed High Commissioner to Canada on May 1, 1942, for 3 years, but resigned in September of the same year. However, he remained a member of the Ministry and continued to represent his constituency during his absence. The official Secretary acted as High Commissioner until the arrival of his successor.

The Hon. D. Wilson who had been Leader of the Legislative Council and for over 3 years a Minister of the Crown, was, while still a member of the Legislative Council, appointed as from April 8, 1944, High Commissioner for New Zealand in Canada for a period of 3 years. His 7-year period of appointment as M.L.C. ceased by the effluxion of time on September 22, 1944, while he was in Canada. He resigned his position in the Ministry on taking up his appointment as High Commissioner—*i.e.*, on April 8, 1944.<sup>1</sup>

**New Zealand (Women as Legislative Councillors).**—Reference was made to this subject in a previous Volume.<sup>2</sup> Section 2 of the Legislature Act, 1908,<sup>3</sup> reads:

The Governor may from time to time, in His Majesty's name, by instrument under the Public Seal of New Zealand, summon to the Legislative Council of New Zealand (hereafter called "The Council") such male persons as he thinks fit, and any person so summoned shall thereby become a member thereof.

Section 40 of the Statutes Amendment Act 1941,<sup>4</sup> reads:

Section 2 of the Legislature Act, 1908 is hereby amended by omitting from subsection (1) the word "male."

Two women Councillors were appointed January 31, 1946.<sup>5</sup>

**New Zealand (House of Representatives Galleries).**—There are 8 Galleries in the House of Representatives, namely, the Speaker's, the Speaker's Ladies, Public, Press, Weekly Press, Ladies' Press, Legislative Council, and Ladies. Up to 1945 it was not permissible for men and women to sit together in any gallery, but this restriction was removed in 1946 as far as the 2 largest Galleries were concerned, namely, the Ladies' and the Public. Admission to Mr. Speaker's or Mr. Speaker's Ladies is by ticket only.

In 1946, a Petition was presented to Parliament praying that husbands and wives be permitted to use adjoining seats in the galleries of the House The Petition was heard by the Public Petitions M to Z Committee,<sup>6</sup> which, on November 14, 1945, reported that in its opinion the petition should be forwarded to the Government for most favourable consideration. The Committee expressed the opinion that the two largest Galleries, the Ladies' and the Public, should be made available for seating members of both sexes. The Government discussed the report with the Speaker who arranged to give effect to the report of the Select Committee the following Session.<sup>7</sup>

<sup>1</sup> Contributed by the Clerk of the House of Representatives.—[Ed.] <sup>2</sup> See JOURNAL, Vol. X, 52. <sup>3</sup> No. 101. <sup>4</sup> No. 26, 5 Geo. VI. <sup>5</sup> From information kindly supplied by the Clerk of the Parliaments.—[Ed.] <sup>6</sup> No. 88. <sup>7</sup> Contributed by the Clerk of the House of Representatives.—[Ed.]

**Union of South Africa: The Senate (Proceedings at Bar).**—On April 20, 1946,<sup>1</sup> a petition was presented to the Senate by an hon. senator from the President of the South African Indian Congress and 4 others praying for leave to be heard at the Bar of the House in opposition to the Asiatic Land Tenure and Indian Representation Bill.<sup>2</sup> On Motion made, the petition was read by the Clerk at the Table.

Subsequently, on May 1,<sup>3</sup> a Motion was adopted, granting leave to the Petitioners to be heard.

On May 3,<sup>4</sup> after Order of the Day for 2 R. of the Bill had been read, the Clerk, by direction of Mr. President, read the Orders of the House granting leave to the Petitioners to be heard, after which the Gentleman Usher of the Black Rod, by direction of Mr. President, called in the Petitioners. One Petitioner (Mr. M. D. Barmania) having been heard at the Bar, with Black Rod in attendance, was directed to withdraw, and the debate on 2 R. of the Bill was then commenced.

On one previous occasion, namely, on March 12, 1914,<sup>5</sup> a Petitioner (Advocate P. F. Smith), who appeared as counsel on behalf of certain persons who had been deported from the Union, was heard at the Bar of the Senate in connection with the consideration and discussion of the Indemnity and Undesirables Special Deportation Bill.<sup>6</sup> <sup>7</sup>

**\*Union of South Africa: The Senate (Remuneration and Free Facilities to Senators).**<sup>8</sup>—In S. 1 of the South Africa Act Amendment Act (No. 21 of 1946) amending S. 56 of the South Africa Act, 1909, provision was made for:

- (a) The increase of the Parliamentary Allowance of Senators from £700 to £1,000 per annum;
- (b) the increase of the salary of Mr. President from £1,500 to £2,000 per annum.

These increases took effect from April 1, 1946.

*Senators' Parliamentary Allowances.*—These are the same as those for M.P.s (see below).

*Senators' Travelling Facilities.*—These are the same as those for M.P.s (see below).<sup>9</sup>

**Union of South Africa (Constitutional: Indian Representation).**—In S. 41 of the Asiatic Land Tenure and Indian Representation Act (No. 28 of 1946) provision was made for the representation of Indians in the Provinces of Natal and Transvaal by:

- (a) 2 Senators;
- (b) 3 additional members in the House of Assembly;
- (c) 2 additional members in the Provincial Council of Natal.

Of the 2 Senators one may be nominated by the Governor-General on the ground mainly of his thorough acquaintance, by reason of his

<sup>1</sup> 1946-47 *Sen. Hans.* 1265. <sup>2</sup> Act No. 28 of 1946; see also *JOURNAL*, Vol. XI-XII, 218. <sup>3</sup> 1946-47 *MIN.* 120. <sup>4</sup> 1946-47 *Sen. Hans.* 1440-55. <sup>5</sup> 1914 *Sen. Hans.* 124-5. <sup>6</sup> Act No. 1 of 1914. <sup>7</sup> Contributed by the Clerk of the Union Senate.—[ED.] <sup>8</sup> See also *JOURNAL*, Vols. VII, 62; VIII, 127; IX, 41. <sup>9</sup> Contributed by the Clerk of the Senate.—[ED.]

official experience or otherwise, with the reasonable wants and wishes of Indians in the Provinces of Natal and Transvaal; and one may be elected by voters in the 3 electoral divisions provided for in the Act.

These Senators will hold their seats for 5 years, notwithstanding any dissolution of the Senate.

For the purpose of the representation of Indians in the House of Assembly the Provinces of Natal and Transvaal will be divided into 3 electoral divisions.

As in the case of the 3 Native Representatives,<sup>1</sup> the Indian Representatives will not have the right to vote at an election for Senators, but otherwise they will have the same rights as any of the M.P.s representing Europeans<sup>2</sup> except that, unlike the Native Representatives, the Indian Representatives will only hold their seats for 5 years if the House of Assembly is not dissolved before the expiry of such period.<sup>3</sup>

The franchise is confined to every adult male Indian: who is a Union National; has passed Standard VI in a Government or Provincial School in the Union, or an examination recognized as equivalent by the Governor-General in the *Gazette*; has an income of not less than £84 *p.a.* or is the registered owner of immovable property within the electoral division in question to the value of not less than £250, over and above any mortgage thereon; provided that in the case of any such Indian who has made application within 12 months of the promulgation of this Chapter the educational qualification is reduced to Standard IV.

There are the usual disqualifications of voters on such grounds as conviction for treason or murder, unexpired imprisonment, corrupt or illegal practice, unsound mind, etc.

Chapter II of the Act dealing with the representation of Indians has, however, not yet been promulgated.<sup>4</sup>

**Union of South Africa (Constitutional: Further extension of Provincial Powers).**<sup>5</sup>—Section 85 of the South Africa Act, 1909,<sup>6</sup> has been amended by Ss. 1 and 2 of the Financial Relations Amendment Act, 1946,<sup>7</sup> which extends the powers of Provincial Councils by empowering them:

- (a) to levy rates on immovable property situate within areas for which certain water supply schemes are intended, and fees in respect of water supplied under such schemes; and
- (b) to raise a levy on local authorities for the purpose of meeting expenditure incurred by a province in connection with free library services.

**\*Union of South Africa (Ministers' Salaries).**—Provision was made in the Supplementary Estimates of Expenditure to raise the Prime Minister's salary from £3,500 to £4,000 and the salaries of the other Ministers from £2,500 to £3,000 *p.a.* each.

<sup>1</sup> See JOURNAL, Vol. V, 36.   <sup>2</sup> Ss. 47, 48.   <sup>3</sup> S. 47 (3).   <sup>4</sup> Contributed by the Clerk of the Senate and the Clerk of the House of Assembly.—[Ed.]   <sup>5</sup> See also JOURNAL, Vols. III, 19; XIII, 77.   <sup>6</sup> 9 Edw. VII, c. 9.   <sup>7</sup> Act No. 22 of 1946.

### \*Union of South Africa (Remuneration and Free Facilities of M.P.s).<sup>1</sup>

*M.P.s' Parliamentary Allowances.*—In view of the increased cost of living, provision was again made in the Supplementary Estimates of Expenditure for a special sessional allowance for members of £75 for the period up to March 31.

Subsequently S. 56 of the South Africa Act, 1946, was amended by the South Africa Act Amendment Act (No. 21 of 1946). Under this Act, which came into operation on April 1, 1947:

- (a) the Parliamentary allowance of M.P.'s was increased from £700 to £1,000 *p.a.*;
- (b) the Leader of the Opposition (as defined in the Act)<sup>2</sup> was granted an additional allowance of £1,000 *p.a.*; and
- (c) the salary of the Speaker of the House of Assembly was raised from £2,000 to £2,500 *p.a.*, and, in the same way as M.P.'s allowances, made a fixed charge on the Consolidated Revenue Fund.<sup>3</sup>

*Telephone exchange for M.P.s' calls.*—On March 21, 1946, the Select Committee on Internal Arrangements agreed to the installation of a telephone exchange for members' calls (both trunk and local calls).

The exchange is off the Main Lobby and connected with 9 numbered cabinets and 30 rooms for members. From 8.30 a.m. on sitting days until half-an-hour after the House adjourns and on Saturdays until 1 o'clock telephone operators put through outward calls and receive inward calls. If a member cannot be traced for an inward call, he is notified by a card in his letter box showing the name and number of the caller and the time of the call.

Members on arriving at the House in the morning record their whereabouts for the day on cards retained by the operators for tracing them more expeditiously.

Two telephones which are connected direct to the Central Exchange in the General Post Office have been installed in cabinets next to the main staircase in the Lobby for members' outward local calls at any time.

A coin-box telephone is provided in the Lobby for use by the public.  
*M.P.s' Travelling Facilities.*

- (i) *Blue Train.*—In accordance with an arrangement made by the Railway Administration members wishing to travel by Blue Train pay a fee of from £1 1s. to £3 3s. according to the mileage travelled, to cover meals, tea and bedding. In regard to their families the full cost of the rail fare is borne by the House of Assembly Vote in terms of a Resolution adopted by the Committee on Standing Rules and Orders on February 14.

<sup>1</sup> See also JOURNAL, Vols. VII, 62; VIII, 127; IX, VI.   <sup>2</sup> See JOURNAL, Vol. XIV, 229.

<sup>3</sup> Section 35 of the Powers and Privileges of Parliament Act, No. 19 of 1911, provided that the salaries of Mr. President and Mr. Speaker shall be fixed by Act of Parliament, but until the passing of Act No. 21 of 1946 their salaries had not been so fixed.

(ii) *Travel by Air*.—On the introduction of the Lodestar and Sky-master air services the Railway Administration extended to members the facility to travel by air during Sessions of Parliament subject to payment by them of a fee of from £1 1s. to £3 3s. according to the mileage travelled. During Sessions a certain number of seats are regularly reserved for members.

*Residence for Mr. Speaker*.—In its First Report the Select Committee on Internal Arrangements recommended that Mr. Speaker be provided with a suitable residence within easy distance of the Parliamentary Buildings as was contemplated by the House in 1937. Provision was accordingly made in the Loan Estimates for funds and the Public Works Department acquired a residence facing Government Avenue, which has been altered and renovated, and is now occupied by Mr. Speaker.

*Additional accommodation for M.P.s*.—Following upon the acquisition of a residence for Mr. Speaker and in accordance with the First Report of the Select Committee on Internal Arrangements, Mr. Speaker's temporary flat and the gymnasium have been converted into 15 additional rooms for the use of members and a smaller gymnasium has been constructed on the roof adjoining the squash court.

**Union of South Africa: House of Assembly (Direct Charges upon Consolidated Revenue Fund).**<sup>1</sup>—When an Act of Parliament fixes an amount to be paid annually from the revenues of the Union for specified services it is known as a "direct charge"; and when an Act provides for an amount to be paid out of moneys to be voted by Parliament it is known as an "indirect charge".

In the Cape Parliament, as in the House of Commons, both "direct" and "indirect" charges were shown in the annual Estimates of Expenditure submitted for Parliamentary approval, but the "direct charges" were not included as amounts to be voted.

At the time of Union this practice was abandoned and the House has annually been asked to vote "direct charges", previously fixed by statute, with other amounts to be voted. As the functions of the Committee of Supply are to consent to, refuse or reduce any amount to be voted, the form of the Union Government Estimates frequently led to the anomalous position that although an item, such as the Governor-General's salary, had been fixed by statute, the Chairman was bound to put an amendment for its omission or reduction when moved in Committee of Supply. This was complicated by the fact that the conduct of certain high officials, such as the Governor-General, can only be questioned on substantive motion in the House itself.<sup>2</sup>

The form of the Estimates which gave rise to these anomalies has on several occasions been considered by the Select Committee on Public Accounts<sup>3</sup> and since 1939 the Estimates have not included "direct charges" for the National Roads Board and the South African Native Trust Fund among the amounts to be voted. While continuing the

<sup>1</sup> See also JOURNAL, Vol. XIV, 191.

<sup>2</sup> See S.C.I.B.—45, pp. vii-xi.

<sup>3</sup> See May, XI, 277-8.



practice of appropriating all sums of money for a financial year in the Annual Appropriation Act, "direct charges" will be excluded in the Estimates of Expenditure for 1947-48 from the items to be voted in Committee of Supply. In addition to moneys payable to the National Roads Board and the South African Native Trust Fund and the Public Debt General Sinking Fund Contribution, the following annual items of expenditure now constitute direct charges upon the Consolidated Revenue Fund:

- (1) Vote No. 1: (*vide* S. 10, South Africa Act, 1909, (9. Edw. VII. c. 9.)) Salary of Governor-General, £10,000.
- (2) Vote No. 2: (*vide* S. 56, South Africa Act as amended by Act No. 21 of 1946):
  - (a) Salary of President of the Senate, £2,000.
  - (b) Allowances to Senators, £1,000 each.
- (3) Vote No. 3: (*vide* S. 56, South Africa Act, 1909 (9 Edw. VII. c. 9) as amended by Act No. 2 of 1946:
  - (a) Salary of Speaker of the House of Assembly, £2,500.
  - (b) Allowances to Members of the House of Assembly, £1,000 each.
  - (c) Additional Allowance to Leader of Opposition, £1,000.

The salaries of Judges and the Controller and Auditor-General have not yet been made direct charges upon the Consolidated Revenue Fund. Until such time as they are made "direct charges" the anomalous position will remain that while the Chairman of Committees must in Committee of Supply accept amendments to omit or reduce their salaries he can not allow debate reflecting upon their conduct.<sup>1</sup>

**Union of South Africa: House of Assembly (The Guillotine).—**The following guillotine Motions were adopted during the 1946-47 Session:

(a) *Committee of Supply.*—The proceedings were limited to 125 hours. Nearly all the time so allotted was taken up on the Main Estimates.

The Motion authorizing this limitation read:<sup>2</sup>

That proceedings in Committee of Supply on the Estimates of Expenditure to be defrayed from the Consolidated Revenue and Railway and Harbour Funds for the year ending March 31, 1947, be limited to 125 hours including the time already occupied.

For the purpose of this resolution:

- (1) *Reference of Estimates to Committee of Supply.*—All Estimates of Expenditure for the financial year 1946-47 which may be laid upon the Table and recommended by the Governor-General, shall stand referred to the Committee.
- (2) *Conclusion of proceedings.*—At the conclusion of the period of hours allotted, any amendments (other than amendments proposed by a Minister) which have been moved but not disposed of shall drop. The Chairman shall thereupon proceed to put forthwith, without debate, any amendments which have been moved or may be moved by a Minister and thereafter only such further amendments as may be moved by a Minister and such questions, including votes, items or heads, as amended or as printed, as may be necessary to dispose of the Estimates under consideration.

<sup>1</sup> Contributed by the Clerk of the House of Assembly.—[Ed.]

<sup>2</sup> 1946-47 VOTES, 386; *see also* JOURNAL, Vol. XIV, 190.

The Committee shall then proceed to consider any Estimates of Expenditure which have been referred to it but have not been considered, and the Chairman shall forthwith put the Votes, items or heads in such Estimates without amendment (unless amendments are moved by a Minister) and without debate.

- (3) *Expedition of Report Stage.*—The Committee shall have leave to bring up its report or reports forthwith, instead of on a future day, and such report or reports shall be considered forthwith without amendment or debate.
- (4) *Time for adjournment of House.*—When business is interrupted at the conclusion of the period of hours allotted the application of Sessional Orders fixing the time for the adjournment of the House shall be postponed until the proceedings on the business interrupted have been completed.
- (5) *Dilatory Motions.*—At no time while the House is in Committee shall the Chairman receive a Motion that the Chairman report progress or do leave the Chair, or a Motion to postpone a vote, item or head unless moved by a Minister and the Question on such Motion shall be put forthwith without debate.

(b) *Marketing Amendment Bill.*—After 20 hours had been occupied on 2 R. and 10½ hours in C.W.H., a Motion was adopted restricting the time for Report Stage to 1 hour and for 3 R. to 2 hours. The Report Stage took 5 minutes and 3 R. occupied the full time allotted.

The Motion authorizing this procedure read:<sup>1</sup>

That the remaining stages of the proceedings on the Marketing Amendment Bill (A.B. 63A-46) be limited as follows:

- (a) one hour shall be allotted for the Report Stage; and
- (b) two hours shall be allotted for the Third Reading.

For the purposes of this resolution:

- (1) *Conclusion of Report stage.*—At the conclusion of the time allotted for the Report stage, Mr. Speaker shall forthwith put the amendment under consideration. Mr. Speaker shall thereupon proceed to put forthwith without amendment or debate any amendments which may be moved by a Minister. Mr. Speaker shall next put the question: "That the Bill as amended be adopted", which shall also be decided without amendment or debate and shall be deemed to include any amendments made in Committee of the Whole House which have not been taken into consideration. The date for the Third Reading shall then be fixed by a Minister.
- (2) *Conclusion of proceedings on Third Reading.*—At the conclusion of the time allotted for the Third Reading Mr. Speaker shall forthwith put the question "That the Bill be now read a Third Time" and any amendments which have been moved but not disposed of shall drop: Provided that Mr. Speaker shall allow the Minister in charge of the Bill to reply to the debate before the Question is put.
- (3) *"Eleven o'clock Rule"*.—When business is interrupted at the conclusion of the time allotted for the stages of proceedings specified above, the application of S.O. No. 26 (eleven o'clock rule) as amended by the Sessional Order adopted on the 10th June, 1946, shall be postponed until the proceedings on those stages have been completed.
- (4) *Dilatory Motions, etc.*—At neither stage shall Mr. Speaker receive a motion for the adjournment of the House or of the debate, or a motion to re-commit the Bill, unless moved by a Minister, and the question on such motion shall be put forthwith without debate.<sup>2</sup>

<sup>1</sup> 1946-47 VOTES, 96.

<sup>2</sup> Contributed by the Clerk of the House of Assembly.—[Ed.]

**Union of South Africa: House of Assembly. (Long Adjournment of House with power to accelerate or postpone).**—The House resorted to the precedent established in 1940, when it authorized Mr. Speaker to accelerate or postpone the date of meeting during a Long Adjournment.<sup>1</sup> The Long Adjournment from June 19, 1946 to January 18, 1947, was adopted in this instance owing to the fact that H.M. the King had consented to open the 1947 Session of Parliament on February 21, 1947, which was later than the usual date for the Opening of Parliament, and it was considered that *inter alia* the financial business normally dealt with at the beginning of a Session could be disposed of when the House resumed its Session in 1947 after the adjournment.<sup>2</sup>

**Union of South Africa (House of Assembly and Joint Staff Salaries).**

*Joint Parliamentary Establishment.*—The Conferring Committees on the Library of Parliament on May 1, 1946, decided to place the Librarian of Parliament on a personal salary scale of £800-30-950-50-1,100 *p.a.*

The Committee on Standing Rules and Orders on March 27, *idem* decided to place Mr. A. J. Pienaar, K.C., Parliamentary Draftsman, upon a personal salary of £1,100 *p.a.*

The duties of the Parliamentary Draftsman have increased to such an extent that it has been considered necessary to obtain the assistance of a practising member of the Cape Bar at an annual fee of £300 as from January 1, 1947. The services of Advocate P. J. Wessels have been obtained.

*New Salary Scales.*—When the Government decided to adopt the Fourth Report of the Public Service Commission of Inquiry with effect from January 1, 1946, Mr. Speaker authorized the Clerk of the House of Assembly to ask the Public Service Commission to indicate what salary scales and notches would have been applicable to the staff of the House of Assembly and Joint Parliamentary Establishment had they been members of the Public Service, with which the Commission complied. Mr. Speaker thereupon authorized the application of the recommendations of the Commission to the staff of the House of Assembly, Mr. President also giving similar approval in regard to the staff of the Joint Parliamentary Establishment with effect from January 1, 1946.<sup>3</sup>

**South-West Africa (Incorporation in the Union of South Africa).**—On May 7, 1946,<sup>4</sup> it was moved in the Legislative Assembly:

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 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. [*Mr. Taljaard*].

<sup>1</sup> See JOURNAL, Vol. IX, 137.      <sup>2</sup> 1946-47 VOTES, 1003.      <sup>3</sup> Contributed by the Clerk of the House of Assembly.—[ED.]      <sup>4</sup> 1946 VOTES, 46; see also JOURNAL, Vols. VII, 64; XI-XII, 59.

—to which an *amdt.* was moved to add the words: “ and that this House requests the Prime Minister of the Union of South Africa to include in the Union deputation to the United Nations Organization a representative of this House to convey to the United Nations Organization the foregoing Resolution ”. [*Mr. Niehaus.*]

A further *amdt.* was moved to insert after “ representation ” the words, “ or otherwise ”. [*Mr. Lardner-Burke.*]

Upon resumption of the debate on the following day,<sup>1</sup> the *amdt.* proposed by Mr. Niehaus was by leave withdrawn and that by Mr. Lardner-Burke put and agreed to.

The Motion as amended was then put: Ayes, 17; Noes, 0. The Chairman directed that his vote be recorded in favour of the Motion as amended.

The Motion, as amended, was accordingly unanimously agreed to. On the same day, the following Motion was moved as an unopposed Motion and agreed to:<sup>2</sup>

That this House respectfully requests His Honour the Administrator to ask the Prime Minister of the Union of South Africa to include in the Union deputation to the United Nations Organization a representative of this Territory, to be nominated by this House.

On May 10,<sup>3</sup> it was moved as an unopposed Motion and agreed to :

That, arising out of the Resolution adopted by the House on the 8th instant, regarding the Union deputation to the United Nations Organization, this House nominates Mr. Jacques Pierre de Mowbray Niehaus as the representative in question. [*Col. Hamman.*]

**\*South-West Africa (Salaries of Members of the Executive and Advisory Councils and M.L.A.s).**—The Officer Administering the Government of the Union of South Africa has approved of the under-mentioned increases in the allowance payable to members of the Executive Committee, Advisory Council, and the Legislative Assembly of South-West Africa, w.e.f. July 1, 1945 :

Members of the Executive Committee	..	From	£560	to	£630	p.a.
Members of the Advisory Council	..	..	£250	..	£320	..
Members of the Legislative Assembly	..	..	£180	..	£250	..
Chairman of the Legislative Assembly	..	..	£460	..	£530	..
Deputy Chairman of the Legislative Assembly	..	..	£280	..	£350	..

**Southern Rhodesia (Prolongation of Parliament).**<sup>4</sup>—The Prolongation of Parliament Act, No. 15, of 1943, extended the life of the Fifth Parliament for 2 years beyond its normal term of 5 years and empowered the Governor, under certain conditions, further to extend the life of that Parliament, which was in fact dissolved in March, 1946, when it had sat for just under 7 years.

The Prolongation of Parliament Act was repealed by the Emergency Laws (Repeal and Transitional Provisions) Act, No. 35 of 1946.<sup>5</sup>

<sup>1</sup> 1946 VOTES, 50.    <sup>2</sup> *Ib.* 47.    <sup>3</sup> *Ib.* 64.    <sup>4</sup> See also JOURNAL, Vol. XI-XII, 60.

<sup>5</sup> Contributed by the Clerk of the Legislative Assembly.—[ED.]

**Southern Rhodesia (Secret Sessions).**—In connection with the Secret Session held on May 27, 1940,<sup>1</sup> which was the first occasion of a Secret Session, *Hansard* for that day,<sup>2</sup> which comprises one single page of print, briefly records:

The following report of the proceedings of the Secret Session was issued under the authority of Mr. Speaker:

The adjournment of the House was moved by the Prime Minister and a debate took place on the organization of the Colony for the prosecution of the War.

*Hansard* does not record even the time of adjournment.

The second occasion on which a Secret Session was held was June 24, 1943,<sup>3</sup> at the close of the main Session, when the Prime Minister took notice of the presence of strangers and on the Serjeant-at-Arms reporting that the galleries were clear, the Prime Minister moved:

That the remainder of this day's sitting be a Secret Session and further, that the proceedings on the Motion "That the House do now adjourn", if under discussion at 10 o'clock p.m., be not interrupted under S.O. 26.

The Motion for the adjournment of the House was then moved and discussion took place in Secret Session until 10.30 p.m., when the House rose. Neither in *Hansard* nor in the Votes and Proceedings is there any record of the subject or subjects discussed.

On the Third Occasion, April 19, 1945,<sup>4</sup> the procedure was similar to that of 1940.<sup>5</sup> When the Motion in regard to restriction of speeches had been agreed to, the Prime Minister moved:

That in the opinion of the House an international airport capable of accommodating the largest air liners should be established in the Colony.

Discussion on the Motion commenced at about 2.45 p.m.

The Votes and Proceedings record:

At five minutes to seven o'clock p.m., Mr. Speaker interrupted business in terms of a Resolution adopted at this afternoon's sitting and the Motion accordingly dropped.

The Resolution referred to was not recorded.<sup>6</sup>

**\*Southern Rhodesia (Remuneration and Free Facilities to the Prime Minister, Ministers, M.P.s and Mr. Speaker).<sup>7</sup>**

*Salaries of Prime Minister, Ministers, Mr. Speaker and M.P.s.*—On July 16, 1945,<sup>8</sup> the Second Report from the Committee on Standing Rules and Orders recommended that every M.P. except Mr. Speaker and Ministers should receive a salary of £600 p.a., subject to a deduction of £3 p.d. for absence, except in case of attendance upon any Committee of the House, absences due to illness or subpoena of a competent court (except to answer a criminal charge on which he is convicted); and when

<sup>1</sup> See JOURNAL, Vol. IX, 46.

<sup>2</sup> 1940 *Assem. Hans.* 874.

<sup>3</sup> 1943 VOTES,

187; 1943 *Assem. Hans.* 2142.

<sup>4</sup> 1945 VOTES, 15; 1945 *Assem. Hans.* 46.

<sup>5</sup> See

JOURNAL, IX, 46.

<sup>6</sup> Contributed by the Clerk of the Legislative Assembly.—[Ed.]

<sup>7</sup> See also JOURNAL, Vols. IV, 39; VI, 66; IX, 49; XIV, 70.

<sup>8</sup> 1945 VOTES, 331.

condoned by the Standing Rules and Orders Committee. The amount of such deductions, however, was not to exceed £100 in any financial year.

With effect from April 1, 1946, it was recommended that the following salaries be increased: Prime Minister to £2,750; Minister to £2,250; and Mr. Speaker to £1,250.

On July 26,<sup>1</sup> the adoption of the Report of the Committee on S.R. & O.'s was moved by the hon. member for Bulawayo S. (Mr. D. Macintyre).

On January 18, 1946,<sup>2</sup> 2 R. of the Payment of Members of Parliament Bill, introduced in consequence of the adoption of this report and authorizing the payments referred to above, but excluding provision for the increase in salaries of Cabinet Ministers and Mr. Speaker, was moved by the Minister of Internal Affairs (Col. the Hon. Sir Ernest Guest). The Bill went into C.W.H. on January 24,<sup>3</sup> and 3 R. was taken on the 28th *idem*.<sup>4</sup> The Bill duly became Act No. 4, 1946. It was promulgated on April 1, 1946 (Proc. No. 20 of May 24, 1946). This is the first occasion on which an Act has been passed for the payment of M.P.s' allowances. The Prime Minister, however, still receives £2,500 and other Ministers £2,000 *p.a.*

The salary of Mr. Speaker, who was not a member during the Fifth Parliament (1939-46), is governed by the Speaker's Salary Act (Cap. 7) R.S. (No. 1 of 1937) and remains at £1,000.

*Allowances to Members of Select Committees sitting during Adjournment.*—In November, 1946, a recommendation of the Committee on Standing Rules and Orders to the effect that all members of Select Committees attending meetings during an adjournment of the House should be paid a subsistence allowance of thirty shillings a day, was adopted by the House.<sup>5</sup>

*Subsistence Allowances to Mr. Speaker.*—Mr. Speaker receives no subsistence allowance, but is entitled to receive a refund of any reasonable out-of-pocket expenses incurred when travelling, other than by railway, to and from any Session.

*Reduction in Air Travel Facilities for M.P.s.*<sup>6</sup>—During 1946 the generous concession, which enabled Members to travel throughout the year at a cost (to the House Vote) of half the fare for an equivalent rail journey, was withdrawn by the Airways Company. In consequence, it has been necessary to reduce the air travel facilities to journeys to and from the seat of Parliament to attend a sitting of the House or a Select Committee Meeting held during an adjournment.

Journeys during an adjournment, or journeys during the Session between a Member's residence and places other than Salisbury, may still be made by rail under the usual conditions.<sup>7</sup>

*British India (Government Policy).*<sup>8</sup>—During the 1945-46 Session

<sup>1</sup> 1945 *Assem. Hans.* 2884.

<sup>2</sup> *Ib.* 3166.

<sup>3</sup> *Ib.* 3318.

<sup>4</sup> *Ib.* 3318.

<sup>5</sup> 1946 VOTES, 329.

<sup>6</sup> See also JOURNAL, Vols. IV, 37, 38; VI, 34.

<sup>7</sup> Contributed

by the Clerk of the Legislative Assembly.—[ED.]

<sup>8</sup> See also JOURNAL, Vols. IV,

76; IX, 51; X, 70; XI-XII, 219; XIII, 87; XIV, 71.

of the Imperial Parliament, the British Government made several statements of policy in the House of Commons in regard to India. On December 4, 1945,<sup>1</sup> the Lord President of the Council (Rt. Hon. H. Morrison) announced in the House of Commons that a delegation consisting of representatives of all Parties in the House should go on a goodwill mission to India under the auspices of the Empire Parliamentary Association. This proposal was met with some objection by certain members who expressed preferences for an official delegation.

*Cabinet Ministers' Mission.*—On February 19, 1946,<sup>2</sup> the Prime Minister (Rt. Hon. C. R. Attlee) recalled that on September 19, 1945, on his return to India after discussions with H.M. Government, the Viceroy made a statement of policy in the course of which he outlined positive steps to be taken, immediately after the central and provincial elections to promote, in conjunction with the leaders of Indian opinion, the early realization of full self-government in India, which steps included:

- (1) Preparatory discussions with the elected representatives of British India and with the Indian States, in order to secure the widest measure of agreement as to the method of framing a Constitution;
- (2) the setting up of a Constitution-making body; and
- (3) the bringing into being of an Executive Council having the support of the main Indian parties.

The elections at the centre were held at the end of last year, and in some of the Provinces they were also over and responsible Governments were in process of formation.

In view of the paramount importance of a successful outcome of the discussions, the Imperial Government had decided to send out to India a special mission to seek, in association with the Viceroy, an agreement with these leaders on the principles and procedure relating to the constitutional issue.

Accordingly, with the approval of H.M. the King, the Imperial Government had decided that the Cabinet Mission shall consist of: the Secretary of State for India, the President of the Board of Trade and the First Lord of the Admiralty to proceed to India in March, which course had the full concurrence of the Viceroy.

On the Adjournment on March 15, 1946,<sup>3</sup> the Imperial Government gave the House an opportunity to debate the subject preparatory to the departure of the Cabinet Ministers' Mission.

*Statement by the Cabinet Ministers' Mission.*—The next important event was on the Adjournment, on May 16, 1946,<sup>4</sup> when the Prime Minister made the statement given in the White Paper<sup>5</sup> by the Cabinet Ministers on their visit to India, of which the following is a brief summary. The statement consists of 24 paragraphs and opens with the words used by the British Prime Minister before the despatch of the Cabinet Ministers' Mission to India, namely:<sup>6</sup>

<sup>1</sup> 416 *Con. Hans.* 5 s. 2102, 2110.

<sup>4</sup> 422 *Ib.* 2109-30.

<sup>2</sup> 419 *Ib.* 964.

<sup>5</sup> *Cmd.* 6821.

<sup>3</sup> 420 *Ib.* 1413-76.

<sup>6</sup> *Cmd.* 6821, p. 2.

My colleagues are going to India with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. What form of Government is to replace the present regime is for India to decide; but our desire is to help her to set up forthwith the machinery for making that decision. . . .

I hope that the Indian people may elect to remain within the British Commonwealth. I am certain that she will find great advantages in doing so. . . .

But if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of external compulsion. It is a free association of free peoples. If, on the other hand, she elects for independence, in our view she has a right to do so. It will be for us to help to make the transition as smooth and easy as possible.

The statement then describes the activities of the Mission in the approach to the problem, and gives the number of millions of Muslims and Non-Muslims in some of the Provinces and other information in regard to the Mission's operations. The recommendations of the Mission are as follow:<sup>1</sup>

We recommend that the Constitution should take the following basic form:

- (1) There should be a Union of India, embracing both British India and the States, which should deal with the following subjects: foreign affairs, defence, and communications; and should have the powers necessary to raise the finances required for the above subjects.
- (2) The Union should have an executive and a legislature constituted from British Indian and States representatives. Any question raising a major communal issue in the legislature should require for its decision a majority of the representatives present and voting of each of the two major communities as well as a majority of all the members present and voting.
- (3) All subjects other than the Union subjects and all residuary powers should vest in the provinces.
- (4) The States will retain all subjects and powers other than those ceded to the Union.
- (5) Provinces should be free to form groups with executives and legislatures, and each group could determine the provincial subjects to be taken in common.
- (6) The constitutions of the Union and of the groups should contain a provision whereby any province could by a majority vote of its legislative assembly call for a reconsideration of the terms of constitution after an initial period of ten years and at ten-yearly intervals thereafter.

The statement goes on to deal with representation, and in a table are set out the suggested figures of how the representation should be apportioned as between General, Muslim and Sikhs in the various Provinces as follows:<sup>2</sup>

TABLE OF REPRESENTATION.

Province.	Section A.				General.	Muslims.	Total.
Madras .. .. .	..	..	..	..	45	4	49
Bombay .. .. .	..	..	..	..	19	2	21
United Provinces .. .. .	..	..	..	..	47	8	55
Bihar .. .. .	..	..	..	..	31	5	36
Central Provinces .. .. .	..	..	..	..	16	1	17
Orissa .. .. .	..	..	..	..	9	0	9
Total .. .. .	..	..	..	..	167	20	187

<sup>1</sup> Cmd. 6821, § 15.

<sup>2</sup> § 19.



## Section B.

<i>Province.</i>	<i>General.</i>	<i>Muslims.</i>	<i>Sikhs.</i>	<i>Total.</i>
Punjab .. .. .	8	16	4	28
North-West Frontier Province .. .. .	0	3	0	3
Sind .. .. .	1	3	0	4
<b>Total</b> .. .. .	<b>9</b>	<b>22</b>	<b>4</b>	<b>35</b>

## Section C.

<i>Province.</i>	<i>General.</i>	<i>Muslims.</i>	<i>Total.</i>
Bengal .. .. .	27	33	60
Assam .. .. .	7	3	10
<b>Total</b> .. .. .	<b>34</b>	<b>36</b>	<b>70</b>
Total for British India .. .. .	..	..	292
Maximum for Indian States .. .. .	..	..	93
<b>Total</b> .. .. .	..	..	<b>385</b>

Note.—In order to represent the Chief Commissioner's Provinces there will be added to Section A the member representing Delhi in the Central Legislative Assembly, the member representing Ajmererwara in the Central Legislative Assembly and a representative to be elected by the Coorg Legislative Council.

To Section B will be added a representative of British Baluchistan.

In regard to the Indian States, the Mission stated that:<sup>1</sup>

(ii) It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93; but the method of selection will have to be determined by consultation. The States would in the preliminary stage be represented by a negotiating committee.

It was further recommended that the Representatives thus chosen should meet at New Delhi as soon as possible.

In their final paragraph the Mission stated:<sup>2</sup>

We hope that the new independent India may choose to be a member of the British Commonwealth. We hope, in any event, that you will remain in close and friendly association with our people. But these are matters for your own free choice. Whatever that choice may be, we look forward with you to your ever-increasing prosperity among the greatest nations of the world and to a future even more glorious than your past.

In May, 1946, a White Paper<sup>3</sup> was issued from the Ministers' Cabinet Mission showing the:

Correspondence and Documents connected with the Conference between the Cabinet Mission and His Excellency the Viceroy and Representatives of the Congress and the Muslim League.

Later in such month another White Paper was issued<sup>4</sup> giving the Statement by the Mission dated 25th May in reply to Pronouncements by the Indian Parties and Memorandum by the Mission on States' Treaties and Paramountcy.

<sup>1</sup> § 19 (ii).

<sup>2</sup> § 24.

<sup>3</sup> Cmd. 6829.

<sup>4</sup> Cmd. 6835.

A further White Paper<sup>1</sup> was issued later in the same month containing:

Correspondence with the Congress Party and the Muslim League, 20th May-29th June, 1946;

and also another White Paper on:<sup>2</sup>

Papers relating to:

- (a) The Sikhs;
  - (b) The Indian States;
  - (c) The European Community.
- (May-June, 1946).

*Motion: on India (Cabinet Mission).*—On July 18, 1946,<sup>3</sup> the President of the Board of Trade (Sir Stafford Cripps), one of the Mission, moved in the House of Commons:

That this House takes note of the Command Papers relating to the proceedings of the Cabinet Mission to India, and awaits a further opportunity of debate in the Autumn.

The Minister's speech on the Motion gave a detailed account of all the negotiations with the various parties in India, remarking that the circumstances of the spring of 1946 were vastly different from those of 1942, or, indeed, of 1939. India had shared to the full in the political awakening which was evident all over the world after the War, and nowhere else, perhaps more, than in the Far East.

The Ministers appreciated the feelings of the very diverse population of some 400 million people with whose representatives they were dealing.<sup>4</sup>

The purpose of the proposed Constituent Assembly is to hammer out agreement from diverse opinions and plans—and likewise they can put forward their view as to how such Assembly should conduct its business.

The next stage would be for the Viceroy to resume negotiations with the two major parties for the formation of an Interim Government.<sup>5</sup>

The only hope of a peaceful and friendly change of Sovereignty, said the Minister, was to offer the Indians their complete and unqualified independence whether within or without the British Commonwealth.<sup>6</sup>

In conclusion Sir Stafford Cripps said:

There is one thing of which I feel certain, that every person in this House and this country will desire their most heartfelt wishes for success to be conveyed to those representatives of the Indian People who will shortly be meeting their Constituent Assembly. May God bless their labours and may they achieve for India, upon a sound and lasting basis, that freedom for which all her people long.

**British India (Constitutional: Central Government and Legislature).**—The India (Central Government and Legislature) Bill which originated in the Lords [Bill 87] contained a provision—Clause 6 (3)—bracketed and underlined in the Bill received by the Commons with the

<sup>1</sup> *Cmd.* 6861.

<sup>2</sup> *Cmd.* 6862.

<sup>3</sup> *425 Com. Hans.* 5, s. 1394-1448.

<sup>4</sup> *Ib.* 1396.

<sup>5</sup> *Ib.* 1409.

<sup>6</sup> *Ib.* 1414.

following NOTE at the top of the Bill—"The words enclosed in brackets and underlined were *inserted* by the Lords to avoid questions of privilege". The (monetary) Privilege provision read:

[*(3) Nothing in this Act shall authorize the imposition of any charge on any revenues of India.*]

After 2 R. in the Commons on March 15,<sup>1</sup> the following Money Resolution was initiated in *C.W.H.*:

That for the purpose of any Act of the present Session to amend the Government of India Act, 1935, with respect to the qualifications of members of the Governor-General's Executive Council, to extend temporarily the powers of the Indian Legislature to make laws, to amend Subsection 4 of Section one hundred and two of the said Act as to the effect of laws passed by virtue of a Proclamation of Emergency, and for the purposes connected with the matters aforesaid it is expedient to authorize the payment out of the revenues of India such sums as may become payable therefrom by reason of any of the provisions of the said Act of the present Session—(*King's Recommendation signified*)

—which Resolution was reported and agreed to by the House on March 20,<sup>2</sup> when, upon the Bill being considered in *C.W.H.* and clauses 1 to 5 having been agreed to, the Minister moved to omit Clause 6 (3) stating that this was purely a formal *amdt.* to leave out what is known as the Privilege Clause.

This *amdt.* was agreed to, and Clause 6 as amended put and agreed to.

In regard to the principle of the Bill itself, the Under Secretary of State for India (Mr. A. Henderson, K.C.) in moving 2 R. on March 15,<sup>3</sup> said that the House would remember that on September 19, the Prime Minister in a broadcast indicated that after the completion of the Provincial elections in India the Viceroy should again enter into discussions with the Leaders of Indian opinion with a view to reconstituting the Viceroy's Council with the support of the main Indian parties. It was provided by S. 36 of the Government of India Act, 1919, and continued in force by Schedule IX of the Government of India Act, 1935,<sup>4</sup> that the composition of the Governor-General's Council<sup>5</sup> shall include 3 members with not less than 10 years' service of the Crown in India and, at least, one member with legal qualifications.

In view of the importance of the discussions shortly to take place, it was considered that this limitation should be removed so that the discussions should not thus be prejudiced in any way. The *amdt.*, however, was quite permissive.

Clauses 2 and 3 refer to the temporary legislative powers given the Central Legislative Assembly during War emergency, which are contained in 3 lists,<sup>6</sup> Federal, Provincial and concurrent.

Section 102 of the Act of 1935 empowered the Central Legislature following Proclamation by the Governor-General<sup>7</sup> if a state of emergency existed, to exercise concurrent legislative powers as regards the Provincial List. Section 126 (a) also conferred concurrent executive authority

<sup>1</sup> 420 *Com. Hans.* 5, s. 1410.

<sup>2</sup> *Ib.* 1974.

<sup>3</sup> *Ib.* 1403-7.

<sup>4</sup> 26 *Geo. V.*

and 1 *Edw. VIII.*, c. 2.

<sup>5</sup> See *JOURNAL*, Vols. IV, 81; X, 70; XI-XII, 64.

<sup>6</sup> *Ib.* Vols. IV, 91; IX, 51.

<sup>7</sup> *Ib.* Vols. VIII, 61; X, 73.

upon the Central Government during a proclaimed emergency. In September, 1939,<sup>1</sup> such an emergency was issued, and made wide use of by the Central Government in the Provincial field. This state of emergency under the Bill would end on April 1, and Central Legislation in the Provincial field would lapse. Therefore all War emergency legislation would come to an end on October 1, 1946.

The Government of India were also concerned to retain certain Indian controls in the economic field.

Clause 2 of the Bill therefore empowered the Central Legislature to legislate in respect of trade and unemployment, control prices and the distribution of commodities.

Clause 2 (1) (b) authorized such Government to make loans to re-settle 3,000,000 ex-servicemen in the Indian Defence Forces. Clause 3 dealt with the requisition of land for the War effort, which when all negotiations are settled will be returned to their owners.

Clause 4 dealt with the duration of these legislative powers for 1 year, with a second year by Governor-General's Proclamation. Extension for a third, fourth or fifth year would require the approval of Parliament. Clause 5 protected emergency legislation passed by the Government of India.

Clause 6 empowered the Governor-General under Clauses 2 and 3 to act in his discretion in order to enable him to maintain the rather delicate balance between the Centre and the Provinces. The powers of the Central Legislature, however, were permissive and limited in time by Clause 4.

The Monetary Privilege amendment (*as above*) was then taken on Clause 6 after which Clause 7 was put and agreed to and the Bill reported to the House with an *amdt.*, as amended considered and passed 3 R. Such *amdt.* was then sent to the Lords for concurrence, was agreed to, the Bill duly becoming 9 & 10 Geo. VI, c. 39.

British India (Franchise Bill).<sup>2</sup>—When moving 2 R. of this Bill on 'October 12, 1945,<sup>3</sup> the Under Secretary of State for India (Mr. A. Henderson) said that the main object of the Bill is to secure that absence on any form of War service should not impair residential qualification in the right to vote. The Bill also ensures the right to vote for those who had not been on the voters' roll, but who had, by such service, qualification therefor, if 21 years of age.

Requirements as to residence in the various Governor's Provinces varies widely in terms.

The second object of the Bill is to secure the fighting services qualification for voters for either the Provincial Upper Houses or for the Central Legislature. The Bill also consolidates the provisions of several Orders in Council.

The Bill (which originated in the Lords) duly passed 2 R., C.W.H. and 3 R. and became 9 & 10 Geo. VI, c. 2.

<sup>1</sup> See JOURNAL, Vol. VIII, 61.

<sup>2</sup> See also JOURNAL, Vol. IX, 51.

<sup>3</sup> 413 Com. Hans. 5, s. 576.

**British India (Proclamation of Emergency Bill).**<sup>1</sup>—In moving 2 R. of this Bill in the Commons on December 18, 1945,<sup>2</sup> the Under Secretary of State for India (Mr. A. Henderson) said that the Bill was to remove doubt as to the legal basis for certain emergency powers which had been exercised by the Government of India during the War period. Certain challenges had been made in some of the Indian Courts as to the use of those powers in regard to the requisition of movable property.

Under S. 102 of the Government of India Act, 1935, where the Governor-General had declared by proclamation that a grave emergency existed whereby the security of India was threatened, by war or otherwise, the Federal Legislature was empowered to make laws for defence in respect of any matters although enumerated in the Provincial Legislative List. Section 2 of the Defence of India Act, 1939, also authorized the making of rules covering the requisition of any property, movable or immovable.

In other words, the main object of the Bill was to give the Governor-General power to make the rules which everyone supposed he had the power to make and upon which the Federal Court had not so far adjudicated.

The Bill, which originated in the Lords, passed 2 R., was amended in *C.W.H.*<sup>3</sup> limiting the Bill to "civil" proceedings, reported with *amds.* and passed 3 R., duly becoming 9 Geo. VI, c. 23.

**British India: Madras (Failure of Constitutional Machinery).**<sup>4</sup>—On April 16, 1946,<sup>5</sup> the House of Commons resolved:

That this House approves the continuation in force of the Proclamation issued under Section 93 of the Government of India Act, 1935, by the Governor of Madras on 30th March, 1939, and of his Proclamation varying the same issued on 15th February, 1943 and 29th September, 1945, copies of which were presented to this House on 28th November, 1939, 16th March, 1943 and 12th October, 1945, respectively.

The Under Secretary of State for India (Mr. A. Henderson) said that the Madras election was completed on March 30, but the majority party had not been able, to date, to decide upon a Leader.

**British India: Bengal (Failure of Constitutional Machinery).**<sup>6</sup>—On August 23, 1945,<sup>7</sup> the House of Commons resolved:

That this House approves the continuance in force of the Proclamation issued under Section 93 of the Government of India Act, 1935, by the Governor of Bengal on 31st March, 1945, a copy of which was presented on 17th April.

In this instance, stated the Under Secretary of State for India (Mr. A. Henderson), the Proclamation was issued on March 31, because the Muslim League Ministry (in effect a coalition including non-Congress Hindus and representatives of the Scheduled castes), which had been in office since 1943, was defeated by a snap vote on March 28 and on the

<sup>1</sup> See also Vols. IV, 91, 96; VIII, 61; X, 73; XIV, 77. <sup>2</sup> 417 *Com. Hans.* 5, s. 1216-42. <sup>3</sup> 418 *Ib.* 97-118. <sup>4</sup> See also JOURNAL, Vols. VIII, 63; X, 74; XIII, 87; XIV, 81. <sup>5</sup> 421 *Com. Hans.* 5, s. 2586. <sup>6</sup> See also JOURNAL, Vols. VIII, 63, 67; XIV, 83. <sup>7</sup> 413 *Com. Hans.* 5, s. 950.

following day the Speaker adjourned the Legislative Assembly *sine die* on the ground that the Government having been defeated, was *functus officio*. The Governor, therefore, stated the Minister, had no option but to issue his Proclamation.

**British India: Orissa (Failure of Constitutional Machinery).**<sup>1</sup>—On December 18, 1945,<sup>2</sup> the House of Commons resolved:

That this House approves the continuance in force of the proclamation issued under Section 93 of the Government of India Act, 1935, by the Governor of Orissa on 30th June, 1944, and of his Proclamation varying the same issued on 7th October, 1945, copies of which were presented on 25th July, 1944 and 9th October, 1945, respectively.

**\*British India: Madras (Language Rights in Legislatures).**<sup>3</sup>—*Madras*: The entry against this Province in Volume XIV of the JOURNAL, p. 76, should read:

*Madras*: Rule 46 of the Madras Legislative Assembly Rules runs thus:

All proceedings of the Assembly shall be conducted in the English language, but any member who is unacquainted or is not sufficiently acquainted with the English language may address the Assembly in any recognized language of the Province.

*Explanation*: For purposes of this rule, "recognized language" shall mean any one of the following languages, namely, Tamil, Telugu, Malayalam, Canarese or Hindustani.

Rule 46 of the Madras Legislative Council Rules on the subject is on identical terms.

Speeches in Tamil and Telugu are now recorded *as delivered* in the Assembly and in the Council by special reporters appointed for the purpose. As regards speeches in other Indian languages, a gist of the speech as furnished by the member is printed in the proceedings and if the member does not supply it, a mere indication is made in the printed reports that the member spoke in that language.<sup>4</sup>

**\*British India: Madras (Remuneration and free facilities to M.L.A.s and its present suspension).**<sup>5</sup>—With reference to Volume I, p. 106, under the present Madras Payment of Salaries and Removal of Disqualifications (Amendment) Act, 1946, every member who does not hold office as Minister, Speaker or Deputy Speaker of the Assembly, President or Deputy President of the Council or Parliamentary Secretary is entitled to receive a monthly salary of Rs. 150 *p.m.*, besides travelling and daily allowances for attendance at meetings of the Chamber or of Committees of the Chamber in accordance with the Madras Legislature Travelling Allowance Rules. Salary accrues to a member from the date on which he is declared duly elected, or, in the case of a member chosen by the Governor in his discretion to fill a seat in the Legislative Council,

<sup>1</sup> See also JOURNAL, Vols. X, 74; XIV, 81.

<sup>2</sup> 417 *Com. Hans.* 5, s. 1242.

<sup>3</sup> See also JOURNAL, Vol. IV, 111; XIV, 75, 76.

<sup>4</sup> Contributed by the Secretary of the Legislature.—[Ed.]

<sup>5</sup> Contributed by the Deputy Secretary of the Legislature.—[Ed.]

from the date on which he is so chosen, or, if such declaration or choice is made before the vacancy occurs, from the date of the occurrence of the vacancy, but such salary may not be paid until the member has made and subscribed the oath or affirmation of allegiance prescribed by the Government of India Act, 1935. It is open to any member (i) to relinquish the whole or any portion of such salary or allowance, and (ii) cancel such relinquishment. Such members as have chosen to relinquish their salaries are permitted to draw travelling allowance and daily allowance, at a higher rate than those who have not so relinquished.<sup>1</sup>

So long, however, as the Proclamation under S. 93 of the Government of India Act, 1935,<sup>2</sup> issued by the Governor of Madras on October 30, 1939, is in force, the Madras Payment of Salaries and Removal of Disabilities Act, 1937,<sup>3</sup> is, under the Madras Payment of Salaries and Removal of Disqualifications (Temporary Repeal) Act of 1940,<sup>4</sup> deemed to have been repealed.

**\*British India: Governor's Provinces (Rights of Ministers to speak in both Chambers).**—This subject, in regard to the practice in the Parliaments and Legislatures of the Empire generally, has been dealt with in the JOURNAL,<sup>5</sup> both by Article and Editorial Note and the practice under the former and also the present Constitution for India has been given, but although the authority in regard to the Central Legislature has also been given, the reference concerning the Governor's Provinces, while referred to, has not actually been set out in the JOURNAL. This practice is provided for by S. 64 of the present Constitution,<sup>6</sup> which reads:

Every Minister and the Advocate-General shall have the right to speak in, and otherwise take part in the proceedings of, the Legislative Assembly of the Province, or in the case of a Province having a Legislative Council, both Chambers and any joint sitting of the Chambers, and to speak in, and otherwise take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this section, be entitled to vote.

*Madras.*—At a sitting of the Legislative Council on September 27, 1937, question arose as to whether, under the above section the Ministers who were not members of the Council could introduce Bills or move Resolutions, was raised on a point of Order and it was ruled by Mr. President that the phrase "otherwise take part in the proceedings", was comprehensive enough to entitle them to make a Motion of that kind.

*India: State of Mysore (New Assembly Building).*<sup>7</sup>—Mysore will shortly have one of the most up-to-date buildings in the State to house the Representative Assembly and to serve as the Convocation Hall and

<sup>1</sup> Contributed by the Deputy Secretary of the Legislature.—[Ed.] <sup>2</sup> 26 Geo. V, c. 2. <sup>3</sup> Madras Act No. IX of 1937. <sup>4</sup> Madras Act No. X of 1940. <sup>5</sup> See Vols. I (Art.), 79; IV, 84, 160; VII, 12-16, 43. Under the Constitution of the Union of South Africa Ministers (excluding those without Portfolio) have this right, but Ministers with such right cannot, in the House of which they are not Members, be included in the quorum, claim a Division or vote.—[Ed.] <sup>6</sup> 26 Geo. V, c. 2. <sup>7</sup> *Mysore Information Bulletin*, March 31, 1947.

Examination Hall of the Mysore University. This is a sequel to the promise, which it may be recalled was made by Sir. A. Ramaswami Mudaliar, Dewan, at the last Dasara Session of the Mysore Representative Assembly, that a spacious and a more permanent structure would be provided for housing the Assembly.

The Representative Assembly will meet here in the Central Chamber under the imposing dome, which will be as high as 140 feet. On the floor of this Hall accommodation will be provided for 400 members of the Assembly with up-to-date provision for the press, visitors' gallery, spacious lobbies, party rooms, luncheon halls, post office, Secretariat Offices, and Assembly Offices and Library.

**Bahamas (Constitutional).<sup>1</sup>**—In reply to a *Q.* in the House of Commons, on October 17, 1945,<sup>2</sup> the Secretary of State for the Colonies (Rt. Hon. G. Hall) said that the Bahamas House of Assembly in April adopted a report recording the opinion that secret ballot ought, subject to certain safeguards, to be extended to the Out-Islands, and that at the same time certain constitutional changes should be effected.

In reply to a Supplementary it appeared that only  $\frac{1}{3}$  of the population enjoyed any franchise rights at all and that the constitutional changes did not include complete adult franchise.

In reply to a *Q.* on January 30,<sup>3</sup> the Under Secretary for the Colonies (Mr. A. Creech Jones) said that the extension of the secret ballot to the whole Colony had now been accepted by the Bahamas Legislature and that the necessary legislation would be introduced in the present Session.

In reply to a further *Q.* on May 8,<sup>4</sup> Mr. Hall said that he was awaiting the arrival in England of the Governor to discuss constitutional matters with him.

On November 6,<sup>5</sup> in reply to a *Q.* Mr. Creech Jones said that in April last there were 10,944 registered electors, or 16 *p.c.* of the population. Many of those qualified for the franchise had not registered. He understood that 13 of the 29 members of the House of Assembly were merchants. Although the franchise was liberal it was generally agreed that a further overhaul of the constitutional machinery was necessary. It was obviously preferable that proposals to this end should come from the Colony.

**Burma (Failure of Constitutional Machinery).<sup>6</sup>**—On April 5, 1946,<sup>7</sup> the following Resolution was passed by the House of Commons:

That this House approves the continuance in force of the Proclamation issued under Section 139 of the Government of Burma Act, 1935, by the Governor of Burma on 10th December, 1942, a copy of which Proclamation was presented on 9th February, 1943.

<sup>1</sup> See also JOURNAL, Vol. XIII, 93.

<sup>2</sup> 415 *Com. Hans.* 5, s. 1141.

<sup>3</sup> 418 *Ib.* 225.

<sup>4</sup> 422 *Ib.* 1038.

<sup>5</sup> 428 *Ib.* 1380.

<sup>6</sup> See also JOURNAL, Vols. XI-XII, 74; XIII, 93; XIV, 89; we are obliged to the Secretary of the Legislative Council for copies of various documents, such as the Royal Instructions, Letters Patent, Proclamations, etc., consequent upon the issue of the above-mentioned Order.

<sup>7</sup> 421 *Com. Hans.* 5, s. 1529-83.



as well as a Resolution in similar form in respect of the Governor's Proclamation of October 17, 1945, presented February 22.

In moving the first Motion the Under Secretary of State for Burma (Mr. A. Henderson) explained that as the previous Proclamation would expire on June 9, it was necessary to renew the Governor's power to carry on the government of the country.

The second Resolution referred to above, provides for the constitution of an Executive Council of not more than 15 members and a Legislative Council of not more than 50 members, appointed by the Governor and holding office during his pleasure, both of which Councils have been established. The Minister then went on to refer to the provisions of the Burma Legislature Bill (*which see below*). The debate on these Motions was a long and interesting survey of the situation.

**Burma (Constitutional: House of Representatives Order).**—On July 17, 1946,<sup>1</sup> the Under Secretary of State for Burma moved:

That an humble Address be presented to His Majesty in pursuance of the provisions of Section 157 of the Government of Burma Act, 1935, praying that the Government of Burma (House of Representatives) (amended) Order, 1946, be made in the form of the draft before Parliament.

Mr. A. Henderson in moving the Motion said that it was consequential upon the Burma Legislature Act.

On July 29, His Majesty's compliance with the request was announced in the Commons.

**Burma (Constitutional: Burma Legislature Bill).**<sup>2</sup>—In moving 2 R of the Burma Legislature Bill in the House of Commons on June 21, 1946,<sup>3</sup> the Under Secretary of State for Burma (Mr. A. Henderson) said that the House was aware of the policy of the Imperial Government to hold elections in Burma at the earliest possible date, so that a democratically elected legislature could be returned from which to form a Ministry.

Following the establishment of a Ministerial Government, a Constitution-making body would be set up so that the Burmese could choose for themselves a Constitution which would make them as free and independent as any of the great self-governing Dominions.

The Bill provides for the franchise recommended by the Burma Franchise Committee, namely—universal franchise for all adults, subject to exceptions in regard to Buddhist monks and nuns.

The Bill also enables the preparation of the new electoral rolls to be put in hand without delay. The Bill duly passed 2 R., but in *C.W.H.* amendment was made to reduce the minimum age for membership of the Senate from 35 to 30 and for the House of Representatives from 25 to 21. In regard to membership of the Senate, the tax qualification is being removed, leaving it to be that of public service.

The Bill (which originated in the Lords) was then, as amended, adopted on Report, passed 3 R. and became 9 & 10 Geo. VI, c. 57.

<sup>1</sup> 425 *Ib.* 1298; 426 *Ib.* 179.

<sup>2</sup> See also *JOURNAL*, Vols. X, 76; XI-XII, 74; XIII, 93; XIV, 89, 90.

<sup>3</sup> 424 *Com. Hans.* 5, s. 558.

**Burma (Privilege).**—In the *Burma Gazette Extraordinary* of January 7, 1946, was published the Legislative Council (Privilege of Members) Act,<sup>1</sup> the purpose of which is to define the privileges of members of the Legislative Council, constituted under the Proclamation of October 17, 1945, which Council takes the place of the Legislature (Senate and House of Representatives) constituted by the Government of Burma Act, 1935,<sup>2</sup> under S. 139 of which the Governor by Proclamation of December 10, 1942, assumed to himself all powers vested under such Act in the Burma Legislature.

Subject to the Government of Burma (Temporary Provisions) Act, 1945,<sup>3</sup> the Order in Council made in pursuance thereof and to the Rules of Procedure, S. 3 of the Legislative Council (Privilege of Members) Act provides for freedom of speech in the Council, no member thereof being liable to any proceeding in any Court in respect of anything said, or any vote given, by him in such Council, or any Committee thereof. Neither is any person liable in respect of the publication by or under the authority of the Governor or the President of the Council, of any report, paper, votes or proceedings thereof.

Otherwise, says S. 4, the privileges of members are the same as those enjoyed by members of the Burma Legislature under the Constitution of 1935.

Nothing in Act XXXII of 1945, however, may be construed as conferring or empowering the Legislative Council to confer, on the Council or any Committee or officer thereof, the status of a Court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the Standing Orders or otherwise behaving in a disorderly manner (S. 5).

**Cyprus (Constitutional).**—In reply to *Q.s* in the House of Commons on July 24<sup>4</sup> and October 9,<sup>5</sup> the Secretary of State for the Colonies said that he was not yet in a position to make a statement as to the provision of representative institutions for Cyprus.

In reply to a *Q.* on October 23,<sup>6</sup> however, Mr. Creech Jones said that His Majesty's Government with a view to establishing a progressive regime in the internal affairs of the Island was inviting the Governor to call a Constituent Assembly drawn from representative elements in the Island to frame proposals for constitutional reform, including the re-establishment of a Central Legislature. It was hoped that this would bring representatives of the Cypriot people into full consultation with the Government in the conduct of local affairs. H.M. Government would now permit the return to Cyprus of those persons deported from the Island for their part in the disturbances of 1931, in the hope that these measures would open a new and happy era for the people of Cyprus.

**East Africa (Constitutional).**—In reply to a *Q.* in the House of Commons on November 14, 1945,<sup>7</sup> the Secretary of State for the

<sup>1</sup> No. XXXII of 1945.

<sup>2</sup> 26 Geo. V, c. 3.

<sup>3</sup> 8 & 9 Geo. VI, c. 30.

<sup>4</sup> 426 *Com. Hans.* 5, s. 9.

<sup>5</sup> 427 *Ib.* 49.

<sup>6</sup> *Ib.* 1470, 396.

<sup>7</sup> 415 *Com. Hans.* 5, s. 2279.

Colonies (Rt. Hon. G. Hall) said that in the event of constitutional changes being proposed all interested parties and groups would have an opportunity of expressing their views.

**Hong Kong (Constitutional).**—In reply to a Q. in the House of Commons on May 1,<sup>1</sup> the Secretary of State for the Colonies said that H.M. Government had under consideration the means by which in Hong Kong and elsewhere in the Colonial Empire the inhabitants of the Territory would be given a fuller and more responsible share in the management of their own affairs. One method was the transfer of certain functions of internal administration to Municipalities constituted on a fully representative basis. The Governor had been instructed to examine the whole question in consultation with representatives of all sections of the community.

In reply to a further Q. on October 30,<sup>2</sup> the Under-Secretary of State for the Colonies said that the Governor had practically concluded his consultations and he (the Under-Secretary) expected to receive the recommendations in the near future.

**Jamaica B.W.I. (Executive Council).**<sup>3</sup>—With reference to the Article (XIV) on the Jamaica Constitution in Volume XIII of the JOURNAL, the 5 members of the House of Representatives in the Executive Council have been given the title of Minister, and their Portfolios are: Finance and General Purposes, Communications, Agriculture, Education and Social Welfare—the various Government Departments being grouped under one or other of these Heads.<sup>4</sup>

**The Malayan Union (The Straits Settlements (Repeal) Bill).**—During the year under review in this Volume considerable constitutional steps have been taken in regard to the Territories known as the Straits Settlements. Until, however, the time comes to have the actual Constitution before us, space will not admit of any lengthy notice on this important movement.

Questions on the subject have been asked in the House of Commons from time to time<sup>5</sup> during the 1945-46 Session and on the Colonial Office Vote on July 25, 1946, there was considerable debate upon the future of Malaya.<sup>6</sup>

A White Paper<sup>7</sup> was issued in January of the same year stating the policy of the Imperial Government on the future Constitution of the Malayan Union and Singapore (*for which see also below*), the latter to become a separate Colony. A Report was also made by Sir Harold MacMichael, G.C.M.G., D.S.O., on his Mission to Malaya (October, 1945-January, 1946)<sup>8</sup> and a further White Paper<sup>9</sup> summarizing the proposed constitutional arrangements was issued in March, 1946.

On March 8, 1946,<sup>10</sup> in moving 2 R. of the Straits Settlements Repeal Bill in the House of Commons—a forerunner of constitutional move-

<sup>1</sup> 422 Com. Hans. 5, s. 16.

<sup>2</sup> 428 *Ib.* 604.

<sup>3</sup> See JOURNAL, Vol. XIII, 199.

<sup>4</sup> Contributed by the Clerk of the Legislature.—[ED.] <sup>5</sup> 414 Com. Hans. 5, s. 254;

<sup>6</sup> 416 *Ib.* 552; 417 *Ib.* 1465; 418 *Ib.* 190; 427 *Ib.* 49.

<sup>7</sup> 426 *Ib.* 237-80.

<sup>8</sup> Cmd. 6724.

<sup>9</sup> Col. No. 194.

<sup>10</sup> Cmd. 6749.

<sup>11</sup> 420 Com. Hans. 5, s. 637.

ments in regard to Malayan Union, Singapore, etc.—the Under-Secretary of State for the Colonies (Mr. Creech Jones) said that this was a Bill to repeal the Straits Settlements Act of 1866 and to make further provision for the government of the territories heretofore known under that name. The Settlements, which were set out in the Schedule to the Bill, included Singapore, the Settlements of Penang, Malacca and Labuan, would, after the passing of the Bill, be divided as set out in Orders in Council and governed either singly or in conjunction with such other Territories as may be specified in Orders in Council, namely, Malacca and Penang, and the 9 Malay States, linked with the Malayan Union.

The underlying purpose was to create a Malayan Union. In indicating the broad proposals, the policy is that the Malayan Union should be governed by a Legislative Council and Executive, with local Councils in each of the Malay States and Settlement Council in the 2 main Settlements; these Councils to enjoy a real measure of local autonomy, the States not losing their peculiar identity but moving forward to local government, representative of all the people and interests in the States. Singapore would be made into a Colony with its Legislative and Executive Councils.

All matters of Mohammedan religion concerning the Malays would be dealt with by a Sultans' Advisory Council, consisting of the Sultans together with, in each State, a Muslim Advisory Council, in regard to all matters appertaining to the Mohammedan faith.

The political life would rest upon a common citizenship. There would be a Governor-General to co-ordinate policy, and the Settlements of Penang and Malacca would retain their status and identity, inside the Malayan Union. Their citizens would continue to be British Subjects.<sup>1</sup>

For the Territories invoked in the Bill the Order in Council would be by virtue of the British Settlements, and that part of the Order relating to the Malay States would be by virtue of the Foreign Jurisdiction Act, 1890.<sup>2</sup>

The Straits Settlements (Repeal) Bill (which originated in the Lords), passed through its remaining stages, duly becoming 9 & 10 Geo. VI, c. 36.

We are indebted to the Clerk of Council, Government of the Malayan Union, for the following papers dealing with the subject, which are the outcome of the sittings of the working Committee, consisting of Government representatives on the one side and Malay representatives on the other, which was set up to examine the various problems in detail:

#### Constitutional Proposals for Malaya.

Report of the Working Committee appointed by a Conference of His Excellency the Governor of the Malayan Union, Their Highnesses the Rulers of the Malay States and the Representatives of the United Malays National Organization.

Revised up to December 19, 1946.

Government Printer, Kuala Lumpur, 1947. 5s. or 2s. 4d.

<sup>1</sup> *Ib.* 639, 640.

<sup>2</sup> *Ib.* 641.

Report of the Consultative Committee.

Together with Proceedings of Six Public Meetings, a Summary of Representations made and Letters and Memoranda considered by the Committee.

Government Printer, Kuala Lumpur, 1947.

Summary of the Constitutional Proposals for Malaya.

Summary of the Report of the Working Committee appointed by a Conference of His Excellency the Governor of the Malayan Union, Their Highnesses the Rulers of the Malay States and the Representatives of the United Malays National Organization.

Revised up to December 19, 1946.

Government Printer, Kuala Lumpur, 1947.

It is hoped in our next Volume to deal with some of the principles of the Constitutions.

Malta G.C. (Constitutional).<sup>1</sup>—The Malta (Elected Members) Letters Patent, 1946, amends the Malta Letters Patent, 1939 ("The Principal Letters Patent") by removing doubts arising as to elected seats on the Council of Government not being filled. S. 1 provides that without prejudice to the provisions of S. 39 of the Principal Letters Patent

That the Council shall be sufficiently constituted, and fully competent to exercise all powers conferred upon it notwithstanding that the seats of any or all of the Elected Members may be vacant and that no steps shall have been taken to fill the vacancies; and that it shall not be obligatory for any such steps to be taken.

The Governor's proclamation bringing these Letters Patent into force appeared in *The Malta Government Gazette* of January 16, 1947.

The main constitutional movements in Malta during 1946 were, however, in connection with the visit of the Constitutional Commissioner (Sir Harold MacMichael, G.C.M.G., D.S.O.) appointed by the Imperial Government

to visit Malta in order to formulate detailed proposals after consultation with representatives of the Maltese people, on the most appropriate means of implementing the declaration regarding constitutional reform made by the then Secretary of State for the Colonies in the House of Commons on the 7th July, 1943;<sup>2</sup> and to discuss generally any matters, including questions of finance, that have a bearing on the restoration of responsible government.

Sir Harold's Report<sup>3</sup> in Chapter 2 thereof gives a résumé of constitutional developments in the Island, up to August, 1936, account of which has already appeared in the JOURNAL.<sup>1</sup> Chapter 3 covers the course of events from then to the end of 1945 and Chapter 4 to those in 1946 when a series of discussions took place between Sir Harold and a National Assembly embracing: the Legislature; Reserved Matters; "Special Matters"; religious toleration; language rights; the Reserved Civil List; the method of granting the Constitution; Disallowance and Reservation of Laws; Miscellaneous provisions and Governor's powers; Relations of

<sup>1</sup> See also JOURNAL, Vols. I, 10; II, 9; III, 27; IV, 34; V, 56; VII, 103; VIII, 92; XIII, 97.

<sup>2</sup> 390 *Com. Hans.* 5, s. 2078.

<sup>3</sup> Colonial Office Paper No. 207.

the Malta Government with that of His Majesty; Public Offices; and, The Imperial side of the Dyarchy. The Commissioner's conclusions open with the following paragraph:

The aims of His Majesty's Government comprise the security of the Island as a bastion of the British Empire, the welfare of its people, their progress along the path of self-government, and the avoidance of friction between the two sides of the dyarchy.

Briefly, the conclusions are that any revocation of the new Constitution would be disastrous; the need for the over-riding powers of the Imperial Government in case of emergency; Malta's control of its own Police Force; opportunity for consultation and ventilation of views on reserved matters; and that the question of uni- *v.* bi-cameralism be left for the Maltese themselves to decide.

Throughout the Report are given in the Chapters, the Commissioner's recommendations in block type, but a description of the Constitution will, as is our usual practice, be reserved until it is an accomplished fact.

In the last paragraph of Sir Harold's Report he says:

Self-government has been well-earned in Malta and must be made a reality within the limits of its application. It is for the Maltese, stimulated by a full sense of responsibility and aided by such assistance as we can give them, to make a success of it. The political soil is fertile and strong ramparts protect the State from encroachment. If the plant of self-government is to thrive and withstand the periodic gusts of controversy and criticism it must be a hardy indigenous type—no artificial production of the hothouse continually requiring grandmotherly care nor liable to tentative disturbance of its roots whenever the conscientious guardians of the State feel grounds for dissatisfaction with some transient symptoms of weakness.

The Appendices to the Report contain the text of the Letters Patent of the Constitution and of the Governor each dated April 14, 1931, as well as the R. I of the same date; various broadcasts and addresses by the Commissioner; table showing the composition of the National Assembly of 421 delegates and extracts from House of Commons Reports. Appendix IX gives the proceedings at the 11 meetings between the Commissioner and the Constitutional Committee of the National Assembly held between July 25 and August 20, 1946. The text of the Draft Constitution as prepared by the National Assembly of Malta, 1946, is shown in Appendix X. Appendix XI contains an account of the final meeting between the Constitutional Commissioner and the Constitutional Committee of the National Assembly.

