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. XVII

FOR 1948

LONDON:
BUTTERWORTH & CO. (PUBLISHERS), LTD.
BELL YARD, TEMPLE BAR

SYDNEY: MELBOURNE: BRISBANE:	BUTTERWORTH & CO. (AUSTRALIA), LTD.
TORONTO:	BUTTERWORTH & CO. (CANADA), LTD.
WELLINGTON (N.Z.): AUCKLAND:	BUTTERWORTH & CO. (AUSTRALIA), LTD.
DURBAN:	BUTTERWORTH & CO. (AFRICA), LTD.

1949
[*Registered at Stationers' Hall*]

Price 30 *shillings*

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

CONTENTS

* *Questionnaire* subjects.

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

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

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

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

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

VOL. XVII FOR 1948

THE KING: ROYAL STYLE AND TITLES[1]

With reference to the statutory authorities cited in the last issue of the JOURNAL in regard to the changes in the Royal Style and Titles of the King, the following is the text of the Proclamation which appeared in *The London Gazette* of June 22, 1948.

BY THE KING: A Proclamation

"Whereas at the time of the coming into force of the Indian Independence Act, 1947, Our Style and Titles were, in the Latin tongue, 'Georgius VI Dei Gratia Magnæ Britanniæ, Hiberniæ et terrarum transmarinarum quæ in ditione sunt Britannica Rex, Fidei Defensor, Indiæ Imperator', and in the English tongue, 'George VI by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India'.

"We have thought fit, and do hereby appoint and declare, that, so far as conveniently may be, on all occasions and in all instruments wherein Our Style and Titles are used, in the Latin tongue, the words 'Indiæ Imperator', and, in the English tongue, the words 'Emperor of India' shall be omitted.

"Given at Our Court at Buckingham Palace, this Twenty-Second day of June, in the year of our Lord One thousand nine hundred and forty-eight and in the Twelfth year of Our Reign."

"GOD SAVE THE KING"

I. EDITORIAL

Introduction to Volume XVII.—In the year under review in this issue of the JOURNAL the British Commonwealth and Empire has suffered loss by Burma and now actually Eire contracting out of the Commonwealth, and brief accounts are given of the respective con-

[1] *See* JOURNAL, Vol. XVI, 5.

stitutional actions taken to transfer the allegiance of these 2 new states.

On the other hand the Commonwealth has gained a new dominion in Ceylon, the new Constitution of which is referred to in this issue. A description is also given of the presentation of a Speaker's Chair and Mace by the House of Commons to Ceylon's new Parliament.

In the sub-continent of India, at the time of going to press, while the Dominion of Pakistan has announced her intention of remaining in the Commonwealth, the Dominion of India although now to become a republic, yet acknowledges the Crown as the symbol of her connection with the Commonwealth.

In Australia the principal constitutional changes have been, the increase in the membership of both Houses of the Federal Parliament and the change in the method of elections to the Senate by which P.R., with the single transferable vote, has been substituted for the former preferential system, each State still to remain a single constituency.

On the North American Continent the proceedings in connection with the future of Newfoundland are taken up to the end of 1948 and show a final decision by Referendum to join the Canadian Confederation.

In the Far East, a new form of Federal constitution has been devised for the heterogeneous population of what was for a short time the Malayan Union, in the Federation of Malaya which embraces several forms of government.

In East Africa a super legislature has been created under the East African High Commission, which, with a Central Legislative Assembly, is performing functions of Government in regard to common services in Uganda, Kenya and the Trust Territory of Tanganyika. There have also been constitutional changes of a minor nature in Mauritius and Northern Rhodesia.

In the West Indies, closer union has been further considered in Conference by the British West Indian Territories and a Caribbean Federation is foreshadowed.

In the Mediterranean, the new Constitution for Malta is now under way, but the people of Cyprus are still undecided as to their future form of Government.

At Westminster, the Parliament Bill 1947-48 has passed through its second phase and in New Zealand the efforts of the Joint Select Committee of the 2 Houses set up to consider the question of whether her Legislative Council should be either ended or mended, have proved abortive.

Parliamentary procedure has been much under investigation both at Westminster and Ottawa. The Commons House of the United Kingdom has by another Select Committee crowned the work of its Select Committee of 1945-46, while the House of Commons of Canada has proceeded further by Select Committee, following the

Special Report on the subject by their Speaker dealt with in our last issue.

This Volume of the JOURNAL also contains an important Article on the Private Bill Procedure of the House of Lords, which is a complement to that on such procedure in the House of Commons by another expert, which appeared in Volume XIV.

These 2 Articles bring up to date the wide revision there has been of the Private Bill Standing Orders of the 2 Houses of Parliament at Westminster in order to adapt them to present-day conditions.

In addition to the perennial Article on Precedents and Unusual Points of Procedure in the Union House of Assembly by an Overseas expert, he also contributes an Article on the recent Select Committee investigation by the House of Commons in regard to Hybrid Bill procedure.

In the maintenance of those high traditions for which the Mother of Parliaments is always so concerned, the House of Commons in the year now under review ordered an inquiry, this time by a Select Committee, into the disclosure of Budget secrets which resulted in the Chancellor of the Exchequer having to relinquish that high office.

The subject of the disclosure of confidential information has also arisen as an aftermath of the Allighan and Walkden Reports, of which an account was given in the last Volume of the JOURNAL.

Many subjects of Parliamentary interest are dealt with under "Editorial", giving instances of other Overseas Parliaments increasing the salaries, both of their Ministers, Speakers and Members, as well as those of the Leader of the Opposition.

Party Whips in some cases are also to receive allowances from Treasury Funds. Under Applications of Privilege instances are reported both at Westminster and Overseas.

This Volume also records the rather unusual example of legislative procedure in connection with the acquisition of territory by the Union of South Africa in the annexation of the Prince Edward Islands.

Owing to the Editor paying a visit to England, the JOURNAL is going to press earlier this year. Therefore the usual Article on Some Rulings by the Speaker and his Deputy at Westminster in the 1947-48 Session will stand over for inclusion in Volume XVIII together with those given of the 1948-49 Session.

For the same reason much other matter which is usually included under Editorial has also had to stand over, including references to delegated legislation in the United Kingdom and Northern Ireland, but the leeway will be made up in the next issue of the JOURNAL.

As so much of the work on the JOURNAL in connection with a survey of the previous year, naturally, cannot be undertaken until some time after that year has expired, strenuous efforts have had to be taken to complete this Volume, almost 4 months before the usual

pre-war month. This early publication, however, would have been quite impossible without the willing efforts of our generous contributors and other ardent collaborators.

Acknowledgement to Contributors.—We have pleasure in acknowledging Articles in this Volume from: Mr. Henry Burrows, The Chief Clerk, Office of The Chairman of Committee, House of Lords; Mr. A. A. Tregear, B.Com., A.I.C.A., Clerk-Assistant of the Australian House of Representatives; Mr. J. E. Edwards, J.P., Clerk of the Australian Senate; Mr. Ralph Kilpin, J.P., Clerk of the Union House of Assembly; Mr. R. St. L. P. Deraniyagala, B.A., Clerk of the Ceylon House of Representatives; Mr. P. O. Wickens, Clerk of the Councils, Federation of Malaya; and Mr. D. W. B. Baron, Clerk of the East Africa Central Legislative Assembly, East Africa High Commission.

We are also indebted for Editorial paragraphs to: Sir Frederic Metcalfe, K.C.B., Clerk of the House of Commons; Mr. George Stephen, Assistant Clerk in Chamber of the Legislative Assembly, Saskatchewan; Mr. A. A. Tregear, The Clerk-Assistant of the Australian House of Representatives; Mr. H. Robbins, M.C., Clerk of the New South Wales Legislative Assembly; Mr. F. E. Wanke, Clerk of the Parliaments and Clerk of the Legislative Assembly, Victoria; Mr. T. Dickson, J.P., Clerk of the Queensland Parliament; Captain F. L. Parker, F.R.G.S.A., Clerk of the Parliaments and Clerk of the House of Assembly, South Australia; Mr. F. E. Islip, J.P., Clerk of the Legislative Assembly, Western Australia; Mr. Ralph Kilpin, J.P., Clerk of the Union House of Assembly; Mr. M. M. Kaul, Secretary of the Indian Constituent (Legislative) Assembly; Mr. K. Ali Afzal, Deputy Secretary of the Pakistan Constitutional Assembly; Mr. S. A. E. Hussein, B.A., LL.B., Secretary of the East Bengal Legislative Assembly, Pakistan; Mr. C. C. D. Ferris, O.B.E., Clerk of the Legislative Assembly of Southern Rhodesia; the Colonial Secretary, Cyprus; and the Colonial Secretary of Northern Rhodesia.

Lastly we are grateful to all members for the valuable and interesting matter they have sent in and for the co-operation they have so willingly and generously given.

Particularly should we appreciate being allowed to mention the ready and willing assistance rendered by the Librarian, and his Staff, of the Union Parliament at Cape Town, where much of our reference work is carried out.

Questionnaire **for Volume XVII.**—There are still a number of Articles on *Questionnaire* subjects awaiting publication, but so much space has to be devoted to current subjects that the publication of these Articles has had again to be deferred. A long deferred *Questionnaire* subject, "Members of Parliament and Government Contracts", however, now appears.

Owing to early publication of the JOURNAL this year it has not been

found possible to include Articles on the new subjects suggested by members in the *Questionnaire* for this Volume.

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:

Created a Baron.—Sir Henry J. F. Badeley, K.C.B., C.B.E., lately Clerk of the Parliaments.[1]

K.C.B.—Sir Frederic W. Metcalfe, Clerk of the House of Commons.

F. G. Steere, I.S.O., J.P.—It was only in the last issue of the JOURNAL[2] that we paid tribute to the services of Mr. Steere upon his retirement. Now, we regretfully mourn the death of our dear friend and Foundation member. It was known that his health had not been so good in recent years, and it is sad to reflect that he was not to enjoy some of the fruits of his 46 years' splendid service to the Legislative Assembly of the State of Western Australia. His counsel and advice are now beyond reach but his example of efficiency and training are now in the keeping of his able successor, Mr. F. E. Islip, to whom we are deeply indebted for the following obituary notice:

Mr. Francis Grylls Steere, I.S.O., J.P., who was Clerk of the Legislative Assembly in Western Australia from 1931 to 1948, passed away at Perth on January 7, 1949, after a short illness. The deceased gentleman had not enjoyed good health for some years past, but his sudden death came as a great shock to his many Parliamentary friends.

A cremation ceremony took place at the Karrakatta Cemetery on Saturday, January 8, 1948, at which the Rev. A. C. Hawke of the Congregational Church officiated. The pall-bearers included the Premier (Hon. D. R. McLarty, M.L.A.), Hon. J. T. Tonkin, M.L.A. (a former Minister for Education), Hon. Sir Charles Latham, M.L.C., Hon. Sydney Stubbs, C.M.G. (a former Speaker), Mr. F. E. Islip, Clerk of the Legislative Assembly, and Mr. L. L. Leake, Clerk of the Legislative Council.

The Rev. A. C. Hawke delivered a moving address, in which he eulogised the late Mr. Steere's public career as an Officer of the State Parliament for 46 years. Mr. Steere had also been a faithful and conscientious worker for his Church, and the community would be poorer by his passing.

A large number of friends attended the funeral, including many members and ex-members of both Houses of Parliament. A very large number of beautiful floral wreaths paid tribute to the memory of our late friend, and we mourn with the members of his family.

[1] The tributes paid in the House of Lords to Sir Henry Badeley, on his retirement, will be given in the next issue of the JOURNAL as this Volume was already in the hands of the Printer.—[ED.].

[2] Vol. XVI, 14.

The Editor of this JOURNAL begs the privilege of being allowed to associate himself in the sympathies expressed to members of Mr. Steere's family by Mr. Islip, upon the passing of a distinguished Officer of Parliament, whose whole life's record was one of loyal devotion to his State and her Parliament. Right well did he bear the torch left him by his Chief, Arthur Ronald Grant, I.S.O., B.A. (Cantab.), whose death we announced in Volume XIII of the JOURNAL. That renowned Clerk of the Commonwealth House of Representatives, Walter Gale, C.M.G., who was one of those associated with the writer in the founding of this Society but who passed away before the first Volume of its JOURNAL was issued, also hailed from this State, as did many distinguished Statesmen at Canberra.

We commend to Clerks-at-the-Table the fine tribute paid by the Premier, Mr. Speaker and others in this State Parliament, to Mr. Steere on his retirement, alas, only last year.

United Kingdom (Ministry of Commonwealth Relations).[1]—With reference to the Editorial Note on this subject in Volume XVI of the JOURNAL, an Order in Council—The Ministers of the Crown (Commonwealth Relations Order[2]—dated July 3, 1947, was issued under the Ministers of the Crown (Transfer of Functions) Act, 1946,[3] changing the style and title of the Secretary and the Under-Secretary of State for Dominion Affairs to Secretary and Under-Secretary of State for Commonwealth Relations respectively. The Order amends the Second Schedule of the Ministers of the Crown Act, 1937, accordingly.[4]

United Kingdom (Ministers of the Crown (Treasury Secretaries)).[5]—In moving 2*R.* of the Minister of the Crown (Treasury Secretaries) Bill in the Commons on December 3, 1947,[6]

to provide for the salary of an Economic Secretary to the Treasury and to render the holder of that office capable of being elected to, and of sitting and voting in, the House of Commons,

the Chancellor of the Exchequer (Rt. Hon. Sir Stafford Cripps) said that its object was to enable the Government to appoint an Economic Secretary. There were 2 Secretaries to the Treasury, one of whom was Patronage Secretary. Now that fresh work had come to the Treasury which the Chancellor had formerly done as Minister

[1] *See also* JOURNAL, Vols. XI-XII, 19; XV, 18; XVI, 16. [2] S.R. & O. 1947 No. 1422. [3] 9 & 10 Geo. VI, c. 31. [4] *See* JOURNAL, Vol. VI, 12. [5] *See also* JOURNAL, Vols. V, 18; VI, 12. [6] 445 *Com. Hans.* 5, s. 469.

of Economic Affairs, it was essential that there should be another junior Minister—the Economic Secretary—to assist in the work.

It was also imperative that they should develop both the sale of their goods in hard currency markets and their sources of supply from soft currency countries and especially from the rest of the Sterling area. It was also necessary to develop new sources of supply from the Colonies, which three-fold task affected the responsibilities of his rt. hon. Friends, the Colonial Secretary and the President of the Board of Trade, as well as of himself. They had therefore asked the Paymaster-General to undertake this special work which made it impossible for him to take on the duties of Economic Secretary to the Treasury.

Besides assisting in the co-ordination of the plans of expansion and development, he would visit Overseas countries. His hon. Friend would have at his disposal advice from the Board of Trade, Colonial Office, Treasury, etc.

The salaries of Ministerial officers were governed generally by the Ministers of the Crown Act, 1937,[1] which limited the number of junior Ministers to 2 and laid down their salaries, namely £3,000 for the Parliamentary Secretary to the Treasury and £2,000 for the Financial Secretary. Clause 1 of the Bill therefore amends the Principal Act by providing for the payment of the holder of the new post similar to that of the Financial Secreary.

The second sub-paragraph raises to 3 the existing limit of 2 junior Ministers in the Treasury and brings about a necessary extension to cover the new post of Parliamentary Under-Secretary.

The disqualification for membership of the Commons was removed by bringing the new post within the scope of the Principal Act, which benefit would be extended thereunder to the new office in respect of salary.

After the 2 *R.* stage, the House thereupon went into *C.W.H.* on the Financial Resolution authorizing the salary for the new post, which was reported and proceeding under a special Procedure Resolution of the same day, as a matter of urgency,[2] the Bill passed 3 *R.*, was sent to the Lords, agreed to and became 10 & 11 Geo. VI, c. 5.

United Kingdom (Offices or Places of Profit under the Crown).—The following Acts of 1948 require members of the House of Commons to "resign their seats" in the event of accepting certain positions on Boards, etc., to be set up under the Acts:

The National Assistance Act, 1948;[3] the Overseas Resources Development Act, 1948;[4] and/or the Development of Inventions Act, 1948.[5]

The disqualification was from allowing a member of the House of Commons to serve on, respectively,

The National Assistance Board; the Colonial Development Cor-

[1] 1 Edw. VIII & 1 Geo. VI, c. 38. [2] 445 *Com. Hans.* 5, s. 206, 394.
[3] 11 & 12 Geo. VI, c. 29. [4] 11 & 12 Geo. VI, c. 15. [5] 11 & 12 Geo. VI, c. 60.

poration; the Overseas Food Corporation; and/or the National Research Development Corporation.[1]

United Kingdom (Delegated Legislation: "Laying" of Documents).[2]—*Select Committee.*—On October 23, 1947,[3] a Select Committee was appointed, with the same order of reference as given in the last issue of the JOURNAL.[4]

On December 17, 1947,[5] the Solicitor-General moved the following 3 Motions in the House of Commons:

That the Order of Reference (23rd October) to the Select Committee be amended in line 3, by inserting after " 1893," the words " or Statutory Instrument " and by inserting after the word " Order " the word "Instrument ".
That the Select Committee have power to consider any notification, which, having been sent to Mr. Speaker under the proviso to sub-section (1) of Section 4 of the Statutory Instruments Act, 1946, has been laid by him upon the Table of the House.

The third Motion was the proviso to S.O. 94, which has already appeared in the JOURNAL,[6] as embodied in that Standing Order.

The first 2 Motions extended the terms of reference of what is called "the Scrutiny Committee". They were made necessary by the fact that the Statutory Instruments Act, 1946, comes into operation on January 1, 1948.

The first Motion extended the terms of reference to enable such Committee to take into consideration Statutory Instruments. The second enabled such Committee to take into consideration notifications which Mr. Speaker lays on the Table when an instrument is made to come into operation before it is laid. The third makes a slight amendment to the new S.O. 94, which the House adopted on November 5, by limiting the Statutory Instruments to which it applied to those which, under S. 4 of such Act, have to be laid before they come into operation. The 3 Motions were then put and agreed to.

Bill for the Act of 1948.—The laying of Documents before Parliament (Interpretation) Bill [131]—

to declare the meaning of references in Acts of Parliament and subordinate legislation to the laying of instruments or other documents before Parliament or before either House of Parliament, and the effect during a vacancy in the office of the Lord Chancellor or of the Speaker of the House of Commons of the requirement in section four of the Statutory Instruments Act, 1946, to send notification forthwith to each of them of an instrument's being made so as to operate before it has been laid before Parliament

—originated in the Lords and in moving 2 *R.* in the Commons on July 23, 1948,[7] the Financial Secretary of the Treasury said that this was a technical measure and had not been agreed to by another place without a great deal of debate. Its main purpose was to make plain

[1] Contributed by the Clerk of the House of Commons.—[ED.]. [2] *See* JOURNAL, Vol. XVI, 16. [3] 443 *Com. Hans.* 5, s. 379. [4] Vol. XVI, 33, 4.
[5] 445 *Com. Hans.* 5, s. 1824. [6] Vol. XVI, 142. [7] 454 *Com. Hans.* 5, s. 796, 7.

by enactment what constituted the laying of documents before Parliament. Certain doubts had been expressed and this Bill was designed to remove them. Those doubts arose in the following way. Before the Statutory Instruments Act, 1946, came into operation on June 1, 1947, subordinate legislation which had to be laid before Parliament under any Act did not generally have to be so laid before it took effect. The usual provision was that it should be laid as soon as may be after it was made.

(*Mr. Glenvil Hall then went on to quote from the new S.O.* 94.[1])

The object of S.O. 94, continued the Financial Secretary, was to enable Instruments to which it applied to be laid before the House at times when the House might not be sitting—on a Saturday or during a Recess. The reason for that was to reduce the occasions on which it would be necessary to use the special procedure of the proviso to S. 4 (1) of the 1946 Act.

When a similar Standing Order was moved in another place, objection was taken on the grounds that it was *ultra vires*. It was argued that it would have the effect of amending Acts of Parliament by providing a new system of laying Instruments and, in particular, that S. 4 of the Statutory Instruments Act implied that the process of laying there referred to was the process of force at the time of the commencement of the Act and therefore that it could not be altered consistently with the Act.

There had been sharp division on the point, both lay and legal. The result was that the only prudent course to take would be to settle those doubts by introducing the present Bill.

Clause 2 amended the flaw they were advised was to be found in S. 4. (1) of the 1946 Act. The special procedure there laid down required notification to be given to the Lord Chancellor " or to you, Sir ", forthwith, if it was essential that an Instrument should operate before copies could be laid. But no provision had been made for the eventuality that one or other of those offices might be vacant. Clause 2 therefore provided that if such a vacancy occurred at the material time, it would be enough to notify the new holder of the office immediately upon his appointment and such notification would be effective. After considerable debate the Bill passed 2 *R.* and was taken in *C.W.H.*,[2] when several amendments were proposed, but either negatived or withdrawn and the Bill was reported without amendment and passed 3 *R.* Message was then sent to the Lords notifying agreement and the Bill duly became 11 & 12 Geo. VI, c. 59.

United Kingdom (Statute Law Revision).—In moving 2 *R.* of the Statute Law Revision Bill in the House of Commons on July 16[3] the Solicitor-General (Sir Frank Soskice) said that the Bill which originated in the House of Lords, had been prepared as a result of recommendations made by the Statute Law Committee. The object

[1] *See* JOURNAL, Vol. XVI, 142. [2] 454 *Com. Hans.* 5, s. 817-828.
[3] 453 *Com. Hans.* 5, s. 1650; *see also* H.L. 60—II, 115—I; H.C. 170—I (1947-48).

was to eliminate obsolete Statutes and bring the Statute book up to date and publish a new edition of the Statutes. The Bill now before the House covered the centuries from 1235 to 1800. Between 1861 and 1898, some 30 Statute Law Revision Bills had been passed.

The first edition of the Revised Statutes was completed in 1885 and its 18 volumes carried the Law down to 1878. The present and second edition contained in 24 volumes the Law down to 1920, and in addition there were 31 volumes of Public General Acts passed since 1920.

Since that edition many Statutes had either become obsolete or been repealed. The present Bill removed all the dead wood and paved the way for the next edition of the Revisd Statutes which it was hoped to publish in fewer volumes than the present edition.

The First Schedule of the Bill repealed 750 Statutes in whole or in part. The Second Schedule continued the process commenced by the Short Titles Act, 1896, giving short titles to many early Acts at present cited by their long titles.

Clauses 3 and 4 eliminated obsolete and unnecessary words and expressions found in Statutes. The Bill which originated in another place had already been under the scrutiny of the Joint Committee on Consolidation Bills.

Sir Frank Soskice referred to the enormous amount of research and labour which had gone to the compilation of the 750 Statutes in the First Schedule and those in the Second Schedule and paid high tribute to the work of Sir Cecil Carr, the Counsel to the Speaker. It was largely due to his unremitting labour and patience and his phenomenal erudition in the Statutes on the Statute book at present that the preparation of the Bill before the House had been made possible. The Bill was a useful one and conduced towards bringing the Statute law up to date.

After a short debate the Bill passed 2 *R.* and its remaining stages, duly becoming 11 & 12 Geo. VI, c. 62.

House of Lords: (Trial by Peers (Abolition of Privileges)).— When the Criminal Justice Bill[1] was in *C.W.H.* in the House of Lords on June 7, 1948,[2] the following new Clause, to follow Clause 29, was inserted:

Abolition of privilege of peers in criminal proceedings.

(1) Privilege of peerage in relation to criminal proceedings is hereby abolished.

(2) In any criminal proceedings the jurisdiction he had and the procedure to be followed, the punishments which may be inflicted, the orders which may be made and the appeals which may be brought shall, whatsoever the offence, and wherever the trial is to take place, be the same in the case of persons who would but for this Section be entitled to privilege of peerage as in the case of any other of His Majesty's subjects.

In moving this new Clause the Lord Chancellor said that the credit for this amendment belonged to the noble and learned Viscount, Lord

[1] 11 & 12 Geo. VI, c. 58. [2] 156 *Lords Hans.* 5. s. 373.

Simon, and the words used were the usual words used in a Bill[1] passed in the Lords in 1935-36.

This new Clause had been drafted by very distinguished lawyers. There were now some 850 Peers. In Henry VII's time there were some 30. Then they had a manageable number.

Space does not permit of any reference in this Volume to this subject in the House of Lords in previous years, particularly to Lord Sankey's Bill in 1935-36 and the Report of the Proceedings on the last of such trials, that of Lord de Clifford in the Session 1935-36.[2]

***House of Lords (Starred Questions).**[3]—On December 18, 1946,[4] the first Report[5] from the Select Committee on Procedure of the House was made and ordered to be printed.

On February 5, 1947,[6] the Report was considered and agreed to, as follows:

1. The Committee recommend the following alterations in the procedure of the House:

(i) That starred questions shall only be put upon the Order Paper on Tuesdays and Wednesdays and that on such days they shall be disposed of after Private Business, before other Notices and Orders of the Day; and that not more than three starred questions be placed upon the Order Paper for any one day.

(ii) That no motion or question, other than motions relating to Bills and Departmental Orders and questions not for oral answer, shall be accepted by the Table for any date more than four weeks ahead of the date on which it is handed in; and that in reckoning the said period of four weeks, no acount shall be taken of any time during which the House is in Recess.

2. The Committee recommend that notwithstanding Standing Order XXI the above alterations in the procedure of the House shall take effect for the present Session of Parliament.

***House of Lords (Refreshment Department).**[7]—On July 17, 1947,[8] the Fourth Report[9] from the Select Committee on House of Lords Offices was laid and ordered to be printed. Paragraph 7 quoted the following Report from the Sub-Committee on the Refreshment Department on the proposals for the amalgamation of the kitchen accommodation of the 2 Houses which was laid before the Committee and agreed to:

The Sub-Committee on the Refreshment Department report to the House of Lords Offices Committee that, in their opinion, the considerations which influenced the decisions of the two Joint Committees of 1936 and 1944-5 still obtain, and that an amalgamation of the two systems is not at present desirable; that the accommodation asked for by the Commons is essential to the use of the House of Lords, for which it is already inadequate, and would not in any event meet the needs of the House of Commons as represented to the Committee.

The Fourth Report was considered and agreed to.[10]

[1] H.L.(30). [2] H.L. (12) (1935-36). [3] *See also* JOURNAL, Vols. IX, 15; X, 16. [4] 144 *Lords Hans.* 5, s. 1133. [5] H.L. (20) 1946-47. [6] 145 *Lords Hans* 5, s. 399. [7] *See also* JOURNAL, Vols. VIII, 30; XIII, 45; XIV, 53. [8] 149 *Lords Hans.* 5, s. 1002. [9] H.L. (110) 1946-47. [10] 151 *Lords Hans.* 5, s. 40.

House of Commons (Hyderabad and Kashmir: Speaker's Ruling).—On the Motion for the Summer Adjournment on July 30[1] when the subject was being raised as to the position of the States of Hyderabad and Kashmir and the Dominions of India and Pakistan, the Prime Minister asked Mr. Speaker's Ruling as to the scope of any debate which may ensue in view of the fact that they were now self-governing Dominions and how far any matter could be brought before the House of Commons.

The Leader of the Opposition (Rt. Hon. Winston Churchill) complained of the Prime Minister raising this matter at such short notice without informing him, and referred to a letter he had written to the Prime Minister on July 27 as to the rights of these States. Mr. Churchill stated that he was informed that these 2 States were willing to have their fate decided by a plebiscite under the auspices of U.N.O. provided that the basis of election was adult suffrage without property qualification.

The Prime Minister pointed out that as they were members of the Security Council the action of such Council in respect of Hyderabad and Kashmir was obviously one on which they should have to state what their actions had been. He had made no suggestion that they could not discuss any question of the pledges, and he thought their consideration very important from the point of view of this House and its relations with the Dominions as to what could be said in debate about the internal affairs of Dominion countries.

Mr. Churchill then referred to a letter the Prime Minister had addressed to Mr. Speaker on the subject of which Mr. Attlee had sent Mr. Churchill a copy, which letter sought a Ruling to the effect that they must not discuss the affairs of these 2 States in the House of Commons, which seemed, said Mr. Churchill, to raise the very largest issues in regard to the whole position of Parliamentary procedure. For instance if a grave catastrophe arose there or in any other Dominion, or a clash between 2 Dominions, was the House of Commons to be the only place in the whole world where this matter may not be discussed?[2]

> Surely pledges and fulfilment were inseparably connected, and it would be an almost absurd position for us to get into where we are asked to give pledges by legislation or otherwise—and in the House—and when whatsoever the consequences no further reference must be made to these matters if they fall within the Dominions.

Mr. Churchill then said that the other point he ventured to submit to Mr. Speaker was that of U.N.O. Surely it would be quite in order for him or other speakers to question the Government upon the instructions they would give to their representatives in the United Nations Organization.

Mr. Speaker then stated that this was a fairly difficult matter. He

[1] 454 *Com. Hans.* 5, s. 1719. [2] *Ib.* 1720.

thought that some misunderstanding had arisen in the first place. He was referred to the Rules on Questions, Rule 19, which prevents the putting down of questions referring to the internal affairs of the Dominions. He must point out to the House that the Rules on questions were far stricter than the Rules about debate and as long as there was any Ministerial responsibility even if it were somewhat remote it was very hard for the Chair to say this and that should not be discussed. He found it hard to say that there was any limit to Debate on 2 grounds, the first ground the rt. hon. gentleman had pointed out; there were pledges, and he thought the House was entitled to know the background of those pledges, and to decide whether or not it was satisfied they had been carried out. There then was the approach to U.N.O. which he understood both the States were using. He thought they were entitled to explore the situation to see what instructions were to be given to their Representative. Therefore, he found it very hard to say that there was any limit to the Debate. He thought the limit must be that of commonsense and common prudence. He said that one did not want unnecessarily to offend in any way a Dominion of the Commonwealth.

Further Mr. Speaker said that he would look into the matter. It might be well to lay down some general guide for the future.

House of Commons (Procedure: The Scottish Committee).—On April 28, 1948,[1] the Secretary of State for Scotland (Rt. Hon. Arthur Woodburn) moved:

That—

(1) If, after any Public Bill has been printed, whether introduced in this House or brought from the House of Lords, Mr. Speaker is of opinion that its provisions relate exclusively to Scotland, he shall give a certificate to that effect.

(2) On the order for the Second Reading of any such Bill being read, a Motion, to be decided without amendment or debate, may be made by a Minister of the Crown, " That the Bill be referred to the Standing Committee on Scottish Bills " provided that if the Motion shall have been thereupon objected to by not less than ten members, it shall pass in the negative.

(3) A Bill so referred to the Standing Committee shall be considered in relation to the principle of the Bill, and shall be reported as having been so considered to the House and shall be ordered to be read a Second Time upon a future day.

(4) When the Order of the Day for the Second Reading of any such Bill has been read, a Motion to be decided without amendment or debate may be made by a Minister of the Crown, " That the Bill be committed to a Standing Committee on Scottish Bills". Provided that this paragraph shall not apply in the case of any Bill to the Second Reading of which notice of an amendment has been given by not less than six members.

(5) If such a Motion shall have been agreed to, the Bill shall be deemed to have been read a Second time, and shall be committed to the Standing Committee on Scottish Bills, and shall proceed through its remaining stages according to the ordinary practice of this House.

"That this Order be a Standing Order of the House."

[1] 450 *Com. Hans.* 5, s. 400-58.

After a brief sketch of the connection between England and Scotland up to and since the Act of Union in 1707, Mr. Woodburn said that—to deal first with the Standing Order on public Bills relating exclusively to Scotland, provision was made that a certificate might be issued by the Speaker certifying that the provisions of the Bill relate to Scotland. In such a case the Government might propose that the Second Reading Debate on such a Bill should be referred to the Scottish Grand Committee. In earlier times, of course, this proposition would have aroused a certain amount of apprehension, if it were entirely within the power of the Government to refer the Debate to the Scottish Grand Committee because, of course, the Opposition and the House itself had rights in this matter. Provision was, therefore, made in the proposed Standing Order that this would only take place if there was general agreement that the Bill should be so referred to the Scottish Grand Committee.

If the Bill went to the Scottish Grand Committee, as we presumed, that Committee would then debate the principle of the Bill in the same manner as it would ordinarily be debated in the House itself. When that Debate had taken place, the Scottish Grand Committee would report back to the House and the Bill be ordered to be read a Second time upon a future day. When the Order of the Day for Second Reading of the Bill had been read in the House, a Motion, to be decided without Amendment or Debate, might be made by a Minister of the Crown, "That the Bill be committed to the Standing Committee on Scottish Bills". If this Motion was agreed then:

> the Bill shall be deemed to have been read a Second time, and shall be committed to the Standing Committee on Scottish Bills, and shall proceed through its remaining stages according to the ordinary practice of the House.

After debate of over 3 hours, Question was put on Motions (1) to (5) and agreed to. (*See above.*)

After which it was Ordered:

> That 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 effect that the Committee of Supply be discharged from considering the Estimates or any part of the Estimates for which the Secretary of State for Scotland is responsible, and that such Estimates or part of such Estimates be referred to the Standing Committee on Scottish Bills for consideration on not more than six days in any Session; and if such Motion be agreed to, the Standing Committee shall consider the Estimates referred to them and shall from time to time report only that they have considered the said Estimates or any of them, which shall again stand referred to the Committee of Supply after such Report has been brought up.
>
> That this Order be a Standing Order of the House.—(Mr. Woodburn.)

Standing Order No. 47 read; and amended in line 20 by inserting after "bills" the words "or other business" and by inserting after "and" the words "referred or"; and in line 25 by inserting after "bill" the words "or other business".—(Mr. Woodburn.)

House of Commons (Private Members' Time).[1]—On October 22,[2] the Second day of the Third Session of the XXXVIIIth Parliament, a debate covering over 70 columns of *Hansard* took place on a Government Motion relating to "Business and Sittings of the House". Practically all the discussion on this question dealt with "Private Members' Time", which was centred on para. (1) of the Motion, namely:

That—
(1) Government Business shall have precedence at every sitting.

The Leader of the House in moving the Motion said that Private Members' Time was the time set aside under the Standing Orders for Private Members to bring in Bills and Motions, subject to their good or ill-fortune in the Ballot. It was proposed that such facilities should, for the third time in this Parliament, be denied and that the Government should have the exclusive right to bring in legislation and generally to take the time of the House in the general public interest.[3]

There were certain items of Business, which under various Standing Orders, or under the practice of the House, might quite properly be taken in Government time, or for which the Government might find themselves obliged to find time, such as: Motions for Adjournment under S.O. 8 (Urgency), Privilege, censure, prayers (delegated legislation); and opportunities for criticizing Government policy in which the Opposition or Private Members had, in practice, the right to choose the subject of criticism. The main items in this group were the Address in Reply, Motions for Holiday Adjournments, Estimates, both Main and Supplementary, other Business on Supply and such measures as the Expiring Laws Continuance Bill and the Army and Air Force (Annual) Bill. Therefore, said the Minister, the idea that when the Government took Private Members' time, they were monopolizing the whole time of the House, was wrong.[4] Private Members also had the opportunity of influencing the choice of subjects for discussion by the Opposition and the Government itself, at Q.-time and the half-hour Adjournment.

Of the 164 sitting days of last Session, 83½ were devoted to Legislation; 5½ to Business of a miscellaneous character, such as Privilege, etc.; 45 to subjects chosen by the Opposition; or in case of Adjournments for Recesses, by back benchers; 9 days were devoted to Adjournments moved for special debates to meet Opposition requests or the general wishes of the House. The Government's legislative programme for the Session had been carefully planned in relation to the available time and they could not complete the task without asking Private Members again to give up their time.[5]

The debate which then followed centred around the amendment to

[1] *See also* JOURNAL, Vols. II, 30; VII, 38; XI-XII, 33; XIII, 31, 37-40; XV, 23; XVI, 123-9. [2] 443 *Com. Hans.* 5, s. 85-163. [3] *Ib.* 91. [4] *Ib.* 97, 8. [5] *Ib.* 99.

delete para. (1) of the Motion, as above-quoted. The mover of the amendment said that the 2 questions at issue were Private Members' Bills and Private Members' Motions.[1]

In the 20 years between the 2 Wars, the average number of Private Members' Bills per Session had been 10·8, 11 became law and 56·3 were introduced but not passed.

Private Members' Motions were a different matter and enabled Private Members to initiate debate.[2] If this Parliament ended without any Private Members' time, would it ever come back?[3] The history of their Standing Orders showed that in the beginning Private Members had all the time.[4]

The following were other points raised during the debate:

One hon. member remarked that it was 10 years since he came into the House and in 8½ years of that time there had been no Private Members' time.[5] It was an injustice to suggest that they should accept the half-hour Adjournment Motion as some compensation for the loss of Private Members' time. On examining the book in Mr. Speaker's office,[6] the number of members who had put down their names would be seen and the length of time a name had to appear daily before a member had any hope of being heard.[7] It was quite a good argument that during the War, Private Members' time could not be given; that was a coalition period.[8]

In the old days $\frac{9}{10}$ of both Private Members' Motions and Bills were put in members' hands by the Government or Opposition Whips with the intimation—"If you are successful in the Ballot, move one or other of these Motions or one or other of these Bills".[9]

The status of every M.P., whether he sat on the Treasury, the Front Opposition Bench, or merely on the back benches, was precisely the same. "It is a status common to all in whatever part of the House one sits and whatever office one holds. . . . It is the status of representing in this House one's own constituency."[10] The things which had been said so well on both sides of the House should be said every year until they got their rights back. Private Members' rights were a very good piece of machinery for getting things done, and especially for getting things done which no Government, however courageous or well-meaning, very often dared to do.[11]

Why could not the half-hour Adjournment be extended to an hour so that they could get some reasoned sort of debate?[12] Reference was made to the recommendations by the Select Committee on Procedure, 1945-46,[13] that Private Members' Time should be restored "as soon as possible". It was urged that if they had the 10 Minute Rule 1 day a week, it would be more advantageous than having half an hour at the end of the day on all 4 or 5 days of the week for the purpose of raising a grievance. Under the 10 Minute Rule, both sides could

[1] *Ib.* 102. [2] *Ib.* 103. [3] *Ib.* 104. [4] *Ib.* 105. [5] *Ib.* 108.
[6] *See* JOURNAL, Vols. XIII, 31; XIV, 37; XV, 23. [7] 443 *Com. Hans* 5, s. 109.
[8] *Ib.* 111. [9] *Ib.* 118. [10] *Ib.* 120. [11] *Ib.* 122.
[12] *Ib.* 126. [13] *See* JOURNAL, Vol. XVI, 123.

put their points immediately after Q.-time and a grievance receive publicity. The 10 Minute Rule would also enable a Bill to be printed and to appear on the *O.P.*; if the House rose early, then there would be a chance of getting on with it. If Private Members could get half an hour 3 days a week immediately after Q.-time, instead of half an hour at the end of one of the days of the 5 days a week, they would make a very good bargain with the Government, and it would help the Government in a great many ways to get rid of awkward questions.[1]

Another idea was that if a large number of members signed a Motion, time should be found to deal with it. If such an innovation were accepted as a sort of *quid pro quo* for Private Members' Time, only one signature a year should be allowed, as otherwise they might have the abuse of 50 members saying that they want it on several occasions. If 1 member were allowed 1 vote a year and 6 or 8½ days were given to a Motion on which there was feeling all over the House, such a Motion might do something to meet what was happening at the present moment.[2]

It was not the members' but the constituents' time which was taken away. To-day the initiative was with the Government; what was wanted was that the initiative should be with the Private Member who was very often much closer than the Government to the people of the country.[3] No member had risen to give his whole-hearted support to the suggestion that all Private Members' time should be taken away.[4] This was the tenth consecutive Session in which Private Members' time had been taken away. If things went on like this Private Members' time would fall into desuetude altogether.[5]

In the old days, Private Members used to enjoy all Wednesdays up to Easter in an average Session and all Fridays up to Whitsuntide Recess; 30 days of an ordinary Session.[6] The Minister was asked if he would see that the Whips were not put on.[7]

The Home Secretary in concluding the debate said that the 10 Minute Rule applied to 1 *R.* of a Bill. The hon. member explained the Bill. If an hon. member were in doubt about the Bill, at any rate he could vote for it and then he would have a chance of reading it. There was something to be said for seeing a Bill before you voted for it. After that a member's chance depended on no one saying, "I object", after 11 o'clock at night. The member would then put down the Bill for 2 *R.* for some night and would sit on the back bench hoping that nobody would vote against it, or that the Government of the Day, irrespective of Party, which did not want to get the Committees clogged up with Bills, would allow the Bills to go through. Anybody saying "I object", would kill the 2 *R.* for that night. The member would then put it down for another night.[8]

The "stand part" question was then put, the voting being: Ayes,

[1] 443 *Com. Hans.* 5, s. 133. [2] *Ib.* 134. [3] *Ib.* 135. [4] *Ib.* 139.
[5] *Ib.* 148. [6] *Ib.* 149. [7] *Ib.* 151. [8] *Ib.* 154.

263; Noes, 165. The amendment was therefore negatived and the Main Question, as printed, put and agreed to.[1]

House of Commons (Representation of the People's Act, 1948).[2] To quote from the Explanatory Memorandum:

> This Bill effects the redistribution of parliamentary seats, reforms the parliamentary franchise, makes fresh provision for the registration of electors, amends the law relating to the conduct of parliamentary and local government elections and to corrupt and illegal practices at such elections, and alters the dates of local government elections. It gives effect to most of the recommendations in the Final Report of the Speaker's Conference of 1944 (Cmd. 6543), in the Interim and Final Reports of the Departmental Committee on Electoral Law Reform (Cmd. 6606 and 7286) and in the Report of the Departmental Committee on Electoral Registration (Cmd. 7004). It will replace the Representation of the People Act, 1918, the Acts amending that Act, and the war-time electoral Acts so far as they relate to the registration of electors and facilities for voting.

This Act embodies the work of the Boundary Commission and gives effect to the principle of " 1 citizen—1 (and only 1) vote ". It abolishes:

(*a*) University constituencies.
(*b*) Separate representation for the City of London, although one of the London borough constituencies is to be known as " The cities of London and Westminster " and contains " the county of the City of London, the borough of the City of Westminster and the Inner Temple and the Middle Temple ".
(*c*) The " business premises vote ".

Electors have one qualification, apart from age, nationality or legal incapacity to vote, and that is residence in a particular constituency, either a borough or a county constituency.

Under the Act, seats are allocated as follows:

> Great Britain—not substantially greater or less than 613.
> Scotland—not less than 71.
> Wales—35.
> N. Ireland—12.

This is specified in the Second Schedule to the Act. Actual figures, based on the First Schedule, are as follows:

England, 506; Scotland, 71; Wales, 36; making a total of 613, which, plus that of Northern Ireland, amounts to 625.

Other Documents connected with this subject are the Electoral Registration Officers and Retiring Officers Order 1948 made on September 22, 1948, by the Home Secretary, to such Officers in England and Wales, Scotland and Northern Ireland respectively.

[1] *Ib.* 162.
[2] 11 & 12 Geo. VI, c. 65, and Reports of Boundary Commission (Cmd. 7400, 7425, 7363, 7397). *See also* JOURNAL, Vols. X, 33; XI-XII, 130; XIII, 122; XIV, 164; XVI, 27. [3] Contributed by the Clerk of the House of Commons.—[ED.]

***House of Commons (Electoral: "British Nationality").**[1]—*British Nationality Act*, 1948.[2]—By re-defining "British nationality and citizenship" and embracing "United Kingdom and Colonies" in this definition the British Nationality Act, 1948, automatically affects the voting right of certain individuals, although residence is a necessary qualification under S. 1 of the Representation of the People Act, 1948,[3] which reads:

(2) The persons entitled to vote as electors at a parliamentary election in any constituency shall be those resident there on the qualifying date, who, on that date and on the date of the poll, are British Subjects of full age and not subject to any legal incapacity to vote:

Provided that a person shall not be entitled to vote as an elector in any constituency unless registered there in the register of parliamentary electors to be used at the election nor at a general election, to vote as an elector in more than one constituency.[4]

***House of Commons (Women Candidates for the Army and Air Force (Women's Service) Act, 1948).**[5]—This Act by applying certain provisions of military law (provisions of the Army and Air Force Act) makes service women exactly like service men in respect of certain provisions. Such parts of military law as affected service men wishing to stand for Parliament operate for women also in like respects.

***House of Commons (Publications and Debates Committee's Report).**[6]—The Select Committee on this subject was appointed by the House on November 5, 1947,[7] with the same order of reference, etc., as in 1944.[8] The Committee met 6 times and heard the Controller of H.M.S.O., and the Assistant Controller (Qs. 1-47).

The Report,[9] with proceedings and minutes of evidence, was laid on July 28, 1948, and ordered to be printed.

Standing Committee's Hansards.—Paragraph 1 of the Report states that the Committee were asked by Mr. Speaker to consider a suggestion that the *Hansard* of each Standing Committee should be collected in a single paper-bound volume as soon after the conclusion of the Standing Committee's proceedings as possible. After hearing the evidence of the Controller of H.M.S.O., and his Assistant and having satisfied themselves that no unreasonable increase in expenditure would result from this added convenience for M.P.s, the Committee advised Mr. Speaker that they approved the suggestion, which was duly adopted.

The Committee also agreed—with Mr. Speaker's edorsement—to the substitution of "Times Roman" type face for the "Old Style" face in all Parliamentary Publications and *Hansard* reports. The

[1] *See also* JOURNAL, Vols. X, 33; XVI, 27. [2] 11 & 12 Geo. VI, c. 56. [3] 11 & 12 Geo. VI, c. 65. [4] Contributed by the Clerk of the House of Commons.—[ED.]

[5] 11 & 12 Geo. VI, c. 21; 446 *Com. Hans.* 5, s, 2046. Contributed by the Clerk of the House of Commons.—[ED.]

[6] *See also* JOURNAL, Vols. I, 45; II, 18; VI, 157; VII, 36; IX, 89; X, 23, 24, 42; XI-XII, 30, 33; XIII, 15; XIV, 53; XV, 40; XVI, 38. [7] 443 *Com. Hans* 5, s. 1961. [8] *See* JOURNAL, Vol. XIII, 153. [9] H.C. 207 (1947-48).

Committee further agreed that the bolder outline of "Times Roman" should be substituted for "Old Style" face in all Parliamentary Publications and *Hansard* reports. In addition, the Committee obtained Mr. Speaker's approval that House of Commons Christmas cards should this year be supplied to M.P.s for their personal use. H.M.S.O. undertook to assist in the printing of these cards and the Accountant of the House of Commons would deal with the sale of them to M.P.s who would be notified in the autumn of the final arrangements for the ordering and purchase of the cards.

***House of Commons (Parliamentary Catering).**[1]—The Select Committee on the Kitchen and Refreshment Rooms (House of Commons) was set up on October 27, 1947,[2] with the same order of reference and powers as stated in Volume XIV.[3]

No Report was made from this Committee in 1947 but a Special Report[4] was brought up and ordered to be printed on July 14, 1948, attached to which was the Trading and Profit and Loss Account, Staff Pension Account and Balance Sheet for the year ended December 31, 1947, certified by the Comptroller and Auditor-General, together with his Report thereon.

This Special Report made reference to the temporary accommodation provided during the rebuilding of the House of Commons and reported that they had, during the year, requested the Auditor-General to audit and certify their accounts annually and to make such suggestions as he thought proper for improving the methods of keeping and presenting the accounts, which were now presented in a new and more detailed form than in past years.

The Committee reported that the deficit of £13,014 1s. 10d. on the year's trading was attributable to costs during periods when the House was not sitting, which amounted to 16 weeks in the year, and that the item for wages alone for these periods was £13,726 8s. 10d. Certain food services were made available during some of these periods of recess and these contributed an estimated gross profit of £1,241 11s.

Trading and Profit and Loss Account.—The Comptroller and Auditor-General in submitting this Account for the year remarked in his Report that the Account shows a net loss for the year 1947 of £13,014, which was £6,387 higher than last year. A rise of some £12,000 in turnover was counterbalanced by substantially higher costs, the chief increases being on provisions, etc., consumed (£9,401), salaries and wages (£2,074), repairs and renewals (£3,015, which includes purchases of linen, etc., amounting to £2,690) and the Staff Pension Scheme (£3,556).

The Ministry of Works provided and maintained free of charge the premises, furniture and heavy equipment, and supplied free elec-

[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; XVI, 39.
[2] 443 *Com. Hans.* 5, s. 655.
[3] P. 52.
[4] No. 187.

tricity, gas and water. Cleaning and other maintenance charges were borne by the Refreshment Department.

In regard to the Balance Sheet for the year, the C. & A.-G. observed that stocks in hand as at December 31, 1947, amounted at cost to £25,082. Stocktaking and valuation had been carried out by professional valuers whose reports were presented for the C. and A.-G.'s inspection.

In accordance with previous practice, the value of stocks of linen, plate, cutlery, glass and minor equipment was not included in the Balance Sheet figures, expenditure on provision and renewal of such items having been charged direct to the Profit and Loss Account.

Balance Sheet.—On January 1, 1946, the Department had an accumulated surplus of £8,904. This had been reduced to £2,277 by January 1, 1947, and as the result of the heavy loss on the year's working in 1947, the surplus had been converted into a deficit of £10,737 by the end of the year. The Bank overdraft rose from £17,061 at December 31, 1946, to £32,295 at December 31, 1947, involving a charge of £903 to the Profit and Loss Account for bank charges and interest during the year.

Staff Pensions Account.—The Account for 1947 showed the first full year's cost of the new Staff Pension Scheme introduced in 1946,[1] which was operated through an Assurance Society by means of endowment assurance policies providing capital sums at the retiring age of each beneficiary sufficient to produce an annuity at the appropriate pensions rate. In the event of death before retirement date, the full capital sum was payable. The total cost for the year of premiums under the new scheme was £4,409, of which £901 was borne by employees. Payment from the Pension Account included £606 in respect of pensions to former members of the staff outside the new scheme.

The special Meal Levy of 1d. on certain meals instituted in 1934 to provide a Staff Pension Fund continued in operation, producing £515 in 1947 and the small balance of that Fund at December 31, 1946, had been applied in relief of expenditure on premiums and pensions. The net cost for the year of provision for staff pensions amounted to £3,556, or 8·5 per cent. of total salaries and wages.

United Kingdom: Northern Ireland (Constitutional position vis-à-vis Eire).—On February 26[2] an hon. member (Mr. Downey) asked the Prime Minister whether his attention had been drawn to a statement made by the hon. member for South Tyrone, as reported in the Press, to the effect that the Parliament of Northern Ireland could be abolished by the passing of an Act at Westminster, without regard to the expressed views of the people of Northern Ireland; and whether he had any comment to make in the matter?

The Prime Minister (Sir Basil Brooke) replied that he appreciated that the Parliament of the United Kingdom as a sovereign legislative

[1] *See* JOURNAL, Vol. XV, 41. [2] 32 *N.I. Com. Hans.*, No. 8, 363.

assembly had, in strict constitutional theory, powers to legislate on the lines suggested. But constitutional usage, a very different thing, over a long period of time, had established the connection that powers once delegated to a subordinate legislature were not therefore diminished without the consent of the Parliament concerned. Constitutional conventions of this nature were not lightly overthrown, and, in fact, he was not aware, in the long history of the Commonwealth of Nations, of any example of such an occurrence.

Apart altogether from this time-honoured practice, continued the Prime Minister, which safeguarded their present rights, he could not conceive that any British Parliament, with its ancient democratic traditions, would contemplate any alteration of their constitution unwelcome to the Parliament which represented the people of Northern Ireland.

On October 21,[1] on the Adjournment, an hon. member (Mr. Beattie) urged that a statement should be made to the House on the position which had arisen in connection with the Commonwealth Prime Ministers' consultations with the representatives of Eire.

On November 30,[2] an hon. member (Mr. Healy), as opposing the present division of Ireland into Eire and Northern Ireland and being in favour of an Irish Republic, moved:

> That, in the opinion of this House, it is regrettable that the Prime Minister's statement on his conversation with Mr. Attlee on Saturday, November 20, indicating the repeal of the External Relations Act, 1936, by the Government of Eire, will have no effect whatever on the constitutional position of Northern Ireland, represents on the part of the Government of Northern Ireland an anti-national attitude to the unification of the country.

During the course of the debate the Prime Minister said that the position was that the Ulster people refused to give way when the Home Rule Bill was proposed in 1913-14. It was perfectly clear that the Northern Ireland Government Parliament was set up under the 1920 Act. Eire had got nothing to do with Northern Ireland. Eire might do anything she liked but it did not affect Northern Ireland. The two were quite separate and distinct.[3] Northern Ireland was not going to move on this question. From 1920 she had decided to go her own way. They had tightened and made firm the links with Britain and with the Crown.

From 1920 on the other side of the Border every possible link had been severed.[4] The only solution to this very difficult question which existed in Ireland as a whole was 2 Governments. The whole prosperity of Northern Ireland depended on their unity with Great Britain.[5]

In Northern Ireland they looked upon the Crown as a symbol of freedom. In the Free State the Crown was said to be a symbol of

[1] *Ib.* No. 59, 2982. [2] *Ib.* No. 73, 3641-3681, 3684-3751. [3] *Ib.* 3662, 3.
[4] *Ib.* 3664. [5] *Ib.* 3667.

aggression. The view of the United Kingdom Government had always been that no change would be made in the Constitution of Northern Ireland without Northern Ireland's free agreement.[1]

If it was found that any further safeguards were needed the Government would take immediate and effective action to make Ulster's position secure and impregnable. Northern Ireland took her stand on the rock of reality and solemnly declared that she would not be severed from Great Britain.[2]

On the second day of the debate the closure was moved and carried. The House then divided on the Main Question; Ayes, 10; Noes, 32.

The Channel Islands.—In our last issue[3] reference was made to a Report of the Privy Council[4] presented to the United Kingdom Parliament in connection with considerable reforms in the control of the Government by the people of the Channel Islands, and we have recently received, by the courtesy of His Honour the Bailiff of Guernsey, a copy of the Order in Council ratifying a *Projet de Loi* entitled "The Reform (Guernsey) Law, No. XI, 1948". It is regretted that there is not time before this Volume goes to press to deal with the subject in this issue. In any case it is not possible now to have access to the constitutional references to the subject, but the matter will be taken up next year when the legislation in regard to the judicial reform will have been completed and when we also have a similar Order in Council in respect of the constitutional reform in the Island of Jersey.

Canada: House of Commons (Adjournment (Urgency) Motions Refused).—On January 26[5] an hon. member, under S.O. 31, asked leave to move the adjournment of the House for the purpose of discussing a definite matter of urgent public importance, and stated the subject to be:

> The sudden and unprecedented rise in the cost of living,

which motion Mr. Speaker ruled out of order on the ground that ample opportunity would be given the House to discuss the rise in the cost of living when the debate on the address took place later that week. Motion not put.

***Canada: House of Commons (*Hansard*).**[6]—On May 28[7] an hon. member moved:

> That the following Report of the Standing Committee appointed to supervise the official Reports of the Debates of the House presented on May 26, 1948, be now concurred in, viz.:—
>
> Your Committee has given careful consideration to its order of Reference under date of May 10, 1948, which reads as follows:
>
> "That the advisability of continuing the publication of the revised edition of Debates and the distribution of the unrevised edition of Debates be referred to the said Committee."

[1] *Ib.* 3668. [2] *Ib.* 3669. [3] Vol. XVI, 45
[4] Cmd. 7074. [5] LXXXIX C.J., 86.
[6] *See also* JOURNAL, Vol. XV, 59. [7] LXXXIX C.J., 428, 479, 480, 490.

The Committee heard evidence from Mr. Edmond Cloutier, King's Printer and Controller of Stationery, and Mr. Earl C. Young, Editor of Debates and Chief of Reporting Branch, House of Commons, and Mr. Yves Fortin, Production Supervisor of the Printing Bureau.

The Committee recommended:

1. That the designations " unrevised " and " revised " editions be discontinued and the day-to-day edition be known as the daily edition and the bound volume as the bound edition.
2. That members be allowed eight calendar days, from the date on which the speech is made, to submit to the debates office necessary and permissible corrections in their speeches as reported in the daily edition and that no corrections submitted after this period be accepted.
3. That the pages of each daily edition be submitted to the Printing Bureau not later than 9 days after the daily edition is published, and that once proofs of the corrected pages have been approved by the debates office, they be assembled by the Printing Bureau for the bound edition.
4. That the pages of the daily edition be kept intact so that after permissible corrections are made, the pages of the daily edition can be used for the bound edition as originally printed and that changes suggested by members be confined strictly to correction of errors and essential minor alterations.
5. That effect be given forthwith to the recommendation contained in paragraph 4 above, for the present Session and succeeding Sessions.
6. That no order for reprints of a member's speech be received by the debates office after the expiration of 7 days from the date of the Daily Edition in which it appears.
7. That the distribution list of complimentary copies of Debates allotted to members be hereinafter forwarded by the Joint Parliamentary Distribution Branch to the Printing Bureau for distribution.

The Committee further recommended that the Government consider the advisability of increasing the number of complimentary copies of the Daily Edition of Debates to members from 10 to 16.

After debate an amendment was moved and seconded that the words " Government consider the advisability of " in the last paragraph be deleted and the words " House of Commons authorize " be inserted instead thereof, which was put and agreed to.

The main Motion, as amended, was then put and agreed to and the Report, as amended, accordingly concurred in.

***Canada: Saskatchewan (Reduced Age for M.L.A.s).**—It was reported in Volume XV[1] of our JOURNAL that the voting age for electors was reduced to eighteen years by the Saskatchewan Election Act, 1945.[2] By the Legislative Assembly Act, 1948,[3] the age of eligibility for membership of the Assembly has also been reduced to eighteen years.

The pertinent Section of the Act of 1945 (c. 3.) reads as follows:

Qualification of Members.

8. Any British subject by birth or naturalization, whether male or female, of the full age of twenty-one years, resident in Saskatchewan, shall be eligible for nomination and election as a member of the Assembly, unless disqualified under this or any other Act.

[1] P. 66. [2] Stat. Sask. 1945, c. 3. [3] Ch. 3 of 1948.

The amending Act of the 1948 Session strikes out the words "by birth or naturalization", and substitutes "eighteen" for "twenty-one" as the minimum age of eligibility.[1]

Canada: Saskatchewan (Electoral).[2]—The Saskatchewan Election Act of 1948[3] makes the following changes:

(*a*) to permit the political (or Party) affiliation of the candidate to appear, in abbreviated or unabbreviated form at his option, on the ballot paper;
(*b*) to provide polls for patients in tuberculosis sanatoria and hospitals;
(*c*) to give students away from their normal place of residence the option of declaring "place of residence" for voting purposes to be either their normal place of residence or the place at which they are attending school, college, university or other educational institution.[4]

Australia: Federal (Suspension of Members).[5]—On November 17, 1948, an unprecedented scene was witnessed in the House of Representatives when 3 members were suspended from the service of the House after having been named by the Deputy Speaker (Mr. J. J. Clark) for disregarding the authority of the Chair.

The Hon. H. L. Anthony (Country Party Member for Richmond, New South Wales) was addressing the House on the Motion for the Second Reading of the Audit Bill. The Chair advised him that some of his remarks were not relevant to the Bill, and, later, directed him to resume his seat for reflecting upon the Chair. Mr. Anthony continued to address the Chair although warned not to do so and, subsequently, was named and suspended on Motion after division.

The Hon. E. J. Harrison, Acting Leader of the Opposition (Liberal Party Member for Wentworth, New South Wales), then endeavoured to move a Motion of no-confidence in the Deputy Speaker. When informed that such a Motion required notice, Mr. Harrison sought to give notice but it was ruled that at that stage notice could not be given.

Then the Hon. P. C. Spender (Liberal Party Member for Warringah, New South Wales) attempted to move for the suspension of the Standing Orders to enable him to submit a Motion without notice. He was ruled out of order and asked to resume his seat. This he failed to do, so he was named and duly suspended.

A question of privilege was sought to be taken by the Hon. J. McEwen, Deputy Leader of the Country Party, but this was disallowed, and the Chair warned members that advantage should not be taken of the Standing Orders for the purpose of obstructing the business of the House.

Shortly afterwards, Mr. H. Beale (Liberal Member for Parramatta, New South Wales) rose to order and proposed to refer to an incident in the earlier proceedings. The Chair ruled that no point of order was involved and that the incident could not be referred to. Mr.

[1] Contributed by the Assistant Clerk in Chamber of the Legislative Assembly.—[ED.] [2] *See also* JOURNAL, Vols. XI-XII, 42; XV, 66 [3] C. 4.
[4] Contributed by the Assistant Clerk in Chamber of the Legislative Assembly.—[ED.] [5] *See also* JOURNAL, Vol. IV, 54.

Beale persisted, although warned by the Chair to desist, and this led to his naming and suspension.

The 3 suspensions occurred in a little over an hour.

Following the suspensions, divisions were called for by the Opposition on every question put from the Chair. The Government then found it necessary to declare that the Bill was an urgent one and to apply the guillotine to the remaining stages.[1]

Australia: Federal (Members' Pensions).—December, 1948, saw the adoption by the Commonwealth Parliament of a parliamentary pensions scheme. Limited schemes were introduced in the United Kingdom Parliament in 1939[2] and in Western Australia in 1941.[3] New South Wales[4] and Victoria[5] adopted their schemes in 1946, and South Australia followed suit in 1948.[6]

The Australian scheme, contributions to which began in December, 1948, is on a contributory and compulsory basis, the Government providing 60 per cent. of the cost of the benefits.

Titled the "Parliamentary Retiring Allowances Act, 1948",[7] the measure provides that in return for a compulsory contribution of £3 a week, a member will, upon his enforced retirement from Parliament after more than 8 years' service, be entitled to a pension of £8 a week, commencing immediately on retirement or on his attainment of the age of 45. If his retirement is voluntary, a pension will not be payable unless the member has served for at least 12 years and has attained the age of 45. In all other cases of voluntary retirement, a member will receive no more than a refund of his contributions. All service in the Commonwealth Parliament, whether before or after the commencement of the Act, counts for pension, and this concession applies both to present members and to those who, having served in Parliament before the commencement of the Act, again enter Parliament. Ex-members who have served in Parliament prior to the commencement of the Act will not be entitled to any benefits unless they are again elected to either House and again retire.

In the case of those members who are compelled to retire with less than 8 years' service the Act provides for a refund of contributions together with a supplement of one and one-half times the amount of the member's own contributions. For existing members of the Parliament, this provision has been extended to enable them to draw the government supplement in respect of periods of non-contributory service. The Commonwealth supplement and refund of contributions is, at the option of the member, payable in lieu of pension. In such cases the amount of the supplement is limited to the amount payable in respect of 8 years' contributions.

Amongst other provisions in the Act an important one is that providing a pension of £5 a week to the widow of an ex-member who,

[1] Contributed by the Clerk-Assistant of the House of Representatives.—[Ed.]
[2] *See* JOURNAL, Vols. VI, 139; VIII, 103; XI-XII, 124; XIII, 175; XIV, 44; XV, 149; XVI, 143.
[3] *Ib.* XV, 196.
[4] *Ib.* XV, 189.
[5] *Ib.* XV, 72.
[6] *Ib.* XV, 72.
[7] Act No. 89.

before his death, was in receipt of a parliamentary pension. A similar pension will also be paid to the widow of a member who dies in service.

The first actuarial investigation will be made after the scheme has been in operation for 7 years.[1]

Australia: New South Wales (Payment of M.L.C.s).[2]—The Constitution Amendment (Legislative Council Members' Allowances) Act[3] assented to on December 2, 1948, provides for the payment of an allowance of £300 per annum, to members of the Legislative Council, with the exception of the President, the Chairman of Committees and members who are Ministers, these offices being already provided for under the Constitution Act.[3]

The notable feature of this Act is that it makes provision, for the first time in the history of New South Wales, for members of the Legislative Council to receive an allowance.[4]

Australia: Victoria (Statute Law Revision Committee Bill).—Since 1915 a Sessional Joint Committee on Statute Law Revision has been constituted each Session by resolution of each House to deal with Statute Law Revision. As a result of the labours during the past 2 years of a Committee on Law Reform appointed by the Chief Justice and consisting of practising barristers and solicitors, numerous proposals for Law Reform were being referred to the Statute Law Revision Committee for consideration, thus necessitating frequent meetings which took up a great deal of members' time and in some cases put them to expense. The Government felt that it was unfair to ask members to incur additional outlay without reimbursement and to cover the position introduced by this Bill. It provides for the appointment of a Joint Committee of the Council and the Assembly consisting of 12 members. The Committee is to be appointed after the commencement of every Session of Parliament according to the practice of Parliament with reference to the appointment of Joint Select Committees, 6 members being appointed by the Council and 6 by the Assembly. Members of the Committee elect a Chairman and are to be paid an attendance fee of £2 2s. each in respect of every sitting they attend. The functions of the Committee are to:

examine anomalies in the Statute Law;
examine proposals for the consolidation of the Statutes;
examine proposals in Bills involving technical alterations in the existing law referred by either House to the Committee;
to make such reports and recommendations as it thinks proper as the results of any such examinations.[5]

***Australia: Victoria (Salaries and Allowances to Premier, Ministers with and without Portfolio, Leaders of the Opposition,**

[1] Contributed by the Clerk-Assistant of the House of Representatives.—[ED.]
[2] *See* JOURNAL, Vol. VII, 57. [3] No. 34 of 1948.
[4] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[5] Contributed by the Clerk of the Parliaments and the Clerk of the Legislative Assembly.—[ED.]

President and Speaker, M.L.C.s, M.L.A.s and Whips).[1]—During 1947 a Tribunal consisting of the Chief Justice, a Judge of the Supreme Court, and a former Judge of the Arbitration Court, was set up to inquire into the salaries and allowances of Ministers and members. The Tribunal submitted a report recommending certain increases and this Bill was introduced in order to give effect, in part, to those recommendations. The effect of the main provisions of the Bill was to make the following increases:

Premier—Salary increased from £1,600 to £2,750 with allowance if a country member and £500 entertainment allowance.
Ministers—Salaries increased from £1,210 to £2,250 with £200 country allowance and £100 entertainment allowance.
Ministers without Portfolios—Allowance + reimbursement increased from £900 to £1,500 with £100 country allowance.
Leader of the Opposition—Allowance and reimbursement increased from £1,000 to £1,550 with £100 country allowance.
Speaker of the Assembly—Salary increased from £1,200 to £1,250 with £100 country allowance and £150 entertainment allowance.
President of the Legislative Council—Salary increased from £1,000 to £1,300 with £100 country allowance and £150 entertainment allowance.
Chairman of Committees of the Assembly—Salary increased from £850 to £1,300 with £100 country allowance.
Chairman of Committees of Council—Salary increased from £500 to £1,000 with £100 country allowance.
Secretary to Cabinet—Allowance and reimbursement increased from £900 to £1,400 country allowance.
Members of the Legislative Assembly—Reimbursement of expenses increased from £650 to £1,050 with £100 country allowance.
Members of the Legislative Council—Reimbursement of expenses increased from £350 to £750 with £100 country allowance.
The allowances to the Whips were reduced from £75 to £50 and that of the Government Whip from £150 to £100.

Parliamentary Salaries and Allowances Bill (No. 2), 1948.—This Bill

(1) Amended the Bill above referred to, by increasing the salary of the President of the Council from £1,300 to £1,500 with the allowances mentioned above.
(2) Provided for an increase in the allowance to the Unofficial Leader of the Council from £250 to £350.
(3) Provided for an allowance of £350 to the Leader of any recognized Party in the Assembly consisting of at least 12 members.[2]

Australia: Victoria (Pensions to M.L.C.s and M.L.A.s).[3]—A Parliamentary Contributory Retirement Fund Bill as passed in 1948, the principal effect of which was to increase the contribution payable by the above members to the Parliamentary Contributory Retirement Fund established under Act No. 5185 from £1 to £2 per fortnight.[4]

[1] *See also* JOURNAL, Vol. XVI, 55.
[2] Contributed by the Clerk of the Parliaments and the Clerk of the Legislative Assembly.—[ED.]
[3] *See also* JOURNAL, Vol. XV, 72.
[4] Contributed by the Clerk of the Parliaments and the Clerk of the Legislative Assembly.—[ED.]

Australia: Queensland (Acting Ministers).—Under the Officials in Parliament Acts Amendment Act of 1948,[1] assented to September 9, 1948, authority is given for the appointment of an Acting Minister to take the place of a Minister granted sick leave (already the Law) and the appointment of an Acting Minister in the place of a Minister absent from the State in the course of the duties of his office.[2]

Australia: Queensland (Pensions for M.L.A.s and Widows).—Under the Parliamentary Contributory Superannuation Fund Act of 1948,[3] assented to December 17, 1948, provision is made for a contributory superannuation scheme applying from January 1, 1949.

The Trustees of the Fund are the Premier, Speaker and Leader of the Opposition. The Act applies to all existing members unless they notify the Chairman of the Trustees that they do not desire to become contributors; should they do so they are permanently debarred from the benefits of the Fund; but the Fund is compulsory for future members.

The Fund consists of members' contributions, £2 per week, a £ for £ with Government subsidy, and such additional annual sum as an actuary certifies to be necessary.

Annuity is only paid if the following conditions are existent:

(i) A service as member for at least 9 years (before or after passing of Act);
(ii) a payment into the Fund of not less than £200;
(iii) the attainment of the age of 50 years.

Should a member cease to be a member before reaching 50 years of age but otherwise has complied with (i) and ((ii) above, he is entitled to annuity on reaching the age of 50.

The rates of annuity are:

Service as a member for 9 years and less than 12 years—£5 p. w.
,, ,, ,, 12 ,, ,, ,, 15 ,, —£6 p. w.
,, ,, ,, 15 ,, or longer —£7 p. w.

Widows of annuitants to be paid during life ⅗ of the weekly rate of husband's annuity, such annuity to cease on remarriage.

If a person ceases to be a member before complying with the requirements entitling him to annuity payments, he can get a refund of his contributions without interest.

At 60 years and over a member may retire at will. Up to the age of 60 it will be necessary for him to be defeated at an election or a pre-selection ballot, or be not endorsed, or compelled to retire on account of ill-health before he can qualify for benefit.[4]

***Australia: Queensland (Salaries of Premier, Ministers, Officers, Whips and Members).**[5]—Under the Constitution Acts Amendment

[1] 12 Geo. VI, No. 32. [2] Contributed by the Clerk of the Parliament.—[ED.]
[3] 13 Geo. VI, No. 18. [4] Contributed by the Clerk of the Parliament.—[ED.]
[5] *See also* JOURNAL, Vols. VI, 54; XIII, 66.

Act of 1948,[1] assented to December 17, 1948, the following increases to annual salaries (payable from July 1, 1948) were made:

Members	Salary increased from	£850	p.a.	to	£1,050
Leader of Opposition	,,	,,	,,	£1,250	,,	,,	£1,550
Government and Opposition Whips ...	,,	,,	,,	£950	,,	,,	£1,150
Chairman of Committees	,,	,,	,,	£1,100	,,	,,	£1,300
Speaker	,,	,,	,,	£1,500	,,	,,	£1,800
Ministers	,,	,,	,,	£1,500	,,	,,	£2,250
Premier	,,	,,	,,	£2,000	,,	,,	£2,700 (plus £300 p.a.)

Acting Minister (for a longer period than 30 days) to be paid at Minister's rate.

Acting Premier (for a longer period than 30 days) to be paid at Premier's rate.[2])

Australia: South Australia (Pensions to Members).—The Parliamentary Superannuation Act, 1948,[3] creates a fund under the control of 3 trustees, namely—the President, the Speaker and the Under-Treasurer, and audited accounts of the fund are required to be tabled in Parliament each year. Members' contributions are payble in 12 equal monthly instalments, totalling £58 10s. per annum. The Government will contribute to the fund on a £1 for £1 basis and will provide any additional funds required for the purposes of the Act.

Eligibility of ex-members for pension rights depends on:

(1) Service as a member of Parliament for at least 12 years;
(2) Non-receipt of Parliamentary salary;
(3) Attainment of 50 years of age;
(4) Contributing to the fund of an amount equal to 6 years' contributions;
(5) Being defeated at an election.

In addition, a member resigning before the expiration of his term of office, or not seeking re-election on expiration of his term of office, must satisfy a Judge that there are good and sufficient reasons for his resignation or for not seeking re-election.

The amount of pension payable will be £250 per annum after 12 years' service, increasing by £20 per annum for each complete year of service thereafter, with maximum of £370 per annum.

Widows of deceased members may receive up to 60 per cent. of the pension entitlement of such deceased husband.

Persons ceasing to be members before qualifying for pensions and, in the case of deceased non-qualified members, their widows, are entitled to a refund of contributions paid without the addition of interest.[4]

***Australia: South Australia (Salaries and Allowances to Members).**[5]—After reference to a special Committee of Inquiry, comprising the President of the Industrial Court, the Judge of Bank-

[1] 13 Geo. VI, No. 17. [2] Contributed by the Clerk of the Parliament.—[ED.]
[3] No. 8 of 1948. [4] Contributed by the Clerk of the Parliaments and Clerk of the House of Assembly.—[ED.] [5] *See also* JOURNAL, Vols. II, 17; IV, 39; XIII, 67.

ruptcy for South Australia and the Auditor-General, the question of members' salaries and allowances was brought before the Parliament which enacted the Committee's recommendations in the Payment of Members of Parliament Act, 1948,[1] and the Parliamentary Superannuation Act, 1948.

The basis of payment of members was changed from a flat rate of £600 per annum, with special allowances, to a rate varying with the location of districts. Members whose electoral district, or any part thereof, does not extend beyond a distance of 50 miles from the General Post Office, Adelaide, receive £900 per annum. Those whose districts are farther removed than 50 miles, but no part of which exceeds 200 miles from the General Post Office, Adelaide, received £950 per annum, and those any portion of whose district extends beyond 200 miles from Adelaide, £975 per annum.

The salaries of certain offices amended under the Act have been increased as follows:[2]

	Estimates.	*Previously. Payment of Members Special Acts.*	*Total.*	*As Member.*	*Act of 1948, Additional for Holding Particular Office.*	*New Total.*	*Actual Increase.*
	£	£	£	£	£	£	£
President & Speaker	800	200	1,000	950	400	1,350	350
Chairman of Committees	600	200	800	900	200	1,100	300
Leader of Opposition	300	600	900	950	300	1,250	350

Australia: Western Australia (Amendments to Standing Orders).[3] On October 13, 1948, amendments were made to S.O.s Nos. 157 and 158 of the Legislative Assembly to provide that a member could ask leave to continue his speech either at a later stage of that sitting or at a future sitting. These amendments were found necessary to enable a member to complete his speech when unfinished at a time which had been generally agreed upon for an early adjournment of the House. Towards the end of the Session when Standing Orders were suspended to enable business such as Messages from the Council to be dealt with forthwith, it has been found necessary to interrupt a speech then being delivered. The Standing Orders were amended to read as follows, the additional words being underlined:

> 157: A Debate may be adjourned on Motion duly seconded, and without discussion, or by leave being granted to a member then speaking to continue his remarks at a future time, either to a later hour of the same day, or to any other day.
>
> 158: The member upon whose Motion any debate shall be adjourned by

[1] No. 9 of 1948; Parliamentary Paper 22 of 1948.

[2] Contributed by the Clerk of the Parliaments and Clerk of the House of Assembly. —[ED.]

[3] *See also* JOURNAL, Vol. XIV, 61.

the House shall be entitled to pre-audience on the resumption of the debate, but a member who is granted leave to continue his remarks, if he fail to so continue immediately on resumption of the debate, shall not speak again at any subsequent stage of the debate.[1]

***Western Australia (Redistribution of Seats).**—In the State Parliament of Western Australia, the boundaries for the 50 electorates for the Legislative Assembly have remained unaltered since 1929, whilst the boundaries of the 10 Legislative Council Provinces (each returning 3 members) have remained the same since 1911. In 1947 an Electoral Districts Act was passed, which repealed all existing Acts on the subject. Three Electoral Commissioners were appointed, consisting of the Chief Justice, the Under-Secretary for Lands and the Chief Electoral Officer, with power to inquire into and make recommendations for the division of the State into 50 electoral districts for the Legislative Assembly, and consequent alteration of Legislative Council provinces. The Act provided that the Commissioners shall regard the State as divided into 3 areas: (1) Metropolitan Area; (2) North-West Area; and (3) Agricultural, Mining and Pastoral Area. For the North-West Area 3 seats were to be provided, in lieu of the 4 existing seats. In the Metropolitan Area every 2 electors were to be regarded as 1 elector, whilst in the Agricultural, Mining and Pastoral Area each 1 elector was to be regarded as 1 elector. As more than half of the electors of the State live in the Metropolitan Area, this provision is to ensure that the scattered and thinly populated parts of the State receive adequate representation. At the end of 1947 the number of electors in the Metropolitan Area approximated 172,000, the North-West Area, 3,200, and the Agricultural, Mining and Pastoral Area, 120,000. Following the provisions of the Act it was ascertained that 20 seats with an average of 8,600 electors each would comprise the Metropolitan Area, whilst in the Agricultural, Mining and Pastoral Area, 27 seats with an average of 4,400 electors each would be provided, whilst the 3,000 electors in the far North-West would return 3 members. In August, 1948, the Electoral Commissioners published their preliminary report, with maps showing the proposed redistribution. Under the Electoral Districts Act, 1947, 2 months had then to elapse to enable any person to lodge any objection to the proposals. When that time had elapsed the Electoral Commissioners presented their final report to the Governor. By Order in Council the Governor promulgated this final report in December, 1948. This redistribution of seats now becomes law as by the 1947 Act it was not necessary to refer the matter to Parliament. It will take effect as from the next general election, which is normally due early in 1950. Any previous bye-elections for the present Parliament will be determined on the present boundaries.[2]

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

New Zealand (Second Chamber Inquiry).[1]—The last issue of the JOURNAL contained an Article on "Constitutional Developments in New Zealand" during the year under review in that Volume, by Mr. H. N. Dollimore, LL.B., the Clerk of their House of Representatives.

Following the debate on the Second Reading of the Legislative Council Abolition Bill (No. 25-1) Motion was made by the Acting Prime Minister in the Lower House, and the Leader of the Legislative Council in the Upper House, for the appointment of Select Committees with power to sit together and confer on the question of the Second Chamber, under the order of Reference there stated.

Although no decision was come to, it is felt that some brief account should be given of a debate which took place in the House of Representatives during the 1948 Session, for which issue of the *Hansard* Pamphlet we are indebted to the Clerk of that House.

House of Representatives.—On September 29, 1948,[2] in the House of Representatives, after the laying of Special Reports from the Committee acknowledging special services rendered them by certain persons, the hon. member for Christchurch Central (Mr. Macfarlane) when stating that he had been directed by the Joint Constitutional Reform Committee to report to the House that the Committee had not been able to reach agreement and that it had no recommendation to make, moved:

> That the Report, together with the minutes of evidence, factual summary and minutes of the proceeding, do lie upon the Table.

Mr. Macfarlane in his opening remarks said that he had in his hand 1 volume consisting of evidence submitted by prominent men and women on constitutional Law in New Zealand. It had been suggested, however, that this was not evidence but merely the expression of opinion. The only persons, however, who could express an opinion of value to the House and the Country were those well versed in constitutional law and it was clear that they preferred the present bicameral system of government. Some thought it should be a small Chamber of persons well versed in economics, law, the Trade Union movement, business, farming and industry generally. All sorts of ideas were put forward.

The majority of the Committee felt that if they were to have a second Chamber the matter would have to be examined at great length.

The Committee of the Legislative Council submitted a scheme on the following lines :

1. That the bicameral system of government should be retained in New Zealand.
2. That the membership of Council should not exceed 40 members—three-

[1] *See also* JOURNAL, Vols. III, 8; XVI, 161.
[2] 1948 *Parl. Hans.* No. 17, 2610, 2620.

fourths of whom should be elected by the House of Representatives and one-fourth appointed by the Governor-General.

3. In the nomination of members elected by the House of Representatives it is suggested that a Select Committee comprising members of the House of Representatives should be the sole nominating body, or, alternatively, that a Joint Committee of both Houses select and draw up a list of persons suitable for appointment to the Legislative Council.

4. That the system of election of members by the House of Representatives should be such as to ensure that the Government and the Opposition are represented in proportion to their numerical strength in the House of Representatives. The method of election is a matter that could be left to the House of Representatives to decide.

5. That when members are being nominated for election by the House of Representatives or appointed by the Governor-General due consideration should be given to ensure as far as possible that they be representative of the economic and cultural life of New Zealand.

6. That without trespassing upon the rights and privileges of the House of Representatives the Government should make more use of the Legislative Council by initiating non-controversial legislation in the Council, and by referring suitable questions to Council Committees for consideration and if necessary for investigation.

7. That it is agreed that the Legislative Council shall not in future be empowered to veto the legislation of the Government. To that end it is proposed that, if a Bill other than a money or supply Bill, which has passed the House of Representatives and has been rejected by the Legislative Council, be again passed by the House of Representatives and again rejected by the Legislative Council the Government may then submit such Bill for the Royal Assent.[1]

An elected form of council was suggested somewhat on the lines of the Upper House of New South Wales, namely elected by the House of Representatives, but the hon. member remarked, that so far as he was able to judge, that system had not proved very successful for they often heard of clashes between the 2 Houses in New South Wales.

Many suggestions were made for reforming the Legislative Council of New Zealand. After having all the evidence before them the Committee were of opinion that they should consider alternatives to abolition.

The Leader of the Opposition (Mr. Holland) observed that this matter had its genesis in the introduction of a Bill by the Opposition to abolish the Legislative Council which was in charge of the Prime Minister but he was in difficulty as he knew that if it was left to a free vote the Bill would be carried. The result was the setting up of the Select Committee with power to sit with a similar committee of the Legislative Council numbering 13, which made a total of 26.

The main proposition was that the Joint Committee should consider the advisability of making the House of Representatives the sole legislative authority.

It was difficult to expect the Legislative Council members to be enthusiastic about the abolition of their own House.

[1] *Ib.* 2611.

None of those who came forward to give evidence, however, seemed satisfied with the present system, but they could not suggest a better one. Both a former and the present Prime Minister of Queensland said that when their Second Chamber had been abolished democracy really flourished. On the other hand the Leader of the Country Party in that State was in favour of a Second Chamber.[1]

Mr. Holland did not favour a vocational Second Chamber. No acceptable system, however, had been placed before the Committee. No one, not even the M.L.C.s, were in favour of an elected Chamber.

At present, M.L.C.s were appointed for 7 years by the Government of the Day.[2]

The M.L.C.s in the Committee suggested, alternatively that a combined Committee of both Houses select a panel suitable for election. Another suggestion was that the Upper House should be representative of the Lower House, and in almost the same political proportion elected every 3 years, but that was mere duplication. They then proposed that they should forego their veto of Legislation.

The Attorney-General (Hon. Mr. W. Mason) said that for over half a century it had been the general opinion that they had not got the service from the Upper House consistent with its existence and strength.

Anyone who had been in the House of Representatives must realize that there was room for an institution to supplement what they were doing in that House, but not to fight it. There were non-contentious matters which were lost sight of, that might properly be attended to by a Chamber that did not have to give attention of questions of fierce controversy at election time.

The first condition of such a chamber was that it should give up the pretence that it had the right to stand in the way of the decision of the people. In the House of Representatives they had Committees which served the House well. They were constituted always in a certain proportion of Government and Opposition members, which rested on nothing else than convention. They did what an Upper House such as he suggested might do, in a bigger way. Such a body would require to be a small body. Preponderance of power could be exercised by one body or another under consideration without any change in its form. An Upper House could evolve but it would require certain help. It could not get that, if the Lower House had first priority in all the Draftsmen. The Upper House would require some ancillary services, independent of the Lower House, upon which it could have first call.

The other points in the debate were: that it was a great disappointment that the Committee after 12 months had not found it possible to bring up anything more than a negative report; and that the people were overwhelmingly of opinion that the Legislative Council as it existed to-day served no useful purpose.[3]

[1] *Ib.* 2612. [2] *Ib.* 2613. [3] *Ib.* 2614.

At this stage, an amendment was moved:

That all the words after the word "report" be deleted with a view to inserting the following words in lieu thereof: "be referred back to the Constitutional Reform Committee of this House with a view to such Committee considering the advisability of recommending to the Government that a referendum of the electors be taken on the question of the abolition of the Legislative Council, and that for such purpose the said Committee be deemed to be and the same is hereby revived."

It was stated, however, that the Legislative Council now contained members owing allegiance to various political parties, which was a much different state of affairs from that which existed years ago when it was packed with supporters of the political party *then in power*.[1]

At this stage in a protracted debate of a general nature, the Closure was moved but not accepted by Mr. Speaker.

The Minister of Industries and Commerce (Hon. Mr. Nordmeyer) said that as it had been indicated in the House, by the Chairman of the Select Committee, the evidence taken by the Joint Committee had been, not only considerable, but weighty, and the Minister, for one, would like the opportunity of reading it, or at any rate a précis of it, so that he might make up his mind on the question of whether the Upper House should be abolished or reformed. He would, therefore, have welcomed the interpretation of the evidence, which he thought the House could have listened to with very considerable interest.[2] As for the amendment, there were some matters which should not be submitted to a referendum. The country was entitled to a lead so that they could more intelligently vote on this very important question. To refer the matter back to the Committee would get them nowhere.

The Minister of Labour (Hon. Mr. McLagan) said that the Legislative Council had had purely legal Measures from the House of Representatives which the Legislative Council had had to revise to prevent the imposition of injustice upon people through flaws in legislation. A useful work was being done by the Second Chamber.[3] The Closure was then again moved but disallowed by Mr. Speaker on the ground that ample time had not been given to the discussion.

The Acting Prime Minister (Rt. Hon. Mr. Nash) observed that he did not think, even now, one half of the members on the Government side of the House and one third of the members on the other side had said what they thought of the Report, which was a complete breach of the logical practice.

(*The Debate was then interrupted.*)

Legislative Council.—On September 30,[4] the 2 Special Reports were laid by the Leader of the Council (Hon. Mr. Wilson) in the Legislative Council and a Motion was similarly made to lay the

[1] *Ib.* 2621. [2] *Ib.* 2626. [3] *Ib.* 2628. [4] *Ib.* 2653.

Report of the Joint Constitutional Reform Committee, the consideration of which was set down for October 6.[1]

On that day the Leader of the Council in moving:

That the Report of the Joint Constitutional Reform Committee be agreed to

said that the Legislative Council members on the Joint Committee were unanimously of opinion that the Legislative Council, as at present constituted, was an essential and very helpful branch of the Legislature, and that the forcing of a general election by the Upper Houses both in Victoria and Tasmania could not happen in New Zealand because of the appointment of its members by the Governor-General-in-Council. The Constitution did not specify any limit as to the number of Legislative Councillors who might be appointed. There was a "gentleman's agreement" that the Legislative Council should not consist of more than 40 members.

The overwhelming evidence before the Committee favoured the bi-cameral system.

Mr. Wilson then read the proposals submitted to the Joint Committee by the Legislative Councillors (*which see above*). These proposals, however, were not proceeded with as it was evident that agreement could not be reached in the Joint Committee, but the Committee was against an elected Upper Chamber and it was urged that the Legislative Council should have the right to reject all Bills, except Money Bills. All such rejected Bills should then be re-submitted to the Legislative Council so that between the first rejection of a Bill by the Legislative Council and its re-introduction in "another place" for further consideration, the people might have the opportunity of expressing their views on the Measure and that if the Measure was rejected by the Legislative Council the second time, it should become law, the responsibility then resting with the general public.

Debate on the Motion was resumed on October 7,[2] and, after further discussion, Question was agreed to.

Union of South Africa (Acquisition of Territory: Prince Edward Islands).—On September 1[3] a Bill was brought up and passed 1 *R*.

to provide for the confirmation of the annexation to the Union of South Africa of the Prince Edward Islands,[4] and for the administration, government and control of the said islands.

Of which the Preamble is:

Whereas effective occupation and administration of Marion Island and Prince Edward Island were established on the twenty-ninth day of December, 1947, and the fourth day of January, 1948, respectively, and such occupation and administration will continue permanently:

And Whereas by proclamation issued by His Excellency the Governor-General, dated the twelfth day of January, 1948, it was declared that His

[1] *Ib.* 2759-2775. [2] *Ib.* 2807-2821. [3] 64 *Assem. Hans.* 1313.

[4] Marion Island: Lat. 46° 53′ S., Long. 37° 45′ E., and Prince Edward Island: Lat. 46° 36′ S., Long. 37° 57′ E.

Majesty's sovereignty over the said islands is henceforth to be exercised by His Majesty's Government in the Union of South Africa:

And Whereas it is expedient to declare formally that the said islands have been annexed to and form part of the Union of South Africa, and to make due and proper provision for the administration, government and control of the said islands:

In moving 2 *R.* of the Bill on September 22,[1] the Prime Minister (Dr. the Hon. D. F. Malan) said that the purpose of the Bill was to obtain the consent of Parliament in validation of an act done by the previous Government. The islands were named by Captain Cook, Marion, after the discoverer, the French navigator Marion du Fresne in 1772. Because they had never been occupied, sovereignty over the islands had not been established by any particular country. The nearest to occupation came from England, by an application of a guano company to lease the island, and, on another occasion, by a whaling company. But these rights, which were granted by the British Government, were never exercised and, in any case, the islands were never occupied.

The islands, so far as is known, had no mineral wealth and there were practically no agricultural possibilities.[2]

The reason for the annexation was two-fold. One was negative: It was thought that the islands being nearer to South Africa than any other country should be annexed by that Government. The more positive reason was that the islands were of value to South Africa from a meteorological point of view and Marion Island was a most suitable place for long-range forecasts of weather conditions, for agricultural purposes. There had been 10 persons on the island since its occupation.[3]

Power was given the Union Government under the Bill to enforce any particular law or part thereof by Proclamation.[4] The population on the island would not be disfranchised and as Cape Town was the

[1] 65 *Assem. Hans.* 3040. [2] *Ib.* 3041. [3] *Ib.* 3042.

[4] The Roman Dutch law, as existing and applied in the Cape Province, whether as judicially interpreted or modified by statute, is to be the common law of the Territory.

By s. 3 of the Bill, the following laws, as amended from time to time, are so far as applicable, to be in force in the territory: Administration of Estates Act 1913; Justice of the Peace and Oaths Act 1914; Criminal Procedure and Evidence Act 1917, Special Justices of the Peace Act 1918, Inquest Act 1919, Magistrates Courts Act 1944 and the Electoral Consolidation Act 1946.

The Proclamation applying any particular Union Statutory provision to the islands is required to be laid in both Houses of Parliament within 14 days after publication, if Parliament is in Session, or, if not, then within 14 days after the beginning of its next ordinary Session, and shall lie there for at least 28 consecutive days. Should Parliament be prorogued before 28 days have elapsed, the proclamation shall be so laid within 14 days of the beginning of the next Session.

Should both Houses by resolution passed in the same Session in which such Proclamation has been duly laid disapprove of such Proclamation or any part thereof it shall cease to have effect to the stated extent, but without prejudice to the validity of anything previously exercised thereunder.

Section 4 of the Bill provides that no Union Act passed after the date of the commencement of the Prince Edward Islands Act shall apply to the Territory unless specifically so provided or declared by Proclamation.—[Ed.]

nearest town, it was provided by another Act[1] that they should come under the Union Assembly Electoral Division of Cape Town (Harbour).

The Bill, which passed through all its stages in both Houses, was signed by the Governor-General on October 1, that year, and duly became Act No. 43 of 1948.

Union of South Africa (Parliamentary Approval of International Customs Agreement).—The General Agreement on Tariffs and Trade recently concluded at Geneva at the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, was agreed to by the Union's representative subject to Parliamentary approval. The agreement was referred to a Select Committee of the House of Assembly, which, after hearing the evidence of the Deputy Leader of the South African delegation at the conference and various other officials, recommended that the Government, on behalf of the Union of South Africa, accept the General Agreement provisionally and that legislation be introduced to enable the Government to give effect to provisions which fell outside the Union's Customs Act.

The Report of the Select Committee[2] was not considered by the House, but the Geneva General Agreement on Tariffs and Trade Act[3] was passed implementing the Committee's recommendations. Section 8 of such Act provides that any proclamation under S. 3, other than a proclamation relating to the provisional application of the agreement and any proclamation under Ss. 4, 5, 6 or 7, issued during any Session of Parliament upon a date not less than 28 days before the end of that Session shall lapse at the end thereof unless it has been approved of during that Session by Resolution of both Houses of Parliament, and any proclamation issued at any other time shall lapse at the end of the next ensuing Session of Parliament unless it has, during that Session, been approved of by Resolution of both Houses of Parliament, but the lapsing of any such proclamation shall not detract from its validity before it lapsed.[4]

Union of South Africa: House of Assembly (Control over Expenditure).[5]

FIFTH SESSION, IXth PARLIAMENT.—During the 1947 Session, the Controller and Auditor-General in his annual Reports to Parliament mentioned 2 instances in which, in his opinion, the principle of Parliamentary control over expenditure had not been observed, namely: (*a*) by the Treasury in connection with the disposal of the profit derived from sales of gold in India and (*b*) by the South African Railways and Harbours Administration regarding the withdrawals of moneys from the Rates Equalization Fund to meet deficits on working.

[1] No. 50 of 1948. [2] S.C. 5-'48. [3] No. 29 of 1948.
[4] Contributed by the Clerk of the House of Assembly.—[ED.]
[5] *See also* JOURNAL, Vols. IV, 60; VI, 210; IX, 34; X, 54; XI-XII, 52; XIV, 68.

Inquiries were made into both instances by the Select Committees on Public Accounts and on Railways and Harbours during the 1947 Session and again in the First Session of 1948 but as finality had not been reached at the time of the dissolution of the House, the circumstances are summarized below:

(*a*) *Disposal of Profits on Sales of Gold in India.*—In his Report for 1945-46[1] the Controller and Auditor-General drew attention to the fact that in 1943 the Treasury made an arrangement through the United Kingdom Government with the Government of India whereby the Union would share in the profit realized on sales of gold in India in proportion to its imports from India. Gold was purchased by the Bank of England from the South Africa Reserve Bank and sold in India at the Bombay price, which was much higher than the exchange parity price for gold. The profit from this transaction during the period July, 1944, to September, 1945, amounted to £1,072,182 7s. 8d. This amount was placed to the credit of the Gold Premium Account with the Paymaster-General and was not paid into the Exchequer Account. Under a direction given by the Treasury amounts of £536,000 and £77,500 were diverted from this profit to the Food Control Organization and to the National Supplies Control Board, respectively, as contributions towards the financial commitments incurred by those bodies in connection with the importation and sale of tea and ground-nuts. The Controller and Auditor-General contended that the profit thus realized was an accrual to the Consolidated Revenue Fund and that expenditure from it should be validated by an Act of Parliament.

The Select Committee in 1947, after hearing evidence on the subject, came to the conclusion that the contention advanced by the Controller and Auditor-General was the correct one and recommended that the action of the Treasury should be regularized by legislation. The Treasury in its reply to the Committee's resolution maintained (i) that the transaction was in the nature of an exchange transaction, (ii) that the balance from the profits so derived from the sales of gold in India were in the nature of a windfall, (iii) that it would be a departure from existing practice to pay the amount in question into Revenue and not use it for the purpose for which the foreign exchange was purchased, and (iv) that it would be difficult to apply it in practice, except where the circumstances are, as in the present case, altogether unusual. The Select Committee in 1948 (First Session) after hearing further evidence on the subject, agreed with the views expressed by the Controller and Auditor-General and recommended that the payments made to the Food Control Organization and the National Supplies Control Board should be regularized by a suitable provision in the Finance Act.

(*b*) *Withdrawals of moneys from the Rates Equalization Fund.*—Attention was directed by the Controller and Auditor-General in his

[1] U.G. 47-'46.

Report on the Accounts of the South African Railways and Harbours Administration for 1945-46[1]—which was referred to the Select Committee on Railways and Harbours, 1947—to the fact that the deficits of £288,464 19s. 2d. and £1,870,087 6s. 1d. on the working of the South African Railways and Harbours Administration for the financial years 1944-45 and 1945-46, respectively, were charged to the Rates Equalization Fund. As the Rates Equalization Fund, established under S. 128 of the South Africa Act, is for "maintaining, as far as may be, uniformity of rates notwithstanding fluctuations in traffic", the Auditor-General queried the propriety of meeting the deficits from this Fund without Parliamentary sanction. The Select Committee, after inquiring very fully into the matter, concluded that the Administration had acted in good faith but in view of the difficulty of determining that the withdrawals were made *solely* for the purpose of "maintaining uniformity of rates notwithstanding fluctuations in traffic" recommended that the withdrawals of the 2 amounts should be approved by Parliament in a Finance Act, and that steps should be taken to clarify the legal position. The Railway Administration in its reply to this resolution, which was referred to the Select Committee on Railways and Harbours, 1948 (First Session), expressed the view that the withdrawals from the Fund were in fact made solely for the purpose of maintaining uniformity of rates. The Committee, after hearing further evidence came to the conclusion that it could not subscribe to the view expressed by the Administration and in reiterating the resolution adopted by the Committee in 1947, submitted the matter in a special report for the decision of the House.

FIRST SESSION, Xth PARLIAMENT.

