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. XVI

FOR 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		★	★	★	★	★	★			★	★	★
Northern Ireland	★	★	★	★	★	★	★	★			★	★
Canadian Dominion	★	★	★	★	★							
Canadian Provinces: Ontario		★	★									
Canadian Provinces: Quebec	★	★	★									★
Canadian Provinces: Nova Scotia			★	★								
Canadian Provinces: New Brunswick		★	★	★								
Canadian Provinces: Manitoba		★	★	★								
Canadian Provinces: British Columbia										★	★	★
Canadian Provinces: Prince Edward Island			★	★								
Canadian Provinces: Saskatchewan	★	★	★	★								★
Canadian Provinces: Alberta		★	★	★								
Australian Commonwealth			★	★	★	★			★	★	★	★
Australian States: New South Wales	*No set rule now obtains.*											
Australian States: Queensland			★	★				★	★	★	★	★
Australian States: South Australia							★	★	★	★	★	★
Australian States: Tasmania						★	★	★	★	★	★	★
Australian States: Victoria							★	★	★	★	★	★
Australian States: Western Australia							★	★	★	★	★	★
New Zealand						★	★	★	★	★	★	
Union of South Africa	★	★	★	★	★							
Union Provinces: Cape of Good Hope			★		★							
Union Provinces: Natal			★	★	★	★						
Union Provinces: Transvaal			★	★	★	★						
Union Provinces: Orange Free State			★			★						
South-West Africa			★	★	★							
Ireland [Eire]	★	★	★	★	★	★	★			★	★	★
Southern Rhodesia				★	★	★				★		
Dominion of India												
Constituent Assembly												
Madras												
Bombay												
United Provinces												
Bihar												
West Bengal												
East Punjab												
Orissa												
Central Provinces and Berar												
Dominion of Pakistan												
Constituent Assembly												
East Bengal												
West Punjab												
North-West Frontier Province												
Sind												
Indian States: Hyderabad	*No set rule obtains.*											
Indian States: Mysore	★						★			★		
Indian States: Jammu and Kashmir			★	★					★	★		
Indian States: Travancore	★			★				★	★			
Bermuda												
British Guiana				★	★	★				★	★	★
Ceylon	★	★	★		★	★	★	★	★	★	★	★
Gold Coast and Ashanti												
Jamaica					★					★		
Kenya Colony				★		★	★			★		
Malayan Union	*No set rule obtains.*											
Malta, G.C.	*No set rule obtains.*											
Mauritius	*No set rule obtains.*											
Nigeria												
Singapore Colony	★			★		★		★		★	★	★
Tanganyika Territory	*No set rule obtains.*											
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.

To:

HIS MAJESTY THE KING

The members of the Society of Clerks-at-the-Table in Empire Parliaments, throughout our Commonwealth and Empire, desire to convey their heartfelt thanks and loyal congratulations to His Majesty the King, Her Majesty the Queen, Their Royal Highnesses Princess Elizabeth and the Duke of Edinburgh on the birth of a son to the Royal House.

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

VOL. XVI FOR 1947

THE KING: ROYAL STYLE AND TITLES[1]

In consequence of the passing of the Indian Independence Act, 1947 (10 & 11 Geo. VI, c. 30) setting up the new Dominions of India and Pakistan, S. 7 (2) thereof gives the assent of the Parliament of the United Kingdom to the omission from the Royal Style and Titles of the words "Indiæ Imperator" and the words "Emperor of India".

Also in accordance with paragraph 2 of the Preamble to the Statute of Westminster 1931 (22 Geo. V, c. 4), Canada, by 11 Geo. VI, c. 72, Australia, by Act No. 70 of 1947, New Zealand, by 11 Geo. VI—Act No. 11 of 1947, and the Union of South Africa, by Act No. 17 of 1948, have made similar provision.

I. EDITORIAL

Introduction to Volume XVI.—The most outstanding constitutional event during the year under review in this issue of the JOURNAL of this Society has been the renouncement by His Majesty the King of his additional style and title "Emperor of India" as a consequence of the passing of the Indian Independence Act, 1947, and the division of geographical India into 2 separate Dominions, with the Indian States, all in substitution of what has been known since 1877 as the Empire of India.

This alteration in the style and title of the King required the consent of those parts of the Realm coming under the Statute of Westminster, 1931, which has been duly given, as indicated above.

The next most important constitutional step during 1947 has been the adoption by New Zealand of the operative sections of the said Statute, thus now bringing herself in unison, in this respect, with her sister States of the British Commonwealth of Nations.

[1] *See also* 1 Edw. VII, c. 15 and 17 Geo. V, c. 4.

The same year marks the passing of the Indian Independence Act constituting the Dominions of India and Pakistan, whose respective Constituent Assemblies are steadily working out their constitutional future, as also are the Indian States, embracing altogether over 450 million people.

On the other hand, 1947 also records the passing of the Independence of Burma Act, but as this occurred during the 1947-48 Session of the United Kingdom Parliament it will come under review in the next Volume of our JOURNAL. Thus, while Burma, by mutual consent, contracts out of the British Commonwealth of Nations by becoming a Republic, the Island and Dependencies of Ceylon are added to the Dominions under the Ceylon Independence Act passed in the same calendar year.

Passing into the Mediterranean, Malta has returned to her former constitutional course as a Ship of State, although under a different rig, to suit her dyarchical nature, necessitated and freely acknowledged, by her gallant people, in view of her strategic position as a bastion of the British Commonwealth and Empire. Across the Western Atlantic, the ancient Colony of Newfoundland is about to turn to her great neighbour by becoming the 10th Province, with her territory of Labrador on the mainland, of the Canadian Confederation.

In the Caribbean Sea, the subject of closer union of what is known as the British West Indies is still engaging attention.

The above, which constitutes the major constitutional issues of 1947, is truly a harvest indeed.

The British people and their associates, sharing with them the desire for real democratic government, are prolific, not only in sowing the seeds which give their constitutions birth, but in having the capacity to frame a constitution to suit any particular local conditions, race and clime. In fact, to view the far-ranging variety of constitutions which the Commonwealth seems to have in its pigeon-hole gives one the impression that, no matter what the local conditions and peculiarities, there is always one available to fit the particular instance.

In the African and other Crown Colonies there is a general movement to reduce the official and to extend the unofficial element both in the Executive and the Legislative Councils and in regard to the non-European to train him in the art of government and administration.

Southern Rhodesia is yearning for amalgamation with the adjacent territories of the Realm and the establishment of a South Central or Capricornic Federation.

So much therefore for the constitution-building programme.

Another constitutional movement of magnitude has been the passing by the New Zealand Parliament of the New Zealand Constitution (Request and Consent) Act and by the United Kingdom Parliament of the New Zealand Constitution Amendment Act, thus giving that State the right, in future, to amend its own Constitution.

The problem of " the Second Chamber " is also coming to the fore,

both in the United Kingdom under the Parliament Act, 1911, and in New Zealand, which subjects when more definite will be reported in the JOURNAL.

The Commonwealth of Australia has referred to her people by Referendum a proposal to amend the Constitution to authorise the Federal Parliament to take under its jurisdiction the question—" Rents and Prices (including charges) ". This constitutes the twenty-second instance of such Constitutional referendum in respect of a Proposed Law since her Constitution came into being in 1900; only 4 such proposals have been affirmed.

Turning now to another fundamental subject of investigation by our Society through its annual JOURNAL—namely, Parliamentary Procedure—both the 2 senior Parliaments of the Commonwealth have been giving this subject wide investigation during the year. In fact, the 1945-46 inquiry by a Select Committee of the Commons at Westminster has been one of very considerable magnitude. The Commons at Ottawa has also conducted investigations by Special Committee in order also to expedite and facilitate her proceedings.

This Volume of the JOURNAL, in addition to Articles dealing with some of the above-mentioned subjects, contains Articles on such subjects as the exercise in distant lands of the Royal Prerogative of Mercy; M.P.s and Offices of Places of Profit under the Crown; the working of the Members' Pensions Fund in the United Kingdom; Financial Procedure in the Victoria State House of Assembly; Precedents and Procedure in the Union House of Assembly; another case of " Conduct of a Member "; a description of the Opening Ceremony of the Ceylon Parliament; and some Rulings during 1947 by the Speaker and Deputy Speaker at Westminster.

Under " Editorial ", notes are given on delegated legislation, an ever-growing problem; Ministerial functions and duties; electoral matters and many other subjects of Parliamentary concern. A general interest prevails in regard to the increase in the remuneration to be given to Ministers, M.P.s and Presiding Officers of Parliament.

Lastly, there are reports of the cases of Application of Privilege which have occurred, mostly at Westminster, during the year. And there are, of course, the hardy annuals, such as Expressions in Parliament and suggested additions to the personal Library of the Clerk of the House.

Acknowledgments to Contributors.—We have pleasure in acknowledging Articles in this Volume from: Mr. A. A. Tregear, B.Com., A.I.C.A., Clerk-Assistant of the House of Representatives, Commonwealth of Australia; Captain F. L. Parker, F.R.G.S.A., Clerk of the House of Assembly and Clerk of the Parliaments, South Australia; Mr. H. N. Dollimore, LL.B., Clerk of the House of Representatives, New Zealand; Mr. Ralph Kilpin, J.P., Clerk of the Union House of Assembly; Mr. Md. Hamiduddin Mahmood, H.C.S., Secretary of the Hyderabad Legislative Assembly; Mr. K. P. Poonegar, B.A., LL.B.,

Secretary of the Mysore Legislature; and Mr. R. St. L. P. Deraniyagala, B.A.(Cantab.), Clerk of the House of Representatives, Ceylon.

We are also indebted for Editorial paragraphs to: Major G. T. Thomson, D.S.O., M.A. (Belfast), Clerk of the Parliaments, Northern Ireland; Mr. L. Clare Moyer, D.S.O., K.C., B.A., Clerk of the Parliaments, Clerk of the Senate and Master in Chancery, Canada; Mr. Geo. Stephen, Assistant Clerk in Chamber, Legislative Assembly, Saskatchewan; Mr. H. Robbins, M.C., Clerk of the Legislative Assembly of New South Wales, Australia; Mr. H. B. Jamieson, Clerk of the Legislative Council, and Mr. F. E. Wanke, Clerk of the Parliaments and of the Legislative Assembly, Victoria, Australia; Mr. J. F. Knoll, J.P., Clerk of the Union Senate; Mr. Ralph Kilpin, J.P., Clerk of the Union House of Assembly; Mr. D. K. V. Raghava Varma, B.A., B.L., Secretary of the Madras Legislature; Mr. S. K. Sheode, B.A., LL.B., J.P., Secretary of the Legislature Department, Bombay; Mr. R. St. L. Deraniyagala, B.A.(Cantab.), Clerk of the House of Representatives, Ceylon; Mr. Alex. Wilkie, Acting Clerk of the Legislative Council, Kenya; the Secretary of the Commission of Government, Newfoundland; and Mr. G. E. Chen, Clerk of the Legislative Council, Trinidad and Tobago.

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 XVI.—There are still a number of Articles on Questionnaire subjects awaiting publication, but so much space has had to be devoted to running subjects that the publication of these Articles has had to be deferred. However, it is definitely intended to publish these outstanding Articles in the next Volume even if publication of much of the informal matter has to be held over to Volume XVIII.

A number of suggested subjects has been sent in and will duly appear in the *Questionnaire* for Volume XVII.

Honours.—On behalf of our fellow members, we wish to congratulate the under-mentioned members of our Society who have been honoured by His Majesty the King since the last issue of the JOURNAL:

G.C.B.—Sir Gilbert F. M. Campion, Clerk of the House of Commons;

I.S.O.—F. G. Steere, Esq., J.P., Clerk of the Legislative Assembly of Western Australia; and

Hon. M.B.E.—S. Ade Ojo, Esq., Clerk of the Legislative Council, Nigeria.

Sir G. F. M. Campion, G.C.B.—On July 28, 1948, the Speaker read to the House of Commons a letter from Sir Gilbert Campion, their Clerk, intimating his desire, as from July 31, " to resign the patent of Clerk of the House of Commons ", a position it had been his privilege to hold for the past 11 years, and saying that it was with profound regret that after 42 years, 27 of which had been spent at the Table, he now left the service of the House.

Sir Gilbert expressed his thanks to Mr. Speaker, his predecessors and other occupants of the Chair, the members of all Parties in the 11 Parliaments he had known and to his colleagues past and present, and his gratitude for the many acts of courtesy and consideration with which Mr. Speaker and his (Sir Gilbert's) colleagues had lightened the burden of his official duties.

In conclusion, Sir Gilbert said that he felt he could say with confidence, that the Department in which he had had the honour to serve, and recently to direct, would continue to maintain its humble traditions of service to the House.

The Lord President of the Council (Rt. Hon. H. Morrison) thereupon rose and stated that the House had heard the letter with great regret and that, in accordance with precedent, a Motion would be proposed tomorrow expressing the thanks of the House to Sir Gilbert Campion for his long services.

On July 30, Mr. Morrison, in moving:

That Mr. Speaker be requested to convey to Sir Gilbert Francis Montriou Campion, G.C.B., on his retirement from the Office of Clerk of this House the assurance of its sincere appreciation of the distinguished and outstanding services which, by his pen, his ever-ready advice and his great knowledge of the law and custom of Parliament, he has rendered to this House and to all its Members in the conduct of their business during upwards of 42 years, of which 27 years have been spent at the Table.

—said that the Motion stood in the name of the Prime Minister, of himself, the Leader of the Opposition and the Leader of the Liberal Party, and they took pleasure in moving it, feeling that it would commend itself to all hon. members.

They would also like to add their congratulations to Sir Gilbert Campion upon the high honour of the G.C.B. conferred upon him by His Majesty.

Mr. Morrison then referred to Sir Gilbert's long years in the service of the House, and continuing, said that:

On Parliamentary procedure Sir Gilbert was an acknowledged authority both here and abroad, and he had made valuable contributions to the literature on the subject. He had rewritten, in effect, the current edition of Sir Thomas Erskine May's Parliamentary Practice, and it might be a comfort to the Opposition to remember that this work, which was a sort of unofficial part of the British Constitution, was a great example of private enterprise having great consequence upon our public affairs.

Sir Gilbert was about to make a tour of the Dominions in the Eastern Hemisphere to study Parliamentary procedure there. This tour was at his own wish and expense. But it was not thought fair that he should be meeting his own expenses for this task and they ought to see whether the wishes of the House could not be conveyed to the Chancellor of the Exchequer. A tour of the Western Hemisphere was out of the question at the moment owing to the shortage of dollars.

All members were indebted to his wise judgment and shrewd commonsense. He had been their guide, philosopher, and friend, always ready to assist them. They wished happiness and health to him for the future, and their sincerest thanks for his distinguished service.

The Leader of the Opposition (Mr. Winston Churchill), associating himself with the motion, said that no one had made a greater contribution to the House than Sir Gilbert. He hoped that when Mr. Morrison made his representation to the Chancellor of the Exchequer he would not necessarily blot out such visits as might be thought desirable for Sir Gilbert to make to the Western Hemisphere.

Wherever he went Sir Gilbert Campion would champion the Parliamentary rights and customs which he had helped to put into practice here in the cradle and citadel of the Parliaments of the world. They wished him the best of good fortune and happiness in his future life. They were sure that the work he had done as a writer on procedure and as an official of the House constituted a definite contribution to the maintenance of public and Parliamentary government in this island.

The hon. member for Montgomery (Leader of the Liberal Party), Mr. Clement Davies, supporting the motion, said that Sir Gilbert Campion's knowledge of procedure was encyclopædic. He had an intense love of the House of Commons, and did a great deal to maintain its dignity and to enhance its reputation. He was recognized in other democratic countries as being an authority on democratic institutions, and his learning and advice had been available to most of the new democratic institutions which had had to be founded on the Continent. Sir Gilbert Campion had been in close contact with all the Parliaments of the Dominions which derived their authority originally from this House.

The hon. member for Montrose Burghs (the Hon. J. S. Mackay), on behalf of Liberal National members and their predecessors, associated himself with the tributes to Sir Gilbert Campion.

The motion was carried *nemine contradicente*.

On behalf of the members of our Society, we should also like to express our regrets at Sir Gilbert Campion's retirement and we wish him long life and happiness.

The Clerks of the two Houses at Westminster, and, in view of the special procedure of the House of Lords, particularly the Clerk of the House of Commons, have always been in intimate relationship with the Clerks at the Table in the Overseas Parliaments and Legislatures. With the long history of precedent and practice, Parliaments Overseas can, in times of difficulty, often turn with advantage to the treasury of information on the subject of procedure and privilege, housed in the Palace of Westminster.

It is, of course, true that as our larger Parliaments Overseas develop, they are likely to make departures in practice, working as they are under various types of Constitution and local conditions to establish a procedure adaptable to their particular Constitutions and circumstances. Nevertheless, it is good for them to know that the Parlia-

mentary authorities at Westminster, no matter who the reigning Clerks of the 2 Houses may be, will always be assured of co-operation.

Sir Gilbert has been a member of our Society since 1946, and before his appointment as Clerk of the House of Commons contributed valuable Articles to our JOURNAL.[1]

Langley, F. B.[2]—On September 23, 1947, the Speaker of the Legislative Assembly of New South Wales announced that as Mr. F. B. Langley, the former Clerk, had reached the age of retirement whilst the House was in Recess, he had already, on August 29, 1947, terminated his long and honourable association with the Parliament of New South Wales. Consequently there were no Motions adopted by the House, but hon. members did not allow the occasion to pass unnoticed and arranged a special function in his honour, at which they expressed their appreciation and recognition of Mr. Langley's long and distinguished service to the Legislative Assembly of New South Wales, extending, as it did, over a period of more than 43 years.

Mr. Langley was one of the oldest members of this Society, and the interest which he has always displayed in the activities of S.C.E.P. was reflected in many helpful and informative articles prepared by him in collaboration with the then Clerk of the House.

He served with distinction in World War I as a lieutenant in the A.I.F. (being mentioned in despatches), and, for a period, was afterwards attached to the Staff of the House of Commons. The experience he gained whilst there was of incalculable benefit to the Parliament of New South Wales during his many years as a Clerk at the Table of the House.

Mr. Langley's interest in football extended to active participation in the game during his early years, and as a member of the Royal Prince Alfred Yacht Club he was perhaps the best known yachtsman on Sydney Harbour. He is now devoted to Surf Club and life-saving work, and for many years has been President of the Palm Beach Surf Club.

His retirement, we hope, will be blessed with many years of good health and happiness. In the varied interests in which he now has the leisure-time to enable him to play an even greater part, we hope Mr. Langley finds full pleasure as a just reward for his many years of outstanding official service.

Pook, P. T., B.A., LL.M., J.P.—On July 31, 1947, Mr. Pook retired from the Clerkship of the Parliaments and that of the Legislative Council of Victoria, after a service in the former capacity of 11 years and of 20 years in respect of the Upper House of the State of Victoria. His previous record has appeared in the JOURNAL.[3]

On September 30, 1947,[4] immediately after the formal proceedings following the Opening of the Second Session of the XXXVIth Par-

[1] We are indebted to the Report of the Parliamentary proceedings in *The Times* of July 29 and 30, 1948, for the above information.—[ED.] [2] *See also* JOURNAL, Vol. III, 141. [3] Vols. III, 141; VI, 255. [4] 1947 *Parlty. Hans.* No. 1, 6-10.

liament by H.E. the Governor, the following Resolution was passed unanimously by the House of which he was the distinguished Clerk for so many years:

That Mr. Percy Thomas Pook having retired from the Office of Clerk of the Parliaments and Clerk of the Legislative Council, this House desires to record its deep appreciation of the zeal, ability, and courtesy uniformly displayed by him in the discharge of his duties.

The Minister of Labour (Hon. P. J. Clarey, M.L.C.), in moving the Motion, recited the various offices Mr. Pook had held since his entry into the Public Service in 1900 and that of Parliament in 1911, and said that his was a most excellent and worthy record of which any member of the Public Service could well be proud. All members of the House would recall with pleasure the assistance given them by Mr. Pook when they were in doubt as to their procedure. Naturally, anyone occupying that important position must impress his personality upon their proceedings, even if in a most unassuming way. The Minister also desired to record his personal appreciation of Mr. Pook's assistance and wished him in his retirement long life and good health.

The Hon. W. J. Beckett (Melbourne) observed that he had been a member long enough to recognise the wonderful service that the occupant of the office of Clerk had always rendered. The Clerk of the House must possess many attributes. He must have a knowledge of procedure and be an authority on constitutional law. In both these respects Mr. Pook excelled.

Mr. Beckett trusted that Mr. Pook in his retirement would find opportunities in some other walk of life for the exercise of his astounding abilities.

The Hon. W. H. Edgar (East Yarra Province) supported the remarks of the Leader of the House.

The Hon. Sir Frank Clarke (Monash Province) said that during his term of office in the Chair, Mr. Pook and he constituted a team, and he had no doubt that other members had also enjoyed the same happy association. Mr. Pook's counsel was always available to the Chair, and on those occasions when he had decided not to follow his (Mr. Pook's) advice on matters of procedure or constitutional law, it was occasionally borne in on him that he was wrong and Mr. Pook was right. Mr. Pook was also his guide, philosopher and friend, and he specially stressed his friendship, for he was a most lovable man, and those who got to know him appreciated his sterling qualities. Mr. Pook had a first-class brain and a wealth of knowledge on all matters relating to constitutional law, to which he had given a lifetime of study.

The Hon. P. P. Inchbold remarked that every occupant of the Chair found in Mr. Pook a good friend. His knowledge and experience enabled him to reach decisions which were most helpful, although he never tried to force his opinion on the Chair. He would form an opinion as to the course which the Chair should take and pass it along with the remark, " The decision is yours, Sir."

In the retirement of Mr. Pook they had lost the services of a very valuable officer who worthily upheld the traditions of the House. Through his efficiency and wide knowledge he helped greatly to make their Parliamentary system work smoothly and along constitutional lines.

The Hon. J. H. Lienhop (Bendigo Province) could not recall an officer for whom he had a greater regard and he joined whole-heartedly in the sentiments which had been expressed by other speakers. He doubted if anyone could have carried out his duties with greater dignity and ability. Mr. Pook was a man with a country background, possessing all the instincts and characteristics of a country gentleman.

The President (Sir Clifden Eager), before putting the Motion, said that he agreed with all that had been said by hon. members in relation to Mr. Pook. Every occupant of the Presidential Chair had reason to appreciate the outstanding ability and courtesy of their former Clerk. Mr. President acknowledged that but for Mr. Pook's learning and ability, which were always placed unstintingly at his command, his task would have been much harder. Mr. Pook was a most distinguished public servant and recognised as one having great knowledge of constitutional and Parliamentary law and practice, not only in Victoria, but also in the various Dominions and in the House of Commons at Westminster, which he visited some time ago, when he had the benefit of consultation with its Clerk.

Mr. Pook's term of office had been extended by the Governor in Council for 4½ months so that he should not be taken from them in the middle of a Session. He had retired at the very height of his intellectual powers and the President would very much like to see Mr. Pook utilizing those powers for the benefit of the House and the State. He could put on record a very fine and authoritative statement on the constitutional history of Victoria and the practice and procedure of Parliament.

Everyone who had passed through the Chair knew that important and difficult questions arose, upon the determination of which may hang not only the fate of Ministers but also the fate of the State. At such times Mr. Pook's advice was always sound. He was also a master of Parliamentary draftsmanship and statutory interpretation. His life was centred in his Clerkship, to which he gave himself unsparingly.

Question was then put and agreed to.

Mr. President stated that he would cause the record of the speeches of hon. members to be printed and handed to Mr. Pook in appropriate form.

On the day of his retirement Mr. Pook received a presentation from his colleagues, and subsequently a luncheon was given in his honour by the members of the House at which a suitably bound copy of the Resolution above referred to was presented to him.

We should like to add our tribute to the valuable and helpful services Mr. Pook has rendered this Society and its JOURNAL, to which he has

been a constant contributor. He was a Foundation Member of our Society, of which only a small number now remain. He has left a great record in every respect, and one of which he has every reason to be proud. We also wish him long life, good health and happiness in his retirement, although we can scarcely imagine him leading an inactive life.

Steere, F. G., I.S.O., J.P.—On December 18, 1947,[1] the Premier of Western Australia (Hon. D. R. McLarty), in addressing his closing remarks to the Legislative Assembly at the end of the First Session of the XIXth Parliament, said that he could not let the occasion pass without reference to the retirement of Mr. Steere, their Clerk of the Legislative Assembly, after 46 years in the service of that House. During that time 287 members had gone, and of the 80 members of both Houses to-day, there was only one who was in Parliament when Mr. Steere first came.

Mr. Steere had served under every Speaker since the establishment of responsible government; this was in itself a record and on behalf of all Mr. McLarty expressed the greatest appreciation of the service Mr. Steere had rendered and the courtesy he had always shown.

It would be interesting to hear from him what he thought about Parliament. He has listened to many speeches, plenty of them no doubt constructive. Others he might have a different opinion about.

They all wished Mr. Steere a Merry Christmas and a Happy New Year, and they also hoped he would be blessed with good health and happiness for the rest of his life.

The Premier was followed by the Leader of the Opposition (Hon. F. J. S. Wise), who said that Mr. Steere had not only been Clerk of Parliament, but a personal friend of all who had entered their Chamber. No matter what help was requested of him, he readily gave it. With the Premier, he hoped that Mr. Steere would enjoy all those things which the Premier wished for him.

The Minister for Education (Hon. H. F. Watts) observed that during the 4½ years he was Leader of the Opposition he had come more closely into contact with Mr. Steere than in recent months. No better wishes could be extended to any man than those he now offered to him upon his pending retirement. No greater example could be set by anyone of his profession than that which Mr. Steere had set. He had been courteous, obliging and had extended to all the benefit of his knowledge and experience. Mr. Steere would leave their House greatly regretted but covered with years and honour.

Mr. Speaker (Hon. C. F. J. North, M.L.A.) said that he felt, in common with all those who had spoken, a deep sense of loss in the impending retirement of Mr. Steere. Coming to the Chair as he did, without even having been Chairman of Committees, he needed a lot of assistance, not only from members but from the Clerks and other officers.

[1] *Parl. Deb.* No. 21, 3032-5.

On the day of his retirement Mr. Steere was entertained by the members of his Staff, who made him a presentation of a Radio chair.

The members of the West Australian Branch of the Empire Parliamentary Association gave Mr. Steere, who had been their hon. Secretary for 23 years, a farewell function, attended also by past members of Parliament.

The Premier of the State, on behalf of members of Parliament, then presented a substantial cheque to Mr. Steere.

As a foundation member of our Society Mr. Steere was a valuable contributor to its JOURNAL. His able counsel and ever-ready co-operation was warmly appreciated. In correspondence with our members in Australia Mr. Steere, being on her west coast, was always the first from whom a reply came to any circular letter to that Continent. When the writer visited Australia in 1926 Mr. Steere was one of the Clerks of the House and he heartily joined issue with his brothers in the other States in the launching of both our Society and its JOURNAL, in connection with which he was ever ready to go on with the formation of this Society and the production of its JOURNAL.

Mr. Steere's retirement dates from March 31, 1948. We know also how highly his predecessor, Mr. A. R. Grant, I.S.O., B.A., thought of Mr. Steere, of whom he always spoke in the most complimentary terms. The writer well remembers many interesting talks he had with Mr. Steere when walking in King's Park on the banks of the beautiful Swan River, and how he encouraged us to go on with the formation of this Society and the production of its JOURNAL.

The office of the Clerk of the House is in a sphere full of incident and excitement, but it is not without its eventual strain. We regret that Mr. Steere's health has been giving him some trouble, but we hope that in his retirement it will soon be restored and that he will enjoy his well-earned leisure after so many years of service to Western Australia and her Parliament.

United Kingdom (Ministry of Defence).—On November 22, 1946,[1] the Prime Minister, in moving 2 *R.* of the Bill " to make provision for the appointment and functions of a Minister of Defence and for purposes connected therewith ", said that the Bill outlined the functions of the new Minister as—

> in charge of the formulation and general application of a unified policy relating to the Armed Forces of the Crown as a whole and their requirements.

This Minister was not taking sole responsibility for defence. The broad organization for defence, where it brought in the civil departments and the whole activities of the nation, must remain with the Prime Minister. In the White Paper[2] the exact functions of the Minister were set out in more detail, but it was thought inadvisable to reduce those into statutory form. It would reduce that flexibility so essential in the office of Minister of Defence. The broad administra-

[1] 431 *Com. Hans.* 5, s. 1163. [2] *Cmd.* 7042.

tion of each Department remained with the service Ministers; the domestic administration of the Services must remain with the Ministers directly responsible therefor to the House.

There was also provision for the appointment of a Parliamentary Secretary, but it was not proposed to appoint one at present. The functions of the new Minister were very largely co-ordinating.

A Financial Resolution[1] was agreed to in regard to the cost of the new Ministry and the Bill passed through its remaining stages in the Commons and was agreed to by the Lords, duly becoming 10 & 11 Geo. VI. c. 2.

United Kingdom (Ministry of Commonwealth Relations).—On July 2,[2] the Prime Minister (Rt. Hon. C. R. Attlee), in reply to a *Private Notice* Q. about a change in the title of Secretary of State for Dominion Affairs and the Dominions Office, said H.M. Government in the United Kingdom had reached the conclusion that it was desirable that these titles should now be changed and that steps were being taken for the issue of an Order in Council under the Ministers (Transfer of Functions) Act[3] to alter the titles to Secretary of State for Commonwealth Relations and Commonwealth Relations Office respectively.

United Kingdom (Ministers and Contributions to the Press).[4]—On January 29,[5] in reply to Qs. as to the contributions by Ministers to the Press, the Prime Minister said that there had been no change in the long-established policy that Ministers should not practise journalism. This rule did not debar Ministers from writing letters or articles to the newspapers to supplement other methods of informing the public of the work of their departments.

United Kingdom (Delegated Legislation: " laying " of Documents).—Can the Standing Orders of a Legislature amend the statutes which it has enacted? The question was discussed at Westminster at the end of 1947[6] in connection with the laying of delegated legislation before Parliament.

The Statutory Instruments Act,[7] which was brought into force on January 1, 1948, gives the new name of " statutory instruments " to the subordinate legislation which Britain has known for some fifty years as " statutory rules and orders ". Amongst other provisions of the new Act S. 4 stipulates that if a parent statute requires an instrument to be laid before Parliament after being made, a copy of the instrument " shall be so laid before the instrument comes into operation ". This would mean, of course, that instruments could not be made with immediate effect during a Parliamentary recess when laying is impossible.

Foreseeing this administrative inconvenience, the draftsman had been careful to add the following proviso to S. 4, in order to deal with cases of urgency:

[1] *Ib.* 1927. [2] 439 *Com. Hans.* 5, s. 1320. [3] 9 Geo. VI, c. 31. [4] *See also* JOURNAL, Vols. V, 18; VI, 18; IX, 20. [5] 432 *Com. Hans.* 5, s. 935. [6] 443 *Com. Hans.* 5, s. 1785, 6; 445 *Ib.* 1824, 5. [7] 9 and 10 Geo. VI, c. 36.

Provided that, if it is essential that any such instrument should come into operation before copies thereof can be so laid as aforesaid, the instrument may be made so as to come into operation before it has been so laid; and where any statutory instrument comes into operation before it is laid before Parliament, notification shall forthwith be sent to the Lord Chancellor and to the Speaker of the House of Commons drawing attention to the fact that copies of the instrument have still to be laid before Parliament and explaining why such copies were not so laid before the instrument came into operation.

The enacting of this proviso encourages the guess that the draftsman never dreamt that Parliament would allow instruments to be laid before it when the House was not sitting. That, however, is just what the Government subsequently asked the Legislature to permit by Standing Order.

The House of Commons, where the Government's majority is substantial, obediently adopted a Standing Order (moved by the Leader of the House on behalf of the Government) which would allow instruments to be deposited with the House officials " at any time during the existence of a Parliament when the House is not sitting for public business ", and would " deem " this deposit of a document " to be for all purposes the laying of it before the House ". When the House of Lords was invited to adopt a similar Standing Order, Lord Simon protested that the proposal would cancel the proviso to S. 4 and would render it superfluous and was unnecessary for a Minister to give any explanation at all. The object of the section, he said, was that, if Ministers felt it was essential to make statutory instruments when the House was not sitting, they must be prepared to justify their actions; the Standing Order would repeal that safeguard and would relieve the Minister from the duty to explain. In reply the Lord Chancellor agreed with Lord Simon that Standing Orders cannot amend statutes, but he contended that each House could, as a matter of internal and domestic arrangement, define what constitutes " laying ". The debate ended with the Government spokesman withdrawing the Motion for the adoption of the Standing Order and with the House of Lords referring the proposed Standing Order to a Select Committee for consideration and report.[1]

Apparently no Select Committee reported. It is plain, however, that representatives of the various parties conferred and came to terms. Subsequently, in 1948, the introduction of a Bill, under which Standing Orders would be authorized to define the meaning of " laying " documents before Parliament,[2] made it clear that no risk would be run of employing a Standing Order to amend a statute. This step, however, is a matter for comment in some future issue of our JOURNAL.

Some statutory instruments dealing with taxation or finance in Britain are directed by their parent statutes to be laid " before the Commons House of Parliament " without mention of the House of Lords. It is thought that where a Statute directs laying " before

[1] 153 *Lords Hans.* 5, s. 352. [2] *Lords Hans.* July 14, 1948, col. 862.

Parliament", the direction must mean before both Houses. It would seem therefore that the Commons Standing Order deeming something to be laid before Parliament which is laid when the House is not sitting will have no effect unless the Lords pass a similar Standing Order.

House of Lords (Increase in number of Lords of Appeal).—On February 27,[1] the Lord Chancellor (Viscount Jowitt) in moving 2 *R.* of the Appellate Jurisdiction Bill, said that there were 2 aspects of the law with which he was much concerned, the cost of litigation and the law's delays. At present there were 8 Lords of Appeal to attend to the judicial business of the House of Lords and of the Privy Council. In the Privy Council, the number of cases in which Lords of Appeal were required to sit was increasing and the number of cases in which 5 Judges were being asked to sit was also increasing. So far as the Dominions were concerned, it had now become the understood practice that the Board should consist of not less than 5 Judges, each of whom is a member of the House of Lords. Therefore it was quite impossible for the Lord Chancellor, when he had to constitute a Board of that sort for the Privy Council, to arrange for sittings simultaneously in the House of Lords.

The Lord Chancellor remarked that he would much rather have too many Judges than that litigants should be subjected to delays. In 1946, the length of time between setting down the case and its hearing in their Lordships' House was, on an average, 8½ months, and the length of time between presentation and setting down was, on an average, 3¾ months, which meant that the average case could not be heard until slightly over a year after it was presented. His Lordship therefore felt that he had no option but to introduce this Bill so that 2 additional Lords of Appeal could be appointed, thereby making the number 9. But the additional Lords of Appeal could only be appointed upon the Lord Chancellor's certification, with the concurrence of the Treasury, that the state of business was such as to require the extra Judges.

The Bill passed through its remaining stages, was sent down to the Commons and duly became 10 & 11 Geo. VI, c. 11.

House of Lords (Delegated Legislation).[2]—The Special Orders Select Committee was appointed November 19,[3] 1946, with the same Order of Reference as before:[4]

That a Select Committee be appointed to consider all Special Orders of the present Session, and that the Lords following, with the Chairman of Committees, be named of the Committee (*here follow* 35 *names*).

Particular action was taken by the Committee only in regard to the following:

[1] 145 *Lords Hans.* 5, s. 846. [2] *See also* JOURNAL, Vols. XIII, 14; XIV, 25; XV, 29.
[3] 144 *Lords Hans.* 5, s. 142. [4] *See* JOURNAL, Vol. XIII, 14.

Special Orders laid before the House (pursuant to Act) or otherwise for Affirmative Resolution and reference to Special Orders Committee.	*Report of Special Orders Committee.*
Unemployment Assistance (Determination of Need and Assessment of Needs, Amendment Regulations, 1946.[1] Supplementary Pensions (Determination of Need and Assessment of Needs) Amendment Regulation, 1946.[2]	Report from the Special Orders Committee: That they have examined the Special Orders as required by the Standing Orders of the House; that they have considered an Explanatory Memorandum by the Unemployment Assistance Board that in their opinion the Orders raise important questions of policy and principle; that the Orders are founded on precedent; that in the opinion of the Committee the Orders 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 Resolutions to approve the said Orders.[3] (*Approved by House*, November 28, 1946.)[4] 144 *Lords Hans.* 5, s. 518, 9.
Clearing Office (Spain) Amendment Order, 1947.[5]	Report from the Special Orders Committee: That they have examined the Special Order as required by the Standing Orders of the House; that in their opinion the Order raises questions of policy and principle; that the Order is founded on precedents; 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.[6] (*Approved by House*, April 24, 1947.) 147 *Lords Hans.* 5, s. 124.
National Health Service (Superannuation) Regulations, 1947.	Report from the Special Orders Committee: That they have examined the Special Order as required by the Standing Orders of the House; that in their opinion the provisions of the Order raise important questions of policy and principle; and that the Order is not founded on precedent and 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.[7] (*Approved by House*, August 5, 1947.) 151 *Lords Hans.* 5, s. 941–9.

[1] 144 *Lords Hans.* 5, s. 328. [2] *Ib.* 329. [3] *Ib.* 516. [4] *Ib.* 518.
[5] 146 *Ib.* 1040. [6] 147 *Ib.* 50. [7] 150 *Ib.* 1000.

On May 20,[1] on the Order of the Day for the consideration of the House the Second Report from the Select Committee on Procedure read.

The Committee reported as follows:

1. Special Orders.

The Committee have considered the position on the Order Paper to be allotted to Motions relating to Special Orders, Special Procedure Orders and Statutory Instruments and are of opinion that such Motions shall be taken at the beginning of public business.[2]

The Report was considered and approved.

House of Lords (Delegated Legislation: Preservation of the Rights of the Subject Bill).—On May 15, 1947,[3] in the House of Lords, the Marquess of Reading in moving 2 *R.* of this Bill (61), the long title of which is—"An Act for the better securing of the Liberty of the Subject", said the Bill was concerned with an attempt to safeguard or to restore certain rights of the subject and the right of the private member of either House to institute legislation, subject always to the power of the Government of the day to annex for its own purposes all the available time.[4]

The noble and learned Marquess did not allege any malign conspiracy on the part of anyone deliberately to attempt to overthrow the liberties of the subject. The process had been gradual, stealthy, haphazard, almost inadvertent, but unfortunately both insidious and menacing in its cumulative effect.[5] The pace and the magnitude of events had in recent years been so tremendous that rights had been filched and liberties purloined almost without the notice of Parliament or the knowledge of the public. From the ministerial and departmental point of view there were obvious, if perilous, conveniences in being able to forge ahead without waiting for the sanction of Parliament or the intervention of the courts of law.

The Bill was directed to the remedying of the growing usurpation by the Executive of the powers of Parliament and the increasing exclusion of the courts of law from their supreme function, protecting the individual citizen against the excessive and illegitimate encroachments and abuses of authority. These tendencies had been nurtured upon the special conditions of emergency obtaining through 2 arduous wars.

Even in 1929 there had been the Donoughmore Committee, which issued its unanimous Report in 1939,[6] which had, like so many of its fellows, cluttered the pigeon-holes of Whitehall.[7] No one would suggest that delegated legislation would be abolished entirely, but it could be kept within bounds, without being indiscriminate. The less time Parliament had to check, sift, digest and revise the multifarious mass of ministerial clauses, the greater the responsibility lying upon the courts of law to examine and pronounce upon their validity.

[1] 147 *Ib.* 871. [2] H.L. (70), (1946-47). [3] 147 *Lords Hans.* 5, s. 762-810. [4] *Ib.* 762. [5] *Ib.* 764. [6] *See* JOURNAL, Vols. I, 12; IV, 12; VII, 30; VIII, 25; X, 89. [7] 147 *Lords Hans.* 5, s. 764.

Clause 1 of the Bill deals with the situation which arose when, notwithstanding the spate of orders, there was no power in either House to amend them; their Lordships only had the power either to accept or to reject.[1]

Clauses 2 to 5 are drawn from the recommendation of the Donoughmore Report. The first deals with a citizen of this country who considered himself injured on account of the Minister having exceeded his powers, by issuing an order which was *ultra vires*. There should be, for a limited period, the right of the citizen to summon the Minister or the Department before the courts. The point of the second Clause is the preservation of the right of the subject for that period.[2]

Clause 3 deals with the " Henry VIII Clause ", which gives the Minister power, after the Act has become law, on his own initiative to amend that Act and sometimes even another Act, without further recourse to Parliament. It should be constitutionally wrong for it to be possible to reproduce that Clause in any future Bill.[3]

Clause 4 of the Bill again strives to support the right of the individual to have recourse to the judgment of the courts of law, where he considers that the Minister, not acting in any administrative, discretionary or quasi-judicial capacity, but purely in a judicial capacity, decides which is wrong, not on fact but on law. Was it too much to ask that the Minister or Department should submit himself, or themselves, to the jurisdiction of the courts for decision ?

Clause 5 seeks, where a Minister appoints a person to conduct an inquiry—which should be public—to provide that its report should be published, with the Minister's reasons for his action.

At present, under powers largely derived from Defence Regulations,[4] there is an army of persons with authority to enter and search private premises—powers wider than those given to the police. Therefore Clause 6 seeks to bring these Departmental sleuths into line with the same precautions enjoined in the interests of the subject, before a member of the police force can so act.[5]

Clause 7 seeks to prevent the suppression of various journals, where a Government, under the Defence Regulations,[4] is so minded—a dangerous weapon to entrust to any government.[6]

Clause 8 deals with the administration of some sort of law in the imposition of fines by Marketing Boards,[7] without any qualified legal assistance at the hearings and, moreover, bringing them up to London for that purpose. What objection was there to such powers being exercised by ordinary courts of summary jurisdiction ?

Clause 9 seeks to apply the same period of prescription to public authorities—namely, 6 years—as in the case of any ordinary individual or company, instead of the present public authority period of 12 months in England or 6 months in Scotland.[8] Sub-section (2) provides that

[1] *Ib.* 765. [2] *Ib.* 766. [3] *Ib.* 766. [4] 9 Geo. VI, c. 10. [5] 147 *Lords Hans.* 5, s. 767. [6] *Ib.* 768. [7] 21 and 22 Geo. V, c. 42; 23 and 24 Geo. V, c. 31; 1 and 2 Geo. VI, c. 30. [8] 147 *Lords Hans.* 5, s. 768, 9.

in any successful action against a public authority begun or continued after the commencement of the Act, costs are to be earmarked on the same principles as in an action against a private dependent.[1]

Clause 10 deals with Assistance Boards, which are described in the Explanatory Memorandum to the Bill as organizations:

> charged with the administration of Unemployment Assistance and Supplementary Old Age Pensions. Although the Board must observe regulations which are approved by Parliament and must also submit to Parliament an annual report, it is not at present directly responsible to any Minister, and is therefore not subject to constant Parliamentary supervision and control.

At present a Court of Referees can decide whether unemployed persons are, or are not, entitled to unemployment benefit, with right of appeal to the Umpire, but when such Courts are unanimous against this, the claimant has no right of appeal, except when he is a member of a trade union, which may appeal on his behalf. Clause 11 suggests a common right to justice for everyone.

Clause 12, in dealing with the " closed shop ", seeks (as described in the Explanatory Memorandum):

> to protect persons employed by public authorities from being dismissed from their employment or otherwise penalised on the ground that they are, or are not, members of any Trade Union or other organization or association representing employees. It also prohibits public authorities from making it a condition of any person's employment that he shall or shall not be a member of any such Trade Union, organization or association as aforesaid.

Clause 13 applies *habeas corpus* to Poles in the United Kingdom subject to Polish Military Law.[2]

In conclusion the noble Marquess quoted a great Irish orator who once said:

> The condition upon which God hath given liberty to man is eternal vigilance, which condition if he break, servitude is at once the consequence of his crime and the punishment of his guilt.

After a short debate the Question was put—" Whether the Bill be read 2a," which was agreed to on division: Contents 37; Not-contents 19.[3] The Bill, however, made no further progress.

House of Commons (Conduct of the Chair).—When the conduct of the Chair was impugned in the House of Commons in 1925 in respect of the grant of the closure, Mr. Speaker Whitley displayed no perturbation. He remained in the Chair throughout the discussion until it reached its inevitable end.[4] Twice recently the present holder of his office has shown a like equanimity under less provocation when it has been suggested that a debate might, by seeming to reflect upon his conduct, embarrass him.

The first occasion arose over the Trafalgar Estates Bill, designed to

[1] 2 and 3 Geo. VI, c. 21. [2] 147 *Lords Hans.* 5, s. 770; *amdt.* of S. 1 of 23-24 Geo. V, c. 6. [3] 147 *Lords Hans.* 5, s. 810. [4] 184 *Com. Hans.* 5, s. 1591.

end the perpetual pension conferred by an Act of 1806 upon the holder of the Nelson earldom and to alter the arrangements for the property which accompanied the annuity. Mr. Lennox-Boyd, M.P., anxious perhaps to lose no opportunity of canvassing the merits of the proposals, asked the Speaker (who is a trustee of the Trafalgar Estates under the 1806 Act) if it was his intention to preside in person over the debate on a Bill designed to alter or revoke the terms of the trust. Mr. Speaker Clifton-Brown felt that he was not personally affected.[1]

The second occasion was the Roosevelt Memorial Bill, or rather the design of the statue of President Roosevelt of which the Bill contemplated the erection in Grosvenor Square near the American Embassy in London. The Pilgrims Society had made itself responsible for the statue; the Speaker is a member of the Society and of the committee thereof concerned with the memorial. The proposed design showed the President standing; some critics wanted to see him seated. Mr. Winston Churchill, M.P., referred to the possible embarrassment of the Chair.[2] The Speaker once more refused to feel uncomfortable. He is, as he has told the House, a trustee also under the enactments relating to the Duke of Wellington Estates and to the British Museum and the Chequers Estate, and he has some representative status in connection with the Natural History Museum and the Royal College of Surgeons. Though he did not mention the fact, he is also a member of the Board of Trade under the old (but apparently unrevoked) Order in Council of 1786, which was reprinted in the Commons *Hansard* under the date of April 24, 1923.[3] It has never been submitted that he should leave the Chair when the Board of Trade comes under fire.

House of Commons (Count on Adjournment Debate).—On May 16,[4] an hon. member asked for Mr. Speaker's guidance in regard to an incident at 12.29 a.m. that day, when an hon. member—fully within his Parliamentary rights but influenced by something which had happened—called for a Count which brought to an end the usual half-hour looked upon as private members' time.

The hon. member asked if it were not the case that a gentleman's agreement existed that this kind of action should not be taken. A rt. hon. gentleman hoped that there could be some arrangement whereby this half-hour, which was all a private member had left, would not be subject to these sudden inroads which were not justified in the circumstances of Parliament " as they are now ".

The Parliamentary Secretary to the Treasury (Rt. Hon. W. Whiteley) hoped that the House generally would regard this half-hour as being private members' time, that it ought to be given, and that experience would probably show that the House, as a whole, regarded it as being their right.

Mr. Speaker remarked that, in view of what Mr. Whiteley had said,

[1] 430 *Ib.* 1793. [2] 431 *Ib.* 517, 8; *Ib.* 991, 2. [3] 163 *Ib.* 49. [4] 435 *Com. Hans.* 5, s. 1872, 1876-9.

there seemed no necessity for him to give a Ruling: indeed, he could not, as it was laid down in their Rules, which could not be altered without the assent of the House. Mr. Speaker therefore thought that the matter could safely be left there.

House of Commons (Standing Committees: References in House).—On March 11,[1] Mr. Speaker was asked for his Ruling to define the extent to which it was permissible to refer in the House to what had occurred in a Standing Committee, before that Committee had reported to the House, to which Mr. Speaker said:

> The Rule prohibiting reference to the proceedings of a Committee, whether a Select Committee or a Standing Committee, must be interpreted in the light of the purpose it is intended to serve. That purpose is to prevent members in the House seeking to interfere with and prejudice the proceedings of a Committee by discussing the matters referred to that Committee. In the case of a Select Committee, the Rule is more easily enforced since nothing is published about its proceedings till the Committee has reported. In the case of a Standing Committee the House has decided that for the information of the members and the enlightenment of the public, reports of its debates and minutes of its proceedings should be published on the day following each of its Sittings. This concession should not be abused, as it would be if members took advantage of it to comment in the House on Debates and incidents that have taken place in the Committee. Reference should be of the most sparing kind. It is hard to lay down a general Rule in advance as to what would be permissible. What is not permissible is more easily stated. But I should say, for example, that statistics about the number of days a Committee has sat and the rate of its progress, are just on the right side of the line, especially where such statistics are intimately related to the Question before the House, provided they are not accompanied by any comment on the proceedings themselves.

House of Commons (Standing Committees' Return).[2]—An informative document to those interested in the operation of Standing Committees is a Return to an Order of the House of August 7, 1947, laid November 14, showing, for the session 1946-47:

> —of (1) the total number and the names of all members (including and distinguishing Chairmen) who have been appointed to serve on one or more of the Standing Committees showing, with regard to each of such Members, the number of sittings to which he was summoned, and at which he was present; (2) the number of Bills considered by all and by each of the Standing Committees, the number of days on which each Committee sat, and the names of all Bills considered by a Standing Committee, distinguishing where a Bill was a Government Bill or was brought from the House of Lords, and showing, in the case of each Bill, the particular Standing Committee by whom it was considered, the number of days on which it was considered by the Committee, and the number of Members present on each of those days.

House of Commons (Censorship of M.P.s' Letters).[3]—On June 4,[4] Q. was asked the Foreign Secretary as to whether he was aware that British Censorship in Germany was opening letters addressed to M.P.s at the House of Commons by Germans, and whether this policy had his approval. The Minister referred the hon. member to his

[1] 434 *Com. Hans.* 5, s. 1145. [2] H.C. 9 (1946-47). [3] *See also* JOURNAL, Vols. XI-XII, 31; XIII, 44. [4] 438 *Com. Hans.* 5, s. 174.

reply of April 24, which was to the effect[1] that the regulations in question were laid down by quadripartite agreement and applied to all correspondence of Germans in the 4 zones of occupation; difficulties would occur if exceptions were introduced in the British zone.

House of Commons (Approach to M.P.s by Fighting, Police, Services, Personnel and P.O.W.s).[2]

Police.—On November 21, 1946,[3] in reply to a Q. as to the extent of the prohibition existing which precluded any policeman from making representation to his M.P. on matters relating to his employment, the Home Secretary said that under the police discipline code it was an offence for any policeman to divulge any secret matter without proper authority, to communicate it to the Press or to any unauthorized person connected with the force. It would be for a local disciplinary authority to decide whether there had been a breach of the code, but the Minister did not regard it as such a breach for a policeman, like any other member of the public, to write to his M.P. about his conditions of service.

Navy.—In reply to a Q., on December 11, 1946,[4] the Parliamentary and Financial Secretary, Admiralty, said that there was no procedure prescribed for ratings who wished to communicate with their M.P., but as regards requests or grievances in Service matters Mr. Dugdale referred the hon. member to the reply given by the Lord President of the Council to a Q.,[5] on November 19, 1945.

Army.—On February 25, 1947,[6] Q. was asked the Secretary of State for War, whether he could cause instructions to be issued to all units of the Army that all ranks were entitled to write to M.P.s without permission of their military superiors. The Minister replied that it was well known throughout the Army that an officer or soldier was so entitled but that it was most desirable, both in the interests of those who might have complaints and of the Army as a whole, that complaints should, at least in the first instance, be made in the proper and

[1] 436 *Ib.* 165. [2] *See also* JOURNAL, Vols. IX, 21; X, 30; XIII, 41; XIV, 35. [3] 431 *Com. Hans.* 5, s. 1007. [4] *Ib.* 238.

[5] *Armed Forces.*—An hon. member asked the Prime Minister if he would instruct the 3 Service Departments that although service men and women desiring to put forward requests and grievances should in the first instance do so through the usual service channels, it was to be understood clearly by all ranks that all service men and women retain the normal citizen right of community with their M.P.s about any subject whatsoever provided there is no disclosure of military secrets.

The Lord President of the Council replied that he was satisfied that all service men and women understood that if they wrote to their M.P.s no disciplinary action would be taken against them for that reason; but the proper channel of complaints as provided in the King's Regulations was the Commanding Officer. Mr. Morrison emphasized the importance of men and women taking up their problems through the channels specially provided, at any rate in the first instance. Before a complaint could be disposed of by higher authority it was generally necessary for the C.O. himself to inquire at first hand and report upon the facts. The House would agree that individual complaints and grievances would be more expeditiously dealt with and the practical interests of individuals be better safeguarded if complaints, not already investigated, were first made through the proper channels rather than referred directly by M.P.s to Ministers. [6] 433 *Com. Hans.* 5, s. 1869.

normal way. If that was done, they could usually be dealt with more quickly and efficiently.

Army.—On April 15, 1947,[1] an hon. member asked the Secretary for War if he was aware that under company orders at 240 Training Regiment R.A., Tonfanan, N. Wales, soldiers were forbidden to write to their M.P.s without permission of the C.O.; and if the Minister would take steps to remedy this, to which the Minister replied that such oral instruction had been given and that as they were incorrect, immediate steps would be taken to have them cancelled.

On April 22,[2] Q. was asked the Secretary for War whether he treated letters from serving soldiers written to M.P.s and subsequently forwarded to him as confidential, to which he replied that when a letter from a serving soldier was forwarded to him by an M.P. it was, of course, usually necessary that the letter should be seen by those responsible for investigating the matter raised. When the investigation required reference outside the War Office, an extract from the soldier's letter might in appropriate cases be sent to the formation concerned, but only the essential parts of the letter were extracted and the soldier's name was not disclosed unless absolutely necessary for the investigation.

A number of personal cases were then raised.

In reply to a further Q. on this subject, on May 20,[3] the Financial Secretary to the War Office said that complaints or requests, particularly if concerned with compassionate leave or discharge, could usually be dealt with more quickly if the soldier took them to his Commanding Officer in the first instance.

On June 6,[4] the Secretary for War, in reply to a Q., said that Service Personnel were allowed to write direct to M.P.s, whatever their profession or employment outside this House.

Soldier-Prisoner.—On May 22,[5] Q. was asked as to why a soldier in prison was refused permission to correspond with his M.P. The Secretary for War replied that in view of the ample facilities given prisoners to make representations to the Secretary of State on matters connected with their trial, conviction or prison treatment, it was a rule that prisoners were not permitted to make representations to judges, public authorities, or departments or M.P.s.

Civil Service.—On March 31,[6] Q. was asked the Minister of Food why the Ministry refused to receive deputations from the Society of Civil Servants and the Civil Service Clerical Association on matters closely affecting the efficiency of the Department. To which the Minister replied that he had promised to review the position towards the end of the year and in the circumstances he felt that little purpose would be served by the proposed meeting.

Personnel of Control Commission.—On June 30,[7] the Foreign Secretary was asked what instructions had been issued by the Head of the

[1] 436 *Ib.* 2. [2] *Ib.* 90-92. [3] 437 *Ib.* 2158. [4] 438 *Ib.* 36. [5] 435 *Ib.* 279.
[6] *Ib.* 247. [7] 439 *Ib.* 102.

Economic Sub-Commission of the Central Commission for Germany forbidding members of that branch of the staff to communicate with M.P.s on any subject. The Foreign Under-Secretary replied that the officer in question had recently reminded his staff of the normal practice of Public Departments whereby official information on a matter for which the Department had responsibility should be given to M.P.s only by a Minister. These instructions, however, did not preclude oral communication of information to M.P.s visiting Germany. They affected only the subject-matter of the official duties of the Staff.

P.O.W.s.—In reply to a Q., on November 26, 1946,[1] the Secretary for War said that correspondence between P.O.W.s and persons in the United Kingdom was restricted to relatives and pre-War acquaintances. He was unable to make an exception for M.P.s, who could not be said to represent individual P.O.W.s. Any P.O.W. who had a grievance could represent it through military channels and he also had a right to put his case to the International Red Cross. P.O.W.s were well aware that such correspondence was forbidden, and disciplinary action was necessarily taken if the rules were broken. Commandants of P.O.W. camps were instructed to return any unauthorized correspondence to the sender.

On December 17, 1946,[2] the Secretary for War said that complaints by a P.O.W. could be made under Article 42 of the Geneva Convention and were addressed to the Commandant of his P.O.W. camp, who was obliged to forward them to the War Office with such comments as he thought necessary.

In reply to a Supplementary as to why the same approach to M.P.s in regard to our own Armed Forces personnel was not doubly necessary in the case of P.O.W.s, the Minister said that the analogy was not correct, as P.O.W.s were protected under certain conventions and such international agreements certainly protected German P.O.W.s in this country. There were also visitors under the Geneva Convention constantly visiting these camps who would soon let the War Office know if P.O.W.s' complaints were not forwarded on.

In reply to a Q. on March 25, 1947,[3] the Secretary for War said that he was not aware that P.O.W.s in any camp in the area in England mentioned had been forbidden to write to M.P.s or other people in this country, but if the hon. member could give him a case it would be investigated.

House of Commons (Redistribution of Seats).[4]—Since the last reference in the JOURNAL to elected matters in the Parliament of the United Kingdom, there have been the Elections and Jurors' Act[5] and the Report from the Select Committee on Electoral Registration Regulations, 1946, which latter deals with the registration of civilians, service voters, seamen, war workers and postal and proxy voting.[6]

In the year now under review in this issue, the House of Commons

[1] 430 *Ib. 264.* [2] 431 *Ib.* 1757. [3] 435 *Ib. 170.* [4] *See also* JOURNAL, Vols. X, 33; XI-XII, 130; XIII, 127; XIV, 175. [5] 9 Geo. VI, c. 21. [6] *Cmd.* 7004.

(Redistribution of Seats) Bill was introduced, its object being "to relax the Rules set out in the Third Schedule to the House of Commons (Redistribution of Seats) Act, 1944,[1] so far as they relate to the application of the electoral quota and, in consequence thereof, to postpone the enumeration date for the purposes of the initial report under S. 3 of that Act".

In moving 2 *R.* of this Bill in the House of Commons on December 13, 1946,[2] the Home Secretary (Rt. Hon. J. C. Ede) in referring to Mr. Speaker having presided over a Conference which reported to the House in the days of the Coalition Government, said that in the Bill now before them they were concerned with only one of those recommendations—namely, No. 10. That Conference recommended that the Boundary Commissioners should not be required to modify an existing constituency if its electorate falls short of, or exceeds, a quota of not more than approximately 25 *p.c.* That was to say, that if they took 100 as the average size of a constituenccy, none should be less than 75 or more than 125 in electoral strength.

Except for the University members, the House is based upon territorial organization. Mr. Ede was astonished, as he moved about the country, at the number of places unrepresented if they got only one member, which had said they preferred to have one member and remain a unity rather than to have a few of their wards lopped off and put with some other groups of people with whom they had no community of interest. The Government desired that the principle of the community of interest, of local government boundaries, should be made superior to mere mathematics.[3]

After a short debate, the Bill passed 2 *R.*, went through *C.W.H.*, and 3 *R.* without debate, was sent to the Lords and returned with a small amendment, duly becoming 10 & 11 Geo. VI, c. 10.

The Electoral Registration Regulations, 1947, were approved by the House, July 30.[4]

Initial Reports of the Boundary Commissions, 1947.—To those interested in the delimitation of Parliamentary electorates the abovementioned Reports (with Maps) will be of interest. The Commissions are constituted under Part I of the First Schedule to the House of Commons (Redistribution of Seats) Act, 1944, each one being presided over by the Speaker of the House of Commons.

Northern Ireland.—This Report,[5] which was made to the Home Secretary, was laid in the House of Commons at Westminster. The Commission consisted of the Speaker, the Registrar of Births, Deaths and Marriages, and the Commissioner of Valuation respectively of N.I., as *ex officio* members, and Colonel J. Megaw (Deputy Chairman) and Mr. W. R. Maconochy, 2 members appointed by the Secretary of State, together with a secretary.

England.—This Report,[6] dated October 24, 1947, was laid in the

[1] 7 & 8 Geo. VI, c. 41; *see* JOURNAL, Vol. XIII, 134. [2] 433 *Com. Hans.* 5, s. 1557. [3] *Ib.* 1558, 9. [4] 441 *Ib.* 585. [5] *Cmd.* 7231. [6] *Cmd.* 7260.

House of Commons. The Commission consisted of the Speaker, the Registrar-General of Births, Deaths and Marriages in England and the Director-General of Ordnance Survey as *ex officio* members and Sir Roland Burrows (Deputy Chairman) and Sir John Nande appointed respectively by the Home Secretary and Minister of Health as members, with a secretary.

Wales.—This Report,[1] dated November 17, was also laid in the House of Commons. The Commission consisted of the same *ex officio* members as in the case of England, and Sir W. Wheldon (Deputy Chairman) and Captain J. C. H. Cranshay appointed respectively by the Home Secretary and the Minister of Health.

Scotland.—This Report,[2] dated November 5, 1947, was laid in the House of Commons. The Commission consisted of the Speaker, the Registrar-General of Births, Deaths and Marriages in Scotland and the Director-General of Ordnance Survey as *ex officio* members, and the Hon. Lord Macintosh (Deputy Chairman) and Sir Robert Nimmo being appointed by the Secretary of State for Scotland.

Final Report[3] *of the Committee on Electoral Law Reform.*—This Committee was appointed by Warrant and consisted of Sir Cecil Carr; Sir Rowland Evans; Mr. Andrew Hamilton; Mr. William Hansford; Mr. Raymond Jones; Mr. William Kerr, C.B.E.; Mr. H. S. Martin; Sir Cecil Oakes, C.B.E.; Mr. G. R. Shepherd; Mr. G. J. Sheriff; Mr. Dudley Sorrell; Mr. E. W. Tame, O.B.E.; and Sir Robert Topping, with the following terms of reference:

(1) in what respects

(*a*) the law relating to corrupt and illegal practices at Parliamentary elections,

(*b*) the provisions of the Ballot Act, 1872, relating to the conduct of the poll and the counting of votes at such elections, and

(*c*) the law relating to the like matters at local elections,

should be amended with a view to rendering the law relating to those matters more suitable to present-day requirements:

(2) the recommendations of the Speaker's Conference relating to the use of schools and halls for election meetings and to broadcasting: and to make recommendations thereon.

AND WE FURTHER APPOINT

Sir Cecil Carr to be Chairman, and

Mr. W. G. Jagelman, of the Home Office, to be the Secretary of the Committee.

The following is the official Summary of the Committee's Recommendations:

CONDUCT OF ELECTIONS.

Re-statement of the Law.—(i) The law relating to parliamentary and to local government elections should be assimilated and re-stated so far as possible in one statute, which should incorporate the decisions of the courts and should harmonize differences of practice between England and Scotland and among returning officers (Para. 4).

[1] *Cmd.* 7274. [2] *Cmd.* 7270. [3] *Cmd.* 7286.

Notice of Election.—(ii) The time for publishing notice of a parliamentary election should be the same for counties as for boroughs—within two clear days after the receipt of the writ (Para. 6).

Nomination of Candidates.—(iii) A candidate's consent to his nomination should be required at parliamentary as at local government elections (Para. 9).

Contents of Nomination Paper.—(iv) Proposers, seconders and assentors should be required to give their numbers on the register of electors at parliamentary as at local government elections (Para. 10).

(v) The number of assentors should be the same at all elections (Para. 11).

(vi) The use of party labels on nomination papers should not be permitted (Para. 12).

Adjudication upon Nomination Papers.—(vii) A candidate's description should be limited to such brief descriptive particulars as will sufficiently identify him, and the returning officer might be given discretion to omit excessive verbiage when preparing the printed ballot paper (Para. 13).

(viii) If the nomination paper is *ex facie* valid, the returning officer should be required to accept it (Para. 14).

(ix) Not more than three nomination papers should be published; their order should be indicated by the candidate (Para. 15).

The Poll.—(x) To minimise the risks of spoilt ballot papers, the margins of ballot papers should be eliminated or shaded. Unless the official mark can be applied to the ballot papers before they are issued to polling stations, the directions for the guidance of voters should expressly invite voters to make sure that the ballot papers have been duly stamped (Para. 17).

Illiterates.—(xi) The " declaration of inability to read " should be abolished (Para. 18).

Voting by Persons Employed at the Poll.—(xii) Presiding officers and poll clerks, and constables on duty at polling stations, should be allowed to vote by post (Para. 19).

(xiii) The provision that an elector shall not be required to serve as a special constable at a parliamentary election should be repealed (Para. 20).

Parish Elections.—(xiv) Election by show of hands should be abolished, and the election of parish councillors should no longer take place at a parish meeting (Para. 23).

Hours of Poll.—(xv) The poll at district and parish elections should close at 9 p.m. if the candidates so request, and otherwise at 8 p.m. (Para. 25).

University Elections.—(xvi) The procedure should be assimilated to that for postal voting at other parliamentary elections; this should be the only method of voting (Para. 26).

Counting the Votes.—(xvii) For uniformity of practice the Home Office and the Scottish Office should issue a model code of instructions for the use of returning officers. It should deal with the facilities to be afforded to the counting agents of the candidates, and with the persons who may be admitted to the count (Paras. 28 and 29).

(xviii) It should be made clear that candidates' election agents and not only the candidates may appoint counting agents (Para. 30).

Equality of Votes.—(xix) Where there is an equality of votes, the decision should be by lot, and not by the casting vote of the returning officer (Para. 31).

Recount.—(xx) When the number of votes is equal or nearly equal, a candidate should have the right to demand a recount. This right should be available also where a candidate is in danger of losing his deposit (Para. 32).

Candidate's Right to Attend.—(xxi) The right of a candidate and his election agent to be present at nomination, at any polling station, and at the count, should be clearly prescribed (Para. 33).

Return of Deposit.—(xxii) A successful candidate should not have to wait until he had taken the oath as a member before he can recover his deposit; the deposit, if not forfeited, should be returned in all cases immediately after the election (Para. 35).

Corrupt and Illegal Practices.

(xxiii) This branch of the law, like the law relating to the conduct of elections, should be re-stated in a single modernised code covering parliamentary and local government elections so far as possible in one statute, and taking into account the decisions of the courts (Para. 36).

Candidate's Expenses.—(xxiv) The prohibition of unauthorised expenses under section 34 of the Act of 1918 should cover any expenditure designed to affect an election. This should apply to local government as well as to parliamentary elections (Para. 39).

(xxv) The restrictions on the number of committee rooms and on the number and capacities of persons who may be employed should be repealed, provided that the payment of canvassers is prohibited. The prohibition on payment for bands, torches, etc., should be repealed (Para. 40).

(xxvi) The amount of a candidate's expenses should be limited and a return and declarations respecting them made at all local government as well as at parliamentary, county council and municipal elections (Para. 42).

(xxvii) The forms of declaration as to expenses might be simplified (Para. 44).

(xxviii) The jurisdiction of the High Court (in Scotland, the Court of Session) should be transferred to the county court (in Scotland, the sheriff court) as regards applications for an injunction restraining a person from repeating a false statement as to the personal character or conduct of a candidate (Para. 45).

(xxix) As at parliamentary elections, a candidate at a local government election (other than a parish election) should be required to appoint an election agent (himself or another person) (Para. 46).

(xxx) If a candidate fails to name an election agent, he should be deemed to be withdrawn (Para. 47).

(xxxi) The law should be assimilated for parliamentary and local government elections as regards the premises which may not be used as committee rooms, and the prohibition on the use for meetings at local government elections of premises prohibited as committee rooms should be repealed (Para. 48).

Imprint on Election Publications.—(xxxii) The name and address of the printer and publisher should be required on all election literature, whether printed or otherwise multiplied (Para. 49).

Period of Incapacity on Conviction of Corrupt Practice.—(xxxiii) The period of incapacity should be five years, whether the offence be committed at a parliamentary or a local government election (Para. 50).

(xxxiv) The permanent disqualification of a candidate reported by an election court as personally guilty of a corrupt practice should be reduced to one of ten years (Para. 51).

(xxxv) A person reported by an election court as guilty of a corrupt or illegal practice should be relieved from incapacity if prosecuted for the offence and acquitted (Para. 52).

Election Petitions and Prosecution of Offenders.—(xxxvi) We put forward some suggestions designed to relieve the political parties or individual electors of a costly responsibility for conducting election petitions (Paras. 53-60).

(xxxvii) The court for the trial of election petitions should consist of three judges (Para. 61).

(xxxviii) The award of costs at the trial of an election petition should ensure that successful parties are not out of pocket (Para. 63).

(xxxix) A county court judge, or in Scotland the sheriff, should be enabled to make an order for the inspection of ballot papers and counterfoils in respect of parliamentary as well as local government elections (Para. 64).

(xl) The Director of Public Prosecutions should be the prosecuting authority in all criminal proceedings relating to corrupt or illegal practices (including personation) in England; but if he declines to institute proceedings, a private complainant should be left free to proceed upon his own responsibility (Para. 66).

(xli) Personation and other corrupt practices, at both parliamentary and local government elections, should be made triable summarily in England as in Scotland (Para. 67).

Appendix I contains a summary of recommendations of the Interim Report reading:

(*a*) *Use of schools and halls for election meetings.*

(1) *Availability of Schools.*—In England and Wales, in addition to the schools hitherto described as " public elementary " almost all secondary and junior technical schools are now to be available through the extension of the previous law by the Education Act, 1944. Corresponding accommodation will be available in Scotland. We think that this existing or expanded provision should suffice.

(2) *Availability of Halls.*—Halls normally used for letting and maintained from public funds should be available.

(3) *Information, etc., for Candidates.*—A candidate should be able to get from a single source a list of schools and halls available for his statutory use in his constituency and, in the case of schools, the local education authority should book them for him.

(4) *Extent of Use.*—The statutory use of a school or hall should be at reasonable times during a period not exceeding three weeks before polling day.

(5) *Charges for Statutory Use.*—The prescribed maximum charges both for schools and for halls should, in addition to covering the actual cost of lighting, cleaning and heating, include an item to meet the cost of the overtime of caretakers in the case of schools and of the usual attendants in the case of halls.

(6) *Rating of Premises.*—No difficulty appears to exist in giving effect to the proposal of the Speaker's Conference that premises used for statutory meetings should not lose exemption.

(*b*) *Prohibition of expenses incurred by a political or other organisation for the purpose of promoting or procuring the election of a candidate, unless authorised by the candidate's agent.*

The prohibition in section 34 of the Representation of the People Act, 1918, is limited to expenses " on account of holding public meetings or issuing advertisements, circulars or publications ". These limiting words should be omitted; and where the election agent authorises such expenditure, it should be included under a separate heading in the return of election expenses.

(*c*) *Payment of speaker's expenses.*

The payment of fees to speakers, if the practice exists, should be regularized; this should be recognized as authorized expenditure and included under a separate heading in the return of election expenses.

(*d*) *Relief in respect of inadvertent venial errors in returns of expenses.*

The Speaker's Conference proposed that relief should be obtainable in the county court (in England) rather than the High Court. A possible alternative would be to entrust the jurisdiction in England and Wales to the acting returning officers, and in Scotland to the returning officers, subject to appeal to the High Court (in Scotland the Court of Session).

(*e*) *Prohibition on a British subject of broadcasting matters affecting a parliamentary election from wireless stations outside the United Kingdom.*

Such a prohibition would be difficult to enforce, but might have a deterrent value. If enacted, it should relate to matters " intended to influence " an election; it should cover cases where a person who is not a British subject makes the transmission, and should include the promotion in the United Kingdom of a broadcast to be made abroad, whether or not the broadcast actually takes place. An exception may be needed for a broadcast legitimately

made by a British politician who finds himself on a mission abroad during an election.

(*f*) *Increased polling facilities in rural areas.*

The existing law provides suitable machinery for ensuring reasonably adequate polling facilities in rural areas, but attention is drawn to minor amendments which might be made with advantage.

House of Commons (Legislation by Order in Council).—The following interesting observations were made in the House of Commons by the hon. and learned member for Montgomery (Mr. Clement Davies) in the Debate on the Address on November 13, 1946,[1] who said:

An attempt was made during our history to make more and more use of Orders in Council for legislation. That battle was fought, and won, by Parliament. Parliament is now parting with a great deal of its rights to the Executive. The power that used to be exercised by the Throne is now exercised by rt. hon. and hon. members who sit on the Treasury Bench. The power is passing into their hands. Parliament is giving them more and more authority as days go by.

At the beginning of last Session, one of the first Acts this Government introduced was one which gave power to continue for another 5 years, the authority which the House gave to the Government during the War for War purposes. My colleagues and I protested. We thought it was only right that that power should be continued for only one year, at the end of which time the Government should come back to the House, give an account of their stewardship, and explain the need for continuing the power.

Legislation that affects every person is very often drawn up by an official who has a post in a Department. The Government refused our plea and I regret it.

The time is coming when we must recognise that there has been, in the course of 32 years, a change in our Constitution. Legislation by Order in Council has come to stay. There is no doubt about it. But that means that we ought to exercise greater vigilance and control than we exercise at present, and that we ought to give this matter more serious and thoughtful consideration than it has yet received. The suggestions which have been made, and adopted, to protect the situation have not been adequate enough to deal with such an important matter.

House of Commons (Delegated Legislation).[2]—As the Order of Reference of the S.R. & O. Select Committee, as announced in the House on November 18, 1946,[3] contains alterations in such Order given in the previous issue of the JOURNAL, the new Order is as follows:

Statutory Rules and Orders, etc.—Select Committee appointed to consider every Statutory Rule or Order (including any Provisional Rule made under Section 2 of the Rules Publication Act, 1893)[4] 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:—

(i) that it imposes a charge on the public revenues, or contains provisions requiring payments to be made to the Exchequer or any Government

[1] 430 *Com. Hans.* 5, s. 205. [2] *See also* JOURNAL, Vols. IX, 64; X, 25, 27, 83; XI-XII, 15; XIII, 160; XIV, 152; XV, 30; and 389 *Com. Hans.* 5, s. 1231, 1593-1692.
[3] 430 *Ib.* 643. [4] 56 & 57 Vict., c. 66.

Department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payments:

(ii) that it is made in pursuance of an enactment containing specific provisions, excluding it from challenge in the courts, either at all times or after the expiration of a specified period:

(iii) that it appears to make some unusual or unexpected use of the powers conferred by the Statute under which it is made:

(iv) that it purports to have retrospective effect where the parent Statute confers no express authority so to provide:

(v) that there appears to have been unjustifiable delay in the publication or in the laying of it before Parliament:

(vi) that for any special reason its form or purport calls for elucidation:

(*Here follow the names of* 11 *members of the Committee.*)

—The Committee:—To have the assistance of the Counsel to Mr. Speaker: Power to sit notwithstanding any Adjournment of the House, and to report from time to time:—Power to require any Government Department concerned to submit a memorandum explaining any Rule, Order 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 such Rule, Order or Draft:—Three to be the Quorum:—Instruction to the Committee that before reporting that the special attention of the House should be drawn to any Rule, Order or Draft the Committee do afford to any Government Department concerned therewith an opportunity of furnishing orally or in writing such explanations as the Department think fit:—Power 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:—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:—(*Mr. Robert Taylor.*)

The *First* and *Second* Reports[1] were laid on December 17, 1946, and Ordered to be printed.

In the *Second* Report the Committee in consideration of the Road Haulage and Hire (Charges) (Amendment) Order, 1946 (S.R. & O., 1946, No. 1890), presented November 13, state that they are of opinion that the special attention of the House should be drawn to it, on the ground that its form or purport calls for elucidation. Appendix I to this Report contains a Memorandum by the Ministry of Transport explaining the position.

In regard to the Control of Fertilizers (Northern Ireland) Order, 1946 (S.R. & O. (N.I.), 1946, No. 165), the Committee are of opinion that the special attention of the House should also be drawn to it on the ground of unjustifiable delay in laying it before Parliament, which delay is explained in a Memorandum by the Board of Trade contained in Appendix II to this Report.

In the *Fourth*[2] Report, which was laid and Ordered to be printed on April 22, 1947, the Committee draw the special attention of the House to the Coal Industry Nationalization (Coal Acts) Regulations, 1947 (S.R. & O., 1947, No. 395), on the ground that their form calls for elucidation in regard to the citing of the Statutory authority, and

[1] H.C. 17 (1946-47). [2] H.C. 85 (1946-47).

the Ministry of Fuel and Power put in an explanatory Memorandum (*vide* the Appendix to the Report). In the *Fifth* Report,[1] which was laid and Ordered to be printed on April 29, 1947, the Committee draw the special attention of the House to the Raw Cocoa (Control and Maximum Prices) (Amendment) Order, 1947 (S.R. & O., 1947, No. 552), and the Transfer of Functions (Coast Protection) Order, 1947 (S.R. & O., 1947, No. 609), on the ground that they appear to make an unexpected use of the powers conferred by the respective Statutes. On the subject of the first-named Order, evidence (*Qs.* 1-35) was taken from the Director of Cocoa, Chocolate and Sugar Confectionery, Ministry of Food, who handed in a statement. In respect of the second-named Order an explanatory Memorandum was put in by the Ministry of Transport and is contained in the Appendix to the Report, Mr. Abrahams, Ministry of Food (Liaison Officer), being in attendance in addition to Sir Cecil Carr, Counsel to the Speaker.

In the *Sixth* Report,[2] which was laid and Ordered to be printed, May 20, 1947, the Committee draw the special attention of the House to the Hill Sheep Scheme Subsidy Payment (England and Wales) Order, 1947 (S.R. & O., 1947, No. 667), on the ground of unjustifiable delay both in publication and in the laying of it before Parliament. An explanatory Memorandum was put in by the Ministry of Agriculture and Fisheries to the Clerk of the Committee (*vide* Appendix).

The last, and *Special*, Report[3] in the 1946-47 Session, was laid on July 29, 1947, and Ordered to be printed. As the whole of this Report is of particular interest in giving an account of the work of the Committee it is printed at length as follows:

1. Your Committee have examined 795 Statutory Rules and Orders, etc., since the beginning of the session and have drawn the attention of the House to six. Of the 795 instruments examined, 565 arose out of emergency legislation—*i.e.*, were presented under the Supplies and Services (Transitional Powers) Act, 1945, the Emergency Laws (Transitional Provisions) Act, 1946, or the Goods and Services (Price Control) Acts, 1939 and 1941. Of the instruments reported on, two were under the third head of the Committee's Order of Reference, two were under the fifth, and two under the sixth. Following the practice of former sessions, Your Committee desire to supplement their *ad hoc* Reports upon Statutory Rules and Orders by submitting a Special Report upon matters which have come to their notice.

Citation of Exact Statutory Authority.—2. Except in the few and easily recognisable instances where the prerogative is relied upon, a department has no power to make rules, regulations or orders having the force of law unless Parliament has first delegated that power by statute. Usually a department, when exercising a statutory power for this purpose, will specify not only the Act but also the section or schedule thereof which confers it. This information is helpful to anyone who may wish to verify his rights or perhaps to challenge in the courts the validity of the departmental instrument. It is also valuable to Your Committee who, being directed to draw attention to the unusual or unexpected use of a statutory power, must identify and examine the exact source of the department's authority.

3. Occasionally this guidance has not been given. Thus, for example, in the case of S. R. & O., 1946, No. 2092, and 1947, Nos. 103, 395 and 530, the

[1] H.C. 91 (1946-47). [2] H.C. 102 (1946-47). [3] H.C. 140 (1946-47).

instrument merely cites the title of the parent Act (the full text of which happens to occupy some seventy pages) without particularizing any section or schedule. Inasmuch as the department will have been careful to study its precise powers before framing any such instrument, there would seem to be no difficulty in declaring their source in detail. Your Committee are aware that it may not always be easy to isolate one or two sections as the enabling authority. It may be suggested, they understand, that it would merely be confusing to enumerate several sections, and, moreover, that it would be unfair to expect a department to identify the particular powers relied upon because the department might thereafter be in some degree estopped (should the instrument ultimately be attacked in the courts as *ultra vires*) from relying upon others less obvious. Your Committee cannot accept these suggestions. They consider that departments, knowing what powers they are exercising, should name in the forefront of their instruments the relevant sections or schedules of the parent Act. They cannot believe, and they would regret to find, that a statute is so drafted as to allow the powers of making statutory instruments to escape the notice of those who have to administer it. Your Committee believe that all departments are now ready and willing to cite a reference to the powers exercised. They welcome this assistance.

Consolidation of Rules and Orders.—4. A Special Report in a previous session[1] drew attention to the Air Navigation Order in Council, made in 1923 and amended some thirty-four times since, as an instance where consolidation was overdue. There has been further amendment in the present session. Your Committee hope that this long series may soon be consolidated. The recently issued Non-Contentious Probate Rules, 1947,[2] invite similar comment. They amend two sets of previous Rules, dealing with the Principal Registry and the District Registries. The former were first made in 1862 and the latter in 1863; both have been frequently amended, and the statutory powers under which they were made were apparently repealed and replaced in 1925. Few outstanding instruments have been more frequently amended than the Rules of the Supreme Court, first issued in 1883. Your Committee trust that these three codes will presently be re-issued in consolidated form.

Negative and Affirmative Procedure.—5. In a Special Report, submitted in October, 1944,[3] the predecessors of Your Committee referred to

> " the apparent absence of any principle determining the choice between the procedure by affirmative resolution and the procedure for annulment of rules and orders by adverse prayer."

" Rules and Orders imposing taxation or modifying the terms of a statute," the Special Report recommended, should require the authority of an affirmative resolution. The Committee expressed themselves as " not convinced that orders such as those for the local opening of cinemas under the Sunday Entertainments Act, 1932," should be in the same category.

6. Your present Committee adhere to this view. Although their duty is confined to the results, and is in no way concerned with the processes, of the delegation of legislative power, they have been impressed in at least one recent instance with the fact that an instrument might with advantage have been made subject to the affirmative procedure. The instance was the Dock Workers (Regulation of Employment) Order, 1947.[4] When considering this important Order, Your Committee felt that its terms, not having been exposed to detailed examination in Standing Committee by being embodied in the direct legislation of Parliament, deserved discussion by the House. As matters stand, this discussion could only have been obtained by putting down a prayer that the Order be annulled—a result which probably no Member would have desired. Your Committee realise that the preference for the negative over the affirmative

[1] 2nd Spec. Rep.: H.C. 187, 1945-46, para. 4. [2] S. R. & O., 1947, No. 1393.
[3] H.C. 113, 1944, para. 4. [4] S. R. & O., 1947, No. 1189.

procedure may involve considerations of political significance and parliamentary time. They nevertheless feel that it would be helpful if the relative appropriateness of the two procedures, seemingly hitherto determined without conscious plan, could now be stated in some considered formula, so that instruments which, by the novelty or importance of their contents, appear to need or to justify discussion by the House should be the subject of the affirmative procedure.

Questions were asked during the Session in regard to S.R. & O. Nos. 154, 255, 336, 796, 1246 and 1248 of 1947.[1]

Following a *Q.* on March 18, 1947,[2] there were several Supplementaries with reference to the discontinuance in Statutory Instruments of the expression " all other powers enabling ", to which the Financial Secretary to the Treasury (Mr. Glenvil Hall) replied that the words were a harmless device and had been in use since 1862. The Questioner then drew attention to *Qs.* 61 and 62 in his name on the *O.P.* in which he drew attention to the use of this phrase in 2 such Instruments (No. 2118 of 1946 and No. 301 of 1947) and asked the Financial Secretary whether he could identify the said powers and explain why the said powers were not specified in the Warrant and Order respectively. The Questioner ultimately gave notice that he would move to annul the Orders in order that the question might be debated.

In reply to a *Q.* on May 6, 1947,[3] the Chancellor of the Exchequer (Rt. Hon. Hugh Dalton) was asked whether he would give instructions for the general adoption in S.R. & O.s of the practice already introduced in some Departments, whereby changes in the law are distinguished by special type, to which he replied that he would draw the attention of the Departments to this practice, but that he would not require it in all cases. Often the explanatory note made it unnecessary.

House of Commons (Statutory Consolidation Orders, debate on).—On February 25,[4] Mr. Speaker in the course of a Ruling said:

This is a Consolidation Order, and it is unusual to discuss the whole Order on consolidation. . . . This Order consolidates the Cheese (Control and Maximum Prices) Order, 1943, and subsequent amending Orders. It also incorporates two amendments of detail. If the Principal Order of 1943 had been subject to annulment by Address, I should have had to rule, that, apart from the two new points, the scope of Debate on the Consolidation Order was limited to the question of consolidation. Since, however, the principal Order was not subject to annulment, and this is the first opportunity the House has had of debating the policy of the Orders consolidated in this Order, I must decide that it is fully open to Debate.

I should like to take this opportunity of placing on record my view that in the case of any Orders which consolidate previous Orders that have been subject to annulment, the policy of the main and amending Orders would not be under discussion, since if the consolidating Order, which revokes the previous Orders, were annulled, the only result would be that the previous Orders would continue in operation unconsolidated. In the case of Consolidation Bills,[5] the

[1] 434 *Com. Hans.* 5, s. 221; 436 *Ib.* 591, 2; 437 *Ib.* 210, 211; 441 *Ib.* 71. [2] 435 *Ib.* 196-8. [3] 437 *Ib.* 209. [4] 433 *Com. Hans.* 5, s. 2011. [5] *See* Index to Speaker's Rulings in previous issues.—[ED.]

scope of debate has long been restricted to the single purpose of consolidation. Of course I must apply that principle to Orders, but not on this particular occasion.

House of Commons (Publications and Debates Report).[1]—The Select Committee on this subject was appointed by Order of the House on November 20, 1946,[2] with the same order of reference, etc., as in 1944. The Committee met 5 times and heard the Editor and Assistant Editor of the Official Report (Mr. P. F. Cole, O.B.E., and Mr. T. H. D. O'Donoghue) and the Controller and Assistant Controller of H.M.S.O. (Lt.-Colonel Sir Norman Scorgie, C.V.O., C.B.E., and Mr. W. J. I. Archer, O.B.E.) on matters arising from the reporting and publication of Debates.

The Report[3] from the Committee, with proceedings and Minutes of Evidence (180 Qs.), was laid on July 23, 1947.

Reporting.—Paragraph 2 of the Report states that, from the evidence of the Editor of the Official Report and the Controller of H.M.S.O., it is clear that the difficulty arises mainly from the fact that sufficient reporters were not obtainable to cope with the sudden increase in Committee work and the large number of late sittings of the House. The Committee observe that the evidence which they have heard clearly shows that the numbers, skill and loyalty of the present staff have been strained to the limits. The Committee are of opinion that the complete, accurate and prompt reporting of the Debates in the House and in its Committees is of the utmost importance, and that every effort should be made and sustained to secure additional reporters, men and women, for the service of the House and that steps should be taken to ensure this service which the House rightly expects to receive in all circumstances.[4]

Paragraph 6 of the Report reads:

Revision of Speeches.—

In the meantime, it is considered desirable to reprint the following notice, which has already been circulated to Members, as a reminder that their co-operation in the revision of their speeches will facilitate the work of the Reporters, especially during the later hours of Debate:

Transcripts of speeches are usually available about one hour after delivery. To ensure the punctual production of the daily part, the copy of a speech should be with the printers not more than two hours after delivery. It will facilitate the work of the staff if Members aim at revising their speeches not less than one hour and not more than one and half hours after delivery.

The margin of time available becomes progressively less from 9 p.m. onwards, and speeches made between 9.30 and 10.30 p.m. have to be dispatched within an hour, or even less, after delivery. The last copy for printing in that night's issue should, under present arrangements, leave the building at 11 p.m.

It is suggested that in the case of these later speeches Members should not seek to do any revision later than 10.30 p.m., except on special points of difficulty or doubt, involving names, figures, or quotations.

Stationery.—Resolutions of the Committee were passed requiring that a stock of crested and addressed air-mail stationery be provided

[1] *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; XV, 40.
[2] 430 *Com. Hans.* 5, s. 981.
[3] H.C. 136 (1946-47).
[4] *Rep.* § 4.

in the Library; that the supply of plain 8vo crested notepaper without address be resumed; and that each style of 8vo notepaper be supplied lengthwise and upright.

***House of Commons (Parliamentary Catering).**[1]—The "Select Committee on the Kitchen and Refreshment Rooms (House of Commons)" was set up on August 20, 1945,[2] with the same order of reference as given in Volume XIV, with power to send for persons, papers and records, and 3 as a quorum. An hon. member expressed surprise that only one doctor was on this important committee.

Question was asked the Chairman (Mr. V. L. T. McEntee) of the Committee on February 12,[3] 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.[4]

In reply to a Q. on February 24, 1946,[5] 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 ½ of a day's pay for each hour or part thereof for all persons detained after 11.30 p.m., who have, 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 November 25, 1946,[6] the Chairman, in reply to a *Q.*, said that the penny per bill pension fund was now merged in the Staff Pension Fund, which, on October 31, 1946, amounted to £1,456 12s. 6d., and that 8 persons were in receipt of pensions from the Fund, the total weekly payment being £9 4s. 5d. The Committee did not consider it desirable to publish the names of the pensioners.

In reply to a *Q.* on December 19,[7] the Chairman said that, up to 4 p.m. on Thursday, the amount contributed to the refreshment department staff Christmas Fund was £984, and the number of the staff among whom it was to be distributed was 150.

On March 25, 1947,[8] Q. was asked as to what extent the Department was running at a profit or a loss and what was the extent to which the taxpayer was subsidizing the food consumed by the members and the staff, to which the Chairman replied that the accounts were still in the hands of the Government auditors.

[1] *See also* JOURNAL, Vols. I, 11; II, 19; III, 36; IV, 40; V, 31; VII, 41; VIII, 29; XIII, 45; XIV, 53; XV, 45. [2] 413 *Com. Hans.* 5, s. 586. [3] 419 *Ib.* 41. [4] 417 *Ib.* 1702. [5] 419 *Ib.* 162. [6] 430 *Ib.* 202. [7] 431 *Ib.* 450. [8] 435 *Ib.* 164.

Up to the date of going to press with this Volume, no recent Report from this Select Committee has been published.

United Kingdom: Northern Ireland (Proportional Representation). —On January 14, 1947,[1] it was moved:

That in the opinion of this House the Government should institute legislation to provide for Proportional Representation as the method of election of members of Parliament and public boards in Northern Ireland.

The following were some of the arguments both for and against brought forward in the debate on the Motion, the Question upon which was negatived without a Division:

FOR.

In the 4 counties of Tyrone, although a total vote had been repeatedly recorded against the Government, yet out of 17 Parliamentary seats, the Opposition received 7 seats and the Government 10, which it was submitted was an unfair system of representation. Also, in the City of Belfast, where the majority of the votes cast at the last General Election was against the Government, yet the Opposition had only 7 out of a total of 14 seats.[2]

The fundamental facts about P.R. were that it was introduced and provided for in the Government of Ireland Act[3] ostensibly to give protection. At the first available opportunity it was abolished. It was provided in Southern Ireland to give a minority of 8 *p.c.*, not a minority of 32 or 33 *p.c.* as in Northern Ireland protection. With a sense of fair play the Government of Southern Ireland had maintained that system because they were bound to maintain it in order to afford protection to the small minority resident there.[4]

Lord Birkenhead said:

We are convinced that not only by the principles of Proportional Representation can we secure elections which are completely honest, but by the application of those principles can we restore equality and stability to our representative institutions.[5]

AGAINST.

The question had been before the public for more than half a century. It was the subject of a Royal Commission in 1890, after which the Imperial Parliament decided not to introduce P.R. A number of private Bills were introduced into that Parliament but they were always decisively rejected. It was brought before the Speaker's Conference in 1916, but again rejected as an unsuitable method of electing Parliament. When the Representation of the People Bill was before the British House of Commons in 1918 the exponents failed again. History showed that since 1890 the English people as a whole had decisively rejected P.R. for Parliamentary elections.[6]

The exponents of P.R. saw their chance, however, in 1919, and when

[1] N.I. *Com. Hans.* Vol. 30, No. 65, 3781. [2] *Ib.* 3782. [3] 10 & 11 Geo. V, c. 67.
[4] N.I. *Com. Hans.* Vol. 30, No. 65, 3806. [5] *Ib.* 3813. [6] *Ib.* 3793.

the Irish Local Government Bill was before the British House of Commons, it was decided to try it upon the dog. The result was that so far as local government elections were concerned, under that Bill P.R. was introduced into Northern Ireland.

In 1925, under P.R., the Unionist Party returned 33 members; in 1945 under single-member constituencies that Party returned 33 members—absolutely no difference.[1]

The position was that in Northern Ireland, where there were 2 Parties with directly contrary views and in every election a clear and simple issue, the difference between P.R. and the direct vote was *nil*.