#### Malta G.C. (Procedure and Miscellaneous).<sup>1</sup>

*President's Power in limitation of Debate, etc.*—Standing Order 30, of the Council of Government, empowers Mr. President, whenever he shall deem it expedient, to disallow any Motion, Resolution or question relating to the defence of "these Islands" or to the use or teaching of any language therein. He may also regulate, restrict or prohibit reference to those subjects in debate, in such manner and to such extent as he may deem fit.

<sup>1</sup> Contributed by a Clerk of the Council of Government.—[Ed.]

\* *Seating of Members.*—It has been the unbroken custom for *ex-officio* and official members to sit on the right of the Chair and elected and nominated members on the left of the Chair, at their discretion.

\* *Closure.*—Standing Order 25<sup>1</sup> provides that after a question has been proposed and debated for not less than half an hour, the Closure may be moved, namely: "That the question be now put", together with any further Motions in order to bring to a decision any question already proposed from the Chair.

\* *Use of Legislative Chamber, etc., for other purposes.*—It is customary to allow the Committee of Privileges of the Maltese Nobility to make use of the Council Chamber for their annual meeting whether during the Session or Recess.

\* *Remuneration and Free Facilities to M.P.s.*—Both the elected and non-elected members of the Council of Government receive an *honorarium* of £150 *p.a.*

\* *Parliamentary Running Costs Estimates, 1946-47.*—These amount to £6,079, of which £1,800 is applied to members' *honoraria*, as above-mentioned.

**Mauritius (Constitutional).**—In reply to a *Q.* in the House of Commons on October 17, 1945,<sup>2</sup> the Secretary of State for the Colonies (Rt. Hon. G. Hall) said that the Government had discussed with the Colonial Office a constitutional scheme to broaden the basis of representation of the Council of Government and to place wider responsibilities on the Council for the affairs of the Island. On his return to Mauritius the Governor would lay the scheme before the Council and report the outcome of these discussions. When they had reached their final form the Minister would make another statement to the House.

On April 3,<sup>3</sup> both oral and written *Q.s* were asked, as well as further *Q.s* on October 16, 1946,<sup>4</sup> on the same subject.

**Newfoundland (National Convention).**<sup>5</sup>—During the year under review in this JOURNAL were passed, the National Convention Act<sup>6</sup> and the National Convention (Labrador) Act.<sup>7</sup> Both are "enacted by the Governor, by and with the advice of the Commission of Government". The former Act deals with the holding of an elected National Convention and the election of representatives thereto, to enable the people of Newfoundland to examine the future of the Island and express their considered views as to suitable forms of government therefor, having regard to its financial and economic conditions. Act No. 16 contains 135 sections and 2 schedules, most of which deal with electoral machinery.

Under S. 2 a National Convention is constituted consisting of 45 representatives elected in accordance with the provisions of the Act together with a Judge of the Supreme Court of Newfoundland appointed by the Governor in Commission, as Chairman.

The duty and function of the Convention are:

<sup>1</sup> See also JOURNAL, Vol. I, 65.      <sup>2</sup> 414 *Com. Hans.* 5, 9, 1135.      <sup>3</sup> 421 *Ib.* 200, 1244.      <sup>4</sup> 427 *Ib.* 195.      <sup>5</sup> See also JOURNAL, Vols. II, 8; IV, 35; V, 61; VII, 106; XI-XII, 107; XIII, 97.      <sup>6</sup> No. 16 of 1946.      <sup>7</sup> No. 29 of 1946.

to consider and discuss among themselves as elected representatives of the people of Newfoundland the changes which have taken place in the financial and economic situation of the Island since 1934, and, bearing in mind the extent to which the high revenues of recent years have been due to wartime conditions;

to examine the position of the country and to make recommendations to His Majesty's Government in the United Kingdom as to possible forms of future government to be put before the people at a national referendum.<sup>1</sup>

The Convention is empowered to establish its own Rules of Procedure amendable only by the support of two-thirds of the total members.<sup>2</sup> The Governor in Commission may provide such advisers, etc., for the Convention as may be deemed necessary.<sup>3</sup> Members are paid and such expenses as the Governor in Commission may determine.<sup>4</sup>

The first meeting of the Convention is summoned by the Governor; thereafter the Convention decides its meetings.<sup>5</sup>

For the purpose of this law, Newfoundland is divided into 38 electoral districts with names and boundaries as set forth in Schedule I to the Act.<sup>6</sup> Each district returns 1 member, except Harbour Main, Grand Falls and Humber, which each return 2 and St. John's City (East) and (West), which each return 3.<sup>7</sup> All compass bearings relating to boundaries of electoral districts in Schedule I are true, except when expressly stated to be magnetic.<sup>8</sup>

A candidate must be a registered elector in the district for which he is nominated as candidate, but a person entitled to vote in an electoral district may be a candidate in another electoral district if he has, within the period of 2 years immediately preceding the day of nomination, been ordinarily and *bona fide* resident in such other district for the continuous period of 1 year.<sup>9</sup>

Disqualifications for candidates are: membership of the Commission of Government; full-time employment in the Public Service of the Crown; holder of any office or employment from or under the Government of Newfoundland or of any corporation, board or body operating or having the management of any service on behalf of the Government to which any salary, fee, wages, allowance or profit of any kind (except War service pay as below) is attached during the time he is holding such office,<sup>10</sup> unless such person be on leave without such salary, etc., or a part-time member of such corporation, etc.

Qualifications to be an elector are: an adult British Subject; 2 years' *bona fide* residence in Newfoundland immediately preceding the election or continuously resident for 2 months immediately preceding polling day in another electoral district; but service in the Naval, Military or Air Forces or in the Mercantile Marine of Newfoundland or the United Kingdom or any of her allies or in the Newfoundland Forestry Unit, in consequence of World War II, qualifies for the vote.<sup>11</sup>

No liquors may be sold on polling day.<sup>12</sup>

<sup>1</sup> S. 3.

<sup>2</sup> S. 4.

<sup>3</sup> S. 5.

<sup>4</sup> S. 6.

<sup>5</sup> S. 7.

<sup>6</sup> S. 8.

<sup>7</sup> S. 9.

<sup>8</sup> S. 11.

<sup>9</sup> S. 20.

<sup>10</sup> S. 21.

<sup>11</sup> S. 46.

<sup>12</sup> S. 66.



The election of the representative of Labrador is provided for by the National Convention (Labrador) Act,<sup>1</sup> and a person eligible for nomination as a candidate is deemed to have been validly nominated if within the period between the date of the Proclamation mentioned in S. 3 of the Act and the expiry of the time for nomination under S. 25 of the Principal Act, the nomination delivery is made to the Returning Officer of: a document signed in his own hand, with address and occupation intimating his desire to be nominated; and a document signed under their own hands by at least 5 electors of the said district certifying to their knowledge that such person is properly resident and otherwise qualified. These documents are then delivered to the person in charge of a telegraph office and telegraphed to the Returning Officer.<sup>2</sup> The Governor in Commission then by Proclamation fixes the day and place of nomination and the polling entries, which may include ships, and the hours of voting at any such centre, which may vary in accordance with the time of arrival of the ship at polling centres.

On December 11, 1945,<sup>3</sup> Questions were asked in the House of Commons as to the Convention, the information in reply being contained in the above.

The Prime Minister (Rt. Hon. C. R. Attlee) also said that the object of this procedure was to enable the people of the Island to come to a free and informed decision as to their future form of government.

On May 14,<sup>4</sup> in reply to a written Q. in the House of Commons, it was stated that it was expected that the elections would take place in the latter half of June, 1946.

On June 24,<sup>5</sup> in reply to another written Q., reply was given as embodied in the Note above.

**South African High Commission Territories: Bechuanaland, Basutoland and Swaziland (Transfer of).**—In reply to a Q. on August 23, 1945,<sup>6</sup> the Under Secretary of State for Dominion Affairs (Mr. J. Parker) said that the attitude of H. M. Government in the United Kingdom on this question was set out in *Cmd.* 4948. The pledges were that the transfer of these Territories should not take place until the inhabitants, both Native and European, had been consulted and until Parliament had been given an opportunity of expressing its views.

**Singapore (Legislative Council).**—On May 15, 1946,<sup>7</sup> in reply to a Q. in the House of Commons, the Secretary of State for the Colonies (Rt. Hon. G. Hall) said that on his arrival in the Colony the Governor established an Advisory Council to assist him in the early days of his administration. With the help of this Council he is consulting local opinion about the composition of the Legislative Council and other

<sup>1</sup> No. 29 of 1946.

<sup>2</sup> S. 2.

<sup>3</sup> 417 *Com. Hans.* 5, s. 210.

<sup>4</sup> 422 *Ib.* 216.

<sup>5</sup> 424 *Ib.* 97.

<sup>6</sup> 413 *Com. Hans.* 5, s. 849.

<sup>7</sup> 422 *Com. Hans.* 5, s.

1856; see also "The Malayan Union (the Straits Settlements) (Repeal) Bill".

matters, including methods of election mentioned in para. 18 (a)<sup>1</sup> of *Cmd. 6749*. These local consultations must take some time.

In reply to a further *Q.* on the subject on June 5, Mr. Hall said that a Legislative Council had not yet been set up either in the Malayan Union or in Singapore. The local consultations which the 2 Governors had been instructed to undertake before these Councils were established were still in progress.

An interesting Blue Book is the Report of the Committee appointed by the Governor of Singapore to make recommendations for the re-constitution of the Legislative Council of the Colony, dated August, 1946, and published by the Government Printer, Singapore.

In addition to the Report, which contains detailed recommendations, there are annexed to it, Minutes of Meetings of the Legislative Council Notice inviting views of the public and their replies; Summary of discussion with Mr. Lim Hong Bee on behalf of the Malayan Democratic Union; Regulations of the Singapore Chamber of Commerce for nominations of M.L.C.s (1921); and a plan of Electoral districts.

When the new Constitution is an accomplished fact reference will be made to it in the JOURNAL.

Trinidad and Tobago (Constitutional).<sup>2</sup>—In reply to a *Q.* on October 30, 1946,<sup>3</sup> as to what plans were being made for the revision of the Constitution, with a view to establishing a fully representative Legislative Council and the responsibility to that body of the Executive Council; the Secretary of State for the Colonies (Rt. Hon. A. Creech Jones) stated that elections were held last July on adult suffrage, 5 of the 9 members of the Executive Council, which had an unofficial majority, were M.L.C.s and 4 were elected. They must wait before they could decide what substantial advances should now be made.

O. C.

October 29, 1947.

<sup>1</sup> 18 (a) There will be a Legislative Council, consisting of the Governor as President, four *ex-officio* members (the Colonial Secretary, the Attorney General, the Financial Secretary and the President of the Municipal Commissioners), Nominated Official Members not exceeding seven, Nominated Unofficial Members not exceeding two, and Elected Members not exceeding nine. (*Note.*—As in the Malayan Union (*see* note in paragraph 6 (a) above), these numbers are stated as maxima and cannot be determined until the Governor has had full opportunity to consult local opinion.) Nominated Members will be appointed by the Governor. Elected Members, who, like Nominated Unofficial Members, will be British subjects or Malayan Union citizens, will be chosen in a manner to be prescribed by law.

<sup>2</sup> *See also* JOURNAL, Vols. X, 82; XIII, 97.

<sup>3</sup> 428 *Com. Hans.* 5, s. 607.

## II. THEIR MAJESTIES IN THE PARLIAMENT OF THE UNION OF SOUTH AFRICA

By J. F. KNOLL, J.P.

*Clerk of the Senate*

FOR some time during the year 1946 and the early part of 1947, great preparations had been going on, not only in the Union but in the other Territories of Southern Africa owing allegiance to the British Crown, in connection with the visit of Their Majesties, the King and Queen, the Princess Elizabeth, Heir Presumptive to the Throne, and Princess Margaret, to this Sub-Continent.

Therefore, when, early on the morning of Monday, February the 14th, 1947, the superstructure of H.M.S. *Vanguard* appeared over the horizon on the last day of her 6,000-mile voyage southward over the Atlantic Ocean, all eyes were turned to the gradually increasing outline of this mighty war-ship as she neared Table Bay. As *Vanguard* approached, guns thundered forth high up from Lion Battery in the Royal Salute, and the stately ship slowly glided to her berth in the Duncan Basin of the Cape Town Docks, a proud sight for all. It was not, however, until 10 o'clock a.m., that Their Majesties and the Princesses were officially welcomed to our shores by the Governor-General, the Prime Minister, other Cabinet Ministers and prominent citizens.

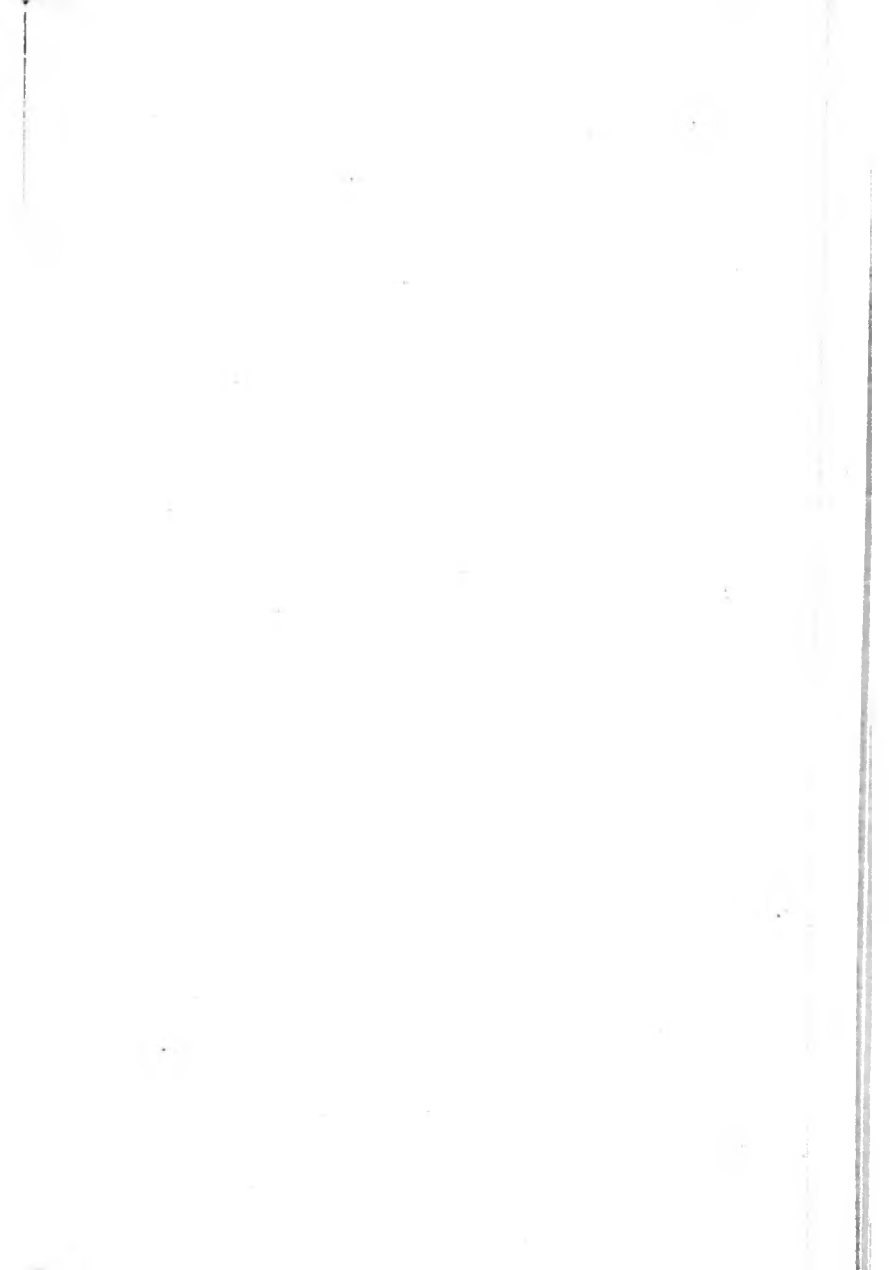
Other descriptions have been given of the great and glorious welcome accorded the King, Queen Elizabeth and the two Princesses by the people of Cape Town (of whatever race or creed), during their triumphal progress along the gaily beflagged and decorated streets of the Union's Mother City, the birthplace of Parliamentary Government in Southern Africa.

However, as this Article only purports to deal with actual Parliamentary events attending the Royal Visit, a brief account will now be given of the visit from that aspect, but space will not permit of a description of all the details connected, either with the presentation of the Joint Address from both Houses of Parliament to His Majesty or the Ceremony of the Opening of Parliament by the King.

The route of the Royal Procession through the streets of Cape Town on the day of arrival ended at the old and historic Government House, which had been placed at the disposal of Their Majesties, the Princesses and their suites, during the visit.

The first Parliamentary event to be recorded was the presentation of a Joint Address by both Houses of Parliament to His Majesty at Government House, Cape Town, on the day of their arrival, for shortly before the close of the Third Session of the Ninth Parliament of the Union, both the Senate and House of Assembly had, without debate, unanimously affirmed the following Resolution:

That an humble Address from this House separately or from both Houses jointly be presented to His Majesty the King on his arrival in South Africa





TO HIS MOST GRACIOUS MAJESTY  
 GEORGE THE SIXTH, BY THE WILL  
 GRACE OF GOD, OF GREAT BRITAIN,  
 IRELAND AND THE BRITISH  
 DOMINIONS BEYOND THE SEAS,  
 KING, DEFENDER OF THE FAITH,  
 EMPEROR OF INDIA.



MAY IT PLEASE YOUR MAJESTY,  
 We the President and members of the Senate  
 and the Speaker and members of the House of  
 Assembly, representing the people  
 of the Union of South Africa, desire in all  
 sincerity and humility to extend a welcome to Your  
 Majesty, Her Majesty the Queen and the Royal  
 Family on the occasion of your visit to the

We are conscious of the special significance of our  
 assembling on this occasion being, as it is, the  
 Commemoration of the 100th Anniversary of the  
 Dominion constituting the Senate and House  
 of Assembly of the King, the Senate and House  
 of Assembly will be represented by the King in person.  
 We gratefully appreciate the high sense of civic  
 public service in which Your Majesty has  
 undertaken the heavy labour attending this  
 visit with which you have honoured our people. The  
 Family will be a source of pleasure to all the people  
 of our land and the warmth of your reception  
 we pray that the blessing of Almighty  
 God may rest on your visit and may  
 sustain you in your labour.

*James*  
 President  
*J. S. Russell*  
 Clerk of the Senate  
*C. J. van Cester*  
 Speaker  
*James*  
 Clerk of the House of Assembly

House of Parliament,  
 Cape Town,  
 17th February, 1947.



conveying a sincere welcome to His Majesty, Her Majesty the Queen and the Royal Princesses: and that such Address be presented on behalf of this House by Mr. President, Mr. Speaker and Members.

Therefore, at 11.45 a.m. that day the members of the House of Assembly met on the summons of the Division Bells in their Chamber, the Ministers and leading members of the various parties meeting in Mr. Speaker's Chamber, after which all followed Mr. Speaker on foot through the gate in the Parliament Gardens, which adjoin those of Government House, and along the broad gravel walk to the entrance steps of the Governor-General's residence.

The Procession was met at the boundary gate by an Equerry of the Royal Household, who, after exchange of courtesies with the Serjeant-at-Arms, conducted Mr. Speaker and the House of Assembly to the State Room at Government House.

The Procession made a stately spectacle. First came the Serjeant-at-Arms with the Mace in the customary Parliamentary uniform, then Mr. Speaker in full-dress robes of office, accompanied by the Clerks-at-the-Table, also bewigged and gowned, followed by Ministers and members.

At 12.15 p.m. the same procedure was followed in regard to the Senate, Mr. President, also in the full-dress robes of office, preceded by the Gentleman Usher of the Black Rod, being accompanied by the Clerks-at-the-Table, also bewigged and gowned, and followed by those Ministers who are members of the Upper House and other Senators.

On arrival in the State Room the seating arrangements were as at an Opening Ceremony of Parliament, the Senate sitting on the King's right and the House of Assembly on his left, the Black Rod and Serjeant-at-Arms each standing near their respective Presiding Officers.

The King and Queen on being privately informed that the members were in attendance, were escorted to the dais, accompanied by the Princesses, Princess Elizabeth being seated on the King's right and Princess Margaret on the Queen's left. On the entrance of Their Majesties all present rose and when the King had reached the dais, His Majesty said "Please be seated".

All being seated (except Black Rod and the Serjeant-at-Arms) Mr. President was handed a copy of the illuminated Address in one of the official languages of the Union by the Clerk of the Senate. Mr. President then rose and advanced until he was standing before the King, bowed and read the Address, after which he presented it to His Majesty, bowed again and retired backwards to his seat.

Similar procedure was then followed by the Clerk of the House of Assembly and Mr. Speaker, who read the Address in the other official language.

These readings of the Joint Address being concluded, His Majesty made his acknowledgments, addressing the members of the Union Parliament as "Mr. President and Members of the Senate" and "Mr. Speaker and Members of the House of Assembly", in each case

saluting them and thanking them for their Addresses of Welcome, Mr. President and Mr. Speaker bowing in acknowledgment of the Salute.

After replying to the Address of Welcome, His Majesty added a very special item to the Ceremony by investing the Prime Minister (General Smuts) with the insignia of the Order of Merit, which had previously been conferred on him. This incident, as pleasing as it was apparently unexpected (even to the recipient), met with the spontaneous applause of all those present.

His Majesty then rose (members rising with Him), and with the Royal Family left the State Room, after which Mr. President and the members of the Senate were escorted back to the Parliamentary Garden Gate by an Equerry, and when the Senate had left, a similar procedure was followed in regard to Mr. Speaker and the members of the House of Assembly.

The Joint Address, the presentation of which, after the report of the King's Speech to each House subsequent to the Opening Ceremony, was also reported in each House of Parliament. A photograph of the Address appears with this Article.

Friday, the 21st of February in the year of Grace, Nineteen hundred and Forty-seven, was a momentous day in the Parliamentary history of South Africa and indeed in that of the British Commonwealth of Nations. It marked the first occasion on which the Sovereign had opened any one of His Parliaments outside the United Kingdom, although he had, in 1939,<sup>1</sup> and that also a first occasion, delivered a speech in His Parliament of Canada, assembled in the Senate House at Ottawa, and given, in person, Royal Assent to certain Bills, not in the time-honoured manner and Norman-French used at Westminster, but by the Clerk of the Parliaments at Ottawa pronouncing such Assent in English and French in the following words:

*His Majesty doth assent to these Bills.*

Later in the day His Majesty signed each of the original Bills as already shown in the JOURNAL.<sup>2</sup>

In order to make this Opening of Parliament by His Majesty possible, His Deputy, the Governor-General, had, on the advice of his Ministers, prorogued Parliament on February 14, 1947, thus bringing to an end its Third Session, and summoned Parliament to meet for the despatch of business in its Fourth Session at Noon, on February 21.

The day of the Opening of the Fourth Session of the Ninth Parliament of the Union of South Africa took place in the South African summer, but even the often wild South-Easter had tempered itself to a gentle cooling breeze for the occasion. The background of the City was Table Mountain, a formation characteristic of the Continent of Africa, rising up abruptly to 3,549 ft.—truly a God-made Statue of Liberty to the incoming voyager.

Set among the buildings of the City, and adjoining what, several

<sup>1</sup> See JOURNAL, Vol. VII, 111.

<sup>2</sup> *Ib.* 114.

centuries before, had been the Government Gardens of the Batavian Republic, is the Union Parliament building, a stately pile, now scorned decoration, beyond the Royal Crown. This was once the Parliament House of the Colony of the Cape of Good Hope, and upon the advent of Union in 1910 became the seat of its Legislature. In this building the King by his Deputy, with the other constituent branches of Parliament, the Senate and the House of Assembly, are associated in legislating for the affairs of a country which, with South-West Africa, covers an area over 6 times that of the British Isles, but contains only 10 million people, of all races.

On that memorable day, the two Houses met previously in accordance with time-honoured custom, the Senate in their Library adjoining the Senate Chamber, which latter is on such occasions used as the Throne Room for the Ceremony of the Opening of Parliament, and the House of Assembly in their own Chamber.

In both Houses, certain preliminaries were gone through, such as the reading of the Proclamation of the Governor-General summoning Parliament and the letter from the Prime Minister's Office in regard to the place and time of the Opening Ceremony.

The practice of the Lower House being summoned by the Crown through Black Rod to the Second Chamber to be present together with the King's Deputy in Parliament for the Opening Ceremony, has rarely been followed in South Africa.

At the appointed time, therefore, Mr. Speaker announced in the House of Assembly that he now proposed to attend the Opening of Parliament in the Senate, and requested as many members as desired to do so to accompany him to the Senate Chamber; a similar procedure being followed by Mr. President in regard to the Senate in their Library.

We will now enter the Houses of Parliament on this eventful day and see what arrangements have been made there for those attending the Ceremony.

As the Senate House, which measures approximately 66 feet by 34 feet by 34 feet, with Senators' desks and benches and the Table of the House removed, will only accommodate 513 people all told in addition to the 44 Senators, 153 members of the House of Assembly, including their respective Presiding Officers, Government House Bay and the Press Gallery, the practice has long been followed of providing seats in the Corridors along which the Governor-General, Mr. President and the Senate and Mr. Speaker and the members of the House of Assembly, each in their separate processions, proceed to the Senate Chamber for the Opening Ceremony. That of Mr. Speaker arrives first, that of Mr. President second and, when both Houses are seated, that of the Governor-General.

On this day, however, 7 minutes before both these Processions of the Senate and of the House of Assembly arrived, another Procession, that of T.R.H. the Princesses Elizabeth and Margaret and Her Excellency the wife of the Governor-General (with those of the Royal Suite who



were not included in the Royal Procession), passed through the corridors of Parliament. This Procession, however, did not enter the Chamber, but was met at the Government House Garden Gate adjoining the House of Assembly by the Serjeant-at-Arms (without the Mace), who, upon entering the Senate part of the Houses of Parliament, handed over to Black Rod (without Rod of Office) to conduct the Procession to the Government House Bay in the Gallery of the Senate, all in the Chamber rising upon their entry. Both Black Rod and the Serjeant-at-Arms were uncovered.

The Clerk of the Senate, in whom were vested all the arrangements in connection with the Opening Ceremony, was in charge. Every precaution had been taken against fire; St. John Ambulance provided a contingent, and Boy Scouts and Schiereiland Voortrekkers were also in attendance at stated points. Even the cellars of the building had been searched and were guarded.

Invitations were issued and seats were arranged in accordance with the *Gazetted* Official Order of Precedence of the Union and admission was by ticket issued in various colours and markings, both to the various parts of the Throne Room itself as well as to the corridors of the Parliament building, where a large number of those for whom there was no accommodation in the actual Chamber had seats to view the Royal and Parliamentary Processions as they passed through and who, by a system of amplification, were able to hear the King's Speech to His Parliament of the Union.

With the exception of those included in the Royal Procession and a few M.P.s who very kindly stood behind some of their seated colleagues, seats were provided as follows: for ladies on the Floor of the House, 165; for Judges, Administrators, the Diplomatic Corps, etc., on the right and left of the Throne, 35, in addition to seats on the right of the Throne for the President, accompanied by the Clerks-at-the-Table, and The Senate, and on the left of the Throne for the Speaker, accompanied by the Clerks-at-the-Table, the Prime Minister, Ministers and the House of Assembly.

In the Official Galleries on the Floor of the House on right and left of the Throne were 9 Union Defence Officers and 6 Heads of Departments respectively.

Upstairs in the 4 other Bays were 49 persons, principally the Permanent Heads of Government Departments, Members of Executive Committees of the Provinces, and high Church Dignitaries.

While the Strangers' Gallery of the Senate provided seats for 164 persons and standing places or cushion seats for 38, the Chamber provided seats for 432, and the Corridors 621, making a total of 1088, exclusive of those with the Princesses in the Government House Bay, the members of both Houses and the Press Gallery.

All entrances to the various parts of the Chamber and the Corridors were strictly guarded by Parliamentary Messengers, official ushers, etc., with a liberal distribution of Police inside the building and at the various

entrance gates of the Parliament Gardens. The utmost precautions had been taken for security, and at 11.15 all movement in the building other than of the several Processions was arrested by barriers at which both Police and officials were stationed, in order to ensure absolutely against any obstruction to the various Processions. It was impossible for any one either to gate-crash or get into the wrong seat, all of which both in the Throne Room and in the Corridors were numbered and, with the respective names, also entered on the working plans. The movements of the Royal and Parliamentary Processions were each minutely timed to pass given points all along its respective route: in fact, every item in the whole proceeding synchronized almost to a split second.

It was now 11.45 a.m. and the Royal Party was setting out from Government House. Government Avenue, the oaks of which afford such cooling summer shade and normally used only by pedestrians, had been closed to the public in order to allow the cars of the Royal Party to pass down it to make their detour through another section of the City, to the Houses of Parliament. The whole route was again gaily decorated. The crowds were even more tumultuous in their welcome. The sun shone, but not too fiercely as occasional white clouds were flitting across the sky: indeed, the arrangements of the "Clerk of the Weather" were as perfect as could be desired.

In the street facing the main entrance to the Houses of Parliament there was a Guard of Honour, consisting of 3 officers and 104 O/Rs of the Cape Town Highlanders with Colour and Band, and the ground and steps from the Garden railings to the main entrance doors of Parliament were lined by 2 officers and 24 ratings of the S.A. Naval Force and 2 officers and 24 O/Rs of the S.A. Air Force. As the King stepped out of his car the Royal Salute was given, the Guard of Honour presented arms and the Band played the first verse of "Die Stem" and then the National Anthem.

Within the Throne Room and its Corridors all was now set, as visitors had to be in their places by 11.15 a.m. Specially selected officials and ex-officials acted as ushers for the occasion, not only in the Throne Room itself, but in the Corridors of Parliament, admission to which was only by ticket—even members of Parliament being required to carry red and green tickets for the day and very willingly did they comply with the restrictions imposed.

At 11.40 the members of the House of Assembly arrived with Mr. Speaker dressed and accompanied as for the Presentation of the Joint Address already described, the Serjeant-at-Arms with the Mace preceding Mr. Speaker.

At 11.50 the members of the Senate entered in similar fashion.

It was now 11.55. The King and Queen had arrived at the main entrance gate to the Parliamentary Gardens and were slowly proceeding up the steps to the main entrance to the Parliament building, in the entrance Lobby of which the Gentleman Usher of the Black Rod,

carrying his Rod of Office, with his cocked hat under his left arm, awaited His Majesty, and the Royal Procession was marshalled in the following order for their progress along the corridors to the Senate Chamber, all those in uniform carrying their head-gear under the left arm.

The Royal Procession was in the following order :

Gentleman Usher of the Black Rod	(a)
Two officers representing the South African Police	(b)
Two officers representing each, the Union Sea, Air and Land Forces respectively.	(c)
The Chief of the General Staff, Union Defence Forces.	(d)
The Members of the Personal Staff of the King, with a Union Defence Force Officer (an A.D.C. to the King).	(e)
Private Secretary to His Majesty.	(f)
The King's Most Excellent Majesty.	(g)
Accompanied by Her Majesty the Queen.	(h)
Lady-in-Waiting to the Queen.	(i)

His Majesty, wearing the Star and Ribbon of the Garter, was in the white uniform of an Admiral of the Fleet, with sword. Her Majesty the Queen, who was in evening dress, wearing on her left arm the embroidered Order of the Garter, was both indescribably beautiful and resplendent. On her head rested the diamond coronet worn by Queen Mary as Duchess of York on her visit to South Africa many years before.

Their Majesties being seated on the Throne, the Lady-in-Waiting (i) stood on the left of Her Majesty, the others being arranged as follows:

<i>On the King's right (as His Majesty faced the House)</i>	<i>On the Queen's left (as Her Majesty faced the House)</i>
Stood	Stood
(d)	
in rear of (d):	
4 officers of (b) and (c)	4 officers of (b) and (c)
on left of Mr. President.	on right of Mr. Speaker.
(f) and (a)	4 officers of (e).

Their Majesties were not announced on entering the Throne Room, but just previous to their entry " a Fanfare " was, 40 seconds before Noon on a signal from Black Rod, sounded on Heralds' Trumpets (as used in the House of Lords at Opening Ceremonies) by 2 Trumpeters of the South African Air Force, each Trumpet displaying a S.A. Air Force banneret.

The King, holding the Queen's hand, walked with Her Majesty on his right so that Her Majesty would not have to walk in front of the King when she took her seat on the King's left on the Throne.

As the King set his foot on the lowest step of the Throne the first of the 21-gun salute was fired at the Lion (Coastal) Battery, and at the

same time the Guard of Honour presented arms, the Band playing the Anthem.

The King then bowed to the right and left of the House (*i.e.*, to Mr. President and Mr. Speaker), who each returned the compliment and, with head covered, took his seat and said:

“Gentlemen, please be seated.”

The Private Secretary armed with 3 signed copies of the Speech from the Throne, in both languages, bound together, now advanced four paces to his front: turned left: bowed: ascended 3 steps of the Throne only (*i.e.*, not to the dais itself): handed one set to His Majesty: descended: stepped backwards to the Floor of the Chamber: bowed: turned left: took 4 paces back to his position and turned right about; all movements being in slow time.

His Majesty read the Speech in English, with the exception of the last paragraph, followed by Mr. President, who read it in Afrikaans, making the same omission. In accordance with time-honoured custom, before reading those parts of the Speech which apply to both Houses of Parliament, His Majesty addressed them as follows:

“Mr. President and Members of the Senate.”

“Mr. Speaker and Members of the House of Assembly,”  
and when speaking of the Estimates to be considered by Parliament the King only addressed:

“Mr. Speaker and the House of Assembly.”

On each occasion His Majesty bowed, and Mr. President and Mr. Speaker respectively, bowed in return.

The King then read in both official languages (English and Afrikaans), the last paragraph of the Speech declaring the Fourth Session of the Ninth Parliament of the Union of South Africa open.

Thereupon the Private Secretary again advanced as before, received the Speech from His Majesty, bowed as before, but this time on regaining the Floor of the Chamber turned right: advanced straight across to Mr. Speaker: bowed: presented one set of the Speech: bowed: turned left about: re-turned until opposite the Throne: halted: turned right, bowed: turned left: advanced to Mr. President: bowed: presented one set of the Speech: bowed: turned right: took two steps forward: turned left: took one step forward—and then turned right about.

Black Rod then advanced: bowed to His Majesty and to Mr. President and to Mr. Speaker and took up his position facing the King.

His Majesty then rose, the Guard of Honour, at a signal, presented arms and the Band played “Die Stem”, during the playing of which His Majesty remained standing.

Black Rod then turned about and took up position to lead the Procession from the House.

The King again took the Queen by the hand, she walking on his left, and both proceeded down the centre of the Chamber, the Procession being in reverse order to that upon entrance.

Upon arriving at the side-walk at the main entrance gate to Parliament

Gardens, the Guard of Honour again gave the Royal Salute and the Band played the first verse of the Anthem, after which the Royal Party entered their cars and, before cheering crowds, slowly proceeded along the same route to Government House, where they arrived at 12.30 o'clock.

As the King left the Houses of Parliament, the Royal Standard, which had been broken on the flagstaff on the top of the building over the entrance on His Majesty's arrival, was hauled down, leaving the 2 official flags of the Union still flying.

In the Chamber, after the Procession of Mr. President and the Senate, followed by Mr. Speaker and the House of Assembly, had left the Throne Room, the visitors filed out along their pre-appointed routes, thus bringing to an end a red-letter day in our Parliamentary annals.

At 4 p.m., the Royal Visitors left Cape Town in the White Train specially built for their use, on their tour through the British Territories of Southern Africa.

April 20 saw the return of the Royal Party to Cape Town, where another interesting event took place when, on April 22, His Majesty presided at a Meeting of His Executive Council at Government House and personally gave His Assent<sup>1</sup> to the War Pensions Laws Amendment Bill, as follows:

*Assented to  
George R.I.*

The following words were endorsed under the long title of the Act:

*Assented to on 23rd April, 1947. (English Text signed by His Majesty the King), the same endorsement being made in Afrikaans in the text in that language.*

On April 29, the following statement was made in each House of Parliament by a Minister (on behalf of the Prime Minister):

The Minister of . . . announced that His Majesty the King had been graciously pleased to give His Assent to the following Bill:

No. 17 of 1947: War Pensions Laws Amendment Act, 1947.

and on May 6, the Act appeared in the *Government Gazette* under the following notice from the Prime Minister's Office:

"It is hereby notified that His Majesty the King has been graciously pleased to give His Assent to the following Act, which is hereby published for general information."

The only difference in the phraseology between the Assent and *Gazette* Notice, in the case of Assent by His Majesty and Assent by the Governor-

<sup>1</sup> The Royal Assent by the Governor-General to all Bills, in respect of that language in which the Bill is signed, is as follows:

*In English:*

"In His Majesty's name I assent to this Bill.

GOVERNOR-GENERAL."

*In Afrikaans:*

"In naam van Sy Majesteit heg ek my goedkeuring aan hierdie Wetsontwerp.  
GOEWERNEUR-GENERAAL."

General in the King's name, was the insertion of the word "graciously" in regard to Assent of the King in person.

Other documents bearing the King's Signature dealt with the commutation of sentences, including that of life imprisonment on 2 Natives convicted of murder.

April 24 was the day of the departure of the Royal Visitors, and Their Majesties and the Princesses, after another right "Royal Progress" through the streets of Cape Town to where *Vanguard* was lying with steam raised, were bid farewell by the Governor-General, the Prime Minister, Ministers and other prominent persons.

Choirs then sang songs of farewell as the King and Queen walked up the brow and took up their position on top of B turret. The wires were cast off and the giant vessel, with the aid of numerous tugs was put into position to proceed to sea, gliding out through the entrance to the Basin, with the King, the Queen, and the two Princesses still standing on B turret acknowledging the cheers of the people.

As *Vanguard* turned to her course for Homeward-bound, she shone like silver in the broken light of a slightly clouded autumn afternoon, presenting a striking picture.

So ended a most welcome, though, perhaps, to the Royal Party, a most strenuous visit, but with full satisfaction in the heart and soul of every citizen that the Royal Family had been blessed with safe travel and good health throughout what will always be to the people of South Africa a great and memorable record in her history.

### III. OPENING OF THE SOUTHERN RHODESIA PARLIAMENT BY HIS MAJESTY KING GEORGE VI

(APRIL 7, 1947)

BY CLAUDE C. D. FERRIS, O.B.E.

*Clerk of the Legislative Assembly*

At 1 o'clock p.m. on April 7, 1947, His Majesty King George VI, accompanied by Her Majesty the Queen, opened the Second Session of the Sixth Parliament of Southern Rhodesia.

The Royal Visit to Southern Rhodesia had been arranged in conjunction with the visit of the Royal Family to South Africa, where His Majesty opened the Parliament of the Union of South Africa.

While the opening of a Dominion Parliament by a reigning Sovereign is of the greatest significance in the Parliamentary history of the British Commonwealth, the occasion of the opening of the Southern Rhodesia Parliament was unique. Never before had a reigning Sovereign himself opened the Parliament of a unicameral Legislature; and never before had the Sovereign undertaken a 600-mile journey by air to open a Parliament. This outstanding honour, which is of the utmost con-

stitutional importance, was conferred upon the Parliament of Southern Rhodesia.

Constitutionally Southern Rhodesia occupies a unique position among the countries of the British Commonwealth of Nations and the British Colonial Empire. The Colony, which has a single Chamber Legislature, is the youngest self-governing unit in the British family of Nations. Yet, although a Colony, Southern Rhodesia deals direct with the Commonwealth Office of the British Government. She has full control over her own affairs with one important exception, in that legislation affecting the African (Native) section of the population is reserved for the signification of His Majesty's pleasure, and must have the sanction of the Commonwealth Office before promulgation. Foreign policy is decided for Southern Rhodesia by Downing Street. In some respects, therefore, Southern Rhodesia resembles a Colony; yet, since she enjoys full autonomy in most respects, she approximates to a Dominion, although she has not attained true Dominion status.

Their Majesties the King and Queen and Their Royal Highnesses the Princesses Elizabeth and Margaret, having completed a journey of over 600 miles by air, arrived in Salisbury from Pretoria at 11.30 a.m. on Monday, April 7, 1947, and were welcomed with enthusiasm unparalleled in the history of the Colony. They were met at the airport by His Excellency the Governor, the Prime Minister, and the Mayor and Mayoress of Salisbury. The Royal Party proceeded on a State Drive, escorted by a motor-cycle escort of the British South Africa Police, through the City to Government House, where they arrived at 12 noon. The gaily decorated route was lined with excited cheering crowds, the majority of whom were looking on the Royal Family for the first time. It was indeed an inspiring occasion, and one which left no doubt as to the loyalty and devotion of the people of Southern Rhodesia to the Royal Family and all that it stands for in our Commonwealth.

At 12.35 p.m. the Serjeant-at-Arms led to their seats in the Public Gallery of the House, the Mayors and Town Clerks of the Cities and Towns of the Colony, robed and wearing the insignia of their office; at 12.40 p.m. they were followed by the Judges in their robes of office; and at 12.45 Mr. Speaker, wearing his gold-embroidered brocade gown, and the members entered the Chamber and took their seats. At 12.50 p.m., Their Royal Highnesses the Princesses arrived, and were escorted to their seats in the Press Gallery (which had been prepared for them) by the Serjeant-at-Arms.

The Royal Guard of Honour, provided by the 1st Battalion of the Royal Rhodesia Regiment, was drawn up opposite the main entrance to the Parliamentary Building.

Shortly before 1 o'clock Their Majesties, escorted by a mounted escort of the British South Africa Police, arrived at the main entrance of the Parliament Building. Their Majesties were received by the Prime Minister and the Leader of the House. Their Majesties entered the members' Common Room, where they signed the historical album,

while the Royal Procession was being formed in the Lobby. Their Majesties then took their places and the Royal Procession moved at a slow pace along the South and West sides of the building, entering the Chamber by the North door. On entering the Chamber, His Majesty took Her Majesty's hand and led her to the Throne. The Prime Minister took up a position on the right of the King, the Leader of the House a position on the Queen's left. The space on either side of the Royal Dais was occupied by members of Their Majesties' staff and representatives of the Air, Military, and Police Forces. In front of the dais on the King's right were the Speaker, the Serjeant-at-Arms, the Clerk of the House and the Clerks-Assistant. The Serjeant held the Mace before him, its head between his hands, the base of the staff resting on the floor between his feet.

No members of the public were seated on the floor of the House. The benches and tables of the Government and main opposition parties were arranged in two rows facing each other across the floor of the House, and the Labour Parties occupied the cross-benches. Thus the House was arranged as nearly as possible as it is during a normal sitting. The seats in the Strangers' Gallery were occupied by the Judges of the High Court of Southern Rhodesia, the Mayors and the Town Clerks of the Cities and Towns, and the wives of these officials and the wives of members of Parliament. The Distinguished Visitors' Gallery was occupied by Ex-Cabinet Ministers and their wives, distinguished persons and representatives of the Churches and their wives. The Press occupied the "Heads of Divisions" bay in rear of the Throne. The Press Gallery accommodated Their Royal Highnesses the Princesses and their retinue.

Under the shade of large canopies, seats on the lawns on the West and North sides of the building accommodated approximately 1,000 people representing as far as possible a complete cross-section of the Public, including representatives of the African, Asiatic, and Coloured Communities. There were also 50 school-children selected by the Department of Education.

Mr. Speaker and Members of Parliament were seated in the Chamber on the arrival of Their Majesties. They were not summoned to attend at the Bar of the House as is the practice in a bicameral Legislature.

His Majesty on seating himself upon the Throne said, "Pray be seated". His Private Secretary then handed the Speech to his Majesty, who was pleased to deliver the following Speech from the Throne:

"Mr. Speaker and Members of the Legislative Assembly, I welcome you to the Second Session of the Sixth Parliament. It gives me very great pleasure to be able to open it in person. *(Then followed the King's Speech.)*

His Majesty concluded his Speech by saying:

"I pray that Almighty God may give His blessing to your counsels."

When the Speech had been read, the Private Secretary moved forward,



and having received the Speech from His Majesty handed it to Mr. Speaker. The Serjeant-at-Arms then came forward and took up a position a few feet from the Throne in readiness to lead the Procession from the Chamber. Their Majesties stepped down from the Throne, the Procession re-formed and left the Chamber, returning along the same route to the main entrance, opposite which the Guard of Honour was drawn up. His Majesty then inspected the Guard of Honour. In the meantime the Princesses left their Gallery and proceeded down the main stairway to the Common Room, where they signed the historical album, after which they joined Their Majesties at the main entrance. The motor-cars then drew up, and the Royal Party, escorted as before, returned to Government House.

#### DETAILED PROCEDURE AT ROYAL OPENING OF SOUTHERN RHODESIA PARLIAMENT.

1. Their Majesties will leave Government House by motor-car and will be escorted by a mounted escort of the British South Africa Police. An Equerry will be in attendance. The Procession will be headed by Police motor-cyclists. Two Police Motor-cyclists will bring up the rear of the escort. Their Majesties are due to arrive at the House of Parliament at approximately 1 o'clock p.m.

2. The route will be as follows: North Avenue, Third Street, Jameson Avenue, Second Street, Baker Avenue to the main entrance of Cecil Building.

3. A Guard of Honour, mounted by the 1st Battalion, the Royal Rhodesia Regiment, attended by the African Band of the Rhodesian African Rifles, will be drawn up opposite the main entrance to the House of Parliament.

4. The motor-car, facing East, will draw up in front of the main entrance to the House of Parliament, where the Prime Minister will await the arrival of Their Majesties. As soon as Their Majesties have alighted, the motor-car will draw off.

5. The Royal Standard at the mast above the main entrance will then be broken and the first gun of a Royal Salute of 21 guns will be fired.

6. The King and Queen, attended by the Prime Minister and such members of the staff as may be detailed to be in position at the entrance, will proceed up the two steps to the porch, where the Leader of the House will be waiting, and with whom the Queen will shake hands.

7. As soon as the Queen and those in attendance have started to mount the steps, the King will face about and take the Salute. One verse of the National Anthem only will be played by the African Band of the Rhodesian African Rifles.

8. His Majesty will not inspect the Royal Guard of Honour.

9. The Equerry in attendance will then escort His Majesty up the steps. His Majesty shakes hands with the Leader of the House and

proceeds, with the Queen, attended by the Equerry-in-Waiting into the members' Common Room.

10. The Procession is formed in the Lobby and when the Serjeant-at-Arms informs the Equerry-in-Waiting that all is in readiness, the Procession moves forward, proceeding at a slow march through the main entrance via the South and West sides of the building, entering the Chamber by the door on the North side.

11. The two Princesses will not join in the Procession, but will watch the proceedings from the South Bay above the Chamber.

12. The Princesses will arrive from Government House 10 minutes before Their Majesties, accompanied by Her Excellency the wife of the Governor, and other members of the staff of the Royal Household, and will be escorted ceremoniously by the Serjeant-at-Arms along the West side of the building, up the steps on the North side, then along the West corridor, entering the Bay reserved for the Royal Party by the door facing West.

13. The Royal Procession will consist of 15 persons, headed by the Serjeant-at-Arms, and will enter the Chamber in the following order:

Two distinguished officers representing the Southern Rhodesia Forces.

Two distinguished officers representing the British South Africa Police.

A distinguished officer representing the Royal Air Force.

His Majesty's Personal Staff.

Equerry-in-Waiting.

Equerry-in-Waiting.

Private Secretary to the King.

THE QUEEN.

THE KING.

Lady-in-Waiting.

The Prime Minister.

Lady-in-Waiting.

The Leader of the House.

14. In order to ensure that these officers taking part in the Procession are in correct positions as regards precedence when the King is seated, the Senior Officers will walk on the left when the Procession enters the Chamber.

15. When the Head of the Procession arrives at the entrance to the Chamber, the British South Africa Police Trumpeters stationed on the lawn on the North side of the building will sound a flourish. The flourish will continue until Their Majesties come to a halt about 9 feet from the foot of the Throne. Those forming part of the Procession, on entering the Chamber, remove head-dresses, and carry them under the left arm, badges to the front.

16. The King and the Queen will take up their positions on the dais standing before their Thrones. The Ladies-in-Waiting will hold their positions. The Prime Minister, after the Queen has taken her place, will move to the left, bow to the Throne, and take up his position on the right of the King. The Leader of the House will move forward, bow

to the Throne, and take up his position on the left of the Queen. The Ladies-in-Waiting, as soon as the Prime Minister and the Leader of the House are in their places, turn to the right and move to their positions on the left of Her Majesty.

17. The officers leading the Procession, who walk two abreast, will keep to their own sides and take up positions right and left of the Throne, as the case may be. The Serjeant-at-Arms will turn to the left and take up a position on the left of Mr. Speaker. The Private Secretary to the King, will also turn to the left and take up a position on the right of His Majesty.

18. The British South Africa Police Band will then play one verse of the National Anthem, which His Majesty will acknowledge and the Royal Guard of Honour will salute.

19. The King will seat himself and when he has done so will say " Pray be seated ".

20. His Majesty's Private Secretary moves forward from his place at the right of the King, bows, and hands him a signed copy of the speech, bows and returns to his place. His Majesty reads the speech, slightly inclining his head where he says " Mr. Speaker and Honourable Members of the Legislative Assembly ". When His Majesty has finished reading, his Secretary again steps forward in front of His Majesty, bows and receives the speech. He then goes towards the Speaker of the House, bows to the Speaker, hands him a copy of the speech, bows again, turns right, bows to the King, and returns to his place.

21. The Serjeant-at-Arms steps forward, bows to Their Majesties, and takes up his position about 9 feet from the Throne, in readiness to lead the Procession from the Chamber.

22. Their Majesties rise and step down from the Throne. The Procession re-forms, and will leave the Chamber in the following order:

The Serjeant-at-Arms.

The King and Queen.

Lady-in-Waiting.

The Prime Minister.

Lady-in-Waiting.

Leader of the House.

Private Secretary to the King.

Equerry-in-Waiting.

Equerry-in-Waiting.

A distinguished officer representing the Royal Air Force.

Two distinguished officers representing the British South Africa Police.

Two distinguished officers representing the Southern Rhodesia Forces.

23. The Procession returns along the same route, escorting Their Majesties to the main entrance. Head-dresses are replaced on leaving the Chamber.

24. On the Procession arriving at the main entrance the African Band of the Rhodesian African Rifles will play one verse of the National Anthem, and the Royal Guard of Honour will salute. His Majesty will then inspect the Royal Guard of Honour.

25. The Princesses will leave the Bay above the Chamber by the door on the East and will proceed down the main staircase to the entrance, escorted by a member of the Governor's staff.

25. The motor-cars will draw up and the Royal Party will return to Government House via Third Street and North Avenue, escorted by the Mounted Escort of the British South Africa Police.

27. In order to avoid misunderstanding, diagrams and notes were issued to those taking part in the Processions. The form used to keep a check on the seating on the lawns is also attached.

#### \*IV. THE REPORT OF THE SELECT COMMITTEE ON THE HOUSE OF COMMONS' LIBRARY AND ITS RESULTS<sup>1</sup>

BY NORMAN W. WILDING.

*Assistant Librarian.*

THE Second (and Final) Report of the Select Committee on the Library of the House of Commons was ordered to be printed on March 13, 1946.<sup>2</sup> This fact hardly enables it to be presented as a subject of topical interest, but an earlier article based on the bare recommendations of the Committee would not have the same interest as a later one which could also record how those recommendations were being carried out.

The House of Commons' Library entered its present home in 1851 or 1852, after losing two-thirds of its books and all its manuscripts in the fire which gutted the Palace of Westminster in 1834. The 4 rooms, each 60 feet long, and a smaller one (the room now used as a Reference Library was added at a later date) were then considered adequate provision for any growth the Library could possibly make in the future. Apart from any books which were bought from time to time, the annual intake of 3 sets of *Hansard*, 3 sets of statutes and the Parliamentary Papers, soon had the Library overflowing into corridors, cellars, cupboards, ministers' rooms and various remote parts of the Palace of Westminster.

The most acute problem, therefore, which faced Mr. J. V. Kitto, C.B., C.B.E., the late Librarian, on his appointment in 1937, was that of space. He began to tackle this by compiling lists of the more useless books, such as those bought with a bequest of £400 in 1856 by a Library Committee composed of Lord John Russell, Monkton Milnes, Benjamin Disraeli and Sir George Cornewall Lewis among others. Although

<sup>1</sup> See also JOURNAL, Vol. V, 167.

<sup>2</sup> H.C. (1945 and 1946) 35, 99-1.

Book Selection was an unknown art in those days, it is still rather painful to record that their choice of works for a parliamentary library included a *Biblia Sacra Polyglotta*, Cuvier's *Ceuvres Completes*, *Byzantine Historiæ Scriptores Varii*, and Sylvestre's *Paleographie Universel*. The weeding out of these and similar encumbrances was made impossible because (a) there was nowhere else to put them, and (b) the advent of the war necessitated the dispersal of a large part of the Library to places of safety such as the Bodleian Library and the University of Aberystwyth.

Towards the end of the War, Mr. Kitto and the Assistant Librarian, Mr. H. A. St. George Saunders (now Librarian), were able to begin the formulation of a plan for the complete reorganization of the Library, which could form the basis of an investigation by a Select Committee. The Speaker was naturally interested in any scheme for promoting the efficiency of the Library, as it comes under his authority, and the announcement was made in the House on April 27, 1945, that a Select Committee of 9 members was appointed "to inquire into the Present State of the Library of the House of Commons". This Report was to be the first published on the Library since 1857, when the "Report of the Standing Committee to assist Mr. Speaker in the management of the Library" made its last appearance.

The Select Committee had 4 meetings, and then the advent of the General Election stopped any further progress. They were able to publish, however, a very useful Special Report,<sup>1</sup> in which a Memorandum from Mr. Kitto was printed and discussed and evidence taken from Sir Norman Scorgie, Controller of H.M. Stationery Office, on the question of the Library buying its books direct from publishers instead of through the Stationery Office. This Committee recommended "that a Committee on the same subject be appointed in the next Session of Parliament", and it was accordingly set up in the new Parliament on October 15, 1945.

The first meeting was held on October 18, when the Librarian and the Assistant Librarian gave evidence on their suggestions for a new salary scale and increased staff. During the subsequent 4 meetings which preceded the issue of the Committee's First Report, evidence was taken from the Librarian of the House of Lords, the Clerk-assistant, House of Commons, the Librarians of the London Library, and the Air Ministry, and Dr. S. J. L. Taylor, M.P. There was general agreement among the members of the Committee that the modernization of the Library to equip it to deal with the increasing demands made upon it was vitally necessary to the work of every Member of Parliament. As the urgent need for reorganization had been recognized and the methods outlined by the Librarian and his assistants, it was felt that an increase of money and staff was all that was needed to ensure the rapid development of the Library service. To simplify the appraisal of the results achieved, the recommendations made in this and the Second Report will be followed by a statement on the action taken.

<sup>1</sup> H.C. (1945) 98.

The recommendations in the First Report were:

(a) That steps should be taken to fill deficiencies in the contents of the Library on certain subjects.

Dr. Rosenbaum of the London School of Economics was engaged to compile lists of books on economic and sociological subjects which were not possessed by the Library, and other experts on history and law assisted in the revision of those sections. In spite of the difficulty of obtaining books in these days, a good number of the gaps—or perhaps *lacunæ* would be a more dignified word for the Mother of Parliaments—have been filled by dredging the second-hand market.

(b) That the preparation of card index catalogues should begin immediately with the help of a temporary staff.

The recataloguing of the whole Library began in March, 1946, under my direction with the assistance of 2 temporary cataloguers and 1 newly appointed permanent member of the staff. It was impossible at the time to obtain experienced cataloguers, so that progress at first was rather slow. However, by June, 1947, author and subject cards had been made for all but a hundred or so of the books not relegated to storage, and also all the new and second-hand books acquired during that period have been catalogued—a total of nearly 9,000 volumes. The joint Anglo-American code was used for author entries, and the subject headings—with additions—of the London Library Subject Index for subject entries.

(c) That 2 additional Assistant Librarians with special qualifications should be appointed at salaries of £800-25-£1,000.

The 2 men appointed to fill these positions form the Research Section. They deal with the more abstruse inquiries from members and are responsible for the series of bibliographies on current parliamentary topics which are experiencing an increasing demand from other libraries as well as from Members of Parliament.

The Committee held 4 more meetings and issued their Second Report<sup>1</sup> in March, 1946. This embodied evidence from Sir Giles Scott, the architect, Mr. Speaker, Dr. Taylor and Mr. Saunders again, Mr. S. A. Heald, Director of the Reference Division of the Central Office of Information, and Mr. A. C. Bossom, M.P., who is also an architect.

The recommendations contained in the Second Report are summarized as follows:

(a) Alternative facilities for dealing with correspondence should be provided outside the Library.

It was felt that the Library's use as a place for writing letters was hindering its proper function as a Library, but the accommodation in the Palace of Westminster is so limited that there are no other rooms available for use as purely writing rooms. The provisions of the new building will not materially affect this problem.

(b) The 8 unused cellars below the Terrace level should be converted into a library store, access should be given from the Library by a circular stair, and a book lift installed.

<sup>1</sup> See above.

The conversion of these cellars has been completed at a cost of about £5,000. They have an air-conditioning plant and an electric book lift direct to the Library. The provision of a stairway from inside the Library was impossible owing to constructional difficulties, but the cellars can be reached quite quickly from outside the Library. They will be used to store back numbers of newspapers and periodicals as well as the weedings from the Library, and it is hoped that the steel shelving will be fitted in time to move them in during the Summer Recess this year (1947).

(c) Galleries should be provided as soon as possible in Rooms A, B and C.

The book-shelves extend to 16 feet from the floor in these rooms and necessitate the use of rather cumbersome ladders. Even so, there is 6 feet of space between the top shelf and the ceiling which could be used for shelving if galleries were constructed. The architects consulted agreed that they would have no detrimental effect on the appearance of the rooms, but their installation will have to await the return of times more propitious to non-essential constructional work.

(d) A room should be provided for the Librarian on the Library floor (he previously occupied one on the ground floor), and other rooms for library offices.

These recommendations have been carried out.

(e) The Library staff should be radically reorganized, and their status and salaries should be equated with those of Clerks in the department of the Clerk of the House, and the scale of salaries set out in paragraph 10 of the Report should be adopted.

The Library staff, now numbering 19, have been divided into 4 sections—Parliamentary, Reference, Research and Statistical. The Parliamentary Section deals with enquiries for Parliamentary Papers, *Hansard*, etc., and has charge of the books in the main part of the Library. One room has been devoted to the Reference Section and houses, besides the usual encyclopedias, dictionaries, directories, and other reference books in many languages, about 700 periodicals and 100 newspapers—British, Commonwealth, American and European. The Reference Section is establishing an Information Service which is becoming very popular with members, and is already relieving Government Departments in some measure by answering questions which would otherwise be asked in the House.

The Research Section was mentioned in the recommendations made in the First Report. The Statistical Section occupies part of the Reference Library, and is staffed by two graduates—a man and a woman—who have specialized in statistics. With the co-operation of our embassies and legations in collecting world statistical material, and the assistance of a calculating machine, they have already proved themselves able to supply members with figures on a great variety of subjects.

The scale of salaries, which other Parliamentary librarians who have already read the Report will not have found the least interesting recommendation, was not adopted—except as it applied to the Research Assistants. It was decided that any attempt to equate the Library Staff with Clerks in the department of the Clerk of the House presented too many difficulties.

The following table gives the recommended salaries and those at present in force:

<i>Position.</i>	<i>Recommended Scale.</i>	<i>Adopted Scale.</i>
Librarian .. ..	£1,400 - 50 - £1,700	£1,320 - 50 - £1,660
Assistant Librarian ..	£850 - 30 - £1,100	£700 - 25 - £950
Senior Library Clerks ..	£700 - 20 - £800	No appointments
" " " ..	£600 - 20 - £700	made on these
" " " ..	£500 - 20 - £600	scales.
Junior " " ..	£275 - 20 - £500	£360 - 20 - £600
Research Assistants ..	£800 - 25 - £1,000	£800 - 25 - £1,000

(f) Two attendants for miscellaneous duties and at least 2 personal assistants with a knowledge of indexing, cataloguing, typewriting and stenography should also be employed in the Library.

These were appointed—plus an additional attendant for the Reference Library.

(g) The present limit of £1,200 to expenditure, through the Stationery Office, for purchase of books, binding, etc., should be removed, the Librarian should be permitted in future to purchase all books direct through trade and other channels, the charge being borne on the Estimate for the House of Commons offices, and all copies of Government publications required by the Librarian should be provided by the Stationery Office.

These recommendations have all been carried out. During the financial year 1946-47 the Library spent £4,250 on books and £500 on binding. The Publishers' Association agreed that the Library should be allowed the usual trade discount on its book purchases, so that now all new books required are ordered direct from the publishers. Previously all books had to be ordered through the Stationery Office—a dangerously slow process in these times when books go out of print so quickly.

(h) The whole lighting system of the Library should be redesigned, etc.

An extra light has been suspended over the group of armchairs clustered round the fireplaces in 3 of the rooms, but this is as far as the Ministry of Works (with the hearty approval of the Ministry of Fuel and Power) are prepared to go at the moment.

(i) Co-operation between the Library and libraries of Government Departments should be encouraged, and members should have full use of the Library of the Ministry of Information (now the Central Office of Information).

Government Libraries and the House of Commons' Library co-operate extremely well in the lending of each other's books and in the supply of information, book-lists, etc. The staff are particularly interested in making useful contacts and establishing sources of information; we also have excellent and useful relations with other Libraries, such as the National Central, the American Library, and London University Library. Co-operation with the House of Lords' Library is somewhat one-sided, as we draw rather frequently on their excellent law library. They come to the Commons for Stationery Office publications and the Victoria County History, for it has been the practice for some time to avoid the duplication of expensive sets in the Palace of Westminster.



There are a few points not mentioned in the Recommendations which might be of interest—such as the inauguration of a book-borrowing system for members assisted by subscriptions to the London Library—and to Harrods' Library for lighter recreational reading. No change was made by the Select Committee in the functions of the Library Committee, which is appointed by Mr. Speaker to advise on matters of policy. It meets 2 or 3 times a year, and receives reports on the progress of the several sections of the Library, but is not required to sanction book-purchases or expenditure generally.

It is very fortunate that the reorganization of the Library began at a time when it was most necessary and when its benefits are most apparent—the election of a new Parliament: a new Parliament moreover which included an unprecedented number of members new to the Palace of Westminster, who are finding the Library's increasing resources an indispensable aid in their Parliamentary work.

## V. HOUSE OF COMMONS: DELEGATED LEGISLATION

(S. R. & O. SEL. COM.)<sup>1</sup>

BY THE EDITOR.

THE investigations of the Select Committee on Statutory Rules and Orders during the 1945-46 Session again give ample proof of the usefulness of such a body—to guard the liberty of the subject; to ensure against the issue of delegated legislation for which statutory sanction cannot be shown; and to see that the House of Commons has the opportunity to supervise S. R. & O.s in all their forms.

These investigations also afford many useful instances, both of the practice and procedure of such an inquiry, even to the extent of going into some detail perhaps of greater interest to the Parliamentarian than to the constitutional student.

The Order of Reference of August 23, 1945,<sup>2</sup> to this Committee was as given in Volume XIII of the JOURNAL. By the subsequent Orders of November 6, 1945,<sup>3</sup> and May 17, 1946,<sup>4</sup> however, the grounds of the inquiry were amended as shown below.

The opening paragraph and paragraph (IV), each as so amended read as follows, the words struck out being shown in [square brackets] and those inserted underlined:

<sup>1</sup> See also JOURNAL, Vols. IX, 64; X, 25, 27, 83; XI-XII, 15; XIII, 160; XIV, 152 and 389; *Con. Hans.* 5, s. 1231, 1593-1692.      <sup>2</sup> 413 *Ib.* 953.      <sup>3</sup> 415 *Ib.* 1188.  
<sup>4</sup> 422 *Ib.* 2328.

Select Committee appointed to consider every Statutory Rule or Order (including any Provisional Rule made under Section 2 of the Rules Publication Act, 1893) laid or laid in draft before the House, being a Rule, Order or Draft upon which proceedings may be, or might have been taken in either House in pursuance of any Act of Parliament with a view to determining whether the special attention of the House should be drawn to it on any of the following grounds:

(IV) that there appears to have been unjustifiable delay in the publication [of it] or in the laying of it before Parliament.

The additional power was given to the Committee "to report to the House, from time to time, any memoranda submitted or other evidence given to the Committee by any Government Department in explanation of any Rule, Order or Draft".

The Committee consisted of the same number of members (11) as last year, but by Order of October 25, 1945,<sup>1</sup> the quorum was reduced from 5 to 3.

By Order of March 11, 1946,<sup>2</sup> the Committee was given power to take evidence, written or oral, from His Majesty's Stationery Office, relating to the printing and publication of any Rule, Order or Draft.

A summarized survey will now be made of the operations of the Committee during the Session in question. It is regretted that space does not admit of the title being given of every S. R. & O. considered by the Committee; to those readers, however, wishing to conduct deeper research the footnotes provide the key.

According to the Minutes of Proceedings, between October 9, 1945, and October 29, 1946, the Committee sat 23 times and Sir Cecil T. Carr,<sup>3</sup> K.C., LL.D., Counsel to Mr. Speaker, "was also in attendance" at all meetings.

Over 947 Rules, Orders or Drafts were considered, to which attention had been drawn by the Committee to 33 of them.

The following witnesses were examined: Mr. L. S. Brass, C.B.E., Assistant Legal Adviser, Home Office; Sir Stephen P. Low, Solicitor to the Board of Trade; Mr. A. Taylor, K.C., Legal Adviser to the Ministry of Food; and Mr. M. Abrahams, the Ministry of Food (Liaison Officer), who was in attendance.

At their first meeting the Committee Ordered: That unless otherwise ordered, Strangers be not admitted.

The mere mention of the bound blue-covered book,<sup>4</sup> with index, containing the 21 Reports and 3 Special Reports from the Committee, together with its proceedings and the Minutes of Evidence, gives some idea of the magnitude of the inquiry. To treat each of the 21 Reports separately would entail too much repetition and perhaps not serve any useful purpose, but the Committee has cited every S. R. & O. which has been considered by them in their proceedings and mentioned in the particular Report those selected for special attention.

<sup>1</sup> 414 *Ib.* 2310.      <sup>2</sup> 420 *Ib.* 911.      <sup>3</sup> Since created K.C.B., a recognition which all those interested in "Delegated Legislation" will warmly welcome.—[Ed.]

<sup>4</sup> H.C. (1945-46) 187.

All the Reports were tabled (or "laid") in the House of Commons, which was asked to take action in regard to only one of them. The Committee themselves, however, took action in regard to others, and the success they achieved is shown in the explanatory memoranda, attached to the particular Reports furnished by Ministries, as well as in the evidence of their witnesses summoned to give evidence before the Committee.

In each of the 21 Reports from the Committee (with the exception of the *Ninth* and *Eleventh*) only the titles and the dates of the presentation of the S. R. & O.s are given, the Committee in their Reports stating, in regard to such S. R. & O. s, that they "are of opinion that there are no reasons for drawing the special attention of the House to them on any grounds set out in the Order of Reference to the Committee".

The following are the Reports from the Committee in which other action was taken, or also taken:

*Sixth*.—The Committee state that they have also considered the Order in Council amending Regulation 42 C.A. of the Defence (General) Regulations 1939 (S. R. & O., 1945, No. 1451), a copy of which was presented on November 16, and were of opinion that the special attention of the House should be drawn to it, "on the ground that it appears to make some unusual or unexpected use of the powers conferred by the Statute under which it is made". (*For further reference see below.*)

In the *Seventh*, *Ninth*, *Tenth*, *Eleventh*, *Twelfth* and *Fourteenth* Reports, 13, 7, 1, 3, 2 and 1 (Act of Sederunt), S. R. & O. respectively the Committee, in reporting the dates on which presentation to Parliament was made, are of opinion, "that the special attention of the House should be drawn to them, on the ground that there appears to have been unjustifiable delay in the laying of them before Parliament".

The Committee also state in their *Seventh*<sup>1</sup> Report in regard to the Bakehouses (Employment on the Sunday before Christmas) Order, 1945 (S. R. & O., 1945, No. 1580), and the Air Navigation (Amendment) (Ministry of Civil Aviation) Order, 1945 (S. R. & O., 1945, No. 1637), and in their *Twelfth* Report in regard to Rules of the Supreme Court (No. 1) 1946 (S. R. & O., 1946, No. 310) "that the special attention of the House should be drawn to them, on the ground that they appear to make some unusual or unexpected use of the powers conferred by the Statutes under which they were made".

In their *Tenth* Report in regard to the Order dated February 1, 1946, amending the Food (Points Rationing) Order, 1945 (S. R. & O., 1946, No. 158), a copy of which was presented on February 11, and in their *Fourteenth* Report in regard to the Order dated December 31, 1945, amending the Food (Points Rationing) Order, 1945 (S. R. & O., 1945, No. 1682), a copy of which was presented January 22, the Committee state "that the special attention of the House should be drawn to it on the ground that its purport calls for elucidation".

<sup>1</sup> 418 *Com. Hans.* 5, s. 1545.

In regard to Disabled Persons (District Advisory Committees and Panels) (Procedure) Regulations, 1945; the Order in Council of October 30, 1945, adding Regulation 68 C.A. to the Defence (General) Regulations, 1939; the Air Navigation (Amendment) (Ministry of Civil Aviation) (Provisional) Order, 1945; the Nurses (No. 2) Regulations, 1945; the Bakehouses (Employment on the Sunday before Christmas) Order, 1945; the Food (Points Rationing) Order, 1945, and the Control of Paper (No. 73) Order, 1946; the Rules of the Supreme Court (No. 1), 1946; the Utility Furniture Directions of May 13, 1946; the Order of May 21, 1946, amending the Food (Points Rationing) Order, 1945; the Rules of the Supreme Court (No. 3), 1946; the Order of September 4, 1946, amending the Manufactured and Pre-packed Foods (Control Order), 1942; the General Licences of September 4, 1946, under the Labelling of Food (No. 2) Order, 1944; and the Rules of Court (Long Vacation), 1946; Resolutions were passed by the Committee requiring the Ministries concerned to furnish Memoranda in explanation, which appear as annexures to the respective printed Reports.

In connection with the Order in Council of November 16, 1945, amending Regulation 42 C.A. of the Defence (General) Regulations, 1939, the Home Office, and in regard to the Order in Council of December 20, 1945, revoking the Order in Council amending Regulation 42 C.A. of the Defence (General) Regulations 1939, the Privy Council Office—the Committee passed Resolutions asking that witnesses be sent to explain the matters to the Committee (*See Minutes of Evidence*).

The Minutes of Evidence were also reported to the House.<sup>1</sup>

It is, however, to the 3 Special Reports that chief attention is drawn.

*First Special.*—The Committee here say that they have occasion to note, in this as in a previous Session, instances of unpunctual compliance with statutory directions for laying before Parliament Statutory Rules and Orders, whether in draft or in final form, and they believe that the House will attach importance to due promptness in this respect, inasmuch as the laying is the first stage in Parliamentary Supervision.

It is in this Report that the Committee recommend the amendment, already mentioned, in the fourth ground of the Order of Reference.

*Second Special.*—The Committee draw attention to the diversity of the periods elapsing between the making of rules and orders and their publication and presentation to Parliament, and after going into the details of the subject, they recommend that the periods between signature and publication be shortened and also that the practice of having rules and orders set up in advance be extended.

The Committee also draw attention to instances where Statutory Rules and Orders purport to have retrospective operation, in some cases without statutory sanction. They feel strongly that Statutory Rules and Orders should not purport to have such operation unless Parliament has expressly so provided. A case is quoted of 34 Amending Orders, which the Committee consider should be consolidated.

<sup>1</sup> 417 *Ib.* 5, s. 259.

Attention is also drawn to the advantage of every S. R. & O. having a short title.

*Third Special.*—The following are the general observations with which the Committee supplement their *ad hoc* reports.

The Committee are able to record a notable improvement in punctuality in both the publication of Orders, etc., and their presentation to Parliament.

In regard to the correction of mistakes the Committee draw attention, by reference, to the following Rulings by Mr. Speaker and we quote them from *Hansard*:

*Speaker's Ruling.*—On May 15, 1946,<sup>1</sup> an hon. member asked Mr. Speaker whether a correction had not been made in a Statutory Order when the time for moving to amend it had normally expired, and whether such Order had been validly presented?

