"A BUSMAN'S HOLIDAY"

The Hon. Editor (*left*) being greeted at Stormont on July 1, 1949, by the Speaker of the House of Commons of Northern Ireland

To face title-page

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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. XVIII

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USUAL SESSION MONTHS OF EMPIRE PARLIAMENTS

Parliament.	Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
United Kingdom		★	★	★	★	★	★			★	★	
Northern Ireland	★	★	★	★	★	★	★	★		★	★	★
Canadian Dominion	★	★	★	★	★							
Canadian Provinces: Ontario		★	★							★		
Canadian Provinces: Quebec	★	★	★	★	★	★						
Canadian Provinces: Nova Scotia			★	★								
Canadian Provinces: New Brunswick			★	★								
Canadian Provinces: Manitoba		★	★	★								
Canadian Provinces: British Columbia		★	★	★							★	★
Canadian Provinces: Prince Edward Island		★	★	★								
Canadian Provinces: Saskatchewan	★	★	★	★								
Canadian Provinces: Alberta		★	★	★								
Australian Commonwealth			★	★	★				★	★	★	★
Australian States: New South Wales	*No set rule obtains.*											
Australian States: Queensland			★	★				★	★	★	★	★
Australian States: South Australia							★	★	★	★	★	★
Australian States: Tasmania		★	★						★	★	★	★
Australian States: Victoria	*No set rule obtains.*											
Australian States: Western Australia							★	★	★	★	★	★
New Zealand						★	★	★	★	★	★	
Union of South Africa	★	★	★	★	★	★						
Union Provinces: Cape of Good Hope			★		★							
Union Provinces: Natal			★	★	★	★						
Union Provinces: Transvaal			★	★	★	★						
Union Provinces: Orange Free State			★			★						
South-West Africa			★	★	★							
Southern Rhodesia				★	★	★	★	★		★		
India: Parliament of India		★	★	★						★	★	★
India: Madras	★	★	★					★	★	★	★	★
India: Bombay		★	★	★					★	★		
India: Uttar Pradesh		★	★	★			★			★		
India: Bihar	*No set rule obtains.*											
India: West Bengal												
India: East Punjab			★	★						★	★	
India: Orissa		★	★					★	★			
India: Madhya Pradesh	*No set rule obtains.*											
Dominion of Pakistan: Constituent Assembly		★	★		★							★
Dominion of Pakistan: East Bengal		★	★					★	★			
Dominion of Pakistan: West Punjab												
Dominion of Pakistan: North-West Frontier Province			★						★	★		
Dominion of Pakistan: Sind		★	★					★	★			
Indian States: Hyderabad	*No set rule obtains.*											
Indian States: Mysore	★					★				★		
Indian States: Jammu and Kashmir			★	★					★	★		
Indian States: Travancore	★			★			★	★				
Bermuda	*No set rule obtains.*											
British Guiana				★	★	★				★	★	★
Ceylon	★	★	★		★	★	★	★	★	★	★	★
East African High Commission	★			★					★			
Gold Coast and Ashanti			★			★			★			★
Jamaica					★					★		
Kenya Colony	—	★			★			★		★		
Federation of Malaya	*No set rule obtains.*											
Malta, &c.	*No set rule obtains.*											
Mauritius	*No set rule obtains.*											
Nigeria												
Singapore Colony		★	★	★	★	★	★	★	★	★	★	★
Tanganyika Territory	*No set rule obtains.*											
Trinidad and Tobago, B.W.I.			★	★	★					★	★	★

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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;
Cons.	= Consideration;
Govt.	= Government;
O.P.	= Order Paper;
Rep.	= Report;
Sel. Com.	= Select Committee;
Stan. Com.	= Standing Committee;
R.A.	= Royal Assent;
H.M. Government	= His Majesty's Government;
U.K. Government	= United Kingdom Government;
w.e.f.	= with effect from.

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. XVIII FOR 1949

THE KING: ROYAL STYLE AND TITLES[1]

The Statute[2] Law Amendment Act was passed by the Saskatchewan Legislative Assembly during 1949 providing that:

2. All acts and regulations in which the Royal Style and Titles of His Majesty are set forth are amended by striking out the words "Emperor of India" wherever they appear in the said style and titles.

Apparently the Dominion Act of 1947—"Royal Style and Titles Act (Canada), 1947"—was not sufficient in itself to cover the situation in Saskatchewan. The explanation seems to be that Saskatchewan's Crown lands and unalienated resources are held "by His Majesty in the right of the Province of Saskatchewan", and thus the Royal Titles appear in some of the Forms of grant, as well as in certain enactments of the Provincial Legislature, and also in some of the Rules of Court. Since Property and Civil Rights come within Provincial jurisdiction under the British North America Act, the Provincial legislation above was necessary to effect the change in Title and Style.[3]

I. EDITORIAL

Introduction to Volume XVIII.—The year under review in this volume has truly been a year of constitutional steps and marks momentous changes in our Commonwealth and Empire.

First there has been the passing by the United Kingdom Parliament of the Ireland Bill to make provision for the alleviation of the difficulties and inconveniences created by the close proximity to the United Kingdom of the new Republic of that part of Ireland which has contracted out of the Commonwealth and Empire.

[1] *See also* JOURNAL, Vols. XVI, 5; XVII, 5 [2] Stat. Sask. 1949, c. 124, s. 2. [3] Contributed by the Clerk of the Legislative Assembly.—[ED.]

Then there has been the passing at New Delhi of the Constitution of India by which she also becomes an independent Republic; but in her case she has declared and affirmed her desire to continue her full membership of the Commonwealth and her acceptance of the King as the symbol of the free association of its independent nations and as such the Head of the Commonwealth. This Volume also contains reference to the India (Consequential Provisions) Act passed by the Parliament at Westminster.

In both Eire and that part of India, or Bharat, coming under the Constitution of India, allegiance will no longer be paid to the hereditary Sovereign but is transferred to a Head of the State elected, in the case of the former directly, and the latter indirectly, by the people.

Further steps in connection with the framing of her Constitution have been taken by Pakistan, but the actual Instrument itself has not yet been put into operation.

Across the Atlantic a step has been taken in another direction, for Canada has been strengthened by "the ancient Colony" of Newfoundland, including its vast territory of Labrador on the mainland, joining the Canadian confederation.

Canada has also, by the passing of the British North America Act (No. 2) of 1949, provided that her Constitution shall no longer be amended by Address to His Majesty for such legislation to be passed by the Parliament at Westminster, but that any future B.N.A. Acts shall be Acts of the Parliament at Ottawa.

Nearer the centre of the Realm there have been the constitutional steps taken by the various "States" in the Channel Islands in the amendment of the particularly interesting and unique Constitutions in those Islands, handed down to them by their forefathers almost 1,000 years ago, in what is now the only part of the ancient Dukedom of Normandy owing allegiance to their Lord Duke, the King.

Then, crossing the oceans down to the Antipodes, the result is reported of the recent Federal General Election of the Commonwealth Parliament consequent upon the constitutional changes of representation in that Parliament, dealt with in the last issue of the JOURNAL.[1]

In Southern Africa another type of change has been the amendment of the Constitution of South-West Africa (formerly under Mandate (C) from the League of Nations) by advance in local autonomy and with representation in both Houses of Parliament in the Union of South Africa.

Just as we published, for more ready record in the JOURNAL, the Atlantic Charter,[2] this Volume gives the text of that document of world-wide fame, U.N.O.'s "Universal Declaration of Human Rights".

In regard to constitutional changes of a major but domestic nature,

[1] Vol. XVII, 242-245, 246-251. [2] Vol. X, 11.

there is the final step in the passing of the Parliament Act[1] at Westminster by which the position of the House of Lords as a constituent part of the British Parliament is still further weakened.

In New Zealand an abortive attempt in 1949 was made to abolish the Upper House which was, however, not successful although achieved in 1950, an account of which will be given in our next issue.

To come now to matters of intra-mural concern, this Volume contains Articles on: the Procedure at a Commission for giving the Royal Assent to Bills; the Trial of Peers, a privilege which has now been abolished; the Judicial Business of the House of Lords; British practice in connection with the relationship of Nationalised Industries to Parliament; an experiment in Devolution in the treatment of Scottish Affairs in the House of Commons, a significant reference to what might have become a matter of Privilege but was dealt with by the Courts in the United Kingdom in Braddock (M.P.) *v.* Tillotson; the Guillotine and adoption of the procedure known at Westminster as "Business Committees"; on Precedents and unusual Points of Procedure in the Union House of Assembly; an Index of Rulings by the Speaker and Deputy-Speaker at Westminster during the 1947-48 Session (that for both the 1948-49 and 1949-50 Sessions will be dealt with in our next Issue); Expressions in Parliament allowed and disallowed during 1949; Reviews and selected publications of 1949 for the Clerk's Library.

An innovation has been created by including a narrative-cum-constitutional contribution on the hon. Editor's visit in 1949 to the Isles of Erin and Man.

Under the usual "Applications of Privilege 1949" there is an instance at Westminster of Mr. Speaker declaring certain matter to be a *prima facie* case as well as other cases not so declared. An instance is also given of a case of Libel on Mr. Speaker which has occurred in the State Parliament of Tasmania.

This Volume also contains reference to the Report of a Royal Commission appointed by the Commonwealth Government in respect of allegations made against a Minister of State in regard to certain timber rights in Papua-New Guinea, who was entirely exonerated.

An account of the Tribunal of Inquiry into the allegations reflecting on the Official Conduct of Ministers and other Public Servants (The "Lynskey" Report) is not sufficiently advanced for inclusion in this Volume.

In far away and beautiful Seychelles an interesting instance has occurred during the year of the relation of the Colonial Judiciary to the Executive. The Parliament of Canada, when abolishing appeals to the Privy Council, was careful to re-enshrine in the law, that Commonwealth-wide principle, the independence of the Judiciary

[1] 12, 13 & 14 Geo. VI, c. 103.

from the Executive Government by the usual provision requiring the authority of a Resolution of both Houses of Parliament before a Judge can be removed from his post.

The practice has been instituted in this Volume of listing in the Table of Contents the subjects of all Editorial paragraphs, therefore there will be no reference to them in the Introduction.

Acknowledgments to Contributors.—We have pleasure in acknowledging Articles in this Volume from: Mr. Victor Goodman, O.B.E., M.C., the Reading Clerk and Clerk of Outdoor Committees of the House of Lords; Mr. R. W. Perceval of the Printed Paper Office, House of Lords; Mr. R. P. Cave of the Judicial Office of the House of Lords; Mr. E. A. Fellowes, C.B., M.C., Clerk-Assistant of the House of Commons; Mr. K. A. Bradshaw, an Assistant Clerk to the House of Commons; Mr. A. A. Tregear, B.Com., A.I.C.A., Clerk-Assistant of the Australian Commonwealth House of Representatives; and Mr. Ralph Kilpin, J.P., the recently retired Clerk of the Union House of Assembly.

We are also indebted for Editorial paragraphs to: Mr. R. P. Cave of the Judicial Office of the House of Lords; Sir Frederic Metcalfe, K.C.B., Clerk of the House of Commons; Mr. E. A. Fellows, C.B., M.C., Clerk-Assistant of the House of Commons; Lt.-Col. P. F. Thorne, Assistant Serjeant-at-Arms, House of Commons; Mr. E. K. de Beck, Clerk of the Legislative Assembly of British Columbia, Canada; Mr. Geo. Stephen, Clerk of the Legislative Assembly, Saskatchewan, Canada; Mr. Henry H. Cummings and Mr. W. H. Hayward, Clerk and Clerk-Assistant of the House of Assembly of the new tenth Province of Canada; Mr. John E. Edwards, J.P., Clerk of the Senate of Australia; Mr. A. A. Tregear, B.Com., A.I.C.A., Clerk-Assistant of the Australian House of Representatives; Mr. H. Robbins, M.C., Clerk of the Parliament, New South Wales; Mr. T. Dickson, J.P., Clerk of the Legislative Assembly, Queensland; Captain F. L. Parker, F.R.G.S.A., Clerk of the House of Assembly and Clerk of the Parliaments, South Australia; Mr. R. S. Sarah, Clerk of the Legislative Council and Mr. F. E. Wanke, Clerk of the Parliaments and of the Legislative Assembly, Victoria, Australia; Mr. C. I. Clark and Mr. C. K. Murphy, Clerks of the Legislative Council and House of Assembly, Tasmania, respectively; Mr. F. E. Islip, Clerk of the Legislative Assembly of Western Australia; Mr. D. R. M. Thompson, Clerk of the Council, Northern Territory, Australia; Mr. J. F. Knoll, J.P., Clerk of the Union Senate, Mr. Ralph Kilpin, J.P., Clerk of the Union House of Assembly; Mr. T. P. Coetzee, Clerk of the Legislative Assembly of South-West Africa; Colonel G. E. Wells, Clerk of the Legislative Assembly, Southern Rhodesia; Mr. M. N. Kaul, M.A., Secretary of the India Parliament; Mr. M. B. Ahmad, M.A., LL.M., Secretary of the Constituent Assembly, Pakistan; Mr. S. A. E. Hussain, B.A., B.L., Secretary of the East Bengal Legislative Assembly, Pakistan;

the Colonial Secretary of the Falkland Islands; Mr. D. W. B. Baron, M.A., Clerk of the Legislative Assembly of the East Africa High Commission; the acting Clerk of the Legislative Council, Kenya; Mr. L. J. Lincoln, B.A., Clerk of the Legislative Council of Mauritius; Mr. Griffith-Jones, Clerk of the Legislative Council, Tanganyika; Mr. Winston Fung, Clerk of the Legislative Council, Trinidad & Tobago; the Chief Secretary of the Zanzibar Protectorate and H. M. Crown Agents for the Colonies.

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 XVIII.—There are still a number of Articles on *Questionnaire* subjects awaiting publication, but the subjects of: M.P.s & Pecuniary Interest; the office of Clerk of the House; Election & Resignation of Speaker; Press Correspondents; the method of legislating for the regulation of Public Professions; Ministers & Company Directorships; and a Report on the "Lynskey" Tribunal will be included in our next issue.

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

Created a Baron.—Sir Gilbert Campion, G.C.B., formerly Clerk of the House of Commons and now the Secretary-General of the Consultative Assembly of the Council of Europe.

K.C.B.—Sir Robert L. Overbury, the Clerk of the Parliaments at Westminster.

S. F. Chubb, J.P.—The Commonwealth House of Representatives and the Society have suffered a loss by the death on December 7, 1949, of Mr. S. F. Chubb, who occupied the post of Second Clerk-Assistant of the House of Representatives, Canberra, since 1937. He was connected with the Australian Parliament for over 30 years and served with the Public Accounts Committee and the Public Works Committee before joining the staff of the House of Representatives. In his earlier days in Melbourne, Mr. Chubb figured prominently in national and Olympic rowing circles. His fatal illness occurred when he was holidaying and he died in Sydney. His remains

were brought to Canberra and laid to rest in the local Cemetery, where many people paid tribute to his memory. We mourn his passing and extend our sympathy to his widow.[1]

On behalf of all members we wish to express our deepest sympathy with Mr. Chubb's widow and the members of his family upon the passing of a distinguished Officer of Parliament, whose devoted services thereto were both long and highly valued. Mr. Chubb was one of the Society's most ardent members and a contributor to its JOURNAL. His splendid record of public service appeared in Volume XV,[2] and enumerates the many important posts he occupied even before he joined the Parliamentary service in 1915.

H. B. Jamieson.—It was only 2 years ago that Mr. Jamieson succeeded to the office of Clerk of the Legislative Council of the State of Victoria, upon the retirement of Mr. P. T. Pook in 1947. Now, we have regretfully to mourn his death at a comparatively early age. After holding various offices in the Public Service of his State,[3] he joined the Parliamentary staff in 1926 as Clerk of the Records of the Legislative Council, becoming its Clerk-Assistant and Clerk of Committees 5 years later. Mr. R. S. Sarah, his successor, informs us that during Mr. Jamieson's period of service he became so highly esteemed and so well liked by the whole Parliamentary Staff that his untimely death was a most severe shock to them all.

Mr. Jamieson was also a Foundation member of our Society of which he was a most ardent supporter and collaborator.

On October 4,[4] immediately after the President (Sir Clifdon Eager) had taken the Chair, the Minister of Public Works (Hon. J. A. Kennedy) said that with great regret he had to announce the sudden death, that morning, of Mr. H. B. Jamieson, the Clerk of the House, and moved, by leave:

> That this House places on record its deep sense of the loss it has sustained through the death of its Clerk, Hugh Blair Jamieson, and its high appreciation of the valuable services rendered by him as an officer of Parliament.

The Minister said that, as honourable members knew, Mr. Jamieson suffered a serious illness some years ago, but after a period of leave his health had returned to normal. Therefore, his collapse that morning had come

[1] Contributed by the Clerk-Assistant of the House of Representatives.—[ED.] [2] P. 306. [3] *See also* JOURNAL, Vols. III, 140; VI, 253; XVI, 308. [4] 1949 *Parl. Hans.* 2409-2413.

as a great shock to honourable members as well as to the Staff of their House.

Those members who had been associated with Mr. Jamieson during the 2 years he occupied the Clerk's chair, appreciated his real efficiency, his knowledge of parliamentary procedure, his zeal for his work and his willingness to co-operate with all members in every way.

The Minister observed that he had been Leader of the Government in the Legislative Council for most of the period of Mr. Jamieson's service as Clerk and expressed his own sincere admiration of the great assistance Mr. Jamieson had been to him and said he had learned to value his great ability.

Mr. Jamieson was born at Abbotsford in 1899, was educated at the Melbourne High School and the University of Melbourne. He had studied law and arts, but the First World War interfered with the completion of his university career. He served with the 14th Battalion of the Australian Imperial Force in France and Flanders in that War. Mr. Jamieson had had 23 years service in Parliament House and rendered notable service to their House. All members felt that the Council had lost a valuable officer who occupied a warm place in their hearts: in fact, he could not speak too highly of Mr. Jamieson, for he had left a record of service which it would be difficult to better.

In submitting the Motion, the Minister wished to convey on behalf of all members of the House their deepest sympathy with Mr. Jamieson's widow and son in their great sorrow.

The Hon. W. T. Beckett (Melbourne Province) in seconding the Motion, recalled that at the time of Mr. Jamieson's appointment the question of his health caused much concern and as the months went by they sincerely trusted that he would regain the strength necessary to combat his physical weakness. It may be some satisfaction to his relatives to know that he died in harness after a period of meritorious service that may well be an object lesson to those who follow him.

Even to those who were acquainted with the knowledge which Mr. Jamieson's predecessors had of Parliamentary procedure, it came as a surprise to discover that all the necessary information had been gathered by study in preparation for the high office he was called upon to take in their House.

The Hon. P. P. Inchbold (North-Eastern Province) and a former Chairman of Committee also alluded to the

ideals and standards of conduct Mr. Jamieson set for himself and desired for their Council.

The Hon. P. L. Coleman (Melbourne West Province), on behalf of the Labour Members of the Council, warmly supported the Motion moved by the Minister. Like other members, they mourned Mr. Jamieson's passing very much indeed. He was consistently courteous and always willing to help with most valuable advice. It was a great calamity that he should have been cut off practically at the height of his career; his place would be hard to fill.

The Hon. R. C. Rankin (Western Province) and Chairman of Committees felt that the House had lost one of the most kindly officers they had ever had. Although Mr. Jamieson knew that the happening of to-day was hanging over his head, he carried on with a courage that must be admired in any man.

Sir Frank Clarke (Monash Province) remarked that during his long period in the office of President Mr. Jamieson had never failed him.

The President wished, before putting the Motion, to add his tribute to the others which had been paid to the memory of their departed friend. He had always found Mr. Jamieson a tower of strength in matters of constitutional law and Parliamentary procedure. He had known their late Clerk for many years and recollected saying when Mr. Jamieson had been appointed, "What a splendid appointment that was", and he was a worthy successor to a long line of able Clerks.

That very morning Mr. President had actually gone to see Mr. Jamieson in his office directly he heard of his illness only to find that he had already passed away. Mr. President concluded by saying that he would see that the speeches of honourable members on the Motion were printed in a suitable form and conveyed to the relatives.

The Motion was then put and agreed to, all members standing in their places.

The Minister of Public Works then moved:

> That the House, out of respect to the memory of the late Hugh Blair Jamieson, do now adjourn until half past seven o'clock that day.

Question put and agreed to.

The Editor of this JOURNAL, on behalf of all the members of this Society, both far and near, begs the privilege of being allowed to associate himself with the sympathies expressed by members of the Victoria Legislative Council to Mr. Jamieson's widow and son, and mourns the passing

of a distinguished Officer of Parliament, whose life's record was one of loyal devotion to his State and her Parliament.

R. S. Stuart Yates.—There passed away suddenly on January 2, 1949, at Victoria, B.C., Robert Stanley Stuart Yates, native son of Victoria, a prominent local Solicitor and the Clerk of the Legislative Assembly of British Columbia. He was called to the Bar in 1919 following his return from Overseas and was associated with his father, J. Stuart Yates, until the latter's retirement from active legal practice in 1941. Mr. "Bob" Yates, as he was familiarly known, had a personality which endeared him to all who enjoyed his friendship. In 1945 he was appointed Clerk of the Legislative Assembly of the Province of British Columbia, after serving as Law Clerk since 1937. In all his duties he was most painstaking and conscientious and will be sorely missed by his many friends and clients. The esteem in which he was held was evidenced at the funeral service held at St. Mary's Church, Oak Bay, Victoria, B.C., when the little church was filled with many friends and representatives of the legal profession. Following the service the remains were taken to Royal Oak Burial Park for cremation and interment.

The deceased is survived by his widow, Alice Anne Yates, and 3 daughters; also by his father and 2 brothers.

We are indebted to Mr. E. K. de Beck, successor to the late Mr. R. S. Stuart Yates, for the above obituary notice. Mr. Yates was a member of this Society for a number of years, and his earnest co-operation and helpful assistance was warmly appreciated. On behalf of all members, we wish to express our deepest sympathy with his widow, his daughters and the other members of his family.

C. E. A. Bedwell.—Although Mr. Bedwell was not a member of our Society, he was, as hon. Secretary of the Society of Comparative Legislation, in close association with us. After being in correspondence with him for many years, it was only last year, on a visit to England, that we had the pleasure of actual personal contact, when many subjects of mutual interest were discussed. The Editor of the Society of Comparative Legislation surveys all legislation of the countries comprising our Commonwealth and Empire, our own Society dealing only with parliamentary procedure and other subjects more intimately connected with Parliament, its members, privileges, etc., and perhaps goes into greater detail in these respects, in regard to any new or amended Constitution.

We should like, however, to be allowed the privilege of paying high tribute to Mr. Bedwell for the tact, grace and helpfulness we have always received so liberally at his hands.

Mr. Bedwell was also a very outstanding example of public service. As Lord Macmillan, the distinguished President of the Society of Comparative Legislation wrote in *The Times* of April 28, Mr. Bedwell's first connection with the law was when he joined the Staff of the Library of the Middle Temple in 1898, of which Library he was Keeper from 1909 to 1921, where he rendered meritorious service and became an acknowledged authority on the literature of the Law.

In 1917 Mr. Bedwell had already become associated with the Society of Comparative Legislation as Assistant Editor of its Journal and, as Lord Macmillan further says in his tribute, subsequently as hon. Secretary. He remained, until his lamented death in his 72nd year, the mainspring of that Society.

When, in 1897, Sir Courtney Ilbert (then Assistant Parliamentary Counsel to the Treasury and afterwards a distinguished Clerk of the House of Commons (1902-21)), along with Sir Mackenzie Chalmers (then Law Member of the Viceroy's Counsel in India in succession to Sir Courtney Ilbert), founded the Society of Comparative Legislation, he was not a little doubtful of the prospects of the enterprise. Thanks, however, in a large measure to Mr. Bedwell, continued Lord Macmillan, it achieved an assured success and now occupies "an eminent position among the select company of our legal institutions".

In 1922 Mr. Bedwell left the Library to take up the duties of House Governor at King's College Hospital until his retirement therefrom in 1939 and the Inn recognised his services by bestowing upon him the unusual distinction of honorary membership.

Among the many offices Mr. Bedwell held were:

Chairman of Library Committee, Member of Executive Committee and Council of the Royal Empire Society;
Vice-President and Member of the Council, Medico Legal Society;
Member of the Library of the Institute of Advanced Legal Studies;
Fellow of the Library Association and Examiner;
Chairman of the Camberwell Hospitals Management Committee;
Chairman of Metropolitan Federation and Member of Council and Executive Committee of the Queen's Institute of District Nursing;
Member of the Council of King's Hospital Medical School;

Member of the Executive and Council of the Camberwell Housing Society.
Past Master of the Sir Thomas White Lodge and Member of the Royal Colonial Institute Lodge of Freemasons;
Original Member of the Royal Institute of International Affairs;
Member of the English-Speaking Union;
Past President and Member of the Rotary Club of Camberwell;
Lay Reader of the Diocese of Southwark;
Chairman of the Camberwell Employment Committee;
Member of the Executive Committee Hospital Savings Association; and
Member of St. Faith's Parochial Church Council.

Mr. Bedwell was also author of a number of books, editor of several journals and a contributor to periodicals and the Dictionary of National Biography.

The Bishop of Kingston, in his address at the Memorial Service at King's College Hospital Chapel, Denmark Hill, grouped Mr. Bedwell's wide range of activities under 3 typically English institutions—the Law, Hospitals and the Church—and pointed out that he was no mere passenger in the last, as he had always played an active part in the life of his Parish and Diocese.

We, as members of the Society of Clerks-at-the-Table in Empire Parliaments, would like to express our deep regrets at the passing of a great friend and collaborator and to record our heartfelt sympathies with his widow, sons and his daughter in their great bereavement.

Sir H. J. F. Badeley, K.C.B., C.B.E.[1]—On May 30, 1949, the Lord Chancellor read to the House of Lords a letter from Sir Henry Badeley intimating his desire to resign from the Office of Clerk of the Parliaments, a position it had been his privilege to hold for the past 15 years, and saying that it was with very great regret that after many years, 19 of which had been spent at the Table, the time had come for him to resign his Office.

Sir Henry asked the Lord Chancellor to express to their Lordships his deep appreciation of the kindness and consideration which he had invariably received from all quarters of the House.

The Lord Chancellor moved that this letter be considered on the following day.

On May 31, the Lord Privy Seal (Viscount Addison) moved:

That this House have received with sincere concern the news of the retirement of Sir Henry John Fanshawe Badeley, K.C.B., C.B.E. from the office of Clerk of the Parliaments, and they think it right to record the just sense which they entertain of the zeal, ability, diligence and integrity with which the said Sir Henry John Fanshawe Badeley, K.C.B., C.B.E. has executed the important duties of his office during the period of fifteen years.

[1] Contributed by Mr. R. P. Cave on behalf of the Clerk of the Parliaments.—[ED.]

Viscount Addison said that Sir Henry had been in the service of the House for 52 years, which was probably unprecedented. For 19 years he had been at the Table of the House, and for 15 of them as Clerk of the Parliaments, before which for several years he was head of the judicial department. In paying tribute to his long and valuable record of service to the House, Viscount Addison mentioned specifically the smooth arrangements which were carried through when the sittings of the House had to be moved to another building during the war, and he as Leader of the House acknowledged the wise and helpful guidance which he himself had received from Sir Henry.

The Leader of the Opposition, the Marquess of Salisbury, said that the natural sorrow of their Lordships in losing an Officer of the House was deepened because in this instance they were losing an old and tried friend. It was almost impossible to imagine the Chamber without Sir Henry, whose shrewd, kindly face seemed as much a part of the House of Lords as the Table at which he sat. To all members of the House, irrespective of party, he had been a guide, philosopher and friend, and all their Lordships had had the benefit of his wisdom and experience. The House would miss his kindness and courtesy; they would miss his wise guidance; they would miss the tang of his personality. Sir Henry would leave to all who had the privilege of knowing him the memory of a great public servant, and they all wished him well in the future.

Viscount Samuel from the Liberal benches paid tribute to one who had held with such distinction the 700 year old office of Clerk of the Parliaments. The holder of that office was *ex officio* the guardian of the accumulated traditions of all those centuries, and it was right that in a place of authority there should be a faithful trustee and a staunch defender of those traditions.

The Chairman of Committees (The Earl of Drogheda) spoke of Sir Henry's colleagues in the House; being himself so intimately concerned with the work of the House he could realise what an extraordinarily happy relationship existed among all members of the staff of the House of whatever grade, and this was in no small degree due to the personality of the Clerk of the Parliaments. He would say to Jack Badeley: "When you have to your credit a score of seventy-five, very much not out, and when you retire still full of runs, having earned the admiration and affection of everyone who has taken part in the match, then, indeed, you have played an innings of which you have every right to be very, very proud."

Viscount Simon, a former Lord Chancellor, spoke of another side of Sir Henry's work, that in connection with the judicial function of the House of Lords. Sir Henry had been a complete master of the rules of procedure which had to be applied in the highest Court of Appeal, and always ready to suggest the best way of handling the

very technical difficulties which from time to time confronted those of their Lordships who were qualified to hear Appeals.

The Lord Bishop of Norwich (Dr. Percy Herbert) for the Spiritual Peers, Lord Teviot for the National Liberal Peers, Lord Hawke and Lord O'Hagan added their tributes to Sir Henry.