In 1929, after 2 elections thereunder, P.R. was abolished. For a great number of years P.R. had considerable support, but that gradually dwindled away until to-day it had virtually none. Labour denounced it vigorously. The Conservatives were not interested in it at all, but it had some adherents among the Liberals, which explained it.[2]

The public did not like P.R. People were quite all right when they cast their first preferences, but they never knew the object of their second or third. There was a sigh of relief when they got back to the single-member constituency. The people of Northern Ireland were no different from those in any other part of the United Kingdom; they very much preferred to see a stand-up fight between 2 men, with conflicting principles, and to vote for the man of their choice.[3] With the big constituencies which P.R. demands, the important aspect of the personal touch between the member and his constituency is lost.[4]

In 1922, when P.R. was done away with in local government elections in Northern Ireland, 52 of such bodies petitioned for the alteration.[5]

P.R. was tried in New South Wales and the result was that it produced minority rule. There the National and Country Party with 456,245 votes returned 42 members, while Labour with 438,578 votes returned 47 members. P.R. gives opportunities of all kinds to the crank and extremist to split the whole assembly into small sections and no stable Government can be formed. A Government must be able to hold the reins of office with a firm hand.

P.R. also led to many abuses, corruption, and to the absolute powerlessness of the Government in office. At one time 12 European countries tried it. Lord Curzon quoted Italian Ministers as saying:

> The weakness of our situation and the instability of our Government are due to Proportional Representation and Proportional Representation alone.[6]

Another important thing was the cost of P.R. to the ratepayers, the increased cost of such elections being 500-600 *p.c.* In the (speaker's) rural district the normal cost of every single contest was £199. Under P.R. it was £721.

With the financial cost to the individual, really only a rich man

[1] *Ib.* 3794. [2] *Ib.* 3795. [3] *Ib.* 3798. [4] *Ib.* 3799. [5] *Ib.* 3802. [6] *Ib.* 3803.

could fight an election under local government under P.R.[1] It was only a dying cause which wanted P.R.[2]

The reason for the present difficulty in France was the alternative vote which was very much the same as P.R., and all kinds of Parties got in, which made the job difficult. In fact, the big stick always wins in P.R.[3]

Many people when they put 1 opposite their first choice did not bother about the others. P.R. was a failure in Northern Ireland. When 6 or 7 members represent a county who is really the member? If you want good government to serve the people, it is better to have members tied to one constituency.[4]

United Kingdom: Northern Ireland (Enlarged Legislative Powers).—In moving 2 *R.*[5] of the Northern Ireland Bill in the House of Commons at Westminster, the Under-Secretary of State for the Home Department (Mr. G. H. Oliver) said that the principle of the Bill was to remove a number of restrictions imposed upon the legislative powers of the Parliament of Northern Ireland by the Government of Ireland Act, 1920,[6] which Act originally applied to the whole of Ireland, but since 1922 applied only to Northern Ireland. Such Act also provides for a Government and Parliament in Northern Ireland within the framework of the United Kingdom, and whilst reserving such powers as defence, currency and foreign affairs to the Parliament of the United Kingdom, it transferred other powers to the Government and Parliament of Northern Ireland in respect of such matters as health, transport, agriculture and law and order.

It was found that the powers possessed by the Northern Ireland Parliament had a very restricted effect, with the result that, from time to time, the legislative powers had to be enlarged by a series of Northern Ireland (Provisions) Acts of 1928, 1932 and 1945. In addition to this, clauses in certain United Kingdom Bills had given powers to Northern Ireland to legislate, without interfering with the main structure of the Act of 1920.

The enlargement of the legislative power under the Act deals with certain schemes extending as well to the portion of Ireland outside the jurisdiction of the Parliament of Northern Ireland as to the portion of Ireland within the jurisdiction of that Parliament but not further. Legislative powers are also enlarged in regard to certain transfers of property, compulsory retirement of county court judges, health services, superannuation rights of N.I. Civil Servants to meet war circumstances, transport services, limitation of actions by and against the Crown, cesser of reservation of registration of deeds and of the registration of title to land in Northern Ireland. Part III of the Requisitioned Land and War Works Act, 1945,[7] is applied to Northern Ireland, and S. 2

[1] *Ib.* 3804. [2] *Ib.* 3810. [3] *Ib.* 3811. [4] *Ib.* 3823. [5] 438 *Com. Hans.* 5, s. 1467. [6] 10 & 11 Geo. V, c. 67, which still stands on the Statute Book, but in 1922 the Irish Free State was formed and since then Eire.—[ED.] [7] 8 & 9 Geo. VI, c. 43.

of the Northern Ireland (Miscellaneous Provisions) Act, 1945,[1] is amended extending the power of the Governor to effect consequential transfers of functions from one Department of the Government of Northern Ireland or Minister thereof to another such Department or Minister.

The Bill passed through its remaining stages in the Commons, was agreed to by the Lords and became United Kingdom Act, 10 & 11 Geo. VI, c. 37.

United Kingdom: Northern Ireland (Delegated Legislation).—On February 19, 1947,[2] the Minister of Health and Local Government "laid", by Act, in the Commons, the Health Authorities (Qualifications and Duties of Medical Officers) Regulations (Northern Ireland), 1947.

On February 27,[3] an hon. member, in moving in that House:

> That the Regulations dated the 18th February, 1947, made by the Ministry of Health and Local Government under sections 10 and 28 of the Public Health and Local Government (Administrative Provisions) Act (Northern Ireland), 1946, and presented to this House on Wednesday the 19th February, be hereby annulled,

—said that the Regulations penalized a doctor who had given 5 or 6 years' service to the Army, irrespective of his qualifications. The hon. member then quoted the offending paragraph—namely:

> unless he has had, for the office of medical officer of health, not less than 5 years' experience in general public health duties in a whole-time capacity as a medical officer of health, deputy medical officer of health or assistant medical officer of health under a local authority.

That, in effect, meant, said the mover, that a doctor who was in the Army and was doing duties comparable to the duties of a medical officer of health, even if he was 5 years doing those duties, could not count more than 2 of them.

After a short debate, however, the Annulment Motion was negatived.

Joint Select Committee.—In addition to the *First* to the *Fifth* Reports (*for which see* JOURNAL, Vol. XV, 45) the *Sixth*,[4] *Seventh*,[5] and *Eighth*[6] Reports were made in the latter part of the Second Session of the VIth Parliament, from the Committee appointed November 28, 1946,[7] of which an unusual recommendation was made only in the *Seventh* Report—namely, that in consideration of the Management of Housing Accommodation Regulations dated March 6, 1947, made by the Ministry of Health and Local Government under Ss. 23 and 29 of the Housing Act (No. 1), 1945, the Committee are of opinion that the special attention of the House should be drawn to Regulation No. 2, on the grounds that it is altogether too vague and confers upon the Ministry of Commerce powers which were never contemplated being conferred on that Ministry by any of the Housing Acts.[8]

[1] 8 & 9 Geo. VI, c. 12. [2] N.I. *Com. Hans.* Vol. 30, No. 75, 4301-4508. [3] *Ib.* No. 78, 4478. [4] H.C. 721. [5] H.C. 724. [6] H.C. 728. [7] *See* JOURNAL, Vol. XV, 44. [8] H.C. 724; N.I. *Com. Hans.* Vol. 31, No. 1, 3.

H.C. Paper No. 743, embracing *all* the Reports in the Second Session of the VIth Parliament, also reports 28 memoranda from Ministers explaining to the Committee the several Statutory Rules, Orders and Regulations presented and examined. This Paper also contains evidence heard by the Committee from Departmental Officials.

In the *Third* Session of the VIth Parliament the Joint Committee was set up by the two Houses[1] with the same order of reference as last year,[2] but the quorum was increased to 5. All unusual recommendations made by the Committee in any of their *Sixteen* Reports are given below.

First.[3]—The Committee, in consideration of a certain Pay Order made by the Minister of Home Affairs in regard to the Royal Ulster Constabulary (Women Members), were of opinion that the special attention of the House should be drawn to this Regulation under subparagraph (3) of the Order of Reference on the ground that it involves a charge upon public funds.

Second.[4]—The same Report was made as above in respect of certain Regulations dealing with a Public Elementary Teachers (Religious Orders) Superannuation Scheme framed by the Ministry of Finance in consultation with the Ministry of Education under Ss. 70 and 71 of the Education Act (N.I.), 1923.

Third.[5]—The same Report was also made as above in regard to certain Regulations dealing with Supplementary Pensions and also with Unemployment Assistance. On June 4, the Minister of Labour, however, obtained approval of the House to these 2 Regulations.[6]

Fourth.[7]—The same Report as above was made in regard to 7 different Education Regulations.

Sixth.[8]—The Committee likewise reported in regard to certain National Insurance Regulations made by the Minister of Labour in conjunction with the Minister of Finance.

Seventh:[9]—In regard to the "Education-Training Colleges—Salaries and Allowances Regulations dated June 16, 1947, made by the Ministry of Education under the Education Acts (N.I.), 1923 to 1942, and under the Teachers' Salaries and Superannuation (War Service) Act (N.I.), 1939, as amended by the Teachers' Salaries (War Service) (*Amdt.*) Act (N.I.), 1946," a copy of which had been presented to the House :

The Committee are of opinion that this Order appears to make an extraordinary use of the power conferred by Section 99 of the Education Act, 1923, in the following respects:—

(1) Article 10 purports to provide that the salaries of the Principals of Stranmillis and St. Mary's Training Colleges shall be determined by the Ministry in consultation with the College authorities, and that the salary of the Principal of Larkfield Training College shall be determined by the Ministry. These salaries shall, however, be subject to the approval of the Ministry of Finance.

[1] N.I. *Sen. Hans.* Vol. 31, No. 2, 13; *Ib. Com. Hans.* Vol. 31, No. 3, 97. [2] *See* JOURNAL, Vol. XV, 44. [3] H.C. 738. [4] H.C. 742. [5] H.C. 744. [6] N.I. *Com. Hans.* Vol. 31, No. 16, 861. [7] H.C. 745. [8] H.C. 747. [9] H.C. 748.

The article in question does not fix a minimum or a maximum scale and does not provide for any procedure or method whereby the rate of salary of the Principals of such Training Colleges shall be determined.

This article in its present form appears to have been made without any express statutory authority and might cast an additional uncontemplated burden on the Exchequer.

(2) This Regulation purports to give retrospective effect to its provisions as from the 1st day of April, 1945, and there does not appear to be any statutory authority for such a provision.

The Committee are unanimously of opinion that their work is hampered and very often frustrated by reason of the fact that the five days allowed by Section 4 (1) of the Rules Publication Act (N.I.), 1925, have expired before the Committee have been able to consider these Statutory Rules and Orders, and in order to remedy this state of affairs, unanimously recommend that Section 4 (1) of the Rules Publication Act (Northern Ireland), 1925, should be so amended that for the five sitting days therein mentioned there be substituted ten days and for ten days there be substituted twenty days.

Twelfth.[1]—The Committee reported that in regard to the S.R. & O. dealing with the Ulster Royal Constabulary—Pay, dated September 15, 1947: the National Health Insurance—Arrears Amendment Regulations, dated September 9, 1947, and the Housing Subsidy Order, dated September 17, 1947, copies of which had been presented to the House, 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 ground that they involve a charge upon public funds.

(*Any subsequent proceedings of this Joint Select Committee falling in the Fourth Session will be dealt with in the next Volume of the* JOURNAL.)

The Channel Islands.—An interesting Paper[2] was issued by the Secretary of State for Home Affairs in March, 1947, and presented to the United Kingdom Parliament. It contained the Report of the Privy Council on very considerable reforms in the control of the Government by the people of the Channel Islands. When these proposals have been translated into action, reference will be made to them in the JOURNAL.

Canada (Letters Patent constituting the office of Governor-General and Commander-in-Chief).—On December 8,[3] the above-mentioned document,[4] issued by the Prime Minister of Canada (Rt. Hon. W. L. Mackenzie King) by Royal Command of September 8, 1947, was laid.

The Preamble recites the Letters Patent and Royal Instructions of March 23, 1931, which are now revoked.

Clause I of the Letters Patent of 1947 constitutes the office of Governor-General and Commander-in-Chief in and over Canada by Commission under " Our Great Seal of Canada ".

Under Clause II the Governor-General, " with the advice of Our Privy Council of Canada or of any members thereof or individually ", is empowered to exercise all powers and authorities lawfully belonging

[1] H.C. 757. [2] *Cmd.* 7074. [3] LXXXVIII, *Com. Hans.* No. 2, 17. [4] H.C. Sessional Paper 143.

to Us in respect of Canada by virtue of the British North America Acts, 1867 to 1946, and under the laws of Canada.

Clause III authorizes the use by the Governor-General of the Great Seal of Canada.

The Governor-General appoints Judges, Justices, etc. (IV), whom he is authorized under—

Clause V, to suspend or remove from office.

Clause VI vests in the Governor-General the power to summon, prorogue and dissolve Parliament.

He is also empowered (VII) to appoint Deputies, and in case of his death, incapacity, removal or absence out of Canada, the Chief Justice of Canada is to act until the King's Pleasure is signified, or in case of death, etc., of the Chief Justice, the Senior Judge for the time being of the Supreme Court of Canada, who in either case officiates as " Our Administrator ". But the latter may act only if the Chief Justice be out of Canada, in both cases after taking the appointed Oaths. The Governor-General may, however, exercise all his powers when temporarily absent from Canada, " with Our permission ", for a period not exceeding one month (VIII).

" All our Officers and Ministers Civil and Military ", etc., are to obey the Governor-General (IX), whose Commission is to be read and published by the Chief Justice, or other Judge of the Supreme Court of Canada " and of Our Privy Council of Canada ", the form of the Oath of Allegiance being:

> I . . . do swear that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His Heirs and successors, according to law. So help me God.

The Governor-General likewise takes the oath of office as Governor-General and Commander-in-Chief and for the due and impartial administration of justice, which is administered by the Chief Justice, etc. (X).

Clause XI authorizes the Governor-General to empower others holding any office or place of trust in Canada to administer such Oaths, together with any other Oaths prescribed by law.

Clause XII vests in the Governor-General the Royal Prerogative of Mercy, but he may not pardon or reprieve any offender without first receiving, in capital cases, the advice of " Our Privy Council of Canada ".

The Governor-General issues exequaturs to duly appointed Consular Officers of foreign countries (XIII).

The Governor-General may not quit Canada without having first obtained " Our leave " for so doing through her Prime Minister (XIV).

Clauses XV, XVI and XVII reserve to the King power to revoke, alter or amend these Letters Patent, provide for their publication and declare their coming into effect on October 1, 1947.

The Appendices to these Letters Patent are: (A) those of March 23,

1931, and (B) the Royal Instructions of the same date, and (C) the amending Letters Patent of March 23, 1931, in effect prior to October, 1947.

Canada: Senate (Conference on Bill).—On July 7, a Message was brought from the Commons by their Clerk with a Bill (No. 364) intituled: " An Act to amend the Criminal Code ", to which they desired the concurrence of the Senate and 1 *R.* of the Bill was thereupon taken.

On the following day the Bill passed 2 *R.* and was referred to the Standing Committee on Banking and Commerce. On July 10, the Hon. Senator Beauregard reported from such Committee that they had gone through the said Bill and directed him to report it with several (32) amendments, among which were:

No. 2, P. 1, l. 25: after the first " in " to insert, " other than a dwelling house," as defined in paragraph (*g*) of section three hundred and thirty five; and

No. 15, P. 3, ll. 24-28 inclusive: delete paragraph (*d*) of Clause 7 and substitute the following:

" (*d*) if he uses or has in his possession any weapon and death ensues as a consequence of its use."

All the 32 *amdts.* were concurred in, the Bill as amended passed 3 *R.*, and the Question—" Whether this Bill as amended, shall pass " was resolved in the affirmative, after which it was:

Ordered: That the Clerk do go down to the House of Commons and acquaint that House that the Senate have passed the Bill with several amendments, to which they desire their concurrence.

On July 11 a Message was brought from the House of Commons by their Clerk in the following words:

Friday, 11th July, 1947.

Resolved,—That a Message be sent to the Senate to acquaint Their Honours that this House disagrees with their 2nd and 15th amendments to the Bill No. 364, An Act to amend the Criminal Code, for the following reasons:—

" In the first case, the amendment which is sought to be made by the Senate is in language which has already been rejected by the House and which for this reason the House cannot accept;

In the second case, that is their 15th amendment, the amendment extends the operation of section 260 of the Act beyond what the House of Commons contemplated or is willing to accept."

Ordered,—That the Clerk of the House do carry the said Message to the Senate.

ATTEST.

ARTHUR BEAUCHESNE,
Clerk of the Commons.

Ordered that the said Message be taken into consideration at the next sitting of the Senate. The Senate after debate on July 14:

Resolved,—That the Senate do insist on its second and fifteenth amendment to the Bill (364) intituled: " An Act to amend the Criminal Code " to which the House of Commons has disagreed.

—and a Message was ordered to be sent to the Commons accordingly.

On the same day a Message was brought from the House of Commons by their Clerk in the following words:

Monday, 14th July, 1947.

Resolved,—That a Message be sent to the Senate respectfully requesting a free conference with Their Honours to consider certain amendments made by the Senate to Bill No. 364, intituled: " An Act to amend the Criminal Code," to two of the amendments to which this House has not agreed and upon which the Senate insist, and any amendment which at such conference it may be considered desirable to make to the said Bill or amendments thereto.

Ordered,—That the Clerk of the House do carry the said Message to the Senate.

ATTEST. R. T. GRAHAM,
Deputy Clerk of the Commons.

When it was Ordered: That the said Message be taken into consideration presently, and the Senate accordingly proceeded to the consideration of the said Message.

After debate, it was:

Resolved,—That a Message be sent to the House of Commons to acquaint that House that the Senate has agreed to the free conference desired with the Senate for the purpose of communicating the reasons which induced the Commons not to concur in the amendments made by the Senate to Bill (364), intituled " An Act to amend the Criminal Code," and has appointed the Honourable Senators Robertson, Haig, and Beauregard as Managers on their part at the said conference, and

Also that the Managers of the free conference on the part of the Senate will meet in Senate Committee Room 262 at 10.00 a.m. tomorrow, the fifteenth day of July, instant.

Ordered,—That a Message be sent to the House of Commons accordingly.

A Message was brought from the House of Commons by their Clerk in the following words:

Monday, 14th July, 1947.

Resolved,—That a Message be sent to the Senate to acquaint Their Honours that Messrs. Ilsley, Benidickson, and Marquis have been appointed Managers on behalf of the House of Commons of the free conference with the Senate with respect to the amendments made by the Senate to Bill No. 364, intituled: " An Act to amend the Criminal Code."

Ordered,—That the Clerk of the House do carry the said Message to the Senate.

ATTEST. R. T. GRAHAM,
Deputy Clerk of the Commons.

On July 15 the Honourable Senator Robertson, from the free conference, reported as follows:

The Managers for the Senate met in conference the Managers on the part of the House of Commons on the Bill (364), intituled: " An Act to amend the Criminal Code," and the amendments thereto, and have agreed to recommend that the Senate amendments two and fifteen be amended to read as follows:—

1. Delete amendment number two of the Senate and substitute the following therefor:

"2. Delete all the words in Section 222B, after the word "one," in line twenty-four, to and inclusive of the word 'otherwise' in line twenty-eight and substitute the following:
'not being in a dwelling house, who causes a disturbance in or near any street, road, highway, restaurant, railway station, public library, tavern, billiard hall, theatre, shop or other place to which members of the public are admitted, whether as a matter of right or otherwise.'"

2. Delete amendment number fifteen of the Senate and substitute the following therefor:

"15. Delete paragraph (*d*) of clause 7, on page 3, lines twenty-four to twenty-eight inclusive, and substitute the following:
"(*d*) if he uses or has upon his person any weapon during or at the time of the commission or attempted commission by him of any of the offences in this section mentioned or the flight of the offender upon the commission or attempted commission thereof, and death ensues as a consequence of its use."

On July 16, a Message was brought from the House of Commons by their Clerk in the following words:

Ordered,—That a Message be sent to the Senate to acquaint Their Honours that the amendments agreed to in the Free Conference with the Senate to Bill No. 364, "An act to amend the Criminal Code", have been agreed to.
ATTEST. ARTHUR BEAUCHESNE,
Clerk of the House.

The said amendments were then read by the Clerk, as follows: (*which see above*).

The Hon. Elie Beauregard, in moving concurrence[1] in the amendments, said that, of the 32 amendments, more than 15 were of a very minor nature but that the Commons did not agree with Nos. 2 and 15.

In regard to No. 2 the change in the Senate's amendment left the latter very much where it was. The object of introducing the words "dwelling house"—which was agreed to by the representative of the Department of Justice—was to make it clear that one who sang or whistled in his house would not be looked upon as a criminal nuisance. The Senate merely wanted to make it clear.

As to No. 15, the change was more important. Section 7 of Bill 364 as presented to the Senate read:

Section two hundred and sixty of the said Act is further amended by inserting immediately after paragraph (*c*) thereof, the following:
"(*d*) if he uses any weapon for the purpose of facilitating the commission of any of the offences in this section mentioned, or the flight of the offender upon the commission or attempted commission thereof, and death ensues as a consequence of such use."

The hon. Senator, continuing, said: The offences mentioned in section 260 were murder, rape, forcible abduction, and so on. The Senate committee recommended the deletion of paragraph (*d*) of clause 7 and the substitution of a new paragraph (*d*) (*which see above*).

The House of Commons would not agree to this amendment, and

[1] LXXXVI, *Sen. Hans.* No. 58, 749.

the Managers at the Free Conference drafted an entirely new paragraph which is a compromise between the original text and that offered by the Senate. He thought the new paragraph was a change for the better, because the words " has in his possession ", in the Senate's amendment, might result in the conviction of a person who had a weapon somewhere among his belongings, but not upon his person, at the time of the commission or attempted commission of an offence.

The proposed new paragraph read: (*which see above*).

That definition covered the four corners of the offence. If death ensued as a consequence of the use of a weapon, the Crown would have to prove that the accused used the weapon or had it upon his person during or at the time of the commission or attempted commission by him of an offence under the section.

This amendment conformed to a suggestion by the Attorney-General of Ontario. It appeared that in that province some accused person or persons escaped conviction, upon a charge of murder, because the Crown was not able to prove that the weapon—in that case it was a revolver—had been used by the accused. The House can understand how difficult it might be in some cases to prove the use of a weapon by an accused person when only two persons were present at the time of its use and the death of one of them ensued as a consequence of its use.

The said substituted amendments were then concurred in and it was

Ordered, That a Message be sent to the House of Commons to acquaint that House that the Senate have concurred in the amendments substituted for the second and fifteenth original amendments made by the Senate.

The above procedure has been given in detail as an example of a " Conference " conducted by " Managers " representing each House.[1]

***Canada: House of Commons (Appeals against Speaker's Rulings).** —During the Third Session of Parliament XX, the following instances occurred. In each case the Motion—" Shall the Speaker's decision be sustained " was affirmed; the voting is given in each case.

" *Reasoned* " *Amdt. to* 2 *R.*—On March 14,[2] an *amdt.* to the question for 2 *R.* of the Agricultural Products Bill was declared out of order on the ground that it was not declaratory of any principle adverse to the principle of the Bill, and further that it dealt with a matter which would be considered when the Bill is in *C.W.H.* (Yeas 89; Nays 61).

On the same day,[3] and at the same stage of the same Bill, a similar Ruling was given (Yeas 82; Nays 69).

Amdt. to Motion for C.W.H.—On March 20,[4] on a Motion to go into *C.W.H.* in connection with the continuation of certain orders and regulations for Emergency Powers, Mr. Speaker declared an amendment out of order, basing his Ruling on S.O. 50, which reads:

[1] We are indebted to the Clerk of the Senate for these particulars.—[Ed.]
[2] LXXXVI ,*Com. Hans.* No. 32, 1417. [3] *Ib* 1420. [4] *Ib.* No. 36, 1636.

A Motion to refer a Bill, resolution or any other question to the Committee of the Whole, or any standing or special committee shall preclude all amendment to the main question. (Yeas, 156; Nays, 26.)

Irrelevance, etc.—On May 26,[1] on 2 *R.* of a United Nations Bill (No. 132), Mr. Speaker ruled an hon. member out of order on the ground that he should discuss only the general principle of the Bill and that his remarks should be relevant, also that he should not refer to a former debate. After the third occurrence the hon. member was asked to resume his seat (Yeas 66; Nays 49).

***Canada: House of Commons (Reading of Speeches).**—On May 29,[2] Mr. Speaker in quoting the following Resolution passed in 1886:

That the growing practice in the Canadian House of Commons of delivering speeches of great length, having the character of carefully and elaborately prepared written essays, and indulging in voluminous and often irrelevant extracts, is destructive of legitimate and pertinent debate upon public questions, is a waste of valuable time, unreasonably lengthens the Sessions of Parliament, threatens by increased bulk and cost to lead to the abolition of the official report of the debates, encourages a discursive and diffuse, rather than an incisive and concise style of public speaking, is a marked contrast to the practice in regard to debate that prevails in the British House of Commons, and tends to repel the public from a useful and intelligent consideration of the proceedings of Parliament.

—made a general appeal to hon. members that the tradition of House of Commons debate is best served by a member using his own language and delivering his remarks in the form of an unwritten composition. If the rule were otherwise members might read speeches written by other people and the time of the House be taken up in considering the arguments of persons who are not the properly elected representatives of the people. Mr. Speaker therefore urged hon. members to refrain from reading their speeches.

Canada: House of Commons (Official Dress of Deputy Speaker).—A discussion took place in *Com.* of Supply on—" Deputy Speaker of the House of Commons 122. Allowance in lieu of apartments $1.500 " on July 17[3] as to the Deputy Speaker not wearing the accustomed gown of office. The Deputy Speaker, who was not in the Chair at the Table at the time, explained that there had been considerable difficulty in obtaining materials and that he had felt that the boys returning from the front should be given the first opportunity to get clothes. He was, however, happy to be able to advise the Committee that the tailor had received the material required for the official dress which the Deputy Speaker should wear. The suit had been made and next Session he would appear properly dressed.

Canada: House of Commons (Financial Resolutions).—On March 27,[4] the Chairman, in *C.W.H.*, suggested that the discussion should be on the Resolution, not on extraneous matter or on the Bill and quoted May:

[1] *Ib.* No. 76, 3506. [2] LXXXV, *Com. Hans.* No. 79, 3629. [3] LXXXVI, *Com. Hans.* No. 115, 6030. [4] *Ib.* No. 41, 1845.

Debate in committee on a financial resolution is confined to the terms of the resolution itself and must not be extended to the related bill.

The procedure of the House was that discussion on the Resolution should be along the lines of whether or not it is advisable to bring in such a Resolution, instead of going into details of what the Bill would be.

After the Resolution is adopted, a Bill is introduced and passed 1 *R.* 2 *R.* is not given immediately; an opportunity is given members to consider the legislation, and later 2 *R.* is moved in the House. At that time a full discussion of the principle of the Bill is permitted. Then the Bill is referred to *C.W.H.*, when questions may be asked as to the details of the Bill.

***Canada: House of Commons (Additional Allowance to Government and Opposition Leaders in the Senate.)**—On May 30,[1] the Prime Minister (Rt. Hon. W. L. Mackenzie King) moved—

That the House do go into Committee of the Whole, at the next sitting of the House, to consider the following proposed Resolution:

That it is expedient to present a measure to amend the Senate and House of Commons Act to provide an additional annual allowance to the member of the Senate occupying the recognized position of Leader of the Government in the Senate and the member occupying the recognized position of leader of the Opposition in the Senate.

Whereupon Mr. Mackenzie King, a Member of the King's Privy Council, informed the House, That His Excellency the Governor-General, having been informed of the subject matter of the said proposed Resolution, recommends it to the House.

Resolved that the House do go into Committee of the Whole at the next sitting of the House, to consider the said proposed Resolution.

On July 9,[2] the House duly resolved itself into Committee of the Whole, and the Resolution was adopted and reported to the House, read the second time on division and concurred in.

The Prime Minister, by leave of the House, thereupon presented the Bill, which passed 1 *R.* on division, and 2 *R.* was ordered for the next sitting.

On July 10,[3] the Prime Minister, in moving 2 *R.* of the Senate and House of Commons Act Amendment Bill, said that the purpose of the Bill was to provide an allowance of $7,000 to the Leader of the Government in the Senate and an allowance of $4,000 to the Leader of the Opposition in the Senate in addition to the sessional indemnity (as it is referred to in Canada). The present Leader of the Government in the Senate was a member of the Government without portfolio, and had to give to his duties an amount of his time much greater than another Senator. In order to perform that duty efficiently the Leader of the Government in the Senate had to be familiar with the Government's policy and programme in all particulars, and to attend Cabinet meetings regularly, not only in Session, but at other times also.

Mr. Mackenzie King observed that he need not say how much more complicated the business of legislation was at this time than it had ever

[1] LXXXVIII, C.J. 468. [2] *Ib.* 747. [3] LXXXVI, *Com. Hans.* No. 109, 5456.

been heretofore. If Parliament sat 2, 3 or 4 months, it might be expected that Leaders would be found to take on these extra obligations without financial recompence; but when Sessions lasted half a year or more, it was imposing a heavy burden on any individual.

The Senate was in many ways in a better position to devote a great deal of its time to international problems than was the House of Commons, and every encouragement should be extended to members of the Upper House to give a great deal of time and attention to all-important world problems. The Leader of the Government and the Leader of the Opposition in the Senate had to make themselves familiar with such problems.

The Leader of the Government had also to make arrangements with members of his following, no matter in which House, to take charge of particular measures as they came up. All these things made the office of Leader of the Government in the other House a much more responsible one to-day than previously.[1]

A measure of this kind would make it possible for any man, whether of means or not too well off, to devote his time to public business.

One could not expect a person on the ordinary member's indemnity, especially under present-day taxation, to give as much time as he would like to be able to give in the position of Leadership. The appointments to the Senate were made, in most cases, from the Commons, from those who had had great experience as Ministers of the Crown or long experience in conducting the affairs of government.[2]

The Leader of the Opposition in the Senate had to give a great deal of extra time to study the measures that came before that House, in making arrangements with the Leader of the Government as to the conduct of business from day to day, in associating himself with committee work and in meeting deputations.[3]

To the question—That the said Bill be now read the Second time—an amendment was moved—That the word " now " be left out and the words " this day six months hence "[4] be added at the end of the Question, upon which combined amendment the House divided: Yeas, 69; Nays, 102.[5]

The Question was then put on the main Motion and agreed to on division, considered in Committee, reported without *amdt.* and ordered for 3 *R.*[6]

On July 11,[7] the Bill passed 3 *R.* on division, was passed by the Senate and duly became 11 Geo. VI, c. 73.

Canada: Saskatchewan (Machine Made Hansard).—With reference to the interesting Article[8] by Mr. George Stephen, Assistant Clerk in Chamber, Legislative Assembly, on this subject, in our last issue, a copy of this dictaphone system of reporting debates for the 36 days' sitting of the Vth Session of the X Legislature, in daily parts, has been sent for our inspection.

[1] *Ib.* 5458. [2] *Ib.* 5459. [3] *Ib.* 5460. [4] Called colloquially " the 6 months' hoist."—[ED.] [5] LXXXVI, *Com. Hans.* No. 109, 5475. [6] LXXXVIII, C.J. 780. *Ib.* 907. [8] Vol. XV, 171.

Mr. Stephen informs us that:

The complete installation (including Committee Room and Council Chamber hook-ups) cost us $6,250. We purchased a duplicating machine of our own for $175; the stencils cost 6½ cents each, and the paper, $1.53 per thousand sheets. The inclusive cost of producing this *Hansard* was approximately $3,000. Our estimated cost per copy (excluding labour cost) is about three cents. We ran 200 copies as a start.

The really gratifying feature of our venture was that, throughout the entire Session, no member arose to claim he had been misquoted. On the contrary, our *Hansard* frequently was employed to correct erroneous newspaper reports of speeches.

We have carefully looked through these 36 daily issues and have no hesitation in pronouncing them a model of neatness and perfection. There is also a General Index for the Session.

***Australia: Federal (Allowances to Ministers, Members, Leaders of Opposition and of certain Political Parties).**[1]—By Act No. 36 of 1947 the allowances of Senators and M.H.R.s are increased from £1,000 to £1,500 p.a., and the allowances of the Leader of the Opposition in the Senate is increased from £200 to £300, and of such Leader in the House of Representatives from £400 to £600 p.a.

An allowance of £800 is provided for Ministers of State, the President, the Speaker and the Chairman of Committees in both Houses.

Act No. 64 of 1947 provides that, in addition to other allowances, an allowance of £400 p.a. is payable to the Leader (not being the Leader of the Opposition) of a recognized political party, of which not less than 10 members are members of the House of Representatives and of which no member is a Minister of State.

Both Acts are made retrospective to July 1, 1947.

***Australia: New South Wales (Salaries of Ministers, Members, Whips and Leaders of Opposition).**[2]—Act No. 28 of 1947, assented December 9, 1947, provides for increases in all Ministers' salaries and members' allowances. A private member's allowance becomes £1,375 p.a. (increase, £500 p.a.), and the salaries of Ministers are increased to the following sums:

Premier	£2,945
Attorney-General	2,595
Vice-President of the Executive Council	2,445
12 other Ministers of the Crown at £2,445 each	29,340

It will thus be seen that the " others " have been increased numerically from 9 to 12.

Section 5 increases the salaries of officers to the following sums:

President	£1,700
Speaker	2,175
Chairman, Legislative Council	1,000
Chairman, Legislative Assembly	1,615

[1] *See also* JOURNAL, Vols. IV, 39; VII, 56; XV, 67.

[2] *See also* JOURNAL, Vol. VII, 57.

The allowance of £250 previously provided for the Leader of the Opposition[1] (in addition to his allowance as a member) is increased to £500 p.a., making his total remuneration £1,875 p.a.

Section 4 provides for an "Entertainment Allowance" for the Premier at the rate of £500 p.a.

An important feature of this Act is the official recognition (the first ever accorded in this State) of Party Whips by S. 2(1)(*b*), which provides ". . . And the Government Whip and the Opposition Whip shall each be entitled to receive an additional allowance of two hundred and fifty pounds per annum". Hitherto, financial recognition of the special services rendered by these members as Party Whips has been purely a matter for the determination of the political Parties to which they belong.[2]

***Australia: Victoria (Increase of Cabinet; allowances to Ministers without Portfolio, Whips and the Parliamentary Secretary to the Cabinet).**[3]—An Officials in Parliament Bill[4] was also passed during 1947. The main provisions of the Bill—

(*a*) increases the maximum number of salaried responsible Ministers of the Crown from 9 to 10;

(*b*) provides for an allowance to be paid to each non-salaried Minister at a rate which, together with his reimbursement of expenses as a member should amount to a rate of £900 p.a. The effect of this provision is to increase the allowance paid to non-salaried Ministers in the Council by £300 p.a.

(*c*) provides for an allowance of £75 p.a., to the Whip of any recognized party consisting of 12 members in the Legislative Assembly and for an allowance of £150 p.a. to the Government Whip in addition to their reimbursement of expenses as a member.

(*d*) provides for an allowance of £250 p.a. to the Parliamentary Secretary of the Cabinet in addition to the reimbursement of his expenses as a member.[5]

***Australia: Victoria (Reimbursement of Expenses of Members of Committees on Private Bills).**—During 1947 a Bill[6] was passed providing for the reimbursement of expenses of members serving on Private Bill Committees. The Bill provides that, if the House into which a Private Bill has been introduced so resolves, each member of the Committee on the Bill shall be entitled to an attendance fee of £2 2s. 0d. for each attendance at a meeting of the Committee, but shall only receive one attendance fee in respect of any one day. The fees are to be paid to the members out of Consolidated Revenue, but shall be repaid thereto by the promoters. The attendance fees are to be in addition to the members' reimbursement of expenses as a Member of Parliament.[7]

Australia: South Australia (Constitutional).[8]—By Ss. 3 and 4 of the Constitution Act, 1934-47,[9] 12 sitting days are substituted for one

[1] *Ib.* Vol. IX, 27. [2] Contributed by the Clerk of the Legislative Assembly.—[ED.] [3] *See also* JOURNAL, Vols. V, 33; VIII, 48. [4] 12 Geo. VI, No. 5252. [5] Contributed by the Clerk of the Legislative Council.—[ED.] [6] 11 Geo. VI, No. 5211. [7] Contributed by the Clerk of the Legislative Council.—[ED.] [8] *See also* JOURNAL, Vol. VIII, 51. [9] No. 19 of 1947.

month as the period of a member's absence without leave of the particular House causing vacation of seat.

*(*Salaries of Ministers*).—By S. 5 of the Constitution Act, 1934-47,[1] the sum total of salaries paid to Ministers is increased from £7,750 to £10,750.

(*Governor's Warrant*).[2]—By S. 6 of the Constitution Act Amendment Act[1] the aggregate of the amount for a Governor-General's Warrant is increased to £400,000.[3]

Australia: Western Australia (Re-election of Ministers).—The Constitution Acts Amendment (Re-election of Ministers) Act[4] amended the Principal Act of 1928 by providing that members of either House need no longer seek re-election on accepting Ministerial office.

Australia: Western Australia (Offices of Profit under the Crown).—Section 37 of the Constitution Acts Amendment Act, 1899,[5] is amended by Act No. 2 of 1947, by which the increased number of Ministers from 6 to 8 come under the exemption from disqualification in respect of Offices of Profit under the Crown.

***New Zealand (Free Facilities to M.P.s' Transport).**[6]—On October 28, 1947, there was instituted for the first time a system of free transport for members of the Lower House to enable them to reach their hotels, homes or lodgings on occasions when the House sits late. The transport arrangements are made by the Whips of both parties with the Public Service garage. Arrangements for the conveyance of members of the staff to their homes when the normal forms of transport have ceased were made in 1943.

Union of South Africa (The Senate and its Restricted Financial Powers).[7]—A perusal of the Minutes of the South African National Convention will, it is thought, clearly indicate to the reader that that august body desired to leave no doubt of its determination to seek absolute financial power for the Lower House—an impression which evidently influenced J. H. Brand, one of the Secretaries of the Convention, in recording in his book *The Union of South Africa* that " the South African Constitution avoids one difficulty which may yet cause trouble in Australia. There will be no doubt which is the predominant House of Parliament."

Apparently, however, the Convention was not completely successful in framing in unambiguous terms the section (60) of the South Africa Act intended to give effect to its decisions, for the provisions of that section have not been free from difficulties and disagreements on the question of interpretation.

Sub-section (3), which prohibits the Senate from amending Bills so as to increase any proposed charges or burden on the people, especially has raised doubts in the minds of Senators as to its powers in the matter of reduction of charges, and indeed, in its contention that it

[1] No. 19 of 1947. [2] *See also* JOURNAL, Vol. XI-XII, 48. [3] Contributed by the Clerk of the House of Assembly and Clerk of the Parliaments.—[ED.] [4] No. 4 of 1947 (11 Geo. VI, No. IV). [5] 63 Vict. 19. [6] *See also* JOURNAL, Vol. XIV, 63. [7] *See also* JOURNAL, Vols. X, 145; XI-XII, 214.

possesses such a right, it obtained the *support* in 1933 of the then Parliamentary draftsman, now an eminent Judge of the Supreme Court, who gave it as his opinion that the restriction placed on the Senate in respect of *increasing* any proposed charge or burden on the people, implied that the Senate may amend any Bill so as to *decrease* such charge or burden, provided that it is not in the form of appropriation or taxation. This opinion was hotly contested by officers of the House of Assembly, and they no doubt relied, *inter alia*, on the practice laid down in the 11th Ed. of Sir Erskine May's " Parliamentary Practice ", where it is stated that the Upper House may not amend the provisions in Bills which they receive from the Lower House dealing with local rates or levies " so as to alter, whether by increase or reduction, the amount of a rate or charge " and also on the fact that the framers of the Act of Union defeated amendments aimed at giving the Senate the power of reduction.

Nevertheless the view that it had this power apparently persisted in the minds of Senators, for, in connection with the consideration by the Senate of the Dental Mechanicians Amendment Bill on May 26, 1947, a Senator moved an amendment aiming at a reduction of an annual levy imposed upon dental mechanicians. The Chairman of Committees ruled the proposed amendment out of order as being in conflict with the terms of S. 60 of the South Africa Act. An appeal was made to Mr. President and on May 29 he gave the following ruling—viz.:

Before proceeding to the First Order of the Day I wish to state that I have considered the Amendment proposed by *Senator Henderson* to *Clause One* of the Dental Mechanicians Amendment Bill and which the Chairman ruled out of order as being a contravention of S. 60 of the South Africa Act.

In terms of sub-section (3) of that section, the Senate may not amend any Bills so as to increase any proposed charges or burden on the people. It was submitted that the disallowance of an amendment *reducing* the burden on the people is not contemplated in the section referred to and would be unduly circumscribing the powers of the Senate in regard to monetary provisions in Bills.

The contention that the Senate may decrease a charge is not a new one, and it has been argued that the Senate may amend any Bill so as to decrease any proposed charge or burden on the people provided that such charge is not in the form of appropriation or taxation.

It may be pointed out that the framers of the Union Constitution obviously did not intend that such powers should be given to the Senate, for, on reference to pp. 51 and 209 of the Minutes of the National Convention, it will be found that two proposals to give the Senate powers of reduction were defeated.

I am of opinion that the phrase " proposed charges or burden on the people " must be held to include moneys which are not paid into the Consolidated Revenue Fund, such as the levy provided for in the Bill under consideration and which is collected for a special purpose, and that the Senate is accordingly not empowered to make any amendment which either increases or reduces a charge of that nature (*vide* May, 11th Ed., pp. 574-5; Kilpin's *Parliamentary Proceedure*, p. 49).

For these reasons I concur in the Ruling given by the Chairman.[1]

[1] Contributed by the Clerk of the Senate.—[ED.]

Union of South Africa (Constitutional: Further extension of Provincial Powers).[1]—Section 85 of the South Africa Act, 1909,[2] is amended by making provision in S. 1 of the Provincial Powers Extension Act, 1947,[3] empowering Provincial Councils to legislate for institutions or bodies having authority and functions similar to those of municipal, divisional council and other local institutions.

Union of South Africa (Constitutional: Representation of Natives).[4]—Sections 1, 2 and 3 of the Natives Laws Amendment Act of 1947[5] amend Ss. 10, 14 and 18 of the Representation of Natives Act, 1936,[6] by providing that the period of membership of senators, members of the House of Assembly and members of the Provincial Council of the Cape Province, respectively, be extended to the thirtieth day of June immediately following the expiration of the period of 5 years for which they had been elected.

Section 4 of the Act of 1947 amends S. 20 of the Act of 1936 by providing that the number of chief native commissioners who are official members of the Natives Representative Council be increased to 6, with a consequential increase in the membership of the Council, which will now number 23.

Section 5 of the Act of 1947 amends S. 37 of the Act of 1936 by providing that the number of taxpayers within the area of each voting unit of an electoral area be determined not less than 3 months before the polling day in respect of an election of senators and extended to apply also to elections of members of the Natives Representative Council; a proviso was added that no such determination in respect of any election shall be necessary where the polling day has been fixed for a date within one year of any previous determination.[7]

Union of South Africa: House of Assembly (Direct Charges upon the Consolidated Revenue Fund).—In reference to the Note on this subject in our previous issues[8] and with the addition of the item—(*d*) Vote No. 7 General Sinking Fund £650,000 (S. 3, Act 50 of 1926)—these direct charges are shown as expenditure additional to the amounts to be voted under the respective Votes with which they are connected, and, while they are included in the totals of the Estimated Expenditure for the year, they are not included in the total amount appropriated by the Appropriation Act, 1947. A footnote in the Appropriation Act to the amount chargeable to Revenue Account indicates, however, that a further amount forms a direct charge on the Consolidated Revenue Fund.[9]

Union of South Africa: House of Assembly (Form of Estimates)[10]—*Elimination of Repetition of Scales of Salary.*—A Treasury proposal to eliminate from the sub-head Salaries, Wages and Allowances of

[1] *See also* JOURNAL, Vols. III, 19; XIII, 77; XV, 81. [2] 9 Edw. VII, c. 9.
[3] No. 41 of 1947. [4] *See also* JOURNAL, Vols. V, 35; XI-XII, 56; XIV, 64.
[5] No. 45 of 1947. [6] No. 12 of 1936. [7] Contributed by the Clerk of the House of Assembly.—[ED.] [8] *See also* JOURNAL, Vols. XIV, 191; XV, 83.
[9] Contributed by the Clerk of the House of Assembly.—[ED.] [10] *See also* JOURNAL, Vols. XIV, 191; XV, 83.

each Vote all salary scales which are common to every department was considered by the Select Committee on Public Accounts in 1945 and concurred in.[1]

The salary scales of all officers of the rank of Chief Clerk, Grade II, and upwards, common to all departments, are now given in a schedule in the introductory part of the Estimates for 1947-48, while the salary scales of other staff common to all departments are given in a schedule at the end of each Vote.

Curtailment of Sub-heads under various Votes.—A further Treasury proposal for curtailment of the number of sub-heads was considered by the Select Committee on Public Accounts in 1945 and concurred in by the Committee after further consideration in 1946.[2]

In accordance with this recommendation the Estimates for 1947-48 were framed—

(*a*) to group all salaries under one sub-head;
(*b*) to provide in one sub-head for all items of expenditure which are common to a Department as a whole, such as subsistence and transport;
(*c*) to consolidate in one sub-head the provision for institutions of a similar character, such as mental hospitals; and
(*d*) to divide into separate sub-heads general services not common to the various branches of a Department.

The total number of sub-heads was accordingly reduced from 1,260 to 440.

Annexure to Defence Vote.—In both the Second Additional Estimates for 1946-47 and the Main Estimates for 1947-48 an Annexure was appended to the Defence Vote of particulars of amounts to be appropriated on the War Stores Disposal Account in addition to the amounts provided in the Defence Vote.

The amounts to be so appropriated on the War Stores Disposal Account were not included in the total amount to be voted in Committee of Supply under the Defence Vote, but, as all grants for the services of the State, not being " direct charges " on the Consolidated Revenue Fund, from amounts authorized by Parliament must be voted in Committee of Supply before they can be appropriated, the Annexure to the Defence Vote was in both cases put in Committee of Supply.[3]

The Select Committee on Public Accounts in its Third Report for 1946[4] having given its concurrence, the Second Additional Appropriation Bill and the Appropriation Bill both contained a new S. 3 providing for the appropriation of the amounts charged on the War Stores Disposal Account.[5]

[1] S.C. 1B.—'45, v & vi. [2] S.C. 1C.—'46, v-ix. [3] When the Second Additional Estimates were under consideration in Committee of Supply an amendment by the Minister of Finance to reduce the amount of the Annexure to the Defence Vote was moved and agreed to (1946-'47 VOTES 171). This reduction was subsequently restored in the Supplementary Estimates for 1947-'48 by a further Annexure to the Defence Vote, also agreed to in Committee of Supply.—R.K. [4] S.C. 1B.—'46, iii & iv. [5] Contributed by the Clerk of the House of Assembly. —[ED.]

Union of South Africa: House of Assembly (The Guillotine).[1]—In the second part of the 1946-47 Session, a Motion was adopted limiting proceedings on the Dongola Wild Life Sanctuary (Hybrid) Bill, as follows:

Approximately 6 hours having been occupied on Committee stage, 5 hours in addition to the time already occupied were allotted for Committee stage, 1 hour for Report stage and 1 hour for 3 *R.*[2] The full time allotted was taken up on the various stages.

1947 Session.—Committee of Supply:

(1) *Railway and Harbour Funds.*—As it was resolved to have separate motions for the House to go into Committee of Supply on the Estimates of Expenditure from the Railway and Harbour Funds and the Consolidated Revenue Fund, respectively, the proceedings on the Railway Estimates were subjected to the time limitations referred to.

The full time allotted was taken up on the motion to go into *Com.* of Supply, in *Com.* of Supply and on 2 *R.* of the Bill, while only 38 minutes were taken up on 3 *R.* On the conclusion of the period of 12 hours allotted for Committee of Supply, Head No. 1—General Charges (Main Railway Estimates) was still under discussion.

(2) *Consolidated Revenue Fund.*—The proceedings in *Com.* of Supply on the various Estimates of Expenditure from the Consolidated Revenue Fund were limited to 125 hours.[3] On the conclusion of the period of 125 hours the Main Estimates were still under discussion.[4]

Union of South Africa: House of Assembly (Delegated Legislation).[5]—On April 3,[6] the rt. hon. the Prime Minister (Field-Marshal J. C. Smuts) in moving:

> That a Select Committee be appointed to inquire into the delegation by Parliament of Legislative power to the Executive Government to be exercised by means of Government Regulations, and to report upon what safeguards may be necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the law; the Committee to have power to take evidence and call for papers

—said that when the subject was brought up in the House last year, the argument was that this power given to the Government to legislate by regulation was, to some extent, an inroad on Parliamentary authority and should be subject to certain circumstances and supervision.

Many difficulties which both members and the public felt in this connection arose out of the War conditions where very special powers had to be conferred upon the Government. He could not conceive that Parliament would continue in normal circumstances to entrust any Government with such exceptional powers.[7]

[1] *See also* JOURNAL, Vols. V, 82; IX, 39; X, 56; XI-XII, 218; XIII, 77; XV, 84.
[2] 1946-47 VOTES, 1144. [3] *Ib.* 180. [4] Contributed by the Clerk of the House of Assembly.—[ED.] [5] *See also* JOURNAL, Vol. XIV, 67; and p. 174 below.—[ED.]
[6] 60 *Assem. Hans.* 2271-96. [7] *Ib.* 2272.

The general procedure was that the Government was given power within the scope of an Act to issue regulations for its detailed execution and the only authority which could interfere was the law courts. It was for them to see whether the Government had acted *ultra vires.* Their legislative set-up in regard to regulations was different from the House of Commons, but there was a feeling that something should be done.[1] It was very difficult to see where administrative discretion stopped and judicial or quasi-judicial discretion came into the matter.[2] They should not take any step which would weaken the responsibility of government. Many Acts and functions of government were such that one could not distinguish between them.

Take, for instance, immigration: the responsible Minister might declare a man to be a prohibited immigrant. Partly it was discretion and partly judicial decision. One must act in a judicial manner in the exercise of such functions. In these cases Parliament should not interfere, the matter should be left to the Government, and if they made a mistake they could be called to account. For Parliament to interfere with Government discretion would lead to slack legislation and administration which was bound to undermine Government responsibility.[3]

The Motion being formally seconded, the hon. member for Faure-smith (Dr. Dönges) in moving an amendment—namely, after " law " to insert " in respect of the above-mentioned matter as well as generally "[4]—remarked that the Motion did not go far enough. There were 3 inter-related subjects with which they had to deal: first, the misuse of delegated powers; secondly, the tendency to exclude an appeal to the courts in connection with judicial or quasi-judicial decisions given by a Minister or a Department; and thirdly, the encroachment by the Executive on the powers of Parliament.

They had too many instances of power given to a Minister or a Department to take decisions. All these matters rested on the foundation of the division of the 3 great functions of the State, the legislative, the executive and the judicial, and on the proper keeping apart of such functions depended the stability of the structure of government.[5]

They should keep a strict eye on the source of legislative power from which subordinate bodies obtained the power to legislate and see that such Bills were not too general in terms. There should be a watch-dog to bark in case of danger.[6]

The Committee should also deal with the increasing tendency to exclude the right of appeal to the courts in the case of decisions taken by a Minister or Department. Where judicial functions and quasi-judicial functions are granted to a Minister or Department, the right of a person aggrieved by such decisions should not be curtailed; in other words, he should have access to the courts of the country, and especially when such decisions affected the personal liberty of the subject or constituted a threat to his property.[7]

[1] *Ib.* 2273. [2] *Ib.* 2274. [3] *Ib.* 2275. [4] *Ib.* 2282. [5] *Ib.* 2276. [6] *Ib.* 2277.
[7] *Ib.* 2278.

The hon. and learned member, in conclusion, observed that an instance of the contempt of Parliament was the acceptance by the Government of the United Nations Charter on behalf of South Africa without prior Parliamentary approval. Secondly, there was the summoning of Parliament, upon a change of Government, more than 6 months after the general election. A third illustration was the delay for a long period in the putting into operation of legislation. The House left it to the Executive to decide when an Act should come into operation. They had an instance where more than 2 years elapsed before an Act was put into operation.

The hon. member representing the Cape Western Natives (Mr. D. B. Molteno), in moving the other amendments—namely, after " regulations " to insert:

> and the vesting in the Executive Government and subordinate authorities of judicial and quasi-judicial powers to be exercised by means of administrative decisions,

—said that a law might be one of 2 kinds, a principle of the Common Law or a Statute, a written rule laid down enjoining individuals that they would infringe such rule at their peril, or a law might take a form not of infringement of a rule, but of an *ad hoc* decision of a Minister or official by which he imposed certain duties on the individual. It was that kind of law which was comprised in what he referred to as judicial or quasi-judicial powers. The hon. member asked for an inquiry into the extent to which Parliament had gone in delegating powers which properly belonged to the judiciary.

An example of the delegation of powers by Parliament was the Native Administration Act,[1] which vested in the Governor-General, namely, the Cabinet, wide powers of legislation. Officials administering the Native Reserves could repeal any law applicable to those Territories and make any law they pleased to replace it.

The Urban Areas Act[2] teemed with examples of judicial powers vested in local authorities, and the Governor-General could proclaim in any such area that every native must live in a location and issue that proclamation, though to his knowledge there was not enough room for the native population in the location. This would force a native to live in a location, even if accommodation there was much worse than the accommodation he already had.[3] After further discussion, Mr. Molteno's amendment was put and negatived and that of Dr. Dönges put and agreed to.

The Motion, as amended, was then put and agreed to.[4]

Report.[5]—On May 23,[6] the Report from the Committee was laid and ordered by Mr. Speaker to be printed. The Committee stated that in view of the imminent prorogation of Parliament they were unable to complete their inquiry and accordingly requested the House to order

[1] No. 38 of 1927. [2] No. 21 of 1923. [3] 60 *Assem. Hans.* 2288.
[4] *Ib.* 2296. [5] S.C. 6—'47. [6] 1947 VOTES, 499.

their discharge, with the recommendation of re-appointment in the next Session to renew their inquiries.

A Committee, which consisted of 10 members, sat 4 times, and at the request of the Committee the Clerk of the House of Assembly furnished:

(1) A Memorandum of April 28, on the safeguards exercised in the United Kingdom and the Union of South Africa in respect of delegated legislation; and
(2) a list of books and articles on the subject, compiled by him, with the assistance of the Librarian of Parliament.

The Clerk was further requested to obtain information from Canada, Australia, Sweden, and the United States as to the safeguards exercised in these countries to uphold the constitutional principles of the sovereignty of Parliament.

It was also resolved for call for returns from Heads of Government Departments specifying the Acts under which they administered regulations with examples as well as returns from the Government Law Advisers showing the judicial and quasi-judicial directions, etc., conferred by Statute upon executive functionaries.

Also laid on the Table were—the Report of the Ministers' Powers[1] and the Preservation of the Rights of the Subject Bill, to which reference is made (*see above*).

***Dominion of India: Madras (Legislative Assembly Membership:[2] Language).[3]**—Under the Government of India Act, 1935, as amended by the India (Provisional Constitution) Order, 1947, the seats reserved for Europeans have been abolished and the total strength of the Legislative Assembly and Legislative Council has been reduced by 3 and 1 respectively. Under the India (Provincial Legislatures) Order, 1947, the sitting members of the Legislative Assembly and the Legislative Council of Madras representing the European Constituency have also ceased to be members of the Assembly or Council, as the case may be, from the appointed day—namely, August 15, 1947.

The provision in the Government of India Act, 1935 [*see* 68 (2)], disqualifying a member from being a member of both the Dominion and the Provincial Legislatures, has been removed. Section 85 requiring English to be used in the Provincial Legislatures has been omitted.[4]

***Dominion of India: Madras (Strangers).**—With reference to the information on this subject which appeared in Volume III, p. 77 of the JOURNAL, the following details may be added:

On March 26, 1947, when the Hon. Sri T. Prakasam, ex-Premier, was making a statement on his resignation, there were shouts and clapping of hands from the occupants of the Visitors' Gallery and the hon. Speaker ordered the gallery to be cleared. Again on April 18, when the change of Portfolios of Ministers was discussed, there were cries from the Visitors' Gallery of " Release S.C.C. Antony Pillai ",

[1] *Cmd.* 4060. [2] *See* JOURNAL, Vol. IX, 51. [3] *Ib.* IV, 3; XIV, 75.
[4] Contributed by the Secretary of the Madras Legislature.—[ED.]

and the hon. Speaker ordered the interrupters to be removed by the police.[1]

Dominion of India: Bombay (Governor's Powers).[2]—The Government of India Act, 1935,[3] has been amended by the Indian Independence Act, 1947,[4] and the orders issued thereunder. In consequence of this, the powers of the Governor to act in his discretion or exercise his individual judgment in the discharge of his special responsibilities have now been removed, and his power of making rules under S. 84 of the Government of India Act, 1935, is now confined only to the procedure in respect to joint sittings of, and communications between, the 2 Chambers.

The members of the Bombay Legislature took the new oath of allegiance to the constitution of India as by law established.[5]

***Dominion of India: Bombay (Language Rights in Legislature).**[6]—As S. 85 of the Government of India Act, 1935,[7] relating to the conduct of proceedings in the Legislature of a Province in the English Language has been deleted by the India (Provisional Constitution) Order, 1947, members of the Bombay Legislative Assembly have now been allowed by the hon. Speaker to speak in any regional language of the Province they like.[8]

***Ceylon (Address-in-Reply).**—With reference to Ceylon, p. 159 of Vol. VIII, the procedure of Address-in-Reply to the Governor's Speech at the Opening of Parliament has now been adopted, the form in both Houses being:

> May it please Your Excellency,
>
> We, the Members of the House of Representatives/Senate, thank Your Excellency for the Speech with which you have been pleased to open Parliament. We assure Your Excellency that we shall give our best attention to all matters placed before us.

At the conclusion of the Debate, the Addresses are presented by 2 members of the Government on behalf of the House of Representatives, and one member of the Government on behalf of the Senate.[9]

Ceylon: Senate and House of Representatives (Method of taking Divisions).[10]—In both Houses, by S.O. 46 (1) and 47 (1) respectively, the votes are taken by the Clerk asking each senator/member separately how he desires to vote and records the votes accordingly. The Clerk first asks the Ministers, then the Parliamentary Secretaries, and then the other senators/members, in the respective alphabetical order of their names. A senator/member may decline to vote, in which case the Clerk makes record accordingly. The Clerk then announces the numbers of the votes, and if equal the President or Speaker, as the case

[1] Contributed by the Secretary of the Madras Legislature.—[ED.] [2] *See also* JOURNAL, Vols. IV, 86, 91, 95-97; VIII, 61. [3] 26 Geo. V, c. 2. [4] 10 & 11 Geo. VI, c. 30. [5] Contributed by the Secretary, Legislature Department.—[ED.] [6] *See aslo* JOURNAL, Vols. IV, 110; XIV, 75. [7] 26 Geo. V, c. 2. [8] Contributed by the Secretary, Legislature Department.—[ED.] [9] Contributed by the Clerk of the House of Representatives.—[ED.] [10] *See also* JOURNAL, Vols. I, 94; II, 55; IV, 36, 54; IX, 29; XI-XII, 67; XIII, 56; XIV, 85.

may be, gives his casting vote and the Presiding Member declares the result of the Division.

Ceylon (Constitutional).—As the Ceylon Independence Act, 1947, was passed in the 1947-48 Session of the United Kingdom Parliament, it, and the White Paper (*Cmd.* 7257), will be dealt with in the next issue of the JOURNAL.

British West Indies (Constitutional and Closer Union).[1]—The Territories comprised in the letters " B.W.I." are Barbados; British Guiana: British Honduras; Jamaica (and Dependencies); the Leeward Islands: Trinidad and the Windward Islands. " B.W.I." does not therefore include Bermuda or the Bahamas.

The subject of the closer union of the B.W.I. Territories has already been referred to in the JOURNAL.

During the year under review in this Volume a Command Paper[2] was presented by the Secretary of State for the Colonies (Rt. Hon. Creech Jones) to the United Kingdom Parliament, containing a despatch dated February 14, 1947, from him to the Governors of the B.W.I. Territories, and, for information, to the Governor of the Bahamas, the Comptroller for Development and Welfare in the West Indies and the British Resident Member of the Caribbean Commission in Washington.

The Despatch suggests, for the consideration of the Legislatures of the Colonies, that a Conference be held to consider the subject of such closer union, with the proposed invitation of the 4 members of the British Section of the Caribbean Commission.

Part II of this Command Paper deals with the general subject of closer union under a federal system and outlines the centralization of customs; control and administration of Joint Services; penal administration; communications, research and planning and defence.

Such a Federal Government consists briefly of a Governor-General, with a Central Secretariat and its department under the Federal Legislature, an Executive Council, a Privy Council on the Jamaica model,[3] also in regard to the system of Standing Committees. and a Federal Court replacing all existing Supreme Courts. The Legislatures of the several Colonies would continue, the Federal Legislature being financially independent.

The Secretary of State for the Colonies' Despatch of March 14, 1945, is given in Appendix I.

Appendix II deals with an outline of the Constitutions of the B.W.I. Colonies: Governors; Executive Council and Legislative Bodies; qualifications for membership thereof and their franchises.

Appendix III is a Schedule for the Financial Position of such Colonies.

Appendix IV sets out the constitutional sections in regard to the distribution of the legislative power as between the Central and the

[1] *See also* JOURNAL, Vols. III, 27; IX, 62; XIV, 103.
[2] *Cmd.* 7120.
[3] *See* JOURNAL, Vol. XIII, 199.

local Legislatures in Canada, Australia and India under the Government of India Act, 1935.

Constitutionally, therefore, quite apart from the question of B.W.I. closer union, this Command Paper is an interesting document.

Burma (Constitutional).[1]—On December 20, 1946,[2] the Prime Minister made a statement in the House of Commons in regard to Burma, and said that in implementation of the pledges which had been made by successive British Governments to the Burmese people, H.M. Government proposed to invite a representative group of Burmans from the Governor's Executive Council to visit the United Kingdom for discussions.

In a statement made to the House on January 20, 1931, at the time of the decision to separate Burma from India, H.M. Government stated that they wished it to be understood that the prospects of constitutional advance held out to Burma as part of British India would not be prejudiced by the decision to proceed with the separation of Burma from India. Since that time great steps had been taken towards self-government. H.M. Government did not regard the White Paper plan as interchangeable in the light of developing circumstances. They took the view that the pledge of 1931 must be fully carried out. The Government did not desire to retain within the Commonwealth and Empire any unwilling peoples. It was for the people of Burma to work out their own future, but it would be to their mutual interests if they agreed to remain within the Commonwealth. It was considered that the new constitution for Burma should be settled by Burma nationals, and H.M. Government believed that arrangements to that end could be made as a result of the forthcoming elections without the necessity of holding fresh elections for a Constituent Assembly on the analogy of India where the Constituent Assembly was based upon the ordinary provincial elections. In the same way, it was not possible, as in India, to enact an interim Constitution, therefore the old one must be carried on in form. It was the intention of H.M. Government to hasten forward the time when Burma would realize her independence, either within or without the Commonwealth.

Later in the day,[3] on the Motion for the Adjournment, attempt was made by the Opposition to have a debate on the subject of Burma, but hon. members were ruled out of order by Mr. Speaker, there being no question before the House.

In reply to a Question asked on February 14,[4] the Under-Secretary for India and Burma (Mr. A. Henderson) said that the intention of the conclusions agreed on with the Delegation of the Governor of Burma's Executive Council was to use the indigenous constituencies in the House of Representatives under the Act of 1935[5] in regard to the return of members, but to double the number thereof to be returned

[1] *See also* JOURNAL, Vols. X, 76; XI-XII, 74; XIII, 93; XIV, 89, 90; XV, 100.
[2] 431 *Com. Hans.* 5, s. 2341. [3] *Ib.* 2346. [4] 431 *Ib.* 111. [5] 26 Geo. V and 1 Edw. VIII, c. 3.

under such Act. The constituencies were double-membered, thus 4 members would be elected from each constituency to the Constituent Assembly.

White Papers.—Three White Papers on Burma were presented to Parliament during 1947. The first[1] was in January, and contained the conclusions of H.M. Government and the Delegation of the Burma Executive Council by which the people of Burma might achieve their independence either within or without the Commonwealth. Provision was made for a Constituent Assembly, a transitional form of Government, and an interim Legislature and Government. As to external affairs, there would be a High Commissioner in London for Burma to represent their Government, and H.M. Government would request the Governments of the countries with which Burma wished to exchange diplomatic representatives to agree to such exchange. A similar approach was to be made in regard to U.N.O.

Provision was also made as to control of both the British and Burmese Forces. The retention of the British Forces in Burma after the coming into force of the new Constitution would be a matter for agreement between the 2 Governments.

Paragraph 8 of the White Paper deals with the early unification of the Frontier Areas and Ministerial Burma and paragraphs 9 and 10 with Finance and other matters.

Annex A defines a Burma National, for the purpose of the franchise and election at the forthcoming elections, as a British subject or the subject of an Indian State, born in Burma, with residence there for not less than 8 years in the 10 years immediately preceding either January 1, 1942, or January 1, 1947.

Annex B deals with the financial relations between the 2 countries. This agreement is signed by Mr. C. R. Attlee and Mr. Aung San, but the Hons. Thakin Ba Sein and U Saw are stated as being unable to associate themselves with these conclusions.

Cmd. 7240 contains a Treaty dated October 17, 1947, between the Government of the United Kingdom and the Provisional Government of Burma, with Annex and Exchange of Notes, not, however, ratified by the Government of the United Kingdom until January 4, 1948.

The Treaty opens with the following paragraphs:

> The Government of the United Kingdom of Great Britain and Northern Ireland, and the Provisional Government of Burma;
>
> Considering that it is the intention of the Government of the United Kingdom of Great Britain and Northern Ireland to invite Parliament to pass legislation at an early date providing that Burma shall become an independent State;
>
> Desiring to define their future relations as the Governments of independent States on the terms of complete freedom, equality and independence and to consolidate and perpetuate the cordial friendship and good understanding which subsist between them; and
>
> Desiring also to provide for certain matters arising from the forthcoming change in the relations between them,

[1] *Cmd.* 7029.

Have decided to conclude a treaty for this purpose and have appointed as their plenipotentiaries:—

The Government of the United Kingdom of Great Britain and Northern Ireland:

The Right Hon. Clement Richard Attlee, C.H., M.P., Prime Minister and First Lord of the Treasury.

The Provisional Government of Burma:

The Hon'ble Thakin Nu, Prime Minister.

Who have agreed as follows:—

Then follow 15 Articles. The first recognizes the Republic of Burma as a fully independent sovereign State. Both Governments agree to the exchange of diplomatic representatives (*Art.* 1).

All international obligations devolving on the Government of the United Kingdom in relation to Burma are to be enjoyed by the Provisional Government of Burma (*Art.* 2).

British subjects at the date of coming into force of the Treaty may make a declaration of alienage as prescribed by Burma law (to be introduced within one year of the Treaty coming into force) and thereupon cease to be Burma citizens (*Art.* 3).

Relations between the 2 Governments in regard to defence are regulated by the mutual agreement of August 29, 1947, set out in the Annex to the Treaty (*Art.* 4).

The Provisional Government of Burma reaffirm their obligation to pay to British subjects (officials) domiciled in any country other than India and Pakistan on the coming into force of the Treaty, all pensions, leave, etc., due from the revenues of Burma (*Art.* 5).

Final financial settlement between the 2 Governments is given in *Article* 6.

Briefly, Burma pays over in full proceeds of the sale of Army and Civil Service (Burma) stores. The United Kingdom makes no claim on Burma for the cost of Civil Administration prior to restoration of Civil Government. The United Kingdom agrees to cancel the £15 M. advance towards certain Burma Budget deficits, the balance of sums to be repaid by Burma not later than April 1, 1952. Burma also repays the United Kingdom advances on certain projects, in both cases interest free. The United Kingdom continues to reimburse Burma for expenditure in respect of services to the Burma Army in 1942. Otherwise the Defence Agreement of August 29, 1947 (Annex), and the Financial Agreement of April 30, 1947, is to stand.[1]

Article 7 respects British commercial contracts.

Article 8 states agreement between the 2 countries in a 2-year Treaty of Commerce and Navigation. By *Article* 9, the contracting Governments agree to maintain postal, air, etc., services. *Article* 10 provides for War years and *Article* 11 for civil aviation. By *Article* 12 the 2 Governments agree to conclude an agreement to avoid double

[1] For terms *see* 437 *Com. Hans.* 5, s. 276-8.

taxation. The rights of both parties to the Treaty under Article 43 of the U.N.O. Charter remain. Differences under the Treaty are to be referred to the International Court of Justice (*Art.* 14).

The Treaty comes into force upon exchange of Instruments of Ratification (*Art.* 15) which were effected at Rangoon on January 4, 1948.[1] The Notes exchanged between Mr. C. R. Attlee and the Hon. Thakin Nu are also given in the White Papers.

The Agreement of January 4, 1948, between the 2 Governments concerning Jurisdictional and Fiscal Immunities to be accorded to Personnel of the United Kingdom Forces in Burma (though not then ratified by the British Government) is given in a White Paper.[2]

As the further proceedings in regard to this subject occurred in the 1947-48 Session of the Imperial Parliament, they will be dealt with in Volume XVII of this JOURNAL covering 1948.

Kenya Colony and Protectorate (Official Speaker).[3]—Up to 1947, it was customary for H.E. the Governor, or in his absence his Deputy, to preside over the sittings of the Kenya Legislative Council. In 1947, however, it was decided to appoint a member who would permanently preside over the Council and regulate its proceedings in accordance with Standing Rules and Orders. He is, at present, " Mr. President ", but after the General Elections in 1948 he will, in the new Legislature, be " Mr. Speaker ". This appointment indicates the evolution of the Kenya Legislative Council towards the form of a representative Parliament. In the new Council there will be an unofficial majority.

Mr. W. K. Horne, an ex-Justice of the Colony, has been appointed a Nominated Official Member of the Legislative Council in order to permit him to assume the functions of President. The appointment is in the nature of an experiment, and if it proves successful Mr. Horne will formally be appointed as the Speaker. His emoluments are:

Honorarium	£300 p.a.
Table Allowance	£250 p.a.

In addition he is provided with an official car and driver, and with suitable robes for the position he occupies.[4]

Mauritius (Constitutional).[5]—On November 27, 1946,[6] in reply to a *Q.* in the House of Commons, the Secretary of State for the Colonies (Rt. Hon. Creech Jones) said that the proposals for amending the Mauritius Constitution were recently placed before the Mauritius Council of Government for consideration, but that no decision would be taken on the proposals until the recommendations of the Governor, framed in the light of local discussions, had been received.

A further *Q.* on the subject was asked on January 27, 1947,[7] and May 7, 1947.[8]

[1] *Cmd.* 7360. [2] *Cmd.* 7355. [3] *See also* JOURNAL, Vols. VII, 153 *n.*; XV, 88. [4] Contributed by the Clerk of the Legislative Council.—[ED.] [5] *See also* JOURNAL, Vol. XV, 106. [6] 430 *Com. Hans.* 5, s. *310-311.* [7] 432 *Ib.* 196. [8] 437 *Ib.* 51.

Two White Papers, as an outcome of such local discussions, have been issued in Mauritius—" Summary of Proposed Constitutional Arrangements ", presented to the Council of Government, October 29, 1946, and " Revision of the Constitution (Correspondence with the Secretary of State for the Colonies) " in 1947, which contains the Governor's Despatches No. 14 of April 21 of that year and the Secretary of State's Despatch No. 179 of August 16 *idem*.

The *Cmd.* Paper[1] was presented to the United Kingdom Parliament in October, 1947, embodying the Governor's Despatch No. 14 and the Secretary of State's reply No. 179. Certain proposals in regard to these constitutional changes have been put forward by the Governor, some of which have been modified by the Secretary of State, but space will not admit of any description of the position until the constitutional changes are an actual fact. These 3 papers will then be of great interest and value in connection with a study of the constitutional changes when translated into law.

Newfoundland (National Convention).[2]—

AT ST. JOHN'S

To carry on from the stage in the constitutional events relating to Newfoundland, reported in the last issue of the JOURNAL, the following is an account of the further developments in connection with this subject in 1947.

As the Report of the National Convention, the Referendum Act and the voting thereunder, took place in 1948, reference to those matters will be made in the issue (Volume XVII) of the JOURNAL surveying that year.

We should like, however, also to acknowledge the copies of the voluminous Reports of the National Convention Committees sent by the courtesy of the Secretary of the Commission of Government at St. John's, dealing with such subjects as: Agriculture; Education; the financial and economic position of Newfoundland (2 reports); Fisheries; Forestry; Local industries; Mining; public health and welfare; and transport and communications, covering hundreds of foolscap pages of typewritten matter, which speak in their volume the magnitude and thoroughness of these inquiries.

AT WESTMINSTER

On February 10, 1947,[3] in answer to a Q. in the House of Commons, the Minister (Mr. Arthur Henderson) said that the elections to the National Convention, based on universal adult suffrage, took place last summer, and the 45 elected members assembled at St. John's in September. The National Convention is charged with the object of making recommendations to the United Kingdom Government as to possible forms of future government to be put before the people of Newfoundland at a national referendum.

[1] *Cmd.* 7228. [2] *See also* JOURNAL, Vols. II, 8; IV, 35; V, 61; VII, 106; XI-XII, 77; XIII, 208; XIV, 97; XV, 106. [3] 433 *Com. Hans.* 5, s. 30.

On May 13,[1] in the House of Lords, the Secretary of State for Dominion Affairs (Viscount Addison), in reply to a *Private Notice Q.*: "Whether His Majesty's Government have any statement to make on the recent discussions with the Delegation from the Newfoundland National Convention", said that a National Convention elected by the people of Newfoundland had been meeting in the Island since last September. The Convention was constituted to consider the financial and economic situation of the Island and to make recommendations to the Imperial Government as to the possible forms of future government to be put before the people of Newfoundland at a national referendum at which they would vote for the form they preferred. At the end of February the Convention passed a Resolution asking the United Kingdom Government to receive a delegation from them, for the purpose of making inquiries as to the financial and fiscal relationship between the United Kingdom and Newfoundland in the event of the people of Newfoundland deciding either upon continuation of the Commission of Government, or restoration of responsible, or some other form of government.

The Minister readily agreed to the proposal and a Delegation of the Chairman and 6 other members thereof recently came to London. The Minister was accompanied at these meetings by the Governor of Newfoundland and the Commissioner for Justice and Defence. Viscount Addison indicated to the Delegation the desire of the United Kingdom Government that the same close relationship should continue between the 2 countries as had always existed. On the financial side it would always be their wish to help Newfoundland within the Imperial Government's means. In reply to direct inquiry, continued the noble Viscount, the United Kingdom Government would be unable to hold out any hope of taking over from Newfoundland liability for the public loan of £17,800,000 which the United Kingdom Government guaranteed in connection with the establishment of the Commission of Government in 1934.

The United Kingdom Government would, of course, maintain their guarantee and were prepared to proceed at the earliest possible date, in agreement with the Newfoundland Government, with a conversion operation to reduce the interest payments from the Newfoundland Exchequer. They could not give the Delegation such firm assurance that they would continue to purchase from Newfoundland large quantities of such commodities as frozen fish and iron ore. They recognized the importance of those industries and would continue to strive to assist, but Newfoundland was a dollar currency, and the United Kingdom Government's measure of assistance must depend upon the general dollar position. If the Newfoundland people, by their referendum, decided in favour of the retention of the Commission of Government for a further period, the United Kingdom would remain responsible for Newfoundland's financial stability. If, on the other

[1] 147 *Lords Hans.* 5, s. 691.

hand, the people decided for responsible government, the Newfoundland Government and people would have to shoulder the full burden.

Viscount Addison hoped that the people of Newfoundland would, at the forthcoming referendum, choose the form of Government best suited to the interests of their country.

On October 30, 1947,[1] in answer to a Q. in the House of Commons, the Secretary of State for Commonwealth Relations (Rt. Hon. P. Noel-Baker) said that in pursuance of a Resolution in March by the National Convention, a Delegation of the Convention went to Ottawa. Their terms of reference were to ascertain from the Canadian Government " What fair and equitable basis may exist for the Federal Union of Newfoundland and Canada ".

On their return to Newfoundland the Delegation presented to the National Convention an agreed record of their discussions at Ottawa and other papers bearing on all the main issues involved in Federal Union. Mr. Noel-Baker understood that the Canadian Government would shortly be coming to the Government of Newfoundland to communicate to the National Convention an answer to the Delegation's Questions about a possible basis for Union, if, in the forthcoming referendum, the people of Newfoundland should declare themselves in favour of Confederation.

The functions of the Convention were to make recommendations to H.M. Government in the United Kingdom about the possible forms of future Government to be laid before the people of Newfoundland in the Referendum.

At Ottawa

On June 23,[2] the Prime Minister (Rt. Hon. W. L. Mackenzie King) in the House of Commons made an official statement in which he outlined events which had happened since the economic collapse of 1929-30 and the assent of the Imperial Government to the appeal from the people of Newfoundland to take over the government of the Colony, accounts of which have been given in the JOURNAL from time to time.

Mr. Mackenzie King reported that the Government of Canada had agreed to receive a delegation from the Newfoundland Convention to consider and discuss whether there was in the opinion of all concerned a fair and equitable basis for the federal union of Newfoundland with Canada. Arrangements had been made to begin discussions on June 25, June 24 being observed this year as the 450th anniversary of the discovery of the Island.

In 1934 the Newfoundland debt stood at $100m., to which the Imperial Government had advanced, up to 1939, over $16m. Owing greatly to the War and the rise in prices of the Colony's exports, she had had an annual surplus of about $29m. and her debt had been reduced to $74m.

The delegation which would arrive the following day would consist

[1] 443 *Com. Hans.* 5, s. 1070. [2] LXXXV, *Com. Hans.* No. 96, 4569.

of Hon. F. G. Bradley, K.C., who led the delegation to London in May, the 6 other delegates to Ottawa being Mr. J. R. Smallwood (Secretary), Mr. T. G. W. Ashbourne, Mr. W. C. H. Ballam, the Rev. L. Burry, and Messrs. P. W. Crummy and G. F. Higgins, K.C. Mr. Mackenzie King had invited the following members of the Canadian Government to meet them: Secretary of State for External Affairs and the Ministers of Justice, Reconstruction and Supply, National Defence, Finance, National Revenue and Fisheries and the Leader of the Government in the Senate.

Canada with Newfoundland owed a common allegiance to the Crown, were neighbours and had many common problems.

The Newfoundland Delegation would have the opportunity to learn, at first hand, the working of the Canadian Federal system and the Canadian people would be in a better position to appreciate what would be involved for Canada were Newfoundland to become a Province. It would remain for the Newfoundland Convention to recommend to the Imperial Government whether the question of union with Canada should be referred to the Newfoundland people for decision.

The question of Newfoundland's future would be left, of course, for her people to decide. On the part of Canada no final decision would be taken without the approval of Parliament. Section 146 of the B.N.A. Act makes provision for the procedure in the event of the admission of Newfoundland to the Union, namely, an Address by both Houses of Parliament.

On October 30, 1947, a typed brochure was issued by the Government of Canada which contained: a letter dated October 29, 1947, from the Prime Minister of Canada to the Governor of Newfoundland, attached to which was a Memorandum entitled " Proposed Arrangements for the entry of Newfoundland into the Confederation "—including 3 Annexures: I. War Service Benefits; II. Apportionment of the Direct Public Debt of Newfoundland and Statement on Surplus; III. A Tax Agreement applied to Newfoundland; and IV. Probable Federal Revenues and Expenditures with respect to Newfoundland.

Mr. Mackenzie King opens his letter by referring to His Excellency's inquiry on March 20, at the request of the Convention, whether the Canadian Government would receive a delegation appointed by the Convention to come to Ottawa, " to ascertain what fair and equitable basis for union with Canada might exist ".

The reply of the Government of Canada was that it would be happy to receive the Delegation and that it was:

> of the opinion that the questions to be discussed with the delegation are of such complexity and of such significance for both countries that it is essential to have a complete and comprehensive exchange of information and a full and careful exploration by both parties of all the issues involved so that an accurate appreciation of the position may be gained on each side.

Reference was then made to the visit of a similar delegation to Ottawa in the preceding June, returning to Newfoundland early in October,

and their frequent meetings with a committee of the Canadian Cabinet to exchange information and explore the many questions which would be involved in Union, of which discussions the Newfoundland Delegation took back with them a report " which it is hoped will be of use to the National Convention ".

Mr. Mackenzie King's letter then goes on to say that, following the discussions, the Committee of the Cabinet advised their colleagues " that in their opinion a basis for union exists that would be fair and equitable to both countries " and that, the Canadian Government having considered and approved the recommendations of such Committee, he was now in a position to advise the Governor regarding the arrangements which the Government would be prepared to recommend to Parliament as a basis for Union, which arrangements were set forth in the document annexed to the letter.

This Memorandum began by announcing that " Newfoundland will have, as from the date of union, the status of a Province of Canada with all the rights, powers, privileges and responsibilities of a province ". The territory of Labrador would also be included.

The public services provided for the people of Canada generally would be extended to the people of Newfoundland, likewise the welfare services, which are detailed.

A description is then given of the services to be taken over, including the salaries, etc., of the Lieutenant-Governor and of the Judges of Newfoundland.

Financial arrangements are then detailed in regard to Debt, Public Works, accumulated surplus, contract rights arising from advances of public funds, subsidies to the Provincial Government, tax agreement, transitional grants and the reassessment of Newfoundland's financial position.

Representation of the Province in the Senate and House of Commons in Canada under the B.N.A. Acts would be not less than that to which the Province is entitled to be fixed—namely, at present by 6 Senators, and 7 Members in the House of Commons, the number being determined from time to time on the basis of population.[1]

The Miscellaneous Provisions deal with Transportation, Government employees, unemployment benefits, education (provided that the Newfoundland Legislature will not have authority to make laws prejudicially affecting any right or privilege with respect to denominational or separate schools which any class of person has by law in Newfoundland at the date of union. The Legislature may, however, authorize any 2 or more such classes of persons to amalgamate with their schools and to receive, notwithstanding such amalgamation or union, their proportionate share of the public funds of Newfoundland devoted to education).

Further provisions are made for defence, the export of oleomargarine, and economic survey.

[1] *See* JOURNAL, Vol. XV, 51.

Under " General " are provisions for:

(i) the extension of Canadian citizenship;
(ii) continuation of Newfoundland laws;
(iii) the first constitution of Newfoundland (in accordance with the wishes of the appropriate Newfoundland authorities and subject to the B.N.A. Acts applicable to Provinces);
(iv) the retention by Newfoundland of its natural resources; and
(v) the application to the Province of Newfoundland of the B.N.A. Acts (except where otherwise provided) and of the federal laws of Canada.

Canada also extends to Newfoundland's veterans of World Wars I and II and Merchant Seamen the same benefits as those applied in Canada, which are all detailed.

Annex II deals, in respect of the Total Direct Public Debt: outstanding $82,377,047 and Sinking Funds $9,221,748 (conversion rate £1 = $4.04) as follow:

Total under the 2 heads—

(*a*) to be assumed by Canada	$71,911,454 and	$8,342,380
(*b*) to be retained by Newfoundland	$10,465,593 and	$879,368

The accumulated surplus of the Newfoundland Government as at March 31, 1947, is $28,789,000, not including $3,232,000 set aside for payment of the Trustee Securities.

Annex III gives " A Tax agreement applied to Newfoundland " and states what Newfoundland and the Federal Government would respectively agree to, and the " Basis of Federal Payments to Newfoundland "; setting out what might be the Newfoundland payments for 1947 in 4 steps.

Annex IV gives the Probable Federal Revenues and Expenditures with respect to Newfoundland.

To return to Mr. Mackenzie King's letter, he emphasizes that the financial aspects are as far as Canada can go under the circumstances, but in regard to education, Canada would not wish to set down any rigid conditions.

The last 2 paragraphs of the Prime Minister's letter are as follows:

It is our understanding that the National Convention is entrusted with the responsibility of making recommendations to the United Kingdom Government regarding future forms of government to be submitted to the people of Newfoundland in a national referendum. The Government of Canada would not wish in any way to influence the National Convention nor the decision of the people, should they be requested to decide the issue of confederation. Should the people of Newfoundland indicate clearly and beyond all possibility of misunderstanding their will that Newfoundland should become a Province of Canada on the basis of the proposed arrangements, the Canadian Government, subject to the approval of Parliament, would for its part be prepared to take the necessary constitutional steps to make the union effective at the earliest practicable date.

I should be grateful if you would bring this letter, together with its enclosure, to the attention of the National Convention.

The Rhodesias and Nyasaland (Amalgamation of).[1]—In reply to a *Q.* in the House of Commons on February 5,[2] the Secretary of State for the Colonies (Rt. Hon. A. Creech Jones) said that the view of H.M. Government in the United Kingdom remained as stated by the then Secretary of State for the Colonies on October 18, 1944,[3] when announcing the decision to establish the Central African Council with a view to promoting the closest contact and co-operation between the Governments of Southern and Northern Rhodesia and Nyasaland—namely, that H.M. Government had come to the conclusion that such amalgamation under existing circumstances was not regarded as practicable.

Singapore (Constitutional).[4]—On January 22,[5] *Q.* was asked in the House of Commons as to the election of unofficial members of the Legislative Council and the number of meetings of the electoral committee which had been held. The Secretary of State for the Colonies replied that such committee had given the local communities every opportunity to express their opinions.

Mr. Creech Jones went on to say that on April 24, 1946, such Committee announced that they wished to consult public opinion to the fullest extent. Their meetings were not public, but a representative of the Malayan Democratic Union attended one of the meetings and discussed the Memorandum they had submitted.

In reply to a *Q.* on the same day, in regard to the pledge given that all sections would be consulted before any final decisions were taken in relation to the constitution of the Singapore Municipal Council and as to citizenship of the Malayan Union, the Secretary of State replied that, as regards the Singapore Municipality, proposals had been forwarded by a Committee appointed by the Governor after all interested parties had had full opportunity to express their views.

White Paper.—The position of Singapore outlined in paragraph 25 of the White Paper[6] of July, 1947, is as follows:

> During the consultations and negotiations of the last year, various organisations and individuals urged the early inclusion of Singapore within the Federation of Malaya. Voices were also heard against the inclusion of the Colony. It is no part of the policy of His Majesty's Government, as the Statement of Policy of January, 1946 (*Cmd.* 6724), declared, " to preclude or prejudice in any way the fusion of Singapore and the Malayan Union in a wider Union at a later date should it be considered that such a course were desirable." His Majesty's Government still hold this view, and believe that the question of Singapore joining in a Federation should be considered on its merits and in the light of local opinion at an appropriate time. Within the next few months the new Constitution of the Federation of Malaya will, it is hoped, be inaugurated. and preparations will be made in Singapore for the holding of elections for the reconstituted Legislative Council, which will have an unofficial majority including six members returned by the direct vote of all registered voters, both male and female, without literacy or property qualifications who are British subjects

[1] *See also* JOURNAL, Vols. IV, 30; V, 50; VI, 66; VIII, 54; IX, 49; XI-XII, 61; XIII, 85; XIV, 191. [2] 432 *Com. Hans.* 5, s. *368.* [3] *See also* JOURNAL, Vol. XIII, 85. [4] *See also* JOURNAL, Vol. XV, 108. [5] 432 *Com. Hans.* 5, s. 193, 4. [6] *Cmd.* 7171.

over the age of 21. The new Governments and Legislatures in the two territories will be the appropriate authorities to consider any demand for the inclusion of Singapore within the Federation, and it would be a mistake to delay the formation of the Federation on the one hand, or the reconstituted Legislative Council in Singapore on the other, by instituting at this time any formal discussion, or negotiation, on the subject of the inclusion of Singapore. The question is one on which considerable difference of opinion exists in Malaya, but the establishment of the new Federal constitution will be without prejudice to the possibility of Singapore joining the Federation at some later date.

Tanganyika[1] (Trusteeship Agreement with U.N.O.).—Tanganyika Territory before World War I was a German possession, but in 1922 a Mandate (B) to Great Britain was issued by the League of Nations for German East Africa, with the exception of the Ruanda and Urundi districts, for which a Mandate was granted to Belgium.

" DRAFT terms of trusteeship for Tanganyika, under U.N.O., were first published in June, 1946, in Cmd. 6840; revised draft terms were published in October, 1946, in Cmd. 6935. The revised draft terms were submitted by H.M. Government in the United Kingdom to the General Assembly of the United Nations at the Second Part of their First Session, and the terms, with minor modifications, were approved by the General Assembly on December 13, 1946.

The approved text follows the revised draft terms published in Cmd. 6935 virtually unchanged, the exceptions being verbal alterations in the Preamble and Article 6 and the addition of certain words at the end of Article 10(*c*)."

The text of the Trusteeship Agreement,[2] as approved by the General Assembly of the United Nations, dated New York, December 13, 1946, is as follows:

WHEREAS the Territory known as Tanganyika has been administered in accordance with Article 22 of the Covenant of the League of Nations under a Mandate conferred on His Britannic Majesty; and

Whereas Article 75 of the United Nations Charter signed at San Francisco on 26th June, 1945,[3] provides for the establishment of an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements; and

Whereas under Article 77 of the said Charter the international trusteeship system may be applied to territories now held under Mandate; and

Whereas His Majesty has indicated his desire to place Tanganyika under the said international trusteeship system; and

Whereas in accordance with Articles 75 and 77 of the said Charter, the placing of a territory under the international trusteeship system is to be effected by means of a Trusteeship Agreement;

Now, therefore, the General Assembly of the United Nations hereby resolves to approve the following terms of trusteeship for Tanganyika:—

Article 1.—The Territory to which this Agreement applies comprises that part of East Africa lying within the boundaries defined by Article 1 of the British Mandate for East Africa, and by the Anglo-Belgian Treaty of 22nd November, 1934,[4] regarding the boundary between Tanganyika and Ruanda-Urundi.

[1] *See also* JOURNAL, Vol. VIII, 97. [2] *Cmd.* 7081. [3] Treaty Series No. 67 (1946), *Cmd.* 7015. [4] Treaty Series No. 41 (1938), *Cmd.* 5777.

Article 2.—His Majesty is hereby designated as Administering Authority for Tanganyika, the responsibility for the administration of which will be undertaken by His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland.

Article 3.—The Administering Authority undertakes to administer Tanganyika in such a manner as to achieve the basic objectives of the international trusteeship system laid down in Article 76 of the United Nations Charter. The Administering Authority further undertakes to collaborate fully with the General Assembly of the United Nations and the Trusteeship Council in the discharge of all their functions as defined in Article 87 of the United Nations Charter, and to facilitate any periodic visits to Tanganyika which they may deem necessary, at times to be agreed upon with the Administering Authority.

Article 4.—The Administering Authority shall be responsible (*a*) for the peace, order, good government and defence of Tanganyika, and (*b*) for ensuring that it shall play its part in the maintenance of international peace and security.

Article 5.—For the above-mentioned purposes and for all purposes of this Agreement, as may be necessary, the Administering Authority:

(*a*) shall have full powers of legislation, administration, and jurisdiction in Tanganyika, subject to the provisions of the United Nations Charter and of this Agreement;

(*b*) shall be entitled to constitute Tanganyika into a customs, fiscal or administrative union or federation with adjacent territories under his sovereignty or control, and to establish common services between such territories and Tanganyika where such measures are not inconsistent with the basic objectives of the international trusteeship system and with the terms of this Agreement;

(*c*) and shall be entitled to establish naval, military and air bases, to erect fortifications, to station and employ his own forces in Tanganyika and to take all such other measures as are in his opinion necessary for the defence of Tanganyika and for ensuring that the Territory plays its part in the maintenance of international peace and security. To this end the Administering Authority may make use of volunteer forces, facilities and assistance from Tanganyika in carrying out the obligations towards the Security Council undertaken in this regard by the Administering Authority, as well as for local defence and the maintenance of law and order within Tanganyika.

Article 6.—The Administering Authority shall promote the development of free political institutions suited to Tanganyika. To this end, the Administering Authority shall assure to the inhabitants of Tanganyika a progressively increasing share in the administrative and other services of the Territory; shall develop the participation of the inhabitants of Tanganyika in advisory and legislative bodies and in the government of the Territory, both central and local, as may be appropriate to the particular circumstances of the Territory and its peoples; and shall take all other appropriate measures with a view to the political advancement of the inhabitants of Tanganyika in accordance with Article 76(b) of the United Nations Charter.