Mr. Speaker said:

My attention has been called to the error contained in the copy of the Statutory Order No. 179, laid on 14th March, or rather in the Related Schedule 2 A, by which this Order was accompanied. The period of 40 days during which, under the present Statute—the Goods and Services (Price Control) Act, 1941, S. 17—the Order could be prayed against, has now elapsed. The error to which my attention is directed occurs in page 21, line 11, column 2 (a) of the Related Schedule and consists in the printing of “2s. 10½d.” in place of “2s. 0½d.” A *corrigendum* slip indicating the error was issued on the 26th April.

\* \* \* \* \*

There is no precise precedent which covers this case. But it has on several occasions been ruled by my predecessors in the Chair, in the case of the laying before the House of Statutory Orders in dummy that the period, for which an Order has to lie before the House, begins on the date on which a complete copy of the Order is available to members. This principle, in my view, requires that the copy of an Order laid should not only be complete but also correct. I must accordingly consider whether the error complained of is sufficient to make it reasonable to say that the copy in which it occurred was not correct. I should distinguish the error in this case from printer's errors which are obvious at first sight, such as “of” for “or” or “than” for “that”. These errors have occurred in copies of Statutory Orders laid this Session, and I have taken no notice of them. But the printing of “2s. 10½d.” for “2s. 0½d.” is an error of substance in however slight a degree. And I must hold that the copy of the Order, laid on the 14th of March, which contained this error was not properly laid.

Accordingly, I rule that the Order for the laying of this Copy must be discharged and the copy withdrawn. A correct copy should be laid in order to comply with the terms of the Statute; and the period during which the Statutory Order can be prayed against will commence from the date of the laying of the corrected copy.

*Speaker's Ruling.*—On May 28, 1946,<sup>2</sup> an hon. member drew Mr. Speaker's attention to the evidence in connection with Order No. 1682 in the *Fourteenth* Report of the Committee.

Mr. Speaker said:

<sup>1</sup> 422 *Ib.* 189o.

<sup>2</sup> 423 *Ib.* 998.

In reply to the hon. member, it seems to me clear that the misplacing of brackets—to which he has called my attention in the copy of the Food (Points Rationing) Order, S. R. & O., 1945, No. 1682, presented on 22nd January last, amounts to a substantial error. In my Ruling of the 15th of May, I laid it down that any mistake in the printed copy of an Order must be considered an error in substance if it is more than an obvious printer's error which carries its own correction. I should accordingly have been prepared to rule that the Order referred to was improperly laid before the House and should be re-laid, but I understand that yesterday a new Food (Points Rationing) Order, S. R. & O., 1946, No. 733, was laid, which incorporated in a corrected form the items incorrectly expressed in the Order complained of. That Order has now, therefore, been replaced so far as the erroneous portion is concerned, and while I must hold that it was improperly laid no purpose would now be served by requiring it to be withdrawn and re-laid.

In regard to Draft Rules and Orders, paragraph 4 of this Report reads:

4. When the parent Statute requires instruments to be laid before the House in draft, it is important that there should be no confusion between the print of the draft and the print of the final and valid instrument. Your Committee have observed cases where, doubtless through oversight, the draft document bears a number in the S. R. & O. series as if approval had already been given. They recommend that care be taken not to issue an instrument under such a number until it has passed out of the draft stage.

The Committee refer to the necessary warning which should be given when Orders are printed back-to-back.

As to retrospective effect of Orders, etc., the Committee recommended that if the House should decide to appoint a similar Committee in a future Session, the occurrence of a provision on this subject should be made a separate ground for a report, in addition to the five headings already specified in the Order of Reference.

The Committee remarked that:

Explanatory footnotes, formerly inserted only in Defence Regulations, or in orders made thereunder, are now being appended to all Statutory Rules and Orders upon which proceedings may be taken in the House, though apparently not to all delegated legislation. Your Committee assume that information of this kind is supplied not merely to facilitate their own examination, but to assist all those into whose hands the rules and orders may come. The notes are prefaced with a statement that the note is not part of the order, but is intended to indicate its general purport—a warning which presumably seeks to avert the risk of legal difficulty arising from repugnancy between text and note.

The Committee welcomed these or any other arrangements clarifying Rules and Orders and they added that an explanatory note occasionally alluded to other S. R. & O.s without mentioning their purport. "Complaint is sometimes made of legislation by reference; explanation by reference may be equally unsatisfactory." Short titles, already referred to, formed the subject of paragraphs 11-15 of their Report.

Paragraphs 16-18 of this Report are given at length:

#### *Five-tier Legislation.*

16. A matter of more general significance is the continuance of emergency law-making at what may be called five levels. The Emergency Powers

(Defence) Act, 1939, sanctioned not only delegation in the form of Orders in Council containing Defence Regulations, but also sub-delegation in the form of "orders, rules and byelaws". Your Committee have sometimes had to take note of a pedigree of five generations:

- (a) the statute;
- (b) the Defence Regulations made under the statute;
- (c) the orders made under the Defence Regulations;
- (d) directions made under the orders; and
- (e) licences issued under the directions.

17. Your Committee hope that, now that hostilities have ceased, Departments may find themselves able so to frame any order made under Defence Regulations that it will be self-contained—in other words, to be content with the grandchildren of the statute and not to bring its great-grandchildren or great-great-grandchildren upon the scene. It is by no means clear that Parliament contemplated these cumulative delegations. They tend to postpone the formulation of an exact and definite law and they encourage the taking of powers meanwhile in wider terms than may ultimately be required.

#### *Departmental Arrangements.*

18. A Treasury circular (T.C. No. 21/46), copies of which were placed in the Library of the House last June, instructed Departments to take note of Special Reports of Your Committee and of any recommendations therein contained. Your Committee welcome this action.

This circular reads:

21st June, 1946.

#### *Subordinate Legislation.*

Sir,

(i) *Explanatory Notes.*—I am directed by the Lords Commissioners of His Majesty's Treasury to refer to Part III of Treasury Circular No. 7/43 of the 6th May, 1943, which dealt with the issue of explanatory memoranda for the purpose of making more intelligible new Defence Regulations and other subordinate legislation made under the Emergency Powers (Defence) Act. It has now been decided that such explanatory notes should be issued in the case of *all* subordinate legislation which is subject to affirmative or negative resolution procedure, unless the purpose and effect of the instrument is readily apparent on the face of it. The explanatory notes are to be printed in all cases with the instruments to which they refer. The following paragraphs (which to a large extent reproduce the instructions in Part III of Treasury Circular No. 7/43) set out the procedure which should be followed by Departments in giving effect to these decisions.

2. Departments promoting new delegated legislation should consider whether each particular instrument is intelligible on the face of it. In all cases where the object of the instrument can be made appreciably clearer by an explanatory note, arrangements should be made for such an explanatory note to be printed with the instrument. It is recommended that Departments should, wherever possible, consult their Information Officers in advance on the publicity to be given to subordinate legislation, including where appropriate, the drafting of explanatory notes.

3. Explanatory notes must not be argumentative, must not seek to explain or to justify policy, and above all must not purport to construe the law. They must therefore be purely informative. Their object is merely to help the reader to appreciate the object of new legislation without unnecessary difficulty or research. The full effect of a legislative instrument often cannot be grasped without careful study; but in cases where it seems likely that a Member of Parliament will not be able to see from the instrument itself whether

it is of sufficient importance or interest to make such study desirable, there should be an explanatory note to guide him on that point.

4. The most obvious need for such an explanatory note arises where new subordinate legislation makes express amendments in existing provisions. Where it has not been possible to draft the instrument itself so as to enable the reader to appreciate its purport without referring to the provisions which it amends, an explanatory note should be added describing the subject matter dealt with by the provisions amended in such a way as to indicate the point of the amendment.

5. Since the explanatory notes must not appear to construe the law, it is particularly important that they should be so worded as to make it clear that they are in the nature of side notes and do not, for purposes of construction, form part of the legislative enactment. They should be printed immediately after the statutory instrument to which they relate, but should not be linked with it by an asterisk or similar symbol. They should in all cases commence with the following heading:

*"Explanatory Note.*—This note is not part of the Regulation (or Order, etc.), but is intended to indicate its general purport."

6. It has been decided to set up a central authority with a view to securing uniformity of practice and the observance of common principles in the drafting and issue of explanatory memoranda and of avoiding, in particular, any appearance of purporting to construe the law. The functions of the central authority will be as follows:

- (a) To receive (after they have been made) copies of all statutory instruments upon which proceedings may be taken in either House of Parliament.
- (b) To consider, in the light of the current general instructions to Departments,
  - (i) In the case of all such statutory instruments whether an explanatory note should or should not have been provided;
  - (ii) In the case of those statutory instruments provided with explanatory notes whether the notes conform in content, scope and drafting to the approved practice.
- (c) To draw the attention of the Department concerned to any case where a departure from the approved practice appears to have occurred, either in the decision to provide or not to provide an explanatory note, or in the drafting of the explanatory notes themselves.
- (d) To advise any Departments seeking advice on (i) whether an explanatory note should be provided for a proposed statutory instrument; (ii) whether a draft explanatory note conforms to the approved practice.
- (e) To report from time to time to the Legislation Committee.

7. It will be noted that the central authority will have no responsibility for the accuracy of the notes, or for any questions relating to the subordinate legislation itself.

8. Sir William Leitch, K.B.E., C.B., has been appointed as the central authority with the functions described in paragraphs 6 and 7 above. Sir William Leitch's office will remain with the War Works Commission, Devonshire House, Mayfair Place, Piccadilly, W.1. (Tel.: MAYfair 8866, Ext. 108), but he will be responsible to the Treasury in the exercise of his new functions. It would be convenient if Departments would designate a particular officer to act as liaison with Sir William Leitch and would inform Sir William Leitch as soon as possible of the name, address and telephone number of the officer selected.

9. As from the 1st July, 1946, all Departments are requested to send to Sir William Leitch a copy of each new statutory instrument for which they are responsible, at the same time as copies are submitted to the Select Committee



on Statutory Rules and Orders. (In the case of statutory instruments which are sent to the Select Committee by the Privy Council Office, the Privy Council Office will be responsible for sending the copy of the instrument to Sir William Leitch.)

(ii) *Retrospective effect of subordinate legislation.*

10. The attention of Departments is directed to a recent ruling of the Law Officers of the Crown, that as a matter of construction it may be said in general that unless the Act of Parliament which confers the power to make subordinate legislation clearly confers power to give retrospective effect to it, the subordinate legislation cannot be made retrospective and if it purports to be so made it will be *ultra vires*. Care should accordingly be exercised by Departments. to see that subordinate legislation is not made with retrospective effect unless there is clear authority so to make it in the Act under which it is made, and that in case of doubt legal opinion is taken.

(iii) *"Short Title" clauses in subordinate legislation.*

11. The Select Committee on Statutory Rules and Orders, etc., in their Second Special Report (11th December, 1945, paragraph 5) draw attention to the advantage of including a "short title" clause in all Statutory Rules and Orders. My Lords wish to remind Departments of the instructions on this matter contained in paragraph 5 of Their Circular No. 43/21 of the 25th November, 1921.

(iv) *Special Reports of the Select Committee on Statutory Rules and Orders, etc.*

12. Departments are reminded of the special reports made from time to time (in addition to the normal reports dealing with particular Rules or Orders) by the Select Committee on Statutory Rules and Orders. Due regard should always be paid by Departments to any recommendations in these special reports.

(v) *New terms of reference of the Select Committee.*

13. I am also to refer to the approval given by the House of Commons on the 17th May, 1946, to an amendment of the Order of Reference of the Select Committee, by inserting after the words "or Draft, upon which proceedings may be . . ." the words "or might have been". The effect of this amendment is to enable the Select Committee to draw the attention of the House of Commons to corrected reprints in cases where the time for the laying of the original Order has elapsed. The text of the Order of Reference as amended on the 6th November, 1945 and the 17th May, 1946 is enclosed (enclosure 1).

(vi) *Technical terms.*

14. I am also to draw your attention to the attached copies of correspondence between the Treasury and the Select Committee (enclosure 2) and to request that Departments should adopt the practice suggested by the Committee, so far as they find it practicable to do so, viz. that where an Order is made, the provisions of which include any technical expressions that will not, in the opinion of the Department, be fully understood by anybody concerned, some explanation of it should reach the Committee with the Order.

(vii) *Erskine May's Parliamentary Practice.*

I am to take this opportunity of drawing attention to the fact that a new edition, completely revised by the Clerk of the House of Commons, has recently been published,

I am,  
Your obedient Servant,  
J. A. BARLOW.

(Enclosure 1 quotes the Order of Reference to the Committee.)

Enclosure 2 quotes 2 letters, which read:

HOUSE OF COMMONS, S.W.1.

27th March, 1946.

DEAR COMPTON,

SELECT COMMITTEE ON STATUTORY RULES AND ORDERS, ETC.

The Select Committee which scrutinizes S. R. & O. have occasionally been puzzled by technical terms occurring in the documents under scrutiny—especially perhaps in the orders of the Board of Trade and Ministry of Supply.

The Committee appreciate that these terms will probably be readily understood by the people to whom the orders are likely to apply; but they do not feel entirely confident that this will always be the case.

It would help the Committee to dispose of orders of this kind if they could feel assured that, where any technical expression is used which will not, in the opinion of the department, be fully understood by anybody concerned, some explanation of it would reach the Committee with the order.

I am to ask whether the Treasury would find it possible to circularize the order-making departments to this effect, so that such a practice can be adopted.

Yours sincerely,

H. R. M. FARMER,

*Clerk of the Committee.*

E. G. COMPTON, ESQ.,

THE TREASURY,

GREAT GEORGE STREET, S.W.1.

2nd April, 1946.

SIR,

I have laid before the Lords Commissioners of His Majesty's Treasury Mr. Farmer's letter of 27th March, conveying the desire of the Select Committee on Statutory Rules and Orders that, where the provisions of an order include technical expressions that may not be generally understood, some explanation of these expressions should be furnished to the Committee with the Order.

In reply, I am to request you to inform the Select Committee that My Lords Propose to circulate the letter under reply to Departments, and to request Departments to comply with the wishes of the Select Committee as far as they find it practicable to do so.

I am, Sir,

Your obedient Servant,

J. A. BARLOW.

*The Clerk of the Committee,*

SELECT COMMITTEE ON STATUTORY RULES AND ORDERS,

HOUSE OF COMMONS, S.W.1.

**Annulment.**—On December 18, 1945,<sup>1</sup> it was moved:

That an humble Address be presented to His Majesty, praying that the Order in Council dated 16th November, 1945, amending Regulation 42 C.A. of the Defence (General) Regulations, 1939 (S. R. & O., 1945, No. 1451), made under the Emergency Powers (Defence) Acts, 1939 to 1945, a copy of which Order was presented on 16th November, be annulled.

The Mover said this was a Defence Regulation dealing with unlawful gaming parties, and gave power to any constable to arrest without warrant, at any time or place, any person whom he reasonably suspects of taking part in one of these unlawful gaming offences. This power

<sup>1</sup> 417 *Com. Hans.* 5, s. 1245.

even permits the arrest in the street 12 months later, of anyone suspected of having taken part in it. This was done by S. R. & O. The hon. member referred to the *Sixth* Report of the Committee and said that a matter of constitutional importance was involved which affected the liberty of the subject and had been the object of a great deal of legislation and discussion.

The hon. member submitted that, subject to a certain number of exceptions, the tendency had been for arrest without warrant to be confined either under the common law to felonies, or to cases of some seriousness or cases where the offence was committed in the presence of a constable. The present Regulation went further and carried with it a maximum punishment of 3 months' imprisonment, or a fine of £500. The Mover observed that in time of peace it was undesirable that measures affecting the liberty of the subject and the power of arrest without warrant should be dealt with by regulation. It was submitted that in such cases the right thing to do was to come to the House for legislation.

The Secretary of State for the Home Department (Rt. Hon. J. C. Ede) said that he had already told the S. R. & O. Committee that he proposed to revoke this Order on the earliest possible occasion, and at the next meeting of the Privy Council a revoking Order would be submitted.

Question was then put and agreed to.

There were many other references in *Hansard* for the 1945-46 Session to the subjects of inquiry by Q.<sup>1</sup> Errors were drawn attention to,<sup>2</sup> and many of the Q.s inquired as to which officials in the various Departments had the authority to sign S. R. & O.s.<sup>3</sup>

In reply to a Q. on May 24, 1946,<sup>4</sup> detailed information was given the House as to the S. R. & O.s in respect of which *corrigenda* slips had been issued during the current session, with the date of publication of each.

The reply to a Q. on July 15, 1946,<sup>5</sup> as to the number of S. R. & O.s which had been issued and the number printed, was that the totals for the period July 31, 1945-June 30, 1946, were 2,670 issued, of which 1,855 were printed.

In regard to the Index to the S. R. & O., the Financial Secretary to the Treasury (Mr. Glenvil Hall) was asked on October 10, 1946,<sup>6</sup> if he would arrange for a complete set of S. R. & O.s in force, with explanatory memoranda, to be published quarterly, to which he replied in the negative, but said that the compilation of a new Edition to the S. R. & O.s in force was proceeding as rapidly as possible. It was a triennial publication and could not be produced quarterly as suggested. Changes in law made in any particular year were shown in the tables and index, attached to the annual volumes of S. R. & O.s.

<sup>1</sup> 416 *Ib.* 2295; 421 *Ib.* 1788, 2092; 423 *Ib.* 263; 424 *Ib.* 27; 425 *Ib.* 70; 426 *Ib.* 506; 427 *Ib.* 349; 428 *Ib.* 780, 781, 1198, 3, 112. <sup>2</sup> 421 *Ib.* 2485; 422 *Ib.* 1230, 53; 423 *Ib.* 993, 1323, 1358. <sup>3</sup> 423 *Ib.* 13, 122, 152, 162, 173, 184, 188, 217, 272, 385; 424 *Ib.* 279; 425 *Ib.* 1874; 426 *Ib.* 214. <sup>4</sup> 423 *Ib.* 118. <sup>5</sup> 425 *Ib.* 151. <sup>6</sup> 427 *Ib.* 86.

## \*VI. HOUSE OF COMMONS: M.P.S' SALARIES AND EXPENSES.

BY THE EDITOR.

THE subject of remuneration and free facilities to members of the House of Commons has been dealt with in the JOURNAL<sup>1</sup> from time to time. On August 20, 1945,<sup>2</sup> an hon. member asked Mr. Speaker whether he was in a position to give the House any guidance as to the date of payment of members' salaries.<sup>3</sup>

Mr. Speaker, in making it quite clear that he was speaking for this occasion only, read an extract from a letter he had sent to the Chancellor of the Exchequer, whom he gathered was prepared to comply with any recommendations he (Mr. Speaker) would make. Mr. Speaker had said:

I think there is a case for an *ad hoc* departure from the principle laid down by Mr. Speaker Whitley. The date which might be chosen on rough grounds of equity is the date after polling day, namely, 6th July, in the great majority of cases, and the equivalent date in those constituencies where polling took place on a subsequent date.

Mr. Speaker had added that he was prepared to give the above as his view to the House of Commons. This meant that those members whose constituencies polled on July 5 and those who were unopposed, would get their salaries for July 6, and those whose constituencies polled later would get their salaries from the day after the poll in their constituencies.

Debate.—On October 9, 1945,<sup>4</sup> a debate took place on the Adjournment, an hon. member drawing attention to the disabilities which members suffered, in regard to their housing when attending Parliament, their transport, accommodation in the Houses of Parliament, their postage and expenses, provision for the reception of visitors, secretarial work, subsistence allowances when travelling on Select Committee business, and sleeping accommodation on long-distance trains. He hoped the House would insist that there must be dignity and status accorded to members of the House and he insisted upon the Government immediately setting on foot an inquiry into this matter and report back to the House.

The Parliamentary Secretary to the Ministry of Works (Mr. J. M. Wilson) replied to the effect that the Government and all the authorities concerned were trying to do everything possible to improve the amenities of members.<sup>5</sup> He did not think that the new Chamber would be ready before 1949, but that in the meantime the Government wanted to do everything possible to meet the requirements of hon. members.<sup>6</sup>

Questions.—On October 17,<sup>7</sup> the Minister of Information (Rt. Hon.

<sup>1</sup> See Vols. VI, 24; VIII, 28; XIII, 42; XIV, 45-6; see also Editorial Note in this Volume: "United Kingdom (Ministers' Salaries)."  
<sup>2</sup> 413 *Com. Hans.* 5, s. 276.  
<sup>3</sup> Consequent upon the recent General Election; see JOURNAL, Vol. XIV, 176, 179.—[ED.]  
<sup>4</sup> 414 *Com. Hans.* 5, s. 181-94.  
<sup>5</sup> *Ib.* 187.  
<sup>6</sup> *Ib.* 188.  
<sup>7</sup> *Ib.* 1190.

E. J. Williams) was asked whether he could acquaint the country with the nature and amount of the average member's heavy expenses and outgoings compared with the salary provided, to which he replied that the subject was being constantly ventilated in the daily *Press*.

The subject was again raised by Q. on October 22,<sup>1</sup> and also on November 6,<sup>2</sup> when the Chancellor of the Exchequer said he would shortly propose that a Select Committee be appointed to go into the whole question of hon. members' expenses and conditions of work.

On the Adjournment, November 8,<sup>3</sup> the Lord President of the Council (Rt. Hon. H. Morrison), in reply to a Q., said that if the proposed Select Committee so wished, it would be competent for them to consider salaries as well as expenses and gave the proposed Order of Reference.

**Select Committee.**—On November 15,<sup>4</sup> the Chancellor of the Exchequer (Rt. Hon. H. Dalton) moved:

That a Select Committee be appointed to consider the expenses incurred in connection with their Parliamentary and official duties by Members of this House, including Ministers whose salary is less than £5,000 per annum; their remuneration and their conditions of work.

Mr. Dalton said that this Committee would follow precedents set up in past times. In 1920 a Select Committee was set up with similar terms of reference. Those of the present Committee had deliberately been made very wide. After debate, in which the subjects raised on October 9 were again urged, the Question was put and agreed to.

On the same day,<sup>5</sup> the Chancellor of the Exchequer moved:

That in the opinion of this House the facilities now available to a member of this House travelling on Parliamentary duties between London and his constituency should be extended so as to provide facilities for free travel on such duties by any public railway, sea or air service, between:

- (a) London and his constituency;
- (b) London and such other place outside his constituency as may have been notified by him to the Fees Office as being his ordinary residence; and
- (c) his constituency and such one other place as aforesaid.

Mr. Dalton remarked that the Motion would also meet the case of a member not living in his constituency—namely, home, constituency and London—and referred to the Motion on this subject which was defeated by a very narrow margin in 1921. He hoped that the new scheme would become effective on December 3, and estimated that these concessions would cost, at the outside, £20,000 in the first year.

Question was then put and agreed to and a statement on the arrangements for travel on Parliamentary duties by rail, sea or air, by M.P.s appeared below the Resolution in *Hansard*.<sup>6</sup>

On November 20,<sup>7</sup> the personnel (17) of the Select Committee on Members' Expenses was announced, the Committee to have power to send for persons, papers and records; to sit notwithstanding any

<sup>1</sup> *Ib.* 1673.

<sup>2</sup> *Ib.* 2477.

<sup>3</sup> 415 *Ib.* 1085-194.

<sup>4</sup> *Ib.* 2484.

<sup>5</sup> *Ib.* 146.

<sup>6</sup> 416 *Ib.* 1725.

<sup>7</sup> *Ib.* 2466-77.

adjournment of the House, and to report from time to time; 5 to be the quorum.

**Government Statement.**—On April 30, 1946,<sup>1</sup> the Chancellor of the Exchequer, with the permission of Mr. Speaker, made a statement on the Report of the Select Committee on Members' Salaries and Expenses, to the effect that the Government accepted in substance the recommendations of the Committee, contents of which were embodied in their Report.

Mr. Dalton said the Government was accepting the position that a Committee be set up to assist Mr. Speaker and the Chancellor of the Exchequer in settling travelling and subsistence allowances. Salaries of M.P.s would not require legislation, but only a Resolution of the House, followed by an Estimate. Proposals regarding Ministers with salaries of below £5,000 per annum would require legislation (*which see above*) and would involve *amdt.* of the Ministers of the Crown Act, 1937, and possibly other material Acts of Parliament. Changes in the salaries of other Ministers would also require legislation.<sup>2</sup>

In reply to a Q. as to which of the proposed changes could be covered by a Resolution and which required legislation, the Chancellor said: M.P.s' salaries was not a question which required legislation, but only a Resolution, followed by the necessary Estimate; neither would the matter of season tickets for members require legislation.

The increase in the salaries of Ministers would involve *amdt.* of the Ministers of the Crown Act, 1937.

Mr. Dalton further said that a Committee would be set up to assist Mr. Speaker and the occupant of the office of Chancellor of the Exchequer, in settling differences in respect of subsistence allowances when travelling on the business of the House.

**Report of Select Committee.**—The Report<sup>3</sup> from the Select Committee on Members' Expenses, or as it was subsequently referred to—"on Members' Salaries and Expenses", with Minutes of Evidence and Appendices, was brought up on March 6,<sup>4</sup> read and Ordered to be printed.

Paragraph 2 of the Report deals with the present situation on the subject as follows:

At present the payment to Members is at the rate of £600 a year. Of this, by a Treasury Minute of 1913, £100 free of income tax is allowed for expenses, but a Member, if he can show that his expenses exceed this figure, can claim expenses up to the full amount of the £600 under ordinary income tax procedure. There is also nothing to prevent the Treasury raising the figure of £100 up to the full amount of £600, if it were thought fit. Members now also receive the concession of free first-class travel by rail for the journeys between Westminster and their constituencies, between Westminster and their homes and between their homes and their constituencies. The cost of first-class sleeping berths and of the charge for travel by an all-Pullman train are allowed. Travel by air is allowed from convenient aerodromes to cover the same three classes of journeys as for rail. The war-time con-

<sup>1</sup> 422 *Ib.* 38.    <sup>2</sup> *Ib.* 40.    <sup>3</sup> H.C. (1945-46) 93-1.    <sup>4</sup> 420 *Com. Hans.* 5, s. 340.

cessions for Members serving in the Forces for free travel from their war stations to Westminster and to the constituency are still in force.

The Committee<sup>1</sup> find that the claims for an improvement in existing conditions resolve themselves into 2 main categories, (a) for financial measures calculated to provide any Member, after the deduction of legitimate expenses, with a sum that will enable him to carry out his duties efficiently and without embarrassment, and (b) for extensions of free travel (including allowances for cars) and for free postage, for free telephone calls, and for additional accommodation.

The Committee express the present-day expenses of an M.P. as very high owing to: (a) the additional cost of living away from home when engaged in Parliamentary duties at Westminster; (b) the additional cost of living when engaged in Parliamentary duties in the constituency when the M.P. does not live there; the cost of secretarial and clerical assistance; and the cost of such items as stationery, postage, telegrams and telephone calls. It was not surprising, therefore, said the Committee, to find that the sum claimed to cover these expenses varied within the wide limits of the figures given in the table furnished by the Inland Revenue.<sup>2</sup>

The Committee were of opinion that an M.P. must have a personal secretary. His work was individual and could not suitably be done in a typists' pool. The salary of the type of secretary employed part-time by the M.P. costs £150-200 *p.a.* It was also difficult to assess the cost of stationery, postages, telegrams and telephone calls, which might vary from £25-£100 *p.a.* On these grounds, arguments are adduced for the grant to members of free postage, telegrams and toll or trunk telephone calls.

The Committee do not favour a members' hostel in London.<sup>3</sup> The members living on the system of the London Transport Board find the daily voucher system very irksome. Neither do the Committee feel that a strong case was made out for the extension of free travel by rail or sea for M.P.s in the United Kingdom. Empire-wide free travel was outside the Committee's Order of Reference. The Committee considered that the cost of a car should be met out of the M.P.'s allowance for expenses.<sup>4</sup>

The Conclusions of the Committee are contained in paras. 7 to 12 of their Report, the preface to which is in para. 6, and states the 3 principles upon which they are agreed, namely:

- (a) That a Member should be allowed his reasonable expenses, wholly, necessarily and exclusively incurred in the performance of his duties as a Member;
- (b) That he should then receive a sum which will enable him to maintain himself comfortably and honourably, but not luxuriously, during the time he is a Member of the House; and
- (c) That the methods for dealing with expenses and with travelling concessions should be simple to administer.

The remaining 5 paragraphs of the Report are summarized in para. 13 as follows:

<sup>1</sup> *Rep.*, § 3.

<sup>2</sup> § 4 and Appendix IV.

<sup>3</sup> § 4.

<sup>4</sup> § 5.

- (a) The salaries of Members should be increased to £1,000 a year, of which £500 should be allowed to all Members as an expense allowance free of income tax (paragraph 7).
- (b) Ministers with salaries of less than £5,000 a year, the Chairman of Ways and Means and the Deputy Chairman, should be granted an expense allowance at the rate of £500 a year free of income tax as Members of the House in addition to their present salaries; and the legislation necessary to amend the Ministers of the Crown Act, 1937, and other material Acts should be introduced (paragraph 11).
- (c) The salaries of these Ministers and of the Chairman of Ways and Means and of the Deputy Chairman should be reviewed by the Government (paragraph 11)
- (d) The rate of subsistence allowance granted to Members when travelling on the business of the House should be increased (paragraph 10).
- (e) Arrangements should be made without delay with the railway companies concerned and the London Passenger Transport Board for the issue of season tickets of suitable duration to Members living in or near London, who wish to have them for daily journeys for which they are entitled to free travel (paragraph 8).
- (f) Consideration should be given to setting up a small committee, nominated by Mr. Speaker, to assist him in matters affecting the payments and concessions for free travel to Members, the recommendations of which would be accepted by Members and by the Treasury (paragraph 12).
- (g) In view of their recommendation in (a) above, Your Committee consider unnecessary any extension of free travel (paragraph 9), any allowance for the use of a motor car (paragraph 8), or the grant of free postage, telegrams and telephone calls (paragraph 9).

All M.P.s had been invited by letter<sup>1</sup> of December 14, 1945, from the Chairman of the Select Committee to contact the Clerk to the Committee should they have any points to put forward. The Committee held 12 meetings and heard 25 Witnesses, of whom 21 were M.P.s. The Officials were the Clerk of the House of Commons (Sir Gilbert Campion, K.C.B.), the Chairman of the Board of Inland Revenue (Sir Cornelius Gregg, K.C.B., K.B.E.), the Director of Postal Services, G.P.O. (Mr. R. A. Little), a Postal Official (Mr. P. R. Mellors), and the Accountant of the House of Commons (Mr. A. J. Moyes, O.B.E.). The Evidence contains 843 Questions and the List of Appendices are as follow:<sup>2</sup>

NOTE.—The Memoranda upon which witnesses were examined are given in Appendices V to IX. A letter and two memoranda upon which the Committee did not hear oral evidence are given in Appendix X.

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<sup>1</sup> Appendix I.

<sup>2</sup> *Rep.*, p. 97.



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**Evidence.**—In reply to a Q.<sup>1</sup> as to what was the *locus standi* of the Treasury in regard to expenditure on the House of Commons Votes and Estimates, Sir Gilbert Campion said that an Estimate must be presented by a Minister, and the Chancellor of the Exchequer was actually responsible for presenting the House of Commons Vote. It was true that part of the Vote was rather independent of the Treasury; the salaries of officials did not come directly under the Treasury but under a Commission of which the Chancellor of the Exchequer was a member—an Estimate was considered a more flexible method. It had, however, been going on so long and was so established that it might now be convenient to subject it to statutory control.

In regard to a question as to which is the authority of the House to interpret a Resolution, in the event of a dispute between an hon. member and the Fees Office as to some particular travelling voucher, the Witness replied that the matter would be referred to Mr. Speaker for decision, but that the Treasury would come in at an earlier stage.<sup>2</sup>

In reply to a Q. as to who was responsible for the House of Commons Vote in the House, the Witness said that an Estimate must be presented on the responsibility of a Minister, and the Vote was presented on the

<sup>1</sup> Q.s 234, 235, 236.

<sup>2</sup> Q.s 244, 257.

responsibility of the Chancellor of the Exchequer, who had to defend it in the House, but the position was somewhat anomalous as that part of the Vote dealing with officials' salaries was outside his control, being under that of a Commission.<sup>1</sup>

The Witness was then asked, that supposing an M.P. had a dispute in regard to his travelling voucher and the Fees Office or somebody else complained about it and it was passed on to Mr. Speaker for decision, the M.P. disputing it, would he have the opportunity of raising the matter on the Votes? Sir Gilbert's reply was that if the Chancellor agreed to take responsibility it would no doubt be raised on his Vote; but if he refused, it would be very hard to say who would take it. "The Speaker could not defend a Vote in the House obviously."<sup>2</sup>

Mr. A. J. Moyes,<sup>3</sup> the Accountant, Fees Office, House of Commons, was questioned mostly in regard to travelling vouchers, petrol coupons, etc. In the last financial year £36,200 was spent on members' travelling expenses.<sup>4</sup> Several Q.s were asked the Witness as to what control he was under, acting in his various capacities as Accountant for the House of Commons. Mr. Moyes replied that in regard to the issue of petrol coupons he was under the control of the Minister of Fuel and Power, but he was actually under the control of Mr. Speaker.

**Debate on Report.**—On May 29, 1946,<sup>5</sup> after the Order had been made, "That the Report from the Select Committee be now considered" had been put and agreed to, the following Motion was moved by the Parliamentary Secretary to the Treasury (Rt. Hon. W. Whitely). Motion was then made and Question proposed:

That in the opinion of this House it is expedient:

- (a) That provision should be made as from the first day of April, nineteen hundred and forty-six, for the payment of salaries to Members of this House:
  - (i) At the rate of one thousand pounds a year, except in the case of a Member who is for the time being in receipt of a salary as a Minister of the Crown, an officer of His Majesty's Household, or an Officer of this House or as Leader of the Opposition, or in receipt of a pension as a person who has been Prime Minister and First Lord of the Treasury;
  - (ii) At the rate of five hundred pounds a year in the case of a member who is for the time being in receipt of a salary less than five thousand pounds a year as a Minister of the Crown, or in receipt of a salary as an Officer of His Majesty's Household, or as Chairman or Deputy Chairman of Ways and Means, or as Leader of the Opposition, or in receipt of a pension as a person who has been Prime Minister and First Lord of the Treasury;
- (b) That more convenient arrangements should be made with respect to the facilities for railway travel available to Members of this House;
- (c) That Mr. Speaker should be invited to appoint a Committee to advise him on the application of the rules and practice governing the payment of travelling expenses of Members of this House and of subsistence allowances payable to them when travelling on the official business of this House;

<sup>1</sup> Q.s 253, 259.  
Hans. 5, 8, 1231-99.

<sup>2</sup> Q. 255.

<sup>3</sup> Q.s 136-232.

<sup>4</sup> Q. 152.

<sup>5</sup> 423 Com.

- (d) That provision should be made for enabling Members of the House of Lords to recover, out of the sums voted for the expenses of that House, the cost of railway fares incurred by them in attending that House for the purposes of their Parliamentary duties.

The following were some of the points which arose in the debate:

The Chancellor of the Exchequer said that the Government did not view with favour the proposal made by the Committee, that both in the case of the private member and in the case of the Ministers affected by these arrangements, they should receive £500 freed automatically from Income Tax.<sup>1</sup> Therefore the Government proposed that in respect of the increased salary of £1,000 *p.a.* to private members and in respect of the increment of £500 to M.P.s who were also Ministers, over and above the £100 which was already deemed to be expenses and free from Income Tax, the existing arrangements should continue exactly as they were now, that was to say, the individual would be required, if he sought relief from Income Tax over and above the £100 which was automatically free, to make his case like any other citizen in the ordinary way.

Mr. Dalton also said that, following representations made through the usual channels connecting this and "the other place", provision should be made, duly supported later by an Estimate, to enable members of the House of Lords to recover out of the sums voted for the expenses of that House the cost of railway fares incurred by them in attending that House for the purposes of their Parliamentary duties. The Government had accepted the proposal.<sup>2</sup>

It was stated by the Chairman of the Select Committee (Mr. Tom Smith) that the Parliamentary Secretary or Under Secretary, the moment he accepted office, had to put off all outside earnings. Nothing was allowed him for expenses. There was no 12 months' carry-over for his Income Tax, it was taken off at the end of the month. On balance it was thought therefore that the Parliamentary Secretaries should have something. He urged that an M.P.'s Secretary should be individual to each member.<sup>3</sup>

*Amdt.* was moved by the hon. member for St. Marylebone (Sir Wavell Wakefield) in line 3, to leave out "day of April nineteen hundred and forty-six" and to insert "Sitting Day of the next Parliament" instead thereof. When the Question was put—"That the words proposed to be left out stand part of the Question" the voting was: Ayes, 345; Noes, 26. Hon. members had a free vote. The main Question was then put and agreed to.

The Report, Evidence and Appendices disclosed a great amount of very interesting matter on the subject, well worthy of consultation in detail to anyone desiring closer research. The practice in regard to the salaries, expenses and free facilities afforded members of Parliament in the 4 Overseas Dominions of Canada, Australia, New Zealand and the Union of South Africa are particularly interesting.

<sup>1</sup> *Ib.* 1234.

<sup>2</sup> *Ib.* 1237.

<sup>3</sup> *Ib.* 1259.

VII. HOUSE OF COMMONS: WORKING OF MEMBERS' PENSIONS FUND, 1946-47<sup>1</sup>

BY THE EDITOR.

SINCE the subject of pensions for distressed ex-members of the House of Commons was raised by Question in the House of Commons in 1936, the various stages of the movement preparatory to the establishment of a scheme by Act of Parliament, and the working and development of the Fund, have been, from time to time, described in the JOURNAL, either in the form of Article or Editorial note.

In 1946, prompted by the prosperous condition of the Fund, so ably administered by M.P.s themselves acting as its honorary Trustees, agitation arose for a review of the position, resulting in the setting up of a Select Committee in 1947, which recommended a considerable reduction of the member's contribution to the Fund and the increase of his benefits therefrom as well as increased benefits to the widow and consideration also of an M.P.'s orphans.

Altogether the handling of this question by the House of Commons, and on non-Party lines, is a fine example of what can be done without resorting to the use of the taxpayers' money.

A survey will therefore now be made of what has transpired in regard to this Fund since the last report on the subject in the JOURNAL, both by Question and Answer, as well as by Motion and Action.

**Question.**—On August 23, 1945,<sup>2</sup> it was reported that 6 M.P.s (*naming them*) had been appointed trustees of the Fund, *vide* S. 2 of the Act of 1939.<sup>3</sup>

On March 14, 1946,<sup>4</sup> the Chancellor of the Exchequer (Rt. Hon. E. H. J. N. Dalton) was asked if he had considered the Report of 1944-45<sup>5</sup> on the Fund, and if he would consider introducing the necessary legislation to increase the pensions, seeing that the capital at the credit of the account amounted to £41,725 2s. 7d.

Mr. Dalton replied that in view of the Government Actuary's Report<sup>6</sup> of July 4, 1944, on the Fund, of the need to accumulate sufficient reserve to cover contingent liabilities and of paras. 14 and 16 of the Report of the Departmental Committee on Pensions to members,<sup>7</sup> the Trustees of the Fund did not think it advisable to propose any *amdt.* of the Fund.

On July 2, 1946,<sup>8</sup> Copy was Ordered:

of an extract from the Minutes of the 33rd Meeting of Trustees, held at the House of Commons on 25th June, 1946, and of a statement by them relative to the position of the Fund.—[*Sir C. MacAndrew*].

**Debate.**—On July 18,<sup>9</sup> during a discussion on the Business of the

<sup>1</sup> See also JOURNAL, Vols. V, 28; VI, 139; VII, 38; VIII, 103; XI-XII, 124; XIII, 175; XIV, 44.

<sup>2</sup> 413 *Com. Hans.* 5, s. 953.

<sup>3</sup> 2 & 3 *Geo. VI*, c. 49.

<sup>4</sup> 420 *Com. Hans.* 5, s. 247.

<sup>5</sup> See JOURNAL, Vol. XIV, 44.

<sup>6</sup> See Vol.

XIII, 176.

<sup>7</sup> *Ib.* 178.

<sup>8</sup> 424 *Com. Hans.* 5, s. 1923.

<sup>9</sup> 425 *Ib.* 1385.

House, Col. Sir. C. MacAndrew (the Chairman of the Trustees) asked the Leader of the House if any action was to be taken with regard to the return presented recently dealing with the financial position of the Fund, revealing that the annual contribution of £12 deducted from every member's salary, produced a sum nearly 4 times that needed to cover the present expenditure; that the future liabilities of the Fund would be reduced by the passing of the National Insurance Bill and that last year there was a surplus of over £6,000 with a reserve of over £40,000. In addition, the Chairman continued, £9 out of every £12 contributed was being invested by the Trustees.

The Lord President of the Council (Rt. Hon. H. Morrison) remarked that this was one of the financial ventures of Parliament which had turned out to be exceedingly prosperous, and no doubt actuarial advice would be taken. It might be discussed through the usual channels and if there were general agreement, they might be able to meet hon. members' wishes and deal with it expeditiously, he hoped, after the Summer Recess.

**Question.**—On July 22,<sup>1</sup> the Chairman of the Trustees of the Fund was asked what steps were contemplated either to reduce the contributions to the Fund or expand the benefits payable, to which he replied that the Trustees were governed by the Act of 1939; under its provisions they had power to reduce the contributions or increase the benefits. Any changes as suggested could not be carried out without legislation.

**Return.**—The following Return<sup>2</sup> was then presented to the House stating the financial position of the Fund, and Ordered to be printed, on July 2, 1946:

EXTRACT FROM THE MINUTES of the 33rd Meeting of Trustees held at the House of Commons on 25th June, 1946:

"It was agreed that a special statement on the financial position of the Fund be submitted to the House."

The Trustees of the Members' Fund operate the Members' Fund Act, 1939, and lay their accounts annually before the House of Commons. The Trustees feel, however, that they should draw the attention of the House to the present financial position of the Fund for the following reasons:

- (a) twenty persons are receiving payments which amount to the annual sum of £2,040;
- (b) the contributions of £12 deducted under the Act from the salary of every Member of Parliament amount to approximately £7,656 per annum and there is additional income of £1,296 derived from an invested reserve of fund £43,881.

Under the terms of the Act and the qualifications required, the contribution of £12 annually from each Member produces a sum nearly four times that needed to cover the present expenditure.

It should be noted that the future liability of the Fund will be reduced by the enactment of the National Insurance Bill.

CHARLES MACANDREW,  
Chairman.

26th June, 1946

<sup>1</sup> *Ib.* 296.

<sup>2</sup> H.C. (1945-46) 160.

**Question.**—On July 29,<sup>1</sup> the Chancellor of the Exchequer was asked whether it was his intention to introduce legislation to amend the terms of the Members' Pensions Fund, in view of the substantial surplus which had now accumulated, to which Mr. Dalton replied—"Not at present", but he understood that discussions were to take place through the usual channels.

**Comptroller and Auditor-General's Report.**—On February 5, 1947, the Comptroller and Auditor-General's annual report<sup>2</sup> for the year ended September 30, 1946, was presented, in which he said that the accounts of the Fund for the year in question had been audited and certified by the Comptroller and Auditor-General in regard to: Income and Expenditure Account, Investments Account, and Balance Sheet respectively, and certified that the income still continued to exceed the expenditure by the amount set out in column 2, which amount had been carried to capital account, bringing the total of that account to the sum shown in column 3, the sum invested appearing in column 4:

1.	2.	3.	4.
Year.	Excess Income over Expenditure.	Capital Account.	Sum Invested.
	£	£	£
1945-46 ..	6,388 19 7	48,114 2 2	45,351 14 5

**Select Committee.**—On February 21, 1947,<sup>3</sup> a Select Committee was appointed to examine and report on the financial position of the House of Commons Members' Fund established under the House of Commons Members' Fund Act, 1939, and to make recommendations with a view to achieving a closer relation between the sums paid into and the payments made out of the said Fund, the Committee to consist of 11 members (*the names being given*) with power to send for persons, papers and records; and 3 to form a quorum.

The Chairman of the Members' Fund Trustees (Col. Sir C. MacAndrew) in speaking to the Motion quoted S. 3 (7) of the Act requiring that all information as to the making or refusing of particular grants, the names of beneficiaries, etc., should be treated as absolutely confidential, and expressed the hope that the *Select Committee* would not ask for any information of that kind. He also drew attention to May,<sup>4</sup> which made it quite clear that the Committee cannot:

... require an officer of a public department to produce any paper which according to the rules and practice of the House, it is not usual for the House itself to order to be laid before it.

The hon. and gallant member said it was unthinkable that he, as Chairman of the Trustees, should be asked to give evidence before the Committee and certainly not an officer of a public department. He hoped that the hon. gentleman who moved the Motion would take steps to ensure that nothing was done in the Committee to give away any of

<sup>1</sup> 426 *Com. Hans.* 5, s. 107.  
5, s. 1627.

<sup>2</sup> H.C. (1946-47) 40.

<sup>3</sup> 433 *Com. Hans.*

<sup>4</sup> XIV, Ed., p. 593.

the names of those unfortunate ex-colleagues who received help from the Fund.

The mover of the Motion duly assured the hon. and gallant member that he would bring the matter of strict privacy to the attention of the Committee.

Question was then put and agreed to.

**Report.**—The Report<sup>1</sup> from the Select Committee on the House of Commons Members' Fund together with the proceedings of the Committee, Minutes of Evidence and Index was tabled on June 5, 1947.<sup>2</sup> The Committee held 11 meetings and heard 13 witnesses, 12 being M.P.s and the remaining witness the Accountant to the House of Commons (Mr. A. J. Moyes, O.B.E.).

The first 9 paragraphs of the Report deal with the history of, and information in regard to the Fund, which has already appeared in the JOURNAL.

The Committee remarked<sup>3</sup> that since the establishment of the Fund, 29 annual grants had been made by the Trustees in respect of the service of 27 ex-M.P.s and 1 non-recurring grant. In 2 instances annual grants were first made to the ex-member and later, after his death, to his widow.

Up to the dissolution in 1945, 17 awards had been made, 5 to ex-members and 12 to their widows. Ten new claims were admitted by the Trustees, 9 annual and 1 non-recurrent grant.<sup>4</sup>

The average service in the House of the 27 ex-M.P.s above referred to was 15 yrs. 5 months.

The financial position of the Fund is shown in a table under para. 14 of the Report, which is given below, with the exception of the items "Excess of Income over Expenditure" and "Total of Capital Account" for the years ended September 30, 1940—September 30, 1946, the statistics of which up to September 30, 1945, have already appeared in the JOURNAL and those for the year ended September 30, 1946 are contained in this Article:

Year ending.	Expenditure.				Income.							
	Grants from the Fund.		Administrative Expenses, etc.		Members' Contributions.		Income from Investments, etc. (including Proceeds of Realization).					
	£	s.	d.	£	s.	d.	£	s.	d.			
30.9.1940	204	0	8	158	1	3	7,302	2	0	32	10	3
30.9.1941	426	14	3	156	4	10	7,305	6	8	195	5	1
30.9.1942	661	4	4	172	7	7	7,304	11	4	1,127	2	7(b)
30.9.1943	952	16	9	156	18	7	7,318	12	8	671	6	2
30.9.1944	856	11	5	157	0	11	7,329	17	1	844	2	5
30.9.1945	1,246	16	1	466	17	6(a)	6,947	4	3	962	16	3(c)
30.9.1946	2,237	15	1	186	8	9	7,660	0	10	1,153	2	7

<sup>1</sup> H.C. (1946-47) 110.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Rep.*, § 11.

<sup>4</sup> *Ib.*, § 12.

- (a) This sum includes £279 for the Government Actuary's charges for reports on the Fund.
- (b) This sum includes £573 5 7 from gain on realization of investments.
- (c) This is a net figure after deduction of £40 17 5 for loss on realization of investments.

The Committee remarked<sup>1</sup> that throughout the conduct of their inquiry, Your Committee have been guided by three primary considerations:—

- (1) That it is of the first importance that the Fund should fulfil the purpose for which it was established;
- (2) That members should not be called upon to contribute any more than is necessary to secure this object; and
- (3) That the recommendations made in this Report should not be inconsistent with the general tenor of the Act of 1939.

In considering possible extensions of the Fund, the Committee have been mainly influenced by the increase in the cost of living since 1939, and to meet this the following provisions should be substituted for those in the First Schedule to the House of Commons Members' Fund Act, 1939:<sup>2</sup>

- (a) the annual amount of any periodical payment made to any person by virtue of his past membership of the House of Commons should not exceed £250 (instead of £150 as at present) or such sum as, in the opinion of the trustees, would bring his income up to £325 (instead of £225) per annum, whichever is the less.
- (b) The annual amount of any periodical payment made to any person by virtue of her being the widow of a past Member of the House of Commons should not exceed £150 (instead of £75) or such sum as, in the opinion of the trustees, will bring her income up to £225 (instead of £125) per annum, whichever is the less.
- (c) No payment should be made in respect of any child of a past Member of the House of Commons whilst both of the child's parents are living, or after the child has attained the age of sixteen years, and the annual amount of any periodical payment made in respect of such a child or children should not exceed the following sums:—
  - (i) £100 in respect of an only child (or £75 for each child if there are more than one) when both parents are dead;
  - (ii) £50 for the eldest eligible child, when one parent is living;
  - (iii) £30 for the second eligible child and each of any later eligible children, when one parent is living.

In regard to grants to widowers of former women members, although the Committee were not unanimously in favour of the proposal, they took the view<sup>3</sup> that if, in the opinion of the Trustees, such a widower was, by reason of age or mental or bodily infirmity, incapable of earning his living, the annual amount of any periodical payment should not exceed £150, or such sum as, in the opinion of the Trustees, would bring the income up to £225 *p.a.*, whichever is the less.

The Committee were opposed to lowering the present age limit of 60 years,<sup>4</sup> the Trustees having already the power to make grants to ex-M.P.s incapable of earning their own living by reason of mental or bodily infirmity. Neither were the Committee in favour of shortening

<sup>1</sup> § 16.

<sup>2</sup> § 19.

<sup>3</sup> § 20.

<sup>4</sup> § 21.



the 10 years' qualifying period in view of the discretion already left to the Trustees.<sup>1</sup>

The Committee, while not laying down anything specific, considered that the Trustees, if in doubt when assessing an income, might well take into consideration the "statutory disregards" under the Determination of Needs Act, 1941,<sup>2</sup> or any amendment thereof.<sup>3</sup>

According to a statement made by the Accountant to the House of Commons, as Secretary to the Fund, to show the effect of the changes in para. 19, in so far as they relate to former members, their widows or their orphan children (both parents being dead), Mr. Moyes' statement was that on the new scale, beneficiaries from the Fund would receive £3,775 instead of £1,825 *p.a.*, and that grants which would now become admissible on the new scale might cost £1,825 *p.a.* In this connection the effects of recent social legislation, such as the National Insurance Act, 1946,<sup>4</sup> had yet to be taken into account. The Pensions (Increase) Act of 1944<sup>5</sup> had already affected the number of claims on the Fund. The Committee therefore allowed for a possible total annual expenditure on grants under the new proposals of about £6,200, making, with the administrative cost of £200 *p.a.*, a total of £6,400.<sup>6</sup>

As the level of income under the new proposals is £2,100 greater than the £6,400, the Committee recommended that the Act be amended by reducing the member's contribution from £12 to £9.

The Committee emphasized that the Fund had not been in existence long enough for data to be available for a reasonably exact actuarial forecast of the results of any new proposals. If the Committee's estimate of claims upon the Fund was unjustified, the proposals contained in the Report would need revision. Until that took place, the Fund has a reserve of some £50,000 and they were fortified by the Act that, in making grants they shall have regard to the resources and commitments of the Fund.<sup>7</sup>

The Committee noted that the Government Actuary's charges for 2 Reports on the Fund amounted to £279, which was more than double the cost of the annual administration of the Fund, the Secretariat of which had supplied the Actuary with the required figures.<sup>8</sup>

The Committee was of opinion that in no circumstances should a grant from the Fund be made to an ex-M.P. who had become a member of the House of Lords.<sup>9</sup>

**Evidence.**—The evidence consisted of 456 Questions and presented many interesting details.

In reply to a Q. by Mr. Daggar, the Witness (Chairman of the Trustees) said that claimants had to disclose their income.<sup>10</sup>

In reply to a Q. by Mr. Peake, Mr. Moyes stated that there was a settled form of particulars which claimants were asked to supply (*which see below*).<sup>11</sup> The income of the wife was not taken into consideration.<sup>12</sup>

The 7 Trustees were drawn from all Parties.<sup>13</sup>

<sup>1</sup> § 22.

<sup>2</sup> 4 & 5, Geo. VI, c. 11.

<sup>3</sup> Rep. 24

<sup>4</sup> 9 & 10 Geo. VI, c. 67.

<sup>5</sup> 7 & 8 Geo. VI, c. 21.

<sup>6</sup> Rep. §§ 25, 26.

<sup>7</sup> § 30.

<sup>8</sup> § 31.

<sup>9</sup> § 32.

<sup>10</sup> Q. 14.

<sup>11</sup> Q. 18.

<sup>12</sup> Q. 19.

<sup>13</sup> Q. 171.

In reply to a Q. by the Chairman, Sir Henry Morris-Jones, one of the Trustees, said that the Act was based on a means test, the following being the letter addressed to a claimant, as well as the Schedule which had to be filled in:<sup>1</sup>

Copy of letter sent to Applicants for grant from House of Commons  
Members' Fund.

FEE'S OFFICE,  
HOUSE OF COMMONS,  
LONDON, S.W.1.

THE MEMBERS' FUND.

DEAR SIR,

To qualify for an award of pension from the Members' Fund, it is necessary that the Trustees of the Fund be provided with a full statement of your income and assets so that they may determine the grant to be made.

The Members' Fund Act, which provides that grants of pensions may be made to ex-M.P.s, their widows, or their orphans, restricts the amount of such pensions according to the private means of the applicant. Provided the age and service qualifications are met, the Trustees may make awards from the Fund which will bring the assessed income of an ex-Member to £225 per annum and of a widow to £125, subject to maximum awards of pensions of £150 and £75 per annum respectively.

Should your present total income be below the limit of £225 (in the case of a widow £125), I should be glad if you would complete the attached statement so that it may be placed before the Trustees. This statement, which must be certified by you, will be treated as strictly *private and confidential*.

Yours faithfully,

A. J. MOYES,  
Secretary.

ANNEX B to evidence of Sir Henry Morris-Jones, M.C., M.P.  
Copy of Form to be filled in by applicants for grant from House of  
Commons' Members Fund.

*Confidential.*

MEMBERS' FUND APPLICATION FORM.

- 
1. Applicant's name in full .....
  2. Date of birth .....
  3. Name of ex-Member of Parliament and relationship ..
  4. PARTICULARS OF ASSETS.
    - (a) Money in a Bank, Post Office, Building Society, etc. (State the amount and the interest, if any, that it earns) .....
    - (b) Money invested in Stocks, Bonds, etc. (State the amount, giving particulars of the investment and the annual interest) .....
    - (c) Property owned. Give
      - (i) description of the property, land, etc., also stating .....
      - (ii) Schedule "A" Income Tax Assessment ....
      - (iii) whether the property is let and what are the annual receipts and outgoings .....
      - (iv) whether a mortgage is held—giving particulars

<sup>1</sup> Q. 97.

- (d) Pensions, etc. (Give particulars of any pension, such as Old Age Pension, Annuity or Service Pension which is held) .....
- (e) Any other source of income .....

I certify that the above is a true statement of all my assets and income at this date the.....day of.....in the year of 194 .

Address .....

.....

(Signature).....

At the opening of Mr. Moyes' evidence, the Chairman thanked him for the memorandum he had put in, saying that it had been a great help and a good guide in time of trouble and also that the members of the Committee would like to have the opportunity of putting questions to him in regard to his memorandum—" or in regard to the admirable work you have done as Secretary of the Fund ".<sup>1</sup>

The following were among the *Q.s* asked Mr. Moyes:

424. *Q.* But I gather the Trustees have taken the view that, as there is no Exchequer contribution to the Fund in the sense that income tax is allowed upon Members' contributions, so the Trustees have thought it wise to arrange the grants in such a way that they did not attract income tax in the hands of the recipients?
- A.* I think I can say "Yes" generally, in agreement. The question did not arise originally with the Trustees. It was raised by the income tax people themselves—1 or 2 of the local assessors—as to whether this sum was a pension as such, in which case it would be assessable for income tax, or, if it was not a permanent pension, then it would not rank for income tax. We went into the question, and as it was one of the rules that awards had to be reviewed within 12 months we could not say that it was definitely a pension as such for the purposes of income tax, and so as to make the matter perfectly clear the awards were then expressed in monthly terms.
431. *Q.* The other point is this: you would think it right, would you not, that the wife's income should be taken into account where the husband and the wife are living together?
- A.* Not if the pension remains at £150, Sir, because there may be domestic difficulties or differences between various married couples, and the pension is for the man and not for the wife. One could envisage the case where an ex-Member's wife has quite a considerable amount of money but they do not live in harmony, and one should not put an ex-Member in a position of having to go to his wife asking for money.
432. *Q.* Could I ask Mr. Moyes with regard to disregards in this Fund, would you favour an extension of disregards or an extension of the upper limit of the amount allowed?
- A.* I personally (it is a personal preference) would favour a graduated scale of disregards, because it does seem to me unfair that a man who has, if you like, saved £225 under the present Act, can get absolutely nothing, whereas, if he has saved £125, he gets £100. So it does mean to say that a man within a certain scale loses everything he has saved. If you had a graduated scale, allowing half of

<sup>1</sup> *Q.s* 418-20.

his savings up to a certain point and then two-thirds beyond that point till it finally disappeared at a certain figure at which he would get nothing, it would encourage thrift a bit and give him some recompense.

439. Q. Have you any idea as to what alterations in the Fund might be necessary with regard to women members, they now being entitled to benefit? Have you thought of that?

A. At the time when the Act was framed there were women members, and I think it was thought that they could come under the Act as regards pensions for themselves, but of course no pensions were provided for their husbands. I think it does definitely say "widows", it does not say "widowers".

In reply to Q. 440, Mr. Moyes put in the following table:<sup>1</sup>

PAPER ANNEXED TO EVIDENCE OF MR. A. J. MOYES, O.B.E.

Table showing Years of Service of Present Members of the House of Commons under their approximate age groups.

Service (years)	Under 36	36/40	41/45	46/50	51/55	56/59	60	61/65	66/70	Not (known)	Total
20 .. ..	—	—	1	3	6	6	3	11	21	2	53
15 .. ..	—	1	5	14	3	6	2	5	6	4	46
10 .. ..	1	3	5	11	14	15	1	8	10	12	80
(179)											
9 .. ..	—	2	1	5	—	1	1	1	1	1	13
8 .. ..	—	1	2	1	4	4	—	4	—	2	18
7½ .. ..	—	—	—	—	1	—	—	1	—	—	2
(212)											
7 .. ..	—	—	3	—	2	4	—	2	3	1	15
6 .. ..	—	2	5	2	4	—	—	1	1	1	16
5 .. ..	1	2	5	3	—	1	1	1	3	6	23
4 .. ..	1	1	3	1	2	2	—	1	2	2	15
3 .. ..	1	1	2	3	1	3	—	1	—	3	15
Under 3 .. ..	42	48	53	45	23	22	4	15	7	85	344
	46	61	85	88	60	64	12	51	54	119	640

No. of serving Members:

- (a) with over 10 years' service .. .. . 179  
 (a 1) with over 10 years' service and 60 years of age .. 85 (96\* Max.)  
 (b) with over 7½ years' service .. .. . 212  
 (b 1) with over 7½ years' service and 60 years of age .. 96 (108\* Max.)  
 (b 2) with over 7½ years' service and 57 years of age .. 125 (141\* Max.)

\* Includes estimate of ages of those not known.

This is as far as the proceedings go up to the time of sending this Volume of the JOURNAL to the press. Further events will be given in our next Volume.

<sup>1</sup> Rep. p. 48.

VIII. CANADA: DOMINION-PROVINCIAL CONFERENCE  
(1945)

BY THE EDITOR.

THERE have been many references in the JOURNAL<sup>1</sup> to the subject of Dominion-Provincial relationship in Canada, but the question is essentially one which receives periodical consideration both by the Federal Government and the Provinces.

The last large-scale inquiry was the Rowell-Sirois Commission, the report of which was surveyed, from the constitutional and procedure angle, in our Volume IX.<sup>2</sup> Therefore, when, what was originally called the Dominion-Provincial Conference on Re-construction, took place towards the Fall of 1945 and in the Spring of 1946, it formed another important link in the chain of conferences on the subject, although the outcome was scarcely more conclusive, from an all-Provinces point of view, than that of its predecessor.

The Conference under survey in this Article which bore the title "Dominion-Provincial Conference (1945)" on the bound volume, held 9 Plenary Sessions, all Provinces being represented. Before, however, giving an account of the proceedings of the Conference from the constitutional and procedure angle, the reader will have a clearer impression if an outline is given of the policies involved. This we are better able to do by quoting from an address delivered by the Hon. Angus Macdonald, K.C., the Premier of Nova Scotia, at the Junior Board of Trade Dinner, Halifax, as recently as March 7, 1947.

It may be mentioned that Mr. Macdonald, who is also a noted jurist, was Premier of Nova Scotia from 1933 to 1940, when he became Dominion Minister for Naval Services, and that he is now again Premier of Nova Scotia and attended the 1946 Plenary Sessions of this Conference in that capacity.

In his remarks at the above-mentioned dinner, Mr. Macdonald said that the financial relations between the Dominion and the Provinces began in 1867, the year the Dominion of Canada was born. At Confederation the Provinces were given the exclusive right to impose direct taxation within the Provinces. Through what is regarded by many as a defect in the B.N.A. Act, the Dominion was given power to raise money by any mode or system of taxation, a provision which on the face of it nullified the Provincial right. In practice, however, for 50 years after Confederation, the Dominion never attempted to exercise the right to direct taxation.

In the 80 years since Confederation, Dominion-Provincial relations have been studied by several Commissions. But only one Commission looked at the relationship between the Dominion and *all* the Provinces, namely, the Rowell-Sirois Commission of 1937.<sup>3</sup> Its report, made after

<sup>1</sup> Vols. IV, 14; V, 90; VI, 43, 191; VII, 48; VIII, 39; IX, 97, 125; XI-XII, 40.

<sup>2</sup> See JOURNAL, Vol. IX, 97. <sup>3</sup> *Ib.* IX, 97.

3 years of study, stands to-day, said Mr. Macdonald, as the most comprehensive and conscientious effort yet made to solve the problem of Dominion-Provincial relations.

The next step of importance was taken in 1941, when the Dominion entered into war-time tax agreements with all the Provinces, giving the Dominion the exclusive right to collect income and corporation taxes. In return, the Dominion promised to give to the Provinces, for the War period, the amounts of money the Provinces had been receiving pre-War from such sources.

The Dominion, however, took another step during the War. They began to impose taxes, up to that time regarded as exclusively belonging to the Provinces. They imposed a tax on gasoline, on amusements and on electricity-users.

The main proposals of the Conference of 1945-46, however, were that the Provinces should give up for 3 years—later extended to 5 years—their right to collect income tax, corporation tax and succession duties, the great revenue producers of to-day.

In return for these concessions by the Provinces, the Dominion agreed to assume additional responsibility in respect of unemployed persons and old-age pensions, the Dominion offering to join with the Provinces in a scheme of health insurance, to the cost of which the Dominion would contribute 60 *p.c.* and the Provinces 40 *p.c.* The Dominion also offered to assist in a programme of assistance towards the cost of public works and undertakings and agreed to pay to the Provinces a grant or subsidy of \$12.00 per head, later raised to \$15.00 per head. No definite agreement, however, was reached at this 1945-46 Conference. The Dominion Government then resorted to individual bargaining with each Province, several of which were prepared to enter into agreements with the Dominion.

Mr. Macdonald went into detail in regard to the points at issue between Nova Scotia and the Dominion, by which this Province would give the Dominion exclusive rights for 5 years to collect income and corporation taxes and succession duties.

In return the Province asked that the Dominion should retire from the gasoline, amusement and electricity tax fields, give to the Province its pre-War subsidies, hold a Conference of all Provinces once a year, and that within 5 years Dominion-Provincial relations should be re-examined in order to give each government exclusive and adequate sources of revenue.

The Dominion had agreed to retire from the gasoline field but refused to leave those of amusement and electricity without Provincial compensation. It had also agreed to give the Provinces pre-War subsidies as fixed by the Duncan and White Commissions, but refused yearly Conferences.

Unfortunately, space does not admit of more liberal quotation from Mr. Macdonald's comprehensive address, but he went on to speak of the need for Conferences; the defects of individual bargaining; larger grants

and greater burdens; minor tax fields for the Province; prosperity and depression; the courses open to Nova Scotia; and no double taxation.

In conclusion Mr. Macdonald stated that the time had not yet come when it was to the interests of the people to dispense with Provincial Governments and that:

Since the Provinces are unequal in wealth and since the effect of federal policies bears more heavily on some than on others, all Provinces should not be expected to raise all the money necessary. Some of them would have to receive grants from the Federal Treasury on the basis of their fiscal needs.

### Dominion-Provincial Conference on Re-construction.

The Conference sat for its first 4 Plenary Sessions, August 6, 7, 8 and 10, 1945, in the Commons Chamber and for the remaining 5 Plenary Sessions, on April 29, 30 and May 1, 2 and 3, 1946, in the Senate Chamber, at Ottawa.

Representing the Dominion Government were the Prime Minister and the Dominion Ministers, those of Justice, Finance, Munitions, Supply and Re-construction, Agriculture, Trade and Commerce, Labour, and National Health and Welfare, constituting the Cabinet Committee on Dominion-Provincial Relations.

The 9 Provinces were represented by their Premiers, accompanied by certain of their Ministers of the Crown. Both the Dominion and the Provincial representatives were accompanied by a large staff of official advisers.

*First Plenary Session—Opening Address by the Prime Minister.*—The Rt. Hon. W. L. Mackenzie King, in opening the Conference, said that they were meeting together with one overriding objective they had in common—"the development of our Homeland from coast to coast and the progress and the welfare of the Canadian people". It was true that the primary responsibility of each Provincial Government was to the residents of its own Province, but the Conference was "a recognition that the interests of each Province are inseparably bound up in the common good of all". They had always kept in mind the paramount fact that Canada was a federal state in which each of its Provinces had its own special characteristics and special problems.<sup>1</sup>

The purpose of the Conference was to ensure the maximum of co-operation between the Federal Government and the Governments of the Provinces. Re-construction meant the conversion from a war-time to a peace-time basis and its success depended no less upon the Provinces than upon the Dominion. Under war conditions, the more noticeable functions of government had, of necessity, been those of the Federal Government.<sup>2</sup> All through the War the Provinces had continued to administer justice, to provide the major civil police services, to maintain and expand educational, health and welfare services.<sup>3</sup>

The Federal Government was not seeking to weaken the Provinces, to centralize all the functions of government, to subordinate one

<sup>1</sup> *Rep.*, p. 1.

<sup>2</sup> P. 2.

<sup>3</sup> Pp. 4, 5.

government to another or to expand one government at the expense of others. His aim was to place the Dominion and every Province in a position to discharge effectively and independently its appropriate functions. The sure road to Dominion-Provincial co-operation lay in the achievement in their own spheres of genuine autonomy for the Provinces, namely—effective financial independence, not only for the wealthier Provinces but also for those less favourably situated.

He believed that the unity and strength of Canada were equally dependent upon the soundness and strength of the Provinces and their capacity to discharge their functions effectively. Only when the Provinces were relatively secure in their own sphere could co-operation among all governments so essential to their country's needs, be achieved.

Mr. Mackenzie King pointed out that this might well be the most important Canadian Conference since Confederation.

At the conclusion of the Prime Minister's speech, the Conference was addressed by the Premiers of the Provinces in their order of precedence. *Addresses by Provincial Premiers.*

The *Premier of Ontario* (Hon. G. Drew) was the first Premier to address the Conference, and said that the Provincial Governments were not merely subsidiary, but governments which had responsibilities in fields of their own not covered by the activities of the Dominion Government.<sup>1</sup>

That great Canadian statesman Macdonald had himself been strongly in favour of full legislative union, but he accepted the fact that a substantial majority of the representatives of the Provinces believed in a Confederation, which would retain for the Provinces their own governments and legislatures with sovereign authority in clearly defined fields of legislation, particularly those of purely local concern within the Provincial boundaries. There was no disposition throughout Canada to change the general structure of Confederation. But even if those practical considerations of local interest and ancient tradition did not preclude the possibility of establishing one centralized government, it should be borne in mind that other powerful arguments could still be found in favour of the decentralized governmental system of Confederation in a country of the area and diversity of Canada.

Thomas Jefferson frequently emphasized the belief that the surest protection to liberty was the decentralization of a large measure of authority under autonomous local governments.<sup>2</sup> He summed up the position in these few words:

What has destroyed liberty and the rights of man in every government which has ever existed under the sun? The generalizing and concentrating all cares and powers into one body.

Mr. Drew expressed his view that they should have a strong central government capable of dealing with all matters of national concern, free of any limiting restrictions arising from constitutional difficulties or lack

<sup>1</sup> P. 7.

<sup>2</sup> P. 9.



of clear definition of their powers. At the same time it was equally important that there should be strong Provincial Governments, free and adequately financed, to deal with their own affairs with the utmost dispatch and without restriction of any constitutional difficulties or lack of definition of their powers. The idea of strong and vigorous Provincial Governments was in no way inconsistent with the thought of strengthening the Federal Government in the performance of all its constitutional responsibilities by the voluntary agreement of every Province of Canada.<sup>1</sup>

If they accepted the proposition that the Provincial legislatures were to continue to exist as responsible bodies with full legislative powers over their own defined fields of legislation, then those legislatures must have real and not merely nominal powers. The power to legislate and to govern rested upon the power to raise funds by taxation within clearly defined fields.

Most, if not all, the problems which confronted them could be solved by agreement rather than by amendment of their Constitution.

There was one fundamental weakness in the B.N.A. Act, which lay at the root of many of their difficulties. While the legislative powers of the Dominion and Provincial Governments were defined with reasonable clarity, the division of taxing powers was left in a much less satisfactory position. The Provinces were empowered to levy taxes in the field of direct taxation, whereas the Dominion Government was authorized to raise money by any form of taxation. There, therefore, was the anomaly that, while the powers of the Provincial Governments had been extended by judicial interpretations of their statutory powers, the Dominion Government had found it necessary over the years to occupy more and more the only field of taxation made available to the Provincial Governments.<sup>2</sup>

Of the 11 Conferences which had been held since Confederation only one—the last Conference—was an open Conference and it was not attended by conspicuous success. The Conferences which had given them the birth of their nation—the Quebec Conferences—and the Conference where Confederation was cradled at Charlottetown, followed discussions which clearly pointed out the reasons why the delegates thought they might more easily come to a basis of common agreement, by meeting privately, rather than by having opinions projected into the open, opinions which perhaps at a subsequent date might easily have been modified the moment some conflicting opinions had expressed themselves in the discussions of the Conference.<sup>3</sup>

He considered it essential that there should be a permanent Secretariat in Ottawa—a Dominion-Provincial Joint Planning Board or Coordinating Council to assure the quick dispatch of business and the quick solution of problems arising between governments.

It was the intention of the Ontario Government to have their own office at Ottawa, with the essential records, and to designate a Minister

<sup>1</sup> P. 10.

<sup>2</sup> P. 11.

<sup>3</sup> P. 14.

who would be responsible for Dominion-Provincial relations and spend much of his time in Ottawa on this work.

Such a board or council would keep each of the governments in touch with the developments of common concern for obtaining quick decisions in regard to matters involving different departments. It would also be a clearing house for ideas between the Provinces, so that a plan which had been worked out satisfactorily between any single Provincial Government and the Dominion Government might be passed on to the advantage of other Provincial Governments. Such an organization with a permanent secretariat would offer much greater assurance of success to Dominion-Provincial Conferences than had ever existed in the past. The subjects to be discussed could be carefully canvassed in advance and the essential statistical information prepared so that all governments might be ready to make their decisions when they met.<sup>1</sup>

If there were more continuity, these Conferences would be more likely to attain full success.