The Lord Chancellor, Viscount Jowitt, summing up, said that Sir Henry Badeley had had the task of " breaking in " a series of Lord Chancellors, and any man who had had that task and could still smile was a remarkable man. Sir Henry had never got rattled or angry and was always cheery; that was the secret of his charm. It had been really touching to realise that all sections of the House were united in love and regard for a very great public servant.

The motion was carried, *nemine dissentiente*.

The Lord Privy Seal (Viscount Addison) moved, That the Lord Chancellor do communicate the said Resolution to Sir Henry Badeley.

The motion was agreed to and ordered accordingly.

The Lord Privy Seal (Viscount Addison) moved:

That an humble Address be presented to His Majesty laying before His Majesty a copy of the letter of the said Sir Henry John Fanshawe Badeley, K.C.B., C.B.E., and likewise of the Resolution of this House, and recommending the said Sir Henry John Fanshawe Badeley, K.C.B., C.B.E., to His Majesty's Royal Grace and Bounty.

The motion was agreed to *nemine dissentiente*: the said Address to be presented to His Majesty by the Lords with White Staves.

In the Birthday Honours List, 1949, a Peerage was conferred on Sir Henry Badeley, who took the title of Baron Badeley of Badly, in the County of Suffolk. This is the first case of a retiring Clerk of the Parliaments being raised to the Peerage. Lord Badeley's Patent and Writ of Summons was dated the 21st June, 1949, and he was introduced into the House of Lords the following day, being preceded into the House by the Gentleman Usher of the Black Rod (Lieutenant-General Sir Brian Horrocks), the Earl Marshal (The Duke of Norfolk) and Garter King of Arms (Sir Algar Howard). His sponsors were Lord Stanmore (formerly Lord Chairman of Committees) and Lord Schuster (formerly Clerk of the Crown).

Dr. Arthur Beauchesne, C.M.G., K.C., M.A., LL.D., Litt.D., F.R.S.C.—We regret to have to announce the retirement on superannuation of Dr. Arthur Beauchesne, the distinguished Clerk of the House of Commons of Canada and the author of the Canadian *May—Beauchesne's Parliamentary Rules and Forms*.

Dr. Beauchesne's record of service has already appeared in the JOURNAL,[1] and shows that he was the son of a Quebec M.L.A., who was later a member of the House of Commons and that, after studying law at Laval, he became Private Secretary to Sir Adolphe Chap-

[1] Vol. VI, 251.

leau. He was then admitted as a barrister at the Quebec Bar and took silk in due course. For some years as founder and Editor of the Montreal *L'Opinion* he was a journalist, but retired in 1913 to become Legal Advisor to the Department of Justice, which he left in 1916 to enter the service of Parliament as Clerk-Assistant of the House of Commons.

Dr. Beauchesne was the author of several pamphlets on constitutional matters and held many important appointments in learned societies.

It was in 1925 that he became the Clerk of the House of Commons a position he held with great distinction until his retirement in 1949.

Dr. Beauchesne's name was included in the New Years Honours List of 1934, when the C.M.G. was conferred upon him.

The following is an extract from the *Hansard* of the House of Commons[1] of September 15, 1949, reporting the proceedings in that House upon the announcement of Dr Beauchesne's retirement:

Right Hon. L. S. St. Laurent (Prime Minister): Mr. Speaker, on the 20th of September, 1917, Sir Robert Borden, then Prime Minister, rose and from his place made the following statement:

An intimation has been already conveyed to the House that the Clerk of the House purposes retiring from the duties of his office, which he has discharged for some fifteen years. Previous to his acceptance of the office which he now holds, Dr. Flint had a distinguished career in Parliament and in the public life of the country, and since he undertook the responsibilities of the important office of Clerk of the House, all of the members who have come in contact with him have appreciated the ability, zeal, and industry which he has uniformly displayed in the discharge of his duties.

I desire to express my own personal recognition of his uniform courtesy and his unfailing attention to all matters which I have had to bring to his notice in the ten years which I served as Leader of the Opposition, and in the six years which I have had imposed upon me the responsibilities of First Minister.

I feel perfectly confident that my right hon. Friend, the Leader of the Opposition, will join with me in proposing a Resolution which I am sure will meet with universal acceptance by all members of this House. It is my privilege to move, seconded by Sir Wilfred Laurier:

That in view of the long and faithful services of Doctor Thomas B. Flint, Clerk of the House of Commons, he be continued after his retirement an honorary officer of this House, and that he be allowed the entree of the House of Commons and a seat at the Table on occasions of ceremony.

I think it is fortunate that, as the years go by, we can find occasion to repeat such gesture to men who have faithfully and long served the House of Commons at the Table. Hon. members have noted that, after many years of efficient, courteous and devoted

[1] 9 *Com. Hans.* No. 1, p. 11.

service to members of this House, Dr. Arthur Beauchesne has reached the age of retirement, and has retired.

I have had the opportunity of discussing with the Leader of the Opposition, and the Leaders of the other groups, the precedent established in this House over thirty years ago. It is my privilege to move at this time, seconded by the Leader of the Opposition:

That in view of the long and faithful services of Dr. Arthur Beauchesne, the recently retired Clerk of the House of Commons, he be appointed an honorary officer of the House, and that he be allowed the entree of the House of Commons and a seat at the Table on occasions of ceremony.

Mr. George A. Drew (Leader of the Opposition): In seconding this Motion, Mr. Speaker, I feel sure that all hon. members will be happy to have the privilege of giving this evidence of their appreciation of the great contribution Dr. Beauchesne has made to the clarification of procedure in the House of Commons. To settle most arguments on procedure it is necessary only to mention a reference in *Beauchesne*. In a great many ways we have adopted the practices of Westminster, but here in this House of Commons we have also developed practices of our own; and to a very considerable extent those practices have taken form and have been clarified and interpreted under the guidance of this great student, who will long be remembered as the man whose views were regarded as so decisive in most cases in which they were cited. Along with that of Dr. Bourinot, I feel that the name of Dr. Beauchesne will be remembered as among those who have done much to design the general practice and procedure that has grown up in this House.

While we are paying this extremely well-deserved tribute to Dr. Beauchesne, may I add that I am sure it will be a very real source of satisfaction to the new Clerk of the House, who sits in his place, to know that from time to time he will have the benefit of the guidance and experience of Dr. Beauchesne, which I am sure will be of value to him in that way as it has been to this House for so many years.

Motion agreed to.

Dr. Beauchesne was the guest of honour at a reception given by officials and employees of the House of Commons staff in the Parliament Buildings in the Railway Committee Room on October 15, 1949.

Speaker Ross Macdonald, K.C., on behalf of the Staff, presented Dr. Beauchesne with a handsome cabinet model radio as a token of their esteem for the veteran House of Commons official. Speaker Macdonald lauded Dr. Beauchesne as a renowed authority on House of Commons rules and procedure and wished him many years of health and happiness in his retirement.

Dr. Beauchesne was reported to be in specially good form as he voiced his appreciation of the presentation made to him.

In addition to Speaker Macdonald, others present for the reception and presentation were Leon J. Raymond, O.B.E., Dr. Beauchesne's successor as Commons Clerk; E. Russell Hopkins, new Clerk-

Assistant, and Lt.-Col. W. J. Franklin, Serjeant-at-Arms of the Commons.

The Deputy Ministers of the various Government Departments also held a luncheon on the 21st of January, 1950, in the Rideau Club, in honour of Dr. Beauchesne. Expressions of regret at his leaving the Service were given by Dr. W. C. Clark, C.M.G., Deputy Minister of Finance.

"We" first met Dr. Beauchesne on a visit to Canada in 1926, during a tour by the United Kingdom delegates on an Empire Parliamentary Association visit to Australia. On a similar delegation to Canada in 1928 it was "our" pleasure to travel with him in the Railroad car for over 2 months, and between 1930 and 1935 we met on several occasions in London. Thus a close friendship grew up, kept fresh by continuous correspondence over all the 24 years.

It was Dr. Beauchesne who, with the writer, founded our Society, joined later by Mr. Walter Gale, C.M.G., M.A., who then held the appointment in the Commonwealth House of Representatives at Canberra corresponding to that of Dr. Beauchesne at Ottawa. From then onwards, the Society went from strength to strength, always with Dr. Beauchesne both a keen and ardent contributor and collaborator.

His career is truly a distinguished and remarkable one and reveals a great life of helpfulness. It has been really a miracle for anyone to accomplish so much in a lifetime. Now he lays down the pen and rests upon the laurels won by his own idomitable energy and perseverance.

The members of our Society wish Dr. Beauchesne long life, good health, and happiness in his retirement, although we can scarcely imagine his being satisfied to lead a life of ease and we hope that Canada will take full opportunity to avail herself of his services.

We regret to say Mrs. Beauchesne, whom we had the pleasure of meeting at their home in Ottawa, passed away several years ago, but there are the charming daughters and the grand-children to beguile some of our dear Friend's leisure hours.

C. C. D. Ferris, O.B.E.—On February 23, 1950, Mr. Ferris retired from the Clerkship of the Legislative Assembly of Southern Rhodesia after almost life-long service to the State, 11 years of which was as the Clerk of the House. His previous record has appeared in the JOURNAL.[1]

In moving the following Motion in the Legislative Assembly on November 2, 1949:

> That in view of his pending retirement the House desires to place on record its sincere appreciation of the distinguished services which Mr. Claude Charles Douglas Ferris, the Clerk of the House, has rendered during his 39 years of public service, of which 26 years have been spent at the Table.

the Prime Minister (Rt. Hon. Sir Godfrey Huggins, K.C.M.G.)

[1] *See* JOURNAL, Vols. I, 132; VI, 252; XIII, 10.

said that it was not necessary to say very much in support of the Motion, which he felt certain would be well received by the Whole House. Mr. Ferris had been a great friend of all hon. members ever since there had first been a Parliament of Southern Rhodesia. He was Clerk-Assistant of the first Parliament and had seen the country grow up over these 26 years. Having worked with Mr. Ferris all that time, said the Prime Minister, he had always found him willing to put himself out to any extent to assist him or any other member.

The Leader of the Opposition, the hon. member for Victoria (Mr. R. D. Stockil) in seconding the Motion said that, on behalf of his colleagues on that side of the House, he wished wholeheartedly to support the Motion. But the highest tribute was to hear what the old members of the House had to say about Mr. Ferris, for they had the highest esteem for that gentleman. Those members who were comparatively new to the House had also found Mr. Ferris a sympathetic adviser and they felt, as the House felt, that a very high standard had been set by Mr. Ferris for tradition, efficiency and courtesy.

The hon. member for Bulawayo District (Mr. W. H. Eastwood) was sure that if the hon. member for Raylton (Mr. J. W. Keller), the Leader of the Labour Party, had been present he would heartily have associated himself with the remarks of the two members who had already spoken. The junior members would always remember Mr. Ferris for his kindness, his readiness to give them help and advice in order to acquaint them with the elements of Parliamentary procedure. For his unfailing courtsey and consideration, they all owed him a deep debt of gratitude. The hon. member was sure that the House would wish Mr. Ferris long life to enjoy his retirement, with the hope that they would often see him in Parliament taking a busman's holiday.

Question put and agreed to.

Mr. Speaker (Hon. Sir Allan R. Welsh) then said that he had been asked by Mr. Ferris to convey to hon. members his sincere and grateful thanks for the resolution in appreciation of his services which the House had been pleased to pass and he would like to take the opportunity of associating himself with the remarks which had fallen from the Prime Minister and other hon. members, as well as expressing his own personal appreciation and thanks to Mr. Ferris for the way in which he had helped him throughout a period of nearly 15 years of his Speakership. Mr. Ferris's assistance, courtesy, knowledge and experience were of the highest and had been of the greatest service to him, not only as Speaker but when he had entered the House 22 years ago as a junior member.[1]

At the Commonwealth Parliamentary Association dinner in Salisbury on October 24, 1949, tributes were paid to Mr. Ferris for his ability, knowledge, kindliness and tact. He was then presented

[1] 30 *Leg. Assem. Hans.*, No. 59, 3352.

with a silver tray, a gold watch and a cheque by the Southern Rhodesia Branch of the Association. Mr. Speaker, who presided, outlined Mr. Ferris's career in Parliament from the time the Colony had been given responsible government and said that he had received many letters from affiliated members of the Association who were unable to be present at the dinner, praising Mr. Ferris's ability and tact. Mr. Speaker, on behalf of the Association, also thanked Mr. Ferris for his work as its hon. Secretary-Treasurer.

The Prime Minister, in paying tribute to the work done by Mr. Ferris, said that they had first met as members of the A. Squadron Southern Rhodesia Volunteers in 1911. Mr. Ferris had always been a tower of strength to the House.

Other members who associated themselves with the remarks of the Speaker and the Prime Minister were the Leaders of the Opposition and the Labour Party. The Associated Members, through Mr. J. B. Lister and Captain E. P. Vernall, also warmly supported the tribute paid their retiring Secretary-Treasurer.

Mr. Ferris, replying, thanked his Colleagues at the Table for the assistance they had given him and the members of all Parties for their courtesy and consideration.

The writer would like to add a tribute, a very sincere tribute, to his colleague as a Foundation member of the Society. His ready response to all enquiries throughout his membership had been really superb. Nothing was ever too much trouble to him, even when rushed with the work of the Session. His thorough co-operation was something to be deeply appreciated: in fact, the slogan "reliable and accurate" was one which had always been connected with Mr. Ferris and his work.

His distinguished record in the Public Service, as well as his service with the First Rhodesia Regiment in the S. African Rebellion 1914-15 and in France 1916-18 as Captain in the R.F.A., have already been recorded in the JOURNAL.

The entire arrangements in connection with the Opening of Parliament at Salisbury by H.M. the King, of which Mr. Ferris gave such a helpful and graphic account in the JOURNAL,[1] were in his hands and the preparation of all the detailed and other arrangements on that occasion were entirely due to his powers of organisation. Mr. Ferris was never one to thrust himself forward, but always content "to do his stuff" without any limelight; in that he was an example to many of the rising generation. The Article above-mentioned will stand as a very thorough guide to any other single-Chambered Legislature making preparations for a similar ceremony. Those Clerks responsible for the arrangements, even at an ordinary Opening of Parliament, well know how much work is involved and how brief the actual ceremony. To go like clock-work, every detail must be worked out to a time-table.

[1] Vol. XV, 119.

On behalf of the members of our Society, both far and near, may the writer be allowed to wish Mr. Ferris long life and a happy retirement.

J. F. Knoll, J.P.—Mr. Knoll retires from the office of Clerk of the Senate of the Union of South Africa at the end of 1950, and on June 21[1] Motion (unopposed) was made and Question proposed:

That Mr. President be requested to convey to Mr. Jacob Friedrich Knoll, on his retirement from the office of Clerk of the Senate, the assurance of the sincere appreciation of this House of the distinguished services he has rendered as an officer of Parliament during upwards of thirty-four years of devoted service in different offices, of which sixteen years have been spent at the Table.

The Prime Minister (Dr. the Hon. D. F. Malan) said that in moving this unopposed Motion he was sure he would have the support of both sides of the House. Mr. Knoll had served Parliament for 34 years, first at the Table in Another Place and after that for a number of years in the Senate. When expressing his heartfelt thanks to Mr. Knoll for his services, Dr. Malan said that he spoke not only on behalf of this House but on behalf of Another Place, which Mr. Knoll had served so long and faithfully. He had proved a tower of strength to the Chair and reliance could always be placed on the advice and assistance which he had so willingly given. It was therefore their earnest wish that thanks should be expressed to Mr. Knoll in this way, together with the hope that when he left the service of this House he would have fortune and prosperity in his further career.

The Leader of the Opposition (Senator the Hon. A. M. Conroy) associated himself heartily with the words of the Prime Minister. They thanked Mr. Knoll sincerely for the services he had rendered to this House and to the State in general over a long period of years. They, in the Senate, in particular, wanted to express their gratitude to him for his loyal services during that time. His helpfulness, his friendly nature and his approachability were available at all times. It was self-evident that the position occupied by Mr. Knoll required a thorough acquaintance with the complicated Rules of the House, which, of course, demanded close study and years of experience. He was leaving this service with an achievement which was unequalled and they wished him many years of health and happiness, not only for himself but also for his wife and family.

The Leader of the Labour Party (Senator the Hon. J. Duthie) also asked to be allowed to associate himself with what had been said by the Prime Minister and Senator Conroy. The hon. Senator observed that he could not speak with the background of the two previous speakers, but he could say that the members of his Party had always received the utmost courtesy and assistance from the Clerk ever since they had been there. He had never been able to find out to what political party Mr. Knoll belonged, but he thought that it

[1] 1949 *Sen. Hans.* 5999; *see also* JOURNAL, Vols. III, 140; IX, 178; XIV, 281.

would be a great pity if the accumulated experience of the Clerk should be lost to the Senate.

Senator Dr. the Hon. E. H. Brookes, on behalf of the Native Representative Senators, joined in the chorus of goodwill and appreciation of Mr. Knoll's services to Parliament during all these years. It was a great thing to have people who represented, not a particular Party, but Parliament as a whole; who were part of the continuing life of Parliament and helped to make it a great and permanent institution. Mr. Knoll had had some difficult and some successful pupils under him. In this particular he was their headmaster for the real continuity of the school and its spirit.

Senator the Hon. J. J. van Rensburg then added a tribute from his own Party, and gave Mr. Knoll the assurance that they would miss him and bade him a regretful farewell.

The Question was then Resolved *nemine dissentiente*, in the Affirmative, all Senators standing.

Mr. President said that it was not in accordance with established Parliamentary practice for the Clerk to thank the House personally, but Mr. Knoll had asked him, on his behalf, to express his sincere gratitude to honourable Senators for the Resolution just passed.

In addition to the above, a day or two before the close of the Session, members had arranged a special function in Mr. Knoll's honour, at which they again expressed their appreciation and recognition of his services to Parliament. A suitable presentation was then made.

On behalf of the members of our Society we should also like to add our tribute to Mr. Knoll for the services rendered by him to the Society, both as a member and a contributor to our JOURNAL, and to express our regrets at his retirement and wish him long life and happiness.

J. M. Parker.[1]—On April 30, 1949, Mr. John M. Parker retired (on superannuation) from the office of Clerk of the Legislative Assembly of the Province of Saskatchewan, Canada, thus terminating a 32-year long association with that body as private member, Speaker, and latterly as Clerk.

A farmer in the Kelliher district of Saskatchewan, Mr. Parker was first elected to the Provincial Legislature in 1917, and served continuously for 21 years as M.L.A. for the constituency of Touchwood. From 1934 to 1938 he was Speaker of the Assembly. Late in 1938, after his defeat in a general election at the hands of the present Speaker of the Assembly (Hon. Tom Johnston), Mr. Parker was appointed Clerk in succession to the late G. A. Mantle.[2]

An April 1, prior to prorogation of the 1949 Assembly, Mr. Parker was presented with a purse of money at a dinner in his honour held in the Legislative restaurant, presided over by Mr. Speaker Johnston. In commenting on Mr. Parker's imminent retirement, Mr.

[1] *See also* JOURNAL, Vol. VIII, 235.

[2] *Ib.* Vol. XI-XII, 8.

Speaker remarked that of him it could truly be said "Well done, thou good and faithful servant". The presentation of the purse was made on behalf of the members by Mr. Peter Howe, Government Whip, who paid tribute to Mr. Parker's sterling qualities of heart and mind, his continual helpfulness, particularly to new members, who looked constantly to him for guidance and good counsel. Mr. E. M. Culliton, K.C., Opposition Whip, speaking for the younger members of the Assembly, said that no one could have been "more fatherly, more kindly and more helpful".

Since retirement Mr. Parker has returned to his native Province of Ontario and to his "first love", farming, with the good wishes of his former colleagues in the Assembly and of all members of the Provincial Civil Service, amongst whom he enjoyed a unique position and a high degree of esteem and popularity.

Mr. Parker became a member of our Society in 1939. His services as a member were outstanding and his opinion highly valued. It is rarely that a Speaker becomes Clerk of the House but, with his long and previous experience also as an M.L.A., it can be realised what Mr. Parker's services must have meant to the Legislature of Saskatchewan. We should like on behalf of the members of our Society also to express our regrets at Mr. Parker's retirement and we wish him long life and happiness.

Speaker's Casting Vote at Westminster.—We are indebted to Mr. H. Robbins, M.C., Clerk of the Legislative Assembly of the State Parliament of Victoria for drawing our attention to an error in Volume II (p. 70) of the JOURNAL, where, under "1861 Church Rates Abolition Bill", the words in italics "*Second Reading*" should read "*Third Reading*".

U.N.O.—Universal Declaration of Human Rights.[1]

The following is the text of the Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948:

Preamble.—WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

WHEREAS it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

WHEREAS it is essential to promote the development of friendly relations between nations,

[1] U.N.O. Official Records, Session III. of the General Assembly, Doc. A/810.

WHEREAS the people of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

WHEREAS Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

WHEREAS a common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge—

NOW THEREFORE

THE GENERAL ASSEMBLY

proclaims

THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.—All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.—Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as the race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other imitation of sovereignty.

Article 3.—Everyone has the right to life, liberty and security of person.

Article 4.—No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.—No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.—Everyone has the right to recognition everywhere as a person before the law.

Article 7.—All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.—Everyone has the right to an effective remedy by the

competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.—No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.—Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.—(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.—No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.—(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.—(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.—(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.—(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.—(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18.—Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with

others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.—Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.—(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21.—(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.—Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.—(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration insuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.—Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.—(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.—(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.—(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author.

Article 28.—Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.

Article 29.—(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.—Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

United Kingdom (Parliament Bill 1949).—A detailed account of the proceedings on this Bill in both Houses during the 1947-48 and 1948 Sessions was given in the previous issue of the JOURNAL,[1] therefore it is not proposed to give more than a JOURNAL record of the proceedings in the Commons and Lords during the 1948-49 Session, as the debates were very much on the same lines as before.

The King's Speech at the Opening of the fifth Session of the XXXVIII Parliament on October 26, 1948,[2] contained the following words:

You will be asked to consider further the Bill to amend the Parlia-

[1] *See* Vol. XVII, 136-180.

[2] 457 *Com. Hans.* 5. s. 7.

ment Act 1911, on which during the last two Sessions your Houses have disagreed.

The Bill was introduced for the Third Time in the Commons on July 28, 1949.[1]

The debate on 2 *R.* took place on October 31,[2] the Question being carried by 333 votes to 196.

On November 14,[3] the same procedure Motion to omit any discussion at the *C.W.H.* stage was passed as in the previous Session[4] and carried by 289 votes to 116. The Committee stage was taken forthwith[5] and the Bill reported without amendment, the voting being 286 to 117.

The 3 *R.* stage was immediately taken[6] and on the Question that "now" stand part of the Question *vide* the amendment moved to defer the 3 *R.* stage to "this day 6 months", the voting for the retention of the word "now" was 340 to 187.

On November 15,[7] the Bill was brought from the Commons to the Lords endorsed with the certificate from the Speaker that the Bill, as compared with the Parliament Bill 1948, contained only such alterations as were necessary owing to the time which had elapsed since the date of that Bill. The Bill then passed 1 *R.* and was ordered to be printed.

The 2 *R.* stage was taken on November 29,[8] when, on the Question being put, the House divided: Contents, 37; Not contents, 110.

Therefore, the Bill having now been rejected by the Lords for the Third Time and the Speaker of the House of Commons having certified that the provisions of S. 2 of the Parliament Act 1911[9] had been duly complied with, it received the Royal Assent under a separate Commission immediately after the usual one at the close of the Session, it being duly announced in the Lords on December 16,[10] that the Parliament Bill had received the Royal assent pursuant to S. 2 of the Parliament Act 1911.

In his speech to both Houses of Parliament closing the Fifth Session of the XXXVIII Parliament His Majesty said:

I have given my consent to a measure to amend the Parliament Act 1911, which reduces the period during which the House of Lords may delay legislative proposals in cases of disagreement between the two Chambers. I regret that it was not possible to secure agreement between both Houses on the provisions of this measure.

The Parliament Bill 1949 therefore duly became 12, 13 & 14 Geo. VI. c. 103.[11]

[1] 467 *Ib.* 2682. [2] 469 *Ib.* 45-167. [3] *Ib.* 1695-1736.
[4] *See* JOURNAL, Vol. XVII, 169. [5] 469 *Com. Hans.* 5, s. 1737-8.
[6] *Ib.* 1741-1817. [7] 165 *Lords Hans.* 5, s. 706. [8] *Ib.* 1011-1040.
[9] 1 & 2 Geo. V, c. 13. [10] 165 *Lords Hans.* 5, s. 1668. [11] The Commons part of this Editorial paragaph was contributed by the Clerk of the House of Commons.—[ED.]

United Kingdom (Ministerial Statements).[1]—On February 2, 1948,[2] in the House of Commons the Prime Minister was asked whether he would give assurance of a diminution of the practice of Ministers of the Crown holding news conferences and making public announcements through the Press and other quarters and more opportunity afforded for such announcements to be made in the House of Commons in accordance with customary Parliamentary practice.

Mr. Attlee replied that both methods of public announcements were appropriate according to circumstances and to the nature of the statement and that the Government must reserve a reasonable measure of discretion as to which method was employed. The House might be assured, however, that the Government had every wish and intention to recognise to the full their constitutional responsibilities to the House of Commons and on all appropriate occasions statements would be made in the House.

United Kingdom (Ministers of the Crown and Stock Exchange Transactions).[3]—On December 11, 1947,[4] in the House of Commons Q. was asked the Prime Minister as to what regulations governed the buying and selling of shares by Ministers of the Crown on the Stock Exchange.

The Prime Minister in reply said that it had never been thought necessary to make a formal regulation on the subject, but the position was clearly stated in 1913 as follows:

> There are certain principles . . . which are beyond dispute. . . . The first, of course, and the most obvious, is that Ministers ought not to enter into any transaction whereby their private pecuniary interests might even conceivably come into conflict with their public duty. . . . Again, no Minister is justified under any circumstances in using official information . . . for his own private profit or for that of his friends.[5]

United Kingdom (Ministers of the Crown: Remuneration and Free Facilities, etc.).[6]—*Salaries.*—On May 2,[7] an hon. member in the House of Commons asked the Prime Minister if, in view of his appeal on February 4, 1948, for the restriction of dividends, profits and wages, the Government would set an example to the country by reducing the salaries of Ministers and of highly paid officials appointed by the Government in nationalised industries and other posts? Mr. Attlee replied: "No, Sir."

Air Travel.—In reply to a Q. on October 28, 1947,[8] regarding the cost of chartering airplanes for H.M. Ministers during the past 6 months, with special figures for August, the Chancellor of the Exchequer said that the total was £54,000, including for August £41,000, of which £40,000 was in respect of visits to Australia and the Far East.

[1] *See also* JOURNAL, Vols. XI-XII, 28; XIV, 34. [2] 446 *Com. Hans.* 5, s. 1465.
[3] *See also* JOURNAL, Vol. VIII, 25. [4] 445 *Com. Hans.* 5, s. 1187.
[5] 54 *Com. Hans.* 5, s. 556. [6] *See also* JOURNAL, Vols. V, 18; VI, 12; XIII, 13; XV, 21. [7] 464 *Com. Hans.* 5, s. 64. [8] 443 *Com. Hans.* 5, s. 696.

In reply to a Q. on October 29, 1947,[1] the Financial Secretary to the Treasury said that aircraft had been used by H.M. Ministers for transport to and from Cabinet meetings on 18 occasions since the date mentioned (August 13), the mileage flown was 4,387 miles, the petrol consumed 876 gallons and the cost to the taxpayer £998.

In reply to a Q. on November 4, 1947,[2] as to the cost of chartering special aircraft to bring Ministers back from their holidays to attend Cabinet meetings on August 25, this was £803 for 693 gals.

In reply to a Q. on November 20, 1947,[3] the Chancellor of the Exchequer said that £54,000, the cost of chartering airplanes for Ministers during the past 6 months, would be charged to the vote of the Minister concerned.

In reply to a Q. on November 25, 1947,[4] the Chancellor of the Exchequer said that Ministers of Cabinet rank could use their discretion in particular cases when chartering aircraft. Treasury permission was required in the case of officials and Service aircraft could be used by Ministers or officials of the Service Departments at the discretion of the Air Ministry.

On February 2, 1948,[5] the Prime Minister was asked for what reason a special aircraft was being ordered for his use and that of the Cabinet; what was the estimated capital and annual operating costs; and why could such Ministers not travel by B.O.A.C. or B.E.A.C.?

The Prime Minister replied that 2 Tudors III had been ordered for the use of the Cabinet and for V.I.P.s delegations, trade missions, etc., the revised estimate of the capital cost was £155,000 each and the annual cost would depend on their use. For reasons of security and speed in the despatch of business as well as the convenience of ordering passages on commercial aircraft, it was impossible to rely only on corporation or chartered aircraft.

On February 19, 1948,[6] Q. was asked as to what sum was paid in 1946-47 for air travel by Ministers and Government servants, distinguishing the amounts paid to air-line corporations, showing scheduled services and chartered flights separately and to the charter companies.