Article 7.—The Administering Authority undertakes to apply in Tanganyika the provisions of any international conventions and recommendations already existing or hereafter drawn up by the United Nations or by the specialised agencies referred to in Article 57 of the Charter, which may be appropriate to the particular circumstances of the Territory and which would conduce to the achievement of the basic objectives of the international trusteeship system.

Article 8.—In framing laws relating to the holding or transfer of land and natural resources, the Administering Authority shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests both present and future, of the native population. No native land or natural resources may be transferred, except between natives, save with the previous

consent of the competent public authority. No real rights over native land or natural resources in favour of non-natives may be created except with the same consent.

Article 9.—Subject to the provisions of Article 10 of this Agreement, the Administering Authority shall take all necessary steps to ensure equal treatment in social, economic, industrial and commercial matters for all Members of the United Nations and their nationals and to this end:

(*a*) shall ensure the same rights to all nationals of Members of the United Nations as to his own nationals in respect of entry into and residence in Tanganyika, freedom of transit and navigation, including freedom of transit and navigation by air, acquisition of property both movable and immovable, the protection of persons and property, and the exercise of professions and trades;

(*b*) shall not discriminate on grounds of nationality against nationals of any Member of the United Nations in matters relating to the grant of concessions for the development of the natural resources of Tanganyika, and shall not grant concessions having the character of a general monopoly;

(*c*) shall ensure equal treatment in the administration of justice to the nationals of all Members of the United Nations.

The rights conferred by this Article on nationals of Members of the United Nations apply equally to companies and associations controlled by such nationals and organized in accordance with the law of any Member of the United Nations.

Article 10.—Measures taken to give effect to Article 9 of this Agreement shall be subject always to the over-riding duty of the Administering Authority in accordance with Article 76 of the United Nations Charter to promote the political, economic, social and educational advancement of the inhabitants of Tanganyika, to carry out the other basic objectives of the international trusteeship system, and to maintain peace, order and good government. The Administering Authority shall in particular be free:

(*a*) to organise essential public services and works on such terms and conditions as he thinks just;

(*b*) to create monopolies of a purely fiscal character in order to provide Tanganyika with the fiscal resources which seem best suited to local requirements, or otherwise to serve the interests of the inhabitants of Tanganyika;

(*c*) where the interests of the economic advancement of the inhabitants of Tanganyika may require it, to establish or permit to be established, for specific purposes, other monopolies or undertakings having in them an element of monopoly, under conditions of proper public control; provided that, in the selection of agencies to carry out the purposes of this paragraph, other than agencies controlled by the Government or those in which the Government participates, the Administering Authority shall not discriminate on grounds of nationality against Members of the United Nations or their nationals.

Article 11.—Nothing in this Agreement shall entitle any Member of the United Nations to claim for itself or for its nationals, companies and associations the benefits of Article 9 of this Agreement in any respect in which it does not give to the inhabitants, companies and associations of Tanganyika equality of treatment with the nationals, companies and associations of the State which it treats most favourably.

Article 12.—The Administering Authority shall, as may be appropriate to the circumstances of Tanganyika, continue and extend a general system of elementary education designed to abolish illiteracy and to facilitate the vocational and cultural advancement of the population, child and adult, and shall similarly provide such facilities as may prove desirable and practicable in the interests

of the inhabitants for qualified students to receive secondary and higher education, including professional training.

Article 13.—The Administering Authority shall ensure in Tanganyika complete freedom of conscience and, so far as is consistent with the requirements of public order and morality, freedom of religious teaching and the free exercise of all forms of worship. Subject to the provisions of Article 8 of this Agreement and the local law, missionaries who are nationals of Members of the United Nations shall be free to enter Tanganyika and to travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools and hospitals in the Territory. The provisions of this Article shall not, however, affect the right and duty of the Administering Authority to exercise such controls as he may consider necessary for the maintenance of peace, order and good government and for the educational advancement of the inhabitants of Tanganyika, and to take all measures required for such control.

Article 14.—Subject only to the requirements of public order, the Administering Authority shall guarantee to the inhabitants of Tanganyika freedom of speech, of the press, of assembly, and of petition.

Article 15.—The Administering Authority may arrange for the co-operation of Tanganyika, in any regional advisory commission, regional technical organization or other voluntary association of States, any specialized international bodies, public or private, or other forms of international activity not inconsistent with the United Nations Charter.

Article 16.—The Administering Authority shall make to the General Assembly of the United Nations an annual report on the basis of a questionnaire drawn up by the Trusteeship Council in accordance with Article 88 of the United Nations Charter. Such reports shall include information concerning the measures taken to give effect to suggestions and recommendations of the General Assembly and the Trusteeship Council. The Administering Authority shall designate an accredited representative to be present at the sessions of the Trusteeship Council at which the reports of the Administering Authority with regard to Tanganyika are considered.

Article 17.—Nothing in this Agreement shall affect the right of the Administering Authority to propose, at any future date, the amendment of this Agreement for the purpose of designating the whole or part of Tanganyika as a strategic area or for any other purpose not inconsistent with the basic objectives of the international trusteeship system.

Article 18.—The terms of this Agreement shall not be altered or amended except as provided in Article 79 and Articles 83 or 85, as the case may be, of the United Nations Charter.

Article 19.—If any dispute whatever should arise between the Administering Authority and another Member of the United Nations relating to the interpretation or application of the provisions of this Agreement, such dispute, if it cannot be settled by negotiation or other means, shall be submitted to the International Court of Justice provided for in Chapter XIV of the United Nations Charter.

***Trinidad and Tobago (Remuneration and free facilities to M.L.C.s).** —As far back as the year 1928 the question of remunerating the unofficial members of the Legislative Council was raised, and it was not until 1939 that it was agreed that unofficial members should receive a fixed remuneration of £150 p.a., and should be reimbursed their actual travelling expenses for attendance at the Legislative Council and Committees thereof. In 1946 it was decided to grant members of the Legislature the concession to purchase motor cars free of customs duty.

Travelling allowances are paid at the following rates to those members who own their own motor vehicles:

(*a*) 10 c. per mile in respect of a car of over 10 h.p. (Standard Car).
(*b*) 6½ c. per mile in respect of a car of 10 h.p. or less (Light Car).

A temporary increase of 25%—which was further increased to 50% with effect from January 1, 1947—has been allowed since the War to cover increased costs of running and maintenance.

In addition members are allowed free travelling on the Government railways and coastal steamers.

As a result of the General Election of 1946, which was held on the basis of universal adult suffrage, persons of a lower income level were elected to the new Legislature. Representations were soon received from the unofficial members of the new Council for a higher rate of remuneration, with the result that the amount of £150 p.a. was increased to £375 p.a., with effect from January 1, 1947.

Elected members who are Chairmen *ipso facto* of their respective County Councils and who are not resident in their Counties receive a subsistence allowance at the rate of £1 5s. 0d. for a period of absence up to 24 hours.[1]

***Trinidad and Tobago (Use of Chamber for other purposes).**—The Council Chamber is also used for the swearing-in ceremony and public reception of a new Governor, for the holding of investitures and meetings of statutory and other Committees or Boards. Occasionally, the use of the Chamber is permitted to recognized public organizations for the holding of special meetings. In 1939 the West India Royal Commission used the Chamber to hold their public Sessions.[2]

O. C.

September 29, 1948.

[1] Contributed by the Clerk of the Legislative Council.—[ED.]
[2] Contributed by the Clerk of the Legislative Council.—[ED.]

II. THE ROYAL PREROGATIVE OF MERCY[1]

By the Editor

Every year it is one of our duties to go through the General Index to the Commons *Hansard* of the previous Session in search of particular references to the practice and procedure of Parliament and other matters of Parliamentary interest.

Among the many other signposts in such Index is the ever-present treasury of information—" Speaker and Deputy Speaker, Rulings of "; and when laboriously pursuing the hundreds of references to its columns in the *Hansard* volumes, we have often had in sympathetic mind the lot of those poor striving husbandmen in that striking and pathetic movie picture " The Good Earth ".

Although a large number of such Rulings deal with that common failing in debate, both at Westminster and Overseas—irrelevancy—few instances of which can profitably be taken out of their setting for reference elsewhere—a general search of these Rulings has to be made.

Normally, a record of a Ruling in the Article on the subject in the JOURNAL is sufficient to indicate its nature, but sometimes a more lengthy treatment under " Editorial " is advisable. The subject of " the Royal Prerogative of Mercy ", raised in the House of Commons in the year under review in this issue, was felt to be worthy of a special Article, displaying several unusual aspects of this important question as well as many points of procedure.

We all know how any suspected instance of injustice stirs the blood of the true Briton, and in this matter members of that august assembly, the House of Commons at Westminster, irrespective of Party, and representing various types of constituency, rose in their wrath and pursued the case like bloodhounds on the trail.

The subject was first brought to notice by the hon. member for Oldham (Mr. Leslie Hall), who, after *Private Notice* of his intention to Mr. Speaker to do so, rose in his place in the House of Commons on March 3, 1947,[2] to ask the guidance of Mr. Speaker in respect of a *Private Notice* Question. The hon. member had asked the Secretary of State for the Colonies (who, for brevity, in this Article will be referred to as " the Minister ") this Question which had been ruled out of Order as affecting the Royal Prerogative. The hon. member was, however, promptly checked by Mr. Speaker, who said that a Question which had been ruled out of order could not be read to the House.

It appeared from what Mr. Hall then proceeded to say that the purport of his Question was that the Minister claimed he had no right or power to interfere with that Prerogative by virtue of the terms of the appointment of Governor and Commander-in-Chief of the Gold Coast. The Question also involved the fate of 4 condemned men who had already been taken to the place of execution[3] 6 times and were due

[1] *See also* JOURNAL, Vol. XIII, 12, 75. [2] 434 *Com. Hans.* 5, s. 37-51. [3] This was later modified by the Minister to mean—" taken to the township " (434 *Com. Hans.* 5, s. 490).

to be executed on the morrow. In those circumstances he made no apology for submitting to Mr. Speaker one or two matters which the hon. member felt were of great importance. He stressed how very grateful he was to have had the assistance of the wealth of learning and the courtesy of the Clerk of the House.

The hon. member then respectfully submitted that the ruling of Erskine May, that a matter affecting the Royal Prerogative could not be raised on the Floor of the House, was erroneous. There was the case of Israel Lipski in 1887, when a full answer was given by the Home Secretary. It was done in the case of Mrs. Maybrick in 1889, when the Home Secretary refused to give an answer. It was also done in the case of the execution of men in Ireland, when it was a question of the Home Secretary making recommendation to the Lord-Lieutenant of Ireland.[1] All of which Mr. Hall respectfully submitted were completely parallel with the present one.

Mr. Hall then stated that the terms of appointment of the Governor of the Gold Coast, from which he quoted, were dated February 19, 1946, which was 14 months after the men were condemned. There must therefore have been an interregnum in which the whole matter was vested in the Minister. The case was sent by the Privy Council to the Minister, who was responsible for preparing the terms of appointment. The Colonial Laws Validity Act of 1865[2] gave Colonial Legislatures power to legislate on such matters. The terms of the appointment of the Governors provide that the Government, in exercising the Royal Prerogative, should take the advice of the Ministers of the Legislature. The matter came before the Court of Appeal in 1935,[3] which involved Canada passing an Act, subsequent to the passing of the Statute of Westminster, 1931, revoking the right of Canadian subjects to appeal to His Majesty in Privy Council.[4] In that case 2 propositions were laid down. There was nothing in the Colonial Laws Validity Act which would abrogate the sovereign right of this House, and the Colonial Legislature had no power to pass any law which conflicted with those of this House, passed with special reference to the Colony. If therefore it was the duty of the Governor to take into account the advice of the Ministers of the Colonial Legislature, it was infinitely more his duty to take into account advice given him by the Minister, whose duty it was to give it. That was made clear in British Coal Corporation *versus* the King. In 1935 the Court of Appeal in the United Kingdom laid it down that it was within the Province of the Dominion Legislature to interfere with the Royal Prerogative. Indeed they went so far as to say that the Royal Prerogative was in a sense a figment of the imagination. On this matter, Mr. Hall and his colleagues submitted to the Council of Regency a Petition inviting it to exercise the Royal Prerogative, but such Council made no application to the petitioners for particulars or information though he understood they

[1] 434 *Com. Hans.* 5, s. 38. [2] 28 & 29 Vict. c. 63. [3] [illegible]
[4] Canadian Act: Cap. 53 of 1932-3, S. 17, which applies only to criminal cases.

took the advice of the Minister. The hon. member urged that if the Minister could give advice to such Council he could give it to the Colonial Governor. Mr. Hall neither sought to impugn the sincerity of either the Minister or the Governor, but he asserted the right of a member of this House to ask a Question on a matter of vital importance affecting the dignity and decency of their Government as to what advice the Minister had tendered to the Governor. The hon. member then submitted for Mr. Speaker's further consideration that he was in order in so doing.[1]

In reply Mr. Speaker stated he was informed that the Minister is not responsible in these matters and that it was not in order for this House to discuss the Royal Prerogative, which was a matter for the Crown itself. If Questions had ever been asked here they had been ruled out of order. Whatever there had been in the past, two wrongs did not make a right. "The Minister is not responsible, the Prerogative is a matter for the Crown and is, therefore, not arguable in this House and that must be my Ruling."[2]

Other hon. members then also raised facts and it was suggested that this was a matter involving the administration of justice in a Crown Colony, the Governor of which is responsible to the Minister. Would, therefore, the hon. member not be entitled to put a Question on the matter or to move the Adjournment of the House?

Mr. Speaker stated that the Question was out of order, and could not be debated, and therefore he could not accept such a Motion.

To a further Question, Mr. Speaker said that the Minister alone could answer whether this was a matter of the Royal Prerogative or of administration. The hon. member (Mr. Hall) raising the whole issue then asked leave to move the Adjournment of the House on a definite matter of urgent public importance—namely,

the failure of the Secretary of State for the Colonies to give directions to the Governor of the Gold Coast respecting four men now lying under sentence of death, who were condemned on 1st December, 1944, and who have been on five occasions since that date taken to the place of execution.

Mr. Speaker thereupon stated the Motion and said:

This Motion says "give directions to the Governor" in respect of five previous occasions. That must involve the Royal Prerogative and therefore it must be out of order.[3]

In reply to questions by other hon. members, Mr. Speaker said that any respite of the sentence must mean discussing the Royal Prerogative, which he must therefore rule out of order.

To a further Question Mr. Speaker said that it was a fact that the Minister did not exercise the Prerogative personally.

Mr. Churchill, who had served 2 years as Home Secretary, asked if it was definitely established that every statutory interference with an execution—every administrative interference with an execution—in-

[1] *Ib.* 40. [2] *Ib.* 41. [3] *Ib.* 43.

volved the Royal Prerogative ? Were not respites frequently given by administrative authority ? He concluded by asking for Mr. Speaker's Ruling " as between the two quite definite classes of action by which the execution of human beings is stayed ".

To which Mr. Speaker replied that there is a certain administrative responsibility on the Home Secretary and everybody else but that once it came to a sentence and the Prerogative of Mercy, he thought that the Home Secretary and the House had no power. " Any hon. member can go to the Home Secretary and say, ' Please put the execution off ', but that does not mean it can happen."[1]

Mr. Churchill then asked if the Minister[2] had not the power to respite if he chose, without involving or invoking the Royal Prerogative ?

To this Question, Mr. Speaker referred to the Home Secretary (Rt. Hon. J. C. Ede) who said that there were occasions, for instance if a man appealed to the Court of Criminal Appeal—when it was necessary for further inquiry to be made into the circumstances of the case before a final decision could be reached as to whether the Home Secretary should make a recommendation to His Majesty with regard to the exercise of the Royal Prerogative. When the sentence was postponed, it might be postponed more than once, as in the case of William Joyce. That was done every time there was an appeal to such Court, but that, of course, did not involve the Royal Prerogative. He understood the difficulty now before the House was that the sentence had been respited on several occasions and the men had been taken to the place of execution. That had not happened in England in recent times. He thought the only case was that of John Lee, where the drop had swollen owing to rain pouring on it and then it was decided that the man should not again be taken to the place of execution.[3]

Another hon. member quoted the cases of a Nazi youth of 14, when a Question appeared on the Order Paper asking whether or not he should be hanged, which was not ruled out of order, and that of Dov. Gruner which they had discussed in the House recently.[4]

The Minister (Rt. Hon. Creech Jones) then stated that he had acted in this case on the advice of the highest authorities in legal matters. He was not in a position to exercise the Prerogative of Mercy. In fact, he was advised that that rested with the Governor. In order that the fullest investigation should be made he (Mr. Creech Jones) had from time to time delayed the execution of these men and had also brought to the notice of the Governor the strong feeling entertained by members of Parliament. He then offered to communicate immediately with the Governor and inform him of these feelings. Mr. Jones said that he would again communicate with the Governor and suggest a respite, and that in the light of the feeling of the House, the Governor should give his earnest consideration to the decision for which he himself is responsible.[5]

[1] *Ib.* 44. [2] In this instance, the Home Secretary.—[ED.] [3] *Ib.* 45. [4] *Ib.* 47.
[5] *Ib.* 48.

The hon. member originally raising the matter then asked leave to amend his Motion for the Adjournment by the substitution of " postponement " for " respite ", to which Mr. Speaker said that the Motion would be in order but the Minister had just said that he was communicating with the Governor and Mr. Speaker could not see that there was any urgency left.[1]

Here Mr. Speaker was again urged to accept the Adjournment, when he said:

" I am not prepared to reconsider the matter. In fact, to ask for any further assurance from the Secretary of State, to ask him to take any dictatorial action, would, I think, be going outside the Constitution. I am quite prepared to stick to what I said, and if hon. members do not like it, they can put down a Motion against me, Mr. Key."[2]

Another hon. member then asked if there was no way of preventing these 6 people from being executed on the morrow. " Is there no way by which we can express our wishes by some form of Motion ?" To which Mr. Speaker said it had been made perfectly clear that the Minister intends to take some other action.

Another hon. member then rose on a point of Order, when Mr. Speaker said the hon. member could not get up and say—" On a point of Order ". " If I do not choose to accept it, I need not do so."

After further remarks, during which Mr. Speaker replied that he had rejected the proposed amendment of the Motion for Adjournment,

Mr. Speaker then said to the Minister of Works (Rt. Hon. C. W. Key)—" We must get on, Mr. Key."

On March 5,[3] hon. members again returned to the charge, when the Minister was asked if he would make a statement about the delay in disposing of the case of 7 men sentenced to death for the murder of Akyea Mensah, the Odikro of Apednwa, Gold Coast, since their appeals were dismissed many weeks ago; whether he was aware that legal proceedings in the case were continued for over 2 years after they were sentenced to death; and whether he proposed to expedite criminal procedure in the Gold Coast ?

Mr. Creech Jones then made a statement to the effect that the Governor had informed him that in view of the strong feeling in the House, he had decided, after discussion with those members of the Executive resident in Accra, to postpone the executions, and would now consider, in consultation with his Executive, how the powers delegated to him would be exercised.

Mr. Creech Jones, continuing, said that, of the 8 men convicted for murder, one had died and 2 had their sentences commuted by the Governor, although a majority of his Executive had advised against it. The murder was concerned with the ceremonial funeral of a Paramount Chief. The trial took place during November, 1944, before a jury, all of whom except one were Africans. The men were sentenced to

[1] *Ib.* 49. [2] The Minister of Works, presumably the Minister present on the Treasury Bench.—[ED.] [3] 434 *Com. Hans.* 5, s. 484-491.

death on December 1 of that year, and appealed to the West African Court of Appeal, which dismissed the appeal in February, 1945. They then gave notice to apply to the Judicial Committee of the Privy Council for leave to appeal, but their petition was not filed until October 24 of the same year. The Judicial Committee dismissed the petition on November 5, 1945, and the executions would then normally have taken place.[1] The advisers of the convicted then tried to attack the validity of the trial by applying for a writ of *certiorari*, which application was dismissed by the Gold Coast and another petition to the Judicial Committee for leave to appeal was also dismissed on January 21, 1946.

The advisers of the convicted men then tried to attack the proceedings by a Writ of Error, and applied to the Gold Coast Attorney-General for his fiat, giving leave to bring proceedings in Error, which was refused, whereupon the convicted men applied to the Gold Coast Court for a *mandamus* to order the Attorney-General to give his fiat. The Supreme Court dismissed the application and the men lodged a third petition with the Judicial Committee, which was dismissed July 15, 1946. At this point the former Secretary of State received a petition signed by 85 M.P.s and subsequently a number of letters from individual M.P.s. The Royal Prerogative of pardon is delegated by the King to the Governor by Letters Patent and by the R. I. he is directed to consider every case fully in Executive Council and finally to decide the matter according to his own deliberate judgment. No similar delegation is made to the Minister although he would naturally advise the King on any petition which might be addressed to the Crown and would draw the attention of the Governor to any circumstances which he felt ought to be considered. The Governor was best in a position to weigh up all the facts relating to the dispensation of mercy in the light of local circumstances and of the advice of his Council.

The representation of the M.P.s was passed to the Governor and they had stated their views to him personally when he was on leave.

Members, however, took the view that there was a residual Prerogative of pardon in the King which was correct, and certain M.P.s would be addressing a Memorial to him, but it was not until late on February 4, the eve of the day fixed for the execution, that the Memorial was delivered, when the Governor was notified that the executions were stayed.

It had long been the practice for the Minister not to intervene in these cases unless it was necessary to prevent a miscarriage of justice, which the Minister was advised there was not. The Governor was in the best position to decide the matter, and the signatories of the Petition and the Governor were informed on February 26 that, no directions having been given on behalf of the King, the final decision rested with the Governor, who, with the full consent of his Executive, which included 3 African members, arranged the executions for March 4.

There had been popular demonstrations of public indignation at the

[1] *Ib.* 484.

delay in carrying out the sentences on these men, who in the opinion of many in the Gold Coast had been able to defeat the ends of justice, and, in the Governor's view, the administration of British justice in the Colony had already been discredited by these delays, with strong feeling both on the Executive and Legislative Councils.

The matter had also been examined by the Minister's legal advisers, with a view to these delays being obviated. The postponement after the dates of execution had been fixed arose from a series of late applications by the men's legal representatives and was not due to any defect in the criminal procedure of the Colony, but to the men's legal advisers, who had had recourse to every step which their ingenuity could devise to keep the matter before the courts, for which the Minister knew of no precedent and all of which had ultimately failed.[1]

To a question in the House, Mr. Creech Jones said that successive Governments in the House of Commons had firmly refused to discuss the exercise of the Prerogative of Mercy in capital cases, because it would be injurious to the administration of justice. Further effort was then made to have a discussion in the House, but on the general question of the use of the Prerogative. The Rt. Hon. Oliver Stanley, a former Secretary of State for the Colonies, asked for Mr. Speaker's guidance as to whether, in view of Mr. Speaker's Ruling on March 3, there was not some other form in which it would be possible, at any rate, to discuss the general question of principle.[2]

To this Mr. Speaker stated that there would be an opportunity on a Vote on Account, down for report very soon, and that obviously there were differing views on the Front Bench and in all parts of the House. He therefore suggested that the rt. hon. gentleman put down an amendment to reduce the salary of the Colonial Secretary by £100 on the Vote on Account; that would limit the discussion to what the Minister was responsible for and would not reflect upon him in any way.

In reply to further questions Mr. Creech Jones said nothing indicated that there had been in any way a miscarriage of justice.[3]

On April 2,[4] 1947, the Minister was asked at what time and date one, Dankwa, was hanged at Accra; at what time each of the other two men was hanged; and at what time and in what circumstances further executions were postponed?

Mr. Creech Jones replied that Dankwa was hanged at 2 p.m. (Gold Coast time) on March 24, and the other 2 at 3.30 p.m. the same day. Written notice of intention to appeal was received by the Director of Prisons at 3.40 p.m., and, in consequence, the Governor gave notice to postpone the other 2 executions.

A further Q. for written answer inquired whether it was the practice in the Gold Coast to suspend the execution of sentences when it was known that application was intended to be made to the Privy Council for leave to appeal? To this Mr. Creech Jones replied that it had been the normal practice in the Gold Coast for the Governor to post-

[1] *Ib.* 486. [2] *Ib.* 486, 7. [3] *Ib.* 490. [4] 435 *Ib* 320.

pone the execution of a sentence of death if he received formal notice to make such appeal.

Another *Q.* for written answer was, at what time and date the Minister was made aware that such application was made against the appeal of writs of *habeas corpus* on one Dankwa; at what time and date the applications for such writs were made and whether verbal intimation was at once given of intention to appeal to the Privy Council? To this, Mr. Creech Jones replied that a letter from the condemned men's lawyer in London was delivered to the Minister's legal adviser at 2 p.m. (1 p.m. Gold Coast time), on March 24, giving him notice that unless the Gold Coast Court discharged the men on their application for writs of *habeas corpus* application would be made to the Privy Council for leave to appeal. The London lawyer had, the Minister understood, already cabled to the Gold Coast lawyer and was informed by the Minister's legal adviser later in the afternoon that the Minister would not be communicating with the Governor.

The applications for *habeas corpus* were rejected by the Gold Coast Court at 1 p.m. (Gold Coast time) on the same day. The Minister understood that counsel for the condemned men stated in Court, on rejection of the *habeas corpus* applications, that they would appeal to the Privy Council, but no notice was given to the Governor, nor was application made to him for postponement of the executions until after the third sentence had been carried out.

The members of the House of Commons, however, still pursued the matter, for on March 10, 1947,[1] Mr. Speaker was asked for his Ruling on the question whether any act by the Secretary of State for the Home Department or of the Colonies, in relation to the Royal Prerogative of Mercy, could be made the subject of Question in this House or be raised in Debate?

In the course of his Ruling, Mr. Speaker said that there were 2 questions involved and the Gold Coast controversy[2] might help to illustrate the general principle. First, the exercise of this Prerogative has been, by legal instrument, delegated to the Governor of the Gold Coast, who exercises this power on his own responsibility and not under any direction from the Minister, and who is not responsible to the House for the manner in which it is exercised.

The second aspect, in accordance with his advice, was that in delegating this Prerogative to a Colonial Governor, the King has not entirely divested himself of the Prerogative, which power would be exercised on the advice of the Minister as in the case of the Home Secretary in respect of the United Kingdom. A long series of cases had established the Rule that the Home Secretary cannot be questioned upon the advice he proposes to tender to His Majesty as to the exercise of the Prerogative of Mercy in any particular case. For one thing, a Minister is responsible to the King and not to the House for the advice he proposes to tender to His Majesty, though he is responsible to the

[1] *Ib.* 958-962. [2] 434 *Ib.* 958, 9.

House for the advice once it has been tendered. Moreover, it is obvious, as laid down by Mr. Secretary Mathews in 1887 and 1889 in the Lipski and Maybrick cases, and has been consistently upheld by the Chair that:

> it is . . . injurious to the administration of justice that the circumstances of a criminal case, on which the exercise of the Prerogative of Mercy depends, should be made the subject of discussion or of Questions in this House.

The House would, in such case, be claiming to be a court of appeal from the sentences pronounced by the courts if it allowed itself to discuss and decide on the circumstances of these cases. Mr. Speaker therefore held that the reprieve of the prisoners under sentence of death in the Gold Coast could not be made the subject of a Question, or be raised on any of the forms of proceedings, such as the Adjournment,[1] which are used specifically for the criticism of the Administration.[2] The cases of Mr. Smith and Sir William Harcourt were also quoted.

In reply to a further Question, Mr. Speaker said that a Notice of Question on the subject had been put in and refused, as had also the question whether the Adjournment could be moved under Rule 8.[3]

The general question, provided it did not involve legislation, was naturally the subject of Debate in the ordinary way without referring to the administration of a particular case under judgment now.[4]

On the 24th *idem*,[5] the matter was again raised in respect of these Gold Coast subjects of the King, of whom 2 were surviving, 3 having been executed that afternoon, and the sixth convicted man had died in prison. Would it therefore appear according to the above Ruling that members were now entitled to look at the facts of these cases?

To this Mr. Speaker replied that of those cases, 3 were executed and 2 had not been executed, therefore the whole matter was still *sub judice*. They must be taken together, and while 2 are still *sub judice* the whole matter was still *sub judice*.[6] One could not differentiate between the 2 cases. How could, continued Mr. Speaker, this case be brought before the House at the moment without prejudice and without reference to this exciting action of 5 men, 3 of whom were hanged and 2 not; as these cases had not yet been decided, they must be *sub judice*.

In reply to Questions as to whether the matter could not be discussed under the Consolidated Fund Bill, Mr. Speaker replied that the Governor's salary did not come under it. This was a matter of the Prerogative of Mercy, which was not debatable in the House.[7]

The Secretary of State has no power whatsoever. He can give advice to the King, but no one may ask what his advice is or that he should give his advice in advance. Nor, after he has given advice in the matter, can it be queried at all.[8] It would be quite impossible to discuss 3 men who are dead without possibly influencing the result in

[1] *See Ib.* 37-51. [2] *Ib.* 959. [3] *Ib.* 960. [4] *Ib.* 962. [5] 435 *Ib.* 1005-1018.
[6] *Ib.* 1006. [7] *Ib.* 1007. [8] *Ib.* 1011.

the case of the 2 men who are not dead and whose cases are still *sub judice*.[1]

On May 1,[2] an hon. member, in referring to the application of the Prerogative of Mercy to all cases, capital or otherwise, asked Mr. Speaker whether he would not expound his Ruling of March 10. Mr. Speaker then pointed out that in such Ruling he was dealing with the particular case of persons under sentence of death on the Gold Coast. The rule that the Minister could not be challenged on the advice he had given to the King until after the sentence had been executed, was, of course, not applicable to sentences of imprisonment.

In reply to another question, Mr. Speaker said that it was not for him to justify the practice of the House of Commons in this matter. For a long period it had been enforced by his predecessors with the general concurrence of the House and was founded on strong reasons of expediency, while maintaining the responsibility of the Minister in the House. How far it concerned the Committee, which it was suggested should be set up, was entirely a matter for the House to decide.

Another hon. member, in urging the appointment of a Committee, drew attention to the history of the Prerogative derived from an Act passed in 1535,[3] and to the fact that the Prerogative of Mercy was originally an ecclesiastical power derived by the King from His Holiness the Pope, and by that Act passed immediately after the Protestant Reformation. Mr. Speaker's reply was that it was for him to obey the practice of the House. If hon. members wanted that changed they must put down a Motion, but it was not within his power.[4]

And so ends an interesting instance, both of members of a Legislature probing a suspected case of injustice to some far-off and humble subjects of the King right down to its very roots, and of a Mr. Speaker standing resolute to his constitutional position against a hail of attempts to shake his attitude.

We feel assured our readers will agree that this case has merited treatment by Article rather than to have been dealt with as a repeated item in the usual Article: " Some Rulings by the Speaker and his Deputy at Westminster."

III. HOUSE OF COMMONS: M.P.S AND OFFICES OR PLACES OF PROFIT UNDER THE CROWN

By the Editor

The acceptance by members of the House of Commons of " offices or places of profit under the Crown " has been dealt with in the JOURNAL from time to time,[5] and the 1945-46 Session provided further interesting cases on the subject, this time concerning the validity of the elec-

[1] *Ib.* 1012. [2] 436 *Ib.* 2179-82. [3] 27 Hy. VIII, c. 24. [4] 436 *Com. Hans.* 5, s. 2182. [5] *See* JOURNAL, Vols. X, 98; XI-XII, 16, 18, 19, 26; XIII, 22; XIV, 34.

tions of 7 M.P.s in view of the terms of S. 24 of the Succession to the Crown Act, 1707.

After investigation by the Select Committee on Elections in that Session, the elections of 5 of these M.P.s were declared invalid because, at the time, such M.P.s held offices or places of profit under the Crown. Of the other 2, in one case the election was declared valid owing to his resignation from office having been effected before the date of the poll. In the remaining case, although the member was considered to be the holder of an " office or place " under the Crown, the office or place in question was not an office or place " of profit " within the meaning of the Act, his election was declared by the Committee in no way to have been invalidated by the retention of such appointment.

In respect of the 5 invalidations, Acts of Indemnity[1] (*of which later*) were duly passed under which the members were " discharged, freed and indemnified from all penal consequences whatsoever incurred by them respectively, by sitting or voting as members while holding the said offices."

In regard to the cases of Mrs. Jean Mann and Mr. John Forman a special Select Committee was set up.

In regard to the other cases, however, the " Select Committee on Elections " was given a general order of reference and issued 2 Reports.

All 3 Reports with their Minutes of Evidence and Appendices are both informative and interesting. As in the case of the Select Committee of 1941, this Committee recommended the repeal of the Act of 1707 and the urgent necessity of clarifying and re-enacting the Statute Law relating to offices of profit.

It is regretted that space does not admit of a detailed survey of all these cases, full of interesting points and valuable precedents as they are, but a summarized account of them will be given, with references fully quoted so that further research may be made by those desiring to do so.

The Cases of Mrs. Jean Mann and Mr. John C. Forman.

Select Committee.

On August 17, 1945,[2] a Select Committee of the House of Commons was appointed:

> to consider whether the elections of Mrs. Jean Mann and Mr. John C. Forman, as Members of this House for the county of Lanark (Coatbridge Division) and the Burgh of Glasgow (Springburn Division) respectively, are invalid on the ground that they at the time of their election were members of a Tribunal constituted under the Rent of Furnished Houses Control (Scotland) Act, 1943.[3]
>
> The Committee to have power to send for persons, papers and records and to sit notwithstanding any Adjournment of the House; 3 to be the quorum.
>
> The Committee consisted of 9 members.

Report.—On the 23rd *idem*[4] the Report[5] of the Committee (with

[1] 9 Geo. VI, c. 3, and 9 & 10 Geo. VI, c. 43. [2] 413 *Com. Hans.* 5, s. 272.
[3] 6 & 7 Geo. VI, c. 44. [4] 413 *Com. Hans.* 5, s. 803. [5] H.C. (1945-46), 3-1.

Minutes of Evidence and Appendices) was brought up, tabled and ordered to be printed.

The Committee held 2 sittings and examined Sir Gilbert Campion, K.C.B., Clerk of the House of Commons, Sir M. M. Craig, C.B., K.C., Legal Secretary, Lord Advocate's Department, and the 2 members in question.

The Committee stated:[1]

2. Section 24 of the Succession to the Crown Act, 1707, which is the basis of the voluminous statute law on the acceptance and holding of offices by Members of the House of Commons, provides that,

"No person, who shall have in his own name or in the name of any person in trust for him or for his benefit any new office or place of profit whatsoever under the Crown which at any time since the 25th October, 1705, have been created or erected, or hereafter shall be created or erected . . . shall be capable of being elected, or of sitting or voting as a member of the House of Commons. . . ."

In the case of the Rent of Furnished Houses Control (Scotland) Act, 1943, it is enacted that,

"The members and acting members of the Tribunal (constituted under the Act) shall receive such remuneration and such travelling and other allowances as the Secretary of State may, with the consent of the Treasury, determine."

The Committee were of opinion that both members were liable to the penalty. The fact that both had taken the Oath might be accepted as proof of sitting, though neither of them had voted.

Both members, in their evidence, showed that the small remuneration they had received on the rare occasions the Tribunals had met was, when set against expenses, a negligible amount, and that their Tribunal work was undertaken as a public duty and not for profit.[2]

Precedents submitted to the Committee by the Clerk of the House of Commons[3] supported the view that the receipt of remuneration by the holder of the office was immaterial, provided the office was one for which it was payable, "and this is so even when the remuneration is now fictional as in the case of the Stewardship of the Chiltern Hundreds".[4]

The early part of Paragraph 5 of the Report read:

5. The principle underlying the conception of the disqualification of office-holders was the fear that the independence of a member of the Commons might be affected by his dependence on the Crown. To-day this principle is still of great importance, in order to ensure that the House of Commons is a body acting without dependence on the executive or the government, and it is easy to see that if the rule were abrogated the House might be filled with a very large number of persons holding government posts and owing a duty to the executive, to such an extent that their independence might be compromised.

The latter part of this paragraph referred to the Select Committee of 1941.[5] The Committee therefore came to the conclusion that both elections were invalid and paras. 7-11 of the Report read:

[1] *Rep.* 2. [2] *Rep.* § 3. [3] Appdx. I. [4] *Rep.* § 4. [5] *See* JOURNAL, Vol. X, 101-111.

7. Your Committee are satisfied that the disqualification was incurred by Mrs. Mann and Mr. Forman by inadvertence, and that they acted in good faith, and Your Committee recommend that legislation should be introduced to relieve the two Members from the pecuniary penalties prescribed by Section 28 of the Act of 1707.

8. When a Sitting Member has accepted and held an office of profit which is incompatible with sitting in the House of Commons, the usual course is for the Member to vacate his seat and for the House to order a new writ for a by-election, followed by the passing of an Act of Indemnity to protect him against the recovery of penalties under the Act at the instance of a common informer.

9. Two recent precedents however—the Under-Secretaries of State Act, 1929, and the Arthur Jenkins Indemnity Act, 1941[1]—show that Acts of Indemnity have also permitted sitting Members, who inadvertently took disqualifying office, to retain their seats. But there is no precedent for a statute validating the election to Parliament of a candidate who was disqualified by holding an office of profit at the time of his election.

10. In considering whether they might recommend that the necessary Bill of Indemnity should indemnify the two Members to the extent of validating their election, as well as freeing them from penalties, Your Committee were influenced by the following facts:—

(i) In this case the electors recorded their votes a few weeks ago, after an unusually long election, and the vacation of the two seats now would mean a repetition of the whole electoral process, disturbing to the constituency and costly to the candidates of all parties, and with possibly the same result.

(ii) Although it is clearly the duty of candidates for election to Parliament to ensure that no disabilities attach to them, the two Members have convinced Your Committee that their service on the Tribunal was undertaken purely from public spirit and not in any way for profit. In fact they may have been out of pocket as a result of their work, and in these circumstances both Members were unaware that service on the Tribunal would constitute a legal disability for election.

11. Your Committee were anxious not to impose an unnecessary burden either on the electorate or on the two Members, whose disqualification is due to a technicality of the law rather than to any deliberate omission on their part, and notwithstanding the importance to the House of Commons of the principle underlying the prohibition of office-holding, as well as the existence of precedents against the validation of elections in such cases, Your Committee recommend in this case that a statute validating the election of Mrs. Mann and Mr. Forman be enacted.

In the last paragraph (12) the Committee consider that the Report of the Select Committee of 1941 contains recommendations which should be adopted at the earliest opportunity.

Evidence.—In reply to a *Q.*,[2] Sir Gilbert Campion said that according to some precedents whether the member actually accepted salary or not seemed to be regarded as irrelevant.

The following further *Qs.* to Sir Gilbert and his Answers are of particular interest:

79. *Q.* Yes. Just following that up, if we are to define these expressions ourselves, we find in the Act of 1707 the expression " office or place of profit," and we also find it preceded by the word " benefit." " No person, who shall

[1] *See* JOURNAL, Vols. XI-XII, 26. [2] *Q.* 18.

have in his own name . . . or for his own benefit any new office or place of profit." If we are to define this expression " office or place of profit," should we not take into account the word " benefit " ? to enable us to decide the question that Mr. Silverman has raised as to whether " profit " means reimbursement or actual profit ?

A. Of course, you are dealing with a law which is 250 years old now and about which something like 300 cases have arisen. I do not think it would be possible absolutely to start *de novo* without looking to see what previous interpretations there have been.

82. *Q.* On the assumption that he takes the office. I am not on that point at all. I am on the prior question as to whether the payments made in these cases were in fact such as to make them offices or places of profit. Might I ask this question, Sir Gilbert, if I may pursue the line I am on ? There are a number of cases, are there not, where expenses are expressly paid as such, specifically as expenses ?

A. Yes.

83. *Q.* Without anyone regarding those as places of profit under the Crown. Can you give us instances of that ?

A. I believe that in the case of Royal Commissions, when a Member of Parliament is appointed a Member of a Royal Commission he has to be very careful only to take the ordinary expenses, because if he took more—if in a particular case the expenses were increased above the normal—it would become a place of profit.

95. *Q.* Is this really relevant, Mr. Chairman: " Profit " does not mean monetary profit. " Profit " is a much wider word than mere " remuneration " or what monetary consideration is given. That is the whole meaning of the Lord of the Treasury having to vacate his seat, although he does not get any money. It is a profitable place; it is an honour ?

A. Profit can be notional.

The Appendix to the Memorandum by the Clerk of the House of Commons quoted the cases of: Whitley Harvey, 1839; Cambridge, 1866; Lords of the Treasury without Salary, 1906; Arthur Jenkins, 1941; Pringle, 1924, all of the United Kingdom; and the Warrego Election Case (Queensland), 1899.

Legislation.—The Bill for the Act:

to validate the election of Mrs. Jean Mann and John Forman, Esquire, to the House of Commons notwithstanding the holding of the office of member of a Tribunal under the Rent of Furnished Houses Control (Scotland) Act, 1943, and to indemnify them from any penal consequences which they may have incurred by sitting and voting as members of that House.

was introduced on October 10, 1945,[1] passed 2 *R.*[2] *C.W.H.*, reported without *amdt.*, passed 3 *R.* on the 15th *idem*, and after concurrence by the Lords, the Coatbridge and Springburn Elections (Validation) Bill duly became 9 Geo. VI, c. 3.

In moving 2 *R.* the Attorney-General (Sir Hartley Shawcross) stated that he recently held the Chairmanship of the Caterham Wages Commission for which there was statutory authority for salary. He was not paid a penny, but 2 days before the election his attention was drawn to the fact " that the mere holding of this office might constitute the holding of an Office of Profit under the Crown " and he effected

[1] 414 *Com. Hans.* 5, s. 266. [2] *Ib.* 564-578.

a hasty retirement from it just before presenting himself to his electorate.

The Cases of Mrs. F. R. Corbet and Messrs. S. S. Awbery, J. Harrison and J. Jones.

Select Committee.

During the same Session the above-mentioned cases were also inquired into by the Select Committee on Elections appointed on December 17, 1945,[1] but now with a general Order of Reference—namely:

to examine any cases which may be brought to their notice of Members of this House who may have been incapable of election to this House by reason of the fact that at the time of their election they held offices or places of profit under the Crown within the meaning of Section 24 of the Succession to the Crown Act 1707; and to report whether any such Member was on that account incapable of election to the House, and, if so, what course should be adopted in any such case.

The Committee (which consisted of 9 members) to have power to send for persons, papers and records; to sit notwithstanding any Adjournment of the House; and to report from time to time; 3 to be the quorum.

In moving the Motion the Attorney-General indicated the nature of the cases, without naming them, for the consideration of the Committee, and said that the House itself is the arbiter of its own constitution in these matters, and also that the Government would in due course consider the introduction of legislation to simplify and clarify this very confused and perplexing branch of law.

Question was put and agreed to.

Report.—On February 11, 1946,[2] the Report[3] (with Minutes of Evidence and Appendices) was brought up, tabled and ordered to be printed. The Committee held 5 sittings and examined 4 members whose names were brought to the notice of the Committee by letter from the Attorney-General. The members, as above-mentioned, were heard by the Committee, as were also the Solicitor-General (Sir F. Soskice, K.C.) and the Clerk of the House of Commons (Sir Gilbert Campion, K.C.B.).

Memoranda from the Ministry of Labour, Mr. Attorney-General and the Secretary of the Pensions Appeal Tribunals, relating to the offices held, were submitted in evidence.

In examination of the cases they reported as follows:

The Case of Mr. James Harrison, M.P.:[4]

3. Mr. Harrison was appointed by the Lord Chancellor a part-time member of a Pensions Appeal Tribunal under the Pensions Appeal Tribunals Act, 1943. The Schedule of the Act provides that members of Tribunals "shall be paid . . . such remuneration as the Treasury may determine." Mr. Harrison attended only three sittings of a Tribunal, all of them before the date of the poll—*i.e.*, on 22nd September, 1944, 9th January and 9th April, 1945. For

[1] 417 *Ib.* 1237-9. [2] 419 *Ib.* 36. [3] H.C. (1945-46), 71-1. [4] *Rep.* § 3.

each attendance he received a fee of thirty shillings, and no expenses were paid. Mr. Harrison's evidence established that he lost in wages more than he received in remuneration. On the 17th October, 1945, he wrote to the Secretary to the Pensions Appeal Tribunals a letter in the following terms:—

" It had been my intention of resigning from the panel of C.D. lay members of the Tribunals before, so please accept my resignation. . . ." This was acknowledged by a letter from the Secretary dated the 23rd October, 1945, reading:—

" I have received your letter of October 17th tendering your resignation as a lay member of a Pensions Appeal Tribunal. Please accept my thanks for your services."

Mr. Harrison's appointment was by letter dated October 29th, 1943, and was for an indeterminate period. As a matter of law, therefore, it appears that both on July 5th and July 26th, 1945, that is, Polling Day and the day of the declaration of the result, Mr. Harrison was still the holder of the appointment.

The Case of Mrs. F. R. Corbet, M.P.:

4. Mrs. Corbet was appointed a part-time assessor to sit with an Umpire to deal with hardship cases under the National Service (Armed Forces) Act, 1939, her appointment being made under Section 6 (3) and Part II of the Schedule to the Act, and the remuneration payable to her being provided for under Section 6 (10) (*a*) of the Act. As such, she became a member of a panel constituted by the Minister of Labour and National Service for the purposes of the Act, and was liable for selection by the Minister to sit as an assessor with an Umpire to deal with appeals from a Military Service (Hardship) Committee. The appointment was made by letter dated 31st May, 1943, and was, in the first instance, for one year until the 31st May, 1944. On the 13th May, 1944, however, a further letter was written inviting her to continue in her appointment " for the period ending 31st May, 1945, and, unless the Minister determines otherwise, for such longer period as may elapse before a further appointment is made." This further appointment she accepted, and this was an appointment which would only expire when " a further appointment is made ". It was not legally determined before the General Election in July, 1945, though Mrs. Corbet had not served or received fees since 1943, when she received eight guineas for two attendances.

The Case of Mr. S. S. Awbery, M.P.:

5. Mr. Awbery was likewise appointed to the panel of assessors to the Umpire under the National Service (Armed Forces) Act, 1939, on the 11th February, 1943. His appointment was, on the 12th February, 1944, extended " for the period ending 28th February, 1945, and, unless the Minister determines otherwise, for such longer period as may elapse before a further appointment is made ".

This extension of his appointment was accepted by Mr. Awbery. On the 21st July, 1945, Mr. Awbery wrote to the Minister of Labour in the following terms:—

" As a Parliamentary candidate I understand that it is necessary that I should relinquish my position as member of the National Service Hardship Committee. I therefore ask you to accept my resignation."

The Ministry of Labour replied to this letter on the 21st August, 1945, as follows:—

" I am directed by the Minister of National Service to refer to your letter of the 21st July . . . I am to say that in view of your subsequent election as a Member of Parliament the Minister feels that he must accept your resignation as assessor to the Umpire under the National Service Acts. . . ."

By his letter of the 21st July, 1945, Mr. Awbery asked the Minister to accept his resignation. If, however, his appointment was "unless the Minister determines otherwise, for such longer period as may elapse before a further appointment is made", it may be considered that his letter amounted to no more than an offer to terminate his appointment sooner than it would, under its terms, come to an end; since in accordance with its terms it could only end when a further appointment was made or the Minister decided that it should before the making of such further appointment come to an end. Unfortunately, Mr. Awbery's offer was not accepted by the Minister until the letter of the 21st August was sent. It seems, therefore, that in law both on July 5th and July 26th, 1945, Mr. Awbery was still the holder of the appointment, though the last of several attendances by Mr. Awbery was in June, 1944. Fees and expenses paid amounted to about £30.

The Case of Mr. Jack Jones, M.P.:[1]

Mr. Jones was appointed Chairman of a Local Appeals Board set up under Section 5 (4) of the Essential Works (General Provisions) No. 2 Order, 1942 (S. R. & O., 1942, No. 1594). His appointment was dated 1st October, 1943, and was for the period ending 31st March, 1944, "and unless the Minister determines otherwise for such further period as may elapse before another appointment is made". Mr. Jones served on eighty occasions and received about £210 in fees and expenses, the last occasion being in July, 1944, twelve months before his election. On the 3rd July, 1944, Mr. Jones was further appointed, but never served, as Chairman of a Reinstatement Committee set up to deal with questions arising under the provisions of the Reinstatement in Civil Employment Act, 1944. This appointment was until the 31st March, 1945, "and for such further period as may be determined." On 28th July, 1944, Mr. Jones was adopted as a parliamentary candidate, and on 30th July, 1944, he conveyed by telephone to the Ministry of Labour's regional office his verbal resignation from both appointments. In his evidence Mr. Jones told Your Committee that the regional officer accepted that verbal statement, and he was never summoned to attend further. In August, 1945, Mr. Jones wrote that owing to a misunderstanding on his part he was under the impression that he "had intimated informally last year that he intended that his retirement from the Chairmanship should date from the last session over which he had presided. . . ." On the 5th September, 1945, a letter was written from the Ministry to Mr. Jones in the following terms:—

> "It has just been brought to Mr. George Isaacs' notice that owing to a misunderstanding it was not realised that you wished to relinquish your appointments as Chairman of a Local Appeals Board and Reinstatement Committee . . . following your adoption as a parliamentary candidate last year. The Minister now accepts your resignation with effect from the 31st August, 1944, in accordance with your wishes. . . ."

In this case Mr. Jones' evidence was that his verbal resignation was verbally accepted by the regional officer, on behalf of the Minister, before 5th July, 1945, the date of the poll.

The Committee came to the conclusion that the 3 members in question, Mrs. Corbet and Messrs. Awbery and Harrison, held offices or places of profit under the Crown within the meaning of S. 24 of the Succession to the Crown Act, 1707, at the time of their election and were on that account incapable of election to this House, but that the resignation of Mr. Jones from his office was effective before July 5,

[1] § 6.

1945, the date on which the poll was taken, and that his election was valid.

The Committee were satisfied that the disqualifications of the 3 members had arisen purely from inadvertence, combined with the difficulty of interpreting and applying the existing law, and recommended that a statute validating the election of the 3 members be enacted.[1]

The Committee observed that they had in no way lost sight of the importance of the principle underlying the prohibition of office-holding by members—namely, the need of ensuring a free and independent House of Commons, but that the mischief against which the Statute of 1707 was aimed was remote from many of the cases which arose to-day, with the recent growth of administration of statutory bodies composed of part-time members.[2]

The Committee were in entire agreement with the recommendation of the previous Committee (H.C. (1945-46) 3-I) that the repeal of the Succession to the Crown Act, 1707, and the clarification and re-enacting of the statute law relating to offices of profit is not only desirable but urgent.[3]

The final paragraph of the Committee's Report reads:[4]

12. In addition to endorsing the recommendations of the Select Committee of 1941, Your Committee suggest that a provision might be included in the proposed new statute, requiring a parliamentary candidate to sign on nomination a general declaration relinquishing, and resigning from, any office of profit under the Crown which he may then hold. This general declaration might be drafted so as to be legally effective forthwith, or to be conditional upon election. Such a declaration would, of course, only guard against candidates holding office by inadvertence at the time of their election, and not against the case of a Member who inadvertently accepted office after election, for which the Report of 1941 suggested an appropriate procedure.

Evidence.—During the course of the examination of the Solicitor-General (Sir F. Soskice) the following were amongst the points which arose:

157. *Q.* The Chairman: In his (the Attorney-General's) memorandum he states: " Section 24 of the Succession to the Crown Act, 1707, so far as material, reads as follows:—' No person who shall have . . . any new office or place of profit whatsoever under the Crown which at any time since the 25th October, 1705, shall have been created or erected or hereafter shall be created or erected . . . shall be capable of being elected or sitting or voting as a Member of the House of Commons in any parliament which shall be hereafter summoned and holden.' "

A. That is the Section of the Act upon which the whole thing depends.

In regard to the General Election of 1945 the crucial date, said the witness, might be July 5 (polling day) or July 26 (declaration of result).

There was very little precedent. The only assistance he could give was that in the case of *Pritchard* v. *the Mayor of Bangor* reported in 13 Appeal Cases at p. 241 it was said that the functions of the returning

[1] § 8. [2] § 10. [3] § 11. [4] § 12.

officer in declaring the result were ministerial in character only. He would have thought that July 5 was the crucial date, but he could not pretend to hold any firm view about it. He would have thought the date would not matter very much, because it would appear that in each case the appointment, if it was an appointment within the meaning of the Act, was held on both dates.[1] The conclusion would be that inasmuch as what took place on July 26 was only ministerial, the substantive proceeding took place on July 5 when the poll took place,[2] when the electors made their choice.[3] So that his inclination would be to advise the Committee that July 5 was the crucial date,[4] the declaration of the result of the poll being merely an administrative act.[5]

If only one candidate was nominated that was the day on which he was elected, and he was subject to be called to Parliament as from that date. He was returned on that date and that was the date of his election.[6]

The distinction which had always been drawn between the phrases "under the Crown" and "from the Crown" was that the latter related to appointments made directly by the Crown; "under the Crown" relating to appointments made by Ministers having the necessary authority.[7]

On the witness being further examined he said: "If the appointment in question is an office or place, and remuneration is received in respect of it, it is no less an office or place 'of profit' by reason of the fact that the appointee would have earned more by following his ordinary avocation than he would receive by way of such remuneration."[8]

To the *Q.*—"Is the statutory disqualification applicable in a case where remuneration does not exceed out-of-pocket expenses and where there is therefore no profit in the ordinary sense of the term?"—the reply of the witness was: "If the payment was offered and accepted as remuneration, the disqualification will be applicable, even although the out-of-pocket expenses directly incurred through the performance of the duties involved, exceeds the amount of the payment. The position is otherwise, however, if the payment is offered and accepted as no more than a reimbursement of, or indemnity against, actual out-of-pocket expenses."[9]

The witness was asked: "Does the disqualification apply if the person accepting the office does so as a matter of public duty and does not attach any importance to the remuneration?" To which he replied: "If the appointment is a place or office of profit within the meaning of the Statute, the motive by which the holder was actuated in accepting it is irrelevant, as is also the fact that he may have attached no importance to the question of remuneration."[10]

In answer to another *Q.* the witness said: "Part of the doctrine, however, is this, that if there has ever been a monetary payment which

[1] *Q.* 158. [2] *Q.* 159. [3] *Q.* 160. [4] *Q.* 161. [5] *Q.* 162.
[6] *Q.* 166. [7] *Q.* 168. [8] *Q.* 201. [9] *Q.* 202. [10] *Q.* 203.

was a profit in the true sense, the office continues to be an office of profit within the meaning of the Statute, although the actual payment may have fallen into disuse, as in the case of the Chiltern Hundreds, where, I gather, no payment is made at all—not even a notional payment."[1]

Where a person is appointed to an office or a place of profit and does not take the remuneration, it would still be a place or office of profit.[2]

239. *Q.* A Parliamentary Private Secretary ?
A. I do not want to make a generalisation with regard to all those cases, but I should say you may have an office of profit, notwithstanding that the advantage which you derive is not immediately in terms of a cash payment. For example, the sort of thing I mean is this: Supposing, by virtue of the fact that you are an office-holder, you have the right to acquire a particular commodity at a price much less than its market value, and that kind of thing. In terms it very soon becomes assessable on a cash basis, because you know, roughly speaking, what that is worth to you, but the mere fact that it is an opportunity, for example, of exercising a right of that sort does not prevent it from being an office of profit, notwithstanding that it is not simply a right to receive cash.

Sir Gilbert Campion in his evidence quoted the case of Mr. Forsyth in the sixties who was made standing Counsel to the Secretary of State for India. That was an office paid by fees and was still treated as coming under the disqualifying Statute.[3]

In reply to a further *Q.* Sir Gilbert Campion said: " The Statute only deals with an ' office '. Surely, if fees are attached to the ' office ', it is an ' office of profit ' and an ' office of profit ', however much it may result in a loss to the holder of the ' office '. Mr. Silverman is introducing now a question of the type of man who holds the ' office ' who may be sacrificing something else in order to hold the ' office '. That does not prevent the office in itself being an ' office of profit '."

The Captain Mark Hewitson Case.

The Second Report[4] from the Select Committee on Elections (with Minutes of Evidence and Appendices) was, on March 5, 1946,[5] brought up, read, tabled and ordered to be printed.

This Report arose from a letter from the Attorney-General drawing the attention of the Committee to the case of Captain Mark Hewitson (Central Division: Kingston-upon-Hull), who may have held an office or place of profit under the Crown within the meaning of S. 24 of the Succession to the Crown Act, 1707.

The Committee held 2 sittings and heard evidence from the Solicitor-General and the Clerk of the House of Commons. A Memorandum from the Minister of Labour, relating to the offices held by the member at the time of his election, was also submitted in evidence.

Paragraphs 3, 4 and 5 read:

3. Captain Hewitson was appointed by the Minister of Labour a member of six Trade Boards set up under Sections 11 to 13 of the Trade Boards Act,

[1] *Q.* 232. [2] *Q.* 235. [3] *Q.* 440. [4] H.C. (1945-46), 92-1.
[5] 420 *Com. Hans.* 5, s. 192.

1909, the appointments taking place between 22nd October, 1941, the date of the earliest appointment, and the 8th May, 1944, the date of the latest. When the Trade Boards Acts, 1909 to 1918, were repealed by the Wages Councils Act, 1945, he remained a member of the respective Wages Councils which, under the latter Act, replaced the Trade Boards set up under the former Acts. Section 11 of the Trade Boards Act, 1909, provides for representative members, who are either elected or nominated (Section 11 (3)) and appointed members (Section 13). Captain Hewitson was a nominated *representative* member in each case. Section 21 of the Trade Boards Act, 1909, provides that *appointed* members may be paid such remuneration and expenses as may be sanctioned by the Treasury, and *representative* members any expenses, including compensation for loss of time, up to an amount sanctioned by the Treasury, which may be incurred by them in the performance of their duties. By Section 20 of the Wages Councils Act, 1945, Trade Boards were converted into Wages Councils and paragraph 9 of the First Schedule continues the distinction under Section 21 of the Trade Boards Act, 1909, whereby representative members as distinct from appointed members (described in the 1945 Act as "independent" members) are to receive travelling and other allowances as distinct from remuneration.

4. Under the Road Haulage Wages Act, 1938, Captain Hewitson was appointed a representative member of the Central Board which was set up under Section 1 (1) (*a*) of the Act. The constitution of the Board is set out in the First Schedule, which provides that representative members may receive travelling and other allowances, whereas the independent members are also entitled to fees.

5. It appears that at the time of his election in July, 1945, Captain Hewitson was a member of the seven Boards described above. In each of these cases a Ministry of Labour Memorandum (A/cs 150) governed the contractual relationship between Captain Hewitson and the Ministry of Labour. In accordance with the terms of this memorandum, which are very clearly drawn, Captain Hewitson received only expenses or allowances, and he never at any time received, or was entitled to receive, fees or remuneration as distinct from such allowances.

Paragraphs 6-9 give the terms of the Memorandum governing Captain Hewitson's appointment.

The conclusion the Committee came to, was that Captain Hewitson, as holder of each of the appointments referred to, was the holder of an "office or place" under the Crown, but that the office or place in question was not an office or place "of profit" within the meaning of S. 24 of the Succession to the Crown Act, 1707, and that in consequence Captain Hewitson's election was in no way invalidated by his retention of these appointments.[1]

Evidence.—In reply to a *Q.*[2] the Solicitor-General (Sir F. Soskice) expressed it as his opinion that if payment was offered and received as "profit" then it was "profit" within the meaning of the Succession to the Crown Act, but on the other hand, if it were offered and accepted not as "profit" but by way of reimbursement of expenses or loss, it was not "profit" within the meaning of such Act, and that from the information contained in the Memorandum by the Ministry of Labour and National Service it would appear that the appointment in each

[1] *Rep.* § 10. [2] *Q.* 474.

case was governed by the terms of " Form A/cs 150 ", with the result that payment in this case was not either offered or accepted as " profit ", but in each case as reimbursement of expenses or loss incurred by the holder of the appointment.[1]

Sir Gilbert Campion in his evidence said that the only thing which made him think a little was, " Compensation for loss of earnings ". He knew of no precedent where that had been the point to be decided by a Committee in a case of this kind, so that in deciding it the Committee would be deciding without any precedent to guide them. He thought they might very properly create a precedent.[2]

And in reply to a further *Q.*[3] the witness said:

A case where profit was possible, but not received, has still been held to disqualify, so I think it really turns upon the question whether compensation for loss of earnings is or is not a matter which would bring this office into the category of an " office of profit ". I think that is the point upon which the Committee has to decide, and they might very well decide that, in their view, it did not constitute an " office of profit ". I think that ought to be borne in mind.

Sir Gilbert also said that it had been held that membership of a Royal Commission was not an " office of profit ".[4]

Legislation.—On March 13, 1946,[5] the Camberwell, British and Nottingham Elections (Validation) Bill was introduced, and on the 2 *R.* stage considerable debate took place. In moving the Motion, the Attorney-General (Sir Hartley Shawcross) said that the Statute of Anne had been a source of difficulty in interpretation ever since it was passed. In present days with the increasing calls which the State made upon the services of private citizens in the administration of the machinery of government, the Statute had become a source of great embarrassment. The circumstances nowadays were vastly different from those in 1707. There were times when to an increasing extent private citizens were being invited, without any great expectation of significant remuneration, to assist by taking part in the activities of the various boards, tribunals and other bodies which were an essential and desirable feature of their administration.[6]

Sir Hartley concluded by stating that in due course, at some convenient time, the Government proposed to introduce legislation for the consideration of the House, which would seek to put this matter upon a more satisfactory and clearer basis. Before the next General Election they would ensure that legislation had been presented to the House in order that these difficulties might not arise again in any future Parliament.[7]

On March 22,[8] the Bill was considered in *C.W.H.*, reported without *amdt.*, and passed 3 *R.* It was then concurred in by the Lords and duly became 9 & 10 Geo. VI, c. 43.

[1] *Q.* 475. [2] *Q.* 511. [3] *Q.* 512. [4] *Q.* 518. [5] 420 *Com. Hans.* 5, s. 1115-1921. [6] *Ib.* 1886, 7. [7] *Ib.* 1889. [8] *Ib.* 2155.

IV. HOUSE OF COMMONS PROCEDURE, 1945-1947

By the Editor

The 3 Reports[1] from the Select Committee of 1945-46 whose recommendations were put into operation in 1947, add yet another Report to the long line[2] of Select Committee inquiries into its Procedure, instituted by the House of Commons, from time to time, in its efforts to meet " present-day difficulties ".

The Memoranda put in by the various authorities and their evidence before this Committee constitute a very broad inquiry into the problem of what the Lord President of the Council (Rt. Hon. Herbert Morrison) so aptly described as getting a quart into a pint pot.[3]

It was, however, generally suspected that, whatever Party came into power on the conclusion of World War II, the introduction of the legislation required for the task of reconstruction would submit the Parliamentary machine to a severe test; not to speak of the temporary disregard of the Septennial Act, 1715, by the extension of the life of the XXXVII Parliament to 9 years 6 months and 20 days, the fourth longest Parliament on record.

As usual, when a House of Parliament is in procedural difficulties, it turns to its Clerk for suggestions as to how they are to be overcome, and right nobly did Sir Gilbert Campion respond, for he also saw that there was simply not enough time for the work the House had to do.[4] His Memoranda alone covered 45 printed pages, one of which documents the Committee made the Appendix to their Second Report, and out of the 6,117 Questions in evidence at the inquiry 2,151 were addressed to the Clerk of the House of Commons.

In addition to this expert knowledge, advice was also sought from prominent members of the Clerk's staff (*whose names and offices are given below*), each in charge of their respective Departments and, to crown these, Mr. Speaker favoured the Committee with his views on the various problems as seen from the high angle of his office.

The vexed question of Delegated Legislation, now confronting some of our Parliaments Overseas, received considerable attention by the Committee, aided by the evidence of Sir Charles MacAndrew, the Chairman of the S.R. & O. Committee, and their able adviser and world-wide authority on the subject, Sir Cecil Carr, Counsel to the Speaker.

Opinions and suggestions on this subject were also invited from such legal luminaries as Dr. C. K. Allen and Dr. E. C. S. Wade.

To turn to the Departmental officials, the valued opinions of Sir Granville Ram, the First Parliamentary Counsel to the Treasury (equivalent to the Chief Government Legal Draftsman Overseas) and Sir Gilbert Upcott, the Comptroller and Auditor-General, were sought.

In addition to all these, Legislators themselves gave the Committee

[1] H.C. 9-1; 58-1; 189-1; (1945-46). [2] H.C. 75 (1902); 264 (1907); 246 (1913); 376 (1914). For other Procedure Com. inquiries *see* JOURNAL, Vol. I, 125, 6.—[Ed.]
[3] H.C. 189 (1945-46). Q. 5450. [4] Q. 2068.

the value of their long and practical experience in the working procedure of the House, namely:—the Rt. Hon. James Stuart, Anthony Eden, O Peake and W. Whiteley as well as those not of the Privy Council, namely—Sir J. Wardlaw-Milne, Sir Charles MacAndrew, Mr. W. Glenvil Hall, Wing-Commander J. Strachey and Major Patrick Buchan-Hepburn.

The Rt. Hon. Ernest Brown, Chairman of the important Procedure Committee of 1931-32, returned to his old haunts to give the Committee the benefit of his wide experience.

The whole inquiry centred round the very wide order of reference moved for in the House on August 24, 1945, by the Lord President of the Council, the senior Government Representative who, with Mr. W. Glenvil Hall, submitted the Memorandum by H.M. Government commenting on Sir Gilbert's proposals (Appendix to First Report) and gave evidence before the Committee.

Confronted with this galaxy of talent, judge " our " feelings when we sat down before the 3 Reports totalling 674 pages, embracing 25 Memoranda, 6,117 Questions in evidence, not to speak of debate covering over 100 columns in *Hansard*. Well might one quail before such a task. But no, we just sought retreat in the seclusion of a seaside cottage within sound of the waves of the Indian Ocean lazily lapping one of the golden strands of the Cape Peninsula, and every moment of our work was both a pleasure and a service.

At first, the Kitchener motto—" Thorough "—came to mind and a digest was also made of all the Memoranda and evidence. The latter had, however, reluctantly to be discarded or the Article would have more than filled this entire Volume.

Such cutting down was disappointing, as so much valuable material, as well as matter of general Parliamentary interest, had to be dropped.

It is hoped, however, that this Article will whet the appetites of Speakers, Clerks at the Table, Ministers and others specially interested in Parliamentary procedure, and encourage them carefully to study these 3 Reports, their attendant documents and evidence themselves. As the Overseas Dominions grow in population, revenue, Legislature-membership, national and constitutional development, it may not be long before they too will be faced with the problem of revising their procedure to meet modern demands.

With this brief introduction, we shall now leave the Article with the reader who, with the keys here put at his disposal, will be able more easily to make closer research into any branch of the subject in which he may be particularly interested.

PROCEEDINGS IN 1945.

Appointment of Select Committee.—Following inquiries made in the House of Commons in the 1945-46 Session[1] a Committee was set up on August 24,[2] with the following Order of Reference:

[1] 413 *Com. Hans.* 5, s. 189, 618. [2] *Ib.* 984-1058.

That a Select Committee be appointed to consider the Procedure in the Public Business of this House and to report what alterations, if any, are desirable for the more efficient despatch of such business.

The Committee consisted of 17 members and had power to send for persons, papers and records; to sit during any adjournment of the House; to report from time to time; and to appoint Sub-Committees for any purpose within the Order of Reference.

The following Instruction[1] was also passed, all the words after " Government " being added by amendment:

That it be an Instruction to the Committee that they do report as soon as possible upon any scheme for the acceleration of proceedings on Public Bills which may be submitted to them on behalf of His Majesty's *Government*, and that during the consideration of any such scheme they do report from day to day the Minutes of the Evidence taken before them and such other records relating to any such scheme as they may think fit and that if the House be not sitting they do send such Minutes and records to the Clerk of the House who shall thereupon give directions for the printing and circulation thereof, and shall lay the same upon the Table of the House at its next meeting.

Debate.—In moving the Motion for the appointment of the Committee, the Lord President of the Council said that one of the reasons for the extraordinary adaptability of their Parliamentary system to changing circumstances was the flexibility of their procedure, and in the past the House had kept its procedure under constant examination and re-examination.[2]

During the present century there had been the Balfour reforms of 1902,[3] followed by the procedure changes in 1907[4] and 1909; the Whitaker Committee of 1913[5] and the Brown Committee of 1931.[6] The interval between that year and 1945 was therefore on the long side and the need for examining their procedure afresh was also because of the immensity of work which confronted them. The proposals the Government intended to submit to the Committee were drafted by a Committee of Ministers in the Coalition Government, but the Government as a whole were in no way committed to those proposals, nor was the Cabinet.[7]. The Select Committee were in no way fettered.

The Leader of the Opposition (Rt. Hon. Winston Churchill) remarked that while the Government of the day naturally carried their own programme, the legislation which emerged from their discussions was not simply Party legislation, but legislation which bore the stamp of Parliamentary influence. Also, the House had a function, not merely of passing Bills, but of stopping bad Bills, or, at any rate, mitigating their effects, having due regard to the prevailing strength of the majority of the day.[8]

Unlike the French Assembly of bygone days, the House had not attempted to govern; it had left that to the Executive Government

[1] *Ib.* 1058. [2] *Ib.* 986. [3] H.C. 75 (1902). [4] H.C. 89 & 181 (1906). [5] H.C. 246 (1913); 378 (1914). [6] H.C. 161 (1931); H.C. 129 (1932). [7] 413 *Com. Hans.* 5, s. 987. [8] *Ib.* 994.

and confined itself to the functions of supervision, correction, and, in the last resort, to the removal of Ministers, if it thought that desirable.

He hoped the Committee would consider whether they could have more general debates, without prejudice to routine business.[1] Would it not also be well to revise their method of examining the Estimates? If, for instance, the Army Estimates were examined in 2 or 3 sittings by a Committee of 12 or 20 members representing all parties in due proportion, who would focus the points of criticism and the issues raised, the Estimates coming, in due course, before the House. There would be no interference with Ministerial responsibility by having a short report from such a Committee. The discussions would thus become more informal than when they consisted simply of individual statements by members on Departmental matters in which they were interested.[2] The best way of speeding legislation was the tact of the Leader of the House and the good will of the House as a whole.[3]

It was stated by another speaker that the Select Committee of 1931 failed to implement the evidence which was given, or the recommendations which were made, and it was still left for the House of Commons to devise some way of making its procedure work in accordance with the demand.[4]

(*Friday*, 12.16 *p.m. Message received to attend the Lords Commissioners to hear the Royal Assent to a Bill. The House went, and having returned Mr. Speaker reported the Bill to which it had been given.*)

Question was then again proposed on the Motion before the House.

The following are some of the other points brought forward in the continuation of the debate:

Bagehot said that good talk was better than bad talk, but bad talk was better than no talk at all.[5]

Amendment was proposed to add to the Order of Reference: " and thereafter do make suggestions for the provision and conduct of Private Members' time ", which, as Public Bills included Private Members' Bills, meant that they should, as soon as possible, consider the acceleration of proceedings on Private Members' Bills. The hon. member speaking had been an M.P. for 10 years and had taken part in every ballot, but had never drawn a horse.[6] There were things like the abuse of the Rules of Private Members' time; take the " counting-out " Rule: sometimes there were 3 Bills on the Paper every Friday, someone who did not like Bill 2 or 3 would count out Bill 1, which unfortunately had the effect of killing Bills 2 and 3, as well as the whole business of the day. The quorum, especially on Fridays, should be increased to 65 or 100.[7]

It would be a pity if the Select Committee recommended anything which curtailed discussions in the *C.W.H.* stage.[8] Legislation should be fully debated on the Floor of the House. The quicker the passage of a Bill through the House, the worse its quality.[9] The view that the

[1] *Ib.* 995. [2] *Ib.* 996. [3] *Ib.* 997. [4] *Ib.* 1000. [5] *Ib.* 1003.
[6] *Ib.* 1004, 5. [7] *Ib.* 1006. [8] *Ib.* 1014. [9] *Ib.* 1016.

fewer laws a Government passed the better it was, was shared by Thomas More, Erasmus, Vives, Francis Bacon, Hugo Grotius, Thomas Hobbs, Winstanley, James Harrington, Bellamy and many more.[1] On many occasions during the War when back benchers on both sides desired to raise matters of general interest, the Government, through the appropriate channels, provided opportunity for the discussion of subjects which would not ordinarily have come up in the course of Government business. It was hoped that the Government would maintain that system, which worked well.[2]

Said another hon. member:

> We intend to fight for the rights of Private Members on the occasion of every new Session of the House. We shall try, as we have done in the past, to preserve the liberties of Private Members and to see that Private Members' time is restored.[3]

It was from the fount of Irish obstruction, when Gladstone was Prime Minister, that hon. members to-day drew all the main limitations on the right to move the Adjournment, the Guillotine, the Kangaroo, the Closure, and all other instruments of torture invented for the affliction of those who displeased the Government by taking up too much time.[4] The Guillotine procedure was the most oppressive of all devices by which the House had been afflicted in the past 50 years.

In regard to the question of sending all Government Bills to Standing Committee, another hon. member remarked that:

> The abolition of discussion on matters of time, the specious excuse that you want to save time and to prevent exciting passions on the Floor of the House, all these are in the very nature of tyranny, because what excites passion on the Floor of this House is the very nerve and life-blood of the existence of this House. What excites passion is the process of the hammer of Government coming down on the anvil of Opposition and fashioning policy, and this must engender heat. The moment that you abolish the passion which that necessarily involves you will emasculate this House until it becomes a pale and impotent ghost unable to reflect the virile feelings and political intelligence of a great nation . . . if we were in any way to upset that, we should be destroying the very factor which has mercifully saved this country from bloodshed for 300 years.[5]

Mr. Morrison, in reply on the Debate, observed that if Parliament were to spend adequate time on the essentials of legislation and do its best to avoid the Guillotine—though he did not think it could avoid this—it must unburden itself of a lot of detailed legislation in which no real element of principle or policy was involved.[6] The real thing was to find a proper balance between the Government getting their business through and the Private Members expressing themselves in a way that enabled them to influence Government policy and Government activities.

H.C. 161 (1931-32) and 129 (1932-33).—On October 9, 1945, the Minutes of Evidence taken before the Select Committee on Procedure

[1] *Ib.* 1017. [2] *Ib.* 1028. [3] *Ib.* 1037. [4] *Ib.* 1041. [5] *Ib.* 1046. [6] *Ib.* 1050.

on Public Business in Session 1930-31 and the Select Committee on Procedure in Session 1931-32 were referred to the Select Committee on Procedure 1945-46.[1]

First Report.—This Report[2] (129 pp.), which deals principally with Standing Committees, was, together with the Appendix, the proceedings, evidence and Index, laid on October 16,[3] and ordered to be printed.

Between September 11 and October 16, 1945, the Committee sat 7 times and heard Mr. Speaker (Col. the Rt. Hon. D. Clifton-Brown, *Qs.* 1-80 and Memorandum, pp. 1-2); the Lord President of the Council (Rt. Hon. H. Morrison, *Qs.* 81-297); the Clerk of the House (Sir Gilbert Campion, K.C.B., *Qs.* 298-714 and Memorandum, pp. 32-42); the First Parliamentary Counsel to the Treasury (Sir Granville Ram, K.C.B., K.C., *Qs.* 715-764); the Chief Government Whip (Rt. Hon. James Stuart, M.V.O., M.C., M.P., *Qs.* 765-981 and Memorandum, pp. 76); and the Editor of *Hansard* (Mr. P. F. Cole, O.B.E., and Mr. O. Bradley, *Qs.* 982-1150 and Memorandum, pp. 92, 93).

The Cabinet Scheme above-mentioned dated September 3, 1945—namely, the Memorandum by H.M. Government—is contained in the Appendix to the Report, and the Committee in reference to para. 4 thereof state[4] that the scheme was conceived to meet the special circumstances of the period of transition from war to peace and it was assumed that, whatever Party should be in power at that time, a heavy programme of legislation would be urgently required for the purposes of reconstruction; also that it would not be possible to put through such a programme under normal conditions of Parliamentary procedure in one or two Sessions. The scheme therefore suggested modifications " which might be given a trial, on an experimental basis, during the first one or two Sessions after the end of hostilities in Europe ", such alterations to take the form of Sessional Orders during the experimental period.

The proposals for expediting the Committee Stage of Bills are contained in Part II of the Committee's Report, which embraces 5 proposals, their recommendations being:

First Proposal: That substantially all Bills should be referred to a Standing Committee.

Para. 6 of the Report reads:

6. S.O. 46 prescribes that " when a Bill has been read a second time it shall stand committed to one of the Standing Committees, unless the House, on Motion to be decided without amendment or debate, otherwise order ". The Order excepts:—

(*a*) Bills for imposing taxes or Consolidated Fund or Appropriation Bills; and

(*b*) Bills for confirming Provisional Orders.

To these two classes the Government proposals would in practice add three other classes:—

[1] 414 *Ib.* 44. [2] H.C. 9-1 (1945-46). [3] 413 *Com. Hans.* 5, s. 930.
[4] *Rep.* § 4.

(*c*) any bill which it may be necessary to pass with great expedition;

(*d*) " one Clause " Bills not requiring detailed examination in Committee; and

(*e*) Bills " of first-class constitutional importance ".

The Government would of course retain the right to move that the Committee stage of any important Bill should be taken on the floor of the House, if in the circumstances of the individual case that course seemed preferable.

The Committee approved of this Proposal.[1]

Second Proposal: That the number of Standing Committees should be increased, their size being reduced, if necessary, for the purpose.

The Committee agreed that as many Standing Committees should be appointed as are necessary expeditiously to dispose of the Bills coming up before the House and recommended that all Standing Committees should sit in the precincts of the Palace of Westminster.[2] Were 6 Standing Committees, in addition to the Scottish one, sitting concurrently, the difficulty might be overcome by the appointment of a third law officer.[3] The Committee concurred that the number of a Standing Committee should be a permanent nucleus of 20, with the addition of not more than 30 in respect of a Bill, the quorum to be 15. The constitution and quorum of the Scottish Committee to remain.[4]

Third Proposal: That the number of hours devoted to the sittings of Standing Committees should be substantially increased over the pre-War minimum standard of 4 hours per week.

The Committee suggested an increase to a meeting of 2½ hours, 3 days a week, in order to relieve congestion, and the revival of S.O. 49A,[5] to enable its meetings also to be held in the afternoon, by the adjournment of the House immediately after Questions; and the arrangement of sittings (after the first, which is fixed by the Chairman) to be in the decision of each Committee. The right of Private Members to the ½ hour Adjournment at the usual time to be preserved.[6]

[1] *Ib.* § 24 (*a*); *QQ.* 87; 301-2; 357, 385, 405; 443, 473-5. [2] *Rep.* §§ 8 & 24 (*b*).
[3] *Ib.* § 9. [4] *Ib.* §§ 10; 24 (*c*).

[5] S.O. 49, which was passed in 1919 but was never used and repealed as obsolete in 1933, is given in Sir Gilbert's Memorandum (p. 42) and reads: 49A (20th February, 1919). In order to facilitate the business of standing committees, a motion may, after two days' notice, be made by a Minister of the Crown at the commencement of public business, to be decided without amendment or debate, " That this House do now adjourn." Provided that, if on a day on which a motion is agreed to under this order leave has been given to move the adjournment of the House for the purpose of discussing a definite matter of urgent public importance, Mr. Speaker instead of adjourning the House shall suspend the sitting only until a quarter-past six of the clock.

Sir Gilbert's alternative to the above in order to permit the adjournment of the House for a limited time reads:

" In order to facilitate the business of standing committees a motion may, after two days' notice, be made by a Minister of the Crown at the commencement of public business to be decided without amendment or debate, " That this House do now adjourn till a quarter past seven o'clock this day." Provided that, if on a day on which a motion is to be moved under this order leave has been given to move the adjournment of the House for the purpose of discussing a definite matter of urgent public importance, the motion so to be decided shall be " That this House do now adjourn till a quarter past six o'clock this day."

[6] *Rep.* § 11-15, 24 (*d*), (*e*), (*f*). *Q.* 157.

Fourth Proposal: That machinery should be prepared for prescribing and enforcing a time limit on the proceedings in Standing Committee.

The Committee recommended that where the Government wish to prescribe a time limit in respect of the proceedings in a Standing Committee, the Guillotine Motion should name the date of report of the Bill; the detailed allocation of sittings to parts of the Bill to be made by a Sub-Committee of the Standing Committee consisting of the Chairman and 7 other members nominated by Mr. Speaker.[1] Para. 18 reads:

18. If this proposal were adopted, the main purpose of the Emergency Business Committee—to draw up a time table for proceedings in Standing Committee—would disappear, since the Second and Third Reading stages of a Bill are not divisible, and the Report stage is only divisible to a minor extent and in fairly obvious ways. Your Committee therefore consider that a central Emergency Business Committee is unnecessary; and that, if an allocation of time is considered necessary for the Committee stage of any of the few Bills which under the scheme may be referred to a Committee of the whole House, and for the Report stage of any Bills, the details should be embodied in the guillotine motion as heretofore.[2]

Fifth Proposal: That if a clause has been amended, debate should not be permitted on the clause unless the Chairman is of opinion that the principle of the clause, or any substantial point arising thereon, has not been adequately discussed.

The Committee remarked that this principle applied also to cases where the clause had not been amended. The proposal was therefore that no alteration is recommended in the *C.W.H.* practice in regard to debate on the Question: " That the Clause stand part of the Bill."[3]

The Committee approved:

That fuller use should be made of the practice by which the Minister in charge of a Bill circulates to the Committee notes on any clauses which are not readily understood without explanation.[4]

In regard to proposed minor changes in financial procedure on Bills, the Committee did not recommend the suggested change that on the Report stage of a Financial Resolution the question should be put without amendment or debate, but they saw no objection to the abandonment of the rule which prevents 2 stages of a financial Resolution being taken on the same day, so long as the right of any member to object thereto is preserved.[5]

The proposals:

(3) *That the rule under which a Financial Resolution is needed to cover provisions of a Bill requiring money to be paid into the Exchequer should be abolished.*

(4) *That the rule, that any new clause or amendment is out of order on report if it creates or imposes a charge on the public revenue or imposes or extends any tax, rate or other local burden, or varies the incidence of any such charge or burden, should be abolished in so far as it extends to rates or other local burdens.*

[1] *Rep.* §§ 16-17; 24 (*g*). [2] *Ib.* §§ 18; 24 (*h*). [3] *Ib.* §§ 19; 24 (*i*).
[4] *Ib.* §§ 20; 24 (*j*). [5] *Ib.* §§ 21; 22; 24 (*k*), (*l*).

—the Committee considered would be more appropriately dealt with in their later inquiries.[1]

Memoranda and Evidence.

Memoranda.—The Appendix to the First Report is a Memorandum by H.M. Government which contains a scheme for acceleration of proceedings on Public Bills covering the need for modification of Parliamentary procedure; reasons for emphasis on House of Commons procedure; subordinate legislation and private and provisional order Bills; reference of substantially all Bills to Standing Committees and acceleration of passage of Bills in Standing Committees; reference of Bills to Standing Committees; extension of sitting hours, time table, increase of number of committees, and minor amendments of practice and procedure for acceleration of Bills in Standing Committees; hours of sitting of Standing Committees; alternative methods as to time table on Proceedings in Standing Committee; number of Standing Committees; restriction of debate on the clause and increased use of explanatory material; improvement of time table procedure by the establishment of an " Emergency Business Committee "; minor changes in financial procedure on Bills; methods of curtailing time spent on other business and carry-over of Public Bills.

Mr. Speaker's Memorandum deals with: reference of substantially all Bills to Standing Committees; number and size of Standing Committees; revival of S.O. 49A; Guillotine proposals; Emergency Business Committee; minor amendments in Committee procedure; and new clauses or amendments imposing charges on rates; Report stage.

The Memorandum of the Clerk of the House deals with the comments on proposals of the Government scheme by: A.—Extended use of Standing Committees; B.—Improved time table procedure and proposed " Emergency Business Committee "; and, C.—Minor changes in Procedure. The Appendices to this Memorandum deal with: A.—The time spent on Committee stages of Bills (Para. 9); B.—Standing Committees and Emergency Business Committee; C.—Alternative to S.O. 49A; and D. and E.—Minor changes in Committee procedure.

The Memorandum of the Chief Government Whip deals with: reference of Bills to Standing Committees; time table on proceedings in Standing Committee; and Emergency Business Committee.

The Memorandum of the Editor of *Hansard* on the Government proposals covers reporting, hours of sitting, typing and typists' subsidies.

Evidence.—The evidence in connection with the First Report embraces 1,150 Qs., and should be read after the Memoranda, thus facilitating a fuller understanding of the Report.

Debate on First Report.—This Report was considered by the House on November 15[2] in a long debate, during which it was Resolved:

That this House doth agree with the Committee in the general recommendations contained in their Report.

[1] *Ib.* § 23.

[2] 415 *Com. Hans.* 5, s. 2344-2359; 2563-2466.

The following Sessional Orders were then, after amendments, agreed to:

That—

(1) For the remainder of this Session paragraph 1 of Standing Order No. 47 shall read (*See S.O.* 7 (1) *in Addendum to this Article*).

(2) For the remainder of this Session Standing Order No. 48 shall read, "Each of the said Standing Committees shall consist of twenty members, to be nominated by the committee of selection, who shall have regard to the composition of the House; and shall have power to discharge members from time to time, and to appoint others in substitution for those discharged. Provided that, for the consideration of all public bills relating exclusively to Wales and Monmouthshire, the committee shall be so constituted as to comprise all members sitting for constituencies in Wales and Monmouthshire. The committee of selection shall also have power to add not more than thirty members to a standing committee in respect of any bill referred to it, to serve on the committee during the consideration of such bill, and in adding such members shall have regard to their qualifications. Provided that this order shall not apply to the standing committee on Scottish bills."

(3) (*a*) A Standing Committee to whom a Bill has been committed shall meet to consider that Bill on such days of the week (being days on which the House sits) as may be appointed by the Standing Committee at a time and if not previously adjourned, at one o'clock the Chairman shall adjourn the Committee without Question put:

Provided that the first meeting of a Standing Committee to consider a Bill shall be at half past ten o'clock on a day to be named by the Chairman of the Committee.

(*b*) Government Bills referred to a Standing Committee shall be considered in whatever order the Government may decide.

(*c*) Nothing in this Order shall prevent a Standing Committee meeting at hours additional to those set out in sub-paragraph (*a*) of this Order.[1]

That—

(1) An Allocation of Time Order relating, or so much thereof as relates, to the Committee stage, made in respect of a Bill committed or to be committed to a Standing Committee shall, as soon as the Bill has been allocated to a Standing Committee, stand referred without any Question being put to a Sub-Committee of that Standing Committee appointed under paragraph 2 of this Order.

(2) (*a*) There shall be a Sub-Committee of every Standing Committee, to be designated the Business Sub-Committee, for the consideration of any Allocation of Time Order or part thereof made in respect of any Bill allocated to that Standing Committee, and to report to that Committee upon—

(i) the number of sittings to be allotted to the consideration of the Bill;
(ii) the hours of sittings, if any, additional to those set out in paragraph (3) of the Order of the House of ———— relating to Standing Committees;
(iii) the allocation of the proceedings to be taken at each sitting; and
(iv) the time at which proceedings, if not previously brought to a conclusion, shall be concluded.

(*b*) As soon as may be after an Allocation of Time Order relating to a Bill committed to a Standing Committee has been made, Mr. Speaker shall nominate the Chairman of the Standing Committee in respect of that Bill and seven members of the Standing Committee as constituted in respect of that Bill to be members of the Business Sub-Committee to consider that order, and those

[1] *Ib.* 2403.

members shall be discharged from the sub-committee when that Bill has been reported to the House by the Standing Committee. The Chairman of the Committee shall be the Chairman of the Sub-Committee; the Quorum of the Sub-Committee shall be Four; and the Sub-Committee shall have power to report from time to time.

(*c*) All Resolutions of a Business Sub-Committee shall be printed and circulated with the Votes. If, when any such Resolutions have been reported to the Standing Committee, a Motion " That this Committee doth agree with the Resolution (or Resolutions) of the Business Sub-Committee," is moved by the Member in charge of the Bill, such a Motion shall not require notice, and shall be moved at the commencement of proceedings at any sitting of a Standing Committee; and the Question thereon shall be decided without amendment or debate, and, if resolved in the Affirmative, the said Resolution (or Resolutions) shall operate as though included in the Allocation of Time Order made by the House.—(*Mr. H. Morrison*).

That in order to facilitate the business of Standing Committees a motion may, after two days' notice. be made by a Minister of the Crown at the commencement of public business:

(*a*) " That this House do now adjourn," and if the Question thereon be not previously agreed to Mr. Speaker shall adjourn the House without Question put half an hour after such a motion has been made; or

(*b*) " That this House do now adjourn till a quarter past seven o'clock this day," and the Question thereon shall be decided without amendment or debate. Provided that if, on a day on which the motion is agreed to under this Order, leave has been given to move the adjournment of the House for the purpose of discussing an urgent matter of public importance, or if opposed private business has been set down by direction of the Chairman of Ways and Means, the motion so to be decided shall be " That this House do now adjourn till a quarter past six o'clock this day."[1]—(*Mr. H. Morrison*).

MONEY COMMITTEES (MODIFICATION OF STANDING ORDER No. 69)

Resolved: That for the remainder of this Session Standing Order No. 69 shall have effect as if at the end thereof there were added, " and any resolution come to by such Committee may, with the general agreement of the House, be reported forthwith."—(*Mr. H. Morrison*).[2]

It was also Ordered: That Mr. Attorney-General, Mr. Solicitor-General, the Lord Advocate and Mr. Solicitor-General for Scotland, being Members of this House, or any of them, though not Members of a Standing Committee, may take part in the deliberations of the Committee, but shall not vote.[3]

PROCEEDINGS IN 1946.

Second Report.—This Report[3] (71 pp.), which deals principally with Questions and Divisions, together with its proceedings, evidence, appendix and index, was laid on January 24,[4] and ordered to be printed.

On February 20,[5] the Eleventh Report[6] of the Select Committee on National Expenditure in Session 1943-44 was referred to the Select Committee on Procedure.

The Committee, on their Second Report, between November 1, 1945, and January 24, 1946, sat 7 times and heard the Second Clerk-Assistant of the House of Commons (Mr. E. A. Fellowes, C.B., M.C., *Qs.* 1151-

[1] *Ib.* 2420, 2443. [2] *Ib.* 2465; *see also* Speaker's Ruling, 436 *Ib.* 1265-7. [3] H.C. 58-I (1946-47). [4] 418 *Com. Hans.* 5, s. 312. [5] 419 *Ib.* 1156; *see also* JOURNAL, Vol. XIII, 140. [6] H.C. 122 (1943-44); *see also* JOURNAL, Vol. XIII, 147.

1358 and Memorandum, p. 9); the Financial Secretary to the Treasury (Mr. W. Glenvil Hall, M.P.) and the Under-Secretary of State for Air (Wing-Commander John Strachey, M.P. (*Qs.* 1359-1438 and Memorandum, p. 19); Rt. Hon. A. Eden, M.C., M.P. (*Qs.* 1439-1504 and Memorandum, p. 30); Mr. Speaker (Rt. Hon. D. Clifton-Brown, *Qs.* 1505-1633 and Memorandum, p. 36); the Clerk of Public Bills (Mr. B. H. Coode) and a Senior Clerk in the Public Bill Office (Mr. S. Gordon, *Qs.* 1634-1765 and Memorandum, p. 50); the Parliamentary Secretary to the Treasury (Rt. Hon. William Whiteley, *Qs.* 1766-1804); and Major P. G. Buchan-Hepburn, M.P., *Qs.* 1805-1823).

The Committee opened their Report by stating that they regarded the right to put Questions to Ministers as one of the most important possessed by members and that the exercise of this right is perhaps the readiest and most effective method of parliamentary control over the action of the Executive. On the other hand, the very power of the right imposes upon members a proportionate responsibility in its use.