Mr. Drew, in conclusion, strongly urged that no attempt be made to project controversial details before the Conference until Committees representative of all the governments had opportunity to consider them and to exchange opinions which might result in complete agreement.<sup>2</sup>

The *Premier of Quebec* (Hon. M. L. Duplessis) was the next speaker, and opened his remarks in French. Speaking in English he said that the Federal Government was the child of the Provincial Governments and he hoped that the child would never undertake the absorption of the mother. It was their considered opinion that an accumulation of powers led to autocracy. Hitler was the model of centralization.<sup>3</sup>

The *Premier of Nova Scotia* (Hon. A. S. Macmillan) remarked<sup>4</sup> that the opposition of the Premiers of Quebec and Ontario to centralization was very welcome to the Maritime Provinces.<sup>5</sup>

The *Premier of New Brunswick* (Hon. J. B. McNair) said that he and his colleagues were definitely of opinion that when the Plenary Session of the Conference had been concluded, their discussions should be in private.<sup>6</sup>

He questioned the wisdom of approaching an adjustment of Dominion-Provincial relations and the task of reconstruction with a blue-print calling for a wholesale re-writing of the B.N.A. Act. Such to his mind was unnecessary; to attempt it unwise.<sup>7</sup>

The *Premier of Manitoba* (Hon. Stuart S. Garson) then briefly (at this stage) addressed the Conference.

The *Premier of British Columbia* (Hon. John Hart) observed that while the B.N.A. Act clearly defined the respective rôles of government in the Canadian economy, the new trends in public finance made it clear that there was an increasing number of questions of joint concern which could only be handled effectively in a Federal system by methods of collaboration and co-ordination by the various governments concerned.<sup>8</sup>

<sup>1</sup> P. 16.<sup>2</sup> P. 17.<sup>3</sup> P. 20.<sup>4</sup> P. 21.<sup>5</sup> N.S., N.B., and P.E.I.<sup>6</sup> P. 22.<sup>7</sup> P. 26.<sup>8</sup> P. 31.

The *Premier of Prince Edward Island* (Hon. J. Walter Jones) stated that Prince Edward Island and the other Maritime Provinces did not seek Confederation. It was Canada that sought to bring them in. Referring to the subject of reconstruction, he said that the primary function of government was to satisfy human needs and to advance the economic welfare of the people who were governed. They did not agree that the surrender of taxing power necessarily involved loss of authority.<sup>1</sup>

The *Premier of Alberta* (Hon. E. C. Manning) pointed out that many of the difficulties which existed in regard to a clear and definite understanding as to the respective fields of jurisdiction and responsibilities as between the Dominion and Provincial Governments, were not due to the allocation of specific responsibilities and autonomous powers under the B.N.A. Act, but rather arose from the interpretations which had been placed upon it. The situation had been confused by the Dominion Government's invasion of various fields of provincial jurisdiction under the exigencies of War.<sup>2</sup>

The purpose of the democratic Federal constitutions adopted by the British Dominions was to provide an effective means for welding together a number of units covering an extensive geographical area into a single nation, without sacrificing any of the advantages to be derived from the greatest possible decentralization of autonomy so essential for the preservation of democratic government.<sup>3</sup>

It seemed beyond dispute that for purposes of a Federal constitution, the broad principle, upon which legislative powers were distributed as between the Parliament of Canada and the Provincial legislatures under the B.N.A. Act, was generally sound.<sup>4</sup>

At the time of Confederation and for many years thereafter, the Provinces accepted the responsibilities conferred upon them under S. 92 of such Act without any misgivings in regard to their implications. Then, there was nothing to indicate the extent of the social services which the Provinces would be called upon to provide under the stress of future economic conditions.

Likewise at the time of Confederation, it was considered that the sources of revenue allocated to the Dominion and to the Provinces would be adequate to enable them to meet their respective responsibilities. While the Dominion was given power to levy any form of taxation, in actual practice it left the field of direct taxation exclusively to the Provinces until the pressure of conditions during the last War forced the Dominion into the field of direct taxation.<sup>5</sup>

The whole situation resolved itself down to the one indisputable fact that the major problem confronting all governments to-day was primarily financial, and in so far as Provincial and municipal governments were concerned, it was absolutely impossible for them to discharge their post-War responsibilities within the confines of the laws of Canada unless the necessary additional revenue was made available to them.<sup>6</sup>

<sup>1</sup> P. 35.

<sup>2</sup> P. 38.

<sup>3</sup> P. 39.

<sup>4</sup> P. 41.

<sup>5</sup> P. 41.

<sup>6</sup> P. 42.

Experience demonstrated that the Provinces frequently had to assume responsibilities involving substantial expenditures as a result of the consequences of national policies over which the Dominion Government had exclusive jurisdiction.<sup>1</sup> Mr. Manning, in conclusion, said that it was the considered opinion of the Government of Alberta that the Conference could best attain its worthy objectives by preserving inviolate those basic autonomous rights which the Fathers of Confederation allocated so wisely as between the Dominion and the Provinces and adhere to the proven principle of the widest possible decentralization of administrative authority. Let them rather by mutual agreement between the Dominion and the Provincial Governments overcome any difficulties which had arisen as a result of duplication or overlapping of autonomous rights.<sup>2</sup>

*Procedure and Conference Arrangements.*—The Minister of Justice (Hon. L. S. St. Laurent) then dealt with matters of procedure<sup>3</sup> and requested speakers to give the reporters a copy of their manuscripts stating that the transcripts might be seen and corrections made at the Reporters' Office within an hour after delivery.<sup>4</sup>

*Steering Committee.*—It was then resolved, on the Motion of the Premier of the Province of Saskatchewan, seconded by the Premier for Manitoba, that the proposals of the Dominion Government and any proposals of the Provincial Governments be read, and after they had been read that a Steering Committee be appointed to decide upon the future proceedings.

*Dominion of Canada Proposals.*—The Minister of Justice (Hon. L. S. St. Laurent) then submitted the Dominion of Canada Proposals as to their policy, which are very briefly as follow:<sup>5</sup>

- first*, to facilitate private enterprise to produce and provide employment;
- secondly*, to promote bold action by the state in those fields in which the public interest calls for public enterprise in national development;
- thirdly*, to provide, through public investment, productive employment for our human and physical resources when international and other conditions adversely affect employment; and
- fourthly*, to provide, on the basis of small regular payments against large and uncertain individual risks, for such hazards and disabilities as unemployment, sickness and old age.

During the course of his speech the Minister of Justice<sup>6</sup> declared the Dominion Government's proposals on such subjects as: National Problems and Objectives; Transition Measures; Industrial Reconversion and Disposal of Surplus War Assets. Other Dominion Ministers then addressed the Conference in regard to their Departmental subjects, such as: Agriculture;<sup>7</sup> Wage Control and Collective Bargaining;<sup>8</sup> Public Investment Policy;<sup>9</sup> Social Security;<sup>9</sup> National Old Age Pensions; and Unemployment.<sup>10</sup>

The Conference met at 10.0 a.m., "took recess" from 1.0 to 3.20 and from 6.0 to 8.0 p.m. adjourning at 10.45 p.m.

<sup>1</sup> P. 43.      <sup>2</sup> Pp. 45, 46.      <sup>3</sup> P. 47.      <sup>4</sup> P. 59.      <sup>5</sup> Pp. 48-71.      <sup>6</sup> P. 71.  
<sup>7</sup> P. 73.      <sup>8</sup> P. 78.      <sup>9</sup> P. 83.      <sup>10</sup> P. 102.

At the *Second Plenary Session* on Tuesday, August 7, 1945, the *Dominion Minister of Finance* (Hon. J. L. Ilsley) put forward the Dominion's proposals in regard to Financial Arrangements.<sup>1</sup>

(*This sitting of the Conference was suspended from 11.0 a.m., to 3.0 p.m., in order to join in the welcome to General Crerar, who commanded the Canadian Armies in Europe.*)

*Provincial Government's Presentations.*—On resumption of the proceedings, the Conference heard presentations by the Premiers of the remaining Provincial Governments, namely: Ontario;<sup>2</sup> Quebec;<sup>3</sup> Nova Scotia;<sup>4</sup> New Brunswick;<sup>5</sup> Manitoba;<sup>6</sup> British Columbia;<sup>7</sup> Prince Edward Island;<sup>8</sup> Saskatchewan;<sup>9</sup> Alberta.<sup>10</sup>

At the close of this day's sitting, the Minister of Justice<sup>11</sup> suggested that now that the general statements of the Provinces had been made the Premiers should meet himself, with the Ministers of Finance and Reconstruction in committee to explore the matter for the Agenda, at 10.0 a.m. to-morrow in Room 16.

The Conference then adjourned at 11.05 p.m., until to-morrow at 3.0 p.m.

At the *Third Plenary Session—Steering Committee's Report*—on Wednesday, August 8, the Conference met at 3.30 p.m., to receive the Report of the Steering Committee (consisting of the Premiers and the Ministers representing the Federal Government), which had unanimously agreed to a Continuing Co-ordinating Committee being set up of: the Prime Minister of Canada, and the 9 Provincial Premiers, its functions being to supervise and co-ordinate the work of all the continuing committees to be established by the Conference and to recommend the establishment of additional committees as might be thought desirable.

This Committee was also charged with considering improved machinery for Dominion-Provincial co-operation and all matters not specifically provided for in the terms of reference of other committees.

The Steering Committee then adjourned in order to permit each Premier to consult with his delegation that afternoon on the terms of reference of the proposed continuing committees. In consequence there was no full meeting of the Conference, which adjourned at 3.45 p.m.<sup>12</sup>

The *Fourth Plenary Session—Co-ordinating Committee's Report.*—The Conference met at 2.30 p.m., on Friday, August 10, 1945,<sup>13</sup> to receive the Report of the Co-ordinating Committee by the Minister of Justice, which had sat from 10.0 a.m. to 1.0 p.m. yesterday morning to consider the procedure of the Conference, and the Committee decided that Sub-Conferences should meet that afternoon at 3.0 p.m. under the following heads: (1) Financial Arrangements; (2) Public Investments; (3) Social Security; (4) Agriculture; (5) Labour; (6) Housing;

<sup>1</sup> P. 111.<sup>2</sup> P. 119.<sup>3</sup> P. 123.<sup>4</sup> P. 124.<sup>5</sup> P. 126.<sup>6</sup> P. 129.<sup>7</sup> P. 163.<sup>8</sup> P. 164.<sup>9</sup> P. 171.<sup>10</sup> P. 182.<sup>11</sup> P. 188.<sup>12</sup> P. 191.<sup>13</sup> P. 193.

that the Dominion Minister responsible in each field would explain the Dominion proposals in detail and that other relevant matters might be introduced by Provincial representation.

It was agreed that the Co-ordinating Committee would meet again at Ottawa on November 26; that in the meantime each Provincial Government would study the Dominion proposals and those of other governments; that further details of the proposals of the respective governments, as they developed from study, be circulated; the Secretary of the Co-ordinating Committee (Mr. Alex Skelton) to be responsible for keeping all the governments informed of all relevant matters that develop and supplying such additional information as may be required; and that notification be given to the members of the reconvening of the full Conference this afternoon for the purpose of formally adjourning until after such further meeting of the Co-ordinating Committee on March 26.

*Closing Remarks by the Prime Minister.*—The Prime Minister of Canada then thanked the delegations from all the Provinces for the spirit in which they had approached the work of the Conference, the urgency and seriousness of which he emphasized.

After referring to the momentous events of the War, Mr. Mackenzie King said that the Dominion Government had been pleased by the acceptance of its proposals as a basis of discussion. He had been anxious to avoid snap judgments and hasty decisions. So far as the government's proposals were concerned they only asked for consideration and examination of them on their merits. The Dominion Government intended to give the same consideration to the proposals and suggestions of the Provinces. All proposals could be improved. It was his government's earnest hope that the arrangements for continuing the work of the Conference through the period of adjournment would enable the Co-ordinating Committee to re-assemble much closer to the establishment of a stable and an equitable basis of Dominion-Provincial relations than Canada had ever had. When the full Conference re-assembled he hoped they would be in a position speedily to resolve any possible remaining differences and to conclude agreements to be of benefit to all.

At 3.20 p.m. the Prime Minister declared the Conference adjourned.

*The Fifth Plenary Session—The Co-ordinating Committee's Report.*—The Conference met on April 29, 1946, the Prime Minister presiding. After expressing, on behalf of the Conference, their appreciation to the Speaker of the Senate for permitting the Conference to use the Senate Chamber, Mr. Mackenzie King called upon the Secretary of the Co-ordinating Committee to read their report, which gave the dates on which that Committee and the Economic Committee had met during the adjournment of the Conference, and stated that the Dominion proposals and the suggestions of some of the Provincial Governments had been considered.

It had also been decided that a Plenary Session of the Conference be held on Monday, April 29, 1946.

The Report was adopted.<sup>1</sup>

*Opening Statement by the Prime Minister.*—A Statement was then made by the Prime Minister giving a modification of the Dominion Proposals and summarizing them under the heads of Financial arrangements, proposed Dominion payments to Provinces, public investment, health, old age pensions, unemployment assistance, conclusion of new agreements, no constitutional change, avoidance of double taxation, forecast of tax policy, urgency of problem, continuing consultation, definition of specified annual payment, and health grants.<sup>2</sup>

*Provincial Government Presentations.*—Presentations were then made by the Provincial Governments of Ontario, Quebec, Nova Scotia (Mr. Angus Macdonald now being Premier), New Brunswick and Manitoba, by their respective Premiers<sup>3</sup> and the Conference adjourned at 6.0 p.m.

The *Sixth Plenary Session* met on April 30, at 10.0 a.m., when the Premier of Ontario raised a question of privilege in regard to incorrect statements made by certain of the Press.<sup>4</sup>

Presentations by the Premiers of the Provincial Governments of Manitoba, British Columbia, Prince Edward Island, Saskatchewan and Alberta were made,<sup>5</sup> after which the Conference adjourned at 5.30 p.m.

The *Seventh Plenary Session* met in the same place on Wednesday, May 1, at 10.30 a.m., when a statement was made by the Dominion Minister of Finance (Rt. Hon. J. L. Ilesley),<sup>6</sup> upon which a discussion followed, the Premiers of Ontario,<sup>7</sup> Quebec,<sup>8</sup> Nova Scotia,<sup>9</sup> Alberta<sup>10</sup> and Saskatchewan<sup>11</sup> taking part.

The Conference adjourned at 6.0 p.m.

The *Eighth Plenary Session* took place at the same time and place on May 2, when a long discussion arose following a statement by the Dominion Minister of Justice, in which debate the Premiers took part.<sup>12</sup> Discussion then followed on the Ontario proposals. Failing agreement it was suggested that the Conference go into Co-ordinating Committee.

The Conference adjourned at 5.0 p.m.

The *Ninth Plenary Session* was held on May 3, when the Dominion Minister of Finance<sup>13</sup> made an analysis of the Ontario proposals to which the Premier of Ontario made a statement in reply.<sup>14</sup>

The Premiers of Quebec, Nova Scotia, Manitoba, Saskatchewan, New Brunswick and British Columbia then made representations in respect of their Governments.

The *Dominion Minister of National Health and Welfare* (Hon. Brooke Claxton) said that it became apparent from the discussion that agreement was not possible at the moment, but he thought that

<sup>1</sup> P. 381.    <sup>2</sup> Pp. 382-90.    <sup>3</sup> Pp. 391-430.    <sup>4</sup> P. 431.    <sup>5</sup> Pp. 431-96.  
<sup>6</sup> P. 497.    <sup>7</sup> P. 514.    <sup>8</sup> P. 528.    <sup>9</sup> P. 531.    <sup>10</sup> P. 535.    <sup>11</sup> P. 538.  
<sup>12</sup> Pp. 545-82.    <sup>13</sup> P. 583.    <sup>14</sup> P. 587.

everyone there expressed the hope that some means would be found whereby the representatives of the people of Canada in the Provinces and also in the Dominion of Canada might get together on a plan which would serve their interests and enable them to make the utmost use of the opportunities before their great country in the years that lay ahead.<sup>1</sup>

The *Premier of New Brunswick* observed<sup>1</sup> that in his view the main difference was that the lines are now drawn by or between certain Provinces on the one hand and certain other Provinces on the other. He remarked that Ontario was prepared to enter into an agreement subject to the following conditions:<sup>2</sup>

9. Following the ratification of the new agreement—and I may say I attach particular importance to this—steps will be taken by the Co-ordinating Committee, with the assistance of the Economic Committee and such other assistance as may be deemed advisable, to conduct a thorough examination of the whole Canadian tax structure for the purpose of establishing a new and revised system of taxation which will leave clearly defined and clearly divided taxing powers to the Dominion and Provincial Governments.

On the top of page 19 these conditions were described as basic proposals and indicated the adoption of a tax structure basis, as he understood it, to the Ontario position in any Dominion-Provincial financial arrangement.

The speaker then quoted the following on page 21 of the brief:

The whole system of subsidies is wrong and should be brought to an end just as soon as a complete and exhaustive analysis of our tax structure can be carried out for the purpose of establishing a new tax structure in Canada.

Mr. McNair concluded by saying that:

Obviously, what Ontario is striving for is an ultimate rather than an immediate objective, a tax system for this country which would be altogether unsuitable to the majority of the Provinces. Those Provinces, because of the chronic economic unbalance which exists across Canada, must necessarily depend on Federal subsidies to a substantial degree to maintain financial stability and discharge their constitutional functions.

The *Premier of British Columbia* regretted that the Conference was about to adjourn without arriving at an agreement, so necessary and so important.

The *Dominion Minister of Finance* then stated that it was quite obvious that to arrive at an agreement that afternoon would be impossible and that it was evident to him that it would be undesirable to indicate any particular date to which the Conference should be adjourned.

They had on record what had been said by the various Premiers. It was now the Dominion Government's duty to give consideration to the situation as it had developed and announce their decision in due course as to the procedure that should be followed to deal with the situation; he would then have to prepare the Budget in the light of the fact that no agreement had been reached.<sup>3</sup>

<sup>1</sup> P. 622.

<sup>2</sup> P. 623.

<sup>3</sup> P. 624.



Upon the Chairman putting the Question—"That the Conference adjourn *sine die*", to his question: "Those opposed say 'nay'"—there were no replies.

In the bound book of the Dominion-Provincial Conference (1945) are the following documents indexed under the head: "Co-ordinating Committee Meetings, Provincial Submissions, and Dominion Replies to Provincial Questions" (pp. 197-367); the figure in brackets against each being the page number in the green-paper bound book of the Conference as printed at Ottawa by "Edmond Cloutier, Printer to the King's Most Excellent Majesty, 1946":

Opening Statement by the Prime Minister of Canada, Co-ordinating Committee, November 26, 1945 .. .. .	(197)
Brief presented by the Province of British Columbia to the Co-ordinating Committee, November 26, 1945 .. .. .	(201)
Brief submitted by the Government of Alberta to the Co-ordinating Committee, November 26, 1945 .. .. .	(207)
Preliminary statement of Province of Nova Scotia, November 28, 1945 .. .. .	(215)
Reply by Dominion Government to Questions raised in the Preliminary statement of Province of Nova Scotia, December 5, 1945 .. .. .	(219)
Reply by Dominion Government to Questions raised by Hon. A. J. Hooke, of the Province of Alberta, December 29, 1945 .. .. .	(221)
Submissions by the Government of the Province of Ontario, January 8, 1946 .. .. .	(225)
Saskatchewan Replies to the Dominion Government Proposals, January 9, 1946 .. .. .	(249)
Submission of Government of New Brunswick on certain Proposals of the Dominion, January 24, 1946 .. .. .	(311)
Submission by the Government of Nova Scotia to the Dominion-Provincial Conference, January 26, 1946 .. .. .	(315)
Statement of Hon. Stuart Garson on behalf of the Province of Manitoba, January 26, 1946 .. .. .	(319)
Statement by the Prime Minister of Canada at the Opening Session, Co-ordinating Committee, January 28, 1946 .. .. .	(327)
Replies by Dominion Government to the Questions put by the Provincial Premiers, January 1946, Co-ordinating Committee Meeting, April 25, 1946 .. .. .	(333)
Memoire Présenté à la Conférence Fédérale-Provinciale par L'Honorable Maurice L. Duplessis, C.R., LL.D., Premier Ministre de la Province de Quebec, le 25 Avril, 1946 .. .. .	(339)
Brief submitted by Hon. Maurice L. Duplessis—English Translation .. .. .	(353)
Supplementary Submission of the Government of Saskatchewan, April 25, 1946 .. .. .	(367)

It will now be evident to the reader how impossible it would have been to have given a full account of the Report and Proceedings, etc., of this Conference within the space available in the JOURNAL. The Report and the documents laid before it, however, present much information of value and interest, not only to other large-area parts of the British Commonwealth where the question of the jurisdiction and taxing fields of the Central Government and of the States or Provinces arises, but to the constitutional student who wishes to make research into the subject in which the footnotes, etc., will assist him.

\*IX. MACHINE-MADE *HANSARD*: SASKATCHEWAN<sup>1</sup>

BY GEORGE STEPHEN,

*Asst. Clerk in Chamber: Legislative Assembly of Saskatchewan*

BEFORE me, as I write, is a small cardboard box, 7 inches wide, 8 inches deep, and 12 inches long. It contains the complete *Hansard* of the 1947 Session of the Legislative Assembly of Saskatchewan (Canada)—the first *Hansard* of its kind ever produced; a *Hansard* capable of audio-reproduction; a record, of voice as well as word, inscribed on approximately 400 plastic belts, each 12 inches long and 3½ inches wide. A belt, flattened out for filing, occupies little more space than an ordinary letter-size envelope.

This new *Hansard* is the product of an experiment in machine-recording of the debates and proceedings of the Saskatchewan Legislature, undertaken by the Assembly in co-operation with the Dictaphone Corporation Limited (Canada). Since other Provincial Legislatures have evinced interest in the experiment and its results, it may be that some of the smaller constituent assemblies throughout the Commonwealth and Empire may, too, be interested. For the Saskatchewan Assembly is convinced that it has found the answer to the *Hansard* problem of the smaller Legislatures.

The problem of providing an adequate *Hansard*, at reasonable cost, of their debates and proceedings, has exercised members of the Legislative Assemblies of the Canadian Provinces for many years. Heretofore cost has proved the chief obstacle—cost and the fact that suitable shorthand reporters have been, and are, in short supply. Since the legislative sessions are comparatively short and memberships relatively small, Provincial Governments and Legislatures have felt that, however desirable a *Hansard* might be, the heavy expenditure involved could not be justified in the public eye.

The Saskatchewan Legislature, for example, has a membership of 55; the average Session lasts about six weeks. From time to time, inquiries have been ordered and reports made on the matter of producing a full *Hansard*. So far, estimates of cost (approximately \$35,000 at times when printing costs were considerably lower than they are now) have effectively quenched the ardours even of the more insistent proponents of a *Hansard*. Then, too, it was found well-nigh impossible to recruit and retain the required shorthand writers without denuding the courts of their best reporters.

Since 1918, however, as a concession to the demand, the practice has been followed of employing a Clerk-assistant who was also a

<sup>1</sup> In its 1947 Session, the Legislative Assembly of Saskatchewan, in co-operation with the Dictaphone Corporation of Canada Ltd., undertook the unique experiment of recording its debates and proceedings by dictaphone. The experiment was designed to demonstrate whether or not it would be possible, by this method, to produce an adequate and satisfactory *Hansard* at reasonable and justifiable cost. Such was the success achieved that a permanent installation is being made, at a cost of approximately \$6,000, to serve the Legislative Chamber and the main Committee Room.—[G.S.]

skilled shorthand writer. In addition to his other duties, this Clerk-assistant took the more important speeches *verbatim*, and, at the end of each Session, submitted a list of the speeches so taken to the Select Standing Committee on Public Accounts and Printing. The Committee would then recommend to the Assembly the speeches to be transcribed and later printed with the Journals or Sessional Papers. The number of speeches selected for printing has varied, over the years, from a high of 50 to a low of 3. Latterly, 3 has been the rule—the Budget Speech of the Provincial Treasurer, and one each, of their own choice, by the Premier and the Leader of the Opposition.

Naturally, as the number of speeches ordered to be printed dropped and the private members faded from the picture, agitation for a more representative selection, if not a complete *Hansard*, recurred at intervals. When, therefore, in 1939, the Dictaphone Corporation Limited advertised a conference recorder which appeared to be adaptable to legislative work, inquiries were launched. These established that, while machine-recording would not affect the actual printing costs of a complete *Hansard*, it would overcome the difficulty of procuring the required shorthand writers, and be a cheap and, possibly efficient, substitute therefor. A test installation, tentatively arranged at the time, had to be abandoned because of the outbreak of the war.

Late in 1945, the war over, the Dictaphone Corporation reopened the discussions, and, after the 1946 Session of the Legislature, gave demonstration of their equipment in the presence of the Speaker and members of the Government. Shortly afterwards, the arrangement for the 1947 experiment was tentatively made.

On Friday, January 31, the second day of the 1947 Session, the Speaker (Hon. Tom Johnston) made the following statement to the House:

Hon. members must have noted the forest of microphones in the Chamber, and, since the House controls its own proceedings, it is necessary that some explanation be given of their purpose here.

This Assembly, at this Session, has the opportunity of participating in a unique experiment, in co-operation with the Dictaphone Corporation Limited, namely, the recording of debates and proceedings by Dictaphone to determine the feasibility of developing a full and effective *Hansard* by this means. It is realized, of course, that the major cost of a complete *Hansard* lies in the actual printing of the debates. The proposed experiment has nothing to do with that aspect, but is designed to determine whether or not the Dictaphone system can be adequately and economically substituted for the high-speed shorthand writers now so difficult to obtain.

If the House consents, the intention is to record the debates and proceedings on wax cylinders and on plastic belt records simultaneously, the wax cylinders to be used for immediate transcription purposes, the plastic belts to be filed as the permanent record. These belts will, in effect, constitute the *Hansard* report of the Session, and, for the time being at least, substitute for the printed report.

Speeches, as transcribed, would require to be edited, after which they will be subject to review and revision, as at Ottawa, by the members concerned. The proposed experiment also will include the recording of the more interesting of the proceedings in Committee of the Whole and in Committee of Supply.

I have referred to the proposed experiment as "unique". I mean by that that this will have been the first time the recording of debates and proceedings by Dictaphone in substitution for *Hansard* reporting has been attempted by any Parliament or Legislature.

The installation has been made by the Dictaphone Corporation without commitment of any kind by the Government, or by me on behalf of the Legislature. However, inasmuch as the installation is an exceedingly complicated one, and had to be made prior to the opening ceremony in order that complete preliminary tests might be made, I discussed the proposal with the Hon. Leader of the Opposition before consenting to the equipment being installed. Again let me repeat, no commitment has been made or guarantee given to the Dictaphone Corporation other than the agreement, subject to the approval of the House, to co-operate in giving the system a fair and reasonable trial, and by arranging for the transcription of the records. . . .

The experiment, of course, cannot proceed without the consent of the Assembly.

Thereupon, by leave of the Assembly, on Motion of the Premier (Hon. T. C. Douglas), seconded by the Leader of the Opposition (Mr. W. J. Patterson) it was:

*Ordered*, That this Assembly, having heard the explanation of Mr. Speaker, agrees to co-operate with the Dictaphone Corporation Limited in the experiment of recording debates and proceedings by Dictaphone, and that, for purposes of the experiment, Mr. George Stephen be appointed Editor of Debates.

The experimental set-up provided 16 microphones distributed throughout the Chamber, the recording machines being located in the Press Gallery. The control panel, for the microphones, was placed at the Table and operated by the Clerk-assistant. Members' desks being arranged in pairs, the installation provided a microphone for each group of 4 members. The arrangement proved moderately efficient, its weakness being that at least 1 member of each quartet, in turning to address the Chair, inevitably spoke away from the microphone for his group. This necessitated some violent manipulation of the control buttons in search of the "mike" which picked him up best.

The editorial work, as it transpired, proved anything but a sinecure, particularly at the start; but it had some compensations. The typists engaged in transcription of the records were wholly inexperienced in legislative affairs and completely ignorant of procedural matters. Some of their renditions in consequence, were highly amusing; others extremely recondite.

Illustrative of the amusing was the instance where an hon. member informed the Assembly that he and a fellow-member had visited a "Metis (Indian Half-breed) Colony". This was rendered "Nudist Colony"—and it took the 2 members the better part of the Session to live down their (or the typist's) lapse.

As for the recondite, the Editor on one occasion found himself confronted with this cryptogram: "The problems of the Asians, and in France, the sick and the unrequited". He recalls even now the glow of heuristic joy which followed the sudden revelation that this

meant: " The problems of the aged and infirm, the sick and the under-privileged ".

However, as the typists warmed to the task, their work improved to the extent that, at the Session's end, when the results of the experiment were reviewed by the Select Standing Committee on Public Accounts and Printing, that Committee came unanimously to the decision to recommend a permanent installation. The Assembly concurred in this recommendation. Since then, the Saskatchewan Government has entered into an arrangement with the Dictaphone Corporation Limited for an installation, to cost an estimated \$6,000, embodying many refinements in both technique and equipment compared with the experimental set-up.

The arrangement calls for the following installations: (a) in the Legislative Chamber, for recording debates and proceedings; (b) in the main Legislative Committee Room, for recording of Special Committee Proceedings, or the representations of larger delegations meeting the Government, or Government conferences, and (c) in the Executive Council Chamber, for recording of representations of smaller delegations, etc., meeting the Cabinet.

The Legislative Chamber will have a 30-microphone installation, with relay controls and amplifiers, and with microphone outlets so placed as to meet any change in the composition of the House. One microphone will be provided for each pair of desks, with one at the dais for Mr. Speaker and another at the Table for the Chairman of Committees of the Whole House. A direct communication channel will connect the Clerk-assistant with the operator of the main control panel, which will be situated in the Press Gallery immediately above the Speaker's Chair. A 5-microphone installation is planned for the Committee Room, and a one-mike affair for the Executive Council Chamber.

For the 1947 experiment, as already noted, 2 types of recording machines were tried, one using wax cylinder records, the other the plastic belts. Only the wax equipment recorder will be used in the permanent installation, for reasons which will appear.

The experiment showed that the machines record equally well; but, in actual operation, the wax type is substantially the more economical: capital investment is less, operating costs materially lower. The belts (from memory) cost between 70 and 80 cents apiece, and can be used only once. The wax cylinders, on the other hand, which run between 40 and 50 cents each, can be shaved after each operation and used possibly 15 times. Furthermore, since it is proposed to transcribe each day's proceedings directly on stencils for immediate multigraphing, in an attempt to attain and maintain a current day-to-day *Hansard*, the wax equipment best suits the purpose.

When the Committee was reviewing the experiment and before it reached unanimous decision to recommend the permanent installation, the old fear constantly recurred: how to justify the relatively heavy

capital investment and operating costs involved, for so short a Session? Here was equipment and material valued at some \$6,000, which would be used for about 6 weeks each year and lie idle the remainder.

This objection had been anticipated, and was overcome by submission of a plan which assured continuous use of the installation throughout the year. In the first place, through the subsidiary installations in the Committee Room and the Executive Council Chamber, it is proposed to record Government conferences, interviews, etc. In the second place, as highly trained personnel will be employed on the Sessional transcription, it is intended that this personnel will be formed into a Dictaphone "Pool", to transcribe "overflow" from the various Governmental departments during their "rush" seasons. In this way, initial and operating costs will be so distributed amongst the departments that the pressure on Legislative appropriations will be materially lessened.

That the typists engaged on transcriptions must have some knowledge of parliamentary procedures, will be obvious. Otherwise, it would be impossible to escape the unnecessary intrusion of routine matters in the stencil-script. Furthermore, the experiment demonstrated that they should have some elementary knowledge of editing, paragraphing, etc. A speaker starts a sentence, decides he can frame his thoughts better—starts again; or he uses a word, thinks of a better, and repeats the phrase; or, having started a sentence, he swings into a parenthesis, and loses the thread. The microphones pick up all these repetitious amendments, all the fugitive vocalizations peculiar to the individual member. Obviously these will require curative treatment in the actual transcribing.

It is proposed, therefore, to put the typists through a rigorous course of preliminary training, both in procedure and in editing. They must be taught to overcome or eliminate the grosser crudities in the text, in order to produce the satisfactory "unrevised" *Hansard* which is the goal.

Members of the Saskatchewan Legislature are positive that, by the Dictaphone system, an adequate and economical *Hansard* can be produced which, in time and with experience, need not be inferior, but may well become superior, to that produced by the older method.<sup>1</sup>

## X. AUSTRALIA: COMMONWEALTH CONSTITUTIONAL REFERENDUM PROPOSALS, 1946.

By A. A. TREGGAR, B.Com., A.I.C.A.,  
*Clerk-Assistant of the House of Representatives*

POLITICAL interest quickens in Australia whenever proposals are submitted to the electors for amendments of the Commonwealth of Australia Constitution Act.

<sup>1</sup> See also Note under Editorial hereof.—[G. S.]

Since May 9, 1901, when the Commonwealth Parliament first met, proposed laws for the alteration of the Constitution have been put before the people on 10 occasions.<sup>1</sup> Of the 22 questions submitted, only 4 have received the endorsement of the electors.<sup>2</sup>

The manner in which the Constitution may be altered is contained in section 128 of the Constitution itself. First of all, the proposed law for the alteration must be passed by an absolute majority of both Houses of the Parliament, and not less than 2 or more than 6 months after its passage through both Houses the proposed law is submitted in each of the 6 States of the Commonwealth to the electors.<sup>3</sup>

The section also prescribes means for overcoming a deadlock between the 2 Houses on a Constitution Alteration Bill, but this aspect is beyond the scope of the present article.

To approve the proposed alteration, a majority of all the electors voting must be secured as well as a majority of electors in a majority of States.<sup>4</sup>

The most recent attempt to secure an alteration of the Constitution was not without success. On September 28, 1946, 3 questions were submitted to the electors, and the one relating to social services gained approval. This amendment inserts the following paragraph after paragraph (xxiii) in section 51 of the Constitution, which section sets out the subject-matters of the legislative powers of the Parliament:

(xxiii, A) The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students, and family allowances:

The other proposals related to Industrial Employment and Organized Marketing of Primary Products. The former sought to insert a new paragraph in section 51 of the Constitution, reading as follows:

(xxxiv, A) Terms and conditions of employment in industry, but not so as to authorize any form of industrial conscription:

Two alterations of section 51 would have been required to give effect to the organized marketing proposal, one to insert the following paragraph:

(i, A) Organized marketing of primary products:

and the other to add at the end of section 51 the following sub-sections:

(2) Without in any way limiting the generality of the expression "primary products" in paragraph (i, A) of sub-section (1) of this section, that

<sup>1</sup> See JOURNAL, Vol. XI-XII, 187, but "Affirmed" should be opposite "State Debts, 1909" and "Rejected" against "Legislative Powers, 1910".—[A. A. T.]

<sup>2</sup> A Referendum by itself is estimated to cost £A.120,000 and a General Election about £A.160,000. The cost added to a General Election by conducting a Referendum at the same time would be limited to the special items incidental to the Referendum, such as the printing of the Referendum ballot papers, counting them, etc., but in total it would not be much.—[A. A. T.]

<sup>3</sup> See also JOURNAL, Vols. V, 114, 117, 118; XI-XII, 186; XIII, 64.—[A. A. T.]

<sup>4</sup> Constitution 63 & 64, Vict. c. 12, s. 128.

expression shall be deemed to include flour and other wheat products, butter, cheese and other milk products, dried fruit and other fruit products, meat and meat products, and sugar.

- (3) The power of the Parliament to make laws under paragraph (i, A) of subsection (1) of this section may be exercised notwithstanding anything contained in section ninety-two of this Constitution.

The Bills were introduced into the House of Representatives by the Rt. Hon. H. V. Evatt (Attorney-General), and in his second reading speeches on March 27, 1946,<sup>1</sup> he indicated the objects of and the reasons for each Bill.

In his speech on the Social Services Bill, Dr. Evatt stressed several points. He said:

The object of this Bill is to alter the Constitution so that this Parliament can continue to provide directly for promoting social security in Australia . . . to place Australian social service legislation on a sound legal footing . . .

The Commonwealth has power to make laws for "invalid and old-age pensions", section 51 (xxii). It also has power in relation to "insurance, other than State insurance", section 51 (xiv). Any other social service payments made by the Commonwealth must, therefore, rest on some other foundation. The only one available is the power implied by section 81, to appropriate money by law, from the Consolidated Revenue, for the purposes of the Commonwealth. For many years there have been two schools of legal thought on the meaning in this section of the words "the purposes of the Commonwealth". The wider view was that any purpose for which the Parliament chose to make an appropriation of money thereby became a "purpose of the Commonwealth". On this view, there were no limits to the purposes for which the Parliament could authorize the expenditure of money. Another, and narrower, view was that "the purposes of the Commonwealth" in section 81 must be purposes indicated elsewhere in the Constitution as coming within the Commonwealth's legislative, executive and judicial powers. The Parliament, as I have said, has consistently acted on the wider view of its appropriation power.<sup>2</sup>

The Attorney-General then referred to the decision of the High Court in what is known as the Pharmaceutical Benefits case,<sup>3</sup> where the Court, with 1 dissentient, held that the Pharmaceutical Benefits Act of 1944 was beyond the powers of the Commonwealth Parliament and therefore invalid. Dr. Evatt went on—

Without going into technical details of the reasons given by the various justices, it may be stated that a majority of the court clearly rejected what I have called the wider view of the meaning of the words "the purposes of the Commonwealth" in section 81 of the Constitution. This decision throws serious doubt on the validity of a number of acts that provide for what are commonly referred to as "social services" . . . the Government has decided that the only amendment to the Constitution which is urgently necessary as a result of the High Court's decision is an amendment to authorize the continuance of acts providing benefits in the nature of social services, and to authorize the Parliament in the future to confer benefits of a similar character.<sup>4</sup>

In moving the second reading of the Constitution Alteration (Organized Marketing of Primary Products) Bill, Dr. Evatt explained<sup>5</sup> that

<sup>1</sup> 186 C'th. Hans. 646-7.    <sup>2</sup> *Ib.* 646-7.    <sup>3</sup> *Attorney-General (Victoria) v. the Commonwealth*, Commonwealth Law Reports, Vol. 71, p. 237.    <sup>4</sup> 186 C'th. Hans. 647.    <sup>5</sup> *Ib.* 650.



the object of the Bill was to alter the Constitution so that the National Parliament could deal effectively with what has become one of Australia's most urgent national problems—the organized marketing of primary products, a problem which, during the war, rested responsibility squarely upon the Commonwealth, under the defence power.

Proceeding, Dr. Evatt said:

With the exception of the war years, attempts by this Parliament to give effective assistance to primary producers by organizing the marketing of primary products have encountered two constitutional difficulties. One is the fact that while the Parliament may make laws with respect only to trade and commerce with other countries and among the States, it may not make laws with respect to trade and commerce within a single State. The second difficulty is the requirement laid down in section 92 of the Constitution that trade, commerce and intercourse among the States shall be "absolutely free". The present Bill is designed to obviate both these difficulties.<sup>1</sup>

During the war years, the defence power of the Commonwealth<sup>2</sup> enabled the Parliament, and, under its authority, the Government, to improve and extend the existing machinery for conciliation and arbitration and to deal directly with almost every angle of the terms and conditions of employment. In time of peace the present conciliation and arbitration power of the Commonwealth Parliament<sup>3</sup> would need to be supplemented. In pointing out the positive powers the Constitution Alteration (Industrial Employment) Bill would confer on the Commonwealth Parliament, Dr. Evatt said that the Bill—

will enable this Parliament to fix standard hours in any industry, though not in occupations that are not industrial in character, in accordance with the distinction between industrial and other types of employment drawn by the decisions of the High Court under section 51 (xxxv). It will enable disputes to be arbitrated upon if they are industrial in character. Employment of many types does not fall within that category. It will enable this Parliament to fix the basic wage, in accordance with the requirements of the present day, or to fix the principles on which it should be assessed—which probably would be the sounder method of approach. It will also enable the Parliament to fix the maximum weekly hours of labour that may be worked in industry throughout the Commonwealth. It will enable this Parliament to continue the important work formerly carried out by the Women's Employment Board. The National Parliament will thus be in a position to deal effectively with one of the great industrial conditions—the entry into industry of many thousands of women workers. In short, the Bill will enable this Australian Parliament to discharge all the normal responsibilities of government in an advanced industrial democracy. All of these powers in each of the States are possessed by the respective State Parliaments.<sup>4</sup>

All Bills were debated<sup>5</sup> at length in the House of Representatives, and, after an unsuccessful attempt by Mr. McEwen, Deputy Leader of the Australian Country Party, to have the Social Services Bill withdrawn and divided into 2 Bills, that Bill was agreed to on the second reading by 57 votes to 1. On the Organized Marketing Bill,

<sup>1</sup> <sup>1</sup> *Ib.* 653.    <sup>2</sup> *Constitution*, s. 51 (vi).    <sup>3</sup> *Constitution*, s. 51 (xxxv).    <sup>4</sup> 186 *C'th. Hans.* 653.

<sup>5</sup> *Ib.* 897, 989, 1104, 1167.

the voting on the second reading was the same, and the third reading was agreed to by 48 votes to 8. The Industrial Employment Bill was opposed. Voting on the second and third readings was 51 to 15.

In the Senate, the Social Services Bill was not taken to a division on the second reading, and the third reading passed by 30 votes to 2. The Organized Marketing Bill was read there a second time after a vote of 20 to 7, and the voting in that House on the third reading was 20 to 13, while the Industrial Employment proposals recorded votes of 19 to 8 on the second reading, and 19 to 14 on the third reading.

The required absolute majority—19 in the Senate and 38 in the House of Representatives—was obtained for each of the Bills.

These proposed laws were then submitted to His Royal Highness the Governor-General, each bearing the following endorsement:

This Proposed Law originated in the House of Representatives, and on the nineteenth day of June, One thousand nine hundred and forty-six, 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.

(Signed) J. S. ROSEVEAR,  
*Speaker.*

(Signed) F. C. GREEN,  
*Clerk of the House of Representatives.*

Writs were issued by His Royal Highness the Governor-General for the submission of the proposed laws to the electors,<sup>1</sup> and Saturday, September 28, 1946, was the date fixed for voting, concurrently with the polling for the General Elections.

Voting eligibility was the same as for the General Elections for the House of Representatives,<sup>2</sup> viz., adult franchise with an extension to Members of the Forces under 21 who had served outside Australia.

Pamphlets in favour of and against the proposed laws were prepared by supporters and antagonists and circulated officially to electors.<sup>3</sup>

Voting was compulsory,<sup>4</sup> and it is interesting to notice that, prior to the introduction of compulsory voting in 1924, the percentage of ballot papers issued to electors enrolled ranged from 50·17 p.c. to 73·66 p.c., but after compulsory voting applied the percentage rose to over 90 p.c. at referendums.

On his ballot paper, the elector was asked "Do you approve the proposed law for the alteration of the Constitution?" If he approved the proposed law, he placed a figure "1" in the square opposite the word "Yes" printed on the ballot paper, and a figure "2" in the square opposite the word "No", also printed on the ballot paper. If he did not approve, he reversed<sup>5</sup> the figures.

The use of numbers on the Referendum ballot paper links the method of voting with the preferential voting system for Parliamentary elections.

<sup>1</sup> Referendum (Constitution Alteration) Act, 1906-36, s. 5.      <sup>2</sup> Constitution, s. 128.      <sup>3</sup> Referendum (Constitution Alteration) Act, 1906-36, s. 6 A.      <sup>4</sup> Commonwealth Electoral Act, 1918-46, s. 128 A.      <sup>5</sup> Referendum (Constitution Alteration) Act, 1906-36, s. 14.

Results of the voting as regards each State and as regards the Commonwealth were as follows:<sup>1</sup>

*Social Services:*

<i>State.</i>	<i>In favour.</i>	<i>Against.</i>	<i>Informal.</i>
New South Wales .. .. .	897,887	764,723	94,540
Victoria .. .. .	671,967	528,452	60,955
Queensland .. .. .	299,205	284,465	28,500
South Australia .. .. .	197,395	184,172	17,734
Western Australia .. .. .	164,017	99,412	15,637
Tasmania .. .. .	67,463	65,924	11,493
Totals for the Commonwealth ..	2,297,934	1,927,148	228,859

It will be seen that in each State a majority in favour of that proposed law was obtained.

*Organized Marketing:*

<i>State.</i>	<i>In favour.</i>	<i>Against.</i>	<i>Informal.</i>
New South Wales .. .. .	855,233	794,852	107,065
Victoria .. .. .	624,343	567,860	69,171
Queensland .. .. .	251,672	323,678	36,820
South Australia .. .. .	183,674	193,201	22,426
Western Australia .. .. .	145,781	113,562	19,723
Tasmania .. .. .	55,561	75,018	14,301
Totals for the Commonwealth <sup>2</sup> ..	2,116,264	2,068,171	269,506

While the Commonwealth totals showed a majority in favour of the proposal, approval was not secured in a majority of the States.

*Industrial Employment:*

<i>State.</i>	<i>In favour.</i>	<i>Against.</i>	<i>Informal.</i>
New South Wales .. .. .	833,822	778,280	145,048
Victoria .. .. .	609,355	560,773	91,246
Queensland .. .. .	243,242	316,970	51,958
South Australia .. .. .	179,153	192,516	27,632
Western Australia .. .. .	142,186	112,881	23,999
Tasmania .. .. .	52,517	74,440	17,923
Totals for the Commonwealth ..	2,060,275	2,035,860	357,806

In this instance the result was the same as in the Organized Marketing case.

<sup>1</sup> *Commonwealth of Australia Gazette*, November 8, 1946, pp. 3169-70.

No petition disputing the result of the referendum having been filed within the prescribed 40 days,<sup>1</sup> the proposed alteration respecting social services was submitted to the Governor-General for assent, endorsed as follows:

This is a copy of the Proposed Law as presented to the Governor-General, and, according to the Constitution, in pursuance of a Writ of His Royal Highness the Governor-General, submitted to a Referendum of the Electors. The period allowed by law for disputing the Referendum has expired, and no petition disputing the Referendum, or disputing any return or statement showing the voting on the Referendum, has been filed. The said Proposed Law was approved in a majority of the States by a majority of the Electors voting, and also approved by a majority of all the Electors voting.

The Bill is now presented to the Governor-General for the King's Assent.

(Signed) J. S. ROSEVEAR,  
Speaker.

(Signed) F. C. GREEN,  
Clerk of the House of Representatives.  
19th December, 1946.

The proposed law was assented to on December 19, 1946, and became Act No. 81 of 1946 with the short title of "Constitution Alteration (Social Services), 1946".

The position in regard to Constitutional Referendums to date is therefore as follows:

"Proposed Law" for Constitutional Alteration.

	Date of Referendum.	Decision.
The Constitution Alteration	(Senate Elections), 1906	12/12/06 Affirmed.
	(Finance), 1909 ..	13/4/10 Rejected.
	(State Debts), 1909 ..	13/4/10 Affirmed.
	(Legislative Powers), 1910 .. ..	26/4/11 Rejected.
	(Monopolies), 1910 .. ..	26/4/11 Rejected.
	(Trade and Commerce), 1912 .. ..	31/3/13 Rejected.
	(Corporations), 1912 ..	
	(Industrial Matters), 1912 .. ..	
	(Railway Disputes), 1912 .. ..	
	(Trusts), 1912 .. ..	13/12/19 Rejected.
	(Nationalization of Monopolies), 1912 ..	
	(Legislative Powers), 1919 .. ..	
	(Nationalization of Monopolies), 1919 ..	

<sup>1</sup> Referendum (Constitution Alteration) Act, 1906-36, s. 28.

		<i>Date of Referendum.</i>	<i>Decision.</i>
The Constitution Alteration	(Industry and Com- merce), 1926 ..	4/9/26	Rejected.
	(Essential Services), 1926 (State Debts), 1928 , ..	17/11/28	<i>Affirmed.</i>
	(Aviation), 1936 ..	6/3/37	Rejected. <sup>1</sup>
	(Marketing), 1936 ..		
	(Post-War Reconstruc- tion and Democratic Rights), 1944 ..	18/8/44	Rejected.
	(Social Services), 1946	28/9/46	<i>Affirmed.</i>
	(Organized Marketing), 1946 .. .. .	28/9/46	Rejected.
	(Industrial Employment), 1946 .. .. .	28/9/46	Rejected.

## XI. THE AUSTRALIAN PARLIAMENT ON THE AIR

BY A. G. TURNER,

*Secretary, Joint Committee on the Broadcasting of Parliamentary  
Proceedings*<sup>2</sup>

At 3 o'clock in the afternoon of July 10, 1946, the Parliament's potential listening public increased from a few hundred who could be accommodated in the Visitors' Galleries to approximately 6 million people of all ages who were able to receive the broadcast from 7 national medium-wave stations in Australia. At that moment the remoteness of the Parliament at Canberra from the majority of electors disappeared, and Australians living up to 2,000 miles from the Federal Capital were able to hear the debates, including the speeches of their own representatives, and, at the same time, were able to sense, to some extent, the "atmosphere" of the House. Parliament could now come into the homes, and Australians were able to gain a more realistic appreciation of the work of Parliament than could be obtained from a reading of the cold print of *Hansard* and the newspapers.

Parliamentary proceedings have been broadcast in New Zealand since 1936,<sup>3</sup> and advantage of this Dominion's experience was taken when the broadcasting of the Australian Parliament was mooted. The proposal was inquired into by the Parliamentary Standing Com-

<sup>1</sup> See JOURNAL, Vol. V, 114.

<sup>2</sup> Mr. Turner is Serjeant-at-Arms and Clerk of Committees of the House of Representatives.—[ED.]

<sup>3</sup> See JOURNAL, Vols. V,

80, VIII, 120.—[A. G. T.]

mittee on Broadcasting which, in September, 1945, recommended in its favour. The Committee's report, which dealt also with technical and legal aspects, formed the basis of the Bill which was introduced into the Senate on June 19, 1946, and which, after minor amendment, was passed into law on July 5, 1946, as The Parliamentary Proceedings Broadcasting Act, 1946.<sup>1</sup>

Briefly, the Act provides for the broadcast of the proceedings of the Senate or the House of Representatives from a medium-wave national station in each of the 6 State capitals and in a major city in New South Wales, and from such other national stations (including short wave) as are prescribed. The Australian broadcasting system comprises the national stations operated by the Australian Broadcasting Commission (a Government instrumentality) and stations operated by commercial organizations. The Commission has 2 national stations in each city and operates national regional stations as well as short-wave stations to provide a service for country and out-back areas.

It also provides that a Parliamentary Joint Committee on the Broadcasting of Parliamentary Proceedings shall be appointed, consisting of the President of the Senate, the Speaker of the House of Representatives, 2 Senators, and 5 members of the House of Representatives (9 in all). In the passage of the Bill through the Senate, it was amended to provide for a Committee of 6 with equal representation for each House. However, the House of Representatives returned the Bill with an amendment restoring representation to 3 Senators and 6 members, and this amendment was agreed to by the Senate.

The Committee, which was appointed immediately and which is re-appointed at the commencement of the First Session of every Parliament, was empowered to consider and specify, in a report presented to each House, the general principles for determining the days and periods for broadcasting the proceedings of the Senate and the House of Representatives. Upon adoption of the report by each House, the Committee, or a sub-Committee to which it may delegate the power, then determines such days and periods.

The Committee also has power to determine conditions in accordance with which a re-broadcast of proceedings may be made, and no re-broadcast shall be made otherwise than in accordance with the conditions so determined.

The Act stipulates that no action or proceeding, civil or criminal, shall lie against any person for broadcasting or re-broadcasting any portion of the proceedings of either House. This provision is designed to protect those persons authorized to broadcast or re-broadcast Parliamentary proceedings.

The substance of the consolidated general principles specified by the Committee in 3<sup>2</sup> reports, which have been presented to and adopted by each House, is as follows:

<sup>1</sup> No. 20 of 1946.—[A. G. T.]

<sup>2</sup> *First*: July 5; *Second*: July 16; *Third*: November 14; all of 1946.—[A. G. T.]

- (1) Proceedings shall be broadcast on each Parliamentary sitting day.
- (2) The broadcast shall commence each sitting day at the time fixed for the meeting of the House whose proceedings are to be broadcast on that day and shall cease when the adjournment is moved by a Minister in the House being broadcast at that time or at 11.30 p.m., whichever is the earlier.
- (3) The allocation of broadcasting time between the Senate and the House of Representatives shall be in accordance with the views of the Committee on the importance of the impending debate and the public interest attaching thereto. The Committee recognizes that in practice more time will be allotted to the House of Representatives than to the Senate.
- (4) Between 7.20 p.m. and 7.55 p.m. on each sitting day (during the dinner adjournment) the Australian Broadcasting Commission shall re-broadcast from the stations which broadcast proceedings so much of the questions and answers of that day in both Houses as is appropriate to the time available. The Committee determined later that the questions and answers of the House whose proceedings are not broadcast at question time shall commence the re-broadcast.
- (5) Proceedings shall be broadcast or re-broadcast through national broadcasting stations only unless the Committee otherwise determine.
- (6) These general principles shall be observed generally by the Committee but they may be departed from in order to meet unusual circumstances.

In anticipation of the passage of the Bill, broadcasting equipment had been installed in both Chambers, and the technical staff had largely mastered the altered technique necessary to enable the broadcast of an assembly as opposed to prepared individual speeches and studio features. The Committee met on the day of its appointment and its first report was presented to, and adopted by each House that day. The Committee then determined that the first broadcast should be made from the House of Representatives on the first sitting day of the next week.

Each Chamber is equipped with 8 microphones attached to metal stanchions placed at approximately equal intervals in a line formed by the back of the front row of benches and one microphone placed immediately in front of the Presiding Officer's Chair. In addition, 2 microphones are installed on the Table in the Senate, and in order to meet the requirements of the larger legislative Chamber, 4 microphones are provided on the Table of the House of Representatives. A glass-fronted sound-proof control booth slightly raised from floor level for use by an operator and announcer has been constructed in each Chamber at the end facing the Presiding Officer. The operator is able to control each microphone individually or in series. Normally, the operator "livens" only the microphone in front of the Chair and that nearest the member speaking, but additional microphones are brought in to cover relevant interjections. There is no doubt of the success of the technical results achieved, and an adequate broadcast of Parliament can be received by those people (estimated at between 60 *p.c.* to 80 *p.c.* of the population) encompassed within the primary and secondary service areas of the 7 transmitters. The use of additional national medium-wave stations is not at present practicable without depriving listeners, particularly in country areas, of an alter-

native national programme, but consideration is being given to the use of a short-wave station which will serve areas outside the range of the selected medium-wave stations.

The Committee meets on an average once a week during Session and determines the allocation of the broadcast between the 2 Houses for the week ahead. The Parliament and the Committee have made it quite clear that as far as is practicable the whole of a debate shall be broadcast, and that broadcasts giving a partisan or partial picture will not be tolerated. When one House only is sitting observance of this principle is easy, but with both Houses sitting and only one broadcast channel available, full observance is impracticable. In this latter case the method adopted by the Committee, with satisfactory results, is to allot the broadcast on each day or for 2 to 3 consecutive days to one House only. The only exception has been the division of the broadcast between the 2 Houses to cover the ceremonial proceedings for the opening of the present Parliament on its first sitting day. The larger membership of the House of Representatives, the introduction of a very large part of the Government's proposed legislation into this House, and its longer sittings have caused more days to be allotted to the House of Representatives than to the Senate.

As any re-broadcast is ordinarily of relatively short duration, the Committee is conscious that a re-broadcast of Parliamentary debates would generally involve a partisan or partial presentation. The only re-broadcasts considered and authorized so far have been confined to the re-broadcast of questions and answers (which generally relate to a specific subject) by the Australian Broadcasting Commission and by the Department of Information in a short-wave service beamed to Australian troops in Japan. This objection to partial broadcast is such that on 2 occasions, when, for some reason such as power restriction, a national station in one of the State capitals has been unable to maintain a full broadcast, the broadcast of Parliamentary proceedings has been discontinued in that State until the service is restored.

The few minutes before the House meets or resumes after a meal adjournment is spent by the control booth announcer in giving a short summary of the business which has been and is to be dealt with. Each member rising is announced by his name, constituency or portfolio, and the political party to which he belongs. The subject of new business is also announced and is repeated at regular intervals throughout the debate. The announcer is not permitted to include "news" in his commentary, which must be confined to a straight description of procedure and business; comment on the presence or absence of members is not to be made.

Students of Parliament will be curious about one of the most interesting aspects of Parliamentary broadcasts—the effect on members and on business and procedure. Members generally are anxious that this new reporting medium shall not be allowed to assume an undue importance in relation to the normal traditions and procedure



of Parliament, and have indicated their opposition to any proposal for the official re-arrangement of business or selection of speakers in order that a particular matter or speaker may be on the air at the more favoured broadcasting times. For members representing the eastern States, the most popular time is 8 o'clock at night (after the dinner adjournment), when the number of listeners would usually be at its largest. Owing to the difference in time between the east and west, Western Australian members prefer 10 o'clock in Canberra, corresponding to 8 o'clock in the west. There is naturally some manœuvring for position, and although no official sanction by the Houses or their Presiding Officers is given, it is sometimes not entirely fortuitous that only one member rises and receives the call at one of these favoured times, or that certain business is then before the House.

The first 35 minutes of questions and answers to be re-broadcast that evening by the Australian Broadcasting Commission is much sought after by members, and the number rising increases correspondingly. Without departing from the strict impartiality of the Chair the Presiding Officers endeavour to strike a fair balance during the week.

Whilst any attempt to speak to listeners rather than to the Chair, such as "Listeners will recall," etc., is called to Order, members are naturally aware of their larger audience and speeches reflect this knowledge. In some cases the effect has been to concentrate the subject matter into fewer words, but on the whole the present tendency is to speak at greater length when a broadcast is taking place.

In the early days of the broadcast members and Ministers sometimes forgot the presence of microphones, and scraps of conversations which were not strictly Parliamentary or which dealt with Cabinet matters have been broadcast to an appreciative public. However, close liaison between the control booth and Chamber staff has done much to eliminate this undesirable possibility.

Parliamentary procedure and the method of doing business have been naturally strange and frequently confusing to this new body of radio listeners, and it is anticipated that a publication containing a brief explanation of the Parliamentary system, its method of transacting business, and diagrams of the seating arrangements will be issued shortly and made available for their information.

Listeners' reactions vary greatly in accordance with their general and political outlook, and in many cases, where the Parliament has been regarded as a mysterious body which meets with awful solemnity and whose members never fall below sublime perfection in their thoughts, their actions and their words, there is undoubtedly profound disillusionment. If the broadcast has done nothing more than destroy this entirely false impression and show that Parliament is, as it should be, a cross-section of the Australian people, it has been worth while.

An accurate survey of the number of listeners to Parliament and the

time spent in listening is an impossible task, but the following analysis obtained from public opinion polls is of interest. Over a recent fortnight of sittings 36 *p.c.* of potential listeners, comprising 4 out of 10 men and 3 out of 10 women, had heard some of the broadcasts. There was little difference in the proportion of city and rural dwellers who had listened. The proportion of listeners increased from 29 *p.c.* in the 20-30 age group to 44 *p.c.* amongst those over 50. Of the full cross-section, 54 *p.c.* favoured continuation, 6 *p.c.* reduction, 15 *p.c.* stop and 25 *p.c.* had no opinion. The comparable figures for the 36 *p.c.* of the full cross-section which had listened were 72 *p.c.* continuation, 9 *p.c.* reduction, 14 *p.c.* stop and 5 *p.c.* no opinion.

Shortly after Parliamentary broadcasting was introduced certain persons outside Parliament claimed they had been attacked during the course of a debate which had been broadcast, and sought the right of reply through a Government-controlled radio channel. Considerable press publicity was given to the matter which was also the subject of questions in Parliament. The proposal was briefly considered by the Committee which ascertained that no situation had arisen in New Zealand which had made the matter an issue and that no special provision had been made for means of reply by persons alleging that they had been attacked in Parliament. No action was taken by the Committee and the question has not again been raised.

There is not much doubt that the innovation has been a success and has achieved the purpose for which it was introduced. This purpose can be summed up in the words of a Leader of one of the major political parties, who said:

I think that it is desirable that the public should have the fullest access to Parliamentary discussions. There are still some newspapers which give a very extensive report of Parliamentary debates, but there are others which give little account of what is actually said in Parliament. The case for broadcasting is therefore a strong one. It is desirable that the electors should be in a position to know what were the actual words spoken by a member of Parliament. It is equally important they should be in a position, by actually hearing, to assess the personality and significance of the speaker. In one sense the ideal Parliament would be one in which all debates were carried on in the presence of all the people.

## XII. AUSTRALIA: COMMONWEALTH COMMITTEE ON WAR EXPENDITURE<sup>1</sup>

BY. W. I. EMERTON,<sup>2</sup>

*Secretary of the Joint Committee on War Expenditure*

SINCE the preparation, in September, 1945, of my Article on the Commonwealth Joint Committee on War Expenditure, which was published in Volume XIII of the JOURNAL, the Committee continued

<sup>1</sup> See also JOURNAL, Vols. X, 45; XI-XII, 45; XIII, 179.—[W. I. E.] <sup>2</sup> Mr. Emerton is Usher of the Black Rod and Clerk of Committees of the Senate.—[Ed.]

to meet at frequent intervals until shortly before the dissolution of the 17th Parliament on August 16, 1946.

Although the Committee conducted a good many inquiries covering various phases of War Expenditure, only 2 further public Reports were made to Parliament, together with 3 confidential memoranda to the Prime Minister. The 2 public reports are as follows:

*Eighth Progress Report.*—This Report, which was Tabled on April 4, 1946, deals with the construction of 300-ton wooden ships in Tasmania, and following certain comments by the Commonwealth Auditor-General in his Report for 1943-44, the Committee, in its conclusions, recommend that in view of the likelihood of the State Government of Tasmania being in a position to lease a portion of the shipyard to private enterprise, the Agreement between the Commonwealth and Tasmanian Governments be finalized *without delay*.

*Ninth Progress Report.*—In this Report, which was Tabled August 8, 1946, the Committee, when surveying its previous work, considers that in view of the expansion during recent years of Commonwealth activities with a consequential increase in public expenditure, there is a continuing need for the detailed investigation of current expenditure, and believes that a Joint Committee of the Parliament, clothed with adequate powers and functioning on somewhat similar lines to that of the Joint Committee on War Expenditure, is the best means of carrying out this work.

The Committee, in support, refers to the opinions expressed by the corresponding Committee of the House of Commons in their Eleventh Report,<sup>1</sup> especially quoting para. 7,<sup>2</sup> of their Historical Retrospect, which was contained in the United Kingdom Select Committee Report of 1903. The last 6 paras. of the Commonwealth *Ninth Progress Report* are given *verbatim*:

While it might not be practicable for such a Committee to make an annual scrutiny of the whole of the Estimates, by dividing the Committee into sub-committees it should be possible to cover all Departments at least every 3 years.

In suggesting that an examination of the Estimates should be one of the main functions of a Joint Committee on National Expenditure, the Committee wishes to emphasize the fact that such an examination should not curtail the consideration at present being exercised by Parliament itself.

From its examination of the Estimates many items upon which information as to actual expenditure was deemed necessary could be listed for further inquiry by the Committee or its sub-committees.

In the United Kingdom a Select Committee was appointed in 1912 to examine and report on the Estimates. It was re-appointed in 1913 and 1914, but was not revived until 1921, when it superseded the National Expenditure Committee, which operated from 1917 to 1921. The Estimates Committee was re-appointed each year from 1921 until the outbreak of World War II, when the National Expenditure Committee was again constituted.

It is also pointed out that on several occasions during the existence of the War Expenditure Committee, the Prime Minister of the day has referred to it subjects for special investigation and report. In our opinion the existence

<sup>1</sup> See JOURNAL, Vol. XIII, 140.—[W. I. E.]

<sup>2</sup> *Ib.* 141.—[W. I. E.]

of a Committee for such a purpose under peace-time conditions is equally necessary.

Your Committee recommends that the Government, as soon as practicable after the commencement of the 18th Parliament, should take steps to constitute a Joint Parliamentary Committee on National Expenditure.

No action has been taken by Parliament to re-constitute the War Expenditure Committee, nor is it expected that this will be done.

Neither has any action been taken up to the time of writing by the Commonwealth Parliament to implement the Committee's recommendations in regard to the constitution of a Joint Parliamentary Committee on National Expenditure.

### XIII. STATE OF NEW SOUTH WALES: M.L.A.s' PENSIONS ACT

BY THE EDITOR

THIS subject has been dealt with in the JOURNAL both in regard to the scheme in operation in the House of Commons<sup>1</sup> which receives no financial assistance from the Government, and the proposal made in the Union House of Assembly in 1939<sup>2</sup> to establish a scheme on a basis of a Government and M.P.s', £1 for £1, contribution, which did not come into force. In the present issue there is also reference to the system adopted by the State Parliament of Western Australia in 1941, the Fund for which is entirely self-contained, no contribution coming from Government funds.

This Article therefore deals with the third scheme in force in the British Commonwealth, namely, that for the members of the Legislative Assembly of New South Wales, initiated by legislation in the Legislative Assembly, which after considerable amendment by the Legislative Council, became law in the year under review in this issue.

The amendments made by the Upper House of New South Wales include an increase of the deductions to be made from the salary of an M.L.A., from £50 to £78 a year, to be paid into the "Legislative Assembly Members' Provident Fund" established under the Act; substituting the Under-Secretary of the Treasury, who is made a corporation sole, for the Auditor-General as Custodian Trustee of the Fund; and not making payment of the £6 a week pension available until after 15 years' service in the Legislative Assembly in the aggregate, except in the case of M.L.A.s with service in 3 Parliaments who do not qualify for the 15 years' service.

The following is a brief account of the proceedings on the Bill, which not being a "Bill which appropriates revenue or moneys for

<sup>1</sup> See Vols. V, 28; VI, 24; VII, 38; VIII, 104; XI-XII, 124; XIII, 175; XIV, 44.

<sup>2</sup> See *ib.* VIII, 128.

the ordinary annual services of the Government<sup>1</sup> is amendable by the Legislative Council.

Legislative Assembly.—On December 6, 1945,<sup>2</sup> the Colonial Secretary (Hon. J. M. Badeley), in moving 2 R. of the Legislative Assembly Members' Pensions Bill, referred to the many calls made upon members and said that it often happened that when they ceased to be members, they found, not only that their former means of livelihood were closed to them but also that they had reached an age when it was difficult to enter upon some new avenue of employment. In some cases members, upon entering Parliament, had to relinquish positions which carried superannuation benefits. In fact, expenditure had been made from the Consolidated Revenue Fund totalling £619 during the current year in respect of 5 pensions payable to ex-M.P.s or their widows. A member might give the best years of his life to the State and at the end find no provision made for him but his old age pension. The scheme embodied in the Bill, continued the Minister, did not provide a pension for every ex-member, but only for those who served in 3 Parliaments. The pension was to be £6 a week commencing from the time he ceases to be a member and continuing, with certain exceptions, to his death. A pension of £3 a week would be payable to the widow, provided she was married to the member before he became a pensioner, or to the widow of a person eligible to receive a pension, but who died whilst still a member. Upon her re-marriage her pension ceased. If a person ceased to be a member and received a pension and later again became a member, he ceased to draw a pension and had again to contribute to the Fund. Upon ceasing to be a member he would be entitled again to receive a pension. A person who had not served in 3 Parliaments would receive a refund of his contribution without interest, and in the event of his death before receiving a refund, it would be payable to his widow. If a member who had received a refund of his contributions again became a member and fulfilled the pensions qualifications of service in 3 Parliaments, he would be eligible for a pension,<sup>3</sup> on repayment to the Fund within the prescribed time. The pension would cease whenever the pensioner occupied an office of profit under the Crown or became a member of the Commonwealth Parliament or that of any State thereof.

There would be paid into the Fund to be established, contributions by members, interest on investments, State contributions to the Fund and any other money, such as gifts that might be received.

Provision is made for the income of the Fund to be free from State taxation and for the investment of the Fund in approved securities. The Fund would be audited by the Auditor-General. Members' contributions would be at the rate of £52 *p.a.*, met by a regular deduction from payment of Parliamentary allowances and salaries. Contributions by present members would date from their election to the

<sup>1</sup> Constitution Act, 1902-38, s. 5 A (3).

<sup>2</sup> 1945 *Parl. Hans.* No. 31, 1777-80.

<sup>3</sup> *Ib.* 1778.

present Parliament. Arrear contributions due to the date of the operation of the Act would be paid in the manner prescribed and include payment by instalments or for deductions from Parliamentary allowances, on salaries payable to members.

The Minister then referred to the system of provision by the Government of pensions for officials from other Funds. The contribution by the members to their Fund would be 2s. 10d. for each £ of pension gratuity, etc.,<sup>1</sup> and the Government would only incur liability where the Fund could not meet the cost of the pension payable. The deduction made from members' allowances would be set at the approximate rate of 6 p.c. as against 4 p.c. in the case of the Police Force and 1½ p.c. in respect of railway and tramway employees.

Government contributions would be included in the Annual Estimates of Expenditure giving members opportunity to review the contribution or pension rate. The sectional accounts established within the Fund would show the proportion of all income and expenditure attributable to the contributions, refunds thereof, and pensions of the ex-members of each Parliament who were not immediately re-elected to the succeeding Parliament.

When any excess of expenditure over income in a sectional account, as at June 30 in a year, had been certified by the Auditor-General, the Government would pay into the Fund from moneys provided by Parliament the amount of such excess.

Where a credit balance remained in a sectional account, after all debits against it had been made, such balance would remain in the Fund and be available to meet pensions chargeable to other sectional accounts.

For the management of the Fund not more than 7 Trustees would be appointed, consisting of the Public Trustee as Custodian Trustee and 6 Managing Trustees among sitting members of the Legislative Assembly. The Public Trustee would be permanent and have the custody of the money and assets of the Fund. He would, however, deal with them at the direction of the Managing Trustees. The costs of the management of the Fund would be borne by the Fund.<sup>2</sup>

The 2 R. debate was resumed on December 11<sup>3</sup> and 12,<sup>4</sup> during which there was some criticism. Reference was also made to the British scheme which involved no Government contribution.<sup>5</sup>

The voting on 2 R. was: Ayes, 47; Noes, 25, after which the House immediately went into C.W.H.

An amendment was made in Clause 9 (Contributions) to substitute £4 for £6, but was negatived and the voting on this Clause was: Ayes, 48; Noes, 24.

On Clause 15, it was moved that sub-Clause (5) be struck out, which read:

(5) The amount of the debit balance of a sectional account at the 30th day of June in each year as certified by the Auditor-General shall be paid by the Colonial Treasurer into the Fund out of moneys provided by Parliament.<sup>6</sup>

<sup>1</sup> *Ib.* 1779.    <sup>2</sup> *Ib.* 1780.    <sup>3</sup> *Ib.* No. 32, 1837-45.    <sup>4</sup> *Ib.* No. 33, 1880-919.

<sup>5</sup> *Ib.* 1897.    <sup>6</sup> *Ib.* 1916.

The voting on the Question: "That the words proposed to be struck out, stand," was: Ayes, 46; Noes, 22 (with 8 pairs as recorded in *Hansard*), after which the Bill was reported to the House without amendment<sup>1</sup> and passed 3 R. on December 13, 1945, and was transmitted to the Legislative Council with the following Message:

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

W. R. McCOURT,  
*Clerk of the Legislative Assembly.*

LEGISLATIVE ASSEMBLY CHAMBER, SYDNEY,  
13 December, 1945.

The amendments are included in a schedule attached to the Bill as well as being shown therein, the words to be omitted *ruled through* and those to be inserted printed in black letters.

Legislative Council.—On April 6, 1946,<sup>2</sup> 2 R. was moved by the Minister of Justice and Vice-President of the Executive Council (Hon. R. D. Downing). During the debate quotations were given from an actuarial opinion on the scheme. On the question for 2 R. the voting was: Ayes, 22; Noes, 12.

The House went into *C.W.H.* on the Bill on April 10, 1946,<sup>3</sup> when, on consideration of Clause 9, which read:

(1) Upon each payment of the salary of a member of the Legislative Assembly, there shall be deducted from the amount payable to him a sum calculated at the rate of fifty-two pounds per annum, and all sums so deducted shall be paid into the fund.

(2) Every person who is at the commencement of this Act a member of the Legislative Assembly and who was on or after the twenty-seventh day of May, one thousand nine hundred and forty-four, entitled to receive salary as a member shall, on demand made to him as prescribed, pay to the trustees, to be by them carried to the fund, a sum equivalent to the aggregate amount which would have been deducted from his salary pursuant to subsection one of this section, if that subsection had commenced upon the twenty-seventh day of May, one thousand nine hundred and forty-four.

The regulations may make provision for and with respect to the manner in which and the times within which payments under this section shall be made by members, and may include provisions for payment by instalments, or for deductions from amounts payable by way of salary to such members.

—the following amendment was moved:

That sub-Clause (1) be struck out and that there be inserted in lieu thereof the following:

9. Upon each payment of the salary of a member of the Legislative Assembly made to him after the commencement of this Act there shall be deducted from the amount payable to him a sum calculated at the rate of seventy-eight pounds per annum and all sums so deducted shall be paid into the fund.

—which was agreed to.