Parliamentary Control over Expenditure.—Reference has been made above to 2 instances in which, in the opinion of the Controller and Auditor-General, the principle of Parliamentary control over expenditure had not been observed; that both had formed the subject of inquiries by Select Committees but that at the time of the dissolution of the House, finality had not been reached in regard to either. During this Session the one matter was disposed of by S. 13 of Act No. 49 of 1948 which validated the unauthorized withdrawals by the Railway Administration from the Rates Equalization Fund of certain amounts for meeting deficits on working during the financial years 1944-45 and 1945-46.

The other relating to the disposal of the profit on gold sales in India was also carried a stage further. The Treasury, in replying to the resolution of the Select Committee on Public Accounts of 1948 (First Session), stated that if it were to accept the recommendation of the Committee without a specific direction of Parliament it would

[1] *Ib.* 51-'46.

be committing itself to a position for which it was not prepared to accept responsibility.

In 1931 the Select Committee on Public Accounts adopted a resolution, which was agreed to by the House, that when on a point of importance, a recommendation made and repeated by the Committee has been rejected by the Treasury for 2 Sessions in succession, the matter, after full investigation and in the early part of the Third Session, should form the subject of a special Report to the House for decision. As this was the second occasion on which the Treasury had disagreed with the views expressed by the Select Committee on Public Accounts regarding the disposal of profits on gold sales in India, the matter came within the ambit of that resolution.

The Committee, after hearing the evidence of the Secretary for Finance, the only witness who had dealt with the matter personally and who had been Overseas during both the 1947 Session and the First Session of 1948 when it was previously under consideration, agreed on a division with the views expressed by the Treasury, namely, that the transaction from which these profits were derived was, in fact, an exchange transaction and that the Treasury had authority to carry on the transaction outside of the Consolidated Revenue Fund.

In reporting the matter specially for the decision of the House in terms of the resolution referred to above, the Committee expressed the view that in its opinion no further action need be taken.

This recommendation completely reversed the recommendations made by the 2 previous Selection Committees. The Special Report of the Committee,[1] was unfortunately, not presented at an early enough stage of the Session to permit of its discussion in the House.

A further instance involving the principle of Parliamentary control over expenditure was referred to by the Controller and Auditor-General in his Report on the Accounts of the South African Railways and Harbours for 1946-47, which was referred to the Select Committee on Railways and Harbours during this Session, namely, the withdrawal and use, without Parliamentary appropriation, by the Railway Administration, of moneys in the Railway and Harbour Funds.

The Committee, after full inquiry into the circumstances, felt itself obliged to emphasize its disapproval of the action of the Railway Administration and in submitting the matter specially for the decision of the House recommended that once financial order was restored, there should be no departure in future from the financial procedure prescribed by law. The Special Report of the Committee[2] was discussed by the House on 2 occasions, but at the time of prorogation no decision had been arrived at.[3]

[1] S.C. 15A-'48. [2] *Ib.* 16A-'48.

[3] Contributed by the Clerk of the House of Assembly.—[ED.]

Union of South Africa: House of Assembly (The Guillotine).[1]

FIFTH SESSION, IXth PARLIAMENT.

Railway and Harbour Funds.—It was again Resolved to have a separate Motion for the House to go into Committee of Supply on the Estimates of Expenditure from the Railway and Harbour Funds and to limit the proceedings on the Railway Estimates as follows:

(i) 12 hours for Motion to go into Committee of Supply;
(ii) 12 hours for Committee of Supply;
(iii) 4 hours for Second Reading of the Railways and Harbours Appropriation Bill; and
(iv) 2 hours for Third Reading of the Bill.[2]

The full time allotted was taken up on the Motion to go into Committee of Supply, 10 hours 39 minutes were taken up in Committee of Supply, 3 hours 36 minutes were occupied on the Second Reading and the full time allotted was taken up on the Third Reading.

FIRST SESSION, Xth PARLIAMENT.

Consolidated Revenue Fund.—The proceedings in Committee of Supply on the various Estimates of Expenditure from the Consolidated Revenue Fund were limited to 110 hours, and 6 and 2 hours, respectively, were allowed for the Second and Third Readings of the Appropriation Bill.[3]

On the conclusion of the time allotted for Committee of Supply the Main Estimates were still under discussion, and the full 6 hours allotted were occupied on the Second Reading of the Bill.[4]

***Union of South Africa (Payment of Senators and M.P.s).**[5]—In moving 2*R.* of the Members of Parliament Bill in the House of Assembly on March 16,[6] the Prime Minister said in regard to Clause 1 of the Bill that under the existing law a member of either House was entitled to 25 days' special leave of absence during an ordinary Session, namely, one in which the ordinary estimates of Revenue and Expenditure were considered, members had come to the present Session under the impression that the present was such a Session. The form had now been changed and the Session had become a Special Session when such estimates would not be considered. Therefore quite a number of members who had been absent under the impression that they were entitled to do so under the law, would now be penalized unless their case was met. Clause 1 therefore provided that this present Session, for the purpose of penalizing members for absence, would be considered as an Ordinary Session and under the Bill such penalty was removed.

[1] *See also* JOURNAL, Vols. V, 82; IX, 39; X, 56; XI-XII, 218; XIII, 77; XIV, 84; XV, 60. [2] 1948 VOTES (1), 166. [3] 1948 VOTES (2), 224.
[4] Contributed by the Clerk of the House of Assembly.—[ED.]
[5] *See also* JOURNAL, Vols. VII, 62; VIII, 127; IX, 41; XV, 80, 82; also s. 56 South Africa Act 1909. [6] 63 *Assem. Hans.* 3295.

(*This Bill also deals with another subject dealt with below*) *Union of South Africa* (*Representation of Natives in both Houses.*)[1]

In moving 2 *R* [2] as above the Prime Minister followed by saying that Clause 2 of the Members Parliament Bill also provided for a special situation which had arisen. Members of both the Senate and the House of Assembly representing the Natives, would, under the existing law, continue to sit until June 30 after which they would have to be re-elected, but the provisions for such re-election were so cumbersome that it would take from 4 to 6 months to re-elect them and enable them to take their places in Parliament. This had not been anticipated in the passing of the Legislation last Session. A special occasion had arisen and now they had a new Parliament which might meet next July or August in which Native interests would not be represented. It was, therefore, provided by Clause 2 of the Bill that the existing members of the Native Representatives, both in the Senate and in the House of Assembly, would continue in office after June 30 and so continue until their successors in the 2 Houses had been elected, whensoever that might be, which would depend on the time the new elections would take.

The Bill then passed 2 *R.* but when it was in *C.W.H.* on March 18, the House divided on the Question—"That Clause 2 become part of the Bill". Ayes 55; Noes 39. The Clause was then agreed to, the Bill taken through 3 *R.*, sent to the Senate, agreed to, and became Act No. 25 of 1948.

Union of South Africa: House of Assembly (Delegated Legislation).[3] –The Select Committee on Delegated Legislation, 1947, was re-appointed during the 1948 (First) Session.[4] The various memoranda and returns, furnished in terms of Resolutions of the Select Committee of 1947, were summarized, tabulated and printed in advance during the Recess, and were referred to the Committee on re-appointment. The Committee, owing to the imminent prorogation of Parliament, was again unable to complete its inquiry and reported accordingly. The documents referred to above, printed in their summarized and tabulated form as appendices to the Committee's report, are:

(*a*) *In respect of the United Kingdom and the Union of South Africa.*

1. Memorandum by the Clerk of the House of Assembly (as revised November, 1947), on the safeguards exercised in the United Kingdom and in South Africa in respect of Delegated Legislation.

(*b*) Tabulated Summary of returns from Government Departments;

[1] *See also* JOURNAL, Vols. V, 35; XI-XII, 56; XIV, 64; XV, 80; XVI, 58.
[2] 63 *Assem. Hans.* 3456.
[3] *See also* JOURNAL, Vols. XIV, 67, 174; XV, 60.
[4] S.C. 8-'48.

(*c*) Return from the Government Law Advisers;
(*d*) Memorandum by the Social and Economic Planning Council;
(*e*) Memorandum by the Association of Law Societies;

and summaries of information supplied by the Union High Commissioner in Canada, the High Commissioner for Australia in the Union, the Union Minister Plenipotentiary in Sweden and by the Legal Division for Political Affairs, U.S.A.

A Bibliography on the subject was also given.

During the First Session of the Xth Parliament, a Select Committee was set up to inquire into delegated powers and to report upon what safeguards are deemed necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the law, to which the Report of the previous Select Committee on Delegated Legislation[1] was referred. At the fifth meeting of the Committee 3 draft reports, which are printed *in extenso* in the minutes of the Committee, were presented by individual members for consideration. The Committee, however, was again unable to complete its inquiry owing to lack of time and in reporting to this effect to the House, recommended that it should be re-appointed in the next Session.

In connection with this Committee it is also interesting to record that one of its members was examined by the Committee.[2]

Union of South Africa: House of Assembly (Powers and Privileges of Provincial Councils).—In moving 2 *R.* of this Bill on February 19 the Minister of the Interior said that the Bill had been drafted on the lines of the Powers and Privileges of Parliament Act, 1910-11,[4] although this Bill was not so wide in its application as the Union Act.

The question of increasing the Powers and Privileges or giving statutory form and authority to the Powers and Privileges of Provincial Councils had been raised some time ago and the Transvaal Provincial Administration submitted to the Government of the Day a draft Ordinance for their Provincial Council, giving greater protection to persons employed in the publication of Provincial Council papers. Such Council, however, did not proceed with the measure as it was thought to be *ultra vires* the South Africa Act, 1909.[5] In 1914, at a conference between the Provincial Executive Committees, a Resolution was passed requesting the Union Government to make the Union Act *mutatis mutandis* applicable to the 4 Provincial Councils, but no action was taken.

In 1936 the subject was raised by the Natal Provincial Administration and placed before the Provincial Consultative Committee, which led to the appointment of a committee in January, 1939, consisting of a representative from each Province to consider the points raised by the Law Advisers in the draft which had been submitted

[1] *Ib.* [2] Contributed by the Clerk of the House of Assembly.—[ED.]
[3] 62 *Assem. Hans.* 1928. [4] No. 19 of 1910-11. [5] 9 Edw. VII. c. 9.

by the Department concerned, but the War prevented further action being taken. Since the cessation of hostilities, however, the Union Government in consultation with the Provinces had given the subject fresh consideration, the result of which was the present Bill approved of by the 4 Provincial Administrations. Clause 1 contained definitions. Clause 2 gave Provincial Councils and their Committees authority to order the attendance of witnesses and Clause 3 provided for their examination. Clause 4 dealt with the objection of a witness to answer questions or produce documents. The Minister then passed on to Clause 10 under which the Press was given the same rights in respect of reports of Provincial Council proceedings as those enjoyed by the Union Parliament. *Bona fide* reports were privileged.

In connection with Clause 14 of the Bill (Freedom of Speech in Provincial Councils) the Minister observed that this Clause, which was in substitution for S. 77 of the South Africa Act, 1909, read:

> There shall be freedom of speech in the Provincial council and no administrator or any other member of the executive committee of a province and no member of a provincial council shall be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of any matter or thing which he may have brought by petition, draft ordinance, resolution, motion, or otherwise, or have said before the provincial council, or by reason of his vote in such council;

and gave protection against action in respect of documents or publications laid before Provincial Councils. A case arose some time ago in which an Administrator was placed in a quandary. He had appointed a Provincial Commission. The Commission reported and the question arose whether, if that report was published any matter contained in it, which might be defamatory, would involve him in legal action. There was considerable divergence of opinion on the matter. This new Clause, however, made it perfectly clear and after some further debate, the Bill passed 2 *R.*, and at a later date, the remaining stages. The Bill was then sent to the Senate, which, in addition to a correction in the Afrikaans version of the Bill, added the following Proviso to Clause 2 of the Bill:

> Provided that no member or officer of Parliament shall be required [while in attendance on Parliament] to attend before a Provincial Council or before any such Committee.

The Senate amended this sub-section by striking out the words shown in square brackets.

The Senate amendment was concurred in by the Assembly and the Bill duly became Act No. 16 of 1948.

As the question of Parliamentary powers and privileges has aroused considerable interest of late, in some of the smaller Legislatures of our Commonwealth and Empire, it is proposed here to

give a little more detail in connection with this Bill, and by affording information as to those of its Clauses not adumbrated by the Minister.

Clause 5 provided against offences by witnesses, and Clause 6 for the issue of certificates protecting witnesses in making full disclosure as a bar to civil or criminal proceedings in respect of evidence given. Clause 7 provided that evidence by members of a Provincial Executive Committee or Council or their officers or Shorthand writers employed by them, might not be given elsewhere without leave from such Councils. A penalty of not exceeding 3 years' imprisonment is laid down in Clause 8 for printing false copies of reports and papers of a Provincial Council or their Committees. Provincial Council publications are protected by Clause 9.

Clause 11 provided that no member of a Provincial Executive Committee or Council and no attorney or parliamentary agent who in the practice of his profession was a partner or in the service of such member, shall accept or receive either directly or indirectly, any fee, compensation, gift or reward for or in respect of the promotion of or opposition to any draft ordinance, resolution matter or thing submitted or intended to be submitted for the consideration of such Council or Committee. The penalty on conviction for such offence is a fine not exceeding £1,000. The court on conviction of such a person may order him also to repay the amount or the value of any such fee, etc., received by him. Such orders of court may be executed as a civil judgment of such court.

Under Clause 12 a member of a Provincial Executive Committee or Council shall not in or before such Council or a Committee thereof vote upon or take part in the discussion of any matter in which he has a direct pecuniary interest, the penalty being the same as in the case of Clause 11. Clause 12, however, does not apply to any remuneration received as a member of a Provincial Executive Committee or Council, or, to any interest which any such member may have in any matter in common with the public generally or with any class or section thereof.

Under Clause 13, any person making or joining in any disturbance in a Provincial Council or its vicinity, while it is sitting, whereby its proceedings are likely to be interrupted, is guilty of an offence and liable on conviction to a fine not exceeding £50, or to imprisonment for not exceeding 6 months, or to both such fine and imprisonment. Such a person may be arrested by anyone without warrant, on the verbal order of the Chairman.

These powers and privileges conferred upon the Union Provincial Councils under this Bill are, however, not so extensive or detailed as those conferred by the Act of 1911 on the Houses of the Union Parliament.

Dominion of India (Constitutional Movements).[1]—Nothing definite has transpired in the Dominion of India in regard to the new

[1] *See also* JOURNAL, Vol. XVI, 187, n. 1, and *Cmd.* 7342, 7472.

Constitution during the year under review in this issue of the JOURNAL. The provisions relating to Fundamental Rights have been adopted, as well as provisions relating to the President, Vice-President and the Council of Ministers, as well as the basic principles relating to the Union Parliament and the State Legislatures, which had to be done to facilitate the formation of constituencies and preparation of electoral rolls. The bulk of the Constitution, however, has yet to be considered.

Movement has also taken place in regard to the "India States", many of which have integrated with the Provinces of India or combined with other States with a view to forming larger units.

***Dominion of India: Language Rights (other than English).**[1]—The present practice in regard to the language of the Assembly has now been amended and the existing provision is incorporated in Rule 107 of the Rules of Procedure which runs as follows:

> The business of the Assembly shall be transacted in English, provided that any member may address the Assembly in Hindustani and that the Speaker may permit a member unacquainted with English or Hindustani to address the Assembly in any Indian Language.[2]

Dominion of Pakistan (Constitutional).[3]—The Constituent Assembly of Pakistan adopted on March 12, 1949, a Motion which indicates the lines on which the future constitution of Pakistan would be framed.

The Constituent Assembly had also constituted a Committee to report in accordance with the Motion adopted by the Assembly on Aims and Objects, on the main principles on which the constitution of Pakistan is to be framed. This Committee formed a Steering Sub-Committee to determine the scope and manner of working of the Committee.

In 1947 soon after the Constituent Assembly came into existence it appointed several Committees to report on various matters connected with the framing of the future constitution:

(1) A States Negotiating Committee was appointed to negotiate with the various States which may join the Federation of Pakistan;
(2) A Tribal Areas Negotiating Committee was appointed to negotiate with the various Tribes; and
(3) A Committee on Fundamental Rights and Rights of Minorities was appointed to report on these rights. This Committee appointed 2 Sub-Committees. One was the Sub-Committee on Fundamental Rights of Citizens of Pakistan and the other the Sub-Committee on Matters relating to Minorities in Pakistan.

[1] *See also* JOURNAL, Vols. IV, 91, 110; XIV, 75. [2] Contributed by the Secretary to the India Parliament.—[ED.] [3] *See also Cmd.* 7343 and 7479.

Some of the Sub-Committees have finished their work but none of the main Committees have yet concluded their deliberations.[1]

Dominion of Pakistan (Parliamentary Procedure).—Section 38 (3) of the Government of India Act, 1935, as adapted for Pakistan reads:

Section 38 (3). Until rules are made under this section, the rules of procedure and standing orders in force immediately before the establishment of the Federation with respect to the Legislative Assembly of the Indian Legislature shall have effect in relation to the Federal Legislature subject to such modifications and adaptations as may be made therein by the President of that Legislature.

Accordingly the Rules and Standing Orders of the Indian Legislative Assembly before Partition were adapted by Mr. President.[2]

Dominion of Pakistan (Bahawalpur State).—The following is the text of the Instrument of Accession of Bahawalpur State to the Dominion of Pakistan:

Whereas the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an independent Dominion known as Pakistan, and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of Pakistan;

And Whereas the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Federation of Pakistan by an Instrument of Accession executed by the Ruler thereof:

Now Therefore

I, Sadiq Muhammad Khamis Abbasi, Ameer of Bahawalpur State, in the exercise of my sovereignty in and over my said State Do hereby execute thi my Instrument of Accession and:

1. I hereby declare that I accede to the Federation of Pakistan with th intent that the Governor-General of Pakistan, the Federal Legislature, th Federal Court, and any other Federal authority established for the purpose of the Federation shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to the State of Bahawalpur (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 Pakistan on the fifteenth day of August, 1947 (which Act as so in force is hereafter 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 Federal Legislature may make laws of this State.

4. I hereby declare that I accede to the Federation of Pakistan on the assurance that if an agreement is made between the Governor-General and the Ruler of the State whereby any functions in relation to the administration in this State of any law of the Federal 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. Nothing in this Instrument shall empower the Federal Legislature to make any law for this State authorising the compulsory acquisition of land

[1] Contributed by the Deputy Secretary of the Constituent Assembly.—[ED.]
[2] Contributed by the Secretary of the Constituent Assembly.—[ED.]

for any purpose, but I hereby undertake that should the Federal Government of Pakistan for the purposes of a Federal 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 Pakistan.

6. 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.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future Constitution of Pakistan or to fetter my discretion to enter into agreement with the Government of Pakistan established under any such future Constitution.

8. Nothing in this Instrument effects 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, rights and jurisdiction 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 Third day of October, Nineteen hundred and forty seven.

(Sd.) Sadiq Muhammad Abbasi.
Ameer of Bahawalpur.

I do hereby accept this Instrument of Accession.
Dated this Fifth day of October, Nineteen hundred and forty seven.

(Sd.) M. A. Jinnah.
Governor-General of Pakistan.

In the Schedule to the Instrument of Accession are listed under:

External Affairs, Communications and Ancillary, the matters in respect of which the Legislature of the Dominion of Pakistan may make laws for Bahawalpur State.

The following are amendments to the above-mentioned Instrument of Accession in respect of Defence:

Whereas Bahawalpur State has acceded to the Dominion of Pakistan and the defence of Pakistan including that of Bahawalpur State is the sole responsibility of the Government of Pakistan;

And whereas it is essential to the overall defence of the Dominion of Pakistan that there should be the closest co-ordination between the Government of Pakistan and Bahawalpur State on matters relating to Defence or having a bearing thereon;

Now Therefore

I, Sadiq Mohammad V Abbassi, Amir of Bahawalpur State, agree that

1. The Bahawalpur State Forces except the Units of my Body-Guard shall be attached to and operate with the Pakistan Armed Forces.

2. The Commander-in-Chief of the Pakistan Army shall also be the Commander-in-Chief of Bahawalpur State Forces and shall exercise full operation, administrative and financial control over them under the direction of the Ministry of Defence, Government of Pakistan.

3. A sum to be determined by agreement between myself and the Govern-

ment of Pakistan shall be paid by the Government of Bahawalpur every year in two equal instalments to the Government of Pakistan for the maintenance of the State Forces.

4. In order to enable the Government of Pakistan to discharge effectively its responsibility in respect of acceded subjects the following additional clauses shall be inserted in the Schedule to the instrument of Accession of Bahawalpur State;

(i) Under the heading " A—Defence ".
" 5. All matters relating to Defence or having a bearing thereon.

(ii) Under the heading " B—External Affairs ".
" 4. All relations with other Dominions or countries and all matters relating thereto or having a bearing thereon.

5. The Government of Pakistan may entrust to the Prime Minister of my State such duties relating to the administration of acceded subjects within the State as it may deem necessary. In the discharge of such duties the Prime Minister of my state shall be under the direct control of and responsible to the Government of Pakistan and shall carry out its directions issued to him from time to time.

Given under my hand this 1st day of October, 1948.

(Sd.) S. M. Abbasi,
Amir of Bahawalpur.

I do hereby accept the above Supplementary Instrument of Accession.
Dated this Fourth day of October, Nineteen hundred and forty eight.

(Sd.) K. Nazim-ud-Din,
Governor-General of Pakistan.

Dominion of Pakistan (Kalat State).—The Instrument of Accession between the Governor-General and H.H. Beglar Begi Khan of Kalat, the Ruler of this State is dated March 27, 1948, and is the same as that of the Instrument of Accession between the Governor-General of Pakistan and H.H. Sadiq Muhammad Khamis Abbasi, the Ameer of Bahawalpur except that in:

Para. 1. " Supreme Court " is substituted for " Federal Court " and " Dominion " for " Federal " in the first 2 instances where they occur.

Para. 4. " Dominion " is substituted for " Federation " and " Dominion Legislature " for " Federal Legislature ".

Para. 5. " Dominion Legislature " is substituted for " Federal Legislature ", " Dominion " for " Federal Government " and " Dominion Law " for " Federal Law ".

Para. 6. " Pakistan Independence Act " is substituted for " Indian Independence Act ".

In a Schedule to the Instrument of Accession are listed, under: Defence, External Affairs, Communications and Ancillary, the matters in respect of which the Legislature of the Dominion of Pakistan may make laws for the Kalat State.

There is, however, as in the case of the State of Bahawalpur, no subsequent Agreement in relation to that dated October 1, 1948, in relation to Defence.

Dominion of Pakistan: East Bengal (Constitutional).[1]—The power of the Provincial Legislature (East Bengal Legislative Assembly) has been curtailed by extending power to the Federal Legislature of Pakistan for making laws for the Province (East Bengal) even in respect of any of the matters enumerated in the Provincial Legislative list or to make laws for a Province with respect to any matter not enumerated in any of the lists in the 7th Schedule to the Government of India Act, 1935, as adapted by the Pakistan (Provisional Constitution) Order, 1947, if an emergency is proclaimed even in the field of economic life or allied matter. This relates to S. 102 of the aforesaid Act as further amended by the Government of India (Second Amendment) Act, 1948. This amendment has been made by the Constituent Assembly of Pakistan functioning as Federal Legislature of the Dominion. Similarly, control of the Federation for giving direction to a Province as to the manner in which the executive authority thereof is to be exercised even in the field of economic life has been provided for in S. 126 (5) of the Government of India Act, 1935, as adapted by the Pakistan (Provisional Constitution) Order, 1947, by the said Amendment. Such power has also been provided for in respect of the Federation by S. 126A of the aforesaid Act as amended by the said amendment.

This shows that the Constituent Assembly of Pakistan has amended an Act of the British Parliament—The Government of India Act, 1935.[2]

Ceylon (Dominion Status).[3]—Volume XV gave an outline of the "Parliamentary Government" Constitution—the Ceylon (Constitution) Order in Council, 1946—and the electoral provisions in connection therewith, so far as they more intimately relate to Parliament and its members. On September 20, 1947, the Ceylon election results were made known and towards the end of that year a White Paper[4] was issued containing the proposals for conferring Dominion Status on Ceylon, following a statement made in the House of Commons on June 18, 1947,[5] and after a Resolution of the State Council of Ceylon was passed on May 14 *idem*.

This White Paper contains 3 agreements concluded between the Governments of the United Kingdom and Ceylon in regard to defence, external affairs and public officers, all concluded November 11, 1947.

On November 13,[6] of the same year, therefore, a Bill was presented in the House of Commons:

to make provisions for, and in connection with, the attainment by Ceylon of fully responsible status within the British Commonwealth of Nations.

[1] Contributed by the Secretary of the East Bengal Legislative Assembly.—[ED.]
[2] 26 Geo. V, c. 2.
[3] *See also* JOURNAL, Vols. II, 9; III, 25; VI, 83; VII, 98; VIII, 83; IX, 12; X, 76; XI-XII, 76; XIII, 95; XIV, 200; XV, 224; XVI, 216.
[4] *Cmd.* 7257; *see also Cmd.* 7422.
[5] 438 *Com. Hans.* 5, s. 2015, *218*.
[6] 444 *Ib.* 557.

In moving 2 *R.* of the Bill in that House on the 21st *idem*, the Secretary of State for the Colonies (Rt. Hon. A. Creech Jones), after reciting the various stages through which constitutional government had progressed during recent years, reports of which have appeared in the JOURNAL from time to time, said that full Cabinet responsibility under a Prime Minister had been established and that the Government of Ceylon was now responsible to a Parliament of 2 Chambers. High Commissioners would be appointed in the 2 countries. Other points would be covered, such as support of Ceylon's membership of U.N.O., and its agencies, and if Ceylon so desired, the Imperial Government would sponsor Ceylon's desire for diplomatic representation. A Governor-General would be appointed. The Government of Ceylon, while able to amend their own Constitution, had felt that the provisions thereof safeguarding minorities should be retained.[1] Thus the provisions for an Upper House and for barring discriminatory legislation would be retained by the Ceylon Government.

The 1946 Ceylon Order in Council, continued the Minister, would now, in the light of these developments, have to be amended in certain respects after the passing of the Ceylon Independence Bill. Moreover, the Government of Ceylon was ready to adopt and follow the resolutions of past Imperial Conferences and in regard to external affairs generally, it would be on the same footing as other members of the Commonwealth.

The Bill therefore gave independence to Ceylon within the British Commonwealth of Nations.

Parts of the Bill, remarked the Minister, followed almost verbatim, sections of the Statute of Westminster, 1931,[2] for instance Clause 1 (1) and the first half of Clause 4 (2) and the First Schedule, which prevented the extension to Ceylon of future Acts of the United Kingdom Parliament and removed existing limitations of Ceylon's legislative power.

The provisions of Clause 4 (1) *inter alia* enabled His Majesty by Order in Council to make adaptation of Acts and other instruments in addition to those made by the Bills in order that all necessary modifications in Acts, etc., not foreseen, might be covered.

The responsibility of the Colonial Office for Ceylon would now, therefore, be relinquished to the Secretary of State for Commonwealth Relations.[3]

The Second Schedule to the Bill, dealt with amendments not affecting the law of Ceylon in regard to British Nationality, Finance, Visiting Forces, Ships and Aircraft, matrimonial causes and copyright.

After a somewhat protracted debate,[4] the Bill then passed 2 *R.* The remaining stages were taken on November 26, without debate

[1] *Ib.* 1480; *see also* Vol. XV, 231.
[2] 444 *Com. Hans.* 5, s. 1481.
[3] 22 Geo. V, c. 4.
[4] *Ib.* 1477-1524.

and the Bill was sent to the Lords, agreed to by them, received Royal Assent on December 10, 1947, and became 11 Geo. VI, c. 7.

The King's Speech on the Prorogation of the Third Session of Parliament contained the following reference:

During the past year Ceylon has become a fully self-governing member of the Commonwealth. I wish her people all happiness and prosperity and I trust that her relations with the other nations of the Commonwealth will be close and cordial.[1]

The account of the Ceremony of the Opening of Parliament under the new Constitution in Colombo on November 25 by Mr. R. St. L. P. Deraniyagala appeared in the last issue of our JOURNAL.

Southern Rhodesia (Constitutional: Increase in Number of Ministers).[2]—The Constitution Further Amendment Act, 1948,[3] amends S. 31 of the Constitution by increasing the number of Ministers from 6 to 7. This amending Act has been promulgated but does not come into operation until so declared by Proclamation.[4]

Southern Rhodesia (Constitutional: "Native").[5]—The Constitution Amendment Act, 1948,[6] amends the definition of the word "native" as given in S. 62 of the Constitution.

"Native" now means:

(*a*) any member of the aboriginal tribes or races of Africa and the islands adjacent thereto including Madagascar and Zanzibar; or

(*b*) any person who has the blood of such tribes or races and who lives as a member of an aboriginal native community.[7]

***Southern Rhodesia (Salaries and Pensions of Ministers and their Widows).**[8]—By the Ministers' Salaries and Pensions Act, 1948,[9] the salary of the Prime Minister is fixed at £3,000 and that of other Ministers at £2,500 per annum.

Ministers' Pensions.—The Act also makes provision for the payment of pensions, at rates which are laid down in the Act, to persons who have held office as Ministers for a period of 9 years or more, whether broken or continuous:

Provided that, if a person entitled to a pension under this section is in receipt of any other pension payable from public funds which is at the rate of seventeen hundred and fifty pounds per annum or more, no pension shall be payable to such person under this section.

The rates of pensions payable to Ministers under this Act are:

(*a*) for the period that a person has held office as Prime Minister, the pension shall be calculated at the rate of one hundred and fifty pounds per annum;

(*b*) for the period that a person has held office as Minister other than Prime Minister, the pension shall be calculated at the rate of one hundred and twenty-five pounds per annum:

[1] 446 *Ib.* 1824. [2] *See also* JOURNAL, Vol. XV, 88. [3] Act No. 38 of 1948.
[4] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[5] *See also* JOURNAL, Vol. V, 50. [6] Act No. 26 of 1948.
[7] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[8] *See also* JOURNAL, Vol. XV, 88. [9] Act No. 29 of 1948.

Provided that—

(i) the maximum pension payable to a person who has held office as Prime Minister shall be one thousand five hundred pounds per annum;
(ii) the maximum pension payable to a Minister who has not held office as Prime Minister shall be one thousand two hundred and fifty pounds per annum;
(iii) if a person entitled to a pension under section *four* of this Act is in receipt of any other pension payable from public funds which is less than seventeen hundred and fifty pounds per annum and if that other pension when added to his pension as determined in accordance with the preceding provisions of this section exceeds seventeen hundred and fifty pounds per annum, his annual pension under this Act shall be reduced by such excess over seventeen hundred and fifty pounds per annum;
(iv) the pension payable to any person under this Act shall be reduced by any amount payable to him as salary or allowance (other than subsistence or travelling allowances) out of monies appropriated by Parliament.

Pensions to Ministers' Widows.—In regard to these pensions the Act by S. 6 provides that:

6. The widow of any person who was entitled to a pension under section *four* of this Act or would, but for the receipt of another pension from public funds at the rate of seventeen hundred and fifty pounds per annum or more, have been entitled to a pension under the said section shall be entitled to a pension equal to forty per centum of the maximum pension to which her husband was entitled under this Act or would have been entitled to under this Act had he been in receipt of no other pension from public funds:

Provided that, in the event of re-marriage, the widow's pension ceases.[1]

***Southern Rhodesia (Salary of Speaker).**[2]—The Speaker's Salary Amendment Act[3] increases the annual rate of salary of the Speaker from £1,000 to £1,250.[4]

British West Indies (Constitutional and Closer Union).[5]—During the year under review a Colonial Office[6] paper was issued, Part II of which reported the proceedings on the closer association of the British West Indian Colonies held at Montego Bay, Jamaica, on September 11-19, 1947, under the Chairmanship of the Secretary of State for the Colonies (Rt. Hon. A. Creech Jones). The paper reports the Debates (pp. 63-95) at the first phase of the Plenary Session on September 11-13. At the second phase on September 15-18 the Conference was in committee when the discussion (pp. 96-104) dealt with the principle of Federation; Responsible Government, Communications, Fiscal Problems; Public Services; and the Standing Closer Association Committee, etc.

At the third phase on September 19 (pp. 105-120) 14 resolutions were adopted recognizing the principle of Federation; favouring an increasing measure of responsibility for the British Caribbean Terri-

[1] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[2] *See also* JOURNAL, Vol. XV, 88.
[3] Act No. 13 of 1948.
[4] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[5] *See also* JOURNAL, Vols. III, 27; IX, 62; XIV, 103.
[6] No. 218 of 1948.

tories; Shipping, Agriculture, Trade Commissioner Service; and recommended the setting up of a Standing Closer Association Committee. Resolution 6 of the Conference reading:

"Resolved: That this Conference recommends:

(1) the immediate constitution of a Standing Closer Association Committee composed of delegates appointed by the Legislatures of each unit in the British Caribbean area, not exceeding the numbers specified in the Schedule to this Resolution, and of a Chairman and Secretary appointed by the Secretary of State.

(2) that the terms of reference of the above Committee be to consider and make recommendations in relation to:

(*a*) the assimilation of:

(I) the fiscal, customs and tariff policy of the British territories in the Caribbean area, so, however, that the committee shall have regard to any recommendations in relation to these matters which may previously have been made by any commission constituted for this purpose subsequent to the nineteenth day of September, 1947: and

(II) the legislation of such territories:

(*b*) the unification of the currency of such territories;

(*c*) the unification, so far as may be practicable, of the public services of such territories, so, however, that the Committee shall have regard to any recommendations in relation to such unification which may previously have been made by any Commission constituted for that purpose subsequent to the nineteenth day of September, 1947, and to which effect may not previously have been given:

(*d*) the form of a federal constitution and federal judiciary most likely to give effect to the aspirations of the people of such territories; and

(*e*) the means of financing the operation of all federal services, regard being had to all proposals, in relation to this subject made to the Conference on Closer Association of the British West Indian Colonies, held at Montego Bay, Jamaica, in September, 1947.

(3) that the headquarters of the above Committee be in Barbados; and

(4) that the Committee above referred to be requested to report to the Governments of the British Caribbean territories not later than the 30th June, 1949.

SCHEDULE.

Barbados 2; British Guiana 2; British Honduras 2; Jamaica 2; Leeward Islands: Antigua 1, Montserrat 1, St. Kitts 1; Trinidad 2; Windward Islands: Dominica 1, Grenada 1, St. Lucia 1, St. Vincent 1; total 17.

Resolution 7-14 deals with customs and provincial matters. The constitutional aspect of the Conference is contained in the following Resolution and statements:[1]

(*a*) *Resolution:* That this Conference approves the attached Statement on federation affirming the adherence and support of the Caribbean Labour Congress to the demands previously made for a federation of the British Territories in the Caribbean area on the basis of local internal self-government for each of the constituent units of the federation and dominion status for the federal government itself, and further that this Conference approves the Draft Bill for a federal constitution for the Caribbean territories annexed to the Statement; and

[1] *Ib.* pp. 121-2.

That the members of this Conference who are delegates to the Closer Association Conference to be held under the direction of the Secretary of State for the Colonies in Montego Bay be requested to support the decisions of the Congress as herein and in the attached Statement set out.

(*b*) *Statement:* The C.O. Paper then goes on to deal with a statement by the Conference in regard to constitutional and other subjects and the setting up of and statement (*c*) gives a Draft Bill to provide for a Federal Constitution for the British West Indian Colonies, of British Guiana, Trinidad and Tobago, Barbados, Granada, St. Vincent, St. Lucia, Dominica, Antigua, Montserrat, St. Kitte-Nevis, The Virgin Islands, Jamaica and British Honduras under the name of the " Caribbean Federation ". Part II of the Bill deals with the office of Governor-General and an Executive Government. Part III with a Federal Parliament, its composition, the franchise, legislative powers, etc. Part IV deals with the powers of the Federal Parliament. Other parts of the draft Bill include the Judicature, Finance, Miscellaneous and the mode of alteration of the Constitution.

The Paper then gives Reports on Shipping, Civil Service, etc.

Cyprus (Constitutional Reform).—On July 9, 1947, the Governor issued invitations to certain individuals and representative bodies of Greek and Turkish Cypriots to participate in a Consultative Assembly for the purpose of framing proposals for constitutional reform. The terms of reference were:

" To make recommendations to His Majesty's Government on the form of Constitution to be established in order to secure the participation of the people of Cyprus in the direction of the internal affairs of the Island, due regard being paid to the interests of minorities."

Organizations representing the Right-wing of Greek Cypriot opinion declined to participate, but an Assembly of 18 members, including both Greek and Turkish Cypriots, was formed and met for the first time on November 1, 1947. As soon as deliberations began the Left-wing Greek Cypriot members insisted that the terms of reference of the Assembly authorized a demand for full responsible government in internal affairs. This view was referred to the Secretary of State for the Colonies, and on May 20, 1948, the Assembly was convened to receive the Secretary of State's reply. This reply took the form of a statement in outline of a new Constitution proposed by His Majesty's Government for consideration by the Assembly.

The Secretary of State made it plain that this offer went as far in the direction of self government for Cyprus as His Majesty's Government were prepared to go at the present time. The Constitution offered for consideration was similar, in general outline, to that of Jamaica in 1944.[1] It provided that there should be a Legislature with approximately 1 member elected for every 20,000 of the population, 22 members in all. The Turkish minority would form a separate electorate and would elect 4 members out of the total of 22. There would be adult male suffrage, but consideration could be given to the extension of the vote to women if the Assembly advised it. The Governor would not preside in the Legislature but an indepen-

[1] *See* JOURNAL, Vol. XIII, 198, and C.O. Paper No. 227.

dent Chairman, who would not be a member of the Legislature, would be appointed by him. There would be a small number of *ex officio* members, probably 4, holding high office in the Government. The Constitution would provide that the Legislature should not discuss the status of Cyprus within the British Commonwealth. The Governor would retain the usual reserve powers, and his consent would be required before the introduction of any Money Bill or Bill relating to defence, external affairs, special interests of minorities, or to amend the Constitution.

It was also proposed that there should be an Executive Council composed of the *ex officio* members of the Legislature, elected members chosen from the majority party in the Legislature, and 1 Turkish member. The Governor would preside. No rigid limit was fixed to the number of Councillors. It was the intention that the elected members of the Executive Council should be associated with specific Government Departments.

These proposals proved unacceptable to 7 Greek members of the Consultative Assembly who declared that they would no longer be able to take part in the Assembly's deliberations. In these circumstances, which gravely diminished its representative character, the Assembly was dissolved on August 12, 1948, but it was made clear in a statement by the Governor that the offer of a Constitution of the general character outlined above was not withdrawn, and that if at any time responsible and fully representative political leaders in Cyprus came forward to ask that these or comparable Constitutional proposals might be re-examined or implemented, or if there was any genuine manifestation of public opinion in their favour, His Majesty's Government would readily take the necessary steps to enable this to be done.[1]

Malta, G.C. (Constitutional).[2]—By Proclamation No. 5 of 1948 in *The Malta Government Gazette* of June 18, 1948, S. 40 (1) of the Malta (Constitutional) Letters Patent, 1947, is amended by altering the style of "Head of the Ministry" to that of "Prime Minister".

***Malta, G.C.: (Language Rights other than English).**[3]—With reference to the use of the Maltese and English languages in the Legislative Assembly, as announced in the last issue of the JOURNAL, it has been ruled that amendments to Bills must be moved in both languages but amendments to Motions, etc., may be moved in 1 language only.

***Malta, G.C. (Payment and Free Facilities to M.L.A.s).**[4]—Members receive an honorarium of £360 per annum, and enjoy the privilege of free stationery in the House, free supply of Government Gazettes and the use of an office in the Parliamentary Buildings.

[1] Contributed by the Colonial Secretary, Cyprus.—[ED.]
[2] The following paragraphs in regard to Malta are contributed by the Clerk of the Legislative Assembly.—[ED.]
[3] *See also* JOURNAL, Vols. II, 9; IV, 112; V, 60; VIII, 94; XVI, 219.
[4] *See also* JOURNAL, Vol. XV, 106.

Postal correspondence in connection with their Parliamentary duties is franked.

Each member is provided with a desk in the House.[1]

***Malta, G.C. (Leader of the Opposition).**—The Leader of the Opposition had no special privileges under the Constitution of 1921 besides an extension of time in debate in replying to the financial statement. Under the present Constitution he is not recognized as such but by S.O. 51 he is granted the same extension of time as under the old Parliament, of 1921.

Moreover, since April, 1948, the member occupying the recognized position of Leader of the Opposition has been paid an honorarium of £550 per annum—*i.e.*, £190 more than an ordinary member.

Northern Rhodesia (Composition of Legislative Council).—An Unofficial majority in the Legislative Council originated in 1945, under the Northern Rhodesia (Legislative Council) Order in Council, 1945, of March 21, which came into force, under Governor's Proclamation on June 1 following. Under S. 5 of that Order the composition of the Legislative Council was:

The Governor (as President): 5 *ex officio* members, 4 Nominated Official members, 5 Nominated Unofficial members (of whom 3 were to be appointed to represent the interests of the Native Community); and 8 Elected members.

By S. 6, the *ex officio* members were the Chief Secretary to the Government, Attorney-General, Financial Secretary, Secretary for Native Affairs, and Director of Medical Services.

During 1946, discussions were held in London, between the Secretary of State, the Governor and 2 Unofficial members, with regard to certain matters affecting the constitution of Northern Rhodesia and the central machinery of Government. It was then decided that the following changes in the composition of the Legislative Council should be made in 1948:

(i) That 2 Nominated Unofficial members, not representing African Interests, be replaced by 2 additional elected members, making a total of 10 elected members.
(ii) That the number of Unofficial European members representing African Interests be reduced to 2, and provision made for 2 Africans, selected by the Northern Rhodesia African Representative Council, to be appointed by the Governor, to the Legislative Council.
(iii) The number of Official members to remain at 9.

Speaker.—At the same meeting it was agreed that a Speaker be appointed to preside over the Council in place of the Governor, though the exact date for this change was left over for further consideration. It was later decided that this change take place at the same time as the other constitutional changes—*i.e.*, in 1948.

[1] *See also* JOURNAL, Vol. XV, 106.

The Speaker, although a person not holding any office of emolument under the Crown in the territory and appointed by the Governor in pursuance of Instructions through the Secretary of State and holds office during the King's pleasure, may, however, receive emolument; he does not vacate office on a dissolution of the Council.

At the time when the above-mentioned discussions took place, the life of the Council was limited to 3 years and the Council which had been appointed in 1944, would normally have been dissolved in 1947. In view of the agreed changes, however, it was decided that it would be more convenient if the life of the Council were extended for another year, which was effected by the Northern Rhodesia (Legislative Council—Extension of Duration) Order in Council, 1947.

The Order in Council, to give effect to the changes referred to above and also to make certain changes in the titles of the *ex officio* members, is dated February 24, 1948, and came into force by Governor Proclamation of July 2, 1948. The opportunity was taken to make certain other amendments to the Legislative Council Order in Council, under the amending Order in Council, by which the Legislative Council is to consist of: a Speaker, 6 *ex officio* members, 3 Nominated Official members, 2 Nominated Unofficial members to represent the interests of the African Community, 10 Elected members and 2 African members.

Consequent upon the decision referred to above to increase the number of elected members from 8 to 10, a Select Committee of the Legislative Council was appointed to make recommendations with regard to the delimitation of Electoral Areas. As a result of these recommendations it was decided to re-divide the electoral areas so as to provide for 7 urban and 3 rural constituencies; the urban constituencies to be Livingstone, Lusaka, Broken Hill, Ndola, Nkana, Luanshya and Mufulira-Chingola, and the rural constituencies to be the South-Western, Midland and North-Eastern areas. The necessary amendment to the Legislative Council Ordinance was passed by the Legislative Council on March 18, 1948.

As a result of later discussions, a further amendment to the Order in Council was made on September 13, 1948, which provided that:

(i) the Governor should have the right of addressing the Council at any time when he should think fit; and,
(ii) the duration of the Council be extended from 3 to 5 years.

This amending Order in Council was brought into operation by proclamation by the Governor on October 29, 1948, and elections under the new Constitution were held on August 26, 1948. The first Session of the New Council (the Ninth) opened on November 10, 1948.[1]

[1] Contributed by the Colonial Secretary of Northern Rhodesia.—[ED.]

Burma (Constitutional).[1]—The Command Papers upon which the separation of Burma from our Commonwealth and Empire was based were dealt with in our last issue. It now only remains to conclude the termination of that happy relationship between the British Government and Burma by recording the last step, the passing of the Burma Independence Bill, which was presented in the House of Commons in the early part of the 1947-48 Session and entitled:

An Act to provide for the independence of Burma as a country not within His Majesty's dominions and not entitled to His Majesty's protection, and for consequential and connected matters.

On November 5, 1947,[2] before moving 2 *R.* of the Bill in the House of Commons, the Prime Minister (Rt. Hon. C. R. Atlee) announced that:

I have it in command from the King to acquaint the House that His Majesty places his Prerogative and interests, so far as concern the matters dealt with by the Bill, at the disposal of Parliament.

Mr. Attlee in moving on that day—"That the Bill be now read a Second Time"—said that it had been the hope and desire of the Government that the people of Burma would recognize the great advantages which accrued from membership of the Commonwealth, a membership which, as one of the Dominion Prime Ministers had said, was not a derogation from independence but an addition to it. Before turning to the provisions of the Bill, Mr. Atlee referred to the earliest connections with Burma derived from the activities of the East India Company, when Burma was a Kingdom and a very disturbed and troubled country. Eventually, Burma was annexed in 1886 and effective rule over the whole of Burma had lasted just over 60 years. Under British rule much progress had been made.

The geographical propinquity had been responsible for Burma being made a unit of the India Empire. Yet the Burmese differed from the Indians in race, language, religion and temperament, and actually until the late War, there were no communications between India and Burma by land, but Burma was treated as part of India and administered under the Government of India Act.[3] This difference was, however, accepted by the British Government of the day in 1931 and effected by the Burma Act of 1935,[4, 5] under which the peoples of the hill country, the Chins, Kachins, the Shans and the Karens had not been brought into ministerial Burma.[6]

The new Constitution had been approved by the representatives of the various communities but there were still a large number of Karens who were not wholly satisfied.

During the transitional period the Government of Burma had been treated in practice as if it were a Dominion Government. Mr. Atlee

[1] *See also* JOURNAL, Vols. X, 76; XI-XII, 74; XIII, 93; XIV, 89; XV, 100; XVI, 66. [2] 443 *Com. Hans.* 5, s. 1836-1958. [3] 26 Geo. V, c. 2.
[4] 26 Geo. V, c. 3. [5] 443 *Com. Hans.* 5, s. 1837. [6] *Ib.* 1839.

then referred to the tragic events of July 19 and the brutal murder of the Burma Cabinet.[1]

After some reference to the new Constitution for Burma, Mr. Atlee, in turning to the actual provisions of the Bill, said that Clause 1 embodied the principle of the Bill, fixed the date of operation as January 4, 1948, and made provision for the termination of the Karenni States.

Clause 2, which had to be read in conjunction with Schedule I, dealt with the complicated and difficult problem of nationality. The general effect of this Schedule was that any person who could claim that his British nationality, or the nationality of his father or his paternal grandfather, rested on something otherwise than his connection with Burma, remained a British subject.

Clause 3 dealt with the transitional provisions pending the conclusion of a trade treaty and Clause 4 with legal proceedings. Clause 5 provided for the repeal of Acts of Parliament, etc., relating to Burma.

A long debate, mostly on policy, then followed, during which an amendment was proposed to leave out "now" and at the end of the Question to add "upon this day 6 months".

On the Question being put "That the word 'now' stand part of the Question", the House divided: Ayes, 288; Noes, 114, and the Bill passed 2 *R.*[2]

On November 11,[3] the House went into *C.W.H.*, on the Bill. Clause 1 was amended by altering "the appointed day" from January 6 to January 4 (*see above*).

Another amendment was proposed as to the treatment of non-Secretary of State civil servants, which was negatived on division: Ayes, 61; Noes, 162.

Clause 1, as amended, was then put and agreed to. Other amendments were moved to both Clauses but withdrawn, the Schedule considered, and the Bill was reported with an amendment, and, as so amended, considered and agreed to.

The Third Reading was then taken,[4] the Bill sent to the Lords, agreed to, and became 11 Geo. VI, c. 3.

O. C.

April 29, 1949.

[1] *Ib.* 1840. [2] *Ib.* 1843-5. [3] 444 *Ib.* 683-734. [4] *Ib.* 734-771.

II. STANDING ORDERS OF THE HOUSE OF LORDS RELATIVE TO PRIVATE BILLS, ETC.

By HENRY BURROWS

The Chief Clerk, Office of the Chairman of Committees, House of Lords

Introduction

In his article on "Private Bill Procedure in the Imperial Parliament" Dr. O. C. Williams has given a full explanation of this subject.[1] It is proposed, therefore, to confine this article to a general description of the revised Standing Orders of the House of Lords relating to Private Bills, etc., and to call attention only to those matters where the procedure on Private Bill legislation varies between the 2 Houses.

Historical.—Before giving a more detailed explanation of the present Private Bill Standing Orders, it may be useful to trace briefly the development of the Standing Orders of the House into their modern form. This cannot be done with certainty as it is doubtful if complete records were kept and in some instances, where records existed, they have been lost. It is clear that there must have been orders for regulating procedure from the earliest times, but no evidence of such orders survives. Stubbs' Constitutional History of England[2] says: "We look in vain for illustrations of the rules of debate, and of the way in which order was maintained, or for any standing orders. Yet as soon as the Journals begin (1509), order, debate, and the by-laws of procedure, are all found in working. We are compelled to believe that many of them are ancient."

The Standing Orders appear to have evolved gradually. When a situation arose which required the making of a Standing Order, a Standing Order was agreed to by the House and ordered "to be entered upon the Roll of the Standing Orders of the House". The Clerk of the Parliaments was responsible for keeping the Roll; and the clerks of the Parliament Office used to supply, on payment of a fee, manuscript copies of the Standing Orders to peers and others when required. The original Standing Orders were, therefore, in manuscript and numbered consecutively as they were entered on the Roll. At first no attempt was made to arrange them according to the matters to which they related.

The earliest date on which the Standing Orders of the House were printed is not certain. It is true that on July 16, 1642, the Earl of Lincoln and Lords Wharton, North and Robarts were directed to "send for what printers they think fit, to consider of a print that the orders and declarations set forth by this House shall be printed in".[3] But no printed copy dated 1642 appears to exist, and there is, therefore, no proof that any printing took place. This Order of the House referred to the Standing Orders on Public Business. As

[1] *See* JOURNAL, Vol. XIV, 111. [2] *Ib.* Vol. III, 484. [3] 5 L.J. 214.

regards Private Bills, it is also true that the Standing Orders on Private Bills were ordered to be printed on November 7, 1707[1]; but again no copy apparently survives to prove that they were actually printed at that time. On June 25, 1824, the House ordered the "Book of Standing Orders" to be printed, but it is difficult to ascertain whether in fact this order was carried out in respect of all the Standing Orders before 1844, when a complete edition in octavo form was printed.

The Standing Orders relative to Private Bills only, however, were certainly printed, in quarto form, as early as 1834, and probably earlier, for a copy dated 1834 was, until burnt by enemy action, in the British Museum. This book of Standing Orders reproduced the Standing Orders in the order in which they appeared on the Roll, and it was not until 1849 that any attempt was made to group the Standing Orders according to the subject-matters with which they dealt. On July 2, of that year, an order to print was made as follows:

> Ordered, That the Book of the Standing Orders of this House be re-printed with the Amendments made in such Orders subsequently to the last Print of such Book; and that in such Reprint the said Orders be arranged and re-numbered according to the Subjects to which they severally relate, but that such Orders relating to Railway and other Local and Personal Bills as at any Time have been vacated be not inserted therein.

Following this re-print the arrangement of the Standing Orders began to assume its present form. In 1876 the Standing Orders of the House were printed in 3 separate books, 1 dealing with public business, another with judicial business and the third with Private Bills. From this time onwards, therefore, the compilation of the Private Bill Standing Orders in their present form may be said to have started.

In the following years numerous amendments were made to the existing Standing Orders on Private Bills. New Standing Orders were added and some withdrawn. The passing of general legislation rendered certain Orders obsolete. For instance the Standing Orders relating to divorce, naturalization and patent Bills gradually disappeared. At varying intervals (often yearly) the book of Private Bill Standing Orders was reprinted; but each edition followed the original arrangement of 1876.

Revision of 1945.—Before discussing the new Standing Orders, it may be of interest to give the background of the latest revision. As has been stated, the Standing Orders were last reprinted in 1936 incorporating many amendments, but no radical revision or rearrangement was then undertaken. Since that date further amendments have been made, without any detailed revision. The Committee appointed by the House in August, 1945, to revise the Standing

[1] 18 *Ib.* 336.

Orders were, therefore, undertaking a task which had not been attempted for a great number of years. Apart from the fact that a revision was already overdue there was the additional reason that an unofficial committee of the House of Commons had been revising the corresponding Standing Orders of that House during the preceding 3 years. The House of Commons having adopted the Standing Orders in the form recommended by this Committee, it was clearly necessary that the House of Lords should undertake a similar revision.

The Committee of the House of Lords determined that it was desirable, wherever possible, to adopt the revised form now in use by the House of Commons. This policy was adhered to strictly with regard to the Standing Orders contained in Part II ("Standing Orders, compliance with which is to be proved before one of the Examiners"). In the remaining Standing Orders dealing with proceedings before committees and matters which are not necessarily the same in both Houses, the House of Commons form has only been used (except in some minor cases which will be mentioned later) where it does not entail any alteration in the existing practice of the House of Lords. No reference will be made to the reasons for the redrafting agreed with the House of Commons, as these are set out in detail in the "Notes on the Revised Orders" attached to the Report of their Committee,[1] and are fully explained in the article by Dr. Williams mentioned in the Introduction.

For convenience the Standing Orders are considered in their new arrangements. At the beginning of each Part a general explanation is given of the Orders, and in certain cases of the procedure followed under the Standing Orders, contained in that Part. Only those Orders which differ from the corresponding Orders of the House of Commons, or are peculiar to the House of Lords, are mentioned individually.

Part I: Preliminary

General Note.—The 3 Standing Orders contained in this Part are identical in form with the corresponding Standing Orders of the House of Commons.

S.O. 2 (*Petition for Bill*).—The words "for which a Petition has not been presented in the House of Commons" are included. These words are necessary because in the case of Bills presented in the ordinary way (*i.e.*, on or before November 2) the actual Petitions for the Bills are only required by the House of Commons. Only in the case of a late Bill, which is to originate in the House of Lords, or a Personal Bill, which by practice usually originates in that House, is a Petition deposited in the House of Lords.[2]

S.O. 3 (*Requirements as to proof before Examiner*).—There are some small differences between this Order and S.O. 3 of the House

[1] H.C. 30 (1944-45). [2] *See* Clifford on Private Bill Legislation, Vol. II, 768.

of Commons which should be mentioned. The word "Private" has been inserted before "Bills" in the last sentence of paragraph (2) of the Standing Order. The intention is to make it clear that Bills which are certified are still Private Bills and subject to the remaining Standing Orders applicable to Private Bills. It also thereby makes it clear that a Bill introduced by the Government relating to the estate, property, etc., of an individual could not be included in the category of a Personal Bill.[1]

The term "Personal Bill" is retained instead of "certified Bill". It is traditional and descriptive and avoids any possible confusion with Bills which are certified by the Speaker as financial measures.

Part II: Standing Orders, compliance with which is to be proved before one of the Examiners

General Note.—The Standing Orders in Part II are identical with the corresponding Standing Orders of the House of Commons, subject to the necessary verbal amendments to adapt them to the House of Lords. Unless these Standing Orders are the same in both Houses, the procedure for certifying[2] that these Standing Orders should not be applicable to certain Bills would prove unworkable. There is also the additional advantage that it assists both the Examiners and Promoters to have only 1 code to consider when compliance with the Standing Orders of both Houses has to be proved.

During the Sessions 1946-47 and 1947-48 both Houses made the same amendments to certain of the Standing Orders contained in this Part. These amendments are mentioned below.

S.O. 12 (*Posting of notices in case of tramway, etc., Bills*), and *S.O.* 15 (*Notice to owners and lessees of railways, etc., affected by proposed tramway or trolley vehicle system*).—These 2 Standing Orders were considered last year by the Standing Orders Committee of both Houses on an application to dispense with them. The Committee of the House of Lords criticized the drafting of the Orders. The new Orders reproduce the substance of the old Orders but have been redrafted to make them clearer.

S.O. 30A (*Deposit of map in case of Bill for taking water supply*).—It was decided to retain this Order which requires the deposit of an Ordnance map at the Ministry of Health and the Office of the Clerk of the Parliaments showing the catchment area in the case of Bills promoted for taking a water supply. The Ministry of Health considered it a useful Order and wanted it preserved. The Order has always been peculiar to the House of Lords, and the House of Commons have not adopted it. As it is necessary, however, to prove compliance with the Standing Orders of both Houses, the effect will

[1] Before the presentation of the Trafalgar Estates Bill of 1947 it was considered whether the Bill could be treated as a Personal Bill. Apart from the fact that the procedure on a Personal Bill was not thought to be appropriate, it was decided that the wording of Standing Order 3 precluded such a course. The Bill, therefore, followed the ordinary procedure of a Hybrid Bill.—[H.B.]

[2] *See* S.O.3.

be that deposits, required under the Order, will have to be made in the case of all Bills whether they originate in the House of Commons or in the House of Lords.

S.O. 39 (*Deposit of Bills at Treasury and other Public Departments*).—An amendment was made to include the Ministry of Agriculture and Fisheries, the Ministry of Food and the Ministry of National Insurance among the Departments, mentioned in paragraph (1) of the Order, with which a copy of every Bill has to be deposited. This amendment was proposed at the instance of the 3 Departments concerned. Paragraphs (5) and (13) have been left out of the Order in consequence of the inclusion of the Ministry of Agriculture and Fisheries in paragraph (1). A revised paragraph (7) has been included in consequence of the passing of the Indian Independence Act, 1947,[1] and the Burma Independence Act, 1947,[2] and in consequence of the alteration of the name of the Dominions Office to the "Commonwealth Relations Office". Southern Rhodesia is also included in paragraph (*b*) because questions relating to that country are now dealt with by the Commonwealth Relations Office and not the Colonial Office. The new draft of paragraph (7) is set out in full below.

(7) of every Bill relating to any company, body or person carrying on business in—

(*a*) a Dominion as defined in the Statute of Westminster, 1931, or any part of His Majesty's dominions or mandated territory or trust territory administered under the authority of the Government of any such Dominion; or

(*b*) India, Pakistan, Ceylon or Southern Rhodesia; or

(*c*) Basutoland, Bechuanaland Protectorate or Swaziland;

at the Commonwealth Relations Office;

(7A) of every Bill relating to any company, body or person carrying on business in—

(*a*) any part of His Majesty's dominions outside the United Kingdom and not mentioned in the last preceding paragraph; or

(*b*) a British protectorate or protected state or the New Hebrides; or

(*c*) a trust territory administered under the authority of the Government of the United Kingdom;

at the Colonial Office;

(7B) of every Bill relating to any company, body or person carrying on business in the Sudan, at the Foreign Office.

S.O. 61 (*Notices and deposits where work is altered while Bill is in Parliament*).—Paragraph (2) (*b*) of the old Order required that a certain notice should be given "in accordance with the provisions of S.O. 22". Having regard, however, to the terms of S.O. 22, no notice can be given in accordance with its provisions unless it has been given by a certain date. In order, therefore, to make the reference to that Standing Order intelligible, the amendment made requires that the notice in question here should be given before First

[1] 10 & 11 Geo. VI, 30. [2] 11 Geo. VI, c. 3.

Reading of the Bill. This entailed a consequential amendment in the language of paragraph (2) (*a*) of the Order.

Part III: Examiners

General Note.—An Examiner of Petitions for Private Bills is appointed by the House of Lords on the nomination of the Chairman of Committees[1] and he acts in collaboration with a similar officer appointed by the House of Commons.[2] It is his duty to examine all Private Bills and to certify whether the Standing Orders of both Houses have been complied with.

On December 18, the Examiners begin their examination of the Private Bills, copies of which have been deposited not later than November 27, each Examiner dealing with a half of the Bills (S.O. 70). The Agent for the Promoters appears before the Examiner and gives proof that he has complied in all respects with the Standing Orders. Any party who may be specially affected by any non-compliance with the Standing Orders may present a Memorial complaining of the non-compliance before noon on the day preceding the examination, and may appear and be heard by himself or by his Agent, and tender evidence (S.O. 76). The Examiner may admit affidavits in proof of the compliance with the Standing Orders (S.O. 80).

The Examiner certifies whether the Standing Orders have or have not been complied with, and when they have not been complied with he reports the facts upon which his decision is founded, and any special circumstances connected with the case (S.O. 72). Should he be in doubt as to the due construction of any Standing Order in its application to a particular case, he makes a Special Report of the facts without deciding whether the Standing Order has or has not been complied with (S.O. 81).

Private Bills brought from the House of Commons, unless they are Personal Bills, after having been read the first time are referred to the Examiner and he certifies whether such Standing Orders as have not been previously inquired into have or have not been complied with (S.O. 74).

The proceedings before the Examiner are similar in the cases of Provisional Order Confirmation Bills and of Public Bills which have been ordered by the House to be examined because the Private Bill Standing Orders may be applicable thereto.

When the Examiner has either certified a non-compliance or made a Special Report, the Certificate or Report is referred by the House to the Standing Orders Committee (Standing Order 87), and any

[1] May XIV, 229, 232.

[2] *See also* O. C. Williams, "The Historical Development of Private Bill Procedure and Standing Orders in the House of Commons," Vol. I, pp. 74-76.—[H. B.]

further progress of the Bill is arrested until that Committee has decided that it shall be allowed to proceed.

The Standing Orders contained in this Part correspond with the similar Standing Orders of the House of Commons. The procedure, however, in connection with Reports from the Examiners is not quite the same in the 2 Houses. The examiner reports direct to the House of Commons; while in the House of Lords the Examiner's Certificate or Special Report is deposited in the Office of the Clerk of the Parliaments (S.O.s 72, 81) and laid on the Table by the Clerk of the Parliaments (S.O. 82). The Standing Orders are drafted to retain this practice.

S.O. 75 (*Bills brought from House of Commons may be referred to Examiners in respect of amendments made in this House*).—This is the same as S.O. 83 of the edition of 1936. Although the House of Commons has no similar Order, it was considered advisable to retain this Order.

S.O. 79 (*Withdrawal of Memorials*).—This Standing Order follows the general Standing Order of the House of Commons providing for the withdrawal of Petitions, Memorials, etc. It was considered simpler not to combine the withdrawal of Petitions and Memorials in one Order, and a separate Order for the withdrawal of Petitions (S.O. 103) has, therefore, been included in the appropriate place in the Standing Orders.

S.O. 82 (*Certificates and Special Reports to be laid on Table*).—This Standing Order provides for the procedure mentioned in the general note on this Part.

S.O. 83 (*Procedure in case of Public Bill ordered to be examined by Examiners*).—This is a comparatively new Standing Order and takes the place of S.O. 81A which was inserted in the 1936 edition of the Standing Orders. The present form is the same as the House of Commons. It was considered convenient to include the Standing Order at the end of this Part.

The note headed "Instructions issued by the Examiners relating to Proof of Compliance with the Standing Orders previous to the Introduction of Private Bills" has been transferred from the Appendix and put in after the Standing Orders relating to the Examiners.

Standing Orders Committee

General Note.—It will be seen from the Standing Orders governing the proceedings of the Standing Orders Committee that it is no longer the ordinary duty of the Committee to examine into the compliance or non-compliance with the Standing Orders.[1] This examination, as stated elsewhere, is now the duty of the Examiners. Only when the Examiner has referred a particular case, by the machinery of a Special Report, is the Standing Orders Committee required to

[1] These functions of the Committee ceased entirely 4 years after the appointment of Examiners by the House of Lords was first instituted in 1854.—[H. B.]

give a decision on whether or not the Standing Orders have been complied with.

The normal function of the Committee, therefore, is to decide whether a Bill may proceed despite the fact that there has been a non-compliance with the Standing Orders. The parties either appear in person or are represented by their Parliamentary Agents. Counsel are not heard. The arguments are confined to the statements submitted by the parties concerned and these statements must relate strictly to the points reported upon by the Examiner. The usual procedure is for the Promoter's Agent to be heard first in favour of dispensing with the Standing Orders, followed by the Agents for each of the *opponents*. In many cases the proceedings are largely formal, as there is no opposition to the application to proceed with a Bill. In such cases, the practice has been for the Chairman of Committees to act alone. In those cases which are *opposed*, the contention is usually that the effect of the non-compliance has been to affect adversely the *opponents* to the proposals contained in the Bill. The Committee have, therefore, to decide the balance between the weight of these interests and the need and urgency for the Bill. They have also to consider whether any conditions should be imposed to lessen any disability which may have been incurred by the *opponents*; thus a decision that the Bill may proceed, subject to the deletion of certain of its provisions, is sometimes given. In *opposed* cases a quorum of 3 is required (S.O. 85).

The Committee consists mainly of peers who have experience of Private Bill legislation, gained, in some cases, by serving on Committees on *opposed* Private Bills.

The Committee is, moreover, the natural one to which any matter concerning the application of Private Bill Standing Orders to meet certain contingencies might be referred. An example of this kind of reference is found in S.O. 200 (Application of Standing Orders to Bills which relate to Northern Ireland).

Little revision has been made of the Standing Orders dealing with this Committee. The chief alteration has been that the provisions stating that the Committee shall consist of 40 Lords besides the Chairman of Committees, and that the Chairman of Committees shall always be Chairman, have been omitted. There seemed to be no reason for the first of these provisions, and the second only prescribes what is laid down by a general Standing Order of the House, No. XLI.

S.O. 89 (*May report on all Bills referred, although Petitions for Bills have not been presented in this House*).—This Standing Order which is new to the House of Lords has been included. It corresponds with the similar Standing Order of the House of Commons and merely enacts what is already the established practice.

Chairman of Committees

General Note.—Any account of Private Bill legislation in the House of Lords would be incomplete without some reference to the duties performed by the Chairman of Committees in connection with such legislation. Before recounting these duties it may be of interest, however, to give a brief history of the Chairmanship of Committees. As no published sources appear to give information on this matter, the following record of the arrangements which have culminated in this appointment have been collected from the documents of the House.[1]

Until the middle of the XVIIIth Century the business of the Committees of this House seems to have been managed with great irregularity. So far as can be traced from the Journals, each of the Committees, and they were numerous, had its own fixed Chairman, but for convenience one often acted in the place of another. Among these Chairmen, Lord Willoughby of Parham was the first who took the lead. He held a position of undefined prominence and continued to hold it for many years, but he did so, not as a Peer, but as an Officer of the House. This extraordinary circumstance seems to be proved from the fact that it was not until 1765 that Lord Willoughby of Parham, whose peerage had been in abeyance, claimed his Seat, and that it was not until March, 1767, that he was allowed to take it, by a resolution of the House. Yet from 1760, if not earlier, he had been acting as the chief Chairman of the Lords' Committees, and had regularly reported to the House. Lord Willoughby was occasionally (but systematically) replaced, presumably in his absence, by the first Lord Sandys of Ombersley, who had been since 1756 "Speaker of the House of Lords". Other Chairmen of Committees (in 1761-65) were Lord Delamer and the Earl of Marchmont. The activities of all these Peers ran parallel, and their reports were sometimes simultaneous. It is remarkable that from the date in 1767 when Lord Willoughby was permitted to take his Seat, his name ceases to appear as that of a Chairman of Committees and his place is taken by Lord Sandys. That nobleman died in 1770, and was succeeded in office by the first Lord Boston.

On February 9, 1775, we meet for the first time, in the capacity of Chairman of Committees, with the name of Lord Scarsdale, "The Lord Scarsdale (according to Order) reported the Amendments made by the Committee of the Whole House," etc. This was his Lordship's first appearance since his appointment. In fact, Lord Boston, seized with fatal illness, had no doubt resigned. His latest appearance in the House had been on January 20, 1775; on March 30 he died.

[1] The historical facts contained in this note are derived entirely from an unpublished memorandum written in 1911 by the late Sir Edmund Gosse (Librarian to the House of Lords 1904-1914).—[H. B.]

Lord Scarsdale's name, from this time forth, appears incessantly in the Journals. He must have been a most assiduous attendant on the business of the House. But, on February 21, 1778, the Order of the Day having been read for taking into Consideration the State of the Nation, it was proposed that the Duke of Portland should be the Chairman of a Committee to report on that subject, independently of Lord Scarsdale.

The Duke being in violent opposition, this suggestion was ill-received. After a debate the question was resolved in the negative. It was then proposed and carried that Lord Scarsdale should be the Chairman of this Committee, as, no doubt, in the normal procedure of business, he would mechanically be.

After this time, we hear no more, or little more, of coadjutor-Chairmen, but Lord Scarsdale seems to exercise all the duties which now belong to the Chairman of Committees. The title and office of Chairman of Committees, however, did not yet exist. On March 24, 1790, Lord Scarsdale abruptly makes way for Lord Cathcart, who henceforward reports from all of the Committees. Lord Scarsdale still attended the Meetings of the House but it is evident that he had resigned his Office of Chairman. Lord Cathcart is henceforward styled "Chairman of the Committees of the House", and he is the earliest of the direct line of Chairmen of Committees. He held the Office until his death in 1794, when he was succeeded (strangely enough) by the Bishop of Bangor. This was John Warren, who occupied the post until his death, on January 27, 1800. Lord Walsingham, who had been joined with the Bishop in some of the duties, continued them provisionally for 6 months, but on July 23 a resolution was passed "that this House will, at the Commencement of every Session, proceed to nominate a Chairman of Committees of this House". Since that resolution, the Lord so nominated has taken the Chair in all Committees of the whole House, in all Committees upon *unopposed* Private Bills and of any Select Committee on which he serves, unless otherwise directed by the House. In the case of Select Committees on *opposed* Private Bills and other matters, the House either nominates the Chairman or directs that the Committee shall choose its own Chairman. If the power of appointing their Chairman is not expressly conferred on a Committee, the Chairman of Committees (whether named on the Committee or not) is the Chairman.

From 1800 a fixed annual salary of £2,500 has been paid to the Chairman of Committees. The post is not pensionable. Lord Walsingham, the first salaried holder of the office, was, however, granted by Act of Parliament[1] an annuity of £2,000 on his retirement by reason of ill-health in 1814. There is no record of any similar award since.

The subsequent Chairmen of Committees have not been many. It

[1] 55 Geo. III, c. 18.

may be well to complete the background with a list of them: The Earl of Shaftsbury, 1814-51; the Earl of Redesdale, 1851-86; the Duke of Buckingham, 1886-89; the Earl of Morley, 1889-1905; the Earl of Onslow, 1905-11; the Earl of Donoughmore, 1911-31; the Earl of Onslow (son of the previous Earl), 1931-44; Lord Stanmore, 1944-46; followed by the Earl of Drogheda, the present holder of the office.

As there has been no procedure in the House of Lords since 1910 for taking the Committee stage of a Public Bill in a Standing Committee, the presence of the Chairman of Committees is required in the Chair during the Committee stage of all Public Bills. The great increase of general legislation during the present Parliament has made it necessary to assist him in this duty. It has also been found necessary to provide a deputy at meetings of Select Committees and interviews on Private Bills held at times while he is officiating in the House. The House, therefore, appointed on April 9, 1946, a panel of Lords as Deputy Chairmen of Committees who, in the absence of the Chairman of Committees, are entitled to exercise all the powers vested in him. It is now the practice to re-appoint this panel at the beginning of each Session in the same way as the Chairman of Committees is re-appointed each Session.

While much of his time is employed on the Committee stages of Public Bills, the primary duties of the Chairman of Committees are concerned with Private Bills and certain forms of delegated legislation.

In the ordinary way all proceedings on Private Bills, except thei presentation and First Reading, which are done formally in the nam of the Lord Chancellor, are the responsibility of the Chairman o1 Committees. Moreover, the House of Lords has, by practice, delegated to the Chairman of Committees great powers over Private Bill legislation.[1] He exercises, with the assistance of his staff, almost unfettered control over the details of its procedure, the provisions contained in it and the form in which such provisions are drafted. It is difficult to find any instance where his advice or decisions have been questioned by the House or by the parties concerned.

His duties in regard to Provisional Order Confirmation Bills, Special Procedure Orders and Special Orders will be referred to in the general note on the Standing Orders relating to them.

Counsel to the Chairman of Committees.—Although S.O. 90 is the only Order which refers specifically to the Counsel to the Chairman of Committees, mention should be made of this Officer of the House who is so largely concerned with Private Bill legislation.

A Counsel to the Chairman of Committees was first appointed very shortly after the office of Chairman of Committees was constituted in 1800, and he became a permanent salaried officer of the House in 1808.

[1] *See* O. C. Williams, *op. cit.*, Vol. I, pp. 55-56, 103.—[H. B.]

His main duty is to examine all Private Bills, and all amendments thereof, with a view to seeing that their drafting is as uniform as circumstances allow and is in accordance with the practice of the House, and also with a view to preventing the surreptitious introduction of clauses which may be inappropriate to a Private Bill.[1]

As well as advising the Chairman of Committees generally on all Private Bills, his Counsel is frequently called on by a Select Committee on an *opposed* Private Bill to give advice on the effect of the Bill or proposed amendments, or to suggest a compromise between the contending parties.

The Counsel to the Chairman also examines all Special Orders before they are considered by the Special Orders Committee, and advises on the findings contained in the reports from that Committee. He also assists the Chairman on questions which are constantly arising for his decision on the working of the Private Legislation Procedure (Scotland) Act, 1936,[2] and the Statutory Orders (Special Procedure) Act, 1945.[3]

S.O. 90 (*Allocation of Bills between this House and House of Commons.*[4]—This is similar to the corresponding Standing Order of the House of Commons. It enacts the usual procedure adopted in the allocation of Bills between the 2 Houses at the beginning of each Session.

Although there are no hard and fast rules for allocating Bills between the 2 Houses, the following guiding principles have, by usage, become more or less established:

1. The number to each House should, as near as possible, be equal: regard should be had also to the equal distribution of Bills of importance and contentious Bills.
2. A Bill which is the same as, or similar to, a Bill rejected by one House in a previous Session should be allocated to that House.
3. If 2 or more Bills are competitive, they must go to the same House.
4. Bills largely financial in character, especially those where a financial resolution in the House of Commons is involved or where local changes in rating law are proposed, should be allocated to the House of Commons.
5. There was a tradition in favour of allocating railway Bills to the House of Commons, because on Second Reading a general debate on railway administration was allowed; though the reason no longer exists, the custom has continued.
6. Hospital Bills are usually allocated to the House of Lords,

[1] The Counsel to the Chairman of Committees together with Counsel to the Speaker are at the moment, with the assistance of representatives from Government departments and the Society of Parliamentary Agents, compiling a new edition of Model Clauses for use in Private Bills.—[H. B.]

[2] 26 Geo. V & 1 Edw. VIII, c. 52. [3] 9 Geo. VI, c. 18.

[4] *See* O. C. Williams, *op. cit.*, Vol. I, pp. 141-42.—[H. B.]

mainly perhaps on the personal ground that certain Chairmen of Committees in the past have been much interested in hospitals.

7. Where Bills propose to extend county boroughs, some Parliamentary Agents prefer them to be allocated to the House of Commons.

Apart from these rules, which cover only a proportion of Bills, the apportionment is entirely discretionary. In the ordinary way the allocation is arranged between the 2 Counsel.

In order to give the Parliamentary Agents, responsible for the promotion of the new Bills of the Session, an opportunity to make representations for alterations, it is usual to inform them of the proposed allocation of Bills between the 2 Houses before a final decision is made.

S.O. 91 (*Chairman of Committees may direct attention of House or Committee to special circumstances*).—This is a new Standing Order, but does not introduce any novel principle. It might prove useful in the following ways. The Chairman of Committees would have authority to direct a Select Committee on an *opposed* Bill to hold an inquiry on a matter raised in an *unopposed* provision of the Bill if, for some reason, he considered a full examination was required. It would also enable him to obtain the opinion of the House on a Bill containing clauses which affected public policy or which were inappropriate to a Private Bill.

S.O. 93 (*Instructions to Committees on Private Bills*).—This Standing Order has been adopted from the House of Commons in a form suitable for the House of Lords. Its purpose is to prevent an instruction to the Committee resulting in provisions being inserted which would enlarge the scope of the Bill. Any enlargement of this nature should only be effected by the ordinary machinery of a Petition for additional provision (*see* S.O. 73).

Instructions are often described as either permissive or mandatory: the former to enable the Committee to do what they could not do without such an instruction; and the latter to compel them to do something which they have already discretion to do.

Permissive instructions (as indicated by the Standing Order) are inappropriate to a Committee on a Private Bill, and are, therefore, seldom proposed. Mandatory instructions are sometimes moved in regard to Private Bills, but the House is always reluctant to agree to them in this form. Unless the arguments in support are unanswerable, the policy of the House is not to restrict in any way the powers of the Committee over the decisions which they make.

In recent years the most usual type of instruction on a Private Bill may be said to be of a cautionary nature. For instance, the Committee on the Bill are sometimes instructed not to authorize certain works, unless satisfied that certain conditions have been complied

with or that various objections have been considered.[1] The House is always ready to accept an instruction of this nature. It is becoming recognized that this type of instruction often achieves its real purpose better than a more direct form of opposition.

Instructions concerning Private Bills are moved, by arrangement with the Chairman of Committees, any time after the Second Reading and before the committee stage of the Bill.

S.O. 94 (*Bills in some cases may be committed to Committee of Whole House*).—This Standing Order is peculiar to the House of Lords, although the procedure is used in the House of Commons on Private Bills which contain clauses affecting the public revenue and thereby require the sanction of a resolution in Committee of the Whole House. In the House of Lords Bills have been proceeded with in this way in order to ensure attention to provisions affecting public interests; or to give the House an opportunity to review the decisions of a Select Committee. It was for this latter purpose that the procedure was last used in connection with the Adelphi Estate Bill in 1933.

Committee of Selection

General Note.—Until 1907 the Committee of Selection consisted of the Chairman of Committees and 4 other Lords named by the House. Since that date the number has been indefinite and the Committee composed of the Leaders and more prominent members of the various parties represented in the House. The numbers of these representatives have been roughly proportionate to the respective strength of the parties in the House. In the House of Lords all Sessional Committees[2] and Select Committees on Public Bills and general subjects are appointed directly by the House. The duties of the Committee of Selection are confined to constituting the Select Committee on *opposed* Private and Provisional Order Confirmation Bills,[3] *opposed* Special Orders (of a Private or Hybrid nature) and nominating the panel of peers to act as Commissioners under the Private Legislation Procedure (Scotland) Act, 1936 (*see* S.O.s 95,

[1] Instructions in this form were given in the House of Lords to the Select Committees on the Metropolitan Water Board Bill, 1945; Tendring Hundred Water and Gas Bill, 1947; Nazeing Wood or Park Bill, 1947; Salford Corporation Bill, 1948.—[H. B.]

[2] The Committees appointed at the beginning of each session, who serve for the duration of that session, are the House of Lords Offices Committee, Standing Orders Committee, Committee of Selection, Special Orders Committee, Procedure of the House Committee and the Personal Bills Committee.—[H. B.]

[3] The House has, on several occasions, ordered that the Committee on a Hybrid Bill should be named by the Committee of Selection. For example, the Lords members of the Joint Committees on the Ouse Drainage Bill, 1927, the London Passenger Transport Bill, 1931, and the Doncaster Area Drainage Bill, 1932, were all nominated by the Committee of Selection. There have also been one or two instances where the members of the Select Committee on a Public Bill have been proposed by the Committee of Selection, but this method of appointment has never been used in modern times. In every case an order of the House, that the Committee be named by the Committee of Selection, has been made.—[H. B.]

185 (1) (*a*), 216 (6) (*d*), 190).[1] In practice the selection of Commissioners and the arrangement of Committees are made by the Chief Clerk of Committees, under the authority and supervision of the Chairman of Committees. This is a natural process as, in the ordinary way, political considerations do not arise. Moreover, the services of Peers are voluntary, there being no compulsion in practice on any member of the House to serve. The main factors which have to be considered are the experience (subject to no personal interest) of the Committee on the matters which will be referred to them and their readiness to serve on the dates convenient for the parties concerned. The functions of the Committee of Selection are, therefore, largely nominal. It is, however, necessary to have a Committee of this nature in existence in case a Private Bill raised political issues. In such a case the Chairman of Committees would hold a meeting of the Committee of Selection in order to agree on the personnel of the Committees to which the Bill would be referred.

The Committee of Selection have met very seldom. In the years before the last War a meeting was held once a year to give formal approval to their Report showing a return of the peers who had served on Private Bill Committees during the previous Session. There is no record during the present century of any meeting held to consider the composition of a Select Committee.

The 2 Standing Orders regulating the procedure of the Committee of Selection have remained unchanged since 1921, except for the omission in the 1946 edition of reference to Provisional Order Confirmation Bills. The reason for this amendment is that all Standing Orders concerning Provisional Order Confirmation Bills are now grouped together in a sub-division of Part VIII, the appointment of committees on these Bills being now governed by the new Standing Order 185.

Part IV: First and Second Reading

General Note.—The First Reading of a Private Bill is entirely formal and is effected merely by an entry in the Minutes of Proceedings. It takes place not later than 3 clear days after the Examiner's Certificate with regard to the Bill has been laid on the Table of the House (S.O. 98 (1)). The Lord Chancellor is nominally responsible for the presentation and First Reading of all Private Bills. This is shown by the entry in the Journals which states: "The Lord Chancellor presented to the House a Bill, intituled. . . . The said Bill was read the First Time."

The Second Reading of a Private Bill is, in the ordinary way, moved by the Chairman of Committees, The Second Reading is usually formal, but it is the first occasion on which the Bill is brought before the House otherwise than *pro forma* or in connection with the

[1] The Committee of Selection (under Standing Order 209 (1) (*a*)) also nominate the three Lords to serve on a Joint Committee to which a Petition against a Special Procedure Order is referred.—[H. B.]

Standing Orders. If the Second Reading of a Bill is *opposed*, the Promoters are informed that the Chairman of Committees will not act for them and that they must arrange for a peer, who is ready to support the Bill, to move the Second Reading. On these debates the Chairman of Committees usually advises the House to give the Bill a Second Reading in order that the matters which have been raised may be fully investigated by a Select Committee, thus giving all parties concerned an equal opportunity of stating their cases. This is a distinctive feature of Private Bill legislation, that in giving a Second Reading to a Private Bill the House does no more than merely acquiesce in the Bill going to a further stage.

The debate on a Motion by Lord Miltown to recommit the South-Eastern, etc., Railway Companies (Arbitration) Bill in 1885 affords an illustration of this principle. In that case the Select Committee to which the Bill had been referred had rejected the Bill and Lord Miltown argued that as the Bill had received a Second Reading, and presumably the House had agreed, therefore, to the principle of the Bill, the Committee were not empowered to reject the Bill on their own authority. The Lord Chancellor (Lord Halsbury), however, asked the House not to accept this Motion in a speech in which he said:

> I demur entirely to the proposition laid down by the Noble Earl that the House by reading this Bill a second time had affirmed its principle, so as to take the consideration of that principle out of the province of the Select Committee. The members of the House who were not members of the Standing Orders Committee or the Select Committee know nothing of the merits of any Private Bill; and if the House were, under such circumstances, to reverse the decision of the Select Committee the present system of Private Bill legislation would be a perfect delusion and snare, and ought to be abolished.

The latest edition of Erskine May says with regard to Private Bills in the House of Lords: "The Second Reading of a Private Bill is in most cases formal, and does not, as in the case of Public Bills, affirm the principle of the Bill, which may therefore be called in question before a committee."[1] As regards the attitude of the House of Commons on the formal character of the Second Reading of a Private Bill the following passage may be quoted:

> There is, however, a distinction between the Second Reading of a Public Bill and a Private Bill, which should not be overlooked. A Public Bill being founded on reasons of state policy, the House, in agreeing to its Second Reading, accepts and affirms those reasons; the expediency of a Private Bill, being mainly founded on allegations of fact, which have not yet been proved, the House, in agreeing to its Second Reading, affirms the principle of the Bill conditionally, and subject to the proof of such allegations before the committee. Where, irrespective of such facts, the principle is objectionable, the House will not consent to the Second Reading; but otherwise the expediency of the measure is usually left to the consideration of the Committee.[2]

The slight difference of emphasis between the 2 Houses on this

[1] May, XIV, 962. [2] May, XIV, 901.

matter may be accounted for in this way. In the House of Commons there is usually available to the promoters the assistance of a member who is able to represent their interests, whereas in the House of Lords it may often be impossible to find a peer who is sufficiently associated with the proposals contained in the Bill to enable him to support them in Parliament.

There is a further reason why the practice of opposing a Private Bill on Second Reading is objectionable. In a Private Bill there are frequently many separate purposes in the same Bill. It is, therefore, improbable that an opponent dislikes the entire Bill. He usually only wishes for the removal of some of its provisions. If, therefore, he has induced the House to throw out the Bill on Second Reading, he has, in some cases, prevented the promoters from proceeding on matters to which there can be no objection. An instance of this can be found in the debate on the Second Reading of the London County Council (Tramways) Bill of 1905. In that case Lord Ridley, who opposed the Second Reading of the Bill, only objected to certain proposals in the Bill. Towards the end of the debate he wished to substitute for the Motion of rejection a Motion that there should be an instruction to the Committee to remove the clauses to which he objected. The Lord Chancellor (then Earl of Halsbury), however, gave a ruling that, as the Motion before the House was on the Second Reading of the Bill, the House could not consider an alternative Motion for an instruction to the Committee. In this case the entire Bill was lost by the House refusing to give the Bill a Second Reading although many of its provisions were unopposed. It is hardly necessary to add that where a peer's personal interests are involved in the proposals contained in a Private Bill he would not take advantage of his position as a member of the House by opposing the Bill other than as an ordinary Petitioner against the Bill. The House would not countenance any departure from this principle.

The House of Lords, therefore, has maintained the practice of seldom refusing to give a Second Reading to a Private Bill by agreeing to a Motion for its rejection. This is shown by the following records. Within the last 40 years only 3 instances can be found of a Private Bill being rejected on its Second Reading, while 44 Bills[1] have been rejected by Select Committees during that period. Moreover, between 1930 and 1940, although about 600 Private Bills have received a Second Reading, on only 9 occasions has the Second Reading of a Private Bill been debated.

S.O. 97 (*Chairman of Committees to authorize deposit of Petitions for late Bills*).—The Order is in the form of the new House of Commons Standing Order 83; but no change in the procedure for introducing late Bills in the House of Lords has been made. The procedure is now similar in both Houses, and is explained below.

[1] Four of these 44 Bills were second House Bills having originated in the Commons.—[H. B.]

Late Bills.—Copies of all Private Bills which it is proposed to introduce during the coming Session (with the exception of the annual London County Council (Money) Bill[1] must be deposited in the Office of the Clerk of the Parliaments on or before November 27 of each year (S.O. 38 (1)). Any Private Bill proposed to be introduced after that date is known as a "late" Bill; and requires a "Petition for the Bill" to the House in which it is proposed that the Bill should originate.

The procedure for introducing a late Bill is as follows: The Parliamentary Agent for the promoters submits to the Chairmen of both Houses a statement of the objects of the Bill, the reasons for the need to proceed during the current Session, and why it was impracticable to lodge the Petition and Bill by November 27. The Chairmen consider the following questions:

(*a*) Is the delay explained and justified?
(*b*) Are the proposals so urgent that postponement of the Bill to the following session would be contrary to the public interest?
(*c*) Can it be assumed that there will be no serious opposition?
(*d*) Is there time for the Bill to become law before the end of the session?

If the Chairmen are satisfied on these points they give leave for the Petition, with a copy of the proposed Bill annexed, to be deposited in the House where it is to originate. Before the revision of the House of Commons Standing Orders, it was usual to introduce late Bills in the House of Lords in order to avoid the cumbrous procedure in force in the House of Commons at that time, by which 2 Petitions had to be lodged.[2] Now that the procedure is similar in both Houses, late Bills are shared between the 2 Houses. The Petitions with the proposed Bill, on presentation to the House, are referred to the Examiners who, as a matter of course, have to report to both Houses non-compliance with Standing Orders so far as they relate to times of deposit, notices, etc. The Examiner's Certificate (or Report as it is known in the House of Commons) is referred to the Standing Orders Committee of each House. If the Standing Orders Committee of both Houses report that the Standing Orders ought to be dispensed with, the Bill is presented and read a first time in whichever House the Standing Orders Committee have given leave for the Bill to be introduced.

The Bill, as presented, must not contain any provisions other than those outlined in the original statement of the promoters in support of their application.[3]

S.O. 98 (*First Reading of Private Bills*).—This corresponds to the House of Commons Standing Order but was considerably altered to

[1] The annual Money Bill of the London County Council is deposited in the Parliament Office on or before the 14th of April each year (*see* S.O. 175).
[2] *See* Report of the Select Committee on Private Bill Standing Orders (H.C. 30 (1944-45)), p. 12, S.O. 83.—[H. B.]
[3] *See* Cumberland County Council (Water, etc.) Bill, 1947.

conform to the practice of the House of Lords. In the House of Commons a Private Bill is deemed to be read a first time and ordered to be read a second time on the day on which it is laid on the Table of the House. In the House of Lords no order of the House is necessary for the Second Reading of a Private Bill; the Bill being put down for this stage on the day asked for by notice from the Parliamentary Agent for the Bill.

S.O. 100 (*Reference of Bills to Examiners after Second Reading*). —This Standing Order corresponds with the House of Commons S.O. 176 adapted for the House of Lords. This is a new Standing Order for the House of Lords and is needed because of a minor alteration in procedure. In the House of Commons, Bills originating in that House and affected by the "Wharncliffe" Orders (H.C. 62-64) are referred to the Examiners after Second Reading for proof of compliance with those Orders. In the House of Lords, this procedure was carried out before Second Reading, with the result that S.O. 99 limiting the time between the First and Second Reading had often to be dispensed with for such Bills. It was decided to adopt the procedure of the House of Commons on this matter to avoid this inconvenience.

Petitions against Private Bills

General Note.—The Standing Orders governing the presentation, printing and withdrawal of Petitions against Private Bills have been adopted in the form in use by the House of Commons. This results in the petitioning time against a Private Bill brought from the Commons, or a late Bill originating in the House of Lords, being altered to *ten* days after the *First* Reading instead of *seven* days after the *Second* Reading. The same date for the initial presentation of Petitions against Bills originating in the House of Lords, namely, February 6, has been retained, however, as Parliamentary Agents find it convenient to have this extra week for the deposit of Petitions against House of Lords Bills. This extra allowance of time causes no delay in the passage of the Bills through the House.

Petitions against amendments proposed in the filled-up Bill,[1] or against alterations in the Bill as deposited, may be lodged up to the time the Committee meets.

Late Petitions.—Although there are no Standing Orders permitting the presentation of a Petition after the petitioning time has expired, they are sometimes received and referred to the Committee. The Procedure is as follows: The Petitioner or his Agent first informs the Parliamentary Agent promoting the Bill. A statement giving the reason why the Petition is late is then submitted to the Chairman of Committees. If, *prima facie*, the reason given appears to justify the

[1] Amendments shown in the filled-up Bill are to a large extent amendments made to meet objections by petitioners or comments made by Government Departments. —[H. B.]

acceptance of the Petition, the Petitioner and the Agent for the promoters attend before the Chairman of Committees. After hearing both parties, the Chairman of Committees either gives or withholds his permission for the Petition to be lodged. As soon as the Petition for leave to present a late Petition has been laid on the Table, it is necessary for the Chairman of Committees to move in the House to dispense with S.O. 101 to get the approval of the House for the Petition to be presented and referred to the Committee. In the House of Commons permission to present a late Petition is granted or withheld by the Standing Orders Committee of that House.

Petitions against Hybrid Bills.—Unlike the House of Commons where Petitions against Hybrid Bills must be presented by a given date ordered by the House, the general Standing Order (S.O. 101), governing the presentation of Petitions against Private Bills, has been considered also to regulate the deposit of Petitions against Hybrid Bills pending in the House of Lords.

It was realized, however, that the Standing Order would not cover the case of a Hybrid Bill where the Standing Orders had been complied with and the examination took place on or after January 27. In August, 1947, therefore, an amendment was made by inserting the words "held on or" before "adjourned" in paragraph (*d*) of the Order.

It may be well to summarize the effect of the Standing Order in regard to Hybrid Bills.

The petitioning time against a Hybrid Bill, in the case of:

(*a*) any Bill in respect of which the Examiner has certified that the Standing Orders have not been complied with, or in respect of which he has made a Special Report to the House; and
(*b*) any Bill in respect of which the examination has been held on or adjourned to a day after January 27; and
(*c*) any Bill brought from the House of Commons;

expires 10 clear days after the First Reading of the Bill; and

(*d*) in the case of a Bill where the examination has been held before January 27, and the Examiner has certified that the Standing Orders have been complied with, the time for presenting Petitions expires on February 6.

It is doubtful, however, if the Standing Order is satisfactory for Hybrid Bills introduced in the House of Lords. The committee stage of a Bill under paragraph (*d*) might be unduly delayed by allowing the petitioning time to run until February 6. It may be found also that 10 days after First Reading is not a sufficiently long period to allow for the presentation of Petitions against Hybrid Bills falling in categories (*a*) and (*b*). It seems likely, therefore, that the practice will be established of making an Order of the House for the presentation of Petitions against Hybrid Bills originating in the

House of Lords, as was done in the case of the New Forest Bill, 1948.

The date by which Petitions must be presented against a Private or Hybrid Bill referred to a Joint Committee is fixed by an Order of the House in which the Bill is introduced. It is usual to provide additional time to assist opponents who, owing to the reference of the Bill to a Joint Committee, are being deprived of the opportunity to Petition in the second House. Petitions are only received in the House of origin.

Part V: Committees on *Opposed* Bills

General Note.—The procedure adopted in both Houses by Select Committees on *opposed* Bills is similar. The promoters and petitioners usually appear by Counsel, who follow a practice established under the guidance of the Parliamentary Bar and the Officers of the House.

The proceedings are conducted in a quasi-judicial manner. All parties who have the right to appear are heard fully, some inquiries lasting for 2 or 3 weeks. The Committee arrive at their decisions after hearing the arguments of Counsel, the evidence tendered by parties and the representations of Government Departments. The advice of the Officers of the House and the Counsel to the Chairman of Committees is always available.

Although every opportunity is taken of making use of the services of peers who are prepared to assist in this work, in practice the number who can give the time to serve is comparatively few. The Committees are therefore often composed of peers who have great knowledge and experience of the matters which come before them. They act independently of any political ties, and with the knowledge that their decisions will rarely be challenged in the House. If a member of a Select Committee finds that he has a financial or other interest in the matters before the Committee, he discloses this interest, as soon as he is aware of it in order to obtain the consent of the parties for him to continue to serve as a member of the Committee. This consent is seldom, if ever, withheld.

The following minor differences in procedure between the 2 Houses should be mentioned. In the House of Lords the Committee consists of 5 members instead of 4. Each member has a single vote; whereas in the House of Commons the Chairman of the Committee exercises a casting vote whenever the voting is equal, to insure a majority in a division.

Unlike the House of Commons, where these matters are decided by the Court of Referees before the Committee meets, all questions of *locus standi* of parties are argued before, and decided by, the Committee to which the Bill is referred.

At the conclusion of the proceedings on the general *opposition* against the Bill, the decision of the Committee "that the Bill may

or may not proceed" is announced by the Chairman. In the House of Commons the words used are "that the Preamble has *or has not* been proved". Some significance has been attached to the latter formula by certain authorities.

In the House of Commons a Report is made in every case and printed as a supplement to the Votes. In the House of Lords no detailed Report is made in the ordinary way; the proceedings of the Committee being terminated by an entry in the Minutes of the House that the Bill has been reported from the Select Committee with, *or without amendment*. Only in exceptional circumstances, when it is thought that the House should be informed of the findings of the Committee, and their reasons for reaching them, is a detailed Report made and printed as a document of the House. It is usual, for instance, to make a Report of this nature after the House has given an instruction to a Committee. This form of Report is known as reporting specially; and an appropriate entry is then made in the Minutes of the House.

If the Committee's decision is that the Bill may not proceed, an entry to this effect is made in the Minutes of the House. The Committee do not give reasons for their decision in their Report to the House. There is, in fact, no record of a Special Report having been made when a Committee has rejected a Private Bill.

The powers of a Committee on a Private Bill are in this respect greater than those of a Committee on a Public Bill.[1] In the case of a Public Bill, if the Committee consider that the Bill referred to them should not be proceeded with, it has been the practice in recent years to report the Bill without amendment to the House and separately to make a Report giving reasons as to the inexpediency of proceeding with the Bill. In such a case the Bill remains pending in the House at the stage which it has reached. In the case, however, of a Private Bill, it is treated as if it had been rejected on Second Reading, and its title removed from the list of Bills in progress. On a few occasions in the past the House has agreed, on the Motion of a peer, to the recommittal of a Private Bill after its rejection by a Select Committee.[2] There is, however, no instance during the last 50 years of such a refusal by the House to accept the decision of a Committee.

In an *opposed* Bill the *unopposed* clauses, and the reports from Government Departments with reference to them, are not considered by the Select Committee. They are dealt with by the Chairman of Committees in the same manner as clauses in an *unopposed* Bill.