The Committee further observed that:

> The Departments very properly accord a high degree of priority to the answering of Parliamentary Questions. It is important therefore that Questions, especially oral Questions, should only be put down when other and less formal methods have failed to produce a satisfactory result, or when some information or action is urgently desired. Similarly, in deciding the date for which a Question is put down, regard should be had to the time which may be needed for the preparation of the answer and to the real urgency of the case. In fine, the smooth working of this form of parliamentary procedure (as indeed of all parliamentary procedure) depends to a great extent upon the individual Member. Your Committee venture to suggest that at the beginning of each Session of Parliament an appeal by Mr. Speaker to Members for discretion in the use of oral Questions would be opportune.[1]

The Committee directed their particular attention to the points (*a*) to (*d*), given below:

(*a*) *Number of Questions per Member per Day.*

The rule is that not more than 3 *Qs.* for oral answer may be placed on the Notice Paper by the same member for the same day.[2] In that Session about 150 such *Qs.* appeared each day, of which about 70 actually got such answers within the allotted hour, the remainder receiving written replies. This situation therefore suggested the reduction of the ration to 2 *Qs.* a member a day.[3]

(*b*) *Period of Notice for Oral Questions.*

The Committee observed that:

> The period of notice for oral Questions is prescribed by S.O. 7 (4) which says that " such question must appear at latest on the notice paper circulated on the day before that on which an answer is desired ". That is to say, the shortest time which a Department may have to prepare the answer to a Question is a little more than 24 hours. It was urged by representatives of the Government that in some cases this period of notice is insufficient, in particular where

[1] *Rep.* § 3. [2] *Manual of Procedure*, 1941, § 57. [3] *Rep.* § 5.

consultation is necessary between different Departments or between widely separated branches of the same Department, or where information has to be obtained from some distant part of the world. It was therefore suggested that the minimum period of notice should be increased from one to two days including Sundays.[1]

As many *Qs.* put down at the minimum period of notice do not appear to merit such urgency, the Committee recommended:

That the rule as to period of notice should be amended so as normally to give the Departments a full two days' notice. Questions received at the Table Office before the hour of sitting of the House should be deemed to have been received the day before. Arrangements should be made for copies of such Questions to be sent by hand to the appropriate Department as soon as they have been examined by the Clerk in Charge of Questions. In this way the Departments would have the advantage of several valuable working hours to initiate such inquiries as may be necessary for the preparation of an answer, and the right of Members to a quick answer to a really urgent Question would be preserved.[2]

In view of week-end difficulties, the Committee recommended that oral *Qs.* handed in during a Friday sitting should not require an answer before the following Tuesday.[3]

In order to carry out these recommendations the Committee proposed that S.O. 7 (4) should be amended to read as follows:

Any member who desires an oral answer to his question may distinguish it by an asterisk, but notice of any such question must appear on the notice paper at least two days (not counting Sundays) before that on which an answer is desired. Provided that questions received at the Table Office before the hour of sitting of the House shall be deemed to have been received the day before.[4]

(*c*) *Supplementary Questions.*

The Committee considered that the rules and practice in regard to supplementary Questions is a matter which should remain entirely within the Speaker's discretion.[5]

(*d*) *Questions not for Oral Answer.*

The Committee considered that undoubtedly the volume of Questions put down for oral answer is to some extent attributable to the uncertainty of written answers. If Members could be assured that they would get a written answer within a reasonable time, they would be encouraged to make more use of the Question for written answer and so relieve the pressure of oral Questions. The Committee therefore recommend that a written answer should be given within seven days after the appearance of the Question on the paper. It would also help to reduce the number of Questions, oral and written, if Departments made it a rule to answer letters from Members within a fortnight.[6]

Divisions.

The Committee considered the various suggestions in regard to the reduction of time spent on Divisions, including the mechanical method,[7] and heard evidence, but the Committee found that none of the suggestions would save much time and that the mechanical method suggested would be neither so convenient nor so accurate as the present

[1] *Ib.* § 7. [2] *Ib.* § 8. [3] *Ib.* § 9. [4] *Ib.* § 10. [5] *Ib.* § 11. [6] *Ib.* § 12.
[7] *See* JOURNAL, Vols. II, 55; IV, 36, for another instance.—[ED.]

method. Some saving of time is, however, expected when the new Commons Chamber is built.

Memoranda and Evidence.

Memoranda.—The Memorandum by the Second Clerk-Assistant of the House of Commons opens with a historical note and then gives, under " Modern Procedure ", the rules as to contents of Questions; limitation of the number of starred Questions a member may ask on the same day; limitation of time for Questions; Supplementaries; limitation of notice; unstarred Questions; relationship of Questions to other forms of Procedure, with an Appendix showing, for the 4 Sessions 1935-36 to 1938-39 in respect of Questions for Oral answer, the number of *Qs.* on the Paper and the number called.

The Government Representatives' Memorandum in respect of the period of Notice of " Oral Questions " deals with the present rule; the difficulties of Government departments thereunder; the suggested remedy and conclusions.

Mr. Anthony Eden's Memorandum draws attention to the lengthening of *Q.* time from 60 to 75 minutes; restricting a member from asking more than 2 oral *Qs.* a day; some additional restriction on Supplementaries; and giving additional powers to the Chair to disallow oral *Qs.* which deal with individual cases except in certain circumstances.

Mr. Speaker's Memorandum includes the subjects of: *Q.* hour; Supplementaries; reduction of the number of *Qs.* per day; Private Notice *Qs.*; and review of the period of notice of *Qs.*

The Clerk of Public Bills and a senior Clerk in the Public Bill Office put in a Memorandum on the possible methods of reducing the time taken for Divisions in the House of Commons and showing the present method, certain statistics of such Divisions; possible methods for shortening the time of Divisions; 3 Division clerks in each Lobby; omission of the second putting of the Question; more frequent use of S.O. 31; and a mechanical method.

All these Memoranda merit careful consideration.

Evidence.—The evidence in connection with the Second Report includes *Qs.* 1151-1823, all brimful of important matter and information of general interest.

Third Report.—This Report[1] (400 pp.), which deals with legislation, delegated legislation, control of policy and administration, control of finance, Private Members' Business, etc., was, together with its Appendix, proceedings, evidence and index, laid on October 31 and ordered to be printed.

Between January 31 and October 31, 1946, the Committee sat 26 times and heard the Clerk of the House of Commons (Sir Gilbert Campion, K.C.B., *Qs.* 1824-2278; 2279-2291; 2334-3012; 5719-6117; Memorandum, p. xxi, and Reply Memorandum. p. 348), and with

[1] H.C. 189-I (1946-47).

the Clerk of Committees (Dr. Orlo Williams, C.B., M.C., D.C.L., alone, *Qs.* 2292-2333); Mr. Speaker (Colonel the Rt. Hon. Douglas Clifton-Brown, M.P., *Qs.* 3013-3179 and Memorandum, p. 82); the Lord President of the Council (Rt. Hon. H. Morrison, M.P.) and the Financial Secretary (Mr. W. Glenvil Hall, M.P., *Qs.* 3180-3720; 5387-5718 and Memorandum, p. 97); the Chief Government Whip (Rt. Hon. James Stuart, M.V.O., M.C., M.P., *Qs.* 3721-3915 and Memorandum, p. 152); the Chairman and Senior members of the Committee of Public Accounts (Rt. Hon. Osbert Peake, M.P., and Mr. G. Benson, M.P., *Qs.* 3916-4110 and Memorandum, p. 170); the Comptroller and Auditor-General (Sir Gilbert Upcott, K.C.B.) and the Secretary of the Exchequer and Audit Department (Mr. F. N. Harby, *Qs.* 4111-4324 and Memorandum, p. 187); the late Chairman of the Select Committee on National Expenditure (Sir John Wardlaw-Milne, K.B.E.), and the Clerk of Financial Committees and lately Clerk to the Select Committee on National Expenditure (Captain C. Diver, C.B.E., *Qs.* 4325-4511, and Captain Diver alone, *Qs.* 4512-4620 and Memoranda, pp. 206 and 226); the Chairman of the Select Committee on Statutory Rules and Orders (Sir Charles MacAndrew, M.P., etc.), and the Counsel to Mr. Speaker and Assistant to such Select Committee (Sir Cecil Carr, K.C., LL.D., *Qs.* 4621-4790 and Memoranda, p. 243 and pp. 243-44); the former Professor of Jurisprudence in the University of Oxford and now Warden of Rhodes House (Dr. C. K. Allen, M.C., K.C., D.C.L., *Qs.* 4794-4996 and Memorandum, p. 261); the Downing Professor of the Laws of England, University of Cambridge (Dr. E. C. S. Wade, LL.D., *Qs.* 4997-5177 and Memorandum, p. 288); the Chairman of the Select Committee on Procedure, 1931-32 (Rt. Hon. Ernest Brown, M.C., *Qs.* 5178-5386 and Memorandum, p. 300). The Committee in para. 5 of this Report observes that:

> the problem is how to adapt the procedure of the House to enable it to perform efficiently all its functions in relation to present and prospective governmental activity.

and that the Clerk of the House accordingly devotes the first part of his Memorandum to an analysis of Parliamentary time from the point of view of the various functions which the House of Commons is called upon to perform. He adopts a fourfold classification: representation of popular opinion, control of finance, formulation and control of policy, and legislation. His analysis of the time spent on these functions in the periods 1906 to 1913; 1919 to 1928; 1929-30 to 1937-38 shows that in the last 40 years (excluding the War years) the over-all length of the Session has not varied much, averaging about 30 weeks, and that the distribution of time between the various functions has remained remarkably steady. Legislation has occupied the most time, slightly under half, as an average. Control of policy is found to occupy about 40 p.c., and is the most constant element of all. Control of finance occupies the least time, about 10 p.c. of the Session.

Legislation.—Under Part II of the Report, which deals with this subject, the Committee remark that the volume of legislation has increased nearly $2\frac{3}{4}$ times, which result was possible without increasing the number of days spent on legislation because the speed in dealing with it has increased in the same proportion, but that so far as procedure is concerned the saving of time has been brought about by extending the use of standing committees and by intensifying such methods of curtailing debate as selection of amendments, the allocation of time (the " Guillotine "), and the Closure, though the last-named was used sparingly in the latter part of the period.

Standing Committees.—The Report[1] then proceeds to deal with Sir Gilbert Campion's scheme for the reorganization of Standing Committees by delegating the detailed consideration of Bills at *Rep.* stage to such Committees (apart from the Scottish Committee) by the constitution of 2 large Standing Committees of 75 to 100 members and the division of each of the three into 3 sub-committees of 25 members, each to take the Committee stage of Bills referred to Standing Committees, reinforced by 15 members for each Bill, leaving the *Rep.* stage to be taken by the parent Standing Committee, instead of by the House itself, with the right at that stage of any member of the House who had given notice of an *amdt.* to a Bill committed to a Standing Committee to attend, and move such *amdt.*, as well as take part in debate upon it, but without the right to vote. The Standing Committee would then report the Bill to the House, which could, if it wished, recommit it to the Standing Committee but could not amend it. The Bill would, however, be debated as a whole on the Motion for its consideration and, when agreed to, would stand for 3 *R.* To work this scheme, a small business sub-committee for each Standing Committee would be necessary to allot the Bills referred to it among its sub-committees and to nominate the members of each sub-committee. The business sub-committee would also have to nominate for each Bill a sub-committee of not more than 7 members, for drafting and consequential *amdts.* in a Bill after its consideration by the sub-committee and before its report to the Standing Committee.

The Committee's main objection to this scheme, however, is the removal of the *Rep.* stage of Bills from the Floor of the House, which would be, in the words of Mr. Speaker, " drastic interference with the rights of private members,"[2] and would adversely affect any smaller parties who could not get adequate representation on the committees and sub-committees. Sir Gilbert's suggestion to meet this objection of outside members, the Committee remark, is entirely contrary to traditional practice. Therefore, with the addition of the bottle-neck which might thus occur in Standing Committees, the Committee were unable to recommend the proposal.[3]

As an alternative to Sir Gilbert's proposal, the Government representatives made 2 suggestions for shortening the procedure on Bills[4]

[1] *Rep.* §§ 9 & 10. [2] *Ib.* p. 83. [3] *Ib.* § 11. [4] *Ib.* p. 101.

(apart from the money proposals in Part IV) namely, that at the *Rep.* stage of Bills considered in *C.W.H.*, debate should be restricted by Order to Government *amdts.*, points left over at the *C.W.H.* stage for further consideration and any new points arising after *C.W.H.* Also that in view of the modern tendency for selection of *amdts.* at *Rep.* stage to become increasingly severe, the Committee did not consider that there is anything to be gained by making a formal rule which might give rise to difficulties of interpretation.[1]

The Committee did not recommend the proposals of the other Government representatives—namely, that the procedure on Motions for the recommittal of part of a Bill should be assimilated to that at present existing for Motions to recommit a whole Bill—namely, permission by Mr. Speaker for a brief explanatory statement of the reasons from the mover for, and from the opposer to, the Motion, after which the Question would be put.[2]

Sir Gilbert's proposal to transfer the 2 *R.* of Scottish Bills to the Scottish Standing Committee was, on account of the constitutional implications, not recommended by the Committee.[3]

Reorganization of Procedure on Supply.—Part III of the Report deals with *Control of Policy and Administration*, and Sir Gilbert Campion makes 4 criticisms of the procedure in *Com.* of Supply—namely, that—

(1) The discussion of Supplementary Estimates is apt to consume a disproportionate amount of time through being exempt from any form of guillotine;

(2) the opportunities for criticizing administrative policy provided by the days allotted to Supply are concentrated in a short period of the session between March and July, whereas they are needed throughout the session;

(3) debate on a Vote in Committee of Supply, together with the sole form of amendment possible—a conventional reduction by a small sum such as £100—affords at best a very rough-and-ready peg on which to hang a criticism of administrative policy; and

(4) the rule which precludes reference in debate in Committee of Supply to matters requiring legislation is increasingly felt to be restrictive and gives rise to anomalies.[4]

To meet (1) and (2) Sir Gilbert proposed that the Supplementary Estimates and the 4 days on which Mr. Speaker is moved out of the Chair be included in the number of allotted days to be increased to 28 and that allotted days should be spaced evenly over the Session.

The Committee recommended the adoption of numbers (1) and (2), provided that it be not regarded as diminishing the normal claims of the Opposition upon the time of the House, with the consequential provision that there should be one guillotine in March and one in July.[5]

As to Sir Gilbert's further suggestion for a fixed day in each week

[1] *Ib.* § 12. [2] *Ib.* § 13. [3] *Ib.* § 14. [4] § 18; pp. xxxvi-vii.
[5] *Ib.* §§ 19 & 62 (1) (*a*).

for the appointment of *Com.* of Supply, the Committee did not suggest laying down any rule, but recognize that an understanding for one day in the week to be so allocated would probably be for the general convenience of the House.[1]

In regard to numbers (3) and (4), the Committee agreed that the form of the question upon which the Votes were taken in *Com.* of Supply was misleading, and that the barred reference in that Committee to legislation did not work fairly. They suggested that on each occasion when Sir Gilbert suggests an alternative form to the ordinary form of question in such Committee—namely, " That a sum not exceeding £..... be granted, etc."—it should be possible to have a debate on an *amdt.* to the Question " That Mr. Speaker do now leave the Chair ", and that on such occasions debate should be freed from the rule which forbids reference to legislation.[2]

The Government Representatives considered it advisable that, apart from the 4 days on which the Speaker is moved out of the Chair on first going into *Com.* of Supply, the choice of the occasion when the proposals are to operate be made only with Government agreement. They were willing that the reference to legislation be relaxed unreservedly in debate on the 4 days in first going into *Com.* of Supply, but feared that, if there were no restrictions on the use of the proposed procedure on the days in *Com.* of Supply itself, it might be preferred too often, with the result that the whole character of the debate would change and the Estimates themselves might never be discussed at all.

The Committee approved Sir Gilbert's later suggestion that, apart from the 4 days on which the Speaker is moved out of the Chair on first going into *Com.* of Supply, the occasions, when the new procedure should operate, be limited, and the Committee recommended that, as an experiment, the new procedure be permitted on 4 other allotted days, the choice to be selected " through the usual channels ". There could thus be not more than 8 allotted days on which debates would be on an *amdt.* to the Question, " That Mr. Speaker do now leave the Chair ", and there would seem to be no longer any advantage in specifically allocating one each to the Army, Navy, Air and Civil Estimates.[3]

The Committee considered that the ballot for precedence in moving *amdts.* to the question, "That Mr. Speaker do now leave the Chair " be retained for the 4 days on first going into *Com.* of Supply. On any other day when the new procedure may be agreed upon, the right to frame the *amdt.* should be exercised by the Opposition.[4]

Control of Administration.—Paragraph 24 of the Report states that control of policy and administration takes up about 40 p.c. of the time of the House, but the two are distinct functions with preference to broad policy rather than administrative detail. Debates on the various stages of Consolidation Bills tend to be taken up with general policy instead of details of administration, as also is the case with the Esti-

[1] *Ib.* § 20. [2] *Ib.* § 21. [3] *Ib.* §§ 22; 62 (1), (*b*), (*c*). [4] *Ib.* §§ 23; 62 (1), (*d*).

mates, and all this in spite of the fact that the field of administration itself has steadily increased.[1]

Part IV: *Control of Finance* takes up about 10 p.c. of the time of the House, the explanation being that the control of expenditure has to a large extent passed from the House to the Public Accounts and Estimates Select Committees. Thus the 15 days a Session the House has on an average devoted to financial control has been mostly taken up with taxation.[2]

Control of Taxation.—Paragraph 33 contains a suggestion made by the Government representatives—

> that a small amount of time might be saved by shortening the proceedings on the Budget Resolutions and the Finance Bill. It was said that the present procedure involves duplication at two points: that the committee stage of the Budget Resolutions is duplicated in the second reading of the Finance Bill, and the report stage of the Resolutions in the committee stage of the Finance Bill. It was therefore proposed that at the Report stage of the Budget Resolutions the question should be put without amendment or debate, points of detail being left for discussion at the Committee stage of the Finance Bill.[3]

The Committee, however, in considering this suggestion, did not feel they could recommend to the House a proposal which, besides having certain practical inconveniences, would still further curtail the opportunities of members for taking part in one of the most important debates of the year.[4]

Control of Expenditure.—In regard to this subject the Committee remarked that the passing of the Estimates in *Com.* of Supply had almost ceased to serve the purpose of financial scrutiny and was used almost exclusively for the criticism of policy and administration. The origin of this development was in the ancient claim of the Commons to refuse grant of supply until their grievances have been redressed, a right gradually come to be exercised within the *Com.* of Supply; the practical justification of which is expressed in the words of the Select Committee of Procedure of 1931-32:[5]

> The Committee of Supply is a Committee of 615 Members. They cannot, therefore, effectively consider the details of finance. The time at their disposal is strictly limited. They cannot examine witnesses; they have no information before them but the bulky volumes of the Estimates, the answers of a Minister to questions addressed to him in debate, and such casual facts as some indefatigable Private Members may be in a position to impart. A body so large, so limited in its time, and so ill-equipped for inquiry would be a very imperfect instrument for the control of expenditure even if the discussions were devoted entirely to that end. But these discussions afford during twenty days practically the only opportunity in the course of the year for the debate of grievances and of many questions of policy. In the competition for time such matters usually take precedence, and questions of finance, especially these affecting the whole field, are crowded out.[6]

[1] § 25. [2] § 31. [3] § 33 & p. 100. [4] *Rep.* § 35; the voting on this paragraph in the Committee was equal and it is a tribute to the impartiality of these Committees that the Chairman, although a supporter of the Government, voted for the inclusion of para. 35.—[Ed.] [5] H.C. 129 (1931-32). [6] *Rep.* p. 36.

As a consequence of this change in the predominant functions of the *Com.* of Supply, financial criticism and control has passed to the Public Accounts and Estimates Select Committees.

Reference is also made to the war-time Select Committee on National Expenditure, the proceedings of which have already been described in the JOURNAL.[1]

Public Accounts Committee.—The Committee remarked that the Public Accounts Committee was primarily an instrument to ensure financial regularity in the accounts, and the function of the Estimates Committee was to criticize expenditure on the basis not of regularity but of economy and sound business principle.[2] The history of these Committees is given in paragraphs 38-43 of the Report, including reference to the independence of the office and duties of the office of Comptroller and Auditor-General, who is appointed by Letters Patent but is responsible to the House of Commons alone.

Proposed Public Expenditure Committee.—The Committee were in favour of Sir Gilbert Campion's proposal to combine the Public Accounts and Estimates Committees in a single Committee with sub-Committees, but with no changes in their powers, etc., or in the position of the Comptroller and Auditor-General.[3] The Committee also approved of Sir Gilbert's suggestion that provision be made for discussion in the House of the Reports of the proposed Public Expenditure Committee by giving them precedence in not more than 2 of the days allotted to Supply.[4]

Private Members' Business.—Part V of the Report deals with private members' time, which has greatly diminished since the XIXth century, when all the time was available to them and only 2 days a week allowed to the Government.[5]

Private Members' time provides opportunities for raising subjects and introducing Bills for which neither the Government nor the Opposition is willing to give facilities out of their time. The Committee recommended that Private Members' time be restored as soon as possible and that " the Ministers' Rule " (S.O. 10) again be available.[6] The Committee, however, did not deny that the present system of the distribution of Private Members' time is not entirely satisfactory, but they nevertheless preferred that the ballot be retained for Bills and Motions, notwithstanding its disadvantages.[7] The Committee made certain recommendations by which Private Members' time is spread more evenly over the Session, with a single ballot for Bills or Motions, the choice to the member, and notices of the terms of a Motion to appear on the Notice Paper circulated on the Friday before it is to be debated.[8] Under this arrangement Private Members would get the same number of days (20 instead of 21) as at present, but rather less time, though it would be possible for 6-10 Private Members' Bills to be passed each Session.[8]

[1] *See* Vols. IX, 80; X, 112; XI-XII, 117; XIII, 138; XIV, 159. [2] *Rep.* § 37. [3] *Ib.* §§ 42, 43; 64 (3), (*a*). [4] *Ib.* §§ 44; 64 (3), (*b*). [5] *Ib.* § 47. [6] *Ib.* §§ 48; 64 (4). [7] *Ib.* §§ 49, 50. [8] *Ib.* §§ 51; 64 (4).

Adjournment Motion under S.O. 8.—This opportunity to raise a definite matter of urgent public importance is all that remains of the formerly unrestricted right of members to move the Adjournment of the House at any time to raise any subject. Its present use is to enable urgent matters to be raised at short notice.

While the Committee did not consider that any change in the Standing Order was needed, they thought that a less narrow interpretation of it would be justified.[1] Sir Gilbert Campion suggested that, as the present procedure disturbed the prearranged order of business, this inconvenience might be mitigated if the time allowed for such Motions were reduced from 3½ to 2 hours and superseded business resumed after debate on the Motion, which business automatically became exempted business for a time equal to that spent on the Motion. The Committee, however, did not recommend any such reduction but that the time spent on the Motion should automatically be made by exempting the superseded business for the corresponding amount of time.[2]

Part VI: *Miscellaneous Proposals.*

Closure.—The Committee was not prepared to recommend the proposal that the Chairman of Ways and Means and Deputy Chairman should have the power to accept the Closure in the House, whether Mr. Speaker's unavoidable absence had been announced or not.[3] They pointed to the difference in the authority for the appointments of Speaker and Deputy Speaker, the former being an official appointment by the House and the latter by a Minister of the Crown from the supporters of the Government. The Committee therefore did not recommend a proposal which might tend to blur a distinction which the House had drawn so clearly.[4]

Time Limit of Speeches.—The Committee concurred in the view expressed by Mr. Speaker that " the influence of the Chair with the general support of the House is the only effective and practical check ".[5]

Part VII summarizes the Committee's recommendations already given under the various headings.

Delegated Legislation.—Several paragraphs[6] of the Report are devoted to this present-day problem, which is also exercising the attention of Houses of Parliament Overseas, as shown in the JOURNAL from time to time.[7]

In para. 16 of their Report the Committee remarked upon the advantages of delegating legislative power, without which Parliament could not cope with the quantity of detail involved in carrying out the policies laid down in the Acts. Though " Statutory Instruments " have the force of law and are therefore a form of legislation, the great bulk of them are administrative in character.

The procedure by which Parliament exercises control is dealt with under Part III, and the Committee remarked[8] how this form of legis-

[1] *Ib.* § 55. [2] *Ib.* § 56. [3] *Ib.* p. 101. [4] *Ib.* §§ 57, 58. [5] *Ib.* § 59, p. 83.
[6] *Ib.* §§ 15, 16, 25 to 30; 62 (2). [7] *See* Index to Vols.—[ED.] [8] *Rep.* § 25.

lation had grown in consequence of the increased field of administrative activity. The form of Parliamentary control applicable to Statutory Instruments is laid down by the Act under which it is made, but for the great majority of Instruments the governing Act provides no Parliamentary control at all.[1]

Where Parliamentary control is provided, it may take either confirmation of the Instrument by Resolution of both Houses (sometimes of the House of Commons alone), or that the Instrument remains in force unless a Motion to annul it is carried by either House within the period prescribed by the Act. Both cases rank as Exempted Business and are usually taken at the end of the day.[2]

Thus, apart from the Affirmative class, only those to which a member objects are discussed in the House. Until 1944, when the S.R. & O. Committee was set up, there was no provision for systematically scrutinizing Statutory Instruments.

The Order of Reference to this Committee, however, gives them no power to inquire into the merits of an Instrument, but only draws attention to those falling into one of the 5 classes.[3] In view of the difficulty in finding time for discussion of Statutory Instruments in the House, Sir Gilbert Campion suggested that the existing S.R. & O. Committee be empowered to consider and report on any Statutory Instrument in force as to its efficiency as a means of carrying out the purposes named by the governing Act. Such a Committee would be precluded by its terms of reference from criticizing the policy of the Act, but would inform itself of the Departmental considerations in framing the Instrument and on the basis of this information such Committee would consider whether the Instrument is well designed for its purpose and whether the method chosen was the least injurious to the rights of the citizen. In particular the Committee would concern itself with those Instruments attracting a substantial volume of public complaint.[4]

The Committee considered that the delegation of legislative power raised issues beyond the scope of the present investigation and that a Joint Committee of both Houses be appointed to go into the subject and the procedure in regard thereto.

Memoranda and Evidence.

Memoranda.—The Appendix to the Third Report consists of a 28 pp. Memorandum by the Clerk of the House of Commons, in which he makes suggestions for reform of procedure, the heads of which are:

INTRODUCTION.

A.—CRITICISM OF EXISTING PROCEDURE.

Functions of the House.
Forms of Proceeding appropriate to the various Functions.
Adequacy of Forms of Proceeding to the various Functions.

[1] *Ib.* § 26. [2] *Ib.* § 27. [3] *Ib.* § 28; *see also* JOURNAL, Vol. XIII. 171.
[4] *Ib.* §§ 29, 64 (2), p. 354.

I. Control of Finance.
II. Formulation and Control of Policy.
III. Legislation.
Summary of Directions in which Procedure might be Improved.
Distribution of Time between the Various Functions (Table I).
Distribution of Time between the Government, Private Members and the Opposition (Table II).
General Conclusion from Tables of Sessional Time.

B.—Suggested Reforms in Procedure.
I. Provision for the Examination of Expenditure.
II. Reorganization of Procedure in Supply.
III. The Adjournment Motion under S.O. No. 8.
IV. Reorganization of Standing Committees.
V. Application of Scheme to Scottish Bills.
VI. A Committee for Uncontentious Bills.
VII. Private Members' Bills and Motions.
VIII. Statutory Instruments.
IX. Time Limit on Speeches.

C.—General Effect of Proposals of Scheme.
Summary of Proposals.
Ideas on which the Scheme is Based.
Effect of the Scheme on the Functions of the House.
Effect of the Scheme on the Distribution of Time.

Appendices 1 to 1c. Distribution of Time (1906-13 and 1919-37/8).
2. Adjournment Motions under S.O. No. 8 . . (1882-1939).

Mr. Speaker in his Memorandum gives his view on provision for the examination of expenditure; reorganization of Procedure in Supply; Adjournment Motion under S.O. 8; reorganization of Standing Committees and the application of the scheme to Scottish Bills; a Committee for Uncontentious Bills; Private Members' Bills and Motions; Statutory Instruments; and time limit on Speeches.

The Government Representatives in Part I of their Memorandum make their comments on Sir Gilbert Campion's proposals, and Part II gives their alternative proposals.

The Chief Government Whip's Memorandum gives his views on the subject head of the inquiry.

The Chairman of the Public Accounts Committee with the senior member thereof, in their Memorandum express their opinion in regard to the proposed Public Expenditure Committee.

A Memorandum is put in by the Comptroller and Auditor-General showing the defects in the existing system of the examination of expenditure with the possible remedies and the proposed plan.

A Memorandum summarizing his evidence was put in by the late Chairman of the Select Committee on National Expenditure, also with reference to the proposed Public Expenditure Committee, and a Memorandum was submitted by the Clerk of Financial Committees and the late Clerk of the Committee on National Expenditure showing how such Committee had operated during the last War years, how the proposed new Committee might work in practice, with an additional

note on the operations of the National Expenditure Select Committee.[1]

The vexed question of Delegated Legislation is dealt with in a Memorandum by the Chairman of the S.R. & O. Committee and the adviser to such Committee, the Counsel to the Speaker.

This same subject, in its reference to Statutory Instruments, is also the subject of a Memorandum by a former Professor of Jurisprudence in Oxford University and by the Downing Professor of the Laws of England in Cambridge University, in both of which Memoranda suggestions are made. The Chairman of the Procedure Select Committee of 1931-32 (Rt. Hon. Ernest Brown) gives the value of his views in a Memorandum on reform in Procedure. Lastly, a detailed Reply Memorandum to the criticisms of the suggestions for reform is submitted by the Clerk of the House of Commons.

It is quite impossible to find space even to give a skeleton of these documents, vital and important as they are to the subjects of inquiry.

Evidence.—The evidence in respect of the Third Report, which includes Qs. 1824-6117, is full of the detailed and important information upon which the reports of Committees are based.

It is much to be regretted that the various Memoranda and the evidence before this exhaustive inquiry cannot be referred to more fully as they teem with information, both in direct application to the inquiry, as well as expressing the opinions of both members and officers of Parliament and others, which is of the utmost interest to Parliamentarians generally. Just to illustrate the latter, one or two examples by that veteran ex-M.P., the Rt. Hon. Ernest Brown, the Chairman of the Procedure Select Committee of 1932, are given.

In the first paragraph of his Memorandum this rt. hon. gentleman makes the following general remarks in regard to Parliamentary Procedure generally:

> There will always be two opinions as to whether parliamentary procedure should make it easier to pass legislation. There will be many who will say that, in view of the speed at which modern ideas are spread and of the size and complexity of the problems with which Parliament has now to deal, the democratic machine must be made to work more swiftly. There will be those who will say that the very size and complexity of modern problems demands closer scrutiny since many Acts and Statutes affect every soul in the nation. I doubt whether alterations in parliamentary procedure will satisfy either body of opinion. If a Government is determined to carry out an ambitious programme and the Opposition is equally determined to oppose to the full those items to which its members object the limits of achievement are not set by procedure but by time, the skill of the contestant, human frailty and by the presence or absence of the measure of goodwill necessary to satisfy Parliament as a whole. Nevertheless all lovers of the House of Commons will desire to see such improvements made from time to time that its procedure may be adapted to and efficient for its functions. This reform must enable the Government to govern, the Opposition to oppose and give Private Members a fair chance as representatives.[2]

[1] *See* JOURNAL, Vols. IX, 80; X, 112; XI-XII, 117; XIII, 138; XIV, 159.
[2] *Ib.* p. 300.

In a reply to one *Q.* Mr. Brown says: " A few determined men can make themselves very powerful in this House as we know,"[1] and that: " It is astonishing how in the House of Commons a man gets up who knows all about something."[2]

It is by digging deep down into the evidence given before these inquiries that the complete picture is obtained.

Debate and Questions.—During the Debate on the Address on November 12, 1946,[3] the Prime Minister (Rt. Hon. C. R. Attlee), in accordance with the usual practice, made a statement about the Arrangement of Public Business and the provision for reasonable facilities for debate. He had in mind the precedents in the past and recalled how much time was allowed them when in Opposition. He would endeavour to meet the wishes of the House with regard to the subjects brought forward, under the guidance of Mr. Speaker. To-morrow he would move to give precedence for Government Business and for stopping Ballot for Private Bills. He regretted asking for those facilities, but they had a heavy legislative programme. While they would like in due course to get back to the days of Private Members' time and Private Bills, the House would realize that after a great War they could not get back to normal. On the other hand, they would try to give full opportunities for debates of general interest and also safeguard the half-hour Adjournment at the end of every sitting—not only after exempted Business but also after a Division at the interruption of Business. They would give very careful consideration to the Third Report from the Procedure Committee.

PROCEEDINGS IN 1947.

In reply to a Q. on January 21, 1947,[4] the Lord Privy Seal (Rt. Hon. A. Greenwood), on behalf of the Lord President of the Council, said that the Government had the Third Report from the Select Committee on Procedure under close consideration, and when completed they would take an early opportunity of making their views known to the House.

On January 23,[5] the Government said that they had not yet had time to consider the Third Report.

Government's Views on Third Report.—On March 17,[6] further *Qs.* were asked in connection with the attitude of the Government in regard to the Third Report, when the Lord Privy Seal said:

> " That is a matter for further consideration. If I gathered from the rt. hon. and gallant gentleman that we should implement a report which we have not had time to consider, that is a matter for the future. As I pointed out, we must discuss these Rules before they come into operation."

However, the Government gave the following views on the 5 main recommendations of the Select Committee:

[1] *Q.* 5278. [2] *Q.* 5349. [3] 430 *Com. Hans.* 5, s. 31. [4] 432 *Ib.* 5, s. 1.
[5] *Ib.* 380. [6] 435 *Ib.* 29.

(1) *Reorganization of Supply Procedure.*—The Government agree with the Select Committee's proposal, except that they consider that there should be 26 allotted days instead of 28, and that there should be no limitation on the number of occasions when debate may arise on the motion: "That Mr. Speaker do now leave the Chair."

(2) *Inquiry into Delegated Legislation.*—The Government consider that such an inquiry would be premature, so long as the scope and form of subordinate legislation is influenced by wartime powers, and until experience has been gained of the working of the Statutory Instruments Act, 1946.

(3) *Public Expenditure Committee.*—The Government are opposed to this proposal, since they hold that the Public Accounts Committee and the Estimates Committee have distinct functions which would be confused by amalgamation. The Government will continue to give the utmost possible help to both Committees to enable them to be effective instruments of the House.

(4) *Private Members' Time.*—When Private Members' time can be restored, the Government would favour the introduction of a scheme on the lines proposed by the Select Committee.

(5) *Adjournment Motions under Standing Order No.* 8.—The Government agree with the Select Committee's proposal.

The Select Committee also considered, but did not accept, 7 suggestions by the Government. In view of the Select Committee's suggestions, the Government are prepared to drop 4 of their proposals, but propose to put the following to the House:

(1) In Committee of Ways and Means on the Budget Resolutions, all the Resolutions except one should, in accordance with present practice, be taken immediately after the Chancellor's Budget speech, the Committee dividing if necessary, and on the Report stage the Question should be put without Amendment or Debate.

(2) There should be a Committee of the House, consisting of the Members of the Chairmen's panel and five other Members nominated by Mr. Speaker, with the function of subdividing the time allocated, by Guillotine Resolution or voluntary agreement, to the Committee stage of any Bill taken on the Floor of the House, or to the Report stage of any Bill.

(3) In any proceedings in Committee, the Chairman should have power to disallow Debate on the Question: "That the Clause stand part of the Bill," if he is of opinion that the principle of the Clause, and all substantial points arising thereon, have been adequately discussed on Amendments.

Debate on Third Report.[1]—The debate on this, the most important of the 3 Reports, did not take place until early in the 1947-48 Session, November 4, 1947,[2] and covers over 240 columns of *Hansard.* Notwithstanding its great interest and value, it is regretted that space does not admit of even a précis of this debate being given. We shall therefore ask our readers to be content with an account of the actual amendments to the 1946 Standing Orders, the outcome of the inquiry, as given in the Addendum to this Article.

The proceedings in the House on the Third Report began with the Order:

That the Third Report (31st October, 1946) from the Select Committee on Procedure be now considered.—(*Mr. H. Morrison.*)

[1] H.C. 189-1 (1946-47).

[2] 443 *Com. Hans.* 5, s. 1547-1790.

After which the Lord President of the Council moved:

That this House approves the proposals contained in the statement made by the Lord Privy Seal on 17th March, 1947, arising out of the recommendations of the Select Committee on Procedure.[1]

—to which, after considerable debate, an amendment was moved: To leave out all words from the second " the " to the end of the Question and to insert " Report ".[2]

Upon the Question being put: " That the words proposed to be left out, stand part of the Question ", the House divided: Ayes, 279; Noes, 118; and the Main Question was then put and agreed to.[3]

The following Motions were successively moved and Question proposed:[4]

Relating to Public Business.

That the amendment to Standing Orders, and new Standing Orders, relating to Public Business, hereinafter stated in the Schedule be made and that Standing Orders Nos. 14 and 16 be repealed.[5]

(*The Schedule then follows.*)

Relating to Standing Committees :

That the several amendments to Standing Orders, and new Standing Orders, relating to Public Buisness, hereinafter stated in the Schedule, be made.[6]

(*The Schedule then follows.*)

Relating to Statutory Instruments :

That the Amendment to Standing Orders and new Standing Orders, relating to Public Business, hereinafter stated in the Schedule, be made.[7]

(*The Schedule then follows.*)

Relating to Sessional Orders :

That the several amendments to Standing Orders, and new Standing Orders, relating to Public Business, hereinafter stated in the Schedule, be made and that Standing Order No. 2 be repealed.[8]

(*The Schedule then follows.*)

Several amendments were moved in the House to the Scheduled Standing Orders but none was carried.

Addendum to Article.—The Standing Orders of 1946[9] as affected by the amendments agreed to in these Schedule Motions will now be taken in numerical order—showing, as it were, " form at a glance "—the omissions being indicated by heavy square [brackets] and the additions, and insertions by underlines.

[1] *Ib.* 1547. [2] *Ib.* 1573. [3] *Ib.* 1630. [4] *Ib.* 1633. [5] *Ib.* 1634.
[6] *Ib.* 1763. [7] *Ib.* 1783. [8] *Ib.* 1784. [9] H.C. 178 (1945-46).

Amendments to Public Business Standing Orders

Sittings of the House

Sittings of the House.

1.—(1) Unless the House otherwise order, the House shall meet every Monday, Tuesday, Wednesday, and Thursday at [a quarter to three] half-past two of the clock.

[(2) At half-past eleven of the clock Mr. Speaker shall adjourn the House without question put, unless proceedings exempted as hereinafter provided from the operation of this standing order, be then under consideration.]

(2) The House shall not be adjourned except in pursuance of a resolution: Provided that, when a substantive motion for the adjournment of the House has been proposed after ten of the clock Mr. Speaker shall, after the expiration of half an hour after that motion has been proposed, adjourn the House without question put.

(3) At [eleven] ten of the clock on Mondays, Tuesdays, Wednesdays, and Thursdays, except as [aforesaid] hereinafter provided, the proceedings on any business then under consideration shall be interrupted; and, if the House be in committee, the chairman shall leave the chair, and make his report to the House; and if a motion has been proposed for the adjournment of the House, or of the debate, or in committee that the chairman do report progress, or do leave the chair, every such dilatory motion shall lapse without question put.

(4) Provided always, that on the interruption of business the closure may be moved; and if moved, or if proceedings under the closure rule be then in progress, Mr. Speaker or the chairman shall not leave the chair until the questions consequent thereon and on any further motion, as provided in the rule " closure of debate," have been decided.

(5) After the business under consideration at [eleven] ten of the clock has been disposed of, no opposed business except proceedings exempted as hereinafter provided from the operation of this standing order shall be taken.

(6) The proceedings on a bill originating in committee of ways and means, proceedings made in pursuance of any act of parliament (including proceedings on the Army and Air Force (Annual) Bill), or proceedings in pursuance of any standing order, the proceedings on the reports of the committee of ways and means and of committees authorising the expenditure of public money, except the committee of supply, may be entered upon after [eleven] ten of the clock though opposed, shall not be interrupted under the provisions of this standing order, and if under discussion when the business is postponed under the provisions of any standing order may be resumed and proceeded with, though opposed, after the interruption of business.

(7) All business appointed for any sitting and not disposed of before the termination of the sitting, shall stand over until the next sitting, or until such other sitting on any day on which the House ordinarily sits as the member in charge of the business may appoint.

[(8) A motion may be made by a minister of the crown at the commencement of public business, to be decided without amendment or debate to the following effect: " That the proceedings on any specified business be exempted at this day's sitting from the provisions of the standing order ' Sittings of the House,' " and, if such a motion be agreed to, the business so specified shall not be interrupted if it is under discussion at eleven of the clock that night, may be entered upon at any hour although

opposed, and, if under discussion when the business is postponed under the provisions of any standing order, may be resumed and proceeded with, though opposed, after the interruption of business.]

(8) A motion may be made by a minister of the crown, either with or without notice at the commencement of public business to be decided without amendment or debate, to the effect either—

(*a*) That the proceedings on any specified business be exempted at this day's sitting from the provisions of the standing order 'Sittings of the House'; or

(*b*) That the proceedings on any specified business be exempted at this day's sitting from the provisions of the standing order 'Sittings of the House' for a specified period after the hour appointed for the interruption of business.

[(9) Provided always, that after any business exempted from the operation of this order is disposed of, the remaining business of the sitting shall be dealt with according to the provisions applicable to business taken after eleven of the clock.]

(9) If a motion made under the preceding paragraph be agreed to, the business so specified shall not be interrupted if it is under discussion at the hour appointed for the interruption of business, may be entered upon at any hour although opposed, and, if under discussion when the business is postponed under the provisions of any standing order, may be resumed and proceeded with, though opposed, after the interruption of business:

Provided that business exempted for a specified period shall not be entered upon, or be resumed after the expiration of that period, and, if not concluded earlier, shall be interrupted at the end of that period, and the relevant provisions of paragraphs (3) and (4) of this standing order shall then apply.

(10) Provided always that not more than one motion under paragraph (8) may be made at any one sitting, and that, after any business exempted from the operation of the order is disposed of after ten of the clock, the remaining business of the sitting shall be dealt with according to the provisions applicable to business taken after the hour appointed for the interruption of business.

[Friday sittings.] [2. The House shall meet every Friday, at eleven of the clock for private business, petitions, orders of the day, and notices of motions. Standing order No. 1 (3) (4) and (7) shall apply to the sittings on Fridays with the substitution of four of the clock for eleven of the clock; and the House shall continue to sit until half-past four of the clock, unless previously adjourned. After the business under consideration at four has been disposed of, no opposed business shall be taken. At the conclusion of business, or at half-past four of the clock precisely, notwithstanding there may be business under discussion, Mr. Speaker shall adjourn the House without putting any question.]

Friday sittings. 2. The House shall meet on Fridays at eleven of the clock for private business, petitions, orders of the day and notices of motions. Standing Order No. 1 shall apply to the sittings on Fridays with the omission of paragraph (1) thereof and with the substitution of references to four of the clock for references to ten of the clock.

Private Business

Time for taking private business.

6.—(1) No opposed private business shall be set down for the sittings on Friday.

(2) No private business shall be considered after a quarter to three of the clock upon Monday, Tuesday, Wednesday, and Thursday, and any business not reached shall stand over to the next sitting.

(3) Any private business entered upon and not disposed of by the time referred to in paragraph (2) of this order shall be deferred until such time as the Chairman of Ways and Means may determine.

(4) Private business, if so directed by the Chairman of Ways and Means, shall be taken at [half-past] seven of the clock on Monday, Tuesday, Wednesday, or Thursday, or as soon thereafter as any motion for the adjournment of the House standing over has been disposed of, provided that such business shall be distributed as near as may be proportionately between the sittings on which government business has precedence and the other sittings and, where any opposed private business is so directed by the Chairman of Ways and Means to be taken, the direction shall be taken to include the setting down of any motion contingent, directly or otherwise, thereon.

(5) No opposed private business other than that under consideration shall be taken after [half-past] nine of the clock.

Questions

Questions by members.

7.—(1) Notices of questions shall be given by members in writing to the clerk at the table without reading them *viva voce* in the House, unless the consent of Mr. Speaker to any particular question has been previously obtained.

(2) Questions shall be taken on Monday, Tuesday, Wednesday, and Thursday, after private business has been disposed of, and not later than a quarter to three of the clock.

(3) No questions shall be taken after [a quarter before four] half-past three of the clock, except questions which have not been answered in consequence of the absence of the minister to whom they are addressed and questions which have not appeared on the paper, but which are of an urgent character, and relate either to matters of public importance or to the arrangement of business.

(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] two days (excluding Sunday) before that on which an answer is desired.

Provided that questions received at the Table Office on Monday and Tuesday before half-past two of the clock and on Friday before eleven of the clock, may, if so desired by the member, be put down for oral answer on the following Wednesday, Thursday and Monday, respectively.

(5) If any member does not distinguish his question by an asterisk, or if he or any other member deputed by him is not present to ask it, or if it is not reached by [a quarter before four] half-past three of the clock, the minister to whom it is addressed shall cause an answer to be printed in the Official Report of the Parliamentary Debates, unless the member has before questions are disposed of signified his desire to postpone the question.

(6) Whenever the House is adjourned for more than one day, notices of questions received at the Table Office at any time not later than half-past four of the clock on either of the two last days on which the House is not sitting (excluding any Saturday or Sunday) shall be treated as if either day were a day on which the House were sitting at half-past four of the clock and the notice had been received after half-past two of the clock, and notices of questions received at the Table Office at any time not later than half-past four of the clock on a day before the penultimate day shall be treated as if they had been so received on the penultimate day.

Adjournment on Matter of Urgent Public Importance

Motion for adjournment on matter of urgent public importance.

8. No motion for the adjournment of the House shall be made until all the questions asked at the commencement of business on Monday, Tuesday, Wednesday, or Thursday have been disposed of, and no such motion shall be made unless by a minister of the crown before the orders of the day or notices of motion have been entered upon, except by leave of the House, unless a member rising in his place shall propose to move the adjournment for the purpose of discussing a definite matter of urgent public importance, and not less than forty members shall thereupon rise in their places to support the motion, or unless, if fewer than forty members and not less than ten shall thereupon rise in their places, the House shall, on a division, upon question put forthwith, determine whether such motion shall be made. If the motion is so supported, or the House so determines that it shall be made, it shall stand over until [half-past seven] seven of the clock on the same day.

Any proceeding which has been postponed under this order shall be exempted from the provisions of the standing order 'Sittings of the House' for a period of time equal to the duration of the proceedings upon a motion under this order, and may be resumed and proceeded with at or after ten of the clock.

Supply and Ways and Means

[Business of Supply.]

[14.—(1) Twenty days and no more (unless as hereinafter provided) being days before the 5th of August shall be allotted for the consideration of the annual navy, army, air, and civil estimates, including votes on account. The days allotted shall not include any day on which the question has to be put that Mr. Speaker do leave the chair, or any day on which the business of supply does not stand as first order.

(2) Provided that the days occupied by the consideration of estimates supplementary to those of a previous session or of any vote of credit, or of votes for supplementary or additional estimates presented by the government for war expenditure, or for any new service not included in the ordinary estimates for the year, shall not be included in the computation of the twenty days aforesaid.

(3) Provided also that on motion made after notice, to be decided without amendment or debate, additional time, not exceeding three days, may be allotted for the purposes aforesaid, either before or after the 5th of August.

(4) On a day so allotted, no business other than the business of supply and the consideration of the reports of the committee of public accounts and the select committee on estimates shall be taken before eleven, and no business in committee or proceedings on report of supply shall be

taken after eleven, whether a general order exempting business from interruption under the standing order (Sittings of the House) is in force or not, unless the House otherwise order on the motion of a minister of the crown, moved at the commencement of public business, to be decided without amendment or debate.

(5) Of the days so allotted, not more than one day in committee shall be allotted to any vote on account, and not more than one day to the report of that vote. At eleven on the close of the day on which the committee on that vote is taken, and of the day on which the report of that vote is taken, the chairman or Mr. Speaker, as the case may be, shall forthwith put every question necessary to dispose of the vote or the report.

(6) At ten of the clock on the last day but one of the days so allotted the chairman shall forthwith put every question necessary to dispose of the vote then under consideration, and shall then forthwith put the question with respect to each class of the civil estimates that the total amount of the votes outstanding in that class be granted for the services defined in the class, and shall in like manner put severally the questions that the total amounts of the votes outstanding in the navy, the army, the air, and the revenue departments estimates be granted for the services defined in those estimates.

(7) At ten of the clock on the last, not being earlier than the twentieth, of the allotted days, Mr. Speaker shall forthwith put every question necessary to dispose of the report of the resolution then under consideration, and shall then forthwith put, with respect to each class of the civil estimates, the question, that the House doth agree with the committee in all the outstanding resolutions reported in respect of that class, and shall then put a like question with respect to all the resolutions outstanding in the navy, the army, the air, the revenue departments estimates, and other outstanding resolutions severally.

(8) On the days appointed for concluding the business of supply, the consideration of that business shall not be anticipated by a motion of adjournment, and no dilatory motion shall be moved on proceedings for that business and the business shall not be interrupted under any standing order.

(9) Any additional estimate for any new matter not included in the original estimates for the year shall be submitted for consideration in the committee of supply on some day not later than two days before the committee is closed.

(10) For the purposes of this order two Fridays shall be deemed equivalent to a single sitting on any other day.]

Business of Supply.

14.—(1) Twenty-six days, being days before the 5th of August, shall be allotted to the business of supply in each session.

(2) On a day so allotted, being a day on which committee or report of supply stands as the first order, no business other than the business of supply shall be taken before ten of the clock, and no business of supply shall be taken after ten of the clock, whether a general order exempting business from interruption under the standing order 'Sittings of the House' is in force or not, unless the House otherwise order on the motion of a minister of the crown, moved at the commencement of public business, to be decided without amendment or debate.

(3) For the purposes of this order the business of supply shall consist of proceedings on motions 'That Mr. Speaker do now leave the chair';

Supplementary or additional estimates for the current financial year; any excess vote; votes on account; main estimates whether for the coming or the current financial year; and reports of the Committee of Public Accounts and the Select Committee on Estimates. But such business shall not include any vote of credit or votes for supplementary or additional estimates presented by the government for war expenditure.

(4) On a day not earlier than the seventh allotted day, being a day before the 31st of March, the chairman shall at half-past nine of the clock, forthwith put every question necessary to dispose of the vote then under consideration and shall then forthwith put the question with respect to any vote on account and all such navy, army and air votes for the coming financial year as shall have been put down on at least one previous day for consideration in committee of supply on an allotted day, that the total amount of all such votes outstanding be granted for those services. And the chairman shall then in like manner put severally the questions that the total amounts of all such outstanding estimates supplementary to those of the current financial year as shall have been presented seven clear days, and any outstanding excess vote (provided that the Committee of Public Accounts shall have reported allowing such vote), be granted for the services defined in the supplementary estimates or any statement of excess.

(5) On a day not earlier than the eighth allotted day, being a day before the 31st of March, Mr. Speaker shall at half-past nine of the clock forthwith put every question necessary to dispose of the report of the resolution then under consideration, and shall then forthwith put, with respect to each resolution ordered to be reported by the committee of supply and not yet agreed to by the House, the question 'that this House doth agree with the committee in that resolution.'

(6) On the last day but one of the allotted days the chairman shall at half-past nine of the clock forthwith put every question necessary to dispose of the vote then under consideration, and shall then forthwith put the question with respect to each class of the civil estimates that the total amount of the votes outstanding in that class be granted for the services defined in the class, and shall in like manner put severally the questions that the total amounts of the votes outstanding in the revenue departments and defence department estimates, and in the navy, the army, and the air estimates be granted for the services defined in those estimates.

(7) On the last of the allotted days, Mr. Speaker shall, at half-past nine of the clock, forthwith put every question necessary to dispose of the report of the resolution then under consideration, and shall then forthwith put, with respect to each class of the civil estimates, the question that the House doth agree with the committee in all the outstanding resolutions reported in respect of that class, and shall then put a like question with respect to all the resolutions outstanding in the revenue departments and defence department estimates, and in the navy, the army and the air estimates, and other outstanding resolutions severally.

(8) On any day upon which the chairman or Mr. Speaker is, under this order, directed to put forthwith any question, the consideration of

the business of supply shall not be anticipated by a motion to adjournment, and no dilatory motion shall be moved on proceedings for that business and the business shall not be interrupted under any standing order.

(9) For the purposes of this order two Fridays shall be deemed equivalent to a single sitting on any other day.

Orders of the Day for Committee

[16. Whenever an order of the day is read for the House to resolve itself into committee Mr. Speaker shall leave the chair without putting any question, and the House shall thereupon resolve itself into such committee, unless notice of an instruction to such committee has been given (when such instruction shall be first disposed of), or unless on first going into committee of supply on the navy, army, air or civil estimates respectively, or on any vote of credit, an amendment be moved or question raised relating to the estimates proposed to be taken in supply.] [When chair to be left without question put.]

Order of the Day for Committee

16.—(1) Whenever an order of the day is read for the House to resolve itself into committee other than a committee on a bill, Mr. Speaker shall leave the chair without putting any question, and the House shall thereupon resolve itself into such committee, unless on a day on which the committee of supply stands as the first order of the day a minister of the crown moves, "That Mr. Speaker do now leave the chair," for the purpose of enabling a motion on going into committee of supply to be moved as an amendment to that question. When chair to be left without question put.

(2) Notwithstanding the practice of the House which prohibits reference to matters involving legislation in the course of debate in, or on going into, committee of supply, Mr. Speaker may, when an amendment to the question "That Mr. Speaker do now leave the chair" is under discussion, permit such incidental reference to legislative action as he may consider relevant to any matter of administration then under debate, when enforcement of the prohibition would, in his opinion, unduly restrict the discussion of such matters.

23A. Whenever the House stands adjourned, and it is represented to Mr. Speaker by His Majesty's Government that the public interest requires that the House should meet at any earlier time during the adjournment, and Mr. Speaker is satisfied that the public interest does so require, he may give notice that he is so satisfied, and thereupon the House shall meet at the time stated in such notice and the government business to be transacted on the day on which the House shall so meet shall, subject to the publication of notice thereof in the order paper to be circulated on the day on which the House shall so meet, be such as the government may appoint, but subject as aforesaid the House shall transact its business as if it had been duly adjourned to the day on which it shall so meet, and any government order of the day and government notices of motions that may stand on the order book for any day shall be appointed for the day on which the House shall so meet; provided also that in event of Mr. Speaker being unable to act owing to illness or other cause, the chairman of ways and means, or the deputy chairman, be authorised to act in his stead for the purposes of this standing order. Acceleration of meeting during adjournment.

Counting out.

25.—(1) The House shall not be counted on Mondays, Tuesdays, Wednesdays and Thursdays between [a quarter-past eight] half-past seven and [a quarter-past nine] half-past eight of the clock, but if on a decision taken on any business between [a quarter-past eight] half-past seven and half-past eight of the clock it appears that forty members are not present, the business shall stand over until the next sitting of the House, and the next business shall be taken.

(2) Paragraph (1) of this standing order shall apply to sittings on Fridays, with the substitution of references to a quarter-past one and a quarter-past two of the clock for the references to half-past seven and half-past eight of the clock.

Notices of amendments, etc.

33A.—(1) Whenever the House is adjourned for more than one day, notices of amendments, new clauses or new schedules (whether they are to be moved in committee or on report) received by the clerks at the table at any time not later than half-past four of the clock on the last day on which the House is not sitting (excluding any Saturday or Sunday) may be accepted by them as if the House was sitting.

(2) Notices of amendments, new clauses or new schedules to be moved in committee may be accepted by the clerks at the table before a bill has been read a second time.

Committee of the whole House on bill.

34A. Whenever an order of the day is read for the House to resolve itself into committee on a Bill, Mr. Speaker shall leave the chair without putting any question, and the House shall thereupon resolve itself into such committee, unless notice of an instruction to such committee has been given, when such instruction shall be first disposed of.

Business Committee.

45A. There shall be a committee, to be designated "the Business Committee," consisting of the members of the chairmen's panel, together with not more than five other members to be nominated by Mr. Speaker, which committee

(1) shall, in the case of any bill in respect of which an allocation of time order has been made by the House, allotting a specified number of days or portions of days to the consideration of the bill in committee of the whole House or on report, divide the bill into such parts as they may see fit and allot to each part so many days or portions of a day so allotted as they may consider appropriate;

(2) may, if they think fit, do the like in respect of any bill to the consideration of which in committee of the whole House or on report a specified number of days or portions of days has been allotted by general agreement notified orally to the House by a minister of the crown; and

(3) shall report their recommendations to the House, and on consideration of any such report the question "That this House doth agree with the committee in the said report" shall be put forthwith and, if agreed to, shall have effect as if it were an order of the House.

Restriction of debate, on question for clause to stand part.

45B. If, during the consideration of a bill in committee of the whole House or in a standing committee, the chairman is of opinion that the principle of a clause and any matters arising thereon have been adequately

discussed in the course of debate on the amendments proposed thereto, he may, after the last amendment to be selected has been disposed of, so state his opinion and shall then forthwith put the question "That the clause (or, the clause as amended) stand part of the bill."

Constitution of standing Committees.

47.—(1) [Not more than five] As many standing committees shall be appointed as may be necessary for the consideration of bills or other business [referred] committed to a standing committee, and the procedure in those committees shall be the same as in a select committee unless the House otherwise order. On a division being called in the House, the chairman of a standing committee shall suspend the proceedings in the committee for such time as will, in his opinion, enable members to vote in the division. Any notice of amendment to a bill which has been committed to a standing committee shall stand referred to the standing committee. The quorum of a standing committee shall be [twenty] fifteen. Strangers shall be admitted to a standing committee except when the committee shall order them to withdraw.

(2) One of the standing committees shall be appointed for the consideration of all public bills relating exclusively to Scotland and committed to a standing committee, and shall consist of all the members representing Scottish constituencies, together with not less than ten nor more than fifteen other members to be nominated in respect of any bill by the committee of selection, who shall have regard in such nomination to the approximation of the balance of parties in the committee to that in the whole House, and shall have power from time to time to discharge, for non-attendance or at their own request, the members so nominated by them, and to appoint others in substitution for those discharged.

(3) Subject as aforesaid the bills committee to a standing committee shall be distributed among the committees by Mr. Speaker.

(4) In all but one of the standing committees government bills shall have precedence.

(5) Standing order No. 18 (as to irrelevance and repetition) and standing orders Nos. 26 (1), (2), (3) and (4) and 27 (as to closure) shall apply to standing committees, with the substitution in standing order No. 26 of the chairman of the committee for the chair, and, in standing order No. 27 of 20 for 100 as the number necessary to render the majority effective for the closure, and the chairman of a standing committee shall have the like powers as the chairman has under standing order No. 22 (as to dilatory motions), and under standing order No. 28 (as to selection of amendments).[1]

(6) All standing committees shall have leave to print and circulate with the votes the minutes of their proceedings and any amended clauses of bills committed to them.

Nomination of standing Committees.

48. Each of the said standing committees shall consist of [not less than thirty nor more than fifty] twenty members, to be nominated by the committee of selection, who shall have regard to the composition of the House; and shall have power to discharge members from time to time [for non-attendance or at their own request], and to appoint others in substitution for those discharged. Provided that, for the consideration of all public bills relating exclusively to Wales and Monmouthshire, the committee shall be so constituted as to comprise all members sitting for constituencies in Wales and Monmouthshire. The committee of selection shall also have power to add not [less than ten nor] more than

[1] *See* para. (5), S.O. 80 following this Article.—[ED.]

[thirty-five] thirty members to a standing committee in respect of any bill referred to it, to serve on the committee during the consideration of such bill, and in adding such members shall have regard to their qualifications. Provided that this order shall not apply to the standing committee on Scottish bills.

Meetings of standing Committees.

48A.—(1) A standing committee to whom a bill has been committed shall meet to consider that bill on such days of the week (being days on which the House sits) as may be appointed by the standing committee at half-past ten of the clock, unless the committee otherwise determine: Provided that—

(i) the first meeting of a standing committee to consider a bill shall be on a day and at a time to be named by the chairman of the committee;

(ii) no standing committee shall sit between the hours of one of the clock and half-past three of the clock.

(2) If a standing committee is not previously adjourned, the chairman shall adjourn the committee without question put at one of the clock: Provided that—

(i) if, in the opinion of the chairman, the proceedings on a bill could be brought to a conclusion by a short extension of the sitting, he may defer adjourning the committee until a quarter-past one of the clock;

(ii) if proceedings under the standing order "Closure of debate" be in progress at the time when the chairman would be required to adjourn the committee under this paragraph, he shall not adjourn the committee until the questions consequent thereon and on any further motion as provided in that standing order, have been decided.

(3) Government bills referred to a standing committee shall be considered in whatever order the government may decide.

Business Sub-Committee.

48B.—(1) An allocation of time order relating, or so much thereof as relates, to the committee stage, made in respect of a bill committed to a standing committee, shall, as soon as the bill has been allocated to a standing committee, stand referred without any question being put to a sub-committee of that standing committee appointed under paragraph (2) of this order.

(2) (*a*) There shall be a sub-committee of every standing committee, to be designated the business sub-committee, for the consideration of any allocation of time order or part thereof made in respect of any bill allocated to that standing committee, and to report to that committee upon—

(i) the number of sittings to be allotted to the consideration of the bill;

(ii) the hours of any additional sittings;

(iii) the allocation of the proceedings to be taken at each sitting; and

(iv) the time at which proceedings, if not previously brought to a conclusion, shall be concluded.

(*b*) As soon as may be after an allocation of time order relating to a bill committed to a standing committee has been made, Mr. Speaker shall nominate the chairman of the standing committee in respect of that bill and seven members of the standing committee as constituted in respect of that bill to be members of the business sub-committee to consider that order, and those members shall be discharged from the sub-committee when that bill has been reported to the House by the standing committee; the chairman of the committee shall be the chairman of the sub-committee; the quorum of the sub-committee shall be four; and the sub-committee shall have power to report from time to time to the standing committee.

(*c*) All resolutions of a business sub-committee shall be printed and circulated with the Votes. If, when any such resolutions have been reported to the standing committee, a motion "That this committee doth agree with the resolution (or resolutions) of the business sub-committee," is moved by the member at the time in charge of the bill, such a motion shall not require notice, and shall be moved at the commencement of proceedings at any sitting of the standing committee; and the question thereon shall be decided without amendment or debate, and, if resolved in the affirmative, the said resolution (or resolutions) shall operate as though included in the allocation of time order made by the House; but, if resolved in the negative, the resolution shall be referred back to the business sub-committee.

Attendance of law officers in standing Committees.

48c. Mr. Attorney General, the Lord Advocate, Mr. Solicitor General, and Mr. Solicitor General for Scotland, being members of this House, or any of them, though not members of a standing committee, may take part in the deliberations of the committee, but shall not vote or move any motion or form part of the quorum.

Adjournment of House to facilitate business of standing Committees.

49. In order to facilitate the business of standing committees a motion may, after two days' notice, be made by a minister of the crown at the commencement of public business, in either of the following forms:—

(*a*) "That this House do now adjourn" (in which case, if the question thereon be not previously agreed to, Mr. Speaker shall put the question half an hour after it has been proposed), or

(*b*) "That this House do now adjourn till seven of the clock this day" (in which case the question thereon shall be decided without amendment or debate):

Provided that if, on a day on which a motion in the terms of paragraph (*a*) of this order stands on the paper, leave has been given to move the adjournment of the House for the purpose of discussing a definite matter of urgent public importance, or opposed private business has been set down by direction of the chairman of ways and means, the motion shall be moved in the terms and subject to the procedure prescribed by paragraph (*b*) of this standing order.

Money Committees.

69. When notice has been given of a [resolution] motion authorizing expenditure in connection with a bill, the House may if the recommendation of the crown is signified thereto, at any time after such notice appears on the paper resolve itself into committee to consider the [resolution] motion, and any resolution come to by such committee may, with the general agreement of the House, be reported forthwith.

Ways and Means resolutions.

70A.—(1) When a minister of the crown in committee of ways and means has moved the first of several motions for imposing, renewing, varying or repealing any charge upon the people, the chairman shall forthwith put the question thereupon and shall then successively put forthwith the question on each further motion moved by the minister, save the last motion; and all such questions shall be decided without amendment or debate.

(2) On consideration of any resolution reported from the committee of ways and means for imposing, renewing, varying or repealing a charge upon the people, the question "That this House doth agree with the committee in the said resolution" shall be put forthwith.

Parliamentary Papers

Presentation of command papers.

93. If, during the existence of a parliament, papers are commanded to be presented to this House by His Majesty at any time, the delivery of such papers to the [librarian of the House of Commons] Votes and Proceedings Office shall be deemed to be for all purposes the presentation of them to this House.

Presentation of statutory instruments.

94. Where, under any Act of Parliament, a statutory instrument is required to be laid before Parliament, or before this House, the delivery of a copy of such instrument to the Votes and Proceedings Office on any day during the existence of a Parliament shall be deemed to be for all purposes the laying of it before the House.

Provided that nothing in this Order shall apply to any Statutory Instrument being an Order which is subject to special parliamentary procedure or to any other instrument which is required to be laid before Parliament, or before this House, for any period before it comes into operation.

Notification.

95. When any communication has been received by Mr. Speaker, drawing attention to the fact that copies of any Statutory Instruments have yet to be laid before Parliament, and explaining why such copies have not been so laid before the instrument came into operation, Mr. Speaker shall thereupon lay such communication upon the Table of the House.

These 4 Schedule Motions with the scheduled Standing Orders Schedules thereunder, were duly put and agreed to and embodied in the 1947 edition of the Standing Orders.[1]

In 1948 an Addendum slip to S.O. 80 in the 1947 Ed. of the Standing Orders was circulated showing the addition of paragraph (5) underlined below:

Deputy Speaker and Chairmen

80.—(1) Whenever the House shall be informed by the clerk at the table of the unavoidable absence of Mr. Speaker, the chairman of ways and means shall perform the duties and exercise the authority of Speaker in relation to all proceedings of this House, as Deputy Speaker, until the next meeting of the House, and so on from day to day, on the like information being given to the House, until the House shall otherwise order:

[1] H.C. 6 (1947-48).

provided that if the House shall adjourn for more than twenty-four hours the Deputy Speaker shall continue to perform the duties and exercise the authority of Speaker for twenty-four hours only after such adjournment.

(2) At the commencement of every parliament, or from time to time, as necessity may arise, the House may appoint a deputy chairman, who shall be entitled to exercise all the powers vested in the chairman of ways and means, including his powers as Deputy Speaker.

(3) Provided also that the chairman of ways and means or deputy chairman do take the chair as Deputy Speaker, when requested so to do by Mr. Speaker, without any formal communication to the House.

(4) Mr. Speaker shall nominate, at the commencement of every session, a chairmen's panel of not less than ten members to act as temporary chairmen of committees when requested by the chairman of ways and means. From this panel, of whom the chairman of ways and means and the deputy chairman shall be *ex officio* members, Mr. Speaker shall appoint the chairman of each standing committee and may change the chairman so appointed from time to time. The chairmen's panel, of whom three shall be a quorum, shall have power to report their resolutions on matters of procedure relating to standing committees from time to time to the House.

(5) Any member of a standing committee may act as temporary chairman of the committee when requested by the chairman of the committee, provided that it shall not be for more than one-quarter of an hour. Paragraph (5) of Standing Order No. 47 shall not apply when a temporary chairman of a standing committee is in the chair.

V. HOUSE OF COMMONS: WORKING OF MEMBERS' PENSIONS FUND, 1947-1948[1]

By the Editor

This Article is a sequel to that which appeared in the previous Volume of the JOURNAL, and brings the proceedings on the subject up to February 13, 1948. During this period there were also several minor references to the subject in *Hansard*.[2]

The White Paper,[3] now to be dealt with, is the Government's reply to the Report from the Select Committee on the House of Commons Members' Pensions Fund,[4] account of which has already appeared,[5] and should be read before consideration of the White Paper and of the following debate on the Motion in connection with such Report.

[1] *See also* JOURNAL, Vols. V, 28; VI, 139; VII, 38; VIII, 103; XI-XII, 129; XIII, 175; XIV, 44; XV, 149. [2] 430 *Com. Hans.* 5, s. 1413; 439 *Ib.* 684, 1141; 445 *Ib.* 580, 1199. [3] *Cmd.* 7282. [4] H.C. 110 (1946-47).
[5] *See* JOURNAL, Vol. XV, 152.

Cmd. 7282.—Of the 13 paragraphs of this White Paper, presented by the Chancellor of the Exchequer to Parliament on December 12, 1947, the first 5 reiterate generally what was covered in our last issue.

Paragraph 6 states that the Government considers that it is essentially for the Commons to decide what alterations in conditions of benefit and contributions should be made in the light of the Select Committee Report,[1] and in order that the House may assure itself that any changes made are actuarially sound the Government has obtained the advice of the Government Actuary on the Committee's proposals.

This official points out that the Select Committee's estimates make no allowance for any new grants in future without increasing the total pensioner roll—*i.e.*, on the cessation of benefit, by death or otherwise, to existing beneficiaries, including certain immediate awards. He suggests that, although such procedure might be appropriate in case of a stable-conditioned fund, it could not be justified in a fund which had been running for only 8 years, and may accordingly expect its pensioner population to increase for many years to come, unless artificially restricted.[2] Therefore, a continuance of past practice in making grants—particularly to M.P.s not retired after a dissolution—might seriously upset the balance of income and expenditure on which the Select Committee have based their proposals.[3]

Paragraph 9 of the White Paper and its attendant table read:

> 9. With the aid of up-to-date information from the officials of the Fund, the Government Actuary has examined the position as at 30th September, 1947, and has estimated that the higher rates of benefit and more generous conditions proposed by the Select Committee could only be maintained by an increase in the annual contribution from £12 to £21. On the other hand he estimates that the present rates and conditions of benefit could still be maintained if the rate of annual contribution were reduced to £9. The Government Actuary has also made estimates of the benefits which might be provided for the future if the rate of annual contribution were maintained at its present figure of £12, and also what further improvement could be made if the rate were raised to £15. The results of the Government Actuary's calculations are summarized in the attached table, which also shows the ultimate size of the Fund which should be accumulated in each case.

The concluding paragraphs, 12 and 13, are as follows:

> 12. It should be explained that throughout his estimates the Government Actuary has adopted the view expressed in the report of the Departmental Committee of 1937, that in the grant of pensions regard should be had to their capital value, the contribution being so fixed as generally to enable the full capital value of each pension to be set aside in the Fund at the time when the pension is awarded. By this means a reasonable degree of stability in the rate of contribution may be looked for, and if, at some future time, changed conditions should render unnecessary any further provision of pensions the payment of contributions could then cease immediately; the necessary funds would have been accumulated to provide for all existing pensioners, subject to the capital liability proving not to have been underestimated.

[1] *Ib.* Vol. XV, 152. [2] *Cmd.* 7282, § 7. [3] *Ib.* § 8.

	Ex-Member.		*Widow.*		*Government Actuary's Calculation.*	
	Maximum Pension.	*Income Limit.*	*Maximum Pension.*	*Income Limit.*	*Appropriate Annual Contribution.*	*Ultimate Fund Required.*
	£	£	£	£	£	£
1. Present scales. (Contribution of £12 now payable)	150	225	75	125	9	60,000
2. Select Committee's proposals. (Contribution of £9 proposed) ..	250	325	150	225	21	150,000
3. Possible alternative schemes worked out by Government Actuary:						
A	170	245	90	165	12	80,000
B	195	270	115	190	15	100,000

Note.—For simplicity the statement omits reference to children's benefits, but the estimates take into account present and proposed benefits to this class and would permit correspondingly improved scales in the two alternative schemes.

13. It is evident that a balance between income and expenditure in any year could be secured by an appropriate adjustment of the rate of contribution; thus, under the proposals of the Select Committee, the income needed to provide enlarged benefits could be obtained in the near future even with a reduced contribution of £9 a year instead of, as suggested by the Government Actuary, an increased contribution of £21, but the contribution could not be maintained at this reduced rate; if new pensions at the higher rates continued to be granted it would be necessary gradually to raise the contribution until, in the long run, it would probably rise to about £25 a year. Further, under this alternative method of financing the Fund, if the grant of new pensions were to be found unnecessary at some time in the future, the payment of contributions would have to continue for some years thereafter (or alternative income secured) until the capital liability in respect of the then surviving beneficiaries had been reduced to an amount equal to the accumulated Fund.

Report from the Select Committee (June 5, 1947).[1]—This Report was considered by the House of Commons on December 17[2] of that year, when the Chairman of the Select Committee in moving:

That in the opinion of this House the House of Commons Members' Fund Act, 1939, should be amended in order to extend its scope and to provide for increased payments and altered contributions.

[1] *See* JOURNAL, Vol. XV, 152.

[2] 445 *Com. Hans.* 5, s. 1787-1824.

said that the Fund was never a " pensions " but actually a " benevolent Fund " established for the assistance of ex-M.P.s,[1] or their orphaned children, overcome by adversity. The Fund had a present balance of £50,000. Under the existing machinery, the trustees might make the income of an ex-M.P. up to about £4 a week.[2] As the Fund was a benevolent Fund, with a means test, it was impossible to place it upon an actuarial basis. Therefore the White Paper could only be a guide. In order to obtain elasticity, the trustees were now compelled to ask for the amendment of the original Act,[3] by embodying an escalator clause to enable the raising or lowering of contributions to be achieved by a Resolution of the House.[4]

The following were some of the arguments put forward in the debate:

The expenses of the Fund are covered 4 times over by the contributions, of which £9 is invested and only £3 used.[5] The suggested £21 contribution is much too high. Under the Act, the £12 subscription is not a charge on income tax. The £9 contribution is sufficient.[6] They are paying £279 for a Government Actuary's report which is unnecessary.[7]

The Financial Secretary to the Treasury (Rt. Hon. Glenvil Hall) remarked that the White Paper was so reasonable in argument and conclusion that the House would accept it without much debate. It now appeared that 2 hon. members who had spoken asked their fellow-members to follow the Select Committee's proposals in their entirety.[8] (Mr. Hall here stated that, as this was a domestic, non-party, non-political matter, the Whips would not be on, if a vote were taken.) The Government wanted to know what hon. members thought about the subject. It must be remembered that, whether they liked the Government Actuaries or not, whether they accepted their advice or not, the House ought, when dealing with a fund of this kind, to have some data to go by. At present, they had only 17 or 20 beneficiaries, and, if the Actuaries' experience was anything to go by, in about 40 years there might be 60 to 80.[9] The present average of ex-M.P.s was 70 and of widows 63. Actuarial tables showed that average expectation of life of widows was another 17 years, but nothing like that in the case of ex-M.P.s.[10] Mr. Hall concluded by saying that, although it was for the House to decide, many of them did not agree to the Committee's recommendations to lower the contributions and to raise pretty steeply the amount of benefit paid. The Government did not think that a wise thing to do, and they hoped that the House would find some middle course acceptable to all concerned.[11]

Among other remarks made in the debate were: The existing conditions should, in general, be maintained—namely, that the age of 60 should be a condition of a grant, or, alternatively, if below that age, that the applicant should be incapable, by reason of infirmity, of earning

[1] *Ib.* 1788. [2] *Ib.* 1789. [3] 2 & 3 Geo. VI, c. 49. [4] 445 *Com. Hans.* 5, s. 1790. [5] *Ib.* 1791. [6] *Ib.* 1792, 3. [7] *Ib.* 1794. [8] *Ib.* 1795. [9] *Ib.* 1799. [10] *Ib.* 1800. [11] *Ib.* 1804.

his living. Members also adhered in their recommendation to the period of 10 years' service in the House to qualify for a grant, and agreed that, in applying the tests necessary to establish the means of the applicant, the trustees of the Fund should apply the same sort of tests as those for ordinary citizens who applied for public relief. It was reasonable to increase the benefit payments as proposed by the Committee; the cost of living had increased and the Select Committee's figures were fair and reasonable. Also, that as many members in receipt of pension as ex-officers, etc., could never become a charge on the Fund, it was reasonable, in the general interest, to keep the contribution as low as possible.[1]

Two main alterations in circumstances had occurred since the 1939 Act was passed, which were the crux of the whole matter—namely, the vast alteration in the value of money, and the raising of salaries of M.P.s.[2] They should support the Report of the Committee, but regard it as an interim one. The whole thing should be re-examined and legislation introduced to put the matter on a different basis.[3]

The following letter by the ex-Lord Privy Seal, etc. (Rt. Hon. J. R. Clynes), in *The Times* of December 16, 1947, was referred to in the debate:

UNREWARDED SERVICE

December 15, 1947.

SIR,

I read that soon there is to be a debate in the House of Commons on the Ex-Members Fund, and I should like to submit a few important points for public notice. From the start of the Fund I paid, like all other Members, £12 a year.

I did not seek re-election in 1945, and left the House after 35 years' service. I applied for aid from the Fund and showed a level of inescapable expenditure amounting to 3 times my weekly income. That was and is due to incurable injury by enemy action in one of the worst air raids years ago. I could not get anything whatever from the Fund; worse still my claim was set aside because my income was more than £4 10s. od. a week! Superannuation money from my trade union, the General and Municipal Workers, was higher than that figure. The Union has been the only source through which I have received substantial weekly benefit from contributions previously paid.

I have not asked for any public money nor for any pension for which I have not paid insurance premium. I should add that to the ex-Members Fund the State pays nothing whatever and the Fund has a large balance. I find it is still needful to add that ex-Cabinet Ministers do not receive any pension at all; I have been a Minister 3 times and ought to know.

I have to rely mainly upon savings stored for the needs of old age and family obligations, and only those who have grown old in a period of high prices and higher pensions and salaries for others can know what these things mean. If this were only a personal question I could say that unlike many others I served in Parliament for years with little or no pay for any purpose. But others are affected, and more than likely to be in years when Members will not have private means to prepare for their future. The figure of income was absurd when fixed years ago, and is now at present money values a monstrous means-test only second as a gross injustice to considering income only and discarding matters of heavy expenditure whatever their cause.

Faithfully yours,

LONDON, S.W. J. R. CLYNES.

[1] *Ib.* 1805, 6. [2] *Ib.* 1813; *see also* JOURNAL, Vol. XV, 147. [3] 445 *Com. Hans.* 5, s. 1816.

Question was put on the Motion and agreed to without Division.

Comptroller and Auditor-General's Report.—On February 13, 1948, this Report[1] for the year ended September 30, 1947, was presented, in which this official certifies that the Income and Expenditure Account, Investments Account and Balance Sheet respectively, have been audited and found correct.

To follow on from the last annual report of the Comptroller and Auditor-General, the position therefore is:

1	2	3	4
Year.	*Excess Income over Expenditure.*	*Capital Account.*	*Sum Invested.*
1946-47.	£	£	£
	6,865 14 9	54,979 16 11	52,091 11 11

The above excess of income has been carried to Capital Account, bringing it to the amount shown above.

No gifts, devises, or bequests have been received by the trustees in the year under S. 3 (2) of the House of Commons Members' Fund Act, 1939.[2]

VI. CANADA: HOUSE OF COMMONS PROCEDURE

By the Editor

The House of Commons of Canada Special Committee Procedure inquiries of 1944 and 1946 have been reported in previous issues of the JOURNAL.[3] Other points of procedure have been noted from time to time.[4]

The revision of certain aspects of procedure has, however, recently engaged the attention of members of that House, with the result, that Mr. Speaker (Hon. Gaspard Fauteux, M.P.) and their distinguished Clerk (Dr. Arthur Beauchesne, the author of Canada's most recent standard work on Parliamentary Procedure),[5] paid a visit to Westminster to make inquiries into the working of certain questions of Procedure, such as Financial Resolutions; Parliamentary investigations of expenditure; the Budget Speech; Questions; Adjournment (urgency) Motions; Appeals from Mr. Speaker's Decisions; Limitation on Speeches; division of the Session; Private Members' time; and the Dinner Hour Adjournment.

The result of that visit is the Report by the Speaker of the Canadian Commons, which is the subject of this Article.

[1] H.C. 66 (1947-48). [2] 2 & 3 Geo. VI, c. 49. [3] Vols. XIII, 54-61 and XV, 56-7. [4] *Ib.* Vols. XIII, 49, 51, 52; XIV, 58, 9; XV, 57-61. [5] *Rules and Forms of the House of Commons of Canada*, 3 ed., by Dr. Arthur Beauchesne, C.M.G., K.C., LL.D., Litt.D., F.R.S.C., etc. (Canadian Law Book Company Ltd., Toronto, Ont.).

There were also subsequent developments of this subject, but as they took place in 1948 they will be reserved for treatment in the Volume (XVII) of the JOURNAL reviewing that year.

On December 5, a Report on the Procedure of the House of Commons of Canada, by Mr. Speaker, was laid in that House.

He opens his report by remarking on complaints made in the past few years that protracted Sessions of Parliament are caused by deficiencies in the rules of procedure, which opinion is supported by some distinguished members of the Canadian Commons.

Mr. Speaker had often discussed the subject with the Clerk of the House, who pointed out that there were complaints against the rules of procedure in nearly all the Parliaments of the Commonwealth, and that the United Kingdom House of Commons in recent years had appointed several Select Committees on the subject.

Mr. Speaker goes on to say that he believes in simplification of procedure, but he does not think the rules should be altered fundamentally. Nevertheless many of the forms of procedure now in force need adaptation to new circumstances. Although they might take a leaf out of the United Kingdom House of Commons book, the Canadian Commons had developed a parliamentary practice of its own, based on British principles and yet clearly Canadian.[1]

Mr. Speaker observes that a 2-month Session, if mismanaged, is more wasteful of time than a 6-month Session during which no time has been lost. Freedom of speech is a sacred principle, and if there is a place where it should be fully respected it is the Parliament of the nation.[2]

Paragraph 55 of the Report, which gives a bird's eye view of the effect of the development of Canada upon its Parliamentary procedure, reads:

55. What we are now striving to do is to find means to expedite business and avoid waste of time. We must admit that we have in the past held our sessions rather leisurely because the administration of our public affairs has not always been as complicated as it is now. Our Standing Orders were passed when there were only four Provinces in the Dominion and the House did its work under the two-party system. We had not taken part in any war. Our finances did not cause much trouble, and as a result, sessions lasted on an average of about two or three months. Members' indemnities were considered generous at $1,000 a year. Members of the House of Commons could then take their time in performing their parliamentary duties. Compare that to the present time now that we are in the eightieth year of our national life. Conditions have so completely changed that one would almost think this is not the same country as in 1867. Some members live over two thousand miles from Ottawa. During the Sessions, they have to reside in the Capital city away from home and they have either to neglect or to give up entirely the professions or business establishments on which they depend to earn their living. They are very keen on performing to the full their duties as public men and citizens, but they insist on the time of the House being spent to good advantage. An increase of two more hours every sitting day when it can be done without any detriment either to themselves or the House will, I am sure, appeal to their patriotism and sense of duty. I submit that the proposition deserves the most serious consideration.

[1] *Rep.* § 10. [2] § 11.

The remarks and suggestions of Mr. Speaker will now be taken under the several subject headings of the Report, the suggested amendments to the Standing Orders being shown, the additions and insertions underlined, and the omissions being put between square brackets.

Financial Resolutions.[1]

Paragraphs 12 to 18 are devoted to this subject, and Mr. Speaker states that there is no doubt that their method is a waste of time and that:

> What Parliament wants to know nowadays is not only what amounts are to be voted but the manner in which they are to be expended. For that reason, members, at least in Canada, are anxious to see the Bill and would perhaps be satisfied if the Governor-General's recommendations were communicated to the House at the same time as the motion for leave to introduce the Bill, in the same way as is now done when motion is made for the House to go into Committee of the Whole at its next sitting to consider a resolution.[2]

Inquiry into Expenditure.[3]

In regard to this subject, Mr. Speaker suggests:

> The appointment of a committee to examine Estimates may be made by a simple motion after notice, in the same way as special or select committees are appointed; but if the House finds it more convenient to make this a Standing Committee it may amend Standing Order 63, by adopting the following motion:—
>
> That Standing Order 63 be amended by adding after sub-section (1) the following:
>
> (*m*) on Estimates, consisting of 35 members, 10 of whom shall constitute a quorum.

S.O. 63 (1) would therefore read:

> S.O. 63 (1). 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 following Standing Committees of the House.[4]
>
> (*Here follows* (*m*) *as above.*)

Mr. Speaker remarks that:[5]

> The Public Accounts Committee can do very good work in controlling expenditures, but for some reason or other the House has not availed itself of the many opportunities to have this Committee investigate payments made by the Government. For it must be well understood that the Public Accounts Committee is essentially an Opposition Committee. That Committee ought to be kept in full activity as far as its own functions are concerned, but in addition to it there ought to be here, as there is in the United Kingdom, a Special Committee on Estimates.

Also that one may admit that so far as debate is concerned, the detailed examination of the Estimates is almost a fiction.[6] The proper place for a careful inspection of the yearly expenditure is a Select Committee,

[1] *See also* JOURNAL, Vol. XV, 57, 8. XI-XII, 39; XIII, 8, 61; XV, 57. [2] § 18. [3] *See also* JOURNAL, Vols. [4] *Rep.* § 56. [5] § 21. [6] § 24.

and Mr. Speaker suggests that the device resorted to in the United Kingdom House has great merit and should be given the most serious consideration.

Full discussion of the country's expenditure is the paramount function of the House of Commons and nothing, not even the desire to save time, should be allowed to impair it.[1]

Paragraph 27 reads:

The objectionable part of our Procedure is not the length of sessions but the undignified rush with which the Estimates and Bills are passed in the last days. No amendment to the Standing Orders could improve that condition, but a great deal can be done if arrangements are made between party leaders for the allotment of time, the avoidance of useless discussion and the business-like treatment of all the public business which has to pass through the House of Commons.

Budget Speech.

As to the Finance Minister delivering the Budget Speech on the motion that the Speaker leave the Chair or delivering it in the Committee of Ways and Means, no special Standing Order is required. The Minister has the right to deliver it either in the House or in the Committee.[2]

Mr. Speaker further remarks that they had never had any Standing Order governing this procedure. The Minister is free to deliver the Budget Speech, either in the House or in the Committee of Ways and Means. Mr. Speaker observes that the latter case seemed more suitable if they wished to save time.[3] In the Canadian House of Commons, the Motion that the Speaker leave the Chair for Committee of Ways and Means is debatable and opens the door to long discussions. The whole Administration is then subject to criticism in the same way as in the debate on the Address,[4] which means a duplication of debate. It had often been suggested that one of these debates be abolished. They had suppressed the debate on the Address in South Africa, but he doubted if the Canadian House of Commons would go so far as that. The delivery of the Budget Speech in Committee of Ways and Means seemed to be the solution.[5]

Mr. Speaker's suggestion on this subject is that, as no special Standing Order would be required as to the Budget Speech being delivered on the Motion—That the Speaker leave the Chair, or that the speech be delivered in the Committee of Ways and Means, the Minister already having the right to choose.[6]

Questions.[7]

Mr. Speaker observes that the practice of asking Questions on the Orders of the Day being called, and before they are proceeded with, had become so common that it was now a part of their procedure.

[1] § 26. [2] § 57. [3] § 28. [4] *See also* JOURNAL, Vol. XIII, 59. [5] *Rep.* § 29.
[6] § 57. [7] *See also* JOURNAL, Vol. XIII, 59.

Attempts were made to revise the practice when the Select Committee of 1944 recommended a Standing Order (No. 44).[1]

This recommendation, however, was never accepted, and oral *Qs.* are now being asked at that stage without any Rule. The present S.O. 44 provides that: " Any member who requires an oral answer to his Question may distinguish it by an asterisk, but under present practice oral answers are not given at the beginning of each sitting. They stand until *Qs.* are called," and nearly an hour is often spent on *Qs.* before Orders of the Day are proceeded with.[2] Ministers answer, some members ask Supplementaries, others join in, and discussions take place when there is nothing before the Chair. Mr. Speaker favours a special Standing Order giving *Qs.* a special place on the O.P., thus recognizing that *Qs.* are not asked by leave but in the exercise of an inalienable right.[3]

The material difference between the rules of the United Kingdom House and the Canadian Commons is that in the former *Qs.* are taken on 4 successive days, Mondays-Thursdays, whereas at Ottawa, under Canadian S.O. 15, they come up on Private Members' days only.

Mr. Speaker submits that *Qs.* should be taken every day but Wednesday, on which the House adjourns at 6 o'clock.

One of the rules on which the Westminster House is adamant is that no telegram, letter or newspaper article may be quoted in the asking of any *Q.*[4]

Mr. Speaker suggests the alteration of S.O. 15 so that " Questions for Oral Answers " be placed on the O.P. immediately after Routine Proceedings and given preference on all other orders at every sitting of the House.

Mr. Speaker also suggests that the following be added as sub-section (*a*) of Section 1 of S.O. 44:

Questions shall not be prefaced by the reading of telegrams, newspaper extracts, letters or preambles of any kind. Oral answers may immediately be followed by supplementary questions limited to three in number, without debate or comment, for the elucidation of the information given by the Minister.

and the following sub-section 2 (*b*) of S. 1 of the same Standing Order:

Questions requiring an oral answer shall be taken on Monday, Tuesday, Thursday and Friday after Routine Proceedings have been disposed of provided that no question shall be taken after four o'clock, except questions that have not been answered in consequence of the absence of the minister to whom they are addressed.[5]

Adjournment (Urgency) under S.O. 31.

It is now the practice of the United Kingdom House of Commons that the Speaker rules as to " definite ", " urgency " and " public importance ". At Ottawa, the Speaker decides only as to " urgency ", the rest being left to the House.[6]

Mr. Speaker suggests the amendment of S.O. 31 (5) as follows:

[1] *Rep.* § 30. [2] *Rep.* §§ 30, 31. [3] § 31. [4] § 33. [5] § 58. [6] § 35

(5) Except with the requisite leave or support the Motion cannot be made. *If the Motion is supported, or the House determines that it shall be made, it shall stand over until* 8 *o'clock on the same day.*[1]

Appeal from Speaker's Decision.[2]

Mr. Speaker remarks that the Speaker's position in Great Britain is one of very high prestige which the House, in its own interest, is keen to preserve. Upon all occasions and in all meetings, he holds and enjoys pre-eminence and precedence immediately after the President of the Privy Council.

An appeal from his decision is considered offensive at Westminster and shows a lack of confidence which might have serious repercussions.[3] His decisions, right or wrong, are respectfully accepted by the House. Disagreement with his Ruling cannot be raised as a matter of Privilege.[4]

Paragraph 40 of the Report reads:

Speaking objectively, and with some reluctance as I happen to be Speaker just now, I beg to suggest that the time has come when our House should consider whether or not the practice of appealing frequently from the Speaker's or the Chairman's decisions has gone too far and tends, not only to damage the Speaker's prestige, but also to belittle the House itself. Members of the United Kingdom House, old parliamentarians and experienced officers with whom I have discussed the matter, all agreed that such a procedure was a great mistake. When I told them that we have had thirty-four appeals during the last two Parliaments, that in every case the appeal was taken by Opposition members, and the decision was invariably sustained, they said the bad feature of such a practice was that it tended to create in the general public the opinion that the Speaker was a partisan politician. I have often felt that that was so. As a matter of fact, it is one of the most unpleasant features of the Speaker's position. It is unfair to the Speaker and is not in keeping with the standing of the House of Commons in this country. The mere fact that, in the eighty years of Canada's parliamentary history as a Dominion, not one appeal was ever taken by a Government supporter, shows conclusively that appeals are not always made with the object of having the rules observed.

Standing Order 12 of the Ottawa House says that the decision is "subject to an appeal to the House without debate" and a practice has developed whereby any member may rise and say: "Mr. Speaker, I appeal from your decision", upon which Mr. Speaker puts the Question: "Shall the decision be sustained."[5]

Mr. Speaker observes that Appeal Judges are chosen from among the ablest members of the Bar or Judiciary. They speak with authority.

Can the same be said of every member, new or old, front or back bencher, called upon to revise the Speaker's decisions? Some of them may be at their first Parliament, others, though more experienced in Parliamentary life, may have never paid much attention to the Standing Orders. And yet these are the judges who are to decide as to whether or not the Speaker, who devotes the greater part of his time to the study of procedure and is in constant consultation with the Clerk, has rendered a just decision. This is not only illogical but it is not common sense.[6]

[1] § 59. [2] *See also* JOURNAL, Vol. XIII, 57. [3] *Rep.* § 38. [4] § 39.
[5] § 41. [6] § 43.