It was then agreed that sub-Clause (2) be struck out and Clause 9 as amended was put and agreed to.

<sup>1</sup> *Ib.* 1919.

<sup>2</sup> *Ib.* No. 56, 3177-200.

<sup>3</sup> No. 57, 3280-90.

Clause 10 read:<sup>1</sup>

(1) There shall be trustees of the fund who, subject to the provisions of this section, shall be appointed and may be removed by order of the Legislative Assembly.

(2) The said trustees shall be not more than seven in number, of whom one, being the Public Trustee, shall be custodian trustee of the fund and the remainder shall be managing trustees.

(3) No person shall be appointed to be a managing trustee unless he is a member of the Legislative Assembly, and, on ceasing to be a member of the Legislative Assembly, a managing trustee shall vacate his office.

(4) The managing trustees may act by a majority of those present at any meeting of the managing trustees at which a quorum is present.

(5) The procedure of the managing trustees shall, subject to the provisions of this Act and the regulations, be such as the trustees may determine, and the quorum for any meeting of the managing trustees shall be three.

(6) A direction of the managing trustees shall continue in force until revoked by a subsequent direction of the managing trustees, notwithstanding any changes in the persons who are managing trustees and notwithstanding that, by reason of a dissolution of Parliament or for any other reason, there are for a time no managing trustees.

—to which the following amendment was moved:

That in sub-Clause (2) the words "Public Trustee" be struck out, and there be inserted in lieu thereof the words, "Under-Secretary of the Treasury".

—and agreed to.

It was then proposed that there be added to sub-Clause (2) the following words:<sup>2</sup>

For the purposes of the exercise and discharge of the powers, authorities, duties, functions and obligations conferred and imposed upon him by this Act, the Under-Secretary of the Treasury is hereby declared to be a corporation sole under the name of "the Under-Secretary of the Treasury".

The said corporation sole shall have perpetual succession and an official seal and may in the corporate name sue and be sued and shall be capable of purchasing, holding, granting, demising, disposing of and alienating real and personal property and of doing and suffering all such other acts and things as a body corporate may by law do and suffer.

Where any property real or personal or the interest therein or charge thereon is vested in or is acquired by the said corporation sole, the same shall unless otherwise disposed of by the said corporation sole pass to and devolve on and vest in its successors.

The seal of the corporation sole shall not be affixed to any instrument or writing except in the presence of the Under-Secretary of the Treasury, who shall attest by his signature the fact and date of the seal being so affixed.

The appointment of the Under-Secretary of the Treasury and his official seal shall be judicially noticed.

—which was agreed to and the Clause as amended put and agreed to.

## Clause 12 read:

(1) There shall be paid out of the fund to every person who after the commencement of this Act ceases to be a member of the Legislative Assembly, and who has been a member of the Legislative Assembly in any three Parli-

<sup>1</sup> *Ib.* 3284.

<sup>2</sup> *Ib.* 3285.



ments, a pension at the rate of six pounds per week, which pension shall subject to this section be payable to him until his death.

The three Parliaments referred to in this subsection may include any Parliament or Parliaments held before the commencement of this Act as well as the current Parliament, and any future Parliament or Parliaments.

A person shall be deemed to have been a member of the Legislative Assembly in a Parliament if he has been a member of the Legislative Assembly during any portion of the term of that Parliament.

(2) Upon the death of a male member of the Legislative Assembly who would, if he had ceased to be a member otherwise than by death, have been entitled to a pension under subsection one of this section, there shall be paid out of the fund to his widow a pension at the rate of three pounds per week, which pension shall subject to this section be payable to her until her death.

(3) Upon the death of a male person who is in receipt of a pension under subsection one of this section there shall be paid out of the fund to his widow a pension at the rate of three pounds per week, which pension shall, subject to this section, be payable to her until her death:

Provided that where a male person who is in receipt of a pension under subsection one of this section marries whilst he is in receipt of that pension his widow shall not be entitled to a pension under this subsection.

(4) Upon the marriage of a widow who is in receipt of a pension under this section, her right to such pension shall cease and determine.

(5) If a person who is in receipt of a pension under any of the provisions of this section accepts an office of profit under the Crown, or becomes a member of the Parliament of the Commonwealth or of any State (including this State) the right of that person to receive such pension shall, whilst that person holds such office of profit or continues to be such member, be suspended.

—to which the following amendment was moved:<sup>1</sup>

That sub-Clause (1) be struck out and there be inserted in lieu thereof the following new sub-Clauses:

(1) (a) Subject to this Act every person who after the commencement of this Act ceases to be a member of the Legislative Assembly, and who has served as a member of the Legislative Assembly for an aggregate period of fifteen years or more shall be entitled to be paid out of the fund a pension at the rate of six pounds per week.

The service referred to in this subsection shall include service before the commencement of this Act as well as service after such commencement.

(b) Subject to this Act, every person who after the commencement of this Act ceases to be a member of the Legislative Assembly and who has been a member of the Legislative Assembly in any three Parliaments but does not possess the qualification specified in paragraph (a) of this subsection shall be entitled to be paid out of the fund a pension at the rate of five pounds per week.

The three Parliaments referred to in this paragraph may include any Parliament or Parliaments held before the commencement of this Act as well as the current Parliament, and any future Parliament or Parliaments.

A person shall be deemed to have been a member of the Legislative Assembly in a Parliament if he has been a member of the Legislative Assembly during any portion of the term of that Parliament.

(2) (a) Where at any time before the dissolution of a Parliament or its expiration by effluxion of time, a person ceases to be a member of the Legislative Assembly otherwise than by death, and, at a by-election held to fill the vacancy so occasioned, he does not become a candidate for election, he shall not be entitled to receive any pension under paragraph (b) of subsection one of this

<sup>1</sup> *Ib.* 3286-7.

section unless the managing trustees or a majority of them in their absolute discretion, upon application made for the purpose, are satisfied that there were good and sufficient reasons for his failure to become a candidate at such by-election.

(b) Where a person—

- (i) resigns his seat in the Legislative Assembly;
- (ii) notifies the Speaker in the instrument of resignation addressed to the Speaker that his resignation is for the purpose of enabling him to seek election for the Parliament of the Commonwealth at an election which is to be held within three months after the date of such resignation; and
- (iii) becomes a candidate for election for the Parliament of the Commonwealth at the election referred to in the last preceding subparagraph; and
- (iv) is elected at such election,

and such person would have been entitled if paragraph (a) of this subsection had not been enacted, and he had not been elected to the Parliament of the Commonwealth, to receive a pension under this section upon so resigning his seat in the Legislative Assembly, he shall on and from the date upon which he ceases to be a member of the Parliament of the Commonwealth, but subject to the provisions of this section, be entitled to receive such pension.

(c) Where a person ceases to be a member of the Legislative Assembly by reason of the dissolution of Parliament or its expiry by effluxion of time and does not become a candidate for election at the general election next ensuing on such dissolution or expiry he shall not be entitled to receive any pension under paragraph (b) of subsection one of this section unless the managing trustees or a majority of them in their absolute discretion, upon application made for the purpose, are satisfied that there were good and sufficient reasons for his failure to become a candidate at such general election.

—which were agreed to.

The following amendment was then moved to sub-Clause (2) of the Clause:<sup>1</sup>

That in subclause (2) the words “ would, if he had ceased to be a member otherwise than by death, have been entitled to a pension under ” be struck out, and there be inserted in lieu thereof the words “ has served as such during the period or in the Parliaments respectively specified in paragraph (a) and paragraph (b) of ”.

—which was agreed to and the Clause as amended was put and agreed to.

During the debate on this Clause an hon. member gave some interesting figures, in regard to a record of the duration of the 33 Parliaments of New South Wales since the granting of “ Responsible Government ”, showing 1, in those of under 1 year duration; 8 of 1 to 2 years, 21 of 2 to 3 years, and 3 of over 3 years, to illustrate that an M.L.A. could come within the provisions of the Bill after serving as an M.L.A., for a very much shorter period than some hon. members had suggested.<sup>2</sup>

The amendment was then agreed to and Clause 13 as amended put and agreed to.

Clause 16 read:<sup>3</sup>

<sup>1</sup> *Ib.* 3289.

<sup>2</sup> *Ib.* 3289.

The Public Trustee may charge such fees for the discharge by him of his duties as custodian trustee under this Act as may be prescribed. Such fees may be prescribed on a percentage basis or otherwise and shall be deemed to be a part of the cost of management of the fund.

It was then moved: That Clause 16 be struck out and there be inserted in lieu thereof the following Clause:<sup>1</sup>

Pensions under this Act shall not be in any way assigned or charged or passed by operation of law.

The Clauses not given at length above cover: 1. (Short title and commencement of Act); 2. (Interpretations); 3. (Legislative Assembly Members' Provident Fund); 4. (Investment of Fund); 5. (Uninvested moneys); 6. (Cheques); 7. (Audit); 8. (Power to borrow); 11. (Functions of Custodian Trustee and Managing Trustees); 13. (Refunds of contributions); 14. (Repayment of re-funds); 15. (Accounts); 17. (Regulations).

The Bill was then reported with amendments and adopted, passed its remaining stage, and was transmitted by the Legislative Council to the Legislative Assembly with the following Message:

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

W. K. CHARLTON,  
*Clerk of the Parliaments.*

LEGISLATIVE COUNCIL CHAMBER, SYDNEY,  
11th April, 1946.

The Amendments were agreed to by the Legislative Assembly, the Bill duly becoming Law.

#### XIV. THE WORKING OF THE MEMBERS OF PARLIAMENT PENSION FUND IN WESTERN AUSTRALIA

By F. G. STEERE, J.P.,  
*Clerk of the Legislative Assembly*

FOR some years the question of the creation of a fund to provide a pension for members of this Parliament who were defeated at a General Election or who retired from Parliament, agitated the minds of members. After a conference, a scheme was drafted, and afterwards approved by the Government; and, in 1941, a Bill was introduced and finally passed into law.<sup>2</sup>

Some of the opponents of the Bill maintained that the fund could not be kept solvent and that the Government would have to finance it from Consolidated Revenue. This contention has proved utterly groundless, for, at the end of March, 1947, the fund had in hand a balance of £5,050 after paying out no less a sum than £3,000.

The fund is financed by a compulsory deduction from members

<sup>1</sup> *Ib.* 3290.

<sup>2</sup> No. 54 of 1941.

allowances of £2 per month. From this fund payment is made to members who lose their seats, or voluntarily retire, on the following basis:

- (a) Those who have been members of the fund for less than 7 years will receive twice the amount of their subscriptions; and
- (b) Those who have been in the fund for more than 7 years will receive a lump sum of £600.

Any person who has been a member prior to the Act coming into force, may take advantage of his earlier service by electing to become a subscriber from a previous date of his service. He must select this date within a period of 1 month after the commencement of the Act.

The Government has made no contribution to the Fund and it is very doubtful if it ever will.

The Fund is administered by 3 Trustees—*i.e.*, the Public Trustee, as Chairman, the President of the Legislative Council and the Speaker of the Legislative Assembly.

The Fund is subject to audit by the Auditor-General.

## XV. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY

BY RALPH KILPIN, J.P.,

*Clerk of the House of Assembly*

THE following unusual points of procedure arose during the first part of the 1946-47 Session (January 18, 1946, to June 19, 1946).

### *Private and Hybrid Bills.*<sup>1</sup>

(a) *Amendments moved on revival of Bills.*—When proceedings on a Private or Hybrid Bill are suspended in one Session under S. O. 75 (Private Bills) and resumed in the next, they are resumed at the precise stage reached<sup>2</sup> in the previous Session. This differs from the practice under S.O. 180 relating to Public Bills, which presupposes that a Public Bill when revived will be proceeded with at the commencement of the stage which had been reached. There is, of course, nothing to prevent the House ordering a Private Bill to be proceeded with at the commencement of the stage reached, but an amendment to this effect was negatived when the City of Durban Savings and Housing Department (Private) Bill was revived.<sup>3</sup>

Three unusual amendments were moved on the Motion to revive the Dongola Wild Life Sanctuary (Hybrid) Bill, namely, a "reasoned

<sup>1</sup> During the Session one Private Bill (City of Durban Savings and Housing Department Bill) and one Hybrid Bill (Dongola Wild Life Sanctuary Bill) were revived; and one Hybrid Bill (N'Jelele Irrigation District Adjustment Bill) was introduced.—[R. K.]

<sup>2</sup> 1925 VOTES, 229.

<sup>3</sup> 1946-47 VOTES, 114.

negative"; an amendment empowering the Select Committee on the Bill in which the proceedings were to be resumed "to have leave to hold sittings in the proposed Dongola Wild Life Sanctuary"; and a further amendment that "the Committee have power to take evidence other than that produced by the parties". All of these amendments were negatived.<sup>1</sup>

(b) *Quorum of Select Committee on Opposed Bill reduced.*—Owing to the difficulty in maintaining a quorum in the Select Committee on the Dongola Wild Life Sanctuary Bill, the quorum was permanently reduced from 5 to 4 members.<sup>2</sup>

(c) *Committee revived to consider costs.*—The Select Committee on the Dongola Wild Life Sanctuary (Hybrid) Bill reported that an application made by the opponents for an award of costs should be referred to the Government for consideration. Mr. Speaker, however, stated that in his opinion the question of an award should be decided by the Select Committee itself and revived the Committee under S.O. 69 (3) (Private Bills). Subsequently the Committee reported that in its opinion the opponents should be awarded costs, but that it was unable under S.8 of the Private Bill Procedure Act, 1912,<sup>3</sup> to obtain the consent of the parties to a stated sum or to say that the petitioners had been "unreasonably or vexatiously subjected to expense in defending their rights". The Committee therefore made no award.<sup>4</sup>

(d) *Repeal of Private Acts by Public Bill.*—During the Session a Banking Institutions Bill was introduced and passed. The Bill, as a matter of public policy, provided generally for the registration under the Companies Act of banking institutions governed by special laws such as the British Kaffrarian Savings Bank, which was established under a Private Act, and Clause 6 provided for the repeal of such laws with effect from the date of registration under the Companies Act.<sup>5</sup>

*Revival of Assembly Bill dropped in Senate.*—Although there have been instances of the revival under S.O. 180 of Senate Bills which dropped in the House of Assembly, there have until this Session been no instances of an Assembly Bill being revived in the Senate. The Bill in question, the Children's Guardianship Bill, dropped in the Senate owing to prorogation at the end of the 1945 Session, and at the beginning of the 1946-47 Session a Message was sent to the Senate asking for the resumption of its consideration of the Bill.<sup>6</sup> The Message was still on the Senate Order Paper for consideration at the time of the prorogation of the Third Session of the Ninth Parliament.

*Petition for leave to be heard at Bar of House.*—On March 25, 1946, a petition was presented from the President of the South African Indian Congress and four others praying for leave to be heard at the Bar of the House in opposition to the Asiatic Land Tenure and Indian

<sup>1</sup> *Ib.* 379, 380, 566; see also JOURNAL, Vol. XIV, 190.

see also JOURNAL, Vol. XIV, 189.

<sup>2</sup> Act No. 20 of 1912.

<sup>3</sup> 1946-47 VOTES, 783;

978, 994; see also JOURNAL, Vol. XIV, 189.

<sup>4</sup> No. 46 of 1926.

<sup>5</sup> 1946-47 VOTES,

131; see also JOURNAL, Vols. IV, 59; VIII, 122.

<sup>6</sup> 1946-47 VOTES,

Representation Bill. Notice of Motion was given that the petitioners be given leave to be heard before the close of the debate on the Motion for the Second Reading. The Motion was not reached, but a similar petition was presented to the Senate<sup>1</sup> (*which see above*).

*Instruction to divide a Bill.*—The first instance in the House of Assembly of an instruction being moved to a Committee of the Whole House to divide a Bill occurred in connection with the Asiatic Land Tenure and Indian Representation Bill. This Bill consisted of 2 chapters—the first dealing with the acquisition and occupation of fixed property by Asiatics, and the second dealing with the representation of Indians. In the Preamble it was stated that “it is desirable that these matters should be dealt with together in one enactment”, but on the Order being read for the House to go into Committee, the Leader of the Opposition moved an instruction based on House of Commons precedents that the Committee have leave to divide the Bill into 2 parts and to report the part embodied in Chapter I separately before proceeding with the other part. The Motion was negatived.<sup>2</sup>

*Appointment of Acting Chairman of Committees.*—As both the Chairman and Deputy-Chairman of Committees were appointed Chairmen of Select Committees which were sitting at the same time, it became necessary on two occasions to anticipate their absence in the House. On the first occasion a member was appointed to act for the Chairman of Committees on a specified measure and on the second occasion a member was appointed to act for the Chairman at any time during the day.<sup>3</sup>

*Member declining to resume his seat on Speaker rising.*—The importance of S.O. 89, under which a member speaking or offering to speak shall sit down when Mr. Speaker or the Chairman rises, was emphasized on June 13, 1946. During a debate on that date a member, having been requested by Mr. Speaker to cease making personal reflections, made reflections on the conduct of the Speaker. Mr. Speaker then rose, and upon the member declining to resume his seat he was “named” for disregarding the authority of the Chair and the Motion for the suspension of the hon. member was carried after a Division had been called for, but which did not take place as fewer than 10 members (S.O. 126) voted against the Motion.<sup>4</sup>

*Stages of Bills.*—Under S.O. 159 not more than one stage of a Bill may be taken at the same sitting without the consent of the Whole House. This Standing Order has twice been suspended in connection with specific Bills.<sup>5</sup> There is no corresponding rule in the House of Commons, where it has often been found necessary for Bills to be passed through all their stages on the same day even by both Houses. In the Union House it was found necessary towards the end of the Session to suspend the Standing Order for the remainder of the Session in order to expedite Public Business.<sup>6</sup>

<sup>1</sup> 1946-47 VOTES, 402, 404; *see also* JOURNAL, Vol. XI-XII, 218. <sup>2</sup> 1946-47 VOTES, 454. <sup>3</sup> *Ib.* 876, 901. <sup>4</sup> *Ib.* 962. <sup>5</sup> 1924 *Ib.* 526; 1939 (2) 2. <sup>6</sup> 1946-7 *Ib.* 989.

*Scope of Debate on Motions of No-Confidence.*—On the opening day of Parliament, when Notices of Motion were called for, the Prime Minister was first to give Notice of a Motion which dealt with the ratification of the San Francisco Agreement. The Leader of the Opposition followed with a Notice of a Motion of “no-confidence” in the Government, and subsequently a number of other Notices of Motion were given. Mr. Speaker stated for the information of the House that the “rule of anticipation” is applied to Motions of no-confidence just as it is applied to Motions for the House to go into Committee of Supply, when general discussion is allowed, and went on to say “the Notice of Motion given by the Prime Minister clearly blocks other Notices of Motion, amendments and discussion on the matter it deals with. As to other Notices of Motion it would be irregular and obviously unfair to members who make constructive proposals if their proposals were forestalled in the ensuing debate; but on the Motion of no-confidence, which is given precedence by the Government, a certain amount of latitude must obviously be allowed for criticism as to the actions or the inaction of the Government *in the past* which does not anticipate proposals *for the future*.”<sup>1</sup>

*Appeals to Speaker from Chairman's decisions.*—On an appeal being made to Mr. Speaker from a decision by the Chairman of Committees, Mr. Speaker recalled two decisions given by Mr. Speaker Jansen, in which he had declined to entertain appeals from decisions given by the Chairman of Committees. “These decisions”, said Mr. Speaker, “were in accordance with S.O. 88 and May XI, pp. 385 and 621 and I entirely agree with them. There may be occasions on which the Chairman and the Committee may wish for the guidance of Mr. Speaker, but ultimately the Chairman is responsible to the House itself and there should be no appeal to Mr. Speaker against decisions that have been given in Committee. On the point raised I have therefore no remarks to offer.”<sup>2</sup>

*Urgent Questions to Ministers asked without Notice.*—In drawing attention to a Question to a Minister which was asked by a member without Notice and without being submitted to Mr. Speaker, Mr. Speaker said “the Standing Rules and Orders (Nos. 47-48) provide that no Question shall be asked without previous Notice and that such Notice may be amended by Mr. Speaker before it appears on the Notice Paper. Exceptions to the giving of Notice are made, with leave of the House, when questions of an urgent character arise, but it is obvious that they should be submitted to Mr. Speaker in time for their due consideration before the House meets”. Subsequently the same member asked leave to put another question to a Minister. Mr. Speaker then said that a copy of the Question had been submitted to him, but that he did not think it of sufficient urgency to be asked without Notice.<sup>3</sup>

<sup>1</sup> *Ib.* 42; see also JOURNAL, Vols. IV, 57; XI-XII, 30.

<sup>2</sup> 1946-47 VOTES, 537.

<sup>3</sup> *Ib.* 545, 603.

## XVI. " THE MALAN CASE "

BY THE EDITOR

WHENEVER an investigation is made by Select Committee in regard to a matter closely affecting a member personally, whether such falls within " Privilege " or comes under the classification " Conduct of a Member ", it is our practice, should the case be an interesting one from a technical standpoint, to treat it at some length in the JOURNAL.

The more prominent of these cases classed under " Privilege " have been: the Alleged Tampering with Witnesses,<sup>1</sup> " the Sandys case " and " the Ramsay case " ; while " the Boothby case " has been the most important instance of " Conduct of a Member " .

It was this last-mentioned inquiry which afforded such useful precedent in that of the " Select Committee on German Foreign Office Documents (Conduct of a Member) " appointed by Order of the Union House of Assembly on May 9, 1946.<sup>5</sup>

Investigations by Select Committee or Commission relating to " Conduct of a Member " have also been dealt with in the JOURNAL by Editorial or other notes in the following instances.

The earliest of these which occurred since the establishment of this JOURNAL was the Judicial Tribunal appointed in the United Kingdom in 1936,<sup>6</sup> under the Tribunal Inquiries (Evidence) Act, 1921, following Resolutions of both Lords and Commons, to investigate a Budget disclosure and the Tribunal's finding was that an unauthorized disclosure had been made by Rt. Hon. J. H. Thomas (a Secretary of State) to Sir Alfred Butt, of information and use made of it by him for his personal gain.

Other cases in the House of Commons were the inquiries by Select Committee into Alleged Disclosures by members of Secret Session proceedings.<sup>7</sup>

The Overseas cases have been as follow:

The Select Committee on the Land Bank Loan, Calvinia,<sup>8</sup> set up by the Union House of Assembly, sub-paragraphs (a) (b) and (c) of paragraph 22 of the Report reading:

- (a) There is no evidence of undue pressure exercised on the Land Bank in connection with the granting of loan No. 8034, either by Dr. Steenkamp or General Kemp or anyone else.
- (b) Dr. Steenkamp, holding the power of attorney for Mr. Louw, and acting for him in the allocation of the amount received for the loan, allowed an unnecessary high loan to be granted, inasmuch as he knew that the first bondholder was prepared to accept £8,750, and the second bondholder £1,500. In explaining this Dr. Steenkamp stated in evidence that he " was pleased that he (Mr. Louw) received more ", namely, the high loan of £11,185, as he believed that the bondholders would refund

<sup>1</sup> See JOURNAL, Vol. III, 106.

<sup>2</sup> *Ib.* VII, 122.

<sup>3</sup> *Ib.* IX, 64; XIV, 32.

<sup>4</sup> *Ib.* XI-XII, 90, 229, 232.

<sup>5</sup> S.C. 5-'46.

<sup>6</sup> See JOURNAL, Vol. V, 20; Cmd.

5184; 311 *Com Hans.* 5, s. 1551.

<sup>7</sup> See JOURNAL, Vol. XI-XII, 237-53; XIV, 252-7.

<sup>8</sup> *Ib.* V, 83; S.C. 18-'36.



some £400 or £500 to Mr. Louw out of the amounts received. He was, therefore, partially responsible for the high figure and undoubtedly acquiesced in the second bondholder receiving £1,921 instead of £1,500. There is no satisfactory evidence that the bondholders definitely promised to refund several hundred pounds to Mr. Louw for buying sheep, as stated by Dr. Steenkamp.

- (c) Save as qualified by sub-paragraph (b) hereof, there is no evidence of any impropriety whatever in connection with this loan on the part either of Dr. Steenkamp or General Kemp, or of the Land Bank.

Following a Motion in the Union House of Assembly a judicial commission was appointed in 1937 to inquire *inter alia* into a letter from the Hon. F. C. Sturrock (Minister of Portfolio) to one of his business managers stating that Colonel D. Reitz (Minister of Agriculture and Forestry) had shown him in strict confidence a list of tenders for tents to be supplied to the National Park Board. The Commission issued an Interim Report,<sup>1</sup> stating that the letter had been written before these members had become Ministers and that there was no impropriety in the conduct of either of them.<sup>2</sup>

In the same year a Select Committee on Wheat Transaction<sup>3</sup> was set up by the Union House of Assembly to inquire into allegations made in the Hubse by the hon. member for Albert (Mr. L. J. Steytler), the Committee finding that:

On 25th September, 1935, the date of the only transaction brought forward by Mr. Steytler in support of his allegations, Mr. Bekker<sup>4</sup> had ceased to be a director of Sasko, and therefore that Mr. Steytler's allegation that Mr. Bekker "when a director of Sasko speculated in wheat and kept the profits which should have been paid to the farmers" is devoid of foundation.

Every investigation, either into a matter of "Privilege" or into "Conduct of a Member" presents new points and features often serving as useful precedents.

As our readers know full well, it is statement of fact with which we have to deal, therefore any references in this Article as to the attitude of political parties towards World War II. are only included to elucidate the inquiry.

We shall now proceed to describe what happened in this case, taking events in their chronological order.

**Debate.**—In the Union House of Assembly on May 7, 1946,<sup>5</sup> during resumed debate in Committee of Supply on the Vote—Justice—when the Minister of that Portfolio (Hon. H. G. Lawrence, K.C.) (Salt River) was speaking of the Deportation Commission then sitting to decide whether certain persons should go back to Germany or not, a discussion arose in regard to the visit of a certain Mrs. Denk to the Union.

The Minister quoted from a photostat in the original German from 2 documents (*which see below*) which had come into the hands of the

<sup>1</sup> Interim Report of the Tender Committee (Unprinted).    <sup>2</sup> See JOURNAL, Vol. VI, 211.    <sup>3</sup> *Ib.* VI, 212; S.C. 16-37.    <sup>4</sup> The hon. member for Woodhouse.—[ED.]  
<sup>5</sup> 57 *Assem. Hans.* 6947-72.

Allies and been sent to the Union Government. The one dated, Berlin, November 22, 1940—"Notes for the Reichsminister for Foreign Affairs"—suggested that a declaration as to the attitude of Germany toward the Union as apparently considered by the Reich Ministry for Foreign Affairs round about 1939, be transmitted to the Leaders of the South African Opposition, and stated that the Reichsminister had sent a Frau Maria Radley (whose husband was interned at the time) to South Africa. The other document gave information as to the instructions given by Germany to Herr Hans Denk to contact Dr. the Hon. D. F. Malan (the Leader of the Opposition in the Union House of Assembly<sup>1</sup>), and stated that Frau Denk had, on January 16, 1940, a long discussion with Dr. Malan.

On January 16, 1940, just prior to the Opening of Parliament that year, the Nationalist Opposition moved a Motion that South Africa should make a separate peace with Germany.<sup>2</sup>

The Minister quoted further from such document, which stated that, according to Herr Hans Denk's report of January 16, 1940, Dr. Malan had been extremely grateful for the news he had received and asked Mrs. Denk to convey his sincerest thanks to her husband, who said that Dr. Malan gave the assurance that he would build up and work entirely on the lines suggested by them.<sup>3</sup>

The Minister, still quoting, said that it was stated in the document that Herr Hans Denk would be waiting in Lourenço Marques in case Dr. Malan was able to despatch a fit and proper representative of his to act as Liaison Officer and that connection would be established through the firm of Schroeder and Leidenberg (Justus) and also that such Liaison Officer would then be brought to Dr. Werz of the local German Consulate, who was a Gestapo agent in Lourenço Marques, Portuguese East Africa, during the War.

The Minister contended that it was the duty of Dr. Malan to have reported the matter to the Union Government and that the document he had quoted from existed in the occupied area to-day. It came out of the files of the German Foreign Office.<sup>4</sup>

After debate upon other subjects had intervened, Dr. Malan acknowledged that Mrs. Hans Denk had had an interview with him during the War and conveyed to him what she alleged was a message from Von Ribbentrop, a message which he had listened to in silence. He took so little notice of it that he could not recall the address which had been given to him. He did not reduce anything to writing nor did he give any reply or message to take back. He had not reported it because the case was not the only one of its kind where a similar person had had an interview with him, as he was convinced that some of them were sent by the Government to trap him.

Later in the debate the Minister stated<sup>5</sup> that he made no charge

<sup>1</sup> The hon. member for Piketberg and a former Union Minister of Interior Education and Public Health.—[Ed.] <sup>2</sup> 57 *Assem. Hans.* 6947-8. <sup>3</sup> *Ib.* 6949-50  
<sup>4</sup> *Ib.* 6955. <sup>5</sup> *Ib.* 6962.

against the Leader of the Opposition. The document he had quoted from purported to be a report of Hans Denk written in Berlin on March 29, 1940, and were notes for the Reichsminister of Foreign Affairs. There was a covering note from Karlowa addressed to the Reichs-Ministry which purported to be an account of an interview which Mrs. Denk had had with Dr. Malan.<sup>1</sup>

The Minister then remarked that he little doubted in his own mind from the speeches of the hon. member for Piketberg that he believed Hitler was going to win the War and therefore considered, if they were to save the Republic, the best way was to adopt a policy of supporting Hitler and the Nazis. That was his charge against the Leader of the Opposition.<sup>2</sup>

Continuing, the Minister said:

The charge I have made in this House, not only during the debate but on several occasions during the War years, is not that the Leader of the Opposition was guilty of high treason or that he was conniving with the enemy in order to get a German victory, but that he was convinced that there would be a German victory and feared there would be trouble in this country, and so played the Hitler game, unconsciously may be, but he played that game. That is my charge.<sup>3</sup>

**Appointment of Select Committee.**—The next day<sup>4</sup> the acting Prime Minister (Rt. Hon. J. H. Hofmeyr) gave notice of the following Motion:

That the copies of documents taken from the German Foreign Office and laid upon the Table on 8th May, 1946, by the Minister of Justice, be referred to a Select Committee to be nominated by Mr. Speaker for investigation and report upon the following:

- (1) Whether the hon. member for Piketberg (Dr. Malan) had conversations with enemy agents during the War as alleged in those documents; and if so,
- (2) the circumstances attending such conversations, and the nature and extent thereof; and
- (3) whether he reported to the authorities the said conversations, the nature thereof and the circumstances surrounding them, if not,
- (4) his reasons for not doing so, and the adequacy or otherwise of such reasons;

—the Committee to have power to take evidence and call for papers.

This Motion was moved on May 9,<sup>5</sup> and after debate amendment was proposed by the hon. member for Waterberg (Mr. J. G. Strydom) to insert the following new paragraphs:

- (5) to what extent the Government was aware of the presence in the country of any of the persons referred to in the documents and of the nature of their activities;
- (6) whether there was a failure to take steps against them; and if so,
- (7) the reasons for such failure and the adequacy or otherwise of such reasons

and to add at the end " And that the hon. member for Piketberg have leave to be heard by Counsel ".

<sup>1</sup> *Ib.* 6972.

<sup>2</sup> *Ib.* 6974.

<sup>3</sup> *Ib.* 6988.

<sup>4</sup> *Ib.* 7026.

<sup>5</sup> *Ib.* 7119.

Mr. Speaker thereupon reminded the House that it was customary for such leave to be made by petition.

After debate both the amendment and the main question as amended, duly seconded, were put and agreed to.

On May 10,<sup>1</sup> Mr. Speaker announced the following members to form such Select Committee, Mr. A. E. Trollip (Chairman), Dr. Bremer, Mr. J. Christie, Dr. T. E. Dönges, K.C., Mr. J. C. Faure, Mr. P. V. Pocock and Mr. G. P. Steyn, and on May 11,<sup>2</sup> Dr. Stals was substituted for Dr. Bremer, who was discharged.

On May 21,<sup>3</sup> the Chairman of the Select Committee brought up a Special Report desiring that the Committee be assisted by Counsel appearing on behalf of the Government in order to present the evidence in the possession of the Government and to examine witnesses, which Special Report was thereupon considered and adopted.

On May 23,<sup>4</sup> the following Instruction was moved, seconded and agreed to:

That it be an instruction to the Select Committee on German Foreign Office Documents to determine what connection, if any, there was between the interview which Mrs. Denk had with the hon. member for Piketberg (Dr. Malan) and the Motion of which General Hertzog gave notice in the House on the 19th January, 1949, in which he asked that the War against Germany be ended.

The Committee sat 10 times between May 17 and June 8 and heard 10 witnesses, their names being given under “ Evidence ”.

Procedure.—The procedure followed at the inquiry was very much on the lines of that in “ the Boothby Case ” above referred to, but the Deputy Speaker of the House of Assembly presided over the Select Committee as Chairman.

At its *first* meeting<sup>5</sup> it was decided

- (1) That in terms of S.O. 236 (1)<sup>6</sup> the evidence given before the Committee be recorded and transcribed *verbatim*.
- (2) That all witnesses be cautioned of their liability to punishment under S. 21<sup>7</sup> of the Powers and Privileges of Parliament Act, 1911, in the event of perjury.
- (3) That printed copies of the evidence taken by the Committee be supplied to Counsel for the hon. member for Piketberg for his own personal use in preparing his case.

Also that all information in possession of the Government as to the authenticity of the photostat copies of the German Foreign Office

<sup>1</sup> *Ib.* 7216.    <sup>2</sup> *Ib.* 7318.    <sup>3</sup> 58 *Ib.* 8030.    <sup>4</sup> *Ib.* 8255.    <sup>5</sup> S.C. 5-'46, p. xvii.  
<sup>6</sup> S.O. 236. The evidence given before a Select Committee of this House may by Resolution of the Committee concerned be recorded and transcribed either *verbatim* or in the narrative form by the Clerk attending the Committee and shall be reported to this House when the report of such Committee is brought up.—[Ed.]    <sup>7</sup> S. 21 of Act No. 19 of 1911 reads: Any person who, before Parliament or any Committee (and whether or not that person has been sworn or has made a solemn affirmation or declaration), after being duly cautioned as to his liability to punishment under this section, wilfully and corruptly makes a false answer to any question material to the subject of inquiry which may be put to him during the course of any examination shall be guilty of an offence and shall be liable on conviction to the penalties prescribed by law for perjury.—[Ed.]

Documents be laid before the Committee and that in the event of the translation of the documents having been done departmentally, sworn translations be obtained.

Counsel for Dr. Malan addressed the Committee.

At its *second*<sup>1</sup> meeting it was moved:

That the Chairman report specially that the Committee desires to be assisted by Counsel appearing on behalf of the Government in order to present the evidence in the possession of the Government and to examine witnesses.

Amendments were then proposed to omit all words after " That " and to substitute:

The Committee feels that it is not necessary to have Counsel to present the evidence either upon items (1) to (4) or items (5) to (7) of the terms of reference.

The Committee further feels that it would have no objection to the Government being represented by Counsel, if it so desires, in respect of items (5) to (7), in the same way as the hon. member for Picketberg is being represented in respect of items (1) to (4):

The Chairman, however, was unable to accept the amendment.

Amendment was then moved to omit all words after " Committee " and to substitute:

suggests that the Government consider the advisability of being represented before the Committee by Counsel in respect of points (5) to (7) of the Committee's terms of reference in the same way as the hon. member for Picketberg is being represented in respect of points (1) to (4) of the Committee's terms of reference.

Question put—That the words proposed to be omitted stand part of the Motion: " Ayes, 4; Noes, 3 ". The amendment was therefore negatived and the main Question put and agreed to.

Counsel for Dr. Malan was recalled and informed of the decision of the Committee.

It was also resolved at the same meeting:

That copies of all papers called for by the Committee or produced by the Government be supplied to Counsel for the hon. member for Picketberg, for his own personal use in preparing his case.

At the *third*<sup>2</sup> meeting the Chairman intimated that the Special Report of the Committee had been adopted by the House.

Counsel for Dr. Malan and Counsel for the Government, the latter instructed by the Government Attorney, were also present.

The Counsel for the Government addressed the Committee as to the authenticity of the German Foreign Office documents and the correctness of the translation. The Chairman read a letter dated May 21 from the Acting Secretary to the Prime Minister to the Clerk of the House stating that the photostat copies above referred to, which had been received by the Department of External Affairs, Pretoria, February 20, 1946, had been obtained from original documents discovered in Germany by the Allied Forces of Occupation. The present

<sup>1</sup> P. xviii.

<sup>2</sup> P. xiv.

whereabouts of these original documents was not known to the Government.

Both Counsel then addressed the Committee.

It was also resolved that copies of all papers called for by the Committee or produced by Counsel for Dr. Malan be supplied to the Counsel for the Government for his own personal use.

At the *fourth*<sup>1</sup> meeting, Counsel for the Government handed in as an exhibit the Government's Departmental file of Mr. W. S. Radley.

At the *fifth*<sup>2</sup> meeting of the Committee it was decided that, with reference to the application of the Counsel for Dr. Malan for discovery of documents relating to Mr. and Mrs. Denk, the procedure be as follows: (1) that in regard to documents which the Government Counsel had no objection to disclosing to the Counsel for Dr. Malan, he shall make discovery of such documents; and (2) any documents which the Government Counsel might object to disclosing to the Counsel for Dr. Malan be laid before the Committee which shall then decide in how far the Counsel for Dr. Malan shall have access to them.

At the *sixth*<sup>3</sup> meeting of the Committee sworn translations into English and into Afrikaans from the said English translation of the German Foreign Office documents were Tabled by the Chairman.

Mrs. Denk, on being called as a witness and informed of the said S. 23<sup>4</sup> of the Act No. 19 of 1911, thereupon asked to be represented by Counsel, and the Committee allowed her Attorney to address the Committee.

Counsel for the Government intimated that he considered it desirable that he should not make discovery of Government files relating to Mrs. Denk until he had presented the evidence he proposed calling.

It was resolved (a Motion, consideration of which had been postponed at the *third* meeting):

That there be laid before the Committee all files, documents or other records in the possession of or under the control of the Union Government or the Administration of South-West Africa relating to Mr. Hans Denk, Mrs. Denk, Mr. and Mrs. Radley and the person referred to as Karlowa in the German Foreign Office documents referred to the Committee.

It was also resolved: That in the event of it being intimated to the Chairman that Mrs. Denk wished to be represented by Counsel, the Chairman take the necessary steps to obtain the leave of the House for the Committee to hear Counsel to such extent as it thinks fit on behalf of persons called as witnesses.

<sup>1</sup> P. xxii.

<sup>2</sup> P. xxiii.

<sup>3</sup> P. xxiv.

<sup>4</sup> Which reads:

23. (1) Every witness before Parliament or a committee who shall answer fully and faithfully any questions put to him by Parliament or such committee to its satisfaction shall be entitled to receive a certificate under the hand of the President or Speaker or the chairman of the committee or presiding member (as the case may be), stating that such witness was upon his examination so required to answer and did answer any such questions. (2) On production of such certificate to any court of law such court shall stay any proceedings civil or criminal except for a charge for perjury against such witness for any act or thing done by him before that time and revealed by the evidence of such witness and may in its discretion award to such witness such expenses as he may have been put to.

In regard to the question as to cross-examination by the Government Counsel which had been raised at previous meetings, it was resolved:

That, although presumably precluded by the terms of its Special Report of the 20th May, adopted by the House on the 21st *idem*, from giving Counsel appearing on behalf of the Government the right of " cross-examination " in the full acceptance of that term, the Committee is prepared to extend to him the facility of putting questions with the leave of the Committee and through the Chairman to elicit information which may be useful for the presentation of the evidence on behalf of the Government.

Counsel were recalled and informed of the decisions of the Committee.

The Chairman then put in a letter from the Attorneys for Mrs. Denk stating that their client was quite prepared to give evidence subject to the following conditions.

- (1) That our client is given complete indemnity and that such indemnity shall further cover her husband Hans Denk.
- (2) That the evidence to be given by our client shall be confined to her interview with Dr. Malan and shall not extend to facts outside that interview.
- (3) That our client in due course be granted a Certificate in terms of Section 23 of the Powers and Privileges of Parliament Act, 1911.

Mrs. Denk's Attorneys further stated that, subject to the above conditions being accepted, their client would not request further legal representation at the hearing, save that she wished to have Counsel to hold a watching brief while she gave evidence.

Whereupon the following Resolution was taken:

Resolved: (1) That in the opinion of the Committee Mrs. Denk is fully covered by the indemnity provided for witnesses under Section 23 of the Powers and Privileges of Parliament Act, 1911, and that she may rightly refuse to give an answer to any question which may incriminate her husband.

(2) That the evidence to be called from Mrs. Denk be confined to matters having a bearing on her interview with the hon. member for Piketberg.

(3) That Mrs. Denk be informed that, subject to her evidence complying with the requirement of Section 23 of the Powers and Privileges of Parliament Act, 1911, she will be entitled to receive the certificate barring civil or criminal proceedings against her, referred to in the said Section.

(4) That in terms of Standing Order No. 241 (*here is given the name of the partner and the firm of Mrs. Denk's Attorneys*) have leave to be present during the examination of Mrs. Denk, but that he have no right to take part in the proceedings other than advising Mrs. Denk.

Counsel were then recalled, and the Attorney for Mrs. Denk being in attendance, the Chairman informed Mrs. Denk and her Attorney of the Resolutions of the Committee.

At the *seventh*<sup>1</sup> meeting of the Committee it was resolved:

That a copy of the evidence given by Dr. the Hon. D. F. Malan, M.P., be supplied to the Minister of Justice for his own personal use only in preparing his further evidence.

At the *eighth*<sup>2</sup> meeting:

<sup>1</sup> P. xxvi.

<sup>2</sup> P. xxvii.

Counsel for Dr. Malan addressed the Committee in regard to items (1) and (4) and the Instruction.

Counsel for the Government addressed the Committee in regard to items (5) to (7).

Counsel for Dr. Malan requested the Committee to give consideration to the question of recommending that the costs incurred by Dr. Malan in connection with the inquiry be paid by the Government.

At the *ninth*<sup>1</sup> meeting the Chairman Tabled a letter from the Acting Secretary to the Prime Minister, forwarding, in compliance with the Committee's Resolution of the 4th instant, certain information on the subject of the Committee's inquiry and not contained in the Department files made available to the Committee through witnesses.

At the *tenth* and *last* meeting the Committee agreed upon their Report.

Upon all occasions when the Committee deliberated the room was cleared.

The Committee in their Report<sup>2</sup> remark that more than once both Counsel for the Government and Counsel for Dr. Malan asked for the guidance of the Committee as to the interpretation of their respective functions. The Committee desired to point out that at no time was it their intention that either Counsel for Dr. Malan or Counsel for the Government should act in any way as prosecuting Counsel nor did they so act. It was clearly understood by the Committee and by Counsel that there was no charge against Dr. Malan nor was there any accusation against the Government, and the Committee was particularly careful not to convert the inquiry into a charge. The Committee had in mind that the rules of Parliament have always required that a charge against a member should be couched in definite and specific language.

Neither Counsel for the Government nor Counsel for Dr. Malan was called upon to undertake anything in the nature of a detailed cross-examination. All witnesses, including Dr. Malan himself, were questioned by members of the Committee after their examination-in-chief.

**Evidence.**—The following is a list of the witnesses called, with the number of the Questions asked them against each name:

Dr. K. Bremer, M.P. for Stellenbosch and a Front Bench member of the Opposition (469-621); Dr. A. C. Cilliers, Professor Physics, University of Stellenbosch (429-460); Mrs. Thyra Elizabeth Margarethe Denk (933-1157); Mr. W. C. du Plessis, a former Assistant Secretary to the Department of External Affairs (97-146); the Hon. H. G. Lawrence, K.C., M.P., Minister of Justice (1158-1500); Dr. the Hon. D. F. Malan (147-428); Brigadier R. J. Palmer, Commissioner of Police for the Union (847-932; 1501-1505); Mr. J. D. Pohl, Acting Secretary for External Affairs (1-96; 807-846); Mr. C. R. Swart, M.P., Winburg, a member of Dr. Malan's Party (461-468); and Colonel

<sup>1</sup> P. xxviii.

<sup>2</sup> Rep. § 5.



Sir Theodore G. Truter, K.B.E., Chief Control Officer of the Union (622-806).

Below are given some interesting points in the evidence.

The text of the translation of photostat copies of documents taken from the German Foreign Office as contained in (A), (B) and (C) of the Appendix to the Report is as follows:

TRANSLATION OF PHOTOSTAT COPIES OF DOCUMENTS TAKEN FROM  
GERMAN FOREIGN OFFICE.

(A)

Hauptreferat VI.  
Kolonien,  
SECRET.

Berlin,  
22nd November, 1940.  
KA/HR.

NOTES FOR THE REICHSMINISTER FOR FOREIGN AFFAIRS.

Referring to my notes of 2nd December, 1939, in which I suggested that a declaration as attached\* be transmitted to the Leaders of the South African Opposition, I have to report that having obtained the permission of the Reichsminister to do so, I have sent FRAU MARIA RADLEY to South Africa.

Meantime FRAU RADLEY has arrived in Bloemfontein and has sent a message to her husband—as the latter informed me—which after deciphering reads as follows:—

" Handed in All correct, atmosphere healthy, satisfied with contents, possibility of showing speedy reaction uncertain."

It is thus clear (1) that Opposition Leaders HERTZOG and MALAN know the offer of the German Government, and that they also know that it lies in their power to make the offer an official one.

(2) that an immediate decision, especially by HERTZOG, cannot be expected however.

As it can be seen from to-day's news of the D.N.B. (Deutsche Nachrichten Buro NY 53 Westen, Sheet 2 and 3) General Hertzog has even declared to a special correspondent of the De Hague Paper *Het Vader-Land*, that the South Africans believed they would face grave dangers if Germany won the war.

The transmission of the Declaration through Frau Radley was therefore just in time, so that these foolish fears of Hertzog can be counteracted and that the Group Malan-Rendsburg be given the possibility to influence the old General by submitting reasonable propositions.

(Signed) KARLOWA,  
South African Union. 147829.

\*1. The German Reichs Government at the conclusion of peace with the Union of South Africa will recognize the Union's territory consisting of the Cape Province, Transvaal, Orange and Natal, as well as of the three Protectorates Swaziland, Basutoland and Betchuanaland, and it will guarantee such territory.

2. The German Reichs Government in the case of a conclusion of peace with the Union will issue a Declaration, that Germany is not interested if the Union of South Africa extends her territory to the Southern Rhodesia of today.

3. The German Reichs Government is prepared to conclude a long term Commercial Treaty with the Union of South Africa after the conclusion of peace.

4. The German Reichs Government declares, that by demanding the return of its colonies it has in mind to extend its basis of raw material so as to make

certain the provisioning with tropical and sub-tropical raw materials from its own African Colonies.

5. The German Reichs Government, however, does not intend the creation of an independent state on African soil and it recognizes the Union of South Africa as the leading white state in the South African living space.

147830.

( B )

Hauptreferat VI.

Berlin,  
29th March, 1940.  
MO/HR.

## NOTES FOR THE HERR REICHSMINISTER FOR FOREIGN AFFAIRS.

I submit herewith the passages of interest for you of the discussion with Dr. Malan, from a comprehensive report of HERR HANS DENK, concerning his journey to South Africa undertaken on instruction of the Reichsminister for Foreign Affairs, with a view to getting into touch with the Nationalist Opposition.

(Signed) KARLOWA.  
66170.

( C )

EXCERPT

66171-66174.

from the report by Herr Hans Denk on his journey to South Africa.

It was my instruction firstly to contact Dr. Malan who had proved himself to be a fighter. On the 15th January, my wife travelled therefore, from CRONDAAL to CAPE TOWN, leaving our son behind, and already on 16th January she had a long discussion with Dr. Malan (the contents of which discussion I shall forward later). *Dr. Malan was extremely grateful for the news he received, and asked my wife to convey his sincerest thanks to me. He gave the assurance that he would build up and work entirely on the lines suggested by us.* He said, moreover, that he would at once talk with General Hertzog and all the leading National(ist) Afrikaners with a view to influencing at once their respective speeches to be delivered in Parliament:

Dr. Malan was told:

The German Reich is surprised that the Union of South Africa is willing to enter the war for Great Britain. The REICH has nothing against the (SOUTH) African people and in general does not want the war. Great Britain has declared war on Germany. Germany has accepted this declaration of war and is waging this war against Great Britain. The German people are desirous of living in friendship with the National(ist) Afrikaner people. The sympathy of the German Government for the Afrikaner goes even so far, that they would be assisted, if they desired seriously to win their independence and to stand on their own feet.

The German people do not doubt for a moment that this war, caused by Great Britain, will end with the absolute victory of Germany. The German Government will dictate the peace terms to Great Britain.

Responsible German circles are prepared to see that the wishes of the National(ist) Afrikaner people materialize. In this connection it may be that the 3 provinces BECHUANALAND, SWAZILAND AND BASUTOLAND will be allocated to the South African Government. The German Government does not claim for itself anything that belongs to the Afrikaner people. On the contrary—as already mentioned—the German Government is willing to assist them to develop and to grow to the fullest degree.

It is not understood why the Union of South Africa robs Germans, who

have committed no crime, of their freedom, interns and maltreats them, the less, because here in Germany, no Afrikaner has been interned.

It must be stressed once more, that the German Reich regards it as a matter of course, that her colonies, in this case SOUTH WEST AFRICA, be returned to her without further ado.

The decision lies with the Afrikaners themselves. Do they intend to refuse the hand of friendship offered them by Germany, or do they intend to accept it and in accepting it to take the initiative on their own to shape and better their own fate? The FUEHRER has said: The German people will be faithful to the peoples who wish us well and who prove faithful to us.

It is a matter for the national Afrikaner people themselves to form a national government with a view to declaring absolute neutrality or to possibly concluding a separate peace with Germany, according to what they think to be the proper thing to do. Further, I had Dr. Malan told through my wife that the fundamental condition before reaching this goal would be for the Afrikaner people to become completely united in their own ranks.

(NOTE: I think I can say that this unity has now been accomplished. The whole national Afrikanerdom has placed itself with Malan under the leadership of General Hertzog.)

I had it conveyed to Dr. Malan, that I would be waiting in LOURENÇO MARQUES, in case he were able to despatch a fit and proper representative of his to act as a Liaison Officer. My wife informed me, however, after consultations with Malan, that such a step would be too great a danger for the whole enterprise. Apart from that, this is made impossible by the strict control, the policing of the border, etc., the Secret Service in LOURENÇO MARQUES, etc., etc. Dr. Malan was further told, if that were not possible, then he could count on it that in LOURENÇO MARQUES connection could be established through the firm of SCHROEDER & LEIDENBERG (JUSTUS). This party member Leidenberg already mentioned previously would then bring the Liaison Officer to Dr. Werz of the local German Consulate.

In this connection Dr. Malan was further informed, that at any time he could send through me a confidential agent to Europe after this first connection being established, when his work had sufficiently advanced and if he thought it advisable, the route *via* Italy and Portugal being the most convenient in my opinion. Since he as well as General Hertzog, were personally acquainted with me it would be possible at any time, if so desired, to forward communications to the German Reich, *via* JUSTUS, LOURENÇO MARQUES already mentioned and in such case I would meet the envoy in question at a suitable place in Europe to bring him to the responsible people.

It was known to me that General Smuts tried to explain to the Afrikaner people, that if they did not join in the war against Germany, Great Britain would despatch 200,000 Australian troops to Africa to occupy South Africa. When this did not have the desired effect, he tried to make the Afrikaner people believe that the Italians in possession of Abyssinia constituted a grave danger for South Africa. In this connection I had him informed that the best example for the South Africans to follow in their actions to gain their independence and to stand on their own feet was the effort by the Irish. Ireland is determined to enforce her unrestricted independence and to have Northern Ireland allotted to her and she will succeed in it. Ireland is very near Great Britain and is easily accessible, but Great Britain is not even in a position to despatch troops to Ireland to prevent the realization of the Irish ideas. Moreover, it should be taken into account that the war now raging will develop with the speed of lightning and I would advise the Afrikaner people to make up their minds quickly what to do and where to go, lest they be too late in the end. . . ."

In reply to a Q. by Dr. Dönges<sup>1</sup> Mr. Pohl quoted from the signed German documents the following paragraphs of the letter received from the Special (Rein) Mission:

I forward herewith the following photostatic copies (with translations) of documents seized by the Allies in Germany, photostatic copies of which are presently housed in the Library of the Foreign Office, Old Stationery Office Building, Prince's Street, London, S.W.1.

4. Notes by Karlowa for the German Minister for Foreign Affairs, giving a résumé of the peace terms with the Union of South Africa, handed to the Opposition (Messrs. Hertzog and Malan) dated 22nd November, 1940 (Nos. 147829-147830). Mrs. Radley's activities will be followed up here, though I am of opinion that more information about her will be found in the Union. I have not forwarded a copy of the translation to our Military Intelligence at General Headquarters in the Union, as Mrs. Radley is a civilian. I have also not informed (Decompol) hereabout as my only information about her is contained in the photostat.

Paragraphs 5 and 6 deal with something else, and paragraph 7 says this:

7. Two copies of translation of the covering Minute from Karlowa to the German Foreign Minister (dated 29th March, 1940) (No. 66170) and two copies of the translation of the report of Hans Denk's journey to South Africa and of his interview with Dr. Malan about 16th January, 1940 (Nos. 66171 to 66174).

In reply to a Q.<sup>2</sup> by the Chairman as to who was Karlowa, Mrs. Denk in her evidence said that he was a subordinate official of the Foreign Office in Berlin.

In reply to Q.s by Dr. Stals and Mr. Faure, Mr. du Plessis in his evidence said that the Police were put on Hans Denk's track because it was thought he was a spy.<sup>3</sup> Later, witness heard that Hans Denk had fled the Union.<sup>4</sup>

On examination of Dr. Malan, his Counsel (*through the Chairman*) asked whether he at any time during the War had underground contact with Germany, to which the witness replied—"None whatsoever".<sup>5</sup>

In reply to a further such Q. by his Counsel, as to whether he would ever have been prepared to entrust messages with regard to policy to German or so-called German agents, Dr. Malan replied: "No, my standpoint in regard to the War was clear to anyone. Our policy was public. There was no need to send a message or grant any interviews".<sup>6</sup>

In reply to a Q. (*through the Chairman*) by Dr. Malan's Counsel, witness said that as far as he could remember Mrs. Denk stated that she had an important message which she had to convey to him verbally as it was given to her. The reply of the witness to Q. 205 was:

As far as I can remember she said that she had an important message which she had to convey to me and, as far as possible she had to convey to me verbally as it was given to her. She added that she had nothing in writing, because in the nature of the matter she could not have anything in writing. The message was, as far as I can recall, firstly a declaration of Germany's and the German Government's goodwill towards South Africa. I can remember that she spoke about the feelings of goodwill that Germany had always had

<sup>1</sup> Q. 44.  
<sup>4</sup> Q. 132.

<sup>2</sup> Q. 943.  
<sup>5</sup> Q. 147.

<sup>3</sup> Q.s 114, 115, 127, 128.  
<sup>6</sup> Q. 150.

and still had toward the Boer Nation, and that it was a pity that South Africa had declared war against Germany. With regard to the future the German Government and the German people, or both, I cannot say precisely, appreciated the aspirations of the Boer Nation with regard to their own destiny and future. With regard to the future, if Germany won the war, then Germany wanted the Union to become independent and that the Union should then consist, I think it was mentioned separately, of the Cape Province, the Free State, the Transvaal and Natal, and that the British Protectorates would be added. I think the Protectorates were also mentioned individually. I think she also said, but I do not remember quite clearly, something about Rhodesia and that, if the Union wanted to incorporate Rhodesia, it would at least have the approval of Germany after she gained the victory. With regard to South-West Africa, she said that Germany claimed the return of her colonies, also South-West. Germany wanted South-West Africa back. That is about all that the interview was about, except that she said at the end—the interview did not last long—that if I wanted to enter into negotiations with those who had given the message—I understood from that that it would be direct with her husband in Lourenço Marques, and in that way the German Government, I then could make use of an address which she mentioned. She did not mention a specific place, of that I am certain. It might have been a post office box address, but then it must have been in Cape Town, for if it was at another place, she must naturally have mentioned the name of the place. She mentioned no such other name. She gave a number. Whether it was the number of a post office box in Cape Town or a number of a telephone to which I should ring up, I cannot say. It was one of the two. All I can remember is a 3, but the number mentioned consisted of more figures. I repeat it was something with a 3 in it. I did not give so much attention to it that I endeavoured to remember it.<sup>1</sup>

The witness was then put under detailed examination as to the document given in Appendix C.<sup>2</sup>

To Counsel for Dr. Malan addressing the Committee through the Chairman, witness also said that he had not made any report of the message to any of the authorities.<sup>3</sup> In reply to Mr. Pocock, witness said that the whole matter was of too little significance to him and also that it was impossible for him at that stage to determine whether he had to deal with a German agent or a trap.<sup>4</sup>

Questioned by Dr. Stals, witness replied that he did not get the impression during the interview that Mrs. Denk had direct or indirect contact with the German Government otherwise than through her husband. The impression of Dr. Malan was that Mrs. Denk had not been in Germany at all and that she had no direct contact with the German Government, but only brought a message from her husband.<sup>5</sup>

In reply to Mr. Faure, witness said that his attitude was, that if Germany had any policy in connection with South Africa's future at the end of the War, and if she should be in a position to decide about the fate of South Africa, then Germany would not have made known that policy to him and other Leaders in South Africa through that channel, by sending somebody with a message. They would have made a statement before the world to that effect. Witness did not really

<sup>1</sup> Q. 205.<sup>2</sup> Q.s 226-52.<sup>3</sup> Q. 256.<sup>4</sup> Q. 257, 329.<sup>5</sup> Q. 228.

accept the message as an authoritative statement by the German Government.<sup>1</sup>

In reply to Q.s by Mr. Pocock, witness said that 4 attempts had been made to trap him, but on no occasion had he reported the matter to the Police.<sup>2</sup>

Mr. Pocock then asked the following Q.s:

345. Q. If you had reported this first case, when Dr. Bremer was present, to the Police, would it not have put you in a very strong position, so far as the Police were concerned with regard to the question of trapping, if no steps were taken in regard to the person who had tried to trap you ?

A. I do not understand the question very well.

346. Q. Here, obviously, you were the leader of a party, and if the Government or someone tried to trap you and you were to report that trap to the Police, and a German trap at that, and no steps were taken by the Government, would it not have put you in an extraordinarily strong position in regard to any question in Parliament with regard to traps in future ?

A. Yes, it may be so, but I did not look at the matter from that point of view. As I say it was not a case of what party would benefit by it. That was not a question that occurred to me. As I said I would not report a trap that came to me. I mentioned it on platforms and I mentioned it in Parliament and everybody knew it. At that time the country was swarming with traps. Speeches in Parliament prove this at the time. Why I should have reported one or the other that came to me, I do not know. I have stated that for my own protection I did not wish to do it, and besides I would just be helping the Government to send others who could attain their purpose in another and better way.

Both Sir Theodore Truter, Chief Control Officer of the Union, and Brigadier Palmer, the Union Commissioner of Police, refuted the statement that instructions had been given to trap members of the Opposition.<sup>3</sup>

The next witness was Brigadier Palmer, Commissioner of Police, who, in examination by the Government Counsel (*through the Chairman*) in reference to Mr. Hans Denk's activities, quoted the following from p. 2 of a Police Report of February, 1939:<sup>4</sup>

Hans Denk, who for years has been just an ordinary farmer, has recently come into prominence. At the moment he is Chairman of the Agricultural Chamber, travelling the country, ostensibly for the purpose of organizing the farmers with a view to the marketing of their products and generally to promote trade with Germany. In this rôle he gets into touch with the Afrikaner section of the community, and is in a position generally to discuss politics with them and to promote German interests. It is considered that his connection with the Agricultural Chamber is just a cloak to cover his activities, which are to promote hostility against the Union Government and to organize Afrikaners in the Union and South-West Africa, whose sympathies are pro-German. It is perfectly clear that Denk must be receiving considerable financial aid from German sources. He is known to be a type of person who is not likely to spend his own money on other than personal causes. Denk's travelling expenses alone must run into quite a considerable amount.

<sup>1</sup> Q. 296.      <sup>2</sup> Q.s 341-4.      <sup>3</sup> Q.s 721, 722; 926-9; trapping is a system used in certain types of criminal cases.—[ED.]      <sup>4</sup> Q. 869.

On examination by the Government Counsel (*through the Chairman*) continuing:

A further Police Report of 1939 read:

The leading man of the anti-British section of the Germans in S.W.A. is a man by the name of Hans Denk, who was recently in Johannesburg and Pretoria. I saw him off when he left by plane for Windhoek. He was brought to the aerodrome by one of Adler's employees in an Adler car. This man is a farmer. Before the British occupation he was married to a bastard woman by whom he has two children. His son, also Hans Denk, is still in S.W.A., while his daughter is on the stage somewhere in Germany. Just before the occupation he managed to get a divorce from this bastard woman through the aid of a German missionary in Rehoboth. He was arrested once in S.W.A., on a charge of stock theft and got off. Whilst in Germany he addressed large meetings. One in particular in Nuremberg was attended by about 4,000 people. Denk has been bragging in S.W.A., about his interview with Herr von Ribbentrop and Herr R. Hess, and it is quite certain that he is one of the greatest leaders of Nazism in S.W.A., and believed in the Union alike, hence his frequent visits to the Union.<sup>1</sup>

A Police Report of January, 1940, in regard to Hans Denk stated:

With reference to your telegram No. 490 of 25.9.39 and further to my telegram 107 of same date, on above subject, I have the honour to report that I have received information that Hans Denk has recently landed at Lourenço Marques, and has been granted a permit by the Portuguese authorities to remain there for three months. He will seize an opportunity to enter the Union or this Territory.

I recommend his immediate internment should he enter the Union. A watch is being kept here and he will be interned at Windhoek as soon as he appears.<sup>2</sup>

Further evidence quoted from Police Reports by witness showed that Mrs. Denk made application for a rifle. She also wrote a letter, which was censored, in regard to the removal of wirelesses from certain Germans in the Territory, and in 1941 she was asked by the Police why she wrote such a letter and she said that she meant what she wrote. She also indicated in a form which had to be filled up by people under suspicion, that she was a member of the Nazi Party and that she hoped Germany would win the War.<sup>3</sup>

Witness also stated that on a form bearing the date stamp of the Consul-General, Lourenço Marques, January 9, 1940, Mrs. Denk is shown as embarking at Trieste and the port of Debarkation, Lourenço Marques, showing that she was returning to her home in South-West Africa.<sup>4</sup>

Mrs. Denk was the next witness, who, in reply to Q.s by the Chairman, said she was born in 1897 at Louisenhof, near Windhoek, South-West Africa, and that she was living on the farm Mecklenburg in the Windhoek District. Her husband was automatically naturalized; before that he was a German national and he was now in Germany. Witness then gave a detailed account of her visit to Dr. Malan, on the lines of the evidence given by Dr. Malan.<sup>5</sup>

<sup>1</sup> Q. 870.

<sup>2</sup> Q. 884.

<sup>3</sup> Q.s 897, 899, 904, 911, 913.

<sup>4</sup> Q.s 921, 922, 923.

<sup>5</sup> Q.s 933, 934, 937, 939.

In reply to a further Q. by the Chairman as to what she told Dr. Malan, witness said:

Yes. I then told Dr. Malan that Germany wanted to live in peace with the Afrikaner people; that no enemy action was planned against the Afrikaner people; that, on the contrary, Germany would welcome a great and strong South Africa. Therefore, Germany would suggest to South Africa to remain strictly neutral. Germany would have no objection against the Crown Colonies, such as Swaziland, etc., coming into the Union; that the German Colonies were a question of honour to the German people. That was all.<sup>1</sup>

In reply to the Chairman, witness said that Dr. Malan did not express himself in any way, and on account of that witness said “ that I was inwardly rather disappointed ”.<sup>2</sup> After the interview witness said that she travelled to South-West Africa and stayed and worked on her farm for 6 years.<sup>3</sup>

The next witness was the Minister of Justice, who during the course of his evidence when under cross-examination by Dr. Malan’s Counsel (*through the Chairman*) was asked:

1200. Q. Did you, before you disclosed this document and put Dr. Malan under a cloud, make any endeavour to ascertain what relation the allegations contained in this document had to fact ?

A. I considered these documents as being copies of original documents in the custody of the German Foreign Office. They were passed on to me as such, and I had to consider what my duty was in relation to those documents, and it seemed to me that there were two courses open to me. Either I could have pigeon-holed those documents, and done nothing about them, or I could have disclosed the contents of those documents in one form or another. There was the question of a possible action being instituted in the criminal courts against Dr. Malan. I think you will agree with me that there was no ground for taking such action. These documents did not warrant such an action being taken, and no charge of a criminal nature arising out of them could be framed against Dr. Malan. There was, therefore, left to me the question whether I had any doubt in my mind, in my capacity as Minister of Justice, not to disclose these documents. That was the choice I had to make. It seemed to me that the documents contained allegations of such a serious nature that it was my duty to disclose them, and my decision was to disclose them to Parliament.

In the course of a reply to a later Q.<sup>4</sup> witness said:

The view I took was that it was quite irrelevant to conduct any further inquiry, because the Department was not considering any charge against Dr. Malan. We did not consider any charge in a criminal sense. I must again say that, whether the allegations in the documents were correct or not, my conception of my duty was that those documents should be placed before Parliament by me, and that Dr. Malan should be given an opportunity of saying whether the allegations were correct or not. Because I would repeat that no charge of a criminal nature was made or could have been made. The only charge that could have been made, if those allegations were correct, was that Dr. Malan had been visited by an enemy agent who had purported to have delivered a message from the German Government, and she had in fact delivered it,

<sup>1</sup> Q. 971.

<sup>2</sup> Q. 974.

<sup>3</sup> Q. 1015.

<sup>4</sup> Q. 1344.



and that it was his moral duty to have disclosed that information to the authorities whatever his views in regard to the war might have been.

1346. Q. You did not put that document before him before you disclosed it in public ?

A. No. I considered it my duty to place that document before Parliament so that Dr. Malan could have an opportunity of saying whether it was correct or not.

Further, the witness, in reply to a Q. by Dr. Stals, said :

. . . the charge which other supporters of the Government have made against the Nationalist Party, is not that they actively sabotaged the war effort in the sense of giving away information of a vital character—which, for example, endangered our troops—but that they played what we call the " Nazi Game ", in the way in which the Reich Government wanted them to play it. That is the charge we made. It is a political difference of opinion. That is the charge.<sup>1</sup>

The following Q.s were put by Mr. Christie :

1411. Q. In answering a question put to you by Dr. Dönges you said that you did not think it necessary to give prior notice to Dr. Malan with regard to these documents.

A. That is so.

1412. Q. Everyone has their own standard with regard to that, but is it not a Parliamentary custom for a member intending to make a charge against another member—is it not etiquette to tell that member that you intend making a charge against him and also to tell him the nature of the charge ?

A. I think if one is going to make a specific charge against a member then the answer is " yes ". On this occasion, I repeat, I did not go into the House with the fixed or set intention of producing the document. I did feel that an appropriate occasion might present itself for producing the document. I felt that possibly the discussion in Committee on internments would enable me to produce that document to the House. On producing the document I did specifically state that I did not make a charge against Dr. Malan. There was nothing to make a charge on, except this, that, if the statement in the document was correct, I felt that Dr. Malan ought to have reported it to the authorities. My other allegation was a political one, namely, that the documents, if correct, showed that there was a state of mind in this country which the Germans anticipated there was amongst the Opposition. It was not a case of laying a criminal charge that Dr. Malan had a conversation with a German agent.

In reply to a Q.<sup>2</sup> by the Chairman, the witness said :

My main concern was whether the allegations contained in the document were correct or not. They might not have been correct. If they were correct, then I certainly considered that the Leader of the Opposition had failed in his duty—that if these allegations were correct, my view was that the Leader of the Opposition had failed in his duty to bring to the notice of the authorities these occurrences.

The following Q.s were put to the witness in further cross-examination by Dr. Malan's Counsel (*through the Chairman*):

<sup>1</sup> Q. 1398.

<sup>2</sup> Q. 1448.

1453. Q. You said when you got this document you saw that there could be no charge, for obvious reasons. What were those reasons ?
- A. The obvious reasons were (a) that no charge could be founded on a document and (b) that the production of that document in a court of law would not help to found a case of high treason.
1454. Q. Your first reason was that you did not have evidence ?
- A. No. If you will just allow me to follow it up. You asked me my reasons. My first reason is that the document itself is not evidence. That document purports to be an account of the activities of Mr. and Mrs. Denk, and I realized the unlikelihood of Mr. and Mrs. Denk being willing to give evidence which would incriminate themselves, and that, even if they were prepared to make statements, that those statements would be valueless in the face of any denial by Dr. Malan. It was, therefore, quite obvious that no question of criminal proceedings against Dr. Malan could arise.

**Report.**—<sup>1</sup> The subject of paragraphs 1 to 4 has already been given either in the account of the initial debate in Committee of Supply or in the Order of Reference and the subject of paragraphs 5 to 11 of the Report is dealt with either under “ Procedure ” or “ Evidence ”. We shall therefore proceed to deal with the remaining paragraphs of the Report (12 to 34) which contain the findings of the Committee.

Before setting these out the Committee felt that they should mention that certain of the evidence traversed matters of detail which it was thought at the time might assist the Committee in arriving at its conclusions, but which, in the light of subsequent analysis, was regarded as going beyond a strict interpretation of the scope of the inquiry, and the Committee remark that even if they were competent to do so, they were not called upon to express any opinion on the evidence referred to.<sup>2</sup>

The Committee itself decided to subpoena Mrs. Denk as a witness after the Government Counsel had indicated that he did not propose doing so.

The findings of the Committee as contained in the Report in respect of the various paragraphs of the Order of Reference, were as follows:

*In respect of (1).* That Dr. Malan had no conversations with any of the persons mentioned in the German Foreign Office Documents except that with Mrs. Denk on January 16, 1940, at his private residence, and that the evidence showed that Mrs. Denk was the bearer of a message from enemy sources, but that it was insufficient to warrant a finding that she was an enemy agent, and since the Committee was satisfied that Dr. Malan did not at the time know that Mrs. Denk was an enemy agent it did not appear to be necessary to endeavour to determine whether or not she was an enemy agent.<sup>3</sup> *In respect of (2).* (Paragraphs 14-16 of the Report gave the details of the visit of Mrs. Denk to Dr. Malan, information in regard to which has already been given.)

Paragraphs 17-22 of the Report read as follows:

17. From what Mrs. Denk told him, Dr. Malan did not get the impression that she herself had had any direct contact with the German Government.

<sup>1</sup> S. C. 5-46.

<sup>2</sup> *Ib.* § 12.

<sup>3</sup> § 13.

He stated that, on the contrary, it seemed that she had not been in contact with any person in Germany. Her only contact was her husband, Hans Denk. The message, which was delivered verbally, purported to be a declaration of the policy of the German Government *towards* or in *respect* of South Africa in the event of Germany winning the war.

18. The salient points of the message which was delivered verbally to Dr. Malan by Mrs. Denk on behalf of her husband, who was in Lourenço Marques at the time, may be summarized as follows:

- (a) A declaration of Germany's and the German Government's friendliness towards South Africa.
- (b) An expression of regret that South Africa had declared war on Germany.
- (c) An assurance that if Germany won the war she would allow South Africa to become independent and that the Union would then consist of the Cape Colony, Orange Free State, Transvaal and Natal and "in this connection the matter of promising the South African Government the three provinces of Bechuanaland, Swaziland and Basutoland may possibly be considered".
- (d) An indication that Germany would, as a matter of honour, demand the return of her former Colonies, more particularly South-West Africa.
- (e) An intimation that if Dr. Malan should wish to contact the sender of the message, he could make use of a name or of a number which Mrs. Denk mentioned.

19. Dr. Malan did not say anything during the recital of the message by Mrs. Denk, but adopted a waiting attitude. Furthermore, he considered it was not necessary in the circumstances for him to say anything to develop the interview.

20. After Mrs. Denk had given Dr. Malan a certain number to which he could refer if he had any message, her part of the conversation ended. Dr. Malan then told her that his views and his policy were well known in South Africa, and on every opportunity, both on platforms and in Parliament, he had plainly and clearly indicated his and his Party's policy, which could be read in the newspapers. Dr. Malan said that he then courteously said goodbye and Mrs. Denk left. The interview lasted about fifteen or twenty minutes.

21. Mrs. Denk stated that she was inwardly disappointed in Dr. Malan's reception of her husband's message and his attitude thereto. She wrote two postcards to her husband in Lourenço Marques, one informing him that she had had the interview.