[1] *See* paragraph 8 of the Report from the Select Committee of the House of Commons on Hybrid Bills (Procedure in Committee), H.C. 191 (1938), and Article XIII hereof.

[2] The proceedings on these Bills have not been examined. It is doubtful if, in every case, the action of the House amounted to a reversal of the findings of the Committee. Probably in some instances, possibly all, it was caused by the fact that the promoters afterwards consented to make certain amendments rather than lose their Bill.—[H. B.]

This is a desirable arrangement as it ensures uniformity in the powers conferred by clauses which are common to many Bills, except where proof of special circumstances justifies a departure. Although this practice is recognized and well established by long usage, it is not laid down by a Standing Order. Whether it should be defined will be considered when the next general revision of the Standing Orders takes place.

This examination of the Bill by the Chairman of Committees assisted by his Counsel usually takes place after the hearing before the Committee. As has been said before, when a Bill has been reported to the House the functions of the Committee are considered at an end, and the Committee discharged. The Bill cannot be referred to them again without a formal re-committal by the House. It is, therefore, of importance that the Bill should not be reported until the decisions of the Committee have been implemented by clauses in a form approved by them. Frequently the drafting of these clauses is left to be agreed between the Counsel and the Parliamentary Agents representing the parties. During these negotiations, which are sometimes protracted, the Bill remains "Waiting for Report". It is then possible, without reference to the House, to summon the Committee, if required, to make further decisions on points which may have arisen during the negotiations, or on matters which have been overlooked, or to give a ruling if agreement on drafting cannot be reached between the parties. The Chairman of the Select Committee is often given authority by the other members of the Committee to act alone on matters of detail; but a full meeting of the Committee would be held where questions affecting their decisions were involved.

As soon as the Select Committee and the Chairman of Committees are satisfied, a copy of the Bill in its amended form is initialled by the Chairman of the Select Committee and the Counsel to the Chairman of Committees, which is the authority for the Bill to be reported to the House.

Petitions in favour of a Bill.—Petitions solely in favour of a Bill are sometimes presented to the House, but they are not referred to the Committee. It is usual, in such cases, for the Chairman of the Select Committee to announce, at the beginning of the hearing, the names of the petitioners; but they take no part in the proceedings, unless called as witnesses by the promoters.

There is no Standing Order which corresponds with S.O. 120 (Declaration by Members) of the House of Commons. Such a Standing Order would be inappropriate to the House of Lords.

It is only necessary to call attention to some new Standing Orders which have been adopted from the Standing Orders of the House of Commons.

S.O. 109 (*Reference to Committee on Bill of Petitions*).—The Standing Order follows the House of Commons S.O. 126 and pro-

vides for the reference to the Committee on an *opposed* Bill of the Petitions which have been deposited either against the Bill or against its alteration. In the past this reference of Petitions against the Bill was always included in the appointment of the Committee. No mention was made, however, of Petitions against alterations, although in practice they were always referred to the Committee. The new Standing Order rectifies this omission.

S.O. 110 (*Hearing and evidence*).—Permission to be heard by Counsel was also included in the Minute entry appointing the Select Committee. This will now be given under the provisions of the Standing Order. Permission to tender evidence is a new provision which it was decided to include.

S.O. 111 (*Petition against Bill must distinctly specify grounds of objection*).—This is a new Order for the House of Lords, but embodies no change of principle. It has been adopted in identical terms with the corresponding Standing Order of the House of Commons.

S.O. 113 (*Treatment of opposed Bill as unopposed in certain cases*).—This Standing Order follows the form of the House of Commons S.O. 131 with the result that a small alteration in the practice of the House of Lords has been made. In the past a Bill would become *unopposed* if the Petition had been withdrawn "before the petitioner's case had been fully opened". Under the new Standing Order, the Petition must be withdrawn "before the evidence of the promoters has been commenced".

Locus Standi of Petitioners

General Note.—This group of Standing Orders entitles certain classes of petitioners to be heard before Select Committees on *opposed* Private Bills. The Standing Orders are in some cases permissive rather than mandatory and include the qualifying proviso "if the Committee think fit".

As the Standing Orders indicate, all questions on the rights of petitioners to be heard are decided by the Committee to which the Bill is referred. These questions rarely arise. Committees of the House of Lords are always reluctant to deny a hearing to any petitioner. Promoters are, therefore, conscious that only for the strongest reasons would their objections be sustained.

The House has maintained a traditional dislike to the rulings of Committees on these matters being either regulated by Standing Orders or bound by previous decisions. Each case is judged on its individual merits. An objection based merely on technical grounds would carry little weight. The considerations which mainly influence the Committee are (*a*) whether the petitioner can disclose that his personal interests are affected in any way by the proposals contained in the Bill; (*b*) whether hearing the petitioner would assist the Com-

mittee in arriving at a proper decision on the matters argued before them.

There are fewer Standing Orders in the House of Lords dealing with the *locus standi* of petitioners than in the House of Commons. The Standing Orders which are common to both Houses are, however, in the same form.

The 2 Orders explained below are the only ones which were added at the last revision.

S.O. 114 (*Committee to decide as to* locus standi *of Petitioners*).—This Standing Order follows the form of S.O. 91 of the House of Commons, which gives similar powers to the Court of Referees. The new Order states the long-established practice of the House which has never been formulated in a Standing Order. It was considered desirable to insert an Order of this kind for the assistance of parties who are more conversant with the practice of the House of Commons.

S.O. 110 (*Right of certain local authorities to* locus standi *against lighting and water Bills*).—This is a new Order for the House of Lords. It was included because it was thought invidious to have 2 of the 3 House of Commons Standing Orders granting *locus standi* to local authorities and omit the third.

Committee on *Unopposed* Bills

General Note.—The proceedings of Committees on *unopposed* Bills in the House of Lords are transacted by the Chairman of Committees acting alone. In practice the work of the committee stage takes place at a preliminary interview, of a more or less informal character, conducted by the Lord Chairman assisted by his Counsel. At this interview the promoters are represented by their Parliamentary Agent and necessary witnesses. Counsel are not heard, and evidence called is not tendered on oath. The representatives of Government Departments concerned in the Bill also attend to substantiate, elaborate and, on occasions, elucidate the reports of their Ministers.

The Bill is examined clause by clause from an annotated copy, prepared by the Agents, showing the precedents or model form (if any) from which each clause is derived and calling attention to any variation from such precedents or form.

The Parliamentary Agent acting on behalf of the promoters explains and justifies, where necessary, any unusual clauses; and informs the Chairman to what extent he has complied with the reports of the various Government Departments.

Matters which have been commented upon by the Lord Chairman or his Counsel are also dealt with in this way. Amendments are suggested or required by the Chairman and the Departments on any points outstanding, which are either agreed to at once by the promoters or, after discussion, are insisted upon, varied, modified or dispensed with by the Chairman. In recent times close co-ordination

exists between the 2 Chairmen in order to avoid, as far as possible, conflicting decisions between the 2 Houses.[1]

As soon as the Chairman of Committees is prepared to accept the Bill in its amended form, the formal committee stage takes place, with the calling of witnesses, on oath, to prove the statements recited in the preamble to the Bill and to produce King's Printers' copies of any Acts and the originals of any documents referred to therein.

The Bill is finally examined by the Counsel to the Chairman of Committees to ensure that the amendments to carry out the rulings of the Lord Chairman have been inserted in a proper form. When he is satisfied on these points and all matters of drafting, he gives authority, on behalf of the Lord Chairman, by initialling the Committee Bill, for the Bill to be reported to the House.

There is no record of a detailed report (Special Report) being made on an *unopposed* Bill; or of an *unopposed* Bill being rejected by the Committee.

The procedure recorded above has grown up by practice, varying to a certain extent in unessential details with individual holders of the office of Chairman of Committees. In the past there have been no Standing Orders governing this procedure.[2] In order that there should be no question that the Chairman of Committees has authority to act on his own as a Committee of the House on an *unopposed* Private Bill, a Standing Order to this effect has been included.

S.O. 121 (*Unopposed Bills referred to Chairman of Committees*). —The reason for this new Standing Order is given above.

S.O. 122 (*Right of Promoters to be heard, etc.*).—This new Standing Order is identical with the corresponding Standing Order of the House of Commons.

Committees on Bills, whether *Opposed* or *Unopposed*

General Note.—The Standing Orders contained in this section follow closely the corresponding Standing Orders of the House of Commons, and call for little comment. Attention should, however, be drawn to *S.O.* 124 (*Limits of Committee's power to hear evidence*). —This Standing Order is new to both Houses and has been fully explained by Dr. Williams in his article on "Private Bill Procedure in the Imperial Parliament".[3] Certain doubt was felt by the revis-

[1] During the last session a conference was held at the instigation of the two Chairmen between the representatives of the Minister and the promoters of Private Bills containing clauses affected by the coming into operation of the Town and Country Planning Act, 1947: with the result that an agreed policy on how these clauses should be dealt with in Bills of the current session was reached.—[H. B.]

[2] May, XIII, 821, states that *unopposed* local Bills are referred to the Chairman of Committees "and such lords as think fit to attend"; and gives a reference in the margin to a Standing Order of the House. No trace of this Standing Order can be found; it certainly has not been in existence for the last fifty years. The JOURNAL entry on the committee stage of an *unopposed* Private Bill has, however, for many years included this phrase, but these words will be omitted in future.—[H. B.]

[3] *See* JOURNAL, Vol. XIV, 111.

ing Committee of the House of Lords as to the wisdom of limiting in any way the powers of a Select Committee in considering the provisions of a Private Bill. It was finally determined that this limitation would, in practice, have little effect, as it is unlikely that the House would refuse authority to a Committee to hear any evidence they wished. On the other hand, a Standing Order of this nature might, in certain circumstances, be a protection to the Committee. An occasion might arise where an individual pressed his claims to give evidence before the Committee, against the wishes of the promoters, the petitioners and the majority of the Committee. In such a case it might assist the Committee in refusing the application to have the authority of a Standing Order. Moreover, if no such Order existed in the House of Lords, the applicant would naturally press his claims in that House rather than in the House of Commons. It might then be made to appear that the Committee of the House of Lords had acted unreasonably in refusing to hear this evidence, when in fact permission would have been withheld, under a Standing Order, by the House of Commons.

Certain Bills affect the rights of His Majesty in respect of Crown Lands and his Duchies of Lancaster and Cornwall.[1] A copy of the Bill, signed by the responsible authority indicating that His Majesty has given his consent, must be received before the Bill is read a third time. It is customary to inform the House that His Majesty's consent has been signified in such cases, in the Minute entry reporting the Bill from the Committee. This practice is not, however, regulated by Standing Order.

S.O. 124 (*Limits of Committee's power to hear evidence*).—This Standing Order, identical in form, is new to both Houses. It is referred to above.

S.O. 126 (*Committees may admit Affidavits as evidence*).—This Order is peculiar to the House of Lords. It is an old Order, but was originally in a more elaborate form. It has been retained as it has proved useful on occasions.

S.O. 127 (*Reports by Departments*).—This Order has been adopted in the same form as the corresponding Standing Order of the House of Commons without the provision which requires the Committee to notice in their Report any recommendation made by a Public Department, or to state their reasons for dissenting if they do not agree to such recommendations. In the ordinary way the House of Lords does not require a Committee on a Private Bill to give an explanation of their decisions.

Agreements

S.O. 129 (*Scheduled agreements to be subject to alteration by Parliament*).—This is an old Standing Order peculiar to the House

[1] The revenues of the Duchy of Cornwall are vested in the Crown until the birth of the eldest son of the Sovereign who automatically becomes Duke of Cornwall.—[H. B.]

of Lords. The last 2 words of the original Order have been changed. This alters the sense slightly to what is the real intention of the Order. The Order was further amended in August, 1947, by inserting S.O. 157 (Agreement to be annexed to Bill) of the House of Commons as paragraph (1) of the Order.

S.O. 130 (*Arrangements between parties and undertakings given to Committees*).—This Order follows the old House of Lords S.O. 123A, but has been redrafted. The intention of this redrafting is to make it clear to both promoters and petitioners that any dispute over an undertaking given by them to the Select Committee on the Bill would, if necessary, be enforced by a ruling of the Chairman of Committees. Various cases have arisen where a Standing Order of this nature would have proved useful.

Reports, etc., of Committees on certain Bills

General Note.—These Standing Orders are nearly identical with the corresponding Standing Orders of the House of Commons. As mentioned in the note at the beginning of Part V, they have been redrafted to leave out any reference to making a report to the House, unless such a provision was already included in the corresponding and existing Standing Orders of the House of Lords.

Local Government Bills

S.O. 141 (*Consideration of clauses in reference to various matters affecting local government or rating*).—This is a new Standing Order for the House of Lords and was included as it seemed inconsistent to have one Order relating to local government Bills and not the other. It is in the same form as the corresponding Standing Order of the House of Commons, but omits the provisions requiring the Committee to report to the House.

Charitable or Educational Institutions

S.O. 142 (*Report of Attorney-General in case of Bill affecting any charity or educational foundation*).—This Standing Order is now identical with the corresponding one in the House of Commons. The adoption of the Order in this form involves a minor alteration in procedure in the House of Lords, which is considered an improvement. Under the old S.O. 103 of the House of Lords (the Standing Order which applied) a Bill could not be read a second time until the Report of the Attorney-General had been received. As frequently these Reports were late, it followed that the Standing Order (limiting the time between First and Second Reading) often had to be dispensed with in connection with these Bills. The present Standing Order will avoid the necessity for doing this.

The remaining Standing Orders included in this Part dealing with clauses in Bills affecting Accommodation for Workmen, Water and Gas Works, Burial Grounds, etc., are identical with the corresponding Standing Orders of the House of Commons with the omission in S.O. 144 (Compensation water, etc.) and 146 (Gas or Water Companies (addiitional capital)) of any reference requiring the Committee to report to the House. The reason for this variation has already been explained.

Part VI: Report, Third Reading and Consideration of Commons Amendments

General Note.—The Report stage of a Private Bill in the House of Lords is simply an entry in the Minutes of the House and no proceedings are taken in the House. Amendments are, therefore, never moved in the House when a Bill is reported from the Committee.[1] On occasions, however, after the discharge of the Committee on the Bill, verbal or drafting amendments can be inserted in the Bill by the Counsel to the Chairman of Committees on the authority of the Chairman, and endorsed "amendments made on Report". No proceedings are required in the House and no entry in the Minutes of the House is made when this is done. This is a convenient arrangement, grown up by practice, which avoids engaging the time of the House on trivial matters.

Any amendments of substance, proposed after the committee stage, must be moved on the Third Reading of the Bill. This is unlike the House of Commons where amendments of this nature are moved on a stage known as "Consideration of Bill ordered to lie upon the Table".

All amendments proposed to be moved on the Third Reading of a Private Bill in the House of Lords must have been submitted previously to the Chairman of Committees under S.O. 148. In the ordinary way they are amendments asked for by the promoters to correct errors or, in some cases, to carry out agreements made during the committee stage. Occasionally, but rarely, an amendment is submitted by a member of the House. All amendments, which have the approval of the Chairman of Committees, are moved by him; and the House accepts them without question. Any amendment moved by another peer would be recognized by the House as an amendment contrary to the wishes of the Chairman of Committees and therefore raise a debate.

In the great majority of cases, however, the third reading stage of a Private Bill is entirely formal and raises no discussion. But it is on this stage that the House would be more ready to entertain a

[1] This does not apply, of course, in the case of a Private Bill re-committed to a Committee of the Whole House under S.O. 94 (Bills in some cases may be committed to a Committee of the Whole House). In these cases a Report stage, similar to that on a Public Bill, is held.—[H. B.]

Motion for the rejection of a Private Bill. Although it is very unusual to reject a Bill on Third Reading, as the House naturally wishes to uphold the decision of the Committee, at the same time the argument that the debate should not take place because the House is not sufficiently informed of the matters in dispute is no longer valid. On the third reading stage of a Bill which has been *opposed* before a Committee, there must be at least 5 members of the House, besides the Chairman of Committees, who are fully apprised of the matters to be debated. It is usual, on these occasions, for the Chairman of the Select Committee which has considered the Bill to be present to defend the decisions of his Committee. The promoters are, therefore, not without support in the House as they often might be if the rejection of a Bill were moved on Second Reading.

All amendments made by the Commons to House of Lords Bills, and amendments made by the Commons to the amendments made by the Lords to House of Commons Bills, are submitted to the Chairman of Committees and his Counsel for approval. If these Commons amendments are agreed by the Chairman of Committees, his Counsel initials an endorsement to that effect on the Bill, and an appropriate entry is made in the Minutes of Proceedings. No action is required in the House.

If there is any disagreement between the Houses on amendments to Private Bills, the same procedure of sending reasons for disagreement is followed as for Public Bills. In modern times the policy on Private Bill legislation is so well co-ordinated between the Houses by the Chairmen and their Counsel that the need for this procedure seldom, if ever, arises. Another factor is the unwritten principle, scrupulously observed, that in a Private Bill neither House re-inserts a provision which has been struck out by the other House.

The Standing Orders on these matters follow closely the similar Standing Orders of the House of Commons.

S.O. 147 (*Bills as amended in Committee to be deposited at Public Departments*).—The words "Third Reading" are substituted for "consideration of a Private Bill ordered to lie upon the Table". The reason for this alteration is that there is no such stage as "consideration" of a Private Bill in the House of Lords. Amendments which are made to a Bill after the committee stage are made on Third Reading; whereas in the House of Commons they are normally made on this "consideration" stage.

S.O. 149 (*Printing of Bill after Third Reading*).—This is a new Order for the House of Lords which it was decided to adopt. It follows closely the corresponding Standing Order of the House of Commons.

Part VII: Personal Bills

Introduction.—The origin and history of Personal Bills are not really relevant for the purposes of this note. It will be neces-

sary, however, to discuss in some detail the old procedure on these Bills in order to explain why the present procedure has been adopted.

Types of Personal Bills.—A Personal Bill (termed Certified Bill in the House of Commons) is now defined by both Houses as a "Private Bill relating to the estate, property, status, or style, or otherwise relating to the personal affairs, of an individual" (*see* S.O.s 3 and 151). This definition, therefore, embraces all the different types of Bills, such as estate, divorce, naturalization, patent[1] and name, which were previously contained in that category.[2] Certain types are now almost obsolete for the following reasons.

Since the passing of the Matrimonial Causes Act, 1857,[3] there have been no English Divorce Bills, the only divorce Bills have been Bills relating to Irish, Indian and Colonial divorces. So far as divorces in Southern Ireland are concerned, these Bills have disappeared since the constitution of the Irish Free State in 1922. Bills for the divorce of persons domiciled in Northern Ireland continued to be presented to the Imperial Parliament until 1925, when intimation was sent to the Parliament of Northern Ireland that the Lord Chancellor considered that Bills of this nature were within the jurisdiction of that Parliament. From that date until the passing of the Matrimonial Causes Act (Northern Ireland), 1939,[4] several divorce Bills were passed by the Parliament of Northern Ireland.

So far as Indian divorces are concerned, an Act of the Indian legislature, known as the Indian Divorce Act, 1869,[5] rendered it unnecessary to have divorce Bills presented to the Imperial Parliament. The Indian Divorces (Validity) Act, 1921,[6] and the Indian and Colonial Divorce Jurisdiction Act, 1926,[7] gave increased jurisdiction to Indian and Colonial courts to dissolve marriages of parties, domiciled in the United Kingdom where the parties resided in India or the colony, and the adultery or crime giving rise to the right of divorce occurred in India or the colony.

Naturalization Bills are now to all intents and purposes unnecessary owing to the passing of the British Nationality and Status of Aliens Act, 1914[8] and 1918.[9] Likewise, there has been no Personal Bill for change of name for many years because other machinery is provided for this purpose.

The necessity for patent Bills, which relate mainly to the restora-

[1] Bills relating to Letters Patent were removed from the list of Local Bills of the 1st class by an amendment to S.O. 1 made by the House of Lords in 1931.—[H. B.]

[2] Bills for reversing attainders; for the restitution of honours and lands; and for restitution in blood are not Personal Bills as they are presented by His Majesty's command. They follow the accelerated procedure of a Public Bill; the King's consent being signified before the First Reading. An Indemnity Bill which *prima facie* appears to relate to the "personal affairs of an individual" is proceeded with as an ordinary Public Bill, though it is usually passed through all its stages at one sitting as being an urgent matter. (*See May*, XIII, 379 and 832.)—[H. B.]

[3] 20 & 21 Vict. (1857), c. 85.
[4] 11 & 12 Geo. V, c. 18.
[5] 4 & 5 Geo. V, c. 12, c. 17.
[6] 2 & 3 Geo. V, c. 13.
[7] 16 & 17 Geo. V, c. 40.
[8] No. IV.
[9] 8 & 9 Geo. V, c. 38, c. 64.

tion of patents, has been largely removed by S. 20 of the Patents and Designs Act, 1907.[1] There are, however, conditions imposed by that section which limit the right to apply for the restoration of a patent, and equally S. 18 of the Patents and Designs Act, 1907, imposes restrictions upon the right of applying for extension of the term of a patent. It is conceivable, therefore, that an application for the restoration of a patent or for the extension of the term of a patent, which would be ruled out by the Patents and Designs Act, 1907, might still form the subject of a Private Bill.

In the same way Bills relating to divorce (*e.g.*, Stevenson Marriage Bill, 1947, mentioned later in a note) and naturalization might possibly be presented to Parliament. Any Bills of this nature would, however, be dealt with by the same procedure (laid down by the Standing Orders contained in Part VII) which governs all Personal Bills. It will be seen that the only remaining form of Personal Bills which have a certain individuality are those dealing with estates. Although these Bills are now also governed by the same general procedure for all Personal Bills, some of the Standing Orders relating to them have been retained.[2]

Introduction in the House of Lords.—Personal Bills have, by long custom, usually originated in the House of Lords. This practice may have grown from the constitutional right of the House of Lords to call upon the judges to assist both the legislative[3] and judicial functions of the House. This right the House exercised until recently in connection with a class of Personal Bills known previously as Estate Bills. It was natural, therefore, that Bills dealing with matters requiring the advice of the judges should originate in the House where that advice was normally tendered.

There appears, however, no constitutional reason why a Personal Bill should not be solicited in the House of Commons.[4] But the practice that a Personal Bill should be introduced in the House of Lords has become so well established that it is doubtful whether the authorities of the House of Commons would accept the presentation of a Bill of this nature.

A Personal Bill, like other Private Bills, must originate on a

[1] 7 Edw. VII, c. 29.

[2] All references to name Bills, the 4 Standing Orders dealing with divorce Bills, the 2 Standing Orders dealing with naturalization Bills, and the first of the 2 general Standing Orders governing patent Bills were left out of the 1930 edition of the Standing Orders. Amendments to leave out the other general Standing Order on patent Bills, together with the 2 Standing Orders affecting notices in case of Bills relating to letters patent were made with other amendments to the Standing Orders in July, 1931.—[H. B.]

[3] Stubbs' Constitutional History of England, Vol. III, 461, says—" they (judges) had very considerable functions as counsellors, in assisting all legislation that proceeded primarily from the King; and in formulating the statutes which proceeded from the petitions of the subject."—[H. B.]

[4] On the other hand, the House of Lords has claimed that Bills for the restitution of honours and in blood should commence with them (May, XIII, 379; and O. C. Williams, *op. cit.*, Vol. I, p. 142, *n.* 4). See also order of the House of March 2, 1664, at foot of next page.—[H. B.]

Petition for leave to bring in the Bill. A copy of the proposed Bill forms part of the Petition (S.O. 152).

English estate Bills.—The majority of Personal Bills which are presented to Parliament are Bills relating to estates or settlements. For the purposes of this note Personal Bills "affecting the provisions of an English will or settlement" are called English estate Bills, and Personal Bills "affecting the provisions of a Scottish will or settlement" are called Scottish estate Bills. It must be remembered, however, that both classes are and always have been termed Personal Bills.

Under an old Standing Order of the House (now withdrawn) the Petition for an English estate Bill was referred to 2 judges of the High Court. A report from the judges upon the Bill had to be delivered to the Chairman of Committees before the Bill could be presented and a read a first time. The orders of reference to the judges, contained in the Standing Order, were to report to the House "whether, presuming the allegations contained in the preamble to be proved to the satisfaction of the Lords Spiritual and Temporal in

---

Die Jovis 2° Martii 1664:

Concerning Restitution in blood.

Upon Report from the Lords Committees for Priviledges, that in pursuance of the first part of the Order of the 24th day of February last directed to y^e^ Committee upon the reading of a Bill for restoring Sir Charles Stanley in blood, the first time whereas the said Bill began in the House of Commons, It appearing by the Records of Parliament, that all bills for the restitution in blood ought, before they be admitted and received in Parliament (upon humble peticion) to have the Kings allowance for presenting the said Bills, and that then they are to be presented and begun in the House of Peeres; Contrary to wh Priviledge there hauving been Errors Committed by reason of begining some Bills of this nature in the lower House, Our late Soveraigne King James was pleased to take notice thereof openly, giving admonition to both Houses concerning one Act (namely for restitution of Rowland Merick in blood) That no such Act of Restitution from henceforth should be proceeded withall in Parliament till the same were first allowed and signed by the King, and that then, it ought to begin first in the Higher House: Whereof his said Majestie did expressly will an observation and remembrance to be made. Notwithstanding which Rule, by reason of the interruption of the regular and Parliamentary way of Proceedings occasioned by the late Tumultuous Times Whereby Sir Charles Stanley & his Counsel have been mistaken in the proper way of bringing a Bill for Restitution in blood into y^e^ Parliament The Lords Spirituall and Temporall in Parliament assembled doe declare. That although they have been pleased to receive the said Bill, Yet it is w^th^ this positive resolution, that, for the future, no such Act of Restitution shalbe proceeded withall in Parliament, till^o^ the same be first allowed and signed by the Kings Majesty, and then that it shall begin first in the House of Peeres. And that to this purpose the said Resolucion of this House conformable to the Orders of the 22nd and 27th of May in 3° Jacobi 1606 be entered upon the Roll of the Standing Orders of this House.

Remembrances for order and decency to be kept in Parliament by the Lords when His Majesty is not present. 27 March 1621.

with various additions 1623-1664.

Victoria Tower.
House of Lords.

Parliament assembled, it is reasonable that the Bill do pass into a law, and whether the provisions thereof are proper for carrying its purposes into effect; and what amendments, if any, are required therein". The view of the authorities concerned (Lord Chancellor, Chairman of Committees and the Officers of the House) was that the Chairman of Committees, in the first place, and subsequently the House of Lords, were entitled to rely upon the judges to advise them whether "it is reasonable that the Bill be passed into a law". It was true that this duty only arose when the presumption had been made that "the allegations contained in the Preamble are proved to the satisfaction of" Parliament. But, in the view of the House authorities, the word "allegations" here connoted only allegations of fact (or, in an extreme case, of mixed fact and law).

The Standing Order made it clear that the judges were to be asked to perform 2 duties, namely (1) to report whether "it is reasonable that the Bill do pass into law"; and (2) to report "whether the provisions (of the Bill) are proper for carrying its purposes into effect".

In many cases the promoters alleged in the Preamble that it is "expedient, just and reasonable" (or some other similar phrase) that effect should be given to certain proposals of the Bill. The result of alleging in this way that the proposals of the Bill were just, reasonable and proper was in effect to exclude from the purview of the judges one of these two duties, leaving them only to report whether the provisions are proper for carrying the purpose into effect.

It was argued by the Officers of the House that the mere fact that promoters often chose to make this allegation in the Preamble cannot in itself cut down the function which the Standing Order laid upon the judges, or deprive the Chairman of Committees and the House of the advice which they sought from the judges as to whether it was reasonable that the Bill do pass—that being the very thing which the Chairman of Committees and the House wanted to know. If it were otherwise, it would be possible for promoters, by adopting a particular form of pleading, in effect to state the judges out of court.

This argument may appear at first sight to have curious results. It would follow that the judges and not the House would become the authority by whom the policy of the Bill was to be accepted or rejected, and in effect the legislative power would pass from the House to the judges. But this is not so strange as it appears at first sight. The reason why the Standing Order required these references to the judges was that the judges still retained in this respect their position as persons summoned to the House of Lords, sitting there on occasion to give advice. It would still technically be possible for the House to reject their advice on a division, though it is inconceivable in modern days that the House would take such a course. But if the House reverted to the old historic position just described, the judges would be able to deliver their opinions in the House *viva voce*, and the House would then decide the point in the light of those opinions.

It is difficult to know how far the judges in the past considered the actual merits of the Bill when making their report. On the Clarke's Estate Bill, 1707, the following passage occurs in the judges' report:

". . . Whether this ought to be done without the consent of the last-mentioned heirs is left to the decision of the House but, as the Bill stands, their position is safeguarded. . . ."

Also in the case of Lord William Poulett's Estate Bill of 1709, where there was a petition against the Bill, the judges safeguarded themselves in their report by saying that whether that part of the Bill to which the petition referred was reasonable or not would be judged by the House in Committee on hearing the petition.

In a more recent Bill (Bury Estate Bill, 1927), the judges, in order to guard against the possibility of it being supposed that in approving the Bill they were exercising any judgment on the question of adequacy of compensation, said: ". . . presuming the allegations, etc., to be proved, *and presuming that it is proved to the satisfaction of their Lordships that the compensation proposed to be made* (to the infant) *is adequate for the interference with her vested rights proposed to be authorized by the Bill,* it is reasonable that the Bill do pass into a law."

The difficulty over the wording of the Standing Order had been appreciated for a long time. But, unless the general principle of a Bill was objectionable, the Standing Order worked satisfactorily. I enabled the judges to put the ordinary Bill in a form acceptable t Parliament, which in almost every case was all that was required On the other hand, the onus of deciding on the merits of a Bill, before its presentation and first reading, was invariably left to the authorities of the House. The drawbacks in the procedure, however, became too apparent over a Bill[1] introduced during the War. The first report from the judges on the Bill was of the usual non-committal character. On considering this report it was felt that the House had not really had the exact assistance to which it was entitled and the judges were therefore asked to report again whether they were of opinion that it was reasonable that the Bill do pass into law. On the second reference the judges reported:

". . . it is *not* reasonable that this Bill should pass into law, for the reasons that the matter to which it relates raises an important question of principle which, if dealt with by Parliament, should in our opinion be the subject of a general Act and that the matters of fact stated in the Preamble contain nothing to make a case for individual treatment."

The promoters, nevertheless, pressed that the Bill should be presented and, because it was felt that it was for Parliament and not the judges to decide upon the questions of principle involved, this was done. The Bill, although given a second reading without debate,

[1] Scarisbrick Estate Bill, 1941. The purpose of the Bill, generally speaking, was to enable the tenant for life to raise capital out of settled estates.—[H. B.]

was rejected by the Select Committee to which it was referred under the provisions of S.O. 92 (Chairmen of Committees may report that *unopposed* Bill should be treated as *opposed*). The promoters therefore incurred considerable expense for no purpose.

Apart from the fact that the Standing Order was badly drawn, it was considered that the principle embodied in it needed review. It had its origin at a time when there were no Law Lords in the House. By reason of the appointment of Lords of Appeal in Ordinary (1876) the ancient practice whereby the House in appeals and writs of error used to seek the counsel of the judges had fallen into almost complete disuse. It was thought that for the same reason the practice of seeking the advice of the judges on estate Bills should be brought to an end, as the House contained within itself persons who were as learned and practised in the law as any judge of the Supreme Court.

The Standing Order referring petitions for English estate Bills to 2 judges of the High Court was therefore repealed and replaced by a Standing Order under which a Standing Committee of the House, called the Committee on Estate Bills, was appointed each Session to which all petitions for such estate Bills would stand referred. By having a Committee of the House to consider the proposed Bills it was thought that a good deal of the confusion as to the respective functions of the House itself, on the one hand, and the judges, on the other, would disappear. The order of reference to this Committee followed the previous terms of reference to the judges with a slight alteration to make the real intention clearer, namely, that the House should be informed whether it was expedient and reasonable that a Bill should pass into law. No petition for an estate Bill was, however, presented to the House while these orders of reference were in force.

Scottish estate Bills.—The old Standing Orders on estate Bills dealt quite differently with Scottish and English estate Bills. As has been shown the province of the High Court judges on an English Bill was strictly limited: it was contemplated that any question on such a Bill should be determined, if the Bill was opposed on petition, by the Select Committee to which the Bill would be referred after second reading or, in the absence of opposition, by the Chairman of Committees on its *unopposed* Committee stage. On the other hand the 2 judges of the Court of Session of Scotland, to whom a petition for a Scottish estate Bill was referred, were to summon all interested parties, to take evidence, consents, etc., and to deal with all questions and report the state of the case. They had to come to a decision on questions of principle, and on disputed facts, if any. They were, in fact, to deal with the whole matter as a Select Committee would deal with it. Their decision was, of course, liable to be overruled on second reading or by the subsequent Select Committee or (if there were no *opposition*) by the Chairman of Committees. But it is doubtful if it ever was. In any case the House, under this procedure, was given

a definite ruling by a competent authority on the merits of a Bill before it was introduced. No change was made therefore at this time in the Standing Order governing Scottish estate Bills.

Right to petition for a Personal Bill.—The right of petitioning the Crown and Parliament, for redress of grievances, is acknowledged as a fundamental principle of the constitution; and has been uninterruptedly exercised from very early times.[1] It may well be assumed that these petitions contained not only a prayer that relief might be afforded by Act of Parliament but also indicated in what manner the needs of the applicants could best be met or, in other words, the petitions were both petitions for Bills and also drafts of the proposed Acts. It seems, therefore, that the House must receive any petition for a Personal Bill which is deposited in accordance with S.O. 152.

The question of how to exercise control on the introduction of Personal Bills has arisen on the rare occasions where the matters contained in the Bill were clearly undesirable for Parliament to entertain. In the case of Personal Bills relating to estates, some guidance on the merits of the proposals contained in the proposed Bill was given by the report of the judges. It has been shown that, owing to the terms of reference to them in the case of English estate Bill, this guidance was in some cases evaded and in others so indefinite as to afford little help. Moreover, even when a definite opinion of the judges was obtained the authorities of the House were reluctant to act on the judges' ruling without confirmation by the House.

The responsibility of deciding whether or not a Personal Bill should be introduced has rested in the past in a rather indeterminate manner between the Lord Chancellor and the Chairman of Committees. This responsibility has never been specifically delegated to them by the House. It has been undertaken either by the Lord Chancellor, in whose name all Private Bills are formally introduced; or by the Chairman of Committees because all Private Bills are entrusted to his general supervision.[2] In practice they must rely to a certain extent on the advice given by the permanent officers of their departments.

It was thought, therefore, that where a decision of the House entailed a refusal to implement a petition for legislation, it should not be given by an outside authority (such as the judges) or even by the House authorities concerned, but by a Committee of the House acting with the full authority of the House.

New procedure on Personal Bills.—The general revision of the Standing Orders in 1945 provided the opportunity for this further revision of the procedure on Personal Bills. It was considered doubt-

[1] May, XIII, 608.

[2] In recent times, in one case a petitioner has been informed that the Lord Chancellor would not introduce the Bill; in another case the petition for a Bill was refused in the Private Bill Office, on the grounds that the prayer of the petition could not properly be dealt with by private Bill legislation.—[H. B.]

ful whether whether even the revised Standing Order defining the duties of the Committee on Estate Bills fulfilled the purpose for which it was designed. The House, therefore, approved a re-drafting of the Standing Order and, in order to meet the problems explained above, enlarged its scope to include all Bills certified by the Chairmen of the 2 Houses as "Personal Bills" The present S.O. 154 interprets these decisions.

It was clear, however, that if the orders of reference to the Estate Bill Committee were to be enlarged in order to rule out the introduction of Personal Bills which were improper for Parliament to entertain, the effectiveness of the procedure would be reduced if Bills dealing with matters in Scotland were exempted from their scrutiny. There were good reasons to know that foolish petitions for legislation sometimes came from over the Border. In order, however, to retain the principle of the Private Legislation Procedure (Scotland) Act, 1936[1] that enquiries into matters affecting interests in Scotland should be held in Scotland rather than at Westminster, it was decided to retain the Standing Order governing Scottish estate Bills in much the same form. While the essential feature (of the Standing Order), namely, that the merits of a Bill should be inquired into and reported upon by the Scottish judges, was kept, the new procedure for Personal Bills generally entailed some alteration in the Standing Order.

It was decided, therefore, to extend the class of Personal Bills referred to the Scottish judges to embrace all such Bills "affecting private interests in Scotland", instead of confining the reference to those "affecting the provisions of a Scottish will or settlement." A further alteration was that the report of the 2 judges of the Court of Session would be referred to the Personal Bills Committee instead of to the House, and provision was made that in the case of a Scottish Personal Bill the Personal Bills Committee should not report upon a Bill until they had considered the report from the 2 judges. The effect of retaining the services of the judges of the Court of Session on Scottish Personal Bills would be that the Personal Bills Committee would, to a large extent, be relieved of their duties in connection with Scottish Bills and the proceedings in Parliament on those Bills would be reduced to a minimum. S.O. 155 carries out this new procedure.

The main purpose of the procedure is to secure that a Personal Bill is not presented and given a first reading unless the Personal Bills Committee report that "the objects of the Bills are proper to be enacted by a Personal Bill". In other words, to ensure that Parliamentary time should not be wasted by considering a petition for legislation on a matter which it would be improper for Parliament to entertain.

If the promoters persisted in proceeding with a Bill despite an adverse report from the Personal Bills Committee, the presentation and first reading could only be done in the name of a peer acting on

[1] 26 Geo. V and Edw. VIII, c. 52.

their behalf. In the event of a peer being prepared to lend himself, in this way, to enable the Bill to be introduced, it would also be left to him to move its remaining stages in the House. It is unlikely that any peer would be able to persuade the House to disregard the ruling of the Personal Bills Committee and give the Bill a Second Reading.

The other principles which the House approved in formulating the new procedure may be summarized as follows: [1]

(i) That a petitioner for legislation may, at the outset and before incurring further expense, be given an indication as to his prospects of obtaining the desired legislation.

(ii) That every petitioner, whose petition for legislation is considered justified, will receive assistance in setting out the objects of the proposed legislation in the form of a Bill suitable for presentation to Parliament.

The procedure also ensures (*a*) that all petitions for Personal Bills (deposited in accordance with S.O. 152) shall be received and considered; and (*b*) that any refusal to implement the petition is given by a Committee of the House instead of by an individual member. Moreover, it does not interfere with the traditional liberty of any peer to present a Bill.

Proceedings before Personal Bills Committee.—It may be well to describe briefly the proceedings before the Personal Bills Committee.

The Committee have before them the petition for the Bill, together with the draft Bill which forms part of the petition, and in most cases a statement by the promoters in support of their application for the Bill and any other relevant documents. The promoters usually appear by Counsel, but would be allowed to be heard by their Parliamentary Agent or by themselves. The arguments addressed to the Committee are directed to prove that "the objects of the Bill are proper to be enacted by a Personal Bill". To report upon this matter is the main duty imposed on the Personal Bills Committee by their orders of reference contained in S.O. 154.

The points on which the promoters should satisfy the Committee may be summarized as follows:

(*a*) that the objects of the proposed Bill are not in conflict with public policy;
(*b*) that the benefits to be conferred are peculiar to the petitioner and that therefore the interests of the general public are not affected;
(*c*) that the consents of all persons principally concerned in the consequences of the Bill can be obtained, and that the interests of infants affected are safeguarded;
(*d*) that the objects can only be achieved by means of a Personal Bill and not by any other instrument or form of enactment.

[1] See Report from the Select Committee of the House of Lords on Private Bill Standing Orders, H.L. (28), 1945.—[H. B.]

Points (*b*) and (*c*) may need some explanation and will be dealt with in that order.

It seems that on point (*b*) the onus is on a promoter to prove that the proposed legislation will not prejudice or affect in any way the interests of the general public. This may often be a difficult point to argue, as any preferential treatment of an individual might be held to be contrary to, or at least to affect, the interests of the public. It is not enough to convince the Committee that the grievances of which the petitioner complains exist, or that the reliefs which he proposes are justified. It must be shown that the grievances are peculiar to him and not liable to be suffered by the remainder of His Majesty's subjects. In other words, that the matters are not such that the remedy should be by general legislation.

The matters raised by point (*c*) are not ones on which any certain policy can be laid down. They must be considered in conjunction with the merits of each individual application for legislation.

The consent of all parties concerned has, however, always been an essential feature in the promotion of a Personal Bill dealing with estates: the reason being that it would be impossible for a promoter to prove the Preamble of the Bill if the consents of any of the interested parties are withheld. If, therefore, any of the parties concerned objects to the proposed legislation, the whole case of the promoters automatically falls to the ground. This principle appears well established: it is shown by the fact that since 1888 no case has been discovered of an estate Bill becoming law after it has been petitioned against. The intention underlying the Standing Orders relating to consents appears to be to divide persons affected by the proposed Bill into two categories:

(1) persons who are concerned in the Bill (the consents of these persons must be proved to the satisfaction of the Committee —S.O.s 153, 166 and 169 effect this);
(2) persons who are only indirectly concerned but who may be able to show, when heard in support of a petition against the Bill, that they are in some way prejudiced (S.O.s. 157 and 162 require that a copy or notice of the Bill is supplied to such persons).

In some cases the Personal Bills Committee would have to direct into which of these two categories certain persons fell. If the Committee decided that unless the consent of "A" (one of the parties principally concerned in the consequences of the Bill) was obtained the Bill should not become law, they would not report favourably on the Bill unless they were satisfied that he would give his consent. If "A" refused his consent, however unreasonable his refusal was, the Bill could not proceed. In such a case the most the promoters could do would be to argue that "A" might be treated as belonging to category (*a*) and that the opportunity to petition against the Bill

was an adequate safeguard for his interests. The promoters might then be able to show before the subsequent Select Committee on the Bill that he was an unreasonable person and sought to impose unreasonable conditions. If, however, it is clear that "A" is a person principally concerned, however misguided or unreasonable (subject to his being *compos mentis*) he might be, nothing could prevent him from blocking the Bill: "A's" refusal to consent (if he belongs to category (1)) would make nonsense of the prayer of the petition for the Bill.

If the Committee are satisfied on the matters outlined above and that the objects of the Bill are justified, they examine the draft Bill with a view to carrying out the other duty imposed on them. This duty is to see whether the provisions of the Bill are proper for carrying its purposes into effect and what amendments, if any, are required. The Committee, therefore, make any amendments, either of substance or drafting, which they consider necessary. In the case of a Personal Bill affecting private interests in Scotland the Committee would have the advantage of the report from the two judges of the Court of Session and the Bill before them would be in the form approved by those judges. It can be expected, therefore, that the proceedings on these Bills would be mainly formal.[1] In most cases the Chairman of Committees will already have requested the Lord Chancellor to appoint a guardian to represent the interests of any infants who should be protected in this way. The Personal Bills Committee are also empowered to require the appointment of a guardian for this purpose (S.O. 167).[2]

When the Committee are satisfied on all these matters, and have given any necessary directions on what consents are to be obtained and which consents can be dispensed with on account of remoteness of interest, the Chairman of Committees signs a copy of the Bill in the form approved by the Committee.

The Report of the Personal Bills Committee is then made to the House and the Bill in its amended form is presented and read a first time.

Passage of Personal Bills in the House of Lords.—The House of Commons have no Standing Orders relating to Personal Bills as it is the practice to leave proceedings on these Bills to the House of Lords. In modern times their passage through the House of Commons is entirely formal.[3]

As the present procedure on a Personal Bill has been so recently

[1] No Scottish Personal Bill has been presented to Parliament since the new procedure has been in operation.—[H. B.]

[2] It is usual in these cases for the Lord Chancellor to appoint the Official Solicitor of the Supreme Court of Judicature.—[H. B.]

[3] A motion opposing *2R.* of the Mountbatten Estate Bill 1949 was tabled in the Commons but the Bill was withdrawn before *2R.* owing to the introduction in the Lords of the Married Women (Restraint upon Anticipation) Bill, a Public Bill to achieve the same purpose.—[H. B.]

established, it may be well to give the various stages of the Bill in the House of Lords.

The procedure as laid down by the Standing Orders is as follows:

(1) The Petition for the Bill, signed by one or more of the parties principally concerned in the consequences of the Bill together with a copy of the proposed Bill, is deposited in the office of the Clerk of the Parliaments (S.O. 152). A petition for a Personal Bill may be deposited at any time during the session, but it should, of course, be deposited as early as possible; they are Bills, however, which Parliament would be prepared to suspend to the following session when necessary.

(2) Every petition for a Personal Bill is referred to the Personal Bills Committee[1] as soon as it has been laid on the Table of the House. The quorum of the Committee is three (S.O. 154).

(3) Every petition for a Personal Bill affecting private interests in Scotland is referred by the Personal Bills Committee to 2 judges of the Court of Session in Scotland (S.O. 155).

(4) The Report of the Personal Bills Committee on the petition for the Bill is made to the House (S.O. 156). In the case of a Scottish Bill this Report must not be made until after the Personal Bills Committee have received and considered the Report of the 2 judges of the Court of Session (S.O. 155 (2)).

(5) The Bill is presented in the form approved by the Personal Bills Committee and read a first time. A copy of the Bill signed by the Chairman of Committees is the necessary authority for the form of the Bill (S.O. 154). The presentation and First Reading of the Bill are done in the name of the Lord Chancellor and effected simply by an entry in the Minutes of Proceedings.

(6) Copies of the Bill as introduced are delivered to all persons affected by the Bill. This distribution must be made before the Second Reading takes place (Standing Order 157).

(7) The Second Reading of the Bill, which is moved by the Chairman of Committees, then takes place. A date is fixed by the Chairman of Committees on, or before, which petitions against the Bill must be presented (S.O. 158). It is usual to fix this date *at least* 10 days after the date of the Second Reading. In any case the Committee stage of the Bill cannot be taken until these 10 days have elapsed (S.O. 159). In some cases it may be necessary to make the petitioning period a good deal longer; if, for example, persons affected by the Bill are known to be abroad.

(8) If the Bills is *unopposed* it is referred to the Chairman of Committees and dealt with by him in a Committee on *Unopposed* Bills (S.O. 160). At this stage the consents of persons concerned in the Bill are given by their attending and signing a copy of the

[1] The present Committee comprises an ex-Lord Chancellor, a deputy Chairman of Committees and 2 Lords of Appeal besides the Chairman of Committees.—[H. B.]

Bill. In certain cases, such as absence abroad, illness or old age, the Chairman of Committees may admit affidavits in proof of signatures in lieu of attendance.

(9) If the Bill is *opposed* it is referred to a Select Committee of 5 Lords named by the Committee of Selection and proceeded with in the same manner as an *opposed* Private Bill (S.O. 161). As has been explained, it is very unlikely that a Personal Bill will be opposed.

(10) The Third Reading of the Bill is then fixed and moved by the Chairman of Committees. The Bill is then passed and sent to the House of Commons, where the proceedings on the Bill are largely formal.

(11) The Royal Assent is given to a Personal Bill in the form "*Soit fait comme il est désiré*".

The above procedure assumes that a Personal Bill will always originate in the House of Lords. If, however, the House of Commons accepted the introduction of a Personal Bill, the Bill when it came up to the House of Lords would be proceeded with in the same way as any other Private Bill. Any reference to the Personal Bills Committee would not be appropriate in such a case, as a Bill which had been passed by the other House must clearly be one which would be proper for Parliament to entertain.

It is still early to judge whether any alteration in the procedure will be required. Such experience as has been obtained up to date tends to show that the procedure is satisfactory.[1]

Part VIII: L.C.C. (Money) Bills, Provisional Order Confirmation Bills, and Procedure under the Private Legislation Procedure (Scotland) Act, 1936[2]

London County Council (Money) Bills

The Standing Orders contained in Part VIII deal with the subjects abovementioned. These Orders were generally similar to the Standing Orders of the House of Commons.

General Note.—The annual Money Bill of the London County Council promoted in accordance with the London County Council (Finance Consolidation) Act, 1912,[3] is allowed by Standing Order to be deposited in Parliament on a date shortly after the end (March 31) of the Council's financial year, instead of on the date prescribed for the deposit of Private Bills generally. The same

[1] Four Personal Bills have been presented to Parliament since the procedure was inaugurated. The Rhodes Trust Bill, 1945, and the Marquess of Abergavenny's Estate Bill, 1945, passed through both Houses *unopposed* and unamended, although both Bills were considerably amended by the Personal Bills Committee before their introduction; for the Mountbatten Estate Bill, 1949, see p. 107 hereof, *n.* 3. The petition for the Stevenson Marriage Bill, 1947, was reported upon adversely by the Personal Bills Committee and the Bill was therefore withdrawn. A saving of expense was thereby secured, the petitioner knowing after the preliminary stage that his prayer for legislation would not be allowed.—[H. B.]

[2] 26 Geo. V & 1 Edw. VIII, c. 52.

[3] 2 & 3 Geo. V, c. cv.

Order lays down that the Petition or the Bill shall be deposited in the House of Commons. The Bill, therefore, always originates in that House.

Since the Council's financial year does not coincide with the normal period of a Parliamentary Session, each of the Bills covers a period of 18 months, namely, the current financial year and the following 6 months. Expenditure incurred in these 6 months is treated as having been incurred on account of the next following financial year.

The proceedings on these Bills have up to date been largely formal in the House of Lords as the Bills have always been *unopposed* and passed without amendment in that House. There is, however, no constitutional reason why the House of Lords should not amend any of these Bills, if it wished to do so. Being Private Bills they could not be included in the definition of a Money Bill under the provisions of the Parliament Act, 1911.[1]

The 3 Standing Orders of the House of Lords applicable to the Bills are identical, subject to the necessary adaptations, with the corresponding Standing Orders of the House of Commons.

The unusual provision, for a House of Lords Standing Order, that the Committee on the Bill are required to report to the House if they disagree with the report of a Government Department, has been allowed in S.O. 177 (Report from Treasury on certain London County Council (Money) Bill). It was thought that in this particular case the provision was desirable; although in the 1936 edition it was not included in the Standing Order.

A fourth Standing Order (S.O. 223, H.C.) of the House of Commons on these Bills, which requires the Committee on an annual money Bill to specify, in their Report on the Bill, the manner in which the Committee have dealt with any matters contained in a Report from the Treasury, has not been adopted by the House of Lords. The House of Lords has never had this Order, which deals with matters more properly the province of the House of Commons.

Provisional Order Confirmation Bills

General Note.[2]—Procedure by way of Provisional Order was introduced almost exactly 100 years ago. Parliament was being inundated at the time with Private Bills, and the object of the new procedure was partly to reduce the number of these and provide promoters with a simpler and less expensive procedure, and partly to give Parliament some assurance that ill-digested proposals would not be submitted to them. Put very shortly, the procedure is that, on the application of the persons interested, the Minister or public Department makes (or in some cases confirms) an Order conferring

[1] 1 & 2 Geo. V, c. 13.

[2] For the origin and nature of Provisional Orders, *see* May, XIV, pp. 973-75; also O. C. Williams, *op. cit.*, Vol. I, pp. 123-26, 178-82.—[H. B.]

the necessary powers, the Order being expressed to be provisional and to require confirmation by Parliament. This confirmation is effected by the Order being scheduled to a Bill which is then introduced and, if successful, passed by Parliament with or without amendment of the Order. Petitions against the Bill may be lodged by objectors as in the case of Private Bills, and the Bill, if *opposed*, is referred to the Committee on one of the groups of Private Bills. But oppositions are rare, as a thorough investigation of the subject-matter is secured by the fact that the responsibility for submitting the Order to Parliament is that of the Minister or Department concerned, and usually by a requirement that a public local inquiry is first to be held.

At the end of the nineteenth century the statute book contained provisions for many different types of Provisional Orders. Examples of some of the commonest in recent years are:

Orders for the compulsory acquisition of land;
Orders establishing or giving additional powers to water, gas and electricity undertakers;
Orders altering the boundaries of local government areas;
Orders amending or repealing local Acts of Parliament.

Since the beginning of the century the scope of the procedure has been narrowed. In some cases Provisional Orders have been replaced by simple Orders not subject to any form of parliamentary control (*e.g.*, most Orders for the compulsory acquisition of land), and in others a different form of parliamentary control has been substituted. Of the 4 examples given above, only the last (repeal and amendment of local Acts) and some small portion of the first (*e.g.*, Orders relating to land forming part of commons or open spaces) still remain under the Provisional Order procedure.

Provisional Orders, like Private Bills, are subject to a parliamentary timetable, and the confirming Bill must be introduced not later than May 15. From the introduction of the Bill much of the Private Bill procedure is applied by the Standing Orders without substantial modification, though the Bill is introduced as a Public Bill. But the fact that the proposals have already been fully investigated renders unnecessary most of the requirements of Standing Orders designed to give notice to possible objectors, and in this and other respects the procedure is simpler. The fees payable by promoters and opponents are less, but a more important factor in securing economy lies in the fact that the prior investigation and approval of the project by the Department decreases the risk of opposition. Hence the proportion of Bills confirming Provisional Orders which are *opposed* is substantially lower than that of Private Bills, and opposition is more commonly confined to one House. Though the Department making the Order, and not the person or body who applied for it, are strictly the promoters of the confirming Bill, it is

the practice to leave to the latter the presentation to the Committee of the case for the Order.

A confirming Bill may include one or more Provisional Orders, and if the Committee considering the Bill decide to approve one Order but not another, they split the Bill accordingly. After the Committee stage is over, the Bill is considered in a Committee of the whole House, and goes through the remaining stages as a Public Bill. The Act, when passed, is a Public Act, but is not included in the annual volumes of Public General Acts but in a separate series of "Local and Private Acts".

Both Houses have 9 Standing Orders relating to Provisional Order Confirmation Bills. Six of the Orders are in substantially identical terms and require no explanation. Of the remaining 3, two are peculiar to each House and the third Order (Proceedings in Committee on Confirming Bills) is in a somewhat different form in each House. The House of Lords has an Order regulating the Second Readings of Bills and also a separate Order for the presentation of Petitions against Bills. The House of Commons has an Order referring questions of *locus standi* of Petitioners to the Court of Referees, and an Order laying down the order of proceedings in the House on confirming Bills. The first of these Orders is covered by S.O. 185 (Proceedings in Committee on Confirming Bills) by applying Part V, which includes S.O. 114 (Committee to decide as to *locus standi* of Petitions). The second Order is not needed, as, following a recommendation of the Procedure of the House Committee, the House of Lords has ruled that proceedings on Provisional Order Confirmation Bills shall be taken after Private Business and before Public Business.

S.O. 183 (*Second Reading of Confirming Bills*).—The Order takes the place of S.O. 102 of the 1936 edition, but follows the form of S.O. 100 of the present edition. There is no corresponding Order in the House of Commons.

S.O. 184 (*Time for presenting Petitions against Confirming Bills*). —The limits of time for presenting Petitions have not been altered to correspond with the House of Commons, as was done in the case of Petitions against Private Bills. There appeared no advantage in making the change which would, in fact, have caused certain inconvenience to the confirming Departments. The presentation of Petitions is regulated in the House of Commons by their S.O. 217 (Proceedings in Committee on Confirming Bills).

S.O. 185 (*Proceedings in Committee on Confirming Bills*).—The first paragraph of the Order lays down what is the practice of the House of Lords, that proceedings before Committees on *opposed* and *unopposed* "confirming" Bills correspond to the similar proceedings on Private Bills.

Although these Bills are introduced as Public Bills, the Committee has the same power as on a Private Bill to reject the Bill on the committee stage. This has been done on several occasions in the House

of Lords[1] to Bills confirming *opposed* Orders; but there is no instance where a "confirming" Bill has been rejected by the *unopposed* Committee.[2]

The second paragraph of the Order is identical with the corresponding paragraph in the House of Commons Standing Order.

Private Legislation Procedure (Scotland) Act, 1936

General Note.[3]—The scheme now contained in the Private Legislation Procedure (Scotland) Act, 1936,[4] was devised in 1899, and amended in 1933, to provide Scottish promoters with a cheaper and more convenient method for obtaining parliamentary powers than the Private Bill procedure at Westminster, while at the same time retaining parliamentary control. The main feature of the procedure is that inquiry in Scotland by a Parliamentary Commission takes the place, in the case of opposed proposals, of the Committee stage in both Houses of Parliament. Another difference between the English and Scottish systems is that in Scotland promoters may not make direct application to Parliament for a Private Bill except in two cases—

(1) Personal Bills are permitted, though they are in fact very infrequent. The petition for a Bill of this nature is presented to the House of Lords and referred to 2 judges of the Court of Session, who hold an inquiry in Scotland. The report of the judges is considered by the Personal Bills Committee of tha House before the Committee makes its report to the House (*See* S.O. 155.)

(2) Where legislation is necessary to provide for the uniform regulation of the affairs of an undertaking or institution carried on or operating in Scotland and elsewhere, the Secretary of State may dispense with the necessity of lodging a Provisional Order dealing with the purely Scottish part of the undertaking. In such a case the Secretary of State, the Chairman of Committees of the House of Lords, and the Chairman of Ways and Means in the House of Commons, together consider the application; and if they are satisfied that the powers asked for can more properly be obtained by the promotion of a Private Bill than by the promotion of a Private Bill and a Provisional Order, they cause a notice of their decision to that effect to be published in the London and Edinburgh Gazettes and lay a report of their decision before both Houses of Parliament.

[1] In the case of the Ancient Monuments Preservation Order Confirmation (No. 1) Bill of 1914, the Select Committee of the House of Lords not only threw out the Bill but also awarded costs to the Petitioner.

[2] In the last session the Ministry of Health Provisional Order Confirmation (Bradford) Bill, 1948, was rejected by the Committee on Unopposed Bills in the House of Commons.

[3] *See* May, XIV, ch. xxxvi; and O. C. Williams, *op. cit.*, Vol. I, pp. 191-210.—[H. B.]

[4] 26 Geo. V & 1 Edw. VIII, c. 52.

Thus the procedure covers a wider field than the ordinary departmental Provisional Order, and the Minister's position is rather different. The defence in Parliament of Provisional Orders made under the procedure rests with the promoters, as in the case of a Private Bill. Promoters have to prove to the Parliamentary Examiners compliance with General Orders made under the Act of 1936, which correspond to the "preliminary" Standing Orders of both Houses.

Application for Provisional Orders may be made twice a year—on March 27 and November 27. The Orders are deposited at the Scottish Office, London, and come under the supervision of the Scottish Home Department. The applicants are required to give notice by public advertisement in the manner prescribed in General Orders. This notice must state where a copy of the Provisional Order may be inspected and copies obtained. Notices to owners, lessees and occupiers of land or houses affected must also be given. The last date for advertisement is April 11 or December 11, as the case may be, and the period of 6 weeks allowed for lodging Petitions praying to be heard against the Order dates from the last date of advertisement. When this period of 6 weeks has expired, the Chairman of Committees and the Chairman of Ways and Means examine the Orders and the Petitions and decide whether any Order or any particular clauses in an Order should be required to proceed as Private Bills. The decision depends on whether the Orders or the proposals contained in the clauses in question relate to a sufficient extent to matters outside Scotland or raise questions of public policy of sufficient novelty and importance. In practice, few proposals are directed to proceed as Private Bills (known as substituted Bills).[1] When the Chairmen so decide, the Order, or the part of the Order, as the case may be, is transferred to Parliament and goes through the normal Private Bill procedure, the notices published and served and the deposits made for the proposed Provisional Order being held to have been published and served and made for a Private Bill applying similar powers. In the ordinary case the Chairmen direct that the Orders be allowed to proceed, subject to such recommendations as they may make later. Recommendations by the Chairmen are not infrequent, and when made are naturally of great weight. In the case of an *opposed* Order they are sent to the Commissioners.

The Orders then go through the procedure under the Act. In the case of *unopposed* Orders, the Secretary of State acts more or less as a Committee on *Unopposed* Bills. He may make modifications in the Order, and drafting and minor points are adjusted with the agents for promoters in consultation with any Department concerned. The Secretary of State has power to send an *unopposed* Order to inquiry, if he thinks fit, and this power has been exercised occasionally.

[1] *See* S.O. 187.

Opposed Orders are referred to Commissioners, who hear parties in Scotland, the inquiries being held in Edinburgh, Glasgow or Aberdeen. There are 4 Commissioners, normally 2 members of the House of Lords and 2 members of the House of Commons, selected by the Chairmen from a parliamentary panel. One of the Commissioners acts as Chairman and, by custom, is chosen alternately from each House. There is an extra-parliamentary panel for emergencies which consists of 20 persons "qualified by experience of affairs to act as Commissioners" under the Act. This panel is revised every 5 years.

The proceedings of the Commissioners follow closely those of the Select Committees on Private Bills; and after inquiry the Commissioners report upon their proceedings to the Secretary of State. They either find the preamble not proved, in which case the Order is at an end, or they find the preamble proved, with or without modification. In this case the Order goes forward in the form in which the Commissioners have approved it. The Secretary of State does not review the decisions of the Commissioners. He is not precluded by statute from making amendments after the inquiry, and, in fact, he is required to have regard to any recommendations made by the Chairmen or by Departments at this stage. It is an essential feature of the procedure, however, that the fullest respect is paid to the views of the Commissioners, and a parliamentary pledge was given on this point in the course of the proceedings on the amending Bill of 1933. With the rarest exception, amendments at this stage are limited to matters of drafting.

Departments receive copies of Orders deposited with applications for a Provisional Order under similar arrangements to those relating to Private Bills. Where Departments have substantial points to raise on an Order, they submit a report to the Secretary of State. If the Order goes to inquiry, the Secretary of State transmits the reports from Departments to the Commissioners for their consideration.

The Orders are discussed at an early stage with Counsel to the Lord Chairman and to the Speaker, so that English and Scottish legislation are kept in line. Counsel to the Secretary of State then discuss with the promoters the various points of difficulty, reporting the result of their negotiations to the Scottish Home Department. Counsel and the Department, therefore, occupy a position somewhat analogous to that of Counsel to the Lord Chairman and to the Speaker.

When an Order is made and introduced, the proceedings in Parliament are, as a rule, formal. In the case of *opposed* Orders there is authority to move in the House of origin, if a petition has been presented, a motion for a Joint Committee, but since the start of the procedure such a motion has been extremely rare, and in fact a Committee has only once been appointed.

The Standing Orders regulating the procedure under the Act are the same in both Houses. The only matter to which attention need be drawn is explained below.

S.O. 197 (*Petitions for or against draft Order to apply to substituted Bill*).—The purpose of this Standing Order is to make it clear that in the originating House only Petitions which have been presented with reference to the Draft Provisional Order can be entertained against the substituted Bill. These Petitions are transmitted from the Scottish Office to the House of origin of the substituted Bill. In the first House, therefore, no time for lodging Petitions is allowed. In the second House, however, the normal petitioning time is given, and it is open to any petitioner to deposit a Petition against the substituted Bill. Thus an opportunity is given to any person, who has been affected by amendments inserted in the first House, to oppose the Bill.

The words "and no Petition other than those so deposited shall be received" have been omitted from the corresponding Standing Order of the House of Commons; although the practice on this matter is the same in both Houses.

Part IX: Miscellaneous

This Part comprises four miscellaneous Standing Orders, all of which appeared in the 1936 edition. They need little comment.

S.O. 199 (*Standing Orders affecting Personal Bills to apply to certain Private Bills*).—This Order, in various forms, has been in existence for over fifty years. It has been further redrafted to make its intention clearer.

S.O. 200 (*Application of Standing Orders to Bills which relate to Northern Ireland*).—The Order appeared first following the constitution of the Irish Free State and the Government of Northern Ireland; and was intended primarily to provide for the intermediate period of jurisdiction.[1] Bills relating wholly to Northern Ireland are now dealt with by that Parliament. Up to the present time there have been no other Bills to which the Order would apply.

S.O. 201 (*Time for delivering notices and deposits*).—A new paragraph has been added in connection with deposits which expire on a Sunday, which merely enacts what has been the customary practice of the House with regard to this matter.

S.O. 202 (*Fees to be charged*).—The fees chargeable in the House

[1] The following question was put to the Law Officers of the Crown (the present Viscount Hailsham and the late Viscount Caldecote) in July 1923, in connection with the Londonderry and Lough Swilly Railway Bill—"Whether a Private Bill promoted by a statutory company domiciled in Great Britain and owning railways in the Free State or Northern Ireland or both would be a Bill which could be properly dealt with by the Parliament of the United Kingdom." Their answer was "In our opinion yes, if it were made clear that the company must comply with the laws of the Irish Free State or the Government of Northern Ireland or both and that interests in the Irish Free State or in Northern Ireland were only to be affected if and in so far as those Governments so enacted."—[H. B.]

of Lords to promoters and opponents of Personal and Private Bills are fully set out in the Table of Fees appended to the Standing Orders. Every stage attracts a fee from the promoters, and every deposit of a Petition or Memorial and appearance before any Parliamentary Committee, Examiner or other tribunal attracts a fee from the party concerned. The scale of second reading fees is regulated by the amount of money to be raised or expended under the Bill. These fees are paid to the Receiver of Fees and Accountant and are treated as an appropriation in aid of the expenditure under the annual estimate for the House of Lords. General control of the personal remuneration and retired allowances of officers of the House of Lords is vested in the House of Lords Offices Committee appointed each Session.

The Vote for the salaries and expenses of the Offices of the House of Lords (including payment of the travelling expenses of Peers), which are part of the Civil Estimates for any financial year, are submitted by the Government to the House of Commons, like any other estimate, and the Appropriation Accounts are examined both by the Comptroller and Auditor-General and the Public Accounts Committee.

Part X: Statutory Orders (Special Procedure) Act, 1945[1]

General Note.[2]—Little experience of the working of this Act, which came into operation on June 1, 1946, has as yet been gained, and it is not possible to do more than give a very brief account of the circumstances in which the Act was passed and of the provisions of the Act and of the Standing Orders since made by both Houses to give effect to it.

The Act, like the Provisional Order system, had its origin in the desire of the Government of the day to find a more expeditious and less expensive method of securing parliamentary approval to Orders whose importance justified their being made subject to parliamentary control. It was felt that both the Provisional Order and the Special Order procedures were open to objection, the first, with its rigid timetable, largely on the ground of delay and expense; the second mainly on the ground that it might lead to the discussion on the floor of the House of matters of a complicated and technical kind, which could more appropriately be dealt with "upstairs". Thus, at a time when a heavy programme of reconstruction legislation, involving much delegation of legislative power, was in contemplation, a new system was devised which, it was hoped, would combine the merits of both and, so far as possible, avoid their defects. The original intention was that the new system should supersede all existing Provisional Order codes, but on examination it was found that the number and variety of these was so great that the risk of applying a new and untried system indiscriminately was not justifiable.

[1] 9 Geo. VI, c. 18. [2] *See* O. C. Williams, *op. cit.*, Vol. I, pp. 254-60.—[H. B.]

Hence the Act, when passed, applied to 3 types of Order only: (*a*) certain Orders made by the Minister of Health under the Water Act, 1945;[1] (*b*) certain Orders made by the Local Government Boundary Commission under the Local Government (Boundary Commission) Act, 1945;[2] and (*c*) certain Orders made by the Minister of Town and Country Planning under the Town and Country Planning Act, 1944,[3] and under the Town and Country Planning (Scotland) Act, 1945.[4] But it provided (s. 8 (3)) for its application by Order-in-Council to Orders under other existing enactments. It has since been applied, by the Trunk Roads Act, 1946,[5] the New Towns Act, 1946,[6] the Civil Aviation Act, 1946,[7] the Atomic Energy Act, 1946,[8] the Water (Scotland) Act, 1946,[9] and the Local Government (Scotland) Act, 1947,[10] to certain Orders made under these Acts. The Act follows the principle of Provisional Order procedure in securing that the subject-matter of the Order is fully and publicly investigated before the Order reaches Parliament. For this purpose it provides (First Schedule) a code of "Preliminary Proceedings" (including local inquiry where objections are made), in all cases in which the enabling Act does not itself make such provision.

The conception underlying the Act is that a distinction may properly be drawn between *opposition* to an Order which is concentrated on a particular point and seeks to have the Order amended on that point (an obvious example is that of a property owner seeking a protective clause) and *opposition* which challenges the Order as a whole or, as has been said, goes to the root of the Order. Since the Order is *ex hypothesi* an expression of Government policy, a direct challenge is a matter for discussion on the floor of the House in which the Minister responsible can take a personal part. If, on the other hand, the *opposition* is of a particular and detailed kind not challenging the Order as a whole, the matter is better dealt with "upstairs" with the aid of advocates and witnesses. Thus the Act provides that, when the Order is laid, Petitions against it may be presented, and that the Chairman of Committees and the Chairman of Ways and Means are to distinguish between Petitions praying for particular amendments ("Petitions for amendment") and Petitions against the Order generally ("Petitions of general objection"). Whether or not Petitions are presented, it is open to either House within a period of 14 "sitting days" to pass a resolution to annul the Order, and in that case the Order is dead. If such a resolution is not passed and there are no Petitions, the Order takes effect. If, on the other hand, there are Petitions for amendment, the Petitions stand referred to a Joint Committee of both Houses for examination. Petitions of general objection do not stand referred, unless either

[1] 8 & 9 Geo. VI, c. 42.
[2] 8 & 9 Geo. VI, c. 38.
[3] 7 & 8 Geo. VI, c. 47.
[4] 8 & 9 Geo. VI, c. 33.
[5] 9 & 10 Geo. VI, c. 30.
[6] 9 & 10 Geo. VI, c. 68.
[7] 9 & 10 Geo. VI, c. 70.
[8] 9 & 10 Geo. VI, c. 80.
[9] 9 & 10 Geo. VI, c. 42.
[10] 10 & 11 Geo. VI, c. 43.

House so orders. Thus Petitions of amendments *must* go to the Joint Committee, while Petitions of general objection will do so only if one or both Houses so decide. The question whether a Petition is of one type or other may sometimes be one of great difficulty, and this provision which enables either House to send a Petition of general objection upstairs, secures that in the last resort the House itself, and not the two Chairmen, decides what the procedure for examination of the Order is to be.

If a Petition is referred to the Joint Committee, the Order stands referred to it "for the purpose of the consideration of the Petition". The words quoted appear to indicate that the function of the committee is not to examine the case for the Order, but to examine and report on the weight and validity of the Petition or Petitions against it. In other words, the onus of proof is on the petitioner, not on the Minister responsible for the Order. Having considered the matter, the committee have power to report the Order with or without amendment or, if the Petition is one of general objection, to report that the Order be not approved.

If the Order is reported without amendment, or if the responsible Minister is prepared to accept the amendments made, it comes into operation without further proceedings.

If amendments are made which the Minister is not prepared to accept, he may either withdraw the Order or schedule it, as amended, to a Bill and invite Parliament to pass the Bill reinstating the terms of the original Order with or without any amendments that he may be willing to accept by way of compromise. Similarly, if the committee report against the Order, the Minister may schedule the Order in its original form to a Bill and invite Parliament to override the committee's decision. In either case, to avoid duplication of procedure, the Bill is treated as having passed all stages up to and including the committee stage. The reason for requiring the Order to be scheduled to a Bill in cases where the Minister wishes to ask Parliament to disagree with the Joint Committee is that this attracts the ordinary constitutional procedure for resolving differences between the two Houses.

The main differences between this procedure and Provisional Order procedure are—

(1) the new procedure avoids the expense and delay of an examination by a Select Committee when the issues are matters of major policy;
(2) by providing for examination by a Joint Committee, it avoids the expense of separate examinations by 2 committees;
(3) it has no fixed date for the presentation of Orders to Parliament. They can be laid at any time;
(4) whereas a Provisional Order is applied for by some Department or public body which supports the Order, the proceed-

ings on a Special Procedure Order are by way of a Petition attacking the Order;

(5) under Provisional Order procedure the time taken to secure parliamentary confirmation of an *unopposed* Order is usually some 3 to 4 months, and of an *opposed* Order some 8 months. The new procedure should take something over 28 days in the case of an *unopposed* Order. The period required for an *opposed* Order will depend on the speed with which the Joint Committee does its work, but there should be a substantial saving of time.

For the purpose of the new procedure, Standing Orders were made by each House in substantially identical terms. They provide for the presentation of Petitions and of Memorials objecting to Petitions, and for the consideration of both by the 2 Chairmen. Memorials may be lodged either by the Minister responsible for laying the Order or by any Applicant, that is, any person stated on the face of the Order to be a person on whose application the Order is made or confirmed. Objections may be taken on the ground that the Petition is not "proper to be received", or that a Petition for amendment is really a Petition of general objection. If Petitions for amendment are received, counter petitions may be lodged by interested parties, and these latter are to stand referred to the Joint Committee (which consists of 3 members from each House) to which the Petitions have been referred. Two points call for special mention. The Standing Orders provide: (1) that the Minister responsible for the Order may be heard before the Joint Committee "by himself, his Counsel or agent", and may tender evidence against the Petition; (2) that the Minister may give notice that his right to be heard is to be exercised by any Applicant specified in the notice. Both these are innovations. As already stated, the practice under Provisional Order procedure is for the authority who have asked for the Order to present the case for the Order, and for the Minister who made the Order to be represented by an officer of his Department who is substantially in the position of *amicus curiæ*. Under the new procedure the question of "promoting" the Order or proving the preamble does not apparently arise, since the onus is on the petitioners of substantiating their objections, but if the Minister wishes to deal with Petitions against the Order he must do so by Counsel, or agent, unless indeed he is prepared to appear before the committee himself, and he must tender evidence in the ordinary way. In some cases there may be no Applicant (*e.g.*, an Order might be made under the Water Act for combining a number of water undertakers, none of whom had asked for the combination to be formed), but if there is an Applicant, the Minister may leave to him the task of rebutting the Petitions.

In the case of Orders made by the Local Government Boundary

Commission and presented to Parliament by the Minister of Health, the Commission and not the Minister have the right to lodge a Memorial objecting to a Petition and to appear before the Joint Committee by Counsel or agent, or, alternatively, to hand over their right of appearance to an Applicant.

A modified procedure has been laid down for Orders applying to Scotland only. Experience under the Private Legislation Procedure (Scotland) Act, 1936,[1] suggested that controversy upon an Order would, as a rule, be finally disposed of—in Scotland—by an inquiry held by Commissioners appointed under that Act. Accordingly, after requiring the normal advertisement and notice of the proposed Order, the Act provides that where there are objections which are not frivolous and are not withdrawn, the Secretary of State must, and in other cases may, send the Order for inquiry in Scotland before Commissioners. The provisions of the Act of 1936 dealing with inquiries apply in general, except that, if it is necessary, in the case of an Order being promoted by a Minister himself, to choose members from the Extra-Parliamentary Panel, the choice will be made not by the Secretary of State but by the Lord President of the Court of Session.

If the Secretary of State makes an Order giving effect to the recommendation of the Commissioners, or if an *unopposed* Order is made without inquiry, it is presented to both Houses of Parliament. There is the same opportunity for Petitions and the same scrutiny of Petitions by the 2 Chairmen as in England, but on the analogy of the 1936 Act, and in view of the fact that there has already been an opportunity for a quasi-parliamentary inquiry before Commissioners in Scotland, the Order will be referred for examination by a Joint Committee only if either House so resolves. It may also, of course, as in the case of an English Order, be annulled by either House. Where it is referred to a Joint Committee, the subsequent procedure is on the same lines as in the case of English Orders.

Where the Minister concerned disagrees with the recommendations of the Commissioners, he may make the Order, but it must be presented to Parliament in the form of a schedule to a confirming Bill. The proceedings in Parliament on such a Bill are to be the same as those on a Bill under the Act of 1936 for the confirmation of an *opposed* Order. They may include reference to a Joint Committee.

Orders regulating the proceedings at inquiries and prescribing scales of fees to be paid by applicants and objectors have been made by the Chairman of Committees and the Chairman of Ways and Means, acting jointly with the Secretary of State.

The Standing Orders were drafted by the Officers of both Houses in consultation with the various Government Departments concerned, and were approved by both Houses in substantially identical terms.

[1] 26 Geo. V & 1 Edw. VIII, c. 52.

Up to March 1, 1949, 32 Special Procedure Orders have come into operation under the provisions of the Act. None of these Orders were *opposed* either by Petition or by resolution. Only the Mid-Northamptonshire Water Board Order, 1948, has been *opposed* on petition and referred to a Joint Committee. This Order was reported from the Joint Committee with amendments on February 17, 1949, but has not been put into operation by the Minister; and it is understood that it is intended to make use of the procedure provided under Section 6 (2) of the Act.[1]

Part XI: Special Orders

Historical.—Before giving an account of the proceedings before the Special Orders Committee it may be of interest to give the history of the Standing Order which constitutes and lays down the duties of this Committee.

The Special Orders Committee was set up in 1925 following the report of a Select Committee of the House of Lords whose orders of reference were as follows:

> To consider the conditions under which in various Acts of Parliament it is provided that schemes or Orders shall acquire or retain the force of law upon the passing of an affirmative resolution by both Houses of Parliament; and to report in so far as the House of Lords is concerned any and, if so, what safeguards in the procedure under which these resolutions are submitted would be required in order to preserve adequate control by Parliament over the provisions of these schemes or Orders.

The policy of Parliament, at that time, was that all important Orders should require an affirmative resolution in each House before coming into operation; and that only Orders of a departmental character should not be subject to this form of parliamentary control. The Standing Order (substantially in its present form) which governed the procedure of the Special Orders Committee, therefore confined the Orders which were referred to the Committee to those which require an affirmative resolution before they come into force, thus securing that all Orders of importance would receive examination; and ensuring that, where definite action by the House was required, some preliminary scrutiny should have taken place.

At first only Measures under the Church of England Assembly (Powers) Act, 1919,[2] and rules made under the Government of India Act, 1935,[3] were exempted from the provisions of the Standing Order. In both cases these instruments were already considered by a Committee of Parliament, Church Assembly Measures being referred to the Ecclesiastical Committee, constituted under the Act to serve for the duration of a Parliament, and rules under the Government of India Act to a Standing Joint Committee on Indian Affairs appointed each session.

[1] The Mid-Northamptonshire Water Board Order Confirmation (Special Procedure) Bill is now pending in Parliament.—[H. B.]

[2] 9 & 10 Geo. V, c. 76.

[3] 26 Geo. V & 1 Edw. VIII, c. 2.

Paragraph (1) of the Standing Order defined the expression "Special Order". The expression is now well recognized, and may be summarized, in its present and enlarged form, as an instrument which requires an affirmative resolution or an Address to His Majesty before it is made or becomes effective; or requires an affirmative resolution as a condition of its continuance in operation, with certain exemptions specified in the paragraph.

In 1932, the Sunday Entertainments Bill gave powers to the Secretary of State for Home Affairs to make Orders subject to approval by resolution in both Houses. It contained, however, a provision in the Schedule to the Bill that no such Order "shall be deemed, for the purpose of the Standing Orders of either House of Parliament, to be a Special Order", the intention being to exclude Orders made under the Bill from the operation of the Standing Order. Lord Onslow, who was then Chairman of Committees, informed the Home Secretary that it appeared to be contrary to the constitutional practice, under which each House of Parliament regulates its own procedure, to pass an Act of Parliament operating directly upon a Standing Order of either House. At the same time, he agreed that the Orders were not of sufficient importance to require their reference to the Special Orders Committee. The provision in the Schedule was, therefore, withdrawn, but an amendment was inserted in the Standing Order excluding Orders made under the Bill.

In November, 1933, a Select Committee of the House of Lords was appointed "to consider and report whether any, and if so, what amendment of the Standing Order relative to Special Orders was desirable". This Committee in their report[1] set out the various Orders, Rules, Regulations, Schemes and other similar instruments which are required to be laid before Parliament by statute as falling into the following categories:

Class I. Those which are laid, in draft or otherwise, with a provision that the Order shall not be made or operate unless approved by resolution.

Class II. Those which are laid with no further directions, *i.e.*, without a provision for an address or resolution adverse or affirmative.

Class III. Those which are operative when made but which are subject to annulment by adverse address.

Class IV. Those which are laid in draft for a prescribed period with provision for an adverse address or resolution.

Class V. Those which are operative when made but which cease to be operative unless confirmed by resolution within a prescribed period.

The Committee in their report made the following recommendations on these various classes:

[1] Report by the Select Committee of the House of Lords on Proceedings in Relation to Special Orders, H.L. (13), 1933.

Class I. These Orders are already referred to the Special Orders Committee under the Standing Order with certain definite exceptions specified in the Standing Order.

Class II. The Committee considered that these Orders did not fall within the province of the Special Orders Committee or call for any special scrutiny by that Committee. They recommended that they should not be included among the Orders dealt with by the Standing Order.

Classes III and IV. The Committee reported that these Orders were, in some cases, of a technical and administrative character, and in other cases affected matters which would otherwise have been dealt with by Private Bill. They recommended that these Orders should not be brought within the scope of the Standing Order.

Class V. The Committee found that the only distinction which could be drawn between these Orders and those in Class I was that while Class V are operative for a prescribed period when made pending parliamentary approval, those in Class I could not operate until such approval is given. The Committee recommended that the Standing Order should be amended to include the Orders which fall into Class V with the exception of Orders made under the Emergency Powers Act, 1920,[1] which appeared to be of exceptional character and should be exempt from reference to the Special Orders Committee in the same way that Church Measures and certain other Special Orders are exempt.

Following the report of this Committee, the Standing Order was amended to include Orders under Class V with the exception of Orders made under the Emergency Powers Act, 1920. The Committee decided not to include Orders in Classes II, III, and IV. A provision was also inserted in the Standing Order instructing the Special Orders Committee to report to the House, in every case, when in their opinion an Order, of a Private or Hybrid Bill nature, raised an important question of policy or principle, or departed from precedent. Power was given to them to refer such an Order, even if it were *unopposed*, to a Select Committee.

In June, 1934, another Select Committee was appointed by the House to consider a proposal for the amendment of the Standing Order for the purpose of exempting schemes made under the Agricultural Marketing Acts, 1931[2] and 1933,[3] from reference to the Special Orders Committee. This Committee reported[4] that in their opinion no such amendment should be made to the Standing Order. Accordingly all schemes made under the Agricultural Marketing Acts have been referred to the Special Orders Committee.

[1] 10 & 11 Geo. V, c. 55. [2] 21 & 22 Geo. V, c. 42. [3] 23 & 24 Geo. V, c. 31.
[4] Report by the Select Committee of the House of Lords appointed further to consider Proceedings in Relation to Special Orders, H.L. (117), 1934.

Following the passing of the Government of India and Government of Burma Acts, 1935,[1] the House of Lords made a new Standing Order setting up the India and Burma Orders Committee with a procedure based on that of the Special Orders Committee. An amendment was, therefore, made to the Standing Order exempting Draft Orders, rules and other instruments laid under these Acts from the purview of the Special Orders Committee.

On November 8, 1939, a further amendment was made to the Standing Order extending the scrutiny of the Special Orders Committee to Orders which require an Address to His Majesty by each House of Parliament before they are made. Orders of this nature under the Air Navigation Act, 1936,[2] and the Pensions (Increase) Act, 1944,[3] have since been referred to the Special Orders Committee.

During November, 1939, the Chairman of Committees, Lord Onslow, examined the question of whether the Standing Order should be enlarged to include Orders made under the emergency war legislation. After examination it was found that of 53 Acts which might fall into this category, only 4 contained provisions for control of Orders by Parliament either by affirmative resolution or by annulment. Of these, 2 only—*i.e.*, Import, Export and Customs Powers (Defence) Act and the Emergency Powers (Defence) Act—contained provisions for affirmative resolutions, and they only applied to affirmative resolutions made by the House of Commons. Three other Acts, the Unemployment Assistance (Emergency Powers) Act, 1939,[4] the Control of Employment Act[5] and the Emergency Powers (Defence) Act,[6] so far as Defence Regulations are concerned, contained provisions for negative resolutions—*i.e.*, resolutions for annulment.

Lord Onslow considered, and was supported in this view by other influential members of the House, that Orders made under these Acts should have some form of parliamentary scrutiny. Before proceeding in the matter, the reactions of the Government to the proposal to extend the scope of the Standing Order were investigated. The Government spokesman stated that the policy of the Government remained as before—namely, to divide Orders into two distinct categories—

(1) those requiring affirmative resolution and so falling to be dealt with under the Special Order procedure of the House of Lords; and
(2) those not requiring such resolution;

the intention being to place those of general importance in category (1) and those of a merely departmental character in category (2). Attention was drawn to the fact that Parliament endorsed this division when passing the Acts under which the Orders were made. The

[1] 26 Geo. V & 1 Edw. VIII, c. 2 & 3.
[2] 26 Geo. V & 1 Edw. VIII, c. 44.
[3] 7 & 8 Geo. VI, c. 21.
[4] 2 & 3 Geo. VI, c. 93.
[5] 2 & 3 Geo. VI, c. 104.
[6] 2 & 3 Geo. VI, c. 62.

fact that Regulations made under the Emergency Powers (Defence) Act, 1939,[1] though of general importance, were subject only to negative resolution, suggests that the policy of Parliament is to admit the necessity of greater powers by the Executive in time of war. It was added that open discussion in the House on these matters might be made use of by the enemy for propaganda purposes and would therefore be contrary to the public interest. The question of revising the scope of the Standing Order was not, therefore, pursued.

In March, 1948, the Standing Order was again amended by leaving out the reference in paragraph (1) to "Draft Orders, etc., made under the Government of India Act, 1935, and the Government of Burma Act, 1935". The reason for, and effect of, this amendment is explained in the general note on the Standing Order relating to India and Burma Orders.

Functions of Special Orders Committee.—The Special Order procedure became common in the inter-war years and was applied under certain statutes passed in that period relating to water, gas and electricity. In fact, the Special Order procedure has largely replaced procedure by Private Bill in respect of these last 2 undertakings. It has also been applied *inter alia* to Acts such as the Road Traffic Act, 1930;[2] Coal Mines Act, 1930;[3] Agricultural Marketing Acts, 1931[4] and 1933;[5] Unemployment Assistance Act, 1934;[6] National Insurance Act, 1946;[7] and Pensions (Increase) Act, 1947.[8] Under this procedure a draft of the Order must be laid before each House of Parliament and the Order may not be made unless affirmatively approved by resolution of each House. In a few cases each House is empowered to modify the terms of the Order, but the usual practice is simply to empower each House to accept or reject the Order as it stands. In the House of Commons no special procedure has been laid down for these Orders.

Under S.O. 216 of the House of Lords a Special Orders Committee is appointed each session to which all Special Orders stand referred as soon as they have been laid on the Table of the House. The Committee consists of the Chairman of Committees, the Leaders of the various parties in the House and peers who have experience of departmental and Private Bill legislation. The peer in charge of any Special Order referred to the Committee is, under the Standing Order, a member of the Committee during the consideration of such Special Order. The wording of the Standing Order makes the attendance of the peer responsible for the Order permissive and not compulsory. It was inserted in the Standing Order to meet the case of the Special Order which is of the nature of a Public Bill, when his attendance is often desirable.

[1] 2 & 3 Geo. VI, c. 62. [2] 20 & 21 Geo. V, c. 43. [3] 20 & 21 Geo. V, c. 34.
[4] 21 & 22 Geo. V, c. 42. [5] 23 & 24 Geo. V, c. 31. [6] 24 & 25 Geo. V, c. 29.
[7] 9 & 10 Geo. VI, c. 67. [8] 10 & 11 Geo. VI, c. 7.

The first duty of the Committee is to divide the Special Orders referred to them into the two categories set out in paragraph (3) of the Order. This duty, in practice, is carried out by the Chairman of Committees and his advisers. Although certain Orders are of a border-line nature, up to the present there has been no disagreement as to which of the two classes an Order belongs. If the Special Order falls into category (3) (*b*) (*i.e.*, private bill class), it is not considered by the Special Orders Committee until the petitioning time has expired, which is up to the fourteenth day after the Order has been laid on the Table of the House.

(*a*) *Public Special Orders.*—If the Special Order is of a public bill nature, the Committee examine the Order with a view to answering the questions set out in paragraph (5) of the Standing Order. They are not required to report on the expediency of the Order which, as it affects general policy, should be dealt with by the whole House. Their functions are confined to reporting their opinion on the importance of the Order, with advice to the House as to whether—

(*a*) the Order can be passed by the House without special attention; or
(*b*) whether the Order requires full debate in the House; or
(*c*) whether the Order should go before a Select Committee.

In only one case[1] have the Special Orders Committee, under paragraph (5) (*c*) of the Standing Order, recommended a further inquiry. This is not surprising. An Order of this type carries out Government policy and, if challenged, should be challenged on the floor of the House rather than before a Select Committee. Only in an exceptional case, where a more detailed examination is considered essential, could reference to a Select Committee be appropriate.

The Committee are also required under paragraph (7) to report if they have any doubt whether an Order is *intra vires*. Here again they do not have to decide or even to give a definite opinion on the question whether the Order is *ultra vires* or not. They go no further than to call attention to any doubt on this matter which they entertain; if, for example, the Order appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made. In their report on the Hops Marketing Scheme, 1932, they merely stated "that the question as to whether the Scheme is '*intra vires*' is at present the subject of an Appeal to this House from the Court of Appeal". In two cases, one an Order under the Census Act, 1919,[2] and the other an Order under the Ministry of Transport Act, 1919,[3] the Committee have sought for special justification from the Departments.

The Committee have also to consider how far the Order is founded on precedent. The word is difficult to interpret. The intention

[1] Sheriffdom of Perth and Angus Order, 1934.
[2] 11 & 12 Geo. V, c. 41. [3] 9 & 10 Geo. V, c. 50.

probably was that the attention of the House should be drawn to the first occasion when the "Special Order" machinery is used for some particular purpose. The longer the Special Order procedure continues in operation, however, the less useful this information becomes. It is possible that when the Standing Order is again reviewed, this function of the Committee, together with their duty to report as to *vires*, may be replaced by an instruction to report when an Order "appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made". The same duty is amongst those imposed on the House of Commons Committee on Statutory Rules and Orders, now (since the end of 1947) called Statutory Instruments.

(*b*) *Private Special Orders.*—If the Order deals with subjects of a private or hybrid character, Petitions may be presented against it by interested parties, and the Committee must report to the House whether or not such Petitions have been presented and, if so, whether the matter complained of has already been adequately investigated by way of departmental inquiry and whether there ought to be any further inquiry.

The functions of the Committee in connection with these private Special Orders are restricted to seeing that the departmental procedure has not been abused. If a Petition is lodged, the Committee consider whether it is important enough to justify the reference of the Order to a Select Committee; but an Order *opposed* on Petition is not referred to a Select Committee as a matter of course.[1] For instance, a Petition is not referred to a Select Committee (*a*) if the Committee are of opinion that the matter has been adequately dealt with on the departmental inquiry; or (*b*) if the matter is one which could have been brought by the petitioners before the local inquiry, but has not been so brought; or (*c*) if the matter is not really important, and can be otherwise dealt with.

In several cases Petitions under paragraph (4) of the Standing Order have been presented, and in the following cases the Special Orders Committee have recommeded (under paragraph (6) (*d*) of the Standing Order) that there ought to be a further inquiry by a Select Committee: Northampton Gas Order, 1925; East Nottingham Electricity Order, 1928; East Cornwall Electricity Order, 1932; Bath Gas Order, 1932; Watford and St. Albans Gas Order, 1932; Sunderland Gas Order, 1933; Sheffield Gas (No. 2) Order, 1936; Oxford and District Gas Order, 1949. The Select Committees then set up have, in most of the above cases, recommended that the Orders should be modified.

The Special Orders Committee are not empowered to express any

[1] For example, the Croydon Gas Order, 1931, the Aberdeen and District Milk Marketing Scheme, 1933, and the Worcester Gas Order, 1949, were petitioned against, but in each case the Special Orders Committee reported that there ought not to be a further inquiry by a Select Committee.—[H. B.]

opinion on the merits of private Special Orders. If they doubt whether an Order is *intra vires*, they must so report and have done so on occasions.[1]

Proceedings on Special Orders.—Before a meeting of the Special Orders Committee, all Orders to be considered by the Committee are examined by the Chairman of Committees and his Counsel. On many Orders draft Reports are prepared for submission to the Committee.

The procedure before the Special Orders Committee is as follows. The representative from the Department concerned explains the Order and answers any questions which are put to him by members of the Committee. The parties then withdraw, and the Committee consider their Report which is designed to answer the questions which the Committee have to consider as laid down by paragraph (5) or (6) of the Standing Order, depending on whether the Special Order is of a public or private nature. As soon as the Report has been agreed, the parties are called in and informed of the contents of the Report.

When a public Special Order is under consideration, the peer in charge of the Order attends as a member of the Committee, if difficulties arise or questions of public policy are at issue. But in the ordinary way the necessary explanation is given by an officer of the Department responsible for the Order.

In the case of a Special Order which is of the nature of a Private Bill, when the Order is *unopposed*, the proceedings are generally of a formal character. If, however, such an Order is *opposed* by Petition, the Parliamentary Agent acting on behalf of the petitioner is heard in support of the Petition with a view to there being a further inquiry by a Select Committee. The Parliamentary Agent representing the applicant for the Order, or an official of the Department responsible for confirming the Order, is heard in reply. Parties are not permitted to be heard by Counsel, and evidence is not admitted. The Special Orders Committee, after hearing both sides, make a recommendation in their Report as to whether the Order shall be referred to a Select Committee; depending on whether or not the Committee consider that the submissions put before them justify such a procedure.

In the case of an *opposed* Order there is an appeal by parties interested, who are heard by the Special Orders Committee as appealing from the decision of the Minister who has confirmed the Order. In such a case it is undesirable that the Minister, if a peer, or the peer representing the Minister, should sit as a member of the tribunal which is reviewing the Minister's own decision—in fact a judge of his own case. Again, if the peer representing the Minister were present at the private deliberations of the Committee, as he would be entitled as a member of the Committee, it might be thought by the parties that he would use arguments behind closed doors in support of his decision, which they would have no opportunity to refute. It is,

[1] Chorley Gas Order, 1929, Bournemouth Gas Order, 1934, and others.

therefore, customary that where an Order in the nature of a private bill is opposed, the Minister confirming the Order is not represented by a peer, but by an official of his Department.

The quorum of the Special Orders Committee, when an opposed Order is being considered, is three.

The proceedings before a Select Committee on an opposed private Special Order are conducted in the same manner as before a Select Committee on an opposed Private Bill. Under the Standing Order such a Select Committee is named by the Committee of Selection. In the case of a public Special Order referred to a Select Committee, the proceedings would follow those of a Select Committee on a Public Bill. In such a case the Select Committee would be appointed by the House, unless the House makes an order that the members should be nominated by the Committee of Selection.

In a few cases, notably gas and electricity orders, the parent Act gives power for an Order to be modified.[1] In such cases the modifications are moved on the motion to affirm the Order. Amendments of any substance are previously submitted to the Special Orders Committee for consideration.

All reports from the Special Orders Committee are printed in full in the Proceedings of the House and agreed to formally by the House. This practice ensures that all peers who receive the Minutes,[2] are informed of the findings of the Committee before the resolutions approving the Orders are moved in the House.

A practice has been established with the House of Commons that he affirmative resolution on an Order shall not be moved in the House of Commons until after the Report of the Special Orders Committee on the Order has been made to the House of Lords. Similarly, now that the House of Commons has a Committee which examines all "Statutory Instruments laid before that House", the resolution to affirm any special order is not moved in the House of Lords until this Committee of the House of Commons have considered the Order. If an Order concerns government policy of contentious nature, it is customary to move the affirmative resolution first in the House of Commons.

General.—The original intention of Parliament has been that all delegated legislation of importance should require an affirmative resolution in each House before coming into operation. It was for this reason mainly that in the proposal for setting up the Special Orders Committee in 1925 the scrutiny of the House was confined to Orders subject to this procedure.

During the war, however, it was argued that the Executive should not be hampered over the exercise of its powers by parliamentary

[1] Electricity Special Orders of this type ceased after April 1, 1948, the vesting date of the Electricity Act, 1947, and similarly Gas Special Orders of this type will cease from May 1, 1949, the vesting date of the Gas Act, 1948.

[2] The Minutes of Proceedings are sent to all peers who give notice to the Printed Paper Office, House of Lords, that they wish to receive them.—[H. B.]

control over certain types of ministerial Orders. Subsequently it was necessary to provide for the rapid passage of reconstruction legislation during the period directly following the termination of the war. One way to assist this process was to exclude from Bills as much detail as possible, leaving this to be worked out later by subordinate instruments. It became evident, however, that Parliament was not prepared to accept the extended use of this device unless enabled to exercise a closer scrutiny of such subordinate legislation than then existed. On the contrary, private members pressed for as much detail as possible to be included in government Bills, and for such subordinate instruments as were incorporated to be made subject to the affirmative resolution procedure. The affirmative resolution procedure, however, was unpopular with the Executive because in every case it requires parliamentary time, and because of the opportunity which it provides for an obstructive Opposition to delay the legislation programme. As a concession to make it possible to resist demands for affirmative resolutions in future legislation in all but very exceptional cases, the Government agreed in 1944 to the setting up of a Select Committee of the House of Commons with the duty of scrutinising subordinate legislation.[1] At the same time the Government announced their intention to introduce a fresh system of parliamentary review for certain types of ministerial Orders to be made under the reconstruction legislation.[2] On these assurances Parliament was willing to accept, in much legislation introduced at tha time, the negative resolution procedure for Orders where previously it would have insisted upon the affirmative. For these reasons the Special Order procedure has gradually tended to become outmoded. To that extent, therefore, the usefulness of the Special Orders Committee has been reduced. The burden of examining delegated legislation, undertaken for 20 years by the House of Lords alone, now falls mainly on the Statutory Instruments Committee of the House of Commons. It would seem a natural arrangement that in future both Houses should share this burden equally, through the machinery of a Joint Committee.