There has been only one appeal from the Speaker's decision at Westminster, and it happened 100 years ago.[1]

Mr. Speaker suggests that if the House wants to persist in these appeals and wishes them to be serious, then it might refer the matter to the Standing Committee on Privileges, the disapproving member to put down in writing his reasons, authorities and precedents. The Committee should consist of members known for their knowledge of procedure and their Report should give detailed reasons why the Speaker's decision ought to be sustained or rejected.[2]

Mr. Speaker consequently suggests the following amendments to S.O. 12: (1) Mr. Speaker shall preserve order and decorum, and shall decide questions of order [subject to an appeal to the House without debate]. In explaining a point of order or practice, he shall state the Standing Order or authority applicable to the case.

Should hon. members come to the conclusion that the appeal be dealt with by the Standing Committee on Privileges and Elections then the following Standing Order may be passed:[3]

When a member is of the opinion that a decision given by Mr. Speaker is not in accordance with the Standing Orders, precedents or general practice of the House, he may give notice that he shall at the next sitting move to refer the decision to the Committee on privileges and elections. This motion shall give in detail, with citations of Standing Order, precedents and authorities, the reasons why the decision should be revised and shall be put without debate. When the Committee's report shall have been tabled, the House shall vote on it without debate.

Debate.[4]

Mr. Speaker recites the various provisions and suggestions which have been made as to time limit on speeches, and remarks upon the practice at Westminster where there is no such limit, but that the rule of relevancy is strictly enforced and the Session is divided into 3 sections, which he suggests be adopted by the House of Commons of Canada, as follows:

(1) October 25 to Christmas, (2) Christmas to Easter, (3) Easter to prorogation.

During the first section we could dispose of the Address; pass non-controversial bills; introduce and give first reading to long and controversial bills, and consider private members' notices of motion. During the second period, the House would take up Supply and such of the Government's measures as have been read a first time. In case of urgency other Government bills may also be then introduced and passed through all their stages. During the third period, the Budget would be brought down. As Easter falls around the first of April, which is the beginning of the financial year, there could not be a better time for the Finance Minister to make his yearly statement.[5]

Mr. Speaker refers to the practical way in which the United Kingdom House deals with a desire to debate some important report or to comment on Government action and they are faced with a crammed *O.P.*

[1] § 44. [2] § 45. [3] § 60. [4] §§ 46,7; *see also* JOURNAL, Vols. XIII, 58; XV, 60. [5] § 49.

The Leader of the Opposition confers with the Leader of the House as to the advisability of fixing a certain day to discuss the matter. If the Leader of the House agrees that there should be a debate, the Whips consult the members of their respective parties as to the most suitable date on which it should take place. A day is then appointed on which the business set on Order Paper is suspended. Our members may consider if they can accept this practice, which can be adopted without the necessity of amending our Standing Orders.[1]

Mr. Speaker therefore recommends the following amendment of S.O. 37:

37. (1) No member, except the Prime Minister and the Leader of the Opposition, or a Minister moving a Government Order and the member speaking in reply immediately after such Minister, or a Member making a motion of " no confidence in the Government " and a Minister replying thereto, shall speak for more than forty minutes at any time in any debate.

(2) *a. After a question has been debated without interruption during two sittings, no member, except those exempted in section 1 of this Standing Order, shall speak for more than twenty minutes at a time on that question, and if a member reads his speech he shall not address the Chair longer than ten minutes on the question under consideration.*

(3) *In the Committee of the Whole, Supply or Ways and Means, no member shall speak more than twenty minutes at a time on a particular motion, clause or item under consideration.*[2]

Private Members' Day.

Mr. Speaker quotes the views of Sir Gilbert Campion, the Clerk of the House of Commons on this subject, and submits that special attention be given to this matter by a Select Committee.[3]

Dinner Hour.

There is no adjournment or suspension of business between 6 and 8 p.m. in the United Kingdom House, as at Ottawa, and Mr. Speaker remarks that a quorum in the Canadian Commons is 20, and the average length of an Ottawa Session is 125 days. He therefore recommends that, by doing away with their " Intermission " and saving 2 hours each sitting day, they would gain 31 8-hour days each Session.[4] He accordingly suggests the repeal of S.O. 6 (1) which reads:

[(1) If at the hour of six o'clock *p.m.*, except Wednesday, the business of the House be not concluded, Mr. Speaker leaves the Chair until 8 o'clock.][5]

Conclusion.

The closing paragraphs of Mr. Speaker's Report are so illuminating that it would be a loss if they were to be abridged in any way. They read:

63. I have examined our procedure from the point of view of the various purposes it is intended to serve, but I feel I must dispel the notion that the rules of the House are made by the Speaker or that I intend to streamline the House of Commons. I have no power to make Standing Orders. That function belongs to the House itself. My duty consists in applying the rules,

[1] § 52. [2] § 62. [3] § 51. [4] § 53. [5] § 61.

preserving order and decorum, and supervising the management of the House's affairs. I am making suggestions for amendments to our Standing Orders after I have seriously considered the existence of general criticism of Parliament by members, the press and representative citizens, and I do so with the deep conviction that our standard is higher than that of other nations' representative assemblies. The work accomplished by our House every session is considerable and does credit to our members. A few improvements, not many, may be made in our procedure. Rules of practice are necessary, but a multitude of Standing Orders ought not (to) be encouraged. Much must be left to circumstances. There were no Standing Orders in the Great Britain House of Commons until 1707, and there were only three from 1715 to 1821, which covers the eighteenth century. There are 93 to-day. We have 81 with respect to public business, 10 dealing with the staff, 30 regulating the procedure on private bills and 9 governing the Library of Parliament.

Our members have always been opposed to regimentation in any form; they have always been reluctant to have restrictions imposed by precise rules which may lessen their freedom and deprive them of their adaptability to meet new and varying conditions or unusual combinations and might also have the effect of restricting rather than safeguarding their privileges.

64. Members themselves must regulate the proceedings of the House of Commons, and Standing Orders depend for their success upon the prevalence of good-will amongst all those who have to work under them. The House must rely on the forbearance of its members and on the general acquiescence in the enforcement of the rule which requires that members should strictly confine themselves to matters immediately pertinent to the subject of debate. Unless understanding and a common desire for co-operation prevail there will be a danger of the House of Commons losing the respect of the nation. If the principle of equality among members, freedom of speech, majority rule and the right of the minority to an adequate expression of opinion are not facilitated by procedure, there is indication of some serious defect in our system of representative government.

65. All or some of the suggestions made by me in this report may commend themselves to the honourable members of this House. On the other hand, some honourable members may have doubt as to the working out in actual practice of the suggested changes in our rules of procedure. I therefore call to the attention of the House that in the latter case such changes could be tried out for one session. If, during the experimental period the change is conducive to greater efficiency and works to the satisfaction of members, the change could be made permanent. If this were not the case, then the change would cease to operate at the end of the session and the House revert to the old practice.

Voice Amplification.[1]

At the end of the Speaker's Report is one dealing with the voice amplification equipment in their Chamber.

Mr. Speaker opens his report by saying that since he became Speaker he had been endeavouring to improve the acoustic conditions of the House.

I have seen in operation the systems installed in the United Nations Assembly, Lake Success, in the City of New York, in the Capitol Building, Havana, and several similar places in the United States and Canada. When in London, in September last, I examined the system now being tried in the United Kingdom House of Commons, and I consulted Mr. N. Sizer, the architect who is now working on a voice raising equipment plan for the Commons now sitting in the Lords' Chamber.

[1] *Rep.* pp. 26, 7.

In the Chamber now used by the House of Commons it was considered that the leaders of the Government and of the Opposition, being immediately below the Press Gallery, could be heard naturally without electric aids, which would be required for speeches made by members of both sides sitting farther from that Gallery. This proved satisfactory for a fairly long time, but occasional complaints caused the Minister of Works to introduce a further microphone to obtain a greater area of pick-up, and this was satisfactorily done.

The 2 concluding paragraphs of Mr. Speaker's Memorandum on this subject are:

> Scientists and engineers have not yet found the perfect equipment for voice raising, but they are constantly experimenting with great hopes of success. Something good will come out of their endeavours at Westminster, which I am following very closely. If they are successful in devising a system suitable to our conditions I am sure this House will give it a trial.
>
> We are making progress in this matter, but we must be careful not to adopt a system that will disturb the deliberations of the House. A noisy equipment or one that will disfigure the architectural ornateness of the Chamber and destroy its characteristic as a House of Parliament is what we would get if we accepted the plans now in operation in Great Britain and in the United States. I would rather wait until the science of artificial voice raising is further developed. It is making rapid progress in England, and I sincerely hope the plan now being tried at Westminster will give satisfaction. If it does, there is no reason why it should not be accepted in our House.

A report on this subject was also laid in the House of Commons of Canada on February 3, 1947.[1] We hope to deal with it in our next issue.

Subsequent proceedings on the question of Procedure in the House of Commons of Canada referred to in the opening words of this Article are the Report of the Special Committee of February 20, 1948, and the Memorandum by Dr. Arthur Beauchesne, the Clerk of the House of Commons for such Committee, which will also extend over until our next issue.

VII. AUSTRALIA: COMMONWEALTH CONSTITUTIONAL REFERENDUM PROPOSAL, 1948[2]

By A. A. Tregear, B.Com., A.I.C.A.,
Clerk-Assistant of the House of Representatives

On May 29, 1948, the Australian electors will be required to vote on a proposal to alter the Australian Constitution[3] by empowering the Parliament to make Laws with respect to Rents and Prices (including Charges).

[1] LXXXVI, *Com. Hans.* No. 337. [2] *See also* JOURNAL, Vols. V, 117; XI-XII, 186; XIII, 64; XV, 175. [3] Commonwealth of Australia Constitution Act.

This will be the eleventh occasion on which proposals for amending the Constitution have been submitted to the people.

Section 51 of the Constitution empowers the Parliament, subject to the Constitution, to make laws for the peace, order, and good government of the Commonwealth with respect to the matters specified in the section, and the present proposal is to insert in that section a new paragraph as follows:

" (XIVA.) Rents and prices (including charges):".

The Bill was introduced into the House of Representatives on November 19, 1947, by the Hon. E. J. Holloway (Minister representing the Acting Attorney-General).

By virtue of its power to make laws for defence, the Commonwealth is at present exercising control over rents and prices through regulations made under the Defence (Transitional Provisions) Act,[1] the High Court of Australia having held that the extension of the defence power to measures necessary to the economic stability of the country does not cease abruptly with the end of hostilities. The scope of the existing power is, therefore, constantly dwindling.

Mr. Holloway, in explaining the Bill, said:

> " The power over rents would cover the fixing or ' pegging ' of rents, would include power to provide for the determination of fair rents and, as an incidental matter, to protect tenants against eviction. It would apply to rents of goods as well as rents of land and buildings. The power with respect to prices would enable the Parliament to control and regulate the prices at which property of any kind, including commodities, land and shares in companies, is sold.
>
> " Explicit power to control charges is included in the bill in order to remove any doubt about charges which are in the nature of prices or rents, but in relation to which the term ' prices ' or ' rents ' may not be ordinarily used; for example, charges for hairdressing or for board and lodging. The words would also include charges for the use of money, or, in other words, interest.
>
> " Since minimum prices, as well as maximum prices, could be fixed under the power, it could be used to ensure a home-consumption price for primary products. Minimum prices could also be used to prevent disorder and losses to holders of stocks of imported goods which could follow a sudden collapse of raw material prices overseas.
>
> " Furthermore, the new power would make clear the right of the Commonwealth to pay subsidies for the purpose of maintaining reasonable prices to consumers as well as producers of essential goods, such as potatoes and dairy products."[2]

The Opposition opposed the measure, but the Second and Third Readings passed on divisions of 39 to 20,[3] with the requisite absolute majority of the House.

In the Senate, the division on the Second Reading was 28 votes to 3,[4] there now being only 3 Senators on the Opposition side in a Senate of 36 members. No division was taken on the Third Reading, as there

[1] Act No. 78 of 1947. [2] Parliamentary Debates, November 19, 1947, pp. 2309-2310. [3] Votes and Proceedings, December 2 and 3, 1947, p. 437. [4] Journals of the Senate, December 4, 1947, p. 159.

was no dissentient voice, and an absolute majority of the whole number of Senators was present.[1]

The proposed alteration of the Constitution will be submitted in each State of the Commonwealth to such electors as are qualified to vote for the election of members of the House of Representatives.[2]

As the proposal is to be submitted " in each State ", it is of interest to note that the electors of the Northern Territory, who return a member to the House of Representatives, do not vote in a referendum for the alteration of the Constitution as they are electors for a Territory and not for any of the 6 Australian States.

To receive the approval of the electors, the proposed law will need to be supported in a majority of the States by a majority of the electors voting, and also by a majority of all the electors voting at the referendum.[3]

Pamphlets in the style as shown before[4] in the JOURNAL, containing " *An Argument in favour of* " the Proposed Law authorized by a majority of the members of both Houses of the Parliament who voted for the Proposed Law—Constitution Alteration (Rents and Prices), 1947—and " *An Argument against* " the Proposed Law authorized by a majority of the members of both Houses of the Parliament who voted against the Proposed Law, were circulated officially to electors, and the result of the voting was:

State.	*Votes in Favour.*	*Votes Against.*	*Informal.*
New South Wales	723,183	1,012,639	26,269
Victoria	559,361	693,937	16,739
Queensland	187,955	422,236	7,487
South Australia	167,171	229,438	6,169
Western Australia	105,605	168,088	4,589
Tasmania	50,437	91,845	2,853
Totals for the Commonwealth	1,793,712	2,618,183	64,106

showing that neither was any State nor the majority of all the electors voting at the Referendum in favour of the Proposed Law. It was therefore rejected.

[1] *Ib.* p. 160.
[2] Commonwealth of Australia Constitution Act, s. 128.
[3] *Ib.* s. 128.
[4] For example *see* JOURNAL, Vol. XI-XII, 189.

VIII. SOUTH AUSTRALIA: FINANCIAL PROCEDURE IN THE HOUSE OF ASSEMBLY.

By Captain F. L. Parker, F.R.G.S.A.,
Clerk of the House of Assembly and Clerk of the Parliaments.

The last 2 paragraphs of the Article on the above-mentioned subject which appeared in Volume XIII[1] and dealt with Loan Estimates and Expenditure have been augmented during the 1947 Session, and the following supplement sets out the present position and procedure.

During the 1947 Session of the South Australian Parliament, the following amendments were made to the Public Finance Act of 1936.

Section 14 of the principal Act was repealed, and provision was made in the Act for discounts, flotation expenses and other costs of borrowing money in connection with the raising of conversion loans, to be paid out of money provided by Parliament for the purpose, instead of, as was previously provided by Parliament, for the amount to be debited to loan account. The amendment now permits the Treasurer to have the amount paid from either revenue or loan account, according to the manner in which the money is provided by Parliament.

Section 27 of the Act, which deals with the allocation of securities purchased and redeemed by the National Debt Commission, was amended to give the Treasurer discretion in allocating securities cancelled in reduction of loan accounts, after provision had been made for depreciation of various departments for the year.

The Public Purposes Loan Bill, which is now an annual measure, is founded on the normal resolution for a Money Bill. For many years it has been the practice to introduce this Bill to provide for the borrowing of money for specific works, but in 1947 the Bill was drafted to give the Treasurer the necessary power to arrange for the borrowing of over-all sums of money for public works and other purposes. The Bill provides that the loan fund will be credited with all amounts borrowed under the authority of the Public Purposes Loan Act, all amounts received by the Treasurer in repayment of advances or money expended, and all surplus revenue applied to loan account in accordance with Section 30 of the Public Finance Act.

The Bill provides that out of the loan fund, the Treasurer can expend an over-all amount on various loan projects, all of which are set out with the amount applicable to each, in the first schedule to the Act. The projects and the amount provided for each in this schedule are identical with the Loan Estimates. It is also provided in the Bill that the Treasurer can, if he finds that the amount specified for any project in the first schedule is insufficient for that work or purpose, issue additional money from the loan fund for the work or purpose,

[1] *See* p. 185.

provided that the total amount issued under the authority of the Public Purposes Loan Act shall not exceed the total of the amounts set out in the first schedule. The Public Purposes Loan Bill is founded on the Loan Estimates which have previously been agreed to. The Bill is divided into 4 parts:

1. Authority for the Treasurer to borrow for new loan expenditure.
2. Authority for the Treasurer to raise money to recoup advances made pursuant to S. 23 of the Audit Act, where the Governor is authorized to issue authority for loan expenditure by warrant.
3. In addition to the borrowings set out in 1 and 2 above, the Treasurer is also authorised to raise such amount of money as is necessary to cover the discounts, charges and expenses incurred in connection with the borrowing of the money under the Act, and to expend the amount necessary for that purpose from the loan fund.
4. Temporary finance for loan works is provided for as follows:
   If at any time the money in the loan fund is insufficient for carrying out the works and purposes set out in the first schedule, the Treasurer may use other money in his hands for those purposes. Any money so used shall be repaid from the loan fund as soon as there is sufficient money in that fund to make the repayment.

The authorities given by the Public Purposes Loan Act for 1947 remain operative until the Public Purposes Loan Act for 1948-49 commences, except that the authority to borrow for the purpose of payment of discounts, charges and expenses in connection with borrowing money under this Act continues until all such expenses have been met.

It will be seen from the provisions set out in the previous paragraph that the date of the assent of one Loan Bill to the date of the assent of the next year's Loan Bill is the " year " for loan money expenditure and authority to raise moneys to provide for that expenditure. This does not necessarily coincide with the fixed financial year (July 1 to June 30), as is the case with expenditure from General Revenue.

IX. CONSTITUTIONAL DEVELOPMENTS IN NEW ZEALAND[1]

By H. N. Dollimore, LL.B.,
Clerk of the House of Representatives

Legislative Council Abolition Bill (No. 25-1).—On August 5, 1947,[2] the Leader of the Opposition (Mr. S. G. Holland) introduced into the House of Representatives a Private Members' Bill intituled " The Legislative Council Abolition Bill ". It provided for the abolition of the Legislative Council and all offices constituted or created in, or in connection therewith, as from a date to be appointed by Proclamation,

[1] *See also* JOURNAL, Vols. III, 18; X, 52.

[2] *N.Z. Hans.* No. 7, 123.

but that such date should not be within a period of one year from the date of the passing of the Act. This step followed the announcement by the Nationalist Party prior to the General Election of November, 1946, of its intention, if returned to office, to take steps to abolish the Legislative Council.

In opening the Second Reading Debate on August 6,[1] the Leader of the Opposition indicated that his party was conscious of the vital and fundamental change proposed, and that such a constitutional change was not being proposed lightly. He claimed that the Legislative Council had ceased to be a revisory Chamber in the true sense of the word, inasmuch as it no longer initiated legislation or made any worthwhile amendments to the Bills transmitted from the Lower House; that appointments to this Chamber had become a means for rewarding supporters of the party in power; and that its members no longer represented men of independent views.

In following the Leader of the Opposition, the Attorney-General (Hon. H. G. R. Mason) drew attention to the apparent incompetence of the New Zealand Parliament to effect this constitutional change in the manner proposed. He pointed out that the Constitutional Amendment Act of 1857[2] made it lawful for the New Zealand Parliament to amend, alter, suspend or repeal all or any of the provisions of the Constitution Act of 1852,[3] except certain sections which have become known as the " entrenched " sections, and that it was to one of these (S. 32) that the present Legislative Council owed its existence. He acknowledged the great development that had taken place in New Zealand's status since 1852, and admitted that New Zealand was not constitutionally restricted in the matter, but suggested that, if possible litigation were to be avoided, the proper course was to apply to the Imperial Parliament for the elimination of the present technical prohibition.

During a somewhat spirited debate, the Prime Minister (Rt. Hon. P. Fraser) moved the following " reasoned " amendment to the Question—" That the Bill be now read a second time "—namely, the omission of all the words after " That " and the substitution of the following:

> prior to any change being made in the constitution of the Legislature, the Statute of Westminster be extended to this Dominion and that a Bill to adopt the Statute be introduced during the present session of Parliament; and that meanwhile consideration be given to the desirability of making the House of Representatives the sole legislative chamber; and that for this purpose a committee of this House be set up to report on this matter and alternatively on (1) the desirability or otherwise of establishing a Revising Body for legislation passed by the House of Representatives, and (2) on any amendments to the procedure of Parliament which may become necessary thereupon; and that such Committee have power to sit together and confer with a similar Committee to be appointed by the Legislative Council and to agree to a separate or joint report.[4]

[1] *Ib.* 197. [2] 20 & 21 Vict., c. 53. [3] 15 & 16 Vict., c. 72. [4] 277 *N.Z. Hans.* 210.

The debate was resumed on August 13 of 1947[1] (the next Private Members' day), when, by a division on strictly party lines, the Prime Minister's amendment was carried by 39 votes to 37, with 1 pair, and the Question for the Second Reading was thus superseded.

On August 31,[2] the Prime Minister moved the following Motion—

> That a Select Committee be appointed, consisting of thirteen members, to consider the desirability or otherwise of making the House of Representatives the sole legislative chamber or, alternatively, the desirability or otherwise of establishing a revising body for legislation passed by the House of Representatives, and to consider any amendments to the procedure of Parliament which may become necessary thereupon; the Committee to have power to sit together and confer with any similar Committee to be appointed by the Legislative Council and to agree to a joint or separate report, and to sit during the recess and to report within twenty-eight days after the commencement of the next ensuing session: the Committee to consist of Hon. Mr. Speaker, Mr. Algie, Mr. Bodkin, Dr. Finlay, Mr. Goosman, Mr. Holland, Mr. Langstone, Mr. Macfarlane, Mr. Mackley, Mr. Osborne, Mr. Petrie, Mr. Webb and the Mover.

A Motion in similar terms was moved by the Leader of the Legislative Council (Hon. D. Wilson).[3]

After preliminary meetings by the House and Council sections of the Committee, the Joint Committee held its first meeting on November 14, 1947, when the Speaker of the Lower House (Hon. R. McKeen) and the Leader of the Legislative Council (Hon. D. Wilson) were elected Joint Chairmen. Prior to its second meeting on February 3, 1948, a considerable amount of information had been secured for the information of the Joint Committee in relation to the composition, functions and powers of Second Chambers throughout the British Commonwealth, and in certain foreign countries. At this meeting it was resolved to extend an invitation to those members of the general public who wished to tender any submissions on the subject to do so, and a special invitation was extended to certain people who in the opinion of the Committee might be in a position to tender expert evidence on this important constitutional question. After some deliberation the Committee adjourned, but it is expected that it will resume its sittings towards the end of April, 1948.

Statute of Westminster Adoption Bill.—On November 25, 1947, the Royal Assent was given by the Governor-General, on behalf of His Majesty, to the Statute of Westminster Adoption Bill. New Zealand has thus, after a lapse of nearly 17 years, decided to adopt the operative sections of the Statute—namely, Ss. 2-6. When the Statute was passed on December 11, 1931, it included a provision (S. 10), which had been inserted at the request of Australia, New Zealand and Newfoundland, that none of those sections should extend to those Dominions as part of their law unless that section were adopted by the Parliament of the Dominion concerned. The former attitude of New Zealand towards the passing of the Statute in 1931 was made clear by the then

[1] 1947 *Ib.* No. 9, 342. [2] 279 *Ib.* 373. [3] 279 *N.Z. Hans.* 432.

Prime Minister (Rt. Hon. G. W. Forbes) when speaking in the House of Representatives on July 21, 1931,[1] on the Report of the Imperial Conference of 1930. The Rt. Hon. Mr. Forbes expressed himself as follows:

> It was agreed by the Conference that the Statute of Westminster should be introduced into the Parliament of the United Kingdom on the request of the Parliaments of each of the Dominions, and accordingly I propose to present to you for your approval a resolution to that effect. I myself am by no means without doubt as to the wisdom and lasting benefit of the course that has been taken. It cannot be denied, however, that this is the logical development of the decisions of the 1926 Conference, and that those decisions in turn followed —perhaps inevitably—the trend of inter-Imperial relations during the past decade. Whether for good or for ill, the course and the character of inter-Imperial relations have now been settled, and no good purpose would be served, in my judgment, by any attempt, which must prove ineffective, to question or alter at this stage the position that has developed.
>
> The constitutional position as set out in the draft statute appears to be a matter of primary moment to various members of the British Commonwealth, and I think that we in New Zealand would not be justified in refusing to agree to its being passed into law. It has always been our policy, in matters of common concern to all members of the Commonwealth, firstly to express our views as clearly and as definitely as possible, but always, if necessary, to subordinate those views to the attainment of united action. Where all our partner Governments have desired to adopt a certain course, it has not been our practice in the past, and should not, I suggest, be our desire in the present instance, to interpose a veto; and it is for this reason—and this reason only—that I commend to the House the resolution approving the draft Statute of Westminster. Honourable members will observe that at our request a saving provision in respect of New Zealand has been inserted.
>
> Notwithstanding the approval of the resolution which I am about to move, and notwithstanding the coming into operation of the Statute of Westminster, the position in New Zealand will, as a result of this saving clause, not be affected in any way unless and until the New Zealand Parliament decides to apply the Statute of Westminster to this Dominion. There is no necessity to consider this question now. We can at our leisure decide for ourselves, at a later date, whether or not, or how far, we desire to accept the position that has now developed. The effect of the resolution, therefore, is merely to enable the statute to be applied by those members of the British Commonwealth who wish to take this course. It seems to me that the correct attitude for us to take in New Zealand is to concur, with what equanimity we may, in such constitutional changes as are desired by all His Majesty's other Governments and to maintain our own position in the meantime without material alteration.

New Zealand has long since abandoned that sentiment, the principal effect of which was to retain for the Dominion subordinate legislative position in relation to other members of the British Commonwealth.

The Prime Minister (Rt. Hon. P. Fraser), when introducing the Bill, expressed the present attitude towards adoption in the following words:

> When the late Right Hon. Mr. Forbes introduced his resolution in regard to the Statute, there was a feeling that, while this was constitutionally right and desirable in many ways, yet it might show some tendency to break up the comity of British nations. Events have far surpassed that sentiment, which, in fact, has disappeared into the oblivion of the past, and nobody gives even

[1] 228 *N.Z. Hans.* 548.

lip service to it. The nationhood of our country is accepted in common with that of every other British dominion, and we expect, as our natural right and function, to be represented independently and to express opinions, as far as a Government can construe the opinions of a country on international matters, overseas and at world Conferences. It is beyond argument that that is a right of our country.[1]

After referring to some of the technical difficulties associated with the non-adoption by New Zealand of the vital sections of the Statute, and particularly to those which arose during the war years, the Prime Minister said:

The adoption of the operative sections of the Statute of Westminster has been the subject of discussions with the Secretary of State for Dominion Affairs of the British Government for quite a number of years. Before the war it was contemplated. All the advice received from those interested in drafting legislation is that this action would make things much better, much tidier, and that there would be an improvement all round. Had the war not broken out the Bill would have been introduced at the latest in 1940.[2]

The intention to adopt the Statute was indicated in the Governor-General's speech at the opening of the 1944 session, and in response to a question as to whether the war had then caused its postponement, the Prime Minister replied that the war was then at a critical stage and, continuing, said:

Lord Haw-Haw and others were disrepresenting everything that British countries were doing. The least thing was used by the Germans as propaganda, and the " Japs " were busy, too. The question arose as to whether the war was not more urgent. Moreover, we had no desire that anyone should be able to get hold of something that could be used to make it appear that there had been any severance from the Old Country. Such critics would have ignored the fact that Canada, Australia, and South Africa were already on that basis, and would simply have concentrated on the fact that here was New Zealand apparently breaking away from the Commonwealth. We discussed the matter in Britain. The suggestion came from ourselves, and the Secretary of State for Dominion Affairs did not at first think there was much in it, but said the point would be considered. Afterwards, the suggestion was adopted and we were asked to allow the matter to lie over, as there was a possibility of bad and untrue propaganda being broadcast in connection with the matter. We were, therefore, very pleased to allow the matter to rest. That is why it did not come forward here immediately following its adoption by Australia.

Nobody could be more proud of belonging to any combination of nations than we are of belonging to the British Commonwealth, and if we felt that the introduction of this Statute of Westminster bringing into legal form our practical status would do anything to lessen the ties between us and our fellow-members of the Commonwealth we would not adopt that course. But instead of lessening the ties, I believe it will strengthen the ties between the various parts of the Commonwealth and ourselves in New Zealand and the Mother-country. It is the opinion of this Government, and certainly my own opinion—and the opinion of the other Dominions and of the British authorities—that we are doing the right thing in adopting the Statute of Westminster and bringing our legal forms up to the actualities."[3]

[1] 279 *N.Z. Hans.* 531. [2] 279 *N.Z. Hans.* 534. [3] 279 *N.Z. Hans.* 534.

The debate extended over 2 sittings, and the Second Reading was finally carried without a division, the Opposition giving the Bill its general support.

In a Parliamentary Paper (A-13, 1947) which was circulated with the Bill for the information of members, it was stated:

> The adoption of the Statute will not alter New Zealand's practical standing in Commonwealth and world affairs. Since the Peace Conference of 1919 New Zealand has been a fully sovereign country in world affairs, with the right to attend international conferences, make treaties, and send and receive foreign envoys. But the adoption of the Statute will make it impossible in the future for some foreign observers and States—unaware of the real nature of Dominion status and the modern Commonwealth—to argue, as they have done from time to time when it suited their purposes to embarrass us or Britain, that our non-adoption of the Statute and our consequent legislative inferiority should deny New Zealand the right of separate representation in world councils. It should be noted that it has been possible to achieve our present freedom in the international field without amending British or New Zealand statutes because the flexibility of the common law and the King's prerogative (foreign affairs being within the prerogative) were at our disposal. The paradox is that in internal affairs, however, we are confronted with the rigidity of several anachronistic statutes, and we cannot achieve similar legal freedom unless we tidy up these legal forms. The legislative inability of the New Zealand Parliament has not proved excessively burdensome because the ways adopted by various Governments of circumventing the difficulties involved have seldom been challenged. (Though there was, and there is always, the risk of this being challenged as being invalid, as might well have been the case during the last war period, particularly in respect of emergency legislation affecting shipping.) Moreover, New Zealanders have never shared the desire of some other Dominions for theoretical " equality of status " with the United Kingdom and were reluctant to identify themselves with groups which insisted too much on " equality " themselves, and pursued separatism under cover of the Statute of Westminster. For many years past, however, the question of status has been settled, and separatism is a dead issue. The cohesion of the Commonwealth and the attitude of our own people during the recent war and since are the answers to the prophets of gloom of the inter-war years. The Statute can now be seen purely as the practical lawyers' document it is, and its usefulness can be shown unclouded by the important but extraneous issues which were once associated with it.[1]

The legal effect of adoption is that New Zealand Acts can now operate extra-territorially, cannot be held void for repugnancy to United Kingdom's Statutes, and need not in any case be now reserved for the King's Assent. Further, that no future Act of the United Kingdom will apply to New Zealand except at the request and with the consent of the New Zealand Parliament. The Bill became Act No. 38 of 1947 (11 Geo. VI).

New Zealand Constitution Amendment (Request and Consent Bill).—The adoption, without more of the operative sections of the Statute of Westminster, would have produced some ambiguity inasmuch as S. 8 retained the limitation on New Zealand's power to deal with its Constitution. The section provided that—

[1] 1947 *N.Z. Parlty. Paper* A-13, pp. 6-7.

Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

The effect of this section was that New Zealand's power to deal with its Constitution was limited to that conferred on it by the New Zealand Constitution Act, 1857,[1] which prohibited it from dealing with certain " entrenched " sections.

It was felt desirable, therefore, when passing the adopting Bill giving legal recognition to New Zealand's constitutional status, to take a further step and request the Imperial Parliament to pass a measure freeing New Zealand from this limitation and thus confer on it full legislative capacity.

The schedule of the New Zealand Constitution Amendment (Request and Consent) Bill contained (*which see above*) the following draft Bill, which was in due course submitted to the Imperial Parliament for enactment:

To provide for the amendment of the Constitution of New Zealand.

Whereas provision for the Constitution of New Zealand was made by the New Zealand Constitution Act, 1852, and the power to amend that Act conferred on the Parliament of New Zealand by the New Zealand Constitution (Amendment) Act, 1857, was subject to certain restrictions therein specified: And whereas on the ..... day of ....., nineteen hundred and forty-seven, the Parliament of New Zealand, by an Act intituled the Statute of Westminster Adoption Act, 1947, adopted sections two, three, four, five, and six of the Statute of Westminster, 1931: And whereas it is provided by section eight of the said Statute of Westminster, 1931, that nothing in that Act shall be deemed to confer any power to repeal or alter the Constitution Act of New Zealand otherwise than in accordance with the law existing before the commencement of the said Statute:

[And whereas New Zealand has requested and consented to the enactment of this Act:

Now therefore be it enacted, etc:—

1. It shall be lawful for the Parliament of New Zealand by any Act or Acts of that Parliament to alter, suspend, or repeal, at any time, all or any of the provisions of the New Zealand Constitution Act, 1852; and the New Zealand Constitution (Amendment) Act, 1857, is hereby repealed.

2. This Act may be cited as the New Zealand Constitution (Amendment) Act, 194 .

The above course was apparently preferred to seeking the repeal by the Imperial Parliament of S. 8 in so far as it related to New Zealand.

In Parliamentary Paper A-13, 1947, tabled by the Prime Minister, the following reference was made to the subject:

There is no necessity for New Zealand, with its unitary constitution, to retain the restrictions which the dominions with Federal constitutions such as Canada and Australia regard as essential for the protection of State rights; but, since this particular restriction has been provided for in S. 8 of the Statute of Westminster, it is necessary to request the United Kingdom Parliament to pass a further statute—the New Zealand Constitution Amendment Act, which is set out in the Schedule to the New Zealand Constitution

[1] 20 & 21 Vict., c. 53.

Amendment (Request and Consent) Bill. The effect of S. 8 is to preserve the restrictions on the amendment of the Constitution Acts of 1852 and 1857 as they existed in 1931, when the Statute of Westminster was enacted. In 1931 the power of the New Zealand Parliament to amend its constitution was limited. Certain sections "entrenched" by the Constitution Act, 1852, remained entrenched by the Constitution Amendment Act, 1857, and can be amended or repealed only by an Act of the United Kingdom Parliament. It is of the essence of the enjoyment of full self-government that we in New Zealand should have full power to deal with our Constitution. It seems appropriate therefore that this opportunity should be taken to remove all restrictions on the legislative competence of the New Zealand Parliament and with this in mind it is proposed that the draft Bill set out in the Schedule to the New Zealand Constitution Amendment (Request and Consent) Bill be submitted to the United Kingdom Parliament for enactment.[1]

Following close on the passage of the New Zealand Bill there was introduced into the House of Lords by the Lord Addison a New Zealand Constitution Amendment Bill in the form referred to above. In moving the Second Reading on December 2, 1947,[2] the Leader of the House of Lords (Viscount Addison) said since 1857 New Zealand had not required any intervention by this House and its Constitution was set up in 1852. There were certain limitations of the power of the New Zealand Government as so constituted. Section 8 of the Statute of Westminster, 1931, provides that (*for which see above*).

Section 10 (2) of the Statute of Westminster went on to say:

> The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in sub-section (1) of this section.

and New Zealand was one of the Dominions so entitled.

The Bill sought to remove the limitations imposed hitherto on the Government of New Zealand, and gave them complete freedom to amend their own Constitution, which was in effect complete independence.

The noble Viscount then quoted what Mr. Fraser, their Prime Minister, had said in the New Zealand Parliament, as follows:

> If the adoption of the Statute of Westminster were to lessen the tie between New Zealand and the Empire, I would have nothing to do with it, but my opinion is that if this Statute were adopted it would strengthen the tie.

After a short debate the Bill then passed through all its remaining stages on the same day.

On December 8, 1947,[3] when moving the Second Reading in the Commons, the Secretary of State for Commonwealth Relations (Rt. Hon. Philip Noel-Baker) said that the New Zealand Constitution Act of 1852 limited the power of New Zealand to amend the Constitution. Another Act in 1857 made some changes, but left intact some of the limitations on this right to amend the Constitution. Those limitations were still retained at the desire of New Zealand by S. 8 of the Statute of Westminster, 1931. A few weeks ago New Zealand passed a

[1] *N.Z. Parlty. Paper* A-13, 1947, p. 14.
[2] 152 *Lords Hans.* No. 16, 1018.
[3] 448 *Com. Hans.* 5, s. 797.

Request and Consent Act to enable them to amend their constitution in any respect; it now remained for the Parliament at Westminster to do their part by the adoption of the Bill which removed what all now recognized to be an arrangement which was out of date. New Zealand is a member of the Commonwealth, equal in status and rights to all the rest. It was the proper business of the New Zealand people to decide what their institutions shall be and how they shall be made to work. This Bill became New Zealand Act No. 44 of 1947 (11 Geo. VI), the Imperial Act being 11 Geo. VI, c. 4.

Superannuation Bill, 1947.—For nearly 30 years the introduction of a superannuation scheme for members of the New Zealand House of Representatives has been discussed, but for various reasons—*e.g.*, lack of unanimity among the members themselves, depression and war conditions—no scheme emerged until November 12, 1947, when the Minister of Finance (Rt. Hon. W. Nash) introduced a Superannuation Bill, the main object of which was to amend and consolidate the law relating to the superannuation of public servants, but which also contained as Part V of the Bill a section providing for a contributory scheme of superannuation for members.

On December 7, 1945, the House had set up a Select Committee consisting of 7 members to consider matters relating to a proposed superannuation scheme for members of the House. The Committee, which was presided over by the then Speaker (Hon. F. W. Schramm), and also contained among its members the Prime Minister, Minister of Finance and the Leader of the Opposition, presented the following report to the House on August 7, 1946:[1]

> I have the honour to report that the Committee set up to consider matters relating to a proposed superannuation scheme for members of Parliament has gone into this question and has reached the following conclusions:—
>
> (1) That membership of the Legislature to-day in many cases means full-time duty and the giving-up of other sources of income or employment which cannot be resumed on retirement from the Legislature.
>
> (2) That membership of Parliament should not be confined to persons of independent means, but should be open to all citizens.
>
> (3) That public servants generally throughout the Dominion have superannuation schemes providing on retirement for their adequate maintenance and that of their dependents.
>
> (4) That the introduction of a contributory superannuation scheme for members of Parliament is necessary and desirable.
>
> The Committee accordingly recommends that legislation providing for such a scheme be introduced into the House in the first session of the next Parliament.

The Bill,[2] which contained 91 clauses, came into operation on April 1, 1948, except for Part V, which came into force as from the date of passing of the Act (November 27, 1947). The provisions in so far as they relate to members are as follow:

[1] *N.Z. Parlty. Paper* I-18, 1946.

[2] Act No. 57, 1947.

PART V

Parliamentary Superannuation

75. (1) In this Part of this Act, unless the context otherwise requires,—
" Member " means a member of the House of Representatives:
" Minister " means the Minister of Finance:
" Salary," in relation to a member, means the amount payable to him under section seventeen of the Civil List Act, 1920, or, as the case may be, the salary payable to him under that Act or any amendment thereof.

(2) For the purpose of computing the length of any period of service of any person as a member for the purposes of this Part of this Act,—

(*a*) Where any period of such service has commenced or ended before the first day of July in any year it shall be deemed to have commenced or ended, as the case may be, at the beginning of that year:

(*b*) Where any period of such service has commenced or ended on or after the first day of July in any year it shall be deemed to have commenced or ended, as the case may be, at the end of that year.

76. (1) From the salary payable to any member in respect of any period after the passing of this Act, a superannuation contribution at the rate of fifty pounds a year shall be deducted as the salary becomes payable from time to time.

(2) Where any person commences to receive a retiring-allowance under this Part of this Act when his contributions under this section are less than two hundred and fifty pounds, he shall pay the amount of the deficiency into the Consolidated Fund within such time and in such manner as the Minister may allow in that behalf.

77. Where any person has ceased to be a member at any time after the passing of this Act after having served as a member for not less than nine years (whether continuously or in two or more separate periods, and whether before or after the passing of this Act), and has attained the age of fifty years, he shall be entitled to an annual retiring-allowance for the rest of his life, commencing on the day after the date on which he ceased to be a member or on the day on which he attained the age of fifty years (whichever day is the later), and computed as follows:—

(*a*) For the first nine years of his service as a member he shall receive a retiring-allowance at the rate of two hundred and fifty pounds a year:

(*b*) For each year of his service as a member in excess of nine years the rate of the retiring-allowance shall be increased by twenty-five pounds a year, but in no case shall the rate of the retiring-allowance be more than four hundred pounds a year.

78. (1) Where any person has ceased to be a member after having served as a member for less than nine years he may at any time elect to receive a refund of the total amount of his contributions under this Part of this Act, without interest.

(2) Where any person has ceased to be a member after having served as a member for not less than nine years, he may, at any time, before accepting the first instalment of a retiring-allowance under this Part of this Act, elect to receive a refund of the total amount of his contributions under this Part of this Act, without interest.

(3) Where any person whose contributions have been refunded under this section subsequently becomes a member, the period of his service as a member for the purposes of this Part of this Act shall be deemed

to include the period in respect of which those contributions were paid, and he shall pay the amount so refunded into the Consolidated Fund within such time and in such manner as the Minister may allow in that behalf.

79. (1) Where any person who is in receipt of a retiring-allowance under this Part of this Act again becomes a member, the retiring-allowance shall not be payable while he continues to be a member; and upon his subsequently ceasing to be a member the rate of his retiring-allowance shall thenceforth be such rate as he may then be entitled to in accordance with this Part of this Act.

(2) Where in any other case than that provided for by sub-section one of this section any person, while in receipt of a retiring-allowance under this Part of this Act, is employed in the Government service or receives any remuneration from the Crown the amount of the retiring-allowance payable to him in respect of any month shall be reduced by the amount of the remuneration so earned by him in that month.

80. Where any person who is for the time being a member or has at any time after the passing of this Act been a member dies, whether before or after becoming entitled to a retiring-allowance, the following provisions shall apply:—

(*a*) If the deceased person is a male and leaves a wife surviving him, there shall be paid to the widow, at her election, either—

(i) Any annuity during her widowhood at two-thirds of the rate of the retiring-allowance (if any) to which the deceased person was entitled at the time of his death, or (if he was then a member) to which he would have been entitled if he had then ceased to be a member; or

(ii) The amount of the deceased person's contributions under this Part of this Act, less any sums received by him under this Part of this Act during his lifetime:

(*b*) Any such election shall be made by the widow in writing delivered to the Minister, and shall be deemed to be final when the first payment under this Part of this Act is accepted by her:

(*c*) If the deceased person is a female, or (being a male) leaves no widow, the amount of his or her contributions under this Part of this Act, less any sums which he or she has received under this Part of this Act in his or her lifetime, shall be paid to the personal representatives of the deceased person in trust for the persons entitled thereto under his or her will or under the statutes relating to the distribution of intestates' estates, as the case may be.

81. Every retiring-allowance or annuity under this Part of this Act shall be paid by equal monthly instalments, with a proportionate payment for any fraction of a month.

82. All retiring-allowances and refunds of contributions, and all other moneys payable under this Part of this Act shall be paid out of the Consolidated Fund without further appropriation than this section.

X. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY

By Ralph Kilpin, J.P.,
Clerk of the House of Assembly

Apart from the Royal Visit dealt with in our previous issue, the following unusual points of procedure arose during the 1947 Session.

Revival of Bills dropped in Senate owing to prorogation.—To connect the last part of the 1946-47 Session with the 1947 Session it was necessary to request the Senate under S.O. 180 to resume the consideration of 3 public Bills which had been introduced in the House of Assembly and dropped in the Senate owing to prorogation—namely, the Part Appropriation Bill, the Stock Exchanges Control Bill and the Commissions Bill. All of them were ultimately passed.[1]

Separate Railway Budget.—During the Sessions of 1920 and 1921 the Standing Rules and Orders provided for separate Motions to go into Committee of Supply on the Consolidated Revenue Estimates and the Railway Estimates.[2] To save time this practice was abandoned, but in the 1946-47 Session it was suggested in the course of debate that time would be saved by reverting to the old practice if the Railway Budget could be brought before the House so early in the Session that no "Part" Appropriation Bill for the Railway and Harbour services would be required. This proposal was adopted as an experiment at the commencement of the Session by means of a Sessional Order which limited the time to be occupied on the Railway and Harbour Estimates to—

(*a*) 12 hours for the Motion to go into Committee of Supply;
(*b*) 12 hours for Committee of Supply;
(*c*) 4 hours for the Second Reading of the Railways and Harbours Appropriation Bill; and
(*d*) 2 hours for the Third Reading of the Bill.

The Railway Budget speech by the Minister of Transport was made on February 26, and the ordinary Budget Speech by the Minister of Finance on February 28.[3]

Enquiry into affairs of private institution with public objects.—In terms of the will of the late Joseph Baynes an estate, known as the Baynesfield Estate, was placed under a Board of Management to be administered "for the benefit of South Africa and the advancement of its people". On March 11, 1947, a private member moved that in view of the complaints which have from time to time been made in regard to the management of the estate a Select Committee be appointed to investigate and report upon the affairs and management of the estate with power to take evidence and call for papers.

[1] 1947 VOTES 16; *see also* JOURNAL, Vol. XV, 198. [2] *See* S.O. 97A of May 29, 1919, amended May 1, 1927. [3] The approximate number of hours occupied on the Railway Budgets including the Appropriation and Part Appropriation Bills for the last 5 years are: 1942, 17; 1943, 22; 1944, 29; 1945, 29; and 1946, 33; 1947 VOTES, 16.

That Parliament has the right to enquire into such affairs is clear from the precedents quoted by Todd,[1] but, as Todd points out, the Government have uniformly resisted all attempts on the part of either House to obtain information concerning the affairs of private individuals " or to sanction the appointment of committees to enquire into private and personal affairs unless presumptive proof of delinquency calling for Parliamentary investigation could be shown ".

In this case the Government had an official representative on the Board of Management and, as he had not reported against the affairs and management of the estate, an amendment was moved that " in the opinion of this House no default on the part of the members of the Joseph Baynes Board of Administration has been established and that should any such default be hereafter alleged, the courts of law would be the proper tribunal before which any aggrieved person may seek redress ".

The proceedings in this case were of particular interest as the Chairman of the Board of Management happened to be an M.P. (Mr. Marwick), and the responsible Minister supported the Motion. The debate on the Motion was adjourned and the Motion finally dropped owing to prorogation.[2]

Conduct of Member[3]*—Statements in the course of debate reflecting on character or personal conduct of members.*—In the course of debate when the House was in Committee of Supply on May 4, 1947, the member for Kimberley (District) made a statement reflecting on the personal conduct of the member for Middelburg on a matter unconnected with the proceedings of the House. On being called upon to withdraw the statement he did so, but repeated it in another form without apologizing.[4] The House adjourned shortly afterwards, but on the following sitting day the member for Kimberley District asked the House to accept his full apology. Mr. Speaker then said:

> The hon. member for Kimberley (District) has tendered an apology which I am sure hon. members, including the hon. member for Middelburg, will accept. I would, however, like to take this opportunity of reminding the House that statements made in the course of debate which cast reflections on the character or personal conduct of members are highly irregular. They may do irreparable harm to members and tend to bring the proceedings of Parliament into disrepute.[5]

Calling a member's word into question.—During a debate in Committee of Supply the Chairman dealt with a wrong impression among members that has frequently given rise to points of order—namely, that a member's word must always be accepted. The Chairman pointed out that it is only what a member says *in explanation* of a speech made in the House that his word must be accepted. The Chairman, after quoting authorities,[6] added that obviously the practice

[1] *Parliamentary Government in England*, II, 160. [2] 1947 VOTES, 104. [3] *See also* Article X hereof.—[ED.] [4] 61 *Assem. Hans.* 4659. [5] 1947 VOTES, 448.
[6] S.O. 65; Bourinot III, 473; 43 *Assem. Hans.* 2787.

was sound, " for otherwise when facts are in dispute not only the member stating them but every other member could claim that his own word should finally dispose of the point at issue."[1]

Stages of Bills.—Under S.O. 159 not more than one stage of a Bill shall be taken at the same sitting without the consent of the whole House. 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. Last year it was found necessary towards the end of the 1946-47 Session to suspend the Standing Order for the remainder of the Session, and in the 1947 Session it was suspended in connection with the Railways and Harbours Appropriation Bill and the Second Additional Appropriation Bill.[2]

Delegated Legislation and Public Utility Corporations.—On April 3, 1947, the Prime Minister moved for the appointment of a Select Committee to report upon what safeguards may be necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the law ". The terms of reference were widened by an amendment which the House accepted. At the request of the Committee the Clerk of the House supplied it with certain documents, including a memorandum on the safeguards existing in the United Kingdom and South Africa and a chronological list of authoritative literature on the subject.[3] Other returns were called for, but, as they were not received before the House adjourned, the Committee recommended that a similar Committee be appointed in the following Session to resume and complete its enquiry.[4]

In the meantime reports and statements presented to the House from the following public utility corporations were referred to the Select Committee on Public Accounts: the South African Iron and Steel Industrial Corporation, Ltd.; the Industrial Development Corporation of South Africa; the Electricity Supply Commission; the Fisheries Development Corporation of South Africa; and the South African Broadcasting Corporation.[5] None of these documents was considered, but the South African Iron and Steel Industrial Corporation, Ltd., and the Electricity Supply Commission were asked to furnish the Committee with memoranda on the question of increased parliamentary control.

During the Session a Bill was introduced and passed which had an important bearing on the subject—namely, the Liquid Fuel and Oil Bill (A.B. 53, 1947). The object of the Bill was to make provision for the manufacture of liquid fuel and oil from coal by *private* corporations approved by the State. In Committee of the Whole House on the Bill amendments were moved which, if agreed to, would have had the effect of substituting corporations comprising both representatives of private enterprise and Government representatives with State capital and a prospect of State control. As these amendments constituted an alter-

[1] 1947 VOTES, 263. [2] *Ib.* 186, 194; *see also* JOURNAL, Vol. XV, 199. [3] S.C. 6—'47, Appdx. [4] 1947 VOTES, 242, 499; *see also* JOURNAL, Vol. XIV, 67; and p. 60 Abstr.—[Ed.]. [5] 1947 VOTES, 282, 362.

native proposal destructive of the principle agreed to by the House at the Second Reading of the Bill, the Chairman ruled that under S.O. 165 he was precluded from putting them.[1]

Closure.[2]—Under S.O. 81 any member may claim to move " That the Question be now put ", and if the Chair is of opinion that the Motion is not an infringement of the rights of the minority the Motion it put without amendment or debate. In practice the Closure has hitherto been moved by a member of the Government party, but in Committee of Supply on May 7, 1947, while a member of the Government party was addressing the Committee it was moved by the Chief Whip of the Opposition as a protest against the amount of time occupied by members of the Government party under time limits imposed by a Sessional Order for debate in Committee of Supply. The Motion was put by the Chairman but was defeated by a Government majority. In explanation the Minister in charge of the Vote under discussion said that the Government was averse to accepting any Motion for the Closure which was moved while a member was speaking.[3]

During the 1947 Session the Closure was applied 9 times—namely:

On the City of Durban Savings and Housing Department (Private) Bill it was applied 6 times, and not accepted twice.

In Committee of Supply it was negatived once and twice not accepted.

On the Cable and Wireless Workers Transfer Bill it was applied twice.

On the Finance Bill it was applied once.

Acceptance of amendment in conflict with principle of Bill.—The Defence Amendment Bill (A.B. 61, 1947) introduced by the Minister of Defence *inter alia* provided for compulsory service by women. In reply to 2 *R.* debate the Minister stated that he was prepared to insert provisions for voluntary instead of compulsory service by women. The Bill passed 2 *R.*, but, as the amendment to give effect to the proposal would have been in conflict with the principle adopted, the Minister moved on the following day that the Order for the House to go into *C.W.H.* thereon be discharged and the Bill withdrawn. This was agreed to and a new Bill was introduced.[4]

Hybrid Bills.—On June 8, 1946, the Acting Prime Minister laid on the Table a statement to the effect that owing to the discovery of gold in large areas of the Orange Free State it would be necessary to " freeze " the use of lands in those areas by future legislation with retrospective effect to that date. During the next 1947 Session the Natural Resources Development Bill (A.B. 52, 1947) was introduced " to promote the better and more effectively co-ordinated exploitation, development and use of the natural resources of the Union ". The areas in the Orange Free State, referred to in the statement, were dealt with in Clause 14 and specified in the Schedule. After the Bill had been read 2 *R.* a

[1] 1947 VOTES, 541. [2] *See also* JOURNAL, Vols. V, 82; X, 157. [3] 1947 VOTES, 398.
[4] *Ib.* 511.

member asked Mr. Speaker in Chambers whether in view of the facts the Bill ought not to have been treated as a Hybrid Bill in order to give the owners of land in the Orange Free State an opportunity of being heard. Mr. Speaker pointed out that this was a " preliminary objection " which should have been taken before the Bill was read 2 *R.* He later added that from a careful examination of the Bill he found that the areas in the Orange Free State and the number of owners were very large, and that while the practice was to treat public Bills adversely affecting private rights of " particular individuals, groups of individuals or localities " as Hybrid Bills, it was not the practice to treat public Bills as Hybrid Bills when they affected large areas or a whole class. In making these observations Mr. Speaker referred to May, XIV, 490.

Preliminary notices for Hybrid Bills.—Hybrid Bills require preliminary notices to be published under S.O. 182 (Public Business) and S.O. 9 (Private Bills) stating the general objects of the Bill, and S.O. 65 (Private Bills) prescribes that no amendment shall be made which is foreign to the import of the notice. In *C.W.H.* on the Vyfhoek Management Amendment (Hybrid) Bill an amendment was moved to exempt persons from the operation of the Bill who were opposed to its provisions, but the Chairman pointed out that the preliminary notice stated that the object of the Bill was to make special provision for the disposal of land at present held in undivided shares by co-owners, and that an amendment to exclude certain co-owners from the operation of the Bill was obviously foreign to the import of the notice. In disallowing the amendment he added that it was also in conflict with the principle of the Bill as read 2 *R.*[1]

Ministerial Statements.[2]—On June 2, 1947, the Prime Minister asked Mr. Speaker's permission to make a statement on the report of a commission on deportations. On a member objecting to the statement being made without an immediate opportunity of debating it, Mr. Speaker said he was aware that it was at one time the practice to obtain the unanimous consent of the House for such statements to be made,[3] but since 1936 the practice had been changed and the Speaker now exercised his discretion on behalf of the House. Mr. Speaker on his own responsibility then allowed the statement to be made for the convenience of the House.[4]

[1] 1947 VOTES, 520. [2] *See also* JOURNAL, Vols. XI-XII, 38; XIV, 34. [3] 26 *Assem. Hans.* 2131. [4] 61 *Ib.* 6201.

XI. " THE GOLDBERG CASE "

By the Editor

During the year under review in this issue a case of " Conduct of a Member " occurred in the Union House of Assembly which was in close relation to a Bill which had been introduced to amend the Union Powers and Privileges of Parliament Act, 1911.[1]

The powers and privileges of Parliament of the Union are provided for in the Constitution, the South Africa Act, 1909,[2] S. 57 of which states that they shall be those of the House of Assembly of the Colony of the Cape of Good Hope at the establishment of Union until such are declared by the Union Parliament. In its First Session an Act was passed, S. 36 of which lays down that the powers and privileges of Parliament shall be the same as those held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and the members thereof respectively whether enjoyed by custom, statute or otherwise; " Provided always that no such privileges, immunities or powers shall at any time exceed those at the same time held and exercised by the Commons House of the said Parliament and by the members thereof."

However, stimulated perhaps by the Statute of Westminster, 1931, and the fact that the powers and privileges of Parliament are not included among the entrenched provisions of the Constitution for the amendment of which a two-thirds vote of Parliament at a joint sitting of the 2 Houses is required, a Bill was introduced into the House of Assembly in 1947 to amend the Act of 1911 as described below.

The events in this double action will now be taken in their chronological order.

Powers and Privileges of Parliament Bill.—On March 7,[3] the hon. member for Pinetown (Mr. J. S. Marwick) in moving 2 *R.* of the Bill said that in the present state of the law punishable payments to members of Parliament under S. 10 (4) of the Powers and Privileges of Parliament Act of 1911[4] were of 2 kinds—namely, for a member:

(*a*) to accept a bribe to influence him in his conduct as a member; or

(*b*) for any member to accept a fee, compensation, gift or reward for or in respect of the promotion of, or opposition to any Bill, resolution, matter, rule or thing submitted to Parliament or any Committee.

Section 26 (1) extends the offence last specified to a member, or attorney, law agent, or partner of the member receiving directly or indirectly, any such fee, compensation, gift or reward, and declares any such offender liable upon conviction to a fine not exceeding £1,000, and repayment of the values received.

The hon. member then gave instances quoted in May.[5] Mr. Marwick, proceeding, said that it would be seen that offences unconnected

[1] No. 19 of 1911. [2] 9 Edw. VII, c. 9. [3] 60 *Assem. Hans.* 605-638.
[4] No. 19 of 1911. [5] XI Ed., 84-5.

with Parliament are included; namely, forgery, perjury or frauds, breaches of trust, misappropriation of public money, conspiring to defraud, corruption in the administration of justice or in the execution of their duties as members of Parliament.[1]

With the passage of time, members of Parliament were looked to by their constituencies more and more to render assistance in an ever-increasing range of activities, and it seemed desirable that a uniform rule should be observed under which services so rendered are free. It would be a negation of their pledges given on public platforms if members were to supplement their income, especially with their allowance of £1,000 p.a., which was intended to cover any reasonable cost they might incur.

The purpose of the Bill was to strengthen the Act by the addition of the following paragraph to S. 10 (4) of the Act of 1911:

> (*b*) The offering to or acceptance by any member or officer for himself or for any other person of any fee, compensation, gift or reward for or in respect of any service rendered or to be rendered by him in obtaining or attempting to obtain any gift, grant or award of or appointment or promotion to any office, or in obtaining or attempting to obtain any benefit from the Crown, or any Department of State, or for or in respect of making representations to any Minister or other servant of the Crown on behalf of any person or association of persons.

The Prime Minister (Field-Marshal J. C. Smuts) observed that he was informed by the officers of the House that their law and practice were identical with those of the House of Commons, and unless a case was made out for departure from that law he did not consider they should deal with this Bill at all. He also regretted the introduction of the Bill as creating a false impression that corruption was rife in the country. He did not say that there were not black sheep, but no case had been brought forward.[2]

Their Parliamentary privileges dealt with the conduct of members in their relation to the House. The hon. member introducing the Bill dealt with the conduct of members in relation to the Government.[3] If a member took valuable consideration, received money or a bribe, or anything else, for work he did in connection with the Government, it is, under the Bill, to be declared a breach of Privilege. Such cases could be dealt with under the criminal law just as with any member of the public. A distinction was drawn between the ordinary citizen and a member of Parliament. If a disclosure was made to him (the speaker) by a member that he dealt professionally with the matter, why should he not listen to the member?[4] He knew there was an impression abroad that public men were not above suspicion, but it was quite a different thing to support that suspicion.

The Prime Minister then moved to omit all words after " That " and substitute:

[1] 60 *Assem. Hans.* 606, 7. [2] *Ib.* 608. [3] *Ib.* 609. [4] *Ib.* 610.

this House is of opinion that an amendment to the Powers and Privileges of Parliament is unnecessary to maintain the spirit of public service devolving upon members or to uphold the dignity of Parliament.[1]

The hon. and learned member of Pietermaritzburg (District), Colonel C. F. Stallard (Leader of the Dominion Party), challenged the statement that the position of a member of the House in regard to all administrative matters was the same as that of a member of the general public. The duties of a member were not confined to matters which actually came before the House in the form of a Motion or a Bill. It was public knowledge that it was a common practice for members continually to approach one Minister or another and take a fee or reward for putting the case before them. That was the mischief aimed at in the Bill. It might apply to a man without any professional standing at all.[2]

Why was a member so chosen ? Because he has regular access to the Minister, and owing to his membership of the party, to one party or another, and to his standing in the House, he may be considered to have greater influence than an attorney or advocate.[3] Of course, the practice is perfectly legitimate if he is not a member, but when he becomes a member the mischief creeps in because he will be, to a certain extent, tying himself in the representations he is making and laying himself open to the possibility of being influenced by the fact that he is holding a brief and taking a fee, whereas, it is his bounden duty to do that without a fee.[4]

The Leader of the Opposition (Dr. the Hon. D. F. Malan (Piketberg)) agreed with the Leader of the Dominion Party that they could not simply thrust the Bill on one side and say that it was entirely unnecessary. The matter could at least be referred to the Committee on Standing Rules and Orders or enjoy their attention, or such Committee should at least have the cognizance of the feeling that legislation was necessary.[5]

He would put this question to the Prime Minister: " If a member of Parliament approaches a specific Minister in connection with the interests of some person or other outside, can that member be paid for making those representations ?"

When he was a Cabinet Minister he doubted whether it was right or honourable and regarded it as something that ought not to be done. The hon. member referred especially to deportation cases, and pointed out the attitude he had always taken up as a Minister when he replied that he was not a court before which members of Parliament should come and practise.[6]

The hon. member for Vereeniging (Lieut.-Colonel K. Rood) stated his opposition to any member of the House, whether of the legal profession or not, making representations to a Minister or Department, or a member of the Government, charging a fee, for whatever reason, where he was dealing with pending or contemplated legislation. It

[1] *Ib.* 611. [2] *Ib.* 612. [3] *Ib.* 614. [4] *Ib.* 616. [5] *Ib.* 617. [6] *Ib.* 619.

was true that the practice had developed of members being given fees to appear before the Ministers, but there was no reason why it should not be stopped as undesirable. He would like to see the matter referred to a Select Committee before which the Bar Council and Side Bar Council could have an opportunity of giving evidence.[1]

The hon. member for Winburg (Mr. C. R. Swart) did not regard it as right for a system to be tolerated under which an advocate could come and say that he was being paid for the work he was doing while another member, who was not an advocate or solicitor, might not do it.[2]

The Prime Minister: " There is no distinction. Any man can say that he is being paid. Is it a crime ?"

Mr. Swart moved to omit all words after " That " and to substitute:

the Order for the Second Reading of the Bill be discharged and the subject of the Bill be referred to the Committee on Standing Rules and Orders for consideration and report.[3]

The hon. member for South Rand (Mr. J. Christie) said that there was very grave danger in the acceptance of the practice of a member taking such fees. If it was not illegal, the quicker they passed the Bill the better. If a member approached a Minister on behalf of a constituent, or some party who needed assistance, in a professional capacity and not as a member of Parliament, it was going to be very difficult to convince the public that that member had no advantage over any other professional man, owing to the fact that he was a member of Parliament. A Minister of the Crown, when this practice prevails, would be uncertain, on being approached by a member, whether that member had not been influenced in the discharge of what was part of his Parliamentary duties by the fact that he was collecting a fee.[4]

The Prime Minister withdrew his amendment.

An amendment was moved by the hon. member for Natal South Coast (Mr. Neate) to add at the end, " and that it be an instruction to the Committee to report within a month ", but dropped for want of a seconder.

The hon. member for Hospital (Mr. A. G. Barlow) observed that when a member of Parliament went to a Minister and said, " I have come here on behalf of a client, but I want to be paid for my services ", then the dignity and integrity of the House was threatened.[5] " The country has got to be cleaned up and we have got to make a law that any member of Parliament who does anything for which he receives money outside his £1,000 a year shall be guilty of a serious crime and misdemeanour."[6] Mr. Barlow, continuing, said that it was a practice that was growing up and though men had done it in an innocent way it was a practice that had got to stop.[7]

The hon. and learned member for Parktown (Mr. J. R. F. Stratford) remarked that there were quite a number of cases where the making of

[1] *Ib.* 620. [2] *Ib.* 623. [3] *Ib.* 624. [4] *Ib.* 625, 6. [5] *Ib.* 629.
[6] *Ib.* 630. [7] *Ib.* 631.

representations to a Minister involved no work, no professional knowledge, no study of any particular case; in other words, nothing more than perhaps a visit to the Minister across the road, or to Pretoria, for a few minutes. For any member, whether professional or not, to charge a fee in cases of that kind was utterly wrong. He was in favour of the Bill. Until this practice was prohibited it would continue and he was satisfied it was not confined only to professional men. It was undesirable. Let them look into the matter and prohibit it in the best way they could after receiving the report from the Committee.[1]

The hon. member for Gezina (Dr. S. J. Swanepoel) urged that it was not only a question of lawyers, but that other members were also in that position. On the other hand he felt that they should not pass legislation precipitately or create the impression that there was corruption on a large scale. Medical and other professional men were in the same position, and in some instances could be placed in a difficulty.[2]

Question was then put—" That all words after ' That ' proposed to be omitted, stand part of the Motion ", upon which the House divided: Ayes, 18; Noes, 69.

The Question was accordingly negatived and Mr. Swart's amendment agreed to.

The Motion as amended:

That the Order for the Second Reading of the Bill be discharged and the subject of the Bill be referred to the Committee on Standing Rules and Orders for consideration and report.

—was then put and agreed to.[3]

It may here be said that it is not the custom for either House at the opening of each Session to appoint a Committee of Privileges; such matters arising in the House of Assembly are usually referred to a Select Committee specially appointed for the purpose.[4]

Conduct of a Member (*The Goldberg Case*).—On March 10,[5] the hon. member for Pinetown (Mr. J. S. Marwick), in giving notice of Motion on the conduct of Mr. A. Goldberg (Durban: Umlazi) put in an exhibit and gave notice that he would move to-morrow:

That it be an instruction to the Committee on Standing Rules and Orders to consider and report upon the following correspondence, and that the Committee have power to take evidence and call for papers.

The following correspondence was the exhibit put in by the hon. member:

(1) Copy of letter from Messrs. Cowley & Cowley, Solicitors, Durban, to Messrs. A. Goldberg & Co., Durban:

14th May, 1946.

DEAR SIRS,

Re R. Bhagwan.

We have been consulted by the above on whose behalf we understand you are acting in connection with an application he made some time ago for an appointment as a Commissioner for Oaths.

[1] *Ib.* 632-4. [2] *Ib.* 635. [3] *Ib.* 637, 8. [4] *Parliamentary Procedure*, by R. Kilpin, 120. [5] 60 *Assem. Hans.* 652.

He has advised us that he has written to you on several occasions, but he does not seem able to obtain any satisfactory information from you. He is very dissatisfied with the manner in which this matter has been handled and he has instructed us to ask you to be good enough to forward to us all the papers which were handed to you by our client.

He also advised us that he paid you the sum of £10.10.0d., being your fees, and he has requested us to ask that you will let us have a detailed statement of your account.

We shall be pleased if you will let this matter receive your earliest attention as we understand your Mr. Goldberg is leaving the country shortly.

Yours faithfully,
COWLEY & COWLEY.

(2) Letter from Messrs. Cowley & Cowley to Mr. J. S. Marwick, M.P., House of Assembly, Cape Town:

21st May, 1946.

DEAR SIR,

On behalf of Mr. Bhagwan, we have the honour to enclose herewith for your information a letter received from Mr. A. Goldberg, M.P., upon the letter heading of Messrs. A. Goldberg & Co., Solicitors.

By this letter you will see that Mr. Goldberg, M.P., has charged a fee of £10.10.0d., not as an Attorney but in his capacity as an M.P. for interviewing the Minister.

We have the honour to ask that you will bring this action before the House in some way, as in our opinion it is unparliamentary for an M.P. to receive pay for doing parliamentary work over and above the salary allowed to him by Parliament. Furthermore, you will see by the letter that because Bhagwan is trying to find out what value he is getting for his £10.10.0d., Mr. Goldberg has turned nasty and has asked Senator Shepstone not to carry on the good work which he was previously doing. We feel confident that Senator Shepstone is not receiving pay for using Parliamentary influence; in fact, he has absolutely refused to do so in this particular matter.

We trust you will also ask Mr. Shepstone not to allow the pique of Mr. Goldberg to interfere with any good work which he may have in hand on behalf of Bhagwan.

Yours faithfully,
C. COWLEY.

Copies to:

A. Goldberg, Esq., M.P., Durban.
Senator the Honourable D. G. Shepstone, The Senate, Parliament House, Cape Town.

Letter from Mr. A. Goldberg, M.P., to Messrs. Cowley & Cowley:

A. GOLDBERG & CO., SOLICITORS,
REDFORDE BUILDINGS,
DURBAN.
15th May, 1946.

DEAR SIRS,

Re Bhagwan.

I have your letter of the 14th instant in regard to the above named. This letter should have been addressed to me personally and not to my firm, as it has nothing to do with professional services either undertaken or rendered by my firm.

Your client sought to invoke my services as an M.P. I was reluctant to intervene on his behalf, as I have enough hay on my fork during the Session.

I eventually agreed, however, to interview the Minister, and such others as might be necessary, for an agreed fee of ten guineas. I have done so, and your client has been advised by me personally that my efforts have proven unsuccessful.

I never undertook to engage in correspondence with your client, and he may write if he so chooses until Doomsday. I have no intention of replying when he has had all the information he can get from me personally.

He saw me very recently, and as a special favour to him—though I pointed out I could see little value in it—I undertook to ask Senator Shepstone, as I was not returning to the Cape, to see whether the High Commissioner for India could use his influence in the matter, and I have done so. As to papers, as your client well knows, these are with the High Commissioner.

As this is not part of my original undertaking, and in view of the terms of the letter under reply, I am to-day wiring Senator Shepstone to ask him to take no action in the matter, and to advise the High Commissioner that I have no desire that any such action should be taken by him at my instance.

Yours faithfully,
A. GOLDBERG.

—upon which Mr. Speaker stated that it was not necessary for any exhibits to be put in at this stage as the hon. member was giving Notice of Motion.

On March 11,[1] Mr. Marwick, when moving the above Motion, said that the case was introduced by him in consequence of a statement made by the rt. hon. the Prime Minister that the Bill introduced by the hon. member for Pinetown on March 7[2] was unintelligible and that he had not made out a case.

After the Motion had been seconded, Mr. A. Goldberg said that so far as the broad question raised by this correspondence was concerned —namely, the propriety or otherwise involved in the acceptance of a fee—the whole question would be considered by the Select Committee. As to the imputations reflected in the correspondence, he would, at this stage, merely say quite emphatically that there was not a shred of justification for any imputation either upon his character or integrity. Nothing he had said or done in this matter would not bear the closest scrutiny. Under the circumstances he welcomed the inquiry. He merely wanted now to make one statement of fact, because, while it emerged from the originals of the correspondence, it did not emerge from the copies, and it was that in his professional calling he had practised entirely on his own behalf and had no partners.[3]

Mr. Goldberg then withdrew.

The hon. member for Durban (Central) (Mr. J. C. Derbyshire) said that the House was ill-advised not to have adopted the Bill sponsored by the hon. member for Pinetown, as it would have prevented the stigma which now attached to the hon. member for Umlazi through this matter now being introduced. Whatever such hon. member had done, had been done by most of the lawyers in the House.[4] Mr. Derbyshire urged that it would serve no good purpose to refer this Motion to the Standing Orders Committee, but if the hon. member

[1] *Ib.* 659. [2] *Ib.* 606. [3] 60 *Assem. Hans.* 761, 2. [4] *Ib.* 762.

for Umlazi was prepared to submit the whole case to the Committee it was not necessary for the House to do so.

Motion was put and a division claimed by Mr. Derbyshire, but as fewer than 10 members[1] voted against the Question, Mr. Speaker declared it carried.

On March 11,[2] it was ordered that the exhibits (*see above*) put in by Mr. Marwick, in giving his Notice of Motion, be referred to the Committee.

On the *Second* and *Third* Reports, the Committee sat twice, Mr. Ralph Kilpin, the Clerk of the House, being in attendance.

In regard to the *First* Report the Committee decided on division (Ayes, 9; Noes, 2)—" That it is unnecessary for the Committee to hear Mr. Goldberg."

A Memorandum[3] by the Clerk of the House on " Conduct of Members " was, at Mr. Speaker's request, put in, shewing South African and House of Commons precedents.

In regard to the *Second* Report (Conduct of Members), a further Memorandum[4] by the Clerk of the House was also, at Mr. Speaker's request, put in, " on matters arising out of the *Second* Report ".

Second Report.[5]—On March 20,[6] Mr. Speaker, as Chairman of the Committee on Standing Rules and Orders, brought up this Report, which read:

On Subject of Powers and Privileges of Parliament Amendment Bill, and Conduct of Mr. A. Goldberg, M.P.

Your Committee has taken into consideration the two matters referred to it, viz. (1) the subject of the proposed Powers and Privileges of Parliament Amendment Bill (A.B. 16-'47) and (2) correspondence from which it appears that Mr. Goldberg, M.P., took a fee for interviewing a Minister which would be prohibited by the Bill (V. & P., 1947, pp. 103-104).

(1) *Powers and Privileges of Parliament Amendment Bill.*

In dealing with the conduct of members the House has recourse to two distinct methods of procedure which have been established by practice:

Matters connected with the proceedings of the House are dealt with under the Powers and Privileges of Parliament Act, 1911, which sets out offences in connection with the proceedings of the House.

Matters unconnected with the proceedings of the House but which affect the honour of members or the integrity and dignity of the House are dealt with as the House may think fit without reference to the provisions of the Act.

The Bill which has been referred to the Committee seeks to include certain matters unconnected with the proceedings of Parliament (such as the conduct of Mr. Goldberg) in the Powers and Privileges of Parliament Act, but your Committee is of opinion that it is inadvisable to include any offence unconnected with the proceedings of the House within the provisions of the Act.

(2) *Conduct of Mr. Goldberg.*

(*a*) Your Committee finds that the conduct of Mr. Goldberg as disclosed by the correspondence is not an offence under the Powers and Privileges of Parliament Act.

[1] H.A.S.O. 126. [2] 60 *Assem. Hans.* 759. [3] Appdx. C. [4] Appdx. D.
[5] The First Report dealt with the subject of Joint Parliamentary Catering.—[ED.]
[6] 60 *Assem. Hans.* 372.

(*b*) Your Committee is of opinion that, since members of this House have special accsss to Ministers and State officials, it is both inexpedient and derogatory to the dignity of the House for any member to accept any reward or other consideration for approaching Ministers and State officials or generally for any public service which he is called upon to perform as an elected representative of the people.

C. M. VAN COLLER,
Chairman.

COMMITTEE ROOMS,
HOUSE OF ASSEMBLY,
20*th March*, 1947.

Mr. Speaker then stated that unless notice of objection to the Report was given on or before March 27 it would be considered as adopted.

On March 27,[1] the hon. member for Pinetown gave notice of objection, and it was moved by the Minister of Finance, put and agreed to: " That the Report be considered on 31st March."

On March 28,[2] the hon. member for Pinetown moved that a letter, dated March 12, 1947, which he had received from M. A. Desai and which was read to the House, be referred to the Committee on Standing Rules and Orders, the charges contained in such letter being refuted by the hon. member for Umlazi. Space does not admit of a résumé of the 12-column debate in this subject. The Motion was, however, negatived.[3]

Debate on Second Report.—On March 31,[4] the Report was ordered to be considered. The Motion—" That the Report be adopted ", was moved by the Minister of Finance (Rt. Hon. J. H. Hofmeyr). During debate an amendment was moved by the hon. member for Winburg (Mr. C. R. Swart),[5] to add at the end of the Question the words:

and further that it be an instruction to the Committee on Standing Rules and Orders to inquire into the desirability of providing in the Standing Rules and Orders or by legislation for the application and the manner of application of the principle laid down in Clause 2(*b*) of the Report of the Committee

—which amendment was duly seconded. However, at the conclusion of the debate, the Minister said that he wanted the Committee to go into these matters without instructions from the House and that he was prepared to bring up: first, the procedure to be followed in connection with all complaints against the conduct of a member in connection with work not directly connected with the proceedings of Parliament; and secondly, whether it was possible to give more definite guidance to members of Parliament in regard to the connection of officials who might be approached.[6]

The debate on this Question covers over 40 columns of *Hansard*,[7] but again space does not admit of its treatment here.

Upon this assurance Mr. Swart, by leave of the House, withdrew

[1] *Ib.* 1814. [2] *Ib.* 1927. [3] *Ib.* 1927-40. [4] *Ib.* 1969. [5] *Ib.* 1982.
[6] *Ib.* 2011. [7] *Ib.* 1969-2011.

his amendment, and the Question for the adoption of the Report was put and agreed to.

Third Report.—On May 1,[1] this Report was brought up by Mr. Speaker, as Chairman of the Committee on Standing Rules and Orders, and read:

On matters arising out of consideration of Second Report.

In its (second) Report on the conduct of a member (V. & P., 1947, p. 155) your Committee expressed the opinion that it was inadvisable to include any offence unconnected with the proceedings of the House within the provisions of the Powers and Privileges of Parliament Act. Your Committee also found that the conduct of Mr. Goldberg in taking a fee for interviewing a Minister was not an offence under the Act and expressed the opinion that:

" since members of this House have special access to Ministers and State officials, it is both inexpedient and derogatory to the dignity of the House for any Member to accept any reward or other consideration for approaching Ministers and State officials or generally for any public service which he is called upon to perform as an elected representative of the people."

The (second) Report was unanimously adopted on the 31st March, 1947 (V. & P., p. 214), but during discussion an undertaking was given that the Committee would consider two questions which had arisen during the course of debate:

(1) *The procedure to be followed by a member in making allegations against the conduct of another member when the allegations are not immediately connected with the proceedings of the House.*

Your Committee finds that the procedure is well established. The allegations must be made in specific terms and are for the House itself to consider as soon as possible. Mr. Speaker is not called upon, as in a complaint of a breach of privilege, to decide whether a *prima facie* case has been made out, but a member making allegations against the conduct of another member which are proved to be without foundation is open to the censure of the House, which by resolution may be expressed from the Chair.

(2) *Guidance as to which State officials may be approached by members for fee or reward in the ordinary course of their private or professional duties.*

Your Committee, when reporting on the matters referred to it, had in mind that *all* members have special access to Ministers and State officials and, in view of the variety of circumstances which may arise, is of opinion that members themselves must accept responsibility for the application in each case of the principle already accepted subject to the ultimate judgment of the House as to what is derogatory to its dignity and inconsistent with the standards which Parliament is entitled to expect from its members.

C. M. VAN COLLER,
Chairman.

[1] 61 *Ib.* 3666; both the Second and Third Reports come under the reference S.C. 7-'47.—[ED.]

XII. CONSTITUTIONAL DEVELOPMENTS IN THE SUB-CONTINENT OF INDIA DURING 1947[1]

By the Editor

PART I

At Westminster.

The task of giving an outline of the constitutional developments during 1947 in regard to what is now no longer the Empire of India is a considerable undertaking. Even could every page of this issue of the JOURNAL be devoted to the subject, affecting as it does over 450 million people, of many races, languages and religions, subscribing to diverse ideas, that space would be quite inadequate.

Constitutional developments in geographical India can be said to have begun with the Morley-Minto proposals, the Montagu-Chelmsford proposals, followed by the Simon Commission, the Round Table Conference,[2] the Government of India Act of 1935, the declaration at the time of the Cripps Mission, the visit of the Ministers to India in 1946, leading eventually to the announcement by the Prime Minister in the House of Commons on June 3, 1947.

The position between the 2 main divisions of political thought of recent development, in the sub-continent of India, is forbidden ground for our JOURNAL, the object of which is—as so aptly described by one of our Indian members—" to trace constitutional and procedural developments in Empire Parliaments " and to " confine itself to factual and historical surveys relating to outlines of constitutions and matters of procedure ". To trespass upon the political in these pages would indeed be just as out of place as politics in the mouth of the Clerk at the Table when in the discharge of his duties to his House, his Speaker and his members.

In giving an outline of constitutional developments in the Indian Peninsula during 1947 there is so much which is fluid that the present is too premature to embark upon a closely defined description of the subject.

It is hoped, when the constitutional position has been established, that an outline of the subject will appear in the JOURNAL.

The object of the writer will be, first, to note the steps which have been taken by H.M. Government in the United Kingdom, both by White Paper and legislation during 1947; to outline what has happened in 1946 and 1947 in regard to what has become the Dominion of India and the Dominion of Pakistan; and to conclude with Articles concerning further constitutional reform in the Indian States of Hyderabad, Mysore and Travancore.

[1] *See also* JOURNAL, Vols. III, 23; IV, 76; VI, 67, 68, 70, 71; VII, 80, 82, 90, 91; VIII, 61, 63, 66, 67, 74, 81; IX, 51, 54, 56, 138; X, 70, 74, 75; XI-XII, 62, 64, 69, 219; XIII, 87, 88, 91-93; XIV, 71, 77, 81, 83, 87, 88; XV, 89, 93-98. [2] For reports of investigations previous to 1932-33 *see* JOURNAL, Vol. III, 23 n.

India (Constitution Conversations).—On December 11, 1946,[1] the Prime Minister (Rt. Hon. C. R. Attlee) made a statement in the House of Commons referring to the Cabinet proposals of May 16, which it was hoped would bridge the gap between Hindu and Muslim points of view and enable Indians to frame their own Constitution by the accepted democratic method of a Constituent Assembly. In order to provide a basis, the Cabinet found it necessary to recommend to both the outline of a future Constitution for India, the essence of which was a Union of India, limited to Foreign Affairs, Defence and Communications, with a particular procedure in the Assembly for Provinces to form groups for the administration of common subjects. To supply this opportunity, the British Cabinet Mission proposed that the Constituent Assembly, after a preliminary meeting to decide the order of business, should divide into sections, 2 to cover the Provinces the Muslims claimed for Pakistan. These sections would settle the Provincial Constitutions. Individual Provinces would be free to opt out of a group after the first election under the new Constitution, decisions to be taken by majority vote.

Owing to subsequent difference of opinion between the Congress Party and the Muslim League as to the meaning of the Cabinet Mission's statement, the Muslim League withdrew its acceptance of the Mission's plan at the end of July last.

The Congress view was that the Provinces had the right both as to grouping and to their own Constitutions, and that therefore the sections' decisions could not be by majority vote. Congress, however, was prepared to accept the ruling of the Federal Court. It was mainly in the hope of resolving the difference in view on this matter that H.M. Government invited the Indian representatives to come to London, but without success. Consequently the Constituent Assembly summoned to meet last Monday was holding its preliminary Session without representation of the Muslim League. H.M. Government had taken legal advice on the interpretation, which confirmed their Statement of May 16, that the voting in the section should be by majority vote, which was accepted by the Muslim League.

The peaceful transfer of power to an Indian Government was a matter of supreme importance. The reference of the matter to the Federal Court should be made early.

In such circumstances, therefore, the Prime Minister felt that the present time would not be opportune for a debate on the subject in the House. The Government, however, ultimately conceded the request of the Opposition for a debate.

The White Papers of 1947.

Cmd. 7047.—The Imperial Government's statement of policy in regard to India as contained in the White Paper of February 20, 1947, opens by reciting the previous steps taken to achieve the proposals

[1] 431 *Com. Hans.* 5, s. 1175-80.

made public in May last envisioning a future constitution of India settled by a Constituent Assembly composed of representatives of all communities and interests in British India and of the Indian States, which, since the return of the Cabinet Mission to the United Kingdom, resulted in the setting up of an interim Government at the centre, composed of the political leaders of the major communities exercising wide powers within the existing Constitution. In all Provinces Indian Governments responsible to the people are now in office.

It was with great regret, however, that H.M. Government found that there were still differences among Indian parties which were preventing the Constituent Assembly from functioning as it should, and it was the desire of H.M. Government to hand over their responsibilities to authorities established by a constitution approved by all parties in India not later than June, 1947.

H.M. Government in their statement of May last agreed to recommend to Parliament a constitution worked out in accordance with the proposals made therein by a fully representative Constituent Assembly.

12. In regard to the Indian States, as was explicitly stated by the Cabinet Mission, His Majesty's Government do not intend to hand over their powers and obligations under paramountcy to any Government of British India. It is not intended to bring paramountcy, as a system, to a conclusion earlier than the date of the final transfer of power, but it is contemplated that for the intervening period the relations of the Crown with individual States may be adjusted by agreement.

13. His Majesty's Government will negotiate agreements in regard to matters arising out of the transfer of power with the representatives of those to whom they propose to transfer power.

Cmd. 7136.—On June 3, 1947, another Statement on Indian Policy was issued,[1] stating that:

2. The majority of the representatives of the Provinces of Madras, Bombay, the United Provinces, Bihar, Central Provinces and Berar, Assam, Orissa and the North-West Frontier Province, and the representatives of Delhi, Ajmer-Merwara and Coorg have already made progress in the task of evolving a new Constitution. On the other hand, the Muslim League Party, including in it a majority of the representatives of Bengal, the Punjab and Sind, as also the representative of British Baluchistan, has decided not to participate in the Constituent Assembly.

This Statement goes on to say that, after full consultation with political leaders in India, H.M. Government intimate that they have no intention of attempting to frame any ultimate Constitution for India; that was a matter for the Indians themselves. Nor was there anything to preclude negotiations between communities for a united India.

The issues to be decided are contained in paragraph 4 of this Paper, which reads:

It is not the intention of His Majesty's Government to interrupt the work of the existing Constituent Assembly. Now that provision is made for certain Provinces specified below, His Majesty's Government trust that, as a conse-

[1] *Cmd.* 7136.

quence of this announcement, the Muslim League representatives of those Provinces, a majority of whose representatives are already participating in it, will now take their due share in its labours. At the same time, it is clear that any Constitution framed by this Assembly cannot apply to those parts of the country which are unwilling to accept it. His Majesty's Government are satisfied that the procedure outlined below embodies the best practical method of ascertaining the wishes of the people of such areas on the issue whether their Constitution is to be framed—

(*a*) in the existing Constituent Assembly; or
(*b*) in a new and separate Constituent Assembly consisting of the representatives of those areas which decide not to participate in the existing Constituent Assembly.

When this has been done, it will be possible to determine the authority or authorities to whom power should be transferred.

The White Paper then indicates the method to be employed as to whether or no certain Provinces, which will be referred to below, are to be partitioned, and to what extent their boundaries are to be altered.

Paragraph 18 in regard to the States reads:

His Majesty's Government wish to make it clear that the decisions announced above relate only to British India and that their policy towards Indian States contained in the Cabinet Mission Memorandum of 12th May, 1946,[1] remains unchanged.

H.M. Government urge the necessity for speed and paragraph 20 deals with the immediate transfer of power:

The major political parties have repeatedly emphasized their desire that there should be the earliest possible transfer of power in India. With this desire His Majesty's Government are in full sympathy, and they are willing to anticipate the date of June, 1948, for the handing over of power by the setting up of an independent Indian Government or Governments at an even earlier date. Accordingly as the most expeditious, and indeed the only practicable, way of meeting this desire His Majesty's Government propose to introduce legislation during the current session for the transfer of power this year on a Dominion status basis to one or two successor authorities according to the decisions taken as a result of this announcement. This will be without prejudice to the right of Indian Constituent Assemblies to decide in due course whether or not the part of India in respect of which they have authority will remain within the British Commonwealth.

Indian Independence Bill.[2]—On July 4, 1947,[3] a Bill was presented in the House of Commons by the Prime Minister (Rt. Hon. C. R. Attlee):

to make provision for the setting up in India of two independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions.

—who moved that the Bill be read 2 *R.* on Monday next, and it was ordered to be printed.

The Lord President of the Council (Rt. Hon. Herbert Morrison), in moving:

[1] *Cmd.* 6835. [2] Bill 92. [3] 439 *Com. Hans.* 5, s. 1674.

That Standing Order No. 67 shall not apply to the proceedings on the Indian Independence Bill

—said that the effect of S.O. 67 was that clauses in a Bill which might involve expenditure from Indian Revenues had to be treated in a similar way to Clauses in a Bill which authorized expenditure from the United Kingdom Exchequer—namely, they must be italicized and in due course be carried by a Financial Resolution. Should S.O. 67 not be suspended, most of the Bill would have to be in italics, which would be misleading and undesirable in what was a wholly exceptional measure.

Question was then put and agreed to.

On July 10,[1] the Prime Minister announced:

I have it in Command from His Majesty to acquaint the House that he places his prerogative and interests, so far as concerns the matters dealt with by the Bill, at the disposal of Parliament.

The Prime Minister, in moving 2 *R.*[2] of the Bill, said that it brought to an end one chapter in the long connection between Britain and India, but it opened another. British rule, at the instance of the United Kingdom, was now coming to an end,[3] and 90 years ago the Government of the East India Company came to an end when Parliament assumed responsibility for Indian affairs.[4]

It had been the settled policy of all parties in the United Kingdom for many years, that Indians, in course of time, should manage their own affairs. The question had always been, How and when ?[5]

The major difficulty which had faced all of them, in considering the best way of achieving Indian self-government, had been the absence of mutual trust and toleration between the communities.

Everyone who had touched the Indian problem had been brought up against this stumbling-block. They had all wanted to maintain the unity of India, to give India complete self-government and to preserve the rights of minorities. Every one of them had hoped that a solution might be found without resorting to partition. Many Indians of all communities passionately desired that, but it had been found to be impracticable. Both H.M. Government and the Indian statesmen had had to accept partition.

There had been a tendency to consider that nothing short of complete severance would satisfy. On the other hand, in the age in which they lived, there were very strong reasons against complete isolation. Many countries that had long enjoyed their freedom and independence had lost it, either permanently or temporarily, and some form of association with others for security and greater prosperity was the desire of many peoples.[6]

The British Commonwealth of Nations was so unique that its nature was still not fully comprehended, and even many of its American

[1] *Ib.* 2441. [2] *Ib.* 2441-2550. [3] *Ib.* 2441. [4] *Ib.* 2442. [5] *Ib.* 2444. [6] *Ib.* 2445.

friends did not understand that the Dominions are as free as Great Britain.

In the Bill 2 independent Dominions are set up, free and equal, and of no less status than the United Kingdom or the Dominion of Canada, completely free in all respects from any control by the United Kingdom, but united by a common allegiance to the Sovereign and by a community of ideas, receiving for their membership of the Commonwealth great advantages, but in no way suffering any restriction. The title of the Bill expressed this fact that the independence which had been the goal for so long of many Indians could be, and he believed would be, realized within the British Commonwealth of Nations.

Clause 1 of the Bill provides for the setting up from August 15, 1947, of 2 Dominions to be known as India and Pakistan.

Clauses 2, 3 and 4 give effect to the methods whereby the Indian people, through their own representatives, are given the opportunity of deciding on the division of territory. It had already been decided that Bengal and the Punjab should be divided, and in the North-West Frontier Province and Sylhet a referendum was taking place to decide the future of those areas. The detailed delimitation of boundaries would be done by 2 Commissions, of which Hindus, Muslims and, in the case of the Punjab, Sikhs would be members.

Clause 5 provides for the appointment by the King of a Governor-General for each of the new Dominions, which, as in the Dominions, is made by the King on the advice of his Dominion Ministers concerned.[1]

Clause 6 deals with the legislative powers of the 2 Dominions and the position of Dominion Legislatures is set out in Ss. 2 to 6 of the Statute of Westminster, 1931. Clause 6 of the Bill, though different in actual form from those 5 sections, has in substance the same effect.[2]

Clause 7 deals with the Indian States. The Cabinet Mission in their Memorandum of May 12, 1946,[3] informed the States that H.M. Government could not and would not in any circumstances transfer paramountcy to an Indian Government. Mr. Attlee said that, with the transfer of power to the 2 Indian Dominions, it was necessary to terminate the paramountcy and the suzerainty of the Crown over the Indian States, and, with them, the political engagements concluded under paramountcy and the mutual rights and obligations of the Crown and the States which derive therefrom.

And, with the transfer of power to 2 Dominion Governments it would be impossible for the British Government to carry out these obligations. A feature running through all the British Government's relations with the States had been that the Crown had conducted their foreign relations. They had received no international recognition independent of India as a whole.

With the ending of the treaties and agreements, the States regained their independence.[4] It was the hope of H.M. Government that all

[1] *Ib.* 2448. [2] *Ib.* 2450. [3] *Cmd.* 6835. [4] 439 *Com. Hans.* 5, s. 2451.

States would in due course find their appropriate place within one or other of the new Dominions within the British Commonwealth, but until the Constitutions of the Dominions have been framed in such a way as to include the States as willing partners, there must necessarily be a less organic form of relationship. The transition of the States from the lapse of paramountcy into a free association with the new Dominions was a process which would require proper discussion and deliberation.

Clause 7 (1) (*c*) relates to para. 17 of the statement of June 3, which said:

> Agreements with tribes of the North-West Frontier Province of India will have to be negotiated by the appropriate successor authority.

The termination of these agreements would place the tribes and the appropriate successor Government in a position freely to negotiate fresh agreements.

Clause 7 (2) deals with the omission from the Royal Style and Title of the words *Indiæ Imperator* and the words *Emperor of India*. This, however, was not a matter for the United Kingdom alone. As the Preamble to the Statute of Westminster, 1931, made clear, it concerned the other members of the British Commonwealth as well. The other Commonwealth Governments had agreed to the proposed change, and would take such steps as were necessary to obtain the consent of their Parliaments.