The Financial Secretary to the Treasury said that, excluding some journeys in aircraft of R.A.F. Transport Command details of which were not readily available, the sums were £9,521 and £249,233, respectively, made up as follows:

	Ministers.	*Government Servants.*
Air-line Corporations	£	£
—scheduled flights	796	205,997
—chartered flights	8,022	42,584
Other chartered flights	703	652

Residences.—In reply to a Q. on November 4, 1947,[7] as to the

[1] *Ib.* 87. [2] *Ib.* 176. [3] 444 *Ib.* 222. [4] *Ib.* 273.
[5] 446 *Ib.* 1470. [6] 447 *Ib.* 249. [7] 443 *Ib.* 1529.

emoluments each Minister and Junior Minister receives in the shape of free lodging, motor-car service, etc., in addition to his ministerial salary and the cost of these extra items to the taxpayer, the Chancellor of the Exchequer said that 5 Ministers were provided with rent-free residential accommodation. The following Ministers also had, in accordance with practice of long standing, rent-free residential accommodation, consisting of a flat or suite of rooms in a building—namely, the Prime Minister, the Chancellor of the Exchequer, the Foreign Secretary, the Lord Chancellor (as Speaker of the House of Lords) and the First Lord of the Admiralty, the cost of which was £1,100 in respect of rates and £5,000 for maintenance, heating, lighting and garage. With the exception of the Foreign Secretary's flat, the cost was £1,000, the other lodgings being in Crown buildings.

The cost of The Chequers, the Prime Minister's residence, was £1,850 p.a. No other Minsters received any further emoluments in addition to their salaries except as to the use of cars (*which see below*).

In reply to a Q. on December 2, 1947,[1] the Minister said that no assessment for increase in income—or surtax—was charged on these residences.

Cars.—In reply to a Q. on November 4, 1947,[2] the Chancellor of the Exchequer said that official cars were supplied Ministers to enable them to discharge their duties. Since 1939, official cars and drivers had been available to Senior Ministers. The annual cost was about £1,000 per head. Junior Ministers, however, could draw on the car pool, the cost of which was 1s. 4d. a mile.

On December 11, 1947,[3] Q. was asked whether, in view of the withdrawal of the basic petrol ration, the Financial Secretary to the Treasury would give instructions that official cars run by Ministers and other servants of the Crown should only be used for official duties and would he take strong disciplinary action for any breach of that rule. Mr. Glenvil Hall replied that Ministers of Cabinet rank might, on payment, use official cars for non-official journeys when such contributed to the efficient discharge of public duties. Other official cars could not be used for private purposes. Since such withdrawal, attention had been drawn to the strict observance of these rules.

On April 8, 1948,[4] Q. was asked as to whether the permitted use of official cars for unofficial journeys, upon payment, by Ministers of Cabinet rank was conditional upon a licence being obtained under the Motor Fuel (Car Hire) Order S.I. 1948 No. 386, if a car was to be used more than 20 miles from its base.

The Financial Secretary to the Treasury replied: "No, Sir, the use of official cars by Ministers of Cabinet rank is within the permitted purposes set out in para. 2 of the Order.

[1] 445 *Ib.* 198. [2] 443 *Ib.* 1531. [3] 445 *Ib.* 226, 368. [4] 449 *Ib.* 357.

On November 8, 1949,[1] the Minister in reply to a Q. in the House of Commons, said that six 1949 model Humber Pullman Saloons had been supplied for the use of Ministers since January 1. The average petrol consumption was 14 m. to the gallon. Their list price, including Purchase Tax, was £13,029, but this was not the price paid by the Ministry of Supply.

Filling of Posts by—On November 6, 1947,[2] the Prime Minister was asked whether he would establish an Appointments Committee to examine any recommendations made by any Minister as to the filling of posts at a Minister's discretion, to which the reply of the Leader of the House was in the negative.

United Kingdom (Ministerial Broadcasts).[3]—On February 11, 1948,[4] the Prime Minister was asked how many Ministerial broadcasts, in addition to Party political broadcasts, had been made by members of the Government during the last 12 months. The Prime Minister replied that in the year ended January 31, 1948, the number of broadcasts to the nation made by Ministers on subjects for which they had Departmental responsibility was 20.

A Supplementary was then asked:

> In view of that quite substantial number, can the rt. hon. Gentleman say who has the difficult responsibility of judging whether both the subject-matter and the manner of these broadcasts are so impartial as to entitle them to rank as Ministerial and not Party broadcasts?

United Kingdom (Consolidation of Enactments (Procedure) Bill).—On April 12,[5] the Lord Chancellor (Viscount Jowitt) presented a Bill in the House of Lords:

> to facilitate the preparation of Bills for the purpose of consolidating the enactments relating to any subject

which passed 1 *R.* and was ordered to be printed.

In moving 2 *R.* on April 13,[6] the Lord Chancellor (Viscount Jowitt) said that the Bill dealt with a highly technical subject and was in no sense controversial. The Bill had been discussed by him with representatives of all Parties and other authorities from whom criticism had been invited and largely recast to meet those criticisms, in fact, he had undertaken not to introduce the Bill unless it was agreed to by all Parties.

The state of the Statute Book at the present time was chaotic and there were many Statutes in the Book which were no longer necessary. Therefore, the first thing to do was to set up a separate Branch of the Parliamentary Draftsman's office to deal solely with consolidation under the control of Sir Granville Ram, who had been head of that office, when he retired. A Statute Law Revision Bill

[1] 469 *Ib.* 114.
[2] 443 *Ib.* 2,000.
[3] *See also* JOURNAL, Vols. VI, 30; IX, 23; XI-XII, 28; XIII, 21; XV, 38; for other countries *see* Index hereto.—[ED.]
[4] 447 *Com. Hans.* 5, s. 360.
[5] 161 *Lords Hans.* 5, s. 1073.
[6] *Ib.* 1262.

covering the period up to 1800 had aleady been passed, and he hoped this year to introduce another Bill for the period 1800-1948 and so have a complete revised edition of the Statutes.

Continuing, Lord Jowitt said that Consolidation with skilled draftsmen presented the great advantage of taking very little Parliamentary time. A Joint Committee of both Houses was set up consisting of highly skilled people[1] with a draftsman going before it. If he was able to satisfy the Committee that he had merely reproduced the existing law—and that was fundamental—the Committee passed the Bill if there were doubts on the existing law, he had to reproduce those doubts and call the attention of the Committee to them.

Sometimes it was almost impossible to consolidate without making some changes—minor changes—without opening the door to all sorts of other amendments.

If a draftsman preparing a Consolidation Bill came across ambiguities, macaronicisms or anomalies which, though of no practical importance, would obstruct the re-statement of the law in clear modern form, he would prepare draft amendments of the existing enactments into the law, but these must be confined to "corrections and minor improvements" as defined in Clause 2 of the Bill.[2] The amendments would then be laid before Parliament in the form of proposals contained in a Memorandum by the Lord Chancellor which would also contain explanatory notes.

The Consolidation Bill and the Lord Chancellor's Memorandum would then be referred to the Joint Committee which deals with Consolidation Bills. It might well be that Parliament may desire to add other members to the Joint Committee.

The Joint Committee would then go through the proposals contained in the Memorandum, with the draftsman before them as a witness and consider any representations made to them with respect to proposals either by members of Parliament or by anyone else. The Committee would no doubt call as a witness any member of either House who asked to appear before them.

The noble Viscount did not wish it to be thought that there was any possibility of amendments of the law being proposed without people having a full opportunity to give their views about them.

After the Committee had considered the Memorandum they would then inform the Lord Chancellor and the Speaker of the House of Commons which of the amendments they were prepared to approve and would ask the Lord Chancellor and the Speaker to concur in this approval. The Committee, however, would not approve any amendments, nor would the Lord Chancellor or the Speaker concur, unless all of them were satisfied that the amendments were not of

[1] Of the 12 members of this Joint Committee 8 are lawyers.—[ED.]
[2] *Ib.* 1264.

such importance that they ought to be separately enacted by Parliament.[1]

After obtaining the concurrence of the Lord Chancellor and the Speaker the Joint Committee would examine the Consolidation Bill and make any amendments therein necessary to give effect to the alterations made by the Committee in the Lord Chancellor's proposals. If they were satisfied that the Bill, or the Bill as amended by them, re-enacted the existing law with such corrections and minor amendments only as had been approved by the Committee with the concurrence of the Lord Chancellor and of the Speaker, they would report accordingly.

Once the Committee had reported in this way, the amendments would, for the purpose of further proceedings in Parliament be deemed to have become law, so that from that stage onwards Parliament could treat the Bill as not doing more than consolidate the existing law. If the Bill was not proceeded with, the amendments proposed by the Lord Chancellor would be of no further effect.

The advantage of this procedure was that when the Bill had been reported by the Joint Committee, no amendments would be in order at any stage on the Floor of the House and the Bill would thus have all the advantages of an ordinary consolidation measure. If either House disagreed with the amendments which the Committee had approved, they could oppose the Bill at any of its remaining stages and the final decision would therefore always rest with Parliament as a whole.[2]

The Bill then passed 2 *R.*, was in *C.W.H.* and reported without amendment on April 27,[3] and after a short debate on April 28[4] passed 3 *R.*, was sent to the Commons and returned by them agreed to on May 16.[5] After announcement of *R.A.* in both Houses, the Bill duly became 12 & 13 Geo. VI. c. 33.

United Kingdom (Tribunal of Inquiry into Allegations reflecting on the Official Conduct of Ministers of the Crown & other Public Servants: The "Lynskey" Report).[6]—It is regretted that in view of the preparation of other matters relating to the year 1949 which has had to be included in this Volume, there has not been time to complete the Article on this Report, but it is hoped to deal with it in our next Volume.

United Kingdom (Private Bill Model Clauses).—In July, 1949, the report of a Committee appointed in February 1948 was published[7] under the authority of the Chairman of Committees of the House of Lords and the Chairman of Ways and Means in the Commons.

In the preface to the Report it is remarked that Standard Clauses for Private Bills had not been revised since 1937 and the Model Bill

[1] *Ib.* 1265. [2] *Ib.* 1266. [3] 162 *Ib.* 116. [4] *Ib.* 150. [5] *Ib.* 720.
[6] *Cmd.* 7616. [7] *H.M.S.O.* 5, s. 53 pp.

not since 1922 and therefore that the Committee found this task more formidable than was expected.

The Committee have revised Standard Clauses in Parts A (Lands); B (Streets and Buildings); C (Sewers and Drains) and D (Infectious Diseases and Sanitary Provisions). Table I shows how the Standard Clauses for the various Parts have been reproduced in Model Clauses, or reasons given for their omission. Table II shows the origin of those not based on Standard Clauses and the Clauses are arranged under their various Part Headings. This publication is of special interest to Parliamentary Agents, and Government and Parliamentary Draftsmen.

House of Lords (Introduction of Clerk of the Parliaments).[1]—On May 31, 1949, the new Clerk of the Parliaments stood outside the Bar of the House at the lower end of the House on the Temporal side, and the Clerk of the Crown (Sir Albert Napier), in wig and gown, took his seat at the Table of the House.

The Lord Chancellor rose and said:

I have to acquaint the House that His Majesty has been pleased to appoint, by Letters Patent dated the thirty-first day of this instant May, Robert Leslie Overbury, Esquire, Companion of the Most Honourable Order of the Bath, to the Office of Clerk of the Parliaments vacant by the retirement of Sir Henry John Fanshawe Badeley, K.C.B., C.B.E., the late Clerk of the Parliaments.

Mr. Overbury advanced up the Temporal side of the House to the Table, stood on the right of the Reading Clerk and handed him his Patent. The Reading Clerk read the Patent and returned to his seat. The Clerk of the Crown (Sir Albert Napier) rose and said: "Robert Leslie Overbury. Be pleased to make the Declaration which is required" and at the same time handed to Mr. Overbury the form of Declaration. Then Mr. Overbury made the Declaration in the following words:

I, Robert Leslie Overbury, do declare that I will be true, faithful, and trowth I will bear to our Sovereign Lord the King, and to His Heirs and Successors. I will nothing know that shall be prejudicial to His Highness, His Crown, Estate, and Dignity Royal, but that I will resist it to my power, and with all speed I will advertise His Grace thereof, or at the least some of His Counsel in such wise as the same may come to his knowledge. I will also well and truly serve His Highness in the office of Clerk of His Parliaments, making true entries and Records of the things done and passed in the same. I will keep secret also such matters as shall be treated in His said Parliaments, and not disclose the same before they shall be published but to such as it ought to be disclosed unto, and generally I will well and truly do and execute all things belonging to me to be done, appertaining to the Office of Clerk of the Parliaments.

At the conclusion of the Declaration Mr. Overbury advanced to the Lord Chancellor, shook hands and returned to his seat. The Clerk of the Crown (Sir Albert Napier) left the House immediately after the Declaration had been made.

[1] Contributed by R. P. Cave on behalf of the Clerk of the Parliaments.—[ED.]

Introduction of Clerk-Assistant.—Then the Lord Chancellor acquainted the House of the appointment of the Clerk-Assistant and the Reading Clerk in the following way:

My Lords, I have to acquaint the House that by virtue of the power granted to me as Lord Chancellor by the Statute 5 George the Fourth, Chapter 82, Section 3, I have appointed Francis William Lascelles, Esquire, Companion of the Most Honourable Order of the Bath, upon whom has been conferred the Decoration of the Military Cross, to be your Lordships' Clerk-Assistant in the place of Robert Leslie Overbury, Esquire, Companion of the Most Honourable Order of the Bath, who has been appointed Clerk of the Parliaments, &c., &c.

"I beg to move,

That this House do approve the appointment of Francis William Lascelles, Esquire, Companion of the Most Honourable Order of the Bath, upon whom has been conferred the Decoration of the Military Cross, to be their Lordships' Clerk-Assistant in the room of Robert Leslie Overbury, Esquire, Companion of the Most Honourable Order of the Bath, who has been appointed Clerk of the Parliaments.

The Motion was agreed to, *nemine dissentiente*.

Introduction of Reading Clerk.—The Lord Chancellor then said:

My Lords, I have to acquaint your Lordships' House that by virtue of the power granted to me as Lord Chancellor by the Statute 5, George the Fourth, Chapter 82, Section 3, I have appointed Victor Martin Reeves Goodman, Esquire, Officer of the Most Excellent Order of the British Empire, upon whom has been conferred the Decoration of the Military Cross, to be Your Lordships' Reading Clerk and Clerk of Outdoor Committees in the place of Francis William Lascelles, Esquire, Companion of the Most Honourable Order of the Bath, upon whom has been conferred the Decoration of the Military Cross, who has been appointed Clerk-Assistant, &c., &c.

"I beg to move,

That this House do approve the appointment of Victor Martin Reeves Goodman, Esquire, Officer of the Most Excellent Order of the British Empire, upon whom has been conferred the Decoration of the Military Cross, to be their Lordships' Reading Clerk and Clerk of Outdoor Committees in the place of Francis William Lascelles, Esquire, Companion of the Most Honourable Order of the Bath, upon whom has been conferred the Decoration of the Military Cross, who has been appointed Clerk-Assistant.

The motion was agreed to, *nemine dissentiente*.

In the New Year Honours List, 1950, the honour of Knight Commander of the Bath was conferred upon Mr. Overbury.

House of Commons (Short Session).—The Fourth Session (of the XXXVIIIth Parliament), which was summoned to meet in order to give further consideration to the Bill[1] to amend the Parliament Act 1911 on which there was disagreement between the two Houses in the Third Session, was a short and one-Bill Session, opening on September 14 and closing on October 25, 1948.

On its second day,[2] the following Resolutions were passed:

[1] *See* JOURNAL, Vol. XVII, 136.

[2] 456 *Com. Hans.* 5, s. 73, 74.

That Government Business shall have precedence at every Sitting and that no Bills other than Government Bills shall be introduced.

and

That Standing Orders No. 15 (Appointment of Committees) and 16 (Business of Supply) be suspended for the duration of this Session.

As in the previous Sessions since the destruction of the Commons Chamber by enemy bomb on May 19, 1941, special arrangements were made as to the places of sitting of the Commons on the Opening and closing of the Session. This was effected by a Message from His Majesty brought up and read by Mr. Speaker (all the members of the House being uncovered) as follows:

It is His Majesty's pleasure that on Monday the 25th day of October next or on such other day as may be notified to both Houses of Parliament as convenient for closing this Session, the House of Commons shall meet in St. Stephen's Hall. And it is His Majesty's further pleasure that, on the day to which Parliament shall thereafter stand prorogued, the House of Commons shall again meet in St. Stephen's Hall; and that as soon as conveniently may be after His Majesty has delivered his speech to both Houses of Parliament, the Chamber at present assigned to the House of Commons as their place of sitting shall be again made ready for their occupation.[1]

GEORGE R.

The Message was set down for consideration on the morrow, when it was

Resolved:

That on Monday 25th October, or such other day as may be notified as convenient for closing this Session, this House do meet in St. Stephen's Hall at twelve o'clock and that no questions be taken.[2]

and Ordered:

That on any day to which Parliament stands prorogued this House shall meet at eleven of the clock in St. Stephen's Hall; and after the House has returned from attending His Majesty or His Majesty's Commissioners in the House of Peers, Mr. Speaker shall resume the Chair at four of the clock and forthwith adjourn the House, without putting any question, to the chamber at present appointed for the use of this House.

That this be a Standing Order of the House.

House of Commons (Absence of Deputy Chairman).—On November 26, 1947,[3] the Prime Minister in moving:

That, during the absence of the Deputy Chairman, owing to temporary indisposition, the hon. member for Newton (Sir R. Young) shall be entitled to exercise all the powers vested in the Deputy Chairman, including his powers as Deputy Speaker,

said that he had it in command from His Majesty to acquaint the House that His Majesty, having been informed of the subject-matter of this Motion, gave his consent thereto.

[1] *Ib.* 893. [2] *Ib.* 1095. [3] 444 *Com. Hans.* 5, s. 1993.

Ordinarily, continued Mr. Attlee, notice would have been given of this Motion, but the circumstances were exceptional and he trusted that the absence would only be temporary. Also, Mr. Speaker was on an official visit to Paris.

Question was put and agreed to.

House of Commons (Appointment of Deputy Chairman of Ways and Means).[1]—In the appointment of a member to this office on the Motion of the Prime Minister on October 28, 1948,[2] the hon. member for Warwick and Leamington (Rt. Hon. A. Eden) observed that it was well known to members of the House who had long experience in these matters, that the choice of an hon. member to be Chairman or Deputy Chairman of Ways and Means was one which is always made by the Government of the day without consultation and without previous notice to the House. The practice used to be that the resignation and the appointment took effect on the same day.

The hon. member reminded the Prime Minister of the precedent created in 1943 by allowing for a delay of one day before the new appointment was made, and Mr. Eden wished now to suggest that these appointments, although technically entirely the Government's responsibility, did affect the House of Commons as a whole. It was for consideration in the future whether it might not be well for that interval to be a little prolonged and for there to be some form of consultation with the House as there was in the appointment of Mr. Speaker, although that could not, of course, affect the final responsibility of the Government in any decision which was taken.

Mr. Attlee in reply said that they had been following precedent in the matter. There had been an interval, but he was certainly ready to give full consideration to the rt. hon. Gentleman's suggestion.

House of Commons (Conduct of the Chairman of Ways & Means).—On April 13,[3] the hon. member for Oxford (Mr. Quinton Hogg) moved:

> That, in the opinion of this House, the conduct of the Chairman of Ways and Means on 5th April, 1949, in refusing to order the hon. member for Norwich to withdraw a charge or accusation, publicly confirmed by the hon. member, that an humble member of the Opposition had been guilty of a lying accusation, was wanting in the impartiality required for the discharge of his office.

It is not proposed to go into the arguments for or against the Motion, but to record the form of the Motion.

In the course of his speech the mover observed that so far as he could ascertain it had been the well established practice for many years, that substantive Motions of this kind could be put down by Private Members who had questions of principle which they sought to apply.

After considerable debate on the Question the mover informed

[1] *See also* JOURNAL, Vols. IV, 12; XIV, 31. [2] 457 *Com. Hans.* 5, s. 242.
[3] 463 *Com. Hans.* 5, s. 2859-80.

the House that having made his Motion he was quite free and quite willing to see it negatived.

House of Commons (Offices & Places of Profit under the Crown).[1]—J. J. Hynd, J. J. Robertson and A. Evans, Esquires, M.P.s.—This is the usual type of Act passed to protect certain M.P.s who might have rendered themselves liable to disqualification for membership of the House of Commons by reason of having inadvertently accepted an office which might be deemed technically to be an office of profit under the Crown.

In the cases of Mr. Hynd and Mr. Robertson, as explained by the Attorney-General (Rt. Hon. Sir Hartley Shawcross) when moving, on July 12,[2] 2 *R.* of the Bill, they were nominated to and sat as members of the General Medical Council by the King on the advice of the Privy Council under S. 3 of the Medical Act of 1858.[3] There was no doubt that they were appointed to an office of profit under the Crown, which office they held in complete good faith on the basis of many precedents of times gone by. Indeed, Mr. Hynd had never acted in the office at all, because, immediately after his appointment thereto and before he had taken any part in the proceedings of the Council, it had occurred to him that there might be some impropriety in holding the office. The Government did not think it right to alter the law in a piecemeal way by providing that this particular office should be excluded from what had hitherto been the law.

Under the Act of 1858, His Majesty, on the advice of his Privy Council, nominated 5 members of this Medical Council, who hold office for 5 years and are entitled to fees of £5 5s. for each attendance. These were not paid out of State funds or out of moneys provided by Parliament, but out of moneys collected by the medical profession from registration fees. But it was not considered as a criterion whether or not an office was an office of profit under or from the Crown where the actual emoluments of it were derived from sources other than public funds.[4]

The case of Mr. Evans came under the House of Commons (Disqualifications) Act 1782,[5] which disqualified an M.P. from holding any contract with the Public Service. It did not, in the ordinary way, apply to M.P.s who were shareholders in or directors of a public company, unless possibly they were remunerated in an unusual way out of the actual profits of the particular contract. Moreover, it did not apply to casual or isolated transactions over the counter, so to speak, transactions which were small in amount. By the *de minimis non curat lex*, said the Minister, a number of cases had not been brought within the strict provisions of the Act. In Mr. Evans' case, however, there were 11 transactions altogether extended over a period of 21 months of a total value of about £100.

[1] *See also* JOURNAL, Vols. X, 29, 98; XI-XII, 16, 18, 19, 26; XIII, 22, 23; XIV, 34; XVI, 257; XVII, 11, 289. [2] 467 *Com. Hans.* 5, s. 285-301.
[3] 21 & 22 Vict., c. 90. [4] 467 *Com. Hans.* 5, s. 286-288. [5] 22 Geo. III, c. 45.

What happened was that the Home Office placed an order with a firm, in which the hon. member was partner, for a small quantity of labels. The first order had been placed with the firm before Mr. Evans had been elected to this House. The other orders were, in the main, for small amounts.

Had these transactions been subject to a written contract the position would have been clear because written contracts with Government Departments in this connection contain a clause dealing with this particular point. It was not known by the Home Office that an M.P. was a partner and the hon. member did not realise that although the Statute did not apply to a one-man company it did apply to a many-man partnership.

The law relating to offices of profit generally is obscure and confused, but its amendment re-statement or codification was by no means an easy matter. It would probably have to be the subject of study by a commission, legal committee or body of that kind. It would not be easy to find a better formula which would hit at really substantial cases where M.P.s ought to be disqualified, while not affecting quite trivial infringements which ought not, in existing circumstances, to affect a member's seat.[1]

The Attorney-General continuing, observed that unhappily the precise limits of the laws governing the subject were obscure. In the main they were embodied in Ss. 24 and 25 of the Succession to the Crown Act 1707.[2] There was no precise definition of what was meant by an office of profit. The case where a large salary was payable to the holder of an office was clear enough, but not so one which was at least a subsistence allowance. On the whole the Government had taken the view that where there was any payment or expectation of payment going in amount beyond the sum which might be regarded not as a mathematically accurate but as a fair reimbursement of pre-assessment of the expenses actually incurred through holding the particular office; the payment or expectation of that sum would constitute the office one of profit.[3]

Then there was the question, also difficult, in relation to new offices, whether they were held "under the Crown" within the meaning of S. 24 of the 1707 Act, or whether, in relation to the old offices, they were held "from the Crown". There was room for argument as to whether there was any legal difference in the meaning of these 2 different phrases. There they had taken the view that to be held "under the Crown" an office did not necessarily have to be subject to any continuing control in its exercise by the Crown. The words in such section, they thought, referred comprehensively to any new office connected with the Public Service or the appointment to which was in the hands of some authority under the Crown. If—which was not certain—the meaning of the words "from the

[1] 467 *Com. Hans.* 5, s. 288-290.
[2] 6 Anne, c. 7 (41 Rev. Stat.).
[3] 467 *Com. Hans.* 5, s. 285, 6.

Crown" in S. 25 was a different one—apart from the fact that the section referred to old offices—the difference might be that they implied an office which had been within the immediate grant of the Crown.[1]

An hon. member who took part in the debate remarked that there were some 150 Statutes which were capable of being invoked to disqualify an M.P. Members were disqualified if they got any new office of profit under the Crown, which had been constituted since 1707 and held under the Crown.[2]

The Bill then passed 2 *R.*, was committed, reported without amendment, passed 3 *R.*, agreed to by the Lords and became 12 & 13 Geo. VI. c. 46.

House of Commons (Petition at Bar).[3]—On February 16, 1948,[4] the Serjeant-at-Arms came to the Table and announced: "The Sheriffs of the City of London."

The Serjeant-at-Arms, taking the Mace from the Table, withdrew, and (with the Mace upon his shoulder) brought the Sheriffs of the City of London, accompanied by the City Remembrancer, to the Bar of the House.

Mr. Speaker then said: "Mr. Sheriff what have you there?" The Senior Sheriff: "A Petition from the Mayor, Aldermen and Commoners of the City of London in Common Council assembled, praying that the Representation of the People Bill be assembled so as to leave undisturbed the separate representation of the City of London in your Honourable House.

The Senior Sheriff then handed the Petition to the Second Clerk-Assistant, who brought it to the Table.

An hon. member: "I beg to request that the salient parts of the Petition be read to the House."

The Clerk of the House then read the Petition.

(*then follow the terms of the Petition*)

which was laid on the Table.

House of Commons (Balloting for Private Members' Bills).—The practice is for this ballot to take place in a Committee Room upstairs, with the Chairman of Ways and Means in the Chair, and the Clerk-Assistant to draw folded slips, with numbers on them, out of a box. Then, unfolding them and calling out the number, the Chairman of Ways and Means reads out the name of the lucky member to whom the number belongs, from the numbered list of those who had put their names down for the ballot, the Clerk-Assistant announces beforehand how many Fridays will be available, so that he can allow so many Bills on Friday, with a small margin over for contingencies. Out of the several hundred members who put down their names, perhaps only 20-30 will be chosen. To secure precedence, a member must hand in at the Table, during the

[1] *Ib.* 285, 6. [2] *Ib.* 295. [3] *See also* JOURNAL, Vols. I, 30; V, 89; XI-XII, 218. [4] 447 *Com. Hans.* 5, s. 801.

sitting of the House on that day, the long and short title of his Bill.

Next day, the fortunate members parade with their dummy Bills, coming in behind Mr. Speaker's Chair, after Prayers and, passing him on his right side, hand their Bills in at the Table, in the same order of precedence as that obtained in the ballot and select a day for Second Reading accordingly, members having to be ready with both the long and short title of Bills.

The notices are then given in *Hansard* after the respective members' names.[1]

House of Commons (½ hour Adjournment Debate).[2]—On March 2, 1948,[3] in a statement made by Mr. Speaker on the raising of questions on the Motion for the adjournment of the House (a member, having passed on to another member the last half-hour) Mr. Speaker said that there was no hereditary right and if, in future, an hon. member could not take his Adjournment, he should inform the Chair, and nobody else, when Mr. Speaker would have his name crossed out at the back of the Speaker's Chair and whoever noticed it could go to Mr. Speaker's office and register for that half-hour. It was fairer to let it go back into the general pool.

An hon. member would also want to give notice to the Minister concerned in order that he might receive a reply. Otherwise, said Mr. Speaker, the Chair was bound to call any member who got up. When a member was holding the fort for another member who was late, there was no handing on the Adjournment to another member.

House of Commons (Member sentenced and sentence quashed).—On October 30, 1947,[4] Mr. Speaker informed the House that he had received a letter of that date (which he read) from the Judge presiding at the Central Criminal Court notifying that Mr. David Weitzman, a member of the House of Commons, had been sentenced to imprisonment for 12 months and a fine of £100, for contravening certain Defence (General) Regulations 1939 (No. 35) by causing a company to supply goods in excess of that allowed.

On March 17, 1948,[5] Mr. Speaker reported to the House that he had received a letter dated March 16, from the Lord Chief Justice (which he read) informing Mr. Speaker that the above sentence had been quashed by the Court of Criminal Appeal on the ground that there was no evidence at all of Mr. Weitzman's participation in any conspiracy.