India and Burma Orders

General Note.—Any account of this Standing Order will only be of historical interest as the Order has now been repealed.

Following the passing of the Government of India and Government of Burma Acts, 1935, the House of Lords made a new Standing Order setting up the India and Burma Orders Committee with a procedure based on that of the Special Orders Committee. Under this Standing Order, Orders in Council made under the Acts were referred to the Committee; but, by desire of the Government, In-

[1] *See* JOURNAL, Vol. XIII, 160.

[2] The Statutory Orders (Special Procedure) Act, 1945, carried out the proposals outlined in 1944.

struments of Instructions (under the Acts) were specially exempted from the consideration of both Committees, although subject to affirmative resolutions. On December 4, 1935, in the debate on the constitution of the Committee, the late Lord Salisbury and the late Lord Onslow (Chairman of Committees) called the attention of the House to this exemption. They both emphasized that the exemption was a departure from the usual procedure of the House and should not be considered as creating a precedent. It could only be justified on the grounds that Instruments of Instructions were of such importance that they could not slip through without the notice of the House.

The Standing Order, agreed by the House on that date, followed exactly the corresponding Standing Order of the House governing the duties of the Special Orders Committee, in so far as that Order related to Special Orders in the nature of Public Bills. It was considered that all Orders submitted to the India and Burma Orders Committee would fall into that category.

The duties of the Committee were, therefore, confined generally to calling the attention of the House to the existence of matters of importance in the draft Orders referred to them. It was not part of the functions of the Committee to consider in detail and report on the merits of an Order. Their function was rather that of a preliminary investigation for the assistance of the House when it came to consider the Order on its merits.

The proceedings before the Committee were conducted in the same manner as before the Special Orders Committee. The Orders were explained in general outline by the Secretary of State, assisted by officials of the responsible Department; and the reports of the Committee were confined to the points which they were required to consider under the Standing Order. In no case have the Committee reported that there ought to be a further inquiry, or that they had any doubt whether an Order was *intra vires*.

The Committee was a small one, originally consisting of 7 members but later increased to 10. The Chairman of Committees and the Secretary of State for India, if a peer, were always members. The Committee had naturally to be re-appointed each session. But the personnel, representative of each party and conversant with Indian affairs, remained unchanged, as far as possible, in order to secure experience and continuity of policy in regard to their duties.

It should be noted that the Orders referred to the Committee were capable of amendment. From the outset, as has already been indicated, it was decided that the Committee should not be at liberty to consider the terms of a draft Order in detail and on its merits; and consequently to propose specific amendments to the draft. The main reasons for this decision were:—(*a*) that it was the function of the House itself to consider the merits of a draft Order and, if necessary, to amend it: (*b*) that, as there was no similar Committee in the

House of Commons, it might give rise to the impression that the two Houses were not dealing with the Orders on quite the same footing. Amendments to Orders were, therefore, always moved in the House on the motions to approve the Orders. Any amendment of substance, proposed by the Government, had, however, in most cases been previously submitted to the Committee for their consideration.

The Act prescribed that an Order should not come into effect "except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Order may be made either in the form of the draft, or with such amendments as may have been agreed to by resolutions of both Houses". It may be of interest to put on record the arrangements which were agreed between the representatives of the Secretary of State for India and the officers of both Houses to ensure the effective working of this procedure when a modification was made to an Order.

Proceedings were not usually initiated in the House of Commons until the report from the India and Burma Orders Committee on the Order had been made to the House of Lords.

The terms of the procedure, agreed at that time, are set out below.

(1) The House of Lords will deal with these Orders on 2 Motions, the first a Motion approving the draft, with or without modifications, and the second a Motion directing the presentation of an Address. The House of Commons will deal with them on a single Motion only namely the Motion for the presentation of an Address.

(2) It is agreed that action should be taken first in the House o Commons. That action would be a Motion by the Government to the effect that "an humble Address be presented to His Majesty praying that the Order may be made in the form of the draft as presented."

It would then be open to any member of the House of Commons who wished to amend the draft to put down an amendment to the Motion for the Address to insert at the end some such words as "subject, however, to the following modification: leave out *x* and insert *y*". This and any other similar amendment, unless the Government chose to accept it forthwith, would be put to the House and, if it or any other amendment were carried, the Government on the conclusion of consideration of all amendments handed in would move the adjournment of the debate on the Motion for the Address.

The position would then be that the House of Commons had taken no other decision than that, if and when an Address were presented, it should request the Order to be made in certain terms.

(This adjournment would be necessary in any case, even if no amendment were proposed in the House of Commons, in order that the Commons might not be committed by having adopted an Address before it was known whether the Lords would propose any modification of the draft.)

(3) The Government would then move in the House of Lords a Motion to the effect that "This House approves the draft Order, subject, however, to the following modification: leave out *x* and insert *y*", the modifications specified in the Lords Motion being the amendments which the Commons had agreed.

(4) If the Lords accept this Motion without further amendment of their own, all that would remain then would be for the postponed Motion for the Address in the House of Commons to be put to the House and carried, a similar Motion for the Address being moved and carried in the House of Lords.

(5) If, however, the Lords, while accepting the Commons' modifications, add a further modification or modifications of their own not directly affecting any modification previously made by the Commons (see next paragraph) it would then be necessary for the Government, if the Lords' modification commends itself to them, to put down themselves a further amendment to the Commons' Motion for the Address, embodying the terms of the Lords modification. (The fact that this further modification affected a paragraph of the draft Order earlier than the last paragraph previously modified by the Commons would not render its consideration and adoption by the Commons out of order.) If this amendment were agreed to in the House of Commons, then as before all that would remain would be the formal moving of the Motion for the Address as amended in the same terms by both Houses.

(6) The foregoing assumes fresh amendments in each House to which the other House is not likely to object, and, in the case of modifications made by the Lords, that these modifications are not such as directly to affect or to cancel a modification made by the Commons. If, however, the Lords

(*a*) refuse to accept one or more of the modifications made by the Commons; or

(*b*) insert themselves a modification which the Commons refuse to accept; or

(*c*) by any of their modifications cancel or otherwise directly affect any of the modifications previously made by the Commons,

then the only course open to the Government would be to refer the matter to a Joint Committee appointed for the purpose of resolving the difference and, having submitted revised drafts to both Houses framed on the basis of the Joint Committee's Report, to re-initiate the procedure as indicated above in each House.[1]

On March 9, 1948 amendments to the Standing Orders were

[1] It is often argued that one of the disadvantages of the affirmative resolution procedure is that it provides no machinery for moving amendments. It is of interest, therefore, to record that the above procedure, which could be adapted, worked satisfactorily. It must be admitted, however, that the evidence is not entirely conclusive as there was never any conflict between the Houses on proposed amendments to these Orders.—[H. B.]

agreed by the House which repealed Standing Order 218 under which the India and Burma Orders Committee was appointed each session; and transferred the functions of that Committee, to the limited extent to which they still existed, to the Special Orders Committee.

The reasons for this new procedure were as follows. Since the decision taken by Burma and enacted by the Burma Independence Act, 1947,[1] to be a country not within His Majesty's Dominions, no further Burma Orders will be presented to the House. In the case of India, since the passing of the Indian Independence Act, 1947,[2] the only Indian Orders which are likely to be presented to Parliament are ones of minor importance dealing with the family pension funds vested in Commissioners under Section 273 of the Government of India Act, 1935,[3] and, possibly, Orders under Section 281 of the Act which deals with the position of the staff who were serving in the India Office at the time of the passing of the Act. These Orders will deal with more or less routine matters and be very few in number. It seemed, therefore, unnecessary to have a special committee appointed each session to examine them.

The amendments also repealed the exemption of Orders made under the Government of India Act, 1935, from the definition of "Special Orders" and, therefore, in future any of the Indian Orders, which have been mentioned, will be referred to the Special Orders Committee to be examined and reported upon by that Committee in the same way as other Special Orders.

Since the repeal of Standing Order 218, one Indian Order[4] has been referred to the Special Orders Committee. By a somewhat strange coincidence exactly one hundred Orders were reported upon by the Indian and Burma Orders Committee. There is no doubt that the Committee fulfilled admirably, during its comparatively short existence, the purposes for which it was appointed.

Conclusion

Conclusion.—It will be seen that both Houses play an almost equal part in private legislation, though, perhaps, it may be held that here the House of Lords is the predominant partner. Where public legislation is concerned the degree of power which should properly rest with the Upper House is a highly controversial question; where private legislation is concerned it is doubtful whether any serious critic of the House of Lords would be found.

[1] 11 Geo. VI, c. 3.
[2] 10 & 11 Geo. VI, c. 30.
[3] 26 Geo. V & 1 Edw. VIII, c. 2.
[4] Government of India (Family Pension Funds) (Amendment) Order, 1948.

III. THE PARLIAMENT BILL, 1947-1948[1]

By the Editor.

It was originally intended to deal with the Parliament Bill, 1947, in the issue of the JOURNAL reviewing 1949, in which year the proceedings on this Measure will, no doubt, be brought to conclusion, but so many constitutional points arose in the debates on this Bill both in the Lords and Commons during the Third and Fourth Sessions of the XXXVIIIth Parliament, that, if a complete report on the matter were left over until the next issue, it might well take up the greater part of that Volume. Therefore, an outline will now be given of the proceedings on this Bill during the Sessions abovementioned, and, in doing so, references to the political aspect of these debates will only be made when necessary to enlighten any particular constitutional point. Note has not been taken of those speeches baldly favouring single Chamber government.

This Article will also not deal with the general subject of House of Lords Reform, as represented in the many Private Members' Bills (principally in the Lords) and other inquiries[2] which have taken place both before and since the passing of the Parliament Act, 1911.[3]

It is proposed only to give a résumé of some of the speeches made in both Houses so far as they refer to second-Chamber government, the powers or composition of the House of Lords, and the particular procedure followed in regard to this important constitutional Measure. All the speeches in these lengthy debates have not been quoted as there has naturally been much reiteration.

The Second Chamber aspect of these debates will be of particular interest, not only to readers in the United Kingdom but Overseas where the problem of Second Chamber government so often arises. In fact, only recently there has been investigation into the question in New Zealand.[4] Both in India and Pakistan the subject will now be under consideration in connection with their new Constitutions. The latest investigation into this subject Overseas, which embodied a definite scheme of reform in its Report, is still the Speaker's Conference of 1920[5] in the Union of South Africa, although no action was taken in regard to the re-constitution of its Senate. New South Wales, however, took action by legislation in the re-constitution of their Upper House in 1933[6] and the Irish Free State, as it then was,

[1] *See also* JOURNAL, Vols. I, 9; II, 14; IV, 10, 11, 50; V, 14, 16, 17; VI, 7, 10, 17; VII, 12, 16, 29, 31; XI-XII, 34; XV, 23; XVI, 18.

[2] The Wensleydale Peerage Case, 1855; Lord Russell's Life Peerage Bill, 1869; Lord Rosebery's Proposals, 1884; the Prime Minister (Lord Salisbury's) Bills and Lord Dunraven's Bill, 1888; Lord Newton's Bill and Select Committee, 1907; Lord Rosebery's Sel. Com. of 1907-8; the House of Lords Resolutions, 1910; Lord Lansdowne's Bill, 1911; The Second Chamber Conference (Lord Bryce), 1917-18; Lord Peel's Proposals, 1922; Lord Cave's Proposals of 1927; Lord Salisbury's Bill, 1933; Lord Rankeillour's Bill, 1935; Mr. (now Sir) Herbert Williams' Bills of 1933 and 1936; and the Constitutional Reform Proposals of 1946.

[3] 1 & 2 Geo. V, c. 13.

[4] *See* JOURNAL, Vol. XVI, 161, and Editorial hereof.

[5] U.G. 65-'20.

[6] *See* JOURNAL, Vol. II, 11.

made a valuable contribution to the subject by its Commission of 1936.[1]

This Article doesn't deal with the question of women "having seat, place and voice in the Peers House of Parliament" in the event of a reformation of that Chamber, a question which again arose when the Sex Disqualification (Removal) Act was passed in 1919 and came up later in connection with the inquiries instituted by the House of Lords on the Lady Rhondda[2] Petition. There was the Cardinal Griffin petition of 1922 and more recently this question has been the subject of considerable correspondence in *The Times*.

It was not possible to go into the history of the Parliament Act 1911 in the narrow confines of this article, but in order to make for more ready reference the relative provisions (excepting the enactment alteration in S.4 of the Act,) in both the Parliament Act 1911 (S.2) and the Parliament Bill 1947 (Clause 1) are given:

Parliament Act, 1911.

Restriction of the powers of the House of Lords as to Bills other than Money Bills.

2. (1) If any Public Bill (other than a Money Bill or a Bill containing any provision to extend the maximum duration of Parliament beyond five years is passed by the House of Commons in three successive sessions (whether of the same Parliament or not), and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, that Bill shall, on its rejection for the third time by the House of Lords, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified thereto, notwithstanding that the House of Lords have not consented to the Bill: Provided that this provision shall not take effect unless two years have elapsed between the date of the second reading in the first of those sessions of the Bill in the House of Commons and the date on which it passes the House of Commons in the third of those sessions.

(2) When a Bill is presented to His Majesty for assent in pursuance of the provisions of this section, there shall be endorsed on the Bill the certificate of the Speaker of the House of Commons signed by him that the provisions of this section have been duly complied with.

(3) A Bill shall be deemed to be rejected by the House of Lords if it is not passed by the House of Lords either without amendment or with such amendments only as may be agreed to by both Houses.

(4) A Bill shall be deemed to be the same Bill as a former Bill sent up to the House of Lords in the preceding session if, when it is sent up to the House of Lords, it is identical with the former Bill or contains only such alterations as are certified by the Speaker of the House of Commons to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the House of Lords in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have been

[1] *Ib.* V, 139. [2] *Ib.* XV, 28.

made by the House of Lords in the third session and agreed to by the House of Commons shall be inserted in the Bill as presented for Royal Assent in pursuance of this section:

Provided that the House of Commons may, if they think fit, on the passage of such a Bill through the House in the second or third session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the House of Lords, and, if agreed to by that House, shall be treated as amendments made by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons shall not affect the operation of this section in the event of the Bill being rejected by the House of Lords.

Parliament Bill, 1947.[1]

Substitution of references to two sessions and one year for references to three sessions and two years respectively.

1. The Parliament Act, 1911, shall have effect, and shall be deemed to have had effect from the beginning of the session in which the Bill for this Act originated (save as regards that Bill itself), as if—

(*a*) there had been substituted in subsections (1) and (4) of section two thereof, for the words " in three successive sessions ", " for the third time ", " in the third of those sessions ", " in the third session ", and " in the second or third session " respectively, the words " in two successive sessions ", " for the second time ", " in the second of those sessions ", " in the second session ", and " in the second session " respectively; and

(*b*) there had been substituted in subsection (1) of the said section two, for the words " two years have elapsed " the words " one year has elapsed ":

Provided that, if a Bill has been rejected for the second time by the House of Lords before the signification of the Royal Assent to the Bill for this Act, whether such rejection was in the same session as that in which the Royal Assent to the Bill for this Act was signified or in an earlier session, the requirement of the said section two that a Bill is to be presented to His Majesty on its rejection for the second time by the House of Lords shall have effect in relation to the Bill rejected as a requirement that it is to be presented to His Majesty as soon as the Royal Assent to the Bill for this Act has been signified, and, notwithstanding that such rejection was in an earlier session, the Royal Assent to the Bill rejected may be signified in the session in which the Royal Assent to the Bill for this Act was signified.

With these introductory words the reader will now be taken on the course of this Bill through both Houses in the 2 Sessions here concerned.

A. IN THE COMMONS: THIRD SESSION, 1947-48.[2]

The King's Speech.—On the Opening of the Third Session of the XXXVIIIth Parliament on October 21, 1947,[3] the King's Speech contained the following words:

[1] Commons Bill (8) and (1) 1948.

[2] *See also* JOURNAL, Vol. IV, 11.

[3] 443 *Com. Hans.* 5, s. 6.

My Lords and Members of the House of Commons:

"Legislation will be introduced to amend the Parliament Act 1911".[1]

—and during the course of the debate on the Address in Reply[2] many references were made in the Commons to the subject by the Prime Minister, Ministers and other hon. members from all parts of the House.

Bill Presented.—On October 31,[3] a Bill[4] "to amend the Parliament Act 1911" was presented by the Prime Minister.

Second Reading.—On November 10,[5] the Leader of the House (Rt. Hon. H. Morrison) in moving 2.*R.* said the subject of the Bill was an important constitutional issue, namely, the powers of the House of Lords in relation to the House of Commons. The unfairness of the situation was that a Conservative Government had no trouble with the House of Lords, but a progressive Government had. The fundamental step of depriving the House of Lords of their absolute veto was taken under the Parliament Act 1911. That Act put into legal form the conventions observed by the House of Lords in the XIXth century until they displayed the desire to oppose radical Measures introduced by the Liberal Government.[6] The Government now proposed to make one change in the procedure laid down by the Parliament Act, 1911. As regards Money Bills the position would remain as provided for in S.1 of the Parliament Act, namely, that they must be agreed to by the House of Lords within one month of their being sent to Their Lordships. Nor was any change proposed in the requirement that a Bill to alter the duration of Parliament needed the consent of both Houses. The Government also preserved the position that Bills coming within the Parliament Act must be sent up to the House of Lords at least one calendar month before the end of the Session, and that a Bill presented for Royal Assent under the Parliament Act procedure, must, in every material respect, be identical with the Bill sent up to the Lords on a previous occasion, except in so far as it may have been amended by agreement between the 2 Houses.

What the present Bill sought to do was to reduce the period for which the Lords may delay the passage of Public Bills approved by the Commons, other than Money Bills, or Bills dealing with the duration of Parliament. The present Bill provided that, in future, such legislation may be passed into law, notwithstanding the opposition of the Lords, if it had been passed by the Commons in 2 successive Sessions instead of 3, as laid down by the Parliament Act, 1911,[6] and provided that 1 year instead of 2 years had elapsed

[1] 1 & 2 Geo. V, c. 13.
[2] 443 *Com. Hans* 5. s. 28, 33, 175, 256, 373, 389, 457, 462, 713, 731, 765, 802, 888, 896, 903. [3] *Ib.* 1250. [4] (No. 8.)
[5] 444 *Com. Hans.* 5. s. 36-155, 203-322. [6] *Ib.* 37.

between the date of the first Second Reading in the Commons and the date on which it was passed finally by the Commons for a second time.

The need to introduce a Bill a second time in a subsequent Session would always offer a strong inducement to the Government and to the Commons to go as far as they fairly could to meet the views of the Lords in the modification of Measures sent up to them. In the growing congestion of Parliamentary Business, the need in 1947 to find a place for a Bill in a subsequent Session was almost as formidable a sanction for due consideration of Lords amendments, as introduction in 2 subsequent Sessions was in 1911.[1]

In the United Kingdom they had tried 3, 7 and 5 year Parliaments and the balance of experience was in favour of 5 year Parliaments. A reversion to 3 year Parliaments would lead to a general unsettlement and be gravely prejudicial to the interests of the country whichever Party happened to be in power. It would represent a frustration of parliamentary government.[2]

The Leader of the House submitted that a Government's programme, as put to the electors and approved by them, in these times, often could not be in any way achieved in 2, or even sometimes, 3 Sessions.[3]

The Lords had done useful work as a revising Chamber and had inserted useful amendments in some of the important Measures passed in the last 2 Sessions.[4]

Bagehot in his "English Constitution" 1867 described the constitutional position as follows:

> Since the Reform Act the House of Lords has become a revising and suspending House. It can alter Bills; it can reject Bills on which the House of Commons is not yet thoroughly in earnest or upon which the nation is not yet determined. Their veto is a sort of hypothetical veto. They say, "we reject your Bill for this once or these twice, or even these thrice: but if you keep on sending it up, at last we won't reject it". The House has ceased to be one of latent directors and has become one of temporary rejectors and palpable alterers.

Erskine May, in his "Constitutional History of England" says:[5]

> During the four years of the Parliament of 1906 no Government Measure, against the Third Reading of which the Official Opposition voted in the House of Commons, passed into law.[6]

The other provisions of Clause 1 having already been described, its proviso had the effect that, once the Bill had become law, a Bill which had been passed twice in the Commons and been rejected by the Lords could be presented for Royal Assent after its second rejection by the Lords, even though it was passed for a second time in a Session previous to that in which the Bill was passed.[7]

Clause 2 (2) of the Bill was required because S.4 (1) of the Parliament Act 1911 sets out in terms the words of Enactment to be

[1] *Ib.* 38. [2] *Ib.* 39. [3] *Ib.* 40. [4] *Ib.* 44.
[5] III Ed. 343. [6] 444 *Com. Hans.* 5. s. 51. 45. [7] *Ib.* 50.

used in a Bill presented for the Royal Assent under the Parliament Act 1911. It was now necessary that the reference should be: "the Parliament Acts 1911 and 1947"[1] It would be urged, the Minister gathered, that the Government was bringing forward this Bill without a mandate; but the Opposition had to get over the words to be found in, "Let us Face the Future",[2] which, in the judgment of the Government, entitled them to take the course they were taking.[3]

The hon. member for Liverpool (Major Sir D. M. Fyfe) then moved an amendment to leave out all words after the first word, "That" to the end of the Question "That the Bill be now read a Second time" and to substitute:

this House declines to give a Second Reading to a Bill which, without mandate, justification or public demand, seeks to destroy the constitutional safeguards embodied in the Parliament Act 1911, when no complaint has been put forward of the use by the House of Lords of its existing powers; when no attempt has been made to deal with the composition of the Second Chamber which that Act laid down as an essential condition of further reform; and at a time when the immediate consequence can only be to distract attention from the economic perils with which the country is confronted.[4]

The hon. and learned member quoted figures (*see below*) showing the amount of revision done by the Lords during the present Parliament.[5] These figures, continued the hon. member, demonstrated beyond peradventure that the need for a revising House was now greater than it was 30 or 40 years ago.

Another important function retained by Second Chambers to-day was the power of delay. The Bryce Conference of 1918 on this subject said that this power should be:

the interposition of so much delay (and no more) in the passing of the Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it.

The late Mr. Lees-Smith in his book made the point that:

a section of a party which is no larger than an insistent minority may often succeed in forcing its proposals on the Statute Book and so impose its views on an entire nation.[6]

If the delay had to exist it must be for two years. A one-year delay would mean, for instance, that a Bill is introduced and given a Second Reading at the end of November or beginning of December. It then went to a Committee upstairs, in all probability, and taking into consideration the Committee stage, Report stage and Third Reading, it would be good time-keeping for it to go to the Lords quite soon after Whitsuntide—somewhere about the end of June.

It was then discussed by the Lords and *ex hypothesi* it was thrown out about the end of July. The next Session would begin somewhere in October and the Bill introduced for its second time in November, or beginning of December, that was 12 months after its Second Reading the first time. What would be said by the Government

[1] *Ib.* 51. [2] A Labour Party pamphlet.—[ED.] [3] 444 *Com. Hans.* 5, s. 52.
[4] *Ib.* 54. [5] *Ib.* 56. [6] *Ib.* 57, 8.

would be, " You had a full discussion only a month or two ago, you had a full discussion in Committee in March, on Report in May, on Third Reading in June and we really do not need to give much valuable time to discussing this Bill again ". So the next time it would go through with tearing speed and it would be found that one year's power of delay had in fact come down to barely 6 months.[1]

It was perfectly clear that the intervention of a General Election had no effect on the operation of the Parliament Act, and the Bill could be passed in 2 Sessions of this Parliament and one Session of the next, on a certain condition, which was of course, very apparent.[2]

There were many weighty arguments against retroactive legislation. It destroyed all certainty under the law, and had many disadvantages obvious to all.[3]

In regard to the complaint by the Prime Minister that the Lords might hold up the Measures of a Socialist Government who had outstayed their welcome but would not similarly hold up the Measures of a Conservative Government, the hon. member submitted that the remedy for that position was not to tinker with the powers of the House of Lords but to deal with its composition.

There was only one way in which a question like this could be dealt with, that was by all-Party agreement.[4]

It was a commonplace of constitutional theory, that there were difficulties about direct election, because the results might be to constitute a second House which competed with the other. It had also been found in many countries to have given too much power to party managers.[5]

To-day, concluded the hon. member, the people wanted Second Chambers to throw out Bills when they were sure that the electorate did not like them. It was that point about finding a Second Chamber, which had caused the real fundamental difficulty of strengthening its basis through the years.

The hon. member for Newcastle-on-Tyne, North (Lt.-Col. Sir C. Headlam) said that what was troubling him was that the policy of the Government seemed to be the beginning of an attempt to establish a form of single-Chamber government.[6]

The Second Chamber, while not being a rival of the Commons, should, nevertheless be in the position to exercise a controlling influence over the Executive if that body endeavoured to exceed its mandate from the electorate and give time to the people to reconsider any particular measure, especially one affecting the Constitution, before it was finally carried into effect. Their system of election by majority vote in single-member constituencies tended to cause violent fluctuations in the strength of parties in power. For instance, a political party which gained only a small advantage in actual votes at a General Election sometimes found itself in possession of a large

[1] *Ib.* 59. [2] *Ib.* 61. [3] *Ib.* 62. [4] *Ib.* 63. [5] *Ib.* 64. [6] *Ib.* 72.

majority in the Commons, as in 1931 and 1945. Indeed, it was possible that when there were 3 or 4 parties in the field, one might obtain a clear majority in Parliament, although it had received only a minority of total votes cast.

Their electoral system, of course, had corresponding advantages, but it entailed the danger that a political Party might gamble for power at an Election, obtain an exaggerated majority and then deliberately use that majority to force upon the country legislative proposals which need not necessarily have played a prominent part in its programme during the Election campaign or commanded a majority of public opinion.

A Cabinet with a clear majority in the Commons had almost dictatorial powers for the full period of a Parliament, and a threat of dissolution gave a minority Government a certain measure of stability and considerable power to impose its will upon the House. When a minority Government was in office, the Party holding the balance of power in the House was usually inclined to submit to the will of the Government and allow any Measure to pass which the Government declared to be a matter of confidence—even though it might disapprove in principle—rather than risk a General Election in which it might easily suffer a severe reverse and a loss of the balance of controlling power.[1]

During a period of minority Government a small middle Party was in a difficult position, because it had the responsibility of deciding to what extent the Commons should sanction a policy which might have the direct support of only a minority of the electorate.

It was just at such a time when the views of the electorate were undecided, or were an unknown quantity that the need for some revising authority in which the public could place confidence was most strongly felt.

The weakness of all modern democracies started throughout Europe, had been that Second Chambers had never been strong enough for the purpose for which they were intended, with the result that in almost every country in modern Europe where such Second-Chamber Government had been set up, democracy had failed. Every other kind of expedient had been tried, in the nature of P.R. and fancy franchises of every description, to make effective the working of parliamentary democracy, but a Second Chamber with reasonable, effective powers of control and reasonably constituted so as to represent public opinion, was the best means of maintaining a sound parliamentary system.[2]

It was therefore a wise precaution to have a Second Chamber, not as a rival infallibility to the popular assembly but as an additional security for the people. What was required for an Upper House was the security of its concurrence, after full examination of the Measures concurred in, as it was desirable to get the greatest agreement in the

[1] *Ib.* 73. [2] *Ib.* 74.

legislation required for the progressive needs of the nation. The Second Chamber therefore, should have a definite part in shaping legislation and should not merely be a revising body whose sole part was that of dotting the "i's" and crossing the "t's" of legislation sent up to it by the Lower House.[1]

According to this view of the functions of a Second Chamber, it should therefore be a body more fully representative of public opinion than was the House of Lords to-day, whose present powers of delay were sufficient and therefore should not be shortened. Under the existing procedure a Government could secure the passing of a Bill into law within the lifetime of a Parliament, of all legislation it considered necessary which it had introduced in the first 3 years of its tenure of power.

Were the Second Chamber reformed or elected, the objection to the present system by which there was a Conservative majority in the Lords would be done away with. Each political Party would have its representation secured in the Second Chamber. Therefore, if the Second Chamber were allowed to hold up Bills for 2 years there would be no real grievance. It was during those last 2 years of a Government's duration of power that it was sometimes difficult for them to claim with any truth that they still enjoyed the confidence of the electorate.

But, concluded the hon. member, even when a Government had lost such confidence, it might nevertheless still endeavour to force through Parliament Measures for which it claimed to have a Mandate, but which were no longer desired by the people. An efficient representative Second Chamber was a necessary condition of the maintenance of Cabinet responsibility and of Cabinet control over the House of Commons, these being the 2 essential characteristics of the present system of Government.[2]

The hon. member for Oxford (Mr. Quintin Hogg) quoted the Parliament Act 1911 as containing in its Preamble the clear declaration that the Bill was designed as a stop-gap measure to tide over a period of constitutional difficulty until a more lasting solution could be found.[3] What was wrong with the House of Lords was the hereditary principle.[4]

The hon. member for Dagenham (Mr. A. Parker) disagreed with the idea that a Second Chamber should be more than a good debating Chamber. They should abolish the hereditary principle of membership and fill the Upper House by agreement between the Government and the Opposition, with useful members who would carry out the work of revising Bills and act as a Debating Chamber.[5]

The hon. member for Dorset Western (Major K. S. Wingfield Digby) said that in the Tudor period the House of Lords was predominantly non-hereditary and that of its 75 members 45 were non-hereditary. It was only at a later date, with the very large increase

[1] *Ib.* 75. [2] *Ib.* 76. [3] *Ib.* 80. [4] *Ib.* 81. [5] *Ib.* 90.

in peerages that it assumed the character of being firstly, an extremely large Chamber and secondly, a Chamber in which the hereditary element predominated. The principles to be applied when considering the future composition of the House of Lords were, (1) smaller numbers, (2) intelligibility, (3) a more distinctive method of appointment and (4) independence without responsibility. A Second Chamber was an essential feature of every well-run democracy. The House of Lords was now considered to be the weakest Second Chamber in the world.[1] The hon. member quoted Lord Acton as speaking of a Second Chamber as "an essential security of freedom". Lecky, in his "Democracy and Liberty" said:

> Of all forms of government that are possible among mankind I do not know of any which is likely to be worse than the government of a single, omnipotent, democratic Chamber.[2]

The hon. member for Thornbury (Mr. J. H. Alpass) said that a strong argument for limiting the veto power was that when the Conservatives were in power, the House of Lords became largely a rubber stamp.[3]

The hon. member for Hertford (Mr. Derek Walker-Smith) considered that the Bill had the unhappy effect of concentrating upon itself the maximum measure of dissent. It was dissented from, both by those who supported, as well as those who opposed, the hereditary principle; it was dissented from by those who wished to abolish the suspensory veto of the Lords altogether and by those who considered that a one-year suspensory veto was totally inadequate for the purpose of a Second Chamber. Four courses were open to the Government in their approach to the problem of the House of Lords. First, they could have adopted the Melbournian policy of "leave well alone"; secondly, abolish the House of Lords altogether; thirdly, reform the House of Lords in such a way as to provide a strong, efficient and acceptable Second Chamber; and fourthly, they could have proposed to weaken and cripple the House of Lords without reforming it. The third course was the best.[4] Any scheme for a reconstituted Second Chamber should not follow the form of election to the House of Commons. The power of delay under the Bill was largely swept away. The necessity for 3 separate Sessions was never a substantial limitation because the Government could in fact by Prorogation, make the Sessions as short as they wished.[5]

The hon. member quoted the 3 Resolutions passed by the House of Lords in 1910:

> That a strong and efficient Second Chamber is not merely an integral part of, but is necessary to the state and the balance of Parliament.
>
> That such a Chamber can best be obtained by the reform and reconstitution of the House of Lords.
>
> That a necessary preliminary to such reform and reconstruction is the

[1] *Ib.* 97. [2] *Ib.* 98. [3] *Ib.* 111. [4] *Ib.* 131. [5] *Ib.* 134.

acceptance of the principle that the possession of a peerage should no longer of itself give the right to sit and vote in the House of Lords.[1]

The hon. member for Cambridge University (Mr. Pickthorn) considered that the British Constitution could be boiled down to 3 points:

First, the omni-competence of Statute—that anything the King in Parliament declared to be law was law and breaches of it would be punished; secondly, that Parliament gave the fullest freedom and fairness to the Opposition; thirdly, that there should not be conscious changes in the Constitution except with the fullest discussion and the maximum obtainable consent.[2]

The main objections to the Bill were—it made a considerable change in the Constitution without making sure of full public discussion or trying the ground in every direction for the possibility of agreement; secondly, the retrospective nature of the Bill, for it purported to alter the constitutional arrangements, not from some day after the Bill was passed but from the beginning of this Session, which in the logic of Constitution-making was a terrific thing to do. Theirs was the only country in the world where the Constitution was largely the statutory omni-competence of Parliament. In every other country, when constitutional changes were proposed, there had to be longer notice, larger majorities, discussions with their constituents; all sorts of safeguards of that nature.[3]

Debate resumed.—When the debate was resumed on November 11, 1947[4] the Leader of the Opposition (rt. hon. Winston Churchill) opened his speech by asking to be shewn a powerful, successful, free, democratic constitution of a great sovereign state, which had adopted the principle of single-Chamber Government.[5] Some foreign countries arrived at the two-Chamber system by a proportion of members retiring every 2 years or every year, some by a franchise based on a higher age limit, some by the influence of local authorities standing on a different foundation and some nominated for life. In some there were joint Sessions where a majority decision decided in case of deadlock.[6] Single-Chamber government was especially dangerous in a country which had no written constitution and where Parliament was elected for 5 years. Where there was an ancient community built up across the generations:

> Where Freedom broadens slowly down
> From precedent to precedent,

it was not right that all should be liable to be swept away by the desperate assurances of a small set of discredited men:

> A thousand years scarce serve to form a State,
> An hour may lay it in the dust.

There was no constitutional or legal bar upon the right of a Government possessing a majority in the House of Commons to propose any legislation they thought fit whether it had figured in their pre-election

[1] *Ib.* 136. [2] *Ib.* 147. [3] *Ib.* 152, 3. [4] *Ib.* 203-322. [5] *Ib.* 210. [6] *Ib.* 211.

promises or programmes or not. The people had no guarantee except the suspensory power of the House of Lords, nor could they be given any other guarantee that Measures never thought of at the election and to which they objected would not be imposed upon them. Look around at what was happening every day. The idea of a mandate was only a convention. A band of men who had got hold of the machine and had a Parliamentary majority undoubtedly had the power to propose anything they chose without the slightest regard as to whether or not it was included in their election literature.[1]

Anyone could see that what was aimed at was single-Chamber government at the dictation of Ministers without regard to the wishes of the people and without giving them any chance to express their opinion. They were approaching very near to dictatorship in the country and dictatorship without either its criminality or efficiency.[2]

The Home Secretary (rt. hon. J. C. Ede) stated that any proposal put forward for a reformed Second Chamber would be considered, if it gave the Labour Party exactly the same chance of passing legislation as it would give to the Conservative Party.[3]

The Government considered that the Lords' Power of a suspensory veto was adequately met if they had 12 months instead of 24 before the Bill could be passed over their heads.[4]

When Question was put—"That the words proposed to be left out stand part of the Question", the amendment was defeated: Ayes, 345; Noes, 194, and the Bill was read a Second Time.

Committee Stage.—The Bill was considered in Committee on December 4, 1947,[5] when the following amendments were moved:

(1) in page 1, line 5, to leave out from "effect" to "as" in line 8 (*so that the clause would then read: "The Parliament Act, 1911, shall have effect with regard to any Bill introduced after the passing of the Act as if——"*)

On the Question,—"That the words proposed to be left out stand part of the Question" the voting was: Ayes, 271; Noes, 150.

(2) page 1, line 19, to leave out "one year" and insert "six months". On the "stand part" Question being put, the amendment was defeated: Ayes, 261; Noes, 120.

The Bill was then reported without amendment.[6]

Third Reading.—The Reading was taken on December 10, 1947.[7] During this debate the hon. member for Saffron Walden (rt. hon. R. A. Butler) moved to delete "now" from the Question.—"That the Bill be now read the Third Time" and add at the end of the Question—"upon this day six months".

The rt. hon. Gentleman reminded the Minister that at the end of the Protectorate period, there was presented a "Humble Petition and Advice", which brought back the constitutional position, very broadly, in the shape of having two Houses and bicameral govern-

[1] *Ib.* 211, 12. [2] *Ib.* 213. [3] *Ib.* 222. [4] *Ib.* 225.
[5] 445 *Ib.* 584-642. [6] *Ib.* 641. [7] *Ib.* 1017-1090.

ment, to what had been the general stream of English constitutional development.[1]

(*There was a long discussion on this reading, which was principally of a political nature, during which the debate was interrupted by a Message from the Lords summoning the Commons for the announcement to both Houses of Parliament of the Royal Assent to several Bills.*)

On the Question being put—"That the word 'now' stand part of the Question" the House divided: Ayes, 340; Noes, 186. The Bill was then accordingly read the Third Time and passed.[2]

B. IN THE LORDS: THIRD SESSION: 1947-48

As in the Commons, many references in the Lords to the subject of the Bill were made during the course of the Address in Reply by noble Lords from all Benches in that House.[3]

1.a. On December 11, 1947,[4] the Bill was brought from the Commons, read *1.a* and printed.

A brief outline will now be given of the debates on the Bill in this House, without reiterating the points and arguments already put forward in the debates on the Bill in the Commons.

Second Reading.—On January 27,[5] 1948, the Lord Privy Seal (Viscount Addison), in moving *2.a* of the Bill, referred to the splendid attendance in the House as reflecting the intense interest which the Bill naturally evoked.

The noble Viscount claimed that it was for the elected representatives of the people to decide whether an issue was or was not to be the subject of Parliamentary activity.[6] In regard to this subject he quoted a statement made by the noble Marquess, Lord Salisbury, on October 31, 1945, during the debate on the Supply and Services Bill:

> If this House refused powers which are thought by Ministers to be essential, the Government have always the ordinary constitutional remedy open to them, which is to go back to the country and ask for a renewal of their mandate.

This was, however, a point of difference which the Government did not accept, namely—that this House, entirely unrepresentative, should be the final arbiter as to what was and what was not the opinion of the people.[7]

In the life of any Parliament there must, of necessity, be a large number of issues which were not foreseen or in anybody's mind at the time of the Election.[8] It was suggested that a reason for not proceeding with the Bill was that the Government had no mandate, but the amendment of the noble Marquess (*see below*) proposed the

[1] *Ib.* 1025. [2] *Ib.* 1090.
[3] 152 *Lords Hans.* 5, s. 27, 33, 35, 38, 52, 56-64, 70-74, 96-102, 111-4, 119, 138-41, 142, 146, 157-8. [4] 153 *Ib.* 187.
[5] *Ib.* 629-672; 741-820; 824-868; 873-882; 156 *Ib.* 443-523; 530-602.
[6] 153 *Ib.* 633. [7] *Ib.* 634. [8] *Ib* 635.

introduction of a much bigger Bill dealing with the whole constitution of the House of Lords.

The noble Marquess then quoted John Bright at a Liberal Association meeting in Leeds in October 1883, as saying that:[1]

if the Peers rejected a Bill once and it had been considered in a subsequent Session by the Commons, and if, after due deliberation, it had again been sent up to the Peers, then the Peers must pass it, or it will receive the Royal Assent and become law.

To come a little closer in history, continued the Minister, there was the Commons Resolution of June 26, 1907:

That in order to give effect to the will of the people as expressed by their elected representatives, it is necessary that the powers of the other House to alter or reject Bills passed by this House should be so restricted by law as to ensure that within the limits of a single Parliament the final decision of the House of Commons shall prevail.[2]

The noble Viscount stated that there was no attack whatever on the Second Chamber in the Bill. It was only designed to give a fairer chance to other Parties in the State besides the Conservative Party.

The Marquess of Salisbury in moving the following amendment:

That this House,
While re-emphasising its oft-expressed readiness to consider proposals for modifying the basis of its membership which may conduce to the more effective performance of its constitutional duties, declines to give a Second Reading to a Bill—

which would effect no change in this respect;
for which the nation has expressed no desire;
which would go far to expose the country to the dangers of a system of single chamber Government; and
which can only serve to distract the attention of the country from the economic crisis and from the united effort towards recovery which is so vital at this time.

—said that this was surely the oddest Measure ever brought before a British Parliament, taking into account the times in which it had been introduced, with the country facing the severest economic crisis in history.[3]

Without any provocation or mandate, without any expression of the desire of the country the Government had introduced a Bill because there were certain measures the Government might wish to introduce which might cause trouble in their Lordships' House. The noble Marquess still believed it was the Iron and Steel Bill which was at the bottom of this Measure,[4] and his Lordship confessed to being intrigued by the argument that the view of the majority in Parliament was always identical with the will of the people at any given moment.[5]

Continuing the noble Marquess said:

Ministers talked of the House of Commons being a sovereign body. It had never been. There was only one sovereign body under His Majesty the King and that was the broad mass of the British people.

[1] Lord Morley's *Recollections*.
[2] *Ib.* 641.
[3] *Ib.* 642.
[4] 153 *Lords Hans.* 5, s. 638.
[5] *Ib.* 643.

The main purpose of the delaying powers reserved to the Second Chamber under the Parliament Act 1911, was to enable great issues, on which the views of the people were not certainly known, to be adequately considered and, if necessary, referred back to the electors for their considered decision. Those powers did not constitute a power of veto.[1]

If the Second Chamber was not to have this power of delay, why give this House any power of delay at all? The noble Marquess believed that the power of a Second Chamber to refer back to the electorate doubtful measures which dealt with issues of the first importance was absolutely vital to the survival of democracy, and the most essential safeguard of the Constitution.[2]

The main importance of a Second Chamber was not to act as a brake but rather like the automatic pilot in an aeroplane, which prevented the machine swinging too far, either to the right or to the left.

It was a mistake to suggest that the House of Lords was not in the broadest sense a responsible and even a representative body. It probably contained a high proportion of the most distinguished men of the day in all walks of life.[3]

The case for the reform of the House of Lords had a great deal to be said for it and this had never been denied by the House of Lords itself. As far back as 1888 the noble Marquess' Grandfather had introduced a Bill, first, to create life Peers and secondly, to eliminate those Peers who did not attend to their duties. Those Bills, however, were not defeated in their Lordships' House but had to be withdrawn owing to opposition in the House of Commons. Since that date there had been many attempts on the part of the House of Lords to initiate schemes for reform, but all Parties alike in the House of Commons had been unwilling to tackle so thorny a problem.

The main complaint against the Bill was that the Government once more funked this question of membership, which, in his Lordship's view, it was essential should be tackled if the House of Lords was to be modernised and made truly representative. The Bill merely cut down drastically the power of the House and so destroyed the essential balance of the Constitution.[4]

The effect of the Bill was to truncate the powers of the House of Lords in such a way as to reduce it, as a balancing factor in the Constitution, to a mere farce and lay the country open to all the dangers of single-Chamber Government.[5]

To press this Bill forward in its present form would only do infinite harm to the stability of the Constitution which all of them, in whatever place they sat in the House of Lords, were pledged to defend.

The noble Marquess appealed to the Government, even at this late stage, to postpone the Bill and so enable discussions to take place between the Leaders of the main Parties, with a view to producing a comprehensive scheme of reform which covered both composition and

[1] *Ib.* 644. [2] *Ib.* 646. [3] *Ib.* 647. [4] *Ib.* 649. [5] *Ib.* 650.

powers. His Lordship assured the Leader of the House that they on their side of the House would be ready to take part in such an examination and that they should not be tied by any preconceived ideas to this or that principle, whatever it might be. The only object would be to ensure that the essential powers of a Second Chamber under the Constitution should be preserved and the best and most acceptable body set up to exercise those powers.[1]

If the Government were willing to respond to his appeal, on lines he could accept, he would not press his amendment to a division at the present stage.

In concluding his speech, the Marquess of Salisbury said:

What is essential, if a Parliamentary democracy is to succeed, is that both Parties should know that if a Government, either of the Left or of the Right—because it applies equally to both—with a temporary majority in the House of Commons, were to introduce really extreme measures, there is in existence a Second Chamber able to stop them. If that protection were to be removed, the defeated Party—and, as I say, it applies equally to the Right and the Left—frantic with anxiety, might well begin to flirt with unconstitutional practices. To all of us who believe in Parliamentary democracy—and I am sure this applies to every noble Lord in this House—that would be the ultimate evil. That is a very real danger, which I entreat the Government not to ignore. They have to-day an opportunity, an opportunity which may not recur, to settle this problem as part of one single comprehensive agreement covering these two aspects, the powers and the constitution of the House. Let them grasp that opportunity and they will deserve well of their fellow countrymen.

If, on the other hand, they neglect it, and if they put too much power in the hands of the Executive with its temporary majority, they may well undo all the work of those who negotiated the settlement of the Glorious Revolution of 1689 and strike a severe, possibly a mortal, blow at the whole institution of Parliamentary democracy which is our greatest glory. I beg then not to stand upon the specious ground of necessity. Let them remember the words of William Pitt, which he used in the House of Commons 150 years ago:

> "Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves."

* * * * *

In this controversy, it is not the interests of the Conservative Party or the Labour Party which are at stake. It is the rights and liberties of the people of England.

* * * * *

We on this side of the House ask no more than that issues affecting the welfare of the electorate, where their judgment is unknown or doubtful, should be referred for their consideration, or at least deferred for a short time to enable their views to be found out. That is the whole reason for our stand for an effective Second Chamber. Can anyone say that is unreasonable? If the present House of Lords is not the right body to exercise this power, let it be amended, but do not remove this essential safeguard against extreme action by the Right or by the Left.

* * * * *

In this great issue in our national affairs I beg the Government may not fail us.[2]

[1] *Ib.* 651, 2. [2] *Ib.* 653.

Viscount Samuel stated that on November 18 last he addressed the following Question to the Government:

> To ask whether they are prepared to summon a conference of representatives of the three Parties in the House with a view to considering the question of the Constitution of the House of Lords.

—to which the Leader of the House replied that the moment was not propitious. The noble Viscount later put down a Question, with no day fixed, in similar terms. The noble Viscount now addressed to the noble Viscount, the Leader of the House, the Question standing on the Order Paper under the heading "No day named", namely—

> Whether the Government have been able to give further consideration to the advisability of summoning an all-Party Conference on the issue of the composition of the House of Lords.[1]

The noble Viscount, continuing, said that the House of Lords was undoubtedly the only institution in the world kept efficient by the personal absenteeism of the great majority of its members.[2]

The Labour Party had never put forward any specific proposals for a new Second Chamber, partly because a number of their members did not desire any Second Chamber but believed in a single-Chamber Constitution.

The Liberal Party, from time to time, had been inclined to favour the principle of the election of the greater part of the members to the Second Chamber, by the House of Commons. As early as 1912 the Cabinet appointed a Committee to draft a scheme for a new Second Chamber on those lines,[3] which he was deputed to draft, but it never came before the Cabinet. That scheme, however, formed part of the plan of Lord Lansdowne and was the main feature in the proposals of the Bryce Conference of 1917-18. By a majority, that Conference proposed the principle of election by the House of Commons as the main feature of the new Chamber, which principle was adopted for Northern Ireland.[4]

The noble Viscount stated that the Liberal Party would be very ready to enter into the Conference which had been suggested, without being tied to any formula.

It was only when a Bill had been passed by the Commons and had been rejected, or was about to be rejected, by the Lords that the country became alive to the situation.[5]

A very important question was whether they were to retain 2 years gross as provided in the Parliament Act or one year net as in the present Bill. Therefore the amendment which he would propose in Committee would be in S. 2 (1), where the Second Reading in the Commons is referred to, that the word "Second" should be left out and the word "Third" substituted. It would then be left to the Commons to say when that one year would start. In other words, it

[1] *Ib.* 655. [2] *Ib.* 656. [3] *Ib.* 657. [4] *Ib.* 658. [5] *Ib.* 660.

would date the delay from the time the Bill left the House of Commons instead of from the time they began its deliberations.[1]

In conclusion, the noble Viscount asked if it was not possible now to bring to a close the whole controversy about the Second Chamber by devising a new Chamber which no Party would struggle to control, which would be outside the Party system altogether, and whose members would be appointed mainly on the basis of fitness and service and apart from Party ties.[2]

At this stage, the Leader of the House, in reference to the proposed Conference, intervened by stating that the Government regarded the passing of the Bill in the form now before the House as essential. After that had been done, the Government would be willing to discuss the issues in the noble Marquess' question. To this Lord Salisbury replied—"How can one possibly know what powers a body ought to have until one had decided what body was to exercise those powers? The composition and the powers were absolutely linked."

The noble Marques again urged the setting up of the Conference and suggested the adjournment of the debate until Monday to enable the question of such a Conference to be considered by the Government.[3] The debate was then accordingly adjourned to Monday, February 2, 1948.

Debate resumed.—Upon resumption of the debate on February 2, Lord Salisbury, by leave of the House, asked if the Leader of the House had any statement to make. Whereupon the Lord Privy Seal said:

My Lords. The Government have given careful consideration to the representations made by the noble Marquess and by the noble Viscount, Lord Samuel. The Government are willing to enter into Conference on the issues raised, without prejudice on either side, on the understanding that:

1. So far as the discussions of the powers of the Second Chamber are concerned they should be limited to ensuring reasonable time for the consideration of Measures by the Lords and for the discussion of differences between the two Houses.

2. The Bill now before the House should either be passed with or without agreed amendment, or rejected by this House, before the end of the present Session:

3. So far as the composition of the House of Lords is concerned:

(*a*) there would be preliminary conversations on the possibility of there being a basis for further discussion.

(*b*) in the event of such a basis for discussion being provisionally agreed, the different Parties should examine the same with their own members, before the discussions were renewed; and

(*c*) the preliminary discussions should be private and confined to a small number of the leading members of the Parties concerned.

4. The different Parties should also examine, with their own members, any suggestions emerging from the discussions relating to the Parliament Bill contemplated under paragraph 1.[4]

[1] *Ib.* 661. [2] *Ib.* 665. [3] *Ib.* 667, 8. [4] *Ib.* 741, 2.

The noble Marquess remarked that, from the statement made, it appeared still to impose a vital limitation upon the scope of the discussions now proposed.[1] The power of delay to which cardinal importance was attached, was now to be eliminated. This, the noble Marquess suggested, would fatally prejudice the position, even before the conversations began at all. But if the Government were willing to discuss the whole question of the existing powers, without prejudice on either side, his Party would be ready to co-operate in the discussions.

Viscount Samuel urged that the suspensory period should not be cut down to nothing. It was the general sense of all Parties that they would not necessarily be tied to the letter of the Bill, provided they achieved its purpose. On that understanding he would be very willing to enter into the Conference.[2]

The noble Viscount said that he found the paragraph in the Ministerial statement as to powers quite incomprehensible.[3]

Viscount Cecil of Chelwood observed that it was not a question of dates, or the exact length of the delay, which the Lords should be entitled to impose upon legislation, but simply a question of whether the House of Commons, without reference to the electorate, could pass any legislation it chose, including any alteration in the constitutional powers of itself or of the House of Lords or, indeed, of any other section of the Constitution. The proposition that the Bill should have retrospective effect as well as a prospective effect, illustrated the vice of the whole system. If this procedure of the Government was sanctioned by public opinion, there would really be no control at all over any House of Commons to be elected in the future.[4] He submitted strongly that the House of Commons had no authority whatever other than that given by the votes of the people.

An immense diminution in the position of the House of Commons had taken place. The old doctrine of Burke and others that the House of Commons, once elected, should exercise its powers without being overruled by the Government, or even by the electors, had almost disappeared.

If an M.P. dared to think for himself and vote accordingly, it would end in his Party organisation running a candidate against him. There was at one time some degree of personal independence left to M.P.s. Now that had been entirely swept away. The majority of the House of Commons now consisted of obedient servants of the Government of the day. In the last century the independence of the House of Commons as such, had greatly declined and the powers of the Cabinet had very greatly increased. They were indeed approaching the plebiscitary conception of Government, whereby, when once a government had been put into office by a plebiscitary vote, it became all-powerful.

The best instance he could give was in the case of Hitler who, once

[1] *Ib.* 742. [2] *Ib.* 745. [3] *Ib.* 754. [4] *Ib.* 756.

having got control of the governmental machinery, used it in order to establish a complete tyranny by himself and his immediate assistants. There was no worse tyranny than the tyranny of a bureaucracy. Europe had more or less always moved together. What had happened in Berlin and Moscow to-day might well happen in London to-morrow.[1]

In the last half-century, the Leaders of the House of Commons had come to insist that almost every phrase in a Government Bill was officially inspired. No change in it was permitted. The normal course was to treat every clause as a question of confidence in the Government. Indeed, in that particular, the power of the Cabinet had been carried further in this country than in any other.

All this led the noble Viscount to the conclusion that if it were to happen that an extreme Government were placed in power by some wave of popular feeling, there could be no sufficient security in the House of Commons. It must be remembered that revolutions did not usually come from majorities: they more often had been the work of minorities.

The whole question was whether, under the Constitution, as it was proposed to be established under this Bill, the people would be consulted at all.[2] Apart from a few extremists, the vast majority of the people of this country were agreed, first, that they wanted a Second Chamber and that they did not want that Chamber to be all-powerful The House of Lords had no power to call for a change of Govern ment.[3] The only satisfactory solution was one which would ensur that legislative decisions in the Lords were in accord with the con sidered views of the electorate. The noble Viscount therefore suggested keeping the present House as it was, the legislative duties being entrusted to a section of it, chosen in regard to the political opinions shewn in the last General Elections. Each new House of Commons should nominate by *P.R.* one-half of the legislative Peers holding office for 2 Parliaments. On the Right the legislative Peers would no doubt be mainly chosen from the existing Peers. On the Left, some who were not Peers would be added.[4] The plan involved the separation of the advisory from the legislative functions of Peers, but otherwise made as little change as possible from the House as they now knew it.

Under this system, the House of Lords would consist, first, of existing Peers with the right to sit, speak and vote as at present, except that they could not vote on matters of legislation, and, secondly, a certain number of legislative Peers, chosen as described.

The noble Viscount said that he could not vote for the Second Reading.[5]

Viscount Stansgate suggested that the House of Lords should have the right to ask Ministers from the Other Place to come here and defend their policy.[6]

[1] *Ib.* 760. [2] *Ib.* 761. [3] *Ib.* 762. [4] *Ib.* 764. [5] *Ib.* 765. [6] *Ib.* 780.

After further speeches, the debate was adjourned at 7.7 p.m.[1]

Debate resumed.—Upon resumption of the debate on February 3,[2] the Marquess of Salisbury stated that he had been trying to find some way of removing the ambiguity surrounding the words in paragraph (1) of the Government Statement, which were incomplete and did not cover the contingency of a reasonable period of delay in the event of a difference of opinion between the two Houses.

The noble Marquess then put forward the following Resolution:

> That the debate upon the amendment standing in my name be adjourned and that an inter-Party conference be immediately convened on the issues raised by the Parliament Bill at present before the House, without prejudice on either side on the understanding that:
>
> (1) So far as discussions of the powers of the Second Chamber are concerned, these communications should not extend to any powers other than those at present possessed by the House of Lords, but should be limited to ensuring reasonable time for the consideration of measures by the House of Lords, for the Parliamentary discussion of differences between the two Houses and for the provision of an adequate period of delay in the event of an unresolved divergence of view between the two Houses.

From there on, remarked the noble Marquess, paragraphs 2, 3 and 4 would remain as in the Government draft.

The First Lord of the Admiralty (Viscount Hall) expressed the hope that a successful Conference would eventually be held.[3] The political situation to-day was entirely different from that of 1888, 1911 or 1933.[4] The Opposition still wanted to challenge the right of the elected House to act. Certainly, it was in the last 2 years of the present Government, but it was expected that the Opposition intended to hold up such measures as the Bill dealing with steel—which was within the mandate—when it was introduced by the Government.[5]

The Minister said that he would like to know whether the Salisbury plan of 1933 was to be revived, because if so, it might well be an obstacle to agreement, for the plan contemplated a Second Chamber of some 300 members, of which 150 were to be elected by the hereditary Peerage from their own number which was made up of some 800 Peers. It was quite true that a large number of them gave no indication of their Political Party. There was no doubt that some 400 of them would take the Whip of the noble Marquess and the Party opposite, whereas the Minister's colleagues and himself numbered 44 and the Liberal Party 71. They had an example in the selection of representative Peers from Scotland.[6]

Viscount Simon hoped that the Conference would succeed and remarked that in one passage of his speech, the Minister said that at the General Election the voters declared themselves in favour of reducing the powers of the House of Lords. It was perfectly true that at the last Election there was a great turn over to the Socialist

[1] *Ib.* 820. [2] *Ib.* 824-868. [3] *Ib.* 827. [4] *Ib.* 828. [5] *Ib.* 829. [6] *Ib.* 831.

Party which obtained more seats than any other Party. But the actual figures shewed that out of 34,000,000 electors, between 11 and 12,000,000 voted Socialist.[1]

A new idea was evidently now developing—an incorrect doctrine—that once a General Election had taken place, the people themselves ceased to be the real governors of the country and that for the whole period of the life of that House of Commons, however the opinion of the members in it might change, the Government have had conferred upon them a mandate to be the supreme interpreters of the people's will.[2]

The noble Viscount pointed out that the Parliament Act, 1911, was only passed after mutual previous consideration in all sorts of forms, Resolutions and discussions and indeed, a couple of General Elections. Mr. Asquith, who interpreted that Act with matchless accuracy, insisted that under it the House of Lords had 2 functions, revision and delay, which latter he referred to as "delay under proper restrictions".[3]

The Lords were left with the difficult exercise of an occasional duty to impose delay of not over 2 years. This confirmed the tendency to scrutinize legislation which came at the end of a Parliament more narrowly than it would be scrutinized at the beginning.

From researches the noble Viscount had made, he did not recall a case in which a constitutional change of importance had been enacted retrospectively.[4]

Some people said that they had no Constitution in this country, but the Constitution had existed, subject to modification, through the centuries. The important thing about it was that it was largely an unwritten Constitution and could be altered with exactly the same legislative process as could even the most trumpery Bill through Parliament. Therefore, a great responsibility rested upon those who sought to alter their Constitutions without adequate grounds. Such alterations should not be changed by serious and thoughtful citizens unless on the broad merits of the case, such alteration became necessary. If the alteration was a tactical device for securing particular Measures on the Statute Book before a General Election, then it was a great abuse of power.[5]

Lord Lindsay of Birker was anxious that the Second Chamber should be endowed with such powers as would enable it to compel that degree of consideration and delay which were absolutely essential if the British Constitution was to be preserved.

Would not the people of this country expect a Second Chamber to stand between themselves and reaction, just as they now expected a Second Chamber to stand between themselves and tyranny?[6]

Lord Darwen expressed the view that the feeling in favour of the abolition of a Second Chamber had been dormant because the Lords had been content to act in an advisory capacity, as an adviser and

[1] *Ib.* 834. [2] *Ib.* 836. [3] *Ib.* 839. [4] *Ib.* 841. [5] *Ib.* 842. [6] *Ib.* 853.

nothing more. So long as the House of Lords was prepared to act in that way there was no objection to it in the country. The throwing out of this Bill and the passing of the proposed amendment would awaken profound antagonism in the country.[1] All the power of the House of Lords that was necessary could be exercised in an advisory capacity.[2] Debate was then adjourned.[3]

Debate Resumed.—Debate was resumed on February 4,[4] when the Leader of the House made the statement that the Government had given great consideration to the various suggestions and were willing to enter into Conference on the issues raised, without prejudice on either side on the understanding that:

1. The discussion of the powers of the Second Chamber should be limited to ensuring reasonable time for the due performance of their functions by that Chamber,

which was an alternative to the paragraph 1 the Government had proposed.[5] This proposal was generally accepted. Whereupon the Marquess of Salisbury, by leave, withdrew his amendment and debate was adjourned.[6]

C. THE WHITE PAPER[7]

In continuation of the above debate in the Lords on the Bill, the following is the report from the Inter-Parliamentary Conference.

Inter-Party Conference representing the Lords and Commons on the Parliament Bill, 1947.—This agreed statement on conclusion of Conference of Party Leaders, February-April 1948, which was presented to Parliament in the following month by the Prime Minister, opens with Lord Salisbury's amendment to the Bill on its Second Reading, January 27 of that year (*which see above*).

The Paper then refers to the statement in the House of Lords on February 4, by the Lord Privy Seal (already given in the debate above).

As the rest of the Paper reports, very concisely and briefly, the proceedings of the Conference, the remaining paragraphs thereof are given in full:

2. It was intended that there should be a small private preliminary conference between leading representatives of the Government, the Official Opposition and the Liberal Party to ascertain whether a basis for further discussion existed. It was agreed that at this conference the Party representatives would be acting purely *ad referendum* to their respective Parties.

3. The Party representatives met for the first time on 19th February, 1948, and on six subsequent occasions. It was agreed that the discussions (and all documents considered at the Meetings) should be regarded as private; statements issued to the Press have been confined to dates and places of the Meetings, and the names of Leaders taking part. The Government have been represented by the Prime Minister, the Lord President of the Council, the Lord Privy Seal, the Lord Chancellor and the Chief Whip; the Official Opposi-

[1] *Ib.* 859. [2] *Ib.* 860. [3] *Ib.* 868. [4] *Ib.* 873-882.
[5] *Ib.* 874. [6] *Ib.* 882. [7] *Cmd.* 7380.

tion by Mr. Anthony Eden, the Marquess of Salisbury, Viscount Swinton and Sir David Maxwell-Fyfe; Liberals by Viscount Samuel and Mr. Clement Davies. While Mr. Eden was ill he was represented at the Meetings by Mr. Oliver Stanley.

4. At the first Meeting, the Party representatives agreed that discussion should embrace proposals relating to the reform of the Composition of the House of Lords, and proposals relating to the Powers which should be vested in any reformed House. These two subjects, though capable of separate consideration, were to be regarded as interdependent, and it was recognised that failure to agree either on Composition or on Powers might result in general agreement on the future of the House of Lords not being reached.

5. Proposals relating to reform of the Composition of the House of Lords were discussed first. If it had been possible to achieve general agreement over the whole field of Powers and Composition, the Party representatives would have been prepared to give the following proposals further consideration, so as to see whether the necessary details could be worked out, and, if so, to submit them, as part of such an agreement, to their respective Parties.

(1) The Second Chamber should be complementary to and not a rival to the Lower House, and, with this end in view, the reform of the House of Lords should be based on a modification of its existing constitution as opposed to the establishment of a Second Chamber of a completely new type based on some system of election.
(2) The revised constitution of the House of Lords should be such as to secure as far as practicable that a permanent majority is not assured for any one political Party.
(3) The present right to attend and vote based solely on heredity should not by itself constitute a qualification for admission to a reformed Second Chamber.
(4) Members of the Second Chamber should be styled " Lords of Parliament " and would be appointed on grounds of personal distinction or public service. They might be drawn either from Hereditary Peers, or from commoners who would be created Life Peers.
(5) Women should be capable of being appointed Lords of Parliament in like manner as men.
(6) Provision should be made for the inclusion in the Second Chamber of certain descendants of the Sovereign, certain Lords Spiritual and the Law Lords.
(7) In order that persons without private means should not be excluded, some remuneration would be payable to members of the Second Chamber.
(8) Peers who were not Lords of Parliament should be entitled to stand for election to the House of Commons, and also vote at elections in the same manner as other citizens.
(9) Some provision should be made for the disqualification of a member of the Second Chamber who neglects, or becomes no longer able or fitted, to perform his duties as such.

6. Discussions on the Powers which should be vested in a reformed House of Lords were, in accordance with paragraph 1 of the Government Statement made by the Lord Privy Seal on the occasion of the adjourned debate in the House of Lords on the Parliament Bill, limited to considering what should be a reasonable time for the due performance of its functions by a Second Chamber.

Under the provisions of the Parliament Act, 1911, Money Bills cannot be challenged by the House of Lords. In the case of all other Bills (except a Bill to extend the life of Parliament beyond five years) the Act provides that a Bill in dispute between the two Houses cannot be presented for the Royal

Assent under the procedure of the Act unless it is introduced and passed by the Commons in each of three successive sessions, and unless two years have elapsed since the date on which the Bill was read a second time in the Commons in the first session and the date on which it was read a third time in the Commons in the third session; further, the Bill must be sent up to the Lords at least one month before the end of each of the three sessions.

The Parliament Bill now before the House of Lords proposes to reduce the number of sessions in which the Bill must be introduced and passed by the Commons from three to two, and to reduce the period of time which must elapse between Second Reading in the Commons in the first session and the third reading in the Commons in the second Session from two years to one year.

7. On this question of Powers considerable discussion took place, but the Conference failed to reach agreement. The views put forward by the respective groups of Party Leaders are set out in the following paragraphs 8 to 10.

8. The representatives of the Government expressed their willingness to see a Second Chamber possessed of proper facilities for debating public affairs and for revising legislation. The procedural arrangements should secure to each House a proper time for the consideration of amendments to Bills proposed by the other; but they should not be such as to enable the Second Chamber to oppose its will on the House of Commons and to force the Government to seek a General Election against its own inclination and that of the Commons. The principal organ of democratic government is the House of Commons, which is elected by the People. The danger in modern conditions is that the machinery of democratic government may act too slowly rather than too quickly. Under the Parliament Act, 1911, the procedure enables a House of Lords hostile to the Government of the day to render the legislative programme of the Government ineffective in the fourth and fifth sessions of a quinquennial Parliament. In the result, the will of the Government and of the People could be thwarted by a Second Chamber which, not being elected, is not directly responsible to the People. The Government representatives agreed that it is important that points of dispute between the two Houses should be appreciated by the public, but they considered that the proposals of the Parliament Bill adequately safeguard constitutional rights in this respect and afford sufficient time for public opinion (which formulates more rapidly in modern conditions than was the case thirty years ago) to understand and pronounce upon a disputed issue.

The Government representatives recognised, however, that under the Parliament Act procedure, as proposed to be amended by the Bill, the Second Chamber might not have a sufficiently long period to consider a disputed measure if, for any reason, the Bill took an exceptionally long time in its passage through the House of Commons. As part of a general agreement over the reform of the House of Lords they would have been prepared to suggest to the Labour Party that the " period of delay " which, under the Parliament Bill, would be one year from Second Reading in the Commons on the first occasion, should be extended to nine months from Third Reading if, in the case of a particular Bill, the latter period proved to be the longer. The Government representatives could not recommend any further extension, inasmuch as the effective legislative use of the fourth session of a quinquennial Parliament would thereby be in jeopardy. It was further argued that the greater the powers given to a second Chamber the more might be the necessity for the Prime Minister of the day to attempt to redress an adverse political balance in that Chamber by the creation of additional Peers, and the greater the danger that the Second Chamber might in fact become a rival of the Commons.

9. The Leaders of the Official Opposition find themselves unable to agree to what they regard as the virtual elimination of the suspensory period. They

feel that this would be in conflict with the whole intention of the Parliament Act of 1911. They hold that the purpose of the power of delay, which formed an integral part of the Parliament Act procedure, has never been to enable the Second Chamber to thwart the will of the People. It is an essential constitutional safeguard to ensure that, in the event of serious controversy between the two Houses of Parliament, on a measure on which the view of the electorate is doubtful, such a measure shall not pass into law until sufficient time has elapsed to enable the electorate to be properly informed of the issues involved and for public opinion to crystallize and express itself. The " one year's delay " from the Second Reading in the House of Commons proposed in the Parliament Bill now before Parliament is in fact largely illusory. For experience shows that it may take eight months for a Bill to pass through the ordinary processes of Parliament. Such a curtailment of the powers of the Second Chamber as is involved in the Government proposals would, in the view of the Opposition, represent a formidable step towards Single Chamber Government, with all the risks entailed. And this is an especial danger in a country like Great Britain where there is an unwritten Constitution and fundamental constitutional changes can be made by a simple Bill. The Opposition Leaders regard the safeguard of some effective power of delay by the Second Chamber as vital at all times and especially at the present juncture, when political instability is so evident throughout the world. They believe that there is no danger that such a power would be used frivolously. For the very existence of a Second Chamber must depend on its acting with due responsibility. And this would apply with redoubled force in the case of a Second Chamber composed of men and women chosen for their individual wisdom and experience, especially if steps were taken to ensure as far as possible that there is no permanent majority for any one political Party. In this case it could not be said that the procedure would operate differently in the cases of Governments of the Left and of the Right.

Notwithstanding this view, the Opposition Leaders considered that if it had been possible to reach agreement over the whole field of Composition and Powers of the Second Chamber, they might have regarded as acceptable a period of eighteen months from Second Reading in the Commons—halfway between the two years of the Parliament Act and the one year proposed by the Parliament Bill. Indeed, in order to facilitate such agreement, they would have been prepared to suggest for consideration by their supporters an even shorter period of twelve months from the Third Reading in the Commons. Any further reduction of the period would in their view involve a breach of the spirit and purpose of the Parliament Act. No doubt the time factor would vary with the complexity of a Bill, and the time taken up by Parliamentary debate in both Houses. But a period must be provided which covers all Bills. On the principle to be applied in deciding what that period should be, there is really a fundamental difference between the Government and the Opposition. In the view of the official Opposition, the effect of the Government proposals would be to allow a period sufficient to ensure full Parliamentary consideration by both Houses, but little or no more. The Opposition contend that this is not enough; and that the time factor must be sufficient to allow for reflection by the country after discussion in Parliament has been concluded and the matters at issue between the two Houses have been clearly defined.

Failure to provide this period for reflection by the electors would, in the view of the Opposition, curtail the powers of the Second Chamber to a point at which its value as a balancing factor in the constitution would be largely nullified. To this they could not agree in view of the danger to the liberties of the People that would be involved.

10. The Liberal Leaders had originally criticised the Parliament Bill on the ground that it did not provide a sufficient suspensory period. Accord-

ingly they had suggested that the " period of Delay " should run, not from the Second Reading, but from the Third Reading in the Commons.

However, in their view, the alternative proposal made by the Government during the course of the Meetings sufficiently met their original objection, and the Liberal Leaders were prepared to suggest the acceptance by their Party Members of the Government proposal.

Having regard to the measure of agreement in principle on proposals for the revised composition of the Second Chamber, the Liberal Leaders deplored the breaking off of further discussions by reason only of a matter of three months in the suspensory period. This, in their view, is a matter of minor importance, which should have been capable of adjustment.

11. The representatives of all three Parties were united in their desire to see the House of Lords continue to play its proper part in the Legislature: and in particular to exercise the valuable functions of revising Bills sent up by the Commons, and initiating discussion on public affairs. It was regarded as essential, moreover, that there should be available to the country a legislative body composed of men of mature judgment and experience gained in many spheres of public life. But the Government representatives and the representatives of the Official Opposition considered that the difference between them on the subject of Powers was fundamental, and not related only to the length of the " period of delay."

In these circumstances, the Party representatives concluded that there did not exist between them that basis for further discussions which would warrant carrying negotiations beyond their present stage.

References to the White Paper in the Lords and Commons during 1948.—Q. was asked in the Commons on April 27[1] as to whether the Prime Minister would make any statement on his consultations with regard to the powers and constitution of the House of Lords. His reply was that he was not in a position to make a statement.

In reply to a Q. on May 4,[2] the Leader of the House of Commons said that the discussions between the Party Leaders had now been concluded and an agreed statement had been prepared and was presented by the Prime Minister, copies of which were available in the Vote Office.

On May 4,[3] the Leader of the House of Lords intervened to make the announcement, also made in another place, that the preliminary discussions between Party Leaders had now been concluded. The Leaders of the Parties represented at the Conference had prepared an agreed statement on the course of these discussions and his rt. hon. friend, the Prime Minister, was presenting a White Paper on their behalf.

The Marquess of Salisbury then said that he did not think it desirable to make any comment at the present stage. No doubt Their Lordships would wish to read the document and the House to consider in due time the course they would take with regard to the Parliament Bill now before Parliament.

On May 6,[4] when the Leader of the House of Commons was making a statement on the course of Business for the next week, an hon. member, in reference to the White Paper, said that as far as the

[1] 450 *Com. Hans.* 5, s. 205.
[2] 155 *Lords Hans.* 5, s. 618.
[3] *Ib.* 1086.
[4] 450 *Com. Hans.* 5, s. 1456.

composition of the House of Lords was concerned, certain proposals had been put on record, and although they were only provisional, it might be taken that they were the considered views of their side of the House. Would the Leader of the House arrange for time for the consideration of the proposals?

To this Mr. Morrison replied that it was quite clear from the document that none of the Political Parties was committed, but he did not consider there would be any advantage from a debate in the House.

On May 12,[1] in answer to a later Question by the same hon. member as to whether the Prime Minister could now state the Government's policy in regard to the reform of the composition of the House of Lords, the Prime Minister said that paragraph 5 of the White Paper summarized certain general proposals for reforming the composition of the House of Lords. These he would have been prepared to commend in principle to the Labour Party if it had been possible to find a basis for agreement between the Parties covering both the composition and the powers of a Second Chamber.

In a Supplementary, the Prime Minister was asked if he was aware that the clear intention of the Government to introduce women into the House of Lords and to abolish the heredity principle had given great satisfaction to the country.

To a further Supplementary, asking whether the Government would continue their efforts to try to bridge the gap following the Conference between the Parties, the Prime Minister said that they had given much time to the question and had failed. He did not think it would be useful to re-open the matter at the present moment.

D. DEBATE RESUMED IN LORDS

On June 8,[2] the Leader of the House of Lords, the mover of the Adjournment, gave way to the Lord Chancellor (Viscount Jowitt), who said that one of the most important matters which Ministers or Leaders of their House should consider in regard to any particular proposal was, whether or not it had been specifically referred to the electorate, and that the proposal for the introduction of a Bill to deal with the Iron and Steel industry had been plainly put before the electorate.[3]

The noble Viscount said that the Conference had met on 7 occasions. Everything they did was *ad referendum* to their respective parties. In regard to the composition of the House of Lords which should be complementary and not a rival to another place, the Lords of Parliament should be appointed and not elected, and should include women. He visualized a House of about 300 members, and thought it would be easier to agree on individuals than on the categories in which they would fall.[4] If a permanent majority for any Party was to be avoided, there must be a considerable Cross-bench element. The Conference, however, broke down on the question of powers. An

[1] *Ib.* 2116. [2] 156 *Ib.* 443-523. [3] *Ib.* 445. [4] *Ib.* 446, 7.

out and out rejection by the Lords of a Bill passed by the other place was a remarkable event and likely to focus public opinion. Was not 9 months from the Third Reading of such a Bill in the Commons amply sufficient?[1] Yet no one wanted any extension of the powers of the Lords under the Parliament Act 1911.[2]

Under the existing law, it would no longer be possible in the fourth year for the other place to pass a Bill unless it commended itself to a majority of their Lordships' House.[3]

If they continued to work as they had done in the past, the Bill would do no harm. If they passed it, the fourth Session would fall in the same category as the first 3 Sessions of a 5 year Parliament. Herein lay the significance of the 3 months which divided them. The Conference discussed 12 months from the Second Reading or 9 months from the Third Reading, whichever was the longer, and the Lord Chancellor said that he would seek to obtain, but they had not obtained, authority from his Party to enter into such a bargain. The Conservatives reluctantly agreed to discuss 12 months from the Third Reading and said they would seek authority from their Party to such a compromise.

The Lord Chancellor said that taking a strictly reasonable estimate, he considered that a major controversial Bill would take not less than 6 months from its introduction in another place to its Third Reading, which he thought was a reasonable time.

The Conservatives claimed that for two-fifths of the lifetime of a Parliament the elected representatives of the people should be under the control of that Party.[4] The principle behind the Bill was that the 2 years laid down 40 years ago was too long.[5]

The Marquess of Salisbury then gave Notice of an Amendment to leave out all words after the word "That", in the Question—"That the Bill be now read 2a" and to substitute:

"this House declines to give a Second Reading to a Bill which by the reduction proposed in the period laid down in the Parliament Act, 1911, would go far towards establishing Single Chamber government and thereby deprive the country of a vital constitutional safeguard of its liberties."[5]

The noble Marquess said that he had personally no complaint to make of the spirit which inspired both the Government and the Liberal Party in the Conference conversations. Unfortunately, they came up against a difference of principle regarding the functions of the Second Chamber. The question of composition did not, of course, arise directly under the Bill, which was one of their main complaints against it and those paragraphs of the White Paper dealing with composition did not, as was frequently assumed, represent a definite inter-Party agreement. As stated in paragraph 5 thereof, they were provisional proposals. It was on this aspect of powers, with which His Lordship's Amendment alone dealt, that their talks failed, be-

[1] *Ib.* 448. [2] *Ib.* 449. [3] *Ib.* 450, 1.
[4] *Ib.* 451, 2. [5] *Ib.* 452. [6] *Ib.* 453.

cause it was found that a fundamental difference existed between the Government and the Conservative Party as to the functions which their Second Chamber should perform.[1] This 3 months' difference enshrined a vital difference of principle.

The first function of their Chamber was, with the wealth of expert opinion available, the discussion of great questions of the day. The second function was the revision of Commons Bills. Indeed there had not been a single Commons Bill sent up to Their Lordships' House in the last 3 years that had not been improved in its passage through the House of Lords.[2]

Then there was the question of the mandate. Every now and again there came before Parliament a measure for which the Government had no mandate. On a great majority of these Measures the view of the British people was well known. There were, however, certain very rare cases, where extremely controversial measures were introduced on which the view of the electorate was not known, or where there was good reason to suppose it was hostile to the proposed legislation. To ascertain the views of the people and act so far as possible in harmony with those views was the essence of Parliamentary democracy.

It was never the intention of the Parliament Act 1911 that the House of Lords should have the power to thwart or even to interpret the will of the people. All that Act did was to provide a breathing space to enable the British people to make up their minds.[3] The power of delay was a vital safeguard, especially in the United Kingdom, because, unlike the U.S.A. and other countries, they had no written Constitution.

The noble Marquess did not take the view that, once the House of Commons had been elected, the majority in that House should have a blank cheque to legislate as they thought fit until the next General Election, whatever the British people might think.[4] The particular political clique who were single-Chamber men wished to nullify the powers of the Second Chamber because they wanted no check on their autocratic power either from the House of Lords, the people, or anyone else. The retention of some effective power by a Second Chamber was of vital interest to all those who believed in free institutions.

In the talks they had, the Conservative Party did not insist upon the retention of the 2 years' period from the Second Reading in the Commons, which was regarded as the minimum safeguard by the framers of the Parliament Act. They moved first to 18 months from the Second Reading, which was half-way between the period under the Act and that in the new Parliament Bill. And later the Conservative Party moved to 1 year from the Third Reading in the Commons. The biggest concession the Government made was to offer 9 months from the Third Reading in the Commons, which was no material

[1] *Ib.* 454. [2] *Ib.* 455. [3] *Ib.* 456. [4] *Ib.* 457.

advance at all. For in the case of any extensive Bill, its passage from the Second to the Third Reading in the Commons took about 3 months of Parliamentary time.[1] Under the Bill the people would have no time to make their views on a vital issue really effective.[2]

The House of Lords did themselves claim the right to interpret the view of the people, but if a certain period was necessary to allow public opinion to crystallize and express itself in the first 3 years of a Parliament, it was equally necessary in the fourth and fifth years.[3] If the electorate at a General Election supported the Government in their views by re-affirming confidence in their policy and returned them to power, the period of delay which had already passed before the General Election was counted as part of the total period of delay under the Act, so that no time would be lost.[4]

It was not a Party question. "It is the right and the liberties of the British people that are at stake," concluded the noble Marquess.[5]

Viscount Samuel said that, with their long experience of democracy, they had learned that part of the working of the Party system itself was the co-operation of Parties when it was in the best interests of the nation.[6] They on the Liberal Benches would vote for the Second Reading of the Bill in order that an amendment might be moved in Committee, embodying the view of the majority of the Conference and put into the Bill a compromise proposal of the Government.[7]

Lord Balfour of Burleigh said that the country did not realize to what extent the hereditary principle had been diluted—strengthened—by the advent of Peers of first creation.[8] What was wanted was a body of independent opinion, possessing the confidence of the country, and representing all political parties. The creation of Life Peers would bring that about. The burden of hereditary Peerage had kept out of the House of Lords many men who would have been a great asset in their deliberations.[9]

The noble Lord believed that the proposal to make Life Peers offered a real way of solving the problems both of powers and composition.[10]

Viscount Bruce of Melbourne observed that the system of democratic government which they enjoyed in this country was regarded throughout the world as a model. That system had been progressively evolved on the basis of a two-Chamber Parliament.[11] The noble Viscount said that the argument might well be used that at the 3 Party Conference the composition and powers were accepted by all Parties as being complementary.[12] His own experience of political controversy was that where people differed was in the things of which they were frightened.[13]

The Earl of Glasgow drew attention to the fact that there was no

[1] *Ib.* 460. [2] *Ib.* 461. [3] *Ib.* 461, 2. [4] *Ib.* 462.
[5] *Ib.* 463. *Ib.* 468. *Ib.* 470. [7] *Ib.* 477.
[8] *Ib.* 478. [10] *Ib.* 479. [11] *Ib.* 480. [12] *Ib.* 490. [13] *Ib.* 494.

mention in the White Paper of Scottish representation in the House of Lords. Many in Scotland did not wish for representation by a Scottish Committee, as in "another place". They considered that they should be represented by Scotsmen elected in Scotland.[1]

Lord Amwell thought that what was being claimed was the right to relegate whatever issue might be chosen at the end of a Parliament to the decision of a General Election.[2]

Lord de L'Isle and Dudley quoted Gladstone as having said:

> Decision by majorities is as much an expedient as lighting by gas. In adopting it, as a rule, we are not realising perfection by bowing to imperfection. It has the merit of avoiding, and that by a test perfectly definite, the last resort of violence; and of making force itself the servant instead of the master of authority. But our country rejoices in the belief that she does not decide all things by majorities.[3]

Lord Clydesmuir suggested that, as the Lords Spiritual represented the Church of England, why should not the Church of Scotland be represented in any reformed House of Lords?[4]

After further discussion, debate was adjourned.

Debate resumed on June 9,[5] when Viscount Stansgate said that the Gallup Poll had been described as a "cross-section of public opinion", but his Lordship regarded it as a very dangerous constitutional precedent and one which might undermine the independence of the House of Commons.[6]

With reference to the White Paper, his Lordship observed that there never had been at any previous period of their history such a document signed by the Leaders of all Parties and dealing with this controversial subject. He considered that, if they did go through a period of constitutional change, they would end by having an elected Senate, should the House of Lords not do its job.[7]

The Lord Archbishop of Canterbury wished that the Government would accept both things: a reformed House and a 12 months' period of delay. The Most Reverend Primate could not see any fundamental difference of principle between the 2 dates, provided there was a reformed House.[8]

Viscount Cecil of Chelwood believed that if one went back to 1888 and examined the facts it would be found that by general agreement some reconstitution of the House of Lords ought to be made.[9] A body was wanted with the authority of a Senate which must be in some way indirectly representative of the people.[10]

Lord Chatfield asked if the General Election really had been fought in any way on the reform of the House of Lords. Was the matter mentioned in 10 per cent. of the constituencies?[11] The value of their Lordships' House was in direct proportion to the lack of Party politics there.[12] It was not the powers of the House of Lords that needed altering; it was its reform that was necessary.[13]

[1] *Ib.* 500. [2] *Ib.* 501. [3] *Ib.* 511. [4] *Ib.* 523. [5] *Ib.* 530-602. [6] *Ib.* 534. [7] *Ib.* 539. [8] *Ib.* 549. [9] *Ib.* 557. [10] *Ib.* 558. [11] *Ib.* 568. [12] *Ib.* 569. [13] *Ib.* 570.

Viscount Swinton observed that, to-day, constitutional safeguards were as important as Parliamentary institutions.[1] The House of Lords did not claim equal and concurrent powers with the House of Commons. It did not claim the right to reject Bills for which the Government had a mandate, or to force a General Election. But it did claim the right and duty to give the country time for reflection and for expressing its opinion on important matters which had not been submitted to the electors, and to which public opinion was doubtful or apparently hostile.[2]

The Leader of the House then announced that, in order to hold the door open, he was authorized by a special meeting of his own Party that morning to say to their Lordships that:

> If the Second Reading is carried, the Government will be prepared to consider an Amendment on the lines suggested in the White Paper as to the time to be given to the Lords for the consideration of Bills. But otherwise will not, without further reference to the Party, enter into further negotiations on the powers and composition of the Second Chamber.[3]

To this the Marquess of Salisbury remarked that, as to the offer of the noble Viscount, that was exactly the proposal about which the conversations broke down. At the time the Government made that offer the noble Marquess's Party made it perfectly clear that it was impossible for them to accept anything less than one year from the Third Reading because that would not in any way preserve the fundamental principle of the suspensory period.[4]

On the Question, "Whether the words proposed to be left out shall stand part of the Question", their Lordships divided: Contents, 81; Not-Contents, 177.

It was then Resolved in the negative and amendment agreed to accordingly.[5]

Prorogation.—The Third Session of the XXXVIIIth Parliament was brought to an end by the King's Speech to both Houses on September 13.[6]

E. IN THE COMMONS: FOURTH SESSION: 1948

King's Speech.—The King's Speech at the opening of the Fourth Session of this Parliament on September 14, 1948,[7] read:

> *My Lords and Members of the House of Commons:*
>
> *I have summoned you to meet at this time in order that you may give further consideration to the Bill to amend the Parliament Act, 1911, on which there was disagreement between the two Houses last Session.*
>
> *It is not proposed to bring any other business before you in the present Session.*
>
> *I pray that the blessing of the Almighty may rest upon your counsels.*

[1] *Ib.* 587. [2] *Ib.* 588. [3] *Ib.* 598. [4] *Ib.* 599.
[5] *Ib.* 603. [6] 157 *Ib.* 1346. [7] 456 *Com. Hans.* 5, s. 4.

As in the Third Session, there were many references in the Commons to the subject of the Parliament Bill in the Debate on the Address in Reply to the King's Speech.[1]

Bill Presented.[2]—On September 16, 1948,[3] the Bill "to amend the Parliament Act 1911" was again presented.

Second Reading.—The Second Reading of the Bill took place on September 20,[4] and the debate covers 120 columns of *Hansard*. The arguments used on both sides were principally a reiteration of the debates on the Bill during the previous Session.

An amendment was moved to the Question,—"That the Bill be now read a Second Time", by leaving out all the words after "That" to the end of the Question and substituting:

this House declines to give a Second Reading to a Bill for which there has been no public demand, which ignores the readiness of all political parties to reform the composition of the House of Lords, and which can only have the effect of depriving the nation of sufficient time during the passage of important and controversial Bills to form and express an opinion. [Major Sir D. Maxwell Fyfe.]

Upon the "stand part" Question being put, the voting was—Ayes, 319; Noes, 192, and the Bill was committed to a Committee of the Whole House for to-morrow.

Procedure Motion.—On September 21, 1948,[5] however, the Home Secretary (rt. hon. J. C. Ede) in moving the following Motion:

That when an Order of the Day is read for the House to resolve itself into Committee on the Parliament Bill, Mr. Speaker shall leave the Chair without putting any Question, notwithstanding that Notice of an Instruction has been given, and on the Committee stage of that Bill the Chairman shall forthwith put the Question that he do report the Bill, without amendment, to the House without putting any other Question, and the Question so put shall be decided without amendment or debate,

—said that he did not intend to deal with the merits of the Bill, but with the procedure he was asking the House to adopt.

Section 2 of the Parliament Act 1911 provides that where a Bill other than a Money Bill has been passed 3 times by the Commons and presented to the Lords within a month of the end of the Third Session and is not then passed by them it shall become law. But there were certain obligations placed upon Mr. Speaker in regard to the process, which made it necessary for Mr. Speaker to be assured that the Bill was the same when it left the Commons on the later occasions as it was when it was first passed by the Commons; and Mr. Speaker had to give a certificate, when the Bill was presented to His Majesty for consent in the end, that the provisions of the Section had been duly complied with.

The issue therefore arose, "What is the same Bill?" For it was quite clear, said the Minister, that there would have to be certain

[1] 456 *Ib.* 6, 11, 13, 14, 17-19, 21-29, 102, 214-5, 237-9, 321-4, 338-9, 348, 397-9, 401, 415-6, 421-2, 425.
[2] (2).
[3] 456 *Com. Hans.* 5, s. 230.
[4] *Ib.* 522-642.
[5] *Ib.* 707-28.

technical alterations with regard to dates that occur in the Bill. The Minister then recited S. 2 (4) of the Act of 1911,[1] because of certain Press comments having been made that by the procedure they were adopting they had in fact prevented suggestions from being made from the Commons. That was not so, continued the Minister. The precedents of both 1913 and 1914 had established that the proper method for making suggestions was for hon. members, possibly the Government, but any hon. member of the Commons, to place on the Order Paper a suggested amendment (*vide* The Welsh Church Bill).

These suggestions, however, did not constitute a stage of the Bill. They were taken after a Motion, such as the one before them, had been carried, but before the Third Reading, so that the House should know when it voted on the Third Reading what was in the Bill as printed and the suggestions which the House indicated that they would be willing to accept as amendments, if they were acceptable to another place. On this occasion no suggestions had been Tabled and therefore the Government had not in any way precluded, and in fact could not preclude, any suggestions which might have been Tabled, from being discussed.[2]

In 1912 the Lords declined to pass the Government of Ireland Bill, the Welsh Church Bill and the Temperance (Scotland) Bill. On June 13, 1913, the Government of Ireland Bill was given a Second Reading in the Commons, after a 2 days' debate, and the Welsh Church Bill and the Temperance (Scotland) Bill were given Second Readings after 2 days' and 1 day's debate respectively. On the 19th of that month the Prime Minister (Mr. Asquith) moved a Procedure Motion, which was, of course, a more complicated Motion than the one now before them, as it had to make arrangements for the procedure on the Financial Resolution as well as on the substance of the Bill. Its provisions were very much similar to the Motion now before the House, namely—that there should be a formalized Committee stage, and both the Committee and Report stages of the Financial Resolution had to be formalized.

In moving the Motion Mr. Asquith referred to the substantial majorities the 3 Bills had received on Second Reading in the Commons, saying that they still had the strong support of the House of Commons so far as the principle of each Bill was concerned. Mr. Asquith then pointed out that the Parliament Act 1911 required the Bill in subsequent Sessions to be identical with the Bill that passed the House in the first Session and that it would be a waste of Parliamentary time to propose amendments which *ex hypothesi* could not be adopted without destroying the identity of the Bill. Finally, he referred to the suggestions procedure as the means by which certain amendments could be made, but explained that this would have to be outside the procedure relating to the Bill itself.

Later in that year the Lords declined to give Second Readings to

[1] *Ib.* 707. [2] *Ib.* 708.

the Government of Ireland, or the Welsh Church, Bills. They passed the Temperance (Scotland) Bill with amendments and sent it back to the Commons for agreement. At one stage the Government refused to consider the Lords Amendments and proposed simply to ignore them.[1] Eventually, however, agreement was reached between the two Houses, and the Temperance (Scotland) Bill passed into law.

In addition to these 2 Bills the Government had difficulties with the Lords in 1913 about the Plural Voting Bill. On April 6, in the 1914 Session, the Government of Ireland Bill was given a Second Reading in the Commons, after 5 days' debate. The Welsh Church Bill was given a Second Reading on April 21, after 2 days' debate, and the Plural Voting Bill was given a Second Reading on April 27 after 1 day's debate.

On May 12, 1914, the Prime Minister moved a Procedure Motion, the first part of which read:

That on the Committee stage of the Government of Ireland Bill and the Established Church (Wales) Bill and the Plural Voting Bill, the Chairman shall forthwith put the Question that he do report the Bill without amendment, to the House without putting any other Question, and the Question so put shall be decided without Amendment or Debate, and when an Order of the Day is read for the house to resolve into Committee on any of those Bills, Mr. Speaker shall leave the Chair without putting any Question, notwithstanding that notice of an Instruction has been given.

In moving this Motion, continued the Minister, Mr. Asquith drew attention to 2 small differences from the Procedure Motion of 1913. First, it was not proposed to allow any time for discussion at the Committee stage of the Financial Resolutions. Secondly, he said the Government had erred in not cutting out discussion of any Instructions in 1913, and that was the reason for putting in that part of the Motion.[2]

The Lords did not formally reject the Government of Ireland or the Welsh Church Bills, but they declined to give them a Second Reading and both became law under the Parliament Act procedure. The Lords also declined to give a Second Reading to the Plural Voting Bill which came forward for the second time, but further action thereon was postponed by the 1914-18 War.

The Motion on the Order Paper to-day was based on the 1914 precedent, subject to 2 points. As a result of consultation with the authorities of the House, the order in the Motion had been reversed to deal with the chronological order of events; first, with the action of Mr. Speaker and then with the action of the Chairman of Ways and Means. The anomaly of the 1914 Resolution was that it first prescribed what such Chairman was to do when the House went into Committee and then went back and said what Mr. Speaker was to do when the House reached the stage of going into Committee. Secondly, there was, of course, no Financial Resolution in the Parliament Bill of 1948.

[1] *Ib.* 709; *see also* 13 *Lords Hans.* 5, s. 1507. [2] 446 *Com. Hans.* 5, s. 710.

In reply to an interjection, the Minister said that, as he understood the procedure of the House, it was open to an hon. member to put down at some stage notice of an Instruction to the Committee that they shall do this, that, or the other. This was now more usually done in connection with Private Bills, as an opportunity of raising a discussion on a Private Bill. Of course, the Government did not know until that morning whether there would be on the Order Paper an Instruction which Mr. Speaker might have had to call had not this safeguarding phrase appeared in the Motion. Had any suggestions appeared it would have been open to the Government to give time for their consideration.[1]

On April 27, 1914, in answer to a Question, the Speaker of the day said that if no Standing Orders were passed applicable to suggestions they would come under the ordinary procedure applicable to all Resolutions, namely one stage. The Minister said: "That is to say that should a suggestion be Tabled, there would be no Readings, Committee or Report stages with regard to it; it would be just a Resolution to which presumably amendments would be made." Finally, there would be one Question—"That this suggestion be approved by the House". There was, however, no suggestion on the present occasion, and the Government accepted the Asquith practice.[2]

The Minister then moved the Motion which would formalise the Committee stage and thus ensure, if the Bill got its Third Reading to-day, that it would be returned to "another place" in the same form it was in when they sent it there last Session.

Here, in reply to a question by an hon. member as to whether a manuscript suggestion would be acceptable to the Chair before they came to the Third Reading, Mr. Speaker said that the Minister was wrong in referring to an amendment, it would have to be a Notice of motion on the Order Paper, a manuscript amendment could not be accepted for a Motion.[3]

The hon. member for Bristol West (rt. hon. O. Stanley) observed that legislative bodies which were allowed to exist, but not to debate, divide, or amend, were of course well known in certain forms of constitution, but up till now, he was glad to say, they had been a rarity in the British form of Parliamentary Government.

The rt. hon. Gentleman then said that, for this short Bill, it was only possible to find 2 amendments on Committee stage and up to yesterday they considered that both went so much to the root of the Bill that they were more easily discussed at the Second and Third Readings. They had always believed that the object of the Bill was to pass the Iron and Steel Bill through the House and that without this retrospective legislation it could not have been done.

The rt. hon. Gentleman pointed out a fundamental difference between the use of the Committee stage and the use of this Resolution

[1] *Ib.* 711. [2] *Ib.* 712. [3] *Ib.* 713.

procedure. If the Committee stage was not taken away, no one could have prevented members from introducing the amendments they desired, and if the Committee passed an amendment it would then be quite possible for the Government on Report stage to ask for its withdrawal on the understanding that they would introduce a Motion in its place.[1] Therefore everyone would have the chance of putting before the Committee the amendments they desired, which could be done in a way which would not involve the defeat of the Bill. If they relied on what they were told now that they must rely on the Resolution procedure only, it would be understood that they were completely in the hands of the Government.

To this the Minister interjected that if the Government did not choose to find time, members would have to find the time for themselves.

Mr. Stanley remarked that the Government then intended to retain the right to pick and choose Motions in a way they would not be able to do on a Committee stage. It was for that reason that he objected to the precedent of 1913-14 being taken as one which was apparently always to be applicable to Bills under this procedure. He believed that occasions could arise in future where the deprivation of the Committee stage might be a real attempt on the liberty of the House of Commons and the rights of the Opposition. It was for that reason that they would certainly divide against the proposition the Minister had advanced.[2]

The hon. member for Torquay (Mr. C. Williams) said that they had got the whole procedure on this Parliament Act into a very difficult and complicated position. It would be wise in the interest of the House itself to get that procedure a little clearer for the future.

Sub-section (4) gave the Commons a real opportunity of making a suggestion which could be put down in the form of a Motion which might be accepted by "another place" and put into the Bill and then the Commons could agree to it.[3]

Question on the Motion was then put and agreed to: Ayes, 280; Noes, 154, and it was Ordered accordingly.

Committee Stage.—The House thereupon went into Committee on the Bill.

"The Chairman proceeded, pursuant to the Order of the House this day, to put forthwith the Question, 'That the Chairman do report the Bill, without amendment, to the House'." The Committee divided: Ayes, 281; Noes, 156,[4] and the Bill was reported without amendment.