Under the new Act the office of Secretary of State for India would come to an end,[1] and the conduct of relations with India would fall within the sphere of the Secretary of State for Commonwealth Relations, which Minister, called " Minister without Portfolio ", would be submitted by recommendation to the King for the post to be filled in due course.

Clause 8 makes temporary provision for the exercise of legislative powers by the Constituent Assemblies. The original plan of the Cabinet Mission was for setting up a Constituent Assembly for the purpose of framing a Constitution for all India. That plan, however, was not carried out in full, but the Constituent Assembly which the Muslim League had decided not to attend had been at work some time upon the framing of a Constitution. A Constituent Assembly would be formed as soon as the procedure under §§ 2 to 4 had been carried out.[2]

The decision to set up 2 Dominions, instead of waiting for the formulation by a Constituent Assembly of a new Constitution, had altered the whole situation. It had become necessary to provide for a legislature in India and Pakistan as from August 15; and these legislatures, besides having general legislative powers, must also have constituent powers—that is to say, they must be legislative bodies set up for the dual purpose of performing the ordinary functions of a Parliament and of making constitutions.[3]

[1] *Ib.* 2453. [2] *Ib.* 2454. [3] *Ib.*

The problem to be solved was to get a Parliament at work in the 2 Dominions where there were no constitutions actually in being, while at the same time providing for the framing of the new Constitution. However, a solution has been found by adapting the Government of India Act, 1935 (*which see below*), as the basic Constitution for the time being for both the new Dominions, while giving the Constituent Assemblies the status of Parliaments.

The Government of India Act, 1935, has now been adapted for the service of the 2 Dominions.

Clause 8 in effect sweeps away all the special powers of the Governor-General and the Governors of the Provinces and places such officers in the position of Dominion Governors-General—that is, acting only on the advice of their Ministers.

Clause 3 protects the existing position as between the centre and the Provinces until other provision is made by a law passed by the Legislature.[1]

Clause 9 provides for the machinery of adaptation by order of the Governor-General, whose powers, up to August 15, are exercisable by the Governor-General within the meaning of the Act of 1935. The Indian leaders had agreed to the setting up of an arbitral tribunal to which would be referred any questions regarding the division of assets and liabilities on which the 2 Governments could not reach agreement.[2]

Clause 10 (1) deals with the position of the Services and all pledges given by H.M. Government stand, the Government of India accepting liability for pensions, whether civilian or Defence officers.

Provision is also made for the partition of the Armed Forces.[3]

The areas to be included in the new Dominions are not yet completely delimitated.[4]

The British Government desired to establish by free negotiation close, cordial and effective arrangements with both new Dominions in all fields affecting their common interests and particularly in regard to defence matters and in the economic field.

The Bill before the House is more in the nature of an enabling Bill—a Bill to enable the representatives of India and Pakistan to frame their own Constitutions.[5]

The Prime Minister concluded by stating that:

> The British Commonwealth of Nations survives to-day, and has survived through the strain of 2 great wars precisely because it is not static, but is constantly developing and because it has throughout the years steadily changed from an Empire, in which the power of control rested with Britain, to a partnership of free peoples inspired by common ideals and united in a common interest. We are now proposing to welcome 2 new Dominions into that full partnership.[6]

After a debate on 2 *R.* on July 14,[7] the question for 2 *R.* of the Bill was put and agreed to.

[1] *Ib.* 2455. [2] *Cmd.* 7195. [3] 439 *Com. Hans.* 5, s. 2458. [4] *Ib.* 2460.
[5] *Ib.* 2461. [6] *Ib.* 2462. [7] 440 *Ib.* 39 to 178.

The House thereupon passed the *C.W.H.* stage with amendments only in Clauses 3 and 4 dealing with certain provincial boundaries.

The Report stage and 3 *R.* were taken on July 15,[1] and the Bill was then sent up to the Lords, where the same announcement was made as regards the Royal Prerogative as in the Commons. The Bill passed through all stages there on July 16 and the Royal Assent was announced on July 18, the Bill duly becoming 10 & 11 Geo. VI, c. 30.

PART II

At New Delhi.

Adaptation of the Government of India Act, 1935.[2]—The India (Provisional Constitution) Order, 1947, made on August 14 by the Governor-General in the exercise of the powers conferred on him by Ss. 8 (2) and 9 (1) (*a*) of the Indian Independence Act, 1947, directed the making of numerous omissions, adaptations and modifications in the Government of India Act, 1935, with effect from August 15, 1947. The Order was subsequently amended by the India Provisional Constitution (Amendment) Order, 1947, the India Provisional Constitution and Provincial Legislatures (Amendment) Order, 1947, and the India Provisional Constitution (Second Amendment) Order, 1947, all of which were given retrospective effect to the same date as the principal Order. Included also below are amendments of the Government of India Act, 1935, by the India Provisional Constitution (Second and Third Amendment) Orders, 1948.

The above involve over 100 amendments of the Act of 1935. Briefly they deal with the repeal of S. 2 thereof as to Government of India by the Crown, as well as of S. 4 in regard to the office of Commander-in-Chief of H.M. Forces in India. The office of Secretary of State and the powers, etc., thereof are abolished. The other amendments deal mainly with the repeal of provisions of such Act in regard to the individual powers of both the Governor-General and the Governors of the Provinces, in regard to legislation, administration, finance, defence, the Legislature, Rules of Procedure, restriction of debate, Instruments of Instruction, the Judicature, the Indian States, Federal Railways, the summoning and prorogation of the Legislature, minorities, Royal Prerogative of Mercy, assent to Bills, power of disallowance, the choosing, summoning and dismissal of Ministers, the I.C.S., Provinces and transitional provisions on Federation.

Other sections repealed deal with Naval Discipline of the R.I.M.; legislative discrimination in regard to British subjects, subsidies, shipping; relationship between the Crown and the States, application of the Colonial Stock Acts, 1877, Crown property, recruitment and conditions of the Services, railways, customs, etc., the High Commissioner for India in London, Indian Princes, Provincial boundaries and the repeal of the use of English in the Legislatures.

[1] *Ib.* 227 to 284. [2] 26 Geo. V, c. 2.

Parliamentary Privilege is no longer to be that of the former Indian Legislature but to be the same as that enjoyed by the House of Commons of the Parliament of the United Kingdom. The allowances to the members of the new Legislature are to be similar to those of the members of the former Indian Legislature.

The amendments to the Schedule repeal the provisions in regard to the composition of the former Indian Legislature, Accession of Indian States, European representation in W. Bengal, and the franchise in North-West Frontier Province.

Further, by the Orders of 1948, the quorum of the Legislature is reduced from $\frac{1}{6}$ to $\frac{1}{10}$; the allowances, etc., of members of the Indian Legislature are applied to the Dominion Legislatures; the Governor-General's powers as to excluded areas are extended; his powers as to the establishment of a High Court, formerly exercised by Royal Letters Patent, are now exercised by his " order ". Removal of a judge on grounds of misbehaviour, etc., no longer rests with the Judicial Committee of the Privy Council but upon the order of the Federal Court. Certain other powers in regard to the High Court are also now exercised by Order of the Governor-General instead of by Royal Letters Patent. Provision is made for further protection of the rights, etc., of civil servants.

The Two Dominions.—We now come to the 2 Dominions constituted as an outcome of the Indian Independence Act, 1947, above described by the Prime Minister of the United Kingdom, and the change that has taken place in the Indian Peninsula in regard to their Constituent Assemblies, sitting either in their Constitution-making or legislative capacity. The 2 constitutions are (1948) in process of formation, so that no mention can be made of them in the present Volume.

In attempting to give an outline of the activities of these 2 Dominions we shall take every care to refrain from anything of a political nature and confine ourselves to factual and historical survey.

Dominion of India.—This Dominion has been popularly described as " Hindustan " on account of its territory not embracing that of Pakistan. When the Indian Independence Bill was sent to India for comment by the Government, the question was considered as to what name should be given to what has now come to be known as the " Dominion of India ". Hindustan was of course a popular word in India, but it was liable to be mixed up with the word " Hindu " in its narrow context. It was therefore decided to drop the word " Hindustan " so far as statutes and official correspondence were concerned. The Prime Minister of India in his public declarations and speeches in Parliament has made clear that the Dominion of India is a secular state, and its Constitution is on lines based on modern well-recognized democratic principles.

The parts of India which at present form the Dominion are contained in S. 2 of the Indian Independence Act, 1947, supplemented by the provisions of the Government of India Act, 1935, adapted by the

Governor-General in exercise of the powers conferred upon him by Ss. 8 (2) and 9 (1) (*c*) of the Indian Independence Act, 1947.

In regard to Ss. 46 and 94 of the Government of India Act, 1935, adapted as above, these relate to the Provinces, but their boundaries are in a fluid state, a Commission having been appointed to enable new Provinces to be created under S. 290 of the Government of India Act, 1935, as so adapted. These new Provinces will be created before the new Constitution is set up under such S. 290.

In regard to what are known as the Indian States, which, as our readers are aware, did not form part of what was British India, some of these have coalesced and formed themselves into bigger units. Others have merged themselves into the Provinces of India. In the third class, represented by the major States, a modified form of responsible government has been introduced.[1] Kashmir is subject to a plebiscite and in Hyderabad there is a standstill agreement.[2] A new map of India is therefore under preparation.

Constituent Assembly of India.—This body owes its origin to the Statement of Policy by H.M. Government of May 16, 1946,[3] and held its first meeting on December 9, 1946. It started as a non-statutory body in its constitution-making capacity, and from such date to January 27, 1948, held 47 meetings. It opened in its legislative capacity on November 17, 1947, and from that date to April 9, 1948, has held 72 meetings. The debates have been published in daily pamphlets Other publications have been: (1) Draft Constitution of India; (2) Objectives of Resolution of the Constituent Assembly and 2 Speeches by Mr. Jawaharlal Nehru; (3) Report of Committees on the principles of the Union Constitution; (4) Governors' Provinces; (5) Minority Rights, Fundamental Rights; Union Powers; States Negotiating; Provincial Government; etc.

The first important act of this Dominion was to pass a Resolution stating the objectives and principles on which the Constitution should be based. The main work of this Assembly was not done in open Session, but in several committees formed to examine various matters ultimately to find a place in the Constitution, a draft of which has been published. When this Constitution is an accomplished fact, a description of it will appear in the JOURNAL.

In consequence of a separate Constituent Assembly being formed for that part of the Indian sub-continent called Pakistan (*which see below*), some members of the Constituent Assembly vacated their seats with consequent alteration in the membership of the Constituent Assembly of India, reducing it to 229. The number to represent Indian States is not yet fixed.

The question whether the name of the Union of India is to be " a Sovereign Democratic Republic " or whether the word " State " is to be used is as yet undecided.

[1] *See* JOURNAL, Vols. IV, 33, 76, 77, 98; V, 33; VI, 73; VII, 91; VIII, 70, 74, 81; IX, 51, 59, 138; XI-XII, 69; XIII, 91, 93; XIV, 87; XV, 98. [2] *See below.*
[3] *See* JOURNAL, Vol. XV, 92.

With reference to the dual functions of the Constituent Assembly, when sitting in its legislative capacity it is presided over by a Speaker who was elected on November 17, 1947, and when sitting as a constitution-making body by a President who was elected in December, 1946.

When sitting in the latter capacity its adjournment is fixed by its President, and when sitting in the former capacity its summoning and prorogation follow normal practice.

The Constituent Assembly, as a constitution-making body, has its own Rules of Procedure, and when sitting in the other capacity the Rules of the Central Legislative Assembly under the Government of India Act, 1935, which ceased on August 15, 1947, have been adapted under S. 38 (3) of such Act as, " Rules of Procedure and Standing Orders of the Constituent Assembly of India (Legislature) ".

This is as far as the activities of the Constituent Assembly can be described at present, the time being not yet ripe for a final description of its Constitution.

The Dominion of India, therefore, consists of the following Provinces, the capitals being put against the name of each, in parentheses:

Madras (Madras).
Bombay (Bombay).
United Provinces (Lucknow).
Bihar (Patna).
West Bengal (Calcutta).
East Punjab (Simla).
Orissa (Cuttack).
Central Provinces and Berar (Nagpur).
Assam (Shillong).

A large number of the Indian States have already signed and accepted the Instruments of Accession.

The Cabinet of the Dominion of India, which sits at New Delhi, consists of: (1) The Hon. Pandit Jawaharlal Nehru, Prime Minister and Minister in charge of External Affairs and Commonwealth Relations; and 13 other Ministers representing, respectively, the Portfolios of (2) Deputy Prime Minister and Minister in charge of Home, Information and Broadcasting and States; (3) Education; (4) Railways and Transport; (5) Defence; (6) Labour; (7) Communications; (8) Health; (9) Law; (10) Finance; (11) Industry and Supply; (12) Works, Mines and Power; (13) Commerce and Relief and Rehabilitation; (14) Food and Agriculture; and (15) a Minister without Portfolio.

PART III

At Karachi.

Dominion of Pakistan.—As a result of the visit to India of the Cabinet Mission in March, 1946, and after prolonged discussions in New Delhi, they succeeded in bringing Congress and the Muslim League, the 2 prominent political parties, together at a Conference held in Simla. There was a full exchange of views, but no agreement could be concluded.

On April 4, 1946, Pandit Jawaharlal Nehru envisaged as the first

stage, after the recognition of independence, the creation of a constitution-making body with sovereign authority.

Quaid-i-Azam M. A. Jinnah referred to this in the Muslim Legislators' Convention at Delhi on April 7, 8 and 9, 1946, when he said they could not consent to a single constitution-making body on the basis of a united India as the Muslims would be in a hopeless minority. Therefore, Mr. Jinnah continued, there should be 2 such bodies—one for Hindustan and the other for Pakistan, that of Pakistan to be in a position to deal with defence, etc., and such other matters as would require adjustment, which would naturally arise by virtue of contiguity and which could be done only by treaty and agreement. Also that they could not accept any proposal derogatory to the full sovereignty of Pakistan.

As there was no agreement between the major political parties, the Cabinet Mission gave the award in their statement of May 16, 1946.[1]

The Council of the All-India Muslim League in their Resolution of June 7, 1946, accepted both the long and short term plans contained in the Cabinet Mission's proposals of May 16, 1946, while the All-India Congress accepted only the long-term plan and objected to Hindu-Muslim parity in the Interim Cabinet, *vide* their Resolution of July 7, 1946.

This led the Muslim League to reconsider its decision, and accordingly the All-India Muslim League Council was summoned to meet in Bombay on July 27, 28 and 29, 1946. Quaid-i-Azam M. A. Jinnah came to the conclusion that the League must adhere to the goal of Pakistan; such League then passed the Resolution of July 29, 1947, accepting the Quaid-i-Azam's advice, reversed its former decision of accepting the Cabinet Mission's plan and declared that the achievement of Pakistan was its goal.

This rejection by the Muslim League led to further negotiations between Congress, the Muslim League and H.M. Government, with the result that on June 3, 1947, H.M. Government issued a statement which was accepted by all the parties concerned.

Therefore, in pursuance of H.M. Government's statement of May 16, 1946, a constitution-making machinery was set up, the first meeting of the Indian Constituent Assembly being held on December 9, 1946; but the Muslim League, including in it the majority of the Muslim representatives of Bengal, Punjab and Sind, and also the representative of British Baluchistan, did not participate in the proceedings of that Assembly.

The statement of June 3, 1947, stated that the procedure outlined in it embodied the practical method of ascertaining the wishes of the people on the issue whether their Constitution should be framed by the existing Constituent Assembly, or by a new and separate Constituent Assembly consisting of representatives of those areas who thought it best not to participate in the existing Constituent Assembly.

[1] *See* JOURNAL, Vol. XV, 90.

The Constituent Assembly is framing a Constitution for the Dominion, and will also function as its Federal Legislature until the new Constitution is framed.

Pakistan consists of the following Provinces, the capitals being given in parentheses:

East Bengal, including Sylhet (Dacca).
West Punjab (Lahore).
North-West Frontier Province (Peshawar).
Sind (Karachi).
Baluchistan (Quetta).

The last-named Province is under the direct administration of the Central Pakistan Government and has no Legislature. The other Provinces have a Governor appointed by the Governor-General and a Legislative Assembly. Some of the former Indian States have acceded to Pakistan.

The Constituent Assembly of Pakistan met on August 10 at Karachi, the capital of Pakistan. H.E. the Viceroy Lord Louis Mountbatten delivered the King's Message to the Assembly on August 14. On August 15 H.E. Quaid-i-Azam M. A. Jinnah was sworn as the Governor-General of Pakistan.

In pursuance of this announcement, the Provincial Legislative Assemblies of Bengal, Punjab, excluding the European representatives, were asked to meet in 2 parts, one representing the Muslim majority districts and the other representing the non-Muslim majority areas.

The Sind Assembly was asked to take its decision on the point at a special meeting for that purpose. The North-West Frontier Province and Sylhet District of Assam were given the opportunity of pronouncing their decision by referendum, and a similar procedure was afforded the people of British Baluchistan. The East Bengal and West Punjab representatives of the Provincial Legislative Assemblies of Bengal and Punjab, as also the Sind Legislative Assembly, decided to join a new and separate Constituent Assembly. Similarly the North-West Frontier Province, Sylhet District of Assam and Baluchistan decided in favour of a new Constituent Assembly.

Constituent Assembly of Pakistan.—Thus a new and separate Constituent Assembly came into being, named the Constituent Assembly of Pakistan, elected on the same principle as that adopted in the case of the Indian Constituent Assembly, its total strength being 69, excluding the number of seats to be added by the accession of States which may decide to participate in it. Of this number of 69 there are 2 Sikh, 17 General and the rest Muslim seats, the Sikh representation being only from West Punjab. Of the general, 13 seats go to East Bengal, including Sylhet, 3 to West Punjab and 1 to Sind. Of the Muslim seats, 31 go to East Bengal, including Sylhet, 12 to West Punjab, 3 to North-West Frontier Province and 3 to Sind. Baluchistan sends one Muslim representative. The allotment of seats has been made on the basis of 1 to every 1,000,000 of the population.

Under S. 8 of the Indian Independence Act, 1947, the Pakistan Constituent Assembly has the following powers: (1) of making a Constitution for the Dominion of Pakistan; (2) of the Federal Legislature, in addition to the powers exercisable under (1); and (3) to frame its own Rules of Procedure.

The Cabinet of the Dominion of Pakistan, whose members were sworn in on August 10, sits at Karachi. It consists of: Hon'ble Mr. Liaquat Ali Khan, Prime Minister, and 8 other Ministers whose Portfolios are not yet to hand.

PART IV

Indian States.

HYDERABAD CONSTITUTIONAL REFORMS[1]

By Md. Hamiduddin Mahmood, H.C.S.,
Secretary, Legislative Assembly

The Hyderabad Legislative Assembly was inaugurated on February 17, 1947, under the provisions of the Hyderabad Legislative Assembly A'in (Regulation) which has given a new Constitution to the Hyderabad Dominions. The chief features of the new Constitution are as follow:

For the first time in its history Hyderabad has a Legislative Assembly of its own with a majority of elected members, chosen by different constituencies on the basis of various interests. Exclusive of the President and *ex-officio* members, the Assembly consists of 122 members, of whom 76 members are elected by popular vote, 3 members appointed at the pleasure of His Exalted Highness to represent the Saraf-e-khas Mubarik (Royal Demesne), and 5 are nominated by the Illakhas.[2] The rest are nominated by the President of the Council of Ministers, of whom at least half are non-officials. With the enforcement of the Hyderabad Legislative Assembly A'in[3] the Hyderabad Legislative Council Regulation VIII of 1309 Fasli[4] (1899), under which the old Legislative Council had been functioning, was repealed and the Council dissolved; in its place the Hyderabad Legislative Assembly is established. The electoral roll dealing with the different constituencies is based on interests and functions so as to bring about communal harmony and to extend the franchise as much as possible.

Until the expiration of 4 years from the first meeting of the Assembly, the President thereof is a person appointed by H.E.H. the Nizam. Thereafter the Legislative Assembly is to elect a member to the office, subject to the approval of His Exalted Highness, while the Deputy President is also elected by the Assembly from among its own members.

The Assembly is vested with powers to make laws for the whole of

[1] *See also* JOURNAL, Vols. VI, 73; IX, 138.—[M. H. M.] [2] The 5 largest estates of the premier noblemen of the State.—[M. H. M.] [3] A'in is equivalent to an Order by H.E.H. the Nizam in Council.—[M. H. M.] [4] One of the Persian eras observed in the official calendar of H.E.H. the Nizam, a legacy of the days of Mogul rule.—[M. H. M.]

His Exalted Highness's Dominions, except those subjects specially excluded from its purview, such as His Exalted Highness, his house and family, the powers of His Exalted Highness with respect to Sarafe-khas (Royal Demesne), the relations of H.E.H. the Nizam with the Crown of the United Kingdom or with any other Government, State or Ruler, including any treaty, agreement, engagement or other instrument between H.E.H. the Nizam and the Crown or any other Government, State or Ruler and other matters specified in S. 18 of the Legislative Assembly A'in.

Members of the Assembly are entitled to ask questions, move resolutions and introduce Bills in respect of matters specified in a schedule to the A'in, and of other matters, as well as with the permission of the President of Council of Ministers.

It is provided that the Budget containing the annual statement of the estimated revenue and expenditure of the State shall be laid before the Assembly every year and, subject to provisions of the A'in, there shall be a general discussion on the Budget, in which any member of the Assembly may take part, and ask questions, or move resolutions in respect of any of the major or minor heads of expenditure included in the Budget.

Provision is also made in the A'in vesting the President-in-Council[1] with powers to make rules regulating the course of business in the Assembly.

Powers are also given to the Assembly to make, from time to time, Standing Orders for the conduct of business and the procedure to be followed in the Assembly.

The A'in makes it perfectly clear that nothing contained in this enactment shall in any manner affect any of the prerogatives of His Exalted Highness.

In order to meet the general wishes of the people and to accommodate them as far as possible, H.E.H. the Nizam has, in his " Instrument of Instructions ", issued to the President of the Council of Ministers, directed that the said President:

> shall import into the working of the constitution a spirit of accommodation and responsiveness to the wishes of the Assembly and shall also signify a spirit of accommodation in granting permission to move resolutions and motions, introduce Bills and ask questions in respect of any matter not expressly included within the purview of the Assembly.

It will be seen that, with the introduction of these constitutional reforms, a courageous and sincere attempt has been made to associate the people with the different branches of administration and to enable them to make their voice heard as far as possible. With the Constitution worked in the right spirit it is expected to yield good results and to be full of promise for future development.

It will further be observed that during the period of less than a year, in which the reforms have been in operation, a number of beneficial

[1] H.E.H. the Nizam-in-Council.

enactments have been passed, and quite a large number which are on the Legislative anvil, after being passed by the House and having received the assent of His Exalted Highness, will prove of great value to the people of this Dominion.

The following statement shows the Acts which have been passed by the Legislative Assembly and, after receiving the assent of His Exalted Highness, placed on the Statute Book, as well as the Bills pending before the House and some important Resolutions adopted by the Assembly during its last Sessions:

(1) An Act to amend the Hyderabad Civil Procedure Code.
(2) An Act to amend the Hyderabad High Court Act.
(3) An Act to amend the Hyderabad Police Act.
(4) The Hyderabad Income Tax Act.
(5) The Hyderabad Luxury Articles Taxation Act.
(6) Provisional Taxation Act.

Bills introduced in the Legislative Assembly, and pending, are:

(1) Press Bill.
(2) Bill to amend the Railway Act.
(3) Bill to amend the Prevention of Cruelty to Animals Act.
(4) Bill to amend the Legal Practitioners Act.
(5) Provident Fund Bill.
(6) Irrigation Bill.
(7) Bill to amend Motor Vehicles Act.
(8) Bill for the Protection of Children from Tobacco Smoking.
(9) House Rent Bill.
(10) Supply of Statistics Bill.
(11) Bill to amend the Contract Act.
(12) Bill to amend the Act relating to suits against Government.
(13) Bill to amend the High Court Act.
(14) Christians' Marriage Bill.
(15) Bill to amend the Hyderabad Civil Procedure Code.
(16) Bill to amend the Limitation Act.
(17) Companies Bill.
(18) Children's Employment Bill.

Some of the important Resolutions adopted by the Legislative Assembly are:

This Assembly recommends to the President-in-Council that a fund be constituted with a minimum capital of rupees one crore, for the welfare of depressed classes.

It may be of interest to know that the Government have placed a sum of *Rs.* one crore[1] as recommended in the above Resolution for the welfare of depressed classes, which fund will be managed by a committee consisting of both non-officials and officials.

This Assembly recommends to the President-in-Council that statutory measures be taken to fix a reasonable limit to dowry and other allied expenses in order to put a stop to the destruction brought on our society by the compulsory method of dowry and other expenses incurred on marriages.

[1] £750,000.

This Assembly recommends to the President-in-Council that in view of the economic and social conditions obtaining in the country and also from the point of view of public health, boys under the age of 15 years be legally prohibited from attending cinema shows, except those films which are considered suitable for such boys by the Board of Censors; such cases being regarded as exceptions.

THE HYDERABAD STANDSTILL AGREEMENT, 1947

By Md. Hamiduddin Mahmood, H.C.S.,
Secretary, Legislative Assembly

The Standstill Agreement signed on November 29, 1947, by His Exalted Highness the Nizam and the Governor-General of India, for the period of one year, may be said to mark the first milestone on the road to co-operation between free India and free Hyderabad.

It will be recalled that the British Cabinet Mission's proposals of May 16, 1946, contained the following statement with regard to the relationship of the States to a free India:

> It is quite clear that with the attainment of independence by British India, whether inside or outside the British Commonwealth, the relationship which has hitherto existed between the Rulers of the States and the British Crown will no longer be possible. Paramountcy can neither be retained by the British Crown nor transferred to the new Government. This fact has been fully recognized by those whom we interviewed from the States. They have at the same time assured us that the States are ready and willing to co-operate in the new development of India. The precise form which their co-operation will take must be a matter for negotiation during the building up of the new constitutional structure and it by no means follows that it will be identical for all the States.

The Cabinet Mission envisaged a self-governing India in which the States would take their due place and with which they would co-operate for the common good. In the formulation and framing of their constitutions the States should play their appointed part by sharing in the labours of the constitution-making body to be set up for the purpose. It was recognized, however, that some time must elapse before the constitutional pattern of a free India would take final shape. Accordingly, in its memorandum dated May 22, 1946, on the States' future position, the Mission observed that during the interim period falling between the Mission's statement and the transfer of power to an Indian Government with the consequent lapse of paramountcy:

> it will be necessary for the States to conduct negotiations with British India in regard to the future regulation of matters of common concern especially in the economic and financial field. Such negotiations which will be necessary, whether the States desire to participate in the new Indian constitutional structure or not, will occupy a considerable period of time and since some of these negotiations may well be incomplete when the new structure comes into being it will, in order to avoid administrative difficulties, be necessary to arrive at an understanding between the States and those likely to control the succession

government or governments that for a period of time the then existing arrangements as to these matters of common concern should continue until the new agreements are completed.

The genesis of the Standstill Agreement may be traced to the suggestion made above. Meanwhile things were moving rapidly in British India. The Muslim League refused to join the Constituent Assembly set up for drafting the Constitution of a united India, and, for reasons which are now well known, the idea of a united India had to be abandoned. How, on the failure of the Congress and the Legaue to come to an understanding, Lord Mountbatten (who had succeeded Lord Wavell in 1947 as Viceroy) announced, on June 3, fresh proposals providing for the partition of British India on communal lines into 2 independent States—India and Pakistan—and how, these proposals having been agreed to by the 2 major political parties, 2 separate governments with Dominion status were set up, while to give legislative effect to the new proposals the Independence of India Bill was introduced in the British Parliament early in July constituting the 2 Dominions and providing for the transfer of power to them on August 15, 1947, are now matters of history. It should be noted that in the announcement of June 3, the Viceroy observed that so far as the States are concerned the Cabinet Mission's proposals of May 16 still hold good.

So far as Hyderabad is concerned, the division of India into 2 independent states with 2 Constituent Assemblies, though not wholly unexpected, gave rise to an embarrassing situation, and His Exalted Highness the Nizam in a Firman dated June, 1946, explained his attitude to this new development in Indian politics as follows:

> The basis of the division of British India is communal. In my State however, the two major communities live side by side and I have sought, since I became Ruler, to promote by every means good and friendly relations between them. My ancestors and I have always regarded the Muslims and Hindus as two eyes of the State and the State itself to be the indivisible asset of all the communities inhabiting it. I am happy to say that there has not been in my State the same acute cleavage as has led to the recent events in British India. The subjects of my State have affinities and common interests with both the contemplated new Unions. By sending representatives to either of the Constituent Assemblies Hyderabad would seem to be taking one side or the other. I am sure I am consulting the best interests of my subjects by declining to take such a course. I have therefore decided not to send representatives to either of the Constituent Assemblies.

After referring to the fact that with the withdrawal of the British he would be entitled to resume the status of an " Independent Sovereign " H.E.H. continued:

> But the question of the nature and extent of the association or relationship between my State and the units in British India remains for decision at a later stage when their constitution and powers have been determined. Whatever form of constitution they ultimately adopt it will be the desire of Hyderabad to live in the closest friendship and amity with both. Meantime I and my Government will lose no opportunity of reaching by active negotiation workin8 agreements on matters of common interest for the mutual benefit of all.

Thus, while H.E.H. was fully willing to negotiate working arrangements on matters of common interest until the form and manner of the relationship between India and Hyderabad were finally determined, the Hon'ble Minister for States of the Government of India early in July invited all the States to accede to the Dominion of India before August 15, 1947, on the basis of an Instrument of Accession prepared by his Government under which Defence, External Affairs and Communications and all subjects ancillary to them are to be ceded to the Indian Dominion. Although H.E.H. sent some of his Ministers to New Delhi as a Negotiating Committee during the latter part of July, to negotiate both a short-term Standstill Agreement and a long-term treaty on the basis of mutual co-operation, the Government of India refused to negotiate even a Standstill Agreement unless and until Hyderabad had acceded to the Indian Dominion. While, however, H.E.H. was always ready to discuss any form of friendly association short of accession, the Government of India insisted that Hyderabad should accede.

What looked like a deadlock, threatening a breakdown in the relations with all its incalculable consequences, was averted by the good offices of Lord Mountbatten, who, realizing that Hyderabad occupied a unique position among the States in view of its size, population and resources, and that it had its special problems, secured the assent of the Government of India to the continuation of the negotiations beyond August 15 for a further period of 2 months. The negotiations were accordingly continued, not for 2 months but for about $3\frac{1}{2}$ months, and through many vicissitudes, the result being the Agreement of November 24, 1947.

The Agreement is short and simple, and naturally bears the impress of the circumstances that gave it birth. During the protracted negotiations neither party lost sight of the fact that it was in the interest of both to work in close association and amity; but while the Government of India seems to have been obsessed with the idea of accession first, the Government of H.E.H., more nearly feeling the pulse of the different communities in the State, were convinced that the over-all atmosphere in India, as well as the peculiar conditions in Hyderabad, obviously indicated a patient and cautious approach. The Agreement is thus India's recognition of Hyderabad's point of view.

Moreover, the Agreement is a recognition of the special position of Hyderabad and thus is more in conformity with the principles laid down in the Cabinet Mission's statement that the precise form which theco-operation of the States will take must be a matter for negotiation and that it by no means follows that it will be identical for all States.

Finally, the Agreement rests on the fundamental assumption of Hyderabad's sovereignty. Article 2 which provides for the exchange of diplomatic representatives between Hyderabad and New Delhi is a recognition of Hyderabad's independent status. And while Article 3 provides that the present Agreement will not create or introduce

paramountcy relationship in any shape or form, Article 1, by providing that the Dominion of India will have no obligation to send troops to the Nizam for maintenance of internal order nor any right to station troops in Hyderabad territory, establishes the principle that the mutual rights and obligations flowing from paramountcy have ceased to exist.

Under the Agreement all matters of common concern, including External Affairs, Defence and Communications, will for the time being be administered in the same way as immediately before August 15, 1947, and until new agreements are made on these matters. But it has been made quite clear in H.E.H.'s letter to the Governor-General of India dated November 14, 1947 (*see below*), that by executing this Agreement he is in no way permanently prejudicing his rights as an independent sovereign, though he is suspending the exercise of certain of those rights during the currency of the Agreement.

The Agreement is therefore necessarily temporary and tentative. It is, however, a distinct step forward, which has relieved the tense atmosphere and set at rest the rumours and uncertainties of the recent past. It provides a vantage-point from which we can look behind and survey the past and look forward and prepare for the future. It has cleared the ground and opened up possibilities for constructive thinking and action. To quote the words of the Hon. Sardar Vallab-bhai Patel:

> Now that accord has been reached it will have a wholesome effect on the existing situation and will exercise a beneficial influence on the relations between the two communities both in the State and outside. We can thus put these happenings back in the past and look forward to a relationship in which amity and cordiality will prevail.

Above all, it is earnestly hoped that the Agreement will provide, if worked with good will on both sides, a basis (as Lord Mountbatten has stated) for a satisfactory long-term solution. What form that solution will take will obviously depend on how the opportunity afforded by the Agreement will be allowed by the various interests involved to be utilized in the pursuit and furtherance of a policy of mutual helpfulness and understanding based on practical compromise and not on political speculation.

The following 2 letters of November 29, 1947, exchanged between H.E.H. the Nizam and H.E. the Governor-General of India, are collateral to the Standstill Agreement, the texts of which follow:

HYDERABAD, DECCAN.
29th November, 1947.

MY DEAR LORD MOUNTBATTEN,

I regret that we have not been able to reach a final agreement as to the eventual nature of the association between Hyderabad and the Dominion of India. As Your Excellency knows, I have not been prepared to contemplate accession to either Dominion, but short of this, I have been ready to negotiate with your Government upon any other basis. I am now enclosing a Standstill Agreement which I am prepared to execute if Your Excellency's Government are also prepared to sign it. It is a disappointment to me that after such

protracted negotiations we are unable to do more for the present than carry on existing arrangements subject to such changes as the departure of paramountcy imposes. On the other hand it is essential to put an end to the present state of uncertainty and the fact that the Agreement now to be executed is to endure for a year means that both Governments will be able to turn their attention more fully to the problems of administration without constant preoccupation with the question of our Constitutional relationship. To that question we shall eventually have to return, but I am confident that, if during the next year our association, in accordance with the terms of the Standstill Agreement, is marked by good will on both sides, we shall be more likely at the end of that period to reach a satisfactory agreement as to the nature of our long-term association. I regard this Standstill Agreement accordingly as founded upon the principle of good neighbourliness and I am sure that Your Excellency and your Government will approach it in the same spirit. By executing this Standstill Agreement I am in no way permanently prejudicing my rights as an independent sovereign, but I am of course conscious that I am in some important respects suspending the exercise of certain of these rights during the currency of the Agreement.

2. It is plain that an Agreement in this general form will necessitate a good deal of adjustment in regard to particular arrangements. In this connection I learn that your Government is prepared as soon as possible to negotiate with mine arrangements for the posts, telegraphs and telephones within Hyderabad to be worked as a Hyderabad system in harmony with the Dominion system. There are, in addition, problems about the Hyderabad Forces, both in regard to the troops and their equipment, which our Governments will need to discuss in the light of the fact that on August 15, 1947, the Hyderabad Forces and Police available for the maintenance of internal order could no longer rely upon the backing of the troops stationed in and near the State by the Paramountcy Power. This question has already been discussed with the late Military Adviser-in-Chief and with his successor and I have no doubt that Your Excellency's Government will have no objection to making any necessary adjustments in these respects and indeed in other cases of the same character (having their origin in the exercise of paramountcy functions) which are already apparent or which may come to light in giving effect to the general provision contained in Article 1 of the Standstill Agreement. So far as arms and equipment are concerned, I understand Your Excellency's Government are ready and willing to provide Hyderabad with the necessary requirements of its Forces and Police. It is only if for any reason the Dominion Government cannot supply such requirements within a reasonable time that I shall approach other sources of supply, and then only after previous intimation to your Government.

3. There is also the question which has been much discussed between my delegation and the representatives of your Government about diplomatic and trade representatives for Hyderabad abroad. I am prepared to execute the Agreement on the understanding that the Government of the Dominion will take no objection to the maintenance of the Hyderabad Agent-General in the United Kingdom or to the appointment of similar representatives in any other country. I shall be prepared to arrange for the complete co-ordination of the work of those representatives with the diplomatic and commercial representatives of the Dominion of India in such countries and to inform you in advance of any representatives whom I may decide to appoint. I am confident that Your Excellency's Government will be equally ready to co-operate with mine in regard to the import and export trade of Hyderabad.

4. There are several matters which have been outstanding between us for some time and which I should like to see cleared out of the way as soon as the Agreement comes into force:—

(*i*) No Paramountcy functions remain to be exercised; nor was the Hyderabad Residency retained except as a house for the British Resident when there

was one in the past. In these circumstances I should be glad if your Government would hand it over to Hyderabad. Suitable arrangements can be immediately made about the Treasury and your Treasury officials.

(*ii*) It is urgently necessary that arms, equipment and, in particular, ammunition should be immediately made available to Hyderabad. We have had no supplies since July and the shortage is interfering with the training of the Hyderabad Army.

(*iii*) In the same way, there has been difficulty in securing the importation of " soft " vehicles for the use of the Army and, in the special circumstances of Hyderabad, you will appreciate the importance of mobility having regard to the areas to be covered.

(*iv*) I understand that the last of the Dominion troops stationed in Hyderabad will be removed in the course of the next month and I shall be glad of confirmation on this matter.

(*v*) The transfer to Hyderabad of all jurisdiction within the State was agreed in principle before the 15th of August, 1947, and was largely effected before that date and has continued since. There are, however, some points still outstanding in this regard in relation to police jurisdiction on part of the railways which run through the State. I assume that such jurisdiction will be immediately restored to Hyderabad.

5. It is of course manifest that my rights in regard to such matters as currency, coinage, and postal rights are in no way impaired by the Standstill Agreement, but I should be glad if Your Excellency would give me an express assurance that the rights to which I have just referred continue undiminished.

6. I should like to take this opportunity of suggesting that, in relation to passports, the Dominion of India should agree, as a matter of convenience in a question which is becoming urgent, to the Chief Secretary of my Government or some other appropriate officer issuing passports to Hyderabad subjects which would be countersigned by the Dominion.

7. I am sure that in entering into this Agreement both our Governments intend to do all they can to prevent and discourage subversive movements and propaganda in the territory of the other.

8. I know well Your Excellency's interest in all steps taken to abate communal antagonism. It may therefore be of interest to you to know that, in conformity with earlier declarations on my part, I propose to issue a Firman in the immediate future expressing my firm resolve to protect the lives, rights and interests of all my subjects alike, irrespective of caste or creed.

Yours sincerely,
(*Signed by the Nizam.*)

AGREEMENT made this Twenty-ninth day of November, Nineteen Hundred and Forty-seven between the Dominion of India and the Nizam of Hyderabad and Berar.

WHEREAS it is the aim and policy of the Dominion of India and the Nizam of Hyderabad and Berar to work together in close association and amity for the mutual benefit of both, but a final agreement as to the form and nature of the relationship between them has not yet been reached:

AND WHEREAS it is to the advantage of both parties that existing agreements and administrative arrangements in matters of common concern should, pending such final agreement as aforesaid, be continued:

NOW, THEREFORE, it is hereby agreed as follows:—

Article 1.—Until new agreements in this behalf are made, all agreements and administrative arrangements as to the matters of common concern, including External Affairs, Defence and Communications, which were existing between the Crown and the Nizam immediately before the 15th August 1947 shall, in so far as may be appropriate continue as between the Dominion of India (or any part thereof) and the Nizam.

Nothing herein contained shall impose any obligation or confer any right on the Dominion

(i) to send troops to assist the Nizam in the maintenance of internal order, or

(ii) to station troops in Hyderabad territory except in time of war and with the consent of the Nizam which will not be unreasonably withheld, any troops so stationed to be withdrawn from Hyderabad territory within 6 months of the termination of hostilities.

Article 2.—The Government of India and the Nizam agree for the better execution of the purposes of this Agreement to appoint Agents in Hyderabad and Delhi respectively, and to give every facility to them for the discharge of their functions.

Article 3.—(*i*) Nothing herein contained shall include or introduce paramountcy functions or create any paramountcy relationship.

(*ii*) Nothing herein contained and nothing done in pursuance hereof shall be deemed to create in favour of either party any right continuing after the date of termination of this Agreement, and nothing herein contained and nothing done in pursuance hereof shall be deemed to derogate from any right which, but for this Agreement, would have been exercisable by either party to it after the date of termination hereof.

Article 4.—Any dispute arising out of this Agreement or out of agreements or arrangements hereby continued shall be referred to the arbitration of two arbitrators, one appointed by each of the parties, and an umpire appointed by those arbitrators.

Article 5.—This Agreement shall come into force at once and shall remain in force for a period of one year.

In confirmation whereof the Governor-General of India and the Nizam of Hyderabad and Berar have appended their signatures.

Nizam of Hyderabad and Berar. — *Governor-General of India.*

GOVERNMENT HOUSE,
NEW DELHI.
29th November, 1947.

MY DEAR NIZAM,

I acknowledge with thanks the receipt of Your Exalted Highness's letter dated 29th November and the Agreement. While my Government and I note that Your Exalted Highness has no intention of acceding to Pakistan, we very much regret that you should have been unable to execute an Instrument of Accession with India. Both my Minister for States in his Statement of the 5th July and I myself in my speech of the 25th July to the representatives of the States have made it clear that it is the earnest desire of the Government of India to maintain the sovereignty of the States and to work with them as full partners in the administration of the three subjects proposed for accession. My Government cordially reciprocate your hope that, given good will on both sides, the working of the Standstill Agreement will provide a basis for a satisfactory long-term solution. Placed as Hyderabad is, its interests are inextricably bound up with those of India; and my Government hope that before the present agreement expires it will be possible for Hyderabad to accede to the Dominion of India.

2. My Government will be prepared to discuss with your representative as soon as possible the question of handing over the posts, telegraphs and telephones; and also the future strength and equipment of the Hyderabad Forces.

As regards the supply of arms and equipment, the Dominion Government will be able to supply your legitimate requirements.

3. My Government have no objection to your maintaining an Agent-General in London and appointing similar representatives elsewhere, if necessary. In this connection they are very glad to have your assurance, to which you will appreciate that the Government of India attach great importance, that the activities of such representatives will be fully co-ordinated with those of the representatives of the Dominion of India and will be confined to matters properly relating to trade and commerce.

The Government of India are certainly prepared to co-operate with Hyderabad fully in regard to its import and export trade.

4. As regards the points raised in para. 4 of your letter, my Government have authorized me to say as follows:—

(1) My Government gladly agree that the Residency buildings at Hyderabad will be returned to your Government as soon as alternative accommodation promised by you is made available for our Treasury and officials employed there.

(2) My Government will take the necessary action in regard to the early supply of arms and ammunition for which an indent has been received from your Government.

(3) My Government will help your Government in securing the vehicles that they require.

(4) It is the definite intention of my Government that the troops at present stationed inside Hyderabad territory should be progressively withdrawn according to an agreed programme and that the withdrawal should be completed by the end of February, 1948, at the latest.

(5) On the points remaining to be settled regarding the retrocession of jurisdiction, these can be discussed with my Government by your representative as soon as he is appointed.

(6) I am authorized to assure Your Exalted Highness that your rights in regard to currency, coinage and postal matters will in no way be impaired by the Standstill Agreement.

(7) My Government will take up the question of passports mentioned in paragraph 6 of your letter. They are fully prepared to assist you in this respect.

(8) With reference to paras. 7 and 8 of your letter, the Government of India desire to assure Your Exalted Highness that it is their earnest desire to promote communal harmony and to maintain peace and security, and they will co-operate wholeheartedly with you to that end.

(9) I enclose the Agreement duly signed by me.

Yours sincerely,
(*Sd.*) *Mountbatten of Burma.*

MYSORE (DOMINION OF INDIA): INSTRUMENT OF ACCESSION[1]

By K. P. Poonegar, B.A., LL.B.,
Secretary of the Legislature

The Maharajah.—The following is the text of such Instrument as well as an Agreement between the State of Mysore and the Dominion of India:

Whereas the Indian Independence Act, 1947,[2] provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as India, and that the Government of India Act, 1935, shall with such omissions, additions, adaptations and modification as the Governor-General may by order specify, be applicable to the Dominion of India;

And whereas the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof;

Now therefore I, Jaya Chamaraja Wadiyar, Ruler of the State of Mysore, in the exercise of my sovereignty in and over my said State, Do hereby execute this my Instrument of Accession and

[1] *See also* JOURNAL, Vol. IV, 77, 98. [2] 10 & 11 Geo. VI, c. 30.

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Mysore (hereinafter referred to as " this State ") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August, 1947 (which Act as so in force is hereinafter referred to as " the Act ").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this Ninth day of August, Nineteen hundred and forty-seven.

JAYA CHAMARAJA WADIYAR.

I do hereby accept this Instrument of Accession.
Dated this Sixteenth day of August, Nineteen hundred and forty-seven.

Seal

MOUNTBATTEN OF BURMA
(Governor-General of India).

Seal of the Government of India,
Ministry of States.

(*Here is scheduled a list of 20 matters with respect to which the Dominion Legislature may legislate, under the heads of Defence, External Affairs, Communications and Ancillary.*)

Agreement between the State of Mysore and the Dominion of India. —The following is the text of the Agreement:

WHEREAS it is to the benefit and advantage of the Dominion of India as well as of the Indian States that existing agreements and administrative arrangements in the matters of common concern, should continue for the time being, between the Dominion of India or any part thereof and the Indian States:—

NOW THEREFORE it is agreed between the Mysore State and the Dominion of India that:—

1. (1) Until new agreements in this behalf are made, all agreements and administrative arrangements as to matters of common concern now existing between the Crown and any Indian State shall, in so far as may be appropriate, continue as between the Dominion of India or, as the case may be, the part thereof, and the State.

(2) In particular, and without derogation from the generality of sub-clause (1) of this clause, the matters referred to above shall include the matters specified in the Schedule to this Agreement.

2. Any dispute arising out of this Agreement, or out of the agreements or arrangements hereby continued, shall, unless any provision is made therein for arbitration by an authority other than the Governor-General or Governor, be settled by arbitration according, as far as may be, to the procedure of the Indian Arbitration Act, 1899.

3. Nothing in this Agreement includes the exercise of any paramountcy functions.

MYSORE STATE,
A. RAMASWAMI MUDALIAR,
Dewan of Mysore.
V. P. MENON,
Secretary to the Government of India.

Seal of the Government of India,
Ministry of States.

MYSORE (DOMINION OF INDIA): CONSTITUTIONAL REFORMS[1]

BY K. P. POONEGAR, B.A., LL.B.,

Secretary of the Legislature

On September 24, 1947, H.H. the Maharaja issued a Proclamation intimating that, following proposals made by His Highness' Dewan, a Constitution Bill establishing Responsible Government had been drawn up on the advice and counsel of a Committee elected by the Legislature and such other experts as were found suitable and desirable, with the object of the Constitution Act functioning from July 1, 1948.

Schedule I states that the Legislature shall consist of 2 Houses, a

[1] *See also* JOURNAL, Vols. VII, 91; VIII, 70; IX, 59; XIV, 88; XV, 98.

Representative Assembly elected upon multi-member territorial constituencies and a Legislative Council composed of members partly elected from such constituencies and partly nominated.

There is to be a Council of Ministers, responsible to the Legislature, formed from its elected members and chosen after obtaining competent advice from leaders of political parties and groups in the Legislature, as well as representatives of important minority communities.

Schedule II to the Proclamation reserves to the Ruler such matters as Succession to the Throne, etc.; constitutional relationship with the Dominion of India; appointment of Judges, Public Service Commissioners and Auditor-General; military; protection of minorities; summoning and dissolution of the Legislature, elections thereto and the residuary and emergency powers in case of the breakdown of the Constitution.

A further Proclamation was issued by H.H. the Maharaja, ordaining that the Dewan and Ministers shall function as a Cabinet on the basis of joint responsibility in all matters dealt with by the Council of Ministers, and shall arrive at decisions by a majority vote, and shall continue in office so long as they enjoy the confidence of the Legislature.

The Ministry is to set up a Constituent Assembly composed of elected representatives of the people to frame the Constitution for the State, also embodying such alterations as may be necessary in regard to the fundamentals stated in Schedules I and II mentioned in the Proclamation of September 24, 1947. The draft Bill is to be submitted to the Ruler for approval and will be promulgated by him with such alterations as he may consider necessary.

The Ministry took office on October 24, 1947.[1] (*Further reference to this subject will be made in Volume XVII of the* JOURNAL *in survey of* 1948.)

TRAVANCORE (DOMINION OF INDIA): FURTHER LEGISLATIVE REFORMS

BY THE SECRETARY TO GOVERNMENT

Travancore was the first Indian State to have a Legislative Council, a Council with a minimum of 5 members having been brought into existence as early as A.D. 1888. By the Legislative Reforms Act of 1108 M.E. (A.D. 1932) the Legislature was reconstituted, of which a description has appeared already in the JOURNAL.[2]

Under such Act the equality of women with men in the matter of voting and membership, in regard to both Chambers, was maintained. According to the electoral rules, all persons who hold lands within the State as registered owners, inamdars, tenants or kudiyans assessable to a tax of one rupee or more, persons who were assessed in a Municipality to land or building or professional tax for any amount, persons who

[1] *Mysore Information Bulletin*, Oct. 31, 1947.—[ED.] [2] Vol. XI-XII, 69.

were assessed to income tax, graduates of recognized Universities of the British Empire who were not undergoing a course of instruction in a recognized institution, all discharged, retired or pensioned Military officers of the Travancore State Forces or of His Majesty's Army or Navy residing in Travancore and all persons who were certified holders of fixed engines for fishing, were eligible to exercise their franchise in the general constituencies of the Assembly, provided they were not under 21 years of age. The franchise for the State Council followed mainly the heads of qualifications for that relating to the Assembly, but was fixed upon a higher standard. The property qualification was fixed at an annual land tax of *Rs.* 25, or a municipal tax of *Rs.* 5, and the educational qualification was limited to graduates of 10 years' standing. Those who earned a monthly pension of not less than 100 rupees on retirement from Government service were also eligible to vote in the general constituencies. Persons below the age of 30 were not eligible as voters or as candidates for election to the State Council.

Further constitutional reforms were effected by passing the Travancore Constitution Act (Act XII of 1122=April 7, 1947) by which it was intended to reconstitute the 2 Houses of the Legislature on the basis of adult franchise and composed wholly of elected members with elected Presidents. It was also designed to confer larger powers on the 2 Houses. Before the provisions of this Act could be brought into operation, great constitutional developments took place in India in August, 1947, and in the wake of those changes His Highness the Maharaja issued a Proclamation on September 4, 1947, announcing his decision to establish Responsible Government in the State, and to constitute a Representative Body composed of members all elected on the basis of adult franchise to submit proposals for modifying the Constitution Act of April, 1947, with a view to establishing full Responsible Government in the State. The rules for the purpose of elections to the Representative Body were framed by a Committee of non-officials and approved by Government. Based on these rules the elections to the Representative Body were held in February, 1948. The Representative Body met on March 20, 1948, and in pursuance of the unanimous wish expressed by the House at this meeting His Highness the Maharaja was pleased to pass the Interim Constitution Act (No. VI of 1123, dated Meenam 11, 1123 (March 24, 1948), authorizing the Representative Body to function as the Legislative Assembly of the State, until the Constitution was revised in accordance with the proposals to be submitted by the Representative Body. For the administration of the State during the interim period, a Council of Ministers was constituted, the Ministers to be appointed by His Highness the Maharaja and responsible to the Legislative Assembly. The administration of the State has thus been entrusted to the elected representatives of the people. The Representative Body has commenced working, and it is expected that the Constitution will be framed as early as possible.

Indian States.—In reply to a Q. in the House of Commons on August 4, 1947,[1] the Under-Secretary of State for India (Rt. Hon. A. Henderson) said that neither the Chamber of Princes nor the Rulers of Indian States were consulted regarding H.M. Government's announcement of June 3. Paragraph 18 of that Statement related only to British India, and H.M. Government's policy toward the States remained as contained in the Cabinet Mission's Statement of May 12, 1946.

The King in his speech on the Prorogation of the Second Session of the XXXVIII Parliament on October 20,[2] said:

The relationship which had so long subsisted between the Crown and the Ruling Princes of India has inevitably also changed. I acknowledge with gratitude the loyalty and devotion of the Indian Rulers to Myself and to my Royal Predecessors and I hope that in association with India or Pakistan their ties with the Commonwealth will endure.

XIII. OPENING OF THE CEYLON PARLIAMENT

By R. St. L. P. Deraniyagala, B.A.(Cantab.),
Clerk of the House of Representatives

Parliament was opened at a formal ceremony in a hall of the House of Representatives by His Excellency the Governor, Sir Henry Monck-Mason Moore, G.C.M.G., on November 25, 1947. The 2 Houses had met earlier for members to be sworn in and for the Speaker and the President and their Deputies to be elected in the 2 Houses, after which they had each adjourned to the date fixed by the Governor by Proclamation for the Opening of Parliament.

It was considered desirable that the 2 Houses should be treated in all matters on a basis of complete equality. With this end in view a search was made for a suitable hall for the Opening Ceremony, but owing to various circumstances it was ultimately decided that a hall in the House of Representatives would have to be used. The Speaker of the House of Representatives, however, surrendered his powers of control over the hall for the opening day, and both Houses made use of the hall as of right. Invitations to the ceremony were issued to members of the public, both in the name of the Speaker and of the President.

The Opening Ceremony was fixed by Proclamation for 10 *a.m.*, and the 2 Houses met in their respective Chambers a few minutes earlier. They then proceeded to the hall, the members of the Senate coming to the House of Representatives in a procession of cars with the President in the leading car. Inside the hall, the members of the 2 Houses were seated side by side with the Speaker and the President in front. The Ministers were ranged on either side of a platform prepared for

[1] 441 *Com. Hans.* 5, s. 975. [2] *Ib.* 2546.

the accommodation of the Governor, with the Prime Minister immediately to the right of the platform.

The Governor came to the House of Representatives direct from his residence, along a route lined by troops, and on arrival was greeted by the firing of 17 guns. He was received at the entrance by the Clerks of the 2 Houses, who escorted him up the main flight of stairs to the platform. After the Governor had taken his seat on the platform, the Proclamation summoning the meeting was read by the Secretary to the Governor, and a copy of the Speech was handed to the Governor by the Prime Minister. The Speech was read by the Governor while seated and covered. On the completion of the Speech, the Governor rose, and passing between the members of the 2 Houses made his exit from the House of Representatives, being again seen off to his car by the 2 Clerks. After the departure of the Governor, the Speaker and the President proceeded to their respective Chambers and, walking past their respective Chairs as an indication that the Sitting had been suspended, returned to their respective rooms.

Business in the 2 Houses was resumed again at the normal sitting hour of 2 *p.m.*, when, after certain formal items had been disposed of, the debates on the Address-in-Reply were commenced.

XIV. THE 1947 CONSTITUTION OF MALTA, G.C.[1]

By the Editor

The high tribute which the King paid the People and gallant Garrison of Malta, by conferring upon the Island the decoration of the George Cross in recognition of the distinguished services, bravery and devotion to duty in the cause of freedom rendered by them during World War II, needs no confirmation here. That ever-to-be-remembered record is enshrined in the hearts of their fellow-subjects throughout our Commonwealth and Empire.

Right worthily, too, did the Council of Government of the Island maintain the highest traditions in carrying on with " business as usual " during that long and arduous siege.

As readers of our JOURNAL are aware, Malta and her Dependencies have had a chequered constitutional career since 1933. In 1945 and 1946, upon steps taken by the elected members of the Council of Government a Constituent National Assembly was set up in Malta to frame a Constitution more akin to that in force between 1921 and 1933. This National Assembly therefore put forward proposals for the modification of the Constitution of 1921, and the Imperial Government appointed Sir Harold MacMichael as Constitutional Commissioner to visit the Island and discuss matters with the reformers.

Following Questions in the House of Commons in the early part of

[1] *See* JOURNAL, Vols. I, 10; II, 9; IV, 34; V, 56; VII, 103; VIII, 91; XIII, 97; XV, 104.

the 1946-47 Session,[1] a Statement of Policy on the subject of a new Constitution for Malta[2] was issued by the Imperial Government in the form of a White Paper, which, after reciting the history of constitutional development of Malta, deals with such matters as the form of the Constitution, its revocation and amendment; security of the Fortress, and consequent Imperial interests, as well as other subjects, of which mention will be made below.

From a constitutional point of view this White Paper is an informative document and should be read in conjunction with the 1947 Constitution which marks the return of Malta to the constitutional path she was treading some years ago.

In considering this and any previous Constitution for Malta, it must be borne in mind that Malta is both a Colony and a Fortress, and that the basis of the Constitution is dyarchic.

An attempt will therefore now be made to describe the provisions of the new Constitution, taking first its Parliamentary and Fortress aspects separately, but in both cases viewing the subject more particularly from the Parliamentary standpoint and omitting machinery and what normally comes under the description of " convention ".

The form of the Constitution is by Prerogative Instrument. The Malta (Constitution) Letters Patent of September 5, 1947 (hereinafter referred to as " C.L.P."), together with the Letters Patent (hereinafter referred to as " G.L.P.") of September 5, 1947, constituting the office of Governor and Commander-in-Chief; the Royal Instructions (hereinafter referred to as " R.I.") of the same date, and the Governor's Proclamation of September 10, declaring September 22, 1947, " the appointed day " for the coming into operation of these 3 Instruments, were all published in both English and Maltese in the *Malta Government Gazette* (G.N. No. 4647) of September 10, 1947.[3]

Malta, the Colony.

The Parliamentary side of the Constitution provides for government by a Governor or in his absence a Deputy Governor, a Lieutenant-Governor and a popularly elected Legislative Assembly. This part of the Constitution—the " Maltese Government "—is defined as the Government " constituted for the exercise of any power, jurisdiction or authority in Malta with regard to all matters other than reserved matters."

Governor and Commander-in-Chief.—This office, as customary, includes the officer for the time being administering the Government, and " Governor in Council " means the Governor acting by and with the advice of the Executive Council. In the Governor is vested the power, as he shall think fit, to summon, prorogue or dissolve the Assembly and fix its place of meeting, all of which are effected by Proclamation in the *Malta Government Gazette*. The Governor is also vested with the other customary powers attached to the office.[4]

[1] 431 *Com. Hans.* 5, s. *231*, 1943. [2] *Cmd.* 7014. [3] Malta Government Printing Office, 1947, 2s. [4] C.L.P., 19, 20; G.L.P., 20-24.

Deputy Governor.—This officer acts in the absence of the Governor.[1]

Lieutenant-Governor.—Under the Governor's Letters Patent, provision is made for a Lieutenant-Governor who is to administer the Government and do such things as may be assigned to him.[2]

The Ministry or Executive Council.—The Ministry is limited to 8 M.L.A.s selected from the Assembly, and the Prime Minister is called " Head of the Ministry ". Appointments to the Ministry are made by the Governor and Ministers are respectively charged with the administration of such Departments and functions as may be assigned by the Governor after consultation with the Head of the Ministry; provided such Departments include Justice and Finance. The Head of the Ministry is the official channel between the Governor and the Ministry.[3]

Legislative Assembly.—This body takes the place of the Council of Government and consists of 40 members elected by P.R., for which the Colony is divided into 8 constituencies each returning 5 members. The qualification for membership is the franchise, which is adult British subjecthood, and not less than 12 months' residence in Malta immediately preceding registration, but excepts members of H.M. Forces on full pay. Unless sooner dissolved the life of the Assembly is 4 years.[4]

In addition to the normal disqualifications for membership of the Assembly, the other disqualifications are: being party to Government contracts (*see below*) and electoral offences.[5]

The normal conditions rendering vacation of seat necessary are: absence (except by reason of imprisonment) from the sittings of the Assembly for a continuous period of 2 months without the approval of the Speaker, obtained within 2 months, from such sitting; being party to a Government Contract (*see below*); or contravention of electoral offences.[6]

The penalty for an M.L.A. sitting or voting therein when disqualified is £2 a day, recoverable by action in the Malta Civil Court at the suit of the Attorney-General, such money to be paid into the Consolidated Revenue Fund.[7]

All questions as to qualification or disqualification of membership of the Assembly are to be decided by the Malta Court of Appeal, whose decision is final.[8]

Provisions as to elections are laid down in S. 15 and Schedule III of the Constitution Letters Patent.

The Speaker and the Deputy Speaker are elected from among the M.L.A.s and vacate their seats on the dissolution of the Assembly. Should both be absent another M.L.A. is elected to preside.[9]

Procedure.—Questions are decided by a majority of votes, and in case of an equality the Presiding Member has a casting vote, which if not exercised the motion is declared lost. A quorum is 15. The Assembly is empowered to make Standing Orders[10] and every M.L.A. must

[1] G.L.P., 7. [2] G.L.P. 8, 9. [3] C.L.P. 40, 41; G.L.P. 10. [4] C.L.P. 5, 11, 12, 13, 14, 21. [5] *Ib.* 6, 7, 8. [6] *Ib.* 7, 8. [7] *Ib.* 9. [8] *Ib.* 10. [9] *Ib.* 17. [10] *Ib.* 30. Published under G.N. No. 571 of Oct. 20, 1947.

subscribe to the Oath of Allegiance or make affirmation before taking his seat, except for the election of Presiding Member.[1]

Privilege.—The privileges, immunities and powers of the Assembly and its members are such as may be declared by law, but no such privilege, etc., may exceed those of the Commons House of Parliament or the members thereof. Until such provision is made those of the Council of Government at the time of its dissolution apply.[2]

The Second Chamber.—For the first 10 years after " the appointed day " the Legislature is unicameral, but provision is made for the establishment of a Senate after the expiration of that time. The Bill, however, is required to be passed by the Assembly, and after its dissolution and a general election to be again passed by the Assembly.[3]

Language.—English and Maltese are the official languages of Malta and no other language may be used in the Assembly. Every speech and the proceedings thereat, as well as all laws, must be in the 2 languages. In case of conflict between them in any Bill or Law the English text prevails.

No alteration may be made by legislation or other action as to the medium of any language in any university, school, etc., without the consent of the Secretary of State, and details as to the use of the 2 languages in the courts are laid down in Schedule V to the Constitution.[4]

Religion.—The Constitution provides for religious liberty and no person may be subjected to any disability or excluded from holding any office by reason of his religious profession.[5]

Judicature.—Ss. 42-45 deal with the Judicature.

Finance.—Ss. 49-52 of the Constitution cover Finance and the last-mentioned section and Schedule VI provide for the Civil List in regard to the salaries of the Governor (and duty allowance), Lieutenant-Governor, Legal Secretary, Secretary to the Maltese Imperial Government and Clerk of Councils, establishment and contingencies totalling £20,800 and the Judiciary £2,350.

Miscellaneous provisions and *Savings* are dealt with in Part IX of the Constitution.

Government Contracts.—A person who is a party to, or a member of a firm, or a director or manager of a company which is party to, any subsisting contract with the Maltese Government for or on account of the public service may not become a candidate for election to the Assembly, and should he become such a party, etc., when an M.L.A. his seat becomes *ipso facto* vacant.[6]

The exemptions provided for in the Constitution are Ministers of the Crown; Crown pensioners not actually in the service of the Crown in Malta; officers of the armed forces of the Crown retired on half-pay; and teachers at the Royal Malta University, provided they are permitted private practice or are obliged to give their whole time to the Maltese Government.[7]

[1] C.L.P. 26, 27, 29. [2] *Ib.* 31. [3] C.L.P. 22 (2), 25 (*b*) (1) (2). [4] C.L.P. 32, 33, 46-48. [5] C.L.P. 53. [6] C.L.P. 7 (1) (*e*); 8 (1) (*f*). [7] C.L.P. 1 (4); 7 (1) (*f*) & (4).

Offices of Profit under the Crown.—As in the Constitutions of Jamaica and Ceylon, the expression " office of emolument under the Crown " is used in substitution for the more general one. The Malta Constitution provides that no holder of an office of emolument under the Crown may become a candidate for the Assembly, and should an M.L.A. accept such an office his seat becomes vacant. Notwithstanding the above, however, a person holding such an office under the United Kingdom Government (other than a member of the Regular Forces) is permitted to become such a candidate if immediately upon his election he ceases to hold the office.

Distribution of Legislative Power.—Except in regard to certain reserved matters, Acts " for the peace, order and good government of Malta " are made with the advice and consent of the Assembly.[1] Bills, however, dealing with divorce, land grants, differential duties, Treaties, Royal Prerogative, etc., are not to be assented to without instructions through the Secretary of State.[2]

Reserved matters consist of control, etc., of the Armed Forces of the Crown and surveys therefor; defence; air navigation and aircraft; compulsory acquisition of land and buildings for such Armed Forces, and all forms of communication in connection therewith; lands, docks, etc., for such Forces; certain Palaces in use by the Governor; importation of goods, etc., for such Forces; currency; immigration; nationality, etc.; postal and telegraphic censorship; passports; appropriation of revenues in regard to reserved matters and treaties.[3]

Exceptions are, however, made to the above in case of certain public services, communications and Imperial property in common with other property and interests.[4]

When, on the presentation of a Bill to the Governor, it appears that the Bill contains any provisions that affect a reserved matter, the Governor may return it to the Assembly for reconsideration, and should that body fail to amend it to the satisfaction of the Governor he must, if so requested by the Head of the Ministry, submit the Bill to the Secretary of State, whose decision shall be final. On the other hand, should the Governor or the Secretary of State consider there is no such prohibition in regard to the Bill, the Governor may assent or not thereto or reserve it for the signification of the Royal pleasure.[5]

The Governor must, however, reserve a Bill subjecting a non-Malta born or descended person to any disability to which a person of Maltese birth or descent is not subjected; or affecting Imperial property or interests, territorial waters, etc., or certain provisions of the Letters Patent, including those relating to the Judicature, language, the reserved Civil List, religious toleration, or inconsistent with the Constitution, etc.[6]

In case of emergency the United Kingdom may legislate by Order-in-Council in order to secure public safety, supplies, etc.[7]

Sections 36, 37 and 38 deal respectively with the commencement,

[1] C.L.P. 22. [2] R.I. 20. [3] C.L.P. 23. [4] *Ib.* 24. [5] *Ib.* 34.
[6] *Ib.* 35. [7] *Ib.* 58, 9.

disallowance and record of laws. The validity of any law passed under S. 22 may not be questioned in any legal proceedings commenced after the expiration of one year from the date of the law coming into operation except in regard to any law in respect of which the Assembly has not power to legislate.[1]

Under S. 38 certain duties are imposed upon the Clerks " to " the Assembly in connection with the enactment of laws.[2]

Power is given to the Governor by Proclamation with previous approval of the Secretary of State to amend the Constitution within a year of the appointed day,[3] and in cases of emergency the Crown may legislate by Order-in-Council,[4] and certain powers are reserved to the King in regard to reserved subjects.[5]

Malta, the Fortress.

" *Maltese Imperial Government* " is defined as the Government constituted by the Malta (office of Governor) Letters Patent, 1947, for the exercise of any power, jurisdiction or authority in regard to reserved matters,[6] which last-mentioned are those touching the public safety or defence of " Our Dominions " and the general interests of " Our subjects " not resident in Malta. This also includes coinage and currency, immigration, nationality, naturalization and aliens, postal and telegraphic censorship, passports, treaties and reserved matters, and the appropriation of such revenues as may accord to the King in respect of any reserved matter.[7]

Governor and Commander-in-Chief.—In regard to reserved matters[8] (*see above*) the Governor can legislate by Ordinance (subject to disallowance)[9] for " the peace, order and good government of Malta ", the words of enactment being "enacted by the Governor of Malta", and rules are laid down by R.I. in this connection.

Nominated Council.—This body, which is summoned by the Governor, who presides thereat, deals with " reserved matters " (*see above*), and consists of the Lieutenant-Governor and the Legal Secretaries *ex officio*, together with an officer of the Royal Navy, Army and Royal Air Force, who hold office during Royal pleasure. Provision is also made for temporary appointments.[10]

In the execution of the powers and duties vested in him, the Governor must consult the Nominated Council in regard to all matters not coming within the jurisdiction of the Assembly, but should he act in opposition to the advice given him by the members of the Nominated Council he must report fully to the Secretary of State with the reasons for his action, and any member thereof has the right to require that the

[1] *Ib.* 39. [2] We noticed also in the recent Constitutions of Jamaica and Ceylon, the office of Clerk is described as " to " and not " of " the Legislature. Certainly in the older Dominion Legislatures, the Clerk, as at Westminster, is always described as " of " his House. The Houses of the Dominion Parliaments are very jealous of the possessiveness of their Clerks to them as a body and their freedom from the influence and control of the Executive Government.—[ED.] [3] C.L.P. 58. [4] *Ib.* 59. [5] *Ib.* 60. [6] G.L.P. 1. [7] *Ib.* 23. [8] *Ib.* 23 (3). [9] G.L.P. 16, 17, 18. [10] G.L.P. 11, 12; R.I. 8, 9.

grounds of any advice given by the Governor must be recorded in the Minutes. The Governor alone has the right to submit questions to this Council.[1]

The Governor also enjoys emergency powers, in which case he must report to this Council the measures he has adopted with the reasons therefor.

Privy Council.—This Council consists of the members of the executive and Nominated Council, and is summoned by the Governor (who presides at its meetings) whenever he may think fit to consider any matters as may be specified in R.I., not being matters exclusively within the responsibility of the Executive Council.

The Governor may also appoint a Joint Committee of the Privy Council consisting of 3 members of the Executive Council nominated by the Head of the Ministry and 3 members of the Nominated Council selected by himself.[2]

The Governor alone has the right to submit questions to the Privy Council or the Joint Committee, but he must in all cases consult with the Privy Council or the Joint Committee before returning a Bill for the reconsideration of the Legislative Assembly under S. 34 of the G.L.P.

The Governor may act in opposition to the advice given him by members of the Privy Council or of any Joint Committee, but he must report such action to the Secretary of State at the earliest opportunity together with reasons for his action, and any member of either body has the right to require that there be recorded at length in the Minutes the grounds of any advice or opinion that he (the member) may give upon the question at issue.[3]

Revocation or Amendment of the Malta (Constitution) Letters Patent, 1947.—Subject to certain reservations and limitations, power is given the Assembly to repeal or amend any Act made under S. 22 of the Constitution or any Order-in-Council, other than a law establishing a Second Chamber; unless the votes of not less than $\frac{2}{3}$ of all the members of the Assembly are cast in favour thereof.[4]

Opening of the New Legislature.—The Legislative Assembly met on Friday, November 7, in the Tapestry Chamber, which is the Chamber of the Legislature, when the M.L.A.s took the Oath and elected their Speaker and Deputy Speaker.

On the 10th *idem*, the Legislative Assembly met in the Hall of St. Michael and St. George (the Reception Hall of the Palace).

The streets were thronged with cheering crowds, standing behind the Armed Forces and Boy Scouts. The Guard of Honour was inspected by His Royal Highness the Duke of Gloucester, and as H.R.H. and his Consort entered the Hall a fanfare of trumpets was sounded, after which the band played the first 6 bars of the National Anthem.

In the hall, after the Commission from the King had been read by the Governor, H.R.H. the Duke, after a speech, declared the new Legislature open.

[1] R.I. 12, 13, 14. [2] G.L.P. 14, 15. [3] R.I. 18. [4] C.L.P. 25.

*XV. EXPRESSIONS IN PARLIAMENT[1]

THE following is a continuation of examples of expressions in debate allowed and disallowed which have occurred since the issue of the last Volume of the JOURNAL:

Allowed.

" absurd " in regard to procedure adopted by the Government. (III, 1947 *Madras Leg. Assem. Hans.* 20.)
" cardsharpers ", reference to Government as. (421 *Com. Hans.* 5, s. 2983).
" flippant ", reference to debates as. (430 *Com. Hans.* 5, s. 1555.)
" fraudulent programme ", that other side is advocating. (424 *Com. Hans.* 5, s. 2072.)
" hostile propagandists ". (441 *Com. Hans.* 5, s. 1911.)
" hypocrisy ", accusation of, as applying to body of people. (436 *Com. Hans.* 5, s. 738, 756.)
imputation of motives to a Party. (433 *Com. Hans.* 5, ss. 820, 833.)
" lie " in reference to a statement. (438 *Com. Hans.* 5, s. 1048.)
" obstruction ". (425 *Com. Hans.* 5, s. 674; 437 *ib.* 44.)
" police state ", intention of Government to introduce a. (422 *Com. Hans.* 5, s. 1024.)
" political hypocrisy ". (*439 *Com. Hans.* 5, s. 837.)
" Quisling ", when used to describe non-members. (V, 1947 *Madras Assem. Hans.* 856.)
untrue statement can be made about another member provided it is not unparliamentary. (425 *Com. Hans.* 5, s. 615.)
" worthless statement " by Minister. (421 *Com. Hans.* 5, s. 2984.)
" You cannot do it, because it is not true and you know it is not true " by one member to another. (421 *Com. Hans.* 5, s. 1564.)

Disallowed.

blackmailed, why was a local authority being. (435 *Com. Hans.* 5, s. 1211.)
" bribes ", to accuse another member of accepting. (*435 *Com. Hans.* 5, s. 1233.)
" gentleman ", asserting that another member is not a. (LXXXVI *Canada Com. Hans.*, No. 113, 5760.)
" hypocrite ". (LXXXVI *Canada Com. Hans.*, No. 38, 720.)
imputing an unworthy motive. (424 *Com. Hans.* 5, s. 2072.)
imputation of motives to an individual. (433 *Com. Hans.* 5, s. 820.)
" infection ", you are the source of. (421 *Com. Hans.* 5, s. 1375.)
" lie ". (*441 *Com. Hans.* 5, s. 2166.)
" matter for regret ", to say that the way in which debate has been

[1] *See also* JOURNAL, Vols. I, 48; II, 76; III, 118; IV, 140; V, 209; VIII, 228; XIII, 236; XIV, 229; XV, 253.

going on is a matter for, held to amount to reflection on Chair. (IV, 1947 *Madras Leg. Assem. Hans.* 965.)
no faith in sincerity of arguments used by other members. (436 *Com. Hans.* 5, s. 511.)
" obstruction ", member charging other members with. (413 *Com. Hans.* 5, s. 152, 3.)
" only one actual rat ". (*441 *Com. Hans.* 5, s. 2102.)
" Quisling ", when applied to Minister or M.L.A. (V, 1947 *Madras Leg. Assem. Hans.* 586.)
" Rats ", reference to other members as. (441 *Com. Hans.* 5, s. 2504.)
" shabby moneylenders ". (*441 *Com. Hans.* 5, s. 1985.)
" totalitarian " Minister. (418 *Com. Hans.* 5, s. 1109.)
" untruth ", charging another member with telling an. (432 *Com. Hans.* 5, s. 7327.)
" untruth ", telling the House an. (432 *Com. Hans.* 5, s. 731.)
" wangle ". (436 *Com. Hans.* 5, s. 1387.)

XVI. SOME RULINGS BY THE SPEAKER AND HIS DEPUTY AT WESTMINSTER, 1946-1947

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 430 to 441 of the Commons *Hansard*, 5th series, covering the period November 12, 1946, to October 20, 1947. The Rulings, etc., given during the remainder of 1947 (which fall in the 1947-48 Session, the Second Session of the XXXVIIIth Parliament) will be treated in Vol. XVII 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* Crown.

Adjournment.

—of debate, motion for, refused at that stage, 430 – 144.
—*of House*
—can only be moved by Government, 431 – 2343.
—debate, *see* that Heading.
*—Motion for, in regard to absence of Minister, not accepted, 437 – 2568.
—Motion for, not accepted, *437 – 2568; 441 – 1020.
—notice given to raise matter on, 433 – 177, etc.
—*of House, (Urgency) Motion for.*
—*accepted.*
—immediate allocation of newsprint to the Press, 440 – 577 to 581, 663 – 719 (Ayes, 113; Noes, 234).
—*refused.*
—a general proposition, 431 – 2182.
—involving Royal Prerogative, 434 – 43.
—no urgency, 434 – 49.
—not definite, 432 – 1968.
—not urgent, 438 – 387.
—not urgent public importance, 438 – 2228.
*—Gold Coast Sentences, out of order, 434 – 43, 44.
—must be an urgent matter of public importance, not one continuing, 438 – 387.

Allocation of Time (Guillotine).

—Guillotine, when falls on *Rep.* stage of Bill, form of *Q.* is: "That the amendment be made," 434 – 196, 2111.

Amendment(s).

—Bills, Public, *see* that Heading.
—debate, *see* that Heading.
—Lords, *see* Lords, House of.
—MS., Mr. Speaker prepared to consider, 438 – 2225.
—MS., not usually accepted at short notice, 440 – 439.
—must be seconded before it can be discussed, 437 – 1535; 438 – 457.
—only mover can ask leave to withdraw, *439 – 486.
—selection of, *see* Chair.
—withdrawal of, objected to, 430 – 590.

Anticipation.

—debate, *see* that Heading.
—only applies to a Bill when it has been produced, 431 – 990.

Ballot(s)—*see* Motions.

Bills, Private Members'—*see* Bills, Public; Debate; and Members.

Bill(s), Public.
—*Amdt(s).*, late printing of, 437 – 1100.
—debate, *see* that Heading.
—Finance, *see* Money, Public.
—Lords *Amdt(s).*, *see* Lords, House of.
—members } *see* those Headings.
—Ministers }
—*Cons.* clause, formal permission for withdrawal of, to be asked by mover, 434 – 444.
—*Rep.*
—*amdt.* not called, as does not make grammar, 436 – 1464.
—*amdt.* on Paper not called until clause read second time, 440 – 417.
*—and 3 *R.* taken same day, 438 – 2228.
—Report stage can only be, when *amdt(s).* have been proposed, 438 – 2177.
—when Guillotine falls, form of *Q.* on *amdt.* is: "That the amendment be made," 436 – 2111.
—*Re-Com.*
—at end of Report: stage instead of beginning, 439 – 42.
—on Report stage on account of *Amdt.(s)* involving, or may involve an additional charge, either on the Exchequer or on certain local ratepayers, 436 – 619.
—3 *R.*
—following *Report* without reprinting but copy of revised Bill on Table, 433 – 1409, 1410.
—immediately after *C.W.H.*, 438 – 2175 to 8.
—not unusual for 3 *R.* to be taken immediately after *Report* without reprinting, 433 – 1409.
—Money Clauses, reprint of italicized provisions, 432 – 381.
—printing error, 431 – 343.

Business, Public.
—discussion of, matter for consideration of the 2 Front Benches, 431 – 984, 987.
—for Government and not Opposition to state, 430 – 1791, 2.
—interruption of, for Mr. Speaker to attend Royal Assent in Lords, 434 – 1180.
—last ½ hour is Private Members' time, 433 – 146.
—objected to, becomes opposed and cannot be taken past the time, 432 – 160.
—statements by Ministers, 437 – 2188, 9.

Chair.
—accuracy of, must not be questioned, 437 – 2706.
—*Amdt(s).*, *selection of.*
*—a matter for Mr. Speaker's discretion and reasons must not be discussed, 439 – 1915.
—not affected by discussion in *Stan. Com.* 438 – 210.
*—not in order to ask for reasons guiding, 432 – 388.
—not selected by Mr. Speaker as not fair to Chairman on *Re-Com.*, 438 – 208, 9.
—charge against treatment by, withdrawn, 441 – 1737.
—charge of, being unfair, withdrawn, 440 – 837.
—comments on Rulings of, not allowed, 434 – 1593.
*—conduct of debate, directed by, on proper lines, 434 – 1599.

Chair (*continued*):
—debate, *see* that Heading.
•—fewer comments should be addressed to, 433 – 1404.
—has complete list of everyone who has spoken, 440 – 1454.
—has no power to ask for any apology to be made to the House by a member nor has it power to ask him to withdraw it, 440 – 1276.
•—member should not reflect on intelligence of, 434 – 155.
—not for, to direct hon. member when to sit down unless out of order, 431 – 94.
—not for, to judge whether or not statement true, 440 – 1323.
—Rulings of.
•—member no right to make comment on, 434 – 1593.
—must not be challenged, 435 – 543, etc.
—should be allowed to conduct Business of the House, 434 – 207.
—Speaker (Mr.), *see* that Heading.
•—speakers, selection of, 433 – 2387; 434 – 963; 441 – 1289.
—speakers, selection of in Com. of Supply, nothing to do with Mr. Speaker, 439 – 1297.
—there is nothing to indicate who will catch the eye of, 433 – 888.
•—words not heard by, 435 – 1850, etc.

Closure.
—Guillotine, *see* "Allocation of time."
—interruption of Business, moved at, 434 —196.

Com., Standing.
—avoiding simultaneous discussion on important matters upstairs, when important matters before House, 435 – 1410.
•—conduct of Chairman of, cannot be criticised, 437 – 811, 2.
—House is fully aware of sittings of, through *Hansard*, 434 – 58.
—moving of *amdt(s)*. in, by Law Officers, 436 – 1266, 7, 1272, 3.
—no official knowledge of proceedings in, until report to House, 431 —1782.
•—protest by Leader of Opposition against abuse of use of, and of withholding from House and from those members not members of such Committee the right to take part in debate on principal Bill of Session, 431 – 1340, 1.
—references to Chairman, 437 – 163, 811, 812, 2678, 2679, 2680.
—references to proceedings of, 434 – 60 to 62, 1145,[1] 6; 437 – 164.
—suggestion of using Chamber for meetings of, 433 – 2075 to 7.

Count—*see* Division(s).

Crown.
—Address in Reply, *amdts.* to, Mr. Speaker's selection, 430 – 386, 526.
•—Royal Prerogative of Mercy, not debatable in House, 431 – 4151, 435 – 1007 to 1017; *see also* Article II. hereof.

Debate.
—*Adjournment of House.*
—appropriate times allotted for subjects, 437 – 2763.
•—Bill already read 2. *R.* cannot be discussed on, 441 – 1889, 91.
—legislation may not be referred to, 439 – 2122; 441 – 1473.
—only legislation ruled out of order, 433 – 2136.

[1] *See also* "Editorial" p. 24 above—[Ed.].

Debate
—*Adjournment of House (continued):*
—only such matters can be debated as involve responsibility of the Government, 431 – 991.
—*Amdt(s).*
*—member having seconded has exhausted right to speak, but may ask *Q.*, 436 – 1105, etc.
—must be seconded before it can be discussed, 437 – 1535.
*—not selected, cannot be discussed, 438 – 268, etc.
—seconder to, necessary before, can proceed, 438 – 457.
—seconding exhausts right to speak on Question, 436 – 1101.
—" *Another Place.*"
*—quoting of speeches in, 433 – 484; 437 – 2706.
—reference to statement in debate in, out of order, 431 – 1467.
*—anticipation of, 433 – 1401, 2.
—anticipation rule only applies when Bill has been produced, 431 – 990.
—as no Motion before House, now possible, 435 – 1849.
—*Bills, Public.*
—*C.W.H.*, little more intervention permissible in, 430 – 1829.
—*Rep.*
—Clauses don't come for discussion at *Report* stage unless *amdt(s).* have been put down, 434 – 45.
—four *amdt(s).* discussed together, 438 – 72.
—mover of *amdt(s).* in Standing Com. entitled to speak again in House, 438 – 263.
—not in Order to discuss on one *amdt.*, matters arising on later *amdt.*, 436 – 1452.
—2 *R.* speech, 436 – 536.
—two *amdts.* discussed together, 438 – 245.
—two clauses discussed together, but treated separately for Division, 436 – 481.
—3. *R.*
*—can only discuss what is in the Bill, and not what individuals said in the past, 437 – 136.
—debate is more restricted in the later stages of the Bill and is limited to the matters contained in the Bill, 441 – 2196.
—details as to what happened in *C.W.H.* not allowed, on 433 – 1435.
—matters not in Bill cannot be discussed on, 433 – 1450, etc.
*—not dealing with as it now stands but as originally introduced, 435 – 2179.
—only as to what is in Bill, 438 – 781.
—*Report* from Standing *Com.*, mover of *amdt.* has right of reply, 439 – 1951.
—cannot be conducted by process of *Q.* and answer, 435 – 612.
—closed when voices collected, 431 – 1478; 438 – 312.
—Closure, *see* that Heading.
*—*Com., Sel.*, previous debates or incidents prior to report, cannot be gone back to, 433 – 49.
—*Com., Stan.*
—any mention in House regarding merits or demerits of Bills now before, out of Order, 434 – 60.
—Bill from, mover of *amdt.* on *Report* stage entitled to speak again, 438 – 263.
—*see also* that Heading.
—conduct of proceedings of the House and method of selection of speeches cannot be debated, 434 – 1418.
—continual interruptions not in order, 433 – 838.
—cross talk irregular, 432 – 1872.

Debate (*continued*):

—Court Martial cases awaiting confirmation by Secretary of State for War still *sub judice*; matter can be brought up in House after confirmation, 434 – 1549.
—custom of Parliament to hear a difficult case quietly, not spoil it by interruptions, 440 – 297.
—frivolous obstruction, 432 – 1711; 436 – 2086.
—Guillotine, *see* " Allocation of Time."
—Head of a State cannot be criticized, 441 – 1550.
—if an appeal is pending then matter is still *sub judice*, 439 – 1507.
—in anticipation of, 433 – 1403.
*—insinuations and imputations, out of order, 430 – 1412.
—interruption of, it was at 12 o/c. when Mr. Speaker rose to his feet to say the debate was over; that was the moment of interruption when the Minister was entitled to get up and move the Closure, 434 – 196.
—interruptions, 431 – 1499, etc.
—leave of House necessary to speak again, 433 – 1615.
—Lords *Amdt(s).*, *see* Lords, House of.
—Lords, House of, *see also* hereunder, " *Another Place.*"
*—matter should be left to forthcoming, 438 – 1987.
—member } *see* those Headings.
—Minister }
—*Money, Public.*
—Budget Resolution confined to subject of, 436 – 1107, 1111, 1114.
—*Supply, Com. of.*
*—Appropriations in Aid not discussible in, 433 – 71.
*—discussion of policy out of order, 433 – 209.
*—legislation cannot be discussed, 433 – 1005, etc.
—Supplementary Estimates.
*—Appropriations in Aid not debatable, 433 – 1002, etc.
*—clearances cannot be discussed, 433 – 1000.
*—form of not debatable, 433 – 246.
*—future policy not discussible on this Estimate, 433 – 2484.
*—increase cannot be advocated, 433 – 1312.
*—legislation cannot be discussed, 433 – 1313, etc.
—member entitled to ask *Q.*, but nature of reply determined by Minister, 433 – 1343.
*—on what is not in Vote, out of order, 433 – 1348.
*—only what is in, can be debated, 433 – 246.
*—policy cannot be discussed, 433 – 1008, etc.
*—policy not debatable, 433 – 227, 8.
*—Savings, cannot be discussed, 433 – 1107, etc.
*—shape of things to come cannot be discussed, 433 – 1313.
*—Vote on a clearance cannot be discussed, 433 – 1014, 1020, 1078.
—usual for Opposition to choose subject of debate on Consolidated Fund Bill and then usual for Mr. Speaker to choose those hon. members ready to talk on that subject, 435 – 593.
—more interesting to have debating speeches than written speeches, 430 – 930.
—motives must not be imputed, 436 – 512.
—no Motion before House, therefore none possible, 435 – 1849.
—not
*—allowed on conduct of proceedings and method of selection of speeches, 434 – 1418.
*—by cross-examination, 432 – 2032.
*—for Mr. Speaker to determine accuracy of any charge being made, 441 – 2444.

—in order to refer to members of Lords by name unless they are Ministers responsible to the Government, 430 – 265.
—out of Order to attribute motives to a Party, 432 – 2204.
—Notice given to raise matter on Adjournment cannot be further discussed, 435 – 26, 406.
—*Orders, Statutory.*
—mover of, no right of reply, but, if called, member entitled second speech, 433 – 2424.
—not in order to raise those of previous years, 430 – 1914.
—two discussed together, 436 – 2303.
•—wider, on Consolidation, 441 – 754.
—Outlawries Bill, 430 – 3, 4.
—personal attacks upon people who cannot answer, 436 – 156.
—Prerogative of Mercy not debatable, 435 – 1006 to 18.
—previous debates of incidents prior to *Sel. Com.* Report cannot be gone back to, 433 – 49.
—remark(s).
•—in very bad taste, 435 – 588.
•—must be withdrawn, 440 – 837, 1462; 441 – 1737.
•—ought not to be made without proof of statement, 431 – 1415.
—should be addressed to Chair, 430 – 887.
—repetition, 430 – 1645, etc.
—Royal Prerogative, not debatable in House, 431 – 41, 51; 435 – 1007 to 17.
—Royal Prerogative, *see also* Article II hereof.
—Speaker (Mr.), pointed out that there had been speeches from the Government side lasting 20, 24 and 30 minutes and from the Opposition side lasting 14, 10 and 5 minutes and therefore he thought that there must be fairness in the allocation of time also, 433 – 606.
—speakers, selection of, *see Chair.*
—*speeches.*
—appeal for shortness, 430 – 526.
—Chair not responsible for, 433 – 818.
—must not be read but notes may be referred to, 432 – 822; 433 – 1592.
—reading of, only in Order on Government policy, 440 – 1322.
•—reading of, 431 – 1218.
—short, favoured, 434 – 1506.
—*sub judice*, 435 – 1006, etc.
—*sub judice*, matter partly, also not debatable, 435 – 1006 to 18.
—the Courts may not be criticized, if House came to the conclusion that magistrates or judges were not carrying out their duties properly a Motion can be put down on the *O.P.*, 440 – 38.
•—the fewer the interjections the greater progress, 430 – 190.
—things for which a Minister is not responsible cannot be raised against him on Floor of House, 440 – 38.
•—usual to have a representative of the Home Office present when Orders in the name of the Home Secretary are moved, 432 – 1300.
•—wearisome repetition, warning against, 436 – 123.
—withdrawal of remarks, Chair will say, if wanted, 437 – 812.
—" You " refers to the Chair, 432 – 254, etc.

Division(s).

—*Count of House.*
—cannot be called between 7.30 and 8.30, 439 – 530.
—Debate on the Adjournment, 437 – 1876 to 9.
—during private members' time on Adjournment, *see* " Editorial " p. 23 above—[ED.].
—division door locked, 440 – 1437 to 9.

Division(s) (*continued*):
—House cannot divide on the question of its leave being refused, 440 – 1393.
—in view of one of the tellers having left the Division Lobby before all members had gone through, Mr. Speaker declared that another Division must be taken, 431 – 2140.
—list,
—publicity to rectification of, 430 – 1795; 431 – 1612.
—name must be added afterwards, 430 – 695.
—member(s).
—calling " Aye " and going to " No " Lobby, may correct himself at second call, 436 – 710.
*—have right, when *amdt(s)*. moved *en bloc*, to divide against any particular *amdt.*, if they wish, 437 – 1618.
—must vote according to his call; to shout " Aye " and not to vote does not matter at all, 430 – 593.
—no Tellers being willing to act for the " Noes," Mr. Speaker declared that the " Ayes " had it, 436 – 2073.
*—Order, point of, handkerchief or *O.P.* not covering, 436 – 2113.
—point of Order, putting an *O.P.* on head not sufficient under which to raise, during, 434 – 393.
—right of Chair to decide manner in which vote shall be taken, 436 – 2101, 2, 9, 2110.
—two votes added to " Noes " if both Parties agreed, 433 – 996.

Finance—*see* Debate; Money, Public.

Guillotine—*see* " Allocation of Time."

Hansard.
—statement as to incorrections in, 435 – 1850.
—half-hour adjournment debate, late publication of, 433 – 373.

King—*see* Crown.

Lords, House of.
—*Amdt(s)*.
—Chair bound to put all, to the House, 440 – 1233.
—procedure on misprints, 440 – 1235, 1255.
—put in groups, and any, affecting Privilege (monetary), a Special Entry will be made, 441 – 802.
—taken *en bloc*, lines called, and *amdt(s)*. taken page by page, 441 – 1305.
—" *Another Place* ", *see* Debate.
—Privilege (monetary), *amdt(s)*., entry in Journal, 437 – 2289.