House of Commons (Members & Broadcasts).—On February 16, 1948,[6] a Q. (No. 71) stood on the O.P. asking the Foreign Secretary if he was aware of the mischief done to British Prestige by a certain broadcast by a member, upon which Mr. Speaker took occasion to

[1] Contributed by the Clerk-Assistant of the House of Commons.—[ED.]
[2] *See also* JOURNAL, Vols. XIII, 31; XV, 37; XVII, 19.
[3] 448 *Com. Hans.* 5, s. 215, 218.
[4] 443 *Com. Hans.* 5, s. 1053.
[5] 448 *Ib.* 2061.
[6] 447 *Com. Hans.*, 833-836.

intervene and suggested that if a member wanted to draw attention to a broadcast by another member he should put a Q. in an impersonal way, and not associate it with any particular member, because if he did, it meant that supplementaries were almost bound to become personal attacks on a member. A member should put down a Motion on the O.P. or put down a Q. in general terms. It was not in accordance with the traditions of the House for one member to pick up the speech of another member and make an attack on the Floor of the House. He should only do that on general grounds —"In accordance with our Parliamentary and democratic practice we always allow people to say on the wireless what they think of the Government."

House of Commons (Conversation in the House).—On September 20, 1948,[1] during the debate on Address to the Crown for an Order in Council to be annulled, Mr. Speaker said:

I cannot hear the hon. member because of the general conversation. I wish hon. members would cease this conversation. I have to know whether what is being said is in order or not, and it is very difficult to hear when such a general conversation is taking place.

House of Commons (Hybrid Bills).[2]—The report of the Select Committee on Hybrid Bills (Procedure in Committee) has already been treated in the JOURNAL.[3] But on February 14, the report was considered by the House of Commons upon the following Motion, moved by the Lord President of the Council (Mr. Herbert Morrison):

That the recommendations contained in the Report from the Select Committee on Hybrid Bills (Procedure in Committee) in Session 1947-48 be approved, subject to the qualification that a Bill, against which no Petition has been lodged, may be committed either to a Committee of the Whole House or to a Standing Committee, as the House may determine.

It may be convenient to recapitulate the Summary of the Committee's proposals as follows:

1. Subject to any instruction or indication by the House referring the expediency of a Hybrid Bill to a Select Committee for investigation and decision, the Second Reading should be considered to remove from the promoters the onus of proving the expediency of the Bill.

2. A petitioner against a Hybrid Bill, who can only be heard by virtue of his *locus standi*, may not argue on matters which cannot give him a *locus standi*.

3. Provided that his arguments do not exceed his *locus standi*, a petitioner may traverse the principle of the Bill.

4. The limits of the *locus standi* of each petitioner and, therefore, of the arguments which he may properly adduce should be decided, where necessary, by the Select Committee to which the Bill is committed.

[1] 456 *Com. Hans.* 5, s. 642.

[2] Contributed by the Clerk of the House of Commons.—[ED.]

[3] Vol. XVII, 252.

5. The onus of proving expediency having been removed from the promoters, the petitioner should open to the committee, calling such evidence as he wishes. The promoters would then answer the petitioner's case, calling evidence, and, if they did so, entitling the petitioner to a right of reply. Procedure in Committee would, however, be flexible, remaining subject to the will of the Committee and the requirements imposed by each Bill.

6. The presence or absence of a preamble in the Bill under consideration should not affect the method of proceeding in Committee. The contents of a preamble would not be exempt from the challenge of a petitioner whose *locus standi* allowed him to do so.

7. As the purpose of committing Hybrid Bills to a Select Committee is to give those whose interests are specially affected an opportunity of stating their case, Hybrid Bills against which no petition has been lodged should be committed to a Committee of the Whole House without being sent in the first instance to a Select Committee.

The debate showed that the Opposition demurred to the report in only one main respect. They considered that it materially curtailed existing private rights by restricting the arguments of aggrieved parties against the principle of the Bill to those arising directly from the *locus standi* they had established. In spite of assurances from the Government that no such diminution of the protection at present afforded to private interests was intended or would occur, the Opposition divided against the Motion, which was carried by 204 votes to 89.[1]

House of Commons (Whether a Hybrid Bill?).[2]—On November 15, 1948,[3] the rt. hon. and learned member for West Derby (Major Sir D. Maxwell-Fyfe) asked for Mr. Speaker's guidance as to the nature of the Iron and Steel Bill,[4] which would shortly come before the House; the point is not whether the Bill is a Hybrid Bill, but whether it came within the words of S.O. 36 (Bills which are *prima facie* hybrid)—namely:

> Where a Public Bill (not being a Bill to confirm a Provisional Order or Certificate) is ordered to be read a Second Time on a future day, and it appears that the Standing Orders relative to private business may be applicable to the Bill, the examiners of petitions for private Bills shall be ordered to examine the Bill with respect to the applicability thereto of the said Standing Orders. . . .

[1] 461 *Com. Hans.* 5, s. 791-838.
[2] *See* JOURNAL, Vol. XVII, 252.
[3] 458 *Com. Hans.* 5, s. 47.
[4] The long title was a Bill for an Act: "to provide for the establishment of an Iron and Steel Corporation of Great Britain and for defining their functions and for the transfer to that Corporation of the security of certain Companies engaged in the working, getting and smelting of iron ore, the production of steel, and the shaping of steel by rolling and of certain property and rights held by a Minister of the Crown or Government Department; for the licensing of persons engaged in any such activities; for co-ordinating the activities of the Corporation, the National Coal Board and the Area Gas Boards relating to carbonisation; and for the purposes connected with the matter aforesaid."

and to which the Standing Orders applicable to Private Bills may be applicable to this Bill.

The modern definition of course, continued the rt. hon. and learned member, was that a Hybrid Bill is a Public Bill which appears, on examination, to affect private rights, with the qualification that it is not the practice of the House to refer Bills dealing with public policy whereby private rights of a whole class are affected (*vide* May, XIV. 490). The rt. hon. member then quoted from the Report on the Select Committee on Hybrid Bills, page iv: [1]

> A Hybrid Bill . . . has also in large or small degree, the character of a private bill, since it affects the interests of specific individuals or corporations as distinct from all individuals or corporations of a similar category.

It was on the point that it affected individual corporations and not all corporations in a similar category that Mr. Speaker was asked for his opinion.

The rt. hon. member then quoted from certain provisions of the Bill in support of his contention, especially in regard to the attempt to make a subjective classification dependent on the whim of a Minister and thus not creating a category affected within the precedents of the House. If the whole of a category is the subject of legislation then it is right and proper and has been recognised by the House for 500 years as a matter to be discussed by the representatives of the people in this House. This was not a legislative point but a question of common justice for people who were affected by individual discrimination.

The precedents, said the rt. hon. member (*vide* May, XIV. 836), came down to two: one on the side of the Public Bill and one on the side of the Hybrid Bill. The first was the Railway Bill of 1921,[2] which was summarised in May as:

> Mr. Speaker ruled that the Bill dealt with a question of public policy affecting all the main railways of Britain.

The then Speaker made it the keystone of his decision.

The Other examples were the Electricity (Supply) Bills of 1926 and 1934. There again, the ground of Mr. Speaker Whitley in 1926[3] and Mr. Speaker Fitz Roy in 1934[4] was the same, that these Bills affected all the undertakers of a particular class alike—that is, there was no description within a clear and definite class.

The rt. hon. member submitted that neither of these precedents was authoritative as saying that a particular class may be constituted by the whim of the Minister.

The other example was the Canals Bill, 1905,

> which did not apply to canals generally but which compulsorily transferred to the Trust the undertakings of certain canal companies only, which were specified in a schedule.

[1] *See* JOURNAL, Vol. XVII, 252. [2] 142 *Com. Hans.* 3, s. 43. [3] 193 *Ib.* 1686.
[4] 295 *Ib.* 1025.

The problem, concluded the rt. hon. member, was not whether this was a Hybrid Bill, but whether there was sufficient case for the Bill to be considered by the examiners.

Mr. Speaker:

I have been asked to give my Ruling whether the Iron and Steel Bill should be referred to the Examiners. I should like to thank the rt. hon. and learned member for West Derby (Sir D. Maxwell-Fyfe) for giving me notice that he was going to raise this question.

Our procedure is governed by Standing Order No. 36—(Bills which are *prima facie*)—which must be read in conjunction with S.O. 224 relating to Private Business. Although S.O. 36 first appeared in 1945 among Public Business Standing Orders it contained no new provision. The same procedure had been directed by Private Business Standing Order No. 216. It seemed more appropriate for the provisions affecting Public Business to be put in Public Business Standing Orders. This was done without any amendment, other than by drafting Amendments.

It is laid down in Erskine May (p. 490):

It is not the practice to refer Bills dealing with matters of public policy whereby private rights over large areas, or of a whole class, are affected.

This statement is supported by Rulings of my predecessors in 1921 on the Railways Bill and in 1926 and 1934 on the Electric (Supply) Bills. In all these cases it was ruled that the Bills were matters of public policy and that they must go through the ordinary procedure of the House without reference to the Examiners. Moreover, none of the large Nationalisation Measures in relation to coal, transport, electricity or gas has been referred to the Examiners, nor has this procedure been in any way challenged.

The purpose, as I see it, of the Iron and Steel Bill, is to bring under public ownership all important companies producing iron ore and certain basic iron and steel products, the limits for acquisition being laid down in the Second Schedule. This is a matter of public policy, as in the case of previous nationalisation Bills, and deals with private interests only generally, as respects a particular class. The Railways Bill of 1921 applied not to all Railways but to all Railways of a particular class, namely, the main-line railways. Similarly the Transport Bill, though it provided generally for the acquisition of railway and canal undertakings, did exclude certain small undertakings not controlled by the Government during the War, and other undertakings whose railway or canal activities were not main activities of the undertaking. These seem to me to be very complete precedents for the action which has been followed in this case of not referring the Iron and Steel Bill to the Examiners.

There is one other point to which I should perhaps refer. In Clause 11 (3) it is laid down that the companies which are to be taken over are governed by the Second Schedule, which states the minimum output qualifying for acquisition in four different types of activity.

There is, however, a reference to those companies which " in the Minister's opinion " fulfil the conditions. It seems to me that the Minister's opinion can only be given on the question of fact whether a particular company does or does not fall above or below the line, and that this does not affect the principle in question. For the reasons, therefore, that I have given, I consider that this Bill should not be referred to the Examiners.[1]

House of Commons (Representation of the People Bill, 1949).[2]—This Bill, which originated in the Lords, consolidated the enactments which made permanent provision for the redistribution of

[1] 458 *Com. Hans.* 5, s. 47-52.

[2] *See also* JOURNAL, Vols. X, 33: XI-XII, 130; XIII, 122; XIV, 164; XVI, 27; XVII, 22.

seats at Parliamentary elections and the provisions of the Representation of the People Act, 1948, interpreting statutory references. Leave to introduce was given and the Bill passed 1 *R.* on April 12,[1] 2 *R.* on May 12,[2] and referred to the Joint Committee on Consolidation Bills, reported therefrom on June 30,[3] with amendments and re-committed to *C.W.H.*, when, on re-committal on July 14,[4] the amendments by the Joint Committee were made and S.O. XXXIX having been suspended, the Bill passed 3 *R.* with amendments; was sent to the Commons and returned as amended, there being practically no debate thereon.

The amendments were agreed to by the Lords, *R.A.* announced and the Bill became 12 & 13 Geo. VI. c. 68.

Motions were passed approving of Regulations on: Representation of the People—(Northern Ireland)[5]; (Northern Ireland No. 2)[6]; (Scotland).[7]

House of Commons (Redistribution of Seats) Bill, 1949.[8]—This Bill, which originated in the Lords, consolidated certain enactments relating to Parliamentary and local government elections, corrupt and illegal practices and election petitions, passed 1 *R.* on April 12,[9] 2 R. on April 28;[10] was referred to the Joint Committee on Consolidation Bills and reported therefrom on May 17,[11] with minutes of evidence and proceedings. The Bill was Ordered to be laid on the Table and to be delivered out; in *C.W.H.* on June 28[12] on re-committal of Bill and reported without amendment, and passed 3 *R.* on June 30.[13]

In the Commons there was no debate on 2 *R.* or 3 *R.* and one amendment was made in *C.W.H.* on October 28,[14] which was agreed to by the Lords and the Bill duly became 12 & 13 Geo. VI. c. 66.

Four draft Orders (1-4) under the Act were approved by Resolutions of the Commons.[15]

House of Commons (Election Commissioners Bill).[16]—This Bill originated in the Lords on November 2, 1949,[17] and being a Consolidation Measure was only read 2 *R.*, after which it was referred to the Consolidation and Statute Law Revision Bills Joint Committee; reported therefrom without amendment and re-committed to *C.W.H.* on 24th *idem*,[18] and reported without amendment on 30th *idem*.[19] The Bill passed 3 R. on December 1,[20] was returned from the Commons agreed to, on December 13,[21] all without any debate in the Lords at any stage.

[1] 161 *Lords Hans.* 5, s. 1075. [2] 162 *Ib.* 600. [3] 163 *Ib.* 744. [4] *Ib.* 1359.
[5] 464 *Com. Hans.* 5, s. 1117. [6] 467 *Ib.* 2412. [7] 462 *Ib.* 100.
[8] *See also* JOURNAL, Vols. X, 33; XI-XII, 130; XIII, 127; XIV, 175; XVII, 27.
[9] 160 *Lords Hans.* 5, s. 1075. [10] 162 *Ib.* 115. [11] *Ib.* 798.
[12] 163 *Ib.* 352. [13] *Ib.* 637. [14] 468 *Com. Hans.* 5, s. 1728.
[15] 467 *Ib.* 2405, 2409, 2142, and 469 *Ib.* 1143; and *Cmds.* 7745, 7841, 7787.
[16] *See also* JOURNAL, Vols. X, 33; XI-XII, 130; XIII, 122; XIV, 164; XVI, 27; XVII, 22. [17] 165 *Lords Hans.* 5, s. 477. [18] *Ib.* 1008. [19] *Ib.* 1123.
[20] *Ib.* 1200. [21] *Ib.* 1518.

There was no debate on the Bill in the Commons and *R.A.* was announced in that House on December 16,[1] the Bill duly becoming 12, 13 & 14 Geo. VI. c. 90.

House of Commons (Electoral Registers Bill).[2]—During the 2 *R.* debate, the Home Secretary (Rt. Hon. J. Chuter Ede) announced, on December 15, 1949,[3] that the purpose of this Bill was to abolish the autumn register as a measure of economy and to give an estimated saving annually of £800,000. The Bill also contains certain consequential amendments to the Juries Act 1922.[4]

The main objection to the Bill came from a member on the Government side (Mr. Bing), who pointed out that in order to vote in any election taking place after March 15 in any year an elector must have been 21 years of age upon the previous November 20 in England (or December 1 in Scotland), and therefore as many as 600,000 young people might be disfranchised although they were 21 at the date of the poll. Put in another way, a person might be as old as 22¼ years before he could even get on the register.

In Committee, Mr. Bing[5] proposed a new clause to include these young people by placing them on special supplementary registers. In response to strong support for the clause from all quarters of the House the Government arranged for an amendment to be moved in the Lords[6] to allow persons aged 21 on June 15 in any year to vote at any election taking place between October 2 and March 15 following, who would otherwise have been excluded.

The Lords amendments were considered on December 13,[7] and agreed to, a special entry being made in the Journals in regard to those amendments involving a question of (monetary) privilege.

This is a good example of a Bill which has been materially altered in response to pressure on the Floor of the House.

The Royal Assent was announced in the Commons on December 16,[8] and the Bill duly became 12, 13 & 14 Geo. VI. c. 86.[9]

House of Commons (Delegated Legislation).[10]—*1947-48 Session.*—The Select Committee on Statutory Instruments, etc. (the old Statutory Rules & Orders Select Committee), was appointed[11] in the 1947-48 Session with the same Order of Reference and powers as in the 1946-47 Session,[12] which was, however, later[13] amended by the following Resolution of the House:

That the Order of Reference (23rd October) to the Select Committee be amended in line 3 by inserting after " 1893 " the words " or Statutory Instruments " and after the word " Order " the word " Instrument ".

[1] *Ib.* 1668. [2] *See also* JOURNAL, Vols. X, 33; XI-XII, 130; XIII, 222; XIV, 165, 166, 170, 176. [3] 470 *Com. Hans.* 5, s. 223-241.
[4] 12 & 13 Geo. V., c. 11. [5] 470 *Com. Hans.* 1044-1058. [6] 165 *Lords Hans.* 5, s. 1379. [7] 470 *Com. Hans.* 5, s. 2585-9. [8] *Ib.* 3056. [9] The Commons part of this paragraph was contributed by the Clerk of the House of Commons.—[ED.]
[10] *See also* JOURNAL, Vols. IX, 64; X, 25, 27, 83; XI-XII, 15; XIII, 160; XIV, 152; XV, 30; XVI, 33; and 389 *Com. Hans.* 5, s. 1231, 1593-1692.
[11] 443 *Ib.* 379. [12] *See* JOURNAL, Vol. XVI, 33. [13] 445 *Com. Hans* 5, s. 1824.

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 four of the Statutory Instruments Act, 1946,[1] has been laid by him upon the Table of the House.

New S.O. 94 was then amended by adding a proviso[2] limiting the Statutory Instruments to which it applies to those which under S. 4 of the Statutory Instruments Act 1946 have to be laid before they come into operation.

The Reports[3] from the Select Committee together with the Proceedings of the Committee and Minutes of Evidence were laid and Ordered to be printed on July 28, 1948.

In the *Second* Report the Committee state that they have considered the Registration for Employment Order, 1947 (S.R. & O., 1947, No. 2409), a copy of which was presented on November 11, and are of the opinion that the special attention of the House should be drawn to it on the ground that it appears to make an unexpected use of the powers conferred by the Statutes under which it is made, and that its form and purport call for elucidation.

Evidence was taken from Sir Harold Wiles, K.B.E., C.B., and Sir Bertram Bircham, M.C., of the Ministry of Labour and National Service.

In the *Fifth* Report the Committee stated that they have considered the Leather (Charges) (No. 1) Order, 1947 (S.R. & O., 1947, No. 2800), a copy of which was presented on January 20, and are of the opinion that the special attention of the House should be drawn to it on the ground that it purports to have retrospective effect where the parent statute confers no express authority so to provide.

The Appendix to this Report contains an explanatory Memorandum on the subject from the Treasury.

In the *Sixth* Report the Committee state that they have considered the Treaty of Peace (Bulgaria) Order, 1948 (S.I., 1948, No. 114), the Treaty of Peace (Hungary) Order, 1948 (S.I., 1948, No. 116), the Treaty of Peace (Italy) Order, 1948 (S.I., 1948, No. 117) and the Treaty of Peace (Roumania) Order, 1948 (S.I., 1948, No. 118), copies of which were presented on January 28, and are of the opinion that the special attention of the House should be drawn to them on the ground that they appear to make an unexpected use of the powers conferred by the Statute under which they are made. An explanatory Memorandum was submitted by the Secretary of the Board of Trade.

In the *Seventh* Report the Committee state that they have considered the Control of Employment (Directed Persons) (Amendment) Order, 1948 (S.I., 1948, No. 708) and the Seizure of Food Order, 1948 (S.I., 1948, No. 724), copies of which were presented on April 7 and 9 respectively, and are of the opinion that the special attention of the House should be drawn to them on the ground that

[1] 9 & 10 Geo. VI, c. 36. [2] *See* JOURNAL, Vol. XVI, 142. [3] H.C. 201 (1948).

they appear to make an unusual and unexpected use of the powers conferred by the Statutes under which they are made.

Explanatory Memoranda on these 2 Orders were submitted to the Committee.

In the *Eighth* Report the Committee state that they have considered the Public Health (Venereal Diseases Regulations) Revocation Regulations, 1948 (S.I., 1948, No. 928), a copy of which was presented on May 3, and are of the opinion that the special attention of the House should be drawn to them on the ground that there appears to have been unjustifiable delay in their publication. An explanatory Memorandum was submitted by the Ministry of Health.

In the *Ninth* Report the Committee state that they have considered the Poisons (Amendment) (No. 2) Rules, 1948 (S.I., 1948, No. 1379), a copy of which was presented on June 24, and are of the opinion that the special attention of the House should be drawn to them on the ground that they appear to make an unusual and unexpected use of the powers conferred by the Statute under which they are made. An explanatory Memorandum was submitted by the Home Department.

The following are extracts from the last and *Special* Report.

Your Committee have examined 1,189 Statutory Instruments and Statutory Rules and Orders, etc. since the beginning of the Session and have drawn the attention of the House to 10. Of the 1,189 Instruments, etc., examined, 617 arose out of emergency legislation, *i.e.* were presented under the Supplies and Services (Transitional Powers) Act, 1945, as extended by the Supplies and Services (Extended Purposes) Act, 1947, the Emergency Laws (Transitional Provisions) Act, 1946, or the Goods and Services (Price Control) Acts, 1939 and 1941. Of the 10 Instruments brought to the special attention of the House, 7 were reported under the third head of the Committee's Order of Reference (unusual or unexpected use of a statutory power), 1 under both the third and the sixth (need of elucidation), 1 under the fourth (purported retrospective effect) and one under the fifth (unjustifiable delay).

Delay in Printing and Publication.—During the Session 1945-46 your Committee brought 27 Statutory Rules and Orders to the notice of the House on the ground of technical delay in presentation to Parliament or in publication. They have had occasion only once in the present Session to report an Instrument on this ground.

Section 4 (2) of the Statutory Instruments Act, 1946, requires all Instruments to show the date on which copies are laid before Parliament or alternatively to state that copies are to be so laid. Compliance with the first of these alternatives has the effect of lengthening the period between signatures and publication.

Sub-delegation.—In a previous Session[1] your Committee commented on the development of sub-delegation and in particular on the five-tier legislation under the Emergency Powers (Defence) Act, 1939, in the sequence of statute, regulations, orders, directions and licences. The 1939 Act had not expressly sanctioned more than the two stages of regulations and orders. Your Committee observe that at least one department has been replacing " directions " with orders, thus reducing the length of the series of sub-delegations.

Your Committee remain unconvinced that, when Parliament by Statute delegates to a Minister a power to legislate by Statutory Instrument, the dele-

[1] Third Spec. Rep. H.C. 187 (1945-46), para. 16.

gation can or should be interpreted (in the absence of specific provision to that effect in the Statute) as authorising him to empower himself or other Ministers to make other ranges of Instruments. They are not satisfied that a power to make consequential or incidental provisions by Instrument can cover sub-delegation.

Negative and Affirmative Procedure.—Your Committee have previously[1] referred to the alternative use of the negative and affirmative procedure. They find that under the National Insurance (Industrial Injuries) Act, 1946, and the National Health Service Act, 1946, it is possible for both procedures to be applicable to the contents of a single Instrument. Regulations made by the Minister, for example, modifying the first-named Statute in regulation to " mariners " under section 77, will require an affirmative resolution. Other regulations, working out the application of the Act generally (for instance, those under section 32 as to absence from Britain) will be subject to the negative procedure. Clearly it will be convenient that the regulations affecting mariners shall be contained in a single Instrument. Your Committee observe that in the result the same Instrument may contain some paragraphs already affirmatively approved by Parliament and others which are exposed to annulment on motion.[2] It is not easy in such cases to identify the precise attribution (as between the affirmative and negative processes) of the powers exercised in each part of the Instrument, nor perhaps will it be easy in proceedings in the House for discussion to confine itself to the paragraphs in the Instrument which are appropriate to the one process rather than the other.

Reports of Advisory Councils.—Your Committee have not always found it easy to discover how each recommendation has been treated; the original draft is not before them and the alterations are difficult to trace. If it were possible, without unduly increasing the heavy and responsible work performed by the Advisory Committee and the department in this process, to set out a brief tabular summary of the recommendations of the Committee and to indicate categorically, item by item, how and where the department has met them, or why it does not meet them, it would naturally be easier to follow what has been done.

Explanatory Notes.—Almost every authority when making a Statutory Instrument now appends an explanatory note. Your Committee welcome this assistance, while they observe with satisfaction that Instruments are sometimes so clearly drafted[3] as to need no explanation. Occasionally a revoking Instrument[4] omits to describe, either by words in the text or by an explanatory note, the purport of the revoked order. Members of the public may need to know what has ceased to be, just as much as what is going to be, the law.

Your Committee take occasion again[5] to suggest that it is more helpful for a short title to include some descriptive word than to refer to the section of an Act as is done.

Consolidation.—Your Committee observe that, where there has been repeated amendment of an Instrument, the reader finds himself obliged to collate documents and pursue references. They therefore emphasise again that Instruments which, over a period of years, have been heavily amended should be consolidated. In previous Sessions[6] they have noted that the Air Navigation Order, 1923, has been amended more than 30 times and is itself out of print; it is amended again in 1948. They do not regard a periodical reprint of an old order with amendments as an adequate substitute for true consolidation.

[1] Second Spec. Rep. H.C. 113 (1943-44), para. 4; and Spec. Rep. H.C. 141 (1946-47), para. 5. [2] *See for instance* S.I. 1948, Nos. 1466, 1467 and 1471, and footnotes to p. 1 of each of these. [3] *E.g.*, The Fireman's Pension Scheme (No. 2) Order (S.I. 1948, No. 1094). [4] *E.g.*, The Motor Fuel (Car Hire) (Revocation) Order (S.I. 1948, No. 1077). [5] *See* Third Spec. Rep. H.C. 187 (1945-46), para. 13. [6] Second Spec. Rep. H.C. 187 (1945-46), para. 4; Spec. Rep. H.C. (1946-47), para. 4.

Sir Cecil T. Carr, K.C.B., etc., the Counsel to the Speaker, was, as usual, in attendance at all the Committee meetings.

1948-49 Session.—The Statutory Instruments Select Committee was appointed by Order of the House on October 28, 1948,[1] and its Order of Reference was the same as that of the 1945-46 Session[2] with the exception of the following amendments, the words omitted shown in heavy square brackets and those inserted with heavy underlines:

[Statutory Rules and Orders, &c.] Statutory Instruments—Select Committee appointed to consider every Statutory [Rule or Order (including any Provisional Rule made under Section 2 of the Rules Publication Act, 1893] Instrument laid or laid in draft before the House, being [a Rule, Order or Draft] an Instrument or draft of an Instrument upon which proceedings may be or might have been taken in either House in pursuance of any Act of Parliament, with a view to determining whether the special attention of the House should be drawn to it on any of the following grounds (*here follows grounds* (i) to (iv)).

(vi) that there appears to have been unjustifiable delay in [the publication or in the laying of it] sending a notification to Mr. Speaker under the proviso to subsection (1) of Section four of the Statutory Instruments Act, 1946, where an Instrument has come into operation before it has been laid before Parliament;

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

The Committee to have the assistance of the Counsel to Mr. Speaker: Power to sit notwithstanding any Adjournment of the House [and] to report from time to time and to report the Minutes of their proceedings from time to time: Power to require any Government Department concerned to submit a memorandum explaining any [Rule, Order] Instrument or Draft which may be under their consideration or to depute a representative to appear before them as a Witness for the purpose of explaining any such [Rule, Order] Instrument or Draft: Three to be the quorum: Instruction to the Committee that before reporting that the special attention of the House [should] be drawn to any [Rule, Order] Instrument or Draft the Committee do afford to any Government Department concerned therewith an opportunity of furnishing orally or in writing such explanations as the Department think fit: Power to report to the House from time to time, any memoranda submitted or other evidence given to the Committee by any Government Department in explanation of any [Rule, Order] Instrument or Draft: Power to take evidence, written or oral, from His Majesty's Stationery Office, relating to the printing and publication of any [Rule, Order or Draft] Instrument.

The Reports from the Select Committee, together with the Proceedings of the Committee, were laid and Ordered to be printed on December 15, 1949. In the *First* Report the Committee state that they have considered the Income Tax (Employments) (No. 9) Regulations, 1948 (S.I., 1948, No. 1819), a copy of which was presented on August 3, and are of the opinion that the special attention of the

[1] 457 *Com. Hans.* 5, s. 377.

[2] *See* JOURNAL, Vol. XVI, 33.

House should be drawn to it on the ground that there appears to have been unjustifiable delay in sending a notification to Mr. Speaker under the proviso to subsection (1) of S. 4 of the Statutory Instruments Act, 1946.

The Inland Revenue Board submitted an explanatory Memorandum.

In the *Second* Report[1] the Committee state that they have considered the Control of Machine Tools (Electrical Equipment) (No. 3) (Revocation) Order, 1948 (S.I., 1948, No. 2492), a copy of which was presented on November 18, and are of the opinion that the special attention of the House should be drawn to it on the ground that its form calls for elucidation.

An explanatory Memorandum was submitted by the Ministries of Supply and Food respectively.

In regard to the Knacker's Yard Order, 1948 (S.I., 1948, No. 2353), Motion was moved on December 3, 1948: [2]

That an humble Address be presented to His Majesty praying that the Order dated October 25, 1948, entitled the Knacker's Yard Order, 1948 (S.I., 1948, No. 2353), a copy of which was presented on 26th October be annulled,

but the Question was negatived after considerable debate.

In the *Third* Report the Committee state that they have considered the Local Authorities (Charges for Dustbins) Order, 1949 (S.I., 1949, No. 120), a copy of which was presented on January 27, 1949, and are of the opinion that the special attention of the House should be drawn to it on the ground that it appears to make an unusual and unexpected use of the powers conferred by the statutes under which it is made.

An explanatory Memorandum was submitted by the Ministry of Health.

A similar Prayer was moved February 28,[3] in regard to the Local Authorities (Charges for Dustbins) Order, but after debate in the House it was negatived.