Third Reading.—Motion was then made, and Question proposed, That the Bill be now read the Third Time.

The hon. member for Oxford (Mr. Quintin Hogg) who was the first Speaker in this debate, during the course of his speech, said that the solitary object and purpose of the Bill, apart from its one retro-

[1] *Ib.* 715. [2] *Ib.* 717. [3] *Ib.* 721. [4] *Ib.* 729.

spective clause, was to reduce the period of delay imposed by the suspensory veto from a period which in practice at the moment was 18 months to a period which in practice would be about 6 months. He used these periods rather than those specified in the Bill because the periods of 2 years and 1 year were imposed upon the first Second Reading and the last Third Reading in such case, and because such an important controversial Bill would take some time to pass through Parliament. Anyhow, the figures he had given were rather more accurate.[1] The motive of underlying the period of 2 years was justified by Mr. Asquith's words:

> A delay of three Sessions or of two years when the suspensory veto of the House of Lords is interposed precludes the possibility—and I say this with assurance—of covertly or arbitrarily smuggling into law Measures which are condemned by popular opinion.[2]

The reason why the period of 2 years was essential as a safeguard to the Constitution was because the possession of these legal powers by a Second Chamber was the minimum necessary to make the Government see reason even in the face of popular opinion.[3]

It was, of course, true that the House of Lords, if it misused its powers, could reduce government to nullity in the fourth or fifth Sessions of Parliament: so it could in the first and second Sessions. It was true that under the existing law, and under the Bill, they could still do it. It was also true that a government, enraged by the legitimate or illegitimate use of their powers by the House of Lords, could advise His Majesty to dissolve Parliament and chance their arm in a General Election. That they could do during the first and second Sessions of a Parliament, or in the third, fourth or fifth Sessions. They could do it under the existing law, and they would still be able to do it. But it was not true in any way that the House of Lords, in the first or second Sessions, or in the fourth or fifth, either under the existing law or under this Bill, was able to advance by a single day a General Election. On the contrary, if it were advanced, then it would be advanced as a result of a deliberate choice by the Government.[4]

The hon. member for Dorset Western (Mr. Wingfield Digby) considered that one of the objections to the Bill could be summed up in the words of Lord Balfour in 1910, when he complained of the Parliament Act 1911 that the Bill "neither ends nor mends".

In those debates of 1910 and 1911 Mr. Asquith never attempted to deny that the question was one which was not finally solved by the Parliament Act of 1911. To quote his words:

> The problem, therefore, will still remain a problem calling for a complete settlement, and in our opinion that settlement does not brook delay.[5]

"This evening", continued the hon. member, "we are not only changing the Constitution, but in addition we are changing the way

[1] *Ib.* 738. [2] *Ib.* 739. [3] *Ib.* 740. [4] *Ib.* 747.
[5] 15 *Com. Hans.* 5, s. 1166.

in which the Constitution is changed, because we are a sovereign Parliament and that Parliament has the right to make future changes. What we are, in effect, doing, is cutting down the length of time in which our Constitution can be changed, however fundamentally, from a period of a year and a half to a period of only 6 months.''[1]

They had reached the position whereby a bare House of Commons majority was able, at the end of 6 months, fundamentally to alter the laws under which they lived, and to alter the Constitution under which they lived,—changes which in countries abroad could only be brought about with the most complicated safeguards of machinery. For example, in the U.S.A. no change of the Constitution was possible unless initiated by two-thirds of both Houses of Congress or three-quarters of the States Legislatures.[2] In Norway the Storting must not only publish the proposed amendment but hold a General Election and finally the principles of the Constitution must not be contravened. That was a very different operation from the mere securing of a Party majority in the House of Commons, with the aid of the Party Whip, which majority might only be a small one and even then still not represent the opinion of the people.

In one or a series of Bills all representative institutions may be swept away, with only a delaying power of 6 months in the House of Lords. This was removing safeguards to a very dangerous degree. Had the Government consulted the people upon this issue? Had it been fully explained to them? The only explanation had been 2 chance lines in '' Let us Face the Future ''.[3]

They had an unwritten Constitution. It was never very easy suddenly to introduce into such a Constitution, which depended upon custom and a number of other factors, something which was hard and written.[4]

It had been pointed out by modern constitutional historians that the initiative in legislation to-day rested almost entirely, not only with the Cabinet, but with a few men in the Cabinet, backed perhaps by the Party Caucus outside. The present Measure brought single-Chamber Government very much nearer than it ever was before. They had the authority of John Stuart Mill, who wrote very solid words on the subject. Cromwell himself condemned the single Chamber he himself had set up.

Within 4 years after the House of Lords was abolished in 1649 a number of very significant things happened. A new form of treason was created; a new court was set up which excluded all reporters; trial by jury was largely abrogated; and then, of course, a single-Chamber Parliament itself was abrogated in the end by the entry of Cromwell's soldiers.[5] These were a warning of the danger of entrusting too much power to the Executive. Yet they were now strengthening the Executive at the expense of other arms of the Government.

[1] 456 *Ib.* 757. [2] *Ib.* 758. [3] *Ib.* 759. [4] *Ib.* 760. [5] *Ib.* 761.

Burke once said that:

No constitution can defend itself; it must be defended by the wisdom and fortitude of men.[1]

The hon. member wanted to see a new Second Chamber, capable of restraining both Parties. He quoted the illustration of France in 1814, whose Second Chamber was despised beyond all Second Chambers because it had been created by a dictator, but which one day overthrew him.

That was but one example of the importance of having some check on the untrammelled power of an Executive. It could restrain the Executive when it overstepped the mark. The time would come when the people should be very careful to see that there was some additional check on the Party bosses.[2]

The hon. member for Wirral (Brig.-Gen. S. Lloyd) drew attention to the amount of work the House of Lords had had to do in this Parliament. For instance, on the Coal Industry Nationalization Bill 91 amendments were moved by the Government in that House, and 7 Opposition amendments were also accepted. On the Civil Aviation Bill 58 Government amendments were moved and 6 Opposition amendments were also accepted. On the National Health Service Bills 62 Government amendments were moved and 13 Opposition amendments accepted. On the Companies Bill 320 Government amendments were moved and 27 Opposition amendments accepted. The classic case was the Transport Bill, on which 139 Government amendments were moved and 91 of the 228 moved by the Opposition were accepted. Members would recollect that 35 Clauses and 5 Schedules of that important Bill were not considered at all by the House of Commons in Committee.[3] On the Town and Country Planning Bill 289 Government amendments were moved in the Lords and 47 Opposition amendments accepted. On the Agricultural Bill there were 76 Government amendments, and the Electricity Bill 107. All this showed the amount of revision done by the House of Lords.[4]

They felt there must be ample time for the task of revision, particularly if the Guillotine was to be used during the Committee stage of the passage of a Bill.[5]

The hon. member for Gloucester (Mr. Turner-Samuels) said that the House of Lords had no mandate; they did not represent anyone but themselves and they had no responsibility to the electorate.[6] The hon. member for S. Ayrshire (Mr. Emrys Hughes) observed that, after all, the people who had done the useful work of revising these Bills were not the 800 Peers but a small body of experts. Therefore he maintained that the Government, in not seizing the opportunity, were carrying on their controversy a further stage, instead of grasping the nettle now and saying to the House of Lords: "We have finished with the House of Lords and are opening a new era in the British Constitution."[7]

[1] *Ib.* 762. [2] *Ib.* 763. [3] *Ib.* 771. [4] *Ib.* 772. [5] *Ib.* 777. [6] *Ib.* 780. [7] *Ib.* 796.

The Leader of the House (rt. hon. H. Morrison) in the course of his reply said that they had had a long conference of the political parties —the Inter-Party Conference representing Lords and Commons (*see above*). They had got through without a cross word under the Chairmanship of the Prime Minister.[1] The Minister paid tribute to the hon. and learned member for Montgomery (Mr. C. Davies) and to his noble friend Lord Samuel for the important and helpful attitude they had adopted during the Conference. Their attitude was significant because they started by rather agreeing with the 12 months from the Third Reading urged by the Conservatives, but as they so nearly reached agreement on composition, subject, of course, to ratification by the various political parties or otherwise, it was right that they should require the satisfaction and approval of their political friends on both sides.

As the discussion went on, the Liberals came to the conclusion that, in view of the high measure of agreement which had been reached on composition and the near agreement on powers, it was a tragedy that the thing had to be broken up. Therefore, if the Conservatives had reached agreement, they might have got it on a changed composition of the House of Lords.

Some progress was made and they were prepared to compromise and so were their Liberal friends, but the Conservatives would not give way—on the point that the fourth Session must be imperilled as well as the fifth. That was not a reasonable proposition and the object of the Bill was therefore to protect the fourth Session.[2]

It was agreed that the Bill would facilitate a *coup d'état* but there could be no *coup d'état* in a situation which required not less than 12 months from the Second Reading to the last Reading and when the *coup d'état* had to pass through 2 Sessions of Parliament.[3]

The Opposition had made no alternative proposals. They wanted to preserve the *status quo* by which a progressive Government was at the mercy of Their Lordships' House for two-fifths of its Parliamentary life. That was a situation to which His Majesty's Government were not disposed to submit.

Question was then put—"That the Bill be now read the Third Time". The House then divided—Ayes, 323; Noes, 195, and the Bill was accordingly read the Third Time and passed.[4]

F. IN THE LORDS: THE FOURTH SESSION: 1948

1a.—On September 22,[5] the Bill was brought from the Commons enclosed with the Certificate from the Speaker that the Bill, as compared with the Parliament Bill 1947 contained only such alterations as were necessary owing to the time which had elapsed since the date of the Bill: whereupon it was read *1a* and ordered to be printed.

Second Reading.—On September 23,[6] the Lord Privy Seal and

[1] *Ib.* 818. [2] *Ib.* 819. [3] *Ib.* 820. [4] *Ib.* 827.
[5] 158 *Lords Hans.* 5. s. No. 4, 133. [6] *Ib.* No. 5, 207-37.

Paymaster-General (Viscount Addison) in moving the Motion, after referring to the previous proceedings on the Bill, said the Parliament Act did not go so far as the Commons Resolution of 1907 and left it open to the Lords to modify, alter or delay proceedings of the Commons after the Third Session of a Parliament.[1] The time had passed when a non-elected Chamber could exercise powers to decide whether a given proposal did or did not represent the wishes of the people.[2]

The Marquess of Salisbury asked what other legislation was in store for them within this Parliament which made this Bill so necessary. It was evident there was some measure in the Government's mind, otherwise why did they introduce the retroactive clause which applied only to the present Parliament and dispensed with the delay laid down in the Parliament Act 1911.[3]

The majority of urgent issues arising at any time affecting the security of the State was not controversial. But when a vital, extremely controversial issue arose, on which the people had never been consulted at all, then they should be given time to form a view and to express it. Otherwise a dominant clique in the House of Commons might impose on the nation a course of action utterly repugnant to it.[4]

Bagehot said that:

> A formidable sinister interest may always obtain the complete command of a dominant assembly by some chance and for a movement, and it is therefore of great use to have a Second Chamber of an opposite sort, differently composed, in which that interest in all likelihood will not rule.

Bagehot referred to a Second Chamber specifically as a "retarding Chamber". He regarded the power of delay as a main function of a Second Chamber.

Burke undoubtedly held the view that Governments and Houses of Commons, once they were elected, had to exercise their own judgment as to what was good for the country and introduce whatever legislation in their view was necessary to further that policy. But Burke never lent himself to the proposition that there should be no check upon actions of the Executive or the House of Commons to ensure in cases of doubt that they really did represent the will of the people.[5] In Burke's time the House of Lords had an absolute veto, yet he never advocated that control should be either abolished or drastically curtailed.[6] Was it really argued that a Government representing a minority of the nation should have an absolute right for the whole 5 years of a Parliament, without any effective check of any kind, to pass far-reaching legislation which may never have been considered by the British people at all? The harm done by that legislation might well be irreparable. That was not democracy as understood in this country.[7] In the recent conversations the official

[1] *Ib.* 209. [2] *Ib.* 210. [3] *Ib.* 213. [4] *Ib.* 216. [5] *Ib.* 217.
[6] *Ib.* 217-8. [7] *Ib.* 218.

Opposition had gone as far as they possibly could to meet the Government. They could not go further without stultifying the whole purpose for which a Second Chamber existed.

If the Government feared that the present membership of the House of Lords acted unfairly against the Parties of the Left, their proper course was not to reduce the powers of the House but to reform its composition. Noble Lords on his side of the House had never opposed this. In fact, they had consistently pressed for it, because they were convinced it was essential in order to exercise their important powers.

The White Paper made it abundantly clear that it was not on composition that those conversations broke down.[1]

Speaking for the vast majority of the members of their House, they did not want a Second Chamber biased violently, one way or the other. What they wanted was a wise, experienced body, able to throw its weight against extreme action, either by the Right or the Left.[2]

Viscount Samuel said that if the Government had desired they could, under the Parliament Act, have proposed in the Commons on the second presentation of the Bill that the House should suggest—not make—an Amendment by which the period of delay in the Bill, if not a year from the Second Reading, might be 9 months from the Third Reading in the Commons. That was a proposal which received a large measure of assent, not only in Their Lordships' House, but also in the Conference.[3] They were now back in the same position they were in when the Bill was first introduced into their House. Furthermore, the period of 1 year was not, in fact, a year and, under the provisions of the Parliament Act, might on many occasions be reduced to 3 or 4 months as would have been the case had this proposal been in operation at the time of the Home Rule Bill and the Welsh Church Disestablishment Bill.[4]

The Earl of Glasgow said that the Bill was not only an attack upon the Constitution but an assault against the principles of free democracy, which were that the will of the people shall prevail. There came a time when the mandates from the electorate exhausted themselves. With what is practically abolition of the powers of the Second Chamber, any Left-Wing demagogue with the heart of a Red Fascist and a lust for power could, by an Order in Council, change their form of Government and tear to pieces everything they held most dear. The will of the people would be the last thing that such a man would want to consult.[5] Never before had the danger of the emasculation of the powers of the House of Lords been so apparent.[6]

Lord Balfour of Burleigh recalled the two General Elections in 1910, which were resolved into a simple referendum to the people on the Parliament Bill, which, in fact, had been read a first time in the House of Commons before the Second General Election. After that

[1] *Ib.* 219. [2] *Ib.* 220. [3] *Ib.* 221. [4] *Ib.* 222. [5] *Ib.* 226.
[6] *Ib.* 227.

Election the Bill was re-introduced in the Commons and a great many amendments were proposed, providing for the exclusion of 23 or 24 things from the operation of the Measure, among them *habeas corpus*, trial by jury, Protestant Succession and Home Rule.

The Government of the day under Mr. Asquith, in the Commons resisted every single amendment. One was that the machinery of the Act should not be used for the prolongation of the life of the Parliament. Another was that no other constitutional change should be made by the operation of the Act. In the course of resisting that amendment Mr. Asquith made the concession that:

> the presumption that a decision of the Commons represents the will of the electors is one which progressively weakens as time passes.[1]

The Leader of the House, in reply, said that the Government objected to an entirely non-representative, non-elected Chamber having the right to say when the elected Chamber should have an election.[2]

The claim was that the House of Lords should decide that the people be referred to and that the existing Parliament should be brought to an end by a General Election, notwithstanding that the 5 years for which it had been elected had not elapsed. That was a claim which the Government could not accept.[3]

On the Question, "Whether this Bill shall now be read 2 a," Their Lordships divided: Contents, 34; Not-Contents, 204.

Resolved in the negative and Motion disagreed to accordingly.[4]

Prorogation.—His Majesty's speech on the Prorogation of the Third Session on October 25, contained the following paragraph:

The two Houses have again failed to agree on the Bill to amend the Parliament Act 1911.

(*Any further proceedings on this Bill in the next Session will be included in the Volume* (*XVIII*) *of the* JOURNAL *surveying Session* 1948-49.)

[1] *Ib.* 231. [2] *Ib.* 235. [3] *Ib.* 236. [4] *Ib.* 280.

IV. HOUSE OF COMMONS PROCEDURE, 1948[1]

By the Editor

Following the Article in our last issue on the proceedings of and the Report from the Select Committee of 1945-46,[2] in connection with the investigations into the Standing Orders of the House of Commons in relation to Public Business, a brief account will now be given of the revision by the Select Committee of 1948[3] of the Standing Orders of the House of Commons, including the particular Standing Orders so thoroughly investigated by the Select Committee of 1945-46.

Clerks-at-the-Table in the other Legislatures of our Commonwealth and Empire, both in the British Isles and Overseas who keep in touch with what is happening at Westminster on the subject of Parliamentary Procedure, in connection with Public and Private Business, will note the present procedural changes with interest. They will also observe that many of the historic numbers of the Standing Orders have been changed as well as their sequence, and that the lines of each Standing Order on Public Business will be numbered in fives and, in future, when citing a Standing Order, both its number and title will be given.

The number of Public Business Standing Orders has been jealously kept down, the House of Commons wisely preferring to rely largely upon established Parliamentary practice.

That House did not wait long to crown the labours of the Select Committee of 1945-46 by appointment of the Select Committee of 1948, which availed themselves of the valuable Memorandum drawn up by their then Clerk, Sir Gilbert Campion, together with the expert heads of his several Departments who assisted the Committee in this revision. One can imagine them each viewing the work of these Committees under the searchlight of their respective experience and technical knowledge, all removed entirely from the political sphere.

The actions of these Select Committees of the House of Commons in the investigation of Parliamentary Procedure are, throughout, an example to the younger Parliaments Overseas of thorough inquiry and impartial political outlook, surveying procedure in consideration both of the rights of the Government and of the Opposition.

Sir Gilbert Campion, who is now on a tour of some of our Dominion countries and visiting their Parliaments, will have the opportunity of seeing them at close quarters and even, during his short stay, learning something of the general problems confronting those Parliaments, in many cases governing huge territories and consisting of peoples of different races, creeds and languages. But all these Parliaments and Legislatures have the blessing and advantage of a common constitutional heritage, which stands them in good stead

[1] *See also* JOURNAL, Vols. I, 125; XVI, 104-43.
[2] H.C. 9-I; 58-I; 189-I (1945-46).
[3] *Ib.* 192 (1947-48).

when faced with constitutional or procedural difficulties. They can then turn for guidance and precedent to the Parliament at Westminster which gave them constitutional birth, all being framed upon one fundamental model.

With these opening remarks we shall now turn to the substance of this Article, the "Report from the Select Committee of the House of Commons on Standing Orders (Revision)".

The Select Committee's Report.—On July 5, 1948,[1] Motion was moved and Question proposed:

That a Select Committee be appointed to consider and report upon the re-arrangement and re-drafting of the Standing Orders so as to bring them into conformity with existing practice.

The Leader of the House, in reply to a question as to consideration of the Scottish Grand Committee sitting in Scotland, said that the matter which would go before this Select Committee was really one of editing and considering the order and sequence of existing Standing Orders.

The Minister later said that it was not proposed to introduce any amendments or new principles into them. It was merely a matter of codification, of editing and revision on the basis of the existing Standing Orders. The Committee would not change the substance of the Standing Orders in any particular nor would they hear evidence. After further assurance to members that the above revision was the only object of the Committee—

Question was then put and agreed to and it was Ordered accordingly.

Orders were then also made as to the personnel (12) of the Committee, that the Committee have power to send for persons, papers and records and that 3 be the quorum.

The Report[2] from this Committee was brought up and Ordered to be printed on July 28.[3] The Committee, which was presided over by the Chairman of Ways and Means, sat 4 times and Sir Gilbert Campion was the only person to give evidence. His Memorandum, which is preceded by an Explanatory Note, consists of all the Standing Orders relative to Public Business on the left-hand pages with the proposed amendments against them on the right-hand pages. Of the 113 Standing Orders, only 28 of the old Standing Orders have not been amended in the text.

The Annex to the Memorandum gives a key to the old Standing Orders with the corresponding number of the revised Standing Orders. This will be useful in comparing this with the Article on House of Commons on Procedure in our last issue.[4] In regard to the amendments to the old Standing Orders shown on pp. 131-143 of the last issue of the JOURNAL, in the left-hand columns given below are given the Orders as numbered on those pages and in the right-hand column their new numbers:

[1] 453 *Com. Hans.* 5, s. 167.
[2] H.C. 192 (1947-48).
[3] 454 *Com. Hans.* 5, s. 1345.
[4] Vol. XVI, 104.

1— 1	23A —112	47(2) —59	69 — 84
2— 2	25 — 28	48 —58	70A— 86
6— 7	33A — 39	48A	93 —109
7— 8	34A — 42	(1) & (2) —63	94 —110
8— 9	45A — 41	(3) —57	95 —111
14—16	45B — 45	48B —64	80 —(96
16—17	47(1)— 57	48C —65	(62
		49 —10	

All these old numbers with the exception of 110 and 111 have been amended and the locality of many of the old Standing Orders has been changed.

In his Explanatory Note, quoted in the Report, Sir Gilbert says:

The object of this paper is to set forth a series of amendments which are proposed to be made to the Standing Orders relative to Public Business with the object of eliminating incongruities in the style of individual Orders and of bringing the Standing Orders as a whole into conformity with the existing practice of the House. It is also proposed that the Standing Orders be re-numbered, so as to bring all related Orders into comprehensive groups. (*See* Appendix, p. 2, Explantory Note.)

The Committee express themselves as satisfied with Sir Gilbert's proposals, which they have accepted subject to certain amendments which they have incorporated.

The Committee draw special attention to the following points:

(*a*) The insertion made in S.O. 13 (Appointment of Committees) (new 15) being shown below underlined:

13. The Committees of supply and ways and means shall be appointed by the House at the commencement of every Session for the duration thereof, so soon as an address has been agreed to, in answer to His Majesty's speech.

The Committee are satisfied that this amendment is necessary in order to conform to the decision already made by the House that the procedure of moving Mr. Speaker out of the Chair should be available throughout the Session. The amendment, if adopted, would have the effect of dispensing with the necessity of setting up the Committee of Supply afresh whenever the Motion "That Mr. Speaker do now leave the Chair" is negatived or lapses at the interruption of business.

(*b*) The amendment to old S.O. 14[1] (Business of Supply) (new 16) to insert after "and" in line 8 "(except in pursuance of Paragraph (2) of S.O. 9 (Adjournment on definite matter of urgent public importance))" removes a discrepancy which has been found to exist between the last sentence of the existing S.O. 8 (Motion for adjournment on matter of public importance (which incorporates a provision adopted last Session)) and paragraph 2 of the existing S.O. 14.

The amendments to this important Standing Order (new 16) will be shown in full, the omissions within heavy square brackets and the insertions underlined:

[1] *See* JOURNAL, Vol. XVI, 135.

Business of Supply.

14 (1) Twenty-six days, being days before the 5th August, shall be allotted to the business of supply in each session.

(2) On a day so allotted, being a day on which the committee of supply or a report [of supply] from that committee stands as the first order, no business other than the business of supply shall be taken before ten of the clock, and (except in pursuance of paragraph (2) of standing order no. 9 (Adjournment on definite matter of urgent public importance)). (See paragraph 2(*b*) of the Report,) no business of supply shall be taken after ten of the clock, whether a general order exempting business from interruption under [the] standing order No. 1. ' 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 the consideration of reports of the Committee [of] from 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] He 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 the committee of supply on an allotted day, that the total [amount] amounts of all such votes outstanding be granted for those services. And the chairman shall then in like manner put severally the questions in respect of the civil estimates and estimates for revenue departments[1] and the Ministry of Defence[1] and of the navy, the army and the air estimates, 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,] previously be granted for the services defined in the supplementary estimates. He shall then in like manner put severally the questions that the total amounts of any outstanding excess vote (provided that the committee of public accounts shall have reported allowing such vote) be granted for the services defined in 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

[1] The words here in italics were added in the House on the adoption of the Resolution accepting the Report from the Select Committee (454 *Com. Hans.* 5, s. 1344.—[ED.]

[the report of] the resolution then under consideration, and shall then forthwith put, with respect to each resolution [ordered] come 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] the said 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] ministry of 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 ministry of 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 [of] for the adjournment of the House and no dilatory motion shall be moved on proceedings [for] on that business and the business shall not be interrupted under any standing order.

(9) For the purposes of this order two [Fridays] Friday sittings shall be deemed equivalent to a single sitting on any other day.

(*c*) The amendment proposed to old S.O. 45A (Business Committee) was in line 4[1] to leave out "which"; substitute therefor the words "the quorum of—The"; and in line 5 to leave out "allocation of time", the Committee remarked supplied what was obviously an intentional omission in the Standing Order, by providing a quorum for the Business Committee.

The Committee recognize that although the Standing Orders relating to Public Money, some of which are of considerable antiquity, afford a very inadequate expression of modern practice, they have, with the exception of old S.O. 67 (Procedure on application for charge on revenues of India) and old S.O. 70A (Ways and Means Resolutions), left them untouched, since their revision would require special technical knowledge and involve labour and research for which time was not then available.

The Committee, however, suggested that attention might be given to this matter at some future time.

[1] *See* JOURNAL, Vol. XVI, 138.

Debate on the Report.—On July 28,[1] it was Ordered in the House:

That the Report from the Select Committee on Standing Orders (Revision) be now considered—[The Chairman of Ways and Means].

Report considered accordingly.

The Chairman of Ways and Means (Major Milner) then begged to move:

That the present Standing Orders relating to Public Business be repealed; and that the Orders recommended by the Select Committee and set out in the Appendix to the said Report be adopted as the Standing Orders of the House relating to Public Business, subject to the following alteration:—

Proposed Standing Order No. 16, line 48, at the end to insert " and the Ministry of Defence ".

Major Milner, who was Chairman of the Select Committee set up to consider the revision of the Standing Orders in relation to Private Bills in 1945,[2] in moving the Motion, said that the Standing Orders relating to Public Business formed, even now, by far the smaller part of the volume of Standing Orders. Even as late as 1825 there were only 7 Standing Orders relating to Public Business, there being no need until the XIXth Century was well advanced for any sweeping revision.

Most of the non-financial Standing Orders had been made during the past century, since the passing of the Reform Act, to meet different circumstances as they arose. There was no consistency in language. In one Order there was the term "Report stage", in another "Consideration Stage" or "Consideration of Report" all having the same meaning.

The House would appreciate that the scrutiny of so many complicated Orders was a task of some magnitude[3] but, fortunately, a great deal of the work had been done by a Departmental Committee consisting of the Clerk of the House, Sir Gilbert Campion, and 7 or 8 of his Senior Officers, whose suggestions were embodied in the Memorandum (*which see above*) and the House was indebted to them and especially to Sir Gilbert, of whose approaching retirement[4] they had just heard with so much regret.[5]

The proposals consisted largely of changes of phrasing to bring about uniformity. Certain Orders had been considerably redrafted. The Standing Committee on Scottish Bills which had also dealt with the Estimates, in addition to Bills, is now to be the Scottish Standing Committee.[6] With reference to the amendment referred to in the Motion now before the House, as S.O. 14 now read, it might be held that all Votes could be put as one question. It now appeared that in defining the class of Supplementary Estimates those for the Ministry of Defence were omitted, hence this amendment.

[1] 454 *Com. Hans.* 5, s. 1344.
[2] *See* JOURNAL, Vol. XIV, 111.
[3] 454 *Com. Hans.* 5, s. 1345.
[4] *See* JOURNAL, Vol. XVI, 9.
[5] 454 *Com. Hans.* 5, s. 1346.
[6] *See* Editorial hereof.—[ED.]

The Committe could not recommend any far-reaching changes, but the Report mentions 3 changes of substance (*see above*). Many points of Procedure are matters of practice not covered by Standing Orders at all.

The hon. member for Gainsborough (Captain the rt. hon. H. F. C. Crookshank) wished to associate their Party with the tribute which the mover of the Motion had paid to the Clerk of the House and his Colleagues.

The hon. and gallant member referred to his criticisms of the Standing Orders on November 4 more particularly about the abolition of the Report Stage of the Budget Resolutions which had caused considerable difficulty in the passage of the Finance Bill. They had their views also as to the times of the sittings of the House, the number of Supply days, the Chairman's power in the restriction of the debate on the clause standing part, the formality of the Report Stage of the Budget Resolutions, the size of Standing Committees and various arrangements with regard to Business Committees, but the hon. member was not going to discuss these matters that day.[1]

Other hon. members also paid tribute to the work of the Select Committee and to Sir Gilbert Campion and the members of his staff who assisted him.[2]

Towards the close of this short debate the hon. member for Torquay (Mr. Charles Williams) expressed regret at the continual tendency to place the bias of the Standing Orders too much in support of the Government and not so much in the interests of the ordinary private member.[3]

[1] *Ib.* 1347, 8. [2] *Ib.* 1349, 50. [3] *Ib.* 1351.

V. HOUSE OF COMMONS: BUDGET DISCLOSURE, 1948.[1]

By the Editor

The custom of the maintenance of the secrecy of the Budget before the official statement thereon by the Chancellor has been made in the House of Commons, is a sacred constitutional convention at Westminster and one which is also respected in our Overseas Parliaments. Indeed, the position could not be otherwise. Most dearly, therefore, does any Cabinet Minister have to pay the price for any violation of this convention.

The last occasion of a breach of this convention was that of the late Mr. J. H. Thomas, then Secretary of State for Dominion Affairs. In that instance the use of Budget secrets was more serious and a judicial Tribunal was appointed under the Tribunals of Inquiry (Evidence) Act 1921.[2] This cost Mr. Thomas his seat in the Cabinet and his future Parliamentary career.

The instance given in this Article is of a different nature—a grave indiscretion—but it nevertheless necessitated the tendering to the King by the rt. hon. H. Dalton of his resignation from the office of Chancellor of the Exchequer, which was announced in the Press[3] together with the Prime Minister's reply to Mr. Dalton's letter to him, both dated November 13.

As *The Times* in a Leader on November 15 said, when expressing sympathy with Mr. Dalton:

" to some the penalty may seem out of proportion to the error yet all tradition rightly expects that a Chancellor should never fail, through the smallest incautious word, in the trust he bears. The secrets of the Budget, in particular must not be communicated by so much as a hint even by the humblest of those who know them; the slightest lapse by the Chancellor himself, whose own standard must be exemplary, cannot be condoned.

A description will now be given of the steps taken by the House of Commons in the matter.

A Financial Statement on a Supplementary Budget was made by the Chancellor of the Exchequer (rt. hon. Hugh Dalton) in Committee of Ways and Means on November 12, 1947.[4]

On the following day[5] an hon. member (*by Private Notice*) asked the Chancellor of the Exchequer whether he had considered the accurate forecast of the Budget Proposals in a newspaper on sale at 3.45 p.m. yesterday, a copy of which had been sent to him, and if he would institute an inquiry into the source of the information.

The Chancellor of the Exchequer replied that he very much regretted to tell the House that the publication to which the hon. member referred arose out of an incident which occurred as he was enter-

[1] *See also* JOURNAL, Vol. V, 21, and Articles VI and XXII (*see below*).—[Ed.]
[2] 11 Geo. V, c. 7.
[3] *The Times*, November 14, 1947.
[4] 444 *Com. Hans.* 5, s. 391.
[5] *Ib.* 551.

ing the Chamber to make his speech yesterday. In reply to questions put to him by the Lobby correspondent of *The Star* newspaper, he (Mr. Dalton) indicated to him the subject matter contained in the publication in question. Mr. Dalton acknowledged that this was a grave indiscretion on his part, for which he offered his deep apologies to the House.

The Questioner then asked the Chancellor if he would convey to the newspaper, apart from any indiscretion on his part, the very grave breach of journalistic honour on the part of a newspaper receiving such information, to publish it in advance before it could properly appear.

The Leader of the Opposition (rt. hon. Winston Churchill) asked if he might, on the part of the Opposition, acknowledge the very frank manner in which the rt. hon. Gentleman had expressed himself to the House and their sympathy with him at the misuse of his confidence which had occurred.

Another hon. member then asked the Chancellor, since this involved the professional honour of journalists in general, whether the Lobby correspondent in question knew that it was a friendly and private, if perhaps ill-judged, statement, or did he think this was for immediate publication?

Mr. Dalton said that he did not think that he should add to what he had said to the House:

> I take the blame for having committed an indiscretion in my relationship with this Lobby correspondent whom I have known, as we have known so many of the Lobby correspondents, over a period of years, and I do not think it would be suitable for me to pass any judgment on him. I have apologised for my part in the matter, and I would prefer to leave it there.

On November 17[1] the Leader of the Opposition asked the Prime Minister whether his attention had been drawn to a Notice of Motion which stood on the Order Paper in his (Mr. Churchill's) name and in the name of other hon. members, on the subject of a Select Committee to inquire into the circumstances of the disclosure of Budget information last week and whether he had any statement to make on the matter.

The Prime Minister then said.

> Yes, Sir, my attention has been called to this Motion. My rt. hon. friend, the member for Bishop Auckland (Mr. Dalton) made a very full and frank statement in public on the matter. He has paid a very heavy penalty for his indiscretion, and I know that he has the sympathy of members in the misfortune which has come upon him. I am not myself able to see what further information is required in the matter, but neither my rt. hon. friend nor the Government would oppose further inquiry—because there is nothing whatever to conceal in the matter—if it is thought necessary. To oppose it might seem to suggest there was something. There is nothing whatever to reveal beyond what my rt. hon. friend has already announced to the House. Therefore if a desire is to set up a Select Committee the Government would not oppose it.

[1] *Ib.* 821.

Mr. Churchill expressed himself as very much obliged to the rt. hon. gentleman and thought it was in the general interest and in the interests of the House, and also in the interests of the late Chancellor of the Exchequer, that the facts of the matter should be put on record by a responsible Committee in such a way as to put an end to any slanderous rumours which might be in circulation.

The hon. member for Lancashire (Heywood and Radcliffe Division) (Mr. Anthony Greenwood) then asked the Prime Minister whether he agreed that the Motion would be debatable and whether in those circumstances he would allow a free vote of the House upon it?

Mr. Attlee said he understood that such a Motion was debatable, and he would like to consider it when definitely put down.

Mr. Greenwood then remarked that he would like to have a reply about the free vote, as this was a matter for the House itself and not for the Government.[1]

Motion.—On November 20,[2] Motion was made and Question proposed:

That a Select Committee be appointed to inquire into all the circumstances relating to or associated with the disclosure of Budget information by Mr. Dalton, then Chancellor of the Exchequer, on Wednesday, 12th November.

That (*here naming* 15 *names*) be members of the Committee.

That the Committee have power to send for persons, papers and records.'

That five be the Quorum.—[*Mr. Whiteley.*]

The hon. member for Fife-West (Mr. William Gallacher) said that, in view of the statement which had been made by the late Chancellor, what need was there for this inquiry? and that the rt. hon. gentleman should not have given up his position as Chancellor of the Exchequer for the mistake he had made.

The Home Secretary hoped the House would pass the Motion. There had been negotiations as to its exact form and he thought in such case it would enable the matter to be closed on a satisfactory basis, when the report had been considered by the House. It was the wish of Mr. Dalton that this inquiry should take place. If the Committee were appointed under terms of reference this would not preclude it from considering any matter that might arise in the course of its inquiries. It was desirable that the matter should be so dealt with as to remove any fear that the statement which had been made had not fully met the situation.

Mr. Ede hoped the House would feel that they owed it to a Colleague—whom, apart from Party politics, they regarded with affection and esteem—that he should be able to say at the earliest date that the whole circumstances had been inquired into and his Colleagues in the House had reached a decision which would enable them to regard the incident as closed.

Question put and agreed to.[3]

[1] *Ib.* 822. [2] *Ib.* 1467. [3] *Ib.* 1468.

Report of the Committee.—The Report of the Select Committee[1] was laid on December 11 and Ordered to be printed.

The Committee sat 5 times between November 25 and December 11 and heard the rt. hon. Hugh Dalton, M.P. (Qs. 1-88 & 748-768); Mr. John L. Carvel, Lobby Correspondent of *The Star* newspaper (Qs. 89-320); Mr. A. L. Campbell, Editor of *The Star* (Qs. 321-520); and Mr. Guy Eden, Hon. Secretary of the Parliamentary Lobby Journalists (Qs. 521-747).

The Committee were of opinion that under their Order of Reference they were required to report to the House the fact of the matters referred to them rather than to offer recommendations or observations.[2]

The Committee heard evidence on the following matters:

(*a*) The actual circumstances in which Mr. Dalton disclosed Budget information;
(*b*) Mr. Dalton's explanation of the disclosure;
(*c*) The use made of the information by Mr. Carvel, to whom it was disclosed;
(*d*) Mr. Carvel's explanation of his action;
(*e*) The practice of Lobby journalists when they receive information from members of the House; and
(*f*) The results of the disclosure.

The circumstances of the disclosure are given in the following paragraphs of the Report:

4. On Wednesday, 12th November, Mr. Dalton, then Chancellor of the Exchequer, arrived at the House just before 3 p.m. He went from his room to the House of Commons Chamber to make his Budget speech, and exchanged greetings with a number of Members on the way. His route to the Members' Lobby led along the corridor past the Members' and Strangers' Dining Rooms and then along the corridor, which passes the Law Lords' rooms and leads into the Members' Lobby by a door on the east side of the Lobby. Mr. Dalton walked down this last corridor alone. As he was entering the Members' Lobby, or was about to enter it, he encountered Mr. Carvel, the Lobby Correspondent of *The Star*.

5. Both Mr. Carvel and Mr. Dalton stated that this was a chance meeting. Mr. Carvel said that he had been loitering in the Members' Lobby for between ten and twenty minutes when he saw Mr. Dalton appear in the doorway, and that this was a normal practice of Lobby Correspondents. In his opening statement to your Committee he said: " At that time I had no definite ideas about writing a pre-budget story, although I was on the alert for news, and it was in my mind at least to provide my office with some Diary paragraphs about the general Budget Day atmosphere, as I had done on many former occasions.[3]"

Mr. Dalton, in answer to a question,[4] said, " I often see Mr. Carvel about the Lobby. I cannot say that I was surprised that he was moving about in the passage at that time." He agreed that it would be a natural thing for Mr. Carvel to wait about there, knowing that the Chancellor was bound to pass that way.

6. There is a difference of recollection between Mr. Dalton and Mr. Carvel as to the precise place of their encounter and their movements once they had met. Mr. Dalton emphasized in his evidence that, when the encounter took

[1] H.C. 20 (1947-48). [2] *Rep.* § 1. [3] *Q.* 90. [4] *Q.* 33.

place, his mind was full of his Budget speech and that his recollection of the detail was not completely clear. So far as he remembers the details of the meeting, it took place in the Law Lords' corridor, and Mr. Carvel did not go with him through the door into the Members' Lobby. " I was walking," he said,[1] " at a moderate pace, perhaps a little more quickly than ordinarily, down the corridor, and Mr. Carvel approached me. I would not like to charge my memory whether he came from the side or from the front, but he engaged me in conversation and walked with me during this tract of the corridor." Mr. Carvel's version of the encounter is that he was standing in the Members' Lobby, just inside the doorway, that he met Mr. Dalton in the doorway, and that Mr. Dalton greeted him in his usual friendly way. According to Mr. Carvel's account Mr. Dalton linked his arm through that of Mr. Carvel and took him back into the corridor, at most about two yards. Mr. Carvel opened the conversation by saying, " Well, what is the worst you have for us to-day?" or something to that effect. It is not clear exactly where he says these words were said; but both witnesses are agreed that the ensuing conversation took place in the corridor and that there was no one else about at the time.

7. The conversation was very brief, lasting for not more than two or three minutes. Mr. Dalton's recollection of it[2] is as follows:

> " He asked me, ' How about the Budget?' I said, ' You will soon hear all about it, and it will be quite a short speech this time—not more than an hour.' He then began to ask me about particular taxes. I think he first asked about tobacco. But I cut these questions short, and told him, in a single sentence, what the principal points would be—no more on tobacco; a penny on beer; something on dogs and pools but not on horses; increase in Purchase Tax, but only on articles now taxable; Profits Tax doubled."

Mr. Carvell, in his opening statement, said:

> "To open the conversation I said to him, 'Well, what is the worst you have for us to-day?' or something to that effect. In the ensuing conversation, which could not have lasted more than two or three minutes, he indicated several items which I later passed to my office. We then separated after I had wished him good luck with his speech."

Mr. Carvel's evidence was later amplified by question and answer[3] as follows:

> *Q.* Did the conversation begin by your saying: " How about the Budget?"
>
> *A.* The actual wording I cannot remember now, but I think I said: " What is the worst you have for us to-day?"
>
> *Q.* Did you ask him about particular taxes?
>
> *A.* No. I did not ask any particular question at all.
>
> *Q.* You made no reference to: " What about the Tobacco Tax?" or anything like that?
>
> *A.* No. I put the one question. I may have put another question while he was talking to me, but I cannot remember a single one. It just came like that.
>
> *Q.* In one sentence, more or less, from Mr. Dalton?
>
> *A.* It might have been two or three sentences. I certainly did not press the matter by putting other questions.
>
> *Q.* It must have come as a bit of a surprise to you?
>
> *A.* It came as a surprise, I admit.

10. Mr. Dalton emphasized in his evidence that his memory was not clear as to whether he told Mr. Carvel that the information he had given him was

[1] *Q.* 28. [2] *Q.* 1. [3] *Qs.* 143-147.

" off the record ", or should be kept confidential until after the Budget speech. Mr. Carvel in his evidence[1] stated that he obtained the information " without any embargo on it ", and Mr. Dalton said that if Mr. Carvel was sure that that was so he did not challenge his recollection.

In regard to Mr. Dalton's explanation of the disclosure the Committee in their Report state that:

11. Your Committee heard evidence from Mr. Dalton in explanation of his giving advance information to Mr. Carvel of the contents of the Budget. He said:[2]

> " Having regard to the time and to the subject matter of our talk, it certainly never entered my mind that he would telephone it to his paper, or that they would publish it, or, indeed, that they would have time to publish it before my speech began to come along. I was on my way to my place in the Chamber, and I assumed that Mr. Carvel was on his way to his place in the Gallery to hear my speech. My quick thought was (and it all passed very quickly) to give him, in reply to his questions, the main points in advance, so as to help him to make a good note for his paper. I have known Mr. Carvel for a number of years and have come to regard him as a friend and as a man of discretion."

13. Mr. Dalton agreed in his evidence that it was the absolute duty of a Chancellor of the Exchequer not to disclose Budget information to journalists before opening his Budget. In his opening statement to your Committee, he said:[3]

> " The point is that I should not have told Mr. Carvel what I did, that the responsibility for doing so was mine and not his, and that I thus committed a grave indiscretion, for which I apologized, next day, to the House. I am the more grieved about this indiscretion because I carried many deep and heavy secrets with complete security while I was a Minister of the Crown during the war, particularly while I was Minister of Economic Warfare, and I am grieved also because I have often felt proud that, until this incident, there had been no leakage of secret information from the Treasury during my term of office as Chancellor."

14. Mr. Dalton went on to say:

> " My conversation with Mr. Carvel passed entirely out of my mind until 1 p.m. next day, when I first heard about the publication in *The Star*. As soon as I heard this I said to two colleagues who were with me: ' This means that I must resign my office.' I saw the Prime Minister at 2.15 and offered him my resignation before coming down to the House and answering the *Private Notice* Question by the hon. member for Wavertree. After Questions and after listening to the first two hours of the Budget Debate I saw the Prime Minister again. He then accepted my resignation and we exchanged letters and arranged for their publication. This was several hours before I received the letter from the Leader of the Opposition proposing a Select Committee. I afterwards told the Prime Minister that if a Select Committee were asked for I hoped that the Government would agree to it without any hesitation."

The Committee, in paragraphs 15-19 give an account of Mr. Carvel's use of the Budget information and its publication in *The Star*, which was in the following form:

15. Having recorded the evidence they heard from Mr. Dalton on his part in the occurrence, your Committee now wish to quote Mr. Carvel's account[4] of his own actions from the time he left Mr. Dalton. It is as follows:

[1] *Q.* 90 [2] *Q.* 1. [3] *Ib.* [4] *Q.* 90.

"I felt what I had learnt should be made known to my paper, so I went at once to the direct telephone line from the House and dictated the news which appeared in *The Star* that afternoon, with the exception of one item, which I later added as an afterthought, as explained below. I had not written notes, and cannot now remember the exact phrasing; but the published story was, so far as I recollect, substantially the same as I telephoned, and was neither more nor less detailed. The item I telephoned later was the one dealing with betting pools, dog and horse racing.

I then spoke to my editor, Mr. Cranfield. I told him that I thought there was material for a late forecast of some of the Budget items, repeating what I imagined they were. He asked if the information was reliable. I replied that I considered it was sound and my authority for it good. I did not, however, reveal the source of the information. In this I was following my usual course and also the custom of the Lobby Journalists, the whole foundation of whose relationship with Ministers and private Members alike rests on the absolute understanding that sources of information should not be disclosed.

After leaving the telephone on the first occasion at somewhere around 3.15 to 3.20 p.m., I went to my seat in the Press Gallery. It was there that I remembered the separate point mentioned above, and I left to telephone my office again. That would be from five to ten minutes later."

16. Your Committee were informed by the Editor of *The Star* that it was the routine practice for Mr. Carvel to telephone news stories direct from the Lobby. Mr. Carvel's first message, telephoned at 3.17 p.m., read:

"I believe that when Mr. Dalton introduces his Budget to-day the following will be among the proposals:

Penny a pint increase in the beer duty; no change in tobacco; Profits Tax to be doubled; Purchase Tax to be substantially increased but not to be applied to any new commodities."

As the Editor expected the Chancellor to speak for 75 minutes, and as the actual Budget Edition of *The Star* would not therefore be out until about 5 p.m., he was pleased to have what he was told was a late forecast of the Chancellor's proposals, which would catch an edition of 250,000 copies, which was due to be printed at 3.40 p.m.

17. Mr. Carvel's second telephone call, which was received before his first message had gone to the printer, read: "There will also be a tax on dogs and football pools but not on horse-racing." When Mr. Carvel asked to speak to his Editor again and told him that he had these two more points that he thought could be relied on, Mr. Cranfield sub-edited the message to put it into the third person, gave headings to the story, and sent it to the printer to be set and put in the Stop Press of the edition that was about to be printed. Mr. Cranfield told your Committee that if he had known that Mr. Carvel was giving him the result of a statement made to him by the Chancellor, he would not have printed it, as it would have seemed to him to be a direct Budget leakage. From his point of view there was no duty laid upon Mr. Carvel to tell him where he obtained the information.

18. Mr. Carvel's message, as sub-edited by Mr. Cranfield, appeared in the Stop Press of *The Star* in the following form:

"PENNY ON BEER"
TAX ON POOLS AND DOGS LIKELY

Star Political Correspondent writes: It was expected Chancellor's proposals would include:

1d. a pint increase in the beer duty.
No change in tobacco.
Profits tax to be doubled.

Also likely to be a tax on dogs and football pools, but not on horse-racing.

Purchase tax to be substantially increased but not to be applied to any new commodities.

19. The edition of *The Star* in which this message first appeared consisted of 258,100 copies printed at two presses in London, and 16,001 copies in which the message was printed-in locally at 24 towns in South-East England by means of a broadcast-telephone system. Of the 258,100 copies printed in London, 256,973 copies were distributed; of these, only 260 copies were on sale before 4 p.m. These copies arrived in Fleet Street at approximately 3.50 p.m. for delivery to sellers in the area between Middle Temple and Wellington Street. Of the papers with the message printed-in locally, the only copies on sale before 4 p.m. were a few on sale at Gillingham and Tilbury at 3.55 p.m. The following extract from column 400 of *Hansard* of November 12 shows that, in his Budget Speech, Mr. Dalton did not turn to his revenue proposals until after 4 p.m.:

Mr. Dalton: So much for expenditure. Now I will turn to the revenue, and to the increases in taxation which I propose. It is past four o'clock and the Stock Exchange will soon be shut.

Mr. Osborne (Louth): It closes at three o'clock.

Mr. Dalton: Then it is already closed, and it is safe for me to proceed with this part of what I have to say.

Paragraphs 20-4 deal with Mr. Carvel's explanation and read:

MR. CARVEL'S EXPLANATION OF HIS ACTION

20. Mr. Carvel explained, in the concluding paragraphs of his statement to your Committee, his action in telephoning to his newspaper the information which the Chancellor had given to him. These paragraphs (Q. 90) read as follows:

" I respectfully submit to your honourable Committee that the information Mr. Dalton gave me could legitimately be used in my capacity c Lobby correspondent. He did not indicate in any way that what he wa saying was ' off the record,' which is usual when information given t Lobby journalists is not intended for use by them, and I assumed I migh make use of it within the bounds of the normal Lobby practice of not revealing sources of information or attributing facts to particular individuals.

Mr. Dalton knows I am a journalist, and I felt he was quite consciously helping me in the capacity with my work, in the way Ministers and other honourable members of all parties frequently give background information to Lobby correspondents, which they use in their stories on their own responsibility. In my experience in the Lobby I have constantly received background information on highly important matters, which I was free to use prior to official announcements, and I considered this was one such occasion.

I did not for a moment think the Budget had been practically unfolded to me, but rather guessed I could have been given only clues to part of it. I frankly admit I never expected that I was providing a story containing five of the main proposals, and I was astonished when I discovered how comprehensive my forecast had been.

I knew my paper would be interested in what I could transmit, for Budget forecasts, as usual, had been appearing in almost every paper for several weeks right up to Budget Day. I had written a number myself—all anticipating what I thought the Chancellor would do—and I regarded this as one more forecast. It was in that way that it appeared.

I think I can claim to have enjoyed the confidence over a long period

of many right honourable and honourable members of the House of Commons. It has never once been suggested I have broken faith with any of them. In this incident I acted in good faith throughout. I obtained the information without any embargo on it, and at the time I had no means of knowing how far Mr. Dalton had divulged the contents of the Budget. I believed there was no restriction on the use of the information in the form in which it was presented, and I sought only to do my job for my paper, within the limits of my duty as a Lobby correspondent.

At the same time I would like your honourable Committee to know that if I could have had any realization of the tragic outcome for Mr. Dalton I should never have telephoned my office, and my regret that I did so, now that I am aware of the events that followed, is deeper than ever I shall be able to convey."

21. Your Committee examined Mr. Carvel's submission that the information given to him could legitimately be used in his capacity of Lobby correspondent, a post which he has held for 11½ years. He agreed, in evidence, that if a newspaper had by 2 p.m. on Budget Day acquired from some authentic source the information which had actually been disclosed to him, it could result in a very serious disaster. The only possible distinction that can be drawn between the acquisition of Budget information at 2 p.m. and at 3.15 p.m. is that there might be no time to publish information given at 3.15 before the actual Budget Speech came through. Mr. Dalton was under the impression that there would be no time for premature publication. Mr. Carvel knew there was just time to publish, and he gave the information to his newspaper for that purpose, though in the guise of a late forecast. Mr. Carvel stated in evidence that he thought, at the time, that the information was given him in such a way that he could use it, but agreed that if he had stopped to think, at the time he received the information, he would have known then that his use of it was not legitimate.

22. Mr. Carvel also agreed, in evidence, that if it appeared that an accurate forecast of a Budget statement had been made beforehand, it was inevitable that it would be followed by a Parliamentary inquiry. He said in his statement that he never expected that he was providing a story containing five of the main Budget proposals, and that he was astonished when he discovered how comprehensive his forecast, as he called it, had been. The details disclosed to him, of the Chancellor's decisions on beer, tobacco, purchase tax, profits tax, football pools, dog-racing and horse-racing, were clearly of such importance that they would be major features of the Budget Speech. As in fact happened, an observant reader could not fail to notice a coincidence between " forecast " and actuality so great as to provoke inquiry.

23. Mr. Carvel was given these facts by the Chancellor of the Exchequer himself. He passed them on to his newspaper, describing them as a forecast. He intended the readers of his newspaper to believe that his " forecast " was intelligent anticipation, but the fact remains that he revealed information which he knew to be accurate.

24. At the end of his evidence Mr. Carvel admitted that he had made a mistake, though, he said, it had not seemed to him to be a mistake at the time he made it.

In regard to the practice of Lobby correspondents the Committee state that they have inquired whether Mr. Carvel's action was in accordance with the accepted practice of Lobby correspondents and they obtained a memorandum from Mr. Guy Eden, Honorary Secretary of the Parliamentary Lobby journalists, and heard evidence from him on the code which these journalists observe in the course of their contacts with members of the House. The memo-

randum had been unanimously approved at a special meeting of the Lobby journalists.[1]

As this memorandum is of special interest in regard to the practice of Lobby correspondents it is given at length:

I have the honour to submit a memorandum covering points which may be of assistance to the Select Committee.

1. For about 63 years journalists have been permitted to " enter and remain in " the Members' Lobby of the House of Commons. The journalists granted that privilege are placed on a " List," which is compiled by the Serjeant-at-Arms, under the authority of Mr. Speaker. The total number of British Lobby journalists is about forty, of whom about thirty are in daily attendance when Parliament is in session.

They represent the national and provincial newspapers, the news agencies, and, latterly, the British Broadcasting Corporation.

Most of the journalists remain in the Lobby for many years (I myself have been an accredited correspondent continuously for 24 years) and naturally, in course of time, develop close friendly relationships with honourable and right honourable members, with officers of the House and of political parties.

2. Journalists on the " List " are admitted to the Lobby for the purpose of making and maintaining contact with members of all Parties, Ministers and officials, with a view to recording events and generally explaining the political scene. They have always been accepted by the House on terms of mutual confidence and trust.

3. At times of national crisis, and particularly during the war, the Lobby journalists have handled official secrets of the highest importance, and there has never been a well-founded suggestion that they had been misused or carelessly handled. The Lobby journalists have also frequently been chosen as the medium for the handling of national matters requiring special delicacy and tact.

4. Contacts between honourable and right honourable members and the Lobby journalists take two forms:

(*a*) Individual contacts between members and journalists. Members nor mally maintain close touch with the representatives of the newspapers in the own Divisions, for instance, on matters of national and local importance, ar on their own activities.

(*b*) Collective contacts, in which members are given facilities for meeting the Lobby journalists as a body.

5. *Individual Contacts.* These have always been regarded as a matter entirely between the member and the journalist concerned. There is often close personal friendship between them, and many of them served together in the Parliamentary Home Guard during the war, or in other fields of public service. In other cases there may be a Party link. Any honourable member is, of course, free to give or withhold information at his own discretion, but the journalist has always been free to use his own skill and ingenuity and general knowledge of political and public matters, in order to gain information on matters of national or local importance, so long as the privileges of the House are not infringed.

6. The practice has always been that no honourable member or other informant is to be quoted textually or mentioned by name without express permission. But any information gained may be used by the Lobby journalist in his own words and on his own responsibility. It has always been the practice for a Lobby journalist to accept full responsibility for what he writes and never to quote an informant should any complaint or criticism arise. The publication of such information rests on the discretion of the Lobby journalist,

[1] *Rep.* § 25.

and the closeness of his relations with the member concerned. It is on this that the tradition of mutual confidence and trust has been established. The degree of confidence between a journalist and a member naturally depends to some extent on the closeness of their personal relationship.

7. *Collective Contacts.* These are arranged, for mutual convenience, between honourable members and the Lobby journalists as a body, when some information of general interest is to be imparted. The meetings are arranged so that an honourable member may address all the Lobby journalists together, as a means of saving time and trouble.

At these meetings the same practice applies as for individual Lobby contacts—no quotation without permission, the Lobby journalist to take full responsibility for anything written, and anything said to be available for publication unless specifically put " off the record ".

8. In both individual and collective contacts the assumption is that any facts given or views expressed are intended for publication unless the contrary is stated. There have been cases where experienced Lobby journalists have themselves volunteered the suggestion that some piece of information, freely given, should, on consideration, be placed " off the record " in the public interest. Whether this is done must depend entirely on the individual journalist or the chairman of the meeting.

9. It has always been a tradition among Lobby journalists that anything which an honourable member might ask to be " off the record " is regarded as strictly confidential and not for publication.

10. The Lobby journalists elect annually a chairman, honorary secretary and treasurer, and a small committee. These officials take charge of the arrangements when the Lobby acts as a body. Such occasions are either purely social or the meetings described above (paragraph 7). Members of the Lobby exercise no disciplinary authority over each other. Such " rules " as there are are those dictated by long experience and the ordinary usages and courtesies of gentlemanly conduct.

11. Sanctions against the abuse of the privilege of entry into the Members' Lobby lie entirely and exclusively in the hands of Mr. Speaker. He may, at will, exclude any journalist from the Lobby, and there is no appeal against that decision. The only other person who can exercise any authority over a Lobby journalist in this connection is his own editor, who can recall him from the Lobby, even if he is still acceptable to Mr. Speaker.

The Lobby journalists as a body therefore have no voice in the selection or admission of any of their number, or of their retention, exclusion or withdrawal from the Lobby.

12. I would beg leave to point out that, apart from events in the last twelve months, the Lobby journalists have carried on their difficult and delicate duties for considerably more than half a century with very few criticisms or complaints. This period has covered times of keen political strife as well as national crisis.

The Lobby journalists have frequently been complimented by Ministers and honourable members of all political Parties alike on their discretion, tact and highly-specialized knowledge in handling technical subjects and national and political situations.

Notes. The records of the Parliamentary Lobby journalists were destroyed when the House of Commons Debating Chamber was burned in May, 1941.

It is, however, known that the Lobby " List " was first formed in the year 1884. Sir Alexander Mackintosh, who is still alive, was placed on the List in the year 1886. Practically all the Lobby journalists are also members of the Press Gallery, and follow Questions and the more important debates from their places in the Gallery.[1]

[1] Appendix III.

It is stated in para. 30 of the Report that Mr. Guy Eden said that an embargo on publication could be implied as well as explicit, and the implication that an embargo existed might be rebutted or confirmed by the time at and the manner in which the communication was made, and by the status of the person making it, but naturally he could not give anything more than his personal reactions when examined on the application of this to the actual circumstances of the Budget disclosure.

The facts as established in evidence before the Committee are summarized by them as follows:

(1) Mr. Dalton made a premature and unpremeditated disclosure to Mr. Carvel of the contents of his Budget, which disclosure he had no right to make.

(2) Mr. Dalton did not make his disclosure for premature publication and believed there was no possibility of such publication.

(3) Mr. Carvell disclosed that information to his newspaper in the guise of a forecast, believing at the time that he was at liberty to do so. That belief was mistaken and the disclosure to the Editor of *The Star* was an error of judgment on Mr. Carvel's part. That error of judgment was made in all good faith.

(4) The number of copies of *The Star* containing the disclosure on sale to the public before the new taxes were announced in the House of Commons just after 4 o'clock was very small.

(5) Evidence from the Chairman of the Stock Exchange Council establishes that there were no movements of prices or sales which could in any way be attributed to the leakage of news which occurred.[1]

The following Questions in the evidence, in addition to those quoted in support of statements in the Committee's Report, are of special interest; the name of the witness and of the M.P. by whom the witness was examined being given in each case:

BY THE CHAIRMAN

MR. JOHN L. CARVEL

Q. 95. I have known you personally for a long time in the Lobby. I have been here in the House for 28 years and my own general feeling on Lobby news has been that unless it was understood that a statement could be used it has not been used?

A. The Lobby rule, Mr. Chairman, surely is that we are given this for background, and unless we have got a definite embargo on it we can put it over, and take responsibility for it.

By Mr. Proctor

Q. 98. You will be aware, having undoubtedly read everything that has been published in connection with this matter, that Mr. Churchill wrote a letter to Mr. Dalton on the same day as the matter was dealt with in the House of Commons?

A. I saw that letter, yes.

[1] *Rep.* § 32.

By Mr. Manningham-Buller

Q. 140. How far did you go along that corridor away from the House?
A. At the very most, I should say, about two yards; it could not have been much more.
Q. 141. Did Mr. Dalton come along that corridor first?
A. I was in the Lobby. He came along the corridor and he was in the doorway. Then he went back with me. In fact, he linked his arm through mine and took me into the corridor.
Q. 148. Had you ever before, in your long experience, had details of taxation communicated to you before the Budget Speech had been made?
A. No. It is the first time it has ever happened to me. I do not know whether any other Lobby journalist has had the experience.
Q. 156. Again without any thought that you might be revealing a conversation which had been given to you without any intention of its repetition?
A. Yes.

By Mr. Sydney Silverman

Q. 190. It is within your knowledge, is it not, that on previous occasions when there has been any reason to suppose that there has been a leakage of Budget information before the Budget Statement had, in fact, been made, Parliament has always taken a serious view of that?
A. Yes.
Q. 194. I quite follow that. You have made it very clear and have said very frankly, if you will allow me to say so, that what you were intending here was that the paper should carry a forecast. What I am putting to you is that you must, if you had stopped to think about it for a second, have realized that so accurate a forecast as that, appearing before the Budget statement, must have led to a Parliamentary inquiry. Do you agree?
A. I agree.
Q. 217. You have been for more than 11 years a Lobby correspondent. Were you a Lobby correspondent at the time of the Sir Alfred Butt and J. H. Thomas incident?
A. No. I came just after that.
Q. 218. You knew of it?
A. Yes.
Q. 219. It is quite clear that it is among the oldest and strictest traditions of the House that the Chancellor never discloses the contents of his Budget until after 4 o'clock—and for good reasons. Is it not therefore quite clear that Mr. Dalton would have no right to give you the information which he did give you?
A. Of course that was a point more for Mr. Dalton than for me.
Q. 220. No doubt that is so, but does not it involve one for you as well, when you talk about there being no embargo on it?
A. I certainly did not regard that there was any embargo on it at that time.
Q. 226. What I am suggesting to you is that since you knew that Mr. Dalton had no right to tell it to you, it was an obvious inference that it was told to you for publication?
A. It did not strike me like that at the time.
Q. 227. Does it now?
A. As I have said in my memorandum, if I had realized what the outcome was to be, I should probably have had other ideas.
Q. 228. I am afraid I must ask you for a direct answer to my question: Do you think now that the information was given to you for publication or not for publication?
A. I think it was given to me in such a way that I could use it.
Q. 230. On second thoughts, what is the answer?
A. The answer is, I do not think I would do it now.
Q. 231. You do not think it was given to you for publication, do you?

A. I still think I was free to use it.
Q. 232. Although he had no right to tell it to you?
A. That was his lookout, not mine.
Q. 233. No doubt, but if a Lobby correspondent always acted on the basis that it was the Minister's responsibility and that he had no share in that responsibility the relations between Lobby correspondents and Ministers would have to be very different from what they are now, would they not?
A. Probably.

The following letter to Mr. Dalton from Mr. Churchill as published in the Press of November 14, 1948, appears as Appendix IV to the Report:

My dear Chancellor of the Exchequer,

Since question time to-day, when I intervened on the subject of the disclosure of Budget secrets, I have received further information. I have now seen the very precise and comprehensive form of the announcement. I am also told that no obligation of secrecy was imposed upon the journalist, though that certainly seems to me to have been implicit. There could have been dealings as the result of this premature disclosure.

In these circumstances, while I acknowledge the frankness of your apology to the House and my sympathy with you in any breach of confidence which may have been committed, I feel it is necessary that the incident should be the subject of an inquiry by a Select Committee. Such is the view of my Conservative colleagues and, I also know, of the Liberal Party.

It seems to me very likely this would be your own wish, too. We are, therefore putting a Motion on the paper in this sense.

I am sending a copy of this letter to the Press.

Yours sincerely,
WINSTON S. CHURCHILL.

By Mr. Boyd-Carpenter.

Q. 249. Some newspapers do have two separate officials, do they not?
A. No. The Sketch writer or Gallery man is frequently described as "Parliamentary Correspondent," and the Lobby man is frequently described as "The Political Correspondent".
Q. 250. You have told the Committee how this conversation started. The Chancellor actually reversed his direction when you came up and started to walk away from the Chamber?
A. Yes, he walked back into the corridor.

By Mr. Alexander Anderson

Q. 265. In spite of the fact that you must have known perfectly well that this would be on the street, in *The Star* before the Chancellor made his Speech?
A. I did not know how soon it could be on the streets.
Q. 269. I still cannot get out of this difficulty, that no paper is known to carry (*a*) a forecast and (*b*) the Chancellor's Speech in the same edition?
A. I cannot explain why that happened in this case.
Q. 270. The point is that you sent this off knowing it was going to be published as a forecast prior to the Chancellor's Speech being made. It left you at 3.20. The Chancellor could not get up until after half-past 3, according to all your experience of Budget Speeches, and the definite details of his Budget could not have been given to the House prior to this appearing on the street. I want to know why you took that line. Did you feel then that you had got something that nobody else had got and that you were so anxious to get it to your paper and therefore you hurried it away quickly?
A. I just hurried it over quickly, as I should hurry any other story at the time.

By Mr. Oliver Poole

Q. 276. It would also seem that he gave you in that time, not unwillingly and not hesitatingly, the major points which, as Mr. Silverman has pointed out to you, he had in fact—and you knew he had in fact—no right to do. You could say that it was his fault and that it was up to him to decide; but you knew he had no right to give them?
A. I never gave that a moment's thought at the time.

By Mr. Sydney Silverman

Q. 279. This is rather important. Mr. Hopkin Morris asked you whether you had any grounds to suppose that the Chancellor of the Exchequer had no right to give you, at 3 o'clock, information about the contents of his Budget. Surely you knew the Chancellor had no right to give anybody information about the contents of his Budget before 4 o'clock?
A. I never for a moment, Mr. Silverman, thought of that aspect at that time.

By Mr. Hopkin Morris

Q. 280. That is the point that I want to know about. Was there anything at all that could lead you to believe that the Chancellor was committing a breach of his duty?
A. I never thought of it at that moment. I have given it any amount of thought during the past 10 days, but not then.

By Mr. Hale

I do want to put it courteously, but surely any child of 14 would know that the Chancellor is committing a breach of his duty if he conveys Budget secrets for publication?
Q 283. So you did know he had no right to do it except privately. That is so, is it not? He had no right to give it to you for publication. I apologize for interrupting. This arises out of what Mr. Silverman said. When you said to the Chancellor—and when he stepped back two yards into a rather more private place to answer your question—"Well, what is the worst you have for us to-day?" what were you inviting him to do?
A. The form of that question, I must confess, was a bit light-hearted.

By Mr. Mitchison

Q. 290. And knowing the urgency of getting this matter into the papers within a very short time for circulation in the country, you went over and telephoned it to your editor?
A. Yes.
Q. 293. I quite appreciate that, but we agreed it was a mistake, and it was a mistake, was it not, to let it out at all? As I said, we all make mistakes at times. It was a mistake, was it not?
A. I certainly passed it over in all good faith to my office.
Q. 295. And looking back at it now, it was not really right to pass on information about the Budget given you by the Chancellor of the Exchequer at a time when you knew perfectly well that he had not told it to the House?
A. I passed it over just as I would have passed over anything. I did not take time to think.
Q. 297. The substance of the mistake was that you got information from the Chancellor about his Budget, which if you had thought about it at all, you would have known he ought not to have given you?
A. Yes, but evening paper men do not have much time.

By Mr. Hicks

MR. CRANFIELD

Q. 375. You remember even last April, when there was a suggestion that some leakage had taken place, an inquiry was made about that?

A. Yes.[1]

By Mr. Sydney Silverman

Q. 463. Mr. Carvel knew what nobody else knew at that time?
A. Yes, Sir.
Q. 464. That it was not a forecast at all?
A. It is clear.
Q. 465. He knew that it was 100 per cent. accurate?
A. Yes, Sir.
Q. 475. Therefore, surely he ought to have known that he should not have told you?
A. Well, the only answer to that is that I felt he did not think he was protecting his informant, and that he felt it his duty to put it over to his paper.

By Mr. Boyd-Carpenter

Q. 520. It follows then that he knew he could only get it into the paper by not telling you he had it from the Chancellor?
A. I think I must say that.

A statement handed in by this witness in reply to question 309 is given in Annex B.[2]

By Mr. Mitchison

MR. GUY EDEN

Q. 628. Do you draw any distinction between those two cases? May I put it this way to you: I take it that in, let us say, time of war, if some matter were disclosed to you which it was obviously in the public interest should not be published, you would certainly not publish it, apart from any embargo?
A. Yes, that is perfectly true.
Q. 638. And accordingly you would recognize, apart from the subject of anything that was said, that the premature disclosure of Budget information from any source was not to be used for publication: you would recognize, would you not, that being so, that the premature disclosure of Budget information was not intended for publication and ought not to be published wherever i came from? Speaking entirely for myself, I should say yes; I should not do it

By Mr. Boyd-Carpenter

Q. 670. Do you regard the present rules of conduct (if you prefer that phrase) as satisfactory, or do you think it would be helpful to have some suggested amendment proposed?
A. As I think I said in reply to Mr. Webb, if it could be made to work I see no great objection to it in principle—if it could be made to work.
Q. 671. That is a very important proviso?
A. It is.
Q. 672. The present rule, on the whole, works?
A. The present rule has produced 63 years of almost faultless working.

By Mr. Sydney Silverman

Q. 673. It did not work this time?
A. Obviously not, but that is the point I am making, that this is the exception in 63 years of work.

By Mr. Boyd-Carpenter

Q. 674. Mr. Silverman says the present rule did not work. That is a matter on which this Committee has to make up its mind?
A. I took Mr. Silverman as meaning——

[1] *See* 436 *Com. Hans.* 5, s. 428; 438 *ib.* 864.

[2] *See Rep.* at p. 20

By Mr. Sydney Silverman

Perhaps it will help if I make quite clear what I meant. Nobody, so far as I know, suggests that Mr. Dalton really did intend this to be published, and the working of the present rule, it is suggested, justified Mr. Carvel in thinking that he had so intended. On that view of the matter it is quite clear that the rule did not work.

By the Chairman

Q. 700. You will have sensed by the questions that have been put by the various members that, arising out of this case, which has had tragic results for the Chancellor and may have done very dangerous things outside to the country generally, there is a disturbance in the minds of members as to the relations now between the Lobby and the average member. It is not clear now what the position is?
A. Yes, I have sensed that.

Appendix I to the Report gives a letter dated December 1, 1949, from the Chairman of the London Stock Exchange, para. 2 of which reads:

> The investigations which I have made have failed to disclose that there were any unusual dealings or movements of prices on Wednesday, November 12th, which could be attributed to the disclosure to *The Star* newspaper of the main features of the Budget.

Appendix II in a detailed statement by the Editor of *The Star* in response to a request for the following information:

(*a*) The time at which the first edition of *The Star* containing the Political Correspondent's story headed "Penny on Beer" was available to the public on November 12th;
(*b*) A list of the editions of *The Star* containing this story, and of the variants of these editions, with or without extracts from the Budget Speech;
(*c*) The localities in which each of the above were circulated;
(*d*) The number of papers in each of these editions, or variants of editions.

The following appeared in the London *Star* on November 14:

> In view of the proposal to call a Select Committee on the disclosure by Mr. Dalton of his Budget proposals, Mr. John Carvel, *The Star* Lobby correspondent, has been withdrawn from the Lobby of the House at his own request pending the Committee's hearing.[1]

[1] *The Times*, November 15, 1947.

VI. THE AFTERMATH OF THE ALLIGHAN AND WALKDEN REPORTS

By the Editor

In the last issue of the JOURNAL[1] an account was given of the 2 above-mentioned Reports which arose in the 1947-48 Session in connection with the disclosure of confidential information by a member. These exhaustive inquiries by the Committee of Privileges of the House of Commons resulted in the expulsion of one member and the reprimand of another by Mr. Speaker, as well as the reprimand of a newspaper editor at the Bar of the House.

Several matters developed as a result of these inquiries. The House of Commons, ever anxious to keep the slate clean and to provide every possible safeguard against similar occasions in future, evidently did not consider that the matter could satisfactorily be left where it was.

In the first place, the question of the personnel of the Committee of Privileges, already referred to in the last issue of the JOURNAL,[2] received further consideration; secondly, such Committee's powers; and, thirdly, a Motion was introduced making better provision against disclosure of confidential information in the future, which was superseded by the Adjournment of the debate. This Motion was, however, soon afterwards passed in amended form.

As the 3 matters have close relationship to one another, they are now embodied in this Article, but familiarity with the two Reports in the last issue of the JOURNAL is recommended.

Personnel of Committee of Privileges.—At the beginning of the Third Session (1947-48) of the XXXVIIIth Parliament, when Motion was moved on October 22[3] to appoint this Committee and name their members, an hon. member challenged the composition of the Committee on 4 grounds, first that the constitution proposed was of Party composition, namely, composed on a P.R. basis according to the strength of the Parties of the House. The second point he challenged was the proposed constitution, by which the old conception of what the Committee ought to be had been departed from.

The Deputy Speaker thereupon Ruled that the hon. member was entitled on this Motion to challenge the proposed constitution of the Committee, member by member, but not entitled to deal with the Motion as a whole.

The hon. member, continuing, said that he challenged the presence on this Committee of members who had only entered the House at the last election. The old conception of this Committee was that it should consist of long-established members with a long experience of the traditions and practices of the House. The hon. member attacked the idea that the Attorney-General should be on this Committee on

[1] Vol. XVI, 276-98. [2] *Ib.* 277. [3] 433 *Com. Hans.* 5, s. 1239.

the ground that he was a member of the Committee to whom, in confidence, the Committee as a whole turned for advice. For in this Committee the Attorney-General acted not only as a member of a judicial body, but as a prosecuting counsel.

The hon. member urged that the Government should withdraw this Motion and endeavour to bring up a list of names which would restore the Committee to the position it held in the past. Above all things, the Committee of Privileges ought not to be a Party Committee. In the names selected here there was an automatic majority of one Party in the House. At one time this Committee discharged the functions of checking on Election Petitions, but that right had been taken away because it had been found impossible to get a judicial and non-Party judgment from it. That function then had to be entrusted to a High Court Judge. The hon. member was rapidly coming to the conclusion that if Privilege was to be preserved for the country they would have to take away the rest of the Committee's functions and vest them in High Court Judges too.

Question was then put and agreed to:

That the Committee of Privileges do consist of ten members;
That (here naming 10 members) be members of the Committee;
That the Committee have the power to send for persons, papers and records;
That 5 be the quorum.

Power of Committee of Privileges.—On October 30, 1947,[1] an hon. member moved:

That when a complaint of breach of privilege is referred to a Committee, such Committee has, and always has had, power to inquire not only into the matter of the particular complaint, but also into the facts surrounding and reasonably connected with the matter of the particular complaint, and into the principles of the law and custom of Privilege that are concerned.

The mover remarked that in recent Privilege cases there had been a tendency on the part of some persons concerned to hunt their hares too tight.

It was remarked by another hon. member during the very short debate which followed that the Committee of Privileges should be enabled to take into account not merely the immediate thing referred to them but attendant and environing circumstances related to the issue.[2]

The Leader of the House said that he had agreed to adjourn the debate on his Motion (*see below*), but that he would not insist upon that in regard to the present Motion.

Confidential Information(Disclosure).—On October 30, 1947,[3] immediately following the reprimand of Evelyn Walkden by Mr. Speaker, the Leader of the House in moving:

That, if in any case hereafter, a member shall have been found guilty by this House of corruptly accepting payment for the disclosure and publication of

[1] *Ib.* 1242. [2] *Ib.* 1244. [3] 443 *Com. Hans.* 5. s. 1228.

confidential information about matters to be proceeded with in Parliament, any person responsible for offering such payment shall incur the grave displeasure of this House; and [if such person shall be the representative of a newspaper or of a press agency, that person and any other representative of the same newspaper or agency, shall, if the House think fit, be excluded from the precincts of this House, until this House shall otherwise determine] this House will take such action as it may, in the circumstances, think fit,[1]

said that the Motion related to the position of journalists in this matter. In these cases it was not proposed to take any action against the journalists or the newspapers involved, but he thought it necessary to place on record a note of warning for the future that in the case of an hon. member being convicted by the House of bribery in these or similar circumstances, the House would contemplate taking action not only against the hon. member but against the giver of the bribe as well. A slight alteration had been made in the Motion which now ended with, "if the House thinks fit", which pre-supposed that the merits of the case would be discussed by the House at the time, probably on a report of the Committee of Privileges. Therefore, if there were mitigating circumstances, or if it were decided that there was no offence at all, that could be argued.

An hon. member pointed out other differences between the Notice and the Motion, such as in the third line, "about matters to be proceeded with in Parliament", in place of "Official information about Parliamentary matters". He regretted that the change should have been made without being brought to the general attention of the House.[2] Other differences were also drawn attention to.[3] There were, throughout the Debate, many criticisms of the Motion, several hon. members regretting that it had been moved at all.[4]

Attention was drawn to the sharp distinction made between members of the Parliamentary Press Gallery and members of the Lobby and also that the Motion meant that if a member of the Lobby transgressed, facilities would be withdrawn from the Gallery representative as well.[5]

An M.P. who had worked in the Parliamentary Press Gallery and Lobby for 15 years repudiated the suggestions that the whole of journalism and newspaper work was concerned only with bribery and corruption. He had never been offered a bribe in his life nor had he accepted one. The organisation for which he had worked would have thrown him out if he had accepted such a bribe. He hoped as a result of the debate the impression would not get about that bribery and corruption were the everyday stock-in-trade of journalists. He invited M.P.s to read in the Report from the Committee of Privileges the evidence given by the Secretary of the Lobby correspondents and

[1] These amendments, the words deleted within heavy square brackets and the words substituted underlined, represent the Motion on this subject moved on December 10 (*see below*).—[ED.]
[2] 443 *Com. Hans.* 5. s. 1229.
[3] *Ib.* 1231. [4] *Ib.* 1230, 1234, 1238. [5] *Ib.* 1232.

also the testimony on oath of editors and Parliamentary correspondents of various newspapers.[1]

Another hon. member stated that democracy "could be built only on the torn pillars of Parliament and the Press—and it would be a very great pity if the impression went out from this House that in the opinion of Parliament there was serious corruption in the British Press".[2]

It was stated by another speaker that it was a cardinal principle of journalism that the sources of information must not be disclosed. This was a principle held in courts of law in libel cases, where everyone else except newspapers had to disclose sources of information. Newspapers were protected in courts of law from disclosing their sources of information. He considered it a breach of the journalistic code of honour that the House should have power to summon any editor before it and ask him where he got his information.

An hon. member then inquired if the Whips were on or whether it was to be a free vote of the House.

After this ½ hour debate, the Leader of the House moved: "That the Debate be now adjourned", which was agreed to. On December 10, 1947,[3] the Leader of the House, in moving the Motion (*as shown amended above*) said that the object of both Motions was simply to give formal notice that in all future cases of the sort on which the House pronounced judgment on October 30, and where a member had already been found guilty of corruptly accepting payment, it intended to proceed immediately, not only against the receiver of the money, but also against the offerer of the payment.

In the cases of Allighan[4] and Walkden[5] the Government were not prepared to recommend the House to proceed against the journalists or editors concerned in making the payment, because they were not necessarily aware at the material time that a Parliamentary offence was being committed. They were not infringing an actual Resolution of the House, nor were they infringing any recognized Privilege of the House. But from now on the intentions of the House should, in the judgment of the Government, be on record, so that nobody would be able to plead ignorance.

The main differences were two.[6] The amended Motion was more general and less specific in its application, both to the persons it covered and to the penalties it imposed. First, there was no specific reference to the "representative of a newspaper or of a Press agency". Secondly, there was no reference to the penalty of exclusion from the precincts of the House.

The other main change in the wording of the Motion related to the penalty—the action the House would take in specified circumstances against an offender. In the amended Motion it was now deliberately left open to the House to take "such action as it may in the circum-

[1] *Ib.* 1233. [2] *Ib.* 1234. [3] *Ib.* 1091-1154.
[4] *See* JOURNAL, XVI, 273-294. [5] 445 *Com. Hans.* 5, s. 294-8. [6] *Ib.* 1091.

stances think fit". The reason for the change was that it did not seem right to H.M. Government, on reconsideration, not even to appear to fetter the discretion of the House by prescribing in advance a precise penalty which might or might not be appropriate in the circumstances of any particular case.

As regarded the action that the House might, in given circumstances, think fit to take, the main penalty that could be imposed was, of course, that mentioned in the original Motion: namely, the exclusion from the precincts of the House of the person or persons implicated in the charge of corruption.[1]

Mr. Morrison said that he had seen it suggested that this involved an extension of Privilege, by imposing a penalty upon a person, or a group of persons, who were not themselves M.P.s That was a misconception. Privilege had always extended to strangers as well as themselves. But this was not really a question of Privilege. Strictly speaking the original Motion did not impose a penalty at all. It simply announced the intention in certain prescribed circumstances of possibly withdrawing a facility—namely the facility of entering the precincts of the House to listen to the proceedings and to interview M.P.s. He did not think that anyone would dispute the absolute right of the House to lay down who should and who should not enter the precincts at any time for any purpose. Nobody had the right to be present in those precincts except by leave of the House.

If a journalist or newspaper editor, or for that matter anyone else, committed a breach of Privilege, he exposed himself to those penalties

The House had decided that Party meetings or private meetings c M.P.s, whenever they were held, should not, as such, attract t themselves the Privileges which attached to the proceedings of Parliament as a whole. Therefore no question arose here of creating a new Privilege. All they were doing in this case was to give notice that where an M.P. had been convicted of corruptly accepting payment for the disclosure of certain confidential information, the offerer as well as the receiver of the payment should bear his share of the responsibility.

The Motion, as it now stood, represented the considered decision of the Government and in those circumstances they were not prepared to leave the matter to a free vote of the House.[2]

It did not generally accord with the laws of natural justice that M.P.s should find themselves shattered and ruined and that people who paid the money should get off scot-free. Therefore he was anxious that the House should now give fair notice for the future that if it happened again they would take serious notice of it, so that no Leader of the House, whoever he might be, would be placed in the dilemma in which he had found himself on this occasion.

The Lobby must mind its step and watch its members in their conduct. So must editors, otherwise they might bring themselves

[1] *Ib.* 1092. [2] *Ib* 1093.

into conflict with Parliament, which would be most unhappy and undesirable for the House and for the Parliamentary institution represented by the House. The way these Lobby men lived with M.P.s and their relations with them were, on the whole, a happy state of affairs. They had their rules and honourable codes of conduct. Mr. Morrison said that the last thing he should wish was that there should be any conflict, but these 2 incidents were disturbing.[1]

He begged of the Lobby and of all editors concerned to take the lesson to heart and consider it in its proper setting. The Press as a whole in this country was upright and free of this kind of trouble.

There was considerable debate on the Motion, lasting over 3 hours, and the following are some of the other points brought forward, the *Hansard* Column references being given, should the reader wish to refer to the full report of the debate.

Continuing, Mr. Morrison said that it was not thought of any use to put such a Motion on the Journals.[2] There were rules of law and there were the rules and code of honourable behaviour. If the law of Parliament was transgressed, anything that might come within the field of Privilege would be dealt with as such at the time. If, on the other hand, there was any transgression of the law, it was for the Courts to deal with.[3]

Criticism was made of the phrase in the Motion—" matters to be proceeded with in Parliament ", of which it had not been possible to find any explanation in previous history or Acts. Here they dealt with legislation and debates all freely arrived at. It was asked whether, if a writer was paid and by inadvertence put in his articles something which could be claimed to be confidential because it was not yet known to the world—such as the date of the rising for the Christmas Recess—would the writer be covered by the Motion?[4]

One speaker concluded his speech by appealing to the Minister to withdraw the Motion; to leave the question to the free vote of the House. It was agreed that every M.P. had, equally, a special interest in the Motion, because every M.P. was a journalist or potentially a journalist or a crypto-journalist.

A journalist M.P., in referring to the freedom of the Press, drew attention to an incident in the last century when *The Times* criticized Louis Napoleon in France, on which occasion a member of the House of Lords said:

> As in these days the English Press aspires to share the influence of statesmen, so also it must share in the responsibilities of statesmen.

To which *The Times* replied in a Leader:

> The purposes and the duties of the two powers (*meaning the Press and the Government*) are constantly separate, generally independent, sometimes diametrically opposite. The first duty of the Press is to obtain the earliest and most correct intelligence of the events of the times, and instantly, by disclosing them, to make them the common property of the Nation.

[1] *Ib.* 1094. [2] *Ib.* 1096. [3] *Ib.* 1097. [4] *Ib.* 1099.

This hon. member stated[1] that he had on him a special responsibility for self-discipline and for determining in his own mind whether what he wished to disclose could suitably be disclosed. On the other hand, an M.P. who was not a journalist had on himself the duty, in his power to obtain information, provided that in its ultimate disclosure he did not infringe the Official Secrets Act.[2]

This same journalist M.P., in concluding his speech, expressed the hope that whoever ultimately replied for the Government and interpreted the meaning of the Motion would make it clear that a publisher or editor whose agent committed an offence in the form of bribery and corruption would not be condemned without an opportunity of stating his case. That seemed to him to be a fundamental right of every publisher and editor.

It was important therefore that there should be adequate safeguards, so that in the event of the condemnation of an agent who had behaved in that way his principal would be given a full and fair opportunity of stating his case.[3]

Another hon. member queried the interpretation to be put upon "corruptly", "publication of confidential information" and "disclosure and publication" in the Motion, and the difficulties in connection therewith.[4]

If the Motion had no legislative tendency what effect or purpose had it? Resolutions of the House did not create punishable offences.[5]

Another speaker, concerned with the present and future relations with journalists, suggested that there should be a sort of Conference between the House of Commons and representatives of the Lobby, consisting, for example, of the Lord President of the Council, the Father of the House, and perhaps a representative M.P. of each of the main political Parties, to get round a table with representatives of the Lobby to discuss the various problems now facing them. One of the things they might well discuss was whether or not the existing powers of the committee of the Lobby were sufficient to give them power to discipline their members. At present it was doubtful whether the Committee of the Lobby had any power over its members at all.

This speaker cited the Guild of Industrial Correspondents, of which Mr. Garry Allighan was a member and who was expelled therefrom for unprofessional conduct. The issue was never decided in court, but it was quite possible that the Guild, because of the action it took against Mr. Allighan, might have found itself mulcted in heavy damages. The same position might arise in the Commons, were the Committee of Lobby Correspondents to take action against a member of the Lobby.

The hon. member said he would like to see the powers of the Lobby Committee extended to this extent, that they should have the

[1] *Ib.* 1102.
[2] 1 & 2 Geo. V, c. 28; 10 & 11 Geo. V, c. 5 and 75; 23 & 24 Geo. V, c. 36; 2 & 3 Geo. VI, c. 62 and 121. [3] 445 *Com. Hans.* 5. s. 1103. [4] *Ib.* 1105. [5] *Ib.* 1107.

privileged right to condemn as unprofessional the action of one of their fellow-members and to report that condemnation to Mr. Speaker himself (who has power to take action against a holder of a Lobby ticket), so that he, if he thought fit, should take action. Perhaps such a Conference might take up the whole question of the written rules of conduct in the Lobby. The hon. member observed that he had always understood, when he was a Lobby Correspondent, that if he spoke to a member or a Minister in the Inner Lobby or anywhere else in the House he could not quote him as having said what he did say without express permission, but that he (as Lobby Correspondent) could quote what he said without referring to the member/Minister, unless the latter expressly refused him the right to do so.[1]

The Press itself, through the Lobby Committee and through their own elder Statesmen, should be especially vigilant, not only for their own good name, but to protect the rights of members as well, so that working here in the House of Commons, whether as a journalist or as a member, will again become in the future what it was in the past—one of the most fully satisfying jobs that a man can have.[2]

It was contended by another speaker that the Motion was an extension of Parliamentary Privilege. Either there should be reference to the Committee of Privileges or to an *ad hoc* Committee to consider whether Privilege should not be so extended by a Resolution of the House, but only after consideration by a Select Committee of the Committee of Privileges. In that way all the arguments might be put by witnesses. It should not be done by a Resolution of the House of Commons.[3] A Motion should not be passed because 2 members, whatever their Party affiliations, could not be dealt with through the medium of their own Party discipline and because the matter had been brought to the attention of the House. There had been a temporary lapse from these high standards of conduct from a couple of members, and that was the reason for the very dangerous Motion which they had before them and which might be used by successive Governments as an engine against the Press and the House.[4]

During the debate Mr. Speaker was asked by an hon. member whether he would make it quite clear that if any hon. member knew of a bribe being offered to a member of the House by anybody at all it was his duty to bring that to the notice of the House. To which Mr. Speaker replied that that was perfectly clear from their proceedings in the past.[5]

The Home Secretary stated that they did not claim that the matters to be dealt with under the Motion were an extension of Privilege.[6] If an offence within the meaning of the first part of the Motion had been established, the second part of the Motion said that the House would proceed to: "take such action as it may, in the circumstances, think fit". It was not a case of a breach of Privilege. The maximum

[1] *Ib.* 1110. [2] *Ib.* 1112. [3] *Ib.* 1117. [4] *Ib.* 1121. [5] *Ib.* 1125.
[6] *Ib.* 1132.

penalty, the Minister suggested, that could be inflicted in the circumstances would be that which was proposed in the first Motion the Government had submitted to the House. There would be a withdrawal of the right to use the Lobby, and other persons who might be found to be associated with the act, or what were called in the amendment the instigators of it, might also find themselves in the same jeopardy.[1]

It was remarked by another speaker that it was contrary to the tradition of the House on a subject of this kind, where they were really not making Party speeches about each other, to put on the Whips. It was suggested that the Leader of the House might at least have waited until the end of the debate before he decided whether to put on the Whips, which was contrary to the way they had normally discussed these matters.[2]

The Leader of the House in reply said that, in regard to the request that the Whips be taken off, the Opposition Whips had been on the doors for some hours. The whole Party machine was ticking over as well as it was capable of ticking over and he could not see any reason to take the Whips off. Had this been a matter of an individual case of a member where the House was giving justice, that would have been a fair request. Indeed up till then in this Parliament the Whips had been off in such cases. They were off on the last occasion, but he was bound to say that, although they were off, the Opposition on certain Divisions had a remarkable degree of solidarity. But so far as the Government was concerned the Whips were off.

In conclusion, Mr. Morrison remarked that all they were establishing was that the House would be free to judge the matter after fair consideration, and presumably with the help of a report from the Committee of Privileges.[3]

Mr. Speaker then proceeded to put the Question and the House divided: Ayes, 287; Noes, 123. The Question was resolved accordingly.

[1] *Ib.* 1133. [2] *Ib.* 1136-7. [3] *Ib.* 1141-2.

VII. HOUSE OF COMMONS MEMBERS' FUND AMENDING ACT, 1948[1]

BY THE EDITOR

AFTER several inquiries[2] as to when opportunity would be given for a discussion on the Report of the Select Committee of June 5, 1947,[3] account of which has already appeared in the JOURNAL,[4] as well as of the debate on the subject in the 1947-48 Session,[5] question was asked under "Business of the House" on February 19, 1948,[6] as to when a date could be fixed for discussion of the Members' Fund. Further question was also asked on March 4, following.[7]

The Amending Bill.

On April 7[8] a Bill was presented:[9]

to amend the House of Commons Members' Fund Act, 1939.

Second Reading.—In moving *2R.* of the Bill on May 5,[10] the Lord President of the Council said that the Fund was purely a domestic matter in which the Government took a friendly interest. Happily, as it did not arouse any conflict of political view, he hoped that agreement on this stage of the Bill would be secured. The Whips were off, this being a matter for members in their individual capacity.

The Fund was characteristically peculiar to the House of Commons and was a cross between a contributory pension and a benevolent fund. It was not quite a full pension fund. If it were, the contribution would have to be much higher than it was at present. Not being quite a benevolent fund on which any M.P. or ex-M.P. might claim, since the conditions were strictly prescribed in the Act of 1939,[11] only those who contributed could qualify for benefit.

When the Trustees made an award to any new person they expected to have to continue making payments for some years. Some might receive a grant for temporary embarrassment and then get clear and no longer require it. The only safe assumption for the Trustees, in most cases, was that their beneficiaries would be continuing liabilities.[12] The increase of the Fund from year to year could not just be regarded as available to whatever deserving cases might arise in that particular year, for every new beneficiary must be considered as a potential annuitant, which was why the Fund required to build up a substantial balance. The Government had looked into the recommendations of the Select Committee,[13] and agreed about the

[1] *See also* JOURNAL, Vols. V, 28; VI, 139; VII, 38; VIII, 103; XI-XII, 129; XIII, 175; XIV, 44; XV, 149; XVI, 143.
[2] 444 *Com. Hans.* 5, s. 1720; 445 *Ib.* 580, 1199. [3] H.C. 110 (1946-47).
[4] Vol. XV, 151-7. [5] *Ib.* Vol. XVI, 145. [6] 447 *Com. Hans.* 5, s. 1340.
[7] 448 *Ib.* 534. [8] 449 *Ib.* 175. [9] [68].
[10] 450 *Com. Hans.* 5, s. 1393-1405. [11] 2 & 3 Geo. VI, c. 49.
[12] 450 *Com. Hans.* 5, s. 1393. [13] *See* JOURNAL, Vols. XV, 152; XVI, 145.

benefits but the Government did not think it prudent to reduce the contributions at this stage.

This Bill sought to amend the Act of 1939: first, by making both widowers and widows of ex-M.P.s eligible for Fund benefit; secondly, by providing for increased maximum limits of grants; and, thirdly, by enabling the maximum amounts of both payments and contributions to be varied by Affirmative Resolution of the House, thus dispensing with amending Acts whenever it was desired to alter the amount of a contribution or the limits of the grant.[1]

Clause 1 of the Bill implemented the recommendation of the Select Committee.[1] Clause 2 prescribed the new maximum limits of benefit recommended by the Select Committee.

Clause 3 was an escalator Clause providing for variation, both of contributions and maximum rates of benefits by means of an Affirmative Resolution of the House.

One of the difficulties of such a Fund was to keep a balance between income and commitments, having regard to future liabilities. The Bill made no change in the deduction from M.P.s salaries, which remained at £12 per annum. This deliberate omission was one of the chief points of departure from the Select Committee's recommendations.

The reason why the Government disagreed with the Select Committee on this point was regard for the 8 years' experience of the Fund's life as being abnormal and no sure guide for the future. It was too short a time on which to base any reliable estimate of the future claims on the Fund, which had not yet reached a stable condition where new awards were, on an average, balanced by the termination of old awards. They would know better after the next dissolution of Parliament; meanwhile it was only prudent to assume that the end of this Parliament would see a substantial increase in the claims on the Fund.[2]

Mr. Morrison urged members to take into account not only future uncertainties and the probability of a big increase in claims but also the importance of not reducing grants once made. Therefore a close watch should be kept on the financial effects of the new limits of grants and the next year or two regarded as an experimental period. The subsequent review would be within a year of the dissolution and nobody could say what the position would be at that time.

Some not very nice things had been said in previous debates about the Government Actuary, but the Minister was convinced that an Actuary was needed to advise upon a scheme of this sort. Nobody else could say how much of the resources of a Fund of this sort it was safe to dispense at any particular time without running the risk of not being able to meet future liabilities.

It was quite true that members must have served 10 years and that their means were taken into account. Were they to "pay as they

[1] 450 *Com. Hans.* 5. s. 1394. [2] *Ib.* 1395.

go" they would be laying up a debt which their successors in the House would have to meet for their benefit.

He had received from the Chairman of the Trustees a private suggestion that, in this Bill, the Trustees should be given reasonable discretion to make *ex gratia* payments to ex-M.P.s and widows who were not qualified because they had not subscribed. The Government were not unsympathetic to it.

The next speaker was the Chairman of the Trustees, who said that the means test was not humiliating as, after all, every income-tax payer had to furnish details of his position. The Bill largely carried out the proposals of the Select Committee which reported last summer and the grants had been increased considerably in their recommendations. Ex-M.P.s got £100 a year more and widows' grants had been doubled to £150. Orphans received an increase as well and the upper limit had been increased in each case to £100, which would be a great help to the 20 beneficiaries now benefiting from the Fund. There were 10 widows and 9 ex-M.P.s.[1] The Fund had a reserve of £60,000 but the Select Committee considered that £50,000 was adequate.[2] The Actuarial Reports had cost £300, which could very well have been spent on some of the widows of M.P.s. As far as investing money was concerned, they got advice from the Public Trustee and in any case the money went into Government securities. The hon. member therefore considered reports by the Government Actuary as unnecessary.

In their Report the Committee said that, in no circumstances, should a grant from the Fund be made to an ex-M.P., now a member of the House of Lords. This, the speaker thought, would be asking the Trustees and the House to bear too great a responsibility in view of all the repercussions which might arise.[3]

The following were some of the main points in the debate which ensued: under the Bill it did not appear that the husband of a female M.P. was rated as a full-time job which cut across all their social legislation;[4] the feeling of the Select Committee about lady M.P.s was that this was not a pensions fund, but more in the nature of a benefit fund; lady M.P.s paid the same subscription as male M.P.s and their husbands stood in the same position as male M.P.s and their wives;[5] and that a sum should be set aside for *ex gratia* payments to a number of widows whom the Trustees were unable to assist.