22. Dr. K. Bremer was present in the rôle of interpreter during the whole interview and he fully corroborates the evidence of Dr. Malan on the details.

*In respect of (3).*

23. Dr. Malan made no report to the authorities of the interview he granted Mrs. Denk.<sup>1</sup>

*In respect of (4).* Paragraphs 24 and 25 of the Report read as follows:

24. The main reasons advanced by Dr. Malan for not reporting the incident to the authorities may be summarized as follows:

- (a) The interview with Mrs. Denk made no impression on Dr. Malan. Incidentally, it may be mentioned that it made no impression on Dr. Bremer either. Both of them regarded it as so unimportant that they did not afterwards discuss it among themselves or among any of their political friends.
- (b) The message itself contained nothing new to Dr. Malan, as the subjects

<sup>1</sup> § 23.

which it covered had already become well known and were, it may be said, notorious. Furthermore, the message did not contain anything which could endanger the safety of the State.

- (c) Dr. Malan had to have regard to the fact that Mrs. Denk, who was a Union National, may have been a trap. He did not form any definite conclusion on the point during the interview although he said he had to keep account of it. Furthermore, he did not at that time know that Mrs. Denk's husband was under suspicion as a German spy.
- (d) Dr. Malan's suspicion that Mrs. Denk was a trap was increased by the fact that she indicated to him some channel of communication through which he could contact her husband.

The Committee find that the reasons given by Dr. Malan are, in view of all the circumstances at the time, adequate.

25. The Committee find that there was no connection whatever between the interview which Mrs. Denk had with Dr. Malan and the motion of which General Hertzog gave notice in the House of Assembly on the 19th January, 1940, in which he asked that the war against Germany be ended and that peace be restored.

*In respect of (5).* Paragraphs 26-29 of the Report read:

26. The Government was aware of the presence in this country of both Mr. and Mrs. Radley. They were Union Nationals and were in Germany when war broke out. It had been reported to the Government that they had broadcast to South Africa from Zeesen.

27. The Government was aware of the fact that Mr. Hans Denk was using his position as Chairman of the Agricultural Union of South-West Africa as a cloak to propagate Nazi ideas. He and his wife left for Germany shortly before the outbreak of war. The Government was also aware of the fact that he had landed in Lourenço Marques in January, 1940.

28. The Government was aware that Mrs. Denk had, as a Union National, returned to the Union *via* Lourenço Marques in January, 1940.

29. There was no information whatsoever in the possession of the Government to show that Mrs. Denk was in any way associated with the activities of her husband, and the Government had no knowledge of the activities ascribed to her which form part of the Committee's inquiry.

*In respect of (6).*

30. When Mrs. Radley returned to the Union from Germany in February, 1940, the question of placing her under control was considered by the Chief Control Officer, but procedure in that regard did not then exist in respect of Union Nationals and the question lapsed. She was, however, closely questioned and warned concerning the activities of herself and her husband whilst in Germany, but she adopted a non-committal and passive attitude.

31. Mr. Radley returned to the Union about three months after his wife, early in May, 1940, and a few days thereafter he was interned. He was released in November, 1940, subject to his undertaking to observe certain restrictions in respect of his movements, etc.

32. As far as Mr. Hans Denk was concerned, when the South-West African Police reported to the Union Government that he had landed in Lourenço Marques, suitable action was taken by the South African Police to see that he would be interned if he entered the Union. A search was actually made for him on his farm in South-West Africa by the Police. It appears he did not enter the Union or South-West Africa and he has not since done so.

*In respect of (7).* The Committee states in paragraph 34 of the Report that: “ the reason why no steps were taken against Mrs. Denk

is given in paragraph 29 of the Report", and the Committee finds that reason, in the circumstances, to be adequate.

**Debate on Report.**—On June 14,<sup>1</sup> the Report of the Select Committee was Tabled and consideration set down for June 18,<sup>2</sup> when the Prime Minister (Field-Marshal the Rt. Hon. J. C. Smuts) said that all sections of the House would be glad that the matter, after investigation, had been dealt with unanimously in the recommendations of the Select Committee, and he hoped that that course would be taken by all sections of the House.

The following were some of the arguments brought up during the debate:

The hon. member for Winburg (Mr. C. R. Swart) said that the Leader of the Opposition had been charged by a Minister of something tantamount to high treason, or something to be regarded as the twin brother of high treason.<sup>3</sup>

The hon. member for Beaufort West (Mr. Eric Louw) brought up the question of paying Dr. Malan's costs.<sup>4</sup>

The question of Privilege was raised in regard to a cartoon which appeared in a local newspaper of June 18, which represented the Select Committee's Report as a barrel of leaking wine, on the top of which Dr. Malan was shown as a mouse which had got drunk on the wine of the Committee's Report, and attention was directed to a press reference in "the Boothby Case"<sup>5</sup> where a statement had appeared in the *Aberdeen Press Journal*.<sup>6</sup> Mr. Speaker, however, ruled that the question should have been brought up at the earliest possible moment, namely, before the Order was read.<sup>7</sup> The case in the House of Commons on November 11, 1941, of Major Hammond Foot<sup>8</sup> was also quoted.<sup>9</sup>

The hon. member for Pietermaritzburg (Col. the Hon. C. F. Stallard, K.C.) referred to paragraphs 24 and 34 of the Report as expressing 2 definite opinions in regard to 2 matters referred to it for inquiry. In one, the Committee found that the reasons given by Dr. Malan were, in view of all the circumstances at the time, quite adequate. The other was in paragraph 34, namely:

The reason why no steps were taken against Mrs. Denk is set out in paragraph 29 and the Committee finds that reason, in the circumstances, to be adequate.

The hon. member did not agree with the findings of adequacy contained in such 2 paragraphs, and remarked on the unfortunate way in which this matter came before the House,<sup>10</sup> which was of prime importance to the safety and honour of the country. It was quite clear to his mind after reading the evidence that beyond a shadow of a doubt both Denks were German agents engaged in subversive activities here.

<sup>1</sup> 58 *Assem. Hans.* 10,207.    <sup>2</sup> *Ib.* 10,586.    <sup>3</sup> *Ib.* 10,587.    <sup>4</sup> *Ib.* 10,593; see also *JOURNAL*, Vol. XI-XII, 232.    <sup>5</sup> See *JOURNAL*, Vol. XI-XII, 90, 229.    <sup>6</sup> *Ib.* 232.

<sup>7</sup> 58 *Assem. Hans.* 10, 597.    <sup>8</sup> See *JOURNAL*, Vol. XI-XII, 236.    <sup>9</sup> 58 *Assem. Hans.* 10,599.    <sup>10</sup> *Ib.* 10,601.

No proceedings had been taken against them at all. There was machinery now for obtaining evidence which might have been of extreme value on the matter. The hon. member could not, therefore, agree with the findings of paragraph 29 of the Report (*for which see above*).

Had the Government been informed of what Mrs. Denk had said to the hon. member for Piketberg that evidence would have been forthcoming at once. The hon. member then quoted paragraph 27 of the Report (*which see above*).

How then could one say that the evidence justified the conclusion that the Government had no knowledge that Mrs. Denk was in any way associated with the activities of her husband?<sup>1</sup> The evidence showed that the inference was practically irresistible that Mrs. Denk was so engaged. One could hardly see the reason why no steps were taken against Mrs. Denk.<sup>2</sup>

Having regard to the fact that the visit to Dr. Malan of Mrs. Denk had disclosed what appeared to be a shape of communication between a citizen of South Africa through Lourenço Marques into Germany had not justified the conclusion, for the reasons given, for not reporting them are adequate.

The hon. member therefore moved to omit all words after " That " and to substitute:

This House having noted the Report and the evidence heard and recorded by the Select Committee on German Foreign Office documents, is of the opinion that in the public interest a thorough inquiry should be held immediately by a Commission (with power to compel the attendance of witnesses and with the provision for their cross-examination) to hold an investigation into subversive activities and the aims thereof in relation to the Union of South Africa during or preceding the period of the War and subsequently.

The hon. member for Pinetown (Mr. J. S. Marwick) in seconding the *amdt.*, said that he had been in possession of evidence for a considerable time relating to the voyage of Mrs. Denk and her husband on an Italian liner from Trieste to Lourenço Marques.<sup>3</sup> There was no doubt that the means by which these German agents visited the Union constituted a well-laid-out practice, and numbers of them were provided with Union passports. His informant knew of the speeches made on board before arrival at Lourenço Marques.<sup>3</sup>

The Prime Minister said that he could not accept the *amdt.* of the hon. member for Pietermaritzburg (District). The Committee said<sup>4</sup> that there was nothing against Mrs. Denk except that she was the wife of Mr. Denk. Denk was known to be a subversive agent, but he had escaped this country before the War.

The hon. member for Winburg had raised the question of the costs in this case and the Government would consider the matter.

The amendment was then put and negatived and the original Question put and agreed to.

<sup>1</sup> *Ib.* 10, 602.

<sup>2</sup> *Ib.* 10, 603.

<sup>3</sup> *Ib.* 10, 604.

<sup>4</sup> § 29.

XVII. CEYLON CONSTITUTION, 1946<sup>1</sup>

BY THE EDITOR

AFTER ardent and persistent agitation since the passing of the Constitution of 1931, the people of Ceylon have been granted Parliamentary government.

Great care has evidently been taken in drafting this fundamental instrument to secure in the written word even provisions which are normally left to the elasticity of convention or Parliamentary procedure.

The road to this long-looked-for constitutional change in Ceylon has undoubtedly been paved by the Soulbury Commission which, together with certain White Papers, Questions, a Ministerial statement in the House of Commons in the latter half of 1945 and the State Council Resolution of November 8, of that year, were all dealt with in the last issue of the JOURNAL.

Other references in the House of Commons to constitutional matters in Ceylon during the 1944-45 and 1945-46 Sessions have been principally by Question and Answer, and relate to State Council elections pending its expiry in March, 1947:<sup>2</sup> the franchise;<sup>3</sup> the official language;<sup>4</sup> disqualification of members;<sup>5</sup> and the new Constitution itself.<sup>6</sup>

The Ceylon (Constitution) Order in Council, 1946.—The new Constitution for Ceylon was published in the *Ceylon Government Gazette Extraordinary* No. 9554 of May 17, 1946, and a brief description will be given of its features, so far as they affect the working of the Parliamentary machine and the exercise of the legislative power.

The Order was made "At the Court at Buckingham Palace" on May 15, 1946, in the presence of "The King's Most Excellent Majesty in Council". It opens with a 5-paragraph Preamble in which the former Constitution, the Ceylon (State Council) Order in Council, 1931, the 5 amending Orders of 1934, 1935, 1937, 1939, 1943, the Ceylon (State Council Extension of Duration) Order in Council of 1944 and the Soulbury Commission Report are referred to and set out in the First Schedule to the Order, all of which Orders are to be revoked when Part III of the 1946 Constitution comes into operation.

The Preamble also gives paragraph 10 of the Statement of Policy by H.M. Government in October, 1945.<sup>7</sup> The enactment words of the new Order read:

NOW THEREFORE, it is hereby ordered by His Majesty by and with the advice of his Privy Council, as follows:

The Order (which does not include the Maldive Islands) is divided into IX Parts which come into operation as given below.

<sup>1</sup> See also JOURNAL, Vols. II, 9, 10; III, 25; VI, 83; VII, 98; VIII, 83; IX, 12; X, 76; XI-XII, 76; XIII, 95; XIV, 200. <sup>2</sup> 414 *Com. Hans.* 5, s. 215, 1138. <sup>3</sup> 418 *ib.* 1709; 422 *ib.* 1862. <sup>4</sup> 421 *ib.* 2675, 449; see also Ceylon Sessional Paper XXII of 1946—a most comprehensive document.—[Ed.] <sup>5</sup> 425 *ib.* 229. <sup>6</sup> 422 *ib.* 216, 281. <sup>7</sup> See JOURNAL, Vol. XIV, 208.

Parts I (Preliminary); IV (Delimitation of Electoral Districts); and IX (Transitional Provisions, Repeals and Savings) on the date on which the Order is published in the *Gazette*, namely, May 17, 1946; Part III (The Legislature) on a day to be proclaimed by the Governor, being not earlier than 9 months after May 17, 1946; Parts II (The Governor); V (The Executive); VI (The Judicature); and VII (The Public Service) on a date to be proclaimed by the Governor, not being later than that on which the names of the Members of the First House of Representatives are published in the *Government Gazette*;<sup>1</sup> and Part VIII (Finance) on the first day of October next following the First Meeting of the House of Representatives.

*Interpretation.*—Those of the 18 definitions contained in S. 2., of particular Parliamentary interest, are defined as follows:

“Adjourn”—the termination of a sitting of the Senate or the House of Representatives;

“Dissolve”—the termination of a Parliament, which in reality is the termination of the House of Representatives, as Parliament (*vide* S. 7) consists of—the Governor, the Senate and the House of Representatives;

“Prorogue”—bringing a Session of Parliament to an end;

“Session”—from the first meeting of Parliament and those subsequently occurring after a prorogation or dissolution to the prorogation of Parliament or a dissolution of the House of Representatives;

“Sitting”—when either House is sitting continuously without adjournment.

*The Governor.* Section 3 (Exercise of Governor's functions) provides that in the summoning, proroguing or dissolving of Parliament (which shall be done by Proclamation), and in appointing and dismissing Ministers, the Governor must:

act in accordance with the constitutional conventions applicable to the exercise of a similar function in the United Kingdom by His Majesty.<sup>2</sup>

Section 4 also provides that no action or omission on the Governor's part shall be called in question in any court of law or otherwise on the ground that the foregoing provisions have not been complied with.<sup>3</sup> Also, where the Governor is under the Constitution directed to exercise a function on the recommendation of a person or authority he may only do so on such recommendation, but he may accept it or refer it back to the authority for further consideration, provided, that after one such reference the recommendation must be accepted by him.<sup>4</sup>

The section also lays down that where the Governor, by or under the Constitution, “is directed to act in his discretion,” he must refer the matter to the Prime Minister for advice, but the Governor shall not be bound to accept it and may “decide that matter in his discretion”.<sup>5</sup> Parliament must be summoned to meet once in every year.<sup>6</sup>

<sup>1</sup> Constitution: s. 2.   <sup>2</sup> S. 4.   <sup>3</sup> S. 4 (1).   <sup>4</sup> S. 4 (2).   <sup>5</sup> S. 4 (3).   <sup>6</sup> S. 15 (2).



Should there arise, after a dissolution of Parliament, an emergency of such a nature, that in the opinion of the Prime Minister, an earlier meeting of Parliament is necessary, the Governor may summon the Parliament which has been dissolved, for a date not less than 3 days from the date of the Proclamation and such Parliament may be kept in Session until the meeting of the new Parliament.<sup>1</sup>

A Proclamation proroguing Parliament is required to fix the date for the next Session, not being more than 4 months after the date of the Proclamation; provided that at any time when Parliament stands prorogued, it may be summoned for an earlier date (not being less than 3 days from the date of the Proclamation).<sup>2</sup>

A Proclamation dissolving the House of Representatives must fix a date or dates for the general election of Members of Parliament, and a new Parliament must be summoned to meet on a date not later than 4 months after the date of the Proclamation.<sup>3</sup> Should the Governor dissolve Parliament before the Appropriation Bill for the financial year has received Royal Assent he may, unless Parliament shall already have made provision, authorize the issue from the Consolidated Fund and the expenditure of such sums as he may consider necessary for the public services until the expiry of 3 months from the date on which the new Parliament is summoned to meet.<sup>4</sup> Otherwise, no sum may be withdrawn from such Fund except under the hand of the Governor addressed to the Minister of Finance and no such warrant shall be issued unless the sum has, by resolution of the House of Representatives or by any law, been granted for specified public services for the financial year during which the withdrawal is to take place or is otherwise lawfully chargeable on the Fund.<sup>5</sup>

*The Executive.*—The Executive power of the Island continues vested in His Majesty and is exercised by the Governor acting on his behalf in accordance with the Constitution.<sup>6</sup>

The Cabinet which has charge of the general direction and control of the Government of the Island (which means the Island and dependencies thereof, *vide* S. 2) is collectively responsible to Parliament and consists of a Prime Minister appointed by the Governor and Ministers similarly appointed on the recommendation of the Prime Minister, 2 of whom are respectively styled, "Minister of Finance" and "Minister of Justice". The Prime Minister is (in addition to any other matters he may assign to himself) in charge of the Ministry of Defence and External Affairs, and each Minister has the administration of such matters as are assigned to him by the Prime Minister.<sup>7</sup>

Not less than 2 Ministers, one of whom shall be Minister of Justice, must be members of the Senate.<sup>8</sup> The Constitution also provides for a Secretary to the Cabinet.<sup>9</sup>

*Parliamentary Secretaries.*—The Governor may, on the recommendation of the Prime Minister, appoint Parliamentary Secretaries not

<sup>1</sup> S. 15 (5).      <sup>2</sup> S. 15 (3).      <sup>3</sup> S. 15 (4).      <sup>4</sup> S. 67 (3).      <sup>5</sup> S. 67 (1) (2).  
<sup>6</sup> S. 45.      <sup>7</sup> S. 46.      <sup>8</sup> S. 48.      <sup>9</sup> S. 50.

exceeding the number of Ministers, to assist them in their departmental duties.<sup>1</sup> Likewise not more than 2 Parliamentary Secretaries may be members of the Senate.<sup>2</sup>

*Ministers and Parliamentary Secretaries.*—Each holds office during the Governor's pleasure and resigns office to him. Neither may retain office for longer than 4 consecutive months, without being a member of either House. Casual vacancies in office are filled by the Governor acting on the recommendation of the Prime Minister. They are also required, whether in an acting capacity or not, to take the official oath or affirmation laid down by the Promissory Oaths Ordinance before assuming office.<sup>3</sup>

*Legislature.*—The Parliament of the Island consists of the King, represented by the Governor, the Senate and the House of Representatives.<sup>4</sup>

*Senate.*—The Upper House is a permanent Body, therefore not subject to dissolution, and consists of 30 Senators of not less than 35 years of age, of whom 15 are elected by the House of Representatives before proceeding to any other business, and if contested by P.R., with the single transferable vote. Before the first election of Senators the Governor makes regulations for the method of election of Senators, which regulations have effect until Parliament otherwise provides.<sup>5</sup>

Casual vacancies (which are defined) are filled in a like manner, the Clerk of the House of Representatives informing both the Governor and the Clerk of the Senate of the result of the election. A separate election must be held for each casual vacancy among elected Senators.<sup>6</sup>

The other 15 Senators are appointed by the Governor acting in his discretion,<sup>7</sup> casual vacancies being filled in a like manner. But should there be at the same time a vacancy among the elected Senators the Governor may defer filling the vacancy of an appointed Senator until the vacancy among the elected Senators has been filled.<sup>8</sup> The appointment of Senators is notified to their Clerk in a certificate signed by the Governor setting out the name and date of appointment. This certificate is conclusive for all purposes and may not be questioned in any court of law.<sup>9</sup>

In the appointment of Senators, the Governor must endeavour to appoint persons who, in his judgment, have rendered distinguished public service or are persons of eminence in professional, commercial, industrial or agricultural life, including education, law, medicine, science, engineering and banking. The Governor may consult bodies or persons who he is satisfied are representative of any profession or occupation.<sup>10</sup>

The term of office of Senators both elected and appointed is 6 years from the date of election or appointment,<sup>11</sup> but one-third of the Senators retire every second year,<sup>12</sup> by division by the Senate of the Senators, at their first meeting, into 3 classes, each consisting of 5 elected and 5

<sup>1</sup> S. 47.      <sup>2</sup> S. 46.      <sup>3</sup> S. 49.      <sup>4</sup> S. 7.      <sup>5</sup> S. 72.      <sup>6</sup> Ss. 8 (5); 9.  
<sup>7</sup> S. 8 (1).      <sup>8</sup> S. 10 (1).      <sup>9</sup> S. 10 (2).      <sup>10</sup> S. 10 (3).      <sup>11</sup> S. 8 (4).      <sup>12</sup> S. 8 (3).

appointed Senators, the term of office of the first, second and third class terminating at the end of 2, 4 and 6 years respectively, from the date of their election, or appointment, as the case may be. Appointed Senators are deemed to be appointed on the day the elected Senators are elected.<sup>1</sup>

*House of Representatives.*—The first House of Representatives is to consist of 101 members, 95 of whom are to be elected according to the laws in force therefor and 6 appointed by the Governor at his discretion.<sup>2</sup>

The elected members are elected by law and when, after any general election it appears to the Governor that any important interest in the Island is not represented or is inadequately represented, he may appoint to the House of Representatives such number of members not exceeding 6 as he thinks fit.<sup>3</sup> Likewise, when the seat of such a member falls vacant the Governor may fill it. In the exercise of these functions, the Governor acts at his discretion.<sup>4</sup>

Unless sooner dissolved each House of Representatives continues for 5 years from the date appointed for its first meeting, and the expiry of that period operates as a dissolution thereof.<sup>5</sup>

*Members of both Houses.*—Subject to the minimum age of Senators already referred to, the Constitution provides that all members of both Houses shall be qualified electors<sup>6</sup> and British subjects. A Senator is disqualified from being elected or appointed to the House of Representatives.<sup>7</sup>

*Disqualification for membership of either House* is, allegiance, obedience or adherence to a Foreign Power; holding a public or judicial office or that of Auditor-General; being an undischarged bankrupt;<sup>8</sup> imprisonment for certain periods during the preceding 7 years without a free pardon<sup>9</sup> or unsound mind.

(a) *Government Contracts.*—A member of either House is also disqualified:<sup>10</sup>

- (c) if he, directly or indirectly, by himself or by any person on his behalf or for his use or benefit, holds, or enjoys any right or benefit under any contract made by or on behalf of the Crown in respect of the Government of the Island for the furnishing or providing of money to be remitted abroad or of goods or services to be used or employed in the service of the Crown in the Island;<sup>11</sup>
- (d) if he has received, or is a member of any incorporated or unincorporated body of less than twenty-five persons which has received, during the period of twelve months immediately preceding, from the public funds of the Island, any grant of such a nature that the award or amount thereof is within the discretion of the Crown or of a public officer;<sup>12</sup>

But the above does not apply to any contract or subscription to a loan to be issued to the public on advertised terms<sup>13</sup> or to any pension or gratuity, or other benefit payable from the public revenues or other funds of the Island.<sup>14</sup>

<sup>1</sup> S. 73.    <sup>2</sup> S. 74.    <sup>3</sup> S. 11 (2).    <sup>4</sup> S. 11 (4).    <sup>5</sup> S. 11 (5).    <sup>6</sup> S. 12.  
<sup>7</sup> S. 13 (1) & (3).    <sup>8</sup> S. 13 (3) (e).    <sup>9</sup> S. 13 (3) (f).    <sup>10</sup> S. 13 (3).    <sup>11</sup> S. 13 (3) (c).  
<sup>12</sup> S. 13 (3) (d).    <sup>13</sup> S. 13 (4) (i).    <sup>14</sup> S. 13 (4) (ii).

Neither does the above apply to: grants to local authorities, religious, educational or charitable bodies.

(b) *Corrupt or Illegal Practice at Elections.*—A member of either House is also disqualified: for corrupt or illegal practice at Parliamentary elections; or:

- (j) if by reason of his expulsion or resignation from the State Council before the date upon which this Part of this Order comes into operation he would have been incapable of being elected or appointed a Member of the State Council if the Ceylon (State Council) Order in Council, 1931, as amended by the Ceylon (State Council) Amendment Order in Council, 1943, had remained in force; or
- (k) during the preceding seven years he had been adjudged by a competent court or by a Commission appointed with the approval of the Senate or the House of Representatives or by a Committee thereof to have accepted a bribe or gratification offered with a view to influencing his judgment as a Senator or as a Member of Parliament.<sup>1</sup>

For the purpose of S. 14 (3) (k), the acceptance by such a member of any allowance or other payment made to him by any Trade Union or other organization solely for the purpose of his maintenance is not deemed to be acceptance of a bribe or gratification.<sup>2</sup>

The penalty for a member sitting or voting in the House of which he is a member when disqualified as above, or after his seat therein has become vacant, is Rs. 500 for every day on which he so sits or votes, recoverable by action in the District Court of Colombo, instituted by any person who may sue for it, by leave of the District Judge thereof, within a prescribed period of 3 months.<sup>3</sup>

*Vacation of seat in either House.*—The seat of a Senator or M.P. becomes vacant: upon death; resignation of his seat to the Clerk of the House of which he is a member; subject to any of the disqualifications abovementioned; absence for a continuous period of 3 months without leave of his House first obtained.<sup>4</sup>

A Senator's seat also becomes vacant at the end of his term of office,<sup>5</sup> and an M.P.'s on dissolution of the House of Representatives<sup>6</sup> or if he is elected or appointed to the Senate.<sup>7</sup> When the seat of an elected Senator becomes vacant, the Clerk of the Senate informs the Clerk of the House of Representatives thereof and in the case of an appointed Senator, its Clerk informs the Governor.<sup>8</sup>

Except for the purpose of electing a President or Speaker, every member of either House must take the Oath of Allegiance before his House before taking his seat.<sup>9</sup>

Section 75 provides for the remuneration paid to members and Officers of the State Council, to continue in respect of the new Parliament until it otherwise provides.

*Presiding Officers.*—Section 16 provides for the election of Senators as President and Deputy President and Chairman of Committees of

<sup>1</sup> S. 13 (3) (j) (k).    <sup>2</sup> S. 13 (5).    <sup>3</sup> S. 14.    <sup>4</sup> Ss. 23 (1) (a)-(d); 24 (1) (a) (b) (d) (e).    <sup>5</sup> S. 23 (1) (e).    <sup>6</sup> S. 23 (1) (f).    <sup>7</sup> S. 24 (1) (c).    <sup>8</sup> S. 23 (2) (3).  
<sup>9</sup> S. 25.

the Senate and S. 17 for the election of M.P.s as Speaker, Deputy Speaker and Chairman of Committees of the House of Representatives; both sections provide for the filling of vacancies. These Officers in the House of Representatives vacate their offices on dissolution of the House of Representatives.

Should the House of Representatives after dissolution, be summoned (*vide* "Governor") before the new House meets, these Officers in the House of Representatives continue in their offices while Parliament is kept in Session.

*Procedure.*—Save as provided in S. 29 (4) all Questions in both Houses are decided by a majority of votes of those members present, the Presiding Member having no deliberative vote but only a casting vote in case of an equality of votes.<sup>1</sup> A quorum in the Senate is 6 and in the House of Representatives 20, which presumably includes the Presiding Member.<sup>2</sup> Each House is empowered to make its own Standing Orders which include provision for the retirement of the President or Speaker and their Deputies.<sup>3</sup> During the Adjournment of either House for a period exceeding one month, the President or Speaker, as the case may be, shall, if requested by the Prime Minister, convene his House "for the transaction of any urgent business of public importance".<sup>4</sup>

*Powers and Privileges of Parliament.*—The following is the provision in the Constitution for this subject:

- (1) The privileges, immunities and powers of the Senate and the House of Representatives and of Senators and Members of Parliament may be determined and regulated by Act of Parliament, but no such privileges, immunities or powers shall exceed those for the time being held or enjoyed by the Commons House of Parliament of the United Kingdom or of its Members.
- (2) Until Parliament otherwise provides, the privileges of the Senate and the House of Representatives and of Senators and Members of Parliament shall be the same as the privileges of the State Council and of its Members at the date on which it is last dissolved.<sup>5</sup>

*Clerks-at-the-Table.*—"Public Officer" as defined in the Constitution does not include the Clerk to<sup>6</sup> the Senate or the Clerk to<sup>6</sup> the House of Representatives or their staffs.<sup>7</sup> The Clerks of the two Houses are appointed by the Governor on the recommendation of the President and Speaker, as the case may be, and the staff of each Clerk is appointed by him in consultation with the Presiding Officer and are only removable by the Governor on an address from the House in question. Unless Parliament otherwise provides their age for retirement is 60 years. This section contains a provision disqualifying both Clerks from being members of either House.<sup>8</sup>

The accounts of the Clerks of the two Houses are audited by the

<sup>1</sup> S. 18.    <sup>2</sup> S. 20.    <sup>3</sup> S. 21.    <sup>4</sup> S. 22 (2).    <sup>5</sup> See also JOURNAL, Vols. IV, 34; X, 76.    <sup>6</sup> It would be interesting to know why the traditional "of" is not used.—[Ed.]    <sup>7</sup> S. 2.    <sup>8</sup> S. 28. This provision may have been inspired by the Secretary of the Council of State of India, being also a member of such Council.—[Ed.]

Auditor-General, who reports annually to the House of Representatives.<sup>1</sup>

In regard to the First Clerks of the 2 Houses and their staffs S. 82 provides:

- (1) The first Clerk to the Senate shall be appointed provisionally by the Governor and shall hold office until an appointment is made under Section 28 of this Order.
- (2) The person holding the office of Clerk of the State Council and the persons on the staff of the State Council on the date immediately preceding the date on which Part III of this Order comes into operation shall, on that date, be transferred to the service of the House of Representatives and shall be deemed to have been appointed respectively as Clerk to the House of Representatives and as members of his staff under Section 28 of this Order. The persons referred to in this subsection shall, until Parliament otherwise provides, hold their appointments on as nearly as may be the same terms and conditions as those on which they were employed under the State Council.

*Legislative Power.*—Subject to the provisions of the Constitution, Parliament has power to make laws “for the peace, order and good government of the Island,” but no such law shall:

- (a) prohibit or restrict the free exercise of any religion; or
- (b) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or
- (c) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions; or
- (d) alter the constitution of any religious body except with the consent of the governing authority of that body:

Provided that, in any case where a religious body is incorporated by law, no such alteration shall be made except at the request of the governing authority of that body.<sup>2</sup>

In the exercise of its powers under S. 29 Parliament may:

- (a) amend or suspend the operation of any of the provisions of any Order in Council in force in the Island on the date of the first meeting of the House of Representatives, other than an Order made under the provisions of an Act of Parliament of the United Kingdom; or amend or suspend the operation of any of the provisions of this Order:

Provided that no Bill for the amendment or suspension of any of the provisions of this Order shall be presented for the Royal Assent unless it has endorsed on it a certificate under the hand of the Speaker that the number of votes cast in favour thereof in the House of Representatives amounted to not less than two-thirds of the whole number of Members of the House (including those not present); every certificate of the Speaker under this subsection shall be conclusive for all purposes and shall not be questioned in any court of law.<sup>3</sup>

The King in Council may legislate, including regulations, etc., thereunder:

- (a) for the defence of any part of His Majesty's Dominions (including the Island) or any territory under His Majesty's protection or any territory

<sup>1</sup> S. 71.

<sup>2</sup> S. 29.

<sup>3</sup> S. 29 (4) (a).

- in which His Majesty has from time to time jurisdiction, or for securing and maintaining public safety and order and supplies and services in case of public emergency; or
- (b) for regulating the relations between the Island and any foreign country or any part of His Majesty's dominions or any territory as aforesaid.

but such laws may not impose charges on the revenues or funds of the Island or regulate its importation or exportation of goods, except to give effect to any agreement to which the Ceylon Government is a party.<sup>1</sup>

*Reserved Bills.*—Bills must be reserved which deal with defence; relation with foreign powers; currency; or whereby the Royal Prerogative, the rights or property of British Subjects not resident in the Island, or trade or transport or the trade, transport or communications of any of the King's Dominions, etc., may be prejudiced; amending or suspending or repugnant to or inconsistent with the Constitution.<sup>2</sup> Bills are also reserved which evoke serious opposition by any racial or religious community and likely to involve oppression or serious injustice to any such community.

Nothing, however, requires Bills to be reserved to which the King has authorized the Governor to assent or which, in the opinion of the Governor fall into the following categories: trade agreements concluded with the approval of the Secretary of State between the Ceylon Government and that of any other territory of the Realm; immigration, but not relating to the re-entry of persons then resident in Ceylon, which in the opinion of the Governor is unfair or unreasonable; electoral; shipping; and imports of goods not providing for differential treatment.<sup>3</sup>

The Governor may disallow laws relating to Ceylon Government stocks.<sup>3</sup>

A Bill, other than a Money Bill, may be initiated in either House, but a Money Bill may not originate in the Senate.

In Ss. 31, 33 and 34 of the Constitution "Money Bill" means:

31. (2) (A) Public Bill which contains only provisions dealing with all or any of the following subjects, that is to say, the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt, expenses of administration or other financial purposes, of charges on the Consolidated Fund or on any other public funds or on moneys provided by Parliament, or the variation or repeal of any such charges; the grant of money to the Crown or to any authority or person, or the variation or revocation of any such grant; the appropriation, receipt, custody, investment, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof, or the establishment, alteration, administration or abolition of any sinking fund provided in connection with any such loan; or any subordinate matter incidental to any of the aforesaid subjects.

In this subsection (2) the expressions "taxation", "debt", "Public fund", "public money" and "loan" do not include any taxation imposed, debt incurred, fund or money provided or loan raised, by any local authority.<sup>4</sup>

Sections 32, 33 and 34 restricting the powers of the Senate as to Money and other Bills read:

<sup>1</sup> S. 30.

<sup>2</sup> S. 37.

<sup>3</sup> S. 39.

<sup>4</sup> S. 31 (2).

32. (1) A Bill shall not be deemed to have been passed by both Chambers unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers.

(2) A Bill which has been passed by the Senate with any amendment which is subsequently rejected by the House of Representatives shall be deemed not to have been passed by the Senate.

33. (1) If a Money Bill, having been passed by the House of Representatives and sent to the Senate at least one month before the end of the Session, is not passed by the Senate within one month after it is so sent, the Bill may, notwithstanding that it has not been passed by the Senate, be presented to the Governor with or without any amendments which have been made by the Senate and agreed to by the House of Representatives, and shall take effect as an Act of Parliament on the Royal Assent thereto being signified.

(2) There shall be endorsed on every Money Bill when it is sent to the Senate and when it is presented to the Governor for Royal Assent a certificate under the hand of the Speaker that it is a Money Bill. Before giving his certificate the Speaker shall consult the Attorney-General or the Solicitor-General.

34. (1) If a Bill, other than a Money Bill, is passed by the House of Representatives in two successive Sessions, whether of the same Parliament or not, and

- (a) having been sent to the Senate in the first of those Sessions at least one month before the end of that Session, is not passed by the Senate in that Session, and,
- (b) having been sent to the Senate in the second of those Sessions, is not passed by the Senate within one month after it has been so sent, or within six months after the commencement of that Session, whichever is the later,

the Bill may, notwithstanding that it has not been passed by the Senate, be presented to the Governor and shall take effect as an Act of Parliament on the Royal Assent thereto being signified.

(2) There shall be endorsed on every Bill, when it is presented to the Governor for the Royal Assent in pursuance of the Provisions of subsection (1) of this Section, a certificate under the hand of the Speaker that the provision of subsection (1) have been complied with and that the Bill presented for the Royal Assent is identical with the Bill sent to the Senate in the first of the two Sessions in which it was passed by the House of Representatives. Before giving his certificate the Speaker shall consult the Attorney-General or the Solicitor-General.

(3) For the purposes of subsection (2) of this Section, a Bill presented for the Royal Assent shall be deemed to be the same Bill as a former Bill sent to the Senate in the preceding Session, if, when it is sent to the Senate, it is identical with the former Bill or contains only such alterations as are certified by the Speaker to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the Senate in the former Bill in the preceding Sessions; and any amendments which are certified by the Speaker to have been made by the Senate in the second Session and agreed to by the House of Representatives shall be inserted in the Bill as presented to the Governor in pursuance of this Section:

Provided that the House of Representatives may, if they think fit, on the passage of such a Bill through the House in the second Session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the Senate, and, if agreed to, shall be treated as amendments made by the Senate and agreed to by the House of Representatives; but the exercise of this power by the House of Representatives shall not affect the operation of this Section in the event of the rejection of the Bill by the Senate.



The certificates by the Speaker under Ss. 33 and 34 may not be questioned in any court of law.<sup>1</sup>

The words of enactment of Bills passed under Ss. 33 and 34 are respectively as follows:

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the House of Representatives of Ceylon in this present Parliament assembled, in accordance with the provisions of S. 33 (or S. 34 as the case may be) of the Ceylon (Constitution) Order in Council, 1946, and by the authority of the same, as follows:

Part IV of the Constitution deals with the delimitation of electoral districts, and the duties and powers of the Delimitation Commission; Part VI with the Judicature; Part VII the Public Service; Part VIII Finance; and Part IX with Transitional Provisions, Repeals and Savings.

**First Delimitation Commission Report.**<sup>2</sup>—The Report of this Commission appointed under S. 76 (1) of the Constitution was published as a Sessional Paper<sup>3</sup> in Colombo, in September, 1946.

This is a voluminous document of 190 pages, together with 12 maps. The investigation is a most thorough one in every respect, even down to the endorsement on the back of the title-page:

*(" Copy " received August 30; Proof sent September 3; Proof returned September 10; Published September 11 (all in 1946).)*

—which, following complaints in other Parliaments as to delayed publications, appears to be an effective check. In fact, this whole investigation reflects great credit not only upon the Commission, but on its Secretariat, for it must have required some very long and arduous work.

This Commission is not regulated by terms of reference, but is governed under S. 76 of the Constitution itself, which also cites the 95 constituencies into which the 9 Provinces of the Island shall be divided by the First Commission. The Commission has, however, power to create in any province one or more constituencies returning 2 or more members: provided the total number of members to be returned for that Province does not exceed the total number of electoral districts so specified. The result is that there is 1 constituency returning 3 members, 4 returning 2 members, the remainder returning only 1 member, in respect of the 89 constituencies,<sup>4</sup> and it is satisfactory to note that all the decisions in the Report were arrived at unanimously.<sup>5</sup>

Section 40 of the Constitution requires that in appointing the personnel of the Commission, the Governor " shall endeavour to select persons who are not actively engaged in politics ". Section 41 of the Constitution defines the duties of the Commission and provides that in dividing a Province into constituencies, the Commission shall

<sup>1</sup> S. 35.  
XIII, 1946.

<sup>2</sup> See also JOURNAL, Vol. XIV, 201-3.  
<sup>4</sup> Appendix A.

<sup>3</sup> Ceylon Sessional Paper,

<sup>5</sup> P. 5.

have regard to the transport facilities of the Province, its physical features and the community or diversity of interests of its inhabitants.

The principal directions given the Commission are stated in para. 7 of its Report, which reads:

- (a) That each Province of the Island be divided into electoral districts, the number of which is specified in The Order and the aggregate of which totals 95 for the whole Island.
- (b) That each electoral district of a Province shall have as nearly as may be an equal number of persons—
  - (i) subject to a proviso relating to transport facilities, physical features, and community or diversity of interest of inhabitants of the Province; and
  - (ii) subject further to the proviso that the rule is to give way wherever it comes into conflict with the directions in (c) and (d).
- (c) That the Commission may so divide a Province as to render possible the representation of minorities united by the tie of race, by the tie of religion, or by any other tie. The Commission is directed in making such division to minimize any disproportion that may arise in the population figures of the several electoral districts demarcated in the Province.
- (d) That the Commission may create electoral districts returning two or more Members, but in so doing shall not increase the number of members to be returned for the Province beyond that specified in The Order.<sup>1</sup>

Summing up the situation the Commission observes that it would be correct to say that the Soulbury Commission rejected "a communal basis of election" in favour of a "territorial basis", but introduced a communal element into their Territorial scheme.<sup>2</sup>

The Commission remarks in para. 19 that a voter in a multi-member constituency will have as many votes as the number of seats provided for that constituency. These he may use in whatever manner he pleases. For instance, if he has 4 votes, he could give 3 to one candidate and 1 to another, or 1 or more to a particular candidate and not use the balance, or he may give all to the candidate of his choice.

A minority which commands a number of votes exceeding one-third will be in a position to return a candidate in a two-member electoral district, a minority commanding anything over one-fourth in a three-member electoral district, a minority commanding anything over one-fifth in a four-member electoral district, and so on, the denominator in each of the relevant fractions being one more than the number of seats allotted to the district.<sup>3</sup>

The Commission further illustrates the position by taking an electoral roll with 100 votes cast and 1 member to be elected, 51 votes would ensure his election, thus:

$$\frac{100}{2} + 1 = 51:$$

in the case of 2 members the quota will be

$$\frac{100}{3} + 1 = 34:$$

in the case of 3 members the quota will be

$$\frac{100}{4} + 1 = 26, \text{ and so on.}^4$$

<sup>1</sup> P. 7.

<sup>2</sup> P. 8.

<sup>3</sup> P. 10.

<sup>4</sup> P. 11.

As an indication of the difficult task this Commission had to face with such a heterogeneous population, the following figures are of interest in regard to the Island as a whole:

<i>Religion.</i>				
<i>Buddhists.</i>	<i>Hindus.</i>	<i>Muslims.</i>	<i>Christians.</i>	<i>Others.</i>
4,175,610.	1,291,094.	422,087.	590,317.	5,301.
<i>Race.</i>				
<i>Low Country Sinhalese.</i>	<i>Kandyan Sinhalese.</i>	<i>Ceylon Tamils.</i>	<i>Ceylon Moors.</i>	<i>Malays.</i>
2,819,782.	1,695,416.	809,950.	358,147.	24,837.

**Electoral.**—The Ceylon (Parliamentary Elections) Order in Council of September 24, 1946, repeals the Ceylon (Electoral Registers) (Special Provisions) Order in Council of May 17 of that year.

This Order of 95 sections provides for the qualifications of electors, their registration, revision of registers, elections, election petitions, concluding with general provisions. The 4 Schedules to the Order give: I, the various forms to be used; II, directions to the voter; III, Election Petitions procedure; and IV, the Orders repealed. "British Subject" is defined by S. 3 (1) as:—

any person who is a British subject according to the law for the time being of the United Kingdom, any person who has been naturalized under any enactment of any of His Majesty's Dominions, and any person who is a citizen or subject of any of the Indian States as defined for the purposes of the Government of India Act, 1935.

The Franchise is universal adult with residence for 6 months in the 18 months immediately prior to June 1 of the year of registration and not less than 5 years' domicile in the Island.

The disqualifications are, being an alien; under 21; state imprisonment; unsound mind; conviction for corrupt or illegal practices under S. 52; or incapable of being a voter by conviction under the Ceylon (State Council Elections) Order in Council, 1931, had such remained in force.

Any person not otherwise disqualified, however, is qualified to be a voter if domiciled in the Island, provided he complies with Ss. 5, 6 and 7, by being able to read and write English, Sinhalese or Tamil and has had an income of not less than Rs. 600 during a continuous period of 6 months immediately prior to June 1 of that year; or, owns unencumbered property of not less than Rs. 1,500; or, has occupation of property for such 6 months, of the annual value of Rs. 200 within the administrative limits of any Village Committee, or, of Rs. 400 situated elsewhere, in both cases in his electoral district.

Any person not otherwise disqualified is also qualified to be a voter if he possesses a certificate of permanent settlement under the Ceylon

(State Council Elections) Order in Council, 1931, or in accordance with S. 7 of the Ceylon (Parliamentary Elections) Order in Council, 1946, for which residence in the Island for not less than 5 years immediately prior to the issue of the certificate, is necessary, with the saving of a total of 8 months for temporary absences.

## XVIII. THE GOLD COAST AND ASHANTI CONSTITUTION, 1946<sup>1</sup>

BY THE EDITOR

DURING the year under review in this issue, another interesting constitutional development has taken place, in this instance in West Africa, and concerning a population also predominantly Non-European. The instruments giving effect to these changes are the Gold Coast Colony and Ashanti (Legislative Council) Order in Council of February 19, 1946,<sup>2</sup> gazetted in the Colony on March 11 of that year; the Gold Coast Ordinances Order in Council of February 19, 1946; the Gold Coast Colony and Ashanti (Legislative Council) Removal of Difficulty Order, 1946;<sup>3</sup> the Letters Patent constituting the office of Governor of March 7, 1946; and the Royal Instructions of the same date.

Under this Order, which will be hereinafter referred to as the "Constitution," there is now an unofficial majority in the Legislative Council which consists mostly of Africans, under a Governor vested with Crown Colony powers, should he have occasion to use them.

As this is a distinct advance in the confidence reposed in the Non-European people of a British-power Territory of Africa, a brief description will be given of the actual opening ceremony of this First Legislative Council, for which we are indebted to the Government of the Territory. This will be followed by a résumé of the main provisions of this Constitution, with some reference to the other Instruments above-mentioned, concluding with remarks on certain of the Standing Rules and Orders of the Legislative Council passed in the same year, all of which will be of interest not only to the Constitutional student, but to other Colonies and Territories of the Crown seeking progress in greater control of their local affairs.

### Inaugural Session of the Legislative Council of the Gold Coast.

The first meeting of the Legislative Council of the Gold Coast Colony and Ashanti under the new Constitution was held at the King George the Fifth Memorial Hall, in Accra, on July 23, 1946.

After the Governor, His Excellency Sir Alan Burns, had read a formal announcement regarding the Instruments setting up the new Constitution, and the Clerk of the Council had read the Proclamation

<sup>1</sup> See also JOURNAL, Vols. XI-XII, 79; XIII, 96; XIV, 92.      <sup>2</sup> S.R. & O. 1946, No. 353: Previous Orders are 1925 (1740); 1927 (1908); 1933 (2093); 1934. II (762); 1939, II (3568).      <sup>3</sup> S. R. & O. 1946, No. 755.

summoning the meeting, the Members of Council took the Oath of Allegiance, and the opening of the Legislature was marked by a salute of 17 guns fired by a Battery of the Gold Coast Regiment.

The Clerk of the Council then read the usual Prayers and immediately afterwards the Governor read out the following Message from His Majesty the King:

On the occasion of the opening of the first Session of the new Gold Coast Legislature, I wish to convey an assurance to my people in the Gold Coast of my interest in the progress of their political evolution, of which the inauguration of a Council with an unofficial majority is signal evidence.

It is a source of gratification to me that it has been found possible to entrust the people themselves, through their elected representatives, with a wider measure of control of their own affairs. I am confident that these representatives will exercise their new powers with a full sense of their heavy responsibilities, seeking at all times to further the welfare of those whom they are called upon to represent.

I welcome to the Council the representatives of my people in Ashanti. Their participation in the work of the Council signified the unity of interest and of purpose between them and the people of the Colony and will, I trust, be of great assistance in the reaching of decisions of general benefit throughout the territory.

Before and after this Message was read the buglers of the Regiment sounded a fanfare. The Governor then read the following Message from the Secretary of State:

The opening of the Legislative Council of the Gold Coast under the new Constitution is a landmark in British Tropical Africa. For the first time the unofficials in the Legislature outnumber the officials and the representatives elected by the people have therefore a new and special responsibility for the use of the powers which they are now to exercise.

It is the avowed aim of His Majesty's Government in the United Kingdom to prepare the people of the African Colonial territories for a progressively greater share in the government of their territory, and the people of the Gold Coast may well be proud that it has fallen to them to demonstrate that this policy is justified.

I shall watch the outcome of this important development with great sympathy and in the confident expectation that complete success will attend an innovation the results of which must be of the keenest interest to peoples in many other territories in British Africa.

The Governor in delivering his Opening Address to the "Honourable Members of the Legislative Council" at its first meeting under the new Constitution, said that this was the first time in tropical Africa that a Legislative Council had included a majority of elected members, and that the representatives of the Colony and Ashanti had sat together in Council, while the presence of the Chief Commissioner of the Northern Territories foreshadowed future unofficial representation of those territories.

This was a very considerable advance and afforded the Gold Coast people the opportunity to prove that they were fitted to make still further steps on the road to democracy. With the power given, there must go great responsibility. It was important that the Legis-

lative Council should win the confidence of the people. It was a Constitution granted to the Gold Coast Colony and Ashanti by the King to the people through their representatives.

The Governor then referred to the Memorial presented to Colonel Oliver Stanley, the then Secretary of State, on his visit to the Gold Coast in 1943, followed by the meetings in the following year of representatives of the Joint Provincial Council, and the Municipal Members of the Legislative Council as representing the Colony and he intimated that 3 (African) elected members would be on the Executive Council, which had been duly carried out.

The Governor referred to his reserved powers which would not lightly be used and remarked upon questions of procedure.

New Standing Orders and the following Resolutions including the Address in Reply to the King's Message were adopted unanimously:

WHEREAS His Majesty the King has been pleased to address a most gracious Message to the people of the Gold Coast Colony and Ashanti on the occasion of the opening of the first session of the Legislative Council constituted under the Gold Coast Colony and Ashanti (Legislative Council) Order in Council, 1946:

BE IT RESOLVED that the said Legislative Council, now in session for the first time do request the Right Honourable the Secretary of State to submit to His Majesty the following reply to the Message.

THIS Council tenders to his Majesty its humble duty and gratitude for His most gracious Message and desires to express to His Majesty on behalf of all the peoples of the Gold Coast Colony and Ashanti the lively gratification felt by them that His Majesty should have been pleased by the grant of this Constitution, to signify both His appreciation of their loyalty and His trust in their ability to bear a greater share of the burdens of Government. The Members of the Legislative Council assure His Majesty of their deep sense of responsibility and of their determination fully to justify the trust placed in them, and desire to re-affirm their unswerving loyalty and that of all the peoples of the Gold Coast to His Majesty's Person and Throne. NANA TSIBU DARKU IX.

THAT this Council places on record its very high sense of appreciation of the unstinted efforts made on behalf of the people of the Gold Coast Colony and Ashanti by His Excellency SIR ALAN CUTHBERT MAXWELL BURNS, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief of the Gold Coast, which have resulted in the granting to the said people of a new Constitution, the first of its kind in tropical Africa. NANA AMANFI III.

Among the spectators in the Council Chamber were the G.O.C., the Air Officer Commanding, the acting Chief Justice and the Judges of the Supreme Court, the Asantehene and a number of other Chiefs of the Colony and Ashanti. Outside the Chamber there was a vast crowd of spectators, including more than 2,000 Ashantis who had accompanied the Asantehene to Accra. In accepting the Governor's invitation to be present at the opening of the Council the Asantehene brought to an end the long-standing tradition which forbade the Ruler of Ashanti to leave his country except for the purpose of leading his army in time of war.

### The Constitution.

This document (S. R. and O., 1946, No. 353) consists of 49 sections and is divided into the following Parts—I. Preliminary; II. The Legislative Council; III. Provincial Members; IV. Ashanti Members; V. Municipal Members; VI. Legislation and Procedure of Legislature; and VII. Miscellaneous, with a Schedule enumerating the existing Legislative Council Orders of 1925, 1927, 1933, 1934 and 1939, which together with Ss. 5-17 of the Ashanti Order in Council of 1934<sup>1</sup> under S. 3 of the Constitution are repealed.

*Governor and C.-in-C.*—Under this form of Constitution the holder of the office of Governor actively participates in its operation, with certain discretionary and overriding powers too detailed to be enumerated here.<sup>2</sup> In regard to legislation, the Governor, with the advice and consent of the Legislative Council, makes laws for the peace, order and good government of the Colony and Ashanti.<sup>3</sup> He also has power to make Ordinances under the Togoland British Mandate Order in Council, 1923 and the Gold Coast Ordinances Order in Council, 1946.<sup>4</sup>

Further, the Governor has certain powers under the Letters Patent of March 7, 1946, constituting his office as well as under the Royal Instructions of the same date, and attention is drawn to Ss. 8, 10, 11, 12 and 13 of the former and to Clauses 1-6, 14, 21 and 23 of the latter.

*Executive Council.*—This Council consists of the following 6 officials: Colonial Secretary, the Chief Commissioners of the Gold Coast Colony, Ashanti, and the Northern Territories of the Gold Coast respectively, the Attorney-General, Financial Secretary and the Director of Medical Services, who are, except for the Director of Medical Services, the ex-officio M.L.C.s under S. 7 of the Constitution and such other persons, styled "Appointed Members of Executive Council" as may be appointed from time to time<sup>5</sup> or as Extraordinary Members whenever upon any special occasion the Governor may desire to obtain advice,<sup>6</sup> or as temporary members under Clause 5 of the Royal Instructions.

"Appointed" members hold their seats for 3 years, subject to the reservations under Clause 4, and under Clauses 5 and 6 temporary appointments may be made. The precedence of members is laid down in Clause 7. The Council is summoned by the Governor and 2 form a quorum. Normally the Governor presides.<sup>7</sup>

Clauses 10, 11 and 12 read as follows:

10. In the exercise of his powers and duties the Governor shall consult with the Executive Council, except in cases—

(a) which are of such nature that, in his judgment, Our service would sustain material prejudice by consulting the Executive Council thereon; or

<sup>1</sup> S. R. & O. II, 749.  
<sup>2</sup> 28 and 29.

<sup>3</sup> *Ib.* S. 33.

<sup>4</sup> The Constitution, Ss. 9, 12, 15, 17, 18, 20, 23, 26,  
<sup>5</sup> *Ib.* S. 48.

<sup>6</sup> R.I. 3.

<sup>7</sup> *Ib.* 6.

<sup>8</sup> *Ib.* 9 and R.I. 8 and 9.

- (b) in which the matters to be decided are, in his judgment, too unimportant to require their advice; or
- (c) in which the matters to be decided are, in his judgment, too urgent to admit of their advice being given by the time within which it may be necessary for him to act.

In every case falling within paragraph (c) of this Clause, the Governor shall as soon as practicable communicate to the Executive Council the measures which he shall have adopted, with the reasons therefor.

11. The Governor shall alone be entitled to submit questions to the Executive Council; but if the Governor shall decline to submit any questions to the Executive Council when requested in writing by any Member so to do, it shall be competent to such Member to require that there be recorded upon the Minutes his written application, together with the answer returned by the Governor thereto.

12. (1) The Governor may act in opposition to the advice given to him by the Members of the Executive Council, if he shall in any case deem it right to do so; but in any such case he shall report the matter to Us, through a Secretary of State, at the first convenient opportunity, with the reasons for his action.

(2) Whenever the Governor shall so act against the advice of the Executive Council, it shall be competent to any Member to require that there be recorded upon the Minutes any advice or opinion he may give upon the question with the reasons therefor.

*Legislative Council*—This body consists of the President, 6 *ex-officio* members; 18 elected and 6 nominated members,<sup>1</sup> with tenure of office for 4 years.<sup>2</sup> It is summoned by the Governor, with the customary provision that there must not be an interval of more than 12 months between Sessions.<sup>3</sup> This Council is also prorogued or dissolved by the Governor and dissolution affects all its members. Provision is made requiring that the election and appointment of members take place within 3 months after such dissolution.<sup>4</sup>

*Ex-officio M.L.C.s.*—These are 6 of the 7 official members of the Executive Council (the members of the Executive Council excluded being the D.M.S.) (*for which see above*).

*Elected Provincial M.L.C.s.*—Of the 18 elected members, the 9 Provincial members (of which 5 represent the Eastern and 4 the Western Province respectively) are elected by the Joint Provincial Council,<sup>5</sup> which consists of the Paramount Chiefs of the Colony (or their duly accredited representatives) recognized by the Governor as a Native Authority, member of a Native Authority, or a Paramount Chief, and 1 member of the Native Authority for every area in the Colony which does not include a State or part of a State. Such member is chosen by such Authority as their representative on the Joint Provincial Council,<sup>6</sup> the elections being conducted under Ss. 24 and 45 of the Constitution.

Vacation of seat by a Provincial M.L.C. automatically occurs upon cessation in office of Paramount Chief, or of membership of the Joint Provincial Council.<sup>7</sup>

"State" is defined by S. R. & O., 1946, No. 755 of May 24, 1946, as a territorial area of the Colony under the administration of a Paramount

<sup>1</sup> The Constitution, S. 5.      <sup>2</sup> S. 11, 12.      <sup>3</sup> S. 41.      <sup>4</sup> S. 43.  
<sup>5</sup> S. 22.      <sup>6</sup> S. 23.      <sup>7</sup> S. 25.



Chief who is recognized by the Governor as a Native Authority or as a member of a Native Authority,<sup>1</sup> and "Native Authority" is defined as a Native Authority constituted under any law for the time being in force in the Gold Coast who, or which, is not subordinate to any other Native Authority (or in the case of Ashanti, not subordinate to any Native Authority other than the Ashanti Confederacy Council) and recognized as such by the Governor.<sup>2</sup>

"Paramount Chief" is defined in S. 26 as not, in the opinion of His Excellency the Governor, subordinate to any other Chief.

To be eligible for election as a candidate for, or to sit or vote as an elected Provincial M.L.C., a person must be a native of the Colony; certified by the Provincial Commissioner as being able to speak and read English; and in the case of the Eastern and Western Province respectively, a Paramount Chief of the Province or owing allegiance to his Stool, or a member of, or subject to, the Native Authority for any area of the Province without a Paramount Chief; or otherwise qualified as required by Part II of the Constitution.

In case of an equality of votes, one re-vote is taken and should that be repeated then the Governor may nominate a member from the candidates.<sup>3</sup>

*Elected Ashanti Members.*—The 4 Ashanti M.L.C.s who represent the peoples of Ashanti are elected by the Ashanti Confederacy Council under S. 45, which consists of the Asantehene and Head Chiefs of such of the divisions of Ashanti and of the Kumasi clans specified by the Governor, together with such other persons as the Asantehene may, with the approval of the Governor, appoint to the Council.<sup>4</sup>

A person eligible for election or to sit and vote as an Ashanti M.L.C., must be: a native of Ashanti; certified in English as above-mentioned; must owe allegiance directly or indirectly to the Asantehene and be otherwise qualified under Part II of the Constitution.

In case of failure to elect a person, the Governor nominates.

In case of a re-vote the same practice is followed as in the case of Provincial M.L.C.s (*which see above*).

For the purpose of S. 24 the following interpretations apply: "Allegiance" is defined as duty, according to native customary law, owed by a person to the Stool to which he is subject, and "Native of the Colony" means a person both of whose parents were born in the Colony and are or were members of a tribe or tribes indigenous to Africa.

*Elected Municipal M.L.C.s.*—These 5 members are elected, 2 for the town of Accra and 1 each for the towns of Cape Coast, Sekondi and Kumasi. The qualifications for election or sitting and voting are: registered voter for the municipal area concerned; the same certificate as above in regard to English; beneficial ownership of personal property of £200 value; or occupier of premises and ratepayer, in the area, of not less than £20; ordinarily resident in the municipal area

<sup>1</sup> S. 24.

<sup>2</sup> Ss. 1 and 28.

<sup>3</sup> S. 24.

<sup>4</sup> S. 28.

concerned for not less than 6 months immediately preceding day of nomination and otherwise qualified under Part II of the Constitution.<sup>1</sup>

*Nominated Unofficial M.L.C.s.*—These number 6 and are appointed by the Governor;<sup>2</sup> they hold their seats during His Majesty's pleasure.

*Extraordinary Nominated M.L.C.s.*—The Governor may make such appointments in order to assist in any matter, but they have no vote.<sup>3</sup>

*Qualifications for Elected and Nominated Membership.*—It is necessary for both classes of M.L.C. to be British subjects, British protected persons, or persons treated as such, of not less than 21 years of age.<sup>4</sup>

*Disqualifications* for both classes of Membership are: foreign allegiance, bankruptcy, imprisonment, disqualification from practice as a legal or medical practitioner, lunacy, electoral disqualification and party to Government contract (*which see below*).<sup>5</sup>

*Disqualifications for Elected Membership.*—These are: office of emoluments under the Crown (*which see below*); relief from public funds within 5 years of election unless specially exempted by law.<sup>6</sup>

*Vacation of seats for both classes of Members.*—Any disqualification as above causes vacation of seat.<sup>7</sup>

*Temporary ex-officio or Nominated Members.*—The Governor has power, in certain cases, to make these appointments by Instrument under the Public Seal, one of them being the absence of a member from the Colony.<sup>8</sup>

*Precedence of Members.*—This is provided for in S. 19. In the recording of divisions the names of the Unofficial Members are called in reversed order of precedence<sup>9</sup> before those of *ex-officio* members, whose names are also called in such reversed order.

*President of the Legislative Council.*—The Governor presides, but he may appoint a person to act for him, and in case of the absence of such person the M.L.C. standing first in the order of precedence presides.<sup>10</sup>

*Legislation.*—Subject to the provisions of the Constitution, the Governor has power, with the advice and consent of the Legislative Council, to make laws for the peace, order and good government of the Colony and of Ashanti.<sup>11</sup>

The provisions in regard to the reserved powers of the Governor are laid down in S. 38, which reads:

(1) If the Governor shall consider that it is expedient in the interests of public order, public faith or good government (which expressions shall, without prejudice to their generality, include the responsibility of the Gold Coast as a component part of the British Empire, and all matters pertaining to the creation or abolition of any public office or to the appointment, salary or other conditions of service of any public officer or officers) that any Bill introduced, or any motion proposed in the Council should have effect, then if the Council fail to pass such a Bill or motion within such time and in such form as the Governor may think reasonable and expedient, the Governor, at any time in his

<sup>1</sup> Ss. 31, 32.    <sup>2</sup> S. 9.    <sup>3</sup> S. 10.    <sup>4</sup> S. 13.    <sup>5</sup> S. 14.    <sup>6</sup> S. 14 (8).  
<sup>7</sup> S. 15.    <sup>8</sup> S. 17.    <sup>9</sup> S.O. 56.    <sup>10</sup> The Constitution, Ss. 6, 18.    <sup>11</sup> S. 33.

discretion may, notwithstanding any provisions of this Order, or of any Standing Rules and Orders of the Legislative Council, declare that such Bill or motion shall have effect as if it had been passed by the Council, either in the form in which it was so introduced or proposed or with such amendments as the Governor shall think fit which have been moved or proposed in the Council or in any Committee thereof; and thereupon the said Bill or motion shall have effect as if it had been so passed, and, in the case of any such Bill, the provisions of this Order relating to assent to Bills and disallowance of laws shall apply accordingly.

(2) The Governor shall forthwith report to a Secretary of State every case in which he shall make any such declaration and the reasons therefor.

(3) If any Member of the Legislative Council objects to any declaration made under this section, he may, within seven days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting, and a copy of such statement shall, if furnished by such a member, be forwarded by the Governor as soon as practicable to a Secretary of State.

(4) Any such declaration, other than a declaration relating to a Bill, may be revoked by a Secretary of State, and the Governor shall notify such revocation in the *Gazette*; and from the date of such notification, any motion which shall have had effect by virtue of the declaration revoked shall cease to have effect; and the provisions of subsection (2) of Section 38 of the Interpretation Act, 1889, shall apply to such revocation as they apply to the repeal of an Act of Parliament.

Assent to Bills is given in the King's name by the Governor, with power to reject or reserve for the signification of the King's Pleasure,<sup>1</sup> and the Royal disallowance operates.<sup>2</sup>

Nothing in the Constitution affects the power of the Governor to make Ordinances under the British Mandate Order in Council, 1923 and the Gold Coast Ordinances Order in Council, 1946.

Clause 15 of the R.I provides that all laws shall be styled Ordinances which are "enacted by the Governor of the Gold Coast with the advice and consent of the Legislative Council thereof". Legislation, however, made by the Governor under S. 38 of the Constitution is "enacted by the Governor of the Gold Coast in accordance with the provisions of such section," etc.

The Governor may not, without instructions, assent to any Ordinance, unless reserved, which deals with: divorce; donations to himself; currency; banking; differential duties; treaties; fighting forces discipline; the Royal prerogative; trade or transport; to which assent has been refused or containing disallowed provisions or to:

any Bill whereby persons not of European birth or descent may be subjected or made liable to any disabilities or restrictions to which persons of European birth or descent are not also subjected or made liable.

Section 17 makes the following special provision in regard to Native Laws, rights and interests:

(1) In the making of Ordinances, any native laws by which the civil relations of any native chiefs, tribes or population under Our protection are now regulated shall be respected, except in so far as the same may be incompatible with the due exercise of Our powers and jurisdiction, or clearly injurious to the welfare of the said natives.

<sup>1</sup> S. 39.

<sup>2</sup> S. 40.

(2) The Governor is to the utmost of his power to promote religion and education among the native inhabitants, and he is especially to take care to protect them in their persons and in the free enjoyment of their possessions, and by all lawful means to prevent and restrain all violence and injustice which may in any manner be practised or attempted against them.

*Private Bills.*—Private Bills are defined in the Constitution<sup>1</sup> as Bills: “intended to affect or benefit some particular person, association or corporate body” and must contain a clause saving “the rights of Us, Our Heirs and Successors” and all bodies politic and corporate, etc.; the procedure is laid down in S.O.s 80 and 89. Section 18 of the Constitution lays down the procedure in regard to Private Bills (see also S.O.s 88-102).

*Procedure.*—Any M.L.C. may introduce Bills, Motions or petitions provided they do not deal with public moneys. Questions are decided by a majority of votes of the members present, but the President has neither a deliberative nor a casting vote, and in the event of an equality of votes the Motion is declared to be lost.<sup>2</sup> An Acting President, however, has a deliberative vote. Should there at any time be an equality of votes, the question is decided in the negative. Ten is a quorum.<sup>3</sup>

*Standing Orders.*—Authority for these is given by S. 42 of the Constitution and they number 112, of which the following provisions are noted: The President may at any time adjourn or suspend a meeting (4); copies of replies to *Q.s.*, when practicable, are supplied to the interrogating M.L.C., at least 10 *m.* before the time fixed for the sitting at which the *Q.* is to be answered (21); an M.L.C. may withdraw a Motion by leave of the President (28); in the case of refusal to retract objectionable words, Motion may, with the consent of the President, be made “that the member be no longer heard” (38); an M.L.C. may, with the consent of the President, delegate his right of reply to another member (41); every M.L.C. unless he expressly declines to vote, must, on a Division vote either “Aye” or “No”, and a statement of the manner of those so declining is entered on the Minutes (57). Private Members’ Bills are described as “Unofficial Members’ Bills” (90); Select Committees may sit during a prorogation and continue in life until the presentation of their report to the Council or by Motion thereof (100); strangers are admitted to debate by the Clerk on the recommendation of an M.L.C. (105); Press representatives receive a general permission from the Clerk to attend sittings, but if their journals publish a report which the President considers unfair such permission may be revoked (109).

The Standing Order dealing with unprovided cases reads:

110. (i) In cases of doubt the Standing Rules and Orders of this Council shall be interpreted in the light of the relevant practice of the House of Commons.

(ii) In any matter for which these Standing Rules and Orders do not provide, the said practice shall be followed, but no restrictions which the House of

<sup>1</sup> S. 18.

<sup>2</sup> S. 35.

<sup>3</sup> Ss. 34-6.

Commons has introduced by Standing Order shall be deemed to extend to the Council or its Members until the Council has provided by Standing Rule and Order for such restriction.

*Governor's Amendments.*—The Governor may make amendments to Bills.<sup>1</sup>

*Language.*—The proceedings and debates of the Council are in English, but a translation is required of any petitions in any other language.<sup>2</sup>

### Miscellaneous.

*Electoral.*—Section 45 of the Constitution empowers provision to be made for the qualifications and registration of voters, the holding of elections, electoral offences, election petitions, and

(g) the number of votes which may be cast in proportion to population by the Members of the Joint Provincial Council and of the Ashanti Confederacy Council respectively at the election of Provincial and Ashanti Members.

*Penalty for unqualified person sitting or voting as M.L.C.*—Any person knowing that he was so disqualified or that his seat has become vacant, is liable to a fine of £20 for every day on which he so sits and votes, the penalty being recoverable by action in the Supreme Court at the suit of the Attorney-General.<sup>3</sup>

*Offices of Emolument under the Crown.*—The position of Chief, Native Authority, or member thereof, or of a Native Court, or being in receipt of a pension or other like allowance in respect of service under the Crown are not deemed to constitute the holding of such office.<sup>4</sup>

*Government Contract.*—Section 14 of the Constitution in dealing with this disqualification imposed upon both types of member, provides that no person shall sit or vote as such or be elected or appointed as such who at the time of election or appointment:

is a party to any subsisting contract with the Government of the Gold Coast in relation to the public service and—

- (a) in the case of a Provincial, Ashanti or Nominated Member, has not disclosed to the Governor the nature of such contract and his interest therein; or
- (b) in the case of a Municipal Member has not published, within one month before the day of election, in the *Gazette* or in some newspaper circulating in the area for which he is a candidate, a notice setting out the nature of such contract and his interest thereon.<sup>5</sup>

<sup>1</sup> S.O. 38.    <sup>2</sup> S.O. 3.    <sup>3</sup> The Constitution, S. 46.    <sup>4</sup> S. 1 (3).    <sup>5</sup> S. 24 (5).

XIX. NIGERIA: CONSTITUTIONAL REVISION<sup>1</sup>

BY THE EDITOR

IN view of the increasing interest which is being taken in the constitutional development of the British Colonial Territories of Africa, where Africans constitute practically the entire population, and in pursuance of the policy to encourage and instruct the African in the principles of administration and the art of government, the movement which has been recently taking place in regard to the revision of the Constitution of the Nigerian Colony and Protectorate will be of particular interest to a large section of our readers, especially in those Colonies where similar population conditions exist.

What is known as Nigeria, situated on the West Coast of Africa, with its capital at Lagos, and the Mandated (B) Territory of the British Cameroons, covers an area as large as France, Belgium and the United Kingdom together, with a total population to-day of 22 millions, of which only approximately 2,000 are Europeans. The area of the Northern Provinces is more than 3 times greater than the rest of Nigeria and its people are mostly Muhammadans, the majority of the remainder being Pagan. In the Southern Provinces the proportions are reversed.

The territorial divisions of Nigeria are, the Colony of Nigeria, the Northern, Eastern and Western Provinces, these 3 groups of Provinces together forming the Protectorate.

The annual revenue in 1938-39 was over 5 million sterling and the total exports over 8.

The Government of the Colony is provided for by Letters Patent of 1922 as amended by those of 1935, together with Royal Instructions as amended by those of 1938 and the Government of the Protectorate by the Nigeria Protectorate Order in Council, 1922, as amended by that of 1935, together with Royal Instructions of 1922, 1928 and 1935. The Nigeria (Legislative Council) Order in Council, 1922, as amended by those of 1928, provides for a Legislative Council for the Colony and the Southern Provinces of the Protectorate. This Council also has control over Protectorate expenditure in the Northern Provinces. The Provinces consist of Native Administrations, the heads of which are described as Emirs, Obas, etc.

During the Tenth Session of the XXXVII Parliament and the 1945 part of the First Session of the XXXVIII Parliament, several Questions<sup>2</sup> were asked in the House of Commons both before and after presentation in March of 1945 of the White Paper (Cmd. 6599), following its Tabling in the Nigeria Legislative Council on March 5 of that year, as to the progress made in regard to constitutional revision of that Territory.

<sup>1</sup> See also JOURNAL, Vols. XI-XII, 79; XIII, 97.

<sup>2</sup> 406 *Com. Hans.* 5, s. 555; 408 *ib.* 1826; 410 *ib.* 194; 411 *ib.* 872; 414 *ib.* 1139.

The White Paper (Cmd. 6599) opens with an introductory note stating that the object of the proposed reforms is to set up a framework within which development towards responsible government can be carried out on practical lines. The proposals are to bridge the gulf between the people and the Government by a measure of decentralization and a widening of the basis of representation, to bring established Native Authorities within the legislative machinery, at the same time providing, by the grant of unofficial majorities on the Legislative and Regional Councils, for immediate constitutional advance.

Paragraph 4 gives an outline of the political history of Nigeria and paragraphs 5 to 9 its administration. Since 1924 that part of the Cameroons under British Mandate has been administered as an integral part of Nigeria.

Then follows a Despatch dated December 6, 1944, from the Governor of Nigeria to the Secretary of State for the Colonies.

Nigeria falls into 3 regions, North, West and East, with peoples differing widely in race, custom, outlook and their traditional systems of government. At present officials are in the majority on the Legislative Council, but it is felt that the time has come to create unofficial majorities.<sup>1</sup>

The recommendations put forward provide both for the widening of the scope and membership of the Legislative Council and the establishment of Regional Councils for the Northern, Western and Eastern Provinces. The Northern Regional Council will consist of 2 Chambers, the House of Chiefs and the House of Assembly, while in the West and East there will be a House of Assembly only. The new Legislative Council is to legislate for the entire country. The whole range of Nigerian affairs will be open for debate, especially on the Budget. The Legislative Council is to be so constituted as to have an unofficial and African majority, and while direct election will be retained in the municipal areas of Lagos and Calabar, the majority of the unofficial members will be selected from their own bodies by the Northern House of Chiefs and by the unofficial members of the House of Assembly. Thus the Regional Councils are to act as electoral colleges for the Legislative Council apart from their other functions. The Houses of Assembly will themselves have unofficial majorities and the greater part of the unofficial members will be nominated by the Native Authorities in each Province from their own numbers. In this way a chain of representation will be created from the Legislative Council to the people through the Regional Councils and the Native Authorities.<sup>2</sup> The constitution and purely advisory functions of the Executive Council, recently enlarged by 3 unofficial members, are to remain the same.<sup>3</sup>

The system of indirect rule cannot remain static, but must keep pace with the development of the country and find a place for the more progressive and better educated men.<sup>4</sup> A single Supreme Court is to be set up covering the whole country.<sup>5</sup>

<sup>1</sup> *Ib.* § 3.