In the *Fourth* Report the Committee state that they have considered the Draft of the Borstal (No. 2) Rules, a copy of which was presented on May 4, 1949, and are of the opinion that the special attention of the House should be drawn to it on the ground that it appears to make an unusual and unexpected use of the powers conferred by the Statute under which it is made.

An explanatory Memorandum was submitted by the Home Department.

The following are extracts from the *Special* Report:

Your Committee have examined 1,300 Statutory Instruments and drafts of Instruments since the beginning of the Session and have drawn the attention of the House to 5. Of the 1,300 Instruments examined 655 arose out of emergency legislation, *i.e.* were presented under the Supplies and Services (Tran-

[1] H.C. 324 (1949). [2] 458 *Com. Hans.* 5, s. 2351-78. [3] 462 *Ib.* 100, 128.

sitional Powers) Act, 1945, as extended by the Supplies and Services (Extended Purposes) Act, 1947, the Emergency Laws (Transitional Provisions) Act, 1946, or the Goods and Services (Price Control) Acts, 1939 and 1941. Of the 5 Instruments brought to the special attention of the House, 3 were reported under the third head of the Committee's Order of Reference (unusual or unexpected use of a statutory power), 1 under the sixth (unjustifiable delay in sending a notification to Mr. Speaker), and 1 under the seventh (need of elucidation).

Consolidation of Instruments is making progress.—Short titles are now almost always conferred upon Statutory Instruments and some of the longer titles have been shortened.

Drafts of Instruments.—The familiar requirement that an Order in Council or other Instrument be laid in draft before Parliament and that it shall not be made operative until approved by resolution of both Houses, implies that there shall be no alteration of the terms of the draft after approval. The addition of signatures and of the dates of signing could hardly be accounted an alteration of those terms, but your Committee do not feel sure that it is proper for a draft to contain any other blanks, such as that of the date of prospective operation, to be filled in after approval.

Recital of Authority.—Your Committee reiterate their opinion that every Instrument should identify the statutory power whereof it purports to be the exercise.

Use of Emergency Powers.—In drawing attention to the Knacker's Yard Order, 1948, and the Local Authorities (Charges for Dustbins) Order, 1949, on the ground that they appear to make an unusual or unexpected use of a statutory power, your Committee had in mind that a possibly permanent amendment of permanent statute law might have been expected to be made by Act of Parliament and not by an order deriving its authority from temporary regulations.

Questions.—In reply to a Q. in the House of Commons on May 10,[1] the Financial Secretary to the Treasury (Rt. Hon. Glenvil Hall) said that during the first 4 months of 1949, 860 Instruments were made, 378 Instruments and Rules and Orders revoked and 55 of the latter expired.

Several other Questions[2] were asked in regard to Statutory Instruments as to delays[3] and other matters including Potatoes (Government Purchases) were the subject of discussion on the ½ hour Adjournment.[4]

House of Commons (Amendment to Public Business Standing Orders).[5]—Amendments to the Standing Orders were made on 2 occasions during Session 1948-49. On November 8, 1948, the Government proposed a number of alterations to meet the situation arising from the passing of the Local Government Bill which received the Royal Assent on the previous March 23. By this Act the system of assistance by the Government to local authorities was altered from one of 5-yearly block grants to one of Exchequer equalization grants, the effect of which was that *any* new expenditure by a local authority might attract an additional grant and hence impose a charge on the

[1] 464 *Ib. 86.* [2] 459 *Ib. 187*; 462 *Ib. 205*; 464 *Ib. 86*; 468 *Ib.* 106; 469 *Ib.* 10, 11, *13*, 1673; 470 *Ib.* 244. [3] 462 *Ib.* 208. [4] 461 *Ib.* 275. [5] *See also* JOURNAL, Vols. I, 17, 42; III, 30; VI, 97; XI-XII, 83; XIII, 24; XVI, 104; XVII, 181.

public revenue, entailing a financial resolution in the House with all its complications.

The amendments proposed involved no change in the case of Public Bills, but provided, in any case which involved such increased local expenditure in a Private Bill, that the Committee on the Bill should insert a clause withholding such expenditure from the benefit of the Exchequer grant unless the Minister concerned submitted a report recommending that the benefit should be granted. In the latter case the Committee would not be precluded from superseding the Minister's view.

Two points of interest emerged from the short debate which followed. One was the statement by the Minister of Health that, speaking generally, the policy of his department would be to recommend the grant for powers already held by other local authorities; but not in cases of very novel powers involving considerable building and capital expenditure. The other point was that he would examine the question whether, in the event of disagreement between the Minister and the Committee upon the question of the grant, the Committee's decision would be final or could be reviewed by the House at a later stage.[1, 2]

House of Commons (Amendments to Private Business Standing Orders).[3]—On October 25, a few minor but urgent amendments were made to the Private Business Standing Orders.[4]

On December 13, other amendments were made to the Private Business Standing Orders.[5, 6]

House of Commons (Serjeant-at-Arms' Method of carrying the Mace).—The Serjeant-at-Arms attending the Speaker invariably bears the Mace "at the slope" on his right shoulder on all occasions that he carries it (*e.g.*, for the Speaker's procession and on all other occasions that he accompanies the Speaker, and when escorting a person under summons at the Bar of the House) except:

1. When placing the Mace on and under the Table, when he holds it horizontally in both hands, the butt end to his right.
2. When preceding the Speaker Elect (before His Majesty's approval of the Speaker has been signified) on which occasions the Serjeant carries the Mace on his left arm, *i.e.* in the crook of the arm with the butt end sloping down to the right.[7]

House of Commons (Members' Pensions Fund: Comptroller and Auditor-General's Report 1949).[8]—On February 28, this Report[9]

[1] 457 *Com. Hans.* 5, s. 1275-1288. [2] Contributed by the Clerk of the House of Commons.—[ED.] [3] *See also* JOURNAL, Vols. V, 20; VI, 151; XIV, 111. [4] 468 *Com. Hans.* 5, s. 1123-24. [5] *Ib.* 2491-93. [6] Contributed by the Clerk of the House of Commons.—[ED.] [7] Contributed by the Assistant Serjeant-at-Arms.—[ED.] [8] *See also* JOURNAL, Vols. V, 28; VII, 38; VIII, 103; XI-XII, 129; XIII, 175; XIV, 44; XV, 149; XVI, 143; XVII, 214.
[9] H.C. 88 (1949).

for the year ended September 30, 1949, was laid and printed, in which the Comptroller and Auditor-General certified that the Revenue and Expenditure Account, Investments Account and Balance Sheet respectively had been audited and found correct.

To follow on from the last annual report of the Comptroller and Auditor-General, the position is:

1.	2.	3.	4.
Year 1947-48.	*Excess Income Over Expenditure.*	*Capital Account.*	*Sum Invested.*
	£6,744 13 2	£61,724 10 1	£59,430 11 5

All the investments are in either Government or Municipal Stock.

No gifts, devises or bequests were received by the Trustees in the year under the House of Commons Members' Fund Acts 1939 and 1948. In paragraph 2 of his Report, the Comptroller and Auditor-General refers to the extended scope of the Fund under the Act of 1948.[1]

House of Commons (Member & Officially paid Envelopes).[2]—On February 3, 1948,[3] the Financial Secretary, in reply to a Q. said that it was quite in order for the officially paid envelopes provided for the use of hon. members when writing to Ministers to be used when writing from their homes to officials of the House on Parliamentary business—namely, when forwarding notices of Parliamentary Questions to the Clerks at the Table.

House of Commons (Refusal of certain Members to accept Salaries).—On November 18, 1948,[4] in reply to Q. (56), the Chancellor of the Exchequer said that of members previously drawing £600 a year, 6 refused the whole and 2 accepted a part only of the recent increase, but that the House could not expect him to disclose the particular, or groups of those, members. The Chancellor further refused to give the names in reply to a Q. on December 9, 1948.[5]

***House of Commons (Publications and Debates Committee's Report.**[6]—This Select Committee was appointed by the House on November 4, 1948,[7] with the same order of reference, etc., as since 1944.[8] The Committee met 8 times and heard Mr. T. H. O. O'Donoghue, the Editor of the Official Report (*Hansard*); Mr. A. J. Moyes, O.B.E., Accountant of the House of Commons; and Captain Mounsey, Principal Clerk, Vote-Office, but no evidence was printed.

The Report,[9] with the proceedings, was laid on July 6, and Ordered to be printed, but it did not deal with any matters of outstanding importance. However, Resolutions were taken in the Committee: (1) for further consideration of the proposal that the left-hand pages of *Hansard*, when printed as single sheets for the

[1] *See* JOURNAL, Vol. XVII, 214. [2] *See also* JOURNAL, Vol. XIV, 46.
[3] 446 *Com. Hans.* 5, s. 256. [4] 444 *Ib.* 5, s. 984. [5] 445 *Ib.* 847.
[6] *See also* JOURNAL, Vols. I, 45; II, 18; VI, 157; VII, 36; IX, 89; X, 23, 24, 42; XI-XII, 30, 33; XIII, 153; XIV, 48; XV, 40; XVI, 38; XVII, 23. [7] 457 *Com. Hans.* 5, s, 1091. [8] *See* JOURNAL, Vol. XIII, 153. [9] H.C. 210 (1949).

benefit of members, include the date as a heading, instead of, or in addition to, "House of Commons"; (2) that each page of *Hansard* bear the date as a heading; (3) that *Hansard* shows in bold type at the head of the page what clause or schedule is under discussion; (4) that a new composite Sessional Demand Form be recommended to Mr. Speaker; and (5) that recommendation as to the form of the House of Commons Christmas Card be made to Mr. Speaker.

***House of Commons (Parliamentary Catering).**[1]—The Select Committee on the Kitchen and Refreshment Rooms (House of Commons) was set up on November 1,[2] with the same order of reference and powers as in force since 1944[3] and below are given some of the principal proceedings in Commons on the subject.

Questions.—On November 5, 1948,[4] Q. was asked as to the financial position of the Refreshment Rooms for the year ended December 31, 1947, to which the Financial Secretary to the Treasury (Rt. Hon. Glenvil Hall) replied that the decision of the House that the Refreshment Department (which catered for members, officers and staff of the House and visitors) be employed permanently throughout the year and the institution of a contributary pensions scheme had added considerably to the overhead costs falling upon the Committee. The result was that, in spite of a substantial advance in the prices charged and a large turnover, the Department was operating at a loss, with a deficit of £13,000 at the end of 1947.

There could be no question of absolving the Committee from the duty of conducting its business on commercial lines, but little revenue could accrue to the Committee during the periods in the year when the House was not in Session. The Government therefore thought it reasonable that there should be a contribution from public funds towards the net cost of the staff of the Committee during those periods.

The need for a contribution would be subject to review from year to year and a Supplementary Estimate would be presented to cover the loss abovementioned. It had also been agreed that the Ministry of Works, which was responsible for cleaning other parts of the premises, should make an annual payment to the Kitchen Committee towards its expenditure in cleaning the premises occupied by it.

On November 15 the Chairman of the Select Committee was asked what steps had been, or were being, taken to put the Refreshment Department on a paying basis, to which the Chairman replied that the Committee had increased its turnover from under £30,000 in 1944 to over £100,000 in 1947. Some of the dining and refreshment rooms had been open for a limited time each day, which new service ran at a profit. Prices had been increased to a level comparable to those of commercial firms.

[1] *See also* JOURNAL, Vols. I, 11; II, 19; III, 36; IV, 40; VII, 41; VIII, 29; XIII, 45; XIV, 53; XV, 41, 45; XVI, 39; XVII, 24.
[2] 457 *Com. Hans.* 627.
[3] *See* JOURNAL, XIV, 53.
[4] 457 *Com. Hans.* 5, s. 139.

There was no loss by the Department during the trading period. The taxpayer paid nothing for the meals of either M.P.s or anyone else supplied by the Kitchen Committee.[1] The loss was entirely due to the action of the House in improving the conditions of the Staff between then and in pre-war days. But for those costs, which he estimated at over £20,000, they would be making a profit.

In reply to a further Q. the Chairman said that the Committee had almost always incurred a loss. He had before him copy of a letter addressed by the Chairman to the then Chancellor of the Exchequer asking the latter to take over full responsibility, or failing that, to provide an annual subvention of £5,000. During the previous years there had been a loss in 7 out of 8. The Committee had on many occasions received subventions from the Treasury. The Committee was an all-Party body of 17 members.[2]

On February 2[3] the Chairman was asked if he would take immediate steps to put the catering on an economic basis and so avoid the taxpayer having to subsidise the feeding of hon. members.

Special Report.—The Committee issued a Special Report which was Ordered to lie on the Table and be printed on February 9.[4]

This Report stated that, covering the last 100 years, whether the catering had been done by a private firm or by the Committee, it had almost invariably been found impossible to balance the accounts without Treasury grants. The recent losses had been due, not to inefficiency or under-charging, but to the building in which Parliament met, the irregularity of its hours of rising, the impracticability of judging from day to day the approximate numbers requiring service and the fact that staff wages, together with a large Employers' contribution to a Staff Pensions Fund, had to be paid all the year round, even when the House was not sitting. The Report then quoted the handicap of the distance between the services and the various rooms, ranging from 65 to 340 ft., which in itself necessitated the employment of extra staff.[5]

The varying numbers which had to be catered for and the fact that the House met for some 36 weeks and then only for about 4½ days a week, were also contributory factors to the financial loss. Since committees met most mornings at 10.30 and it was 12 hours or more before the House rose, food and drink had to be available, thus necessitating a spread-over staff, and for overtime at increased rates of pay. The payment of casual part-time labour under the provisions of the new Catering Wages Act 1943[6] was especially expensive.[7]

Approximately 1,800 persons were entitled to use the Refreshment Rooms, and the number of meals served daily ranged from 1,330 to 4,084.

[1] *Ib.* 39. [2] *Ib.* 40-41. [3] 461 *Ib.* 233. [4] H.C. 68 (1949).
[5] *Ib.* s. 3, 4. [6] 6 & 7 Geo. VI, c. 24. [7] H.C. 68 (1949), s. 5.

The improvement in staff under the Wage Agreements for 1948, including wages for the 17½ week recess, staff meals during that period and costs of superannuation and uniforms, amounted to £18,427,[1] not including £553, the bank charges for an overdraft of this amount. Figures of the income derived from the sale of food and drink in the various rooms, cafeteria and bars for 1948 showed an overall total of £91,182 as against £97,577 for 1947, the annual decrease being £6,395.

Nor, it was stated in the Report, was the outlook for the future any brighter. A considerable amount of equipment required renewing, a new Press Room and Bar had to be provided in the new Commons building and further distances in service had to be considered. The Select Committee on the House of Commons (Rebuilding)[3] did not take evidence on these matters from any member of the Kitchen Committee.[4]

Prices had had to be increased, but the Committee emphasised that the adverse balance was not due to low prices, and that the cost of food, etc., was well covered by sales.[5] However, by the strictest economy the Committee had been able to meet a part of the heavy extra cost during the last few years. The deficit could be further substantially lessened by a large reduction in staff, the institution of the cafeteria system in all dining-rooms and abolition of waiter service in the members' Smoking Room or reversion to the old system of casual labour, but the Committee did not consider either of these satisfactory.[6]

The Catering Service was essential to the proper functioning of Parliament.

The Committee therefore recommended that the cost of the Catering should be borne by the House of Commons Vote without disturbing the functions of the Committee.[7]

Other Questions.—Several other Qs. were asked dealing principally with the loss on the Commons Catering and its burden on the taxpayer, etc.[8]

Second Special Report.[9]—In this Report, which was laid and Ordered to be printed July 20, the Committee, in presenting the annual statement of income and expenditure for 1948, drew attention to para. 14 of their First Special Report (*see above*), urging the House to come to a decision as to the cost of Commons Catering being borne on the House of Commons Vote.

The Account for the year ended December 31, 1948, showed: (1) on the profit and loss account an income and expenditure of £95,317 6s. 7d. and £114,564 2s. 3d. respectively—namely, a deficit of £19,246 15s. 8d.

Staff Pensions Account.—The expenditure for the year was

[1] *Ib.* § 8. [2] *Ib.* § 9. [3] H.C. 109 & 109-I (1944). [4] *Ib.* § 10 and JOURNAL, Vol. XIII, 106. [5] H.C. 68 (1949), § 11. [6] *Ib.* § 12.
[7] *Ib.* § 13 & 14. [8] 462 *Com. Hans.* 5, s. 33. [9] H.C. 222 (1949).

£4,990 2s. 8d., showing a deficit borne by the Committee of £3,403 18s. 8d.

Balance Sheet.—This totalled £55,774 12s. 10d. and showed a bank overdraft of £51,653 18s. 9d. as against £32,295 of the previous year and a loss on the Profit and Loss Account as at January 1, 1948, of £10,736 17s. 6d. which, with the loss for 1949, made a total of £29,983 13s. 2d.

The provision and maintenance of premises, furniture and heavy equipment, electricity, gas and water; stationery and Post Office and the cost of cleaning the premises and of provision and maintenance of linen, cutlery, glass, etc., was borne by the Committee, subject to a contribution by the Ministry of Works at the rate of £1,100 p.a. for cleaning services.

United Kingdom: Northern Ireland (Delegated Legislation).[1]— In 1948 the Order of Reference for the Statutory Rules, Orders and Regulations Joint Committee as adopted in 1946[2] were amended and the following Order of Reference substituted:[3]

Resolved.—That a Select Committee be appointed with such members as may be added thereto by the Senate to scrutinise every Statutory Order, Regulation or Rule laid or laid in draft before the House (other than a Statutory Order, Regulation or Rule which is required to be affirmed by Resolution of the House), in respect of which proceedings may or might have been taken in the House or in the Senate in pursuance of any Act of Parliament, with a view to determining whether the special attention of the House should be drawn to it on any of the following grounds:

(1) That it imposes a charge on the Public Revenues or contains provisions requiring payments to be made to the Exchequer or any Government Department or to any local or public authority in consideration of any licence or consent, or of any services to be rendered, or prescribes the amount of any such charge or payments;

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

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

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

(5) that there appears to have been an unjustifiable delay in the publication or in the laying of it before Parliament;

(6) that for any special reason its form or purport calls for elucidation.

Ordered.—That the Committee do consist of 5 members of this House with such members as may be added by the Senate, not exceeding 5 in number.

Ordered.—That the following (*naming them*) be members of the Committee.

Ordered.—That five be the quorum of the Committee.

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

[1] *See also* JOURNAL, Vols. XV, 44; XVI, 43-45.
[2] N.I. *Com. Hans.*, Vol. 32, No. 6, 243-250.
[3] *Ib.* XV, 44.

In 1949[1] the same Order of Reference for this Joint Committee was again approved.

Canada (The Judiciary & Parliament).—A Bill[2] was passed in the First Session of the XXI Parliament (13 Geo. VI. 1949) amending the Supreme Court Act, which contains the following section:

Tenure of office.—9. (1) Subject to subsection two the Judges shall hold office during good behaviour, but shall be removable by the Governor-General on address of the Senate and House of Commons.

Canada: House of Commons (Reading from Newspapers in Debate).—On April 7[3] the Chairman of Committees ruled that it was not in order for a member in debate to read articles from current newspapers, letters or communications emanating from persons outside the House and referring to, or commenting on, or denying anything said by a member or expressing any opinion reflecting on proceedings within the House.

Canada: House of Commons (Adjournment (Urgency) Motions).[4]—On February 1[5] the Leader of the Opposition (Hon. G. A. Drew) asked Mr. Speaker's leave to move the adjournment of the House (S.O. 31) for the purpose of discussing a definite matter of urgent public importance, namely, the statement of the Parliamentary Assistant to the Prime Minister reported in the Press, as follows:

War with Russia may be an outcome of the signing of the North Atlantic Security Pact. . . .

Mr. Harris, Parliamentary Assistant to the Prime Minister, foresaw the possibility of war when the Pact is signed in about 3 months' time.

If the Russians felt that they must make war, it would come at that time, he said,

—and it was the duty of the Government to place before the House immediately all the facts and circumstances upon which this statement was based.

Mr. Speaker, during the course of a Ruling, said that as there was no urgency for the discussion, since the matter could be discussed not only during the debate on the Speech from the Throne then under consideration, but on amendment and sub-amendment, he could not accept the Motion.

The House divided on the Question: "Shall the Speaker's decision be sustained?" Yeas, 133; Nays, 55.

Canada: House of Commons (Questions: Reply not in the Public Interest).—On March 17[6] the Minister of National Defence (Hon. Brooke Claxton) was asked:

As at February 15, 1949, how many Canadian army personnel have been qualified as parachutists (*a*) of the P.P.C.L.I.; (*b*) of other units?

[1] *Ib.* Vol. 33, No. 14, 523. [2] 13 Geo. VI. [3] CCLXVIII *Com. Hans.* 2409.
[4] *See also* JOURNAL, Vols. XIII, 52; XIV, 59; XVI, 152.
[5] CCLXVI *Com. Hans.* 117. [6] CCLXVII *Ib.* 1552.

to which the Minister replied that it was not in the public interest to give this, or similar information.

In regard to a subsequent Question as to the strength of the active force Canadian Army Brigade group as at February 15, 1949, or the nearest date to that for which returns had been made, the same answer applied.

Canada: British Columbia (Executive Council).—By the Constitution Act Amendment Act 1949,[1] S. 9 of the Constitution Act,[2] has been amended increasing the number of Ministers from 10 to 12.

Canada: British Columbia (Lady Speaker).—At the opening of Parliament on February 14, 1949, the Legislative Assembly elected Mrs. Nancy Hodges as Speaker. Mrs. Hodges has been an M.L.A. since 1941. We believe this is the first instance in the Commonwealth and Empire of the election of a woman to the Chair of the Legislative Chamber.[3]

Canada: British Columbia (Native Indian Franchise).—At the 1949 Session of the Legislature, the franchise[4] was extended to include Native Indians and for the first time they had their vote in the Election of June 15, 1949. Mr. Frank Arthur Calder, an Indian and a graduate of the University of British Columbia, was nominated and duly elected for the Division of Atlin in the Legislative Assembly. In order to give the franchise to a Native Indian the Elections Act 1939[5] was amended[6] by striking out the definition of "Indian" and amending S. 5 thereof, defining the voting disqualifications. There was little debate on the subject and the amendment passed without opposition.[7]

Canada: British Columbia (Clerk-Assistant & Law Clerk).—The person occupying the position of Law Clerk, is looked upon as the Clerk-Assistant at the Table and also assists in the drafting of amendments to Bills.[8]

Canada: Saskatchewan (Bill of Rights Act).—In 1947 the Legislative Assembly passed a Bill of Rights Act[9] to protect certain Civil Rights, of which the following is the text:

His Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short Title.—1. This Act may be cited as *The Saskatchewan Bill of Rights Act, 1947.*

Interpretation, "creed".—2. In this Act the expression "creed" means religious creed.

Right to freedom of conscience.—3. Every person and every class of persons shall enjoy the right to freedom of conscience, opinion and belief, and freedom of religious association, teaching, practice and worship.

[1] R.S.B.C. 1949, c. 11. [2] R.S. 1936, c. 49.
[3] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[4] R.S.B.C. 1947, c. 28. [5] *Ib.* 1939, c. 16. [6] *Ib.* 1949, c. 19.
[7] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[8] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[9] Stat. Sask., 1947, c. 35.

Right to free expression.—4. Every person and every class of persons shall, under the law, enjoy the right to freedom of expression through all means of communication, including speech, the press, radio and the arts.

Right to free association.—5. Every person and every class of persons shall enjoy the right to peaceable assembly with others and to form with others associations of any character under the law.

Right to freedom from arbitrary imprisonment.—6. Every person and every class of persons shall enjoy the right to freedom from arbitrary arrest or detention, and every person who is arrested or detained shall enjoy the right to an immediate judicial determination of the legality of his detention and to notice of the charges on which he is detained.

Right to elections.—7. Every qualified voter resident in Saskatchewan shall enjoy the right to exercise freely his franchise in all elections and shall possess the right to require that no Legislative Assembly shall continue for a period in excess of five years.

Right to employment.—8. (1) Every person and every class of persons shall enjoy the right to obtain and retain employment without discrimination with respect to the compensation, terms, conditions or privileges of employment because of the race, creed, colour or ethnic or national origin of such person or class of persons.

(2) Nothing in subsection (1) shall deprive a religious institution or any school or board of trustees thereof of the right to employ persons of any particular creed or religion where religious instruction forms or can form the whole or part of the instruction or training provided by such institution, or by such school or board of trustees pursuant to the provisions of *The School Act*, and nothing in subsection (1) shall apply with respect to domestic service or employment involving a personal relationship.

Right to engage in occupations.—9. Every person and every class of persons shall enjoy the right to engage in and carry on any occupation, business or enterprise under the law without discrimination because of the race, creed, religion, colour or ethnic or national origin of such persons or class of persons.

Right to own and occupy property.—10. Every person and every class of persons shall enjoy the right to acquire by purchase, to own in fee simple or otherwise, to lease, rent and to occupy any lands, messuages, tenements or hereditaments, corporeal or incorporeal, of every nature and description, and every estate or interest therein, whether legal or equitable, without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

Right of access to public places.—11. Every person and every class of persons shall enjoy the right to obtain the accommodation or facilities of any standard or other hotel, victualling house, theatre or other place to which the public is customarily admitted, regardless of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

Right to membership in professional and trade associations.—12. Every person and every class of persons shall enjoy the right to membership in and all of the benefits appertaining to membership in every professional society, trade union or other occupational organization without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

Right to education.—13. (1) Every person and every class of persons shall enjoy the right to education in any school, college, university or other institution or place of learning, vocational training or apprenticeship without discrimination because of the race, creed, religion, colour or ethnic or national origin of such person or class of persons.

(2) Nothing in subsectoin (1) shall prevent a school, college, university or other institution or place of learning which enrolls persons of a particular creed

or religion exclusively, or which is conducted by a religious order or society, from continuing its policy with respect to such enrolment.

Prohibitions against publication.—14. (1) No person shall publish, display or cause or permit to be published, or displayed on any lands or premises or in any newspaper, through any radio broadcasting station, or by means of any other medium which he owns, controls, distributes or sells, any notice, sign, symbol, emblem or other representation tending or likely to tend to deprive, abridge or otherwise restrict, because of the race, creed, religion, colour or ethnic or national origin of any person or class of persons, the enjoyment by any such person or class of persons of any right to which he or it is entitled under the law.

(2) Nothing in subsection (1) shall be construed as restricting the right to freedom of speech under the law, upon any subject.

Penalties.—15. (1) Every person who deprives, abridges, or otherwise restricts or attempts to deprive or otherwise restrict any person or class of persons in the enjoyment of any right under this Act or who contravenes any provision thereof shall be guilty of an offence and liable on summary conviction to a fine of not less than $25 nor more than $50 for the first offence and not less than $50 nor more than $200 for a subsequent offence, and in default of payment to imprisonment for not more than three months.

(2) The penalties provided by this section may be enforced upon the information of any person alleging on behalf of himself or of any class of persons that any right which he or any class of persons or any member of any such class of persons is entitled[1] to enjoy under this Act has been denied, abridged or restricted.

Injunction.—16. Every person who deprives, abridges or otherwise restricts or attempts to deprive, abridge or otherwise restrict any person or class of persons in the enjoyment of any right under this Act may be restrained by an injunction issued in an action in the Court of King's Bench brought by any person against the person responsible for such deprivation, abridgment or other restriction or any attempt thereat.

The Crown bound.—17. The provisions of this Act shall bind the Crown and every servant and agent of the Crown, and application for relief may be made without complying with the provisions of *The Petition of Right Act*.

Construction of Act.—18. Except as herein expressly provided nothing in this Act shall be construed as derogating from any right, freedom or liberty to which any person or class of persons is entitled under the law.

Coming into force.—19. This Act shall come into force on the first day of May, 1947.

Ottawa has debated the issue on several occasions, on Private Members' Motions, but nothing has yet come of it in a legislative way. The Province of Alberta passed an Act, in 1946, Part I of which closely resembled the Act. The Act, however, contained a "joker": it had a Preamble and a Part II which were more or less the Social Credit credo re banking and credit, and thus suspect as encroaching on Dominion jurisdiction in these matters. So, in 1946, the Act was tested in the Courts. The Alberta Supreme Court ruled Part I *intra vires*, Part II *ultra vires* of a Provincial Government. The case went to the Privy Council which, in 1947, declared the whole Act *ultra vires*. It was largely on the basis of the Preamble, however, that the whole Act was thrown out—Part I included. In the Province of Manitoba, Bill No. 23 of the 1949

[1] As amended by Stat. Sask., 1949, c. 29, 1.