The Financial Secretary to the Treasury, at the conclusion of the debate, said that the Fund would continue down the years and obviously the time would come when the advice of the Government Actuary would build up a body of evidence on which they could judge. More than one inquiry had been made by the Actuary. The Government went into this at the time and came to the conclusion that the cost, though it might seem to be a lot to some hon. members,

[1] *Ib.* 1396, 7. [2] *Ib.* 1399. [3] *Ib.* 1400. [4] *Ib.* 1401. [5] *Ib.* 1402.

was nevertheless justified by the work involved. The Bill then passed 2 *R.*[1]

Financial Resolution.—On May 5[2] the House went into Committee of Ways and Means on the following Resolution:

That, for the purposes of any Act of the Present Session to amend the House of Commons Members' Fund Act, 1939, the salary or pension of a member from which deductions are to be made under the said Act of 1939 as amended by the first-mentioned Act, shall not be treated for any of the purposes of the Income Tax Acts as reduced by reason of any increase attributable to the provisions of the said Act of the present Session in the amount of the said deductions, and, a member shall not be entitled to any allowance, deduction or relief under any provision of the Income Tax Acts by reason of such increase and his increase shall not be regarded as thereby diminished.—[*Mr. Glenvil Hall.*]

In the short debate which followed, the Financial Secretary was asked if the above was a change from established practice, who replied that, under the 1939 Act, the House decided not to come upon the taxpayer in any shape or form, and members were to forego the normal allowance allowed to members of a superannuation fund on the contributions they made to the Fund. Under the new Act it would be possible for an Affirmative Resolution of the House to alter the rates and benefits and particularly the rates of contribution. This Resolution would be required in order that when such Affirmative Resolution was passed it would come within the rules of Order and members would not then be able to claim income-tax rebate on what could be considered as a superannuation contribution paid to the Fund.

An hon. member observed that for a compulsory deduction such a this it was reasonable to consider whether it should be allowed t rank as a deduction for income-tax purposes. It was suggeste therefore that the Financial Secretary take counsel on the matter "through the usual channels" before the Report stage as a quasi-permanent machine was being set up.[3]

It was remarked by another hon. member that when the 1939 Act was passed taxation was at a very different level from now.

The Financial Secretary then said that if the £12 was to be paid hon. members were entitled, as the law allowed, to a proposed rebate as in the case of any other taxpayer. But in 1939 hon. members decided they would owe nothing to the nation and would not accept "a subsidy from the public".

This was a democratic and non-Party matter and if the majority of the Committee were agreeable to the change no one would be more pleased than himself, but he asked the Committee to pass the Motion in the meantime with the possibility of an alteration later. He would call attention to what had now been said and if it was decided to rescind this provision he was sure the Government would accede to the demand with alacrity.[4]

[1] *Ib.* 1403, 4. [2] *Ib.* 1405. [3] *Ib.* 1406. [4] *Ib.* 1407-8.

The Resolution was then put and agreed to.[1]

On May 10[2] the Resolution was reported to the House and agreed to, after which the Bill was considered in *C.W.H.* Clauses 1, 2 and 3 were agreed to practically without debate, but when the Motion was made and Question proposed on Clause 4—(Report by Government Actuary)—"That the Clause stand part of the Bill", it was suggested by an hon. member who had a new Clause (Cessation of Reports by Government Actuary) to propose that Clause 4 be left out, the argument being that as they already had audit by the Comptroller and Auditor-General, the Actuary's report was unnecessary.[3] This was supported by the Trustees of the Fund.

The Financial Secretary, however, trusted that Clause 4 as printed would be retained. It was true that the Actuarial charge on the last quinquennial valuation was excessive. They had only had 8 years and one dissolution of Parliament since the Fund came into existence and there was no real data as to what calls would be made upon it when normality returned. The Government had looked into the matter with the utmost sympathy and it seemed to them to be unwise to do without the actuaries.

Continuing, the Minister said it was for the House to judge how the Fund would run. The Government were entitled to make suggestions to the House and considered it inadvisable to go back on what the House thought desirable in 1939. The Committee then divided on the Question: Ayes, 87; Noes, 46.

At this point a Motion to report progress and ask leave to sit again was moved but negatived.

A new Clause (Provision for cases of special hardship) was then moved, to which the Financial Secretary added a sub-clause (5) the object of which was to empower the Trustees to meet special cases of hardship by payments out of the section of the Fund, consisting of the original £3,000, any gift to the Fund under S. 3 (2) of the Act of 1939 and, if the House so decided by Affirmative Resolution, 10 per cent. of the members' contributions to the Fund in any one year. A fresh resolution would be required if it were desired to repeat the 10 per cent. grant from the members' allocations in a subsequent year.

Payments under this clause would be at the entire discretion of the Trustees, except that they could only be made to ex-M.P.s, their widows and orphans. In making such special grants the Means Test applied to the First Schedule of the 1939 Act could be disregarded by the Trustees, if they thought fit.[4]

An hon. member remarked that he could not see why the widower of a deceased lady M.P. should be included, which he looked upon as a degrading provision in the Bill. All one then had to do was to court a lady M.P. and succeed in securing her hand to live upon the charity of members of the House of Commons. The Chairman of

[1] *Ib.* 1896. [2] *Ib.* 1897. [3] *Ib.* 1897. [4] *Ib.* 1903.

the Trustees wished to make it clear that the Means Test had not been abolished. An ex-M.P., if he had £325 per annum, got nothing and a widow of an ex-M.P., if she had £225 per annum, got nothing. The limit had been raised by £100.

The new Clause was then put and agreed to, the Clause read a second time and added to the Bill.

Another new Clause (Amendment of S. 1 of the Principal Act) to add the following sub-section to S. 1 of the Principal Act:

(6) No grant to this Fund shall be made to a member of the House of Lords,

—was then brought up by the Chairman of the Trustees and read the First Time. In moving "That the Clause be read a Second Time" an hon. member said that the amendment, which was supported by the recommendations of the Select Committee, stood in the names of all the Trustees. A divided opinion was expressed in the debate which followed; on the one hand it was thought it would be undesirable if ex-M.P.s who had become members of the House of Lords should be entitled to benefit under the Fund. On the other hand, such ex-M.P.s now in the Lords who had been M.P.s for the requisite 10 years and subscribed to the Fund ought not lightly to be robbed of their right.[1]

Upon a division being claimed, the voting was: Ayes, 46; Noes, 48, and the new Clause was negatived.

Another new Clause (Acceptance of Property by the Trustees) was moved by the Chairman of the Trustees in order to extend the receipt of gifts to the Fund, which, under the 1939 Act, were only permissible in respect to M.P.s, ex-M.P.s or other persons.

Why should not the Trustees receive a bequest or gift to the Fund whether in money or in real estate, whether held by the Fund or to be realized and invested?[2]

After a short debate the question was put and agreed to, the new Clause read a Second Time and added to the Bill, after which the Bill was reported with amendments.

At the Report stage of the Bill on May 12[3] the above new Clause 5 (Acceptance of Property by the Trustees) was amended by the insertion of the following sub-section (2):

(2) Any property other than money or authorized investments, accepted by the Trustees under the said sub-section (2) shall be held upon trust for sale: Provided that the Trustees may, in their discretion, postpone the sale and conversion of any such property for such time as they think fit.

This amendment was moved by the Financial Secretary to the Treasury and after being agreed to 3 *R.* was immediately taken. During the short debate thereon, in order to remove a misconception in the country in regard to this Bill that M.P.s were securing pensions to which the State contributed, an hon. member stressed the im-

[1] *Ib.* 1906. [2] *Ib.* 1915. [3] *Ib.* 2198.

portance of making it perfectly clear that not one penny of State funds went towards the Fund, which came entirely from contributions by members of Parliament and, as the Lord President of the Council subsequently added, also from benevolent donations to the Fund.

Mr. Morrison then paid tribute to the public-spirited action by M.P.s to do what they could to assist former M.P.s who were in financial difficulties after a given period of service to the House and said that a large number of M.P.s could never expect or hope to get any personal advantage from the Fund. The Bill then passed 3 *R.*, was sent up to the Lords, agreed to and duly became 11 & 12 Geo. VI. c. 36.

VIII. NEWFOUNDLAND—CANADA FEDERAL UNION[1]

By the Editor[2]

As the footnote to the title of this paragraph shows, there have been many references in this JOURNAL to the constitutional position in Newfoundland, including the appointment by the Government of the United Kingdom, at the invitation of the Newfoundland people in 1933, of a Commission of Government on account of acute political difficulties in the Island.

In the last issue of this JOURNAL an account was given of the activities of the National Convention of Newfoundland, composed of Representatives elected thereto by popular vote.

Report will now be made of the subsequent events, the passing by the Newfoundland Commission of Government of the Referendum Act of 1948 under which the wishes of the registered electors of Newfoundland, including her acquired territory of Labrador on the Canadian mainland, were ascertained, as to their views on the future constitutional position of Newfoundland.

Then followed the votings on the Referendum and successful negotiations between Canada and Newfoundland for entering the Canadian Confederation.

Certain objection by the Responsible Government League of Newfoundland was, however, raised against this incorporation, resulting in 6 former members of the old Newfoundland Parliament applying in November, 1948, to the Newfoundland Supreme Court for a wri against the Governor, as Chairman of the Commission of Government, claiming that all the steps taken by the Newfoundland Government to pass both the National Convention Act of 1946 and the Referendum Act, 1948, were illegal and seeking declaration of judgment; and, further, for an injunction restraining the defendant from concluding Union with Canada, from asking the United Kingdom Government to pass legislation to bring about Federation, and from any other steps to alter the Newfoundland Constitution except by a restoration of Responsible Government and the revival of the Letters Patent suspended in 1934.[3]

In a lengthy judgment delivered in the Supreme Court of Newfoundland on December 13, 1948,[4] Mr. Justice Dunfield dismissed the action in connection with the writ to stay Confederation with Canada, saying that the statement of claim was a dead horse and that flogging would not bring it to life. This judgment appeared in the *Evening Telegram*, St. John's, on December 14, 1948, showing that at the conclusion of such proceedings the Counsel for the Plaintiffs intimated that he would appeal to the Full Bench.

[1] *See also* JOURNAL, Vols. II, 8; IV, 35; V, 61; VII, 106; XI-XII, 77; XIII, 208; XIV, 97; XV, 106; XVI, 70.

[2] With grateful acknowledgments to the Secretary of the Commission of Government, Newfoundland.—[ED.]

[3] *The Times*, November 15, 1948.

[4] *The Evening Telegram*, Newfoundland. December 14, 1948.

Both in 1947 and 1948 several letters also appeared in *The Times* from British M.P.s and others, urging that Newfoundland be allowed to choose her own career, and even suggesting that "The Ancient Colony" should become, as Northern Ireland, part of the United Kingdom with representatives in the House of Commons.

Description will now be given of the proceedings on this subject, during the year 1948 at St. John's, Ottawa and Westminster.

A. AT ST. JOHN'S

On January 29, 1948, a despatch was addressed to the Secretary of State for Commonwealth Relations by Mr. J. B. McEvoy, the Chairman of the National Convention, which opened with a citation of the duties of the Convention as defined in S. 3 of the National Convention Act, the terms of which have already appeared in the JOURNAL.[1]

The Convention was opened by the Governor of Newfoundland on September 11, 1946, and its first step was to appoint 9 investigating Committees consisting of 10 members each to inquire into: (1) Agriculture; (2) Education; (3) Finance and Economics; (4) Fisheries; (5) Forestry; (6) Local Industries; (7) Mining; (8) Public Health and Welfare and (9) Transportation and Communications.

The duties of these Committees were reported as completed, each of the Reports being the subject of careful examination and extensive discussion by the Convention in its general Sessions. The Convention was satisfied that these various Reports furnished a sufficiently accurate and complete review of the matters dealt with and that their conclusions and recommendations were based on substantial foundations.

Two fact-finding delegations were sent abroad by the Convention, one to London and the other to Ottawa. That to London left Newfoundland on April 24, 1947, returning May 10, 1947, and reported the result of its 3 discussions with the Secretary of State for Dominion Affairs to the Convention. Stenographic copies of the discussions were reported and supplied to each member for his private information only.

The Delegation to Ottawa left on June 19, 1947, and returned on October 4 of that year.

During the absence of these 2 delegations the Convention stood adjourned, reassembling October 10, 1947, when an account of its meetings with the representatives of the Canadian Government was submitted, such being contained in 2 volumes annexed to the Convention's despatch.

An outline of the proposed arrangements by Canada for the entry of Newfoundland into the Confederation appeared in the last issue of the JOURNAL.[2]

Annexed to the Convention's despatch was the Economic Report

[1] *See* Vol. XV, 106. [2] Vol. XVI, 73 *et seq.*

on the present financial position and economic outlook of Newfoundland prepared by the Finance Committee of the Convention which was debated at length by the Convention on January 14, 1948, and adopted unanimously. The reports received from the Canadian Government had been thoroughly discussed and analysed.

The following Resolution was then introduced in the Convention and debated:

BE IT RESOLVED that this Convention recommend to the United Kingdom Government that the following forms of government be placed before the people at the proposed Referendum, namely:

1. Responsible Government as it existed prior to 1934.
2. Commission of Government.

This Resolution was carried unanimously, 45 voting in its favour.

The next Resolution to be introduced and debated was as follows:

BE IT RESOLVED that the National Convention desires to recommend to His Majesty's Government in the United Kingdom that the following form of government be placed before the people of Newfoundland in the forthcoming National Referendum, namely:

Confederation with Canada upon the basis submitted to the National Convention on November 6, 1947, by the Prime Minister of Canada.

The voting on this Resolution was: For, 16; Against, 29.

Under S.O. 39 of the Rules of Procedure of the Convention members could express a preference between one form of government and another, and the following preferences were expressed:

For Responsible Government, 28.
For Commission Government, nil.
For Confederation as against Responsible, 12.
For Confederation as against Commission of Government, 12.
For Responsible Government as against either Confederation or Commission of Government, 28.

The names of those voting in all cases above were given in the despatch.

Enclosed with the despatch were certified copies of the Minutes of the Meetings of the Convention of January 22, 28 and 29, 1948.

The Convention met at 3.0 p.m., adjourned at 6.0 p.m. and resumed at 8.0 p.m. After the confirmation of the Minutes each day, strangers were admitted except on January 29, when the Report of the Drafting Committee on the Recommendations of the Convention to the Secretary of State for Commonwealth Relations was presented and adopted in camera.

Resolutions of thanks were passed both to the Broadcasting Corporation of Newfoundland for their fine public service in broadcasting the proceedings of the Convention, and to the Press for publication of the reports.

Referendum Act, 1948.—On April 10, 1948, the Referendum Act, 1948, was published in *The Newfoundland Trade Review*,

together with its objects and reasons. It was entitled: "An Act to Provide for Ascertaining at a Referendum the Wish of the People as to the Future Form of Government of Newfoundland" and consisted of 25 sections.

Preamble. The Preamble to the Act reads:

WHEREAS by the National Convention Act, 1946, a National Convention consisting of representatives elected in accordance with the provisions of the said Act was constituted " to consider and discuss among themselves as elected representatives of the people of Newfoundland the changes that have taken place in the financial and economic situation of the island since 1934, and, bearing in mind the extent to which the high revenues of recent years have been due to war-time conditions, to examine the position of the country and to make recommendations to His Majesty's Government in the United Kingdom as to possible forms of future government to be put before the people at a national referendum ";

AND WHEREAS the matters hereinbefore recited have been considered, discussed, and examined and recommendations have been made to His Majesty's Government in the United Kingdom by the National Convention;

AND WHEREAS His Majesty's Government in the United Kingdom have decided that the forms of government hereinafter in this Act set forth should be put before the people at a national referendum;

AND WHEREAS it is desirable to provide for the conduct of such referendum in order to ascertain the wish of the people as to the future form of government of Newfoundland.

Objects and Reasons. These are as follow:

The provisions of the National Convention Act, 1946, indicated that after the close of the National Convention, a national referendum would be held at which possible forms of future government of Newfoundland would be put before the people. The bill published hereunder makes provision for the holding of such referendum.

In clause 2 of the bill are named the Forms of Government which will appear on the ballot paper to be used at the referendum, in the form and order therein set forth.

Clause 3 provides that the form of government selected will be that form having a majority of the votes cast and accepted at the referendum.

Clause 4 authorizes the holding of a second poll in the event that any one of the forms of government appearing on the ballot paper shall not obtain a majority of the votes cast at the first poll.

Should a second poll be necessary, the form of government having the least number of votes at the first poll will be eliminated from the ballot paper which will be used at the second poll.

Clause 6. The proviso to this clause varying the boundaries of certain districts is made for the sake of convenience at the poll.

Clause 9 makes certain of the provisions of the National Convention Act, 1946, and the procedure under the said Act applicable in so far as they are consistent with the provisions of the proposed Referendum Act.

Clause 17 provides for the setting up of mobile polling stations in polling divisions, which are certified by the chief electoral officer to be

sparsely populated. Such polling divisions may include places along the railway line, logging camps or settlements containing such a small number of electors as not to warrant the setting up of regular polling stations. The idea is to transfer the polling station for the polling division from one place to another on polling day. Notice of the hours at which polling will take place at each settlement will be posted up previously for the information of electors.

Clause 18 makes provision for an elector, who is absent from the place in which he ordinarily and *bona-fide* resides, to vote at any polling station upon taking the Oath of Qualification.

Clause 21 gives the chief electoral officer power to reject any vote given contrary to the provisions of the proposed Referendum Act or of Section 90 of the National Convention Act, 1946. Provision is made for appeal from the decision of the chief electoral officer.

The other clauses of the bill are usual in the case of election or referendum legislation.

The Form of Ballot Paper was:

1. COMMISSION OF GOVERNMENT
   for a period of five years
2. CONFEDERATION WITH CANADA
3. RESPONSIBLE GOVERNMENT
   as it existed in 1933.

The first poll in the Referendum was held on June 3, 1948, in the 25 electoral districts of Newfoundland at which the voting was as follows: The total number of registered electors was: 176,297, of whom 155,777, or 88·36 per cent., voted with the following result:

For Commission of Government.	*For Confederation with Canada.*	*For Responsible Government.*
22,311	64,066	69,400
14·32%	41·13%	44·55%

The second Referendum, when 146,862 voted, was held on July 22, when the result was (the final figures are shown in italics):

For Confederation with Canada	76,013	*78,323*
For Responsible Government	70,847	*71,334*

B. AT OTTAWA

On December 8, 1947,[1] the Prime Minister, a Member of the King's Privy Council, laid in the House of Commons the Report of meetings between delegates from the National Convention of Newfoundland and representatives of the Government of Canada, held at Ottawa June 25 September 29, 1947, with Summary of Proceedings and Appendices—Parts 1 and 2.

Also—copies of terms believed to constitute a fair and equitable

[1] LXXXIX C.J. 35 Sessional Paper 141 (a).

basis for Union of Newfoundland with Canada, should the people of Newfoundland desire to enter into Confederation.

On March 11, 1948,[1] Mr. St. Laurent, a Member of the King's Privy Council, laid in the House of Commons—Answers to certain questions submitted to the Canadian Government by the Newfoundland Government on behalf of the National Convention of Newfoundland, dated November 29–December 10, 1947.

The Prime Minister thereupon[2] said that he had been advised by the United Kingdom Government that a statement was to be issued to-day in Newfoundland announcing that the people of Newfoundland would be given the opportunity shortly to vote in a referendum on their future form of government. The questions to be submitted to the people would be (*see Form of Ballot Paper on p.* 225). If no form of government received an absolute majority, a second vote would be held later on the 2 forms receiving the largest support.

Mr. Mackenzie King recalled the visit of the Delegation from the Newfoundland National Convention to Ottawa last year[3] and the Committee of the Cabinet appointed to meet them, and referred to his letter of October 29, 1947, addressed to the Governor of Newfoundland, account of which was given in our last issue of the JOURNAL.[4]

The Evening Telegram of December 11, 1948, contained a report of the Confederation terms of union signed at an historic ceremony in the Senate Chamber at Ottawa by the representatives of Canada and the representatives of the 450-year-old Colony. The terms would, however, not come into force until confirmed by an Act of the British Parliament.

Prime Minister St. Laurent said that the best had been done to safeguard the interests of both Canada and Newfoundland and gave assurance of "our common interest in one enlarged nation", in confederation.

The terms, which, broadly, have already appeared in the JOURNAL,[5] had been settled in discussions between the Canadian Government and the Newfoundland delegation. After the opening Session on October 6, a series of "in camera" meetings took place on October 7, since when there had been 21 such joint meetings, together with a substantially larger number of meetings of sub-committees and smaller groups.

These terms were to come into force on March 31, 1949, following approval by the Canadian and Newfoundland Governments and confirmation by the Parliament of the United Kingdom.

Mr. St. Laurent referred to Mr. Bradley having said, when the Newfoundland delegation first came to Ottawa in June, 1947, "Should Newfoundland become the tenth Province of your Canadian union you will be receiving, as a partner, a proud people eager and determined to pull their weight in generous measure," Mr. St.

[1] *Ib.* 244 Sessional Paper 141 (b).
[2] CCLXII *Com. Hans* 2095.
[3] *See* JOURNAL, XVI, 72.
[4] *Ib.* 73.
[5] *See* JOURNAL, Vol. XVI, 73.

Laurent adding that Canadians were equally " eager and determined to pull their weight ".

Continuing, Mr. St. Laurent said that Canada had made tremendous strides in the 81 years since Confederation on July 1, 1867, and the people of Newfoundland would now share all the advantages enjoyed by the rest of the Canadian people of whom they would then form part.

In addressing the gathering in French, the Prime Minister said that the Canadian nation was based on the equal partnership of two great races. They had 2 official languages and two distinct though closely related cultures. But they were one people. Canada had a constitution under which all British subjects were in a position of absolute equality, having equal rights of every kind—of language, of religion, of property and of person. There was no paramount race in Canada. The foundations of their nationhood were, and would remain, mutual tolerance and equal partnership.

Covering a letter dated December 11, 1948, from Prime Minister St. Laurent to the Hon. A. J. Walsh, K.C., LL.B., Chairman of the Newfoundland Delegation, was a Memorandum in regard to certain 24 details, not important enough to form part of the terms of union, dealing with such subjects as: imports of essential goods; broadcasting; passports; continuance of laws; public harbours; and hospitalization of veterans, etc., etc.

The Terms of Union of Newfoundland with Canada.—These are contained in the " Memorandum of Agreement entered into on the 11th day of December, 1948, between Canada and Newfoundland ".

The text of the agreement is too long to give here but it opens with a 5-paragraph Preamble followed by 50 clauses, which, under thei main heads, deal chiefly with: Terms of Union; Application of th B.N.A. Acts; Representation in Parliament; Provincial Constitutio (Executive and Legislature); Education; Continuation of Laws (General, Supply, Patents, Trade Marks, Fisheries); Financial Terms (Debt, Loans, Subsidies, Tax Agreement, Transitional Grants, Review of Financial Position); Miscellaneous Provisions, Salaries of Lieutenant-Governor and Judges, Public Services, Works and Property, Natural Resources, Veterans, Public Servants, Welfare and other Public Services, Merchant Seamen, Citizenship, Defence Establishments, Economic Survey, Oleomargarine, Income Taxes. The last 3 Clauses, however, are given at length:

Statute of Westminster. 48. From and after the date of Union the Statute of Westminster, 1931, shall apply to the Province of Newfoundland as it applies to the other provinces of Canada.

Saving. 49. Nothing in these Terms shall be construed as relieving any person from any obligation with respect to the employment of Newfoundland labour incurred or assumed in return for any concession or privilege granted or conferred by the Government of Newfoundland prior to date of Union.

Coming into Force. 50. These Terms are agreed to subject to their being approved by the Parliament of Canada and the Government of Newfoundland.

and shall take effect notwithstanding the Newfoundland Act, 1933, or any instrument issued pursuant thereto, and shall come into force immediately before the expiration of the thirty-first day of March, 1949, if His Majesty has theretofore given His Assent to an Act of the Parliament of the United Kingdom of Great Britain and Northern Ireland confirming the same.

The Schedule deals with Electoral Districts.

Summary of Confederation Terms.—The following Summary of these Terms appeared in *The Evening Telegram* of December 13, 1948, as from the Canadian Press (Ottawa, December 13):

The framework for a greater Canadian confederation has been prepared and awaits only the official and formal seal of parliamentary approval. One of the last steps was taken Saturday when the eight men met in the stately Senate Chamber of Parliament buildings and signed the historic terms of union of Newfoundland with Canada. They were Prime Minister St. Laurent and Hon. Brooke Claxton, acting External Affairs Minister, who signed for Canada, and Hon. A. J. Walsh, chairman of the Newfoundland negotiating committee, and five other Newfoundlanders who signed for the people of the 450-year-old island colony.

They dipped their pens in the inkstand used at Quebec in 1864 by the original fathers of Confederation who envisioned a Canada which would include Newfoundland as well as other British North American colonies. That dream will reach fulfilment next March 31 when formal union is expected to take place. Between now and that date the terms of union will be approved by the Parliament of Canada and the Government of Newfoundland and the enabling bill passed by the British Parliament. Then a lieutenant-governor of Newfoundland will be appointed. He in turn will select an executive committee to govern the island until elections are held and the first provincial legislature of this new Canadian province convenes. The Legislature must meet no later than four months after March 31.

Under the terms of union Newfoundland will receive a "transitional" grant of $42,750,000 spread over a number of years as well as other payments and Canadian services such as old age pensions, family allowances, veterans' benefits, and unemployment insurance. In general the Newfoundland people will receive all rights and privileges of Canadian citizens which they will by then have become.

Besides Mr. Walsh the signers for Newfoundland included F. G. Bradley, Joseph Smallwood, G. A. Winter, Philip Grouchy and J. B. McEvoy. One member of the Newfoundland delegation did not sign. He was Chesley A. Crosbie, who announced Friday he would not attend the ceremony because he was dissatisfied with the provincial arrangements.

The terms of union provide that Newfoundland, including the coast of Labrador, will have seven members in the House of Commons and six in the Senate. The date of by-elections for Commons seats was not announced. They must take place under the Canadian electoral law within six months after the Speaker has been notified of vacancies. The terms also add $16,000,000 to the $26,250,000, which was offered to Newfoundland as a traditional grant a year ago, boosting the total to $42,750,000.

In addition, Newfoundland will get $1,000,000 in re-establishment credits for her veterans and $5,000,000 as amounts recoverable and payable to the colony.

Canada will take over Newfoundland's net debt of $63,200,000 and try to provide dollars for the colony's sterling surplus of $8,000,000 to $9,000,000 within a year after union.

Newfoundland will retain the surplus of between $25,000,000 and $30,000,000 built up during the war. She will receive an annual subsidy of $180,000 plus

80 per cent. per capita grant provided for provinces in the British North America Act. For the island with a population of 325,000 this will amount to $260,000 yearly.

At the end of eight years Canada will appoint a royal commission to review the province's financial position and decide whether any additional federal assistance is required. Once union is accomplished Canada will discuss with the United States Government the question of the operation of the three American bases in Newfoundland. They likely will continue under United States operation. Newfoundland will retain the right to manufacture and sell margarine within its borders. The Newfoundland Fisheries Board which controls shipments from the country's most important industry will continue in operation, and Newfoundland's fisheries laws on export marketing of salt fish will remain effective for five years at least.

The Canadian taxation system, including the pay-as-you-go income taxation method, will be introduced in Newfoundland, and its taxpayers will be given a tax holiday of three months next year to enable them to get in on the current payment basis.

C. AT WESTMINSTER

On March 15, 1948,[1] in reply to a Question to the Secretary of State for Commonwealth Relations in the House of Commons, the Under-Secretary said that a despatch had been sent to the Governor of Newfoundland indicating the questions which it had been decided should be put before the people of Newfoundland at the forthcoming referendum.

Mr. Gordon Walker then read the despatch which was dated March 11, and opened by reference to the Report of the National Convention set up under the National Convention Act No. 16 of 1946, the terms of which appeared in the XVth Volume of the JOURNAL. Tribute is paid to the members of the Convention and reference is made therein to the negotiations which had taken place between the Newfoundland and Canadian delegates (*The Minister then quoted from the Despatch the voting at the Convention as to reference of the certain subjects to Referendum*):

(1) *Responsible Government as it existed prior to 1934*, and
(2) *Commission of Government, as given above.*

The Minister said that H.M. Government in the United Kingdom appreciated that there had been a feeling among some members of the Convention that the entry of Newfoundland into a confederation with Canada should only be arranged after direct negotiations between a local responsible Government and the Government of Canada. The terms offered by the latter, however, continues the despatch, represent the result of long discussion with a body of Newfoundlanders who were elected to the Convention and the issues involved appear to have been sufficiently clarified to enable the people of Newfoundland to express an opinion as to whether confederation with Canada would commend itself to them. In these

[1] 448 *Com. Hans.* 5, s. 207.

circumstances and having regard to the number of members of the Convention who supported inclusion in the Confederation of Canada in the ballot paper, H.M. Government came to the conclusion that it would not be right to deprive the people of Newfoundland of an opportunity of considering the issue at a referendum and they have therefore decided that Confederation with Canada should be included as a third choice on the referendum paper. The Resolution of the Convention did not indicate any limiting period for the continuation of Commission of Government, if favoured by the electorate. This Commission was established in 1933, on a temporary basis, and if it were to be continued there must be some understanding as to when it would be again revised.

They have therefore decided that the question to be placed on the ballot paper should be limited to the continuation of Commission of Government for 5 years, on the understanding that before the end of that period arrangements should be made for a further testing of Newfoundland public opinion as to the future form of government at the end of that period.

(*The Minister here quoted the 3 questions to be submitted to Referendum as above.*)

Since there were 3 questions on the ballot paper, it was intended that there should be provision in the Referendum Act for a second referendum, should no form of government get an absolute majority at the first vote, the form of Government with the smallest number of votes cast being omitted from the ballot paper at the second count.

Should Commission Government not be decided upon at the referendum, it would continue until arrangements could be made for the new form of government, and should the vote be for Confederation, means could be provided for discussion between Newfoundland and Canadian delegates.

Arrangements had been made for the publication of this despatch in Newfoundland.

On July 29, 1948,[1] Question was asked in the House of Commons as to the broadcasting of 2 members of the Commission of Government in Newfoundland in favour of Confederation with Canada, and the need for impartiality by the Commission. The Under-Secretary for Commonwealth Relations, however, did not see any reason why any Newfoundlander should not have complete freedom to broadcast under the auspices of any of the organizations engaged in the referendum campaign, provided that, in the instances in question, they made it plain—as they did—that they were expressing their views as individuals.

On July 30, 1948,[2] Question was asked the Secretary of State for Commonwealth Relations whether he was aware of the strong feeling of a large section of the people of Newfoundland that, in view of the recent popular poll, the inclusion of Newfoundland in the Canadian

[1] 454 *ib.* 152. [2] *Ib.* 208.

Confederation should not be contemplated except by negotiation between elected Governments on either side, the hon. member asking for the assurance that H.M. Government would have due regard to this feeling in any action they proposed.

Further, whether, in view of the inconclusive result of the recent popular poll in Newfoundland, H.M. Government would consider anew an invitation to Newfoundland to become a part of the United Kingdom with arrangements similar to Northern Ireland. The reply of the Minister was that His Majesty's Government in the United Kingdom were giving close attention to the results of the referendum in Newfoundland and a statement of their views would be issued as soon as possible.

On September 22, 1948,[1] Question was asked the Secretary of State for Commonwealth Relations in the House of Commons as to whether he was aware that by the British North America Act, 1867, Newfoundland could not be included in the Canadian Union except on an Address from the Newfoundland Legislature which did not now exist; and what action he proposed under the circumstances.

The Minister replied that legislation would be required at a later stage for the entry of Newfoundland into the Canadian Confederation.

In a Supplementary the hon. member asked if the Minister was aware that at the recent referendum in Newfoundland on an 84 per cent. poll only 52 per cent. voted for confederation with Canada; and whether upon this inconclusive authority it was proposed to proceed further with the scheme.

The reply of the Minister was that H.M. Government in the United Kingdom had given close consideration to the result of the recent referendum in Newfoundland. When the readiness of the Canadian Government to proceed with Confederation was announced in a statement by the Prime Minister of Canada on July 30, the United Kingdom Government expressed their agreement with that course. The Minister concluded by saying that he could not accept the view that the authority for this course expressed by the people of Newfoundland in the referendum was inconclusive.

On September 23, 1948,[2] in reply to a Question in the House of Commons as to what action was being taken to ensure that all interests were being adequately represented in the negotiations before a final decision was made as regards the confederation of Newfoundland with Canada, the Secretary of State for Commonwealth Relations said that after the recent referendum in Newfoundland the Governor appointed a delegation of 7 to meet the Canadian Government and settle the final terms of union between the 2 countries. The leader of the delegation was the Vice-Chairman of the Commission of Government and he and his colleagues would leave for Ottawa early in October. The Minister was satisfied that the members of the delegation would fully represent the general interests of Newfoundland.

[1] 456 *ib.* 126. [2] *Ib.* 157.

Individuals and organizations in the Island who might wish to do so had been invited to submit their views.

(*The Proceedings on this subject at Westminster subsequent to the opening of the 1948-49 Session on October 26, 1948, together with any further proceedings both at Ottawa and at St. John's, will be reported in the next issue of the* JOURNAL.)

IX. CANADA: HOUSE OF COMMONS PROCEDURE,[1] 1948

By the Editor

There have been many special references in the JOURNAL to Procedure in that stately legislative building on Parliament Hill at Ottawa. The last issue reported considerable activity in this respect by the Speaker of the House of Commons—the Hon. Gaspard Fautieux and their distinguished Clerk, Dr. Arthur Beauchesne, C.M.G., K.C., LL.D., Litt.D., F.R.S.C., etc., the third edition of whose "Rules and Forms of the House of Commons of Canada" was reviewed in Vol. XI-XII of the JOURNAL and who is one of the Foundation Members of this Society. In fact it was in Ottawa, Canberra and Cape Town where the seeds of this Society were sown in 1926.

In our last issue there was considerable reference to the inquiries of a Special Committee of the Canada Commons on its procedure, resulting in Mr. Speaker Fautieux and Dr. Beauchesne paying a special visit to Westminster for discussion with Mr. Speaker Clifton Brown and Sir Gilbert Campion, the Clerk of the House of Commons. The following information is the result of such visit and subsequent inquiries by the Special Committee on the subject appointed by the House of Commons on February 20, 1948, on the Motion of the then Prime Minister (rt. hon. W. L. Mackenzie King), namely:

That a Special Committee consisting of (*here naming 5 members*) be appointed to consider, with Mr. Speaker, the latter's Report on the Procedure of the House of Commons of Canada laid on the Table of the House, December 5, 1947[2] and to report to the House thereon.[3]

On June 25 of that year the Speaker laid on the Table of the House of Commons the Interim Report of the Special Committee abovementioned.[4] As this Report of the Special Committee appointed February 20, 1948, is both short and concise, it will be given at length:

The Special Committee appointed on the 20th of February, 1948, begs leave to present the following Report:

Your Committee has given serious consideration to the "Report on the Procedure of the House of Commons of Canada" laid on the Table on December 5, 1947, which brought to the attention of the House suggestions made at different times, in and out of the House, with respect to the following matters:

Financial resolutions preceding money bills; the appointment of a Committee on Estimates; the delivery of the Budget Speech in Committee of Ways and Means, instead of in the House with the Speaker in the Chair; questions to Ministers; adjournment under S.O. 31 to discuss an urgent public matter; appeals from the Speaker's decision; the length of speeches; the division of the session in 3 parts; and the suppression of the intermission from 6 to 8 o'clock.

Your Committee also considered a memorandum from the Clerk of the House

[1] *See also* JOURNAL, Vols. V, 74; XIII, 49; XV, 56; XVI, 148.
[2] *Ib.* XVI, 148: H.C. Sessional Paper 139.
[3] LXXXIX *Com. J.* 7, 179.
[4] *Ib.* 679.

(*see below*) dealing with the time of the meeting of the House; the obligation of members to attend the service of the House; the 6 o'clock adjournment on Wednesday; the obligation of members to vote; the necessity of having a special Standing Order dealing with " irrelevance " and " tedious repetition "; the right of reply given to the mover of the second reading of a Bill and the Minister sponsoring any government measure; the expedition of procedure with respect to divorce bills; and the advisability of appointing a committee to deal with the shortening of over-protracted debates. These questions have been given serious consideration.

Your Committee has agreed to amend S.O.s 6 and 7 in order to allow the House to adjourn at 10 o'clock p.m. Under this amendment there shall be an intermission of only an hour after 6 o'clock. The amendment consists in deleting the word " eight " and substituting " seven " therefor, making the Standing Order read as follows:

> 6 (1). If at the hour of six o'clock p.m. except on Wednesday, the business of the House be not concluded, Mr. Speaker leaves the Chair until seven o'clock.

Standing Order 7 will have also to be amended by striking out the word " eleven " thereof and substituting " ten " therefor, making it read as follows:

> 7. At ten of the clock p.m., unless the closure rule (Standing Order 39) be then in operation, the proceedings on any business under consideration shall be interrupted and Mr. Speaker shall adjourn the House without question put, provided that all business not disposed of at the termination of the sitting shall stand over until the next sitting day when it will be taken up at the same stage where its progress was interrupted.

Your Committee has inquired into the time limit on speeches, a question which ought to be considered with the greatest caution lest the principle of freedom of speech be disregarded. However, since the House adopted the 40-minute rule in 1927, the following amendment to S.O. 37 is hereby recommended:

> Provided always that in Committees of the Whole, Supply or Ways and Means, no member shall speak on a particular motion, clause or item under consideration more than twenty minutes continuously.

As to oral questions addressed to Ministers, your Committee agreed to the following amendment to S.O. 44:

> A question of urgent character may be addressed orally to a Minister on the Orders of the Day being called. Such a question shall not be prefaced by the reading of telegrams, newspaper or book extracts, letters or preambles of any kind. The answer shall be oral and may be immediately followed, without debate or comment, by such supplementary questions as may be necessary for the elucidation of the answer given by the Minister.

Your Committee recommends that the motion for the Speaker to leave the Chair for the House to go into Committee of the Whole to consider a Resolution antecedent to a Money Bill be allowed to pass without debate. In order to do that a slight addition would have to be made to S.O. 38. Section (1) thereof could be amended by adding to paragraph (*a*) after the word " date ":

> and motions for Mr. Speaker to leave the Chair for the House to resolve itself in Committee of the Whole on a Resolution antecedent to the introduction of a Money Bill.

Section (5) of S.O. 56 provides that, " at the commencement of every Session, or from time to time, as necessity may arise, the House may appoint a Deputy Chairman of Committees ".

Your Committee recommends that the words " Session or from time to time as necessity may arise " be deleted and the word " Parliament " be substituted therefor and also the word " shall " be substituted for " may " in the said Standing Order which will therefore read:

> At the commencement of every Parliament the House shall appoint a Deputy Chairman of Committees who shall, whenever the Chairman of Committees is absent, be entitled to exercise all the powers vested in the Chairman of Committees, including his powers as Deputy Speaker during Mr. Speaker's unavoidable absence.

Your Committee has borne in mind during their discussions that the House of Commons is a representative assembly where equality among members, publicity of proceedings, freedom of speech, majority rule and the right of the minority to an adequate expression of opinion are principles which must be carefully guarded.

We are of the opinion that at this late period of the Session it is not in our power to complete our inquiry.

Your Committee presents this Interim Report with the recommendation that revision of the Standing Orders be considered again at the next session of this Parliament.

In the above-mentioned Memorandum by Dr. Beauchesne, dated May 26, 1948, he submits certain suggested amendments to the Standing Orders, which he considers, if adopted by the House, would expedite its work without encroaching on the fundamental rights of its members. Dr. Beauchesne also remarks that some may commend themselves to the members of the Special Committee. Others may not. But they will constitute a basis for discussion by the members of the Committee.

As this concise Memorandum is complementary to the Special Committee's Report, it will be given at length, each suggestion by the Clerk of the House being supported by explanatory notes thereon.

THE CLERK'S MEMORANDUM

S.O. 2 reads.—The time for the meeting of the House is at 3 o'clock in the afternoon, and if at the time of meeting there be not a quorum, Mr. Speaker may take the chair and adjourn.

When the House rises on Friday it stands adjourned, unless otherwise ordered, until the following Monday.

Suggested Amendments.—Unless the House otherwise order, the House shall meet every Monday, Tuesday, Wednesday and Thursday at three o'clock in the afternoon, and if at the time of meeting there be not a quorum, Mr. Speaker may take the chair and adjourn the House to its next sitting day.

The House shall meet every Friday at two o'clock and shall continue to sit until six o'clock unless previously adjourned.

The hour from five to six o'clock on Friday shall be reserved to Private Bills.

When the House rises on Friday it stands adjourned until the following Monday.

Explanatory Notes.—Under this amendment the House shall sit two hours less on Friday, but this apparent loss of time will be made up by the suppression of the intermission from 6 to 8 o'clock as suggested further in amendment proposed to S.O. 6.

There is a tendency on the part of many members to take the train or aeroplane on Friday afternoon or early evening in order to spend the week-end with their families or visiting friends anywhere between Hamilton and Quebec. Members have then had 5 days' sittings either in the Chamber or in Committees, and they naturally feel the need of coming in closer contact with the public and, also, of paying some attention to their personal or provincial affairs. Those who represent distant constituencies, either from the West or the Maritime Provinces, being almost compelled to remain in Ottawa during the week-end, feel that the House should sit on Friday night; nevertheless, we must not forget that the attendance is very small on that night.

There is seldom any important work done from 8 to 11 on Friday, and there would be nothing lost if the sitting was not held.

S.O. 5 reads.—Every member is bound to attend the service of the House; unless leave of absence has been given him by the House.

Explanatory Notes.—It is suggested that this Standing Order be abolished. The practice of moving for leave of absence has fallen into desuetude.

Motions for leave of absence were frequent occurrences in the first years of Confederation. Five were made in the Parliament of 1867-68. The first one read as follows: "That leave of absence for fifteen days be granted to the Hon. Mr. Galt, Member for the Electoral District of Sherbrooke." Sometimes reasons were given. The Journals show that on May 8, 1868, Mr. Walsh moved, seconded by Mr. Morris—"That leave of absence for the remainder of the session be granted to Hugh MacDonald, Esquire (Antigonish) on account of urgent private business". On February 16, 1871, Sir John A. Macdonald moved, seconded by Sir George Etienne Cartier: "That eight days' leave of absence be granted to James F. Laprum, Esquire, Member for the Electoral District of Addington, on account of family affliction." On April 13, 1877, the House resolved: "That in consequence of his being incapacited by severe illness to attend to his duties in this House, leave of absence be granted to Firmin Dugas, Esquire, Member for the Electoral District of Montcalm, and that his sessional indemnity be computed and paid as for the whole session."

There is no record in the Journals of the House of any leave of absence having been asked after 1877. S.O. 5 is useless and should be abolished.

S.O. 6 (1) reads.—(1) If at the hour of six o'clock p.m. except on Wednesday, the business of the House be not concluded, Mr. Speaker leaves the chair until eight o'clock.

Explanatory Notes.—This section of S.O. 6 should be abolished. In the United Kingdom there is no intermission between 6 and 8 o'clock p.m. The sittings are governed by their Standing Order 1, which reads:

(1) Unless the House otherwise order, the House shall meet every Monday, Tuesday, Wednesday and Thursday at a quarter to three of the clock.

(2) At half-past eleven of the clock Mr. Speaker shall adjourn the House without question put.

They have therefore sittings of 8 hours and 45 minutes. Our sittings last 6 hours. The average length of our session is 125 sitting days. If we saved two hours on each sitting day, we would work 250 hours more each session, which means 31 days or one month additional time. The quorum of the House being only 50 members, there would always be a sufficient attendance from 6 to 8 to carry on the business of the House.

S.O. 9 reads.—Upon a division, the yeas and nays shall not be entered upon the minutes unless demanded by five members.

The following amendment is recommended:

That the following words be added to S.O. 9:

And every member present in the Chamber when the question is fully put by Mr. Speaker shall be obliged to vote, and if he does not vote Mr. Speaker shall call upon him to vote and his name shall be recorded accordingly. If he persists in not voting he may be named by Mr. Speaker for having violated a Standing Order of the House.

Explanatory Notes.—There never was a Standing Order governing this matter in the Canadian House of Commons. The suggestion that members be compelled to vote was made in a Report of a Committee on Procedure in 1944[1] but no further action was taken. Our practice for many years was that a member who remained seated during a division was required by the Speaker to declare on what side he intended to vote. It often happened that a member would rise after a division and say: "Mr. Speaker, I noticed that the Honourable Member did not vote", but there was no Standing Order giving the Speaker any authority to impose a penalty. In 1909 the United Kingdom House passed its Standing Order 29, which relieves members of the obligation to vote. We have no rule to follow in this regard, which is hardly fair to members who are entitled to know what are their rights in a proceeding of this kind. The compulsion proposed under this new amendment will be very light as members who have objections to vote one way or the other shall not be forced to do so against their will, for they shall be free to stay out of the Chamber when division takes place.

S.O. 12 (1) reads.—Mr. Speaker shall preserve order and decorum, and shall decide questions or 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.

Proposed amendment: That the following be added after the word "debate" in the fourth line:

provided no division shall take place thereon unless demanded by twenty members.

[1] *See* JOURNAL, Vol. XIII, 54.

Explanatory Notes.—Under the present procedure when Mr. Speaker has given a decision, any Member may rise and say: "I appeal from your decision". The question is then put on that appeal, and if 5 members rise a division has to take place. This amendment provides that, in the future, the House will only divide on the appeal if a division is demanded by 20 members.

S.O. 31 (3) relating to the motion to adjourn the House for the purpose of discussing a definite matter of urgent public importance reads.—He (the member) then hands a written statement of the matter proposed to be discussed to Mr. Speaker, who, if he thinks it in order, and of urgent public importance, reads it out and asks whether the member has the leave of the House. If objection is taken, Mr. Speaker requests those members who suppport the motion to rise in their places and, if more than twenty members rise accordingly, Mr. Speaker calls upon the member who has asked for leave.

1st amendment proposed: that the following be added to s.s. (4):

If the Motion to adjourn is permitted, the discussion will be postponed

(*a*) on Monday and Thursday, until 8 p.m.
(*b*) on Tuesday and Friday, until Private and Public Bills have been disposed of.
(*c*) on Wednesday until 5 p.m.

2nd amendment: that the following be added as sub-section (*g*) of Section (6):

There shall be no appeal from Mr. Speaker's decision as to the urgency of discussing the matter mentioned in the written statement submitted to him by the Member who proposes to move the adjournment of the House.

Explanatory Notes.—The object of this amendment is to bring the rule in conformity with the present practice of the House and several Speakers' decisions which have been invariably sustained. The theory is now accepted that the Speaker in declaring that there is no urgency to debate the matter brought to the attention of the House does not rule on a point of order. He takes the responsibility of deciding whether or not the question proposed to be discussed is of such national importance that it should be given precedence over the appointed proceedings of the House.

S.O. 37 reads.—No member except the Prime Minister and the Leader of the Opposition, or a Minister moving a Government Order and the members 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 40 minutes at a time in any debate.

Proposed Amendment: That the following be added as Section (2):

Provided always that in the Committees of the Whole, Supply or Ways and Means, no member shall speak more than once on a particular motion, clause or item under consideration, and not more than 20 minutes continuously, but his right to ask questions relating to the subject-matter of the said motion, clause or item under consideration shall not be thereby restricted.

Explanatory Notes.—When Mr. Speaker is in the Chair, a member can only speak once, but there is no limit to the times of speaking

when the House is in Committee. Under the present rule, a member may make two or three 40-minute speeches during a sitting of the Committee which does not last longer than 3 hours at a time. This amendment provides for a more equitable apportionment of time and allows more members to take part in the discussions.

S.O. 40 (2) reads.—Mr. Speaker or the Chairman, after having called the attention of the House, or of the Committee, to the conduct of a member who persists in irrelevance, may direct him to discontinue his speech, and if the member still continues to speak, Mr. Speaker shall name him, or, if in Committee, the Chairman shall report him to the House.

Proposed Amendment: That the following words be inserted after the word "irrelevance": "or tedious repetition".

S.O. 43 (2) reads.—A reply shall be allowed to a member who has moved a substantive motion, but not to the mover of an amendment, the previous question or an instruction to a Committee.

Proposed Amendment: That the following be inserted after the word "motion": "or the second reading of a bill, and to a Minister of the Crown who has introduced a Government measure". The amended section will read:

A reply shall be allowed to a Member who has moved a substantive motion, or the second reading of a bill, and to a Minister of the Crown who has introduced a Government measure, but not to the mover of an amendment, the previous question or an instruction to a committee.

Explanatory Notes.—In recent years the Ministers have had to obtain leave or unanimous consent in order to answer criticism and as no objection was ever taken to this course, the House may now regulate the practice by adopting this new rule.

S.O. 44 regulates questions placed on the Order Paper, but does not deal with questions addressed orally to Ministers on the orders of the day being called.

Proposed Amendment: That the following be added as Section (5) of this Standing Order:

A question of urgent character may be addressed orally to a Minister on the orders of the day being called, provided a copy thereof has been delivered to the Minister and to the Clerk of the House at least one day before the meeting of the House. Such a question shall not be prefaced by the reading of telegrams, newspaper extracts, letters or preambles of any kind. The answer shall be oral and may be immediately followed by supplementary questions limited to three in number, without debate or comment, for the elucidation of the information given by the Minister.

Explanatory Notes.—The custom of asking questions before the orders of the day are proceeded with has taken such a development that it is now part of our parliamentary practice. It is neither possible nor advisable to do away with it. As it seems to meet the wishes of the majority of members, the House may adopt this amendment so that the Speaker will in future be guided by a Standing Order when members' rights in this connection are challenged.

S.O. 60 reads.—If any motion be made in the House for any public aid or charge upon the people, the consideration and debate thereof may not be presently entered upon, but shall be adjourned till such further day as the House thinks fit to appoint; and then it shall be referred to a committee of the Whole before any resolution or vote do pass thereupon.

S. 54 of the B.N.A. Act reads as follows:

It shall not be lawful for the House of Commons to adopt or pass any vote, Resolution, Address or Bill for the appreciation of any part of the Public Revenue, or of any Tax or Impost, to any purpose that has not been first recommended to that House by Message of the Governor-General in the session in which such Vote, Resolution, Address or Bill is proposed.

Explanatory Notes.—The Resolution is not a necessary element in our procedure. The House would be justified in abolishing it for the sake of expediting business. The practice in our House is that the Government first gives 48 hours' notice that it will move the House into Committee on a future day to consider the Resolution, which means that nothing is done until the 48 hours are past. Then motion is made that the House shall go into Committee at the next sitting to consider the Resolution. When the Government is ready to go on with the measure, motion is made "that Mr. Speaker leave the Chair". This is debatable and may consume several days. No amendment is allowed. If the motion carries, the Resolution at last reaches the Committee where it may be discussed for a few days more. This means a considerable loss of time. Even if the Resolution passes unanimously, its 3 first stages cover 3 sittings. I may add, however, that in many cases the delays are waived by unanimous consent and the Bill is introduced forthwith, which means that these delays are not absolutely necessary and can be omitted when members are anxious to see the Bill.

There does not seem to be any doubt that the procedure on this Resolution is a waste of time which adds to the length of sessions. It is a relic of the old procedure when the King of England asked for money and the Commons' consent had to be obtained. The situation has changed considerably in late years.

Note.—This motion that Mr. Speaker leave the chair has to be made and is debatable under S.O. 38 when it appears on the Order Paper. Standing Order 38 could be amended by adding the following provision after the word "date" in Section (*a*) "and financial resolutions preceding a money bill other than Supply and Ways and Means".

S.O. 75 reads.—Every public bill shall be read twice in the House before committal or amendment.

Proposed Amendment: That the following be added at the end of this Standing Order:

with the exception of Divorce Bills passed in the Senate which shall be referred to the Standing Committee on Private Bills as soon as received from that House.

Explanatory Notes.—Under this new rule, divorce Bills will come before the House only once. They will be thoroughly considered in the Committee on Private Bills prior to being submitted to the House. They are now mentioned 3 times before their Third reading: first, when the Message is read from the Senate; secondly, on first reading and thirdly on second reading. The object of the new rule is to avoid this unnecessary procedure.

Divorce by legislation should not take place to such an extent that Bills seeking it sometimes fill many pages of the order paper. The matter is not one that can be settled by Standing Orders. The whole question should be given full consideration with a view to eliminating divorce Bills from Parliament, and your Committee strongly recommends that this be done as soon as conveniently possible.

Standing Order 63 (1) (*k*) which relates to the appointment of Standing Committees reads:

(*k*) On debates, to consist of 12 members, 7 of whom shall constitute a quorum:

Proposed amendment (*k*):

(*k*) On debates, to consist of 6 members of designated alternates, one-half of whom shall be supporters of the Government and the balance representative of parties in opposition. All members must be present in order to constitute a Meeting.

The following is suggested as new Rule:

63 (A) (*a*) The Committee on Debates may without reference consider the length of time to be occupied in any debate, and make recommendations to the House in relation thereto.

(*b*) All questions before the Committee on Debates shall be decided by a majority of voices including the voice of the Chairman, who shall not have a second or casting vote.

(*c*) A Motion that the House concur in a report of the said Committee shall be put without debate.

X. P.R.: APPLICATION OF THE SYSTEM IN ELECTING THE SENATE OF THE COMMONWEALTH OF AUSTRALIA

By J. E. Edwards,
Clerk of the Australian Senate.

Section 7 of the Constitution of the Commonwealth of Australia is as follows:

7. The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.

But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of senators to be chosen for each division, and in the absence of such provision the State shall be one electorate.

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State, but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

The senators shall be chosen for a term of six years, and the names of the enators chosen for each State shall be certified by the Governor to the Governor-General.

The Representation Act of 1948[1] increased the number of Senators to 60, that is, 10 from each State.

Section 9 of the Constitution is as follows:

9. The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws prescribing the method of choosing the senators for that State.

The Parliament of a State may make laws for determining the times and places of elections of senators for the State.

For very many years all political parties in Australia have found fault with the system under which Senators have been elected.

Until the year 1918 elections for the Senate were held under what was known as the "first past the post" method. Each voter placed a cross in the square opposite the name of each candidate for whom he desired to vote, the number of crosses being limited to the exact number of Senators to be elected. The result was that while the 3 Senators elected received more votes than other individual candidates, in some cases (where there were many candidates, for instance) they were elected on a minority of the total votes cast.

In 1918 the preferential voting system was applied to Senate elections, and at the following election produced the result that all the seats in the Commonwealth went to the political party or com-

[1] No. 16 of 1948.

bination of parties favoured at the time by a bare majority of the electors.

A minority as high as 47 per cent. of the electors received no representation at all in the Senate at a particular election. As only half the total number of Senators vacate their seats at each election, in most cases it happened that, because of what has been called "the swing of the pendulum", each of the principal political parties retained some representation from a previous election. In 1920, however, the Senate contained 35 Government members to one Opposition member. In 1934 the numbers were 33 to 3, and in 1947 the numbers were again 33 to 3, with the political composition of the Senate the exact opposite to what it had been in 1934.

Many suggestions were made to alter the voting system, but although each party in turn had power to amend the law, both parties rejected proportional representation, preferring to take the chance of retaining control of the Senate under the old system.

In 1948, when legislation was passed increasing the number of Senators to 60, it was realized that to continue a system which might result in a Senate of 60 members all belonging to one party would make a farce of Parliamentary government.

The Government, after careful consideration, decided that the fairest system and the one most likely to enhance the status of the Senate would be that of proportional representation.

Accordingly, a Bill was introduced and passed,[1] with the concurrence of all parties, setting out in detail the method of counting to be adopted in respect of future elections of Senators.

In the Second-Reading speech of the Minister who introduced the Bill in the Senate it was stated that the method adopted was generally in accord with the practice laid down by the Proportional Representation Society. It follows closely the provisions contained in the Proportional Representation Bill 1912[2] of Great Britain and the system employed in respect of municipal elections in the United Kingdom and South Africa. It is virtually identical with the method used in the election of the Parliament of Eire.

The existing style of the Senate ballot-paper (*see p.* 245) and the provision that candidates may be grouped thereon will remain, and voters will be required to indicate the order of their preference for all the candidates. The count will be carried out, under the direction of the Commonwealth Electoral Officer for the State, in the offices of the respective divisional returning officers. When he has received the final result of the count of the first preference votes from all the returning officers and has totalled such results the Commonwealth Electoral Officer will *determine a quota by dividing the total number of first preference votes by one more than the number of candidates required to be elected and by increasing the quotient so obtained by one.* This formula is the one recommended by the Proportional

[1] Act 17 of 1948. [2] Bill No. 255 (1912-13).

Representation Society, and used generally in all places in British communities where proportional representation has been applied.

Any candidate who, either on the count of the first preference votes or at any subsequent stage, obtains a number of votes equal to or greater than the quota shall be elected; and until all vacancies have been filled the surplus votes, that is, any number in excess of the quota, of such elected candidate will be transferred to the continuing candidates in strict proportion to the next preference indicated by voters.

If, after the count of the first preference votes or after the transfer of the surplus votes of an elected candidate at any stage, no candidate or less than the number required to be elected has or have obtained the quota, then the candidate with the fewest votes shall be excluded, and the whole of his ballot-papers transferred to the continuing candidates; and if, thereupon, no candidate has yet reached the quota, the process of excluding the candidate with the fewest votes and the transferring of his ballot-papers will continue until a continuing candidate has received a number of votes equal to the quota, or in respect of the last vacancy, a majority of the votes.

The Act has a number of other provisions which need not be dealt with here.

At the next election of Senators, due to take place in 1949, it will be necessary to elect 7 Senators from each State, 4 of whom will enter the Senate immediately upon their election, the other 3 commencing or re-commencing their terms on the following 1st day of July.

As it is expected that the political party which receives the majority of the votes of the electors will obtain 4 seats, and that the other major political party will obtain 3 seats, both parties are faced with a minor dilemma in selecting candidates.

Realizing that if the party selects 7 candidates for the 7 seats, it is reasonably certain that the last 3 on the ticket will have no chance of election, the present intention (February, 1949) seems to be to select 4 candidates only. If this is done it will involve issuing a "how to vote" ticket with places Nos. 5, 6 and 7 allotted to candidates of another party, or to independent candidates.

In Australia, more than 90 per cent. of votes for the Senate follow one or other of the party tickets. It is realized that if electors are left to follow their own choice after the first 4, the proportion of informal votes, which is at present very high, will be even higher.

One of the results of the new system of voting will be that in actual practice the choice of most of the Senators will be made in party pre-selection ballots. With 7 candidates to be elected each of the two major parties seems assured of 3 seats while the remaining seventh seat will be determined by the electors.

FORM OF SENATE BALLOT PAPER

" FORM E

Ballot Paper

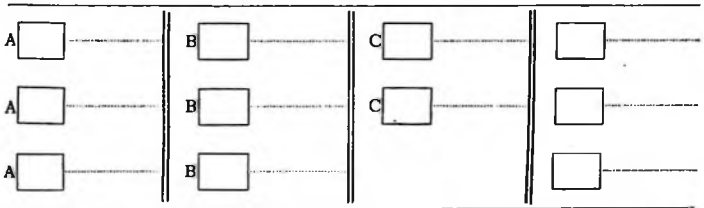
COMMONWEALTH OF AUSTRALIA

State of [*here insert name of State*].

Election of [*here insert number*] Senators.

Directions.—Mark your vote on this ballot-paper by placing the numbers [*here insert* 1, 2, *and so on, as the case requires*] in the squares immediately to the left of the names of the respective candidates so as to indicate the order of your preference for them.

CANDIDATES



NOTE.—The letter ' A ' or ' B ' or ' C ' &c., appearing before the square immediately to the left of a candidate's surname indicates that that candidate and each other candidate who has the same letter appearing before the square immediately to the left of his surname have been grouped by mutual consent.

The fact that no letter appears before the square immediately to the left of a candidate's surname indicates that the name of that candidate has not been included in any group."

XI. AUSTRALIA—ENLARGEMENT OF COMMONWEALTH PARLIAMENT

By A. A. Tregear, B. Com., A.I.C.A.,
Clerk-Assistant of the House of Representatives.

In 1901, when the Commonwealth of Australia was established, the population of Australia was 3,765,339, and the representatives of the people to be chosen for the first Commonwealth Parliament numbered 36 Senators and 75 members of the House of Representatives.[1]

Throughout the years the population has been steadily increasing, and, at the census taken on June 30, 1947, the figure of 7,580,820 showed that the population had more than doubled since 1901.

Although provision has always existed in the Commonwealth of Australia Constitution Act[2] for increasing the number of Senators and members of the House of Representatives, no opportunity has been taken to grant additional representation in the Parliament in accordance with the growing numbers of people and the wider needs of the Commonwealth.

Looking at the statistical returns for the elections held in 1903,[3] it is found that the 1,893,586 electors then enrolled, returned a representative to either the Senate or the House of Representatives for each 17,059 electors, and that each Member of the House of Representatives represented on an average 25,247 electors.

The marked increase in the population and the concurrent rise in the number of electors to the present total of 4,780,334, together with developments in Australia's national status, called for early action to improve the position if the Australian electors were to enjoy adequate representation in the National Parliament.

On April 16, 1948, the first proposal since Federation for the enlargement of the Parliament was made, for, on that day, the Attorney-General (rt. hon. H. V. Evatt) introduced into the House of Representatives a Bill for an Act to increase the number of Senators and for other purposes.[4] The Bill effected an increase in the number of Senators to 10 for each of the 6 Australian States instead of 6 as at present.

On the number of Senators depends the strength of the House of Representatives, for S. 24 of the Constitution lays down that the number of Members of the House shall be, as nearly as practicable, twice the number of Senators. Accordingly, the new House will have 121 Members representing State electorates. In addition, the Northern Territory will continue to elect one member, and, for the first time, the Australian Capital Territory electors will go to the polls and elect one member.

[1] Commonwealth of Australia Constitution Act, ss. 7, 26.
[2] *Ib.* ss. 7, 27. [3] Paper No. 12 (1948). [4] *Com'th Hans.*, p. 962.

As prescribed by S. 28 of the Constitution, each House of Representatives may not continue for longer than 3 years from its first meeting. The term of the present House must therefore end by November 5, 1949, and the enlarged Parliament of 60 Senators and 123 Members of the House of Representatives will be elected after the House is next dissolved.

Explaining the Bill which he had introduced, Dr. Evatt said, in his second reading speech[1]:

> For some time past there has been a strong body of opinion that, having regard to the growth of population and the marked expansion of Commonwealth interests and activities, the numerical strength of the National Parliament should be substantially increased. . . . The Australian Government is convinced that in the interests of the people of the Commonwealth the Parliament ought to be enlarged to the degree provided in the Bill, and since, in any case, a redistribution of the electorates is due prior to the next elections, the Government considers the present to be an opportune time at which to effect such enlargement.

Sir Earle Page (Country Party Member for Cowper, New South Wales) moved an amendment to the motion "That the Bill be now read a second time," in the following terms[2]:

> That all the words after "That" be omitted with a view to inserting the following words in place thereof: "the consideration of the Bill be postponed to permit the submission to the people by referendum of constitutional alteration—
>
> (1) to section 24 of the Constitution eliminating the necessity of any relationship between the numbers of the members of the Senate and the members of the House of Representatives;
> (2) to provide for a double dissolution of the Senate and House of Representatives when any general increase or decrease of numbers of Senators is to be made; and
> (3) to enable the minimum representation of any original State to be increased if Parliament so desires in proportion to any general increase of membership of the House of Representatives."

The amendment was defeated, the Bill was passed and sent to the Senate for its concurrence.

In the Senate, Senator Cooper (Leader of the Opposition) moved the following amendment to the motion for the second reading:[3]

> Leave out all the words after "That" with a view to inserting in lieu thereof the words: "consideration of the Bill be postponed to permit the submission to the people by referendum of constitutional alteration to eliminate from section 24 the provision whereby the number of members of the House of Representatives is determined by the number of Senators."

The amendment was negatived and the Bill passed. Royal Assent was given to the Bill on May 18, 1948, and it became Act No. 16 of 1948 with the title "Representation Act 1948", operating from the day on which it received the Royal Assent.

Applying the new Act in relation to Senate representation was just a matter of increasing the number of Senators in each State from 6 to

[1] *Ib.*, p. 964. [2] *Ib.*, p. 1141. [3] *Ib.*, p. 1357.

10, but, in the case of the House of Representatives, new electorates were needed. For the way in which additional electorates are created, reference is made to the Representation Act 1905-1938. Under this Act, following a census of the people of the Commonwealth, the Chief Electoral Officer is required to determine the number of Members of the House of Representatives to be chosen in the several States.[1] First, a quota is ascertained by dividing the number of the people of the Commonwealth (excluding residents of the Australian Capital Territory, the Northern Territory, and full-blooded aboriginals) by twice the number of Senators.[2] By the Representation Act 1948, the number of Senators is deemed to be 60. Then the number of people in a particular State is divided by the quota, and the result gives the number of members for the House of Representatives to be chosen in that State (subject to the constitutional provision that at least 5 members shall be chosen in each State).[3] Under the new proposals, the numerical strength of Members of the House of Representatives from the various States will increase as follows:

New South Wales	from 28 to 47
Victoria	from 20 to 33
Queensland	from 10 to 18
South Australia	from 6 to 10
Western Australia	from 5 to 8

Tasmania has an unaltered figure of 5.

Having determined the number of members to be returned by each State, then each State has to be divided into electoral divisions corresponding with the number of members to be elected. For the procedure in this connexion, the Commonwealth Electoral Act 1918-1948 applies.

Three Distribution Commissioners are appointed by the Governor-General, one being a principal electoral officer and one being the Surveyor-General of the State or an officer with similar qualifications.[4] The Commissioners are informed by the Chief Electoral Officer of the number of electoral divisions into which the State is to be divided, the quota for the State, and the permissible maximum and minimum numbers of electors in a division. For this purpose, the quota is obtained by dividing the number of electors for the State by the number of members for the House of Representatives to be chosen for that State.[5] A variation from the quota is allowed to the extent of $\frac{1}{7}$ more or less.[6]

In framing their proposals, the Commissioners are required to give consideration to—

(*a*) community or diversity of interest;
(*b*) means of communication;

[1] S. 9. [2] *Ib.* s. 10. [3] Constn., s. 24.
[4] Commonwealth Electoral Act, 1918-1948, s. 16. [5] *Ib.* s. 18. [6] *Ib.* s. 19.

(*c*) physical features;
(*d*) existing boundaries of electoral divisions and subdivisions; and
(*e*) existing boundaries for elections for members of the Parliament of the State concerned.[1]

After their deliberations and before submitting their report, the Commissioners exhibit at each post-office in the proposed electoral division a map showing the boundaries, and invite public attention to it.[2] Within 30 days, objections or suggestions may be lodged, which the Commissioners are bound to consider.[3] The Commissioners then forward their report to the Minister who presents it to Parliament for approval or otherwise.[4]

The redistribution of electoral divisions to meet the needs of the enlarged Parliament has now been effected. In some States, objections were taken and suggestions made by interested persons, and the Commissioners where they thought fit amended their original proposals and boundaries. Parliament approved in each case of the final reports of the Commissioners after having altered some of the names proposed for certain electorates.[5]

In the enlarged Parliament, there will be one representative for each 27,600 electors instead of the present ratio of one for each 43,457, and, in the House of Representatives, the present average of 69,000 electors to each member will be reduced to approximately 41,300.

Country and metropolitan electorates in each State will be:—

State.	*Metropolitan.*	*Extra-Metropolitan.*	*Total.*
New South Wales ...	25	22	47
Victoria	18	15	33
Queensland	6	12	18
South Australia ...	6	4	10
Western Australia ...	4	4	8
Tasmania	1	4	5
Totals	60	61	121

It is expected that the existing Chambers will accommodate the additional numbers, but structural alterations will have to be made elsewhere in Parliament House to provide extra rooms and space to meet the needs of 183 parliamentarians instead of the existing 111. Whether the present Standing Orders and Rules will be sufficient for a larger Parliament remains to be proved, but, should they be deficient, early remedial measures will be taken to ensure that our Parliament continues to function as a truly national and democratic institution.

[1] *Ib.* s. 19. [2] *Ib.* s. 20. [3] *Ib.* s. 21. [4] *Ib.* ss. 22, 23, 24.
[5] 1948. *Votes and Proceedings*, p. 205.

XII. WESTERN AUSTRALIA: MEMBERS' PENSIONS[1]

By Fred. E. Islip, J.P.,
Clerk of the Legislative Assembly.

The State Parliament of Western Australia passed a Members of Parliament Fund Act in 1941,[2] which was outlined in Volume XV of this JOURNAL[1] by the late F. G. Steere, I.S.O., J.P., then Clerk of the Legislative Assembly. During 1948 an Act was passed which superseded the 1941 Act, and provided for a system of pension benefits for ex-members and widows of deceased members. In the Legislative Assembly on December 9, 1948[3] the following speech was made on 2 *R.* of the Bill which thoroughly explains the system proposed.

The Premier (hon. D. R. McLarty—Murray-Wellington) in moving 2 *R.* said:

I believe that every State Parliament in Australia, with the possible exception of Tasmania, has made provision of some kind for a superannuation fund for retiring or defeated members. This Bill is based on the recommendations of a committee representative of both Houses, and of the various parties, which has submitted to the Government a scheme to provide superannuation benefits for members of Parliament and their dependants. Under the measure it is proposed to supersede the existing legislation whereby members receive a lump sum payment from the Members of Parliament Fund by way of compensation for loss of membership, and to establish in lieu a system of pension benefits. Any rights which have accrued to members as contributors under the Members of Parliament Fund Act will not be disturbed, however, by the proposals now before the House. The Bill requires that all members will be required to contribute at the rate of £48 a year to a fund to be known as the Parliamentary Superannuation Fund, which will be administered by 5 trustees comprising the Treasurer (or his deputy) and 2 members from each House. The Bill makes no provision for any contribution from State revenue. From the fund, payments will be made to ex-members or their dependants who have qualified for pension benefits. The unqualified ex-members or their dependants will be refunded the amount of their contributions with interest as determined by the trustees. Dealing with benefits, before any member may qualify for a pension upon retirement, he must have served for at least 7 years in the Parliament of this State. Moreover, having ceased to be a member, he will not be entitled to a pension, unless he stands for re-election and is defeated, or satisfies the trustees that there are good and sufficient reasons why he should not seek re-election. The rate of pension is to be governed partly by length of parliamentary service and partly by the period of the member's contributions under the Members of Parliament Fund Act and the proposed legislation—

(*a*) Where the person has served as a member for not less than 14 years and the aggregate period of contribution is also not less than 14 years, a pension will be payable at the rate of £6 per week for 10 years and £3 per week for a period of 10 years thereafter.

(*b*) Where the period of service is not less than 7 years but less than 14 years and the member's contributions have covered a period of not less than 7 years, a pension will be payable to the ex-member at the rate of £3 per week for 10 years.

Concessions are provided, however, in the case of persons who are members

[1] *See* JOURNAL, Vol. XV, p. 196. [2] No. 54. [3] 1948 *W. A. Hans.* 3402.

of Parliament at the commencement of the proposed legislation. Any such member who has served the requisite qualifying period, but whose period of contribution may ultimately prove to be less than 14 years or 7 years as the case may be, will be entitled to a pension at $\frac{5}{8}$ the relevant rate. In this connection I would mention that it is a fairly general practice to provide concessional benefits to veteran joiners at the commencement of a new superannuation scheme. As regards pensioners who have accrued rights under the Members of Parliament Fund Act, the Bill provides that they shall receive their lump sum payment in due course. It also provides, however, that the lump sum shall be regarded as in lieu of the pension until such time as it would be exhausted at the relevant pension rate. At the expiration of that time the pension will commence, but will be payable during the balance of the pension period only. I propose to move a small amendment in Committee to clarify that intention. No person will be able to transfer his pension benefits. The Bill provides, however, that the widow or widower of an ex-member, who was married to the deceased before his loss of membership, shall be entitled to a proportion of his accrued pension benefit. Any dependant child or children under 16 years of age, who are the issue of such a marriage, shall be entitled to the benefit if there is no widow or widower. It is proposed to pay to these classes of beneficiaries a pension at half the rate for which the contributor had qualified, subject to the provision that where a contributor dies while still a member, the pension to the dependant for the first years shall be $\frac{3}{8}$ the relevant ex-member rate. There will inevitably be cases where a member re-enters Parliament after receiving a pension or a refund of contributions with interest. Provision is made in the Bill to ensure that in such cases contributions and benefits or refunds will ultimately be the same as if the period of the member's service had been continuous. The Bill does not contemplate the payment of a pension to any ex-member who receives any payment from the Crown (whether in right of a State or the Commonwealth) at a rate in excess of £312 per annum. In a small scheme of this character, it is impossible to make a satisfactory estimate of future commitments, which are likely to show substantial variations from time to time. In view of this, it has been considered expedient to provide for an actuarial investigation of the fund every 5 years. If the actuary reports that the benefits or the contributions should be varied, the decision as to what action shall be taken shall be made by Parliament.

XIII. HYBRID BILL PROCEDURE

By Ralph Kilpin,

Clerk of the House of Assembly, Union of South Africa.

In a diary written more than three centuries ago a little-known member of the British House of Commons,[1] shows how careful the House was in formulating its procedure on a practical basis after examining its precedents. During the intervening centuries the House of Commons has always shown a willingness to re-examine precedents and procedure with a view to expediting public business without departing from the fundamental principles of Parliamentary government.

A recent enquiry by a Select Committee of the House of Commons on Hybrid Bill procedure[2] is a case in point.

"Hybrid Bill" procedure is probably little known outside the circle of Parliamentary officials, but it touches the daily life of every person who values his freedom and in view of the tendency towards nationalization in Great Britain the report of the Committee is a valuable public document.

Almost everyone interested in Parliamentary procedure knows that a *Public* Bill is introduced by the government or a private member to alter the general law on a question of public policy.

Fewer know that a *Private* Bill is a Bill introduced by a private member on petition from particular individuals, groups of individuals or localities, to benefit themselves and that, being their own property, they can decline to proceed with it at any time.

If still fewer know what is a "*Hybrid Bill*" they cannot be blamed. They may guess that it is a mixture of a Public and Private Bill, but who could guess what it is from the commonly accepted definition that

> "A Hybrid Bill is a Public Bill which affects private interests in such a way that, if it were a Private Bill it would, under the Standing Orders relating to private business, require preliminary notice to be served on affected parties"?

This definition, derived from May and applied by Standing Orders, is adopted by the Select Committee of the House of Commons,[3] but it presupposes a knowledge of two facts which are not generally known. The first is that the reason why special procedure is prescribed for a Private Bill is that before conferring benefits upon petitioners Parliament must in equity give a hearing to those whose private rights may be *adversely* affected. The second is that the same principle should be observed when a Public Bill *adversely*

[1] *The Parliamentary Diary of Robert Bowyer, 1606-1607*, edited by David Harris Wilson.—[R. K.] [2] H.C. 191 (1947-48). [3] *Ib.* iv.

affects the rights of particular individuals, groups of individuals or localities as distinct from the public at large.[1]

Now a Hybrid Bill, being a Private Bill dealing with public policy, is read a Second time and thereafter is referred to a Select Committee to give those whose interests are adversely affected the same opportunity of being heard as is given to the opponents of a Private Bill. When a Private Bill is referred to a Select Committee the Committee after hearing evidence may report that a case has not been made out for the principles of the Bill and the Bill drops. But it is a well-known rule that when a Public Bill has been read a second time its principles are accepted and only its details can be altered.

How to reconcile the practice of Select Committees on Hybrid Bills (the principles of which are supposed to be decided as on other Public Bills by the House at the Second Reading) with the practice of Select Committees on Private Bills (the principles of which are admittedly at the mercy of a Select Committee) was therefore the main problem with which the Committee was confronted.

The Committee, after taking evidence, came to the conclusion that, unlike a Private Bill, the case for a Hybrid Bill (being a Public Bill) was made out at the Second Reading of that Bill; that petitioners against a Hybrid Bill should be heard according to their *locus standi* which may in some cases justify an attack on the principle of the Bill; and that if there are no petitions in opposition to the Bill a select committee need not necessarily be appointed.

The enquiry centred around a scholarly memorandum written by Mr. L. A. Abraham (Clerk of Private Bills in the House of Common which affords a striking example of how responsible Parliamentary officials regard their duties and the respect which a representative House will pay to them.

Seven witnesses gave evidence before the Committee and submitted memoranda. All of them were highly qualified to do so and in answer to over 900 questions expressed points of view which illustrate the difficulty of reconciling procedure as between the public rights exercised by a representative House and the private rights of individuals.

A great deal of technical evidence was necessarily taken on the preambles of Bills because every Private Bill must commence with a preamble containing allegations for the expediency of the measure which the promoters have to prove while preambles in ordinary Public Bills are not essential. Mr. Abraham, the first witness, contended that while in the case of Private Bills the onus of proof of expediency rested with the promoters, in the case of Hybrid Bills (being

[1] I am indebted to the late Sir T. Lonsdale Webster (Clerk of the House of Commons and editor of the 13th edition of *May*) for the above working definitions. They arose out of personal discussions and correspondence and have been of invaluable assistance to the Union House of Assembly in formulating its practice on Hybrid Bills of which a short description is given at the end of this article.—[R. K.]

Public Bills) the onus of proof rested on the opponents in establishing their claims and that a good deal depended on whether the Public Bill had a preamble or not.[1] The next witness, however (Mr. A. Lewis, C.B., First Parliamentary Counsel to the Treasury), bluntly stated that in his opinion "the presence or absence of a preamble [in a Hybrid Bill] ought not to be allowed in any way to determine onus of proof."[2]

More interesting evidence was given on the broader issue as to whether a Hybrid Bill (being a Public Bill) can have its principles impugned after it has been read a second time.

Mr. Abraham contended that if its principles can be impugned after the Second Reading "the whole distinction between Public and Private Bills goes".[3] Sir Charles Browne (a Parliamentary Agent with long experience before Hybrid Bill Select Committees) robustly claimed that a Hybrid Bill should be treated on all-fours with a Private Bill in view of the fact that it was a quasi-Private Bill and the Second Reading was conditional on its subsequent reference to a Select Committee where opponents could be heard as on a Private Bill.[4] He also took the view that it would be possible for the Chairman of a Select Committee on a Hybrid Bill to restrict evidence to the extent to which petitioners were affected by the Bill.[5] Mr. W. Craig Harrison, K.C. (Leader of the Parliamentary Bar) went even further. "If it appears" he says in his memorandum "that the opposition rests only on certain private interests the Bill can be passed with or without amendment, but if it be shown by petitioners that the public interest is affected, how could any rules which precluded proof of that fact be justified?"[6] He also made the important point that on a Public Bill it is always competent for the House to hear Counsel at the bar of the House on behalf of parties whose interests, as distinct from the general interests of the country, are directly affected by it.[7] Sir Thomas Barnes, G.C.B., C.B.E. (Treasury Solicitor) was perhaps the most interesting and informative witness. He emphasized that the Second Reading of a Hybrid Bill was conditional on its reference to Select Committee and agreed with the witnesses who said that petitioners were entitled to petition against the Bill as a whole.[8] He also put in a memorandum to show how Hybrid Bill procedure had been curtailed by legislation giving Government Departments powers of compulsory acquisition of land for State purposes subject to local enquiries,[9] and pointing to the modern trend of delegated legislation, suggested that to save time the onus should be on the petitioner to substantiate his objection and that there should be no obligation on the Government as promoters before the Select Committee to prove the expediency of the Bill.[10]

[1] Pp. 2-4. [2] P. 32 (*Q.* 215). [3] P. 9 & p. 27 (*Q.* 169).
[4] *See* particularly p. 56 (paras. 17 & 18) & p. 67 (*Q.* 584). [5] *Qs.* 591-597.
[6] P. 73, para. 9.
[7] *Qs.* 662, 663 & *May*, 14th ed., p. 502. [8] Qs. 830-832.
[9] Pp. 90-94. [10] P. 96, para. 4 & p. 99. *Q.* 840.

This was the main proposal made by Mr. Abraham and as has already been shown was the view taken by the Committee.

In conclusion it may be of interest to add that in the House of Assembly of the Union of South Africa, where problems similar to those of the House of Commons have arisen, the following distinction has been made in its practice between Private and Hybrid Bills.[1]

A Private Bill is referred to a Select Committee where its preamble must be proved *before* its public principles are subjected to the Second Reading stage.

A Hybrid Bill (being a Public Bill) must have its public principles approved at the Second Reading stage before it is referred to a Select Committee.

Every Hybrid Bill is expected to have a preamble and the Clerk of the House is consulted on the subject before the Bill is introduced. On the introduction of the Bill Mr. Speaker states that it will be referred to the Examiners of Private Bill petitions to report whether Private Bill preliminaries have been complied with and that if they have been complied with the Second Reading stage will be subject to the proof of the preamble as in Private Bill procedure.

Under this procedure the Second Reading stage of a Hybrid Bill is usually regarded as a formality and the issue between public interest and private rights is reposed in a carefully selected committee consisting of members of all political parties, presided over by a member chosen from a Speaker's panel, which weighs the pros and cons in a judicial manner, and decides whether in its opinion public interest or existing private rights should prevail, or whether a compromise could be affected by amendment.

[1] *See* Kilpin's *Parliamentary Procedure*, pp. 31-34.

XIV. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY, 1948

By Ralph Kilpin, J.P.,
Clerk of the House of Assembly.

The following unusual points of procedure arose during 1948:

FIFTH SESSION, IXth PARLIAMENT

Day for meeting of Parliament Accelerated.—After Parliament had been summoned to meet on Saturday, January 17, 1948, the Prime Minister's Office was informed that it would be difficult to make the necessary traffic arrangements for a Saturday without serious inconvenience to the public and that *Friday*, the usual day for a formal opening ceremony, would be more suitable. A Proclamation (No. 304, 1947) was then issued accelerating the date to Friday, January 16, 1948.[1]

Deputy Prime Minister and Leader of the House.—On the reconstitution of the Cabinet, Mr. Hofmeyr (who was then given the portfolios of Mines and of Education) was appointed "Deputy Prime Minister" and "Leader of the House". This is the first occasion on which this title has been officially conferred on a Minister. It was recognized by Mr. Speaker when appointing him a member of the Standing Rules and Orders Committee.[2]

Amendment similar in import to original Motion.—An amendment disallowed by Mr. Speaker illustrates for the first time since Union that an amendment to omit all the words after "That" in a Motion for the purpose of substituting other words should be either wholly or partially opposed to the original question.[3] The amendment disallowed was moved by a member of the Official Opposition to a Motion moved by the Leader of the Labour Party. The amendment sought to convert the Motion into a vote of censure on the Government but although verbally different from the original question was found by Mr. Speaker to be similar in import.[4]

Executive Matters.—The constitutional principle that Parliament will not directly interfere with details of executive government was referred to in 1937.[5] The matters there dealt with arose out of petitions presented from public servants for enquiries and the necessity for the Select Committees which were appointed restricting their report to findings as distinct from recommendations. On February 10, 1948, the House showed even greater care in dealing with a petition from G. P. Vosloo—a clerk in the Controller and Auditor-General's office who complained that he had not received due promotion—by negativing a Motion to refer the petition to a Select Committee. In speaking on the Motion the then Minister of the Interior

[1] 1948 votes (1), 1.
[2] *Ib.* 2.
[3] May, XI, 289.
[4] 1948 votes (1), 88-9.
[5] *See* journal, Vol. XIII. 213.

submitted that in justice to Ministers, Heads of Departments and the Public Service Commission, petitions of this sort should not be enquired into by Parliament unless the applicant can make out a *prima facie* case "either of *mala fides*, or of gross irregularity, or of a manifest failure of justice".[1]

Distinction between Public and Private Bills.—In 1944[2] attention was drawn to the principle that a Bill dealing with the right to practise a public profession should be a Public Bill, but that a Bill dealing with the property, interests or constitution of an association of professional persons should be a Private Bill. In that year the Government introduced the "Nursing Bill" which dealt not only with the right to practise a public profession but with governing powers to be exercised by a private institution. Mr. Speaker stated that this precedent, if established by the House at the instigation of the Government, might lead to similar Bills being introduced by private members, and lead to the destruction "of the wholesome distinction between questions of public policy and questions of private interest".

The "Nursing Bill" was, however, passed and in 1948 the "Estates Agents Bill" containing similar provisions was introduced in the Senate by a private member. Mr. President in a statement in the Senate repeated what Mr. Speaker had said and the subject of the Bill was referred to a Select Committee. The Select Committee after receiving "voluminous memoranda" was precluded by the early prorogation of Parliament from coming to a conclusion, but suggested that the information it had gathered might be of use "in the consideration of any similar proposed legislation".[3]

FIRST SESSION, Xth PARLIAMENT

Reclassification of the Votes in Estimates of Expenditure owing to change of Government.—Prior to the general election which took place on May 26, 1948, the Government prepared its Estimates of Expenditure for the year 1948-49 but did not present them. On the change of government after the general election the new Government decided to present the same Estimates, but as the various portfolios held by Ministers had been re-distributed the question arose as to how the Votes could be put in Committee of Supply without confusion. The solution was found by substituting a reclassified summary of Votes in the Estimates as presented and the Chairman then put them in the order in which they appeared in the summary instead of the order in which they were printed.[4] Priority was also granted for the consideration of the Votes of a Minister who was about to leave for Europe.[5]

Impropriety of Reference in Debate to Officers of the House.—In Committee of Supply on September 9, 1948, when the Chairman was giving a Ruling, a member made an interjection to the effect that the

[1] 1948 VOTES (1), 177; 62 *Assem. Deb.* 1281-93. [2] *See* JOURNAL, Vol. XIII, 195.
[3] 1948 *Sen. Min.* 15 & *Sen.* S.C. 1-48. [4] 1948 VOTES (2), 82. [5] *Ib.* 84, 86.

Ruling was that of the Clerk of the House. The incident was reported to Mr. Speaker, who in the course of a statement made to the House on the following day pointed out that it was the duty of the Clerk of the House to advise the Chairman and said: "As it is my duty to protect officials of the House, I wish to point out that any reference to them on the floor of the House, whether to their advantage or disadvantage, is highly improper and detrimental to the best Parliamentary traditions.[1]

Document quoted by Minister in Committee of the Whole House laid upon the Table when Speaker in the Chair.—When the House was in Committee on the War Measures Further Continuation Bill a Minister quoted from a letter and on a question being raised as to whether it should not be laid on the Table the Chairman pointed out that as there was no "Table" in Committee of the Whole House the matter should be raised when Mr. Speaker was in the Chair. On the following day when the Order for the Third Reading of the Bill was reached and the question was again raised, Mr. Speaker stated the rule[2] that when a Minister quotes in the House from a despatch or other public document he ought to lay it on the Table unless it is inconsistent with the public interest to do so. The Minister then stated that he was averse to disclosing the name of the writer of the letter but laid an unsigned copy on the Table.[3]

Proclamation proroguing Parliament.—For the first time since Union the Proclamation proroguing Parliament also summoned it to meet on the day specified.[4]

[1] *Ib.* 190. [2] May XI, 338. [3] 1948 VOTES (2), 289.
[4] *Ib.* 304, May XIV, 264.

XV. PRESENTATION OF MACE AND SPEAKER'S CHAIR TO CEYLON HOUSE OF REPRESENTATIVES BY BRITISH HOUSE OF COMMONS

By R. St. L. P. Deraniyagala, B.A. (Cantab.),
Clerk of the Ceylon House of Representatives.

A little known fact concerning the inauguration of the Parliament of Ceylon, the youngest Dominion Parliament in the Commonwealth, is that the infant legislature was attended at its birth by one of the Clerks at the Table of the House of Commons. For the first time in the history of the House of Commons a Clerk at the Table was sent abroad to assist in making the necessary preparations for the inauguration of a new Parliament and to draft its Standing Orders. This unprecedented mark of goodwill on the part of the House of Commons was followed by the presentation, on January 11, 1949, of a Mace and a Speaker's Chair by the House of Commons to the House of Representatives of Ceylon. Many of the circumstances attendant on this gift were themselves unprecedented.

This presentation arose out of a Question asked in the House of Commons on December 19, 1947, by the hon. member for Hornsey, Captain L. D. Gammans. The Secretary of State for Commonwealth Relations replied that H.M. Government had decided to offer the Government of Ceylon the gift of a motor car for the use of their Prime Minister and that H.M. Government had authorized the Secretary of State for Commonwealth Relations to propose to Mr. Speaker that he should, on behalf of the House of Commons, offer the above-mentioned gifts of a Chair for their Speaker and a Mace, with "our warm congratulations on their attainment of a fully responsible self-Government, and with our best wishes for the happiness and prosperity of their people".

This was followed by a Motion for an Address to His Majesty who caused His Gracious Consent to the proposal to be announced to the House of Commons, which was duly done on December 9, 1948.

The Delegation to the Parliament of Ceylon appointed by the House of Commons, with Mr. E. A. Fellowes, C.B., M.C., their Clerk-Assistant, and Mr. C. J. Harris, C.B.E., Secretary to the Parliamentary Secretary to the Treasury, in attendance, arrived in Ceylon on January 3, 1949; on January 11 the House of Representatives met at 2 p.m. to receive them. A large and representative gathering filled the galleries and the reception of the Delegation was given precedence over all other business except for the swearing-in of a new member. As soon as the new member had taken his oaths the Serjeant at Arms standing at the Bar made the following announcement:

Mr. Speaker, I have to report that a Delegation sent by the Commons House of Parliament of Great Britain and Northern Ireland to present a Speaker's

Chair and a Mace to the House of Representatives, Ceylon, is inquiring if this Honourable House would be pleased to receive them.

Thereupon in pursuance of a Resolution of the House, considered essential for the admission of any stranger, however welcome, into the Chamber, Mr. Speaker directed the Serjeant at Arms to admit the Delegation. The Delegation was duly admitted, bringing the Mace with them, all the members of the House rising to receive them. The Chair was carried in by messengers and placed at the Bar, and the visitors took up position on either side of it. After the Serjeant at Arms had announced the Delegation, Mr. Speaker requested everyone to be seated and commenced proceedings by warmly welcoming the Delegation on behalf of the House. He then called upon Major the Rt. Hon. J. Milner, Chairman of Ways and Means, to speak on behalf of the Delegation. Major Milner, in the course of a memorable speech, explained the significance of the gifts from the House of Commons as follows:

Mr. Speaker, the Chair and Mace are the symbols of Principles fundamental to democratic institutions. For surely, Sir, the first essential of a democratic state is consideration for and toleration of the opinions of others. In that lies the importance of the Chair, which is the natural protector of minorities, the guardian of free speech and the outward and visible sign of fair play.

Whilst the Chair embodies these essential safeguards of the democratic way of life, the Mace embodies the authority without which the House cannot function. As we see the Mace before us in our daily work we are constantly reminded of two things. The first is that it is from the people, and the people alone, that we derive our powers and that those powers must be tempered by moderation, discretion and understanding. The second is the responsibility which rests upon us in our individual and in our corporate capacity as a House to make democracy work. This is not easy. Many countries have not even tried: others have tried and failed. As we look round the world to-day, there are countries where democracy flourishes, but the world is also littered with the memories of democracies which have fallen. They fell because they lacked the spiritual qualities which to you and to us are enshrined in the Chair and in the Mace. Though inanimate, the Chair and the Mace represent something living, something vital without which your House and ours would wither and die.

At the conclusion of his speech, Major Milner formally presented the gifts by uncovering the Chair and handing the Mace to the Serjeant at Arms who, with the customary bows, advanced to the Table and placed the Mace upon it.

The House then proceeded to pass the following Resolution, moved by the Hon. Mr. S. W. R. D. Bandaranaike, Leader of the House, and seconded by Dr. V. R. Schokman, an Appointed Member:

That this House accepts with thanks and appreciation the gift of a Speaker's Chair and a Mace from the Commons House of Parliament of Great Britain and Northern Ireland as a token of friendship and goodwill on the part of the British House of Commons and people towards the House of Representatives and people of Ceylon.

Thereafter, the Delegation withdrew, being preceded out of the Chamber by the Serjeant at Arms with the Mace, the members of the House standing in their places. On the return of the Serjeant at Arms, the House proceeded to normal business after a short suspension to enable the Chair, which was still at the Bar, to be carried to Mr. Speaker's table.

On January 25, 1949, Major Milner reported to the House of Commons the visit of the Delegation and the proceedings in the Ceylon House of Representatives in connection with the Presentation.

He and other members of the Delegation were thanked on behalf of the House of Commons by the Rt. Hon. Mr. Winston Churchill, who said:

> The right hon. and gallant Gentleman is speaking for the whole House in what he has said. We are very glad that his visit was so successful, and consider that he and his colleagues—our colleagues—who travelled on this mission and who were so cordially and kindly received have rendered a service not only to the House, but to wider circles.

Thus was written another brief line of Parliamentary History.

XVI. THE FEDERATION OF MALAYA[1] (PERSEKUTUAN TANAH MELAYU)

By P. O. Wickens,
Clerk of the Councils.

In Volume XV of the JOURNAL reference was made to the preparations and consultations in connection with the subject of Malayan Union. Difficulties, however, occurred in the application of the Malayan Union Order in Council of 1946 with the result that, upon representation, the Imperial Government decided to substitute a new Order.

The Federation of Malaya Order in Council of January 26, 1948, S. 53 of which revokes the Order of 1946, was laid before the Imperial Parliament on the following day and came into operation on February 1 of that year, such action being duly announced in the House of Commons by the Secretary of State for the Colonies on the 4th[2] of that month.

The new Order in Council was the result of long and patient negotiation between the representatives of H.M. Government and the representatives of Their Highnesses the Rulers of the Malay States and the United Malays National Organization (U.M.N.O.). The short-lived Malayan Union of 1946 set up immediately after the liberation of Malaya from the Japanese did not have the goodwill and co-operation of the Malays.

Questions had been previously asked in the House of Commons on November 26[3] and December 3,[4] 1947 as to the proposals for Federation in Malaya. To which latter Q. the Secretary of State for the Colonies replied that, as stated in paragraph 9 of the Command[5] Paper, H.M. Government had accepted the Federation proposals for Malaya as therein outlined, which decision had been only reached after very careful consideration and exhaustive local consultations, including full opportunity for all communities and interests to express their views.

The Conference on November 12, referred to by the Questioner, had been convened to obtain agreement of Their Highnesses the Malay Rulers and their advisers, in regard to some drafting points for the finalizing of the texts of the Federation, and State Agreements, to which each of the Rulers would be a signatory. The Federal form of Constitution also involved completed administration plans for each State and the consequent change over from the present Union Government. The Minister expressed himself as in no doubt that the Rulers and the U.M.N.O. were substantially representative of the majority of opinion in these matters in the Malay States.

The King's Speech on the Prorogation of the Third Session of Parliament contained the following reference:

[1] *See also* JOURNAL, Vols. XV, 102; XVI, 76.
[2] 446 *Com. Hans.* 5, s. 1786.
[3] 444 *Ib.* 278.
[4] 445 *Ib.* 76.
[5] *Cmd.* 7171.

The new Federation of Malaya has been inaugurated and the new Legislative Council of the Colony of Singapore has met. My Ministers are determined to restore law and order in these territories and to suppress the outbreaks of violence which have so unhappily disturbed the peace of the Federation; and to that end the police forces have been greatly strengthened and military reinforcements have been sent to Malaya.[1]

Briefly, the new Constitution provides for the Federation of the 9 Malay States and the former Straits Settlements of Penang and Malacca. Singapore is not included, but the door is left open for its entry into the Federation in the future on terms acceptable to both sides. The chief features of the Federation are the creation of a common citizenship,[2] to be extended to all those who regard Malaya as their real home and the object of their loyalty, with a strong central Government controlling all matters of Federal concern but leaving State and Settlement Governments with considerable autonomy in local administration.

The organ of this central Government is the Legislative Council, presided over by the High Commissioner, and composed of 75 members only, 14 of whom are officials. Its members are drawn from the various communities of Malaya—Malays, Chinese, Europeans, Indians, Eurasians, Ceylonese—and represent the interests of labour, rubber and oil-palm planting, mining, commerce, agriculture, education, the professions, etc.

Opening of Inaugural Session of the Federal Legislative Council.—The Inaugural Session of the Federal Legislative Council, which was held at Kuala Lumpur on Tuesday, February 24, 1948, was the fourth and final ceremony of importance since the Federation was instituted at the beginning of the month. There had been the swearing-in of the first and last Governor of the Malayan Union (Sir G. E. J. Gent, K.C.M.G., etc.), as High Commissioner for the Federation, the first meeting of the Federal Executive Council, and the first Conference of Their Highnesses the Rulers of the 9 States. His Excellency was received by a Guard of Honour on his arrival and took his seat at 9.30 a.m. The temporary Council Chamber, before the War the spacious Mess of the Federated Malay States Volunteer Force, was filled to the limits of its capacity with the Councillors, who occupied the well of the Chamber, and distinguished guests seated around the sides. Room was also found for the Press reporters and the camera men, the latter with their arc-lamps recording the scene for the benefit of the public and posterity, at the expense, it must be admitted, of some inconvenience to those present and a certain loss of dignity to the proceedings.

On the dais, on the right of His Excellency the High Commissioner, sat the Minister of State for Colonial Affairs (rt. hon. the Earl of Listowel, P.C.). When the Chief Secretary to Government, the

[1] 454 *Ib.* 1824. [2] *Federation of Malaya Agreement* 1948, Part XII.

Mentri Besar (Prime Minister) of Johore, Dr. Ong Chong Keng from Penang, and Mr. S. B. Palmer, C.B.E., senior Unofficial Member, had delivered their inaugural addresses, Lord Listowel read the following message from the Secretary of State for the Colonies:

> It gives me great pleasure to offer to the Legislative Council of the Federation of Malaya my sincere good wishes for the future. Nearly two years have passed since the restoration of civil government. During that period all the members of the Advisory Council have carried out their task with high integrity and splendid devotion. You will now carry on the tradition which they have so notably created and maintained; but as members of the first Legislative Council in the newly-forged Federation, you will have an added historic responsibility. You will, I know, approach the problems which lie ahead in the spirit of statesmanship which has been shown in the creation of the Federation. In that way, and by working together as representatives of the peoples of Malaya for their common future, you will ensure a successful outcome to your new responsibilities. You may be assured that we in Britain will do our utmost to assist you in your endeavours.