<sup>2</sup> *Ib.* § 4.

<sup>3</sup> *Ib.* § 5.

<sup>4</sup> *Ib.* § 6.

<sup>5</sup> *Ib.* § 7.

*House of Chiefs.*—This Northern Province body, presided over by the Chief Commissioner, is to consist of First-class Chiefs (13) sitting by right, and a representative panel of other Chiefs elected from among their number, acting on the advice of the Chief Commissioner, subject to the approval of the Governor.

The House of Chiefs will equally have the right to originate motions and resolutions, other than money resolutions,<sup>1</sup> as well as consider the estimates, with power to delete or amend items but not to insert new ones.<sup>2</sup>

The House of Chiefs is to meet annually in January for their Budget Sessions at Kaduna, the administration H.Q. of the Northern Province.

*Regional Councils.*—A large measure of financial responsibility is to devolve upon these bodies, as each will have its own regional budget, on which will be borne the cost of all Government services in the region, including the salaries of Government personnel. The only exception will be the cost within the region of services declared central services—*i.e.*, railways, posts and telegraphs; income tax and audit, which would continue to be carried on the Central Estimates, together with the central organization of Government, the Headquarters and central staffs of all Departments, interest on public debt, pension, etc.

Regional revenue is to consist of the share in the direct tax at present payable to the Central Government together with receipts from fees, licences, etc.

After passing the Regional Councils the estimates will be submitted to the Governor, who will have the right to amend them if he thinks necessary in the public interest. After such approval they will appear in the central estimates as block votes, full details being given in the form of appendices. A statement is attached (Appendix I to the White Paper) giving the Governor's proposals for the financial procedure of Regional Councils in greater detail together with their financial relations with the Legislative Council.

Native Authorities would have the responsibility for operating their own local services and financing them from their own revenues, derived mainly from the share of the direct tax retained by Native Authorities, which share the Governor may increase or decrease.

*Houses of Assembly.*—Of these there are to be 3, one each for the Northern, Western, and Eastern Provinces (which includes the Cameroons), presided over by the Senior Resident in respect of the first and the Chief Commissioner in respect of the others.

That for the Northern Provinces consists also of 12 other Residents, including the Secretary, Northern Provinces, Deputies for the Financial Secretary, Director of Education, Director of Agriculture, Director of Medical Services, Director of Public Works and Crown Counsel.

The unofficial element consists of 14 Provincial members to be selected by Native Authorities from their members other than major Chiefs; 6 members, nominated by the Governor, to secure adequate

<sup>1</sup> *Ib.* § 10.

<sup>2</sup> *Ib.* § 12.



representation of the Pagan community, smaller Native Authorities, Natives of the Southern Provinces resident in the North, industry and commerce or any other important aspects of life not otherwise represented among the Unofficial members.

That for the Western Provinces is to consist of 7 Residents, including the Secretary, Western Provinces and the corresponding 6 officials as above. The Unofficial element will consist of 3 Chiefs, nominated by the Governor after consultation with Western Province Chiefs; 7 Provincial members selected by the Native Authorities from their members, other than major Chiefs; and 5 members nominated by the Governor from prominent citizens representing important aspects of life not otherwise represented among the Unofficial members.

That for the Eastern Provinces is to consist of 6 Residents, the same 5 officials as above and 9 Unofficial members selected by Native Authorities from their members; and 5 members nominated by the Governor from prominent citizens to represent important aspects of life not otherwise represented among the Unofficial members.

Each President is to have both an original and a casting vote in event of an equality of votes, but there will be an unofficial majority in each House of Assembly, and all Unofficial members will be Africans domiciled in Nigeria.<sup>1</sup>

The Houses of Assembly will debate motions and resolutions whether brought forward by official or Unofficial members, although, in accordance with the usual practice, the Unofficial members will not be entitled to propose money resolutions.<sup>2</sup>

These Houses will also debate the regional estimates in detail before passing them with such amendments as they may suggest<sup>3</sup> and the language will be Hausa in the North and English in the East and West.<sup>4</sup>

*Legislative Council.*—This body is to remain responsible for the actual passage of all legislation pending consideration by a committee whether legislative powers, and if so what powers, should be devolved on the Regional Councils. Meanwhile all Bills other than purely formal Bills, or those introduced under certificates of urgency, will be tabled in the Regional Councils, before submission to the Legislative Council, for general discussion on the lines of a 2 R. debate and for the submission of advice by resolution should any amendments be desired.<sup>5</sup>

The Legislative Council is to consist of the Governor as President, and the following Official members: Chief Secretary; Chief Commissioners (3); 1 Senior Resident each from Northern, Western and Eastern Provinces (3) and the Heads of 13 Administrative Departments.

The Unofficial members would be: 4 Emirs (nominated by the House of Chiefs, Northern Provinces); 2 Chiefs from the Western Provinces (nominated by the Governor from the 3 Chiefs who are members of the House of Assembly); 5 members from the Northern, 4 from the Western and 5 from the Eastern Provinces (each nominated

<sup>1</sup> *Ib.* § 9.<sup>2</sup> *Ib.* § 10.<sup>3</sup> *Ib.* § 12.<sup>4</sup> *Ib.* § 15.<sup>5</sup> *Ib.* § 11.

by the Unofficial members of the Houses of Assembly from their own body); 1 member for Calabar (elected from the township area); 3 from Lagos (elected from the Municipal area); 1 for the Colony (nominated by the Governor after consultation with the Native Authorities); 1 each to represent<sup>1</sup> Banking, Shipping, Industry and Commerce, and Mining, nominated by the Governor, who will have a casting vote only, and the Council will thus have an unofficial majority of 29 to 20, and, on the assumption that the 4 commercial members will be Europeans, as at present, there will be an African majority of 25 to 24.

Nominations of Unofficial members will be for 3 years.<sup>2</sup>

The Governor is to retain his reserve powers, to be exercised if necessary in the interests of public faith, public order and good government.

The functions of the Legislative Council and its Finance Committee are to remain as at present, but the former will now legislate for the whole of Nigeria including the Northern Provinces.<sup>3</sup>

The Legislative Council will meet for the Budget Session in March, with other meetings during the year as required, and the Budget Session will be held in successive years at Lagos, Kaduna, Ibadan and Enugu to demonstrate the Nigerian character of the Council, all other meetings being at Lagos.<sup>4</sup>

Under these changes, the town of Lagos becomes a Municipality with extensive powers; the rural area of the Colony remains directly under the Legislative Council and continues to be administered by a Commissioner, etc.

The Governor, in his despatch, remarks that the system of ballot is not, in his view, a suitable method, in Nigerian conditions, for securing the proper representation of the people, nor will it be understood by the mass of the population. He is therefore opposed to any extension of election by ballot at present; at the same time, neither at Lagos nor Calabar does the small proportion voting indicate any great attachment to this method.

*Administrative Machinery.*—The new constitutional proposals involve the creation of regional Departmental Deputy Heads, and it is proposed that the Chief Commissioners, in consultation with these Deputies, shall settle all matters in the regions, only referring to the Government on questions of policy and to Departmental Directors on major questions; in fact, these officials together will form what would amount to regional executive councils responsible, under the Government, for the co-ordination of all activities in the region and for its general welfare and development.<sup>5</sup>

The Governor's chief difficulty has been in considering how best to promote Nigerian unity and political progress, in view of the diversity of outlook between different parts of this vast Territory. The individualism which distinguishes the people of the Eastern Provinces,

<sup>1</sup> But see later.—[ED.]    <sup>2</sup> *Ib.* § 16.    <sup>3</sup> *Ib.* § 17.    <sup>4</sup> *Ib.* § 18.    <sup>5</sup> *Ib.* § 22.

finds no counterpart in the disciplined and conservative North, where respect and affection for their Chiefs is a very real factor.<sup>1</sup>

It is proposed that the new Constitution shall remain in force for 9 years, to be then reviewed, but at the end of every 3 years there is to be a review of direct nomination by the Governor for membership of the Houses of Assembly and Legislative Council.

*Qualifications for Elected Members and Electors.*—The qualifications for persons entitled to vote in Legislative Council elections are contained in the following Articles of the Nigeria (Legislative Council) Order in Council, 1922:

*Elected Members.*—Three persons resident in the municipal area of Lagos elected by qualified electors, and 1 likewise for Calabar. (Art. VI.)

*Qualifications of Electors.*—Every adult male person who is a British subject or a native of the Protectorate of Nigeria, resident in the particular municipal area and during the calendar year preceding had a gross annual income from all sources of not less than £100.<sup>2</sup> (Art. XX.)

Electors are disqualified if of declared unsound mind or have been sentenced by any competent Court in any part of H.M. Dominions, etc., to death, penal servitude or to more than 6 months' imprisonment, served their sentences or received free pardon. (Art. XXI.)

On November 19, 1945,<sup>3</sup> debate on the subject of Nigerian constitutional revision took place in the Commons on the Adjournment, at the instance of the ex-Secretary of State for the Colonies (Col. the Rt. Hon. Oliver Stanley), who opened his remarks by saying that in the minds of many hon. members, raising a matter on the adjournment was associated with the receipt of an unsatisfactory reply from the Minister, or, the desire to express some difference of opinion with the Government of the day. His intention, however, was to give the House an opportunity of expressing agreement with what he believed to be the policy of the Government. He felt it was well to establish the practice, at any rate in major constitutional developments, of giving the House that opportunity, at some stage before final decision was taken.<sup>4</sup> After all the House of Commons bore the final responsibility for the fate of 60 million people in the Colonial Empire.<sup>5</sup>

The first important factor was that these new proposals provided for a very great degree of decentralization. The second was, an eventual system of indirect election by which the village sent its representative to the Provincial Council, and it, in turn, its representative to the House of Assembly and, finally, to a large degree, the Legislative Council, which will be made up of people elected by, and sent to it, by the House of Assembly. That accorded far more with the traditional methods of Africa than an attempt to institute, everywhere, the ballot-box method of the United Kingdom.<sup>6</sup>

The Under-Secretary of State for the Colonies (Mr. Creech Jones), in welcoming the initiative taken by the previous Secretary of State

<sup>1</sup> *Ib.* § 25.   <sup>2</sup> This, however, is now to be reduced to £50.—[ED.]   <sup>3</sup> 416 *Com. Hans.* 5, s. 159-68.   <sup>4</sup> And 6599 § 2.—[ED.]   <sup>5</sup> 416 *Com. Hans.* 5, s. 160.   <sup>6</sup> *Ib.* 162.

for the Colonies in bringing the proposed Constitution for Nigeria to the notice of the House, paid tribute to the great part he had played in initiating these proposals.<sup>1</sup>

The proposals secured a greater representation of Africans in the discussions and management of their own affairs.

Certain amendments to the White Paper proposals had been made, such as greater flexibility in regard to the adaptation of native institutions. The proposed small African majority in the Houses of Assembly and Legislative Council would be strengthened by reducing the number of official representatives.<sup>2</sup> Likewise 4 of the official members on the Legislative Council would be excluded as well as one of the 4 proposed Unofficial European members. It was also proposed that in place of the 3 European members representing special commercial interests there should be 3, not representing any particular interest but appointed by the Governor, and so bring to the Council, experience and qualifications not necessarily represented there in the normal way. These 3 representatives might be either Africans or Europeans, having regard to the interest which in the opinion of the Governor should be represented.<sup>3</sup> A further amendment would be that the annual income qualification of the electors in Lagos and Calabar would be reduced from £100 to £50.

The Under-Secretary concluded by saying:

It is in the great tradition of Mary Kingsley and our own social democracy that this Constitution is offered, and I ask Nigeria to work it and to bring the country along the road towards the goal of responsible and complete self-government.<sup>4</sup>

The hon. member for Thirsk and Malton (Mr. R. H. Turton) remarked that it was satisfactory that in this matter of Colonial constitutional development, they had continuity of policy between the two great parties in the country. One important point was that the proposals were not a slavish imitation of a Western European Constitution. They had in Africa a Constitution just as great, based not on the ballot-box, but on tribal authority. The hon. member therefore regretted that the ballot-box system had been retained in Calabar and Lagos. It would have been better to have adhered to nomination. In an election at Kumasi 2 years ago only 828 voted out of 14,600.<sup>5</sup>

#### \*XX. EXPRESSIONS IN PARLIAMENT<sup>6</sup>

THE *Questionnaire* to Vol. V. of the JOURNAL contained the following item:

X. Please give full list of *expressions* in debate which have been ruled as "Unparliamentary" and also *borderland expressions* which have been allowed, quoting Volume and page number of *Hansard* in every case.

<sup>1</sup> *Ib.* 163.    <sup>2</sup> *Ib.* 164.    <sup>3</sup> *Ib.* 165.    <sup>4</sup> *Ib.* 167.    <sup>5</sup> *Ib.* 168.    <sup>6</sup> See also JOURNAL, Vols. I, 48; II, 76; III, 118; IV, 140; V, 209; VI, 228; XIII, 236; XIV, 229.

The first Article on this subject appeared in Volume XIV of the JOURNAL and the following are other instances, but it is regretted that space does not admit of many being given in this issue.

### Allowed.

- "an accusation of discourtesy". (425 *Com. Hans.* 5, s. 1344.)
- "apostle of cryptoism". (424 *Com. Hans.* 5, s. 1693.)
- "disgraceful accusation". (419 *Com. Hans.* 5, s. 183.)
- "employed on snooping duties". (425 *Com. Hans.* 5, s. 1847.)
- "gay". (425 *Com. Hans.* 5, s. 1546.)
- "malicious". (425 *Com. Hans.* 5, s. 1873.)
- "ramp" and "racket". (421 *Com. Hans.* 5, s. 2805, 2809.)
- "Tory ramp". (426 *Com. Hans.* 5, s. 36.)

### Disallowed.

- "A friend of an enemy of this country". (425 *Com. Hans.* 5, s. 1873.)
- "a totalitarian Minister". (418 *Com. Hans.* 5, s. 1109.)
- "abominable lie". (425 *Com. Hans.* 5, s. 615.)
- "accusation of discourtesy should be withdrawn" (421 *Com. Hans.* 5, s. 2859.)
- "blackleg". (422 *Com. Hans.* 5, s. 1051.)
- "cheat", if applied to individuals. (414 *Com. Hans.* 5, s. 794.)
- "frauds". (424 *Com. Hans.* 5, s. 2072.)
- "intentionally". (57 *Union Assem. Hans.* 6863.)
- "mug". (1932 *Q'ld. Hans.* 2189.)
- "not a damned one of you opposite". (423 *Com. Hans.* 5, s. 107.)
- "one of those who were prepared to sell their souls". (1929 *India L. A. Hans.* 2892.)
- "outrageous". (418 *Com. Hans.* 5, s. 292.)
- reflections on colour or matters of a personal nature. (V. *Madras L.C.* 2303.)
- "sacked for incompetence". (1935 *S. Rhod. Hans.* 1305.)
- "shrimp". (1932 *Q'ld. Hans.* 1435.)
- "silly ass". (419 *Com. Hans.* 5, s. 216.)
- "take him out—he is drunk". (416 *Com. Hans.* 5, s. 1472.)
- "That is a lie". (417 *Com. Hans.* 5, s. 674.)
- "traitor". (423 *Com. Hans.* 5, s. 1604.)
- "untrue statement". (425 *Com. Hans.* 5, s. 614.)
- "weak and cowardly", as applied to Government. (1932 *Q'ld. Hans.* 1709.)

## XXI. SOME RULINGS BY THE SPEAKER AND HIS DEPUTY AT WESTMINSTER, 1945-1946

COMPILED BY THE EDITOR

THE following Index to some points of Parliamentary procedure, as well as Rulings by the Speaker and Deputy Speaker of the House of Commons given during the First Session of the XXXVIIIth Parliament of the United Kingdom of Great Britain and Northern Ireland (9 Geo. VI), are taken from the General Index to Volumes 413 to 428 of the Commons *Hansard*, 5th series, covering the period August 1, 1945, to November 6, 1946. The Rulings, etc., given during the remainder of 1946 (which fall in the 1946-47 Session, the Second Session of the XXXVIIIth Parliament) will be treated in Vol. XVI of the JOURNAL.

The respective volume and column reference number is given against each item, the first group of figures representing the number of the volume, thus—"413-945" or "428-607, 608, 1160". The references marked with an asterisk are indexed in the Commons *Hansard* only under the heading "Parliamentary Procedure" and include some decisions of the Chairman of Committees.

Minor points of Parliamentary procedure are not included in this Index, neither are Rulings in the nature of remarks by Mr. Speaker. Rulings in cases of irrelevance are only given when the point is clear without reference to the text of the Bill, or other document, itself. It must be remembered that this is an index, and, although its items generally are self-contained, in other cases a full reference to the *Hansard* text itself is advisable.

*Note.*—1 R., 2 R., 3 R.=Bills read First, Second or Third Time. *Amdt.(s)*=Amendment(s). *Com.*=Committee. *Cons.*=Consideration. *Rep.*=Report. *C.W.H.*=Committee of the Whole House. *Govt.*=Government. *Dept.*=Department. *O.P.*=Order Paper. *Q.(s)*=Question(s) to Ministers. *Sel. Com.*=Select Committee. *Stan. Com.*=Standing Committee. *R.A.*=Royal Assent.

Address to the King.

See King George VI.

Adjournment.

—of debate.

\*—abuse of Rules of House, 413-229.

—Motion not accepted by Chair, 421-2628.

—moved to call attention that no Cabinet Minister is present when the affairs of his Department being discussed. Refused by Deputy Speaker, who was of opinion Motion was an abuse of Rules of House, 413-229.

—of House.

—acceptance of Motion for, refused, Motion usually submitted in written form; one then reads it out and considers whether in order, 416-39.

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- debate—*see* that Heading.
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- falls as no seconder, 417 - 89.
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**Bills, Private Members'.**

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**Bills, Public.**

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- of the House governed by Government, 416 - 2678, 2683.
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- Ruling of, must not be questioned, 420 - 1174.
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**Chairman of Committees.**

- not in order to address by name when sitting as Deputy Speaker, 421 - 465.

**Closure.**

- if Mr. Speaker accepts Motion, it is then for House to decide by sufficient majority whether debate is to come to an end. It is Mr. Speaker's responsibility to see that every minority has adequate hearing, and if not it is for Mr. Speaker to refuse to accept Motion for, 422 - 715, 6.



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- proceedings in must not be disclosed, 420 - 456, 526.
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- what happens in, is unknown to House until *Com.* has reported, 419 - 2278.

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- Acts of Parliament must not be criticized, 419 - 1684.
- Adjournment of House.*
- debate on, cannot be anticipated, 420 - 1081.
- lapsed at 10 o'clock, exempted business then taken, and when finished extra half-hour of final adjournment, 426 - 1075, 6.
- last half-hour given to private members, 415 - 1390.
- legislation cannot be discussed, 416 - 2458.
- member wasting time of House when giving up his right and no Minister warned, 231 - 2655.
- when notice given to raise matter on, no further reference can be made to it, 417 - 387.
- see also "Editorial".
- Agreement (Bretton Woods) being a Treaty, not debatable in House, 417 - 740-2.
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- down on *O.P.*, member can only ask a *Q.* about it, 417 - 641, 2.
- four discussed together, 425 - 449.
- \*—to come, cannot be discussed, 425 - 411.
- American Government, member not entitled to criticize form of, 418 - 1245.
- "*Another Place*".
- case of a member of, may be cited in his individual capacity as a citizen, 421 - 2806.
- details of what happens in, must not be gone into, 421 - 1189.
- in, may be referred to if a statement of Government policy, 418 - 393.
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## Debate

## "Another Place" (continued):

- argument against Mr. Speaker is disrespectful behaviour, 425 - 653.
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  - consolidation, administration of Act not open to, 427 - 305.
  - 2 *R.*
    - \*—debate on, 416 - 240, etc.
    - not usual to discuss details of, 416 - 279.
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  - Motion to refer to, cannot be debated, 427 - 294.
  - \*—on Clause not yet called, out of order, 424 - 906.
- Cons.*
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  - second speech allowed to mover of *Amdt.* on Bill from Standing *Com.*, 425 - 1978.
- Re-Com.*
  - \*—details of *Amdts.* to be discussed in *C.W.H.* cannot be discussed on Motion for, 425 - 46.
  - general review of Standing *Com.* proceedings not in order, on unlimited committal only short statement allowed, 421 - 385.
  - member may not speak again, but may make personal statement, with leave of House, 425 - 80.
- \*—3 *R.*, 415 - 2532, etc.
  - cannot comment on omission from, 421 - 495.
  - cannot talk about what ought to be in the Bill, but open to Chair to allow certain latitude, 415 - 1383.
  - cannot be raised on a *Q.* decided same Session, 425 - 530.
  - Chair, no power to insist upon hon. member replying, 421 - 2856.
  - Civil Servants not to be attacked or praised, 419 - 1161.
  - Civil Servants, opinion of, cannot be asked in opposition to the Ministers responsible, 427 - 1392.
- \*—coming, cannot be discussed on point of Order during *Q.* time, 427 - 1485.
- \*—conduct of, should be left to Chair, 417 - 1043.
- Com., Sel.*
  - Motion committing Bill to, not debatable, 415 - 166.
  - reference to proceeding in, 421 - 2622.
  - comments on Government of N. Ireland not in order, 416 - 2517.
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  - English, members must address House in, 428 - 396.
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- \*—imputations, 413 - 1044, etc.
  - imputations and insinuations, 418 - 143, etc.
  - individual not able to reply for himself must not be attacked, 419 - 355.
  - interruptions, 413 - 1044, etc.
- \*—interruptions and interjections, 421 - 890, etc.
- Judges, all Judges of Allied Court, Nuremberg, put upon same footing as Judges of British Courts, as to reference, 416 - 598.

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- member—see that Heading.
- Military Courts, not entitled to judicial privilege in, 415 - 1092.
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- Finance Bill, expenditure cannot be discussed, 417 - 230.
- Resolutions must be kept within terms of, 418 - 989, 1006-8, 1009.
- Supply, Com. of.*
- debate on Motion—That Mr. Speaker do leave the Chair, proposed *Amdt.* out of order, 421 - 2370.
- matters requiring legislation cannot be discussed, 419 - 1949.
- Supplementary Estimates, 418 - 1450-4, 1478.
- mover did not rise to exercise his right of reply, 414 - 1504.
- Motion.
- mover of, has right of reply, 425 - 1390.
- to cover two, 427 - 729.
- Orders, laying of, not before House but their subject, 425 - 531.
- Parliamentary Expressions.<sup>1</sup>
- Mr. Speaker quoted Mr. Churchill as saying: *We should never get too mealy-mouthed or frightened about little tiffs that occur in the course of our affairs*, 421 - 228; 426 - 36.
- petitions, member must not read out all but give heading and prayer, 425 - 1353.
- Prayers against Order, wide debate allowed in view of subject, 425 - 1226, 7.
- Q.* must be put if no other member rises, 416 - 1402.
- repetitions, 416 - 1688, etc.
- Resolution *Rep.* if Minister declines to open debate on Bill, is entitled to close it, 418 - 1226.
- rule against reference to previous day's part of debate raised in special circumstances, 419 - 669.
- sad tendency to debate subjects by *Q.* and answers, 425 - 884.
- secret documents may not be quoted from, 424 - 1875.
- speaker, a matter for Mr. Speaker to decide upon, 416 - 336.
- Speaker (Mr.) reminds members of his power in regard to repetitions, 425 - 406.
- Speeches.*
- reading of.*
- “member's memory seems to need a good deal of refreshing,” 424 - 1919.
- prohibited, but member may refresh his memory from notes, 424 - 1919.
- Statements, Ministerial—see Business, Public.
- S. R. & O. Orders, mover of Motion to amend has no right of reply, but a second speech, 421 - 516.
- sub judice.*
- matter not in order to raise, 421 - 770.
- in appeal case, does not apply until appeal has begun, 420 - 303.
- taking down objectionable words falling into disuse, 425 - 1873.
- withdrawal of words a matter for Mr. Speaker, 428 - 1029, 1874.
- “You”.
- Deputy Speaker wishes that hon. members would not bring him into the picture so often, 427 - 988.
- means Mr. Speaker, 416 - 966, 969, 970.

<sup>1</sup> See also Article XX hereof.

**Division(s).**

- bells ring 4 times for 23 seconds each with about 4 seconds interval and the bells have ceased finally to ring before the second call 2 minutes after the first call, 425 - 1061.
- 2 R., House proceeded to, and Mr. Speaker stated that he thought the "Ayes" had it and on his decision being challenged it appeared to him that the, was unnecessarily claimed; he accordingly called on those who supported and those who challenged his decision successively to rise in their places and declared the "Ayes" had it, 2 members only who challenged his decision having stood up—Bill was accordingly read second time, 419 - 105.
- call of "division off", 425 - 1062.
- Count of House.*
  - cannot be called after 7.30 p.m., 415 - 1526.
  - counted out, 423 - 1970.
  - on previous night when the "ticker" tape machine and the bells went almost simultaneously, drawn to Mr. Speaker's attention, 423 - 2008.
- member rising to point of Order during, must have hat covering, handkerchief or *O.P.* not sufficient, 421 - 2715.
- Speaker (Mr.) asked to extend the time to 3 minutes, 423 - 2009.

**Elections Validation Bills.**

- members concerned, are still members but must be mentioned by name and not by their constituencies, 420 - 1891, 2, 7.<sup>1</sup>

**Finance—see Money, Public.****Hansard.**

- correction of error in, ordered by Mr. Speaker, 423 - 699.
- reporters not supposed to show hon. members other hon. members' speeches, 424 - 2334, 5.

**Judges.**

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- Presidents of Military Courts not protected against criticism, 415 - 1092.

**King George VI.**

- Address to, arrangements, stated to the House by Mr. Speaker, 413 - 182.

**Lords, House of.**

- Amdts.*, not in order to say the amendment was accepted by Lords, 420 - 892.
- Amdts.* by, three, put together, 426 - 918.
- "Another Place"—see Debate.
- must be referred to in Commons as "Another Place" (see "Debate"), 425 - 476.
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<sup>1</sup> See also Article V hereof.

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- Lords must be referred to in Commons as, 425 - 476.
- may only give his interpretation of assurance given by Government on, but must not quote from, 420 - 890.
- member of, may be cited in his individual capacity as a citizen, 421 - 2806.
- can only rise to point of Order or put *Q.* to member addressing House, 428 - 1088.
- cannot
  - criticize the conduct of a Governor, except on a Motion, 421 - 1566.
- make second speech, 415 - 535, etc.
- make second speech except by leave of House, 414 - 1559, etc.
- speak unless member speaking gives way, 415 - 236, etc.
  - giving way a matter for hon. member, 415 - 731.
  - has not been called, 422 - 822.
  - House entitled to refuse right to speak second time, 415 - 1156.
  - imputations against, should be withdrawn, 419 - 522; 420 - 180.
  - in possession of floor may give way or not as he chooses, 422 - 996.
  - interrupted, right of reply by courtesy, not of right, 413 - 1052.
  - maiden speeches, not usual to interrupt, 415 - 69.
- \*—makes statement on own responsibility, 415 - 739.
  - may not impute unworthy motives against another, 422 - 1005.
  - should ask for leave to speak again, 421 - 2732.
  - speeches, reading of, all a question of refreshing memory, 420 - 389.
  - wishing to speak, better seek to catch Mr. Speaker's eye, 423 - 1467.
- “Learned” only used of members who are “K.C.s”, 421 - 2471.
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- must
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  - resume seat when occupant of Chair rises, 425 - 1180.
  - sit down when Mr. Speaker on his feet, 423 - 2025.
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- notice to, of intended criticism of personal conduct, 417 - 222.
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- answers to,
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<sup>1</sup> See Article XXII hereof.<sup>2</sup> See JOURNAL, Vol. XIV, 252.

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- \*—asking seated and attention drawn thereto, member rose, 426 - 936.
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  - arguing with Minister and not asking *Q.*, 415 - 1070.
  - can submit any *Q.* he likes to Mr. Speaker but may not be allowed to ask, 415 - 1456.
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- more in form of a speech than a, 420 - 169.
- must be asked and not statement made, 425 - 1219.
- must be asked in proper way, 416 - 1318.
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- Private enterprise Q. cannot be debated, 421 - 2089.
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  - Q., 422 - 1493.
  - Q. and Q. about Business, asking of, in order, 415 - 2329.
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  - quotations in, withdrawal of, if not substantiated, 422 - 65.
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  - should be directed to obtaining information, 420 - 337.
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- Speaker (Mr.) cannot tell Minister how to answer a, 419 - 1299.
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  - another Q., 414 - 1687, etc.
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  - few and many Qs., or many and few Qs., 413 - 445, etc.
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  - member rising to ask, after giving Notice to raise matter on Adjournment, 418 - 1098.
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  - nothing to do with matter before the House, 422 - 1237.
  - nothing to do with Q., 420 - 1508.
  - outside scope of Q., 420 - 2038, etc.
  - raising matter on the Adjournment, 421 - 1101.
  - rather far from original, 415 - 1720.
  - referring to another Q., 421 - 1926.
  - short Qs. the most effective, 416 - 585.
  - should be directed to obtain information, 420 - 337.
  - should be directed to obtain information, and not to advance arguments, 413 - 782.
  - should be put to Minister, not Speaker, 419 - 1299.
  - should not be read, 422 - 1460.

Questions to Ministers (*continued*):

- \*—telescoping of, question of, 419 - 383.
- \*—thanks to Minister for answers, 419 - 1555.
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- three together, question whether Minister answering, 416 - 1516.
- time, extension of, matter for Leader of House, 421 - 2109, 2111.
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- unsatisfactory reply, matter can be raised on Adjournment, 428 - 600.
- \*—unworthy insinuations, 415 - 8.
- wide of original, 421 - 2073, etc.
- wide of what is in Order, 427 - 1646.
- writing to appropriate Minister instead of asking, 419 - 948.
- written replies to, in future, to appear at end of *Hansard*<sup>1</sup> to speed up publication, 414 - 1372.

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- proceedings relative to discharge of reprinting of Order of June 18, 1942,<sup>2</sup> 417 - 1414.

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- Amdts.*, selection of—*see* Chair.
- argument addressed against, is disrespectful behaviour, 425 - 653.
- cannot give Ruling which would break the Rules, except with general consent of House and then it would be stated it was not to create a precedent, 423 - 836.
- Closure—*see* that Heading.
- Deputy, addressing of, by name not in order, unless in Chair in *C.W.H.*, 421 - 465.
- informs House of his visit to Air Chief Marshal in Germany, 414 - 3.
- intervention, a matter for, to decide on, 423 - 1363.
- member no right to say, made *ex parte* statement, 421 - 2365.
- Privilege (monetary)—*see* that Heading; *also* Lords, House of.
- reflection upon, as to Closure withdrawn, 425 - 532, 3.
- Ruling as to error in tabled Order, 423 - 998, 9.
- should not be asked to take part in Supplementary Q., 423 - 2144.
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- I am not so much concerned with Standing Orders—valuable as they are—as I am concerned with applying them with common sense*, 418 - 1228.
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## Standing Order(s).

- exemption from S.O. (Sittings of the House), 417 - 421, etc.
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- no *Amdts.* permissible, only acceptance or rejection, 426 - 1081, etc.
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<sup>1</sup> Such pp. are numbered in italics and from Vol. 422 onwards at end of Volume.—(Ed.)

<sup>2</sup> *See* JOURNAL Vol. XVI, 252.

## XXII. APPLICATIONS OF PRIVILEGE, 1946

BY THE EDITOR

## At Westminster.

*Letter to Members.*—On July 15, 1946,<sup>1</sup> the hon. member for Gainsborough (Captain the Rt. Hon. H. F. C. Crookshank) asked the guidance of Mr. Speaker on what might or might not be a matter of Privilege. He and many other hon. members "and possibly you, Mr. Speaker" had received a printed document from an organization called "Service Equity", which was unsigned although the name of the Secretary was shown at the bottom as F. R. Mendell. The letter dealt with some service organization and its last sentence read:

In the event of no reply, we shall be forced to assume that the Member of Parliament concerned is against us,

and seemed to imply some sort of threat in case of no reply being received. The hon. member did not think that any member, except as a matter of courtesy, was under any obligation to answer any letter unless he or she so desired.

Captain Crookshank then asked Mr. Speaker for a Ruling, in protection of hon. members "of this honourable House".

The Lord President of the Council (Rt. Hon. H. Morrison) said that in the case of communications from organizations of that character, M.P.s were free to agree or disagree therewith, or send a reply which was not clearly "Yes" or "No"—from time to time it was quite right that they should send no reply at all.

The implied threat in the letter, of a sort of blackmailing arrangement if a member did not reply, did seem to him to be an effort to coerce the free judgment of M.P.s. Therefore, although he was not sure that any question of Privilege arose, he sympathized with what the rt. hon and gallant member had said and would affirm that so far as the Government were concerned, M.P.s must be absolutely free to answer communications as they liked, or not answer them at all.

Mr. Speaker: "I will read out one line from Erskine May".

To attempt to influence Members in free debate by threats is also a breach of Privilege.

Mr. Speaker thought it was perfectly clear. He could not say that the letter appeared to contain a *prima facie* breach of Privilege. It was quite true that it was worded in such a way as to insinuate what he might call a veiled threat. In tone it was disrespectful to Parliament. He thought that a repetition of such letter might justifiably incur the serious displeasure of the House. Mr. Speaker said:

"As it contained no very definite threat, I suggest we had better treat it as undeserving of consideration."

<sup>1</sup> 425 *Com. Hans.* 5, s. 885.

*Service of Writ of Summons on an Officer of the House within its Precincts.*—On October 11, 1945,<sup>1</sup> in the House of Commons, following the Opening of the First Session of the XXXVIII Parliament, Mr. Speaker reported that it was his duty to protect the Officers of the House, and it so happened that “during this day on which the House was sitting,” a writ had been served on an Officer of the House within its precincts.<sup>2</sup> Had it been served on a Member of Parliament, no doubt the matter would have been raised at once by the member in this House and would have been submitted to the Committee of Privileges. “In these circumstances”, said Mr. Speaker, “I thought I had better mention the fact to the House that a writ was served upon one of those whom I have to protect, and served within the precincts of the House”, therefore it seemed to him that a *prima facie* case of Privilege had been established.

The Lord President of the Council (Rt. Hon. H. Morrison) then moved:

That the subject matter communicated to the House by Mr. Speaker be referred to the Committee of Privileges.

Question put and agreed to.

*Report.*—On November 27, 1945,<sup>3</sup> the Report<sup>4</sup> (which is dated November 27, 1945) of the Committee with evidence and Appendix was brought up, read, Ordered to lie on the Table and be printed.

The Committee sat 3 times and heard, Lt.-Colonel Sir Ralph Verney, C.B., C.I.E., C.V.O., Secretary to the Speaker; Mr. David Henderson, Inspector of Police attending the Houses of Parliament; Sir Frank Newsam, K.B.E., C.V.O., M.C., Deputy Under-Secretary of State, Home Office; Mr. L. S. Brass, C.B.E., Assistant Legal Adviser thereto; Mr. T. E. Barnwell, Deputy Chief Constable of Shropshire; and Sir Gilbert F. M. Campion, K.C.B., Clerk of the House of Commons.

The Committee find that 2 summonses to appear before a court of summary jurisdiction to answer 2 informations laid in respect of alleged offences under the Road Traffic Act, 1930, were served on an Officer of the House within the precincts thereof on October 11 at about 9.45 a.m.; that the summonses were served by a Police Officer on duty in the precincts of the House by direction of his superior officers; and that they were served at the request of the officer who had preferred the informations.<sup>5</sup>

In regard to *service of legal process within the precincts of Parliament* the Committee state in paragraph 2 of their Report that the law of Parliament has not been well defined. It has been doubted whether a member is immune from service even of civil process within the precincts<sup>6</sup> of the House. On the other hand, the Lords have treated service or execution of civil process within the precincts of their House as a breach of Privilege,<sup>7</sup> and, as May says:

<sup>1</sup> 414 *Com. Hans.* 5, s. 412.  
(1945-46) 3L

<sup>4</sup> *Rep.* § 1.

<sup>2</sup> *See Q.* 287.  
<sup>5</sup> *Q.* 287.

<sup>3</sup> 416 *Ib.* 1089.  
<sup>7</sup> May, XIII, 89.

<sup>6</sup> H.C.

Both Houses act upon precisely the same grounds in matters of Privilege. They declare what cases, by the law and custom of Parliament, are breaches of Privilege and punish the offenders . . . in the same manner as courts of justice punish for contempt. The modes of punishment may occasionally differ in some respects, in consequence of the different powers of the two Houses; but the principle upon which the offence is determined, and the dignity of Parliament vindicated is the same in both Houses.<sup>1</sup>

In 1888 the Select Committee appointed to consider the attempt by an officer of the Royal Irish Constabulary to serve a summons upon Mr. Sheehy, a member of the House, in the Outer Lobby of the House, expressed in their report, the opinion that to attempt to serve a summons upon a member within the precincts of the House, whilst the House was sitting, without the leave of the House first obtained, was a breach of Privilege.<sup>2</sup>

And this Committee remark that although the report was not adopted by the House, the Committee are of opinion

That it may be accepted as a correct, though not necessarily an exhaustive, statement of the law of Parliament. The failure of the House to adopt the report does not appear to have been due to any disagreement with the finding that a breach of Privilege had been committed. Moreover, in Australia, where the law and custom of Parliament have been applied by statute, the opinion of the Committee was accepted as a correct statement of that law.<sup>3</sup>

In paragraph 5 of their Report the Committee observe that :

A Member of Parliament as such is not privileged from service of process. If, therefore, he is immune from service of process within the precincts of the House, while the House is sitting, it must be in virtue of a privilege enjoyed by the House in its corporate capacity. If any such privilege is enjoyed by the House, while sitting, service of process within its precincts must constitute a breach of that Privilege regardless of whether the person served is a Member or merely a stranger. This has been recognized in the analogous case of arrests. In the debate on Lord Cochrane's Case, Mr. Williams Wynn, a recognized authority on parliamentary Privilege, contended that it could not be a breach of Privilege to arrest a Member, who had been sentenced to a term of imprisonment, but had escaped from custody, in the House at a time when the House was not sitting, because "if it were otherwise, that Privilege would be available in the case of any stranger". And the Speaker seems to have concurred.<sup>4</sup>

The Committee do not take the view that :

When the Committee of 1888 expressed the opinion that the attempted service of a summons upon a Member within the precincts of the House, while the House was sitting, without the leave of the House first obtained, was a breach of Privilege, they meant that service of process in such circumstances was void. The term "breach of Privilege" early acquired an extended meaning and has long been used as synonymous with contempt. Nor do they consider that that Committee intended to imply that it was only service of process upon a *Member* that would constitute a breach of Privilege.<sup>5</sup>

<sup>1</sup> *Ib.* 73; *Rep.* § 2.      <sup>2</sup> *Rep.* § 3; see also case of Thomas Bush in Sir Gilbert Campion's Memorandum.—[Ed.]      <sup>3</sup> *Rep.* § 4; see also H.C. Paper 411 of 1888, p. iii.      <sup>4</sup> 30 *Parl. Deb.* 1, s. 311 & 313.      <sup>5</sup> *Rep.* § 6.

The Committee remark that:

In order to determine whether the present case is within the principle of breach of Privilege, it is necessary to consider upon what principle service of process upon a Member within the precincts of the House, in the circumstances before-mentioned, was held to be a breach of Privilege.<sup>1</sup>

In paragraph 7 the Committee observe that

Service of process cannot be regarded as an insult to the person served therewith. If it was, it would be a breach of Privilege to serve process upon a Member on his way to or from the House, since the House has on several occasions resolved that an insult to any Member in his coming to or going from the House is a breach of Privilege.<sup>2</sup> No contention of this sort has ever been advanced.

Paragraphs 8 and 9 of the Report are here given at length:

But even supposing service of process upon a Member within the precincts of the House while the House is sitting is an insult to the Member, that would not make it a breach of Privilege. Mr. Holt, writing in 1810, at a time when the House was far more ready to commit for breach of Privilege than it is to-day, observes:

"With respect to Parliamentary Privilege, to guard against any error from a too comprehensive rule, it may be necessary to observe in the first instance, that the common law attributes no peculiar dignity to a Member of Parliament as an individual and that the dignity, therefore, which is the subject of Privilege and the subject of defence, is that of the House, and not of the individual person. . . ."

"When we speak of the dignity therefore of Parliament, we can intend nothing but the dignity of the House; and all Privileges founded on this dignity must be understood to be limited in this sense."<sup>3</sup>

If, then, service of process on a Member within the precincts of the House, while the House is sitting, without the leave of the House first obtained, is a breach of Privilege, the reason must be that it is deemed disrespectful to the House. For a stranger admitted within the Parliamentary precincts with the permission, express or tacit, of the House to presume to serve the process of an inferior tribunal in the presence, actual or constructive, of the House is clearly an abuse of the Privilege of admission to the House, and a violation of the dignity of the High Court of Parliament. As the essence of the offence is the insult to the House, it is immaterial whether the person on whom process is served is a Member or not. The immunity being the Privilege of the House, may in exceptional circumstances be withheld, but to draw a distinction between Members and other persons in this regard would expose the House to the reproach of "stretching the compass of dignity too far, and applying it to the individual instead of to the House".<sup>4</sup> The circumstance that, in this particular case, process was served by a police officer on duty within the Parliamentary precincts if anything aggravates the breach of Privilege, since the officers of the Metropolitan Police who are on duty within the precincts are there only for the purpose of assisting the Serjeant-at-Arms in carrying out the orders of the House and maintaining order and decorum within the precincts.

*In regard to Service of Process within the precincts of the House when the House is not sitting*, the Committee state that whether the circumstance that the House is sitting when the process is served is an essential element in the breach of Privilege is a question of some difficulty. The Committee do not accept the inference drawn from Lord Cochrane's case that it was an essential element. That case was not one of

<sup>1</sup> Rep. § 6.      <sup>2</sup> 22 C.J. 115; 37 *Ib.* 902.

<sup>3</sup> The Law and Usage of Parliament in Cases of Privilege and Contempt, p. 35.      <sup>4</sup> Holt, *op. cit.* p. 43.

service or execution of process but of a member who had been convicted of a criminal offence and had escaped from prison, taking sanctuary in the Chamber at a time when the House was not sitting, and therefore not in point.<sup>1</sup>

Paragraphs 11-12 of the Report read as follows:

11. It is clear that service of process even upon a Member within the precincts of the House during a prorogation, or during any periodical recess, or even on a day over which the House had adjourned is not a breach of Privilege. To hold that it is, would be to confuse *what* the House is with, *where* the House is.

12. As regards service of process within the precincts on sitting days, it would be impracticable to limit the time during which it would constitute a breach of Privilege strictly to the hours during which the House was sitting. It must be extended for at least a reasonable time before the meeting and after the rising of the House. It will clearly include periods when the sitting of the House is suspended, e.g., on the first day of a Session after the House returns from attending the King in the House of Peers, when the House is constructively still sitting.

The Committee observe<sup>2</sup> that indignities offered to the Committees of the House are resented as indignities offered to the House itself. It will therefore be a breach of Privilege to serve process whilst the Committee are sitting, even though the House itself is not sitting at the time. The breach of Privilege could not be limited to service of process in the actual view of a Committee, and unless each case is to be decided on its particular facts, the Committee find it difficult to see how the area within which protection will be afforded by the dignity of the Committee can be restricted to anything less than the precincts of the House.

The Committee further observe that if the period during which service of process within the Parliamentary precincts would constitute a breach of Privilege was limited to periods while the House or any Committee of the House was actually sitting, the absurdity would result that on some days it would be a breach of Privilege to serve process between say 10.45 a.m. and 1.15 p.m., and between 2.15 p.m. and the rising of the House, but not a breach of Privilege to serve it between 1.15 and 2.15 p.m.<sup>3</sup>

The House has jurisdiction to keep order and maintain decorum within its precincts, including the curtilages thereof, and may make rules with respect to the conduct of strangers admitted to those precincts, as well during the intervals between its daily sittings as during the sittings themselves, and Your Committee are of opinion that the simplest rule to lay down is that service of process within the precincts of the House on a day on which the House or any Committee thereof is to sit, is sitting or has sat will constitute a breach of Privilege.<sup>4</sup>

Misbehaviour within the precincts of the House while the House is sitting, even though not calculated to disturb the proceedings of the House, is punishable as for breach of Privilege. The Committee

<sup>1</sup> *Rep.*: § 10; see also Hatsell 1818.I.78. Chambers' Encyclopædia 1906 Vol. IV, 121, gives an interesting sketch of this distinguished sailor's career and quotes other literature on the subject.—(Ed.)

<sup>2</sup> *Ib.* § 13.

<sup>3</sup> § 14.

<sup>4</sup> § 15.

remark<sup>1</sup> that the principle upon which it is so punishable can only be that the House is deemed to be present in every part of the building in which it is sitting and therefore that misbehaviour within the precincts of the House is misbehaviour in the presence of the House, in the same manner as contempt may be committed constructively in the face of a court of justice though not in its actual view. The principle that the House, though not actually, may yet technically be sitting already finds a place in Parliamentary Procedure.<sup>2</sup>

The Committee take the opportunity to observe that in their view the principles which apply to service of process are equally applicable to execution of process,<sup>3</sup> within the precincts of Parliament.

In regard to *Parliamentary Privilege and the course of criminal justice* the Committee cannot think that the immunity from the service or execution of criminal process which, in their opinion, is conferred by the law of Parliament upon all persons within the Parliamentary Precincts, temporary in its duration and liable to be withheld whenever the House saw fit, could paralyse the arm of the law or obstruct the course of criminal justice. An immunity wider than that obtained by the Committee of 1888, in that it is not limited to the time while the House is sitting, has been enjoyed by Members of Parliament under a Police Order for over 50 years.<sup>4</sup>

As regards persons who reside within the Palace of Westminster the Services of Process (Justice) Act, 1933,<sup>5</sup> enables a summons to be effectively served upon a defendant at his last or usual place of abode by registered post.

The Committee state<sup>6</sup> that the protection from service or execution of process afforded by the dignity of the House in no way affects the right of police officers on duty within the precincts to arrest strangers who, having been admitted to the Palace of Westminster, commit criminal offences, or are thought to be about to do so, subject to this that they must refrain from entering the House itself while it is sitting, unless they have previously received its permission.

*Recommendations.*—These are contained in the last 2 paragraphs (Sections 20 and 21) of the Report as follows:

20. Your Committee are of opinion that in this case a breach of Privilege was committed.

21. Your Committee are satisfied upon the evidence given that no breach of Privilege or disrespect to the House was intended by any of the officers of the Metropolitan Police concerned in the service of the process. The extent of the Privilege of the House in the matter was not well defined, and no instructions had ever been issued to the Metropolitan Police regarding the service of criminal process upon persons other than Members of Parliament within the precincts of the House. For this reason Your Committee do not consider that the interposition of the House is called for by any proceedings against the officers concerned. With regard to the officer who laid the information and requested the Metropolitan Police to serve the process, Your Committee do not think that he ever envisaged the possibility that service of process

<sup>1</sup> Rep. § 16.    <sup>2</sup> May, XIII, 222.    <sup>3</sup> Rep. § 17.    <sup>4</sup> See Q.s 103-4; and Appendix, p. 24.    <sup>5</sup> 23 & 24 Geo. V, c. 42, s. 1.    <sup>6</sup> Rep. § 19.



within the precincts of the House might be a breach of Privilege. Moreover, they are informed that the address on the summons (which in this case was c/o The Speaker, House of Commons, London, S.W.1) is inserted merely by way of description of the defendant and with a view to assisting the serving officer.<sup>1</sup> He cannot, therefore, be held to have procured the commission of the breach of Privilege.

*Evidence.*—Lt.-Colonel Sir R. Verney, who was the first witness to be called, testified that on October 11, at about a quarter to ten, he accepted two summonses in his office from Inspector Henderson and afterwards mentioned the matter to Mr. Speaker.<sup>2</sup> The House would have been sitting at 2.15 and he believed there was a Committee meeting that morning, so that it was a day on which the House was sitting.<sup>3</sup> One summons was in connection with a charge that he—“unlawfully did drive a certain motor vehicle to wit a motor car, on a certain road called the main Shrewsbury-Bridgenorth Road there situate without due care or attention” and the other one was for failing to report the accident.<sup>4</sup>

Inspector Henderson testified as to the serving of the summonses. The summonses were for service on Sir Ralph Verney, c/o The Speaker, House of Commons.<sup>5</sup>

Sir Frank Newsam in his evidence stated that Inspector Henderson said he was clear that he ought not to serve such instruments on Members of Parliament at the House of Commons, but he thought it was right to deliver them to officers of the House of Commons.

Sir Frank said that if the Committee thought that there had been a breach of Privilege both the Secretary of State and the Commissioner of Police would like to express their most sincere and profound regret. The relevant Home Office Order was in these terms:

Criminal process may not be served or executed on any Member of Parliament within the Palace of Westminster or within Palace Yard without the leave of the House, and no action whatever will be taken by the Police in such cases without the special instructions of the Commissioner.<sup>6</sup>

It was clear that when this Order was approved it was not thought that officers of the House were in the same position as members, but that might be right or wrong.<sup>7</sup> If the Committee thought that the Home Office were wrong, they would take the necessary steps to see that the Order was put right, because the Home Secretary had power to give directions to the Commissioner of Police and they would amend the Order in any sense in which the Committee found it was lacking.<sup>8</sup>

In reply to the *Q.* why the summonses were served on Sir R. Verney in the Palace of Westminster rather than in Gloucestershire at his private address, Mr. Barnwell said: “I understood his house would be closed for some considerable time”.<sup>9</sup> It was a fairly general practice of the Police that in serving a summons or process, the Police

<sup>1</sup> See Appendix, p. 25 referred to later.—[ED.]    <sup>2</sup> *Q.* 1.    <sup>3</sup> *Q.* 2.    <sup>4</sup> *Q.* 10.  
<sup>5</sup> *Q.* 27.    <sup>6</sup> *Q.* 103.    <sup>7</sup> *Q.* 104.    <sup>8</sup> *Q.* 130.    <sup>9</sup> *Q.* 146.

endeavour to avoid serving such on a person at his place of employment for an obvious reason—that it might get him into difficulty with his employers.<sup>1</sup>

Sir Gilbert Campion on being called submitted a Memorandum<sup>2</sup> of which the following briefly are the main points:

Although some of the features of this case are covered by previous cases there are no conclusive precedents. All the cases quoted in the Appendix to his Memorandum are cases where process was served *within the precincts of the House*. The witness was afraid that it would be found that the most important point remained one on which a new decision was required. In the present case a summons *to attend a police court* was served on an *Officer of the House within the precincts of the House at a time when the House itself was not sitting*. The facts indicated by italics all had a bearing on the issue of Privilege and in no recorded case were they all combined.

The cases quoted in the Appendix will now be given, each followed by a résumé of Sir Gilbert's comments thereon in his Memorandum.

*Case of Mr. Sheehy.*—On the 26th November, 1888, a complaint was made that an attempt had been made to serve a summons, issued under the Criminal Law and Procedure (Ireland) Act, 1887, upon a Member in the outer Lobby of the House, and a Select Committee was appointed to consider the matter. The Committee reported that the attempted service of a summons upon a Member, within the precincts of the House, whilst the House was sitting, without the leave of the House first obtained, was a breach of the Privileges of the House, but that the Committee did not recommend the interposition of the House in any proceedings against the constable who had made the attempted service, as the Committee were satisfied that no violation of the Privileges of the House was intended. But when, upon consideration of the report, a motion was made "That this House doth concur in the report of the Committee", an amendment was carried "that the House do now proceed to the Orders of the Day".

It would appear from the report of the debate<sup>3</sup> that reluctance to place on record a formal recognition of a right to execute process upon Members within the precincts of the House, even subject to the qualifications and conditions suggested by the Committee, or to concur in their opinion that general instructions should have been issued to the Irish Police as to the observance of due care and respect for the House in serving or executing process against Members within the precincts of the House, had much influence in leading the majority of the House to vote for the amendment. However this may be, the question remained undecided, and successive editors of May's Parliamentary Practice have not considered themselves justified in saying more than that "service of a criminal process on a Member within the precincts of Parliament, whilst the House is sitting, may be a breach of Privilege".

*Comment.*—In this case the House failed to pronounce a decision on the Report of the Committee, but not, it would seem from the debate, because of disagreement with the opinion of the Committee that a breach of Privilege had been committed. Still, even without the endorsement of the House, the opinion of the Committee on the question of Parliamentary law involved must be allowed to carry considerable weight, since it is consistent (as will be shown presently) with the principle on which cases of this kind are to be judged, and is supported by a decision of the House of Lords and by one of a Dominion Parliament in which our Parliamentary law of Privilege is accepted.

<sup>1</sup> Q. 159.

<sup>2</sup> H.C. 31 (1945-46) pp. 12-6.

<sup>3</sup> 332 Parl. Deb. 3, s. 102-24.

The Sheehy case, however, differs from the present case in two important particulars: (1) The person on whom the process was served was a Member, not an Officer of the House, and (2) The process was served not only within the precincts of the House but at a time when the House was actually sitting.

*Case of Lord Cochrane.*—In 1815, Lord Cochrane, a Member of the House, who had been convicted of a conspiracy and committed to the King's Bench Prison, escaped and took refuge in the House of Commons. He was arrested by the Marshal in the House whilst the House was not sitting. The case was referred to the Committee of Privileges, who reported that it was entirely of a novel nature, and that under the particular circumstances given in evidence it did not appear to the Committee that the Privileges of Parliament had been violated, so as to call for the interposition of the House, by any proceedings against the Marshal of the King's Bench. Sir Reginald (then Mr.) Palgrave, who was Clerk of the House in 1888, when giving evidence before the Select Committee, to which reference has already been made, expressed the opinion that "judging by the case of Lord Cochrane it would seem as if Privilege did not run, even in the precincts of the House, in the case of a criminal process or criminal proceedings when the House was not sitting". This is a possible, but not, I think, a necessary inference. There is an obvious difference between allowing the walls of the House to be made a sanctuary for the benefit of a convicted criminal, and allowing legal process to be served within the precincts of the House. It will also be observed that the Committee of Privileges carefully refrained from saying that the arrest of Lord Cochrane was not a breach of Privilege. They said only that the Privileges of Parliament did not appear to have been violated so as to call for the interposition of the House by any proceedings against the Marshal of the King's Bench.

*Comment.*—If this opinion of Mr. Palgrave could be accepted, it would have a bearing on the present case which would be little short of conclusive. For it resembles the present case in these points: (1) The process was of a criminal nature; (2) It occurred within the precincts and when the House was not sitting. Further, if a Member was not protected in such circumstances, how much less an Officer of the House?

But the general rule which the Clerk in 1888 felt bound to extract from the case seems hardly warranted by its facts. These were peculiar. The Member was a convicted criminal escaped from prison, who was attempting to use the House as a place of sanctuary. This is very different from the case of a person arrested before trial. The opinion referred to also seems to involve a confusion between the privilege of freedom from arrest anywhere (which is a personal privilege of the individual Member and is undoubtedly confined to civil cases) and the privilege of excluding service of process within the precincts of the House, which is a collective privilege of the whole House, and with regard to which the question whether it does or does not cover criminal process is one of the questions to be decided.

*Case of Thomas Bush, 1689.*—On the 29th July, the Lords adjudged one Thomas Bush guilty of a breach of Privilege for arresting William Presgrave in one of the rooms belonging to the House of Peers by a warrant from the Lords Commissioners of the Great Seal, and ordered him into the custody of the Gentleman Usher of the Black Rod.<sup>1</sup> It is not stated that the arrest took place whilst the House of Lords was sitting. It is true that this was a case of arrest on civil process, and that witnesses attending either House of Parliament or Committees of either House, and petitioners or other persons summoned to give evidence, or parties soliciting business before either House or before Committees of either House, are privileged from arrest on civil process in coming, staying and returning.<sup>2</sup> But there is nothing to show that Presgrave belonged to either category, and the fact that Bush's offence is particularized as arresting Presgrave in one of the rooms belonging to the House of Peers

<sup>1</sup> 14 L.J. 298.

<sup>2</sup> May, XIII, p. 128.

suggests that he did not, and that it was the fact that the arrest took place within the precincts of the House that was the essence of the offence.

*Comment.*—The details of this case are not very explicitly stated . . . the probability is that the offence for which Bush was judged guilty of a breach of Privilege was that of arresting a *stranger* within the precincts of the House of Lords, whether during the sitting of the House or not is unknown, though had it been while the House was sitting, the fact would almost certainly have been stated. This case differs from the present case principally in the fact that the arrest effected by Bush was on civil process.

*Case of John Bell, 1827.*—In 1827, John Bell was brought before the Lords and admonished for serving Plass, a doorkeeper, when attending on the House, with a process from the Westminster Court of Requests, to pay a debt and costs awarded against him by that court, for the loss of an umbrella which had been left with the doorkeeper during a debate. The Lord Chancellor said that Bell had taken upon himself to serve Plass with the process "in their Lordships' House";<sup>1</sup> but whether the Lords were sitting at the time is not clear.

*Comment.*—This is also a case of service of civil process in the precincts of the House of Lords, and whether the House was sitting is unknown. The person on whom process was served was an official of the House.

*Case in Australian House of Representatives.*— . . . In the Commonwealth of Australia, where by 63 and 64 Vict. c. 12, Const. s. 49, the Privileges of Parliament are the same as those enjoyed by the House of Commons, it appears to be held that service of process on a Member within the precincts of the House whilst the House is sitting is a breach of Privilege.

On 6th October, 1922, a complaint was made to the House of Representatives that summons to appear in connection with the pastoralist strike had been served upon a Member in the precincts of the House whilst the House was sitting. The Attorney-General said he did not know exactly what was the nature of the document served on the Honourable Member, but he thought that, when it was necessary to serve such documents, those concerned ought not to serve them while the House was sitting in any way that might be regarded as an interference with the movements of Hon. Members in the House, that those intrusted with a process had ample opportunities of acting without coming within the precincts of the House when sitting and that it was a practice to be rephended; and he undertook to look into the matter and report to the House. Five days later the Attorney-General informed the House that he had had inquiries made, and found that the summons had been served, as stated, but that the gentleman who had served it did not intend to commit a breach of Privilege. He went on: "In the circumstances and in view of the doubt that exists whether the section<sup>2</sup> under which the summons was issued might not be regarded as being of an administrative rather than of a penal nature, I am of opinion that it is not desirable to proceed further in the case. Those intrusted with the service of process of the courts should take steps to have summonses served in the ordinary way, as it is not a desirable practice that service should, in any circumstances, be made within the precincts of this House while the House is sitting".<sup>3</sup>

<sup>1</sup> Parl. Deb. 1827, 17, Col. 34.    <sup>2</sup> The Commonwealth Parliament has no Powers and Privileges of Parliament Act, which fact has sometimes attracted attention at Canberra. In the (older-established) States of the Federation, however, more detailed provision is made. The constitutions of Victoria and S. Australia contain similar sections to Commonwealth S.49, but that of Queensland contains several Privilege provisions. In N.S.W., Victoria, S. Australia, and Queensland some of the provisions usually contained in Powers and Privileges of Parliament Acts are included in other Acts. It is only in W. Australia, and Tasmania where special Acts have been passed but even there, some privileges are dealt with in other Acts. In several of the States details of the subject are included in the Criminal Code. [Ed.]    <sup>3</sup> 101 Clth. Aus. Parl. Deb. 3337-8, 3555.

*Comment.*—This case shows that the Attorney-General, interpreting a body of Privilege which is the same as that enjoyed by the House of Commons, held that it was “not a desirable practice that service should in any circumstances be made in the precincts of the House while the House is sitting”.

The rest of Sir Gilbert's Memorandum will be given *verbatim*:

The precedents, I think, make it clear that service of process upon a Member of the House within the precincts of the House while the House is sitting is a breach of Privilege. The questions which the Committee have to decide are whether (1) service of process on an *officer* of the House, and (2) at a time when the House is *not sitting* is covered by the same principle.

That principle may be stated as follows: “To serve process within the precincts of the House is an affront to the dignity of the House. It is a breach of the collective Privileges of the House as a corporate body not of any privilege enjoyed by Members as individuals.” This is why I think there is no doubt that no distinction can be drawn between civil and criminal process, since this is a distinction which only applies to the individual privilege of Members, of freedom from arrest. This is supported by the opinion of the Select Committee on the Sheehy case, and is not really contradicted by the Cochrane case for the reasons given above.

(1) Is service of process on an *Officer* of the House a breach of Privilege?

Assuming that the service of legal process within the precincts of the Houses of Parliament can in some circumstances constitute a breach of Privilege, there seems no good reason for limiting the offence to service of process upon a Member. A Member of Parliament as such enjoys no immunity from service of process beyond the precincts of Parliament. If he is exempt from service of process within the precincts of the Houses of Parliament whilst the House is sitting, it can only be because the House considers the service of process upon the Member within its precincts whilst it is in session as a violation of its dignity. It is difficult to see why, if service of process upon a Member in such circumstances is disrespectful to the House, service of process upon an Officer of the House in similar circumstances is not equally disrespectful.

(2) Is service of process within the precincts of the House, while the House is not sitting, a breach of Privilege?

In the absence of any direct precedent attention might be directed to the treatment by the House of other forms of misconduct committed within the precincts of the House when the House is not sitting. Instances of such misconduct being treated as breaches of Privilege are not numerous. The reason is that persons who offend in this way are usually removed by the officers of the House or the police. In 1887, however, insulting words addressed by a Member to another Member in the outer lobby after the House had risen were brought under the cognizance of the House. In 1621 Clement Coke, a Member, was committed for an assault upon another Member within the precincts of the House at a time when the House was not sitting.<sup>1</sup> There are also a number of cases in which assaults upon, or the use of threatening, insulting or abusive language to witnesses attending the House or Committees of the House within the precincts of the House, have been treated as a breach of Privilege, even though the House was not actually sitting when the assault was committed or the threats, etc., uttered. On the basis of this analogy, there seems no reason why the rule forbidding the service of legal process within the precincts of Parliament should not apply during the intervals of adjournment between sitting as well as when the House is actually in session. The essence of the offence is the abuse by the person serving process of the Privilege of admission. It must, however, be admitted that this conclusion is not supported by any direct precedent, but only by precedents drawn from an analogous form of misconduct.

<sup>1</sup> 1 C.J. (1547-1628) 611, 613, 615-6.

In conclusion I am of the opinion that the facts of the present case constitute it a breach of Privilege in all respects, except possibly the fact that process was served when the House was not sitting. This is the most important question on which a decision is needed.

In his evidence which followed, Sir Gilbert, in reply to a *Q.* as to whether an official organ of the House was functioning if a Committee but not the House were sitting, said he did not think it made very much difference, but that he was inclined to believe that probably the deciding point was whether the House itself is, or has been, or will be, sitting upon that day.<sup>1</sup> The line of demarcation would come at midnight on Friday.<sup>2</sup> Sitting did not mean during the Session.<sup>3</sup>

The following Questions by the Rt. Hon. A. Greenwood, and Sir Gilbert's replies are given *verbatim*:

231. *Q.* Yes.

*A.* This is a collective privilege of the House as a whole, and the status of the individual on whom process is served in the precincts of the House is rather irrelevant. I think it might even be a breach of Privilege if it were served on a stranger, taking a very extreme case, who was in the House. Privilege is disrespect to the House as a whole, and not to an individual Member.

232. *Q.* What authority is there for that? That is the point I want to get at, because Sir Alexander Maxwell in a letter which you may have seen which he sent to us does not really take that point. I am not arguing against either the point with regard to strangers or anybody else, but the question is on what real authority is your statement based that an Officer of the House or a stranger within the precincts should have Privilege extended to him, which, according to all the cases I have seen, has only been given to Members of the House?

*A.* I think I quote some cases here where the House of Lords . . .

233. *Q.* I do not think they are quite relevant.

*A.* The privileges of both House are identical.

In reply to a *Q.* in the Cochrane case as to whether there was not a difference between arrest before conviction and fleeing from justice, the witness replied that he did not think the Chamber or the precincts were a sanctuary for criminals.<sup>4</sup>

The witness said that in this case the Clerk at the time took the distinction between criminal and civil. Sir Gilbert, in further reference to this subject, said:<sup>5</sup>

That is a distinction which applies to the freedom of individual Members from arrest. It has nothing to do with the question of the service of process within the precincts, which is a totally different kind of privilege. One is an individual privilege and the other is a collective privilege. The collective privilege has a very ancient history; it is very hard to trace, but I suppose it is connected with the privileges of a Royal residence undoubtedly, because the Palace of Westminster is a Royal Palace, and it goes back a very long time, and there are parallels in the case of the Courts of Justice.

The following evidence by this witness in reply to Mr. Greenwood in regard to a *prima facie* case of Privilege will be of special interest to newer Overseas Legislatures:

<sup>1</sup> *Q.*s 209-12.    <sup>2</sup> *Q.*s 302, 303.    <sup>3</sup> *Q.* 307.    <sup>4</sup> *Q.* 238.    <sup>5</sup> *Q.* 240.

251. Q. I gather you took the same view, that there was a *prima facie* case, Sir Gilbert ?
- A. Yes. The Speaker in a case of doubt always decides that way, because if there is any doubt at all and he decides there is not a *prima facie* case he is in effect deciding the question of Privilege itself. If he decides there is a *prima facie* case, then that question is left to the House.
252. Q. That is accepted by the House ?
- A. The fact that the Speaker considered there was a *prima facie* case is not an argument one way or the other.
253. Q. I have known cases where the Speaker has ruled that there is a *prima facie* case, and when it has come to this Committee it has been shown that there was no *prima facie* case at all.
- A. Yes, that frequently happens.
254. Q. It does not prejudice the issue ?
- A. No; the Speaker would leave it to the House.

The Committee of Privileges does not normally enunciate general principles. It deals with each case on its merits.<sup>1</sup>

The Privilege of Parliament does not rest entirely on the fact that the Houses of Parliament is a Royal Palace although that is the historic origin. It is the privilege of the Parliamentary institution just as there is a similar privilege with regard to the Courts of Justice. They all go back originally to the Royal Privilege, probably the King's Peace, which was specially intensive in his immediate neighbourhood.<sup>2</sup>

In reply to a further Q., the witness did not consider Parliamentary Privilege an individual immunity. It did not belong to Members *qua* individuals. It was disrespect to the House as a whole body.<sup>3</sup>

In reply to another Q., the witness stated that "precincts" meant within the railings surrounding the Palace: "that is to say, within the enclosure of the Palace of Westminster".<sup>4</sup> Within those precincts and during the period that the Privilege was in existence it was an offence against the dignity of the House.<sup>5</sup>

The following Questions are given at length:

326. Q. We are not called upon to lay down a doctrine; we are only called upon to say in the light of the circumstances of this case, against the background of precedents, whether this is a breach of Privilege or not ?
- A. Yes, I think there is one thing that might throw a little light upon this question, and that is argument from analogy. In the last paragraph of my Memorandum I say: "In the absence of any direct precedent attention might be directed to the treatment by the House of other forms of misconduct committed within the precincts of the House when the House was not sitting"; that is to say, assaults and insulting words. Those have been dealt with by the House as breaches of Privilege whether the House was sitting or not. It seems to me that those cases offer somewhat analogous points.
327. Q. Yes.
- A. I think there is one more analogy, and that is the case that is generally known as *Ex parte Herbert*,<sup>6</sup> where a prosecution took place about the existence of a bar in the precincts. In that case

<sup>1</sup> Q.s 258, 259.    <sup>2</sup> Q.s 265-6. <sup>3</sup> Q. 270.    <sup>4</sup> Q. 287.    <sup>5</sup> Q. 292.

<sup>6</sup> See JOURNAL, Vol. III, 33; see also; X, 58.

no attempt was made to argue that even if the Privilege of the House for regulating its own internal affairs and procedure extended to selling intoxicating liquor without a licence, it could only apply to sales whilst the House was sitting. It became clear that some of the selling in respect of which one of the informations was laid took place at a time when neither the House nor any of its Committees were actually sitting. That is an analogous case; and that point was never taken.

328. Q. And which commonly happens ?

A. Yes. Privilege was there protecting the sale of liquor at unlicensed hours whether the House was sitting or not; so that I think in the absence of a direct precedent some weight might be attached to those analogies.

This is the end of Sir Gilbert Campion's evidence.

In the Appendix to the Report is given a letter dated October 25, 1945, from Sir Alexander Maxwell, G.C.B., K.B.E., Permanent Under-Secretary of State, Home Office, addressed to the Clerk to the Committee of Privileges on direction of the Secretary of State setting out the origin of the Home Office Order issued to the Commissioner of Police and the practice in regard to the issue of summonses having due regard to the Privilege of Parliament.<sup>1</sup>

*Debate.*—The Report of the Committee was considered by the House on March 22, 1946,<sup>2</sup> when the Lord President of the Council (Rt. Hon. H. Morrison) moved:

That this House doth agree with the Committee in their Report.

Mr. Morrison said that with these ancient and important issues of what in fact amounted to Parliamentary law, it was very desirable not to leave it at the Report of the Committee, but the House should be given an opportunity of pronouncing judgment upon their recommendations.<sup>3</sup> The Minister then briefly recited the facts and the conclusions which the Committee had reached upon them.<sup>4</sup>

Mr. Morrison observed that as the essence of the offence was the insult to the House, it was immaterial whether the person on whom the process was served was an M.P. or not. It would be absurd to draw a distinction between periods when the House, or any Committee thereof, was actually sitting and periods on the same day when this was not so. The rule could only be that service of process within the precincts of the House on a day on which the House or any Committee thereof, "is to sit, is sitting or has sat", would constitute a breach of Privilege. In questions of Parliamentary Privilege, the governing principle was the public interest, the primary consideration being the maintenance of the dignity and authority of Parliament, which was clearly of the utmost national importance. In the present case there seemed to be no doubt that however unintentional, there was disrespect to the House in its corporate capacity and that it was right that the authority of the House should be asserted.<sup>5</sup>

<sup>1</sup> *Rep.* (Appendix) p. 24-5.  
<sup>4</sup> *Ib.* 2178.

<sup>2</sup> 420 *Com. Hans.* 5, s. 2177.

<sup>3</sup> *Ib.* 2177.

<sup>5</sup> *Ib.* 2179.



There was no reason to think that the immunity from the service or execution of criminal process, which, in their opinion, was conferred by the law of Parliament upon all persons within the Parliament precincts could paralyse the arm of the law or obstruct the course of criminal justice. A General Order had now been issued to the Metropolitan Police, which should make the position quite clear for the future.<sup>1</sup>

The Minister thought that past Governments and Members had shown themselves, in some cases, rather lax in not demanding that the Reports should always be considered and he hoped that it might be taken now as the accepted rule that they would be considered.<sup>2</sup>

Earl Winterton was the only other speaker in the debate and he thought that Mr. Henderson should have been aware of the fact that he acts under the instructions of the Serjeant-at-Arms, and that before accepting instructions from a superior officer (of the Police) he should have gone to the office of the Serjeant-at-Arms and asked whether it was in order to serve a summons on an Officer of the House.

Question put and agreed to.

"Face the Facts Association": Poster.—On July 18, 1946,<sup>3</sup> after *Private Notice* to Mr. Speaker, the hon. member for Watford (Major John Freeman) drew attention to a matter concerning the Privileges of the House. He stated—producing it—that a poster had been posted up in London that morning which concerned the vote which hon. members might record in the House that night. He had also a photograph taken by the *Star* newspaper showing the poster *in situ* and both he and the photographer were prepared to certify that it was correct and accurate. According to the imprint the poster was published by an organization known as "Face the Facts Association", of which the secretary was Mrs. Tennant, already known to hon. members and to the Home Secretary.

If you, Mr. Speaker, will be good enough to direct that the contents of this poster be made available to the House, I shall beg leave afterwards to move, that such a poster is a high breach of the Privileges of this House.

Mr. Speaker: Before I can say whether it is a breach of Privilege, I think that the contents of the poster ought to be read out.

The hon. member then read the contents of the poster as follows:

Names of M.P.s voting for bread rationing in the Commons on Thursday will be published here as public enemies and dictators. Face the Facts Association, 6 Lower Sloane Street, S.W.1.

Mr. Speaker then declared the matter to be a *prima facie* case of breach of Privilege and the Clerk (Sir Gilbert Campion) read the poster complained of.

The Lord President of the Council (Rt. Hon. H. Morrison), the Leader of the House, thereupon moved:

<sup>1</sup> *Ib.* 2180.

<sup>2</sup> *Ib.* 2181.

<sup>3</sup> 425 *Com. Hans.* 5, s. 1386.