Session—"An Act to protect Certain Civil Rights"—was introduced and debated, but did not reach the Statutes.[1]

Canada: Saskatchewan (Exceptions to Disqualifications of M.L.A.s: Contracts with Government).[2]—The Legislative Assembly Act was amended, during the 1949 Session of the Saskatchewan Legislature, by an addition to the section of the Act relating to "Exceptions to Disqualifications", to cover a possible situation arising from the fact that certain areas of the Province have suffered successive crop failures due to drought to the extent that Government aid and intervention has been necessary. The new sub-section excepts from disqualifications direct or indirect concern or interest . . . "in any benefit or emolument arising from any bargain or contract entered into by or on behalf of the Government of Saskatchewan with respect to advances of fodder or seed grain or supplies or the cancellation of any indebtedness therefor".[3, 4]

Canada: Saskatchewan (Sessional Indemnities of M.L.A.s).[5]—The Sessional Indemnity of members of the Legislative Assembly of Saskatchewan was increased from $2,000 per Session to $3,000, by an amendment to the Legislative Assembly Act enacted during the 1949 Session.[6] The $3,000 was allocated for taxation purposes, as follows: $2,000 to straight indemnity (subject to Federal Income Tax assessment), and $1,000 to allowable expenses (tax-free).[7]

Canada: Saskatchewan (Immunity for Radio Broadcasts).[8]—Certain Debates and Proceedings of the Legislative Assembly of Saskatchewan have been broadcast by radio since 1946. The sections of the Legislative Assembly Act relating to "Immunities and Privileges" were extended, at the 1949 Session, to provide that no member shall be liable to any civil action or prosecution, arrest, imprisonment or damages . . . "notwithstanding that words spoken by a member before the Assembly are broadcast, provided that the broadcasting takes place while the words are being so spoken".[9] That is to say, the immunity granted under the new sub-section does not apply to re-broadcasts.[10]

Canada: Newfoundland (House of Assembly: Internal Expenditure).—During the First Session of the Legislature of the Province of Newfoundland the Internal Economy Commission Act[11] was passed, providing that the person who fills the office of Speaker at a dissolution continues in such office until a Speaker is chosen by the new Legislature.[12]

The Clerk and Clerk-Assistant and the Serjeant-at-Arms of the

[1] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[2] *See also* JOURNAL, Vol. XV, 66, and Index hereto "M.P.s' contracts with Government." [3] Stat. Sask., 1949, c. 2, s. 2.
[4] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[5] *See also* JOURNAL, Vols. X, 36; XV, 66. [6] Stat. Sask., 1949, c. 2, s. 4
[7] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[8] *See also* JOURNAL, Vol. XV, 67, and Index "Parliament" hereto.
[9] Stat. Sask., 1949, c. 2, s. 3. [10] Contributed by the Clerk of the Legislative Assembly. [11] No. 46 of 1949. [12] S. 2.

House of Assembly are appointed by the Lieutenant-Governor in Council by Commisson under the Great Seal.[1]

The Lieutenant-Governor may in the same manner appoint a Law Clerk of the Legislature who shall be *ex officio* solicitor of the House of Assembly.[2]

In the same way a Commission of Internal Economy is appointed, consisting of the Speaker, the Chairman of Committees and 3 members of the House of Assembly, being members of the Executive Council. The Lieutenant-Governor is also required, by message, within the first 2 weeks of the Session, to communicate such appointments to the House of Assembly; 3 to form a quorum.[3]

The Clerk of the House is required to prepare annually an estimate of the Moneys required for the payment of members' salaries and contingent expenses of the House and the several officers and clerks thereof during the year commencing on July 1 each year. Such estimates must be submitted for the approval of the Commissioners for transmission to the Minister of Finance for his approval, before being laid on the Table of the House with the other estimates for the year.[4]

All moneys voted by the Legislature on such Estimates must be paid over to and held by such Minister, subject to the order of the Commissioners, for payment or transfer to them on their order at any time, in such sums as they deem requisite.[5]

All sums mentioned in S. 7 of the Act are paid according to the direction of the Commissioners, who may transfer such moneys as they may deem necessary into a bank to the credit of the Clerk of the House by an order signed by any 2 of them and in case of the death or removal from office of the Clerk, the moneys standing to his credit in the account are forthwith paid by such bank to the Commissioners.[6]

Any surplus, subject to running expenses, is paid over to the Minister of Finance.[7]

The Commissioners appoint all doorkeepers, messengers, etc., as they may consider necessary for the conduct of the business of the Legislature.[8]

The Commissioners also make all arrangements in connection with *Hansard* and Parliamentary printing, subject to Tabling a report thereon within 7 days of the Opening of the Legislature, for approval thereof.[9]

Complaints or unfitness of Officers of the House must be made to the Speaker, who may cause such enquiry thereon as he may think fit, and if the person was appointed by the Crown, suspend him, reporting such suspension to the Lieutenant-Governor in Council, or if not so appointed, Mr. Speaker may suspend such person and report thereon to the Commissioners.[10]

[1] S. 3. [2] S. 4. [3] S. 5. [4] S. 6. [5] S. 7. [6] S. 8. [7] S. 9. [8] S. 10. [9] S. 11. [10] S. 12.

Canada: Newfoundland (Promulgation of Statutes).—The Promulgation of Statutes (Amendment) Act[1] which further amends Chapter I of the Consolidated Statutes (Third Series) provides, among other things, that the Clerk of the House of Assembly must endorse on every Act, immediately after the Title of the Act, the day, month and year of Assent by the Lieutenant-Governor or reserved by him for the signification of the pleasure of the Governor-General of Canada; and in the latter case, the abovementioned endorsement is made when the Lieutenant-Governor has signified, either by speech or message to the House of Assembly or by Proclamation, that it was laid before the Governor-General in Council and that he was pleased to assent to it, and, if no date of operation is provided in the Act, the date of such assent or signification being the date of the commencement of the Act.

Acts no longer need be on parchment but may be wholly or partly written, typewritten or printed.

Bills finally passed by the House of Assembly must be signed by its Clerk on each page before presentation to the Lieutenant-Governor.

Section 4 provides that any Act may be amended, altered or repealed by any Act passed in the same Session.

Australia: Federal (Royal Commission: Timber Rights in Papua-New Guinea & the Minister of State for External Territories).—On January 11 the Hon. Mr. Justice G. C. Ligertwood of the Supreme Court of South Australia was by Letters Patent appointed a Commissioner:

> to inquire into certain transactions in relation to timber rights in the Territory now known as Papua-New Guinea

and on June 22 of that year his report was made to the Governor-General of Australia which became a Command Paper presented to Parliament on the 24th *idem*.

The inqury arose out of a transaction embodied in 2 Deeds dated respectively December 19, 1944, and November 20, 1945, whereby Raymond Parer, Harcourt Garden, Edward Farrell, and John Smith Garden, as Vendors, agreed to sell to Hancock & Gore Limited, as Purchasers, exclusive rights to take and export timber from an area of about 17,000 acres in the Bulolo Valley, New Guinea, containing 200,000,000 super feet of timber.

The Deeds themselves purported to base the rights, so agreed to be sold, upon a grant alleged to have been made by "the appropriate authority" to the Vendors or some one or more of them. Collaterally to the Deeds, it was alleged by the Vendors, that "the appropriate authority was the Hon. E. J. Ward, Minister of State for External Territories, and that the grant was in the form of an approval by the Minister of an application for a licence to take and

[1] No. 42 of 1949.

export timber made by Raymond Parer. It was said, that the approval of the application had been communicated to Parer in writing by J. S. Garden under the direction of the Minister.

It was further alleged by J. S. Garden, that the Minister had been induced to make the grant to Raymond Parer by a promise of 20 per cent. of the purchase moneys arising from its sale, and that Harcourt Garden appeared in the transaction only as "the dummy" for the Minister.

The purchase price under the Deeds was £100,000, of which £50,000, in two sums of £12,500 and £37,500, was paid by Hancock and Gore, Ltd., to Edward Farrell as representing the Vendors.

It was alleged by J. S. Garden that on December 3, 1945, having received a specific sum of £5,000 from Farrell, he paid it to the Minister on account of his share of the purchase moneys, with a promise that a further £15,000 would be paid, when the Minister issued a formal licence to Parer, which would enable the purchasers to go to New Quinea to commence operations.[1]

Mr. Justice Ligertwood said that the matters referred to him for inquiry were:

(i) What were the real transactions involved between Raymond Parer, Harcourt Garden, Edward Farrell and John Smith Garden or any of them, and Hancock & Gore, Limited, or any of its directors, employees or legal representatives, in relation to timber rights in the Territory now known as Papua-New Guinea;

(ii) Whether the Honourable Edward John Ward, Minister of State for External Territories, was party to any of the transactions abovementioned;

(iii) Whether the Minister signed, or authorized John Smith Garden to sign, any notification that the grant to Raymond Parer of any timber licence in the Bulolo Valley had been, or would be approved by the Minister;

(iv) Whether the Minister—

(*a*) was promised any financial benefit in relation to any of the transactions abovementioned;

(*b*) received, either directly or indirectly, any financial benefit in relation to any of the transactions abovementioned; and

(v) Whether the Minister—

(*a*) is or was financially interested, either directly or indirectly, in Sydney Pincombe Pty. Limited;

(*b*) has received, either directly or indirectly, any financial benefit from that company.

The fifth question was submitted because, in the course of certain criminal proceedings against the Vendors, to which I shall refer later, it was imputed by questions asked of the Minister in cross-examination, that he had concealed the £5,000 by investing it in Sydney Pincombe Pty. Limited through its managing director, W. M. Urquhart, who it was suggested, was his nominee. Although these imputations were hotly denied by the Minister, Counsel persisted in them through two preliminary proceedings before the Magistrates, and through two trials before a Judge and Jury. It is said that great prominence was given to them in the daily press.

Counsel appeared for the various Parties to the inquiry and evidence was taken.

[1] *Rep.* p. 3.

The Report of the Commissioner is very exhaustive and covers 41 pp. of printed foolscap.

We are, however, in this matter concerned only with the position of the Minister and the Commissioner's findings in regard to him were as follows:

1. (*a*) The transaction embodied in the 2 Deeds was a barefaced fraud, practised by Farrell and J. S. Garden upon Hancock & Gore Limited, in which, by false pretences, they induced Hancock & Gore Limited to purchase a non-existent timber concession, and to pay them £50,000 on account of the purchase money. Raymond Parer and Harcourt Garden were involved in the transactions and their conduct is morally censurable, but they have been acquitted by a Jury of criminal complicity.

(*b*) The Working Directors of Hancock & Gore Limited (which expression does not include Mr. E. R. Crouch nor Sir William Glasgow) were induced to enter into the transaction by their greed of timber and by their desire to get into Bulolo Valley ahead of their rivals. They were prepared to enter into a secret transaction, which, having regard to the position of J. S. Garden as a public servant, was improper on its face. They were aware of the impropriety and were ready to take advantage of it, seeking to salve their consciences with the reflection that they were dealing with the Syndicate, and were paying full value for the timber, and that the means by which the Syndicate became possessed of the grant, and what they did with the purchase money, were no concern of theirs. So much did they realize the impropriety of the transaction, that for a period of three and a half years, notwithstanding the fact that £50,000 was involved, they were afraid to directly approach either the Minister or the Department, to see if there was any substance in what they thought they had purchased. The Company's solicitor, Mr. E. E. Biggs, co-operated with the Working Directors in negotiating the transaction with similar knowledge of its impropriety, and failed in his duty to properly advise the Company and to secure it against loss. The Company's Logging Manager, Mr. H. G. Forshaw, also assisted in the negotiations with knowledge of the impropriety of the transaction.

2. The Minister was not in any way party to the transaction or to the fraud.

3. The Minister did not sign, or authorize John Smith Garden to sign, any notification that the grant to Raymond Parer of any timber licence in the Bulolo Valley had been, or would be, approved by the Minister.

4. The Minister was not promised any financial benefit in relation to the transaction, and did not receive, either directly or indirectly, any financial benefit therefrom or in relation thereto.

5. The Minister is not and was not financially interested, either directly or indirectly, in Sydney Pincombe Pty. Limited, and has not received either directly or indirectly, any financial benefit from that Company.[1]

The Commissioner's conclusion was as follows:

This completes my report. I have answered the specific questions submitted to me and have endeavoured to tie up the " loose ends " as well.

I have not pursued a number of by-tracks which led to dead ends. For instance about May, 1947, Ray Parer seemed to have received either the Department's letter of the 12th July, 1946, or the Minister's letter of the 18th December, 1946, refusing the application for a licence. He was considerably perturbed and saw his brother, Leo Parer, about the whole matter. Leo Parer, in communicating to Senator Courtice, endeavoured to make an improper use of the information which he alleged he obtained from his brother. Senator Courtice reported the matter to the Prime Minister, who dismissed it

[1] *Ib.* p. 4.

with the curt remark, " One hears some strange stories in these jobs of ours. I do not think that anybody who knows Eddie personally would doubt his honesty." Again there were suggestions made in anonymous letters that a mysterious robbery in 1945 and that a mysterious sum found in Brisbane in 1948 had something to do with the Hancock & Gore transactions. They were investigated and found to have no connexion with the matters under inquiry.

There are just two comments which I wish to add. First, I think that the authorities should give consideration to the question of prosecuting Farrell criminally. There were many indications that he was the master-mind in formulating and carrying out the Hancock & Gore transactions. The medical evidence submitted to me showed that since 1948 his health had improved to a considerable extent. He was able to give evidence at the inquiry and was in the witness box for periods aggregating three days. It was true that at times he exhibited distress, but on each occasion this was remedied by a temporary postponement of his examination.

My second comment relates to the governmental status of Garden and Service. Each of them was brought temporarily into the Public Service and was given a responsible office. Each of them was allowed a measure of trust and discretion outside the routine of the Department to which he was attached. Each of them betrayed his trust. In marked contrast was Mr. Halligan, the Secretary and Permanent Head of the Department of External Territories, who over a long period had faithfully discharged his administrative duties. In the routine of his Department, with its files and memoranda, were found the solutions to many of the questions which arose in the course of the inquiry. The necessities of the time and the sudden expansion of the Public Service may have made it desirable, if not necessary, to create offices like those held by Garden and Service. But this inquiry has emphasised that the utmost care should be exercised in selecting persons to fill such offices and in defining and supervising their duties and activities.[1]

Australia: Federal (Political Broadcasts).[2]—When the Australian Broadcasting Control Board was established by Act No. 64 of 1948, it was required to ensure that facilities were provided on an equitable basis for the broadcasting of political matter. The Board issued an order relating to the 1949 elections which compelled the policy speeches of the leaders of political parties to be broadcast over all stations, both national and commercial. When this order was tabled in Parliament, attention was directed[3] to the effect of the order in requiring commercial broadcasting stations, which were strongly opposed to Communist views by reason of their religious or trade union ties, to afford time on the air for the leaders of the Communist Party or other Parties with unacceptable views to deliver their policy speeches. In the debate on the matter, it was clear that both the Government and the Opposition were concerned at the effect of the order. The Board then amended its order, and it was left to the Broadcasting Commission, which controls the national broadcasting stations, to determine to what extent and in what manner political speeches would be broadcast from national stations during the election campaign.[4]

Australia: Federal. House of Representatives (Proposed Amend-

[1] *Ib.* p. 40. [2] *See also* JOURNAL, Vols. V, 80; VI, 30, 43; VIII, 120; IX, 23; XI-XII, 28; XV, 38, 182. [3] 1949 *Aust. Hans.*, Sept. 28, 643.

[4] Contributed by the Clerk-Assistant of the House of Representatives.—[ED.]

ments to Standing Orders).[1]—On October 7, 1949, the Report of the Standing Orders Committee covering a complete revision of the Standing Orders was brought up. The Committee considered that certain amendments would be needed to mould the Standing Orders to fit the enlarged House which would be assembled early in 1950. Although the consideration of the Report was set down as an Order of the Day, the proposed amendments did not come under review before the House dissolved prior to the General election. Material alterations from existing Standing Orders were:

(*a*) Automatic adjournment of House at 12.45 p.m. on Fridays, and at 11 p.m. on other days.
(*b*) New provision for a Minister to move "that House do now adjourn" to allow discussion on a matter of special interest where it was desired not to formulate a motion in express terms.
(*c*) New provision providing for the intervention of the Speaker when offensive or disorderly words used.
(*d*) When the guillotine is in force, the time limits for speeches will be greatly reduced.
(*e*) Before precedence is given to a matter of privilege a *prima facie* case must be established.
(*f*) The debate on a dissent from a ruling of the Speaker must be proceeded with forthwith instead of being held over to another day.
(*g*) On each alternate Friday, grievances and Private Members' business will receive priority (at present every third Thursday).
(*h*) Want of Confidence motions or motions relating to Government Business shall not be subject to the existing time limit of two hours for all motions.
(*i*) Precedence is accorded to Censure or Want of Confidence Motions.
(*j*) One supplementary question may be asked (at present none allowed).
(*k*) Rescission of a vote may be affirmed by a majority of those voting, not, as previously, by a majority of the whole number of Members.
(*l*) New provision for declaring result when division unnecessarily claimed.
(*m*) Motion for printing a paper on tabling is now limited to a Minister.
(*n*) Standing Orders may be suspended by a simple majority (at present an absolute majority).[2]

Australia: Federal (No point of Order on call from the Chair).—

[1] *See also* JOURNAL, Vol. IV, 54.
[2] Contributed by the Clerk-Assistant of the House of Representatives.—[ED.]

On March 15,[1] in the House of Representatives, Mr. Deputy Speaker ruled that no point of Order could be taken in relation to the call from the Chair. That matter rested entirely with the Chair.

Australia: Federal (Registration of Lobbyists).—On February 11,[2] in the House of Representatives, Q. was asked the Prime Minister (Rt. Hon. J. B. Chifley) whether he would consider adopting the practice of the Congress of the U.S.A., of registering Lobbyists and political contact-men and the clients they represent, so that this information could be made available to the public? Would he also consider the holding of a public inquiry into the activities of these Lobbyists similar to that ordered by Mr. Attlee in Great Britain? Mr. Chifley replied that the Government did not propose to register "Lobbyists" or so-called contact-men. How could they be defined? For instance, a business man might be interested in a number of commercial organisations. Mr. Chifley, continuing, said there were in Australia some people who acted as agents, but their number was not great. He had never felt that there was anything improper in the practice. It would be most difficult to draw a line between Lobbyists and "contact-men" and business men who wished to make representations on their own behalf. The Government did not propose to appoint Committees, or to compile a register of people who came into Parliament buildings.

Australia: Federal (Re-Broadcasting of Questions).[3]—On March 3,[4] in the House of Representatives, an hon. member asked Mr. Deputy Speaker, as Chairman of the Parliamentary Proceedings Broadcasting Committee, if the Committee would consider varying the present procedure in connection with the omission of defamatory matter and personal explanations from the evening re-broadcasts of Questions and answers. The hon. member said that an untrue statement was made about him, but the denial was not. In the interests of equity and fair play, he suggested that all accusations and denials should be eliminated from future re-broadcasts.

Mr. Deputy Speaker said that if hon. members would make accusations against one another when asking Questions the Chair could not do much about it. The Act[5] which authorised the broadcasting of the proceedings of Parliament provided that Questions and answers at the beginning of each sitting should be re-broadcast in the evening, such re-broadcast being restricted to Questions and answers by the general principles for the conduct of the broadcast which were adopted by Parliament on the recommendations of the abovementioned Committee.

Australia: Federal (Aborigines & other Non-European Franchise).—In 1788, when white settlement first began in Australia, the number of aborigines in that Continent was estimated at about

[1] 1949 (II) *Com. Hans.*, No. 7, 1461.
[2] *See* JOURNAL, Vol. XV, 182.
[3] *Ib.*, No. 1, 206.
[4] 1949 (II) *Com. Hans.*, No. 5, 960, 988.
[5] No. 20 of 1946.

300,000. To-day it is estimated to be not more about 80,000 full bloods and half-castes.

The latest figures are those given in the Australian Year Book 1946-47:[1]

	Nomadic.	*In Employment.*	*In Supervised Camps.*	*Others.*	*Total.*
Full bloods	21,664	11,687	11,519	2,144	47,014
Half-castes	1,438	8,250	7,312	7,981	24,981

All aborigines in the Australian Capital Territory and the States of New South Wales, Victoria, South Australia and Tasmania are now entitled to enrolment on the Commonwealth Roll, but in Queensland, Western Australia and the Northern Territory only those who have served with the Forces or are qualified by a law of the State or Territory are so entitled.

The estimated number of aborigines (full blood) resident in the several States and Territories, the estimated number entitled to enrolment and the estimated number actually enrolled is:

State or Territory.	*Estimated No. of aborigines resident in area.*	*Estimated No. of aborigines entitled to enrol.*	*Estimated No. of aborigines actually enrolled.*
New South Wales	594	594	500
Victoria	29	29	25
Queensland	7,979	100	50
South Australia	2,868	2,868	250
Western Australia	22,210	100	50
Tasmania	2	2	2
Australian Capital Territory	1	1	1
Northern Territory	13,331	50	20
Totals	47,014	3,744	898

No aboriginal native of Asia (except British India), Africa or the Islands of the Pacific (except New Zealand) is entitled to enrolment on the Commonwealth Roll unless under S. 41 of the Constitution or by naturalisation.

Very few persons would now be qualified under S. 41 of the Constitution and having regard to the restrictions which have long operated against entry and naturalisation in the case of non-Europeans the number now entitled to be enrolled is not large.

The total non-European (full blood) population of Australia is about 21,000—probaby about half of these are actually enrolled.[2]

Australian States (Aborigines and other Non-European Franchise).—In regard to the number of aborigines in the various States and their State franchise rights, the position is as follows:

New South Wales.—There is no statutory provision in the Parlia-

[1] No. 37. [2] Contributed by the Clerk of the Senate.—[Ed.]

mentary Electorates and Elections Act, 1912,[1] under which the Parliamentary franchise is given to aborigines in this State. As native-born or naturalized citizens of the State they automatically come under the provisions of S. 20 (1) of such Act, containing the general Parliamentary franchise. The approximate number of aborigines in this State is 9,000.

Victoria.—As natural-born subjects of His Majesty all Australian aborigines of the full age of 21 years are entitled to be enrolled as Parliamentary voters under the same provisions as laid down by S. 144 of the Constitution Act Amendment Act, 1928,[2] for other persons, but only a very small number now remain.

Queensland.—Section 11 of the Elections Act of 1915[3] provides that no aboriginal native of Australia (of which only a few thousand remain in this State), Asia, Africa, or the Islands of the Pacific is qualified to be enrolled on any election roll and under S. 9 of such Act, if his name is not on the electoral roll he is not qualified. Section 11 also provides that naturalized subjects from British India or Syria, possessing the qualifications of residence as laid down in S. 9 thereof, may be registered on the electoral roll and are entitled to vote at any election.

South Australia.—Australian aborigines have always been regarded as British subjects and as such are enrolled in accordance with the Constitution and Electoral Acts in the same way as Whites. Out of an estimated population of 5,000 in South Australia approximately 1,000 are enrolled or entitled to be enrolled. Of this number between 300 and 400 are also eligible to vote for the Legislative Council. The balance of 4,000 are nomads of various tribes and out of touch with civilized ways of living. Those aborigines enrolled are mostly in Government-controlled institutions and denominational mission stations or employees on sheep and cattle stations where facilities for recording votes exist. Although voting is compulsory for the House of Assembly, no action is ever taken against any aborigine for not enrolling and voting.[4]

An interesting document on the aborigines in this State is the Report of the Aborigines Protection Board for the year ended June 30, 1949, a Parliamentary Paper ordered by the House of Assembly to be printed October 11, 1949. (*See also* the Aborigines Act 1934-1939.[5])

Western Australia.—(*See* JOURNAL, Volume XIII, 68.)

Tasmania.—There are no aborigines in this State. However, Ss. 28 and 29 of the Constitution Act, 1934,[6] provide for the qualifications of electors of both Houses of Parliament, but make no racial distinction.

Northern Territory.—"Aboriginal" is defined in the Aboriginals Ordinance of the Territory as being any person who is:

[1] No. 41 of 1912.
[2] 19 Geo. V, No. 3660.
[3] 6 Geo. V, No. 13.
[4] Constitution Act, 1934-37, and other Acts.
[5] No. 2154 of 1934 as amended by Act No. 14 of 1939.
[6] 25 Geo. V, No. 94.

(*a*) an aboriginal native of Australia or of any of the Islands adjacent or belonging thereto; or
(*b*) a half-caste who lives with an aboriginal native as a wife or husband; or
(*c*) a half-caste who, otherwise than as the wife or husband of such an aboriginal native, habitually lives or associates with such aboriginal natives; or
(*d*) a half-caste male child whose age does not apparently exceed twenty-one years; or
(*e*) a female half-caste not legally married to a person who is substantially of European origin or descent and living with her husband; or
(*f*) a male half-caste whose age exceeds twenty-one and who, in the opinion of the Director, is incapable of managing his own affairs and is declared by the Director to be subject to this Ordinance.

Section 3 "A" of such Ordinance however, which enables the Director of Native Affairs to declare an aborginal or a half-caste to be not subject to the Ordinance, states:

(1) The Director, by notice in the *Gazette*, declare that any person shall not be deemed to be an aboriginal or a half-caste, as the case may be, for the purposes of this Ordinance or of any provision thereof.
(2) On the publication of any such notice in the *Gazette* the person named in the notice shall, to the extent specified therein, cease to be a person to whom the definitions of "aboriginal" and "half-caste" in the last preceding section apply.
(3) The Director may, by notice published in the *Gazette*, revoke any declaration made in pursuance of subsection (1) of this section so far as that declaration applies to any particular person and thereupon the declaration shall no longer apply to the person specified in the notice of revocation.

Regulation 3 of the Statutory Rules, 1949, No. 1, reads as follows:

Other disqualified persons.—3. Regulation 22 of the Northern Territory Electoral Regulations is amended by omitting paragraph (*a*) and inserting in its stead the following paragraph:

unless—

"(*a*) he is an aboriginal native of Australia and—

(i) is, by virtue of a declaration in pursuance of section 3A of the Aboriginals Ordinance 1918-1947 of the Territory, not deemed to be an aboriginal for the purposes of that Ordinance or of any provision thereof; or
(ii) is or has been a member of the Defence Force;"[1]

Australia: New South Wales (Formation of Ministry).—In Article VIII of the Letters Patent constituting the office of Governor of the State it is provided that:

The Governor may constitute and appoint in Our name and on Our behalf, all such Judges, Commissioners, Justices of the Peace and other necessary officers and Ministers of State as may be lawfully constituted or appointed by Us.

Following a General Election the Governor summons the Leader of the Party which has won the majority of seats in the Legislative

[1] The abovementioned information is contributed by the Clerks of the Legislative Assemblies of New South Wales, Victoria, Queensland, and the Clerks of the Houses of Assembly of South Australia, Tasmania, and the Clerk of the Legislative Council of the Northern Territory.—[ED.]

Assembly and asks him whether he will be able to form a Government. On receiving assurance to that effect, the Governor swears him in as Premier.

In the case of the present Government, it is understood that the nominees were elected by the Parliamentary Labour Party (known as the Caucus) and were therefore recommended by the Premier to the Governor for appointment as Ministers. If the Governor approves of these recommendations he swears them in as Ministers and their appointments are subsequently *Gazetted*. Vacancies in the Ministry are filled in like manner. The seniority of Ministers depends upon the order in which they are sworn in, except in the case of the Deputy Premier, who is always the next senior to the Premier.[1]

Australia: New South Wales (Legislative Assembly: Electoral).—The Parliamentary Electorates and Elections (Amendment) Act, 1949,[2] makes provision for increasing the number of members of the Legislative Assembly from 90 to 94 as from the next General Election, which will be held in 1950.

The Act also makes provision for the redistribution of electoral districts to be carried out by the Electoral Commissioner, instead of by 3 Electoral Districts Commissioners.

Certain restrictions have been imposed on postal voting. Only persons living more than 5 miles from each and every polling place, which will be open in such district, are now permitted a postal vote. "Electoral Visitors" will in future visit sick or infirm electors, who have notified the Returning Officer that they will be unable to attend at a polling place.

The Act also contains miscellaneous amendments, including provision for the use of mobile polling booths in hospitals, convalescent homes and similar institutions.[3]

Australia: South Australia (Financial Procedure: Governor's Warrant).[4]—The Public Finance Act Amendment Act of 1949[5] repealed S. 72 of the Constitution Act, 1934-1947,[6] and re-enacted it to be included in the Public Finance Act. This dealt with the Governor's Appropriation Fund and a slight re-drafting of the section makes it clear that when Parliament passes an Act containing a provision that money required for the purposes of that Act is to be paid out of money voted by Parliament, then the Governor's powers of appropriating revenue or loan (according to the nature of the particular Act) will be available for expenditure on the purposes mentioned in the Act.

This Act also provides for the establishment of an account to be called the Loan Fund Account to which all Loan Moneys raised pur-

[1] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[2] Act No. 23 of 1949.
[3] Contributed by the Clerk of the Legislative Assembly.—[ED.]
[4] *See also* JOURNAL, Vols. XI-XII, 48; XIII, 184; XVI, 56
[5] 13 Geo. VI, No. 48 of 1949. [6] 11 Geo. VI, No. 19 of 1947.

suant to any Act will be credited and all loan moneys expended pursuant to Statutes or Governor's warrants will be debited.

The principle is established of having a permanent standing consolidated loan account for all loan moneys, instead of a separate loan account for each loan. Previously this authority was inserted from year to year in the Public Purposes Loan Act.[1]

Australia: South Australia (Suspension of a Member).—On November 1-2,[2] during a discussion in Committee on the Revenue Estimates, a member was called to order by the Chairman for irrelevancy in the debate. The Treasurer interjected, "It is only wasting time. We are not listening." The member replied, "Dictators never do."

The Treasurer then objected to the word "Dictator". The Chairman having asked the hon. member to withdraw the word objected to, and the hon. member having refused, he was named by the Chairman.