The President then addressed the Assembly, after which the Chief Secretary to the Government took and subscribed the Legislative Councillor's Oath as required by the Federation of Malaya Agreement. The meeting then adjourned and resumed a few minutes later with the Chief Secretary in the Chair for the administration of the Oath to all the other members. In the afternoon the Council proceeded to the despatch of business.

The New Order in Council.—As this new Constitution[1] for the Federation of Malaya presents many features of particular interest it is proposed to give some description of those of its provisions which more closely concern the various bodies to be set up under the scheme in respect of its component parts, namely, the Federal, the Settlements, and the 9 Malay States under their respective Rulers, and the Conference of such Rulers, their composition, functions and powers. The legislative foundation of the new Constitution can best be described in its words of enactment:

> Now, therefore, His Majesty, by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890, the Straits Settlements (Repeal) Act, 1946, and the British Settlements Acts, 1887 and 1945, or otherwise in His Majesty vested, is pleased by and with the advice of His Privy Council to order, and it is hereby ordered as follows:

The Order is a comprehensive document occupying the 145 pp. of the Third Supplement to the *Malayan Union Gazette* of January 29, 1948, and consists of 54 sections. The 9 States Agreements and the Federal Agreement are given in Schedules I and II respectively, while Schedule III contains the Forms of the Oaths of Allegiance and office.

[1] *The Malayan Union Government Gazette*, No. 4 of January 31, 1948, Notice No. 1372.

The Federation.

The Federal Agreement of January 21, 1948, concluded between the Crown and Their Highnesses the Rulers of the 9 Malay States, together with the Order in Council of the same year, establishes: the office of High Commissioner, a Federal Executive Council and a Legislative Council, as well as Councils of the States, Settlement Councils in Malacca and Penang and the Conference of Rulers.

Sections 4-6 of the Order establish the Federation and give the Federal Agreement the force of law, clothing the High Commissioner with authority thereunder.

High Commissioner.—Subject to the Federal Agreement and in particular without prejudice to Clauses 18, 86 and 110 thereof, the Executive Authority of the Federation extends to all matters set out in the first column of Schedule II to the Agreement.[1] This authority is exercised by the High Commissioner either directly or indirectly, but the Legislative Council is not prevented from conferring functions on persons, etc., other than the High Commissioner, within the powers given to it by the Agreement.[2]

The High Commissioner may delegate Executive authority to the Government of any Malay State with the consent of His Highness the Ruler thereof, or to the Government of a Settlement or their officers, functions in relation to any matter to which the executive authority of the Federation extends.[3]

Special responsibilities are conferred upon the King's Deputy in regard to the protection of the rights of the States and their Rulers; grave menace to peace; safeguards in respect of finance; the special position of the Malays and legitimate interests of other communities; securing to, and to the dependents of, members of the Federal public service, their rights; and the securing that the due discharge of his functions in matters concerning which he is bound by constitution or statute to act in his own discretion or judgment, is not prejudiced by any course of action taken in regard to any other matter. To discharge these responsibilities, the High Commissioner may give appropriate directions to any State or Settlement Government.[4]

Federal Executive Council.—This consists of the Chief Secretary, the Attorney-General and the Financial Secretary *ex officio* and not more than 4 Official Members holding office of emolument under the Federal Government or the Crown appointed by the High Commissioner, and between 5 and 7 Unofficial Members not holding such office, all appointed by the High Commissioner, who may, however, appoint as Unofficial Members persons holding office of emolument. All Official and Unofficial Members hold their seats for 3 years unless terminated sooner.[5]

The High Commissioner may suspend or discharge any Official or Unofficial Member[6] and make temporary appointments to such

[1] F.A. 16 [2] *Ib.* 17. [3] *Ib.* 18. [4] *Federal Agreement Clause,* 19 (1).
[5] *Ib.* 23. 25. [6] *Ib.* 25 (5)-(7).

Council.[1] The High Commissioner, so far as practicable, presides at meetings of the Executive and must consult with his Executive in the execution of his powers (other than those relating exclusively to the Settlements) except when he considers H.M. Service or the public interest would sustain material prejudice by doing so; or in regard to unimportant or to immediately urgent matters.[2]

The High Commissioner is alone entitled to submit matters to this Council,[3] but should he decline to do so when requested in writing by a member thereof, such member may require a record of his application and the High Commissioner's reply on the Minutes.

Should the High Commissioner have occasion in his judgment to act in opposition to the Executive, he must, fully and promptly, report the matter to the Secretary of State, and any member is competent to require his opinion thereon also to be so reported.[4]

Legislative Council.—This Council consists of the High Commissioner as President and the 75 members are made up as follows: 3 *ex officio* members (as above), 11 State and Settlement members, 11 Official and 50 Unofficial members.[5] The State and Settlement members are the 9 Presidents of the Councils of State and 1 representative selected from among their number by each Settlement Council.

Under Clause 65, however, His Majesty and Their Highnesses the Rulers declare it as their intention in due course to provide for the election of members to the Legislative Council.

Clauses 40 and 41 lay down the qualifications and disqualifications of Unofficial Members, the normal tenure of office being 3 years.[6]

In addition to the usual reasons for vacation of seat, are absence from 2 consecutive meetings without leave of the High Commissioner, ceasing to be President of a Council of State or the representative of a Settlement Council.[7]

All questions as to the right of any person to remain an Official or Unofficial Member are subject to the decision of the High Commissioner in Council whose decision may not be questioned in any Federation Court.[8]

Provision is also made for the High Commissioner to make temporary appointments to the Legislative Council.[9]

Legislation.—Clause 48 of the Federal Agreement provides that, subject to such Agreement, the High Commissioner and Their Highnesses the Rulers, with the advice and consent of the Legislative Council, may make laws for the peace, order and good government of the Federation with respect to the matters set out in Schedule II and subject to any qualifications therein.

Whenever Resolutions are passed by 2 or more Councils of States and Settlement Councils by which it is expedient that any matter not included in the first column of Schedule II hereof, should be regulated

[1] *Ib.* 26. [2] *Ib.* 30. [3] *Ib.* 31. [4] *Ib.* 32. [5] *Ib.* 36, 37.
[6] *Ib.* 42. [7] *Ib.* 42 (3) (i) (j). [8] *Ib.* 42 (8). [9] *Ib.* 43.

in their respective States and Settlements by a Federal Ordinance, such may be enacted in accordance with the terms of such Resolutions.

Every such Ordinance, upon coming into operation under Clause 54 but subject to Clause 55 of this Agreement, has effect within such States and Settlements and may be brought into effect in any other State or Settlement (with any necessary adaptations) by Resolution of the Council or State or Settlement thereof for publication in the *Gazette,* and shall come into force on the date of publication, unless some other date be specified in the Resolution.

Unless otherwise provided in such Resolution, no such Ordinance may confer any executive power or authority upon the Federal Government.[1] The power of the Legislative Council to make Federal Ordinances extends to the adoption within the Federation of so much as is expedient of the common law and mercantile law of England and of the rules of equity as administered in England and to the adoption within the Federation of any Act of Parliament with such modifications as shall seem necessary to suit the needs and circumstances of the Federation.[2]

The words of enactment of Federal "Ordinances" are:

> Enacted by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States with the advice and consent of the Legislative Council,

but in the case of laws by declaration of the High Commissioner under his reserved powers to act "when it is expedient in the interest of public order, public faith or good government"—which is defined —the words of enactment are:

> Enacted by the High Commissioner of the Federation of Malaya in accordance with Clause 52 of the Federation of Malaya Agreement 1948.[3]

In such cases, however, the High Commissioner must report to Their Highnesses the Rulers and to the Secretary of State, and should any member of the Legislative Council object to any such declaration, he may within 7 days thereof submit to the High Commissioner a written statement of his reasons for so doing, copies of which the High Commissioner must report to Their Highnesses the Rulers and to the Secretary of State, who has power of revocation except in the case of a declaration relating to a Bill.

Clauses 54 and 55 deal respectively with Arrest and Disallowance.

All questions as to the right of any person to remain an Official or Unofficial Member are subject to the decision of the High Commissioner in Council, whose decision may not be questioned in any Federation Court.[4]

[1] *Ib.* 48. 49. [2] *Ib.* 50. [3] *Ib.* 51-52. [4] *Ib.* 42 (8).

Provision is also made for the High Commissioner to make temporary appointments to the Legislative Council.[1]

Conference of Rulers.—(Majlis Raja Raja Negri Melayu).—Part VI of the Federal Agreement provides for a Conference of Rulers, consisting of: Their Highnesses the Rulers of the 9 Malay States or a representative in case of a Regency or the unavoidable absence of His Highness.

The Malay Adviser to each Ruler must attend every meeting of the Conference.[2] A Ruler's Seal[3] is authorized, of which the Secretary of the Conference is the Keeper.[4]

The Conference meets whenever necessary and is presided over by one of the Rulers appointed by them as Chairman, but it must meet the High Commissioner at least 3 times each year.[5]

Functions.—Except in the case of formal amendment of a Federal Ordinance, every Ruler is supplied with a copy of every Bill (prior to its publication in the *Gazette*) to be brought before the Legislative Council, and the same practice prevails in regard to salary schemes. Except in connection with the High Commissioner's reserved powers under S. 52 of the Federal Agreement, he is required to consult the Conference upon questions of immigration, and disagreements between himself and the Conference are referred to the Legislative Council for their opinion to be signified by and subject to its Resolution, upon which its *ex officio* and Official Members may speak but not vote.

The High Commissioner must also consult the Conference in regard to any important question of Federation policy and ascertain their opinion. On the other hand, each Ruler is required to inform the High Commissioner of any matter conducive to the welfare of his State which the High Commissioner may refer to the Conference for consideration. The Conference, unless unanimous, acts by majority.[6]

Standing Committee.—Provision is made for a Standing Committee consisting of 2 of Their Highnesses, to be appointed by the Conference, such members to hold office for 12 months. This Committee is also entrusted with expressing the assent of the Rulers to any Bill passed "or having effect as if it had been passed by the Legislative Council or to any matter in writing to which assent is required under the Federal Agreement or any law."[7]

The States.

The Malay States consist of Johore, Pahang, Negri Sembilan, Selangor, Perak, Kedah, Perlis, Kelantan and Trengganu.

State Agreements.—These States are governed under 9 Agreements (in the English and Malay languages) all dated January 21, 1948, concluded between the Crown and His Highness the Ruler of each State. In the case of Negri Sembilan the Agreement is also signed by the 5 Ruling Chiefs.

His Majesty has control of defence and external affairs. There is a

[1] *Ib.* 43. [2] *Ib.* 67-8. [3] *Ib.* 70. [4] *Ib.* 73.
[5] *Ib.* 71. [6] *Ib* 72. [7] *Ib.* 74-6.

Resident British Adviser in each State to advise upon all matters except in regard to the Muslim Religion and the custom of the Malays.

Provision is made for the powers and duties of H.H. the Ruler, who undertakes to govern his State under a written Constitution in conformity with the Federation and State Agreements in the case of the States of Johore and Trengganu. In the other 7 States the following provisions are added in regard to the Constitutions, "which shall be granted and promulgated by His Highness as soon as conveniently may be, either in whole or, if His Highness thinks expedient, in parts from time to time."

In all the Agreements except those of Johore and Trengganu "His Highness in Council" means His Highness acting after consultation with the State Executive Council constituted in accordance with the Agreement but not necessarily in accordance with the advice of such Council, nor necessarily in such Council assembled.

In the 2 States above mentioned, however, the expression means H.H. acting after consultation with the State Executive Councils constituted under the written Constitution of the State (*vide* Clause 9) but not necessarily in accordance with the advice of such Council nor necessarily in such Council assembled.

State Executive Councils (*Majlis Meshuarat Kerajaan*) *and Councils of State* (*Majlis Meshuarat Negri*) are established. The education and training of Malays are a charge on the State in question. Previous Agreements are revoked and the prerogatives, power and jurisdiction of the Ruler as possessed on December 1, 1941, are retained.

Their Highnesses the Rulers undertake to accept the advice of the High Commissioner in all matters connected with the government of the Federation save as excepted in Clause 5 of the Federal Agreement which Clause provides that, except in Clauses 100 and 101 thereof, nothing therein (or in the Schedules thereto) shall apply in any Malay State to matters relating to the Muslim Religion or the custom of the Malays. But provision may be made by Federal Ordinance for enabling any Court of Justice to ascertain the Hukum Shara[1] or the custom of the Malays concerning any matter before it.

Executive Authority.—Subject to the Federal Agreement, the Executive Authority of the States, which is taken in the name of H.H. the Ruler of that State, extends to all matters, save those set out in the first column of Schedule II to such Agreement and subject to the proviso of Clause 86 thereof, which legislative exemption consists, broadly, of defence and external affairs, civil and criminal law and procedure, emergency powers, aliens, public order and security, public officers, census, electoral, labour, protection of women and children, local government, education and charities, science and research, communications and transport, medical, health, Federal water works, agriculture, etc., animals, trade, shipping, banking, customs, revenue and public debt.[2]

[1] The body of law known in English as Muhammadan Law.—[P. O. W.]

[2] *Federal Agreement Clause* 86.

The Executive Authority of each State is exercised by its Ruler, either directly or through State officers, subject to the power of the Legislative Council or Council of State under the Federal Agreement conferring power on other persons than the Ruler. The one exception is the State of Negri-Sembilan, where the prerogatives, power and jurisdiction of the Ruling Chiefs within their respective Territories possessed on December 1, 1941, are nevertheless subject to the Federal and the State Agreements.

Executive Councils.—There is a State Executive Council in each State summoned by the Ruler who presides thereat, to advise the Ruler, consisting of at least 5 *ex officio* members, namely, the Chief Minister and Senior Executive Officer (Mentri Besar), the British Adviser, the State Secretary, the Legal Adviser, the State Financial Officer and such other persons, whether holding offices of profit under the Federation or State Government or not, as may be prescribed by the Constitution of the State.[1] H.H. the Ruler consults this Council except (1) when in his opinion the service of His Majesty or H.H. the Ruler would sustain material prejudice by doing so; (2) when matters are too unimportant; or (3) when too urgent, in which last mentioned case the Ruler must as soon as possible cause the measures he has adopted, with the reasons therefor, to be communicated to the Council.[2]

H.H. the Ruler and the State Secretary are alone entitled to submit questions to this Council, but should any such Secretary decline to do so, when requested in writing by any member thereof, such member may require complete record thereof on the Minutes.[3]

Similar procedure is laid down in the case of the Ruler acting in opposition to the State Council.[4]

Councils of State (*Majlis Meshuarat Negri*).—These are established in each State and consist of the Mentri Besar, as President, at least 4 *ex officio* members (*as above*) and such other members whether holding offices of profit under the Federal or State Governments or not, as may be prescribed by the Constitution of the State. The Ruler declared his intention to provide for the election of members to the Council of his State.[5]

The Mentri Besar may invite any non-member to a meeting of the Council when he considers the business before the Council renders it desirable but such person shall not have a vote.

Subject to the Federal Agreement, the qualifications for membership of these Councils are: 21 years of age or upwards; subject of H.H. the Ruler of the State concerned (*vide* Clause 124 (3) (*a*)); Federal citizenship, or, when the Ruler considers it desirable, a British Subjecthood, and no other person may sit or vote in such Council as a member thereof.[6]

Legislation.—Each Council of State may legislate on: (1) any

[1] *Ib.* 89, 90, 92, 94. [2] *Ib.* 94. [3] *Ib.* 95. [4] *Ib.* 96.
[5] *Ib.* 97, 98, 103, 109. [6] *Ib.* 99.

subject, including the Muslim Religion or Malay custom, other than those subjects on which the Legislative Council has power to legislate under Clause 48; and (2) any other subject so authorized under Clause 48.

State laws may not be repugnant to those passed by the Legislative Council or by the High Commissioner under his reserved powers (*vide* Clause 52 of the Federal Agreement).

Nothing, however, in Clause 100 thereof prejudices the Ruler to grant or enact a Constitution for his State.[1]

The Ruler has reserved powers of legislation whenever he shall consider it expedient in the interests of "public order, public faith or good government" (which is defined) should the Council of State fail to pass a Bill, etc., within such time and form as H.H. may consider reasonable, declare such Bill, etc., to have effect either in the form in which it was introduced or with such amendments as he shall think fit. Bills passed by State Councils are styled "Enactments" and require the Assent of H.H. the Ruler.[2]

Clause 155 of the Federal Agreement provides that save as expressed in such Agreement, it shall not affect the sovereignty and jurisdiction of Their Highnesses the Rulers in the several States.

Interpretation Tribunal.—Clause 153 of the Federal Agreement provides that, except as otherwise provided therein or by law thereunder, the power to interpret the Agreement is exclusively exercisable by the Interpretation Tribunal, which consists of the Chief Justice, or a Judge of the Supreme Court appointed by him, as Chairman and 2 other members appointed respectively by the High Commissioner and Their Highnesses the Rulers, which 2 members must be either Judges of such Court or possess the qualifications therefor. The decisions of the Tribunal, which must be *Gazetted*, are binding upon the parties to the Agreement and may not be questioned in any Court.[3]

The Settlements.

Under the Federal Agreement, provision is made for the Settlements of Malacca and Penang to be administered in conjunction with the Malay States as component parts of the Federation in such manner as provided by such Agreement and Order in Council from time to time.[4] Each Settlement has a Resident Commissioner appointed by the High Commissioner.[5]

Executive Authority.—Under the Federation Agreement this Authority extends to all matters save those set out in the First Column of Schedule II to the Agreement (*see above*) provided that, (except in regard to common policy involving 2 or more of the States and the Settlements) any law made under Clause 48 of this Agreement, to the extent stated in the second column to Schedule II, con-

[1] *Ib.* 100. [2] *Ib.* 101-2. [3] *Ib.* 153. [4] *Ib.* 110 (1). [5] *Order* Ss. 7-10.

fers executive authority on the Governments of the Settlements or on specified bodies or persons, in any matter set out in the first column of such Schedule.[1]

The High Commissioner is also vested with executive authority in the Settlements.

Nominated Councils.—Each Settlement has a Nominated Council to aid and advise the High Commissioner, consisting of: 3 *ex officio* members, namely, the Resident Commissioner, the Legal Adviser and the Settlement Financial Officer, and such other persons—"Appointed Members"—as the High Commissioner may appoint from among the Settlement Council. He may appoint to the Nominated Councils members who are not members of such Councils or for special advice. All hold office during pleasure.[2]

Settlement Councils.—Subject to the proviso of Clause 110 of the Federal Agreement, provision is made for a Settlement Council in each Settlement constituted and with such powers as are given below. These Councils have such powers of executive authority as prescribed by law and the High Commissioner may delegate under Clause 18 of such Agreement. The legislative powers of these Councils are given below.[3]

Each Settlement Council consists of, the Resident Commissioner, who is President thereof; 2 *ex-officio* members, namely, the Legal Adviser, the Settlement Financial Officer and such Nominated Official and Unofficial Members and Elected Members as prescribed by any law under Part VI of the Constitution.[4] Unless sooner dissolved by the High Commissioner, the term of a Settlement Council is 3 years. The qualifications for Nominated and Elected Membership are laid down, with special reference to offices of emolument under the Crown (*see below*), 21 years and over, British Subject or Federal Citizen, whom the High Commissioner is satisfied can speak (unless incapacitated by blindness or other physical cause), read and write the English language sufficiently to take part in the proceedings of the Council. But should any member of such Council not be a British Subject or Federal Citizen, he may retain membership provided he undertakes to make application for such condition within 12 months of the "Appointed Day".[5]

There are the usual disqualifications for membership, such as insanity, imprisonment, bankruptcy or being party to Government Contracts (*see below*). Elected Members may, in addition, suffer disability by appointment as an Electoral Official or if guilty of an Electoral offence.

Nominated and Elected Membership ceases upon dissolution of the Council, or previously, should the seat become vacant under the Constitution. Any member of a Settlement Council sitting or voting when disqualified is liable to a fine not exceeding $200 for every such

[1] *F.A.* 110 (3). [2] *Order* S. 12. [3] *Ib.* Ss. 30, 31.
[4] *Ib.* Ss. 17-20, 46. [5] *Ib.* S. 21.

day, recoverable by action in the Supreme Court at the suit of the Attorney-General for the Federation or the Legal Adviser in the Settlement.[1]

Whenever the seat of a member of the Council becomes vacant or he is unable to vote on account of holding an office of emolument under the Crown, the Clerk of the Council must report the fact to the High Commissioner.

Final decisions as to Nominated Membership rest with the High Commissioner, but Elected Members are subject to the laws of the Settlement.[2]

Provision is made for the temporary appointment by the High Commissioner of *ex officio* or Nominated Members.

The Resident Commissioner may also invite non-members to the Council when, in his opinion, its business requires, but such person has not the power to vote.

The Resident Commissioner appoints the sittings of the Council, but their prorogation or dissolution rests with the High Commissioner.[3]

Legislation.—Subject to the Constitution and the Federation Agreement, the High Commissioner, with the advice and consent of the Settlement Council, has power to make laws for the peace, order and good government of a Settlement on any subject, other than those for which the Legislative Council has power to legislate or a subject coming under Clause 48 of the Federation Agreement.

Should the High Commissioner consider it in the interests of "public order, public faith, or good government" (*which is defined*) in a Settlement that any Bill or Motion should have effect, then should a Settlement Council fail to pass it within reasonable time, he may declare the Bill or Motion to have effect, either in the form in which it was introduced or with such amendments as he may think fit, duly reporting such matter to the Secretary of State.

Should, however, any member of a Settlement Council object to such declaration he may, within 7 days thereof, lodge his reasons therefor in writing, and provision is made for revocation.[4]

All Bills must be gazetted as well as sent to the High Commission. Bills of the Settlements are styled "Enactments". The words of enactment in ordinary cases are:

> Enacted by the High Commissioner with the advice and consent of the Settlement Council,

or when declared as above:

> Enacted by the High Commissioner in accordance with the Section 33 of the Federation of Malaya Order in Council, 1948.[5]

Provision is made for Royal Assent and for the reservation or disallowance of Bills.

Any Royal Instructions must be noticed by Settlement Councils.[6]

[1] *Ib.* Ss. 22, 23, 48. [2] *Ib.* S. 24. [3] *Ib.* Ss. 26, 45, 46.
[4] *Ib.* Ss. 31, 33 (5). [5] S. 35. [6] S. 38.

Section 47 deals with laws as to elections. For the avoidance of doubt, laws, etc., may be allowed to operate retrospectively. Overriding powers are reserved to the Crown to legislate for the peace, order and good government of the Settlement or relating to defence or external affairs.[1]

Military Courts.—It is provided by S. 50 of the Order that the powers and functions of a confirming or reviewing authority under the Military Courts Proclamation for the Malay Peninsula of August 25, 1945 (as amended), shall now be exercisable by the High Commissioner or by such person as he may appoint.

Also that when a person has been convicted of an offence by such a Court, the High Commissioner may, as he shall see occasion, in the King's name and on His behalf, grant to such a person a pardon, either free or lawfully conditional, or any respite, either indefinite or for such period as the High Commissioner may think fit, of the execution of any sentence passed on such person, and may remit the whole or any part of such sentence, or of any penalties or forfeitures otherwise lawfully due by virtue of the conviction or sentence.

General.

The following subjects are also dealt with in the Federal Agreement: Part VII Courts; VIII Law Officers; XI and Schedules III and IV Finance; XII Federal Citizenship (*see above*); and XIII Transitional, but notice will now be taken of some subjects more closely related to the bodies set up under the Order and the several Agreements.

Language.—The official language in each Settlement Council is English.[2] The State and Federal Agreements are in both the English and Malay languages, but for purposes of interpretation regard is had only to the English version.[3] In the Legislative Council both English and Malay are the official languages, but anything requiring to be printed or reduced into writing is in English.[4]

In regard to Nominated and Elected Membership of Settlement Councils and Unofficial Members of the Legislative Council, the High Commissioner has to be satisfied that the member (unless incapacitated by blindness or other physical cause) is able to speak, read and write the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings.[5]

Members and Government Contracts (see Article XIX hereof).

Oaths.—Provision is made both in the Order and the Agreements in regard to the oaths (or affirmations) required of members of Settlement Councils[6] of the Federal Executive Council,[7] Legislative Council,[8] State Executive Councils,[9] Councils of State,[10] the High Commissioners,[11] Citizenship[12] and members of Councils of State.[13]

[1] Ss. 49, 54. [2] *Order* S. 40. [3] *S.A.* 16, 17 (Negri Sembilan); *F.A.* 156.
[4] *F.A.* 63. [5] *Order* S. 21; *F.A.* 40. [6] *Order* S. 44; III Schedule.
[7] *F.A.* 24. [8] *Ib.* 64. [9] *Ib.* 91. [10] *Ib.* 108, 148. [11] *Ib.* 9.
[12] *Ib.* 125. [13] *Ib. F.A.* 108.

In all cases the words "So help me God" may be varied according to the religious belief of the persons concerned.

"*Office of Profit under the Crown,*" *etc.*—Under the Order this disability is described as "an office of emolument under the Crown or under any Government of the Federation".

For the purpose of the Federal Agreement, a person in receipt of a pension or other like allowance in respect of service under the Federal or a State Government or Settlement is not deemed such an office of emolument. The High Commissioner, however, may declare by *Gazette* Notice that any office under any such Government shall not be an office of emolument thereunder for all or any purposes of the Federal Agreement. A "State Officer" means the holder of an office of emolument under the Government of a State.[1]

The seat of an Unofficial Member of the Federal Executive Council (other than an *ex officio* member) not holding an office of emolument under any Government of the Federation or the Crown on his appointment becomes vacant if appointed permanently to any such office.[2]

Should, also, an Unofficial Member of the Federal Executive Council not holding such an office on his appointment to such Council be appointed temporarily to act in any such office, he may not sit as an Unofficial Member thereof so long as he continues to hold, or act in, that office.[3]

Neither may Unofficial Members of the Federal Legislative Council hold any such office and should they, after their appointment, become the holders of such an office, whether temporary or acting, they may not during that time sit or vote.[4]

Any person sitting or voting when unqualified incurs vacation of seat and, moreover, is subject to a penalty of $200 for every day upon which he sits or votes when so disqualified,[5] the said penalty being recoverable by action in the Supreme Court of the Federation at the suit of the Attorney-General or the Legal Adviser in the Settlements as the case may be.[6]

Exceptions to the above are: Nominated Official Members of a Settlement Council holding such office under the Government of the Federation, a Settlement or the Crown,[7] and Official Members of the Federal Legislative Council.[8] Should an Official Member of the Federal Executive or Legislative Council cease to hold such an office, his seat likewise becomes vacant.[9]

In respect of any *non-ex officio* members of a State Executive Council or Council of State, however, they may hold such an office of emolument under the Federal or State Government or not, as may be prescribed in the Constitution of the State.[10]

Private Bills.—Clause 56 of the Federal Agreement provides that, except as otherwise therein prescribed, a Federal Ordinance, not

[1] *Order* S. 1 (4). [2] *F.A.* 25 (2) (*c*). [3] *F.A.* 25 (4).
[4] *F.A.* 40, 42 (9). [5] *Order* S. 48. [6] *Order* S. 48 (2).
[7] *Order* 19 (1). [8] *F.A.* 39. [9] *F.A.* 25 (2) (*b*), 42. [10] *Ib.* 90, 98.

being a Federal Government measure, intended to affect or benefit some particular person, association or corporate body, shall not affect the rights of His Majesty, His Heirs and Successors, or the rights of Their Highnesses the Rulers and Their Successors, or the rights of any body politic or corporate, or of any other person.

Precedence.—Precedence is laid down for members of the Settlement Councils,[1] of the Federal Executive,[2] the Legislative Council,[3] and Their Highnesses.[4]

Procedure.—The Federal Legislative Council, the Conference of Rulers, State Councils and the Settlement Councils have power to make Standing Orders for the conduct of their proceedings.[5]

Questions are decided by a majority of the members of the Legislative or Settlement Councils present and voting.[6]

In the case of the Legislative Council, the High Commissioner, who presides thereat, does not have a deliberative vote, but should there be an equality of votes, he has a casting vote. In the event, however, of his absence, the member presiding has both a deliberative vote and the casting vote in case of an equality of votes. This also applies to the Resident Commissioner and Settlement Councils, except that if he does not appoint anyone to preside during his absence the senior member present presides.[7]

In the State Councils the Mentri Besar presides, or in his absence the State Secretary, or, should the latter be absent, then this duty falls to the senior member present.[7]

The Minutes of Proceedings of the Legislative Council require confirmation at the next succeeding meeting.[8]

The quorum in both the Legislative and Settlement Councils is $\frac{1}{4}$ of the members, excluding the presiding member.[9]

The Legislative Council is summoned by the High Commissioner to sit at such times and places as he may appoint, but there must not be an interval of more than 12 months between Sessions.[10] Prorogation is by the High Commissioner's Proclamation in the *Gazette* with the assent of the Rulers.[11]

In the case of the Settlement and State Councils, such interval is the same, but it is the Resident Commissioner and the Mentri Besar respectively who appoint the time and place.[12]

The time and place where the Conference of Rulers is to meet is decided by the Conferences,[13] but it must meet the High Commissioner at least 3 times each year.[14] The Chairman is selected from among the Rulers and the High Commissioner may direct any Federal Public Officer or British Adviser to attend him at a Conference.[15]

Members are entitled to introduce Bills, etc., in the Legislative

[1] *Order* S. 28. [2] *F.A.* 27. [3] *Ib.* 47. [4] *Ib.* 69.
[5] *F.A.* 57, 74, 105; *Order* S. 39. [6] *F.A.* 58 (1); *Order* S. 32.
[7] *F.A.* 58 (2) (3), 104; *Order Ss.* 27, 32. [8] *F.A.* 62. [9] *F.A.* 46; *Order* S. 42.
[10] *F.A.* 60, 61, 107. [11] *F.A.* 61. [12] *Order* S. 45.
[13] *F.A.* 71. [14] *Ib.* 71. [15] *Ib.* 71 (3).

Council and the Settlement Councils, but questions of public money or the suspension of the Standing Orders require the recommendation or consent of the High Commissioner or Resident Commissioner as the case may be.[1]

The same privilege applies to a member of a State Council, with the substitution of the Mentri Besar, or of the presiding member.[2]

[1] *F.A.* 59; *Order* S. 43.

[2] *F.A.* 106.

XVII. THE EAST AFRICA HIGH COMMISSION AND THE EAST AFRICA CENTRAL LEGISLATIVE ASSEMBLY

By D. W. B. Baron,
Clerk of the Central Legislative Assembly.

The East Africa (High Commission) Order in Council, 1947,[1] which came into operation on January 1, 1948, by virtue of High Commission Proclamation No. 1 dated October 26, 1947,[2] established an East Africa High Commission and a Central Legislative Assembly, with Headquarters at Nairobi in Kenya, for the purpose of providing, in the interests of good government, for the control and administration of certain matters and services of common interest to the inhabitants of the Colony and Protectorate of Kenya, the Trust Territory of Tanganyika and the Protectorate of Uganda.

These three territories comprise a total area of some 680,000 sq. m. and a population of over 17 millions, composed approximately as follows: Africans 17,000,000 (estimated), Indians and Goans 170,000, Europeans 44,000, Arabs 37,000.

The High Commission.—This authority, which is a body corporate with an official seal, consists of the Governors of Kenya, Tanganyika and Uganda with the Governor of Kenya as Chairman, and meets in conference as agreed upon by the members. At other times the Chairman is empowered to act, but he must report to the other members at the next Conference. The High Commission may, however, by agreement decide what minor matters need not be reported and what matters may not be dealt with by the Chairman without prior reference to the other members.[3] Provision is also made for the delegation of the Chairman's powers to the Administrator.[4]

The High Commission has power under S. 9 of the order to take over, from the date of its establishment, the administration of the services set out in Schedule I to the Order, namely the Secretariat of the High Commission; the following East African Departments and Services—the Anti-Locust Directorate, the Directorate of Civil Aviation, the Directorate of Training, the Income Tax Department, the Industrial Council, the Interterritorial Languages Committee, the Office in London, the Posts and Telegraphs Department, the Production and Supply Council, the Publicity Committee, the Refugee Administration, the Research Services (comprising Agriculture and Forestry Research, Fishery Research, Industrial Research, Tsetse and Trypanosomiasis Research and Reclamation and Veterinary Research), the Statistical Department and the Meteorological Department; the Lake Victoria Fisheries Board; and Services connected with liaison between the Territories and the Defence Services, and

[1] S. R. & O. 1947, No. 2863.
[2] *High Commission Gazette*, No. 1, January 31, 1948.
[3] *Order in Council*, Ss. 4-6.
[4] *Ib.* S. 7.

with the operation of the East African Currency Board. Power is further given to administer, from their formation, the following East African Services listed in the Second Schedule to the Order: The Literature Bureau (formed on January 1, 1948), the Railways and Harbours Administration (formed on May 1, 1948), the Customs and Excise Department (formed on January 1, 1949), the Information Office, the Radio Communications Service, the Regional Geological Survey and the Regional Topographical Survey; also Interterritorial services financed by grants to the High Commission from the East African Regional Allocation under the Colonial Development and Welfare Acts, and such further East African Research Services as may be set up.

Under the same Section the High Commission may take over the functions of and replace the East African Air Transport Authority, with certain reservations as to Zanzibar; appoint advisory and consultative bodies on matters within its control or of common interest to the territories; and take over the functions of the East African Transport Policy Board.

All Bills and Acts must be *Gazetted* by the High Commission.[1]

Power is given to appoint the following Officers[2]: a Commissioner for Transport,[3] a Finance Member,[3] a Postmaster-General, a Commissioner of Customs, an Economic Secretary and a Legal Secretary

The East Africa Central Legislative Assembly.—This Legislatur (hereinafter called "the Assembly") consists of an Official Speaker holding office during pleasure[4] and 23 Members, 7 *ex-officio*, 3 Nominated Official and 13 Unofficial.

The *ex-officio* Members are the officers named above.[5] The Nominated Official Members are persons holding an office of emolument under the Crown in each of the 3 Territories, appointed by the respective Governors[6]. The original nominees have in fact been the Financial Secretaries of the three Territories.

The Unofficial Members are—

(*a*) three persons, being respectively European, Indian and African appointed by the three Governors respectively. (In Kenya the European and Indian being first elected by resolution of the European and Indian elected members respectively of the Legislative Council.)

(*b*) an Elected or Nominated Unofficial Member of the Legislative Council of Kenya and an Unofficial Member of the Legislative Council of Tanganyika and of Uganda, in each case elected by Resolution of the Unofficial Members (in Kenya of the Elected and Nominated Unofficial Members) of their Legislative Council.

(c) an Arab appointed by the High Commission.[7]

[1] *Ib.* S. 11.

[2] *Ib.* S. 12; *Order of precedence prescribed*, H.C. Notice No. 7, *Gazette*, December 28, 1948. [3] *Change in Titles*, H.C. Notice No. 14, *Gazette*, May 1, 1948.

[4] *Order in Council*, S. 16. [5] *Ib.* S. 17. [6] *Ib.* S. 18. [7] *Ib.* S. 19.

Under S. 20 the High Commission may summon any person to the Assembly, when in its opinion "the business before the Assembly renders the presence of such person desirable", but he has no vote.

In addition to the customary conditions under which a Nominated Officer or Unofficial Member must vacate his seat are absence from the Meetings of the Assembly or from the Territories for more than 12 months continuously or from 2 consecutive Sessions thereof, permanent appointment of an Unofficial Member to an office of emolument under the Crown, or a Nominated Official Member ceasing to hold such an office (*see below*).[1]

No Unofficial Member, however, ceases to be a Member of the Assembly on ceasing to hold a seat in his Legislative Council. Vacancies under S. 21 (1) are reported to the High Commission in writing by the Speaker.

Decisions as to questions of membership rest with the High Commission.[2]

There is provision for the appointment of a temporary Member during the period of a vacancy caused by

(*a*) one person occupying more than one of the offices held by the seven *ex-officio* Members;
(*b*) a vacancy in one of these offices;
(*c*) its occupation by a Nominated Official Member; or
(*d*) its ceasing to exist;
(*e*) incapacity of a member to sit or vote, declared by the High Commission;
(*f*) absence of a member from the Territories.[3]

Sessions of the Assembly are held at such times and places as the High Commission may by Proclamation appoint; provided that a recess does not extend beyond 12 months. The prorogation of the Assembly is by High Commission Proclamation.[4]

Speaker.—The Speaker is appointed by the High Commission under the Official Seal and such appointment may be revoked by the same authority. Should the Speaker be absent the presiding member is to be such member as the High Commission may appoint, or in default thereof, or in the absence of the member so appointed, the member standing next in the following order of precedence:

(*a*) *Ex-officio* Members;
(*b*) Nominated Official Members;
(in both cases in such order as the High Commission may direct)
(*c*) Unofficial Members according to length of continuous Membership, those appointed on the same day being in alphabetical order.[5]

[1] *Ib.* S. 21. [2] *Ib.* S. 22. [3] *Ib.* S. 23. [4] *Ib.* Ss. 37, 39.
[5] *Ib.* Ss. 24, 35.

The Legislative Power.—Subject to the provisions of the Order, the High Commission has power, with the advice and consent of the Assembly, to make laws for the peace, order and good government of the Territories in respect of the matters specified in the Third Schedule to the Order, namely: —Appropriation of Public Moneys, Civil Aviation, Customs and Excise (excluding Tariff Rates), Defence, Income Tax (excluding Rates), Interpretation and General Clauses, Inter-Territorial Research, Lake Victoria Fisheries, Makerere College, Meteorological Services, Pensions and other matters affecting the Staff of the High Commission Services, Posts and Telegraphs, etc., Railways, Harbours and Inland Transport, Loans, Statistics and Census.[1]

The High Commission may also, with the advice and consent of the Legislative Councils of theTerritories, make laws for their peace, order and good Government.[1]

Under S. 33, should the High Commission consider it expedient in the interests of Public Order, Public Faith, or good government that any Bill or motion should have effect, then, if the Assembly fails to pass such Bill or motion, the High Commission may declare such to have effect, either in its original form or with such amendments as it shall think fit, reporting such case to the Secretary of State. Should any Unofficial Member object he may within seven days submit a written statement to the High Commission which shall be similarly forwarded; revoking powers resting with the Secretary of State ir the case of motions.

The forms of enactment in the three classes of legislation are:

(*a*) Enacted by the East Africa High Commission with the advice and consent of the Legislative Assembly thereof;

(*b*) Enacted by the East Africa High Commission in accordance with the provisions of S. 33 of the East Africa High Commission Order in Council, 1947; and

(*c*) Enacted by the East Africa High Commission with the advice and consent of the Legislative Councils of the Colony and Protectorate of Kenya, the Trust Territory[2] of Tanganyika and the Protectorate of Uganda.[3]

Sections 35 and 36 deal respectively with assent to Bills and their disallowance, and S. 8 with the signification of Acts and decisions.

Procedure

Subject to the Order and any Royal Instructions the Assembly has power to frame its own Standing Orders.

Questions are decided by a majority of the members present and voting. In the event of an equality of votes the casting vote lies with the Speaker, but in the case of a presiding member, he has only an original vote, the motion, in the case of an equality of votes, being declared lost.[5] Ten members excluding the Speaker or presiding member constitute a quorum.[6] Every member must take the Oath of Allegiance.[7]

[1] *Ib.* S. 28. [2] *See* JOURNAL, Vol. XVI, 77. [3] *Order in Council*, S. 34.
[4] *Ib.* S. 38. [5] *Ib.* S. 30. [6] *Ib.* S. 31. [7] *Ib.* S. 40.

Offices of Profit under the Crown.—Provision is made in the interpretation section 1 (ii) for the High Commission, with the consent of the Legislative Assembly, to declare that any office shall not be "an office of emolument under the Crown" in any of the Territories; excepted are pensions or other like allowances in the service of the Crown. Should an Unofficial Member be appointed permanently to any such office of emolument his seat becomes vacant and should he be so appointed temporarily, he may not sit or vote in the Assembly during such period.[1]

Unofficial Members and Government Contracts.—The seat of an Unofficial Member also becomes vacant if he, without the prior consent of the High Commission, becomes party to any such contract either with the High Commission or with the Government of any of the Territories.[2]

Finance.—Provision is made for separate Funds, one for each of the self-contained and self-financing services[3] into which its revenue is to be paid, and one for the non-self-contained services into which are paid contributions granted by the Territories and from other sources, in each case on the lines of a Consolidated Revenue Fund.[4] Section 43 provides for a contingencies fund, with the authority of a resolution of the Assembly.

Miscellaneous.—Part VI of the Order provides for the amalgamation and conversion of certain services, additions to lists of scheduled services and of subjects of legislation, transfer of officials to the High Commission, terms of service, pensionable offices, penalty for unqualified persons sitting and voting in the Assembly, the removal of difficulties and the power reserved to the Crown.[5]

Meetings of the Assembly.—The inaugural meeting of the Assembly on April 6, 1948 was attended by Their Excellencies, the East Africa High Commission and the Parliamentary Under-Secretary of State, Mr. D. R. Rees Williams, read a message from the Secretary of State for the Colonies. The Assembly adopted its own Standing Rules and Orders, set up a Standing Committee on Finance, and passed the Estimates for the year. The only Act passed was the Liwali for the Coast (Dispensation)) Act, which declared this office not to be an office of emolument under the Crown, thus enabling the holder of the office to be appointed to the Assembly as Arab Member.

At its second meeting on August 31 the Assembly passed the Estimates of the non-self-contained services for 1949 and the East Africa Railways and Harbours (Transitional Provisions) Bill, which enabled amalgamation of the Kenya and Uganda Railways and Harbours

[1] *Ib.* S. 21 (1) (i), (2). [2] *Ib.* S. 21 (1) (*f*).

[3] These are the E.A. Railways and Harbours and (since January 1, 1949) the E.A. Posts and Telegraphs.—[D. W. B. B.]

[4] *Order in Council, ib.* s. 41, 42. [5] *Ib.* Ss. 44, 51.

and the Tanganyika Railways and Ports services to take place, was enacted.

In July a Meeting of the Standing Committee on Finance was held at Dar-es-Salaam, Tanganyika, and it is the intention to hold a Meeting of the Assembly in Kampala, Uganda, in April, 1949.

XVIII. REVISED CONSTITUTION FOR MAURITIUS[1]

By the Editor

The island of Mauritius lies between 19° 51′ and 20° 35′ S. Latitude and 57° 18′ and 57° 48′ E. Longitude and covers 720 sq. m. The Dependencies comprise a large number of small islands from 230 and 1,200 miles away, the largest of which is Rodriques. According to the 1944 Census the total population is 419,185 made up of Europeans, Africans or people of mixed descent 143,056; Indians 265,247 and Chinese 10,882. The total adult population in 1946 was: White 6,500; Coloured 72,500; Chinese British subjects 4,478; Indo-Mauritians: Hindu 105,800 and Muslim 30,100.

Almost the sole product is sugar of which 350,000 tons was exported in 1947. The total revenue for the same year was Rs. 50,511,566.

Following negotiation and correspondence between the Secretary of State for the Colonies and the Governor as well as negotiations between His Excellency and the people of the Island[2] in regard to a constitutional scheme to broaden the basis of representation of the Council of Government by the substitution therefor of a Legislative Council with wider responsibilities for the conduct of the affairs of the Island, the new Constitution was published in the *Government Gazette of the Colony of Mauritius* of January 7, 1948, under Government Notice No. 17.

The Instruments bringing the new Constitution into force consist of Letters Patent constituting the office of Governor and Commander-in-Chief and Royal Instructions (hereinafter referred to as "G.L.P." and "R.I." respectively) and the Mauritius (Legislative Council) Order in Council, 1947 (hereinafter referred to as the Constitution). All 3 documents are dated December 19, 1947, and the existing Governor's Letters Patent of 1913 and 1945, the Royal Instructions of 1913, 1933 and 1939 and the Letters Patent of 1945 are repealed.

Without reference to the provisions common to such documents a brief description of them will be given so far as they closely affect the re-constitution of the Legislature.

The revised Constitution provides for a Governor, an Executive Council and a Legislative Council (the last 2 bodies being referred to hereinafter as "the Executive" and "the Council" respectively).

Governor and Commander-in-Chief.—Among the normal duties and powers vested in the Governor in regard to the Executive and the Council are that he is required to consult the Executive, with exception in certain cases. The Governor alone submits questions to the Executive over which he presides, but should he decline to submit any question when requested in writing by a member thereof to do so, such member may require record on the Minutes both of his request and the Governor's answer thereto.[3] Should the Governor act in

[1] *See also* JOURNAL, Vol. XV, 106. [2] *Cmd.* 7228. [3] R.I., 11, 12, 13.

opposition to a majority of the Executive he is to report to the Secretary of State.[1]

The Executive.—The Executive consists of the Colonial Secretary, Procureur and Advocate-General and Financial Secretary, all 3 being *ex officio* members; 4 "Appointed" members, who must be elected or nominated M.L.C., selected in accordance with regulations made by the Governor who appoints them; and such other members as may be appointed by the Crown. All "Appointed" Members hold office for 3 years. In addition, the Governor may summon any person as an Extraordinary Member in order to obtain any special advice.[2]

All "Appointed" Members hold office for 3 years from the date of appointment, unless their seats become vacant under the Instructions, which include ceasing to be an M.L.C. Upon the dissolution of the Council, however, "Appointed" Members hold their seats until the first meeting of the Executive for such dissolution. Absence from the Colony without leave of the Governor causes vacation of seat.[3]

Provision is made for the precedence of members of the Executive.[4]

The Council.—This Council, the normal life of which is 5 years, is summoned, prorogued and dissolved by Governor's Proclamation in the *Gazette*, and[5] consists of the 3 *ex officio* members of the Executive above mentioned, 12 members nominated by the Governor and 19 elected. For this purpose the Colony is divided into 5 electoral districts, 1 returning 6, 3 returning each 3 and 1, 4 M.L.C.s.[6]

The qualifications for both nominated and elected membership includes ability to speak and, if not incapacited by blindness, etc to read the English language "with a degree of proficiency sufficien to enable him to take an active part in the proceedings of th Council".[7] In addition to being a party to Government Contracts (*which see below*) disqualification for unofficial membership of the Council includes bankruptcy, lawyer or doctor disqualified from practising, and, in the case of an elected M.L.C., electoral offences.[8]

Nominated M.L.C.s hold office during His Majesty's pleasure and every Unofficial Member vacates his seat on dissolution of the Council. Among other reasons a nominated or elected M.L.C. may not be absent from sittings of the Council without previously obtaining leave of the Governor or the Council respectively.[9] Decisions as to questions of membership are determined by the Governor in the case of nominated, and the Supreme Court in the case of elected, M.L.C.s.[10]

The Governor may in certain cases appoint temporary *ex-officio*, nominated[11] and also extraordinary M.L.C.s, but the last mentioned are only entitled to take part in the proceedings of the Council relating to the matter for which they were summoned and have no voting powers.[12]

[1] *Ib.* 14. [2] R.I., 3-8. [3] *Ib.* 6. [4] *Ib.* 9. [5] Const., 36.
[6] *Ib.* 14. [7] *Ib.* 8. [8] *Ib.* 9. [9] *Ib.* 10. [10] *Ib.* 11. [11] *Ib.* 12.
[12] *Ib.* 13.

The penalty for an M.L.C. sitting or voting when disqualified is not more than Rs. 500 for every day on which he so sits or votes, recoverable in the Supreme Court at the suit of the Procureur and Advocate-General.[1]

Language.—The official language of the Council is English but any M.L.C. may address the Chair in French.[2]

Presiding Officer.—The unofficial M.L.C.s on the opening day of each Council elect a Vice-President, who presides in the absence of the Governor. Should both be absent, then the member present who stands in first order of precedence takes the Chair.[3]

Franchise.—Every British subject adult of 2 years' residence in the Colony is entitled to vote, subject to the usual disqualifying conditions as to aliens, imprisonment for certain offences, insanity, or acting as returning officer. But a voter must be able to:

(1) speak, read and write simple sentences and sign his or her name to the satisfaction of the registering officer in English, French, Gujerati, Hindustani, Tamil, Telegu, Urdu, Chinese or the Creole Patois, unless unable to do so through blindness or other physical cause; or
(2) have 6 months' business premises occupation, as defined, of the annual rental value of not less than Rs. 240, with special provision for joint occupation; or
(3) have served for at least 12 months in the armed Forces of the Crown with not less than "fair" conduct discharge.[4]

Legislation.—The Governor is empowered, with the advice and consent of the Council, to make laws (called Ordinances) for the peace, order and good government of the Colony,[5] but Bills dealing with the subjects contained in Clause 18 of the R.I. such as divorce, land grants to the Governor, currency, banking, differential duties, affecting treaties, Royal Prerogative, racial or religious disabilities, etc., may not be assented to by the Governor without R.I.[6]

By S. 27 of the Constitution powers are, however, reserved to the Governor to legislate without the Council, whenever he should "consider it expedient in the interests of public order, public faith or good government" so to do. Whenever it is necessary that any Bill or Motion introduced in the Council should have effect, and the Council fail to pass it within such time and in such form as the Governor may think reasonable and expedient, he may declare that such Bill or Motion shall have effect as if it had been passed by the Council, either in the form in which it was introduced or with such amendments as he may think fit. These cases must, however, be reported to the Secretary of State and if any M.L.C. objects to any such declaration he may within 7 days thereof submit to the Governor a written statement stating his reasons for so objecting, copy of which shall be

[1] *Ib.* 38. [2] *Ib.* 32. [3] Const., 19-21. [4] *Ib.* 16, 17.
[5] *Ib.* 23. [6] *R.I.*, 18.

sent to the Secretary of State. Such declaration by the Governor is subject to revocation by the Secretary of State.

The form of enactment for these emergency Ordinances are "enacted by the Governor of Mauritius in accordance with the provisions of Section 27 of the Mauritius (Legislative Council) Order in Council, 1947".[1]

Sections 28 and 29 deal with assent to Bills and their disallowance.

Procedure.—Section 31 of the Constitution empowers the Council, subject to the provisions thereof, to make Standing Orders. The Council may, however, not deal with any matter concerning public money or suspend any Standing Order without the recommendation of the Governor.[2]

All questions in the Council are determined by a majority of the votes of M.L.C.s present and voting and the Governor, or M.L.C. presiding, has a casting vote in event of an equality of votes. Should, however, such casting vote not be exercised, the Motion is declared lost.[3]

All M.L.C.s are required to take, before the Governor, the Oath of Allegiance in the prescribed form. Affirmation is permitted in legal proceedings instead of an Oath.

Private Bills.—A Private Bill is defined as a Bill, not being a Government measure, intended to affect or benefit some particular person, association or corporate body and must contain a clause saving the rights of the Crown. No such Bill may be introduced into the Council until due notice has been given by not less than 3 successive publications of the Bill in the *Gazette* and the Governor may not assent thereto unless so published. In such cases the Governor is required so to certify the Secretary of State.[4]

Offices of Profit under the Crown, etc.—The more common title is used in this heading in place of "office of emolument under the Crown" although in this Constitution such office is extended to Municipal Corporations within the Colony. But a person is not deemed to hold either office above mentioned if a Crown or Municipal pensioner, or if he is the Mayor or a member of the Council of a Municipal Corporation or its Standing Counsel or Attorney.

"*Public Office*" is defined under S. 1 of the Constitution. Power is, however, reserved to the Governor-in-Executive Council under R.I. 27 to declare any office not to be a public office.[5]

The holding of any public office by an unofficial M.L.C. necessitates vacation of seat,[6] but should a nominated M.L.C. be appointed temporarily to any public office he may not sit or vote in the Council during that time.[7]

Government Contracts.—It is a disqualification for any nominated M.L.C. to be a party to or a member of any firm or a director or manager of a company party to any subsisting contract with the

[1] R.I., 17. [2] *Const.*, 33. [3] *Ib.* 34. [4] *R.I.*, 19.
[5] Const., 1, 5 (*b*). [6] Const., 10 (3) (*j*). [7] *Ib.* 9 (*a*), 10 (4).

Government of the Colony for and on account of the public service and has not disclosed to the Governor the nature of such contract and his interest therein. It is also a disqualification for an elected M.L.C. to be a party to any such contract, if he has not published the fact in the *Gazette* and in a newspaper circulating in the electoral district for which he is a candidate, a notice setting out the nature of such a contract and his interest therein.[1]

Contravention of the above involves vacation of seat by an unofficial M.L.C. and under S. 38 the member contravening is liable to a penalty of Rs. 500 for every day upon which he sits and votes when disqualified.

Miscellaneous.—Provision is also made in the several Constitutional Instruments in regard to the office of Governor,[2] the Royal Prerogative of Mercy,[3] Oaths of Office,[4] Precedence, etc.[5]

There is also a Civil List in regard to the office of Governor, the 3 *ex-officio* M.L.C.s and the Officer administering the Government,[6] etc.

Questions at Westminster.—Certain Q.s were asked in the House of Commons in regard to Mauritius during the Third Session of the XXXVIIIth Parliament but those referring to the Mauritius Constitution dealt only with the new Council having consideration of the estimates,[7] the system of election in multi-membered constituencies,[8] and the literacy tests for the franchise.[9]

[1] Const., 9 (*b*) (i) (ii), 10 (3) (*f*). [2] G.L.P., 4-8; R.I., 2, 26.
[3] G.L.P. 14; R.I. 24. [4] G.L.P., 6; R.I., 1. [5] R.I., 9; Const., 21.
[6] Const., 40. [7] 449 *Com. Hans.* 5, s. *30*. [8] 450 *ib. 248*. [9] *Ib. 249*.

XIX. MEMBERS OF PARLIAMENT AND GOVERNMENT CONTRACTS

THE *Questionnaire* for Volume XV contained the following item:

(8) Please give statutory or S.O. provision in regard to members interested in Government Contracts quoting instances?[1]

The question of a member of Parliament benefiting from such membership, whether (1) by acceptance of office or place of profit under the Crown not exempt by law, (2) by participation in contracts with the Government, (3) by receiving money for promoting or opposing matters in Parliament, or (4) by voting on questions in which he has a direct pecuniary interest, has long received the attention of Parliaments by legislative or other action.

No. (1) has been reviewed in the JOURNAL from time to time;[2] No. (3) is usually provided for in the local constitution or Powers and Privileges of Parliament Act; and the Article in regard to No. (4), although already prepared, has had, for want of space, to be held over for inclusion in a later volume.

It is therefore with No. (2) that this particular Article is concerned, and, in order the better to do justice to the subject, it is proposed first to give a general outline of the background of the present attitude of Parliaments towards this subject. In this connection one has in mind the expression used by Mr. Winston Churchill (then Prime Minister of the United Kingdom) in "the Boothby case"[3]—

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

—for the status of Parliament depends upon the esteem in which its members are held in the heart and mind of its people.

For the origin of most matters concerning the law and custom of Parliament one has to turn to the Mother of Parliaments, the fountain source of precedents and the place where problems have been hammered out, often under great difficulties, on the anvil of hard-earned experience. May, as always, is to be consulted and if the actual documents referred to therein are locally available the authorities given in the footnotes will be the guide.

This Article also attempts to show what action Parliaments overseas have taken to combat this problem by giving *verbatim* the various forms of governing clauses on the subject.

United Kingdom.—Just as "great oaks from little acorns grow" it was a humble petition from the inhabitants of Royston concerning the payment of subsistence money to certain officers and soldiers, presented to the House of Commons in 1694 (during the period often

[1] This question had already been the subject of item 6 of the *Questionnaire* for Vol. XIV.

[2] *See* JOURNAL, Vols. IV, 85; VI, 20; VIII, 111; IX, 61; X, 53, 98; XI-XII, 16, 18, 19, 26, 54, 61, 62; XIII, 22-24, 68, 90; XIV, 34.

[3] *Ib.* Vols. XI-XII, 115.

described as "The Corruption Phase"), which led to the discovery of corruption of such magnitude as to justify an inquiry:

and timely check given to the most scandalous and dangerous corruption which had lately tainted, not only the agents of the Army, and several members of the House of Commons but also the Speaker himself and had crept into His Majesty's Privy Council.[1]

As a result of this inquiry, several persons were summoned to the Bar of that House; some even being committed to the Tower. Representations on the subject were made to the King and it is even recorded that the Speaker was declared guilty of receiving a gratuity and expelled the House.[2]

This was followed later that year by an Act,[3] S. 57 of which prohibited members of the House of Commons from sitting or voting therein while occupying the offices of farmers of excise and in 1700 an Act[4] was passed imposing similar disabilities upon members of Parliament acting as commissioners of customs.

It was not, however, until 1779 that legislation was introduced dealing with members of the House of Commons being involved in contracts with the Government and leave given to bring in a Bill:[5]

for restraining any person, being a member of the House of Commons, from being concerned himself, or any person in trust for him, in any contract made by the Commissioners of His Majesty's Treasury, the Commissioners of the Navy, the Board of Ordnance, or by any other person or persons for the public service, unless the said contract shall be made at a public bidding.

The hon. member, in moving the Motion on February 12 of that year, declared that his intention was to preserve the independency of the House as the only means of preserving "our excellent Constitution". The mover complained of a variety of abuses in connection with Army contracts; of the influence of contractors on elections; of the power they had of making promises of provision for voters in subaltern departments under them and he remonstrated against the power of a First Lord of the Treasury, who at a time when the nation was exhausted with taxes and borrowing money on the most disadvantageous terms, had borrowed £30,000-£40,000 from a favourite contractor:

Motion for leave was granted: Yeas, 158; Noes, 143 and the Bill read *1 & 2 R.*, but on the question—"that the Speaker do now leave the Chair" the voting was: Yeas, 124; Noes, 165, followed by a Resolution—

That this House will, upon this day four months resolve itself into a Committee on the Bill[6]

—after which one heard no more of the Bill that Session.

Burke in his speech before the House of Commons on February 1, 1780,[7] when presenting his plan for the better security of the Inde-

[1] 5 *Parl. Hist.* 881. [2] *Ib.* 910. [3] 5 Will. & Mary, c. 7.
[4] 12 & 13 Will. III, c. 10, ss. LXXXIX-XCII. [5] 20 *Parl. Hist.* 124. *Ib.* 219. [7] 21 Parl. Hist. 1.

pendence of Parliament and the economical reformation of the civil and other establishments, said:

> What I bent the whole force of my mind to was the reduction of that corrupt influence, which is itself the perennial spring of all prodigality, and of all disorder; which loads us more than millions of debt; which takes away vigour from our arms, wisdom from our councils, and every shadow of authority and credit from the most venerable parts of our Constitution.

On April 10 debate took place in the House of Commons on a Motion in Committee by Mr. Joseph Dunning "for securing the independence of Parliament" but space does not admit of an account of it being given here. The Resolution, however, which was duly carried (Yeas, 215; Noes, 213), read:[1]

> That it is the opinion of this Committee, that for preserving the independence of Parliament, and obviating any suspicion of its security, there be laid before this House, within seven days after the first day of every Session, enactments, authenticated by the signature of the proper officers, of every sum and sums of money paid in the course of the preceding year, out of the produce of the civil list, or any other branch of the public revenue, to, or, to the use of, or in trust for, any member of either House of Parliament, by way of pension, salary, or any other account whatsoever; specifying when, and on what account.[2]

On March 19, 1782,[3] on the Motion to go into Committee of the Whole House on the Bill for the Act of that year, Mr. Fox said he was rejoiced at seeing that a new spirit of government seemed to be rising in the country, when corruption would be banished from the Senate, and when those who should have the management of public affairs might safely trust to the merits of their measures for support, without having recourse to the detestable system of corruption to obtain it.

The Bill stated that no contractor should sit in the House who should not have made his contract in consequence of a public advertisement, and though a contract should have been advertised it might nevertheless be given to a favourite person; he would therefore move that the exception in the Bill should cease and that no contractor whatsoever should have a seat in Parliament.

The next proposition was that all those who actually had contracts should not sit in that House, for as the Bill stood it had no retrospect. Mr. Fox therefore moved:

> That it be an instruction to the said Committee that they have power to extend the provisions of the said Bill to prevent all such persons from sitting or voting in Parliament, although such contract may have been at a public bidding

—which being agreed to, the House went into *C.W.H.*, Mr. Fox moving his 2 clauses which were admitted without opposition.

The hon. member observed that it was very well known who disposed of such contracts in the Treasury and that the whole plan of the Treasury, etc., was conducted on the same corrupt system was a

[1] *Ib.* 374-386. [2] *Ib.* 376. [3] 22 *Ib.* 1211-1214.

fact not to be disputed. Nothing but the power of Parliament could strike at the root of the evil.[1]

When the House resumed in Committee on the Bill on April 12 of that year[2] Burke remarked that individuals had an option either to retain their political rights and sit in Parliament, or their professional and commercial rights by pursuing their trade and supplying government as usual. It was strict justice to the public for Parliament to separate two sorts of rights when they were found to be incompatible; a good member of Parliament could not be a contractor. Burke then asked that the Clerk might read the clauses of 3 Acts passed, two in the 5th of William and Mary[3] and one in the 11th and 12th of William, already referred to.[4]

Committee was resumed on April 17[5] and the Bill passed 2 days later, but not without some disagreement with the Lords. The Bill duly became 22 Geo. III. c. 45.

The House of Commons (Disqualification) Act of 1801[6] applied the Act of 1782 to Ireland in practically identical terms both in regard to corrupt practices and Offices of Profit under the Crown.

It was not however until 1931 that a further clarification of these Acts was found necessary and in moving, on March 25[7] 2 *R.* of the House of Commons (Disqualification) Bill to remove certain doubts as to the scope of the Acts of 1782 and 1801, the Solicitor-General (rt. hon. Sir Stafford Cripps) said the urgency in asking the House to take all the stages of the Bill so that it might be sent to "another place" that night was that at least one and probably a large number of members of the House of Commons were at the moment in a position of jeopardy owing to the uncertainty of the interpretation of S. 1 of the Act of 1782.

This section, of what was known as the "Contractors' Bill",[8] continued the Minister, dealt with 2 classes of persons, those who entered into contracts with Government Departments and those who carried them out, and applied the disqualification to both classes.

The first class was dealt with in these words:

> Any person who undertakes executes holds or enjoys any contract agreement or commission made or entered into with the Commissioners of the Treasury, Navy, or Victualling Officer or Board or Ordnance or with any other person for or on account of the public service.

The second class was described as those who:

> Knowingly furnish or provide in pursuance of any such agreement contract or commission which may have been entered into as aforesaid any money to be remitted abroad or any wares or merchandise to be used or employed in the service of the public.

The doubt had arisen as to whether S. 1 of the Act of 1782 and the corresponding section[9] of the Act of 1801 were intended to apply to

[1] *Ib.* 1213. [2] *Ib.* 1333. [3] 5 Will. & Mary, c. 10 s. 7 and c. 20 s. 23.
[4] 12 & 13 Will. III, c. 20 ss. 89-91. [5] 22 *Parl. Hist.* 1336.
[6] 41 Geo. III, c. 52. [7] 251 *Com. Hans.* 5, s. 361. [8] 22 Geo. III, c. 45.
[9] S. IV.

every type of contractual relationship between a Government Department and an M.P., or whether they were only intended to apply to those types specified in the latter half of S. 1 above referred to, which may roughly be termed mercantile contracts as distinct from contracts dealing with land and other matters. The question had never been actually decided by a court, though Government Departments and others had from time to time taken many opinions from lawyers upon the point, most of which opinions displayed an extreme diversity of views.

The penalty was £500 per day so long as the member continued to sit and the fine could not be remitted except by Act of Parliament. It could be sued for by any common informer, so that so long as doubt existed as to the type of contract covered by the section in question all M.P.s who entered into the most harmless contractual relationships with any Government Department were put in jeopardy of being either afraid to continue sitting or of being sued for penalties at the hands of some chance common informer. In the past a number of personal indemnity Acts had been passed where trading contracts had been entered into by M.P.s unwittingly, the most recent case being that of William Preston who had sold some pick-handles to the Government in 1925, a case which clearly fell under the Act of 1782.

The urgent necessity, said the Solicitor-General, for the present Bill, which raised the interpretation of S. 1 of the Act of 1782, concerned the noble Lord, the hon. member for South Dorset (Viscount Cranborne), whose father, Lord Salisbury, entered into an agreement with the Postmaster-General for a year-to-year tenancy of the building used as Hatfield Post Office, assigned to the noble Viscount, together with other properties, as a lessor to the Postmaster-General, the landlord of the Post Office receiving a rent for the property.

Opinions had been expressed that the Act of 1782 was wide enough to cover such a case. Were such an interpretation to be put upon the Act of 1782 it would cover every contract of whatever nature entered into by an M.P. with a Government Department, such as wayleaves for telegraph and telephone lines and indeed ordinary telephone agreements.

When the present case arose a few days ago the Government legal advisers were in the course of considering the whole question and a preliminary view of the true meaning of S. 1 had been arrived at, which was that expressed in the Bill. The Minister had reviewed the whole question and considered the interpretation now put upon such section as the correct one.

The Solicitor-General then quoted extracts from past debates in connection with the Bill of 1782,[1] which was aimed in the Bill, described as "contractors' profits", that was to say, the cases where either money or goods were being supplied for the service of the Crown by persons who were entering into contracts with Govern-

[1] 250 *Com. Hans.* 5. s. 365.

ment Departments. The present Bill therefore made it abundantly clear that it was that class of contract alone to which S. 1 of the Act of 1782 applied. The remaining provisions of the Acts of 1782 and 1801 were left wholly unaltered.

After a short debate the Bill passed 2 *R.* and its remaining stages, was sent to the Lords, agreed to without amendment, and became 21 Geo. V. c. 13.

In dealing with the subject of Government contractors, May[1] states that they may be regarded as analogous to office-holders, being supposed to be liable to the influence of their employers—the Executive Government—and therefore open to one of the objections against office-holding, and are disqualified by statute.

In referring to the House of Commons (Disqualification) Acts of 1782 and 1801, May states that they provide that any person who, directly or indirectly, himself or through a trustee, holds or undertakes any contract or commission, for or on account of the public service, is incapable of being elected; and if a member becomes a public contractor, the election is void. There is a penalty of £500 for every day of sitting and voting while under this disability.[2]

These Acts also impose the same penalty upon any person who admits an M.P. to a share of a contract.[3] A person is not, however, rendered incapable of being elected or of sitting and voting if the contract has been executed by him at the time of his election or at the time of sitting and voting,[4] which means, in effect, that the disability does not exist if the contract has already been executed, or if the sitting member does not continue to execute the contract. The Acts do not affect incorporating trading companies contracting in their corporate capacity.

Moreover, May also states that in 1915 it was ruled that the 'public service" to which the Acts of 1782 and 1801 refer, was not confined to the public service of the United Kingdom, nor need it be paid for out of moneys voted by Parliament, but meant the service of the Crown anywhere.[5]

As the declaratory Act of 1931 specifically interpreted the Acts of 1782 and 1801 as applying to "contracts . . . for money to be remitted abroad" a clause was inserted in the East India Loans Act 1937 (S. 11) exempting from disqualification M.P.'s who might be subscribers to such India loans.[6]

Under the Succession to the Crown Act 1707 and supplementary legislation, the election of a disqualified person is void; together with the penalty of £500 abovementioned. There seems, continues May, to be no case of action at law by a common informer to recover the statutory penalty against an M.P. disqualified on the ground of office-

[1] May, XIV, 214, 215 and notes.
[2] For instances of new Writs, *see* May, XIV, 214.—[ED.]
[3] *See* May, XIV, 214 and notes for cases.
[4] *See* May, XIV, 214, for case of Royce *v.* Birley.
[5] May, XIV, 214. [6] *Ib.* 215.

holding. But such an action has been brought in the analogous case of disqualification by the holding of a Government contract. The official copy of the division lists[1] is accepted as a sufficient record to establish proof of voting. Examples of actions of common informers are those of Forbes *v.* Samuel in 1913, each claiming a penalty of £46,500.[2]

Overseas Parliaments and Legislatures.—Similar details cannot be given in connection with the history of the proceedings of Parliaments and Legislatures Overseas in regard to the subject of M.P.'s being involved in Government contracts, but the following survey of the information received on this subject from such Parliaments and Legislatures will now be given:

Canada.—The practice in Canada between 1844 and Federation in 1867 and from then on to 1903 is given in Bourinot where it is stated[3] that in 1843, Attorney-General Lafontaine presented a Bill entitled "an Act for better securing the independence of the Legislative Assembly of this Province". This Bill became law[4] in 1844 and has formed the basis of all subsequent legislation on the subject in Canada. Judges and other public officers, as well as contractors with the Government were specially disqualified from sitting and voting in the Assembly and were liable to a heavy penalty should they violate the law.

In the Session of 1877 attention was called in the House of Commons to the fact that a number of members appeared to have inadvertently infringed S. 3 of the Act reading:

> No person whatever, holding or enjoying, undertaking or executing, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, any contract or agreement with Her Majesty or with any public officer or department, with respect to the public service of Canada, or under which any public money of Canada is to be paid for any service or work, shall be eligible as a member of the House of Commons, nor shall he sit or vote in the same.[5]

Some doubts arose as to the meaning of the word "contract" under this section and all the cases in which members were supposed to have brought themselves within the intent of the statute were referred to the Committee on Privileges. In the several cases so referred, it was alleged that Mr. Speaker Anglin, who was editor and proprietor of a newspaper, had received public money in payment for printing and stationery furnished "per agreement" to the post department; that Mr. Currier was a member of a firm which had supplied some lumber to the P.W.D.; that Mr. Norris was one of the proprietors of a line of steamers upon the lakes which had carried rails for the Government; that Mr. Burpee was a member of a firm which was supplying certain iron goods to Government Railways; that Mr. Moffat was interested in, and had been paid for the trans-

[1] *Ib.* 411. [2] *Ib.* 415. [3] Bourinot III, 232.
[4] 7 Vict., c. 63, amended 16 Vict., c. 154 & 18 Vict., c. 86.
[5] Bourinot III, 233-4 and notes.

port of rails for the Government; that Mr. T. Workman was a member of a firm interested in the supply of hardware to the P.W.D., and that Mr. A. Desjardins was editor and publisher of the *Nouveau Monde* which had received public money for Government advertisements and printing. Both Mr. Currier and Mr. Norris, believing they had unwittingly infringed the law, resigned their seats during the Session.[1]

Owing to the lateness of the Session, in only one case (Mr. Anglin) were the Committee able to report. In this case, which caused much discussion, the Committee came to the conclusion that the election was void, as Mr. Anglin had become a party to a contract with the Postmaster-General, but that it appeared from Mr. Anglin's evidence, that his action was taken under the *bona fide* belief, founded on the precedent and practice hereinafter stated, that he was not thereby holding, enjoying or undertaking any contract or agreement within the section.

In the Russell case of 1864, the precedent referred to in the report, an Election Committee of the Legislative Assembly of Canada found that the publication by the member for Russell of advertisements for the public service, paid for with public moneys, did not create a contract within the meaning of the Act. On the other hand the Committee of 1877 came to the conclusion that the decision of 1864 was erroneous. It appeared from the evidence taken by the Committee and from the public accounts of the Dominion that—

> between 1867 and 1873 numerous orders given by public officers, for the insertion of advertisements connected with the public service were fulfilled, and various sums of public money were paid therefor to members of Parliament.

It was never alleged at the time that these members were disqualified, but the Committee were of opinion, nevertheless, that —

> according to the true construction of the Act for securing the independence of Parliament, the transactions in question did constitute disqualifying contracts.

The result of this report was the resignation during the Recess of Mr. Anglin, Mr. Moffat and some other members who had entered into such contracts.[2]

Messrs. Jones and Vail also resigned their seats, being stockbrokers in a company which had performed printing and advertising for the Government. Mr. Mitchell also resigned. Messrs. Burpee, Workman and Desjardins did not resign, as they had not violated the provisions of the Act. In 1894 Mr. Corby resigned his seat on learning for the first time, in the course of discussion in Committee of Supply, that his firm had had a small business transaction with the Department of Inland Revenue, and that he had consequently inadvertently infringed the law.[3]

[1] Bourinot III, 234 and notes. [2] *Ib.* 235 and notes. [3] *Ib.* 236 and notes.

Among other things, says Bourinot, it is provided that—

in every contract, agreement, or commission to be made, entered into or accepted by any person with the Government of Canada, or any of the departments or officers of the Government of Canada, there shall be inserted an express condition that no member of the House of Commons shall be admitted to any share or part of such contract, agreement or commission, or to any benefit to arise therefrom.

Any person disqualified as a contractor, or otherwise, under the Act, forfeited $200 for every day on which he sat and voted and persons admitting a member to a share in a contract forfeited $2,000 for each such offence.[1]

The following provisions are contained in the Dominion Elections Act, 1920:

In regard to Official Agents, S. 79 (6) of such Act lays down that:

A contract whereby any expenses are incurred on account of or in respect of the conduct or management of an election shall not be enforceable against a candidate unless made by the candidate himself or by his official agent or by a sub-agent of the official agent thereto authorized in writing:

Provided that inability to enforce such contract against the candidate shall not relieve him from the consequences of any corrupt or illegal practice having been committed by his agent.

The subject is also dealt with in the Canada Senate and House of Commons Act,[2] S. 15 of which is similar to S. 15 of the Act of 1877 quoted above, with the same penalty of $200, such sum being recoverable from the member by any person who sues for the same in any court of competent civil jurisdiction in Canada.

Under S. 18 of the Senate and House of Commons Act the provisions of Ss. 15-17 are also extended to any transaction or Act begun and concluded during a Recess of Parliament including the $2,000 forfeit by anyone admitting a member of the House of Commons to such a contract.

In regard to the drawing up of Government contracts, S. 19 of the Act makes the same provision as already quoted by Bourinot.

Exceptions to disqualification of an M.P. are:[3] shareholders in any Government contract, except for building a public work; devolvement as executor, etc.; loans to Government on terms common to all persons; or in the Naval, Military or Militia services.

Special provisions are made in S. 21 of the Act, in respect of Senators as follows:

No person who is a member of the Senate shall directly or indirectly, knowingly and wilfully be a party to, or be concerned in any contract under which the public money of Canada is to be paid.

The penalty is the forfeit of $200 for each day the member continues to be a party to the contract, recoverable as in the case of an M.P. and there are the same exceptions in regard to shareholders in a company having contract with the Government except for the building of any public work.

[1] *Ib.* 237-9. [2] R.S.C. 1927, c. 147. [3] R.S.C. 10, s. 20.

Canadian Provinces.

The following are the provisions made in regard to members of Parliament and contracts with the Government, in the Provinces of Canada. Where there is no material difference in the governing sections of the respective Acts they are not repeated, but any variations in the exceptions are given in each case.

Quebec.—Section 69 of the Legislature Act, 1925,[1] provides that:

(1) No person undertaking or executing or having directly or indirectly, alone or with another, by himself or by the interposition of any trustees or third person, any contract or agreement with His Majesty or with any public officer or department of the Government of the Province, with respect to the public service of this Province or under which any public money of the Province is to be paid for any service, work, matter or thing, may be appointed a Legislative councillor, or be eligible as a member of the Legislative Assembly in either case, sit or vote as such.

Section 69 (2) however exempts any person who is a shareholder in an incorporated company having such contract or agreement, with the exception of a company carrying out any public works.

The penalty for a member of either House sitting or voting when so disqualified is $1,000 for every day on which he so sits or votes, recoverable by anyone suing therefor before a competent court.[2] The prescriptive period is 12 months and whilst any such suit is pending no other suit may be taken against the same defendant. In event of such other suit being brought, proceedings thereon are stayed, and judgment having been rendered against the defendant, no proceedings may be heard in any other suit against the same person for any such offence committed before the time of service upon him of such judgment.

Ontario.—Cap. 12[3] of the Revised Statutes of this Province, 1937, contains comprehensive provision in regard to this subject.

Section 10 of the above Act is in the same terms as S. 69 (1) already given under Quebec,[4] but the penalty is a forfeit of $2,000 for every day on which such member sits or votes, recoverable by any person who sues for the same in any court of competent jurisdiction.[5]

Exceptions[6] to the above are: Trustees for estates of contractors; shareholders in non-contracting companies, unless the contract is for the building of a public work of the Province not let by tender to the lowest bidder; loans to Ontario Government; holder of mining rights or leases, but no such person may vote on any question affecting such right, etc., or in which he is interested by reasons thereof; owners and persons interested in certain newspapers in which official advertisements appear or are subscribed for by the Government or any public institution of the Province, unless such advertisements or subscriptions are paid for out of Ontario public moneys at rates greater than the usual rates; timber licences, etc., but no such person may vote on any question affecting such right, etc., or in which he is

[1] R.S. 1941, c. 4. [2] *Ib.* S. 70. [3] R.S.O. 1927, c. 12.
[4] R.S.O. 1927, c. 12, s. 10. [5] R.S.O. 1937, c. 12, s. 16. [6] *Ib.* S. 11.

interested by reason thereof; holder of a fishery licence or having a contract or agreement with His Majesty or any public officer or department with respect thereto, with the above-mentioned stipulation as to voting; surety for contractors or liable for payment of money on account of the maintenance or tuition of an inmate or pupil of any Government institution; postmasters or contract mail carriers between 2 or more post offices outside a city, town or incorporated village, or surety therefor; receipt of compensation for land where the amount thereof has been fixed by award made under the Public Works Act or any other general or special Act of the Province (but there is the above stipulation as to voting); and sureties of public officers.

Should an elected M.L.A. who is, at the time of his election, surety as above, he must before he sits or votes in the Assembly take complete action to free himself therefrom, with the same stipulation as above as to sitting or voting.[1]

No such disqualification, however, may operate until so declared by an election court but this may not affect cases provided for under S. 11 (2) of Cap. 12 of 1937, "nor as affecting the right of the Assembly to expel a member according to the practice of Parliament or otherwise".

Nova Scotia.—Section 15 of Chapter 2 of 1937—1 Geo. VI enacts that except, as otherwise provided thereunder, no person holding or enjoying, undertaking or executing, directly or indirectly, alone or with another, by himself or by the imposition of a trustees or third person, any contract or agreement with the Government of Nova Scotia or with any Minister or Department thereof for which any public money of Nova Scotia is to be paid for any service, work matter or thing, shall be eligible for membership of the House of Assembly or shall sit or vote therein.

Exceptions[2] to the above are devolvement as executor; administrator or trustee until 12 months have elapsed after such devolvement; shareholder of an incorporated company unless for the building of a public work not let by tender to the lowest bidder; Government loans under authority of the Legislature after public competition or respecting the purchase or payment of bonds, etc., of Nova Scotia in terms common to all persons; proprietor of any newspaper in which official advertisements are inserted or subscribed for by the Government of Nova Scotia or any Minister or Department thereof; surety, etc., for payment of money for or on account of any person in any Government institution or for a public officer, etc., required by law to furnish security to the Crown; member of any medical board or commission of any hospital; compensation for any property taken by the Crown where the amount thereof has been fixed under the Expropriation Act, etc., of the Province or where the Judge of the County Court for the County in which the property is situate has

[1] R.S.O. 1927, c. 12, s. 11 and Cap. 12, 1937, c. 12, s. 11 (2). [2] S. 16.

certified that the amount of compensation is fair and reasonable; party to any contract, etc., of a casual nature for any service work, etc., where such contract, etc., is not made in the course of continued and successive transactions of like character; in temporary or part time employment or service of the Dominion of Canada or of the Province of Nova Scotia where such employment requires special qualifications or professional skill; or member of any commission, etc., appointed under any law of the Province and declared by such Act to be entitled to remuneration, etc., while a member of the House of Assembly.

The penalty is the forfeit of $1,000 for every day he sits or votes, recoverable by action in the Supreme Court at the suit of any person.[1]

New Brunswick.—In the New Brunswick Elections Act, 1944,[2] S. 38 (1) provides that no person shall be eligible as a candidate or of being returned to the Legislative Assembly who:

(*b*) is a contractor with or under the Government of the Province or any department thereof or is a surety for such contractor; provided that this clause shall not apply to any person by reason of his being a surety for a sheriff, registrar or other public officer, or a surety or contractor for the payment of the maintenance of a patient in the Provincial Hospital; or

(*c*) is a person holding or engaging in, undertaking or executing, directly or indirectly, alone or with any other, by himself or by the interposition of a trustee or third party, any contract or agreement with His Majesty, or with any public officer or department with respect to the public service of the Province or under which any public money of the Province is expended for any service or work, matter or thing;

Among the exemptions[3] are the Chairmanship of the New Brunswick Electric Power Commission; in receipt of superannuation allowance; a pension for disability caused by military service or a provincial grant as a teacher; employment by any patriotic committee or organization whose funds may be contributed wholly or only in part by the Province; a J.P. coroner or notary public.

(*d*) A shareholder in any incorporated company having a contract or agreement with the Government of the Province, except any company which undertakes a contract for the building of any public work.

The election and return of any person in contravention of the Act is declared "null and void".

Manitoba.—Section 17 of Cap. 116[4] of the Revised Statutes of the Province is practically *verbatim* the Ontario S. 10 above quoted.

The exemptions[5] however vary somewhat from the Ontario Act and consist of: shareholders or directors of any corporation having a contract with the Government except for building any public work; Government loans after public competition or holding securities of the Province on terms common to all persons; contracts for utility or merchandise; compensation for Crown land; owners and persons interested in newspapers (see Ontario section); principal or surety to

[1] S. 20. [2] C. VII. [3] S. 38 (2) (3). [4] S. 39.
[4] S.M. 1940, c. 116. [5] *Ib.* S. 18.

a Government bond under the Succession Duty Act; holders of grazing, hay or wood-cutting permits; mining licences or leases, licences for game or fishery and highway traffic licences; certain collectors of licences; and certified carriers of goods for the Crown.

The election to the Legislative Assembly of any person disqualified as above is null and void.[1]

The penalty[2] for nomination for or election of an M.L.A. who is so disqualified is $200 for every day on which he so sits or votes.

British Columbia.—Section 29 of the Constitution[3] makes the same provision as that already given under S. 69 (1) of the Legislature Act, 1925, of Quebec.

Should any person disqualified or declared incapable of being elected an M.L.A. be elected and returned, his election and return shall be declared null and void[4] and no such person may sit or vote in the Legislative Assembly while so disqualified.[5] The penalty for so sitting or voting is the forfeit of $500 for each day he does so, recoverable by any person suing for the same in any court of competent civil jurisdiction in the Province.[6]

The exemptions are: shareholder, director or trustee of any incorporated company having a contract or agreement with the Government of the Province (but no such shareholder, director or trustee may vote at any general or special meeting of the company, or of the directors or trustees for the making of such contract or agreement); executor, etc., of an estate in which such contract, etc., is involved until 12 months after it has devolved upon him; Government loans under the authority of the Government of the Province after public competition, or respecting the purchase or payment of the public stock or debentures of the Province on terms common to all persons.[7]

Prince Edward Island.—Section 22 of the Legislative Assembly Act[8] reads:

> No person holding or enjoying, undertaking or executing directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, any contract or agreement with His Majesty or with any public officer or department with respect to the Public Service of the Province of Prince Edward Island, or under which any public money of the Province is to be paid for any service or work or who shall become surety for the same, shall be eligible as a member of the Assembly nor shall he sit or vote in the same; provided that nothing herein contained shall be construed to apply to any person holding a share of the capital stock in any incorporated company.

Saskatchewan.—The Statutory provision in regard to members interested in Government contracts is contained in S. 15 of the Legislative Assembly Act (R.S.S., 1940, c. 3). The pertinent clauses read as follows:—

> 15. Nothing contained in this Act shall extend to or disqualify any person as a member of the Assembly:

[1] *Ib.* S. 19. [2] *Ib.* S. 21. [3] R.S. 1911, c. 44. [4] *Ib.* S. 31.
[5] *Ib.* S. 32. [6] *Ib.* 33. [7] *Ib.* S. 34. [8] Cap. 37. 1940.

(*a*) by reason of his being a shareholder or director of any incorporated company having a contract or agreement with the Government of Saskatchewan except any company which undertakes a contract for the building of any public work;

(*c*) by reason of his entering into a contract with the Government of Saskatchewan or a department thereof for the supply or sale to him of any utility or article of merchandise administered or sold by such Government or department.

As previously noted, two new clauses were added to this Section, in the 1946 Session, by an amending Act (Statutes of Saskatchewan, 1946, c. 2). The clauses read:

(*h*) who, being a person required by or pursuant to an Act to collect the tax imposed thereby, receives remuneration for such service in the same way as all other persons required to collect the tax;

(*i*) by reason of his entering into a bargain or contract with a corporation created under the Crown Corporations Act, 1945, for the supply or sale to him of any real or personal property sold by such corporation or for the supply or sale by him to such corporation of any real or personal property.

Australia.

Federal Parliament.—Section 44 (v) of the Constitution[1] provides that:

Any person who has any direct or indirect pecuniary interest in any agreement with the public service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons, shall be incapable of being chosen or of sitting as a Senator or as a member of the House of Representatives.

Section 46 of the Constitution also provides that any person declared by the Constitution to be incapable of sitting as a member of either House shall be liable to pay a fine of £100 for every day on which he so sits, to any person who sues for it in any court of competent jurisdiction.

Australian States.

In order to economize in space, the same practice will be followed in regard to legislative comparison in the Australian States as with the Provinces of Canada.

New South Wales.—Provision is made in the Constitution Act, 1902-1938 as follows:

13. (1) Any person who directly, or indirectly, himself, or by any person whatsoever in trust for him or for his use or benefit or on his account, undertakes, executes, holds or enjoys in the whole or in part any contract or agreement for or on account of the Public Service shall be incapable of being elected or of sitting or voting as a Member of the Legislative Council or Legislative Assembly during the time he executes, holds or enjoys any such contract or any part or share thereof or any benefit or emolument arising from the same.

The penalty is vacation of seat on the declaration by the House to which such member belongs and the election to either House of anyone disqualified as above is void; the penalty for sitting and voting as a member while so disqualified is the forfeit of £500 to be recovered by any person who sues for the same in the Supreme Court

[1] 63 & 64 Vict., c. 12.

of New South Wales. Exceptions to the above are contracts, etc., accepted by any incorporated trading company of more than 20 persons, where such contract is accepted for the general benefit of such incorporated or trading company.

Victoria.—There are no Standing Order provisions in either House relating to Government contracts. The statutory provisions governing this matter were originally contained in S. 25 of The Constitution Act of 1857 but are now contained in ss. 24-26 and 29 of The Constitution Act Amendment Act 1928 and the Members of Parliament (Disqualification) Act 1939 (No. 4718). These sections provide that no person who is either directly or indirectly concerned or interested in any contract entered into by or on behalf of His Majesty may sit or vote in the Council or the Assembly; and the election of any such person to be a member of either House is void: should any member become interested in any such contract his seat thereupon becomes vacant. Certain contracts are excepted, such as Government contracts entered into by a company consisting of more than 20 persons where the contract is for the general benefit of such company; also contracts for the sale or purchase of land or for the loan of money. Any person who offends against these provisions forfeits for every such offence a sum of £200 to be recovered by any person who sues for the same in any court of competent jurisdiction. The Act No. 4718 was passed in 1939 to remove doubts as to the scope of the above-mentioned ss. 24 and 25 of the Constitution Act Amendment Act 1928 and it is provided that any references in those sections to contracts entered into by or on behalf of His Majesty include a reference to contracts entered into by any Government Department, any Minister of the Crown in his capacity as such, and certain specified governmental bodies such as the Railway Commissioners and the Country Roads Board, etc., but do not extend to the supply by His Majesty (including any Departmental Minister or body aforesaid) of goods chattels and services on no better terms than such goods etc., are ordinarily supplied to the public; or to an isolated casual sale or supply of goods chattels or services to His Majesty (including any Department, Minister, or body aforesaid) where the member concerned did not know and could not reasonably have known that such sale or supply was a sale or supply to His Majesty. Prior to the passing of this last-mentioned Act (No. 4718) doubts had arisen as to the interpretation of the expression "contracts entered into by or on behalf of His Majesty" and fears were expressed in debate[1] that members may have unwittingly placed their seats in jeopardy by entering into contracts which might be regarded as contracts with His Majesty especially in view of the growing practice of Parliament to create State instrumentalities to carry on services and undertakings formerly carried on by private enterprise.

Two interesting cases may be briefly referred to. In one case it

[1] 1938 *Hans.* 542, 597, 1035-8.

was alleged in Parliament that A, a member of the Council, was a shareholder in a company (consisting of less than 20 persons) which had entered into a Government contract.[1] No Parliamentary inquiry was instituted to ascertain the facts of the case nor was any action commenced in the Courts to claim the penalty prescribed by law; but 2 or 3 days later, A, without making any reference to the allegations or any admission as to the facts, submitted a letter resigning his seat in the Council. If the facts were as alleged the seat of the member had become vacant by operation of law when his company entered into the Government contract and the member's resignation was a nullity because he then had no seat to resign. If on the other hand the facts were not as stated and the seat was not vacant by operation of law, the resignation was effective to render the seat vacant. As therefore, in either event, there was a vacancy, the President issued a writ for the election of a member to fill the vacancy. In the other case B, who was interested in a Government contract for the supply of firewood, was returned as duly elected a member of the Assembly, but before the House met he learned that his interest in the Government contract disqualified him from election and he wrote a letter to the Speaker purporting to resign his seat. The Speaker also received a petition from the defeated candidate praying that the matter be referred to the Assembly for inquiry by the Elections and Qualifications Committee. As B, in his letter to the Speaker, had admitted he was concerned in a Government contract it may be thought the Speaker could rightly have regarded the seat as vacant and issued a writ for a new election to fill the vacancy as was done in the case of A. However, the provision of S. 24 of the Constitution Act Amendment Act applicable to a candidate for election who is concerned in a Government contract is that "the election of such person shall be absolutely void" and it may be doubted whether this means that the election is wholly void so that no other candidate could claim the seat, especially as S. 361 of the same Act (applying to the findings of Elections and Qualifications Committees) provides that no election shall be held void in consequence of any candidate being declared by such Committee to be unqualified. . . ." On the other hand it may be contended that B was not an "unqualified", but a "disqualified" candidate. The Speaker in reporting the matter to the Assembly stated the law and the precedents[2] and indicated that he was not satisfied a vacancy had been created and that he had decided not to issue a writ for a new election but to submit the whole matter to the House. The case was referred to the Elections and Qualifications Committee which reported that B, being directly interested in a Government contract, was not duly elected and that the election was wholly void.[3] The Speaker thereupon issued a writ for a new election.

During Session 1938 the Premier, in reply to a question in the

[1] *Ib.* 437. 505. [2] 1917 *Ib.* 17-21. [3] *Ib.* 442.

Assembly,[1] promised to make inquiries regarding Government contracts entered into by a certain company, but no further reference was made in the House to the matter. It appeared from references in the Press that in this case the Company, of which a member of Parliament was said to be a member, did not enter into any Government contract but had supplied Government contractors with certain materials specified under "prime cost" clauses of their contracts. Earlier instances where the Assembly Elections and Qualifications Committee declared candidates or members disqualified by reason of being interested in Government contracts occurred in Sessions 1860-61 (Post-Office contract 1861-2 (contract for insertion of a Government advertisement in a newspaper) and 1877 (contract for supply of stationery).

Queensland.—*See* Vol. VIII, 49.

South Australia.—Section 49 of the Constitution Act, 1934-1943, provides that any person who:

(*a*) directly or indirectly, himself or by any person whatsoever in trust for him, or for his use or benefit, or on his account, undertakes, executes, holds, or enjoys in the whole or in part any contract, agreement, or commission made or entered into with, under, or from any person or persons whatsoever, for or on account of the Government of the State; or

(*b*) knowingly and willingly furnishes or provides in pursuance of any such agreement, contract, or commission made or entered into as aforesaid, any money to be remitted abroad, or any wares or merchandise to be used or employed in the service of the public; or

(*c*) is a member of any company, or holds any office or position in any company formed for the construction of any railway, or other public work, the payment for which, or the interest on the cost of which has been guaranteed by the State,

shall be incapable of being elected, or of sitting or voting as a member of the Parliament during the time he executes, holds, or enjoys any such contract, agreement or commission, or office, or position, or any part or share thereof, or any benefit or emolument arising from the same.

Under S. 50 of such Act the seat of a member accepting or holding such contract as above becomes void.

The exemptions to the above given in S. 51 are: statutory loans; loan bond-holders; incorporated companies of more than 20 persons, for a company's general benefit; lease, licence or sale of Crown land; contracts by descent, etc., for 12 months after possession; executors or administrators for 3 years after possession; supply of provisions to Government Departments on no better terms than those supplied by members of the public; and statutory loans by the Government or on their behalf to those not M.P.s when the loan was made.

Section 52 requires conditions as to M.P.s to be inserted in all public contracts with a penalty to the non-member of £500 recoverable at full costs of suit by anyone suing first in any competent court.

[1] 1938 *Ib.* 1242.

An M.P. sitting or voting while so disqualified forfeits £500 recoverable as above.[1]

Prosecutions under Ss. 52 and 53, however, are limited to 12 months.

By S. 54 (*a*) further exemptions are: Chairman or member of any Committee or Joint Committee in Parliament who receives or is entitled to receive salaries, fees, allowances or other emoluments. Neither is the election of a person to Parliament affected by holding such offices.

The only case on record is as follows: On April 23, 1872, the House ordered an opinion from the Crown Solicitor as to the question affecting Messrs. Barrow, Derrington and Ward, relating to their supposed breach of the Contractors Act, for Government advertisements appearing in their papers.

On May 7 the Return to the Order of the House was laid on the Table, read and ordered to be printed. The Crown Solicitor's opinion was to the effect that, Government advertisements having appeared in certain newspapers, of which these gentlemen were the proprietors, printers and publishers, at the request of a duly authorized Government agent, each of the gentlemen had forfeited his seat under the second section of the Act. Thereupon Mr. Boucaut moved that the seat of Mr. Barrow was vacant (he having accepted a contract with the Government). An amendment was moved for a Select Committee to inquire into the question as affecting the 3 gentlemen, but the original motion and amendment were alike lost, and a further amendment moved and carried—

> That, in the opinion of this House, the seats of the Hon. John Henry Barrow, Ebenezer Ward, and Edwin Henry Derrington are not vacated by reason of the advertisements referred to in the opinion of the Crown Solicitor, inasmuch as such advertisements are not agreements or contracts within the spirit of the Contractors in Parliament Act, No. 19 of 1869-70.

(This Act has since been incorporated in the Constitution Act.)

Western Australia.—Section 32 of the Constitution Acts Amendment Act, 1899,[2] is in the same terms as paragraphs (*a*), (*b*), and (*c*) of S. 49 of the South Australia Act (*which see above*) and further provides that persons holding such contracts are incapable of being elected or sitting as members of either House of Parliament and, S. 33, that if any such disqualified person is elected or returned to serve in Parliament, such election or return is void.

Section 34 of the said Act then provides that if any member of either House shall—

> directly or indirectly, himself, or by any person whomsoever in trust for him, or for his use or benefit, or on his account, enter into, accept, or agree, or undertake or execute, in the whole or in part, any such contract, agreement, or commission as aforesaid, or having already entered into any such contract, agreement, or commission, or any part or share of

[1] S. 53. [2] 63 Vict., No. 19; *see also* 52 Vict., 23, s. 24; JOURNAL, Vol. VII, 61.

any such contract, agreement, or commission, by himself, or by any other person whomsoever in trust for him, or for his use or benefit, or upon his account, shall, after the commencement of the next Session of the Legislature, continue to hold, execute or enjoy the same, or any part thereof, the seat of such member shall be void: Provided that nothing in this or the last preceding section shall extend to persons contributing towards any loan for public purposes heretofore or hereafter raised by the Colony or to the holders of any bonds issued for the purpose of any such loan

—his seat in the Parliament shall be and is hereby declared to be void.

The exemptions laid down in S. 35 are: incorporated companies of more than 20 persons and leases, etc., of Crown land.

To this S. 35 the following further exemptions have been added under the Constitution Acts Amendment Act (No. 4), 1945:

nor to any contract or agreement (not being a contract or agreement for the construction of any public work within the meaning of the Public Works Act, 1902-1933) made or entered into by any person with the Crown for the rendering of any service by such person for the Crown, or for the supply of any goods, wares or merchandise or the rendering of any service to such person or for the making of any loan to such person upon the security of a mortgage, bill of sale, lien or other security at prices or rates or upon and subject to conditions which are similar to those charged or imposed by the Crown in its transactions of a like nature with other persons in the ordinary course of the business of supplying goods, wares or merchandise or rendering the service or making loans as aforesaid and which the said first-mentioned person under the said contract or agreement is legally bound to pay or observe and comply with; nor to any sale of goods or to any performance of work by any person to or for the Crown in the usual and ordinary course of a commercial business as already established and being carried on by such person in a town or portion of the State where there is no other person carrying on the same kind of business and—

(i) it is necessary, in order to avoid delay, expense, or other inconvenience, that the Crown shall obtain such goods or the performance of such work in such town or portion of the State;

(ii) the goods are not sold or the work is not performed in pursuance of a written agreement which by virtue of its provisions has a continuing operation; and

(iii) the goods or work are not required for or in connection with the construction of a public work within the meaning of the Public Works Act, 1902-1933.