Member(s).
*—action irregular, 433 – 1566.
—apology by, for personal allegation against Prime Minister, 436 – 1244.
—asked to resume his seat, 433 – 546.
—as member has not given notice of making a personal statement, he is out of order, 435 – 1849.
—cases of Privilege, *see* Article XVII hereof.
—cannot compel Chair to take certain course of action, 441 – 2443.
—Chair, *see* that Heading.
—*debate.*
—allowed to quote from newspaper, 434 – 1079.
—Bills, Public, 2. *R.* Committee points on, 430 – 1640.
—cannot
*—address the House again on the point, 440 – 1814.

Member(s)
—*debate*
cannot (*continued*):
—interrupt unless member gives way, 432 – 1169.
—intervene unless member gives way, 432 – 832, etc.
—make speech but may put *Q.*, 437 – 7423.
—second *amdt.*, having spoken to the *Q.*, 440 – 1364.
—speak again without leave of the House, 430 – 1330.
—speak second time without leave of House, 430 – 1350.
—speak twice, 440 – 1376.
*—speak unless called upon, 441 – 2443.
—speak unless member speaking gives way, 434 – 180.
*—speak unless Minister gives way, 432 – 969.
*—does not have to apologize for making what appears to be a rash statement, 441 – 1525.
—entitled to speak only once, except with leave of the House, 434 – 796, etc.
—exhausted right to reply, 436 – 1893.
—exhausted right to speak, 432 – 98, etc.
—gives up his opportunity to speak on the Adjournment to allow Minister to make a statement, 433 – 2526.
—has already spoken, 433 – 1668, etc.
*—has already spoken twice, 434 – 797.
*—has exhausted right to speak except with leave, 440 – 1454.
—having spoken in House only entitled to ask *Qs.*, 438 – 1760.
—if, denies allegation made against him, it should not be repeated, 433 – 437.
—if, does not give way, other not entitled to get up, 435 – 2073.
—if member speaking does not give way, member cannot put *Q.* to him, 440 – 336.
—in charge of Bill has right to speak twice, 437 – 2624.
—last ½ hour is sacrosanct to, 433 – 146.
—leave of the House to speak again, refused, House cannot divide upon *Q.*, 440 – 1393.
—leave to speak again, not given, 431 – 2272.
*—make statements on their own authority and are responsible for them, 434 – 1768.
*—making another speech, 433 – 841, etc.
—may
*—ask *Q.*, but not make observation, 436 – 1386.
—only speak once, 431 – 2770; 439 – 1890.
—only speak once on 2. *R.*, 430 – 1639.
—may not
—rise, except to speak or on a point of Order, 431 – 94.
—rise if, speaking, does not give way, 437 – 2581.
—rise when Closure accepted, 431 – 162.
—must
—address the Chair, 441 – 1226, etc.
—ask leave of House to speak again, 437 – 2495, etc.
*—resume his seat when Chairman standing, 437 – 352.
—rise in his place to ask *Q.* during, 432 – 1872.
—rise when he addresses the Chair, 432 – 1607.
—withdraw unparliamentary expressions unreservedly, 435 – 1233.
—must not
*—argue against Speaker's Ruling, 435 – 543.
—argue or question decision of Chair, 437 – 2568.
*—put *Q.* to Mr. Speaker, 432 – 1496.
*—remain on his feet if Minister does not give way, 435 – 2072.

Member(s)

—*debate* (*continued*):

*—remain on his feet when Closure accepted, 431 – 162.
—remain on his feet if member does not give way, 435 – 2072, etc.
—rise when Mr. Speaker is on his feet, 439 – 2412.
*—no personal reference to, 436 – 1244.
—not desirable for, to give way too frequently, 436 – 1862.
—not entitled to
—interrupt unless member gives way, 435 – 1971; 441 – 1678.
*—make another speech, 437 – 403.
—make imputations, 440 – 867.
—resume seat and indicate that he is giving way by pointing at another, 433 – 1444.
*—not for Mr. Speaker to correct inaccuracy of, 437 – 1559.
—not in order
—for, to use information sent down to him from " in the Gallery ", although such sent from " under the Gallery " permissible, 430 – 1900, 2.
—in indulging in excess of illustrations, 431 – 1257, 65.
—in referring to previous debate that day, 430 – 818.
—not to interrupt to make speeches, 439 – 1654.
—ordered to withdraw after making reflection on Chair, 441 – 1737.
*—out of order in rising as he has not been called, 431 – 94.
*—personal statement not allowed, 435 – 1849.
—reference to
—paper seen by, but not available to other, in order, 431 – 1919.
—in " Another Place " out of order, 431 – 1467.
—what is said in Committee room, undesirable but not out of order, 431 – 1467.
—remark ought not to be made and certainly not without proof of statement, 431 – 1415.
—report from *Stan. Com.*, mover of *amdt.* entitled to speak again in House, 438 – 263.
—resuming seat, loses right to speak, 434 – 152, 3.
—seems to be making a speech, can only ask a *Q.*, 432 – 1823.
*—seems to be reading out a great deal, 438 – 168.
*—should be allowed to continue his speech, 433 – 2163, etc.
—should not reflect on intelligence of, 434 – 155.
*—should not speak in that tone, 441 – 2443.
*—Speaker (Mr.) has no power to instruct or to insist upon the making of particular statement by, 440 – 1272.
—two must not be on feet at same time, 430 – 718, 886.
*—whether a, is out of order or not, is matter for Chair, 439 – 1962.
—entitled to transmit documents to Minister privately, 439 – 1794.
—had better address comment to Mr. Speaker when in the Chair, 433 – 1404.
—Lords, *Amdt*(*s*). } *see* those Headings.
—Lords, House of }
—make statements on their own authority and are responsible for them, 434 – 1768.
—Ministers, *see* that Heading.
—Motions, Notices of, signatories, 435 – 863.
—must
—abide by Mr. Speaker's Ruling or he must ask him to resume his seat, 435 – 2179.
—first give the member Notice before making a charge against him, 431 – 2191 to 2196.

Member(s) (*continued*):
—no power to instruct or insist upon a, making any particular statement, 440 – 1272.
—Order, *see* that Heading.
—ordered to withdraw from the House must withdraw from the precincts—namely, the premises, during that day's sitting, 441 – 1920 to 1922.
—out of order for, to bring into the House receptacles other than dispatch boxes, *439 – 2218.
—" Parliamentary Expressions ", *see* Article XV hereof.
—pecuniary interest, 431 – 1614.
—perfectly in order for member to move a Motion or *Amdt.* and then go into Lobby and vote against it, 436 – 1485.
—personal statement by, 431 – 2191; 435 – 1418.
*—personal statement by, would be out of Order, 433 – 185.
—Privilege, *see* that Heading.
—Questions to Ministers, *see* that Heading.
—should not carry on a conversation across the Floor of the House, 435 – 1720.
—singing in Division Lobby, outside Mr. Speaker's jurisdiction, 436 – 2114.
—statement as to incorrection in *Hansard*, 435 – 1850.
—trying to teach Mr. Speaker his own business, 431 – 1967.
—when Mr. Speaker on his feet everyone should remain silent, 434 – 242.
—whether a, is out of Order or not, matter for the Chair, 439 – 1962.
—" You " refers to Chair, 432 – 254, etc.

Minister(s).
—might be allowed to reply, *433 – 2284.
—must ask leave of House to speak second time, 432 – 1900; 441 – 835.
—presence of, not matter for the Chair, 437 – 2568.
—Questions to, *see* that Heading.
—statement by, cannot be discussed as no Motion before House, 431 – 2343 to 2345.
—when, denies an accusation, it ought not to be repeated, 433 – 436.

Money, Public.
—Debate, *see* that Heading.
—Finance Bill, *Report amdt.* to refund certain money. If moneys in hand of Treasury a Resolution required, but if Chancellor assures Chair that moneys now with Inland Revenue and not reached Exchequer, in order to move, 440 – 439.
—Lords' *Amdt(s).*, *see* Lords, House of.
—money clauses, reprint of *italicised* provisions, 432 – 381.
—Resolution, if there is the slightest possibility of an *amdt.* increasing the charge in any way, it must be ruled out of order, 432 – 162, 3.

Motion(s).
—Ballot for Notices of, 432 – 1981.
—Bills, Private and Public, *see* those Headings.
*—cannot be opposed after 10 o'clock, 436 – 468.
—notices of, signatories, 435 – 863.
—debate, *see* that Heading.
—Guillotine, *see* " Allocation of Time ".

Notices—*see* Bills; Motions; and Questions.

Order.
*—insinuations and implications out of, 430 – 1412.
—not a point of, 430 – 145; 436 – 876, etc.

Order (*continued*):
—not in, to smoke, chew gum, eat chocolates and sweets or peel and eat oranges in Chamber, 434 – 495.
—*point of.*
—answer to a *Q.*, whether a member likes it or not, not a, 438 – 1333.
—cannot be
—raised on *Q.* not called, 441 – 27.
—taken when *Q.* being put, 436 – 2104.
—two points of Order at same time, 436 – 2101.
—charge of obstruction not a, 437 – 44.
*—does not arise, 430 – 491.
—matter of opinion not a, 432 – 380.
*—Motion in regard to absence of Minister, not accepted as, 437 – 2568.
—must be addressed to Chair and not to a member, 440 – 336.
—not in order to make pretext to ask a *Q.*, as a, when it is one of merits, 433 – 1412.
—out of order to make a, on *amdts.* that are not being called, 436 – 1817.
*—question of merits and not a, 433 – 1411.
—should not be used as opportunity for making speeches, 436 – 2102.
*—the fewer the better, 434 – 56.
*—the fewer, the more chance of reply from the Minister, 434 – 209.
*—three members cannot be on feet pursuing, at same time, 441 – 2019.
—two, cannot be dealt with at same time, 436 – 2101; 441 – 2141.

Order Paper.
—*amdt.* on, may be referred to by Minister, though not yet moved, 438 – 1474.
—mistake on, 430 – 237.

Orders, Statutory.
—consolidating[1], *see* " Editorial " *above.*
—consolidating previous, scope of debate limited to consolidation, 433 – 2011, 2.
—debate, *see* that Heading.
—several taken together, *441 – 754.

Parliamentary Expressions—*see* Article XV hereof.

Petition(s), Public.
—presentation of, 431 – 1733, 4, etc.; 440 – 1011, 2.
—right of members to present, 439 – 652.

Private Member(s)' Bills—*see* Bills, Public; and Members.

Privilege.
—monetary, *see* Lords, House of.
—*non-monetary.*
—assault on a member, 431 – 2243.
—charges against members by a member and his expulsion, 435 – 1233.
—M.P.s and contractual agreements, 435 – 1077.
—telegrams to members, 431 – 1967.
—*see also* Article XVII hereof.
—*prima facie*, cases of breach of, 435 – 1080; 436 – 193.

[1] *See also* "Editorial," p. 37 above—[Ed.].

Question(s) to Ministers.
—a speech not a *Q.*, *432 – 739; 435 – 565.
*—answer given, 437 – 2529.
—answer to, whether member likes it or not, not a point of Order, 438 – 1333.
—answer with another on same subject, 431 – 1609.
—answering, Minister cannot be directed as to way of, 438 – 2008.
—answers, a matter for Minister, 434 – 1468.
—argument not a, 430 –1423; 435 – 2199.
—asking by letter or by oral *Q.*, a matter for member, 435 – 2015.
*—asking of, to annoy member, 441 – 2264.
—becoming a speech, 431 – 341, etc.
*—" before the rt. hon. gentleman (Minister) replies can he tell us " and so on, is a usual custom, the rt. hon. gentleman would have to reply to the original supplementary *Q.* afterwards, 431 – 505.
—cannot be
—asked if Questioner not present to ask, 438 – 1321, 2.
—asked of those not responsible for the Government, 432 – 379.
*—continued for ever, 439 – 2015.
—debated further, 435 – 37.
*—cannot remain on one, for ever, 430 – 1598.
—criticism of conduct of Courts not allowable, 440 – 38.
—discussed long enough, 436 – 2166.
—hypothetical, 430 – 792, etc.
—if passed by Table, is in order, 437 – 1471.
—imputations and insinuations, 435 – 1075.
—imputations being made and information given but, not being asked, 433 – 1172, 3.
—inadvisability, 433 – 517.
—information being given and not asked for, 430 – 1236, etc.
*—information not being asked for, 431 – 970.
—lot of time spent on, 438 – 1765.
—matter
*—cannot be answered at *Q.* time, 437 –2323.
*—cannot be debated at *Q.* time, 438 –843.
*—discussed long enough, 436 –2166.
—should not be pursued when reply fully given, 431 –505.
*—to be raised on Adjournment, 438 –387, 855.
—member
—may
—ask any, he likes but not necessary that Minister should answer, 432 – 1577.
*—ask *Q.*, but must rise in his place, 432 – 1872.
—not be asked of Private Member, 431 – 1319.
—must ask, not make a speech, 435 – 564.
*—not present to ask, 438 – 1322.
—responsible for what is in, 436 – 167.
—rising to ask, cannot enter upon argument, 430 – 353.
—Minister
—can
—refuse to answer, 432 – 1577, 8.
—reply in any way he likes, 435 – 1644.
—cannot be compelled to answer, 431 – 281; 432 – 376; 436 – 1542.
—if the member responsible for a *Q.* does not answer Speaker's call, the Minister may rise and make such statement upon the *Q.* as public interest demands, 437 – 2189.
—may not answer unless he so desires, 437 – 1410.

Questions to Minister(s) (*continued*):
*—Ministerial change of day for answering, 431 – 1341.
—must not be anticipated, 439 – 930.
—must seek information and not produce argument, 439 – 433.
—next *Q.*, 430 – 997, etc.
*next, must be got on with, 432 – 1378.
—not
—answered owing to absence of Prime Minister, can be put down again, 437 – 1710.
—completely answered, can be put down again, 435 – 190.
—connected with, on *O.P.*, 431 – 970.
—desrvineg an answer, 433 – 546.
—reached, answering of, 430 – 693, etc.
—Notice given to raise matter on Adjournment, 433 – 177, etc.
—Notice, Private, *see* that Sub-Heading hereunder.
*—notice required and, should be put down, 430 – 88, etc.
—opinion being expressed, information not asked for, 433 – 1878.
—opinion, matters of, not subject to, 437 – 2003.
—order of taking, 430 – 1618.
—postponement allowed by Mr. Speaker, 434 – 244.
—*Private Notice*, 433 – 675, 707.
*—absence of Minister, *Q.* to be asked to-morrow, 441 – 1919, 20.
—provocative and debating, 432 – 1577, 8.
—putting down of, if no reply received to letter, 430 – 491.
—*Q.* discussed long enough (15 Supplementaries), 439 – 432.
—reference to N. Ireland Government not approved, 436 – 1934, 5.
—ruled out of order cannot be read out or debated, 434 – 38, 42.
—should be asked for obtaining information, 441 – 2264.
—Speaker (Mr.) cannot direct as to which answered, and Minister entitled to refuse to answer, 436 – 2149, 2150.
—Speaker (Mr.) should be informed when a sequence of, are taken together, 430 – 997.
—speech being made, 432 – 227.
*—statement being made instead of, being asked, 435 – 860.
*—statement, responsibility of members making, 431 – 1462.
—*Supplementaries*, 437 – 1077, 1482; 439 – 2006.
—a different *Q.*, 430 –1019; 434 –1124; 435 – 1053, etc.
*—a different and much wider, 437 – 2156.
*—a much larger *Q.* than that on *O.P.*, 436 – 174.
—another
*—matter, 430 – 491, etc.
*—point, 433 – 1386.
*—*Q.*, 430 –658, etc.; 431 – 14, 27, etc.
*—*Q.*, and nothing to do with, on Paper, 441 – 228.
—are becoming speeches, 435 – 1826.
*—as not much talking Mr. Speaker heard all, except one, 433 – 534.
*—becoming a speech, 431 – 341.
*—beyond *Q.*, 431 – 339; 435 – 189.
*—far beyond original, 434 – 1124.
—frivolous, 438 – 2191.
—gatecrashing: by Front-Bencher on Back-Bencher, 434 – 240.
—getting out of order, 435 – 19.
—great number of, of extraordinary length, 431 – 211.
*—imputations in, quite unnecessary, 439 – 1502, etc.
*—imputations out of order, 432 – 1959.
*—information should be sought not given, 430 – 1390.
—length of answer cannot be expected to, 435 – 580.

Questions(s) to Ministers
—*Supplementaries* (*continued*) :
—lots of *Qs.*, and lots of, not possible, 430 – 1618.
—member
—asking too many, 433 – 546.
—entitled to ask, 432 – 931.
—entitled to rise as often as he chooses but Mr. Speaker need not call, 438 – 1593.
—has asked very long, before, 440 – 1594.
—must not expect to ask on every *Q.*, 438 – 1583.
—reading out a great deal in his, 438 –168.
—rising and starting to talk before name called goes to bottom of queue, 438 – 1593.
•—should have asked a, 435 – 190.
—not
—arising, 430 – 511, etc.
—connected with *Q.* on the Paper, 435 – 27; 431 – 970.
•—contained in *Q.*, 436 – 326.
•—*Q.* on Paper, 430 –1008, etc.
•—subject of *Q.*, 430 – 843.
•—out of order for member to rise, but not necessary that Mr. Speaker should call, 438 – 1583.
—nothing to do with *Q.*, 432 – 739, etc.
—off the original, 431 — 1777; 441 – 1907.
—opinion being asked for, and not information, 433 – 189.
—out of order to ask for opinion on, 433 – 189.
—should be short and snappy, 431 – 333.
—Prime Minister allowed to correct statement in reply to, 434 – 1143.
—twenty-four in ½ hour, 433 – 170.
—very long (120 words), 441 – 230.
—when presented to Table cannot be put as, 437 – 1497.
•—wider, 431 – 514, 1584; 437 – 2524; 439 – 1784; 430 – 2022.
—taken together, 439 – 940, etc.
—transfer, 435 – 197.

Royal Prerogative of Mercy—*see* Crown.

Speaker (Mr.).
—*Amdt(s).*, selection of by, not entitled to discuss Mr. Speaker's reason for or not selection, 439 – 1915.
—conduct of, *see* " Editorial " p. 22 above—[Ed.].
—Deputy, has same powers in regard to withdrawal of members, 441 – 1921.
•—has no knowledge of what transpires in *C.W.H.*, 432 – 160.
—is not court of appeal from any decisions of Chairman in *C.W.H.*, 432 – 161.
—not concerned with one side of House, but with House as a whole, 440 – 1273.
—not for, to determine accuracy of any charge, 441 – 2444.
—Privilege (monetary), *see* that Heading; *also* Lords, House of.
—*see also* Chair; Debate.
—servant of the House, not right for him to express his opinion one way or the other, 437 – 1632.
•—when on his feet everyone should remain silent, 434 – 242.

Supply—*see* Debate.

Votes and Proceedings.
—availability, delay, 437 —777.

XVII. APPLICATIONS OF PRIVILEGE, 1947

By the Editor

At Westminster.

Telegram to Members.—On December 18, 1946,[1] the hon. member for Dumbarton Burghs (Mr. D. Kirkwood) asked for the guidance of Mr. Speaker in regard to a telegram he had received the night before which the hon. member thought brought into question the privileges of hon. members.

Upon the invitation of Mr. Speaker, the hon. member then brought the telegram up to the Table. The telegram, which was thereupon handed in, read as follows:

D. Kirkwood, M.P., House of Commons.

Directors, staff mechanics unanimously regret Transport Bill all support in future will be denied you if you vote in favour.
—George Davie & Sons, Ltd. Roman Bridge, Duntocher.

The hon. member for Aberdeen, North Division (Mr. Hector Hughes, K.C.), brought to the attention of Mr. Speaker 3 telegrams, and quoted 2 Rulings from May (p. 122).

Upon which Mr. Speaker said: " I do not think the hon. and learned member is right in trying to teach me my own business."

Whereupon the hon. member apologized.

Telegrams handed in, and read as follows:

Hector Hughes, House of Commons, Westminster.

Unless you support public inquiry for transport nationalization my support will be withdrawn.—John Ross and Son, 31/55, Princes Street, Aberdeen.

The Rt. Hon. Hector Hughes, Member for North Aberdeen, Houses of Parliament, Westminster, London.

Strongly resent annexation of business built up after years of work. No further support if you proceed with strangulating Transport Bill.—Elrick & Hutcheon, 3/7, Pitlochrie Lane, Aberdeen.

Hughes, M.P., House of Commons, London.

Cannot continue support if you encourage Transport Bill.—A. King, 2, Rose Hill Avenue, Aberdeen.

Mr. Speaker then stated that he would take the last 3 telegrams first, to which he did not think there was any case of *prima facie*. Anybody could write to his member and say, " Look here, if you vote for this, I will not support you at the next election." That was not intimidation.

In regard to the first telegram, he considered that the hon. member was quite right in bringing the telegram to the notice of the House. That was a more serious one because it was collective and contained a kind of intimidatory threat. But even then Mr. Speaker did not consider there was a *prima facie* case, because it was not definite enough, and he remarked:

[1] 431 *Com. Hans.* 5, s. 1967.

I would reinforce the warning that this House does not like collective intimidatory messages. Members are free to vote as their consciences may think best. I know that in times of great controversy rash telegrams may be sent, but I think we are more dignified if we ignore them.

Assault on a Member.—On December, 9 1946,[1] in the House of Commons, the proceedings on the Report stage of the Exchange Control Bill were interrupted at 7.4 p.m., immediately following a division, by the hon. member for Nuneaton (Mr. F. G. Bowles), who, on a point of Order, stated that it had just come to his knowledge that the hon. member for Mile End (Mr. Piraton) had, outside the Chamber but in the precincts of the House, been twice physically assaulted and battered. Mr. Bowles had told Mr. Piratin that he would raise the matter with Mr. Speaker, but Mr. Piratin was not in his place—maybe he was not strong enough to be present. Mr. Bowles said that the matter seemed to be a gross breach of Privilege of this House, and that he was intimating the matter to Mr. Speaker.

Mr. Speaker then said that the hon. member had reported what seemed to be a very serious matter and read the following from May:

> That the assaulting, insulting or menacing any member of this House, in his coming to or going from the House, or upon the account of his behaviour in Parliament, is a high infringement of the Privilege of this House, a most outrageous and dangerous violation of the rights of Parliament, and an high crime and misdemeanour.

Mr. Speaker also said that, although the hon. member for Nuneaton had informed him of the matter he (Mr. Speaker) had no knowledge of the facts. He would therefore instruct the Serjeant-at-Arms, who was here at Mr. Speaker's service, to find out the facts and report them to him.

Further observations were made by members, to which Mr. Speaker remarked that surely the matter was *sub judice* at the moment.

At 11.35 p.m.,[2] the same day, Mr. Speaker again referred to the matter and called upon the Serjeant-at-Arms to come to the Table and make his Report to the House.

The Serjeant-at-Arms (*at the Table*). According to your instructions, Mr. Speaker, I investigated the facts in connection with the disturbance within the precincts of the House of which complaint was made by the hon. member for Nuneaton (Mr. Bowles). I have to report that a disturbance undoubtedly occurred within the precincts, but the evidence appears to be conflicting, and further investigation is required to determine the actual facts of the case.

Mr. Speaker then said that perhaps it would be for the convenience of the House, seeing that the hon. member who took part in the affair was present, if he would wish to say something before he (Mr. Speaker) declared whether this was a *prima facie* case or not.

Mr. Piratin replied that in view of the fact that, with other members

[1] 431 *Com. Hans.* 5, s. 2243. [2] *Ib.* 2323.

of the House, he regarded this not as a personal matter, but an affront to the dignity of the House, it was in that light he raised the matter.[1]

There were actually 2 events. On the first occasion, in the Cafeteria, this man attacked him after using offensive remarks. " On that occasion I struck him. I am apologetic, and I express my deep regret that I should have struck him, in spite of the provocation which I received. And if I may say so, I did what any other member of the House would have done in the circumstances. He not only insulted me, but he also insulted my race."

The second occasion was 1½ hours later when he was going to make a report to the Serjeant-at-Arms with whom he had an appointment at 6.45 p.m.

The hon. member said he went upstairs to meet a reporter, and as he left the Reporters' room this man deliberately attacked him when he was not in a position to defend himself and struck him, as of course the House could see for itself. It was on that occasion that the hon. member felt there was no ground whatever for the attack. This man's evidence had already been taken by a policeman, and as far as the hon. member was concerned his statement was waiting for submission to the Serjeant-at-Arms.

Therefore, although the hon. member expressed his deep regret to the House, in all sincerity, that he did allow provocation to incite him to return the blow, he must ask the House to take into consideration the second occasion, which was absolutely unprovoked and, further, was premeditated as the man had said after the first event, " Wait until I get you alone."

Mr. Piratin was therefore prepared to leave the matter in Mr. Speaker's hands. Mr. Speaker, thereupon, for the convenience of the House, read the following letter:

SIR,

I beg your leave and indulgence to express to you and, through you, to the House of Commons, my profound regret that I should have been involved in an affair within the precincts with a member of your honourable House. I deeply regret my part in what occurred, and ask you to believe, Sir, that no disrespect was ever intended to you or the dignity of the Commons, either individually or collectively.

I hope, Sir, that you will be generous enough to extend to me your leniency and forgiveness. During 8 years as a member of the Press Gallery I have never been hitherto involved in any untoward incident and I trust that you will believe me when I say that I shall never allow it to occur again. I repeat my sincere regrets to you, Sir, and to the House of Commons, the dignity of which I had, within my limited sphere, diligently sought to preserve.[2]

The Lord President of the Council (Rt. Hon. H. Morrison) said that he was sure the whole House would regret the incident which had occurred, but as the hon. member and the journalist had each expressed their regrets, perhaps they might avoid making terribly heavy weather of the matter by referring it to the Committee of Privileges, although members must be protected from any degree of physical assault.[3]

[1] *Ib.* 2324. [2] *Ib.* 2325. [3] *Ib.* 2325-9.

The hon. member for Nelson and Colne (Mr. Sydney S. Silverman), on a point of Order, said that it seemed to him that before the House discussed the incident it was for Mr. Speaker to decide whether a *prima facie* case had been made out. If in fact it had been made out, then the House might decide to do one thing or another with it, but Mr. Speaker's decision should be made first.

Mr. Speaker, however, said that the hon. member was in error there. " Once I declare the matter to be a *prima facie* case the Leader of the House has no option but to refer it to the Committee of Privileges." For that reason Mr. Speaker was deferring the matter to hear the views of the House.

The Leader of the Opposition (Rt. Hon. Winston Churchill) said that he did not consider that a member, no matter who he was or to what political Party he belonged, should be knocked about by strangers. An hon. member who is assaulted in the course of his work and in the precincts of this Palace should have the right to require of the House that the matter be investigated. The rt. hon. gentleman therefore most respectfully submitted that the matter be referred to the Committee of Privileges.

Mr. Speaker: " I then rule that a *prima facie* case has been made out."

On the Motion of the Leader of the House it was then Resolved—

That the matter of the complaint, together with the Reports received by the Serjeant-at-Arms, be referred to the Committee of Privileges.

On December 20,[1] the Committee was given power to sit notwithstanding any adjournment of the House.

Report.—On February 3, 1947, the Report[2] from the Committee of Privileges with the proceedings, evidence and appendices, was laid and ordered to be printed.

The Committee sat 3 times between January 15 and 30, and heard Sir Gilbert Campion, K.C.B. (Clerk of the House of Commons, Qs. 1-47), and Mr. J. A. Abraham (Clerk of Private Bills, who later acted for the Clerk, Qs. 48-57); Mr. P. Piratin, M.P.; Mr. T. D. Lucy, member of the Press Gallery; and 12 other witnesses including 2 M.P.s.

Paragraphs 2 and 3 of the Report read:

2. All the evidence, except that relating to the law of parliament, was taken on oath. This course was adopted because, as the Serjeant-at-Arms had reported to the House on 19th December, 1946, the evidence on the facts of the disturbance appeared to be conflicting. As it appeared that counter-charges had been made against Mr. Piratin by Mr. Lucy it was also considered desirable, in the interests of fairness to both parties and on grounds of natural justice, to depart from the usual procedure of Committees of Privileges of examining successive witnesses in private. Instead Your Committee allowed both Mr. Piratin and Mr. Lucy to be present throughout the examination of witnesses and gave them an opportunity of putting any questions which they desired to the witnesses, and to interrogate each other, a form of procedure for which there is only one precedent.[3]

[1] *Ib.* 2347- [2] H.C. 36 (1946-7). [3] *See* JOURNAL, Vol. XIV, 255.

3. It is well settled that all misbehaviour within the precincts of the House, while the House is sitting, even though not calculated to disturb its proceedings, is a contempt of the dignity of the House and punishable as a breach of Privilege. An assault committed in such circumstances must be regarded as an affront to the dignity of the House. Any provocation that may have been given to the person guilty of such an offence, can only go towards mitigating the penalties to be inflicted. The chief duty of Your Committee, therefore, was to ascertain the facts of the disturbances in the precincts on the 19th day of December last.

Paragraph 4 relates to the incident in the Cafeteria, followed by the account of Mr. Piratin (§. 5) and Mr. Lucy (§. 6). Paragraph 7 deals with the incident near the Press Gallery, the accounts of Mr. Piratin and Mr. Lucy being given in paragraphs 8 and 9.

The conclusions of the Committee are:

10. As stated in paragraph 3 above, an assault in the precincts of the House whilst the House is sitting, by whomsoever committed, must be regarded as a serious offence against the dignity of the House. That the assault was committed by a Member upon a non-Member does not diminish the contempt, being derogatory to the dignity and honour of the whole body of which he is a member. Your Committee find that offensive words passed on both sides. After an altercation, Mr. Piratin said, " Shut your mouth ". Mr. Lucy caught him by the arm and replied, " And shut yours ". Mr. Lucy's action in catching Mr. Piratin by the arm was in the circumstances not unnatural but was improper. Nothing in the foregoing account justified Mr. Piratin, after putting down his tray, turning and striking him a violent blow. Your Committee accept the evidence that there was previously no malice or prejudice of any kind between them. But it is not a question merely between Mr. Piratin and Mr. Lucy. It involves the order and decorum of the House and its precincts.

11. Your Committee are of opinion that in striking Mr. Lucy, Mr. Piratin was guilty of a gross contempt of the House, and that the blow which he struck was the most serious feature of the whole affair. The fact that the assault took place in the presence of strangers and was observed by them aggravates the contempt, for it is bound to lower the House in the estimation of the public. As has been already stated, Mr. Lucy's conduct immediately before Mr. Piratin struck him was improper, but Your Committee recommend the House to take a lenient view of this as he had received some provocation.

12. As regards the second incident, Your Committee accept Mr. Lucy's assurance that in calling upon Mr. Piratin to " face up now for the dirty blow he (Mr. Piratin) had struck " he did not intend to challenge Mr. Piratin to fight, but only to demand an explanation of his conduct. But even if he had justification for considering himself the aggrieved party, over an hour and a half had passed since the incident, and he should therefore have regained his self-control. Instead of demanding an explanation from Mr. Piratin he should, if he desired to pursue the matter further, have preferred a complaint either to the Speaker, or to the House by way of petition. While the House protects Members from all molestations in the execution of their parliamentary duties, it must also mark the misconduct of any of its Members towards persons admitted within the precincts. Mr. Lucy's demand for an explanation was couched in provocative terms. Insults offered to Members on their way to or from the House have always been deemed high breaches of Privilege and dealt with accordingly. An insult offered to a Member within the precincts of the House constitutes an equally serious offence, especially if the House is sitting at the time. Your Committee are of opinion, therefore, that Mr. Lucy was guilty of contempt of the House.

13. Both Mr. Piratin and Mr. Lucy at a very early stage offered a full apology for the parts which they had respectively played in the events which have been investigated, and in all the circumstances Your Committee are of opinion that the dignity of the House would be vindicated and safeguarded by the House expressing its extreme displeasure at the incidents which have taken place and recording such displeasure.

The *Appendices* to the Report, consist of [1]a Memorandum by the Clerk of the House on instances of " Disturbances in the Precincts ", and [2]one by the Clerk of Private Bills on " The Case of Sir Jonathan Trelawney and Mr. Ash (1678) ".

DISTURBANCES IN THE PRECINCTS.

Although the general bearing of parliamentary law on this case cannot be in doubt, it is not possible to state its particular application precisely in advance, since the facts have still to be ascertained. As to these, three conclusions seem possible *a priori*:

(1) It is a case of an assault by a stranger upon a Member of the House.
(2) It was an assault by a Member upon a stranger.
(3) It was a brawl the responsibility for which was more or less equally divided.

There seems to be no instance on record of case (2) above and few recent instances of cases (1) and (3) so far as physical violence is concerned. It is clear, however, that each of these offences constitutes a breach of Privilege. For they fall within the principle of wider offences—the molestation of Members or contempt of the House by creating a disturbance, respectively, which are undoubtedly breaches of Privilege. Some general indication will be given of the nature of these offences, and examples will be added in an Appendix. Although some of these examples are not precisely analogous, the principle on which they were decided covers any facts that may be established in the present case.

It is worth saying by way of a preliminary remark, that all Privilege has a common basis—the authority and dignity of the House, as a whole. Thus, for instance, in dealing with an offence against one of its Members, the House is not so much vindicating that Member's rights (since his rights as a citizen are protected by the courts) as punishing a contempt against itself. If, as will be shown by reference to authority, the creation of a disturbance within the precincts of the House is the committal of a contempt against the House, all who are responsible for the disturbance are equally in contempt to the extent of their responsibility, whether they are Members or strangers. Privilege does not operate as a protection or even as a palliative for a Member taking part in such a disturbance, unless he was clearly the victim of aggression —indeed, the contrary.

Molestation of Members.—The privilege of freedom from molestation of Members of Parliament is one of great antiquity, and of proved indispensability to the functioning of the House. Hatsell has expressed the principle as follows:

" As it is an essential part of the constitution of every court of judicature, and absolutely necessary for the due execution of its powers, that persons resorting to such courts, whether as judges or as parties, should be entitled to certain privileges to secure them from molestation during their attendance, it is more peculiarly essential to the Court of Parliament, the first and highest court in this Kingdom. . . ." (1 Hatsell, 1).

In 1432, the privilege of freedom from molestation was already well established, and a general statute of that year (11 Henry VI, c. 11) imposed penalties

of damages and fines for assaults on Members of either House coming to Parliament. (For further details, see May, 66-68.)

In numerous instances throughout the seventeenth, eighteenth and nineteenth centuries, the Journals record that persons assaulting, challenging, threatening or otherwise molesting Members on account of their conduct in Parliament, have been committed or otherwise punished by the House. In particular, two resolutions of the House may be referred to:

The resolution of the House of Commons on 12th April, 1733, declared " that the assaulting, insulting or menacing any Member of this House, in his coming to or going from the House, or upon the account of his behaviour in Parliament, is an high infringement of the privilege of this House, a most outrageous and dangerous violation of the rights of Parliament and an high crime and misdemeanour " (C.J. (1732-37) 115) and on 6th June, 1780, the Commons resolved, " that it is a gross breach of the privilege of this House for any person to obstruct and insult the Members of this House in the coming to, or going from, the House . . . (C.J. (1778-80) 902).

Creation of a Disturbance in the House or its Precincts.—It is equally well-established in law that the House has the right and duty to maintain order both in the House itself and in the precincts. Any misbehaviour in the precincts, whether the offender be a Member or a stranger, has always been treated by the House as a breach of Privilege. The law of Parliament in this respect has been frequently re-asserted. It will be sufficient to quote from a report from the Committee of Privileges of last Session (H.C. 31 (1945-46))[1], which was agreed to by resolution of the House on 22nd March, 1946:

> 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. (*Ibid.*, para. 15.)
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> 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 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. (*Ibid.*, para. 16.)

January, 1947.

Examples of Molestation of a Member by another Member.[2]

1. *Case of Dr. Tanner* (1887).—In 1887 complaint was made by a Member of being molested by another Member within the precincts of the House, such molestation consisting in the use by the offending Member of offensive language in the Lobby at a time when the House has risen. A motion was made that, " in consequence of the disgraceful and insulting words addressed in the Lobby of the House by Dr. Tanner to another honourable Member, Dr. Tanner be suspended from the service of the House and excluded from its precincts for a month." But following an apology to the House by Dr. Tanner, the motion was withdrawn.

Mr. Speaker Peel, on that occasion, said: " Unquestionably the House, as it seems to me, is unanimous on one thing, and that is in the opinion that offensive and un-Parliamentary language has been used—that un-Parliamentary and offensive language used in the Lobby is an offence against this House—as much an offence, I might almost say, as if it were actually used in the House itself." (Parl. Deb. 1887, vol. 317, col. 1664.) In the course of

[1] *See* JOURNAL, Vol. XV, 272. [2] *See also* p. 66, Appendix 2.

the discussion on the behaviour of the offending Member, the then First Lord of the Treasury (Mr. W. H. Smith) said: " It is obviously impossible that this House should refuse to extend its jurisdiction to language spoken and acts done within the precincts of the House, though not in the House itself. If so, hon. gentlemen who considered themselves insulted might take the remedy into their own hands, and we might have very disgraceful scenes within the precincts of the House. Unless the House is prepared to recognize a principle which it has never yet sanctioned, the House must insure that order and decency are maintained in the Lobby as well as in the House." (*Ibid.*, col. 1639.) On the same occasion another Member, the then Attorney-General (Sir Richard Webster) said: " I hope the House will not recognize that there is any distinction between the Lobby and the House in this matter. The only distinction is this—in the House Mr. Speaker at once takes notice of a thing of this kind, whilst when it occurs in the Lobby it has to be brought to his notice. When within a few feet of this House language is used which one Gentleman would not use to another, I hope the House will take notice of it, and deal with it properly. I must say that it is not possible to deal with this matter as a light or trivial incident. I do not think that apologies are sufficient with regard to conduct of this kind, because, if such conduct is to be purged by apology, there is not much reason why serious notice should be taken of it." (*Ibid.*, col. 1654.) On the same occasion another Member (the Marquess of Hartington) said: " I am fully aware that in the opinion of a very large number of hon. Members of the House the offence against the order and decency of the House and its precincts was so grave that it was a moot or doubtful point whether it would be possible that the offence could be purged by any apology, however ample or complete. I must admit that there is a good deal to be said in support of that view. It is not a question between Member and Member. It is a question of the order and decency of the House—in which we have to transact our business—and its precincts. If the offence, which is to a great extent admitted, had been committed by any stranger, those who are entrusted with the guardianship of the precincts of the House would have known how to deal with it, and certainly it is not one that would have been condoned by an apology, however ample. And it does seem to me somewhat doubtful whether the House ought to be more lax in the way in which it deals with offences against its order committed by hon. Members themselves than the guardians of the precincts would be in the case of a stranger." (*Ibid.*, col. 1655.)

2. *Case of Dr. Kenealy*, 1877.—Following a complaint by a Member that another Member had used an offensive expression (" Sir, you are a liar ") to him in the Lobby, the House resolved that Dr. Kenealy (the offending Member) be ordered to withdraw the offensive expression " and to apologise to the House for having used it." (C.J. (1877) 144; Parl. Deb. (1877) 233, c. 951.)

3. *Case of Mr. Harvey Lewis*, 1867.—Following a Member's complaint of offensive language addressed to him by another Member during a division, Mr. Harvey Lewis (the offending Member) was heard in his place, " and expressed his regret that he should have used the language complained of, instead of seeking explanations from the honourable Member which would have averted the misunderstanding between them." (C.J. (1867) 221.)

4. *Case of Sir T. Mompesson*, 1690.—As a result of a quarrel between two Members in the Lobby, Sir Thomas Mompesson was found to have been the offender in assaulting a fellow Member; and having sought the Pardon of the House, it was resolved that Sir T. Mompesson should, in his place, ask pardon of the Member whom he had assaulted; " Whereupon they were both called into the House again: and Mr. Speaker acquainted Sir Thomas Mompesson, That the House had considered, that he was an ancient Member: and therefore were very indulgent to him by their Resolution: Which he acquainted him with; and required him to ask pardon accordingly. Which he did do." (C.J. (1688-93) 348, 354, 355.)

Example of Molestation of a Member within the Precincts by a Stranger.

5. *Gourlay's Case*, 1824.—A Member was assaulted in the Lobby by a stranger, Richard Gourlay, who was taken into custody by the Serjeant-at-Arms. In this case the Member said he felt something strike him twice. " The blows appeared to be inflicted with a small switch, and he at the same time heard the voice of a person, as if muttering something. He turned round and saw a man with rather a wild expression of countenance, who was held by the persons about him." (Parl. Deb. (1824) 11, c. 1205.)

It appeared from the statements of several Members, that doubts might be entertained as to Gourlay's sanity, and the House accordingly ordered that the offender stand committed to the custody of the Serjeant-at-Arms. (C.J. (1824) 483.)

6. *Harcourt's Case*, 1699.—On 21st December, 1699, complaint was made to the House that a Member, " as he was yesterday going from the House, was, in Westminster Hall, assaulted, and otherwise affronted, by Simon Harcourt, Esquire, a Clerk in the Crown Office; in contempt and breach of the Privileges of this House ". The House ordered that Simon Harcourt be taken into the custody of the Serjeant-at-Arms for the said contempt and breach of Privilege. On 24th January of the following year, a petition from Harcourt was presented wherein " he acknowledged his being sensible of the great indignity and affront offered by him; and praying to be discharged from his confinement ". The House then ordered that Harcourt be brought to the Bar the following day; and accordingly Harcourt appeared at the Bar next day " where he, upon his knees, received a reprimand from Mr. Speaker ". Harcourt was then ordered to be discharged out of custody on payment of his fees. (C.J. (1699-702) 90, 140, 142.)

7. *Case of Holt*, 1692.—Complaint being made that Holt, a solicitor, " did give very abusive language " to a Member coming through the Lobby, the House ordered the offender to be taken into custody by the Serjeant-at-Arms. (C.J. (1688-93) 782.)

8. *Case of Franklin*, 1660.—The House was informed that Richard Franklin, a stranger, " did, in the Lobby by the House of Commons Door, give reproachful and abusive language " to a Member. Franklin was ordered to be taken into custody by the Serjeant, and the matter was referred to the Committee of Privileges. (C.J. (1660-67) 187.)

9. *Case of Hitchcott*, 1646.—For abuse and insolence to a Member, upon the steps coming up to the House, Helen Hitchcott was ordered by the House to be " forthwith sent to the House of Correction ". (C.J. (1646-48) 42.)

Example of Molestation of a Stranger within Precincts by Another Stranger.

10. *Case of Mr. French*, 1827.—In the case of a witness, who was insulted and assaulted in the Lobby by a Mr. French, the then Home Secretary (Sir Robert Peel) said that whatever the merits of the quarrel between the witness and French, " he was of opinion that both Parties should be called to the Bar and should be told that the House was a privileged place, and that those who were called there came to discharge a public duty—that they must do so quietly, and that while so engaged there must be an oblivion of personal quarrels ". (Parl. Deb. (1827), vol. 16, col. 1310.) Another Member (Sir Robert Wilson) said: " It did not signify what were the characters or the station of the parties; nor was it material whether the act complained of received any palliation, as to its impropriety, from any antecedent aggression. It was the duty of the House to show to the public that every witness who came within the precincts of that House, in obedience to the orders of Parliament, should be protected there as if he were in a sanctuary without reference to any previous quarrels." (*Ibid.*, col. 1311.)

On a later day Mr. French was called to the Bar and having assured the

House that he had not offended knowingly, he was directed to withdraw and ordered to be discharged from further attendance. (C.J. (1827) 351.)

Examples of Disorderly Conduct in Precincts by Strangers.

11. *Case of Scrope*, 1764.—The House being informed " that Thomas Scrope, Esquire, created a great disturbance in the Lobby, and upon the stairs, leading to this House, the said Scrope was ordered to be taken into the custody of the Serjeant-at-Arms. (C.J. (1764) 843.)

12. *Case of Rowe and Atkinson*, 1723.—" The House being informed, That several Footmen upon the stairs were very rude and disorderly yesterday, and abused the constables, and the officers of this House; and that the Serjeant-at-Arms had taken two of the most disorderly of them ", the offenders Rowe and Atkinson were ordered to be committed to prison in the Gatehouse, Westminster. (C.J. (1722-27) 185.)

13. *John's Case*, 1654.—The House was informed " that one Theauro John, in the Lobby without the door of the Parliament, did there draw his sword, and struck at divers Persons: and ran with his sword against the door of the House ". After being brought to the Bar of the House and questioned by Mr. Speaker, the offender was committed to prison. (C.J. (1651-59) 410.)

14. *Case of Goodwyn*, 1647.—Goodwyn (a Petitioner who had presented a groundless and scandalous petition) was, by resolution of the House, committed to the prison of Newgate, there to remain a prisoner during the pleasure of the House, on account of " his insolent behaviour, and foul revilings upon the House, and their Members; and raising Clamours and Tumults at the Door of the House, to the disturbance and scandal of their proceedings; and for his great and notorious misdemeanours in this kind ". (C.J. (1646-48) 232.)

15. *Case of Carew*, 1605.—Complaint was made to the House by a Member that " the pages upon the stairs had much abused the passengers, and had beat down two Clerks of the King's Bench; so as the Judges there had taken knowledge, and committed them. Whereupon this House sent the Serjeant to clear the stairs, and to demand the Prisoners to be taken into his custody ". Next day two pages were brought up, and the House ordered one of them, Carew, to be whipped in the Townhouse, by the Beadle of Westminster. (C.J. (1647-1628) 259, 260.)

Appendix 2.

Paper submitted by Mr. L. A. Abraham.

Case of Sir Jonathan Trelawney and Mr. Ash (1678).—On 21st November, 1678, words passed between two Members, Sir Jonathan Trelawney and Mr. Ash, in the House, and Sir Jonathan struck Mr. Ash, who returned the blow. The Speaker named both Members, who were heard to excuse themselves, after which the House ordered them to be secured by the Serjeant-at-Arms until the matter should be examined and determined by the House.

A motion was made for Sir Jonathan's expulsion. This was negatived on a division and the House then resolved that he should be sent to the Tower, there to remain during the remainder of the Session. The House then proceeded to consider Mr. Ash's case. Several Members contended that no punishment ought to be inflicted on him because he had struck in his own defence. Other Members took the contrary view.

Sir Charles Wheeler said: " He that strikes again, makes himself his own judge. Both have broken your Order." (6 Grey 256.)

Sir John Ernly said: " I would not consider the provocation on one side or the other. We saw the blows, but heard not the words. Both struck, and pray send them both to the Tower." (6 Grey 258.)

Sir John Birkenhead said: " I wonder that a man should take the sword out of the Magistrate's hand, and that it should be no crime, and the Long Robe should say ' it is no offence '. The blow was given in the King's House, and by the Saxon Law, it was death, and, by a continuendo, 28 Henry VIII, drawing of blood. Let Ash be punished by you, lest he have greater punishment.

Serjeant Gregory having interrupted him saying that " The affront was not given to the walls of the House, but to the Speaker, sitting in the Chair of the House ", Sir John Birkenhead replied, " By the 28th Henry VIII if a man strikes in an integral part of the King's Palace, he might as well strike in the King's bed-chamber ". (6 Grey 259-60.)

It was ultimately decided that Mr. Ash should be reprimanded in his place by the Speaker. The Speaker, in reprimanding him, said:

" Mr. Ash, the House has considered the disorder you committed, and the provocation that was given you. They have a tenderness for every Gentleman that is a Member; therefore they have thought fit to proceed tenderly with you only. When you make yourself judge, etc. (as printed it reads ' When you make the House judge ', an obvious misprint) you make yourself no way justifiable, but by extraordinary provocation and passion." (6 Grey 260.)

It is perhaps worth noting that Hawkins in his *Pleas of the Crown*, 8th ed., vol. I, p. 62, says that a person who is guilty of the offence of striking in Westminster Hall " cannot excuse the same by showing that the person so struck gave the first assault ". The reason for this is said to have been that the offence was derived not from the injury done to the individual but from the contempt offered to the place.

As to the question whether offensive words amount to sufficient provocation the following remarks made by the Earl of Ancram in the debate on the case previously referred to may be of interest:

" I have known that misfortune of words, amongst brave men. Words may make reparation for words, but blows are for a dog, and not a quarrel to be taken up. Here has been a blow given in the House of Commons. A man that sits here should have his understanding so far about him, that a word should not bring him so in passion, as it would do in another place." (6 Grey 260.)

Procedure.—As several points of Procedure arose in this case (Piratin) a special reference to them will be made.

At their first meeting the Committee resolved—after Sir Gilbert Campion and Mr. L. A. Abraham had been examined—that the evidence of all witnesses examined before the Committee in relation to the facts of the disturbance in the precincts be taken on oath, which was administered by the Clerk to the Committee.

It was also resolved that Mr. Piratin and Mr. Lucy be invited to be present during the examination of witnesses to fact, before the Committee, and that they be permitted to put Questions through the Chairman to any witness who might be called.

In reply to *Qs.*, in his evidence the Clerk of the House of Commons pointed out that[1]—

This is really a case where the whole difficulty resides in ascertaining the facts. Once the facts are ascertained the application of the law will be a

[1] *Q.* 1.

straightforward matter. There can be no doubt that whichever is found to be the state of facts, whether it was an attempt by a stranger on a Member or by a Member on a stranger, or whether there was a mix-up in which the responsibility was equally divided, in any of those cases obviously a contempt has been committed against the House, and as and when the Committee decides which of those three alternatives corresponds to the facts, then it will be an easy matter to apply the law of Parliament correctly. The whole of this difficulty does turn, then, on the ascertainment of the facts, about which there is a certain conflict of evidence. It is a case where, if it had been before a Select Committee, no doubt evidence would have been taken on oath. It is possible for the Committee of Privileges to do that itself, to take evidence on oath, just like an ordinary Select Committee, but I feel that there would be certain inconvenience at any rate if some of the evidence was taken not on oath and some was taken on oath. If the Committee began by taking evidence not on oath and then found it necessary later on, in order to establish the facts, to swear some of the witnesses, perhaps those who had already given evidence, it might be thought rather invidious. In a case of this sort, no doubt, had it come before a Select Committee, I think it would have been thought better to admit the public. That is not a procedure which the Committee of Privileges ordinarily follows. Everybody would be anxious that justice should be done in the light of day, whereas if the Committee of Privileges follows its ordinary procedure it will be sitting on these charges and counter-charges *in camera*.

In reply to Mr. Churchill the Witness said:[1]

Before 1909 Privilege cases usually went to a Select Committee and not to the Committee of Privileges. There is no difficulty, of course, in the case of a Select Committee about admitting the public. It would be quite in accordance with the ordinary practice of Select Committees to admit the public, but it is not in accordance with the recent practice at any rate of the Committee of Privileges.

And in reply to Mr. Churchill's second *Q.*, Sir Gilbert said that[2]—

In most cases that come before the Committee of Privileges the facts are admitted; there is seldom any dispute about facts. The difficulty generally is in applying the law; but here the essence of this case, I should have thought, was a dispute about facts.

The Chairman remarked that the 2 most recent cases affecting members were those of Mr. Edward Granville[3] and Mr. Robert Boothby.[4]

In reply to *Q.* 10, Sir Gilbert remarked:

The Committee of Privileges would be perfectly entitled, obviously, to inquire into the matter itself. I was only wondering whether the procedure that would then become necessary or advisable does not rather depart from the ordinary procedure of the Committee of Privileges. It has so little experience of going into matters of pure fact.

The following *Q.* is also of particular interest:

Q. 12. If the matter were admitted to a Select Committee, that would be for the purpose of fact-finding, and then the Committee of Privileges would subsequently have to pass judgment?

It could do so; you could do it that way; or the Select Committee could

[1] *Q.* 2. [2] *Q.* 3. [3] *See* JOURNAL, Vol. XIV, 255. [4] *Ib.* XI-XII, 90, 229, 232.

both inquire into the facts and pass judgment on them. Any Committee of the House has the power of deciding on matters of Privilege which come before it, just as much as the Committee of Privileges. It would be perfectly possible to leave the matter of law to be decided by the Committee of Privileges, and there might be some advantage in that, in having one body with a continuous tradition—one body laying down the law on matters of Privilege. On the other hand, in this case the question of law is so very straightforward that there would be no danger, I should have thought, of any body failing to apply the right principles.

When a Resolution on Procedure was suggested by one of the Committee members, the Chairman said that they could not very well put a Resolution before the meeting with a witness in the Chair.[1]

In reply to a *Q.* as to whether there were any precedents, should Mr. Piratin or Mr. Lucy demand to be heard by Counsel, the witness said:[2]

There is no precedent for that since the eighteenth century, whereas in the case of Select Committees, of course, there is frequent precedent. But indeed if Counsel were heard it would be very necessary to confine them to questions of fact and to cross-examination, and to make it very evident to them that they could not give any advice to this Committee on the law of Parliament.

The most recent case of the molestation of a member by a stranger, said Sir Gilbert, was in 1824 and[3]

it would be very much more straightforward if this was a case of an assault by a Member on a Member or of a stranger on a stranger, but as it is a doubtful case of an assault either by a Member on a stranger or by a stranger on a Member, I think it raises more difficult questions.

Sir Gilbert further remarked that[4]—

Official authority attaches to the recommendations of this Committee, and in many cases they remain authoritative although not actually endorsed by the House.

The witness also said that it was not usual to submit Reports from the Committee (of Privileges) to the House unless some action was recommended.[5]

The following *Qs.* were asked of the witness:

Mr. Solicitor-General. Q. 40. Would there be anything contrary to precedent in offering to Mr. Lucy and to Mr. Piratin an opportunity of being legally represented if they wish ?

A. It is contrary to the recent practice of the Committee of Privileges.

Mr. Churchill. Q. 41. I should have thought it tended rather to alter the character of our meetings here, because after all this is the House of Commons; we are representing it and reporting to it, and we settle these matters in our own way. We are not like an ordinary Court of Summary Jurisdiction ?

A. And, of course, it would then be necessary to confine Counsel to facts and to cross-examination on facts.

The Solicitor-General. Q. 43. Yes ?

A. The question of Counsel could only be raised if it would be helpful to the Committee, if the Committee felt it would be helpful in getting to the bottom of the facts.

[1] *Q.* 22. [2] *Q.* 24. [3] *Q.* 27. [4] *Q.* 30. [5] *Q.* 32.

Mr. Churchill. Q. 44. I hope you realize what delay that would cause. Witnesses will all go off and engage their Counsel, and then they will have to tell them all about it and go into it, and we would probably have to adjourn it for a month—I suppose that would be necessary—and so on ?

A. Yes; and in any case the Committee would have to obtain power from the House. It would have to wait until the House met again in order to obtain power to hear Counsel.

Mr. Clement Davies. Q. 47. The only other question on which I think Sir Gilbert might help us is this: Does he think that as there may possibly be a contradiction of evidence all the witnesses ought to be present while the man who is in the chair is actually making his statement to us ?

A. Yes; I was going to leave that to Mr. Abraham to explain, and I think it would be very valuable if the Committee could find out from him the course of procedure that was adopted in the Granville case, which was somewhat similar. I think in that case, if I remember rightly, the two parties were present the whole time.

Mr. L. A. Abraham then carried on in place of Sir Gilbert Campion, who then withdrew, and, in reply to a *Q.*[1] in regard to the Granville Case,[2] said that the Committee came to a conclusion that—

If as a result of their deliberations they arrived at a finding that Mr. Granville had been guilty of a breach of the privileges of the House, it was in accordance with natural justice that he should be allowed to be present, he, not all the witnesses, but he should be allowed to be present to hear everything that was alleged against him, and that he should be allowed to cross-examine those witnesses, the form being observed that he should put his questions through the Chair. As I say, they examined the precedents, and there was one case, the case that was most strongly in point, which was in the eighteen-twenties or eighteen-thirties, where charges of corruption were alleged against the Chairman of Ways and Means and other Members. With regard to the procedure that was adopted in that case, the Committee of Privileges followed it as nearly as the different circumstances of that case admitted, and it seemed to the Committee that that was the only way, and that otherwise the party condemned would say, when the case was over, " There were things that I would have urged in my defence had I known precisely what was alleged against me, but I was not allowed to be present, and all I knew was these matters which were put to me in cross-examination." They considered that even had there been no precedents—and they conceived there were precedents —that that was the course which natural justice required.

The witness continuing said that[3]—

The difference in this case is that there are cross-charges, and in my submission justice can only be done by the Committee if both Mr. Piratin and Mr. Lucy are allowed to be present and are allowed, after the Committee have examined them, to cross-examine each other, and that they are also allowed to cross-examine any other witnesses whom the Committee calls and any witness whom the Committee allows the parties to call in their own defence.

The following evidence has also bearing on this point:

Chairman. . . . Shall we now proceed to take some of the evidence ?[4]

Mr. Clement Davies.—Before you call them, in view of what Mr. Abraham has said, do not you think that it would be advisable at any rate to allow the two principals to be present throughout the proceedings ? In the past, for instance in the case of Mr. Granville, there was only one person, Mr. Granville

[1] *Q.* 48. [2] *See* JOURNAL, Vol. XIV, 255. [3] *Q.* 49. [4] *Q.* 56.

himself, involved. There are two now involved in a breach of Privilege, and the question is, I should have thought, whether they should not be allowed at any rate to be present, and whether we should allow them to ask any questions, which would, of course, be another matter, while the evidence is being given.

Mr. Solicitor-General.—Might I support that? It may be—one does not know—that the Committee might have to decide one way or the other. The witnesses may differ as to an issue of fact, and if they have both given evidence on oath, if the Committee decided that they preferred one account to the other account it might be extremely wounding to the person whose account is rejected, and therefore in those circumstances I would respectfully submit to the Committee that natural justice would require that at least they should be present and hear what is said about each other, and that if circumstances seem to indicate it necessary that they should actually be allowed to challenge a particular point, if they feel in their own defence they ought to challenge it, I would submit that that is what natural justice requires. I think what Lord Hewart said was that not only should justice be done but that it should be patently seen to be done, and I would respectfully submit to the Committee that possibly the outside world might think it was not fair to these two gentlemen if they at least were not allowed to hear what the charges made against them were.

Chairman.—Neither of the two persons primarily concerned has been invited for this morning.

Mr. Marples (Clerk to the Committee).—Yes, they are here.

Chairman.—If we do that it must be understood that there is no cross-conversation.

Mr. Clement Davies.—Certainly.

Mr. Solicitor-General.—They will simply hear what takes place.

Chairman.—Does that meet with the views of the Committee?

Mr. Churchill.—I should have preferred to have seen the two persons to the dispute one after the other, and then having heard what they had got to say, clear the room, and then we could settle whether they required to be confronted with each other. Probably it would turn out that they had better be confronted. Then it could all be printed, or on the other hand the Shorthand Writer could read the notes which he has taken down.

Chairman.—That would mean starting by having Mr. Piratin in first and then subsequently Mr. Lucy, leaving these ancillary witnesses to later.

Mr. Clement Davies.—Yes; but on the other hand I should like the Committee to reconsider whether it would not be right for Mr. Lucy to sit there while Mr. Piratin is giving his evidence.

Mr. Grenfell.—But not be heard then?

Mr. Clement Davies.—No.

Mr. Churchill.—Yes.

Mr. Solicitor-General.—He might possibly ask permission to put questions, and the Committee could then rule whether permission could be given.

Mr. Neil Maclean.—In the case of the one who is second in making his statement, it should be made clear to him that he has got to make his statement and not criticize or contradict what has been said by the first individual.

Chairman.—Mr. Lucy's chance comes when he comes into the witness chair.

Mr. Grenfell.—Can that be put to both witnesses, that for the convenience of the Committee they are to be present but that they each of them will give their testimony only.

Mr. Neil Maclean.—It is only to make statements, not to criticize each other in what one or the other may say.

Mr. Solicitor-General.—I would suggest respectfully to the Committee that if either desires to challenge or to question a particular point in the other's evidence they should ask the permission of the Committee through you, Mr.

Chairman, to put the questions they want to put. Then they can put questions on their behalf, or the Committee can give them permission to ask questions themselves or refuse permission.

Mr. Neil Maclean.—You are misunderstanding what I said. What I said was that as the first one comes in we should make it quite plain that the first one makes a statement. The second man is sitting listening to him, and instead of making a statement he begins to reply to the statement that has been made by the first. I think that should not be allowed. Each statement should be taken as a separate statement and not the second individual criticizing what has been said by the first.

Mr. Clement Davies.—The Chairman will take him through his statement.

Mr. Neil Maclean.—Yes. I want the two statements to be made by each as individual statements.

Chairman. Q. 57.—Yes, I think that is right?

Mr. Abraham.—If I may respectfully suggest it, Sir, you have these statements in front of you, which are, of course, not evidence, but if you ask them to state the facts over again it would be far wiser if you proceeded to examine those rather than invite the parties to make a long statement, because they will inevitably travel into justification.

Chairman.—I think these statements that have been circulated to us are not evidence; that is quite clear; but for the purpose of record, witnesses have to make statements; they must make statements as to the events, clearly.

Mr. Churchill.—Surely they should make it uninterrupted by the other party?

Mr. Clement Davies.—Yes, certainly.

Chairman.—We can consider what the next stage is. Shall we, then, have the two persons in? I assume the Member had better be heard first? (*Agreed.*)

Mr. Piratin and Mr. Lucy were then called in and Mr. Piratin was examined. After Mr. Piratin had given evidence he left the witness-chair and Mr. Lucy was sworn and examined, after which both witnesses withdrew.

After a short adjournment the Chairman made the following statement:[1]

Chairman.—Mr. Piratin and Mr. Lucy, after you left us this morning, we considered how, in all fairness, this question should be dealt with. We have decided on this procedure, that first you might ask questions of one another (it really arises out of the point you made this morning, Mr. Piratin, although, as a matter of fact, we had it in mind) and you may remain here and ask questions of other witnesses after each witness has made his or her statement to us; and at the conclusion of the evidence, each of you, if you so desire, may make a short statement to us. Now, this is a procedure which, of course, must not be abused. Theoretically, all questions should be put through the Chair. That might be somewhat tedious, and we think that if you ask questions directly of one another that would be better, but they must be questions and not speeches. We must confine ourselves to elucidation. We want to get to know, so far as we can, the truth about the situation. If it should happen that either of you transgresses and starts to make speeches, I shall have to pull you up, and then all subsequent questions will have to be put through me as Chairman. I thought perhaps Mr. Piratin, who raised the point this morning, might first like to ask questions of Mr. Lucy, and then Mr. Lucy might wish to ask questions of Mr. Piratin.

Mr. Montague.—One question at a time each, alternately?

[1] *Rep.* p. 19.

Chairman.—They must have been turning these matters over in their minds since this morning, and I should think the whole series of questions might be put by each, and then Members of the Committee could have a second turn, if they so desired. Does that meet the wishes of the Committee? (*Agreed.*)

At this point both Mr. Piratin and Mr. Lucy were allowed to defer their cross-examination of one another until they had an opportunity of seeing the printed evidence.

After some further discussion with these 2 witnesses in regard to Procedure, the Chairman said:[1]

We would like to dispose of as many witnesses as we can to-day, because these cases ought not to be unduly prolonged. You would both of you, I suppose, be prepared to stay and listen to the witnesses as they come in and then, if you desire so to do, to put questions to them—so long as it is confined to questions?

Mr. Piratin.—Yes.

Mr. Lucy.—Yes.

Chairman.—That meets with the approval of both of you and I think that is the desire of the Committee.

Mr. Grenfell.—Neither of the parties is at any disadvantage because neither has been given any advance information. It is because of our desire that this enquiry should be conducted in the interests of truth and fair play that they have been invited to come in. There is no bias one side or the other.

Chairman.—Is that agreed? (*Agreed.*)

The other witnesses were then called one by one and examined by members of the Committee as well as questioned by both Mr. Piratin and Mr. Lucy, once each only. Each particular witness then withdrew, and the next one was called, the same procedure being followed in respect of each witness.

Later Mr. Lucy was cross-examined by Mr. Piratin, followed by Mr. Piratin being cross-examined by Mr. Lucy.

Mr. Piratin and Mr. Lucy then withdrew and the Committee deliberated.

Debate on the Report.—On February 10, 1947,[2] before the Report was considered, Mr. Speaker stated:

This is a somewhat novel procedure for this House. Therefore perhaps I had better explain that it is customary, before the Motion such as the Motion on the Paper in the name of the Lord Privy Seal is moved, for the hon. member concerned, if he so wishes, to be allowed to make a statement to the House. Then the custom is that the hon. member withdraws, so that the House can discuss, not in his presence, the Motion before them. Therefore I must ask the hon. member for Mile End (Mr. Piratin) if he cares to make a statement.

Mr. Piratin then made a statement during which he said that if he had to apologize again he could not add to the sincerity which he employed some weeks ago. Also that he had done nothing wrong in regard to the second incident and that the Committee reached its own findings on the evidence.

The hon. member then withdrew, after which the Lord Privy Seal (Rt. Hon. A. Greenwood) moved:

[1] *Rep.* p. 21.

[2] 433 *Com. Hans.* 5, s. 40-62.

That the conduct of Philip Piratin, Esquire, a Member of the House, and Thomas Daniel Lucy, as found by the Committee in their Report was a gross violation of the order and decorum of the House; that this House doth agree with the Committee in their opinion that Philip Piratin, Esquire, was guilty of a gross contempt and Thomas Daniel Lucy of a contempt of the House; and that this House places on record its high displeasure with their conduct and its determination to proceed with the utmost severity against future offenders in like cases.

In moving this Motion, Mr. Greenwood said there could be no doubt that both a member of this House and a member of the Press Gallery were guilty of an affront to the honour of this House, and the events could not in the circumstances be ignored by the House.

Several other members took part in the debate which followed, during which an hon. member *rose in his place and claimed to move— " That the Question be now put ", but Mr. Speaker withheld his assent, and declined then to put that Question.*

The original Question was then put and agreed to.

M.P.s and Contractual Agreements.—On March 25, 1947,[1] in the House of Commons, after Qs. and just before the Orders of the Day were entered upon, the hon. member for the County of Dorset, North Division (Mr. F. C. Byers), brought to the notice of Mr. Speaker a matter of Privilege, on behalf of the hon. member for Warwick, Rugby Division (Mr. W. J. Brown), who had lost his voice.

Mr. Byers said that when, in 1942, Mr. Brown was elected for Rugby, he was General Secretary of the Civil Service Clerical Association, which he had founded and organized many years before. Upon becoming an M.P., he relinquished such secretaryship, but agreed to act as Parliamentary Secretary to the Association. Under the agreement drawn up between him and the Association, it was provided that, while on Civil Service matters he would do his best for the Association and its members, on general political matters he was to be completely free to speak and vote as he thought right. The agreement made it clear that for his actions or utterances on non-Civil Service matters he would not be speaking on their behalf, and that the Association would have no responsibility for what he said and did as M.P. This agreement was endorsed by the Association at its annual Conference in 1942, circulated to members and published in the Press.

During last Parliament, difficulties arose in connection with the working of the agreement when members of the Executive Committee of the Association brought pressure to bear on Mr. Brown on matters unconnected with the Association, which was of course *ultra vires*, but the case was not considered to be sufficiently serious to invoke the Privileges of the House.

After the repeal of the Trade Union Act, 1927,[2] in the present Parliament, however, things took a turn for the worse, as such repeal enabled the Association to affiliate itself to the Trades Union Congress,

[1] 435 *Com. Hans.* 5, s. 1077-80. [2] 17 & 18 Geo. V, c. 22.

which it did without a ballot of membership. At the executive committee meeting following the T.U.C. at Brighton, strong pressure was put upon the hon. member for Rugby not to speak or write contrary to the policies of the T.U.C. or the Labour Party. To this pressure Mr. Brown refused to submit, and reminded the executive committee that he was elected to the House as an Independent and that the agreement clearly divested them (the Association) of responsibility on general political matters. He therefore refused to accept any limit on his freedom to speak, vote or write as he thought proper as a free member of the House. The Executive then determined that the agreement and his Parliamentary Secretaryship should be brought to an end, and the officers of the Association offered him financial compensation if he would consent to terminate his agreement.

These proposals were then embodied in a letter to the hon. member which made it plain that it was his political activities which were objected to. To this Mr. Brown replied that he had no wish to terminate or alter the agreement to which there were 2 parties, and that he did not regard these officers as being representative of the Association, and that it would be for the annual Conference to determine whether or not it wished to terminate the agreement. Later he warned the Executive that the question of Privilege might arise out of the proceedings. The Executive yesterday, however, decided to table a Motion for the annual Conference that it was desirable for the agreement to be brought to an end.

Mr. Byers then claimed that this was a definite act and the matter was now raised at the first opportunity. It was not known what would happen at the annual Conference, but what he asked was, whether it was proper that pressure should be brought to bear upon a member of this House by an outside body, to compel him to take a certain political line, in this case quite inconsistent with the basis upon which the member was elected to the House, and that when he refused to comply the Executive of that body should attempt to terminate the agreement?

In the Executive, it emerged that the matters in which the hon. member had offended were his speeches and votes on the Bill repealing the Trade Union Act of 1927; his known and proclaimed views on the "closed shop"; his alleged views on splinter trade unions; and his Parliamentary speeches and writings.

Mr. Byers therefore asked for Mr. Speaker's Ruling as to whether this sequence of events did not constitute a *prima facie* case of breach of Privilege, and he asked this quite irrespective of any legal rights or protection the hon. member for Rugby might have in respect of the agreement.

In conclusion, Mr. Byers said:

> What is concerned here is not the personal position of the hon. member, which is unimportant and which it is hoped would be vindicated by the annual Conference, but the issue that the hon. member should be free to speak, vote or write as a member of this House unsubjected to pressure from an outside

body, and free, if he declines to yield to such pressure, from victimization thereafter.

Mr. Speaker replied that the facts were, of course, outside his knowledge, but as it was alleged that pressure had been brought to bear on a member, it seemed that a *prima facie* case had been established.

The Lord Privy Seal then said: " In view of your Ruling, Mr. Speaker, I beg to move:

That the matter of the complaint be referred to the Committee of Privileges."

The Leader of the Opposition (Mr. Churchill) then, on behalf of the Opposition, supported the Motion, which was put and agreed to.

Report.—On June 17, the Report[1] from the Committee of Privileges was laid, and ordered to be printed.

The subject was referred to the Committee in the following words: " Complaint being made by Mr. Byers, Member for the County of Dorset (N. Div.), of certain actions by the Executive Committee of the Civil Service Clerical Association, which he submitted were calculated improperly to influence Mr. William Brown, Member for the County of Warwick (Rugby Div.), in the exercise of his Parliamentary duties, and constituted a breach of the Privileges of this House."

The Committee sat 8 times between April 23 and June 17 and heard the following witnesses: Mr. W. J. Brown, M.P. (*Qs.* 95-335 and statement); Mr. E. W. McMillan, President of the Civil Service Clerical Association; Mr. W. P. James and Mr. E. J. Hicks, Vice-Presidents thereof (*Qs.* 336-440 and statement); Mr. L. C. White, its General Secretary (*Qs.* 441-610).

The Committee also heard evidence from Sir Gilbert Campion, K.C.B., Clerk of the House of Commons (*Qs.* 1-94, 611-637, and Memorandum), on the law of Parliament relating to the matter of complaint, and from Mr. Speaker (*Qs.* 638-659) and Sir Gilbert Campion in regard to a subsidiary matter concerning the circumstances in which a letter addressed by Mr. Brown to the General Secretary of the Association on March 21 came to be written. In addition, the Committee examined a considerable number of documents submitted to them by Mr. Brown or on behalf of the Executive Committee of the Association.

The Appendices to the Report consist of: The Agreement between Mr. Brown and the Association and its Addenda; II. Mr. Brown's Statement of Case; III. Statement by Mr. McMillan, Mr. W. P. James and Mr. E. J. Hicks, Honorary Officers of the Association; and IV. Memorandum by the Clerk of the House on " Actions calculated improperly to influence a Member in the Exercise of his Parliamentary Duties".

Evidence.—It is regretted that lack of space does not permit of a *résumé* of the evidence being given, but attention is drawn to *Qs.* 21-3, 133, 196-9, 199, 241, 294, 318, 344-6, 350-1, 373, 378, 387,

[1] H.C. 118 (1946-47).

401, 409, 470, 533, 537, 546, 577, 633, quoted in the final debate in the House on the subject.

The Committee stood as a mark of respect when Mr. Speaker was called to give evidence, and no request to withdraw was made at the conclusion of his evidence as in the case of Mr. W. J. Brown, M.P. In the case of other witnesses, they were ordered to withdraw.

Two draft Reports were submitted, one by the Attorney-General and the other by Mr. Clement Davies, both of which were read a first time. On Motion being made and Question proposed—" That the Draft Report proposed by Mr. Attorney-General be read a second time, paragraph by paragraph ", amendment was proposed—" to leave out the words ' Mr. Attorney-General ' and insert the words ' Mr. Clement Davies '." Question was then put—" That the words ' Mr. Attorney-General ' stand part of the Question " and agreed to on division: Ayes, 5; Noes, 3.

Five other Questions at the inquiry were also decided on division.

The Committee in their Report remark that the oral evidence of the witnesses as to the facts was in somewhat general terms, and that whilst there was agreement on many points, the emphasis in that of Mr. Brown and Mr. White was different from that of Mr. McMillan.[1]

The Civil Service Clerical Association is a Trade Union within the meaning of the Trade Union Act, 1913,[2] in whose employ Mr. Brown had been as General Secretary in terms of a written agreement of 1923 subject to later amendments.

The Committee observe that:[3]

> Under the original agreement, Mr. Brown held the office of General Secretary to the Association and was bound:
>
> (*a*) " to perform all such duties as may reasonably be required of him ", and
> (*b*) " to use his best endeavours to promote the work and objects of the Association, being guided in such efforts by the wishes and directions of a two-thirds majority of the members of the Association in Conference ".
>
> Whilst Mr. Brown was entitled to terminate the agreement by 6 months' notice, there was apparently no such view on the part of the Association, and so far as they were concerned his appointment was " of a permanent nature " which the Association could only terminate in the event of serious and wilful misconduct and then only by the previous sanction and direction of a two-thirds majority of the members of the Association on a referendum vote taken by a decision of a two-thirds majority of the members voting at an Annual or a special Conference of the Association.
>
> Apart from this the agreement would in the ordinary course continue until Mr. Brown reached retirement age in September, 1949.
>
> The Addendum of May, 1943, was rendered necessary by Mr. Brown's election as a Member of Parliament. It provided that Mr. Brown should, whilst remaining a member, hold the appointment of Parliamentary General Secretary and not of General Secretary. Mr. Brown's remuneration was substantially unaffected; his present emoluments consist in a salary of £1,350, the use of a motor-car and an expenses allowance of £250, the services of a private secretary, the use of accommodation and secretarial facilities at the

[1] *Rep.* § 2. [2] 2-3 Geo. V, c. 30. [3] *Rep.* § 3.

Association's offices, the provision of a telephone at his home and certain pension rights. The terms of the principal agreement in other respects were to remain in full force " so long as they are not inconsistent with the terms of the Addendum ". The Addendum included the following express provisions. It declared that Mr. Brown:

(*a*) shall be entitled to engage in his political activities with complete freedom;
(*b*) shall deal with all questions arising in the work of the Association which require Parliamentary or political action;
(*c*) shall not be entitled " in his political and Parliamentary activities to purport to represent the political views of the Association (if any) and he shall only represent the Association in so far as Civil Service questions are concerned ".

Mr. Brown was first elected to Parliament in 1942 (when he stood as an Independent), his expenses on that occasion not being borne by the Association, which then had no political fund.[1]

Mr. Brown said that from about the time of his re-election to Parliament in 1945, criticism of his political activities by a section of the Executive Committee became more marked. From time to time questions were raised in regard to the political views he had expressed, and suggestions were made that his employment as the Association Secretary should be brought to an end. Mr. Brown stated expressly, however, that he did not seek to point to any particular incident, but he complained that the cumulative effect of " a sequence of events " over a period of time was such as to bring pressure to bear upon him to alter his conduct as a Member of Parliament and to change the free expression of his views under the threat that if he did not do so his position as an official of the Association would be terminated or rendered intolerable. Mr. Brown agreed that in his view there was no power to bring the agreement to an end without his consent, but he said that " an atmosphere " could have been created which would have rendered it impossible for him to continue in office.[2]

Mr. Brown's evidence was substantially borne out by Mr. L. C. White, who spoke as an individual and not on behalf of the Association. He did, however, refer to one specific incident where the Association's Delegation to the Trades Union Congress, after discussing the reasons for Mr. White's failure to secure election to that body as the representative of the Association, which they attributed to the public activities of Mr. Brown, " made it clear " orally to Mr. White that " steps would be taken to persuade or compel Mr. Brown either not to give public expression to his political views or to get out of the Association ".[3]

Mr. McMillan said that it was in the interest of the Association and in order to end this embarrassment that an attempt was made to find an agreement with Mr. Brown as to the terms on which (without financial loss to himself) his official connection with the Association might be terminated. It was recognized that nothing could be done without Mr. Brown's consent, and it was not desired to do anything which would in any way fetter the complete freedom Mr. Brown had in political matters. Mr. Brown had carried out his duties to the Association in Civil Service matters with complete satisfaction, and it was fully appreciated that in his political activities he had done no more than his agreement entitled him to do. None the less, his activities were embarrassing to the Association and this was why it was desired to sever the official connection.[4]

In face of this somewhat conflicting evidence, the Committee, in

[1] *Ib.* § 4. [2] § 5. [3] § 6. [4] § 7.

paragraph 8 of their Report, quote at length references to the Minutes of the Executive Committee and to certain correspondence.

In the conclusions to their Report, the Committee state that the Executive Committee considered in good faith that the public activities of Mr. Brown, including his speeches and newspaper articles, were injuriously affecting the interests of the Association, but the Executive, recognizing Mr. Brown's right to complete independence, felt that in the interests of the Association the official connection between Mr. Brown and the Association should be terminated.[1]

In paragraph 10 of their Report the Committee state that—

> The nature and extent of any particular privilege claimed by Parliament has to be considered in relation to the circumstances of the time, the underlying test in all cases being, whether the right claimed as a privilege is one which is absolutely necessary for the due execution of the powers of Parliament. Not only has Parliament no legal right to extend its privileges beyond those which satisfy this test, but Your Committee feel that any attempt so to do would be contrary to the interest both of Parliament and the public.

The Committee also observe that the true nature of the Privilege involved in this case could be stated as follows:

> It is a breach of Privilege to take or threaten action which is not merely calculated to affect the Member's course of action in Parliament, but is of a kind against which it is absolutely necessary that Members should be protected if they are to discharge their duties as such independently and without fear of punishment or hope of reward.

The Committee remark that[2]—

> The relationship between a Member and an outside body with which he is in contractual relationship and from which he receives financial payments is, however, one of great difficulty and delicacy in which there must often be a danger that the rules of privilege may be infringed. Thus it would certainly be improper for a Member to enter into any arrangement fettering his complete independence as a Member of Parliament by undertaking to press some particular point of view on behalf of an outside interest, whether for reward or not. Equally it might be a breach of privilege for an outside body to use the fact that a Member had entered into an agreement with it or was receiving payments from it as a means of exerting pressure upon that Member to follow a particular course of conduct in his capacity as a Member.
>
> It would also be clearly improper to punish a Member pecuniarily because of his actions as a Member. An example of such action is to be found in the resolution of the Newcastle Branch of the Association condemning Mr. Brown's activities and recommending that he be immediately placed on pension because of them. Your Committee have not referred to this incident in greater detail since the resolution was rejected by the Executive Committee, and Mr. Brown very properly sought to make no point about it and considered that the Resolution was passed in ignorance. We mention it now as an instance of the dangers resulting from financial relationships between Members and outside bodies.

The Committee, however, recognize that there are M.P.s who receive financial assistance from associations of constituents or other

[1] § 9. [2] § 13.

outside bodies, and those who enter into such arrangements must, of course, exercise great discretion to ensure that these do not involve the assertion or the exercise of any kind of control over the freedom of the M.P. concerned. On the other hand, an outside body is certainly not entitled to use the agreement or payment as an instrument by which it controls, or seeks to control, the conduct of an M.P., or punish him for what he has done as an M.P.[1]

The Committee appreciate that a decision by an outside body to terminate its relationship with an M.P. might in practice be a powerful factor in inducing that member to change his course of conduct, although the body concerned did not desire to put any pressure on him to do so. The Committee consider that Parliament must be jealous to see that relationships of this kind are not allowed by M.P.s or used by outside bodies to influence M.P.s in their course of conduct.[2]

The Committee do not consider that the cumulative effect of the course of events involved in the present case was calculated to or did affect Mr. Brown's freedom of action.[3]

Paragraphs 19 and 20 of the Report read:

19. Your Committee have also not overlooked the suggestion that although the agreement could not be terminated without Mr. Brown's free consent, " an atmosphere " might have been created in which it would have been difficult for Mr. Brown to continue in office. It is true that, as stated by the General Secretary, there was " a generally unpleasant atmosphere because it was clear that there was hostility on the part of many members of the Executive Committee to Mr. Brown, and, if I may say so, a certain amount of contempt on the part of Mr. Brown towards the Executive Committee ". The circumstances in which an " atmosphere " of unfriendliness, hostility or social ostracism can constitute a breach of Privilege must be exceptional. However matters might have developed in the future, Your Committee do not think that any breach of Privilege had been committed in this sense.

20. It appears to Your Committee that the Executive Committee were entitled to bring the question of the termination of the agreement before the Annual Conference of the Association, that they had in effect been invited by Mr. Brown so to do, and that their action in proposing so to do was not calculated to, and did not in fact, affect Mr. Brown in the discharge of his Parliamentary duties. Your Committee do not think it necessary for the due execution of the power of Parliament that the Association should be precluded from pursuing the proposed course. Your Committee therefore recommend that no further action should be taken in regard to the matter.

The 3 concluding paragraphs of the Report relate to a misinterpretation by Mr. Brown in regard to an interview with Mr. Speaker.

Memorandum by the Clerk of the House.—The opening paragraphs refer to the origin of the freedom of M.P.s to speak and vote without restraint, as confirmed by the 9th Article of the Bill of Rights, 1688, and quote from the petition of Thomas Young in 1455: •

" the old liberte and fredom of the Comyns of this lande . . . to speke and say in the House of their assemble, as to theym is thought convenient or reasonable without any maner chalenge, charge or punycion ".

[1] *Ib.* § 14. [2] *Ib.* § 15. [3] *Ib.* § 17.

Chapter IV of May (pp. 47-65) is then quoted.

This Memorandum, however, has such an important bearing on the case that it is proposed to quote certain of its paragraphs.

5. In their protestation of 18 December, 1621, the Commons claimed "That every member hath freedom from all impeachment, imprisonment, or molestation, other than by censure of the House itself, for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the Parliament or Parliament business". "Molestation" covers not only punitive action but also the threat of such action on account of speeches or votes in Parliament. Cases of this nature are referred to in List II, below.

6. So wide is the principle that both Houses have treated as a breach of privilege discriminatory action against witnesses, counsel and petitioners for evidence tendered or speeches made before the House or a Committee, whether that action took the form of prosecution in the courts, censure, dismissal, or any form of insult or intimidation. See List III, below. (Although the persons there referred to were not Members any decision in their cases would apply *mutatis mutandis* to Members.)

7. From a consideration of precedents it may be laid down in general terms that any punitive or discriminatory action by an outside body or person against a Member for speeches or votes in Parliament, or the threat of such action, is a breach of the Privilege of freedom of speech.

Application to Present Case.

8. The complaint made by Mr. Byers on the 25th of March on behalf of Mr. W. J. Brown is, briefly, that the action started by the executive committee of the Civil Service Clerical Association to dispense with his services as an employee of that Association on account of his speeches and votes in the House of Commons, constitutes a breach of Privilege. The question that has to be investigated is whether the action complained of falls under the general principle extracted from the precedents mentioned above. This question will need to be carefully defined in the light of the circumstances of the case, but before attempting this, it will be useful to remind the Committee of the circumstances of a recent case and the conclusions reached upon it, as the circumstances are similar and the conclusions consequently afford guidance in the present case.

Case of Alderman Robinson, 1944.[1]

The Circumstances of the Present Case.

13. The degree of correspondence between the statement of Mr. W. J. Brown and that of the honorary officers of the Civil Service Clerical Association makes it possible to give a brief *résumé* of the circumstances of the case which bear upon the question of privilege. The facts fall into two groups, (1) those connected with the terms of the agreement between Mr. Brown and the Association, and (2) those connected with the pressure brought to bear upon Mr. Brown for the purpose of terminating his appointment.

BEARING OF PRIVILEGE OF FREEDOM OF SPEECH UPON A RESTRICTIVE AGREEMENT.

23. The validity of an agreement restricting a Member's freedom of action in Parliament has never before been submitted to the judgment of the Committee of Privileges, and the decision of the Committee may depend on the bearing which they consider the privilege of freedom of speech has on such an agreement.

[1] *See* JOURNAL, Vol. XIII, 256.

A Possible View.

24. From the point of view from which this case has been brought forward, it would seem that, in order that the facts should constitute a breach of Privilege, the following propositions would have to be established:

(1) That the joint effect of the principal Agreement of 1923 and of the Addendum of 1943 left Mr. Brown freedom of action in Parliament, at least in relation to certain subjects.

(2) That the pressure brought to bear upon Mr. Brown amounted to a threat of punitive action on account of Parliamentary activities in respect of which under the terms of his agreement his freedom was unrestricted.

This point of view implies the notion that the privilege of freedom of speech is the individual right of a Member of Parliament, and that he is free to sign away part of it and retain the rest intact.

Alternative View.

25. But freedom of speech is more than an individual right of Members. It is a collective right of the House as a whole. " It is only as a means to the effective discharge of the functions of the House that individual privileges are enjoyed by its Members " (May's *Parliamentary Practice*, p. 43). If this is so, the right of free speech may be regarded as also a duty which the individual Member owes to the House.

26. One practical conclusion which may be drawn from this view with regard to the present case is that no agreement by which a Member purports to bargain away any portion of his freedom to an outside body will be recognized by the House as diminishing his freedom. Such a conclusion would tend to establish the validity of Mr. Brown's complaint.

Another conclusion might be that a Member, who has divested himself of any portion of his freedom of judgment in submission to the directions of an outside body, has thereby debarred himself from the protection of the privilege of freedom of speech even for those matters in respect of which he may claim to have retained his freedom.

The Appendix to the Memorandum consists of 3 Lists which will be quoted at length:

List I.—Cases of proceedings in the Courts against Members for speeches in Parliament.

Strode's Case, 1512.—In 1512 Strode, a Member of the House of Commons, was prosecuted in the Stannary Court, for having proposed certain bills to regulate the tinners in Cornwall, and was fined and imprisoned in consequence. Upon which an Act was passed, which declared the proceedings of the Stannary Court to be void and enacted that all suits and other proceedings against Richard Strode, and against every other member of the present Parliament, or of any Parliament thereafter, " for any bill, speaking, or declaring of any matter concerning the Parliament, to be communed and treated of, be utterly void and of none effect ". As the proceedings which had already taken place against Strode were declared to be void, it is evident that freedom of speech was then admitted to be privilege of Parliament, and was not at that time first enacted.

Case of Sir John Eliot and others, 1629.—In 1629 a judgment was obtained in the King's Bench against Sir John Eliot and two other members for their conduct in Parliament. Sir John Eliot was committed to prison and died during imprisonment. In 1641 the House of Commons declared all the proceedings in the King's Bench to be against the law and privilege of Parliament. After the restoration in 1667 the Commons resolved that Strode's Act was a general law extending to all members of both Houses of Parliament and a

declaratory law of the ancient and necessary rights and privileges of Parliament and also that the judgment given in the King's Bench was an illegal judgment, and against the freedom and privilege of Parliament. Upon a writ of error, the judgment of the King's Court was reversed by the House of Lords in 1668. One cause of error stated was that words spoken in Parliament could only be judged in Parliament and not in the King's Bench.

Dillon v. *Balfour*, 1887.—In this action brought in the Irish Courts against a member of the House of Commons for words spoken in the House, the court being satisfied that those words constituted the cause of action, ordered that the writ and statement should be taken off the records of the court, the court having no jurisdiction in the matter.

List II.—Cases of discriminatory action or the threat of such action on account of speeches or votes in Parliament.

General Conway's Case, 1764.—Deprivation of the emoluments of non-ministerial offices to penalize a Member for his Parliamentary conduct was resorted to by the King in the course of the historical conflict between the Crown and Parliament. According to Anson, " To take away such offices for speech or vote in Parliament is an invasion of privilege " (1922 Ed., Vol. I, p. 169).

The instance of General Conway in 1764, which was the last of the kind, will suffice for illustration. For opposing the ministry of George Grenville on the question of general warrants, he was dismissed from the King's service, not only as a Groom of the Bedchamber, but also as Colonel of a regiment.

Plimsoll's Case, 1873.—In this case a Member complained of the publication of a book containing certain passages in which he was impugned and threatened by another Member. It was declared to be a breach of privilege to attempt to influence members in their parliamentary conduct by publishing demands impugning their conduct and threatening them with further exposure if they take part in the debates of the House (C.J. (1873) 60; Parl. Deb. (1873) 214, c. 733).

Mullingar Guardians Case, 1898.—On 26th July, 1898, a complaint was made to the House by Mr. Patrick O'Brien, Member of Kilkenny City, of the proceedings of the Board of Guardians of Mullingar, as reported in the *Irish Daily Independent* newspaper of 22nd July, 1898, containing threats against the Honourable Member for Roscommon, on account of a speech made by him in this House. The said newspaper was handed in, and the Report of the Proceedings complained of was read, as followeth: " Proposed by Mr. James Brennan, seconded by Denis Shanahan, that on this day fortnight the Board take action in regard to the vile and anti-cleric speech made by Mr. John P. Hayden last week in Parliament, with a view of having his paper deprived of the advertisement here in future, and himself and his reporter excluded from our meetings."

Resolved, That the said proceedings of the Mullingar Board of Guardians, as reported in the *Irish Daily Independent* newspaper of 22nd day of this instant July, constitute a breach of the Privileges of this House.—(Mr. Patrick O'Brien)." (C.J. 153 (1898) 381.)

List III.—Cases of the extensions of the principle to witnesses and counsel.

Meggott's Case, 1696.—In 1696, Sir G. Meggott was declared guilty of a breach of Privilege and committed to the Serjeant for instituting a legal action against witnesses for what they had testified at the Committee of Privileges and elections. (C.J. (1693-97) 591, 613.)

Stone's Case, 1697.—In 1697, upon oath made at the Bar by Richard Luxford and another, " that Thomas Stone did strike Richard Luxford in this House below the Bar, and gave him opprobious language; who was then attending upon a committee of Lords, in pursuance of an order of this House ", the

Lords attached Thomas Stone and directed the Attorney-General to prosecute him for the offence. (L.J. (1696-1701) 144.)

Hare's Case, 1710.—In 1710, on the report from a committee that John Hare, a soldier, was afraid of giving evidence, the Commons resolved, " That this House shall proceed with the utmost severity against any person that shall threaten, or any way injure, or send away the said J. Hare or any other person that shall give evidence to any committee of this House." (C.J. (1708-11) 535.)

Medlycot's Case, 1715.—A complaint beingm ade that C. Medlycot, Esq., had been abused and insulted, " in respect to the evidence by him given " before a committee, the person complained of was committed to the custody of the Serjeant. (C.J. (1714-18) 371; Goold's case, 1819, *ibid.* (1819) 223.)

Dunbar's Case, 1733.—In 1733 complaint was made that Jeremiah Dunbar, Esq., had been censured by the House of Representatives of Massachusetts Bay, for evidence given by him before a committee on a bill, upon which the House resolved, *nem. con.*, " That the presuming to call any person to account, or to pass a censure upon him, for evidence given by such person before this House, or any committee thereof, is an audacious proceeding and a high violation of the privileges of this House." (C.J. (1732-37) 146.)

Wharton's Case, 1826.—An individual who sent an insulting letter to Counsel in relation to a speech made by Counsel at the Bar of the House of Lords, was ordered to attend the House and obliged to make a proper submission and apology before being discharged. (L.J. (1826) 128, 142, 145.)

Parrott's Case, 1845.—In 1845 a petition by Mr. Parrott complained that an action had been commenced against him in respect of evidence which he had given before a committee. The plaintiff and his solicitors, having been ordered to attend, disclaimed any intention of violating the privileges of the House, and declared that the action would be discontinued. They were, in consequence, discharged from further attendance, although the commencement of the action was declared to be a breach of privilege. (C.J. (1845) 672 680, 697, Parl. Deb. (1845) 81, c. 1436.)

Harbin's Case, 1845.—In the same year, Mr. Harbin brought an actio against Mr. Baker, for false and malicious language uttered before the Hous of Lords, in giving evidence before a committee. On the 14th July, the plaintiff and his attorney was summoned to the Bar, and on their refusal to state that the action should not be proceeded with, both were declared guilty of a breach of Privilege and committed. (L.J. (1845) 690, 712, 729; Parl. Deb. (1845) 82, c. 431, 494.)