The Speaker resumed the Chair and having asked the hon. member to withdraw and the hon. member again refusing, he was suspended from the service of the House for one hour on Motion duly made and put.[3]

Australia: South Australia (Pensions to Members).[4]—Section 3 of the Parliamentary Superannuation Act Amendment Act, 1949,[5] amending the Act of 1948,[6] provides that any member qualified for a pension, who has served as a member for 18 years or more, need not comply with the requirement that he satisfies a Judge that there are good and sufficient reasons why he should resign and not seek re-election.

Section 4 of the amending Act makes it clear that a member contemplating resignation may approach a Judge before that event, with a statement of reasons for his intended retirement.[7]

Australia: Victoria (Constitutional: Governor's salary).—Heretofore the Governor's salary was fixed at £5,000 p.a., out of which the Governor paid staff salaries, travelling and all other expenses except repairs to Government House.

Under the Governor's Salary Act,[8] however, provision has been made for payment to the Governor of a salary of £6,000 p.a., and of an additional amount (this year £4,000) for the purpose of meeting his expenses for services in connection with Government House (including secretarial, domestic and maintenance services). Actually it means that the salary has been increased from £5,000 p.a., to £10,000 p.a.[9]

[1] Contributed by the Clerk of the Parliaments and Clerk of the House of Assembly.—[ED.] [2] 1949 *Hans.* 1184-6. [3] Contributed by the Clerk of the House of Assembly and Clerk of the Parliaments.—[ED.]

[4] *See also* JOURNAL, Vol. XVII, 34. [5] 13 Geo. VI, No. 33 of 1949. and the Clerk of the House of Assembly.—[ED.] [6] 13 Geo. VI, Act No. 5380.

[6] 11 Geo. 6, No. 8 of 1948. [7] Contributed by the Clerk of the Parliaments

[8] Contributed by the Clerk of the Legislative Council and the Clerk of the Legislative Assembly.—[ED.]

Australia: Victoria (Motion: That an honourable member be not further heard).[1]—The following is an S.O. (78D.) of the Legislative Assembly of this State Parliament:

A Motion, without notice, may be made that a member who is speaking " be not further heard ", and if it shall appear to the Speaker or Chairman that such a member has already had full opportunity of stating his views on the question and is using his right to speak in such a manner as to be an abuse of the rules and forms of the House or for the purpose of obstructing business, and that such Motion, if carried, would not be an infringement of the rights of the minority, the Motion, that the member who is speaking " be not further heard " shall be put forthwith and decided without amendment or debate, and no other Motion shall shall be made or question of order raised until such Motion has been disposed of.

and a similar practice prevails in the Parliaments of the other States[2] of Australia, as well as at Canberra.[3]

On November 17, 1948,[4] consequent upon the attitude of a member, it was moved by another hon. member:

That the honourable member for Richmond be not further heard. The hon. member in question then said: " You want to forget that you are a member of the Liberal Party occasionally, Mr. Speaker." Whereupon another hon. member rose to a point of order, but was ruled out by Mr. Speaker, who read S.O. (78D.) given above and said: The hon. member for Richmond has disregarded the frequent admonitions of the Chair, has indulged in repetition and has departed from the Standing Orders. I shall therefore put the Motion; and the House divided: Ayes, 39; Noes, 12 (6 pairs).

Australia: Victoria (Legislative Assembly: Suspension of a Member).—On November 17, 1948,[5] the hon. member for Elsternwick drew Mr. Speaker's attention to certain words used by the hon. member for Richmond (Mr. Keon) as abovementioned:

Mr. Speaker then asked the hon. member for Richmond whether he admitted using those words, to which Mr. Keon replied in the affirmative.

Mr. Speaker stated that he regarded these words as offensive to the Chair, and named the hon. member.

The Minister of Lands (Acting Premier) suggested to the hon. member that he withdraw the words to which exception had been taken, which Mr. Speaker intimated he was willing to accept.

The hon. member for Richmond, however, said he had no intention of withdrawing " one iota from anything I have already said ",

[1] Blackmore, in his " Practice of the House of Assembly, 1885, in the Province of South Australia," p. 305, refers to an instance which occurred in the Commons on June 14, 1880, when a member, persisting in charges against the French Ambassador, notwithstanding the remonstrances of Mr. Speaker, Mr. Gladstone moved, " That Mr. O'Donnell be not now heard." Mr. Speaker stated that such a motion had not been made for 200 years, but there were instances in the seventeenth century.

[2] N.S.W.: L.C., S.O. 75; L.A., S.O. 142; Que.: L.A., S.O. 107; S.A.: H.A., S.O.152; W.A.: L.A., S.O. 144; Tas.: L.C., S.O. 137; H.A., S.O. 188.

[3] Sen., S.O. 421; Reps., S.O. 262C. [4] 1948 *Parl. Hans.* 3576. [5] *Ib.* 3577.

and concluded by saying: "He is the most biased Speaker that has ever been in the House."

Whereupon the Acting Premier observed there was no alternative but to move:

That the honourable member for Richmond be suspended from the service of the House.

The House thereupon divided: Ayes, 40; Noes, 13 (Pairs 6), and Mr. Keon withdrew from the Chamber.

On November 23 the Minister of Lands said:[1]

I desire to raise a question of privilege, Mr. Speaker. In the *Age* newspaper of the 18th of November last the honourable member for Richmond, Mr. Keon, M.L.A., is reported to have made a statement which is a reflection upon you, Mr. Speaker, in that you are accused of partiality in the discharge of your duties. I also wish to refer to an incident which took place in the House on Wednesday evening last following the suspension of the honourable member for Richmond. As he was leaving the Chamber he turned and, facing you, gave the Nazi salute. This act was not only an insult to you but also contempt of Parliament. I will now hand in at the Table a copy of the newspaper referred to, and later I propose to move that the honourable member for Richmond is guilty of breaches of privilege.

Mr. Speaker then asked the Clerk of the House to read the quotation referred to, as follows:[2]

PARTISAN CHARGE.

Later, Mr. Keon said: Whatever might be said about Mr. Rosevear as Speaker of the House of Representatives, he is only an apprentice compared with Mr. Maltby.

Despite his elevation to Speaker and chief custodian of the rights of members of all parties of State Parliament, Mr. Maltby has never been able to forget he is a Liberal party member.

At every opportunity he attempts to protect members of the Government parties from exposures by members of the Opposition.

Any abuse of the Labour party by the Liberal or Country parties has always been in order, but Labour members cannot blink an eyelid without the Speaker rising in outraged indignation.

Mr. Speaker went on to say that he would hear the hon. member for Richmond if he desired to speak.

Mr. Keon replied that he understood the decision had already been taken and that anything he now said would not alter the decision of the Government to suspend him for a certain period,[3] and after further remarks from the hon. member, Mr. Speaker ordered him to withdraw from the House.

Mr. Keon accordingly withdrew from the Chamber and the Acting Premier moved:[4]

That the action of the honourable member for Richmond, Mr. Keon, when leaving the Chamber following his suspension on the 17th of November instant was an insult to the Speaker and a contempt of Parliament.

That the remarks made by the honourable member for Richmond, Mr.

[1] *Ib.* 3645. [2] *Ib.* [3] In some Parliaments the S.O.s provide fixed periods for the first, second and subsequent suspensions.—[ED.] [4] *Ib.* 3648.

Keon, and reported in the *Age* newspaper on Thursday, the 18th of November instant, are a gross libel on the Speaker; and

That the honourable member for Richmond, Mr. Keon, is guilty of grave breaches of the privileges of this House and that he be suspended from the service of this House and be excluded from the precincts until the 31st of December, 1948.

Long debate on the Motion then took place,[1] during which the offending member accused the Government of taking advantage of the Standing Orders to stifle free speech in order to rid themselves of a member who might cause the Government discomfort in the discussions during the next few weeks.[2]

An hon. member observed that, after all, in all Parliaments incidents sometimes occurred: tempers became frayed and people got excited. It was usually made right by all Parties agreeing that the incident about which there was a complaint was disagreeable and upon the member concerned expressing regret the incident was closed.[3]

It was also contended by another hon. member that the offending member had not only refused to withdraw what he had said but had increased the offence by his actions.

Upon the Question being put the House divided: Ayes, 43; Noes, 14 (Pairs 2).

On December 8, however, Mr. Speaker said:[4]

I desire to report to the House that the honourable member for Richmond, Mr. Keon, has waited on me and has expressed his regrets for the episode which led to his recent suspension from the House. He has expressed his regrets as they affect me in person, and as they affect my office. I am convinced of the sincerity with which he approached me, and so far as his expressions affect me and my office I accept them without reservation. Mr. Keon has also expressed to me, and in the same spirit, his regret for any offence against the Parliament as an institution. It is a matter for the consideration of honourable members so far as the institution is affected, and I therefore leave that aspect to the will of the House.

The Premier and Treasurer (Mr. Hollway) then replied:

In view of what you have said, Mr. Speaker, I beg to move:

That the resolution of the House on the 23rd November last with respect to the breach of privilege of this House by the honourable member for Richmond, Mr. Keon, his suspension from the service of this House, and his exclusion from the precincts until 31st December, 1948, be read and rescinded.

The Speaker.—I presume the House is agreeable to the resolution of the 23rd of November being taken as read.

The Motion was agreed to.

Australia: Tasmania (Salaries, etc., of Premier, Ministers, Leader of the Opposition, Government Leader in Legislative Council, President, Speaker & Members).—An Act was passed at the end of 1948[5] authorizing the following salaries and allowances:

(*a*) The Premier, if holding any of the offices mentioned below (*b*),

[1] *Ib.* 3648-3680. [2] *Ib.* 3647. [3] *Ib.* 3657. [4] *Ib.* 4125. [5] No. 59 of 1948.

is entitled to a salary of £2,000 p.a., and if not his salary, in addition to his allowance as a member of Parliament, is at the yearly rate £400 p.a., with, in either case, an entertainment allowance at the rate of £350 p.a.

(*b*) The salary of the following Ministers: Chief Secretary, Attorney-General, Treasurer, Minister for Lands and Works, for Agriculture and for Education is £1,750 p.a. in each case.

(*c*) Honorary Ministers receive £1,450 p.a. each.

(*d*) The salary of the Leader of the Opposition is increased from £250 to £500 and the Government Leader in the Legislative Council receives £350 in addition to the same allowance as the Leader of the Opposition.

(*e*) The President and the Chairman of Committees of the Legislative Council receive £400 and £175 p.a., and the Speaker and Chairman of Committees of the House of Assembly £400 and £250 p.a., all respectively.

(*f*) The constituencies for the two Houses are enumerated under S. 8 of the Bill and classified with annual salary as follows:

Legislative Council.	£
(i) Buckingham, Hobart, Newdegate and Queenborough	800
(ii) Monmouth, Derwent, Huon and Pembroke ...	900
(iii) Launceston, Cornwall, Macquarrie, Meander, Tamar and Westmorland	950
(iv) Mersey, West Devon, Russell and South Esk	1,000
(v) Gordon	1,050

House of Assembly.	£
Denison	850
Franklin	950
Bass and Wilmot	1,000
Darwin	1,050

The fees paid to members of the Public Works Committee are also revised as follows:

(*a*) by increasing payment from 30s. to £3 3s. (para. I);
(*b*) by increasing payment from 25s. to £2 2s. (para. II).

Australia: Western Australia (Electoral).—The Electoral Act, 1907-1940, S. 17 (3) provides: Any member of the Legislative Assembly, and the wife of any member of the Legislative Assembly, may claim to be enrolled for the district represented by such member, and when so enrolled shall be deemed to live in such district. Quite a number of the members of the Legislative Assembly, who represent country or far north-west districts, live in the city. The above provision in the Electoral Act enables them and their wives to be enrolled for the district which the member represents. Their

names do not appear on the roll for the district in which they actually live.[1]

The amending Act of 1949 was made necessary by the recent redistribution of seats, whereby certain constituences were abolished or considerably altered or suffered change of name. Several sitting members intend to contest fresh districts. The amending Act provides for their enrolment for the next Elections.

The other provisions of the amending Act are purely machinery. They deal with appointment of polling places, and the questions to be put by Presiding Officers at the poll to electors before the issue of ballot papers.[2]

Australia: Northern Territory (Northern Territory Representation Bill).—In moving 2 *R.* of this Bill in the House of Representatives on March 3[3] the Minister of the Interior (Hon. H. V. Johnson) said that the Bill was consequential on the passing of the Nationality and Citizenship Act of 1948 and that clause in the Electoral Bill, 1949, which was now before the House, was designed to remove the restrictive condition hitherto contained in the Commonwealth electoral law in respect of the eligibility of naturalized persons for nomination and election to the Federal Parliament.

The Bill passed through the remaining stages on the 16th *idem*,[4] was sent to the Senate, agreed to without amendment, received *R.A.* and became Act No. 11 of 1949.[5]

New Zealand (Bill to abolish the Legislative Council).[6]—On August 12 the then Leader of the Opposition (Mr. S. Holland) introduced a Bill to abolish the Upper House of New Zealand and on the 17th *idem*[7] he moved its Second Reading, to the Question for which an amendment[8] was moved by the then Prime Minister (Rt. Hon. P. Fraser) that the word "now" be deleted and the following words added: "this day 3 months", but the amendment was not put, the debate being interrupted and the Bill lapsed.

As, however, there have been further proceedings on the subject during 1950 and such a Bill has been passed,[9] it will be reported in the Volume (XIX) of the JOURNAL reviewing that year.

Union of South Africa: The Senate (Mr. President's Ruling on Entrenched Provisions in Constitution).—On April 6[10] when the House was in *C.W.H.* on the South Africa Affairs Amendment Bill an hon. Senator asked the Chairman's Ruling whether this Clause 15 (*Amendment of S. 22 of Act No. 42 of 1925*) of the Bill did not require to be passed by a ⅔-majority of both Houses of Parliament sitting together in terms of Ss. 137 (*Equality of English and Dutch Languages*) and 152 (*Amendment of Act*) of the South Africa Act, 1909.[11]

[1] The Electoral Act Amendment Act, 1949. [2] Contributed by the Clerk of the Legislative Assembly.—[ED.] [3] 1948-49 *Com. Hans.*, 2d. period, No. 5, 968. [4] *Ib.* 1547. [5] Contributed by the Clerk of the Legislative Council.—[ED.] [6] *See also* JOURNAL, Vol. XVI, 166. [7] 286 *N.Z. Hans.* 1340. [8] *Ib.* 1348. [9] *Ib.* 1367. [10] 1949 MIN. 95. [11] 9 Edw. VII, c. 9.

The Chairman then said that in his opinion the provision substituting "Afrikaans" for "Dutch" as one of the official languages of South-West Africa was not in any way affected by the provisions of the South Africa Act, 1909, entrenching certain sections of that Act but suggested that the hon. Senator ask for the ruling of Mr. President.

Upon which it was Resolved: That, for the purpose of obtaining Mr. President's Ruling, the Chairman be directed to report progress and ask leave to sit again. The Chairman thereupon left the Chair to make his Report to the House, when, with Mr. President in the Chair, the Chairman stated the Question which had arisen in Committee and the decision which had been given by him thereon, and that, for the purpose of obtaining Mr. President's Ruling, the Committee had directed him to report progress and ask leave to sit again.

After debate, Mr. President said:

I do not see how the honourable Senator can argue that any of the provisions of a Bill amending the constitution of South-West Africa is governed or affected by provisions in the Act of Union, requiring, in the case of an amendment to certain sections, a two-thirds majority of both Houses of Parliament sitting together. Sections 137 and 152 of the South Africa Act, 1909, have never been in force in the Territory; consequently the official languages in South-West Africa are not entrenched and therefore the procedure prescribed by the South Africa Act is not applicable. Subsection (1) of the proposed new S. 44 to which the honourable Senator has referred, does not appear to do anything more than to confirm the right which the Union Government has hitherto had of administering, and legislating for, the Territory.

My ruling is that the proposed amendment of S. 22 of the principal Act substituting "Afrikaans" for "Dutch" as one of the official languages of the Territory is not in any way affected by those provisions of the South Africa Act which are entrenched.

Mr. President then left the Chair and the Committee resumed when the Chairman stated Mr. President's Ruling to the Committee.

Union of South Africa: The Senate (Questioning qualifications of new Senator).—On January 21,[1] when a new Senator (Hon. W. G. Ballinger) was waiting to be sworn in, an hon. Senator asked Mr. President whether in view of the fact that the Witwatersrand Electoral Officer had held that gentleman concerned could not be registered as a voter as he was not a Union National, and that he therefore could not comply with the requirements of section 26 and section 54 of the South Africa Act, 1909,[2] his seat had not automatically become vacant, and he was consequently not entitled to be sworn and to take his seat in the House.

Mr. President said:

In permitting the Honourable Senator to ask me the question I would like to remind the House that it is laid down in May,[3] " ' that the taking of his seat by a member is a matter of privilege, and ought not to be interrupted by any discussion whatever '. Nor can any appeal be made to obtain the interference

[1] 1949 MIN. 2. [2] 9 Ed. VII, c. 9. [3] XI Ed. 161.

of the Speaker to stay a member from taking the oath on any ground whatever." I am prepared, however, to go so far as to say that I am in fact informally aware that the request of the gentleman concerned for the transfer of his name from the Claremont (Cape) to the Houghton (Johannesburg) Voters' List has been refused by the Electoral Officer there on the grounds of an objection, which had been lodged and which he has upheld, that the gentleman concerned was not a Union National. According to my official information, however, which has just been communicated to the House, he has been duly elected as a Senator and unless I receive further information to the contrary he is entitled to subscribe the Oath and to take his seat.

I feel that I should point out that it is the duty of any Senator to satisfy himself that he is in all respects qualified to be sworn as a Senator and to take his seat. Should he fail to do so, he naturally becomes liable to the penalty provided by section 55 of the South Africa Act, 1909.

Mr. William George Ballinger, elected to the Senate in terms of Act No. 12 of 1936, was then introduced and brought to the Table by Senators Campbell and Malcomess.

The Declaration of Property Qualification required by section 26 of the South Africa Act, 1909, was then made by the newly elected Senator before the Clerk of the House in his capacity of Commissioner of Oaths.

Mr. Ballinger then made and subscribed the Oath of Allegiance, which was administered to him by Mr. President, and the new Senator took his seat.

Union of South Africa: The Senate (The Closure).—On the adjourned debate of the Motion to go into *C.W.H.* on the Dongola Wild Life Sanctuary Repeal Bill on May 17[1] the Closure: "That the Question be now put" was moved but not accepted by Mr. President.

On May 18[2] the Closure was moved on Clause 3 of the same Bill in *C.W.H.*, accepted by the Chairman of Committees and carried.

On May 20[3] the Closure was moved on an amendment to the Question of the Third Reading of the same Bill and carried after a Division: Contents, 17; Not-Contents, 15.

On May 23[4] Senator the Rt. Hon. G. H. Nicholls on a point of Order asked Mr. President:

Whether in view of the fact that:

(1) Standing Order No. 145 (1) expressly excluded the application to the proceedings of this House of the "closure procedure" as applied to the proceedings of the Commons House of Parliament of the United Kingdom;

(2) whilst Standing Order No. 63 (1) of "Another Place" provides that a member shall not interrupt another member whilst speaking unless it is done for certain purposes including the moving of the closure, Standing Order No. 141 (*a*) of this House expressly omits such provision; and

(3) during the present Session the closure had been permitted to be moved whilst a Senator was speaking,

he would give his Ruling on the procedure which should and would be followed in future in this House.

[1] 1949 MIN. 151; 1949 *Sen. Hans.* 2584. [2] 1949 MIN. 156; 1949 *Sen. Hans.* 2726.
[3] 1949 MIN. 164; 1949 *Sen. Hans.* 3003. [4] 1949 MIN. 167; 1949 *Sen. Hans.* 3008.

After Debate Mr. President stated he would give a considered Ruling at a later date.

On May 24[1] Mr. President gave his Ruling as follows:

I have given consideration to the questions put to me by Senator the Rt. Hon. Heaton Nicholls. He is correct in his submission that the form of closure provided for in Sanding Order No. 145[2] of the Senate is a limited one, but it was nevertheless made part of our Standing Orders to enable Mr. President and the Chairman to allow a motion to close a debate provided in their opinion such motion was not an abuse of the rules of the House or an infringement of the rights of the minority, their discretion being limited by the provision that at least 12 Senators should vote in support of the motion.

I am sure that few presiding officers would lose sight of the fact that their discretionary power in accepting the motion for the closure is subject to the main object of that rule, namely, the reconciliation of the claims of public business with the rights of the minority. Once, however, a presiding officer has decided that he is justified in allowing a motion to close a debate, such decision is final and absolute.

The fact that Standing Order No. 141 does not provide for the interruption of a Senator whilst speaking for the purpose of moving the closure, does not affect the accepted practice in, as far as I know, most other Parliaments where provision is made for the closure, *i.e.* that of allowing, subject to the discretionary power of the presiding officer, the application of the closure either whilst a member is addressing the Chair or at the end of his speech.

Union of South Africa: The Senate (Application of the "Guillotine").—On June 21[3] an hon. Senator (the Rt. Hon. G. H. Nicholls) asked the advice of Mr. President with reference to a proposed drastic alteration in the Standing Orders of the Senate on a fundamental principle, and one "which you always respect, that is, the protection of the rights of minorities in this House".

Continuing, the rt. hon. Senator said that the Motion (*see Guillotine Motion below*) had not been referred to the Standing Rules and Orders Committee so that both sides of the House would have the opportunity of debating it. To come forward with a Motion like this was nothing less than an attempt at dictatorship over freedom of speech in the Senate and contrary to its traditions.

The rt. hon Senator then asked whether it was in order for anyone to come forward with a notice of this kind to amend the Standing

[1] 1949 MIN. 171. [2] *Limited Closure.*—145. (1) It shall not be in order to apply to the proceedings of this House what is known in the Commons House of Parliament of the United Kingdom, as the "closure procedure" except as provided for in the succeeding paragraph.

(2) After the question has been proposed from the chair upon:

(*a*) the second or third reading of a bill;
(*b*) a clause, schedule or preamble of a bill in committee or on report;
(*c*) a substantive motion, or an amendment (except an amendment in the passage of a bill) before the House or committee;

—a Senator rising in his place may claim to move "That the question be now put," and unless it appears to Mr. President or the Chairman that the motion is an abuse of the standing orders of the House or an infringement of the rights of the minority, the said motion shall be put forthwith without amendment or debate; but it shall only be carried provided that not less than twelve Senators vote in support of it. [3] 1949 *Sen. Hans.* 5136.

Rules and Orders which have been carefully drawn up by the Committee on Standing Rules and Orders. The proceeding was entirely foreign to the traditions and privileges of the Senate.

Mr. President then said that he would consider the matter and give his Ruling before the debate came on.

On June 22[1] Mr. President (Senator Cdt. the Hon. C. A. van Niekerk) said:

Before the House proceeds to the discussion of the first motion, I wish to say that I have given consideration to the question put to me by Senator Nicholls yesterday. My reply is that the motion is in order. It is entirely a matter for the House to decide. The House may accept the motion as proposed or in an amended form, or it may reject it. As Honourable Senators are aware the " guillotine " has on a number of occasions from 1940 onwards been used in Another Place, and the fact that it has not thus far been applied in the Union Senate does not appear to be a reason why it should not be invoked here if the House so resolves.

The motion now before the House is an adaptation of the procedure followed in that respect in the House of Commons when dealing with contentious legislation and where the Government and the Opoosition have not been able to come to an agreement on the time to be occupied in its passage through the House. In the House of Commons the " guillotine " has been in use for about as long as the " closure ". Sir Gilbert Campion, a former Clerk of the House of Commons, in an article on the " guillotine " states: " It is an effective and elastic form of procedure, all the more effective for *not* being laid down by the Standing Orders but passed *ad hoc*, and specially applied to fit each particular case." This statement, I think, clearly indicates that this is a procedure which may be accepted as one which is applied only in special circumstances; it is not intended that it should form part of the permanent Standing Orders of the House and would not therefore be referred to the Sessional Committee on Standing Orders for consideration as the Right Honourable Senator suggested should have been done.

In regard to the statement of the Right Honourable Senator that procedure of this kind is contrary to the traditions of any Senate in any part of the Commonwealth, I may say that as long ago as 1926 the Senate of the Commonwealth of Australia adopted a Standing Order, which has been partly adapted in framing the motion now before the House, which provides that when a Message is received from the House of Representatives transmitting a Bill for concurrence, a Minister may declare that the Bill is of an urgent nature and move, without amendment or debate being permitted, that the Bill be considered an urgent Bill, and upon this being carried (either without a dissentient or by the affirmative vote of not less than 13 Senators) he may move a further motion specifying the time to be allocated to the various stages.

It will thus be seen that if the motion is adopted it will not mean that this House is initiating a procedure unknown in other parts of the Commonwealth.

I would add that to me it is a matter of regret that the various parties were unable to come to an agreement in this matter and thus have avoided the introduction in the Senate of so desperate an expedient as the " guillotine " in order to expedite business.

The Guillotine Motion was then moved by Senator the Hon. H. F. Verwoerd as follows:[2]

That in respect of any Bills upon the Order Paper and whenever during the remainder of the present Session a Message is received from the House of

[1] 1949 MIN. 233; 1949 *Sen. Hans.* 5243. [2] 1949 MIN. 234; 1949 *Sen. Hans.* 5245.

Assembly transmitting a Bill for concurrence, or at any other stage of a Bill:

(1) *Limitation of Proceedings.*

A Minister may declare that the Bill is of an urgent nature, when proceedings shall be limited as follows:

(*a*) seven hours shall be allotted for the Second Reading, excluding the time occupied by the Minister in charge of the Bill in moving the Second Reading;

(*b*) five hours shall be allotted for the Committee Stage, except in the case of Bills governed by Standing Order No. 130;

(*c*) half an hour shall be alloted for the Report Stage, and

(*d*) half an hour shall be allotted for the Third Reading, excluding the time occupied by the Minister in charge of the Bill in moving the Third Reading;

Provided that if a Minister declares that the Bill is an urgent Bill at any time during its progress, the time already occupied during that stage shall be counted as part of the time allotted for such stage.

(2) *Conclusion of Stages.*

At the conclusion of any period of hours allotted under the above paragraphs, Mr. President or the Chairman shall forthwith put the question before the House or the Committee and any amendments, other than amendments proposed by a Minister, which have been moved but not disposed of shall drop: Provided that on the Second or Third Reading Mr. President shall allow the Minister in charge to reply to the debate before the question is put.

Mr. President or the Chairman shall thereupon proceed to put forthwith, without debate, any amendments which have been moved or may be moved by a Minister and thereafter only such further amendments as may be moved by a Minister and such questions, including clauses as amended or as printed, as may be necessary to dispose of the stage.

At the conclusion of each stage of the Bill, the next stage, notwithstanding the provision of Standing Orders Nos. 72 or 218, shall be taken immediately or on a debate to be fixed by a Minister.

(3) *Dilatory Motions, etc.*

At no stage shall Mr. President or the Chairman receive a Motion that the Chairman report progress or do leave the Chair, or a Motion to postpone the consideration of a clause, or a Motion for the adjournment of the House or of the debate, or a Motion to recommit the Bill, unless moved by a Minister, and the question on such Motion shall be put forthwith without debate.

An hon. Senator (the Hon. H. Tucker) moved the following amendment: [1]

To delete all the words after "That" and to substitute

this House regards the Motion of Senator the Honourable Verwoerd as an unwarranted attack upon its honour as the highest legislative body of the country and as subversive of its freedom and its position of responsibility as a House of review and therefore considers it to be its duty to reject the Motion and to warn the country against this autocratic curtailment of the fundamental rights and liberties of the people and of the Senate.

Debate was adjourned until June 23, when, after more than 13 hours' debate,[2] during which the House was twice counted, and on

[1] 1949 MIN. 235; 1949 *Sen. Hans.* 5300. [2] 1949 *Sen. Hans.* 5243, 5395-5492.

the Question: "That the words proposed to be deleted stand part of the Motion" being put, the House divided: Contents, 17; Not-Contents, 16. The original Question was then put and carried on the same voting.[1]

Union of South Africa: The Senate (Casting Votes).[2]—During the 1949 Session there were 24 instance of the casting vote in the Senate, namely, one by Mr. President on an amendment to a Motion on the Relationships between the European and Non-European population, when Mr. President declared himself with the "Contents" in favour of the amendment; the other instances occurring in *C.W.H.*

On the insertion of certain words in Clause 7 (Powers of Administration) of the South-West Africa Affairs Amendment Bill, the Chairman declared himself with the "Contents".[3]

Several instances occurred in the proceedings on the Defence Amendment Bill, the first being on the Question: "That the further consideration of the Clause (25) stand over until after the remaining Clauses have been disposed of," when the Chairman declared himself with the "Not-Contents",[4] which he also did on the Question: "That the Chairman be directed to report progress and ask leave to sit again."[5]

On the Question: "That Clause 25 (Establishment of Auxiliary Service) stand part of the *Bill*," the Chairman declared himself with the "Contents".[5]

On the Question: "That the words proposed to be deleted stand part of Clause 1 (Definitions)," the Chairman declared himself with the "Contents",[6] which he also did on the Question that such Clause as printed stand part of the Bill.[7]

The following instances took place on the South Africa Citizenship Bill, when, on the Question for the insertion of 2 new Clauses, the Chairman declared himself with the "Not-Contents"[8] and on the Question that words proposed to be deleted stand part of the Clause or that Clauses stand part of the Bill the Chairman in these instances declared himself with the "Contents".[9]

In no instance, however, whether by Mr. President or the Chairman of Committees, were reasons given for the Presiding Senator's casting vote.