For the purposes of this section, the term " the Crown " includes the Crown, a Minister of the Crown in his ministerial capacity, any State Government officer acting in his official capacity, any State Government department, any State trading concern, State instrumentality, State public utility, and any other person or body, whether corporate or non-corporate, who or which under the authority of an Act of Parliament administers or carries on for the benefit of the State any public social service or public utility.

Section 36 of the Act provides, however, that the above-mentioned prohibitions shall not extend to contracts by descent.

An amendment to Ss. 37 and 38 of the Constitution Acts Amendment Act, 1899, was however passed during the 1948 Session. Under the Commonwealth law known as the Pharmaceutical Benefits Act, 1947, the Commonwealth was empowered to enter into arrangements or contracts with chemists to supply medicine to persons to whom

medical prescriptions had been issued in accordance with the Act, and when such persons had been so supplied the chemists and doctors were to be paid for their services by the Commonwealth. A query was raised how this Commonwealth Act affected a member of Parliament in Western Australia who was also a chemist or a doctor. He would come into conflict with the provisions of the Constitution Act which disqualified a member of Parliament from entering into contracts with the Crown. The Constitution Act Amendment Act, 1948, has removed these doubts, and was made retrospective in its application as from June 12, 1947.

Tasmania.—In 1932 it was found that certain M.P.s had accepted loans or grants under various Acts. In some cases these contracts had been entered into prior to the contractors becoming M.P.'s In any case it was considered that if these had been infringements of the Constitution, it was only by inadvertence. Parliament thereupon passed a Removal of Doubts Act, the preamble of which cited S. 19 of the Constitution Act[1] which provided:

> That any person who executes, holds, or enjoys in whole or in part any contract or agreement for or on account of the public service shall be incapable of being elected or of sitting or voting as a member of the House of Assembly and that if any member of such House enters into or continues to hold any such contract or agreement his seat shall be void.

By S. 6 of the Constitution Amendment Act 1870[2] similar provision was made in respect of the members of the Legislative Council.

Since the passing of that Act a consolidation and amendment of the Constitution Act was passed in 1934,[3] S. 33 of which was in somewhat different form. Sub-section (*i*) thereof is, however, the same as already given in the Constitution Act 1932-1938 of New South Wales (*which see above*).

Exemptions to the above S. 33 are contracts by an incorporated company consisting of more than 6 members, for its general benefit; purchase or lease of Crown land in pursuance of an Act of Parliament; sale or surrender of Crown land; state loans; supply of any service or commodity, insurance or indemnity supplied by the State for the public generally if entered into by the member as a private citizen and is subject to the same conditions applied by the State to any other private person.

To disqualify a person the contract must be enforceable against him.[4]

The penalty for election, sitting or voting as a member of either House is £500, recoverable by any person who shall sue for it.

The following cases of alleged breaches of this law have occurred in recent years:—

In 1932 doubts were expressed as to whether certain persons who had entered into contracts or agreements for grants or advances by

[1] Members of Parliament Doubts Removal Act, 1932 (23 Geo. V, No. 12).
[2] 1854; *see also* Constitution Amendment Act of 1870, s. 6.
[3] 25 Geo. V, No. 94.
[4] Miles McIlwraith (1883), 8 App. Cas. 120.

way of loan under the provisions of the State Advances Act, 1907, the Returned Soldiers' Settlement Act, 1916, the Flood Sufferers' Relief Act, 1929, the Unemployed Relief Act, 1930, or the Unemployed (Assistance to Primary Producers) Relief Act, 1930, and had subsequently been elected or had continued to sit and vote as members of Parliament, had incurred penal consequences through infringing the disqualifying provisions of the Constitution Act. In order to clear the matter an Act was passed—

to remove doubts as to whether certain persons have incurred any penal consequences by sitting and voting as members of either House of Parliament, and to validate the election of such persons and to provide for their continuance in office as members of Parliament.

In 1935 the following Motion was made, and, after being debated, was negatived on the voices:—

That the Honourable Tasman Shields, having acted for and accepted fees from and on account of legal work done for and on behalf of the Dairy Products Board, which is controlled by the Dairy Products Act, 1933 (24 Geo. V. No. 56), his seat in the Legislative Council be declared void, according to Section 33 of the Constitution Act, 1934 (25 Geo. V. No. 94).

New Zealand.

Section 15 of the Electoral Act 18 Geo. V. (No. 44 of 1927) makes the following provision:

Subject to the provisions of this Act, every person registered as an elector, but no other person, is qualified to be a candidate and to be elected a membe of Parliament for any electoral district:

Provided that a person shall not be so elected—

* * * * *

(*d*) who is a public servant or a contractor.

" Contractor " is defined as a person who, either by himself or directly by or with others, but not a member of a registered or incorporated company or any incorporated body, is interested in the execution or enjoyment of any contract or agreement entered into with His Majesty or with any officer or Department of the Government of New Zealand, or with any persons for or on account of the Public Service of New Zealand, under which any public money above the sum of fifty pounds is payable directly or indirectly to such person in any one financial year;

but it does not include or extend to: any of the persons or contracts devolved by marriage as executor, etc., until 12 months after being in possession of the same; contracts in writing for acquisitions by the Crown of any estate or interest in land, provided a copy of such contract is Tabled in both Houses of Parliament within 30 days after the making thereof if Parliament be in Session, or, if not, within 30 days after the commencement of the next ensuing Session; contracts for loans or securities given for the payment of money only; and for advertising of not more than £50 after public tender.

Section 23 of the Act provides that the seat of any member of Parliament shall become vacant—

* * * * *

(*f*) if he becomes a contractor or public servant as defined in Section 15 hereof.

Union of South Africa.—There is no legislation prohibiting members of either House from being party to contracts with the Government.

The only reference to the subject is in House of Assembly S.O. 124 which includes in "pecuniary interest" the voting by a member in any contract or bargain from which any pecuniary interest or benefit is or may be derived by him or by any partnership of which he is a member or by any company of which he is a director or under which he holds any office or employment.

In 1911, however, a Select Committee of the Senate on the Powers and Privileges of Parliament Bill in its Report[1] stated that the question of the inclusion of provisions in the Bill rendering the seat or the election of a member void who participated in a Government contract, and the exceptions which are by the laws of other Colonies generally allowed thereto, had received the attention of the Committee.

The Committee did not consider that the subject was proper to a law on Powers and Privileges of Parliament but strongly recommended that a special Bill dealing with the subject be introduced at an early date.

It was not, however, until May 25, 1927,[2] that a Select Committee of the Senate was appointed—

> to inquire into and report upon the advisability of the preparation and introduction of legislation upon the question of Government Contractors, etc., standing as candidates at elections for, or so sitting as members of the Senate, the House of Assembly or the Provincial Councils

—with power to take evidence and call for papers.

The Committee sat 6 times and examined 2 witnesses. It was resolved that the evidence taken by the Committee be not recorded. The Clerk of the Senate put in a Memorandum,[3] showing the clauses which were put before the Select Committee of 1910-11, extracts from May and legislation in the United Kingdom and Overseas Dominions and Colonies on the subject.

A draft Bill was submitted and the Parliamentary Draftsman was examined on the further amendments proposed by the Committee.

The Committee in their Report[4] concurred with the recommendations of the Select Committee of 1910-11 and recommended that the Bill[5] be introduced into the Senate as soon as possible with the object of it being placed upon the Statute Book.[6]

The main clauses of the Government Contractors' Disqualification Bill were as follows:

> 1. Subject to the provisions of this Act, no person shall be capable of being chosen or of sitting as a member if he is interested in a contract with the Government, whether directly or indirectly, alone or with any other person, by himself or by the interposition of a third party.

[1] S.C. 5, 10-11.
[2] 1927 MIN. 85; 1927 *Sen. Hans.* 309.
[3] *Sen.* S.C. 5-'27, Appendix A. Appendix B.
[4] S.C. 5-'27.
[5] *Rep.* § 3.

2. If a member becomes subject to the disability mentioned in S. 1 his seat shall thereupon become vacant and the provisions of Ss. 55[1] and 72[2] of the South Africa Act, 1909, shall apply to him.

3. A person shall be deemed to be interested in a contract with the Government within the meaning of Section one in the same manner and to the same extent as would have been the case if he himself had entered into such contract, for his own individual benefit if he—

(*a*) is a shareholder of a company registered under the Companies Act, 1926, and consisting of less than eight shareholders and such company enters into such a contract; or

(*b*) is a director, manager, official or employee of any company, registered under the said Act, which enters into such a Contract; or

(*c*) directly or indirectly by himself or by the interposition of a third party holds or controls or holds and controls in the aggregate more than one-third in number or value of the total shares or of any class of shares in any company registered under the said Act, which enters into such a contract; or

(*d*) is a shareholder of any company registered under the said Act, which enters into a contract for the construction of any public work for the Government.

The exemptions were: contracts not exceeding £100, or £200 in aggregate; Government contracts at ordinary published tariff rates; sale of movable property to the Government at a price not more than ordinarily charged to the public generally; for the general benefit of a limited liability company of more than 7 shareholders with a proviso that if a shareholder fall under S. 3 (*a*) above, this exemption was not to apply; written contracts by public tender not for any Government public work; Government loans raised by Parliament; loan or assistance in pursuance of Union or Provincial legislation; purchase of land by or from the Government under Act of Parliament; letting of land by the Government under Act of Parliament; with co-operative societies; the retention under contract with the Government of the services of an advocate, attorney, conveyancer, medical practitioner or land surveyor; and the completion of a contract with the Government devolving upon an executor, etc.

It was provided[3] also that nothing in the Act shall affect S. 53 (*d*) of the South Africa Act, 1909 (Offices of Profit under the Crown) or S. 1 of the Native Affairs Act[4] (Membership of Native Affairs Commission).

Clause 5 of the Bill read:

(1) A member who is interested or is deemed under Section three to be interested in any such contract as is exempted under paragraph (*e*) of Subsection (1) of Section four shall furnish to the Clerk of the House of which he is a member a full and true statement in writing of his interest in such a contract, which statement shall be furnished within one month after the member

[1] Penalty for sitting or voting when disqualified £100 for each such day, recoverable on behalf of the Treasury by action in the Supreme Court.

[2] Application of s. 55 to Provincial Councils.

[3] S. 4 (3).

[4] No. 23 of 1920.

has acquired such interest or if the member holds such an interest at the date when he becomes a member then within one month of such date.

(2) If any member fails to furnish within the period prescribed by Sub-section (1) the statement therein referred to his seat shall thereupon become vacant and the provisions of Sections fifty-five and seventy-two of the South Africa Act, 1909, shall apply to him.

(3) Returns showing in tabulated form the information furnished by members to the Clerk of the House in terms of Sub-section (1) shall be prepared under the supervision of Mr. President, Mr. Speaker or the Chairman of the Council (as the case may be) and shall be laid upon the Table of the House as soon as possible after the end of each month when the House is in Session, and if the House is not in Session as soon as possible after the opening day of the next succeeding Session.

Clause 6 of the Bill laid down a penalty not exceeding £500 upon anyone guilty of the offence of knowingly admitting a member in contravention of the Act to any part or share in any contract entered into by the Government.

"Government" was defined as including the South African Railways and Harbours Administration or any Provincial Administration; "member" a member of either House of the Union Parliament or of a Provincial Executive or Council, and "Clerk of the House" as the Clerk of the Senate, of the House of Assembly or of any Provincial Council.

The short title clause of the Bill provided for the Act to come into operation on October 1, 1927.

The Report of the Select Committee was brought up in the Senate on June 21, 1927,[1] and the Bill passed 1 *R.* and 2 *R.*[2] but on account of opposition in *C.W.H.*[3] was not proceeded with further than to report progress and sit again. No further action on the subject has since been taken.

Pre-Union.

The Legislative provision in the Colonies of Natal, the Transvaal and Orange River in regard to members of Parliament and Government Contracts (in the Colony of Cape of Good Hope there was no such provision) was:

In Natal S. 33 of the Constitution (Act 14 of 1893) read:

33. If any member of the Legislative Council or Legislative Assembly shall for the period of one month, remain a party to any contract with the Government his seat in the said Council or Assembly as the case may be, shall thereupon become vacant; Provided that this Clause shall not apply to any purchaser of land at public auction from the Government, or to any lessee of Government land.

The penalty under S. 38 thereof was £100 for every day on which the member shall sit and vote when so disqualified.

In the Transvaal and Orange River Colonies the following S. 32 was embodied in the respective Powers and Privileges of Parliament Acts,[4] namely:

[1] 1927 MIN. 162; *ib. Sen Hans.* 708-711. [2] 1927 *Sen. Hans.* 783-799.
[3] *Ib.* 862. [4] Transvaal Act No. 3 of 1907; Orange River Colony No. 1 of 1908.

32 (1) Where any member is pecuniarily interested in any contract or bargain made for or on account of the government of the Colony or the Central South African Railway Administration or the authority administering any public service which is common to the Transvaal and Orange River Colony not being a contract or bargain for the rendering of any service or for the supply of any thing by such government administration or authority at ordinary published tariff rates he shall make a full and true statement in writing of his interest in such contract or bargain to the Clerk of the House of which he is a member.

(2) Such statement shall be made within three months of the date when the member acquires such interest or if a member holds such interest at the date of his becoming a member then within three months of such date; provided that in the case of a member holding such interest at the date of the taking effect of this Act such statement shall be made within three months of such last-mentioned date.

(3) Returns[1] showing in a tabulated form the information furnished by members to the Clerks of the Houses in accordance with the provisions of this Section shall not less often than once in six months be prepared under the supervision of the President and Speaker and the returns so prepared shall as soon as may be after preparation be laid before each House.

(4) For the purposes of this Section a member shall be deemed to be pecuniarily interested in any contract or bargain in which any limited liability company of which he is a director or under which he holds any office or position (other than that of auditor) is pecuniarily interested but shall not be deemed to be so interested in any contract or bargain by reason merely of the fact that he is a shareholder in the ordinary course in any such company which is interested in such contract or bargain; provided however that a member who is a shareholder in any such company which undertakes a contract for the building of any public work shall be deemed to be pecuniarily interested in such contract.

(5) The holding of any bonds or stock issued for the purpose of or in respect of any loan for public purposes heretofore or hereafter raised by the government of this Colony shall not be deemed to constitute an interest in a contract or bargain made for or on account of the government of the Colony within the meaning of this Section.

(6) Any member who acts in contravention of this Section may be adjudged guilty of a contempt of Parliament by the House of which he is a member and may be punished as in this Act provided in cases of contempt of Parliament and shall incur a penalty not exceeding five hundred pounds: provided always that a member shall not be deemed to have contravened this Section by reason of his failure to make such statement as is hereby required where such failure is due to illness absence from the Colony inadvertence or some other like cause and is not due to any want of good faith.

Southern Rhodesia.

Section 22 of the Constitution[2] provided that if any member of the Legislative Council[3] or Legislative Assembly:

* * * * *

(2) shall have any direct or indirect pecuniary interest in any contract with the Government of the Colony for or on account of the public ser-

[1] A Return was Tabled in the Legislative Assembly of the Transvaal on June 1, 1909, "showing the business dealings with Government Departments by an M.L.A., from January 1, 1908, to March 31, 1909", and on July 2, 1909, "showing such dealings by an M.L.A., for the 3 months ended June 30, 1909". 1909 VOTES, 2; *Ib.* 287.

[2] The Southern Rhodesia Constitution Letters Patent 1923.

[3] Section 2 of the Constitution empowers the Legislative Assembly to constitute an Upper House, but in the meantime the Assembly was the Legislature.

> vice otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons;
>
> * * * * *
>
> his seat became vacant, and if any such member while so disqualified, knowingly sat or voted as such he forfeited £100 recoverable by the Attorney-General for the benefit of the Treasury by action in the High Court.

The above Sub-section 22 (2), however, was repealed by the Constitution Letters Patent Amendment Act 1925,[1] which provides that:

> 2. Any member of the Legislative Assembly who prior to the passing of this Act, may have had any direct or indirect pecuniary interest in any contract with the Government of the Colony or on account of the Public Service in contravention of section 22 of " The Southern Rhodesia Constitution Letters Patent 1923 " shall be and is hereby held freed and released from an indemnification against all consequences and liabilities attendant on such contravention.

The Bill for Act No. 7 of 1925 passed 2 *R.*, on April 30, 1925[2] (Ayes 27); as there were less than 5 " Noes " Mr. Speaker declared the question carried without a division (S.O. 127). The Bill was then unanimously referred to Select Committee.[3]

The Report which was Tabled on May 8,[4] recommended that it was inadvisable and impracticable to amend the Bill in any way, but that provision be made for ensuring publicity in connection with all Government contracts and in particular those entered into with M.P.'s. The Committee therefore suggested that the Government amend the Financial Regulations by the insertion of an amendment to the following effect:

> That a summary of all tenders accepted and contracts entered into in accordance with Ss. 347-366 of these Regulations be published in the *Government Gazette* within a reasonable time of the acceptance or making thereof. Such summary shall show the name of the person with whom the contract is entered into, the nature of the service or supply and the amount involved.

The Committee also recommended the amendment of the Audit and Exchequer Act 1924[5] by the insertion of the following paragraph after the word " required " in line 8 of S. 32:

> He (the Auditor-General) shall also set out in his annual report all payments out of public moneys made to members of the Legislature (other than the allowances or salaries paid to them as members) by stating in each case the name of the member receiving such payment, the total amount which he has received and the service or services in respect of which the payment was made.

The Select Committee's Report was considered on May 12,[6] and the Attorney-General in moving its adoption drew attention to Financial Regulation 347 setting out that all supplies and services required involving an expenditure exceeding £50 on any one service in the financial year shall be offered to public competition.

The Report was adopted and the Bill considered in *C.W.H.* on May 19,[7] reported without amendment on May 26,[8] and passed 3 *R.*

[1] Act No. 7 of 1925.
[2] 3 *Assem. Hans.* 33-66.
[3] *Ib.* 66.
[4] *Ib.* 263.
[5] No. 16 of 1924.
[6] 3 *Assem. Hans.* 405.
[7] *Ib.* 636.
[8] *Ib.* 827.

(Ayes 27; Noes 1) shewing that the necessary two-thirds[1] of the members present had voted on this, a constitutional amendment.

Federation of Malaya.—The Federation of Malaya Order in Council 1948, provides that no person is qualified to be a Nominated or Elected Member of a Settlement Council, or, having been so appointed or so elected, to sit or vote therein who, at the time of his appointment or election:—

(*a*) in the case of a Nominated Unofficial Member, is a party to, or a partner in a firm, or a director or manager of a company, which is a party to any subsisting contract with the Government of the Federation or of the Settlement for or on account of the public service, or is otherwise to his knowledge interested in any such contract, and has not disclosed to the Resident Commissioner the nature of such contract and his interest, or the interest of any such firm or company therein.

(*b*) in the case of an Elected Member is a party, etc., to such contract, as above, and has not published, within one month before the day of election, in the English language in the *Malayan Union Gazette* and in a newspaper circulating in the Settlement, a notice setting out the nature of such contract and his interest, or the interest of any such firm or company, therein.[2]

The seat of any member of such Council (other than an *ex officio* member) becomes vacant:

in the case of a Nominated Unofficial or Elected Member, if he becomes a party to, etc., such contract (*as above*); provided that the Resident Commissioner may, if in the circumstances it appears to him to be just to do so, exempt any member from vacating his seat under the above provisions, if such member shall, before becoming a party to such contract as above, or before, or as soon as practicable thereafter, becomes otherwise interested in such contract (whether as partner in a firm or director or manager of a company or otherwise) discloses to such Commissioner the nature of such contract and his interest or the interest of any such firm or company therein.[3]

And S. 48 of the Order provides that any disqualified member of a Settlement Council is liable to a penalty not exceeding $200 for every day upon which he so sits or votes, the penalty to be recoverable by action in the Supreme Court of the Federation at the suit of the Attorney-General for the Federation or the Legal Adviser in the Settlement.[4]

Section 23 (8) of the Order provides that whenever the seat of a member of the Settlement Council becomes vacant on account of any such contract the matter must forthwith be reported to the High Commissioner by the Clerk of the Council concerned.[5]

The Federation of Malaya Agreement 1948, contained in Schedule II thereof, provides that no person shall be capable of being appointed

[1] Const., S. 26. [2] The Order, s. 22 (*d*) (i) (ii); *see* Article XVI hereof.
[3] The Order, s. 23 (3) (*f*). [4] *Ib.* S. 48. [5] *Ib.* S. 23 (8).

an Official or Unofficial Member of the Legislative Council or, having been appointed, sits or votes therein who at the time of his appointment was so interested etc., in any subsisting contract with the Federal Government and shall not have disclosed to the High Commissioner the nature of such interest etc., as above.[1]

Such agreement makes the same provision as to penalty for disqualified members of the Legislative Council sitting or voting, as in the case of disqualified members of a Settlement Council.[2]

Ceylon: *See* JOURNAL, Vol. XV, 228.
East Africa High Commission: *See* Article XVII hereof.
Gold Coast and Ashanti: *See* JOURNAL, Vol. XV, 246.
Jamaica: *See* JOURNAL, Vol. XIII, 202.
Kenya Colony: *See* JOURNAL, Vol. XIV, 95.
Malta, G.C.: *See* JOURNAL, Vol. XVI, 220.
Mauritius: *See* Article XVIII hereof.

[1] Federal Agreement, 11, 41. [2] *Ib.* 149.

XX. REPUBLIC OF IRELAND BILL

By the Editor

THERE have been many references in this JOURNAL to constitutional developments[1] in Erin's Isle, from the Government of Ireland Act of 1920,[2] providing a Constitution of all the 32 counties of the Island, to the Irish Free State Constitution of 1922 (implementing the Treaty between Great Britain and Ireland of the previous year) as well as to the Constitution of Eire in 1937, and to many other incidental Acts passed from time to time.

A final constitutional step has, however, now been taken by Eire to sever herself from the British Commonwealth and Empire by removing that last remaining link in the External Relations Act of 1936, under which the Crown, although having no longer any connection with Eire internally, yet externally authorized the credentials of Eire's diplomatic and consular officials abroad.

As in this and all other directions, the political aspect of any matter appearing in the JOURNAL is something with which we have nothing to do, our object being to confine ourselves only to the purely factual exposition of constitutional or procedural questions. Therefore some description will be given of the proceedings on this Bill.

The steps towards the present constitutional position in Eire can be said to have begun with the fight for a Republic in 1916, followed by the Irish Free State Constitution of 1921, the subsequent abolition of the Oath of Allegiance to the Crown, appeal to the Privy Council and the Eire Constitution of 1937. Then came the Amendment No. 27 to the last-mentioned Constitution which removed the Crown, leaving only the Executive Authority (External Relations) Act, 1936,[3] with its Schedule containing the Instrument of Abdication of December 10, 1936, which was expressed to take effect by Eire from the date of the passing of the Irish Act (December 11, 1936).

The Republic of Ireland Bill.—The Bill bringing about the latest constitutional change is of such particular constitutional importance that its English text is given in full:

BILL
entitled

An Act to repeal the Executive Authority (External Relations) Act, 1936, to declare that the description of the State shall be the Republic of Ireland, and to enable the President to exercise the Executive power or any executive function of the State in or in connection with its External Relations.

Be it enacted by the Oireachtas as follows:

Repeal of the Executive Authority (External Relations) Act, 1936.

1. The Executive Authority (External Relations) Act, 1936, No. 58 of 1936) is hereby repealed.

[1] *See also* JOURNAL, Vols. I, 79; II, 11; III, 21; IV, 28; V, 119; VI, 60; VII, 64; VIII, 53; IX, 43; X, 65; XI-XII, 60.

[2] 10 & 11 Geo. V, c. 67.

[3] No. 58, *see* JOURNAL, Vol. V, 71, 124.

The Republic of Ireland.

2. It is hereby declared that the description of the State shall be the Republic of Ireland.

Exercise by the President of the executive power or any executive function of the State in or in connection with its external relations.

3. The President, on the authority and on the advice of the Government, may exercise the executive power or any executive function of the State in or in connection with its external relations.

Commencement.

4. This Act shall come into operation on such day as the Government may by order appoint.

Short title.

5. This Act may be cited as The Republic of Ireland Act, 1948.

A brief account of the proceedings on this Bill in its passage through the Dáil and the Seanad will now be given.

The Stages of the Bill in the Dáil.—On November 24[1] the Prime Minister moved in the Dáil the Second Reading, or, as it is called at Dublin, "the Second Stage", of the Bill and the debate was resumed on the 25th[2] and 26th[3] *idem*, on which last-mentioned day the Question—"That the Bill be now read a Second Time" (Second Stage) was passed without a Division.

On December 1[4] the Dáil went into Committee of the Whole House on the Bill and reported progress and on the following day[5] the Dáil resumed in Committee and the Bill was reported without amendment, although many amendments had been moved but withdrawn.

Question: "That the Bill be received for final consideration" was then put and agreed to. The next Question proposed was: "That the Bill do now pass", upon which there was considerable debate. Altogether, the debate on all the stages of the Bill in the Dáil covered 56 columns of *Hansard*.

Stages of the Bill in Seanad.—The Second Stage was taken in the Seanad on December 9,[6] when the Question—"That the Bill be now read a Second Time"—was moved by the Prime Minister (Ministers having the right to speak in both Houses).[7] This stage was taken on December 10[8] and the Seanad went into Committee on December 15,[9] when the Bill received final consideration and the Question—"That the Bill do now pass" was proposed and taken. The debate on all stages in this House alone covered 332 columns of *Hansard*.

Space does not admit of a digest of these 888 columns of debate, but extracts from the speech of the Attorney-General (Mr. Cecil Lavery, S.C.) in the Seanad on December 19, 1948, will be given as a fair description of the Bill from its constitutional standpoint.

[1] 113 *Dail Hans.* No. 3, 347. [2] *Ib.* No. 4, 478. [3] *Ib.* No. 5, 621.
[4] *Ib.* No. 6, 762. [5] *Ib.* No. 7, 909. [6] 36 *Sean. Hans.* No. 1, 2.
[7] *Ib.* 79. [8] *Ib.* No. 2, 117. [9] *Ib.* No. 3, 296.

To those readers wishing to read the debates at length, the footnotes will be their guide.

The Attorney-General said,[1] in moving the Second Reading in the Seanad, that they were now in 1948 and had reached the point when they had advanced step by step since 1921, and were, in fact, although not yet in law, independent. What they were proposing to do now was, if they were to go out of the Empire or secede from the Commonwealth, to go with their heads up.

It would be found that there were a substantial number of persons who opposed breaking the link with the Crown or the secession from the Commonwealth. It would be admitted by all that there remained a substantial, even an overwhelming, majority, who, if the country were taken as a whole, would follow the line set down in the Bill.[2]

In referring to the Executive Authority (External Relations) Act of 1936, the Attorney-General said that it had a curious history.

As Senators would remember, His Majesty King Edward VIII abdicated,[3] or signed his Instrument of Abdication, on December 10, 1936. On the morning of the following day the Government introduced into the Dáil Eireann a Bill which was passed the same evening as the Constitution No. 27 Act.[4] That was an Act which went over the existing Constitution with a blue pencil and struck out from it every reference to the King's representative and took from the King and from his representative every function which remained after the inroads of earlier constitutional amendments. That Act, as passed, left the King of Great Britain no place whatever in the constitutional position in Eire.

It was on December 11, when that Bill was being debated in the Dáil, that the Attorney-General used the words:

> Examining the Bill in the time that I and the House have had in which to do it, it would seem to me that the effect of it is to remove the King from the Constitution and to give to this country a republican Constitution. That may or may not be a desirable thing.

The point the Attorney-General wished to bring out was that on December 11 they enacted in Dáil Eireann the Act which gave them a republican Constitution, but on the morning of December 12 another Bill was introduced. On that morning Eire was consequentially, so far as the Act of her Legislature could do it, a republic without a king of any kind and without any kingly functions remaining in the law of the State. But on that morning the Executive Authority (External Relations) Bill, 1936, was introduced, which created a perfectly logical, if somewhat peculiar, proposition.[5] It was introduced to the House on the morning of December 12—"at a time, mark you", when they had no King; he was gone from the Constitution. Edward VIII had abdicated. They had no concern any longer with ratifying his abdication, as they thought, because the King had no functions in Eire.

[1] *Ib.* No. 1, 105. [2] *Ib.* 106. [3] *See* JOURNAL, Vol. V, 63.
[4] Ib. 138. [5] 36 *Sean. Hans.* No. 1, 108.

(*Here the Attorney-General quoted Ss. 1 and 2 of Act No. 58 of 1936 and S. 3 (1) at length.*)[1]

Continuing the Attorney-General said that, in the Bill as introduced, sub-section (2) of S. 3 read:

The King referred to in the foregoing sub-section of this section shall for the purposes of that sub-section be the person who, if His Majesty King Edward VIII had died on the 10th of December, 1936, unmarried, would for the time being be his successor under the law of Saorstat Eireann.

This proposal, said the Attorney-General, was quite explicit, that the King mentioned was the King recognized by other countries as their King. There was the clearest safeguarding of the position of Ireland, that Ireland or Saorstat Eireann, as the term went then—did not recognize that King for any purpose, even for this particular purpose.[2]

The thing that stood out quite clearly when this section became part of the Act was this, that they were giving to the King of other countries the duty of performing certain acts for them while explicitly denying to him any allegiance or recognition of him as their King.

That was what I call the republican part of the External Relations Act, but, on this 12th December, 1936, for some reason that has never, so far as I know, been explained, an amendment was proposed.

I hope I made it clear that the Constitution (27) Act had got rid of the King altogether, that this Bill, as introduced, gave us no King. It said there was a king of other nations—" so long as we were associated with these other nations ". It is to be remarked that curiously, in the Constitution of Saorstat there was left, when the King and his representatives disappeared Eireann, Article I, which declared that we were members of the Commonwealth. At any rate, on this blessed morning of the 12th December, we were free of the King; we were for the time being, at least, a republic without any question of doubt, with no King, or no functions given to any King.

The republican section, said the Attorney-General, might have left them in that position but the amendment above mentioned was proposed which subsequently became subsection (2) of S. 3, and read:[3]

(*Here the Attorney-General read S.* 3 (1) (see above) *at length.*)

It was difficult to understand, observed the Attorney-General, why they should be giving effect to the instrument of abdication of a King whose power, authority and existence under their Constitution they had destroyed the evening before.

There followed the scheduled instrument of abdication. That was what he supposed might be called the Commonwealth part of the Act and anybody, whether a constitutional lawyer or merely a man of common sense, who examined the Act carefully would find a conflict and a contradiction between 2 sub-sections.

The Minister of External Affairs pointed out that under this subsection it was possible to contend there was a King of Ireland. It was not a probable construction but a possible one. The effect of this was to give Deputies and Senators who liked to maintain that their

[1] *See* JOURNAL, Vol. V, 124.
[2] 36 *Sean. Hans.* No. 1, 109.
[3] *Ib.* 110.

Republic was declared by the Act of 1936 to have full power to do so by relying upon sub-section (1) and it gave some colour to those who wanted to say the Commonwealth connection was retained by reading sub-section (2).

But however that may be, that was done in December, 1936. In the month of July, 1937, the Constitution of the Irish Free State, as amended, was disposed of and disappeared, and the country, by the legal theory adopted at the time, gave to itself a new Constitution which had no history but which came down by Divine inspiration through the vote of the people on a day in July, 1937.[1]

It did not spring, like the old Constitution, from a treaty or from anything else. It was enacted by the people. It came down brand new and that Constitution was the one under which they lived to-day, which would give this country a republican form of Government.

"What, then, became of the External Relations Act of December, 1936?" "Why is it still making confusion in our constitutional position?" asked the Attorney-General. The method used by the new Constitution of providing a body of law for the new State was to provide, as it did by Article 50, that—

> all laws in force in Saorstat Eireann at the date of the coming into force of the Constitution, save in so far as they are inconsistent with the provisions of this Constitution, continue in full force and effect.

By that single clause the new State provided itself with a body of law, and every statute and every principle of the common law, assuming the statute was pre-1937, had to be examined to see whether it was contrary to any provision of the Constitution and to the extent to which conflict was established, or supposed to be established, that law was invalid and was not carried over nor did it form part of the law of the State.

Now, that test had to be applied to the External Relations Act, 1936. It was possible to say that, inasmuch as Article 29 of the Constitution empowered the Government to make use of any organ of the State, or any organ recognized by a group of nations with which the State was for the time being associated, it did probably entitle the Government to utilize the King of other countries, "but not our King" for the purposes of diplomatic and consular representatives and the conclusion of international Agreements.

Said the Attorney-General:

> That was what I call the republican part of the External Relations Act. But is it not possible to argue with force, that the second Sub-section of Section 3 which I have read to you[2] and which can be read to give Ireland a King —though that, as I say, is not the construction that it ought to be given; but it is confused and contradictory to the first Sub-section—that that particular Sub-section did not survive, and it may well be that the coming into force of the Constitution of 1937 destroyed that part of the External Relations Act

[1] 36 *Sean. Hans.* No. 1, 111. [2] *Ib.* 112.

and left only the shadowy part of the Act that provided that the King of these other countries might, without being king in any sense of Ireland, be utilized.

* * * * *

Now, if that be so, was it not consonant with the dignity of this nation that this state of affairs should be ended? Was it not due to the dignity of the Crown that it should no longer be asked to perform these functions?

Perhaps only constitutional lawyers would understand the position, but at any rate it was a question of law and of constitutional practice.[1]

It had been said repeatedly in debate in the Dáil, and no doubt would be said in the Seanad, that there should be no idea that the act which they were taking was an act of hostility either to Great Britain or to the nations of the Commonwealth.[2]

The Attorney-General concluded by saying he felt confident that not only those who felt strongly that this Bill should be passed into law, but those who, for one reason or another, would wish to keep the link with the Crown, would realize, on a study of the Act and of the problem, that it was for the benefit of the nation and its relations with its neighbours, that this Bill should be passed into law with as large a measure of support as it could get.[3]

Date of operation of the Provision is made by S. 4 that the Republic of Ireland Act[4] shall come into operation "on such day as the Government may by order appoint" and the Republic of Ireland Act, 1948 (Commencement), Order (S. I. 27 of 1949) dated February 4, 1949, was issued appointing Easter Monday, April 18, 1949, as the day of commencement.

[1] *Ib.* 113. [2] *Ib.* 115. [3] *Ib.* 116. [4] No. 22 of 1948.

*XXI. 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.

"accusing the Government of political murder". (65 *Union Assem. Hans.* 3710.)
"Fool". (449 *Com. Hans.* 5, s. 1196.)
*"Log rolling". (450 *Com. Hans.* 5, s. 2447.)
"Political nepotism". (443 *Com. Hans.* 5, s. 2001, 2006, 2007-10.)
"rat", reference to a member as a. (63 *Union Assem. Hans.* 3398.)
"so-called Greek Supreme council". (447 *Coms. Hans.* 5, s. 1929, 1930.)
"that a member does not pay tax and cannot therefore speak on behalf of taxpayers". (XXV *Madras Hans.* 365.)

Disallowed.

"accusing the opposition of causing a revolution". (63 *Union Assem. Hans.* 3554.)
"Can they [the party opposite] deny that they had dealings with the enemy?" (64 *Union Assem. Hans.* 634.)
"He called upon his supporters to contravene the law" in reference to an hon. member. (63 *Union Assem. Hans.* 3314.)
"impertinent". (CCXVII *Can. Com. Hans.* 3717.)
"is this . . . honesty?" (63 *Union Assem. Hans.* 2750.)
"made common cause with the enemy" in reference to a member. (62 *Union Assem. Hans.* 310.)
"negotiated with the enemy" in reference to an hon. member. (62 *Union Assem. Hans.* 3107.)
"accusing the opposition of murder". (63 *Union Assem. Hans.* 3554.)
"never had a conscience" in reference to an hon. member. (XLI *Bombay Hans.* 1282.)
"Offensive lie". (443 *Com. Hans.* 5, s. 2004, 2010.)
"road of revolution on which he led his supporters". (63 *Union Assem. Hans.* 3314.)
"Scandalmongers". (CCXVII *Can. Com. Hans.* 3750.)
"that is cowardly" in reference to the Prime Minister's course of action. (65 *Union Assem. Hans.* 2976.)
"that long-distance calls were made to Hitler". (64 *Union Assem. Hans.* 636.)

[1] *See also* JOURNAL, Vols. I. 48; II. 76; III. 118; IV. 140; V. 209; VIII. 228; XIII. 236; XIV. 229; XV. 253; XVI. 224.

"these are illegal steps" insinuation that the Minister took. (65 *Union Assem. Hans.* 3335.)

"to hell with the English".[1] (446 *Com. Hans.* 5, s. 14.)

"whatever we said the non-member would trust it". (65 *Union Assem. Hans.* 3388).

"will betray South Africa" in reference to a non-member. (63 *Union Assem. Hans.* 3234.)

[1] Not in order, but not heard.

XXII. APPLICATIONS OF PRIVILEGE

By the Editor

At Westminster.

Press Insinuations against Members.—On March 8,[1] 1948, in the House of Commons, the hon. member for Warwick (Mr. F. G. Bowles) drew Mr. Speaker's attention and that of the House to a report in last Saturday's *Daily Mail* reflecting upon almost every member of the House which, in effect, said that 29 members of Parliament were traitors and secret agents of a future enemy.

The hon. member, quoting certain extracts from the newspaper, submitted to Mr. Speaker the point as to whether or not this constituted a breach of Privilege.

Mr. Speaker stated that he had not had very much time to study the matter, as he only heard of it just before he came into the Chair and asked the hon. member if he would now bring the newspaper to the Table, which copy was delivered in, the Clerk of the House reading the passage complained of.

Mr. Speaker then said:

Although I have some doubt about the matter, because I do not like to be too sensitive about criticism, there is, I think, a charge perhaps against 29 members, who, apparently, are nameless, and it may be the wish of the House that that should be cleared up. I therefore declare that a *prima facie* case has been made out.

The Lord President of the Council then said: In the circumstances and in view of your Ruling, Mr. Speaker, it is necessary for me to move:

That the matter of the complaint be referred to the Committee of Privileges.

Question put and agreed to.

The complaint was stated as follows:

Complaint being made by Mr. Bowles, Member for the County of Warwick (Nuneaton Division), of the publication of certain passages in the *Daily Mail* newspaper of the 6th day of March, 1948, reflecting on members of this House: And the said newspaper being delivered in and the passages complained of being read, as followeth:

" Our Secrets for Soviet.

Author doubts M.P.s.

By *Daily Mail* Reporter.

" B.B.C. listeners last night heard Mr. Colm Brogan, author and editor, speaking in the ' Friday Forum ', suggest that secret sessions of Parliament were useless, as ' secret agents of a potential enemy ' would be present.

" ' I *know* that any defence information would be given to the Russians,' he told me afterwards.

" ' The secret supporters of the Communist Party are the danger, not the open ones. I don't think Willie Gallacher would do it, for instance. But I understand there are 29 of these secret supporters in the House.' "

The Resolution of October 30, 1947 (Powers of the Committee of

[1] 448 *Com. Hans.* 5. s. 801-2.

Privileges) (*see* Article VI hereof) was referred to the Committee, which sat 4 times between March 10 and April 8.

The Report of the Committee was laid on April 8, 1948 and Ordered to be printed.[1]

Report.—The Committee stated that the questions they had before them were whether an offence against the law of Parliament was committed in the broadcast, and, if so, who were the offenders; whether an offence against the law of Parliament was committed in the interview between Mr. Brogan and a *Daily Mail* reporter, and who were the offenders; and, finally, whether the publication in the *Daily Mail* of Mr. Brogan's alleged statements in a broadcast and his alleged remarks to a reporter about members of Parliament, constituted offences against the law of Parliament and, if so, who were the offenders.[2]

The Committee were, however, faced with a greater difficulty than the lack of first-class evidence on the nature of the broadcast. The general tenor of Mr. Brogan's remarks, if indeed he made them, indicated an apprehension that, in the event of a future crisis, members of Parliament now in the Labour Party, 29 in number, would reveal themselves in what he alleged to be their true colours as members of the Communist Party and would act traitorously.

The conclusions of the Committee were:

> 6. Your Committee are of opinion that it is not consistent with the dignity of the House that penal proceedings for breach of privilege should be taken in the case of every defamatory statement which, strictly, may constitute a contempt of Parliament. Whilst recognizing that it is the duty of Parliament to intervene in the case of attacks which may tend to undermine public confidence in and support of the institution of Parliament itself, your Committee think it important that, on the one hand, the law of Parliamentary privilege should not be administered in a way which would fetter or discourage the free expression of opinion or criticism, however prejudiced or exaggerated such opinion or criticism may be, and that, on the other hand, the process of Parliamentary investigation should not be used in a way which would give importance to irresponsible statements.
>
> 7. In the light of all these considerations, your Committee are of opinion that the statements attributed to Mr. Brogan and reported in the *Daily Mail* of March 6, 1948, as well as the statements said to have been made by him in the course of a broadcast and their subsequent publication fall into the category of incidents which it would be inconsistent with the dignity of the House and of this Committee to examine further. Your Committee accordingly recommend that no further action should be taken.

Evidence.—Only the Clerk of the House (Sir Gilbert Campion, K.C.B.) was called before the Committee (Qs. 1-149) putting in a Memorandum on "Reflection on Unnamed Members". The following are some interesting points which arose during the hearing of the evidence.

Charges against a member in his capacity outside Parliament are not breaches of Privilege. They would only be amenable to the

[1] H.C. 112 (1947-48). [2] *Rep.* § 1.

ordinary processes of law.[1] It was still technically a breach of Privilege to publish reports of a debate. Therefore, if anyone chose to rise in the House and call the attention of Mr. Speaker to it, by previous rulings on the subject, the witness supposed, the Speaker would have to hold that it was *prima facie* a case of Privilege, but nothing further would happen.[2]

The following Questions in evidence were asked Sir Gilbert, the Questioner's name being given in each case:

By Mr. Grenfell.

60. Is not a ruling of the Speaker that it is a *prima facie* case tantamount to an instruction that the matter should go before the Committee of Privileges?

Sir Gilbert Campion.

No, not an instruction. If Mr. Speaker rules that there is a *prima facie* case, what follows from that is that it can be debated then and there and take precedence over the Orders of the Day. The House could deal with it on a Motion on the spot, declaring that it was or was not a breach of Privilege; but in most cases if there is a question of doubt it would be referred to the Committee of Privileges.

61. A Division of the Members present would decide it?

Yes.

By Earl Winterton.

64. This Committee is the sole body which recommends to the House whether or not action should be taken or whether it is or is not, in their opinion, a breach of Privilege?

Of course in principle the Committee of Privileges being a Select Committee, the House could give it a mandatory instruction.

By Captain Crookshank.

In reply to Q. 65, as to whether there had been Secret Sessions except during War, the witness replied: "No".

66. None at all?

Only during the war. In fact the procedure of a full secret session depends, to some extent, on the Defence of the Realm Regulations. There are two stages in a secret session. One, you clear the Gallery; and, two, a resolution is passed that the proceedings should be conducted in secret session. You get a secret session of a sort by clearing the Gallery. But by passing a resolution, any disclosure then becomes liable to a penalty in the Courts. So there are two sanctions under which a secret session is conducted; first, the sanction of Privilege and, second, the sanction of penalty in the Courts under a Defence Regulation.

67. Those unexpected occasions when strangers were spied and therefore there were no reporters were not technically secret sessions?

Not in the full sense.

68. There would have been no penalty in that case?

No; only the penalty of breach of Privilege.

Sir Gilbert Campion said that the nearest case to the present one was that of Hobhouse on December 10, 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

[1] *Q.s* 10, 11. [2] *Q.s* 54-56.

people, and that 'nothing but brute force, or the pressing fear of it, would reform Parliament'."[1]

That was a reflection on the House, an insult to the House.[2] In reference to the present case, Sir Gilbert said that the specific part of the charge was hypothetical but it involved a reflection on the character of the members equally.[3] On previous precedents a reflection on unnamed members was taken to be a reflection on the House itself.[4]

By the Attorney-General.

135. Privilege might go further in the protection of the honour of the House than the law of libel does in the protection of the honour of the citizen?—Yes.

138. Are we bound by the fact that the Speaker has ruled that there is a *prima facie* case of Privilege, ourselves to rule that it is a case of Privilege?—By no means.

139. Equally, we are not bound by the ruling of the Speaker the other way round?—No. I should say not. The House alone can finally decide, and the Committee of Privileges alone can advise the House.

Inquiry into action of Chairman of Ways and Means.—On March 22[5] in the House of Commons the Chairman of Ways and Means (Major rt. hon. J. Milner) asked Mr. Speaker's permission to make a personal explanation to the following effect: The rt. hon. Gentleman the member for Seaham (Mr. Shinwell) had been a client of a firm of solicitors of which he (Major Milner) was a member. Without his knowledge and in his absence, Mr. Shinwell gave instructions to a partner in the firm on what he (Mr. Shinwell) felt were very serious reflections alleged to have been made upon him in a B.B.C. Broadcast by the hon. member for South Ayrshire (Mr. Emrys Hughes). Mr. Shinwell later saw Major Milner, which was the first he had heard of the matter. Major Milner observed from the script that other hon. members of the House were mentioned as having also made the statements of which complaint was made. It then occurred to Major Milner that here were possibilities of trouble and recrimination; that it was desirable to bring about an amicable settlement and that knowing all members concerned he could be of help to that end. He had however to satisfy Mr. Shinwell who felt very strongly on the matter. After discussion Mr. Shinwell agreed to be content with a withdrawal and apology but he was anxious that letters should be despatched at once to the B.B.C. and to the hon. member for S. Ayrshire. Major Milner thereupon dictated and signed letters in the firm's name on Mr. Shinwell's behalf both to the B.B.C. and Mr. Emrys Hughes. Major Milner later saw the hon. member who told him that he was not proposing to be represented by any solicitor. Major Milner said that he thought the matter could be settled amicably and that he was willing to do anything he could to help, but of course the hon. member must do what he thought right. The hon. member said that he was quite willing to apologize and Major Milner told him that if he would do so he felt sure it would

[1] *Q.* 73. [2] *Q.* 74. [3] *Q.* 85. [4] *Q.* 95. [5] 448 *Com. Hans.* 5, s. 2584.

dispose of the matter. Mr. Hughes had since written Mr. Shinwell a letter of regret and differences between them had been happily composed.

Major Milner then said that on reflection he had realized that his action in writing the letter to Mr. Hughes, however well intentioned and even in a matter outside the House, might be interpreted as a deviation from the principle of impartiality which should govern the Chair and that he should have been wiser to have referred Mr. Shinwell to another solicitor. Major Milner fully realized the absolute necessity of the Chairman being impartial and that that impartiality should not only exist in fact, but that there should be every appearance of it.

> I have therefore thought it right, Mr. Speaker, to make this statement to the House and to say in so far as there has been departure from that principle I feel I have made an error of judgment and for that, Mr. Speaker, I express my very sincere apologies to the House. I can only ask the House to forgive me.[1]

Mr. Emrys Hughes then said that so far as he was involved he wished to say how much he appreciated the statement made by the Deputy Speaker and to say that there was nothing rankling in his mind for the action he took in the matter.

The Leader of the Opposition (Mr. Churchill) then observed tha' it would be quite improper now to debate a statement of this character unless the Prime Minister had any observations to make, but i appeared to him that it would require some consideration before it finally passed from the consideration of the House.[2]

On March 23[3] the Leader of the Opposition moved:

> That a Select Committee be appointed to inquire into the Statement made to the House on 22nd March by the Chairman of Ways and Means and Deputy Speaker, that he acted in his professional capacity as a solicitor against an hon. member of this House in a matter which might have resulted in legal proceedings; and to report whether such action is consonant with the proper and impartial discharge of the duties of this office.

The Prime Minister said that he accepted the Motion and with Mr. Speaker's consent he was prepared forthwith to nominate members to serve on the Committee, although notice was normally required. The hon. members it was proposed to appoint to the Committee had been approached and had expressed their willingness to serve on the Committee.

The Leader of the Opposition said that he thought that the Motion was in the best interests of the House and in those of all parties concerned. The matter was not one of a personal character but touched certain principles which should at any rate be explored and pronounced upon by the House and that the matter should be disposed of as quickly as possible. Mr. Speaker said that it was not for the convenience of the House if the matter was not expeditiously dealt with.

[1] *Ib.* 2585, 6. [2] *Ib.* 2586. [3] *Ib.* 2782.

I have come to the conclusion that this matter is ultimately based on Privilege, and it is the right of the House to provide for the effective discharge of its functions, and in such matters the general rule is that for the convenience of business or Debate this should be treated as a matter of Privilege. Therefore, the rule about giving notice can be waived.

Question was then put and agreed to.

The personnel of the Committee was agreed to and the Committee given power to send for persons, paper and records and to sit notwithstanding any adjournment of the House; three to be the quorum.[1]

Report.—The Report,[2] together with the proceedings of the Committee, Minutes of evidence and appendices, was laid in the House of Commons on March 25, 1948. The Committee heard evidence from Major the rt. hon. J. Milner, M.C. (Chairman of Ways and Means and Deputy Speaker) (Qs. 251-447); Mr. W. FitzGerald (Qs. 177-250), a partner of Major Milner in the firm of J. H. Milner and Son, solicitors; the rt. hon. E. Shinwell (Qs. 48-125); Mr. Emrys Hughes (Qs. 126-176) and Mr. Sydney Silverman (Qs. 448-480); all M.P.s; and Sir Gilbert Campion, K.C.B., Clerk of the House (Qs. 1-47).

The Committee reported the following circumstances:

Mr. Shinwell, who considered that serious reflections upon him had been made in a broadcast by Mr. Emrys Hughes on Saturday, March 13, rang up Mr. FitzGerald, a partner in the firm of solicitors—J. H. Milner and Son—on the Monday morning following and instructed him to act on his behalf. Major Milner was then in Yorkshire and did not know that his firm had become involved in a dispute between 2 M.P.s until the afternoon of the same day, when Mr. Shinwell interviewed him in his room in the House of Commons. Mr. Shinwell insisted that Major Milner should write both to Mr. Hughes and the B.B.C. demanding that each of them should make a withdrawal of, and an apology for, certain statements made in the broadcast.

Major Milner then wrote the letters of March 15 appearing as Appendices 2 and 3 to the Minutes of Evidence, No. 2 to the B.B.C. asking for a copy of the script and No. 3 to Mr. Hughes drawing attention to the slanderous statements, that Mr. Hughes had repeated an allegation alleged to have been made by Mr. David Kirkwood, M.P., that he and Mr. Shinwell had "sat together in the dock at the High Court of Edinburgh charged with murder and high treason" and that Mr. Hughes had also repeated a statement alleged to have been made to Mr. John McGovern, M.P., that Mr. Shinwell "used to call soldiers hired assassins".

This letter went on to say that these statements were grossly slanderous and untrue and asked that a complete withdrawal and apology be made in the earliest issue of the Labour organ *Forward* in terms to be approved by Messrs. J. H. Milner and Son and that Mr. Hughes authorize the B.B.C. to make a similar apology on his

[1] *Ib.* 2782. [2] H.C. 104 (1947-48).

behalf during the next talk in "The Week in Westminster" on Saturday next. The letter closed with the words, "Failing your agreement to this course our client will have no alternative but to take such action in the matter as he may be advised."

Before these letters were written however, observed the Committee, it was agreed by Mr. Shinwell that he would not take any legal proceedings against Mr. Hughes and that he would be content with a withdrawal and an apology, if those could be obtained, as Major Milner thought probable.[1]

When Major Milner eventually saw Mr. Hughes he said that if he would apologize he would advise Mr. Shinwell to accept the apology and he hoped Mr. Hughes would do this in the interests of all concerned. Mr. Hughes accepted Major Milner's assurance that their relations in the House would not be affected. Later, after a suggestion by another hon. member, Mr. Hughes sent a note of apology to Mr. Shinwell who accepted it.[2] Both members then considered the matter closed.[3]

Major Milner then received the following letter of March 18[4] from the Leader of the Opposition (Mr. Winston Churchill):

Private and Personal.

DEAR MAJOR MILNER,

I have been informed that several members of the House have been shown a letter from the firm of solicitors in which you are a partner, to Mr. Emrys Hughes, the Member for South Ayrshire. The letter, I am told, threatens proceedings for damages for slander on behalf of Mr. Shinwell, the Secretary of State for War, in respect of a broadcast in which Mr. Hughes is alleged to have made defamatory remarks regarding Mr. Shinwell.

No one would wish that any hindrance would be placed in the way of Mr. Shinwell taking any proceedings. I am, however, gravely concerned at the thought that the firm of solicitors acting against a member of the House should be one in which the Deputy Speaker and Chairman of Ways and Means is a partner. The impartiality of the Chair is the foundation of proper functioning of the House of Commons and it is as imperative that impartiality should appear to exist, as that it should exist in fact. You will appreciate the doubts that must come into being if the occupant of the Chair is conducting an important case against a member.

Before, however, putting down any motion on which this grave matter may be raised in the House, I thought it was only right to communicate with you and to give you the opportunity of confirming or disclaiming the correctness of my information.

Yours sincerely,

(Sgd.) WINSTON S. CHURCHILL.

Major the Right Hon. James Milner, M.C., T.D., LL.B., M.P.
House of Commons, S.W. 1.[5]

To this letter Major Milner replied as follows:

HOUSE OF COMMONS, S.W. 1.
March 19, 1948.

DEAR MR. CHURCHILL,

I am grateful to you for your courtesy in writing to me in terms of your letter of yesterday's date.

[1] *Rep.* § 3. [2] *App.* 5 & 10. [3] *Rep.* § 4. [4] *App.* 7. [5] *App.* 4.

I was in Yorkshire last week-end and came direct to the House on Monday. In the meantime Mr. Shinwell had given instructions in the matter you mention to my partner, Mr. FitzGerald, who had accepted and acted upon them without any reference to me and without my knowledge. The letter to which you refer, and for which I must and do accept apology, did not threaten any proceedings; it asked for a withdrawal, and failing which Mr. Shinwell would " have no alternative but to take such action as he may be advised ". I used my good offices towards a settlement, and I understand that the matter is now concluded in so far that the B.B.C. have agreed to apologize and that Mr. Hughes has also sent an expression of regret direct to Mr. Shinwell.

May I say that when, during the tenure of office of your Government, I was honoured by being asked to occupy the office of Chairman, I took advice, in particular from my predecessor, Sir Dennis Herbert, who was himself a practicing solicitor at the time. I was assured that there was no objection to my carrying on business as a member of a firm of solicitors.

I frankly recognize, however, that in this instance, which affects members of the House, an error of judgment has taken place, for which I express my sincere regret. I have given the most express instructions to my partner, and I will personally take care that no such case occurs again.

I had hoped to have seen you on this matter, and I am still at your disposal, if this should be agreeable to you.

With Mr. Speaker's permission, however, I now propose to make a personal statement on Monday next, when I hope the House may be generous to me.

I feel that I must add that I have occupied my present office for no less than 5 years, that I have very greatly valued the honour, and that I have hitherto endeavoured to uphold its high traditions. If in this instance I have departed from the appearance of impartiality no one can regret it more than myself.

I am,

Yours very sincerely,

(Sgd.) JAMES MILNER.

The Rt. Hon. W. L. S. Churchill, O.M., C.H., M.P.,
House of Commons, S.W. 1.

After having received this letter from Mr. Churchill, Major Milner decided to make his statement (*see above*) to the House.[1]

The Committee considered that the second part of their Order of Reference was capable of 2 interpretations: to report whether the action which Major Milner in fact took was consonant with the proper and impartial discharge of his duties in the Chair; or to report whether any step taken professionally against a member by a Deputy Speaker who was also a solicitor was consonant with the proper and impartial discharge of his duties in the Chair. In doing this the Committee were satisfied that there were no precedents which could guide them in that part of their enquiry.[2]

The concluding paragraphs of the Report read:

6. Your Committee consider that Major Milner was acting in a professional capacity when he wrote to Mr. Emrys Hughes on behalf of Mr. Shinwell on 15th March, but that he acted only after his firm had, without his knowledge, become involved in a dispute between two members. He did not seek out the situation in which he was placed, but when he found himself in it he appears to have done all that he could to mediate between the two members.

7. The question remains to be discussed whether the actions of Major Milner were consonant with the proper and impartial discharge of his duties as Deputy

[1] *See* Qs. 391-418, 438-441 and 444-446. [2] *Rep.* § 5.

Speaker. It appears from the evidence submitted to your Committee that there were doubts in the minds of some members of the House on this point. It was the knowledge of these doubts, together with the letter from Mr. Churchill, which led Major Milner to decide to make his statement in the House, which led to this inquiry. Your Committee believe that Major Milner was not actuated by any partiality, but that his sole aim was to effect an amicable settlement. At the same time, they agree with Major Milner's own statement that the Chair should not only be impartial, but should also give the appearance of impartiality. It is in this sense alone that any criticism can be levelled against Major Milner's conduct.

8. It remains for your Committee to comment on the second interpretation of their Order of Reference. At least one other Deputy Speaker has in recent years continued his work in the legal profession whilst holding his office in the House. Your Committee are of opinion that it is a matter for the House to consider whether or not rules should be laid down governing the conduct of the Deputy Speaker in his professional or business relationships with any member of the House.

Procedure and Evidence.—It was ordered by the Committee at their first meeting: "That strangers be not admitted" and the usual practice was observed of the witness withdrawing when the Committee deliberated.

At their second meeting the Committee divided on the Question: "That the letter written by Mr. Churchill to Major Milner be called for". Ayes, 9; Noes, 1.

Three members of the Committee assisted the Chairman in the preparation of the Draft Report, which, after amendment in the Committee, was agreed to.

The following are some interesting points in the evidence:

Sir Gilbert Campion in his evidence said that he did not think a case had ever arisen in which the Chairman of Ways and Means, at any rate, had acted in a case affecting 2 members. There was a rule of Privilege against a member in a professional capacity advising on any matter which would become a proceeding of the House, but that was not the present case where proceedings would be outside the House and only connected with it by the fact that 2 members were concerned in it.[1]

There were precedents for the Chairman of Ways and Means being a practising solicitor in Sir Dennis Herbert and Sir Cyril Entwhistle, which latter was Deputy Chairman and practised at the Bar.[2]

The circumstances in the present case were unprecedented.[3] It was not a matter of procedure, but eminently a point for the Committee to decide.[4]

No member ought to advise in a professional capacity regarding any matter which would become a proceeding of the House.[5]

The following Qs. were asked this Witness:

By Mr. Eric Fletcher.

29. . . . Am I right in thinking that, as far as the Speaker is concerned, the Speaker does not have any outside interest?—That is so.

[1] Q. 1. [2] Q. 3. [3] Q. 4. [4] Q. 14. [5] Q. 18.

30. . . . But that on the contrary it is recognized that the Chairman of Ways and Means and the Deputy Chairman are in a different category as regards their general right to have either unlimited outside interests or considerable outside interests?—That has been the case certainly hitherto.

By Mr. Thurtle.

36. . . . You say that he (the Chairman of Ways and Means) ought not to act professionally for a fellow-member in any matter which was likely to come before the House?—Yes, or for anybody, whether a member or not a member.

By Mr. Ungoed-Thomas.

40. . . . Do you see any objection to a member acting in a non-professional capacity if what he is endeavouring to do is to bring about an amicable settlement between members? I should see no objection if it were perfectly clear that it was strictly in a non-professional capacity.

This Witness, in reply to Q. 41, quoted the following from May:

To guard against indirect influence, the House of Commons has forbidden the acceptance of fees by its members for professional services connected with proceedings in Parliament; thus a member is not permitted to practice as counsel before the House or any Committee, and it is not consistent with Parliamentary usage for members to advise as counsel upon any private matter or other proceeding in Parliament.

But that, remarked the Witness, was only remotely connected with the present case.

In the course of his reply to Q. 128 by the Chairman, Mr. Emrys Hughes said that it had been suggested to him that this question of the letter being received from the firm of which the Deputy Speaker was a member was a matter which should be conveyed to the Speaker, so the Witness went to the Speaker's Secretary and asked if he should take the letter to Mr. Speaker and he did so and he asked me also if he should consult with the Leader of the House and he did so . . .

Mr. Emrys Hughes in reply to further Qs. expressed the view that the Deputy Chairman who took the Speaker's Chair should not be a solicitor of any kind, especially in view of the fact that so much litigation in these days was with Government Departments.[1] "I think he should sever his connection with his solicitor's office during the term he is in office."[2]

In reply to a Q.[3] by the Chairman, Major Milner said that when he took on the position of Chairman of Ways and Means he took advice from Sir Dennis Herbert who was himself a practising solicitor and was his predecessor as Chairman of Ways and Means and he advised him that there was no objection to him continuing to practise as a member of a firm of solicitors as he himself had done.

This Witness in reply to a further Q.[4] said that Mr. Shinwell came to the firm as a client, and to him presumably as a friend who was also a member of that firm.

The following are further Qs. asked Major Milner:

[1] Q. 167. [2] Q. 168. [3] Q. 252. [4] Q. 306.

By Mr. Selwyn Lloyd.

308. Did he not come, in fact, to find out from you what action the firm had taken with regard to his instructions?—He did.

309. He gave you, in fact, further instructions?—Yes.

310. As a result of which you wrote those letters?—That is so.

311. Those instructions were given to you as a partner in a firm of solicitors?—Yes.

In reply to Q. 312, this Witness said that he had looked up the books of the firm, and on none of the 3 or 4 occasions had Mr. Shinwell ever been charged with any costs because Major Milner had treated it as a friendly matter which shows that there was no question of fees in his mind.

This Witness said that he had had nothing to do with the agreement with the B.B.C. as to costs, or a suggestion, which Mr. FitzGerald accepted.[1]

By Mr. Leslie.

Q. 440. I suppose, Mr. Milner, it never dawned on you that you had done something that was not quite proper until you learned that it was being discussed in the smokeroom and then got the letter from Mr. Churchill?—That is so.

By Mr. Ungoed-Thomas.

Q. 444. Although Mr. Churchill's letter does not refer to your making a statement in the House, it does refer to his putting down the Motion?—Yes.

In reply to Q. 461, this Witness said that what was generally in his mind was that it would be an embarrassing situation to have lega correspondence between the Chair and a member.

On June 17[2] the Prime Minister said that the House would recollec that in the concluding Report of the Select Committee on the Chairman of Ways and Means the point was raised, whether or not Rules should be laid down governing the conduct of the Deputy Speaker in his professional or business relationships with any member of the House, as the Chairman of Ways and Means and Deputy Speaker is appointed on the nomination of the Government, the House may perhaps consider it appropriate for the Prime Minister to make a statement on this subject, in order that "the Chair should not only be impartial but should also give the appearance of impartiality".

He quoted from the Report of the Select Committee—the Government felt that both the Chairman and the Deputy Chairman should in future refrain from acting in a professional capacity on behalf of, or against, members of the House of Commons. The Prime Minister said he had consulted Mr. Speaker, the Chairman and the Deputy Chairman of Ways and Means, about this proposed rule and they concurred in it.

The Leader of the Opposition said that they were in general agreement with the statement the Prime Minister had made on the subject. Mr. Churchill expressed himself as glad that this matter had

[1] 313. [2] 452 *Com. Hans.* 5, s. 663.

terminated in a manner which reflected on nobody in any matter of personal honour, and at the same time fulfilled the sagacious recommendations of the Select Committee. It might well be that, in the future, when a reconsideration of these matters was possible, even stricter regulations might be propounded.

Disclosure in the Press of extracts from Tabled Papers before their Publication.—On July 27,[1] an hon. member in the House of Commons drew the attention of Mr. Speaker to extracts from a Report by the Select Committee on Estimates, which had been laid on the Table of the House and sent to the printers, having been published in certain named newspapers before it had been published for the public and the Press to read.

In response to the hon. member's request for a Ruling as to whether a breach of Privilege had been committed, Mr. Speaker said that the Report had been technically laid before the House, because it had been presented to the Clerks and therefore sent to the printers. Had the Report not been sent to the printers, there would definitely have been a *prima facie* breach of privilege. His predecessors had ruled that once a report had gone to the printers it had been technically laid before the House and a breach of Privilege did not exist. The fact must remain, that it was a wholly undesirable principle that before hon. members themselves had had a chance of reading what was in the Report of the Select Committee something should have taken place which ought not to have happened.

Mr. Speaker concluded by saying that he regretted very much that some of the Report of this Select Committee should have been disclosed to and printed in the Press. "The articles are not breaches of Privilege, but they call for my displeasure."

The Seychelles.

Freedom of Speech by Member.—On December 1, 1948, a Law Report appeared in *The Times* of proceedings of the Judicial Committee of the Privy Council on the previous day in *Chenard and Company and others* v. *Joachim Arissol*, on appeal from a judgment of the Supreme Court of Seychelles on March 20, 1947, in regard to certain statements made in the Seychelles Legislative Council by which judgment it was held on a preliminary point of law that s. 192 (1) of the Seychelles Penal Code 1904 conferred upon a Member of the Legislative Council immunity from prosecution or action for defamation for anything which he said or wrote in such capacity in the Council.

The salient provisions of the said section read:

192. (1) No prosecution or action for defamation shall be competent against (*a*) The President or a member of the Legislative Council for anything said or written by him in such capacity from his place in such Council or in any Committee thereof.

* * * * *

[1] 454 *Com. Hans.* 5. s. 1125.

(2) Provided that defamatory allegations foreign to the cause at issue may give rise to a civil action by any party to the suit whenever the right to such action shall have been reserved to the parties by the Court and may in any case give rise to a civil action by a third party.

(3) Provided further that the Court of Seychelles may inflict disciplinary penalties against any barrister, advocate, or attorney making such allegations.

In the action out of which the appeal arose the appellants:

claimed damages for alleged defamation from the respondent, the Hon. Joachim Arissol, a member of the Legislative Council of Seychelles, in respect of words in a speech which he made in the Council Chamber on September 28, 1946.

The Supreme Court on the preliminary point of law, dismissed the action.

Lord Reid, giving the judgment of the Board, said that the statements made by the respondent were alleged to be defamatory of the appellants, and it was further alleged that the respondent abused his position as a member of the Legislative Council for the purpose of making false, malicious and defamatory statements against the appellants. The respondent, while denying those allegations, pleaded *in limine litis* that no action lay in law against him as a member of the Legislative Council on the averments of the statement of claim.

The only question raised in the appeal was whether:

absolute privilege attached to statements made in the Legislative Council of Seychelles by a member of the Council. Section 192 (1) (*a*) of the Seychelles Penal Code (Ordinance No. 10 of 1904) provided that no prosecution or action for defamation should be competent against the President or a member of the Legislative Council for anything said or written by him in such capacity from his place in such Council. It was admitted by counsel for the appellants that if that provision was *intra vires* the present appeal must fail.

The power of the Governor and Legislative Council of Seychelles to make laws flowed from Letters Patent of August 31, 1903, clause 8 of which provided: "The Governor by and with the advice and consent of the said Legislative Council may make ordinances for the peace, order and good government of the colony. . . ." A power to make ordinances for the peace, order and good government of a colony did not authorize alteration of the constitution or powers of the colonial Legislature, but it did authorize the enactment of rights, privileges, and immunities whether those were general, or in favour of particular persons or classes of persons.

It was argued for the appellants that that general power to enact rights, privileges, and immunities was limited by the provisions of sections 2 and 5 of the Colonial Laws Validity Act, 1865.[1]

Section 2 provided that "any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony . . . shall to the extent of such repugnancy . . . be void and inoperative". Section 5, after conferring on every colonial Legislature power to make laws regarding Courts of Judicature, provided that "every representative Legislature shall have and be deemed at all times to have had full power to make

[1] 28 & 29 Vict., c. 93.

laws respecting the constitution, powers, and procedure of such Legislature. . . ."

The Legislative Council of Seychelles was not a representative Legislature within the meaning of that Act. The argument for the appellants was that in view of the fact that the first part of section 5 conferred certain powers on every colonial Legislature, the restriction of the grant of further powers by the latter part of the section to representative Legislatures must be deemed to imply that non-representative Legislatures were prohibited from exercising any of these further powers. Their Lordships did not accept that argument.

The purpose of Section 5 was to confer rights, not to take them away. No right was conferred by Section 5 on any non-representative Legislature to make laws respecting the constitution powers or procedure of that Legislature and it might be that few, if any, non-representative Legislatures had power to make laws which directly affected their own constitution powers or procedure, but, if any such Legislature had power from another source to make laws which touched any of those matters, those powers were not affected by the Colonial Laws Validity Act, 1865.

In any event their Lordships were of opinion that section 192 (1) (*a*) of the Seychelles Penal Code was not a law respecting the constitution, powers or procedure of the Legislature of Seychelles within the meaning of section 5 of the Colonial Laws Validity Act. It was argued that those words must be given a wide meaning so as to include all rights, privileges, and immunities which attached to members of the Legislature in their capacity as members, or at least all those rights, privileges, and immunities which could properly be regarded as falling within the sphere of constitutional law.

Their Lordships saw no reason for so extending the ordinary meaning of the words of that section. None of those words was apt to include privileges or immunities of individual members of the Legislature which protected them against actions in respect of their conduct as members. Accordingly, Section 192 (1) (*a*) of the Seychelles Penal Code was within the power to legislate conferred on the Legislature of that colony by Letters Patent, was not repugnant to any Act of Parliament, and was therefore *intra vires* and valid.

A further question was fully argued—whether absolute privilege in respect of statements made in a legislative assembly by members of that assembly was so essential for free discussion and the proper conduct of business that the setting up of any legislative assembly necessarily implied the creation of that immunity. It had long been settled that the setting up of a colonial Legislature did not vest in that Legislature, without express grant, all the privileges of the Houses of the Imperial Parliament, but only such powers or privileges:

as are necessary to the existence of such a body and the proper exercise of the functions which it is intended to execute. Whatever in a reasonable sense is necessary for these purposes is impliedly granted whenever any such legislative body is established by competent authority—Barton *v.* Taylor ((1886) 11 App. Cas. 197, per Lord Selborne at p. 203); Kielley *v.* Carson ((1842) 4 Moore P.C. 63). There was little authority on the question whether absolute privilege must be held to have been impliedly granted, but in Gipps *v.* McElhone ((1881) 2 N.S.W. 18) it was held that no action lay for defamation

in respect of a question put by a member in the legislative assembly of New South Wales. Sir J. Martin, C.J., said (at p. 21):

> There is no doubt in my mind of the existence of this privilege, and that it is absolute. It arises from inherent necessity. The necessity is just as great here as in the Imperial Parliament.

Their Lordships saw no reason to differ from that opinion or to draw any distinction in that matter between representative and non-representative legislative assemblies.

Their Lordships would humbly advise his Majesty that the appeal be dismissed.

XXIII. REVIEW[1]

Private Bill Procedure in the House of Commons.—There has for long been a requirement for a procedural history of private Bill legislation to supplement the researches of Clifford from the Promoters' standpoint. And if it may be thought strange that such a work has not been attempted before, a very cursory glance at Dr. Williams' book will show that others not as well equipped may well have hesitated before undertaking a task that has obviously required such patience and industry in assembling a mass of detail and no less scholarship in presenting the result as a co-ordinated whole. A great part of the merit of the book lies in the fact that Dr. Williams has kept strictly to his aim of presenting a history of private Bill procedure and has avoided the temptation to stray into any consideration of the impact of such legislation upon the social and industrial history of Great Britain except where that has proved necessary to illustrate his subject. The result is a book which will be both of interest to Clerks of Parliaments and Legislatures in our Commonwealth and Empire and indispensable as a work of reference.

Dr. Williams traces the history of private Bill legislation from the pre-standing order period to the present day. His work develops three main themes: the ouster of private interest in favour of small Committees acting in a semi-judicial capacity; the increasing supervision of private Bills by Officers of the House and Government Departments; and the differences of opinion that have arisen during the last century over the delegation of Parliamentary powers.

Substantive law and procedure owe a great debt to the development of the British railway system, and no small part was played by railways both in the change in the composition of private Bill Committees and in the attitude which they adopted towards private Bills. At the beginning of the XIXth century Committees represented a struggle of private interest; Committees were large and unwieldy, comprised in the main of Members who at the best regarded themselves as little more than proxies for their Constituents. Dr. Williams shows how the agitation for small Committees first began to make itself felt in 1836 at a time when the Lords were first putting into practice the system of appointing small impartial Committees, and culminated with the revision of the Standing Orders in 1847, after Mr. Gladstone's experiment with Railway Bills had proved successful.

The same period saw the beginnings of the modern system of supervision of private legislation by Officers of the House. It was not long since the Clerks of the Private Bill Office had been debarred from personal and profitable practice as Agents for the promotion of

[1] *The Historical Developments of Private Bill Procedure and Standing Orders in the House of Commons*, by O. Cyprian Williams, C.B., M.C., D.C.L., sometime the Clerk of Committees, House of Commons. Vol. I. (H.M.S.O., 17s. 6d. net.)

private Bills, and the change of view of the House generally can be measured by these reforms. While *opposed* Bills had been subjected to a severe scrutiny, *unopposed* Bills had been left virtually unsupervised. With the appointment of a Counsel to Mr. Speaker in 1839, and the duties imposed upon the Chairman of Ways and Means, there was laid the foundation of the present system of dealing with *unopposed* Bills. There can be seen here the germ of a conception of a duty owed to the public generally in dealing with private legislation and not merely a duty owed to particular interests; this is further exemplified by the earlier innovation of Parliamentary deposits supervised by the Private Bill Office as a safeguard against speculation and fraud.

The railway boom of the 1840s was also responsible for the Preliminary Inquiries Acts of 1846 and 1848, the first experiment in imposing other than Parliamentary control on private legislation. These Acts were in themselves unsuccessful but they saw the beginning of the movement sponsored by Mr. Gladstone and Joseph Hume for an increased supervision by Government Departments and with this the suggestion that a share of the burden of private and particularly municipal legislation should be transferred from the Legislature to the Executive. It was perhaps inevitable that the pressure of public business towards the end of the XIXth century should result in an increasing delegation of powers and that this tendency should have been continued, but no less remarkable has been the insistence of the House, particularly back-benchers, on retaining the ultimate control. The account given of the arguments and counter-arguments which led up to the provisional order system and to the recent Statutory Orders (Special Procedure) Act, 1945,[1] deserves a careful study by all students of comparative procedure.

Dr. Williams explains in his Preface that although he has alluded frequently to the part played by the House of Lords in developing private Bill procedure in the Commons, he has not attempted a systematic survey of procedure in that House. Much as his caution may be applauded in refraining as an Officer of one House from commenting on the procedure of the other, we may regret perhaps that he has not brought the Upper House a little more into the picture; it would certainly have given the book an added interest to those concerned with Parliamentary procedure as a whole. A more valid criticism, since Dr. Williams is avowedly concerned with Commons procedure, is that so much more emphasis is placed on work "upstairs" than on proceedings on the floor of the House itself. Admittedly the Committee Stage is by far the most important aspect of private Bill legislation, but it would have been interesting for example to have further details of the pressure which led to the introduction of the present S.O. No. 7—that no debate on *opposed* private business can take place during the quarter of an hour after prayers; a statis-

[1] 9 Geo. VI, c. 18.

tical table showing the time occupied by private business on the floor of the House would have been invaluable.

The past 30 years have seen a considerable decline in the number of private Bills before the United Kingdom Parliament, in favour of alternative methods of legislation. This does not in any way lessen the importance of Dr. Williams' book, for the study of the history of private Bills is essential to any understanding of alternative procedure. Indeed, the historical aspect should be of particular value and interest to all those concerned with private Bill procedure in overseas Dominions and territories, where private Bill legislation has not reached such development as at Westminster.

At present the number of private Acts passed in each year in these countries, except in Canada, is comparatively few. The great Dominions of India and Pakistan, where no provision for private Bill legislation has existed in the past, have as yet small experience of Parliamentary government. Such legislation in Australia is confined to the States, and in New Zealand and the Union of South Africa, with their smaller populations, the number of private Acts each year is not large.

With the increasing development of the Dominions, however, it is natural to anticipate that, notwithstanding the modern tendency of delegation of powers, the need for resorting to private Bill legislation will grow. Clerks of the Houses of overseas parliaments and legislatures will now have, at first hand, the valuable precedents and practice gained through the centuries at Westminster for use and reference in building up a sound and practical system of private Bill procedure.

XXIV. LIBRARY OF "THE CLERK OF THE HOUSE"

By the Editor

The Clerk of either House of Parliament, as the "Permanent Head of his Department" and the technical adviser to successive Presidents, Speakers, Chairmen of Committees and Members of Parliament generally, naturally requires an easy and rapid access to those books and records more closely connected with his work. Some of his works of reference, such as a complete set of the Journals of the Lords and Commons, the Reports of the Debates and the Statutes of the Imperial Parliament, are usually more conveniently situated in a central Library of Parliament. The same applies also to many other works of more historical Parliamentary interest. Volume I of the JOURNAL[1] 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[2] gave a list of works on Canadian Constitutional subjects and Volumes IV[3] and V[4] a similar list in regard to the Commonwealth and Union Constitutions, respectively.

Volumes II,[2] III,[5] IV,[6] V,[7] VI,[8] VII,[9] VIII,[10] IX,[11] X,[12] XI XII,[13] XIII,[14] XIV,[15] XV,[16] and XVI[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.

Bossom, A. C.—Our House. (People's Universities Press.) 7*s.* 6*d.*

Carr, R. K.—Federal Protection of Civil Rights. (London: Cumberlege.) 16*s.*

Chrimes, S. B.—English Constitutional History. (O.U.P. London: Cumberlege.) 5*s.*

Furnival, J. S.—Colonial Policy and Practice. (C.U.P.) 36*s.*

Gordon, S.—Our Parliament. 3rd Ed. (Hansard Society.) 8*s.* 6*d.*

Harrison, W.—The Government of Britain. (Hutchinson's University Press.) 7*s.* 6*d.*

Hamilton, A., Madison, J., Jay, J.—The Federalists or the New Constitution. (Oxford: Blackwell.) 9*s.* 6*d.*

Hardie, F., and Pollard, R. S. W.—Lords and Commons. (Gollancz.) 2*s.*

Illingworth, F.—British Parliament. (Skelton Robinson.) 21*s.*

[1] 123-6. [2] 137, 138. [3] 153-4. [4] 223. [5] 133. [6] 152.
[7] 222. [8] 243. [9] 212 *et seq.* (starred items). [10] 223-6 (starred items).
[11] 170. [12] 196. [13] 267. [14] 270. [15] 274. [16] 297. [17] 300.

Jones, J. Merwyn.—British Nationality Law and Practice. (Oxford: Clarendon Press.) 30*s.*

Journal of Comparative Legislation and International Law. Third Series, Vol. XXX, Parts I and II, May, 1948, and Parts III and IV, November, 1948. Royal Empire Society, Northumberland Avenue, London, W.C.2.

Lindsay, M.—Shall We Reform "The Lords"? (Falcon Press.) 4*s.* 6*d.*

May, H. J.—The South African Constitution. 2nd Ed. (Cape Town: Juta and Co.) 48*s.*

Monaghan, F.—Heritage of Freedom. (Princetown University Press; London: Cumberlege.) 20*s.*

Patterson, C. P.—Presidential Government in the United States. (London: Cumberlege.) 21*s.*

Richardson, H. G., and Sayles, G. O.—Parliaments and Councils of Medieval Ireland. Vol. I. (Dublin Stationery Office.) 25*s.*

Strong, C. F.—Modern Political Constitutions. (Sidgwick and Jackson.) 25*s.*

Van Doren, C.—The Great Rehearsal. The Story of the Making and Ratifying of the Constitution of the United States. (Cresset Press.) 25*s.*

Wheare, K. C.—Parliaments and Politics. (Oxford: Bureau of Current Affairs.) 2*s.*

XXV. LIST OF MEMBERS

JOINT PRESIDENTS

R. A. Lawrence, Esq., LL.B. J. M. Parker, Esq.

MEMBERS

United Kingdom.

R. L. Overbury, Esq., C.B., Clerk of the Parliaments, House of Lords, S.W.1.

F. W. Lascelles, Esq., C.B., M.C., Clerk-Assistant of the Parliaments, House of Lords, S.W.1.

V. M. R. Goodman, Esq., O.B.E., M.C., Reading Clerk and Clerk of Outdoor Committees, House of Lords, S.W.1.

Sir Frederic W. Metcalfe, K.C.B., Clerk of the House of Commons, S.W.1.

E. A. Fellowes, Esq., C.B., M.C., Clerk-Assistant of the House of Commons, S.W.1.

D. J. Gordon, Esq., Second Clerk-Assistant of the House of Commons, S.W.1.

Northern Ireland.

Major Geo. T. Thomson, D.S.O., M.A., (Belfast), Clerk of the Parliaments, Stormont, Belfast.

Canada.

L. Clare Moyer, Esq.,* D.S.O., K.C., B.A., Clerk of the Parliaments, Clerk of the Senate, and Master in Chancery, Ottawa, Ont.

Dr. Arthur Beauchesne,* C.M.G., K.C., M.A., LL.D., Litt.D., F.R.S.C, Clerk of the House of Commons, Ottawa, Ont.

R. A. Lawrence, Esq.,* LL.B., Chief Clerk of the House of Assembly, Halifax, N.S.

H. H. Dunwoody, Esq., Clerk of the Legislative Assembly, Winnipeg, Man.

E. K. de Beck, Esq., Clerk of the Legislative Assembly, Victoria, B.C.

J. M. Parker, Esq., Clerk of the Legislative Assembly, Regina, Sask.

Australia.

J. E. Edwards, Esq., J.P., Clerk of the Senate, Canberra, A.C.T.

R. H. C. Loof, Esq., B.Com., Clerk-Assistant of the Senate, Canberra, A.C.T.

F. C. Green, Esq., M.C., Clerk of the House of Representatives, Canberra, A.C.T.

A. A. Tregear, Esq., B.Com., A.I.C.A., Clerk-Assistant of the House of Representatives, Canberra, A.C.T.

* Barrister-at-Law or Advocate.

S. F. Chubb, Esq., J.P., Second Clerk-Assistant of the House of Representatives, Canberra, A.C.T.

H. Robbins, Esq., M.C., Clerk of the Legislative Assembly, Sydney, New South Wales.

I. P. K. Vidler, Esq., Second Clerk-Assistant of the Legislative Assembly, Sydney, New South Wales.

H. St. P. Scarlett, Esq., Clerk of Committees and Serjeant-at-Arms, Legislative Assembly, Sydney, New South Wales.

T. Dickson, Esq., J.P., Clerk of the Parliament, Brisbane, Queensland.

Captain F. L. Parker, F.R.G.S.A., Clerk of the House of Assembly, and Clerk of the Parliaments, Adelaide, South Australia.

C. I. Clark, Esq., Clerk of the Legislative Council, Hobart, Tasmania.

C. K. Murphy, Esq., Clerk of the House of Assembly, Hobart, Tasmania.

H. B. Jamieson, Esq., Clerk of the Legislative Council, Melbourne, Victoria.

R. S. Sarah, Esq., Clerk-Assistant of the Legislative Council, Melbourne, Victoria.

V. A. Lyons, Esq., Usher and Clerk of Records, Legislative Council, Melbourne, Victoria.

F. E. Wanke, Esq., Clerk of the Legislative Assembly and Clerk of the Parliaments, Melbourne, Victoria.

H. K. McLachlan, Esq., Clerk-Assistant of the Legislative Assembly, Melbourne, Victoria.

J. A. Robertson, Esq., Serjeant-at-Arms and Clerk of Committees, Legislative Assembly, Melbourne, Victoria.

F. E. Islip, Esq., J.P., Clerk of the Legislative Assembly, Perth, Western Australia.

L. P. Hawley, Esq., Clerk-Assistant of the Legislative Assembly, Perth, Western Australia.

D. R. M. Thompson, Esq., Clerk of the Council, Darwin, Northern Territory.

New Zealand.

C. M. Bothamley, Esq., J.P., Clerk of the Parliaments, Wellington.

H. L. de la Perrelle, Esq., Clerk-Assistant of the Legislative Council, Wellington.

H. N. Dollimore, Esq.,* LL.B., Clerk of the House of Representatives, Wellington.

A. E. Roussell, Esq.,* LL.B., Clerk-Assistant of the House of Representatives, Wellington.

South Africa.

J. F. Knoll, J.P., Clerk of the Senate, Cape Town.

* Barrister-at-Law or Advocate.

W. T. Wood, Esq., B.A., LL.B., Clerk-Assistant of the Senate, Cape Town.
Ralph Kilpin, Esq., J.P., Clerk of the House of Assembly, Cape Town.
J. M. Hugo, Esq., B.A., LL.B.,* Clerk-Assistant of the House of Assembly, Cape Town.
C. T. du Toit, Esq., M.A., LL.B., B.Ed.,* Second Clerk-Assistant of the House of Assembly, Cape Town.
K. W. Schrewe, Esq., Clerk of the Cape Provincial Council, Cape Town.
L. G. T. Smit, Esq., B.A., Clerk of the Natal Provincial Council, Maritzburg.
C. N. Ingwersen, Esq., Clerk of the Transvaal Provincial Council, Pretoria.

South-West Africa.

Clerk of the Legislative Assembly, Windhoek.
Clerk-Assistant of the Legislative Assembly, Windhoek.

India.

M. M. Kaul, Esq., M.A. (Cantab.), Secretary of the Constituent (Legislative) Assembly, New Delhi.
D. K. V. Raghava Varma, Esq.,* B.A., B.L., Secretary of the Legislature, Fort St. George, Madras.
Sri T. Hanumanthappa, B.A. (Hons.), B.L., Assistant Secretary of the Legislature, Fort St. George, Madras.
S. K. Sheode, Esq.,* B.A., LL.B., J.P., Secretary, Legislature Department, Poona, Bombay.
S. L. Govil, Esq.,* M.A., LL.B., Secretary of the Legislative Council, Lucknow, United Provinces.
Shri K. C. Bhatnagar, M.A., Secretary of the Legislative Assembly, Lucknow, United Provinces.
Krishna Bahadur Saksena, Assistant Secretary of the Legislative Assembly, Lucknow, United Provinces.
R. N. Prasad, Esq.,* M.A., B.L., Secretary of the Legislative Council, Patna, Bihar.
Dr. S. K. D. Gupta, M.A., Secretary of the West Bengal Legislative Assembly, Calcutta, W. Bengal.
T. M. Paul, Esq., Assistant Secretary of the West Bengal Legislative Assembly, Calcutta, W. Bengal.
Sri G. Dhal, B.A., B.L., Secretary of the Legislative Assembly, Cuttack, Orissa.
Sardar Bahadur Sardar Abnasha Singh, B.L., Secretary of the East Punjab Legislative Assembly, Minto Court, Simla.
Sri T. C. Shrivastava, Esq., M.A., LL.B.,* Secretary of the Legislative Assembly, Nagpur, Central Provinces and Berar.

* Barrister-at-Law or Advocate.

Pakistan.

M. B. Ahmad, Esq., Secretary of the Constituent Assembly, Karachi.
K. Ali Afzal, Esq.,* Deputy Secretary of the Constituent Assembly, Karachi.
S. A. E. Hussain, Esq.,* B.A., B.L., Secretary of the East Bengal Legislative Assembly, Dacca.
Manzura Quadari, Esq., Assistant Secretary of the East Bengal Legislative Assembly, Dacca.
Khan Bahadur Sahib H. A. Shujaa, B.A., Secretary of the West Punjab Legislative Assembly, Lahore, The Punjab.
Shaikh A. Zafarali, B.A., Secretary of the Legislative Assembly, Karachi, Sind.

Indian States.[1]

Hyderabad. Md. Hamiduddin Mahmood, Esq., H.C.S., Secretary of the Legislative Assembly Dept., Hyderabad, Deccan.[2]
Jammu and Kashmir. The Secretary to the Government, Praja Sabha (Assembly) Department, Srinagan.[3]

States Acceded to India.

Mysore. C. M. Nali, Esq., B.A., LL.B.,[4]* Secretary of the Representative Assembly and Legislative Council, Bangalore.
Travancore. V. Krishnamoorshi Chigar, Secretary of the Representative Body and Legislative Assembly, Trivandrum.
Suarashtres. Secretary of the Constituent Assembly, Rajkit.

States Acceded to Pakistan.

Junagadh; Manavadar; Bahawalpur; Khairpur; Kalat; Las Bela; Kharan; Makran; Amb; Chitral; Dir; Swat.

Ceylon.

E. V. R. Samerawickrame, Esq., Clerk of the Senate, Colombo.
R. St. L. P. Deraniyagala, Esq.,* B.A.(Cantab.), Clerk of the House of Representatives, Colombo.

Southern Rhodesia.

C. C. D. Ferris, Esq., O.B.E., Clerk of the Legislative Assembly, Salisbury.
Lt.-Col. G. E. Wells, Clerk-Assistant of the Legislative Assembly, Salisbury.

[1] Many States are being grouped, others are being absorbed into Provinces.—[Ed.]
[2] At present under an Indian Military Governor.
[3] In dispute between India and Pakistan. The ultimate fate of this State to be decided by plebiscite under U.N.O.—[Ed.]
[4] *Vice* Mr. Abdul C. Nabi, B.A., LL.B.

* Barrister-at-Law or Advocate.

J. R. Franks, Esq., B.A., LL.B., Second Clerk-Assistant of the Legislative Assembly, Salisbury.

Bermuda.

E. T. Smith, Esq., Clerk of the Legislative Council, Hamilton.
G. S. C. Tatem, Esq., B.A.(Oxon), Clerk of the House of Assembly, Hamilton.

British Guiana, B.W.I.

J. J. Rodrigues, Esq., Clerk of the Legislative Council, Georgetown.

Cyprus.

Clerk of the Legislative Council, Nicosia.

East Africa High Commission.

D. W. B. Baron, Esq., Clerk of the Central Legislative Assembly, Nairobi, Kenya Colony.

Gold Coast and Ashanti.

N. F. Ribiero-Ayeh, Esq., B.A.(Lond.), Clerk of the Legislative Council, P.O. Box 140, Accra, Gold Coast Colony, W. Africa.

Jamaica, B.W.I.

Clinton Hart, Esq., Clerk of the Legislature, Kingston.

Kenya Colony.

Clerk of the Legislative Council, Nairobi.

Federation of Malaya.

P. O. Wickens, Esq., Clerk of Councils, Kuala Lumpur.

Malayan States.

Clerk of the State Council of Pahang, Kuala Lipis.

Malta, G.C.

V. A. Dillon, Esq., M.B.E., Clerk of the Legislative Assembly and Clerk of the Executive Council, Valletta.

Mauritius.

The Clerk of the Council of Government, Port Louis.

Nigeria.

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

* Barrister-at-Law or Advocate.

Colony of Singapore.

The Clerk of the Councils, Singapore.

Tanganyika Territory.

R. J. R. Dashwood, Esq., Clerk of the Legislative Council, The Secretariat, Dar-es-Salaam.

Trinidad and Tobago, B.W.I.

Gerald E. Chen, Esq., Clerk of the Legislative Council, Port of Spain.

Union of Burma.

U Tun Tin,* B.L., Secretary of the Constituent Assembly and Legislative Council, Rangoon.

U Sein, A.T.M., Deputy Secretary of the Constituent Assembly and Legislative Council, Rangoon.

Ex Clerks-at-the-Table.

W. R. Alexander, Esq., C.B.E., J.P. (Victoria, Australia).

H. H. W. Bense, Esq. (South Africa) *Provincial Secretary, Province of the Cape of Good Hope*).

Sir Gilbert F. M. Campion, G.C.B. (United Kingdom) (*Clerk of the Consultative Assembly of the Council of Europe*).

E. M. O. Clough, Esq., C.M.G. (South Africa).

S. F. du Toit, Esq., LL.B. (South Africa) (*Union Minister Plenipotentiary to the Argentine & Chile*).

Captain M. J. Green, V.D., R.N.V.R.(rtd.) (South Africa).

J. G. Jearey, Esq., O.B.E. (Southern Rhodesia).

Office of the Society.

c/o The Senate, Houses of Parliament, Cape Town, South Africa.

Cable Address: CLERDOM CAPETOWN.

Honorary Secretary-Treasurer and Editor: Owen Clough.

* Barrister-at-Law or Advocate.

XXVI. MEMBERS' RECORDS OF SERVICE

Note.—*b.* = born; *ed.* = educated; *m.* = married; *s.* = son(s); *d.* = daughter(s); *c.* = children.

Members who have not sent in their Records of Service are invited to do so, thereby giving other Members the opportunity of knowing something about them. It is not proposed to repeat these records in subsequent issues of the JOURNAL, *except upon promotion, transfer or retirement, when it is requested that an amended record be sent in.*

Kaul, Maheshwar Nath, M.A.(Cantab.).—Barrister-at-Law (Middle Temple). Secretary to the Indian Parliament; *b.* 1901; *ed.* London School of Economics; Trinity Hall, Cambridge. Economics Tripos, Cambridge, 1924. Research Scholar Cambridge University (State-aid to industries, with special reference to India). Called to the Bar, 1925; Advocate of the High Court of Judicature at Allahabad, practised Law, 1926-27. Editor, Allahabad Law Journal, 1931-37. Appointed Officer of the House (Indian Legislative Assembly) 1937; on deputation to the United Provinces Government in connection with the United Provinces Tenancy Bill of 1938. Secretary of the Conferences of Presiding Officers of legislative bodies in India held in 1938, 1939 and 1947. Secretary, Empire Parliamentary Association, 1943-47; member, Autonomous Section of Secretaries-General of Parliaments (Inter-Parliamentary Union). Fellow of the Royal Economic Society; visited Belgium, Germany, Austria (1922), France, Switzerland, Italy (1925), Switzerland and Britain (1932). Participated in the Commonwealth Parliamentary Conference held in London during October-November, 1948 as Secretary to the Parliament of India.

Kempaiya, T.,* B.A., LL.B.—Secretary to the Mysore Legislature; *b.* October 8, 1898; Subordinate Judge, Bangalore, August 22, 1946; Subordinate Judge—First Class Magistrate, Chitaldrug, November, 1947; appointed to the present office May 10, 1948.

Nabi Abdul, C., B.A., LL.B.—Secretary to Mysore Legislature; *b.* November 13, 1895. After taking degrees in Arts and Law at Madras and Bombay, respectively, practised as an Advocate and was an elected member, Mysore Representative Assembly; entered Government Service as Munsiff in October, 1927; promoted as First Magistrate, Mandya in July, 1945; was Subordinate Judge at Tumkur till the middle of December, 1948, and subsequently elevated as District and Sessions Judge and appointed to present position in the latter part of December, 1948.

* Barrister-at-Law or Advocate.

Ribeiro, Ayeh, N. F., B.A.—Clerk of the Legislative Council, Gold Coast; *b.* August 25, 1906; *m.*, 2 *s.*, 2 *d.*; *ed.* Presbyterian School, Christiansborg, Wesley College, Kumasi and University College, Southampton; graduated London University (General) 1936; Tutor and Housemaster Mfantsipim School, Cape Coast 1927-1939; Assistant Secretary Native Affairs 1939-43; Assistant Colonial Secretary and Clerk of the Legislative Council since 1944.

Shrivastava, Shri T. C., M.A., LL.B.—Secretary to the Central Provinces and Berar Legislative Assembly; *b.* September 6, 1902; joined the Central Provinces and Berar Civil Service (Judicial) as Subordinate Judge 2nd Class January 2, 1929; Chairman, Debt Conciliation Board 1938-39; Subordinate Judge 1939-42; Extra Assistant Commissioner 1942-44; Officer on Special Duty, High Court of Judicature March-April, 1944; Deputy Registrar, High Court of Judicature 1944-47; officiated as Assistant Legal Remembrancer and Under-Secretary to Government, Central Provinces and Berar in the Judicial, Legal, Legislative and Assembly Departments 1947-48; Deputy Secretary to Government in the Legislative and Assembly Departments and Secretary to the Central Provinces and Berar Legislative Assembly from September 29, 1948.

Wickens, P. O.—Acting Clerk of the Federal Legislative Council and the Federal Executive Council, Federation of Malaya, since February 7, 1948; *b.* Newbury, Berkshire, September 22, 1915; *ed.* Plymouth College and New College, Oxford; Malayan Civil Service.

INDEX TO SUBJECTS DEALT WITH IN EARLIER VOLUMES

NOTE.—*The Roman numeral gives the Volume and the Arabic numeral the Page. Constitutional matters are arranged under Countries and Procedure, etc., under Subject headings.*

Speaker's Rulings of the House of Commons are not included in this Index as the Articles thereon are an index in themselves (vide Volumes of the JOURNAL, *I to VII and XIII to XVI inclusive, covering "Com. Hansard." Volumes 251-442 5 series).*

(Art.)=Article in Journal.
C.W.H.=Committee of the Whole House.
Q=Questions. O.P.=Order Paper.
Amdts.=Amendments.
(Com.)=House of Commons.
Sel. Com.=Select Committee.

[1] *See also* "Australian States."

[1] *See also* Vol. V. 111-118.

[1] *See also* "Canadian Provinces" and "Newfoundland."
[2] *See* Index Vol. X. [3] For names of, *see* Table facing Contents, p. ii.

[1] *See* Provisional List in " List of Members."—[ED.]
[2] *See also* " Irish Free State." [3] See also " Ireland (Eire)."

[1] *See* Provisional List in "List of Members."—[ED.]

[1] *See* "South Africa, Union of"—"precedents and unusual points of procedure."—[ED.]

[1] For Provinces of *see* Table facing Contents, p. ii.

Printed in Great Britain by
Billing and Sons Ltd., Guildford and Esher
C853