That the Committee of Privileges do inquire into the authors, printers, and dispersers of the said poster.<sup>1</sup>

The hon. member for Woodford (Rt. Hon. Winston Churchill) asked whether they were to understand that the members of this new House of Commons were going to be frightened out of their wits by something like this. Who would insinuate that this House of Commons had already got into such a dither that it was afraid of the vulgar chatter and clamour which arose in the streets?<sup>2</sup>

Mr. Speaker then read from Erskine May as follows:

Any attempt to influence Members in their conduct by threats is also a breach of Privilege.

Mr. Churchill observed that it was very unfortunate that this newly elected House should show itself so extremely sensitive and touchy.<sup>3</sup>

Mr. Morrison remarked that it was open to question, whether, if members of this honourable House in the High Court of Parliament were to be branded by irresponsible people as public enemies and dictators, the rights and authority of and Privileges of Parliament had not been affronted.

The hon. member for Bristol, West Division (Rt. Hon. Oliver Stanley) asked Mr. Speaker what distinguished this case from that raised by the rt. hon. member for Gainsborough (see "Letter to Members" *above*) on Monday?

Mr. Speaker stated that it was most extraordinary that he should be asked to give reasons and he must deprecate that most strongly. He gave his reasons in the earlier case, as he did, because there was a veiled threat in it. It had been brought to his knowledge, however, in this case that this (poster) was flaunted outside the House after what he had said the other day, which made it far worse.

I warned the House then that if anything of this kind occurred I had no doubt the House would take a serious view.

This was, however, not the proper time to debate a matter of this kind. He had declared it to be a *prima facie* case. The Committee of Privileges was the body to which these things ought to be referred. Its Report could be debated when it came up before the House.<sup>4</sup>

The hon. member for Norwich (Mr. H. Strauss) asked if the Motion was in the right form, to which Mr. Speaker replied that this was one of the 3 forms in which the Motion<sup>5</sup> could be put.

Question put and agreed to and Order made accordingly.

On the following day,<sup>6</sup> however, the Resolution was altered to read:

That the matter of complaint raised yesterday by Mr. John Freeman be referred to the Committee of Privileges.

*Report.*—On October 18,<sup>7</sup> the Report<sup>8</sup> from the Committee of Privileges, with Minutes of Evidence and Appendices, was brought up

<sup>1</sup> *Ib.* 1387.

<sup>2</sup> *Ib.* 1388.

<sup>3</sup> *Ib.* 1389.

<sup>4</sup> *Ib.* 1391.

<sup>5</sup> *Ib.* 1392.

<sup>6</sup> *Ib.* 1547.

<sup>7</sup> 201 C.J. 390.

<sup>8</sup> H.C. Paper 181 of 1945-46.

and read, whereupon it was Ordered that the Report, etc., lie on the Table and be printed. Paragraphs 2 to 7 are given at length:

2. From the evidence taken by the Committee the following facts have been established:

The author of the poster, which reads "Names of M.P.s voting for bread rationing in the Commons on Thursday will be published here as public enemies and dictators. Face the Facts Association, 6, Lower Sloane Street, S.W.1", was Mrs. Eleonora Tennant, who is chairman of the Association named in the poster. The printers of the poster were the firm of Messrs. Hutchings and Crowsley, of which firm a joint managing director is Mr. John King; and the dispersers of the poster were Messrs. Longman's Billposting Limited, of which the managing director is Mr. George Longman.

3. It has always been asserted by the House and recognized by all authorities that any attempt by improper means to influence Members in their Parliamentary conduct is a breach of Privilege, and it was the duty of Your Committee to determine whether publication of a poster bearing the words complained of constituted an improper attempt to influence Members. In her evidence Mrs. Tennant accepted full responsibility for the wording of the poster and asserted that she had the intention of influencing Members, but not of intimidating them, and that her object was also to call attention to what she regarded as an unwise political act on the part of a political party. On the other hand, the wording of the poster might be interpreted as an attempt to deter Members from taking part in a forthcoming division of the House, and it was certainly so regarded by the Member who made the complaint.

4. The borderline between legitimate political activity and illegitimate pressure upon Members of the House of Commons must sometimes be difficult to determine. The circumstances of the time, the form and place of publication and the interpretation to be put on the words used, as well as the intention of the author, *inter alia*, are relevant factors in cases such as the present, and opinion may reasonably differ as to the importance to be attributed to each of these factors. But seeing that the occasion was the morning of the day on which the House was expected to vote on the Order for the rationing of bread, that the publication was in the form of posters displayed not only in the streets but at the entrance to New Palace Yard, and that the words used contained what was in effect a threat to hold Members voting in favour of the Order up to public contempt, your Committee cannot doubt that the intention of those primarily responsible for the action complained of was to subject as many Members as possible to an objectionable form of pressure. The House has the right and the duty to protect its Members from attempts to influence their Parliamentary conduct by improper means; and Your Committee feel that they would be failing in due regard for the Privileges of the House if they were not to mark what has occurred in this case with their disapproval.

5. *Conclusion.*—In the case referred to them, Your Committee are of the opinion that the wording of the poster was improper and that the persons responsible for the writing, printing and distribution of the poster in question are guilty of breach of Privilege.

6. Your Committee are satisfied that neither the author, the printers nor the billposters were aware at the time that the publication of the poster might constitute a breach of Privilege. The printers and billposters regarded the contract with Mrs. Tennant purely as a business arrangement, and were quite unaware of any constitutional objection to the contract, which was carried out hurriedly at a few hours' notice, and they have severally expressed their regret to Your Committee for their part in the matter.

7. Mrs. Tennant, on the other hand, instigated the publication and was responsible for the wording of the poster. Your Committee are of the opinion

that she acted in a desire to achieve self-advertisement and with a disregard of the respect due to Parliament. Her motive was to bring improper pressure on Members, and not to defend freedom of speech as she alleged. Your Committee, however, recommend that, while her action constituted a breach of Privilege, it was in fact so petty in scale and so insignificant in its result that the House would best consult its dignity by taking no further notice of the offence.

At their third meeting the following amendment was proposed: in Para. 3 (see above).

Amendment proposed, in line 12, at the end, to add the words:

Your Committee have approached their task bearing in mind that it has long been established that Parliament ought not to extend existing Privileges. An examination of the precedents and authorities shows that it is plainly a breach of Privilege to threaten to molest Members of Parliament or to impute criminal or dishonourable conduct or motives to them. But Your Committee find no ground for the view that it is a breach of Privilege to seek to influence the votes of Members by threatening to make a political attack on them if they vote in a particular way. Such an attack must not be scurrilous. It is a breach of Privilege to attack or threaten to attack any Member in words or by methods which clearly go beyond the bounds of public decency or exceed the legitimate limits of political controversy. Your Committee have therefore sought to apply this test to the present case. (*Mr. Churchill.*)

To this amendment, the following amendment was proposed: in line 9, to leave out from the word "way" to the word "Your" in line 12. (*Mr. Churchill.*)

On the Question being put—That the proposed words, as amended, be there inserted, the Committee divided: Ayes, 3; Noes, 6. The *Amdt.* was therefore negatived.

The Committee sat 4 times and heard the following witnesses: Sir Gilbert Campion, K.C.B., Clerk of the House of Commons,<sup>1</sup> Major T. Freeman, M.B.E., M.P.,<sup>2</sup> Mrs. Eleonora Tennant (Chairman of the Face the Facts Association) and Mrs. Mary Nye (Acting Secretary thereof),<sup>3</sup> Mr. John S. King, Joint Managing Director, Mr. F. H. Laraman, Secretary, Messrs. Hutchings and Crowsley, Printers, and Mr. G. Longman, Managing Director and Mr. W. Tunstall, Acting Secretary, Messrs. Longman's Billposting Limited.<sup>4</sup>

*Evidence.*—The first witness, *Sir Gilbert Campion*, put in a Note<sup>5</sup> on precedents in regard to Posters relating to the conduct of members which will be given at length, except in regard to paragraph 2, as follows:

The freedom of Members from molestation during their attendance in Parliament is a Privilege of undoubted validity, as well as of great antiquity, and any attempt by *improper means* to influence Members in their Parliamentary conduct has always been regarded as a breach of that Privilege. It is clear that any form of incitement to violence is a direct infringement of the Privilege of freedom from molestation, and as such constitutes a clear breach of Privilege. Thus in 1696, 1699 and 1780, the Commons resolved that inciting any number of persons to come in a riotous, tumultuous or disorderly manner to the House to obstruct business was a high violation of Privilege,<sup>6</sup> and persons were

<sup>1</sup> Q.s 1-299. <sup>2</sup> Q.s 300-92. <sup>3</sup> Q.s 393-557. <sup>4</sup> Q.s 558-586. <sup>5</sup> Appendix 1, p. 33. <sup>6</sup> C.J. (1639-96) 667; *Ib.* (1699-1702) 230; *Ib.* (1778-80) 902.

committed to prison for inciting others to come in a riotous manner to the House<sup>1</sup> or for "inciting the rabble against Members of the House".<sup>2</sup>

(Here the case raised by Captain Crookshank on the 15th idem was quoted. See above.)

The proceedings in the cases, which are set out below, are also of interest in indicating that the action of the House consequent on such an offence has been:

- (a) a condemnatory resolution, without a committee of inquiry and without summoning the parties, or
- (b) a condemnatory resolution, followed by acceptance of an apology by the offender, or
- (c) a condemnatory resolution, followed by a Committee of Privileges, and, on its report, an order for attendance of the offender but without further action on his apologising; or
- (d) on the report of a Committee of Privileges, further action in the form either of a reprimand or an order to prosecute.

#### Recent Cases.

*Case of the League for Prohibition of Cruel Sports, 1935.*<sup>3</sup>

*Case of Mr. Samuel Plimsoll, 1873.* On 20th February, 1873, a Member complained of paragraphs in a book by Samuel Plimsoll, M.P., containing statements "impugning the character of certain Members of the House, and threatening further exposure in order to influence their conduct in Parliament". In the book Mr. Plimsoll threatened to give the names of certain Members whose motives in opposing his Bill were (he implied) dishonourable: "I recommend those gentlemen to be more discreet next Session, if they wish to preserve their incognito". Mr. Plimsoll made an apology to the House for his conduct.<sup>4</sup>

*Case of Mr. Samuel Plimsoll, 1880.* On 17th February, 1880, a complaint was made by Sir Charles Russell, Member for Westminster, of the publication of printed placards throughout the City of Westminster, describing his action in opposing a Bill as "inhuman" and "degrading". The House resolved that publication of such placards "was calculated to interfere with the due discharge of the duties of a Member of this House, and is a breach of its Privileges". But as Mr. Plimsoll, the author, withdrew the expressions and apologized to the Member and to the House, no further action was taken.<sup>5</sup>

#### Earlier Cases.

Earlier cases of breach of Privilege by dispersing posters, etc., are:

*Case of John Reeves.*—On 26th November, 1795, the House resolved that a pamphlet "Thoughts on the English Government" was a malicious, scandalous, and seditious libel and that the pamphlet was a high breach of the Privileges of the House. A Committee, appointed to inquire into the authorship of the pamphlet, reported on the 1st December that John Reeves was the author of the Publication.<sup>6</sup>

*Further proceedings.*—On 15th December the House, after considering the report of the Committee, resolved that an address be presented to His Majesty asking him to give directions to his Attorney-General to prosecute John Reeves as the author of the pamphlet.

*Case of Thomas Hector, 1766.* On 2nd June, 1766, a complaint was made to the House of a printed paper being dispersed, which was entitled "The Case of the Town of Walsall and Mr. Samuel Corbett, relative to a Bill depending in the House of Lords, for making a turnpike road". After the paper had been

<sup>1</sup> Dennis's Case, C.J. (1699-1702) 230. <sup>2</sup> Gardner's Case, *ib.* 231. <sup>3</sup> See JOURNAL, Vol. IV, 130. <sup>4</sup> C.J. (1873) 60. <sup>5</sup> C.J. (1880) 46, 54. <sup>6</sup> C.J. (1795-96) 119.

read at the Table the House resolved "That the said paper contains a false and gross misrepresentation of the Proceedings of this House" and appointed a Committee to inquire into the authors, printers and dispersers of the said paper.<sup>1</sup>

*Further proceedings.*—The next day the Committee reported that they had examined Mr. Thomas Hector, who said "that he was the author of the said paper; which he carried to be printed to Mr. Richardson's printing house, and delivered it to one of Richardson's servants; and that the same was exactly printed from his copy, and sent to his lodgings; from thence he sent it by a porter, to be delivered at the House of Lords". On receipt of this report the House of Commons ordered the attendance of the offending author and printer.

On attending before the House, Hector alleged, in his excuse for writing the said paper, that he did not know he had transgressed the Rules and Orders of the House, but that he did it for the use of his clients. The printer, in his excuse, alleged that it was brought to his house on Sunday morning before he was up; that he read the title and took it to be a thing of course; and considered no further than the title; and that he should be the last person in the world to do anything against the orders of the House. The House then proceeded to debate the Motion "That the said Thomas Hector by being the author of the said paper, is guilty of a breach of the Privileges of this House".

The debate was adjourned and Parliament was prorogued the same day.

*Case of Samuel Johns, 1746.* On 30th April, 1746, a complaint was made that several printed papers had been delivered to the Members of this House at the door thereof purporting to contain reasons against a Bill now depending in Parliament. After the paper was read at the Table it was resolved that the said printed paper "does contain impudent and insolent reflections upon the proceedings of this House, and is an high indignity to, and breach of the Privileges of, this House". A committee was appointed to inquire into the authors, printers and publishers of the paper.

*Further proceedings.*—On 8th May, the Committee reported that Samuel Johns, Solicitor, was the author, that Thomas Allen, a butcher, was the distributor, and that John Hughes was the printer.

On 13th May, the three offenders were called in to the House and acquainted with the resolution of the House and with the report of the Committee. Samuel Johns, in his excuse for writing the said paper, said he had no intention of offending the House, and that it was drawn up, and carried to the press, in a hurry, without an opportunity of revising it; but acknowledged that he had acted without proper caution, and asked the pardon of the House for his offence. The House then ordered that Samuel Johns, being the author of the said paper, be brought to the Bar of the House and be, upon his knees, reprimanded by Mr. Speaker for his said offence. Thomas Allen and John Hughes were dismissed from further attendance on the House without reprimand.<sup>2</sup>

*Case of Edward Stephens, 1699.* On 27th February, 1699, complaint was made to the House of a printed paper, one of which was presented to the House and read at the Table, containing high reflections upon the honour of the House in general and in particular upon a (named) Member thereof. The House resolved that the said paper was a false and scandalous libel and that Mr. Attorney-General do prosecute the offender, Edward Stephens, for the said false and scandalous libel. (A committee was appointed to inquire into the printer of the paper. The committee's report is not noticed in the JOURNAL.)<sup>3</sup>

During the hearing of the evidence, Sir Gilbert was asked<sup>4</sup> by Mr. Churchill:

<sup>1</sup> *Ib.* (1765-66) 839.

<sup>2</sup> C.J. (1745-50) 141 and 153.

<sup>3</sup> *Ib.* (1699-1702) 230.

<sup>4</sup> *Ib.* Q. 6.

Do I understand you are not taking the responsibility of bringing the matter before the Committee?—Certainly not. I am here to answer questions as to the law of Parliament.

In reply to a further Question<sup>1</sup> by *Mr. Churchill* as to where the gravamen of a breach of Privilege resided, Sir Gilbert said:

The poster says "Names of M.P.s voting for Bread Rationing in the Commons on Thursday will be published here as public enemies and dictators." Those are the words on which *prima facie* a case of breach of Privilege was ruled by Mr. Speaker. It follows the general principle of Privilege, that any molestation of Members or attempting to influence their votes otherwise than by persuasion, or anything in the nature of intimidation or which is calculated to intimidate, is a *prima facie* breach of Privilege.

*Earl Winterton* asked the witness:<sup>2</sup>

105. Q. In your opinion, does the gravamen of the charge lie in the fact that this is a printed document?

A. A published document. Yes.

Sir Gilbert also said<sup>3</sup> that the poster was a threat to pillory people who voted in a certain way and to brand them as "public enemies and dictators", and that if the invitation amounted to molestation or "anything which tended to obstruct or impede members in the discharge of their duties", or "any attempt by improper means to influence members" rendered a person liable to the penalties imposed for a breach of Privilege.<sup>4</sup>

The following Questions were also put to the witness:

285. Q. *Mr. Clement Davies*.—So that again it comes to this, that the two points we have to consider are (1) whether there is any influence and (2) whether the means used to bring that influence to bear upon Members of Parliament was improper or not. That is right, is it not?

A. Yes. The Witness considered that the *prima facie* case would have stood without an element of threat.<sup>5</sup>

299. Q. *Mr. Churchill*.—I should like to say that the course which our proceedings have taken this evening has subjected Sir Gilbert to a prolonged cross-examination, he being in the position of having to say what there is to be said for our Privileges. I earnestly hope that he will not think that by the questions we have been putting we are animated by any other feelings than those of respect for his office and appreciation of the help which he has always rendered to us. I am sure the Committee is very much obliged to him?

A. Thank you very much.

*Major John Freeman*, M.P., who was the next witness, said that he had consulted both the Clerks-at-the-Table and Mr. Speaker beforehand.<sup>6</sup> The witness testified as to seeing the poster outside his own flat in Westminster, later that morning in Victoria and Cockspur Streets and on the corner of Westminster Bridge. At 2.15 p.m. he saw it held up by 2 women at the entrance to New Palace Yard in the precincts "of this Palace".<sup>7</sup> He felt that it was an attempt to in-

<sup>1</sup> Q. 17.

<sup>2</sup> Q. 105.

<sup>3</sup> Q. 127.

<sup>4</sup> Q.s 232-6.

<sup>5</sup> Q. 288.

<sup>6</sup> Q.s 306, 7.

<sup>7</sup> Q. 310.

fluence him by methods other than those of Parliamentary argument to cast his vote in a particular way whether his conscience demanded he should do so or not.<sup>1</sup>

At this stage, (Q. 381) *Earl Winterton* said: I should like the witness to withdraw while I raise a point of order ”.

*The Chairman:*

382. Q. Would you mind withdrawing, Major Freeman ?

A. Certainly.

(*The Witness was directed to withdraw, the Committee deliberated and the Witness was again called in.*)

In answer to Q. 387, *Major Freeman* said that he drew a great distinction between any threat or pressure which might properly be brought upon him personally and public pressure brought on members of the House of Commons as such.

The next 2 witnesses, Mrs. Eleonora Tennant and Mrs. Mary Nye, were heard together and testified as to the offices they respectively held in the Association.<sup>2</sup> Mrs. Tennant took sole responsibility for the poster<sup>3</sup> and gave the order for printing the 500 copies, 400 of which were posted and 100 kept by the Association.<sup>4</sup>

The following Questions were then put to the witness by the *Chairman*.

411. Q. Did it occur to you that this might be a breach of Parliamentary Privilege ?

A. No. In my limited experience of politics, I have always thought that we have always had an untrammelled freedom of opinion in this country, and this was an expression of free opinion.

412. Q. The point did not occur to you ?

A. No; but I would have done just the same had it occurred to me.

413. Q. If you had believed it was a breach of Privilege you would have done just the same ?

A. No, because I would not have considered it a breach of Privilege. I would have considered it was the expression of free opinion.

In answer to Q. 417, Mrs. Tennant said:

I would only like to stress the fact that in putting up the poster it was our opinion that we were giving free expression to our opinions, and we believed that we had the right to do that because I think *Erskine* said: “ Other liberties are held under Governments but the liberty of opinion keeps Governments themselves in subjection to their duty ”.

After Q. 423, *Mr. Churchill* said: “ I wish to raise a point of order and I want the witnesses to be removed.”

*The Chairman:* “ Will the Witnesses kindly withdraw ? ”

(*The Witnesses were directed to withdraw, the Committee deliberated and the Witnesses were again called in.*)

In reply to certain of the Questions put by the *Solicitor-General*, the witness (Mrs. Tennant) said that even if she had thought putting out the poster was or might be a breach of Privilege she would nevertheless have put it out—“ I thought I was doing right ”.<sup>5</sup>

<sup>1</sup> Q. 314.    <sup>2</sup> Q.s 393, 4.    <sup>3</sup> *Ib.* Q. 395.    <sup>4</sup> Q.s 405, 6.    <sup>5</sup> Q.s 428-30.



After Q. 444:

(The Witnesses were directed to withdraw, the Committee deliberated, and the Witnesses were again called in.)

In reply to a further Question the witness said she took no steps, when she heard that the poster was the subject of a Motion in the House of Commons, to have the poster taken down. Continuing Mrs. Tennant replied:

What could I do about it? The posters were up. You do not run round and take posters down because it has been brought up in the House of Commons. You stand your ground, I imagine.

Both witnesses testified as to going out in front of the Commons and parading up and down the street in the gutter, as sandwichmen, in order that Members of Parliament should see them.<sup>2</sup> They thought, as citizens, they were perfectly entitled to influence Members of Parliament,<sup>3</sup> and that their parading outside the Palace Yard was necessary to stop bread rationing. "We thought we were entitled to do that. We did not like it. That was our opinion."<sup>4</sup>

The witnesses also thought "and we still think" that Members of Parliament who rode roughshod over all those names on the Petitions were not acting according to the will of the people. In a democracy you must be considered dictators.<sup>5</sup>

In reply to the Q. by the *Solicitor-General*: "Were you intending in fact to publish the names of Members of Parliament who did vote for bread rationing?" the witness replied: "Yes, certainly".<sup>6</sup> They were proposing to post them up in exactly the same way as they posted up the poster.<sup>7</sup> They wanted to influence Members of Parliament.<sup>8</sup> In reply to Q. 537 by *Mr. Churchill* that the witness had a feeling of respect towards the House of Commons, she said:

Yes, we have the greatest possible respect. We honour the Parliamentary system. I myself and my followers are democrats. We honour the House of Commons and all our Parliamentary institutions; but because we honour Parliamentary institutions we felt it was our bounden duty to protest to the very best of our ability; and it was because we are democrats and because we believe in Parliamentary institutions and government that we put out this poster, to draw the attention of the Public to what we thought were dictatorial methods.<sup>9</sup>

536. Q. *Mr. Churchill*. May I put some questions to you? At the beginning of your evidence, Mrs. Tennant, you said that you did not know when you issued this poster that it was a *prima facie* breach of Privilege. That is so, is it not?

A. Yes, Sir. We thought we were putting up our opinion—that was all.

Mr. John S. King and the remaining witnesses were then called. Mr. Longman in his reply to Q. 579 expressed regret at what had happened and apologized, as stated in their Company's letter<sup>10</sup> for their "unwilful part in this unfortunate matter".

<sup>1</sup> Q. 445.    <sup>2</sup> Q.s 472-4.    <sup>3</sup> Q. 477.    <sup>4</sup> Q.s 495, 6.    <sup>5</sup> Q. 497.    <sup>6</sup> Q. 500.  
<sup>7</sup> Q. 501.    <sup>8</sup> Q. 508.    <sup>9</sup> Q. 537.    <sup>10</sup> Appendix z.

## Canada.

*Arrest of a Member: Official Secrets Acts: Second Interim Report of Royal Commission.*—On March 15, 1946,<sup>1</sup> in the House of Commons, the hon. member for Rosetown-Biggan (W. M. J. Caldwell) rose to draw attention to a question of Privilege, quoting from Beauchesne<sup>2</sup> in regard to the suspension of the Habeas Corpus Act in Great Britain with the special provision that no Member of Parliament shall be imprisoned during the sitting of Parliament, until the matter in which he stands suspected shall be first communicated to the House and the consent of the House obtained for his commitment, or if Parliament be not sitting, then immediately after it reassembles in like manner as if he were arrested on a criminal charge. That was the general rule. The House was usually appraised of the cause of commitment of a member after his arrest and wherever he is in custody, in order to be tried by naval, military, or air, courts martial, or after he has been committed for any criminal offence by a court or magistrate.

The hon. member said that the newspapers reported to-day that Mr. Rose, representative in this House of Cartier in the Province of Quebec, had been taken into custody by the Royal North-West Mounted Police. The House had no knowledge of the charge against him. If the suspected offence was indictment under their criminal code or by special statute, then the House should be informed of the nature of the charge in conformity with established usage.

If the newspapers were correct in stating that the action arose out of a disclosure of secret information laid before Parliament during the War, the offence would appear to be a breach of the Privileges of this House, and should be a subject of inquiry by the appropriate Committee.

In the hon. member's opinion, the House should require a satisfactory statement from the Government.

The Prime Minister (Rt. Hon. W. L. Mackenzie King) tabled the Second Interim Report of the Royal Commission appointed to investigate the unauthorized disclosure of secret confidential information. He had been advised by the Attorney-General of Canada that charges had been laid against 4 men (*naming them*), one of whom was Dr. Boyer, who alleged conspiracy with an intermediary by the cover name of Debourz, believed to be the hon. member for Cartier, Montreal, which information has resulted in the execution of a warrant for his arrest. The Prime Minister said he had thus taken this first opportunity of communicating to the House of Commons the reason why the hon. member for Cartier was prevented from taking his seat in the House.

The Prime Minister then read a letter of March 14, 1946, from the Counsel to the Commission to the Minister of Justice, in which the latter was asked:

(a) Whether a federal Member of Parliament who would have committed a crime under the Official Secrets Act can be arrested either during the

<sup>1</sup> LXXXV, *Com. Hans.* No. 2, 5.

<sup>2</sup> III, Ed. XXXI-XXXII.

coming Session of Parliament or within the few days which remain before its opening on the 14th instant ?

- (b) Whether, taking into account the whole of the circumstances surrounding this investigation, it would be advisable or inadvisable to obtain the issue of a warrant of arrest against this member at the same time as that to be issued against the individual who divulged to this member certain important war secrets for the benefit of a foreign power ?<sup>1</sup>

Counsel's answer to these questions were to:

(a) Yes.

- (b) It would not only be advisable, but the interest of justice would not be served and the other trial would be prejudiced if a warrant were not issued against the member at the same time as that issued against the individual.

Attached to this letter was one dated March 12, 1946, from Mr. Phillippe Brais,<sup>2</sup> K.C., to the above-named Counsel, which was read by the Prime Minister.

Mr. Mackenzie King also read the concluding paragraph from p. 20 of the Second Interim Report. Those persons who were being detained by the Commission were being detained for interrogation for the purpose of putting their evidence under the Inquiries Act. There was no charge against them at the moment. The purpose was whether a charge should be made.

The Leader of the Opposition (Mr. J. Bracken) said that a letter had appeared in the Press, reported to have been directed to certain members from those detained in this investigation complaining of a disregard of his constitutional rights, and this morning's Press reported the arrest, while Parliament was in Session, of a Member of Parliament in connection with a matter related to this investigation, and referred to the question of *habeas corpus*.

The Prime Minister replied that he agreed with his hon. friend about the importance of securing the rights of the individual. Mr. Mackenzie King then moved for authority to print (2,500 English and 1,000 French) of the documents relating to the proceedings of the Royal Commission established under P.C. 411 of February 5, 1946, and the First and Second Interim Reports of the Commission Tabled on March 14 and 15 instants which were agreed to.<sup>3</sup>

*Expulsion of a Member.*—The following is a Memo dated January 9, 1947, by Dr. Arthur Beauchesne, C.M.G., etc., the Clerk of the House of Commons of Canada, on the expulsion of Fred Rose, M.P. for Cartier:

When the House meets on January 30 instant, Mr. Speaker will lay on the Table of the House a certificate of the Clerk of the Crown in Montreal declaring that Fred Rose, M.P. for Cartier, has been found guilty of an indictable offence and sentenced to six years in the penitentiary, and also a copy of the judgment of the Court of Appeal confirming the sentence.

It will then be open to the Leader of the House to move that these documents be referred to the Standing Committee on Privileges and Elections. This motion is debatable. The Committee will not then be in existence but it may be appointed at any time provided membership and the list of members has been prepared. Standing Order 63 says:

<sup>1</sup> LXXXV, *Com. Hans.* No. 2, 6.

<sup>2</sup> *See Ib.* 7.

*Ib.* 8, 9.

"At the commencement of each Session a Special Committee, consisting of five members, shall be appointed whose duty it shall be to prepare and report with all convenient speed, lists of members to compose the Standing Committees of the House."

The Committee will consider whether or not the House should expel Rose and what will be the result of his expulsion. In order to reach a decision it may consult legal authorities. When the Committee reports, the Chairman may move that the report be concurred in. This motion is debatable. The House is also free to appoint a Special Committee to consider the case, or it may dispose of the case without referring it to any Committee at all. There are no Standing Orders respecting this matter. If the Leader of the House is satisfied that the case is clear enough to move forthwith that Rose be expelled he may do so on the ground that when there are no Standing Orders the House is free to adopt the course it deems advisable. There was no reference to a Committee in 1875 when Riel was expelled.

The expulsion of Mr. Rose must be considered in view of the laws and customs of Parliament.

The House of Commons, under S. 4 Senate and House of Commons Act (R.S.C. c. 147), enjoys all the privileges, immunities and powers which in 1867 (at the time of the passing of the B.N.A. Act) were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof. Among the powers then exercised by that House was that of expelling members and causing the issue of new writs in their constituencies. A careful perusal of the laws passed in the United Kingdom with respect to members imprisoned for gross misdemeanours, felony, open rebellion or treason shows that great care was taken not to interfere with the House's inherent right to expel any guilty member and declare his constituency vacant. Section 1034 of the Canadian Criminal Code is a copy of Section 2 of the United Kingdom Forfeiture Act, 1870,<sup>1</sup> which has never precluded the U.K. House of Commons from thus expelling any of its members who may have been found guilty of felony. Although it is stated in that Section 2 that the person convicted of treason or felony shall become incapable of sitting or voting as a member of either House of Parliament *until* he shall have served his sentence yet this provision has never been interpreted in the United Kingdom as curtailing the House's power to expel the member. May 14th Edition, says, page 104:

"The purpose of expulsion is not so much disciplinary as remedial, not so much to punish members as to rid the House of persons who are unfit for membership. It may justly be regarded as an example of the House's power to regulate its own Constitution."

No special law has ever been passed in England defining the House's right of expulsion, for such a right is inherent to the House and is a part of the general Law of Parliament.

Section 1034 of our Criminal Code passed in 1892,<sup>2</sup> did not exist when Riel<sup>3</sup> was expelled in 1875, and it cannot be referred to with regard to Thomas McGreevy's expulsion in 1891.<sup>4</sup> No expulsion has taken place since that Section has been included in the Statutes and therefore we have no precedents

<sup>1</sup> 33 & 34 Vict. c. 23.

<sup>2</sup> R.S.C. c. 36.

<sup>3</sup> Louis Riel was accused of the murder of Thomas Scott during the North-West troubles and expelled as a fugitive from justice as well as expelled the House in 1874, after which he was again returned and expelled the House in 1875, having been adjudged an outlaw for felony (Bourinot II I. 258).

<sup>4</sup> On account of condemnatory acts in connection with certain important contracts for public works, it was Resolved *nem. con.* that the said member, "having been guilty of a contempt of the authority of the House by failing to obey its order to attend in his place therein, and having been adjudged guilty by the House of certain of the offences charged against him on the eleventh day of May last, be expelled from the House". (Bourinot III, 259.)

to guide us as to its application. Moreover, there is not a word in the Section which can be construed as purporting to divest the House of its power to expel a member and render his constituency vacant and justifying the Speaker in issuing a Writ for a by-election. In fact there is no mention of that power in any Statute and therefore it remains intact and operative.

It may be argued that Rose was elected under the terms of a Statute, namely, the Dominion Elections Act, Section 67 of which provides that—

“ the candidate who on the addition of the votes is found to have a majority of the votes shall then be declared elected.”

It would seem at first sight that, under the law, Rose has the right to remain a member of the House during this 20th Parliament or at least until another law has been passed for the purpose of expelling him definitely from the House. It may also be argued that a resolution of the House cannot override a Statute. The answer to this argument is that the powers, privileges and immunities of the House cannot be taken away by implication or by general terms of any Statute but only by the express words of the law. Members are elected on the tacit understanding that they will not do anything detrimental to the honour of the House of Commons, and if they transgress certain rules they are liable to be brought to account. Bourinot says (4th Edition, p. 64):

“ The right of a legislative body to suspend or expel a member for what is sufficient cause in its own judgment is undoubted. Such a power is absolutely necessary to the conservation of the dignity and usefulness of a body.”

Members have been expelled in Great Britain as having been guilty of forgery, of perjury, of frauds and breaches of trust, of misappropriation of public money, of conspiracy to defraud, of corruption in public offices or in the execution of their duties as members of the House and of conduct unbecoming the character of a gentleman. Is there not greater reason to expel a member who has been convicted of conspiracy to disclose state secrets to a foreign country?

The House of Commons of Canada would do well in adopting the practice followed in the United Kingdom. Under the British North America Act our Constitution is similar in principle to that of the United Kingdom and under Section 4 of the Senate and House of Commons Act, the House of Commons of Canada enjoys the same powers as the United Kingdom House exercised in 1867.

It has been suggested that the passage of a Bill was required in order to set off the provision of the Election Act under which Rose was elected; but the Bill would have to be passed by the Senate and to receive Royal Assent. This would mean that two other authorities—the Upper House and the Governor-General—would be entitled to deal with the matter. This would be a very bad precedent to establish. There may be cases in which the Senate may amend or reject the Bill. The Governor-General, in a time of crisis, might refuse Royal Assent. The upshot would be that the House of Commons could not rid itself of persons unfit for its membership and it would be subservient to the authority of other bodies.

The British North America Act provides (Section 33) that if any question arises respecting the qualifications of a Senator or a vacancy in the Senate the same shall be heard and determined by the Senate. No doubt the same principle applies to the Commons, but it is so inherent to the House that it was not found necessary to embody it in the Constitution. It stands to reason that no legislation is required for the House absolutely to exercise its power to exclude from its membership persons convicted of certain indictable offences.

As Rose is now serving a six-year sentence which will expire after the duration of Parliament, the House, following precedents of the United Kingdom may move—

"That Fred Rose, Member for Cartier, having been adjudged guilty of an indictable offence and sentenced to six years' imprisonment and not having served the punishment to which he was adjudged, has become and continues incapable of sitting or voting in this House, it is ordered that Mr. Speaker do issue his Warrant to the Chief Electoral Officer to make out a new Writ for the election of a new member to serve in the present Parliament for the County of Cartier in the room of said Fred Rose adjudged and sentenced as aforesaid."

This is necessary, after the expulsion has been pronounced by the House, because there is no provision in the House of Commons Act authorizing Mr. Speaker to issue his Warrant in a case of expulsion.

If the case is to be dealt with by the Standing Committee on Privileges and Elections, the reference could be made in the following terms:

"That the report of the Court adjudging Fred Rose guilty of an indictable offence and the judgment of the Appeal Court confirming the verdict and sentence be referred to the Standing Committee on Privileges and Elections with instruction to examine into the Law of Parliament involved in the case and report to the House on the steps to be taken in the circumstances."

Should Rose be permitted to appear before the Committee on Privileges and Elections or at the Bar of the House? The Speaker of the U.K. House said in 1891, referring to the Verney case:

"Looking at precedents in these unhappy cases it is certainly customary that notice should be given to the incriminated member to attend."

Note that there was at that time on the U.K. Statute the Forfeiture Act of 1870 which provides, like Section 1034 of the Canadian Criminal Code, that the member while serving his sentence is incapable of sitting in the House. Although our House is not bound by all British customs which it may only consult for guidance, yet there is ample justification for hearing Rose if he applies for attendance. It seems that this is a matter for the House to decide.

On the opening day of the Third Session of the XX Parliament, January 30, 1947,<sup>1</sup> and when the Commons had returned to their own Chamber after the ceremony of the Opening of Parliament in the Senate Chamber by His Excellency the Governor-General.

Mr. Speaker, after the announcement of vacancies and the issue of new Writs, said:

"I have the honour to lay before the House court judgments in connection with the imprisonment of Fred Rose, M.P.,<sup>2</sup> namely—(1) a true copy of the verdict and sentence in the case of Fred Rose; (2) copy of the certificate of the Clerk of the Court attesting the said verdict and sentence; (3) copy of the judgment of King's Bench, Appeal side, rejecting the appeal and maintaining the verdict; (4) copy of the judgment of the court of King's Bench, Appeal side, rejecting the appeal and confirming the sentence."

The Prime Minister (Rt. Hon. W. L. Mackenzie King) then rose, and said: "Mr. Speaker, I beg to move, seconded by Mr. St. Laurent:"

"That Fred Rose, Member for Cartier, having been adjudged guilty of an indictable offence and sentenced to six years' imprisonment and not having served the punishment to which he was adjudged, has become and continues incapable of sitting or voting in this House, and it is ordered that Mr. Speaker do issue his warrant to the chief electoral officer to make out a new writ for the election of a new member to serve in the present Parliament for the county of Cartier in the room of Fred Rose adjudged and sentenced as aforesaid."

<sup>1</sup> LXXXVI, *Com. Hans.* No. 1, 1 and 2. <sup>2</sup> Convicted of conspiracy to disclose state secrets to a foreign country. <sup>3</sup> Minister of Justice.

The Prime Minister said that the Resolution spoke for itself. "I have nothing to add."

The Motion was agreed to without debate.

On January 31, 1947,<sup>1</sup> the Speaker of the House of Commons announced:

I have the honour to inform the House that pursuant to the Order passed yesterday I have issued my warrant to the chief electoral officer to make out a new writ of election for the electoral district of Cartier.

### Australia.

*Censorship of M.P.s' Mail Matter.*—With reference to the report upon this subject which appeared in Volume XIII of the JOURNAL<sup>2</sup> the Report<sup>3</sup> from the Standing Committee of Privileges of 1944 came to the unanimous opinion:

- (1) that the opening by censors of letters addressed to Members of the House is not a breach of any existing Privilege of the House;
- (2) that the evidence negatives any suggestion that the mail addressed to Mr. Cameron was subjected to any special scrutiny or to any discrimination; no envelopes produced by Mr. Cameron indicated any censoring other than of letters posted to him from operational or other prescribed military areas.

In regard to S. 49 (Privileges, etc., of Houses) of the Constitution, the Committee remarked that:

So far the Commonwealth Parliament has not enacted any legislation to declare its privileges. Its privileges are therefore limited to those inherited from the House of Commons.

### Union of South Africa:

*Conduct of a Member: see Article "The Malan Case."*

*Publication of proceedings of Select Committee.*—On Friday, February 1, 1946, in the House of Assembly,<sup>4</sup> Mr. Speaker stated that his attention had been drawn to the fact that a statement had been published in at least one newspaper disclosing the proceedings of the Select Committee on Public Accounts on the appointment of a Chairman, before the proceedings had been reported to, or printed by the House, and referred to a similar occurrence in 1936<sup>5</sup> when further action was deemed unnecessary if the disadvantage were emphasized at which some newspapers might be placed when the rule is disregarded by others. He felt it incumbent upon him to remind the Press of its obligations.<sup>6</sup>

*Reflection on report of Select Committee.*—During the consideration by the House of the Report of the Select Committee on German Foreign Office Documents on June 18, 1946, the hon. member for Beaufort West (Mr. Eric Louw) proposed to raise a question of Privilege namely: a cartoon in a local newspaper of the same date, which in his

<sup>1</sup> LXXXV, *Com. Hans.* No. 2, 24.   <sup>2</sup> P. 261.   <sup>3</sup> H. of R. I.   <sup>4</sup> 1946 *Assem. Hans.* 886.   <sup>5</sup> See JOURNAL, Vol. V, 200.   <sup>6</sup> 1946 VOTES, 114; see also JOURNAL, Vols. IV, 38, 133; V, 200.

opinion reflected upon the findings of the Committee. Mr. Speaker stated that as the matter had not arisen out of the proceedings of the House and had not been raised before the business of the day had commenced, it could not be entertained as a question of Privilege, but that he would give a further ruling. On the following day Mr. Speaker confirmed his ruling and stated that the practice was that a member who wished to complain of a breach of Privilege should do so at the earliest possible moment after it had occurred. That is to say if it occurred before the sitting of the House, it should be raised before the commencement of public business; if after the House had commenced its sitting, between Orders of the Day; and if it arose out of the proceedings of the House it should be raised forthwith.<sup>1</sup>

*Witnesses cautioned.*—In accordance with a Resolution adopted by the Select Committee on German Foreign Office Documents at the commencement of its proceedings all witnesses were cautioned of their liability to punishment under S. 21 of the Powers and Privileges of Parliament Act, 1911.<sup>2</sup>

*Protection of Witnesses.*—During the proceedings of the above Select Committee one of the principal witnesses (Mrs. Denk) was afforded the full protection contemplated by the Powers and Privileges of Parliament Act. She was informed that she need not answer any incriminating question, that she could be represented by counsel and that if required she could be protected by a certificate under S. 23 of the Act debarring her from civil or criminal proceedings. The witness decided to be accompanied by her attorney, appearing as a stranger under S.O. 241.<sup>3</sup>

### XXIII. REVIEW

*Parliamentary Procedure.*<sup>4</sup>—In April, 1947, Sir Gilbert Campion, K.C.B., Clerk of the House of Commons, published the Second Edition of his work, "An Introduction to the Procedure of the House of Commons". This book, the First Edition of which has, for many years, been the indispensable *vade mecum* of both Members and Officers of Parliament, and an invaluable source of information to students of the institution of Parliament, is now brought up to date. It is indeed a remarkable achievement that Sir Gilbert Campion, who, only a few months previously, completed the editing of a Fourteenth Edition of May's "Parliamentary Practice", should have also been able to find the time and opportunity, in the midst of two of the busiest Sessions ever known to the House of Commons, to publish this work.

<sup>1</sup> 1946 *Assem. Hans.* 10593-601, 10714, 10757-8; 1946 VOTES, 1002. <sup>2</sup> No. 19 of 1911; S.C. 5-'46, XVIII. <sup>3</sup> S.C. 5-'46 XXIV, XXVI; see also JOURNAL, Vols. X, 188; XI-XII, 255. <sup>4</sup> *An Introduction to the Procedure of the House of Commons*, by Sir Gilbert Campion, K.C.B., Clerk of the House of Commons. O. xvii, 346 pp. (Macmillan, London. 1947).



It is in every sense "a practical guide to the procedure of the House of Commons". In the opening chapter, Sir Gilbert gives us a brief and fascinating insight into the historical origins of Parliament, and many of the forms of proceeding—an insight which clarifies much of Parliamentary procedure that would otherwise appear meaningless to the student—*e.g.*, the employment of the "Committee of the Whole House".

From there, he proceeds to deal with all aspects of the work of the Imperial Parliament. To have condensed the magnitude of "May" into the conciseness of a work such as this is ample evidence, if such were needed, of Sir Gilbert's vast knowledge and experience of every aspect of procedure. He has avoided the inclusion in his book of the mass of references one finds in "May", and leaves to this latter work much of the detailed matter which is necessary only when investigating the finer points of procedure, or the "case law" of Parliament. In fact, two of the greatest merits of "An Introduction to the Procedure of the House of Commons" are its brevity and its clarity, both of which must recommend it in the highest degree to a busy Chamber Officer or Member of Parliament in search of a clear and concise statement of the practice of the Imperial Parliament in any given case.

The foregoing remarks do not presume to do more than make general reference to this brilliant work. The reviewer does not propose, therefore, to elaborate on a theme to which, in any case, he could do scant justice, but will leave the pursuit of the wealth of information contained in "An Introduction to the Procedure of the House of Commons" to the erudite minds of Parliamentary Officers throughout the British Commonwealth, in the confident knowledge that their united opinions will immediately establish the pre-eminence of Sir Gilbert's work as the standard concise Parliamentary textbook.

#### XXIV. 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<sup>1</sup> contained a list of books suggested as the nucleus of the Library of a "Clerk of the 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<sup>2</sup> gave a list of works on Canadian Constitutional subjects and Volumes IV<sup>3</sup> and V<sup>4</sup> a similar list in regard to the Commonwealth and Union Constitutions, respectively.

Volumes II,<sup>3</sup> III,<sup>5</sup> IV,<sup>6</sup> V,<sup>7</sup> VI,<sup>8</sup> VII,<sup>9</sup> VIII,<sup>10</sup> IX,<sup>11</sup> X,<sup>12</sup> XI-XII,<sup>13</sup> XIII<sup>14</sup> and XIV<sup>15</sup> gave lists of works for a Clerk's Library published during the respective years. Below is given a list of books for such a Library, published during 1946.

*Campion, Sir Gilbert.*—An Introduction to the Procedure of the House of Commons. II Ed. (1947. Macmillan. 18s.)

*Coupland, Sir R. (Ed.)*—The Durham Report: an abridged version with an Introduction and Notes. (Oxford: Clarendon Press. London: Cambridge. 8s. 6d.)

*Coupland, Sir R.*—India, a re-statement. (O.U.P. London: Cambridge, 2s. 6d.)

*Gillgrave, Alford.*—The Book of Big Ben. (Herbert Joseph. 10s. 6d.)

*Journal of Comparative Legislation and International Law.* Third Series Vol. XXVIII. Parts I & II, May, 1946, and Parts III & IV, November 1946. 26, Old Buildings, Lincoln's Inn, London, W.C.2.

*May, Sir T. Erskine.*—XIV Ed. by Sir Gilbert Campion. (Butterworth Co. (Publishers) Ltd. 75s.)

*Ollivier, Maurice.*—Problems of Canadian Sovereignty from the B.N.A. Act, 1867, to the Statute of Westminster. 1931. (1945. Canadian Law Book Company, Toronto, Ont., Canada.)

*Schuyler, R. L.*—The Fall of the Old Colonial System. (O.U.P. London: Cambridge. 12s. 6d.)

*Wheare, K. C.*—Federal Government. (Issued by R.I.I.A.) (O.U.P. London: Cambridge. 15s.)

*Wheare, K. C.*—The Machinery of Government: an inaugural lecture delivered before the University of Oxford, Nov. 16, 1945. (Oxford: Clarendon Press. London: Cambridge. 2s.)

*Wight, Martin.*—The Development of the Legislative Council. (Studies in Colonial Legislatures, Vol. I.) (Faber & Faber. 10s. 6d.)

<sup>1</sup> 123-6.

<sup>5</sup> 133.

<sup>9</sup> 212 *et seq.* (starred items).

<sup>12</sup> 196.

<sup>2</sup> 137, 138

<sup>6</sup> 152.

<sup>13</sup> 267.

<sup>3</sup> 153-4.

<sup>7</sup> 222.

<sup>10</sup> 223-6 (starred items).

<sup>14</sup> 270.

<sup>4</sup> 223.

<sup>8</sup> 243.

<sup>11</sup> 170.

<sup>15</sup> 274.

## XXV. LIST OF MEMBERS

### JOINT PRESIDENTS.

The Honble. Mr. L. J. D. Wakeley,      Mian Muhammad Rafi,  
O.B.E., M.A., I.C.S.                      B.A.

### MEMBERS.

#### United Kingdom.

- Sir Henry J. F. Badeley, K.C.B., C.B.E., Clerk of the Parliaments, House of Lords, S.W.1.
- R. L. Overbury, Esq., C.B., Clerk-Assistant of the Parliaments, House of Lords, S.W.1.
- F. W. Lascelles, Esq., C.B., M.C., Reading Clerk and Clerk of Outdoor Committees, House of Lords, S.W.1.
- Sir Gilbert F. M. Campion, K.C.B., Clerk of the House of Commons, S.W.1.
- Frederic W. Metcalfe, Esq., C.B., Clerk-Assistant of the House of Commons, S.W.1.
- E. A. Fellowes, Esq., M.C., Second Clerk-Assistant of the House of Commons, S.W.1.

#### Northern Ireland.

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#### Dominion of Canada.

- L. Clare Moyer, Esq.,\* D.S.O., K.C., B.A., Clerk of the Parliaments, Clerk of the Senate, and Master in Chancery, Ottawa, Ont.
- Dr. Arthur Beauchesne,\* C.M.G., K.C., M.A., LL.D., Litt.D., F.R.S.C., Clerk of the House of Commons, Ottawa, Ont.
- R. A. Lawrence, Esq.,\* LL.B. Chief Clerk of the House of Assembly, Halifax, N.S.
- H. H. Dunwoody, Esq., Clerk of the Legislative Assembly, Winnipeg, Man.
- R. S. Stuart Yates, Esq., Clerk of the Legislative Assembly, Victoria, B.C.
- J. M. Parker, Esq., Clerk of the Legislative Assembly, Regina, Sask.

#### Commonwealth of Australia.

- J. E. Edwards, Esq., J.P., Clerk of the Senate, Canberra, A.C.T.
- R. H. C. Loof, Esq., B.Com., Clerk-Assistant of the Senate, Canberra, A.C.T.

\* Barrister-at-law or Advocate.

- F. C. Green, Esq., M.C., Clerk of the House of Representatives, Canberra, A.C.T.
- A. A. Tregear, Esq., B.Com., A.I.C.A., Clerk-Assistant of the House of Representatives, Canberra, A.C.T.
- S. F. Chubb, Esq., J.P., Second Clerk-Assistant of the House of Representatives, Canberra, A.C.T.
- F. B. Langley, Esq.,<sup>1</sup> Clerk of the Legislative Assembly, Sydney, New South Wales.
- A. Pickering, Esq., M.Ec.(Syd.), Clerk-Assistant of the Legislative Assembly, Sydney, New South Wales.
- I. P. K. Vidler, Esq., Second Clerk-Assistant of the Legislative Assembly, Sydney, New South Wales.
- H. St. P. Scarlett, Esq., Clerk of Committees and Serjeant-at-Arms, Legislative Assembly, Sydney, New South Wales.
- T. Dickson, Esq., J.P., Clerk of the Parliament, Brisbane, Queensland.
- Captain F. L. Parker, F.R.G.S.A., Clerk of the House of Assembly, and Clerk of the Parliaments, Adelaide, South Australia.
- C. I. Clark, Esq., Clerk of the Legislative Council, Hobart, Tasmania.
- C. K. Murphy, Esq., Clerk of the House of Assembly, Hobart, Tasmania.
- P. T. Pook, Esq., B.A., LL.M., J.P., Clerk of the Parliaments, Melbourne, Victoria.
- H. B. Jamieson, Esq., Clerk-Assistant of the Legislative Council, Melbourne, Victoria.
- R. S. Sarah, Esq., Usher and Clerk of Records, Legislative Council, Melbourne, Victoria.
- F. E. Wanke, Esq., Clerk of the Legislative Assembly, Melbourne, Victoria.
- H. K. McLachlan, Esq., Clerk-Assistant of the Legislative Assembly, Melbourne, Victoria.
- J. A. Robertson, Esq., Serjeant-at-Arms and Clerk of Committees, Legislative Assembly, Melbourne, Victoria.
- F. G. Steere, Esq., J.P., Clerk of the Legislative Assembly, Perth, Western Australia.
- F. E. Islip, Esq., Clerk-Assistant of the Legislative Assembly, Perth, Western Australia.

#### **Dominion of New Zealand.**

- C. M. Bothamley, Esq., Clerk of the Parliaments, Wellington.
- H. L. de la Perrelle, Esq., Clerk-Assistant of the Legislative Council, Wellington.

<sup>1</sup> Mr. H. Robbins, M.C., has since succeeded to the Clerkship.—[Ed.]

- H. N. Dollimore, Esq.,\* LL.B., Clerk of the House of Representatives, Wellington.
- A. E. Roussel, Esq.,\* LL.B., Clerk-Assistant of the House of Representatives, Wellington.

### Union of South Africa.

- J. F. Knoll, Esq., J.P., Clerk of the Senate, Cape Town.
- W. T. Wood, Esq., B.A., LL.B., Clerk-Assistant of the Senate, Cape Town.
- Ralph Kilpin, Esq., J.P., Clerk of the House of Assembly, Cape Town.
- J. M. Hugo, Esq., B.A., LL.B.,\* Clerk-Assistant of the House of Assembly, Cape Town.
- C. T. du Toit, Esq., M.A., LL.B., B.Ed.,\* Second Clerk-Assistant of the House of Assembly, Cape Town.
- J. P. Toerien, Esq., Clerk of the Cape Provincial Council, Cape Town.
- L. G. T. Smit, Esq., B.A., Clerk of the Natal Provincial Council, Maritzburg.
- C. N. Ingwersen, Esq., Clerk of the Transvaal Provincial Council, Pretoria.

### South-West Africa.

- K. W. Schreve, Esq., Clerk of the Legislative Assembly, Windhoek.
- Clerk-Assistant of the Legislative Assembly, Windhoek.

### Southern Rhodesia.

- C. C. D. Ferris, Esq., O.B.E., Clerk of the Legislative Assembly, Salisbury.
- G. E. Wells, Esq., Clerk-Assistant of the Legislative Assembly, Salisbury.
- J. R. Franks, Esq., B.A., LL.B., Second Clerk-Assistant of the Legislative Assembly, Salisbury.

### Indian Empire—<sup>1</sup>

#### British India.

The Honble. Mr. L. J. D. Wakeley, O.B.E., I.C.S., Secretary of the Council of State, New Delhi.

<sup>1</sup> In view of the uncertainty of the Legislature appointments during the pending constitutional changes, the 1945-46 list of members has been more or less retained.—[ED.]

- Mian Muhammad Rafi,\* B.A., Secretary of the Legislative Assembly, New Delhi.
- Raghava D. K. V. Varma, Esq.,\* B.A., B.L., Secretary of the Legislature and Secretary of the Legislative Assembly, Fort St. George, Madras.
- Surya Rao, Esq.,\* B.A., B.L., Deputy Secretary of the Legislature and Assistant Secretary of the Legislative Council, Fort St. George, Madras.
- N. K. Dravid, Esq., I.C.S., Secretary of the Legislative Council, Poona, Bombay.
- S. K. Sheode, Esq.,\* B.A., LL.B., J.P., Secretary of the Legislative Assembly, Poona, Bombay.
- Dr. S. K. D. Gupta, M.A., Secretary of the Legislative Council, Calcutta, Bengal.
- S. A. E. Hussain, Esq.,\* B.A., B.L., Assistant Secretary of the Legislative Council, Calcutta, Bengal.
- T. M. Paul, Esq., Second Assistant Secretary and Registrar of the Legislative Council, Calcutta, Bengal.
- K. Ali Afzal, Esq.,\* Secretary of the Legislative Assembly, Calcutta, Bengal.
- Rai Bahadur N. N. Sen Gupta, First Assistant Secretary of the Legislative Assembly, Calcutta, Bengal.
- S. L. Govil, Esq., M.A., LL.B.,\* Secretary of the Legislative Council, Lucknow, United Provinces.
- Rai Sahib K. C. Bhatnagar, M.A., Secretary of the Legislative Assembly, Lucknow, United Provinces.
- Sardar Bahadur Sardar Abnasha Singh,\* Secretary of the Legislative Assembly, Lahore, the Punjab.
- Khan Bahadur Sahib H. A. Shujaa, B.A., Assistant Secretary of the Legislative Assembly, Lahore, the Punjab.
- R. N. Prasad, Esq., M.A., B.L.,\* Secretary of the Legislature, Patna, Bihar.
- E. A. A. Snelson, Esq., O.B.E., I.C.S., Secretary of the Legislative Assembly, Nagpur, Central Provinces and Berar.
- H. C. Stork, Esq., C.I.E., I.C.S., B.A., Secretary of the Legislative Council, Shillong, Assam.
- S. Ali Haidar Shah, M.A., LL.B.,\* Secretary of the Legislative Assembly, Peshawar, North-West Frontier Province.
- Sri G. Dhal, B.A., B.L., Secretary of the Legislative Assembly, Cuttack, Orissa.
- Shaikh A. Zafarali, B.A., Secretary of the Legislative Assembly, Karachi, Sind.

#### Indian States.

- Md. Hamiduddin Mahmond, Esq., H.C.S., Secretary of the Legislative Assembly Dept., Hyderabad.

\* Barrister-at-law or Advocate.

K. Pherozechaw Poonegar, Esq.,\* B.A., LL.B., Secretary of the Representative Assembly and Legislative Council, Bangalore, Mysore State, India.

Secretary to Government, Praja Sabha (Assembly) Department, Jammu, Jammu and Kashmir State, India.

S. M. Patel, Esq., B.A., LL.B.,\* Secretary of the Dhara Sabha, Baroda, Baroda State, India.

Secretary of the Sri Mulam Assembly, and of the Sri Chitra State Council, Trivandrum, Travancore, South India.

#### **Bermuda.**

E. T. Smith, Esq., Clerk of the Legislative Council, Hamilton.

G. S. C. Tatem, Esq., B.A.(Oxon), Clerk of the House of Assembly, Hamilton.

#### **Burma.**

U. Tun Tin,\* B.L., Secretary of the Legislative Council, Rangoon.

U. Sein, A.T.M., Assistant Secretary of the Legislative Council, Rangoon.

#### **British Guiana.**

J. J. Rodrigues, Esq., Clerk of the Legislative Council, Georgetown.

#### **Ceylon.**

Clerk of the Senate, Colombo.

R. St. L. P. Deraniyagala, Esq., Clerk of the House of Representatives, Colombo.

#### **Cyprus.**

Clerk of the Legislative Council, Nicosia.

#### **Jamaica, B.W.I.**

Clinton Hart, Esq., Clerk of the Legislature, Kingston.

#### **Kenya Colony.**

Clerk of the Legislative Council, Nairobi.

#### **The Malayan Union.<sup>1</sup>**

Clerk of the Legislative Council, Kuala Lumpur, Malaya.

#### **Malta, G.C.**

Capt. V. A. Trapani, Acting and Deputy Clerk of the Council of Government, Valetta.

#### **Mauritius.**

Clerk of the Council of Government, Port Louis.

<sup>1</sup> Comprising the Malay States, the Settlement of Malacca and the Settlement of Penang.—[Ed.]

\* Barrister-at-law or Advocate.

**Colony of Singapore.<sup>1</sup>**

Clerk of the Legislative Council, Singapore.

**Tanganyika Territory.**

Clerk of the Legislative Council, Dar-es-Salaam.

**Trinidad and Tobago, B.W.I.**

W. J. Boos, Esq., Clerk of the Legislative Council, Port of Spain.

**Ex Clerks-at-the-Table.**

W. R. Alexander, Esq., C.B.E., J.P. (Victoria, Australia).

H. H. W. Bense, Esq. (South Africa) (*Provincial Secretary, Province of the Cape of Good Hope*).

E. M. O. Clough, Esq., C.M.G. (South Africa).

S. F. du Toit, Esq., LL.B. (South Africa) (*Union Minister Plenipotentiary to Sweden*).

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.

## XXVI. MEMBERS' RECORDS OF SERVICE

**Note.** — *b.* = born; *ed.* = educated; *m.* = married; *s.* = son(s); *d.* = daughter(s); *c.* = children.

*Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat these records in subsequent issues of the JOURNAL, except upon promotion, transfer or retirement, when it is requested that an amended record be sent in.*

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**Badeley, Sir Henry J. F., K.C.B., C.B.E.**—The Clerk of the Parliaments; appointed a Clerk in the Parliament Office, House of Lords, February, 1897; Principal Clerk in Taxing Office, Judicial Department, April, 1919; Clerk-Assistant of the Parliaments, March 6, 1930 and Clerk of the Parliaments, 1934.

<sup>1</sup> Comprising the Island of Singapore, the Cocos or Keeling Islands and Christmas Island.



**Campion, Sir Gilbert F. M., K.C.B.**—Clerk of the House of Commons; entered House of Commons Office, 1906; Second Clerk-Assistant, 1921; Clerk-Assistant, 1930; Clerk of the House of Commons, 1937.

**Chubb, S. F., J.P.**—Second Clerk-Assistant of the House of Representatives, Canberra, A.C.T., since 1937; *b.* October 27, 1889; *ed.* Hawthorn College, Victoria, matriculated Melbourne University; Commonwealth Public Service, Department of Trade and Customs, 1908; Secretary to the Royal Commission on the Meat Export Trade, and later Private Secretary to the Minister for Trade and Customs; transferred to the Parliamentary Service, February, 1915; Secretary to the Commonwealth Parliamentary Joint Committee on Public Accounts, 1920 to 1927; Serjeant-at-Arms and Clerk of Committees, House of Representatives, till 1937, when promoted to Second Clerk-Assistant; acting Clerk Assistant, 1940-41. From 1941 to 1946 Secretary to the Joint Committee on Rural Industries and to the Joint Committee on Social Security.

**Dollimore, H. N., LL.B.**—Clerk of the House of Representatives, New Zealand, since 1946; *b.* October 20, 1905, at Gisborne, New Zealand; appointed Stamp Duties Department, 1921, resigned, 1922; appointed Railways Department, 1923, resigned, 1927; appointed Public Service Commissioner's Office, 1928; transferred to Parliamentary Staff, 1929; appointed Second Clerk-Assistant and Reader, 1933; Acting Clerk-Assistant, 1936 and 1940-45 inclusive; Clerk-Assistant, 1945 and Clerk, 1946; graduated LL.B., 1935.

**Fellowes, Edward E., C.B., M.C.**—Second Clerk-Assistant of the House of Commons; entered House of Commons Office, 1919; Second Clerk-Assistant, 1937.

**Hart, Clinton.**—Clerk of the Legislature of Jamaica: Clerk of the Legislative Council of Jamaica, September 1, 1937; upon the granting of the new Constitution, November 1, 1945, was appointed Clerk of the Legislative Council and Clerk of the House of Representatives; is a practising Solicitor of the Supreme Court of Jamaica. His Deputy and Assistant are full-time officers of the Legislature.

**Khan, A. R., I.C.S.**—Deputy Secretary, Government of Bombay Legal Department and Secretary to the Bombay Legislative Council since March 14, 1946.

**Laurence, R. A., LL.B.**—Chief Clerk of the House of Assembly of Nova Scotia; *b.* Nova Scotia, 1909; *ed.* Saskatchewan University and graduated from Dalhousie Law School; admitted to the Nova Scotia Bar, November, 1935; in general practice as from that date; appointed Clerk-Assistant of the House of Assembly, 1943; appointed to present office on the death of Mr. R. F. Phalen, K.C., 1946.

**Metcalf, Frederic W., C.B.**—Clerk-Assistant of the House of Commons; entered House of Commons Office, 1919; Second Clerk-Assistant, 1930; Clerk-Assistant, 1937.

**Overbury, R. L., C.B.**—Clerk-Assistant of the Parliaments, House of Lords; Secretary of Commissions of the Peace, Lord Chancellor's Office, 1923-30; Establishment Officer, Lord Chancellor's Office, 1930-34; Reading Clerk and Clerk of Outdoor Committees, House of Lords, 1934-37; appointed to present position, 1937.

**Prasad, R. N., M.A., B.L.**—Secretary to the Bihar Legislature (both Chambers), 1946; *b.* March 3, 1900; M.A. and B.L., University of Patna, after B.A. Honours (English) and obtained Gold Medal (English Literature); also winner of other medals and prizes in elocution; enrolled Patna High Court for legal profession; Assistant Secretary to the Bihar and Orissa Legislative Council, 1931; officiated as Secretary to the Bihar Legislative Council, 1935; Deputy-Secretary to the Bihar Legislature, 1937; deputized as Secretary to the B. & O. National Service Labour Tribunal and Assistant Director of Employment (under the Labour Department of the Government of India); previously served as member of Managing Committees of schools; is also a member of a local Body (Patna Administration Committee); and a registered Graduate of the Patna University.

**Roussell, A. E., LL.B.**—Clerk-Assistant, House of Representatives, New Zealand, since March 3, 1947; *b.* October 1, 1911, Auckland, New Zealand; 18 years' service in Government in Public Trust Office, Rehabilitation Department and Office of Public Service Commission graduated LL.B. in 1934; Barrister of Supreme Court of New Zealand 3 years' service R.N.Z.A.F.; Mentioned in Despatches, 1943.

**Scarlett, H. St. P.**—Serjeant-at-Arms and Clerk of Select Committees, Legislative Assembly of New South Wales; *b.* Grafton, N.S.W., March 29, 1914; *m.* 1943; *i s.*; *ed.* North Sydney Boys' High School. Entered Public Service, 1930. Appointed to Staff of Legislative Assembly Office, 1933; Clerk of Papers and Assistant Clerk of Bills, 1945 to February, 1947; First Clerk and Clerk of Bills, February to August, 1947; served with Second A.I.F., 1940-45.

**U. Sein; A.T.M.**—Appointed Assistant Secretary, Burma Legislative Council, January 29, 1946; entered permanent appointment in Government Service—the Secretariat—November 1, 1919; transferred to the Legislature, December, 1922; part-time Superintendent to the Burmese Wing of the Indian Statutory (Simon) Commission during its visit to Burma, 1928; awarded Certificates of Honour and silver and gold watches in 1933 and 1935, respectively; Permanent Assistant Secretary to the House of Representatives, 1939; awarded as a personal distinction, the title of A.T.M. (the title for loyal and meritorious services) on June 8, 1939; Assistant Secretary to the Honble. the Premier,

February 17, 1941; Officer-on-Special-Duty in the Home and Judicial Department to re-organize the Burma Legislative Council Department, January 9, 1946.

**Sheode, S. K., B.A., LL.B., J.P.**—Secretary to the Bombay Legislative Assembly; Assistant Superintendent, Legal Department of the Bombay Government, 1927; transferred to the Old Legislative Council office in January, 1932, as Assistant Superintendent; Superintendent, Bombay Legislative Assembly, 1936, on the introduction of Provincial Autonomy; Assistant Secretary, Bombay Legislative Assembly, 1939; J.P., 1939; during Section 93 regime, when the Legislature ceased functioning, was transferred to the Home Department (Political) of the Government of Bombay as Assistant Secretary in that Department. After the restoration of the Legislatures in 1946, again appointed as Assistant Secretary to the Bombay Legislative Assembly. Appointed to present position July 26, 1946.

**Smith, E. T.**—Clerk of the Legislative Council of Bermuda and Senior Clerk, Colonial Secretary's Office; *b.* Paget West, Bermuda, June, 24, 1913; *ed.* Norwood School, Exeter, Devon, and Sherborne School, Dorset; appointed Treasury Clerk, Bermuda, July 1, 1930; Clerk, Board of Public Works, May 1, 1931; Clerk, Colonial Secretary's Office, January 1, 1942; appointed to present office, August 1, 1943.

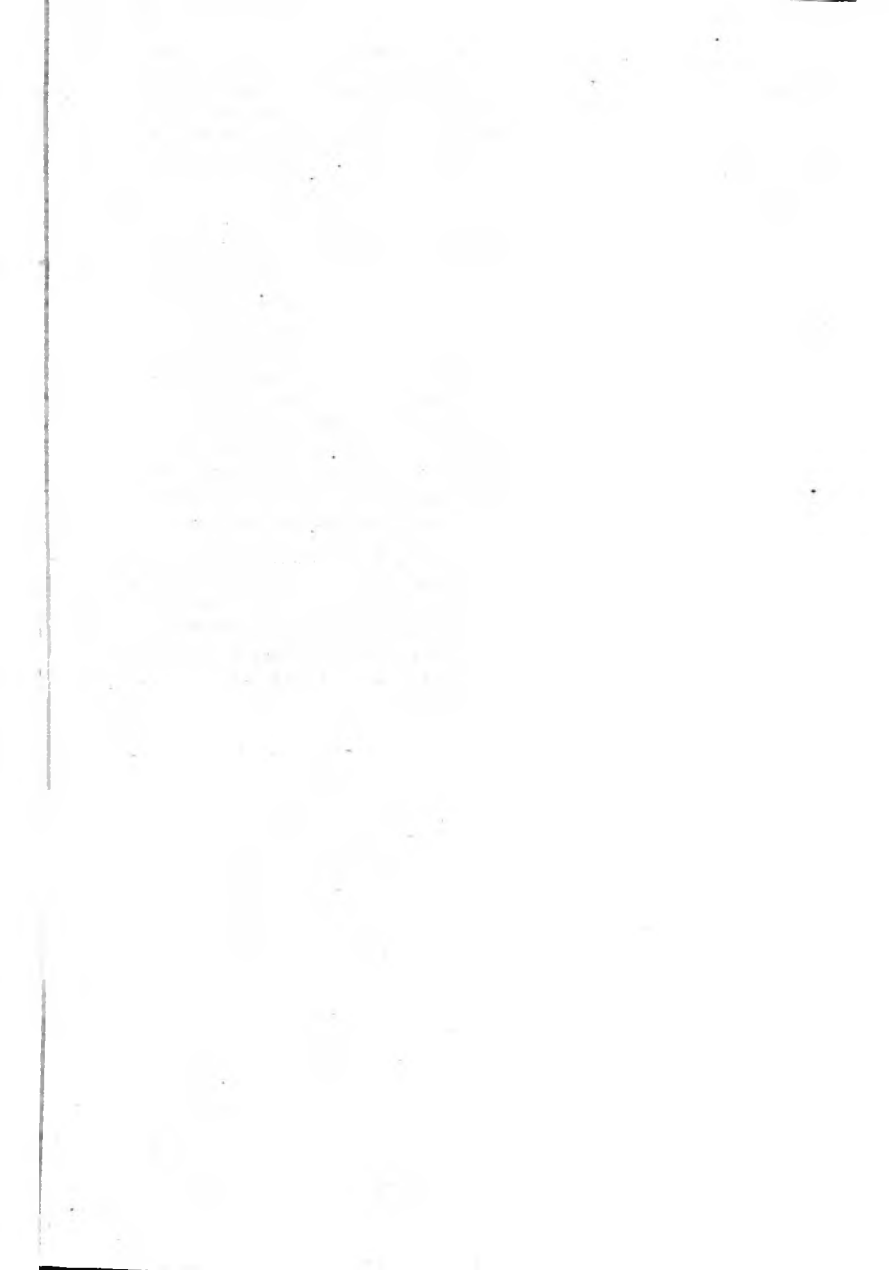
**Snelson, E. A. A., O.B.E., I.C.S.**—Appointed Secretary of the Central Provinces and Berar Legislative Assembly, March 18, 1946; Acting Commissioner, 1929-35 (Sub-Judge under training, 1931-35); Sub-Judge (Provincial), 1935; Sub-Judge, District and Sessions Judge, 1936-41; Registrar of High Court of Judicature at Nagpur, 1941; on deputation to the Government of India in the Legislative Assembly Department from April 16, 1945; District and Sessions Judge, Legal Remembrancer, Secretary of the Legislative Assembly and Legal and Judicial Secretary to Government, Central Provinces and Berar, March 18, 1946.

**Tregear, A. A., B.Com., A.I.C.A.**—Clerk-Assistant of the House of Representatives, Commonwealth of Australia, since March 23, 1937; Bachelor of Commerce, University of Melbourne; Associate Member of the Commonwealth Institute of Accountants; Commonwealth Public Service, 1911-20; Senate, 1920-25; House of Representatives from 1925.

**U. Tun Tin.**—Appointed Secretary to the Burma Legislative Council, January 29, 1946; called to the Bar from the Inner Temple in 1926; practised at the Bar till 1941 when appointed as an understudy to the Secretary of the Senate with a view to becoming Secretary when the permanent incumbent retired; appointed as Officer-on-Special-Duty in the Home and Judicial Department to re-organize the Burma Legislative Council on January 17, 1946.

**Wakely, L. J. D., O.B.E., M.A., I.C.S.**—Secretary of the Council of State of India; *b.* June 18, 1909; *ed.* Westminster School, Christ Church, Oxford, and School of Oriental Studies, London; arrived in India, November, 1933, and served in the Punjab as Assistant Commissioner; Under-Secretary to the Government of the Punjab Political and Home Departments, November, 1937; Under-Secretary to the Government of India, Defence Department, September, 1938; Under-Secretary to the Governor-General (Defence Co-ordination), December, 1938; Under-Secretary to the Government of India, Defence Co-ordination Department, February, 1939; Deputy Secretary to the Government of India, Defence Department, August, 1942; additional Deputy Secretary to the Government of India, Legislative Department, November, 1945; Joint Secretary to the Government of India, Legislative Department, November 25, 1946; reverted as Additional Deputy Secretary to the Government of India, Legislative Department, December 30, 1946; Secretary of the Council of State since November, 1946; *cr.* M.B.E., January, 1942 and O.B.E., January, 1945; ranks in Article 45 of the Warrant of Precedence for India by virtue of appointment as Additional Deputy Secretary to the Government of India.

**Vidler, I. P. K.**—Second Clerk-Assistant, Legislative Assembly of New South Wales; *b.* Parramatta, N.S.W., May 9, 1909; *m.* 1940; *1 s.*; *ed.* Newington College; appointed to Staff of Legislative Assembly Office, 1928; has occupied all extra-Chamber positions on Staff; Serjeant-at-Arms and Clerk of Select Committees, February to August, 1947; served with 2/17 Aust. Inf. Bn., Second A.I.F., 1940-44.



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(Art.) = Article in Journal.

C.W.H. = Committee of the Whole House.

Q. = Questions.

O.P. = Order Paper.

Amdts. = Amendments.

(Com.) = House of Commons.

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