Cambrian Railway Directors' Case, 1892.—In consequence of evidence given before the Select Committee on Railway Servants (Hours of Labour) certain witnesses were reduced or dismissed from the service of the Cambrian Railway Company, and on April 7th, 1892, the House ordered the attendance in his place of one of the railway directors, who was a member of the House, and of the two other directors and manager at the Bar. The directors and manager were admonished by the Speaker after the House had resolved that they had committed a breach of Privilege by their action in dismissing John Hood, one of the witnesses. (C.J. (1892) 166.)

In consequence of these proceedings an Act was passed; and persons who punish, damnify, or injure witnesses before committees of either House of Parliament on account of their evidence may now under the Witnesses (Public Inquiries) Protection Act, 1892,[1] be convicted of a misdemeanour, fined, imprisoned, and condemned to pay the costs of the prosecution, as well as a sum by way of compensation to the injured persons.

Notice of Motion.—On July 3,[2] the following Notices of Motion stood upon the *O.P.* in the name of Mr. Pickthorn:

[1] 55, 6 Vict., c. 64.

[2] 439 *Com. Hans.* 5, s. 1521.

That the Report (17th June) of the Committee of Privileges be now considered.

That this House disagrees with the Report of the Committee of Privileges, and, in particular, deprecates contractual agreements with outside bodies relating solely to a Member's work in Parliament, as inconsistent with the dignity of the House, with the duty of a Member to his constituents, and with the maintenance of the privilege of freedom of speech.

Mr. Speaker said: "I have considered the Notice of Motion which stands on the Order Paper in the name of the hon. member the Senior Burgess for Cambridge University (Mr. Pickthorn), but there are various complications, and for the moment I do not feel that I am justified in calling it. I quite realize that the hon. member was right to put it down without undue delay, and that he has in fact done so, but there are repercussions and I have not had much time to look into the matter. I should like further time before I come to any decision."

Mr. Pickthorn said that all he was trying to do was to make sure that the matter remained discussable and would be discussed as soon as possible. In response to an appeal from another hon. member, the Leader of the House said it would scarcely be proper for him to say anything before Mr. Speaker's Ruling was given and he would like to express his thanks to the hon. gentleman, the Senior Burgess for Cambridge University, for his courtesy in letting the Chief Whip know last night of his intention.

Mr. Pickthorn, continuing, said that he understood that Mr. Speaker's withholding was on the question whether this was a matter of that order of urgency that it must be taken on the first possible day as if it were a breach of Privilege. All he wanted to make clear was that, whatever Mr. Speaker's Ruling might be, it left unaffected the right of hon. members to expect that the Government would make it possible to discuss the Report.

Question.—On July 10,[1] during discussion on the Business of the House, an hon. member asked Mr. Speaker's guidance with regard to the question of Privilege and the Motion standing in the name of the Prime Minister and Lord President of the Council:

(*Here quoted is the Motion moved by the Lord President of the Council on July 15 (see below).*)

—whether it would be possible in terms of that Motion, to discuss the nature of Privilege itself which arises on one of the documents contained in the Report apart from the findings of the Committee.

Upon which Mr. Speaker remarked that he was not quite certain what the hon. and learned member asked. Did he assert that the Motion on the Order Paper was one of Privilege ?

To which the hon. and learned member replied that his point was that one of the most important documents in the Report was that by the Clerk of the House, in which he discusses the 2 possible meanings attached to Privilege. In the form of the Motion, would it be possible

[1] *Ib.* 2436.

to discuss the nature of Privilege as it appeared on the original Motion or the Privilege of the House independently of the actual merits of the case, because the nature of the Privilege, as it appeared to him, affected the decision in regard to the individual case? Mr. Speaker replied that he had not yet seen the Motion on the Paper, so that he did not really know what they could discuss. He would be giving a Ruling later that day, but he did not think it would help the hon. member very much.

Mr. Speaker's Statement.—On July 10,[1] Mr. Speaker made a statement on the subject of Privilege, opening with references to the 2 Notices of Motion given above. The rest of the statement was as follows:

The Motion raised the question whether the report of the Committee on a matter of Privilege is entitled to priority over the programme of Business in the same way as a matter of Privilege arising for the first time. I did not feel in a position to rule on the Motions on its first appearance and have deferred my decision until this afternoon. In the current edition of Erskine May, on p. 134 it is stated:

A Motion that a report of a committee on a matter of Privilege be now taken into consideration . . . will be accorded the priority assigned to a matter of Privilege unless there has been undue delay in bringing it forward.

The view in some earlier editions that such a Motion was not entitled to priority was based on a Ruling of one of my predecessors, Mr. Speaker Gully, in 1902. This Ruling cited certain precedents, but I am satisfied that it not only misinterpreted the precedents to which it appealed, but also showed a misunderstanding of the true relations between the House and a committee to which a matter of Privilege is referred. When the Committee of Privileges have been ordered to inquire into a complaint of breach of Privilege, in Erskine May's words:

" the House suspends its judgment until their report has been presented ".

The House, by referring a complaint to the Committee, does not forgo its right to adjudicate upon the case; the Committee, indeed, can only recommend and have no power to pronounce judgment. It is, moreover, the inherent right of every member of this House, first, to bring matters of Privilege to its attention and consequently to serve its decision upon them. There are, however, several difficult questions of a practical nature involved in treating the reports of the Committee of Privileges as matters of Privilege. Such a report, together with its minutes of evidence and appendices, may be a long and complicated document. It would not be reasonable to discuss such a report until Members generally have had time to acquaint themselves fully with its contents. On the other hand, it would not be right that such a report should be left unconsidered for a considerable time and then brought forward with the priority of a matter of Privilege.

[1] *Ib.* 2437.

I think that in this matter the general practice of the House should be followed whereby the choice of a day for debate is settled by agreement among the various parties interested. In the event of failure to agree, any member would have the right to put down a Motion for consideration of such a report at the time at which matters of Privilege are taken—namely, before entering on the programme of public business. In such a case, however, if any attempts were made to debate a report which in the view of a great majority of the House did not call for discussion, it would be possible to avoid discussion by negating the preliminary question for the consideration of the report—upon which the substance of the report is not open to debate. In cases where time for considering a report on a matter of Privilege was settled by a general agreement, I do not think it would be necessary to insist that the Motion must be taken immediately after Questions. Any time that was generally convenient would be admissible. I think this decision conforms with the traditions of the House in matters of Privilege, and that the practice which I have indicated would be fair to individual members and the House as a whole.

Mr. Pickthorn thanked Mr. Speaker for his Ruling and expressed the fearful joy with which some of them heard such plain correction of a Speaker and asked whether the debate, if there was to be a debate, would be upon the Motion down in his name, or the Motion which has since appeared on the Order Paper.

Mr. Speaker said that it was usual, if the Chairman of the Committee of Privileges put down a Motion, to take the Motion standing in his name, but, not having looked at the Motion, he could not give a definite answer.

The Leader of the House, in thanking Mr. Speaker, mentioned that it had not been uncommon in connection with Privilege Committee Reports, when there had been general agreement on the Committee and when, perhaps, they had not raised issues of great importance, for the House to let the matter rest there. He presumed that the Ruling would not in any way prejudice that course being taken.

Upon which Mr. Speaker said that it was not usual to demand discussion where a Committee had been in complete agreement and had reported that no breach of Privilege had been made. There was a remedy that, if anybody put down a Motion, the House could refuse to consider the matter and that would end it at once.

Debate on the Report.—On July 15,[1] after it had been formally decided that the Report be now considered, the Minister without Portfolio (Rt. Hon. A. Greenwood) moved:

> That this House agrees with the Report of the Committee of Privileges, and in particular declares that it is inconsistent with the dignity of the House, with the duty of a Member to his constituents, and with the maintenance of the privilege of freedom of speech, for any Member of this House to enter into any contractual agreement with an outside body, controlling or limiting the

[1] 440 *Ib.* 284-365.

Member's complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a member being to his constituents and to the country as a whole, rather than to any particular section thereof.

There was a debate on this Motion extending over 77 columns of *Hansard*, of which the following extracts are given.

The issue was whether they agreed or disagreed with the majority report of the Committee, and about that there might be conflicting views cutting right across the party line; it would have been better if this matter could have come before the House in 2 Motions, one as to acceptance or rejection of the Report and the other dealing with the wider question;[1] the unit of electoral representation was the constituency, but the unit of financial organization very often was not the constituency;[2] what was to be deplored was when the outside body used the element of financial aid to seek the control of the member; the safeguards lay in 3 directions—the character of the member, the danger of the secret arrangements of which the House knew nothing, and the difficulty of bringing home a charge of breach of Privilege;[3] Privilege questions always turned either on interpretation of great principle or of rather fine distinctions, and therefore they were, of all questions, the most difficult to deal with; it was the greatest question of Privilege which the Committee of Privileges, as they knew it, had ever dealt with;[4] if any such agreement was a breach of Privilege, they were right in presuming that any pressure brought even within the limits of the agreement was in itself a breach of Privilege;[5] allusion to the sharp division of opinion on the Committee of Privileges itself was for the purpose of showing how difficult were the questions which the Committee had to consider and how great was the responsibility that consequently lay on the House for them to make up their minds on the merits.[6]

In the well-known judgment of Lord Denman, C.J., in Stockdale *v.* *Hansard*, as cited by the late Lord Hewart, C.J., in the last case of Privilege that came before the Courts, it was said that—

> The Commons of England are not invested with more power and dignity by their legislative character than by that which they bear as the grand inquest of the nation. All the Privileges that can be required for the energetic discharge of their duties inherent in that high trust are conceded without a murmur or a doubt.[7]

It would be regrettable if Parliamentary Privilege were put lower than it had already been put by the Courts on this particular topic.[8]

Blackstone was quoted as saying:

> Every member, though chosen by one particular district, when elected and returned, serves for the whole realm. For the end of his coming thither is not particular, but general; not basely to advantage his constituents, but the whole common wealth.

[1] *Ib.* 291. [2] *Ib.* 300. [3] *Ib.* 301. [4] *Ib.* 303. [5] *Ib.* 304. [6] *Ib.* 312. [7] *Ib.* 314. [8] *Ib.* 315.

and Coke:

> And it is to be observed, though one be chosen for one particular county or borough, yet when he is returned and sits in Parliament he serveth for the whole realm.

Also Lord Justice Fletcher Moulton in a judgment stated:

> The reason why such an agreement would be contrary to public policy is that the position of a representative is that of a man who has accepted a trust towards the public, and that any contract, whether for valuable consideration or otherwise, which binds him to exercise that trust in any other way than as on each occasion he conscientiously feels to be the best in the public interest is illegal and void. This deep-seated principle of law is the basis of the illegality at common law of bribery at Parliamentary elections, for the power of voting for a representative is also a trust towards the public. Now to my mind it can make no difference whether such a contract be that B. shall vote as A. tells him or as any body of third persons may decide. Every such agreement is tainted with the vice of the trustee binding himself contractually for valuable consideration that he will exercise a trust in the specified manner to be decided by considerations other than his own conscientious judgment at the time as to what is best in the interests of those for whom he is trustee. . . . And it is no answer to say that before or at the election he openly avowed his intention to be thus contractually fettered. The majority who elect him may be willing to permit it, but they cannot waive the rights in this respect of the minority.[1]

Continuing with certain extracts from the debate, it was observed that: there should be no contract in existence at all that bound the M.P. to serve any organization;[2] neither the Motion nor the amendment should be carried, but the matter referred back to the Committee of Privileges for them to consider the nature of the Privilege;[3] it was the duty of any M.P. not to pledge himself to act here as a delegate who was instructed on any matter by an outside organization;[4] on the whole, the Committee's Report did not quite fit the story which was unfolded before them;[5] the Committee did not look behind the allegation of improper pressure having been brought into the question whether or not the agreement was itself a breach of Privilege;[6] they had it in evidence that Sir Gilbert Campion had never seen a written contract before and that this was the only one of which the terms had come to light; the Motion fell into 2 quite distinct parts, first, approval of the Report of the Committee of Privileges, and the second, the question of the general principle;[7] the vital difference between the majority report and the minority report was that the latter found there had been a breach of Privilege;[8] the particular matter on the general issue was that financial arrangements should not be used as a method of bringing pressure.[9]

The Lord President made it clear that the Whips were off and that his hon. friends were free to vote as they thought right on the matter. Mr. Morrison remarked that when the hon. member for Rugby signed the agreement he had, to that extent, signed away his complete freedom of Parliamentary action on Civil Service matters. So far as Mr.

[1] *Ib.* 316. [2] *Ib.* 332. [3] *Ib.* 334. [4] *Ib.* 337. [5] *Ib.* 340.
[6] *Ib.* 341. [7] *Ib.* 347. [8] *Ib.* 348. [9] *Ib.* 350.

Morrison knew, the law of Privilege had not hitherto laid down whether that would be a breach or not. If, hereafter, people made arrangements of this sort binding on an M.P., hon. members and organizations concerned should be very careful and would do well to reflect upon them;[1] if it were found that a Trade Union affiliated to the Labour Party had an agreement with its M.P.s similar to that which the hon. member for Rugby had with the Civil Service Clerical Association, he would advise the Trade Union and the member concerned to get out of it as quickly as they could. The first duty of members was to their constituents and the nation; it was wrong that they should be fettered in their judgment by any outside interest.[2]

During the course of the debate an amendment was moved by Mr. Pickthorn, to leave out " agrees " and to insert " disagrees ".[3]

On the Question being put—" That the word ' agrees ' stand part of the Question ", the House divided: Ayes, 275; Noes, 114. The main Question was then put and agreed to.

Charges against Members by a Member and his Expulsion.—On March 26,[4] in reply to an Oral Question on the membership of the Royal Commission on the Press, the hon. member for Wolverhampton (Bilston) (Mr. Willie Nally) in a Supplementary asked if the Prime Minister was quite satisfied that the terms of reference of such Royal Commission were sufficiently wide to permit a full investigation into the circumstances under which a newspaper of the *Express* group continued to pay bribes to members of this House to supply reports of private and confidential meetings in this House.

Another hon. member then rose on a point of Order, to ask if the hon. member should not now substantiate his statement and, if not, was it not a breach of Privilege.

Upon Mr. Speaker ruling that the statement was out of order, Mr. Nally asked if he could put himself in order by inserting the word " alleged ", but Mr. Speaker said that the hon. member must withdraw unreservedly.

Question of Privilege being raised by other hon. members, Mr. Speaker said that this was not the only opportunity when the matter might be raised.

On the next day,[5] Mr. Nally made a personal statement repeating his unreserved withdrawal of the words he used the previous day.

On April 3[6] the following appeared in the *World's Press News* by the hon. member for Gravesend (Mr. G. Allighan):

LABOUR M.P. REVEALS HIS CONCEPT OF HOW PARTY NEWS GETS OUT

Public that pays is entitled to Know

BY GARRY ALLIGHAN

WILLY NALLY put his foot ankle-deep into it last week when, in Parliament, he accused M.P.s—of whom 21 are his fellow members in the N.U.J.—of taking Beaverbrook money as " bribes ". The fascinating grotesquerie caused

[1] *Ib.* 355. [2] *Ib.* 360, 1. [3] *Ib.* 302. [4] 435 *Com. Hans.* 5, s. 1233, 4. [5] *Ib.* 1418.
[6] *Rep.* pp. 118-120. The words in italics are for purpose of reference.—[ED.]

the Speaker to demand a withdrawal and to contemplate action in respect of a breach of privileges. Complete withdrawal and apology which exonerated his colleagues were forthcoming from Willy Nally willy nilly.

This pool-busting, Co-op. nominated journalist M.P. was righteously angered by the fact that the " Evening Standard " manages to get what the Parliamentary Labour Party has, for years, referred to as " leaks ". What does all this really amount to ? In my opinion it all adds up to two conclusions: that the " Evening Standard " is highly enterprising, and that the Parliamentary Labour Party is highly ingenuous.

Every week about a dozen different Party meetings are held in the House, to none of which the Press is admitted. I attend an average of six weekly. So far as recollection serves, the " Evening Standard " has published, on an average, something about one of these per week. How do they get the stuff ? Anyone with wide Fleet Street experience would know that there is nothing mystic about this.

Every newspaper in the Street has anything up to half a dozen M.P.s on its " Contacts " list. They always have had—what's the Contacts file for, otherwise ?

Some of the " contacts " are on a retainer, some get paid for what they produce, some are content to accept " payment in kind "—personal publicity. I, as news editor of the " Daily Mirror ", used to O.K. payments to several regular M.P. contacts, both for stories, " info " and tip-offs. At least two of them were prominent Labour M.P.s—one is a Cabinet Minister of such prominence as to be in the first four of potential Premiers.

That is one way any enterprising newspaper gets what the Party calls " leaks ". Another way more accurately justifies that description. M.P.s " leak " around the bar. Being no less human than subs., some M.P.s " knock 'em back " at the bar and, being less absorptive than reporters, become lubricated into loquacity.

Maurice Webb, the Party chairman, has told the Party that when he was a Lobby Correspondent he would have fallen down on his job if he had failed to pick up every story that was going. And that applies to every other reporter on that beat.

No worthwhile reporter could fail to get the stuff. If he knew no other way, and had no other contacts, all he would have to do would be to spend his time, and paper's money, at the bar, and if he did not pick up enough bits and pieces from M.P.s in search of refreshment to make a first-rate " inside " story, he ought to be fired. Herbert Morrison is not half the Party " boss " he's accused of being—if he were he'd put the bar out of bounds to Labour M.P.s, some of whom have succeeded in approaching the fringe of semi-sobriety.

Solemn Promise

On the eve of taking our seats in the House two years ago, Hector McNeil, Michael Foot and I, lunching at the Ivy, made a solemn promise to each other that we'd never drink alcohol in the House. All three of us have often wanted to break out, but none will be the first. I confess that I've worn a groove in the roadway between the House and St. Stephen's " dive " opposite !

Unlike most of my Parliamentary colleagues, I do not eat in the House—except on the rare occasions I entertain guests there. Those reporters who do should have no difficulty in picking up the bits and pieces which go to make an " inside " story. As all Press Club habitués know, I prefer their company. There we talk Fleet Street shop, all the " dirt " and the only politics is the leg-pulling of which I am a retaliatory victim.

Leaks in the Bar

Enterprising reporters who have the House for their " beat " do not spend much time in the Press Club—they eat and drink on the job. That is where and how the " leaks " are picked up. Any news editor would tell Willy Nally that. So could the cashier of any newspaper—the " Swindle sheets " of Parliamentary

reporters contain almost as many " to entertaining M.P.s " as any dance-band leader's " to entertaining B.B.C. producers ".

Some of the " Evening Standard " stories have been verbatim reports and, having been present at the meetings, I would go further and say that they were very accurate verbatim reports. Who could have taken the speeches down ? I reply : any one of the score or more M.P.s who can be seen at every Party meeting making voluminous notes. On one occasion—here I " leak "—the chairman had to appeal to them to restrain their note-taking energy.

Not that the " Standard " gets all the scoops. Both the " Star " and the " Evening News " run a good " leak service ". One of the best leaks the " Star " had was a report of what Hadyn Davies had said at a Party meeting—and how well he had said it. Despite his past associations with the " Star " nothing could convince me that Hadyn had leaked—although many of Our Dear Comrades went round that day declaring that he had taken care to get a good press.

On one or two occasions I have " leaked " a couple of words to Jack Broadbent or Percy Cater—but not so's you'd notice it. In fact, they always think I've let the " Daily Mail " down in not telling them the inside stuff. It's difficult when you take a newspaper's money for your journalistic services and sit tight, as an M.P., on the stories they really want.

Why is the Press so mustard-keen on securing and publishing all they can get about those Party meetings ? I can suggest two lines of thought and the first is that preferential treatment for one newspaper is the surest way to make all other newspapers discover means of robbing that favoured newspaper of its " scoop " position.

Copy to Dunbar

Until recently, a full report of the proceedings of the Parliamentary Labour Party private meetings was provided, by the Party secretariat, to John Dunbar, Odhams editorial chief. Six weeks ago that was changed, and in the opinion of Fleet Street, changed for the worse; so bad that it challenged every self-respecting news editor to counter-action.

At every meeting of the Parliamentary Labour Party now—and this is my third " leak " on this page—my very good friend Percy Cudlipp, the brilliant editor of the very non-brilliant *Daily Herald*, is present. He and no other editor—one newspaper is represented and no other. What did the Party think Fleet Street would do about that ? Maurice Webb, of all people, experienced in both the *Herald* and the *Express* offices, should have told the Party that Fleet Street would not take that lying down.

So soon as Fleet Street knew that one newspaper editor was being allowed into the private Party meetings every news editor decided that such meetings could not be regarded as private any longer. I have noticed that, since the *Herald* was afforded " favoured nation " treatment, every newspaper in the Street has featured the Party meetings.

My other reason is more profound: I do not believe anything should take place, concerning the political welfare of the nation, that should be kept secret from the public. I happen to be a libertarian; I believe democracy should be practised as well as preached. Basic to that is this deep conviction: the public have a right to know.

Make Meetings Open

Secret diplomacy is an evil on the Party level as in international affairs. The duty of the Press is to find out what is afoot and inform the public. Cabinet Ministers and M.P.s have no right to go into huddles, hold secret meetings to define public policy. They are merely servants of the public and their masters—indeed, their pay-masters—the public, have a right to know what their servants are doing in their name and under their authority.

In my opinion, the meetings of the Parliamentary Labour Party should be

open to the Press. That statement will infuriate my M.P. colleagues, but that is because most of them, I discover, have a supreme contempt for the Press—which they eagerly read to see if they have been reported.

Two Categories

At the Party meetings, there are two categories of subjects—purely domestic and national policy. If the Press were admitted, the domestic *trivia*—over which some M.P.s yammer and yatter as if they were important—would not even reach the " spike ". The other matters would be reported—and I hold very strongly that they should be.

Represent Public

M.P.s do not represent themselves, nor represent their Party; they represent the public. And the public have quite as much right as M.P.s to know what Cabinet Ministers are planning to do for—and with—them. Those who argue that what is being discussed and decided should be kept from the public may be very good Party loyalists and even brilliant politicians; they are not democrats.

If the Parliamentary Labour Party want to stop " leaks " there is one way and only one authority can do it. Let the Party throw its meetings open to the Press, the informants of the public. To discuss public policy behind locked doors is not only to deny knowledge to the public, but deny to the public its right to know.

Complaint of Breach of Privilege (Allighan).—On April 16,[1] the hon. member for Oxford (Mr. Hogg) made complaint of such Press publication purporting to be written by Mr. Garry Allighan containing passages reflecting on the conduct of members of this House:

And it was ordered that the matter of the complaint be referred to the Committee of Privileges.

The several paragraphs (printed in italics above) were read out by Mr. Hogg, who prefaced each with remarks and expressed the hope that the question would not be treated as a Party matter, because it reflected on the whole House. He submitted that he had made a *prima facie* of breach of Privilege " flagrant, open and gross " against the author of the article, the publisher, the owners of the newspaper and the printers, and asked Mr. Speaker for his Ruling.

Mr. Speaker then asked the hon. member to bring up the paper containing the Article (which was *duly delivered in*) and said that it was customary for the Clerk to read out the alleged breach of Privilege, but as so much had been said perhaps he could dispense with the custom on this occasion. Mr. Speaker then stated that he had no option but to declare that a *prima facie* case had been made out.

In moving his Motion—

> That the matter of this Complaint be referred to the Committee of Privileges.

Mr. Hogg said that they had the right to clear their good names in this matter. The article was almost a boast by an hon. member that he personally had assisted in the payment of money to members for the disclosure of information, and it was for the House to clear its name.

[1] 436 *Com. Hans.* 5, s. 190-8.

General allegations should not be made. Then there was the serious charge of insobriety of members, and such remarks as " Swindle sheets ". " Honour to one's own Party, if one is a member of a Party, is just as much a part of honourable conduct for a member of Parliament as voting in this House." His sole object in raising this matter was to vindicate the good name of the House of Commons.

The Motion having been seconded, Mr. Speaker said that if the hon. member referred to was in his place it was normal that he should now be heard, and then be asked to withdraw before any further discussion took place, if he were prepared to do so.

Mr. Garry Allighan: " I had been prepared this afternoon to make withdrawal complete and apology complete, but as there is now a Motion before the House, I prefer to keep what I have to say until I appear before the Committee. With your permission, Sir, I will withdraw."

(*The hon. member then withdrew.*)[1]

The Lord Privy Seal (Rt. Hon. Arthur Greenwood) stated that he would have been willing to move the Motion had nobody else risen to speak after Mr. Speaker's Ruling. The honour of the House had been impugned, and he associated himself with what had been said in the Motion.

Mr. Winston Churchill thought it was always understood that on Mr. Speaker's Ruling a *prima facie* case the Leader of the House moved the Motion, but if a private member could do it it was quite agreeable to the Opposition.

The hon. member for Ayr District of Burghs (Lt.-Col. Sir Thomas Moore) made a disclosure of his interest as a director of the company which published this journal and withdrew any possibility of association with its contents.

Question was then put and agreed to.

Personnel of Committee of Privileges.—On April 22,[2] Motion was moved:

" That Mr. Herbert Morrison and Mr. Montague be discharged from the Committee of Privileges and that Mr. Thomas Reid and Mr. Edward Davies be added." (*Mr. R. J. Taylor.*)

Mr. Churchill said that 2 important cases were now before the Committee of Privileges. This Committee had always consisted of members of considerable and usually long experience in the House. This Committee was surely of the utmost consequence. The Prime Minister used always to be on this Committee. Now 2 members were proposed, both of whom came into Parliament in 1945. A proposal is now made which entirely alters the character of this Committee.

Another hon. member, who moved the Adjournment of the debate, observed that the Law Officers themselves had not had long experience of the House. They found it difficult to accept the proposition that

[1] *Ib.* 197.

[2] 436 *Com. Hans.* 5, s. 971-87.

neither the Prime Minister nor the Leader of the House should be members of the Committee.

The Adjournment of Debate was negatived on division: Ayes, 35; Noes, 76; and after further debate, the original Question was put and agreed to.

On June 19,[1] Mr. Churchill was discharged from the Committee of Privileges and Mr. J. S. C. Reid added.

Special Report.—On July 23, the Special Report[2] and Report[3] from the Committee of Privileges were laid (*of which later*).

Questions.[4]—Questions were asked as to when debate would take place on the Report and in regard to the absence of Mr. Allighan.

Reports.—The *Special Report*,[5] dated July 22, from the Committee of Privileges on this case was laid on July 23 and ordered to be printed. The *Special Report* read:

> Mr. Guy Schofield, Editor of the *Evening News*, and Mr. Stanley Dobson, Political Correspondent of the same newspaper, witnesses before the Committee, having refused to answer certain questions[6] put to them, Your Committee have agreed to report the circumstances to the House, in order that the House may take such steps as may seem to the House to be proper and necessary.

Report.—The Report[7] from the Committee, together with the proceedings, evidence and appendices, was laid on July 23 and ordered to be printed.

Paragraph 1 gives the list of witnesses who were each examined on oath administered by the Clerk to the Committee as follows:

> Mr. Garry Allighan, the Member of the House who wrote the article complained of; Mr. Hadyn Davies, being a Member of whom the article made mention; Mr. Arthur J. Heighway, Editor and Publisher of the *World's Press News*; Mr. James Dunn, a contributor to the same; Mr. Henry Martin, Editor-in-Chief of the *Press Association*; Mr. Edward John Gilling, News Editor, and Mr. Spencer Shew, Political Correspondent of the *Exchange Telegraph Company*; Mr. Herbert Gunn, Editor of the *Evening Standard*; Mr. C. Carrdus and Mr. John L. Carvel, Assistant Editor and Political Correspondent respectively of the *Star* evening newspaper; Mr. Guy Schofield and Mr. Stanley Dobson, Editor and Political Correspondent of the *Evening News*; Mr. Gerald Barry and Mr. Geoffrey Cox, Editor and Political Correspondent of the *News Chronicle*; Mr. Cecil E. Thomas, Editor, Mr. R. W. T. Suffern, Managing Editor, and Mr. W. L. Greig, Political Correspondent, of the *Daily Mirror*; Mr. William Rust and Mr. Peter Zinkin, Editor and Political Correspondent of the *Daily Worker*; Mr. Alan Robbins, News Editor and formerly Political Correspondent of *The Times*; Mr. Arthur Christiansen and Mr. Guy Eden, Editor-in-Chief and Political Correspondent of the *Daily Express*; and Mr. C. R. Coote, Acting Managing Editor, and Mr. J. F. B. Miller, Political Correspondent, of the *Daily Telegraph*.

The Clerk of the House of Commons (Sir Gilbert Campion, K.C.B.) and Mr. L. A. Abraham (Clerk of Private Bills, who had had consider-

[1] 438 *Com. Hans.* 5, s. 2346. [2] H.C. 137 (1946-7). [3] H.C. 138 (1946-7).
[4] 441 *Ib.* 462, 628, 1647. [5] H.C. 137 (1946-7). [6] *See Rep.* of the Committee of Privileges, H.C. 138 (1946-7), Evidence, pp. 62, 69, 95. [7] H.C. 138 (1946-7).

able experience in this class of Committee) were in attendance and gave evidence.

Mr. Allighan admitted writing the article, but said he was not responsible for its heading or for the cross-headings.[1]

The Committee observed that Mr. Allighan did not in the article (*see above*) confine his statements as to the manner in which such knowledge was obtained, to information obtained merely from Party meetings, but stated that it was obtained in the way he described from members of Parliament generally, including information relating to proceedings, current or future, of Parliament. The Report then quotes certain assertions in the Article.[2]

When Mr. Allighan first gave evidence before the Committee he read a prepared statement in which he said:[3]

> " I wrote (the article) in good faith believing that what I wrote had been true within my professional experience and I sought to suggest that in those past methods of news-gathering might be found a description of how that editorial function operates now."[4]

Mr. Allighan was examined at some length and, said the Committee, his evidence seemed to be of an evasive and contradictory nature. Thus at one stage he gave the following answers:[5]

Q. 245. The Committee will have to decide whether they accept your distinction between a payment and a bribe. Is this right, that you were explaining to the public who might read the paper that the way in which this information was obtained was that M.P.s gave it either in return for payment or because they were not altogether sober ?—

A. I have said that they are two of the ways, amongst others I mentioned, in which it is possible for a newspaper to get information.

Q. 246. Those were the two main ways in which you suggested that this particular information was likely to have been obtained ?—

A. Yes. There is the other one, of course—personal publicity. But we will say those are the two main ones, if you wish.

Q. 247. By Members receiving payment in kind or in cash from newspapers or by M.P.s giving away the information when they were on " the fringe of semi-sobriety "?—

A. Yes, and you will not mind my pointing out that it is very unreal for us to discuss as to whether this can be done—giving away information—when we know it is done, when at least half a dozen papers every week run different stories which leak from at least half a dozen different sources. So we know it is done.

Q. 248. You are saying it is true ?—

A. The evidence of our own eyes tells us it is true. It is in the papers every week—at least six different stories.

Q. 249. And you are saying that those stories get out because some M.P.s either are paid to give them or give them when not altogether sober ?—

A. They could not get out except from a Member unless it was a member of the staff, and the Members who do it may do it for one of three reasons: one, for payment; two, because he talks when he has been drinking; and three, in the expectation of favours to come in order to keep in the good graces of the paper.

[1] *Rep.* § 4. [2] *Ib.* §§ 5, 6. [3] *Rep.* § 7. [4] *Q.* 99. [5] *Rep.* § 8.

Q. 250. That is what you were saying. That is how those stories leak to the *Evening Standard* ?—
A. Those are the only ways I can imagine of their leaking.

The Committee observed that Mr. Allighan had no need to draw upon his imagination in the matter, and their subsequent inquiries elicited that Mr. Allighan had himself for some time been selling detailed reports of, *inter alia*, what had taken place at private Party meetings to the *Evening Standard* for £30 a week. On the other hand, Mr. Allighan later stated:[1]

Q. 272. You are not suggesting that you know of any Member of Parliament who has done that ?—
A. Who has done it or is doing it ?
Q. 273. Who has done it ?—
A. No, not who has done it.
Q. 274. Do you wish to say that you know of any Member of Parliament who is now giving, in return for money, information about what goes on at secret party meetings ?—
A. No, I do not wish to say that.
Q. 275. I do not quite understand that answer. Do you say that you do know of any Member of Parliament who is receiving payments for giving information about what goes in at secret party meetings ?—
A. No.

Mr. Allighan, being unwilling or unable to substantiate his imputations, was in effect seeking to justify the allegations contained in his article; the Committee, therefore, called beforethem the editors, etc., to whom Mr. Allighan had referred as having published accounts of the private meeting of the Labour Party on April 23.[2]

The general effect of the evidence of the witnesses was that the Press or Lobby Correspondents indignantly repudiated the suggestion that they sought or obtained confidential information from M.P.s either by paying them in money or in kind, or when members were under the influence of drink.[3]

Two exceptions to this general evidence were the *Evening Standard*, whose Editor stated that his newspaper had received a report of the meeting from the *Trans-Atlantic Press Agency*, to which it paid a regular fee of £30 a week for reports of such meetings, etc., and that to a certain M.P., Mr. Allighan, who had supplied such reports over a considerable period. This, Mr. Allighan on being recalled, admitted. He also stated that he had a controlling interest in such Agency, and "that he had not informed your Committee before of the position because he preferred they should find it out for themselves in the course of their inquiries."[4]

The other exception was the *Evening News*, which had also published a detailed account of the meeting, obtained by the Editor (Mr. Guy Schofield) through their Political Correspondent from an M.P. to whom they paid £5 weekly in return for information on political and industrial matters generally. This was corroborated by their Lobby

[1] *Rep.* § 8. [2] *Ib.* § 9. [3] *Ib.* § 10. [4] *Ib.* § 11.

Correspondent, Mr. Dobson. Both, however, refused to disclose the name of the M.P.[1]

The Editor and Publisher of *World's Press News*, in which the article had also appeared, after unwillingness to admit its implications and prolonged examination, " made what your Committee can only regard as an entirely inadequate apology ".

In regard to the subsequent article in *World's Press News*[2] the Committee did not recommend that action be taken.[3]

Paragraphs 14 to 18 of the Report read:

14. On any view this is a case of great seriousness. It is also one of much difficulty from the point of view of the law and custom of Parliament, as is clearly shown by the evidence and memoranda submitted by Sir Gilbert Campion, to whom Your Committee are much indebted for the assistance he gave them. Your Committee are very mindful of the fact that Parliament has no right to extend its privileges beyond those to which recognition has already been accorded, and they believe that it would be contrary to the interest both of Parliament and of the public so to do. On the other hand, the absence of an exact precedent does not in itself show that a particular matter does not come within some recognized principle of Parliamentary privilege.

15. Moreover, it is to be remembered that the right to punish for contempt is by no means restricted to the case where some actual privilege has been infringed. The two matters are distinct.

16. Whether or not the matter has by analogy some relation to the privilege that Members are entitled to be free from molestation, it has long been recognized that the publication of imputations reflecting on the dignity of the House or of any Member in his capacity as such is punishable as a contempt of Parliament. It is true that the imputation upon a Member to come within this principle must relate to something which he has done as such, that is to say incidentally to and as part of his service to Parliament. Thus in an extreme case concerning *The Times* in 1887,[4] an allegation that certain Members " draw their living . . . from the steady perpetration of crimes for which civilization demands the gallows " was held not to constitute a contempt in that it did not refer to the action of the Members concerned in the discharge of their duties as such. Reflections upon Members, however, even where individuals are not named, may be so framed as to bring into disrepute the body to which they belong, and such reflections have therefore been treated as equivalent to reflections on the House itself. It is for the House to decide whether any particular publication constitutes such an affront to the dignity of the House or its Members in that capacity as amounts to a contempt of Parliament.

17. In modern times the practice of holding private meetings in the precincts of the Palace of Westminster of different parties has become well established and, in the view of Your Committee, it must now be taken to form a normal and everyday incident of parliamentary procedure, without which the business of Parliament could not conveniently be conducted. Thus, meetings held within the precincts of the Palace of Westminster during the parliamentary session are normally attended only by Members as such, and the information which is given at such meetings is, in Your Committee's view, given to those attending them in their capacity as Members. Your Committee therefore conclude on this matter that attendance of Members at a private party meeting held in the precincts of the Palace of Westminster during the parliamentary session, to discuss parliamentary matters connected with the current or future proceedings of Parliament, is attendance in their capacity of Members of Parliament. It does not, of course, follow that this conclusion attracts to such

[1] *Rep.* § 12. [2] *Ib.* § 13. [3] Appendix 2. [4] Parl. Deb. (1887) 311, c. 286.

meetings all the privileges which are attached to the transactions of Parliament as a whole.

18. It follows that an unfounded imputation in regard to such meetings involves an affront to the House as such. Your Committee consider that an unjustified allegation that Members regularly betray the confidence of private party meetings either for payment or whilst their discretion has been undermined by drink is a serious contempt.

Whether the actual betrayal of information about a private meeting of members held in a Committee room of the House or its publication in the Press constitutes a distinct breach of Privilege is a separate and more difficult matter. In regard to this, the Committee content themselves with observing that publication of secret meetings of his Party by a Member clearly involves a gross breach of confidence but is not in itself a breach of Privilege.[1]

It is, however, continued the Committee, clearly a breach of Privilege to offer a bribe or payment to a member in order to influence him in his conduct as a Member. In the Committee's view, therefore, the making of a payment in order that a member should specially note what took place at the meeting and should disclose information about it, or the acceptance of such a payment, constitutes a transaction in the nature of bribery of a Member in regard to what is part of his work in Parliament and is a breach of the Privileges of this House.[2]

The conclusions of the Committee are contained in the following paragraphs of their Report:

22. Your Committee consider that whilst the two cases which have come to light in the course of the inquiry involve a serious departure from that high standard of personal honour which is to be expected from all Members of Parliament, there is no evidence whatever to justify the general charges made by Mr. Allighan; Your Committee regard these charges as wholly unfounded and constituting a grave contempt.

23. In the case of Mr. Allighan, this contempt was aggravated by the facts that he was seeking to cast suspicion on others in respect to the very matter of which he knew himself to be guilty. and that he persistently misled the Committee.

24. Your Committee take an exceedingly grave view of the offences committed by Mr. Allighan. He gave evidence to Your Committee which they have been quite unable to accept and he indicated that he considered at the time that his duty as the employee of a newspaper took precedence over his duty to Parliament. Your Committee consider him to have been guilty of an aggravated contempt of the House of which he is a Member and of a gross breach of privilege.

25. Your Committee consider that Mr. Heighway, the Editor and Publisher of *World's Press News*, should be reprimanded.

26. Your Committee are glad to know that editors and journalists generally share their view that, quite apart from any question of privilege, transactions between newspapers and Members of the House whereby the latter disclose confidential information in return for payment by the former are discreditable to both parties and quite out of accord with the best standard of journalism.

Evidence.—Space will not admit of a précis of the evidence being given, but special attention is drawn to Qs. 1, 2, 3, 15, 42, 43, 61, 65,

[1] *Ib.* § 20. [2] *Ib.* § 21.

1869, 1870, 1915-1920, 1945-9, 1960, 1975, 1976, 1977, 1982, 1983, 1989, 2003, 2029. The Memorandum put in by the Clerk of the House of Commons, upon which much of the evidence was given, reads:

MEMORANDUM BY THE CLERK OF THE HOUSE OF COMMONS

I

Adverse Reflections on the House

1. The House has long regarded speeches or writings which reflect upon it as among the acts which constitute a breach of privilege or contempt. In 1701 the House resolved that to print or publish any books or libels reflecting on the proceedings of the House is a high violation of the rights and privileges of the House (C.J. (1699-1702) 767), and indignities by words spoken or writings published reflecting on the character or proceedings of the House have been constantly punished upon the principle that such acts tend to obstruct the House in the performance of its functions by diminishing the respect due to it. The House of Lords has also observed the same principle in punishing spoken or written reflections as a contempt.

Reflections upon Members, even where individuals are not named, may be so framed as to bring into disrepute the body to which they belong, and such reflections have therefore been treated as equivalent to reflections on the House itself.

2. In the newspaper article which is the subject of the present inquiry, it appears that a Member makes allegations of drunkenness against his fellow Members. There have been three recent precedents for the view that such an allegation in itself constitutes a gross libel and breach of privilege, namely, the cases of Mr. John (1921), Dr. Salter (1926) and Mr. Sandham (1930).

3. The present newspaper article links drunkenness with the taking of money, and in the Sandham case the words of a newspaper report declared:

> " None of these things (drunkenness and bribery) are against the sacred traditions of the House, in fact they are in keeping with them. It is known that Labour Members have accepted money from moneylenders and other interests, and it is known that Labour Members of Parliament get drunk in the House."

It would appear that apart from the primary accusations of insobriety, any reflections on a Member's financial integrity must aggravate the nature of the contempt, as the penalty imposed by the House in this case was greater than in the other two cases where the charge of insobriety alone was made.

4. There is, in the light of the precedents, some difference in degree, though not in the nature of the offence, when reflections are made by a Member on fellow members, as distinct from reflections by a stranger; this distinction is indicated by the words of admonition in Mr. Sandham's case which the House ordered to be entered in the Commons Journal:

> " It is clearly the duty of every Member to uphold the rights, the privileges and the prestige of this House, and, above all, the honour of its Members. This you have not only failed to do, but you have gone out of your way publicly to degrade it and them in the eyes of your countrymen and the world." (C.J. (1929-30) 503.)

5. In the newspaper article which now stands referred to the Committee of Privileges, another contempt may be inferred. This lies in the words:

> " I, as news editor of the *Daily Mirror*, used to O.K. payments to several M.P. contacts."

This, in its particular context, might suggest the offer of a secret commission or bribe, and the House has frequently ruled that the offer of such secret

commission in relation to proceedings in Parliament is a serious offence. The offence lies in making an offer, and that offence has always been considered a breach of privilege, on the ground that it affects the honour and dignity of the House. (See, *e.g.*, Cases of Nowis and Duncomb, below.)

6. Finally, the present article suggests that expenses are incurred " entertaining M.P.s ". To quote from a recent report by the Committee of Privileges, dealing with an offer of expenses to a Member:

"the assumption by private persons that facilities and inducements . . . can in any way affect the public duty of Members, might in itself be considered an affront to the dignity of the House." (H.C. 103 (1942-43) Evidence, p. 11.)

20*th June*, 1947. G. F. M. CAMPION.

II

CASES

EXAMPLES OF REFLECTIONS IN WRITING BY A MEMBER

1. *Case of Mr. Hall* (1580).—On 4th February, 1580, a complaint was made of a book " not only as reproaching some particular good Members of the House, but also very much slanderous and derogatory to the general authority, power and state of this House, and prejudicial to the validity of its proceedings . . . charging this House with Drunkenness, as accompanied in their counsels by Bacchus ". It was resolved that Mr. Hall, a Member, who had written the book, be apprehended and brought to the Bar of the House, in company with the printer of the book, and a Committee was set up to examine the case.

When Hall had made his apology at the Bar, it was resolved that he be committed to the Tower for 6 months, fined 500 marks, and " severed and cut off from being a Member of this House any more during the continuance of this present Parliament." The printer does not appear to have been punished. (C.J. (1547-1628) 122, 125, 126; D'Ewes 291.)

2. *Case of Mr. Scott* (1790).—On 21st May, 1790, a complaint was made of a letter by Mr. Scott in " Woodfall's Register ", containing reflections on the House in its conduct of the impeachment of Warren Hastings. It was resolved, after some debate, that Mr. Scott was guilty of a violation of his duty as a Member of the House, and of a high breach of privilege; he was accordingly reprimanded in his place by Mr. Speaker. No action was taken against the periodical. (C.J. (1790) 508, 516.)

3. *Case of Sir Francis Burdett* (1810).—On 27th March, 1810, a complaint was made of an article by Sir Francis Burdett in *Cobbett's Weekly Political Register*, which criticized the power of the Commons to alter the constitution as respecting the personal liberty of the subject. After protracted debate, Sir Francis was committed to the Tower on a division on 9th April. No action appears to have been taken against the periodical concerned. (C.J. (1810) 252; Parl. Deb. (1810) 16, cc. 136, 257, 454.)

EXAMPLES OF REFLECTIONS IN A REPORTED SPEECH BY A MEMBER

4. *Case of Mr. O'Connell* (1838).—On 26th February, 1838, a complaint was made of a speech by Mr. O'Connell, reported in the *Morning Chronicle* and the *Morning Post*, asserting that there was " foul perjury in the Tory Committees of the House of Commons . . . who took oaths according to Justice, and voted for Party ". It was resolved that Mr. O'Connell be reprimanded in his place by the Speaker; no action was taken against the two newspapers. (C.J. (1837-8) 306-7, 312-3, 316.)

5. *Case of Mr. Knox* (1893).—On 21st December, 1893, a complaint was made of a Speech by Mr. Knox, reported in the *Daily Chronicle*, in which he averred that " he was surprised that there had not been more protest against the war in the House of Commons; but one reason he would give was that the

Chartered Company had placed their shares most judiciously. Shares which would sell in the City at an enhanced price had been given to Members of the House ". Mr. Knox was heard in his place; he stated that the report was inaccurate, in that he had said the shares had been *allotted*, not *given* to Members, and he apologized for any apparent imputation of corruption. A debate then arose on a motion that the speech was a breach of privilege, and was terminated by the Previous Question. (C.J. (1893-4) 631; Parl. Deb. (1893-4) 20, c. 112.)

6. *Case of Mr. John* (1921).—On 8th November, 1921, a complaint was made of a speech by Mr. John, reported in the *Western Mail*, containing the words: " I should like to take some of the Rhondda miners to witness a debate in the House of Commons, to see the wealthy landlords coming up from their dining-rooms three parts drunk. Some of them cannot stand, and some there are who have to hold on to their chairs in order to speak in the House of Commons." A motion was made, that the speech was a gross libel and a breach of privilege, but withdrawn after an apology by the Member. (C.J. (1921) 393; Parl. Deb. (1921) 148, c. 228.)

7. *Case of Dr. Salter* (1926).—On 25th October, 1926, a complaint was made of a speech by Dr. Salter, reported in the *Daily Express*, in which he said: " I have seen many Members drunk in the House of Commons, and I am sorry to say no party is exempt." It was resolved that the speech was a gross libel on Members of the House, and a gross breach of privilege; no penalty, however, was imposed on the Member, who refused to withdraw the substance of his allegations. (C.J. (1926) 338, 340; Parl. Deb. (1926) 199, cc. 561, 709.)

8. *Case of Mr. Sandham* (1930).—On 28th July, 1930, a complaint was made that Mr. Sandham, in a speech reported in the *Manchester Guardian*, had said: " Labour Members can receive bribes to help to pass doubtful bills in the interests of private individuals; Labour Members can get stupidly drunk in this place; but none of these things are against the sacred traditions of the House, in fact they are in keeping with them. It is known that Labour Members have accepted money from moneylenders and other interests, and it is known that Labour M.P.s get drunk in the House. Our leaders can see nothing wrong in that, or, at any rate, such conduct is not bad enough to create a demand for their expulsion." Mr. Sandham was admonished in his place by the Speaker; no action was taken against the *Manchester Guardian*. (C.J. (1929-30) 477, 489, 503; Parl. Deb. (1929-30) 242, cc. 42, 309, 742.)

EXAMPLES OF REFLECTIONS IN WRITING BY A STRANGER

9. *Stuart's Case* (1805).—On 25th April, 1805, a complaint was made of a libellous statement in the *Daily Advertiser* to the effect that the King had been improperly advised in making a Ministerial appointment. The printer and publisher (Mr. P. Stuart) was ordered to attend at the Bar of the House; he was found guilty of breach of privilege, and committed to the custody of the Serjeant-at-Arms. A week later he was recalled to the Bar, reprimanded and discharged. (C.J. (1805-6) 214, 216; Parl. Deb. (1805) 4, cc. 381, 384.)

10. *Hobhouse's Case* (1819).—On 10th December, 1819, a complaint was made of a pamphlet, in which it was suggested that only the existence of the Army saved the Members of the House from the wrath of the people, and that " nothing but brute force, or the pressing fear of it would reform Parliament ". The publisher of the pamphlet, Robert Stodart, was ordered to attend at the Bar, and he declared that the author of the pamphlet was John Cam Hobhouse. The latter was adjudged guilty of a breach of privilege, and committed to Newgate Prison; no penalty was imposed upon Stodart. (C.J. (1819-20) 55-7; Parl. Deb. (1819) 41, cc. 1009-1026.)

11. *Speaker's Ruling on article in " The Times "* (1887).—With reference to an allegation in *The Times*, " that certain Members draw at once their living

and their notoriety from the steady perpetration of crimes for which civilization demands the gallows " Mr. Speaker made the following ruling on 22nd February, 1887: " The Rule is that, when imputations are made, in order to raise a case of privilege the imputations must refer to the action of Hon. Members in the discharge of their duties in the actual transaction of the Business of the House." No *prima facie* case of breach of privilege was therefore established. (Parl. Deb. (1887) 311, c. 286.)

EXAMPLES OF OFFENCES RELATING TO OFFERS OF MONEY TO MEMBERS

12. *Nowis's Case* (1694).—On 19th March, 1694, the House resolved " That Mr. Charles Nowis having, to several Persons, pretended he was out of Purse, or engaged to give great Sums of Money to several Members of this House, in order to pass the Orphans' Bill; which, on his examination, he denied to have given, or promised; hath been an occasion of Scandal to this House, and the Members thereof ", and he was committed to the custody of the Serjeant-at-Arms. (C.J. (1693-97) 277.)

13. *Duncomb's Case* (1696).—On 5th January, 1696, Mr. Pocklington reported from the Committee appointed to examine the Abuses of Prisons, and other pretended privileged Places. That it was proved before them, by Two Witnesses, That Francis Duncomb had declared, That he had distributed Money to several Members of the House, but that the said Francis Duncomb, being examined by the said Committee, had denied that he had said any such Thing, although the Witnesses had confronted him therein; And therefore that the Committee had directed, That the House should be moved, That the said Francis Duncomb might be taken into the Custody of the Serjeant-at-Arms.

Ordered, That the said Francis Duncomb be taken into the Custody of the Serjeant-at-Arms attending this House. (C.J. (1693-97) 651.)

14. *Noble's Case* (1733).—On 19th February, 1733, a complaint was made that William Noble had asserted in a Coffee-House that Sir William Milner, M.P., received a pension from the Court. On a motion that the said assertion was false and scandalous, and a breach of privilege, Noble was committed to the custody of the Serjeant; he was recalled to the Bar of the House on 28th February, admonished and discharged. (C.J. (1732-37) 245.)

15. *Cundy's Case* (1836).—On 13th July, 1836, a complaint was made that N. W. Cundy had told a Member that various Members of a Committee of the House had received money for their votes. Cundy was called to the Bar of the House and examined, but no further action was taken, since he denied the charge, and it was not possible to substantiate it. (C.J. (1836) 658, 676; Parl. Deb. (1836) 35, cc. 167, 255.)

III

NOTE BY THE CLERK OF THE HOUSE OF COMMONS SUPPLEMENTING THE EVIDENCE GIVEN BY HIM ON 23RD JUNE, 1947

The evidence which I gave to the Committee suggested that, while a charge against a Member of disclosing what took place at a private meeting would be a reflection upon a Member (Q. 75), to constitute a *breach of privilege* such reflection must be on a Member *in his parliamentary capacity*. These words are defined in May, p. 123, as " actions performed or words uttered in the actual transaction of the business of the House ". This interpretation was not sufficiently stressed in my evidence, and I therefore feel it my duty to submit this supplementary note.

Aspersions on the general conduct of Members are not reflections involving breach of privilege (Parl. Deb. (1896) 38, c. 1359), unless they relate to the actual transaction of the business of the House (including any Committee of the House).

Reflecting on a Member by saying he discloses private party information

given to him " in his capacity as a Member " could only offend against privilege, therefore, if the disclosure related to the current or future proceedings of the House. But this might not be enough to constitute a breach of privilege. The proceedings of the House itself are public, and their publication is not now treated as a breach of privilege except in special circumstances—unless, for example, misrepresentation of such proceedings also occurs. On this analogy neither the disclosure of proceedings or private party meetings, nor the imputation of such disclosure, would constitute a breach of privilege, without some aggravating circumstance, such as, possibly, an attempt to interfere with current or future proceedings of the House.

To apply these accepted principles to the case of Mr. Allighan, it would therefore not be enough to show that in his article he imputed dishonourable behaviour to Members. The dishonourable behaviour must be conduct in a parliamentary capacity, as defined above.

It was put to me in evidence (Q. 79) that if it were alleged that a Member disclosed the confidences of a party meeting in return for bribes, the additional allegation of bribery would amount to a breach of privilege. Here again it would be desirable to qualify the answer " Yes " by the words " only if the disclosure for which the bribe was accepted related to the transaction of business in the House ".

Although party meetings are not proceedings of the House, it may be argued that they are necessary for the functioning of the House, and should therefore be protected. In my view, this argument would apply also to Cabinet meetings, to meetings of a party's executive committee, or to conversations between Members, and might lead to an assertion of privilege unsupported by the law of Parliament.

Party meetings, moreover, are attended and largely organized by party officials who are neither Members nor Officers of the House, which is an additional reason why such proceedings should not be regarded as proceedings of the House. Further, if they were so regarded, not only privilege relating to disclosure, but other privileges of the House, such as the privilege of freedom of speech, would have to be extended to these meetings.

If my view of the law relating to this difficult case is correct, these conclusions follow:

(i) Party meetings are distinct from actions performed and words uttered in the actual transaction of the business of the House, and to disclose what takes place, however dishonourable such disclosure may be, is not a breach of privilege.

(ii) Disclosure of the secrets of party meetings not being a breach of privilege in itself, the acceptance of money, though increasing its dishonourable nature, would not transform the action into an offence against privilege.

(iii) The payment or acceptance of money in the precincts for such disclosure, provided it did not disturb the order and decorum of the House, would not offend against privilege, however repugnant it might be to the traditions of honourable Members.

(iv) Reflecting on Members by imputing any of the above transactions is not a breach of privilege, since the transactions themselves are not related to the proceedings of the House.

G. F. M. C.

15th July, 1947.

Debate on Special Report (*Refusal of Witnesses to Answer Questions*).—On August 12,[1] the Lord President of the Council (Rt. Hon. Herbert Morrison) moved:

[1] 441 *Com. Hans.* 5, s. 2267-2305.

That the Special Report (23rd July) from the Committee of Privileges be now considered.

In the debate on this Motion Mr. Morrison said that the reason for this Report was that it raised a special and somewhat isolated issue—namely, what was to be done about 2 witnesses who did not answer Questions put to them by the Committee of Privileges. It was important for the House to have answers to those points before dealing with the substantial issues against the 2 hon. members concerned.

Question was then put and agreed to.

Proceedings at Bar.—Motion was then made and Question proposed:

That Mr. Guy Schofield and Mr. Stanley Dobson do attend the House forthwith.

Upon Mr. Speaker being asked who would be asking the Questions, Mr. Speaker said that if the House chose to order members of the public to come to the Bar, it was his duty to ask them certain Questions. These questions he hoped would not be leading questions, but merely bring out the case and help the House in coming to a decision.

> When they come to the Bar, I tell them that I have to ask these questions. I put the questions, and ask them for their answers. I then ask them to withdraw, and we discuss the matter having heard their answers. I do not think it can hurt the witnesses or the House in any way. I can assure the House that I have looked at this question fairly to see that fair play is done on all sides.[1]

Question was then put and agreed to.

The Serjeant-at-Arms informed the House that Mr. Guy Schofield and Mr. Stanley Dobson were in attendance.

Mr. Speaker: The Serjeant-at-Arms will now bring the witnesses to the Bar.

The Serjeant-at-Arms then brought the two witnesses to the Bar.

Mr. Speaker: I have to ask you, Guy Schofield, and you, Stanley Dobson, the following questions, to which you will each reply separately. First, did you refuse to answer the Committee of Privileges when they asked you to disclose the name of a member of this House from whom you obtained the information ?

Mr. Schofield: Yes, Sir.

Mr. Dobson: Yes, Sir.

Mr. Speaker: The second question is this: Did you then understand that your refusal to answer any question put to you by the Committee of Privileges constituted an undoubted contempt of this House ?

Mr. Schofield: No, Mr. Speaker, I did not. Since now you tell me that it is so, I should like to offer you, Mr. Speaker, and to this House my humble apologies.

Mr. Dobson: No, Mr. Speaker, I did not realize it at the time. For any offence I have committed, I wish to offer unreservedly to you, Mr. Speaker, and to the House my humble apologies.

[1] *Ib.* 2275.

Mr. Speaker: Are you now prepared to answer the question which you previously refused to answer ?

Mr. Schofield: Yes, Mr. Speaker.

Mr. Dobson: Yes, Mr. Speaker.

Mr. Speaker: Was Evelyn Walkden the name of the member which you previously refused to disclose ?

Mr. Schofield: Yes, Mr. Speaker.

Mr. Dobson: Yes, Mr. Speaker.

Mr. Speaker: I direct you now to withdraw.

Mr. Schofield and Mr. Dobson then withdrew accordingly.

Contempt.—Mr. Morrison then begged to move:

That the refusal of a witness before a Select Committee to answer any question which may be put to him is a contempt of this House and an infraction of the undoubted right of this House to conduct any inquiry which may be necessary in the public interest.[1]

Mr. Morrison said that he moved this Motion in a declaratory form in order to establish a principle that shall be known by all.

The matter was one for the House as a whole to decide. The point was not one on which any doubt could be allowed to continue as regards any Committee of the House, and not simply the Committee of Privileges.[2]

During the course of the debate the Attorney-General (Sir Hartley Shawcross) said that in this case they adopted a somewhat unusual arrangement, whereby one of them on the Committee—sometimes it was the rt. hon. and learned gentleman the member for Hillhead, sometimes the rt. hon. and learned gentleman the member for West Derby, sometimes the rt. hon. and learned gentleman the member for Montgomery, and sometimes himself—put questions on behalf of the whole Committee. That was by arrangement. They asked the questions on behalf of the whole Committee in a form which the whole Committee agreed was proper. Therefore the questions were not so much his own as those of the Committee.[3]

The hon. member for Nelson and Colne (Mr. Silverman) remarked that all the lawyers in the House would realize that privilege based on the circumstances in which journalists obtained their information could not be claimed in any other court. It could not be claimed in the High Court, in a libel action, or in the police court; it could not be claimed in any other Court in the land. Why could it be supposed it could be claimed before the High Court of Parliament ?[4]

Mr. Silverman, continuing, said that they as back-benchers felt a little anxiety in case the Committee of Privileges, being a judicial body, should nevertheless become a little too much like a Court of Law to which people were summoned and were unrepresented, and in a strange atmosphere they might feel a hostile sense in not being represented in any way. It would be very much better if the members of the Com-

[1] *Ib.* 2275-6. [2] *Ib.* 2277. [3] 441 *Com. Hans.* 5, s. 2278-9. [4] *Ib.* 2284.

mittee asked their own questions and did not rely upon skilled assistance even though such might come from members of the Committee.[1]

It was further remarked by the Attorney-General, that in his view no court would have any jurisdiction to consider the finding of this High Court of Parliament as to whether or not a particular witness, by refusing to answer questions, had been guilty of contempt. It would not be open to the witness to say, " That is an irrelevant question ". It was for the Committee to judge that matter and the witness would have to answer the question.[2]

If Counsel, in examining a doctor or a journalist or one who professed a particular religion, sought to insist upon a relevant question being answered by a witness, the judge would have no authority, or right, or discretion whatever, to prevent that question being put and answered. If Counsel insisted and the witness did not answer, that would constitute an undoubted contempt of court.[3]

The law of Parliament is something quite different from the ordinary law of the land. Parliament itself is the sole judge of the law which is applicable to its proceedings. The privilege of refusing to answer incriminating questions is laid down by Statutes which apply only to particular courts, not all courts and certainly not to the High Court of Parliament. It is entirely a matter for the House of Commons to decide what privileges, if any, should protect a witness from his otherwise undoubted obligation to answer any questions put to him by the House or the Committee.[4]

The hon. member for Newton (Sir Robert Young) observed that with reference to the answers of a witness, some members here seemed to indicate that he should be entitled under certain conditions not to answer a question. If a witness was to be allowed, he would be justified in not producing papers, which any Select Committee might demand. In those papers there might be many instances of incriminating evidence which he might not wish to produce. The Committee is entitled, under the Rules of the House, to call for persons, papers and records. The hon. member had always understood that that meant that a witness had to give full information to the Committee when he was asked a question, either through its Chairman or by any one member of the Committee.[5]

Mr. Morrison stated that, individually, no member of the House could lay down Parliamentary Law. Only the House could do that, and the House was doing that by passing this Motion.

Question was then put and agreed to *nemine contradicente.*

Mr. Morrison then moved:

That in the circumstances it was not necessary to proceed further in the matter of the Special Report from the Committee of Privileges.[6]

Question put and agreed to.

Report (*Allighan*).—On October 30, 1947,[7] it was ordered:

[1] *Ib.* 2285. [2] *Ib.* 2291. [3] *Ib.* 2292. [4] *Ib.* 2297-8. [5] *Ib.* 2299, 2300.
[6] *Ib.* 2304. [7] 443 *Ib.* 1094.

That the Report (23rd July, 1947)[1] from the Committee of Privileges (on the Matter of the Complaint made on 16th April, 1947) be now considered. (*Mr. H. Morrison.*)

Report considered accordingly.

Ordered: That Arthur Heighway do attend this House forthwith. (*Mr. H. Morrison.*)

The Serjeant-at-Arms informed the House that Mr. Arthur Heighway was in attendance.

Proceedings at Bar.—Mr. Speaker then directed and the Serjeant-at-Arms acted as in the cases of Mr. Schofield and Mr. Dobson.

Mr. Speaker then said: " Mr. Arthur Heighway, you have been summoned to appear at the Bar of this House in consequence of a Report made by a Committee of this House. That Committee was directed to inquire into the matter of an article written by Mr. Garry Allighan, a member of this House, and published on the 3rd of April, 1947, in the *World's Press News*, of which you are the editor and publisher. You did not seek, so the Committee have found, to establish the truth of the article, nor did you appear willing to admit its obvious implications, but, after prolonged examination, you made what the Committee were only able to regard as an entirely inadequate apology. I have to inform you that the House is willing to hear anything that you should now say to us in answer to the findings of the Committee."

Mr. Heighway then said: " Mr. Speaker, Sir, the responsibility for the publication of that article, with its references to members of the House, for which I desire sincerely to apologize, is entirely mine. I would like to say, however, that the article came from a member of Parliament who is a professional journalist and publicist, and, because of these two factors, I wrongly allowed my guard to be lowered in respect of factors which I should have considered. For that I make no excuse. The fault was entirely mine. I accepted the article in good faith as a matter of interest to the specialized and restricted readership of my paper and without any thought that it could be an affront to the members of this House."

Continuing, Mr. Heighway said: " As to the contents of the section of the article, I should like to say that I did not appreciate then that they could be interpreted as an affront to the dignity of this House. It was not my intention at any time so to do. I now appreciate that, and for that lack of understanding and serious error of judgment on my part I do desire to tender my regret and my sincere and humble apologies to Mr. Speaker and to the members of this House."

After Mr. Speaker had directed Mr. Heighway to withdraw, Mr. Allighan *rose in his place and said:*[2]

" Mr. Speaker, Sir, in the first place I desire to express to the House, through you, my grateful appreciation of their consideration in agreeing

[1] H.C. 138 (1946-47). [2] 443 *Com. Hans.* 5, s. 1095.

to the Lord President's proposal before the Recess to postpone this debate until I was able to be present and make this statement."

During the course of his remarks, the hon. member expressed his deep regret for having written the offending and offensive article, and apologized humbly and sincerely for writing in such a way as to be an affront to the House, and withdrew publicly all the unfounded imputations against the integrity of members, frankly admitting the enormity of his offence and apologizing for it.[1]

In conclusion the hon. member said: " Mr. Speaker, I have humbly acknowledged my mistake, and nothing could be more sincere and heartfelt than my remorse for my action. Having done all that is humanly possible to do to put this deeply regretted affair straight, I am content to submit myself to this House, confident that it will act in its traditional spirit of justice and generosity."

Mr. Speaker then directed the hon. member to withdraw, and he withdrew accordingly.

Motions.—The Lord President of the Council then moved:

That the article written by Mr. Allighan and published in the *World's Press News* of 3rd April, 1947, in its general tone, and particularly by its unfounded imputations against unnamed Members of insobriety in the precincts of this House, is an affront to this House, and that both Mr. Allighan, as the writer of the article, and Arthur Heighway, the Editor and Publisher of the *World's Press News*, are guilty of a gross contempt of this House.

After a short debate,[2] in which were quoted the cases of Mr. Walsh who was, after a long debate in 1812, expelled by 101 votes to 16, a passage from a statement by Mr. Speaker Abbott (1802-1817) being quoted, the case of Sir John Bennett in 1621, and of Mr. Dennis Bond in 1732, the Question was put and agreed to.

It was then resolved:

That Mr. Allighan, in persistently misleading the Committee of Privileges in his evidence and in seeking to cast suspicion on others in respect of the very matter of which he knew himself to be guilty, has committed a grave contempt of this House in disregard to the Resolution of this House of 12th November, 1946, " That if it shall appear that any person hath given false evidence in any case before this House, or any Committee thereof, this House will proceed with the utmost severity against such offender ".[3] (*Mr. H. Morrison.*)

The Lord President then also moved:

That Mr. Allighan, a Member of this House, in corruptly accepting payment for the disclosure of information about matters to be proceeded with in Parliament obtained from other Members under the obligation of secrecy, is guilty of dishonourable conduct which deserves to be severely punished as tending to destroy mutual confidence among Members and to lower this House in the estimation of the people.

A lengthy debate followed,[4] nearing the close of which an hon. member *rose in his place and claimed to move* " That the Question be

[1] *Ib.* 1095-1100. [2] *Ib.* 1100-1110. [3] *Ib.* 1111. [4] *Ib.* 1111-1159.

now put ", *but* Mr. Speaker *withheld his assent and declined then to put that Question.*

Question was put and after division (Ayes, 198; Noes, 101) agreed to.

The Lord President thereupon moved:

That Mr. Allighan, for his gross contempts of the House and for his misconduct, do attend in his place forthwith and be reprimanded by Mr. Speaker; that he be suspended from the service of this House for six months and that his salary as a Member of this House be suspended for that period.[1]

In moving this Motion, Mr. Morrison said that in this case the House had a choice of punishments: committal to prison or the Clock Tower; reprimand, or admonition, and expulsion. Committal was too extreme and had not been used for quite a time, reprimand was inadequate, so that it boiled down to suspension or expulsion.

He did not consider that any argument which had taken place on the last Motion committed the House, logically or necessarily, to expulsion. The offence of the hon. member was exceedingly grave. Not only was it conduct that was dishonourable and unbefitting a member of Parliament, but there were other gravities connected with it, for suspicion had been cast on hundreds of other members of the House. It was an exceedingly serious offence, and it would be perfectly competent for the House to expel the member. In this case he thought compulsion would be going too far. The hon. member's constituency would be punished by suspension. They must, however, do something to mark the seriousness of the offence.[2]

There was considerable debate also upon this Motion,[3] during which the hon. member for Oxford City (Mr. Hogg) moved an amendment to leave out from misconduct to the end of the Question and to add the words: " be expelled from this House ".[4]

After further debate on this amendment, an hon. member asked the Deputy Speaker whether it would be in order to move another amendment, but the reply of the Chair was " not at this stage ", and later that they must first dispose of the amendment before the House.[5]

On the Question " That the words proposed to be left out stand part of the Question " being put, the House divided (Ayes, 75; Noes, 187); the proposed words were added, and the Main Question as amended, put and agreed to,

That Mr. Allighan, for his gross contempts of the House and for his misconduct, be expelled from this House.[6]

It was then ordered: " That Mr. Arthur Heighway be reprimanded by Mr. Speaker." (*Mr. H. Morrison.*)

Mr. Speaker thereupon said: " The Serjeant-at-Arms will direct Mr. Heighway to come to the Bar."

The Serjeant-at-Arms then brought Mr. Heighway to the Bar.

Mr. Speaker (seated in the Chair and covered) then said:

[1] *Ib.* 1159. [2] *Ib.* 1159-61. [3] *Ib.* 1159-97. [4] *Ib.* 1167. [5] *Ib.* 1187-94. [6] *Ib.* 1196, 7.

" Arthur Heighway, the House has adjudged you guilty of publishing in the *World's Press News*, of which you are the Editor, words which contain unfounded imputations against the conduct of members of this House. These words were untrue. They were a gross affront to honourable members and they were a contempt of this House. As Editor you had a high responsibility. You were not unaware of the traditions of Parliament, yet you published words calculated to tarnish them. In the name of the House I accordingly reprimand you for a gross offence against it. I now direct you to withdraw.

Mr. Heighway withdrew accordingly, and it was ordered:

That the reprimand delivered by Mr. Speaker be entered upon the Journals of the House. (*Mr. H. Morrison.*)

Personal Statement (Mr. Walkden).—On August 4, 1947,[1] the hon. member for Doncaster (Mr. Walkden) said:

" With your permission, Sir, for which I am extremely grateful, I crave the indulgence of the House to make a personal statement.

Since reviewing the Official Report of Thursday last[2] and the questions and answers referring to the report of the Committee of Privileges, I feel it to be right and honourable that I should inform the House that I am the member of Parliament referred to by the Editor and the Political Correspondent of the London *Evening News*.

I make this very frank statement because I am profoundly concerned that suspicion would, until this matter is resolved, rest on all my party colleagues.

It was not until I read the Report of the Committee of Privileges[3] that I fully realized the interpretations which were being placed upon my actions.

I must explain to the House that the essence of my relationship with the *Evening News* was in acting in a purely advisory capacity to Mr. Stanley Dobson over a wide range of political and industrial issues. In point of fact my friendship with Mr. Dobson dates back many years to a time when he was political correspondent of the *News Chronicle*, but no question of payment here ever arose. May I also make it quite clear that, apart from a feature article, I have never written one single line of any kind of the newspaper reports of the *Evening News*.

I have, of course, written several feature articles in the past for such newspapers as the *Star*, the *Daily Herald*, the *Daily Mirror*, the *Yorkshire Evening Post*, and the *Yorkshire Evening News*. But in each case they were signed articles and bore my name.

The House will be aware that it is quite a common practice for members of Parliament of all parties to discuss the political issues of the day with Lobby Correspondents in a normal, routine manner.

I have always understood that Lobby Correspondents piece together information gained from many sources before writing their stories, and in the course of their work have to do a considerable amount of cross-checking.

[1] 441 *Com. Hans.* 5, s. 991-6. [2] *Ib.* 628. [3] *See* H.C. 137 and 138 (1946-47).

It was on this basis that quite recently I entered into an arrangement with the *Evening News*, under which I was invited to give frequent guidance to their Political Correspondent, on a wide range of political and industrial subjects, to which, of course, party meetings were only incidental. But there was no change in the subject-matter as a result of the payment.

When I read the Report of the Committee of Privileges I was surprised to find that what appeared to me as a legitimate transaction had been deemed by the Committee to be in the nature of bribery.

No such interpretation had ever occurred to me, or, I am sure, to either Mr. Schofield or Mr. Dobson.

So far as meetings of the Parliamentary Labour Party are concerned, it was only after garbled and very biassed reports appeared in the *Evening Standard* that I took the opportunity when approached for guidance by Mr. Dobson, to try and render to him a little advice which would enable the *Evening News* to present a more balanced account of the proceedings without giving away anything of an essentially secret nature, but by no means was I consulted after every party meeting.

Mr. Dobson and Mr. Schofield have, by refusing to disclose my name, preserved a journalistic confidence, but I feel I cannot allow either of them to shield me in this manner.

For any offence, either apparent or pronounced, which may appear to hon. and right hon. members to have been committed by myself, I humbly beg to apologize to the House and to you, Mr. Speaker, without any reservation whatsoever.

The small income which I received for about 8 months, I reported quite openly to an income tax official when I called at Sutton in May last and discussed my returns, and will of course be taxed in the normal manner; I had no reason *not* to disclose it.

Finally, I again repeat, if only to completely absolve my party colleagues from undeserved suspicion, I submit to the House this personal explanation.

Bearing in mind that I have nearly 40 years' membership of the Labour Party and 6½ years' membership of this House, I am sure honourable and right honourable members will quite understand how much I feel my present position, as well as the depth of feeling of my regret that this connection was ever entered into, especially when I now realize the interpretation that can be placed upon it.

Mr. Speaker, Sir, I thank you for affording me this opportunity to make this explanation, and whatever course of action the House may choose to take, I can do no other than leave the judgment of my conduct to be determined by the House and my friends everywhere."

Dishonourable Conduct of a Member.—The Lord President of the Council then moved:

That the statement made by Mr. Walkden be referred to the Committee of Privileges.

Mr. Speaker: I ought to ask the hon. member for Doncaster whether he has anything further to say now. If not it is usual for the hon. member to withdraw.

Mr. Walkden: Nothing whatever to say, Mr. Speaker.

Mr. Speaker: Then perhaps the hon. member will withdraw.

The hon. member then withdrew.

The Motion was then formally seconded and, after a short debate, agreed to.

Report.—On August 4, the Report[1] from the Committee, together with the proceedings of the Committee, evidence and appendix, was laid and ordered to be printed.

The Committee held one sitting and examined on oath Mr. E. Walkden, M.P. (Qs. 1-352), Mr. Guy Schofield, the Editor, and Mr. Stanley Dobson, the Political Correspondent, of the *Evening News* (Qs. 353-358). Several times the witness was requested to withdraw while the Committee deliberated. Two draft reports were brought up, one by the Attorney-General, recommending the case as one of Privilege, and the other by Mr. James Reid, opposing such principle, the former being adopted on division (Ayes, 6; Noes, 2).

The evidence is summarized in Paragraph 2 of the Report, which reads:

> 2. Mr. Walkden gave evidence before Your Committee, and was examined by the members at length. The effect of his evidence was that he was a party to what he described as a " gentlemen's agreement " under which he gave " advice " to the Lobby Correspondent of the *Evening News* about, amongst other things, the contents of the reports to be published in that newspaper of what had occurred at private meetings of the Labour Party. He stated that he did not consider that everything that took place at such meetings was confidential, and that it was of advantage to his Party that such accounts as appeared of them were accurate. He said that it was for this reason, and not for the payment of £5 per week which he received in cash through the medium of the newspaper's Lobby Correspondent, that he assisted the *Evening News* in this way.

The conclusions of the Committee are as follows:

> 4. Your Committee are regretfully compelled to say that they formed an unfavourable view of Mr. Walkden's evidence. They feel that he has disclosed to a newspaper information about party meetings which he well knew was intended to be secret and the value of which to the newspaper concerned was, indeed, that it was confidential and not obtainable through normal sources. Your Committee entertain no doubt that, although the £5 weekly which was paid to him may have been in consideration of other services as well, it was paid by the *Evening News* and accepted by Mr. Walkden as payment *inter alia* for information about matters which had come to Mr. Walkden's knowledge in confidence as a Member of this House. Your Committee consider that Mr. Walkden should have put his duty as a Member of the House before any question of journalistic etiquette and should have disclosed his position as soon as the matter first arose.
>
> 5. Your Committee have already indicated in paragraph 21 of their main Report[2] that they regard transactions of this kind as in the nature of bribery,

[1] H.C. 142 (1946-47). [2] H.C. 138 (1946-47).

and they therefore report that, although Mr. Walkden thought fit to betray the secrets of his Party meeting for a relatively small sum, he has been guilty of a breach of privilege.

6. Your Committee see no reason to alter the general conclusion expressed in paragraph 22 of their main Report[1] that these two cases of Members giving away confidential information for money are exceptional ones and in no way indicative of any general practice on the part of Members of the House.

7. Your Committee do not consider that Mr. Walkden's evidence affects the Special Report[2] which they have presented to the House in regard to the refusal of the Editor and the Lobby Correspondent of the *Evening News* to answer questions as to the name of their informant, which were put to them by Your Committee. That Report remains before the House.

Debate on Report.—On October 30, 1947,[3] it was ordered:

That the Report (4th August, 1947) from the Committee of Privileges (on the matter of the Personal Statement made by Mr. Walkden on that day) be considered forthwith. (*Mr. H. Morrison.*)

—and the Report was considered accordingly.

Mr. Speaker: I have to ask the hon. member for Doncaster (Mr. Walkden) if he is in his place. If he cares to make any statement, the House will now be prepared to hear him.

Mr. Walkden *then rose in his place* and concluded his statement as follows:

" Mr. Speaker, I wish to tender very humbly and most sincerely to the House and to all my friends and my colleagues, my humble apologies. I therefore leave the issue of justice and righteousness to be determined by the wisdom and counsel of hon. and rt. hon. members in what I still believe will be the true traditional spirit of tolerance."

Mr. Walkden then withdrew and Mr. Morrison moved:

That Mr. Walkden, a Member of this House, in corruptly accepting payment for the disclosure of information about matters to be proceeded with in Parliament obtained from other Members under the obligation of secrecy, is guilty of dishonourable conduct which deserves to be severely punished as tending to destroy mutual confidence among Members and to lower this House in the estimation of the people.[4]

During the discussion an hon. member moved—" That the debate be now adjourned ", but the Motion was not accepted by Mr. Speaker.

After further debate, Question was put and carried on a Division (Ayes, 152; Noes, 92).[5]

The Home Secretary in moving:

That Mr. Walkden, for his misconduct, do attend in his place forthwith and be reprimanded by Mr. Speaker.

—said that, as the recommendation of the Committee of Privileges on this case had not been put to the House, the question of Privilege did not therefore arise in this case. The view of himself and his rt. hon. friend was that this case was not nearly as aggravated on

[1] H.C. 138 (1946-47). [2] H.C 137 (1946-47). [3] 443 *Com. Hans.* 5, s. 1198-1228.
[4] *Ib.* 1199. [5] *Ib.* 1220.

the one count upon which the hon. member had been found guilty as was the case of Mr. Allighan. In addition Mr. Allighan was found guilty of 2 other charges. In their view it was essential that the House should mark by its punishment some sense of the difference between the 2 offenders.[1]

After a short debate, the Question was put and agreed to.

Reprimand of Member.—

Mr. SPEAKER *then called upon Mr. Walkden by name, and* Mr. Walkden *standing up in his place uncovered,* Mr. SPEAKER, *sitting in the Chair covered, delivered the following reprimand :*

" Evelyn Walkden, the House has adjudged you guilty of corruptly accepting payment for information which you obtained from your fellow-members under the obligation of secrecy. If other members acted as you did, it would be impossible to maintian that mutual confidence without which the system under which we work would break down. Your conduct, which has been publicly exposed, lowers not only yourself, but the House, in public esteem. In the name of the House, I accordingly reprimand you for your offence against its honour."

Ordered—" That the Reprimand delivered by Mr. Speaker be entered upon the Journals of the House." (*Mr. H. Morrison.*)[2]

Further Motions in regard to the disclosure of confidential information and the powers of the Committee of Privileges were passed, but, as they occurred in the 1947-48 Session, reference to them will be reserved for the next issue of the JOURNAL. It was felt, however, that the Allighan and Walkden cases should be taken to their conclusion in this issue.

Subsequent proceedings in the House of Commons in connection with Privilege—namely, the disclosure of confidential information and the constitution of the Committee of Privileges, which took place in the early part of the 1947-48 Session—will be noticed in our next Volume of the JOURNAL.

Union of South Africa (Obstructing members coming to or going from Parliament).[3]—When the House of Assembly resumed in Committee at 8 o'clock p.m. on Wednesday, April 23, on the eve of the departure of the Royal Family for England, a complaint was made of an attempt by municipal traffic officers to obstruct members coming to or going from Parliament in cars bearing the official Parliamentary badge. The Chairman, through the Clerk of the House, reported the matter to Mr. Speaker, who, in view of S. 10 (5) of the Powers and Privileges of Parliament Act, 1911,[4] caused an urgent letter to be addressed to the Town Clerk, Cape Town, informing him of the com-

[1] *Ib.* 1221. [2] *Ib.* 1228. [3] Contributed by the Clerk of the House of Assembly.—[ED.] [4] No. 19 of 1911.

plaint and drawing attention to the paramount right of Parliament to the attendance and service of its members and requesting an explanation. On Tuesday, April 29, Mr. Speaker informed the House that he had received a letter from the Deputy Town Clerk expressing regret at the inconvenience caused, and stating that steps had been taken to prevent a recurrence of the incident complained of.[1]

Conduct of Members.—(*See* Article XI hereof.)

XVIII. REVIEWS

Parliament, its History, Constitution and Practice.[2]—A revise of the Second Edition of this excellent work, of which many subsequent impressions have been made, has been long overdue, for much water has passed under the bridge since 1919. The Home University Library is to be congratulated upon the selection of Sir Cecil Carr, the Counsel to the Speaker and the well-known authority on delegated legislation, who was for nearly 20 years Editor of Revised Statutes and S. R. & O., to revise the Second Edition of this important book of reference. The revision has been thorough, but on comparison with that Edition the present one seems to have been almost rewritten.

In the Preface Sir Cecil Carr gives a glowing outline of Ilbert's distinguished career as a scholar, Parliamentary Counsel to the Treasury, and Law Member of the Viceroy's Council in India, until he became the Clerk of the House of Commons.

The book gives a graphic description of England's constitutional progress throughout the centuries, marking how the power of the King has gradually declined and that of the Parliament increased until the present day, when so much power, encouraged no doubt by 2 great Wars, has passed into the hands of the Executive.

The chapters deal with the constitution of the House of Commons, the making of laws—most interesting and instructive to the draftsman—finance, administration, sittings and procedure, organization of the House, the member and his constituents, records, the Press and the Public, and the House of Lords. The closing chapter gives an interesting comparison between the Parliamentary system of Great Britain and that of the United States. In fact this is a most useful and informative work, carried out as it has been almost in the very shadow of the Speaker's chair.

The book also contains an up-to-date glossary of Parliamentary terms; even that curse to all who are condemned to use it, " legislation by reference ", is defined, but with undeserved moderation.

There is an extensive Bibliography of well selected works on the origin and development of the British Constitution, its working and

[1] 60 *Assem. Hans.* 3191; 1947 VOTES, 355. [2] *Parliament.* Sir Courtney Ilbert and Sir Cecil Carr, 3rd Ed. (O.U.P., Cumberlege), 5*s*.

its law, the practice and procedure of Parliament, the drafting of statutes, finance, shorter and more popular subjects and the Dominion and Overseas Constitutions, with which to pursue the studies encouraged by the Ilbert-Carr Third Edition.

Whether to the Clerk at the Table, the M.P. presiding in the House or Committee, or bent on a Parliamentary career, the Government or Parliamentary draftsman, the permanent Head of a Department or the student of Parliamentary institutions, this handy and well arranged work will prove a most useful book of reference. It should also be on every Parliamentary, University and Public Library bookshelf.

Western Australia Parliamentary Handbook.[1]—The Fourth Edition of this very useful and informative record of the Western Australian State Parliament was reviewed in Volume XIII (p. 266) of our JOURNAL. The Fifth Edition reviewed up to 1947 has now been received, and is well up to the standard of its predecessor.

XIX. 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[2] 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[3] gave a list of works on Canadian Constitutional subjects and Volumes IV[4] and V[5] a similar list in regard to the Commonwealth and Union Constitutions, respectively.

Volumes II,[3] III,[6] IV,[7] V,[8] VI,[9] VII,[10] VIII,[11] IX,[12] X,[13] XI-XII,[14] XIII,[15] XIV[16] and XV[17] 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.

[1] *The Western Australia Parliamentary Handbook*, 1947 (Perth, Govt. Printer).
[2] 123-6. [3] 137, 138. [4] 153-4. [5] 223. [6] 133. [7] 152.
[8] 222. [9] 243. [10] 212 *et seq.* (starred items). [11] 223-6 (starred items).
[12] 170. [13] 196. [14] 267. [15] 270. [16] 274. [17] 297.

Amery, Rt. Hon. L. S.,—Thoughts on the Constitution. (O.U.P. London: Cumberlege.) 8*s.* 6*d.*

Carrington, C. E.—An Exposition of Empire. (C.U.P.) 3*s.* 6*d.*

Corry, J. R.—Democratic Government and Politics. (University of Toronto Press. London: Cumberlege.) 21*s.*

Crocker, Walter Russell.—On Governing Colonies. (Allen & Unwin.) 10*s.* 6*d.*

Eggleston, Wilfrid.—The Road to Nationhood: A Chronicle of Dominion-Provincial Relations. (O.U.P. London: Cumberlege.) 12*s.* 6*d*

Greenwood, Gordon.—The Future of Australian Federalism. (Melbourne University Press. London: Cumberlege.) 17*s.* 6*d.*

Hemingford, Lord.—What Parliament is and does: An Introduction to Parliamentary Government in the United Kingdom. (C.U.P.) 6*s.*

Ilbert, Sir Courtney, and Carr, Sir Cecil.—Parliament. III Ed. (O.U.P.: Cumberlege.) 5*s.*

Journal of Comparative Legislation and International Law. Third Series. Vol. XXIX. Parts I & II, May, 1947, and Parts III & IV, November, 1947. Royal Empire Society, Northumberland Avenue, London, W.C.2.

Lindsay, Martin.—The House of Commons. Britain in Picture Series. (Collins.) 5*s.*

Quekett, Sir Arthur S.—Constitution of Northern Ireland. Part III. Foreword by Sir Cecil Carr. (Belfast: H.M.S.O.) 15*s.*

Reis, Charles.—The Government of Trinidad and Tobago. III Ed. Port of Spain, Trinidad. (Yuille Printerie. London: Sweet & Maxwell.) 15*s.*

The British Commonwealth and World Society.—Frost, Richard, Ed. (O.U.P. London: Cumberlege.) 15*s.*

Wheare, K. C.—The Statute of Westminster and Dominion Status. Third revised Edition. (O.U.P. London: Cumberlege.) 12*s.* 6*d.*

Wright, Martin.—The Gold Coast Legislative Council. (Faber & Faber.) 12*s.* 6*d.*

XX. LIST OF MEMBERS

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Honorary Secretary-Treasurer and Editor : Owen Clough.

XXI. 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.*

Bhatnagar, Rai Bahadur Kailash Chandra, M.A.—Secretary of the Legislative Council of the United Provinces, India, and Assistant Secretary to the Government of the Province on creation of this office, May 5, 1937, the Secretaryship of such Council being *ex officio*; was previously temporary Superintendent in the United Provinces Secretariat; officiated as Secretary of the Legislative Assembly, April 28 to December 27, 1939; officiated as Secretary, Legislative Assembly of the United Provinces from April 1, 1946, to July 15, 1946. Appointed permanent Secretary of the Legislative Assembly on January 26, 1947. Title of Rai Bahadur conferred in 1946.

Chen, G. E.—Clerk of the Legislative Council of Trinidad and Tobago; Principal Officer Grade I, Secretariat. Joined Government Service September 1, 1933, as a Junior Clerk in the Post Office and Savings Bank Department; promoted and transferred to the Secretaria September 1, 1937; appointed on December 13, 1946, to carry out the duties of Clerk of the Executive and Legislative Councils of Trinidad and Tobago.

Deraniyagala, R. St. L. P., B.A.(Cantab.).—*b.* October 27, 1904; Barrister-at-law (Inner Temple); Crown Counsel, 1934; Assistant to the Legal Secretary, 1936; Secretary to the Matara Commission in addition to his own duties, 1942; Clerk-Assistant to the State Council, 1946; Clerk of the State Council, 1947; acted as Crown Counsel for various periods from November 21, 1927, to September 30, 1934.

Hawley, L. P.—Clerk-Assistant and Librarian, Legislative Assembly, Western Australia; *b.* Perth, Western Australia, June 9, 1905; *m.* 1932, 2 d.; *ed.* Scotch College, Western Australia; entered State Public Service, 1924; acted, on loan, as Clerk-Assistant Legislative Assembly 1930 session; resigned Public Service, 1933; appointed Clerk of Records and Accounts, Legislative Assembly, 1933; appointed to present position 1948.

Islip, F. E., J.P.—Clerk of the Legislative Assembly, Western Australia, since 1948; *b.* London, England, 1899; *ed.* Subiaco and perth Boys' Schools; *m.* 1937, 2 *s.*; joined Messenger staff Legislative

Assembly, 1915; Assistant Clerk of Records, 1919; Clerk of Records and Accounts, 1931; Clerk-Assistant and Sub-Librarian, 1933; Clerk-Assistant and Librarian, 1945; Secretary Joint Printing Committee, 1948; Hon. Secretary Western Australian Branch of Empire Parliamentary Association, 1948.

Jamieson, H. B.—Clerk of the Legislative Council, Victoria, Australia; *b.* Melbourne, 1899; appointed to Public Service as Clerk to the Crown Solicitor, 1916; on active service with the Australian Military Forces, 1918-1919; Associate to His Honour Mr. Justice McArthur of the Victoria Supreme Court, 1924; Clerk of the Records and Legislative Council, 1926; Clerk-Assistant and Clerk of Committees Legislative Council, 1931; appointed present position July 31, 1947.

Ojo, S. A., Hon. M.B.E.—Clerk of the Legislative Council of Nigeria since June 20, 1946; third-class Clerk Provincial Administration, 1919; second-class Clerk, 1920; promoted Grade III Clerk, H.D., 1923; first-class Clerk, 1926; Assistant Chief Clerk, 1939; Chief Clerk, 1941; Assistant Secretary (Administrative Officer Class IV), 1942. Awarded Honorary M.B.E. by His Majesty the King, June 12, 1947.

Pande, S. A., M.A., LL.B.—Secretary to the Central Provinces and Berar Legislative Assembly; *b.* August 2, 1900; joined the Central Provinces and Berar Civil Service (Judicial) as Subordinate Judge, second class, October 18, 1927; Additional District and Sessions Judge, March 27, 1943, to September 11, 1945, and as Assistant Legal Remembrancer and Under-Secretary to Government, Central Provinces and Berar in the Judicial, Legal, Legislative and Assembly Departments, October 17, 1945, to June 10, 1947; officiated as Legal Remembrancer and Secretary to Government, Central Provinces and Berar, Legal, Judicial, Legislative and Assembly Departments June 11 to August 14, 1947; appointed Deputy Secretary to Government in the Legislative and Assembly Department and Secretary to the Central Provinces and Berar Legislative Assembly, August 15, 1947.

Samerawickrame, E. V. R.—Clerk of the Senate of Ceylon. Magistrate February 6, 1935, to February 18, 1940; District Judge, February 19, 1940, to March 31, 1943; attached to Department of the Principal Assistant to the Legal Secretary, April 1 to December 31, 1943; Acting Principal Assistant to the Legal Secretary, January 1, 1944, to October 13, 1947; appointed to present post, October 14, 1947.

Sarah, R. S.—Clerk-Assistant and Clerk of Committees, Legislative Council, Victoria, Australia; *b.* Gisborne, 1899; appointed to the Public Service as Clerk in the Official Accountant's Branch of the Department of Law, 1916; Assistant Clerk of Courts, 1916-17; Clerk in the Office of the Crown Solicitor, 1917; Clerk in the Records and Clerk assisting at the Table, Legislative Council, 1931; Secretary to the House Committee, 1933; Usher and Clerk of Records of the Legislative Council, 1935; appointed present position July 31, 1947.

Thomson, Major G. T., D.S.O., M.A.(Belfast).—Clerk of the Parliaments, Northern Ireland; Parliamentary Librarian, 1921; Second Clerk-Assistant, 1925; Clerk-Assistant, 1929; acting Clerk of the Parliaments during absence on active service of Lt.-Colonel A. O'N. Chichester, O.B.E., M.C.; commended for services during the visit of the King and Queen to Stormont. *Ed.* Royal Belfast Academical Institution; M.A.(Hons.) Belfast; student at the Assembly's College, Belfast, 1914, completing his Divinity course and becoming a Licentiate of Belfast Presbytery, 1919. Officer 12 Royal Irish Rifles (Central Antrim) raised for Ulster Division; went to France for course of instruction, 1914; at first Battle of Ypres; Adjutant of his Regiment; returned to France with Ulster Division, 1915; Battle of the Somme, July 1, 1916; Messines-Wytschaete Ridge, June 7, 1917; Commanded his Battalion as Acting-Lt.-Col. 9 months, in advance on Flanders; awarded Croix de Guerre, 1917; D.S.O. Kemmel Hill, 1918; twice mentioned in despatches. On demobilization became one of the founders of the Larne Branch of the British Legion, 1920-21; in World War II was prominently associated with the Civil Defence Authority as Chief District Officer, East Belfast.

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