The Standing Order of the Senate on the question is the general one, namely:

163. *Questions decided by majority of votes.*—All questions in the House or in Committee thereof shall be determined by a majority of the votes of the Senators present, other than the presiding Senator, who shall have and exercise a casting vote in case of an equality of votes, and any reasons stated by him therefor shall be entered in the Minutes.

[1] 1949 MIN. 238. [2] *See also* JOURNAL, Vols. II, 68; VII, 30; X, 59; XIV, 66.
[3] 1949 MIN. 100. [4] *Ib.* 214. [5] *Ib.* 215. [6] *Ib.* 217. [7] *Ib.* 217.
[8] *Ib.* 251, 2. [9] *Ib.* 252-256.

the other principle being, of course, the one laid down by May,[1] that the casting vote should, if possible, be given in such a manner as to leave the House another opportunity of deciding the same question.

From a procedural point of view much of the interest is absent when the reasons are not given.

A specially interesting point arose, however,[2] in connection with the exercise by the Chairman of his casting vote. A certain amendment to Clause 26 (Amendment of S. 96 of Act 13 of 1912 as amended by S. 5 of Act 39 of 1947) of the Defence Amendment Bill had been ruled out of order by the Chairman as one which he was precluded from putting in the Upper House by S. 60 (Money Bills) in the South Africa Act, 1909,[3] when, on Motion being made to obtain Mr. President's Ruling thereon and reporting progress and asking leave to sit again, the Chairman declared himself with the "Not-Contents" whereupon the following Motion was moved and carried without a Division:

That the Chairman be directed to report progress and ask leave to sit again for the purpose of obtaining Mr. President's Ruling on the Question of the correctness of the decision of the Chairman (*a*) in allowing a Division to take place in Committee on a Motion asking for the Ruling of Mr. President on a Ruling given by the Chairman and (*b*) in giving his casting vote with the "Not-Contents" or, in effect, in favour of the Ruling given by him.

The House being resumed, the Chairman made his report to Mr. President who ruled as follows:

I am aware that in the past appeals have frequently been made to Mr. President on rulings given by the Chairman of Committees but the procedure as laid down in May[4] is that the Chairman decides questions of order when the House is in Committee and from his decision no appeal should be made. There may be occasions on which the Chairman may desire the guidance of Mr. President but ultimately the Chairman is responsible to the House itself. On the question of whether he exercised his casting vote correctly, that is a matter entirely within his own discretion.[5]

and on the resumption of the House in Committee the Chairman duly reported Mr. President's Ruling.

Union of South Africa: House of Assembly (Vote of Thanks to Ex-Speaker, The Hon. C. M. van Coller, M.P.).—Before the House adjourned on March 24 the following Resolution was adopted on the Motion of the then Leader of the House:

That this House places on record its thanks to the Honourable Clifford Meyer van Coller for the judicious and impartial manner in which he has discharged the traditional duties of his high office of Speaker of this House during the Ninth Parliament of the Union of South Africa.

After the former Leader of the Opposition and Leaders of other Parties had identified themselves with the terms of the Motion and

[1] XIV, 408-411. [2] 1949 MIN. 215. [3] 9 Edw. VII, c. 9.
[4] 11 Ed. 385, 621. [5] 1949 IMN. 216.

expressed their appreciation and thanks for the way in which the proceedings of the House had been conducted, Mr. van Coller replied. In his reply, which is recorded in the Votes and Proceedings,[1] he mentioned that "experience has lately shown me that no Speaker can successfully maintain the dignity and authority of the House unless due respect is shown to all of those who are called upon to fill high office".

On April 12 Mr. van Coller in a public statement intimated that if returned at the general election he would not wish to be re-elected as Speaker. He took the opportunity of making two suggestions for the benefit of his successors in office:

> The first was that when a Speaker is chosen by the House the proposal should come from the Prime Minister, on behalf of his Government, as in the case of the Cabinet, and not from a party caucus "which may make the Chair a plaything for party purposes and place the Speaker in an invidious position". The second was that, once elected to the Chair, the Speaker may be given a safe return to the House and re-elected to the Chair, irrespective of what political party is in power.

In terms of S. 34 of the Powers and Privileges of Parliament Act, 1911,[2] the Speaker at the time of dissolution continues to act as Speaker until the election of the new Speaker.[3]

Union of South Africa: House of Assembly (Speakers' Portraits).—In pursuance of Resolutions adopted by the Select Committee on Internal Arrangements on February 27, 1948, and February 23, 1949, Professor E. Roworth was selected by Mr. Speaker to paint the portrait of the present occupant of the Chair (Mr. Speaker Naudé) and the portrait of Speaker de Waal (of whom there is no portrait in the Parliamentary buildings), the latter to be painted from any portrait or photographs that may be obtained. Professor Roworth was accordingly commissioned by the Department of Public Works. Upon the completion of the portraits the House of Assembly will have in its possession portraits of all its previous Speakers.[4]

Union of South Africa: House of Assembly (The Guillotine).[5]—Separate Motions were again adopted for the House to go into Committee of Supply on the Estimates of Expenditure from the Consolidated Revenue Fund and the Railway and Harbour Fund.

Railway and Harbour Fund.—The proceedings on the Railway Estimates were limited as follows:

(*a*) 12 hours for Motion to go into Committee of Supply;
(*b*) 12 hours for Committee of Supply;
(*c*) 4 hours for Second Reading of the Bill; and
(*d*) 2 hours for the Third Reading.[6]

[1] 1949 VOTES 423. [2] No. 19 of 1911. [3] Contributed by the Clerk of the House of Assembly.—[ED.] [4] Contributed by the Clerk of the House of Assembly.—[ED.] [5] *See also* JOURNAL, Vols. V, 82; IX, 39; X, 56, XI-XII, 218; XIII, 77; XV, 84; XVI, 60; XVII, 47. [6] 1949 VOTES 225.

The full time allotted was taken upon the Motion to go into Committee of Supply; 9 hours 5 minutes in Committee of Supply, 3 hours 40 minutes on the Second Reading, and 43 minutes on the Third Reading of the Bill.

Consolidated Revenue Fund.—The proceedings in Committee of Supply on the Estimates of Expenditure from the Consolidated Revenue Fund were limited to 116 hours.[1] The full time allotted was taken up.

South African Citizenship Bill.—After the Second Reading had occupied 46¾ hours and notice had been given of a large number of amendments for the Committee Stage, the Prime Minister moved a guillotine Motion, limiting the remaining stages of the proceedings on the proceedings on the Bill as follows:

(*a*) 14 hours for Committee Stage;
(*b*) 3 hours for Report Stage; and
(*c*) 3 hours for Third Reading.[2]

The Motion was agreed to on a division after a discussion lasting from 11.15 a.m. until 7 o'clock p.m.

On each stage of the above proceedings business was interrupted at the conclusion of the time allotted.[3]

Union of South Africa: House of Assembly (Pensions to ex-members on their Petition).—As a result of the passing of legislation providing for increases in the amounts paid to military and other pensioners as well as the abolition of the time limit, within which applications for compensation had to be made by widows of certain ex-volunteers, the number of petitions referred to the Pensions Committee have shown a marked decrease in recent years. In consequence the number of petitions, in respect of which the Committee had not completed its enquiry at the end of each Session since 1943, have been very small in comparison with the numbers standing over at the end of the Sessions prior to that year.

During the last Session two petitions from ex-members of Parliament were referred to this Committee. In each case the Committee recommended the award of a small pension as the petitioners, on account of advanced age and physical disability were no longer able to maintain themselves. The recommendations were adopted by the House and it is interesting to record that this is the first occasion in the Union House of Assembly that former members of Parliament have been granted pensions in respect of their Parliamentary service by petitioning the House for relief.[4]

Union of South Africa: House of Assembly (Official photograph of House in Session).—A request from the Acting Secretary for Education to have a short film made of the House in Session for

[1] *Ib.* 380. [2] *Ib.* 595. [3] Contributed by the Clerk of the House of Assembly.—[Ed.] [4] Contributed by the Clerk of the House of Assembly.—[Ed.]

educational purposes only was considered by the Committee on Standing Rules and Orders at a meeting on February 4, but not acceded to. The Committee was, however, of opinion that an official photograph should be taken of the House in Session after every general election and resolved accordingly. Arrangements were made with the State Information Office for taking such a photograph on February 15, copies of which were subsequently made available to members for purchase.

With the exception of the Joint Sitting in 1936 the only other photograph of the Union House of Assembly in Session was taken in 1920.[1]

***Union of South Africa: House of Assembly (Members' Air Travel Facilities).**[2]—At a meeting of the Committee on Standing Rules and Orders held on March 30 it was resolved that the same facilities which were made available to members' wives and families for travel by the Blue Train[3] in respect of Sessions of Parliament, be extended to them for travel by South African Airways provided accommodation was available, the special fees varying from £1 1s. to £3 3s. according to the distance flown, being payable by members. This air travelling facility was made available as from the commencement of the 1950 Session.[4]

Union of South Africa: Provinces (Distribution of Legislative Power).[5]—In addition to the matters upon which Provincial Councils may make Ordinances under S. 85 of the South Africa Act, 1909,[6] the following may also be entrusted to the Provinces under Ss. 1 and 3 of the Financial Relations Amendment Act of 1949:[7]

(*a*) the establishment, control and management of libraries and library services;

(*b*) the restrictions of horse racing and the prohibition and restriction of other racing;

(*c*) the planning or replanning of areas under town-planning schemes.[8]

Union of South Africa: Provinces (Deputy Administrators).—Under S. 68 of the South Africa Act, 1909,[9] provision is made for the appointment and tenure of office of Administrator as the chief executive officer in each Province. The same section also provides for the appointment by the Governor-General in Council, of Deputy Administrators to execute the office and duties of the Administrator during his absence, illness or other inability. In 1949, the Deputy Administrator's Act[10] was passed amending the said S. 68 by which

[1] Contributed by the Clerk of the Union House of Assembly.—[ED.]
[2] *See also* JOURNAL, Vols. IV, 38; XV, 82. [3] A Train de Luxe.
[4] Contributed by the Clerk of the House of Assembly.—[ED.] [5] *See also* JOURNAL, Vol. IX, 34. [6] 9 Edw. VII, c. 9. [7] No. 8 of 1949.
[8] Contributed by the Clerk of the House of Assembly.—[ED.]
[9] 9 Edw. VII, c. 9. [10] No. 2 of 1949.

a Deputy Administrator may also be appointed while the appointment of an Administrator is pending and provision is made under S. 2 of the Act for the validation of such appointments prior to the passing of such Act.[1]

South-West Africa (Constitutional Amendment).[2]—During its 1949 Session the Union Parliament passed the South-West Africa Affairs Amendment Act,[3] in respect of the future government of the Territory of South-West Africa (formerly under Mandate C of the League of Nations) which included the following provisions and came into operation on April 22, 1949:

(*a*) The abolition of the Advisory Council.

(*b*) The extension of the powers of the Legislative Assembly.

(*c*) The limitation[4] of the powers of the Governor-General and the Administrator to legislate by proclamation or to amend existing legislation, in connection with matters which the Legislative Assembly has power to legislate.

(*d*) The division of the Territory into 18 electoral divisions, each electing one member to the Legislative Assembly, and thereupon the division of the Territory into 6 electoral divisions, each consisting of 3 of the aforesaid electoral divisions, each of which will elect one representative to the House of Assembly of the Parliament of the Union of South Africa. Together, therefore, there will be 6 members representing South-West Africa in the Parliament of the Union of South Africa, chosen by registered voters of the Territory, registered in terms of the Electoral Consolidation Act No. 46 of 1946 (Union), as applied to the territory by the South-West Africa Affairs Amendment Act No. 23 of 1949.

(*e*) The Territory will also be represented in the Senate of the Parliament of the Union of South Africa by 4 Senators, 2 of whom will be nominated by the Governor-General and the other 2 elected on the principle of proportional representation, with the single transferable vote, by the members of the Legislative Assembly together with the members of the Union House of Assembly elected for the Territory of South-West Africa.

One of the Senators to be nominated is to be selected mainly on the ground of his thorough acquaintance with the reasonable wants and wishes of the Coloured races of the Territory.

The Powers of the Union Parliament over South-West Africa:

(*a*) *Over-riding of Ordinances of Territory.*—Under S. 22 (4) and (6) (Saving as to right of Union to administer and legislate for the Territory) of the Act, Parliament may by Act over-ride any Ordinance made by the Legislative Assembly of the Territory and no Ordinance has effect in so far as it is inconsistent with or repugnant to an Act of such Parliament.

(*b*) *Powers of legislation previously granted to Governor-General.*

[1] Contributed by the Clerk of the House of Assembly.—[ED.] [2] *See also* JOURNAL, Vols. IV, 22; V, 42, 44; VI, 59; VII, 64; XI-XII, 59; XV, 86.

[3] No. 23 of 1949.

[4] This includes the repeal (by sections 9 and 21) of the provisions which gave the Governor-General power in special circumstances to dissolve the Assembly, or, if the Assembly failed to pass an Ordinance appropriating necessary funds or imposing taxation for necessary revenue, to enact such legislation by proclamation.

—Under S. 22 (3)[1] powers of legislation granted to the Governor-General under the Treaty of Peace and South-West Africa Mandate Act[2] are abrogated so that only the Union Parliament has power to legislate for the Territory on matters on which the Legislative Assembly of the Territory is not competent to legislate, but on which it may make recommendations to Parliament.

Restrictions on Acts of the Union Parliament relating to South-West Africa:

(*a*) *Taxation Measures.*—Under S. 18 (Amendment of S. 28 of Act No. 42 of 1925) of the Act no Act of the Union Parliament imposing taxation, other than customs and excise, has force in the Territory. This provision can only be amended or repealed with the consent of the Legislative Assembly of the Territory.

(*b*) *Acts expressly applicable to South-West Africa.*—Under S. 22 (5) of the Act no Act of the Union Parliament expressly applicable to the Territory may come into force in the Territory until it has been published in its *Official Gazette.*

The following Resolution was passed by the Legislative Assembly on June 16, 1949, upon the abovementioned change in the Costitution of the Territory:

That this House—

(*a*) takes cognisance of the South-West Africa Affairs Amendment Act, 1949, passed by the Parliament of the Union of South Africa;

(*b*) welcomes the fact that the said Act marks another important step along the road of Constitutional development of the Territory, in that—

(i) The South-West Africa Legislative Assembly now becomes a fully elective and representative House;

(ii) The powers of legislation of the Assembly are extended in important respects; and

(iii) The Territory is given representation in both Houses of Parliament of the Union of South Africa;

(*c*) deplores the fact that although provision is made in the aforesaid Act for the retention by this House of control of the Territory's finances, the Union Government has seen fit to cast doubt upon that control by appointing a Commission of Inquiry to investigate and report upon " the relative advantages and disadvantages of the retention by the Legislative Assembly of South-West Africa of the existing financial powers, in comparison with their integration in the financial system of the Government of the Union ";

(*d*) expresses the hope, however, that the closer association between the Union of South Africa and this Territory, brought about by the said Act, will lead to a period of fruitful co-operation and mutual understanding between the two countries, and also to the ultimate abolition of the Mandate over this Territory, and to the recognition that South-West Africa forms an integral part of a Greater South Africa and that its destiny is indissolubly linked up with that of the Union of South Africa within the Commonwealth of Nations;

(*e*) respectfully requests His Honour the Administrator to bring this Resolu-

[1] Prior to this provision Union legislation or regulations under Union legislation could be made applicable to the Territory by proclamation of the Governor-General when considered expedient. The effect of s. 22 (3) is, therefore, that only those Acts of Parliament which expressly apply to the Territory or regulations made under them shall be of force there.

[2] Union Act, No. 14 of 1919.

tion to the notice of both Houses of Parliament of the Union of South Africa.[1]

South African High Commission Territories: Bechuanaland, Basutoland & Swaziland (*Re* Transfer of).—Questions in regard to this subject were asked in the House of Commons on July 15,[2] and November 25, 1948,[3] and also January 27,[4] and October 27, 1949,[5] to which the same reply was given as on August 23, 1945.[6]

On November 3, 1949,[7] in reply to a Q. as to whether the Secretary of State for Commonwealth Relations would give an undertaking that H.M. Government would not transfer the Commission Territories to the Union of South Africa without the consent of their inhabitants, the Minister quoted the following passage on p. 4 of an *aide memoire* handed to the Prime Minister of South Africa in 1935 (*Cmd.* 4948):

His Majesty's Government will not make any decision until the native population and the white population have had full opportunity of expressing their views, and any views they may express, and any representations which either the native population or the white population may make to His Majesty's Government will receive the most careful consideration, before the Government come to any final decision in regard to the matter.

On December 1, 1949,[8] Q. was asked as to whether the policy of such transfer was still that stated by the Under Secretary of State for the Colonies in the House of Lords on June 9, 1937, namely, that such transfer could only be effected with the full acquiescence of the population of the Territories concerned, to which the Minister gave the same reply as on November 3, 1949, and said that it would be better to stand on the policy of the reply of such date, which was plain.

India (Composition of the Union and State Houses).—We hope to be in a position to give in our next issue, information in regard to the composition of the new Parliament and State Legislatures.

India (Accession of Baroda State).[9]—The following is the text of the Instrument of Accesssion of Baroda State to India:

Agreement made this twenty-first day of March, 1949, between the Governor-General of India and His Highness the Maharaja of Baroda.

WHEREAS in the best interests of the State of Baroda as well as of the Dominion of India it is desirable to provide for the administration of the said State by or under the authority of the Dominion Government:

IT IS HEREBY AGREED AS FOLLOWS

Article I.—His Highness the Maharaja of Baroda hereby cedes to the Dominion Government full and exclusive authority, jurisdiction and powers

[1] Contributed by the Clerk of the Legislative Assembly.—[ED.] [2] 453 *Com. Hans.* 5, s. 1386. [3] 458 *Ib.* 1380. [4] 460 *Ib.* 1079. [5] 468 *Ib.* 1495. [6] *See* JOURNAL, Vol. XV, 108. [7] 469 *Com. Hans.* 5, s. 564. [8] 470 *Ib.* 1305. [9] *See* JOURNAL, Vol. IX, 59.

for and in relation to the governance of the State and agrees to transfer the administration of the State to the Dominion Government on the 1st day of May, 1949 (hereinafter referred to as " the said day ").

As from the said day the Dominion Government will be competent to exercise the said powers, authority and jurisdiction in such manner and through such agency as it may think fit.

Article II.—His Highness the Maharaja shall continue to enjoy the same personal rights, privileges, dignities and titles which he would have enjoyed had this agreement not been made.

Article III.—His Highness the Maharaja shall with effect from the said day be entitled to receive from the revenues of the State annually for his Privy Purse the sum of Rs. 26,50,000 (Rupees Twenty-six lakhs and fifty thousand only) free of all taxes. This amount is intended to cover all the expenses of the Ruler and his family, including expenses on account of his secretariat and personal staff, maintenance of his residences, marriages and other ceremonies, etc., and will neither be increased nor reduced for any reason whatsoever;

Provided that the sum specified above shall be payable only to the present Ruler of the State of Baroda and not to his successors for whom provision will be made subsequently by the Government of India.

The Government of India undertakes that the said sum of Rupees Twenty-six lakhs and fifty thousand shall be paid to His Highness the Maharaja in four equal instalments in advance at the beginning of each quarter from the State Treasury or at such other Treasury as may be specified by the Government of India.

Article IV.—His Highness the Maharaja shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of this agreement.

His Highness the Maharaja will furnish to the Dominion Government before the 31st day of March, 1949, an inventory of all the immovable property, securities and cash balance held by him as such private property.

If any dispute arises as to whether any item of property is the private property of His Highness the Maharaja or State property, it shall be referred to a judicial officer qualified to be appointed as a High Court Judge, and the decision of that officer shall be final and binding on both parties.

Article V.—All the members of His Highness's family shall be entitled to all the personal privileges, dignities and titles enjoyed by them whether within or outside the territories of the State, immediately before the 15th day of August, 1947.

Article VI.—The Dominion Government guarantees the succession, according to law and custom, to the gaddi of the State and to His Highness the Maharaja's personal rights, privileges, dignities and titles.

Article VII.—No enquiry shall be made by or under the authority of the Government of India, and no proceedings shall lie in any Court in Baroda, against His Highness the Maharaja, whether in a personal capacity or otherwise, in respect of anything done or omitted to be done by him or under his authority during the period of his administration of that State.

Article VIII.—(1) The Government of India hereby guarantees *either* the continuance in service of the permanent members of the Public Services of Baroda on conditions which will be not less advantageous than those on which they were serving before the date on which the administration of Baroda is made over to the Government of India *or* the payment of reasonable compensation.

(2) The Government of India further guarantees the continuance of pensions and leave salaries sanctioned by His Highness the Maharaja to members of the Public Services of the State who have retired or proceeded on leave preparatory to retirement, before the date on which the administration of Baroda is made over to the Government of India.

Article IX.—Except with the previous sanction of the Government of India, no proceedings, civil or criminal, shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duties as a servant of the State before the day on which the administration is made over to the Government of India.

In confirmation whereof Mr. Vapal Pangunni Menon, Adviser to the Government of India in the Ministry of States, has appended his signature on behalf and with the authority of the Governor-General of India and His Highness Farzand-i-Khas-i-Daulat-i-Inglishia Maharaja Sir Pratap Singh Gaekwar Sena Khas Khel Shamsher Bahadur, G.C.I.E., Maharaja of Baroda, has appended his signature on behalf of himself, his heirs and successors.

(*sgd.*) MAHARAJA OF BARODA,

(*sgd.*) V. P. MENON,

Dated the 21st March, 1949. *Adviser to the Government of India, Ministry of States.*

On May 1 an Order was issued by the Bombay Government under S. 4 of the Extra-Provincial Jurisdiction Act, 1947,[1] together with Bombay Government notification No. 101-P of the above date of the Government of India, repealing certain sections of the Government of Baroda Act[2] making the Administration of the Baroda State Order applicable to Baroda State by delegating extra Provincial jurisdiction to the Provincial Government.

On July 25 the Government of Bombay issued the Baroda State (Application of Laws) Order, 1949, providing for the administration of justice, education, etc.

On July 28 the Bombay Government republished the States' Merger (Governor's Provinces) Order, 1949, issued by the Governor-General merging the Baroda State with what was then the Bombay Province and giving Baroda 28 seats in the Legislative Council of Bombay.

Pakistan (Constitutional).—The new Constitution for the Dominion of Pakistan has not yet been enforced. On March 12, 1949, the Constituent Assembly adopted the following Objectives Resolution:

MOTION ON AIMS AND OBJECTS OF THE CONSTITUTION

In the name of Allah, the Beneficent, the Merciful;

WHEREAS sovereignty over the entire Universe belongs to God Almighty alone and the authority which He has delegated to the State of Pakistan through its people for being exercised within the limit prescribed by Him is a sacred trust;

This Constituent Assembly representing the people of Pakistan resolves to frame a Constitution for the sovereign independent State of Pakistan;

WHEREIN the State shall exercise its powers and authority through the chosen representatives of the people;.

WHEREIN the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;

WHEREIN the Muslims shall be enabled to order their lives in the individual and collective spheres in accord with the teachings and requirements of Islam as set out in the Holy Quran and the Sunna;

[1] XLVII of 1947. [2] VI of 1940.

WHEREIN adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures;
WHEREBY the territories now included in or in accession with Pakistan and such other territories as may hereafter be included in or accede to Pakistan shall form a Federation wherein the units will be autonomous with such boundaries and limitations on their powers and authority as may be prescribed;
WHEREIN shall be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality.
WHEREIN adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;
WHEREIN the independence of the judiciary shall be fully secured;
WHEREIN the integrity of the territories of the Federation, its independence and all its rights, including its sovereign rights on land, sea and air, shall be safeguarded;
So that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the world and make their full contribution towards international peace and progress and happiness of humanity.

Since when the following important Committees were formed to report to the various aspects of the Constitution:

1. Fundamental Rights of Citizens of Pakistan and Minorities Committee;
2. Basic Principles Committee;
3. Federal and Provincial Constitutions and Distribution of Powers Sub-Committee;
4. Judiciary Sub-Committee;
5. Franchise Committee;

and their Reports are expected to be presented to the Constituent Assembly towards the end of 1950.

For the present the Dominion of Pakistan is governed by the Government of India Act, 1935, as adapted for Pakistan and as amended by the India Independence Act, 1947, and the subsequent amendments made by the Pakistan Constituent Assembly. The latter exercises the powers of and sits as the Federal Legislature as well. The Hon'ble Mr. Tamizuddin Khan is the president of the Pakistan Constituent Assembly who presides over its Sessions on both the occasions when it sits as a Constitution-making body as well as when it sits as a Federal Legislature. There are no second Chambers either in the Centre or in the Provinces at present. The Provincial Legislature is called "Legislative Assembly". The Presiding Officer is called Speaker.

But the Punjab Legislative Assembly has been dissolved pending new elections on wider franchise.[1]

Pakistan (Privilege, etc., of Members).[2]—In regard to Privilege the Government of India Act, 1935,[3] has been adapted for Pakistan as follows:

[1] Contributed by the Secretary of the Pakistan Constituent Assembly.—[ED.]
[2] *See also* JOURNAL, Vol. IV, 88, 86.
[3] 26 Geo. V, c. 2.

28.—Privileges, etc., of members. (1) Subject to the provisions of this Act and to the Rules and Standing Orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of the Legislature of any report, paper, votes or proceedings.

(2) In other respects, the Privileges of members of the Federal Legislature shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

* * * * *

(5) The provisions of subsections (1) and (2) of this Section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of the Federal Legislature as they apply in relation to members of the Legislature.[1]

Pakistan (Salaries & Allowances of Ministers).—Under the Salaries and Allowances of Ministers Act, 1949,[2] every Minister has a salary of *Rs.* 3,000 p.m., with rent and maintained furnished residence free for his term of office and 15 days immediately thereafter, together with allowances and privileges as follow:

Under the Ministers' Allowances and Privileges Rules, 1950, issued under S. 2 (*d*) of such Act, a Minister is entitled to: (1) his own and his family's actual travelling expenses from ordinary place of residence to and from the seat of Government on taking and laying down of office; (2) transporting not more than 2 servants and household effects not exceeding 60 maunds;[3] on first appointment; (3) initial equipment allowance of *Rs.* 2,000; (4) sumptuary allowance of *Rs.* 300 p.m.

The Prime Minister's sumptuary allowance is *Rs.* 750 p.m., and a further *Rs.* 250 p.m., for residence establishment, and a Government-maintained car.

A Minister has a Government furnished official residence not exceeding *Rs.* 20,000, including carpets and one refrigerator; such limit, however, does not apply to the Prime Minister. All furniture bears a Government mark and an official inventory, signed by the Minister, is prepared by the P.W.D., showing the price of each article. On vacating his official residence a Minister hands over to the P.W.D.

Rail.—First-class compartment (or where an air-conditioned coach is provided a 1st-class coupé) or a reserved railway saloon, if available, at Government cost, or as laid down by Rules. Should he travel as an ordinary 1st-class passenger he is entitled to cost of the railway fare paid inclusive of cost of air-conditioned berth.

Should the Minister not travel by reserved saloon, he is allowed

[1] Contributed by the Secretary of the Constituent Assembly of Pakistan.—[ED.]
[2] No. XV of 1949.
[3] 82·284 lbs.

actual travelling expenses not exceeding daily allowance for the period of the journey at the admissible rate. He is also entitled to free accommodation for 2 servants and to personal luggage up to 3 maunds, or 4 servants when travelling in reserved saloon.

His wife may accompany him free and also a member of his personal office (in the class to which he is entitled).

Air.—Should the public interest so demand, free travel, plus 100 lbs. luggage, inclusive of the allowance given by the Air Company, is allowed, but whenever possible the Minister must buy a return ticket.

He can also requisition a free R.P.A.F. plane under Rules framed by the Minister of Defence, but no non-official may accompany him without the authority of such Minister. His personal office staff receives the same air travel allowance as granted for Government air transport. Free air transport for 2 personal servants and luggage up to 3 maunds by rail or steamer, is provided for the same journeys.

Road.—Beyond a radius of 5 miles from his H.Q., he is allowed 8 annas a mile, if public conveyance is used. In other cases, actual travelling expenses with the cost for public conveyances is provided.

Daily Allowance during Halt.—When on tour he is entitled to *Rs.* 30 p.d., except when he stays in a railway saloon, in which case the allowance is *Rs.* 15 p.d., with ½ rate for separate days of arrival and departure. For each continuous halt on tour exceeding 10 days, full rate for the first 10 days, ¾ thereof for the next 20 days and ½ thereafter. A halt on tour is treated as continuous unless terminated by absence at a distance of 5 miles from the halting place for not less than 7 nights.

Certification.—He is required to put in written certification according to formula of his expenses and the circumstances thereof.

Travelling Allowances Abroad.—When travelling officially outside Pakistan, a Minister is entitled to such expenses as prescribed by Government.

Medical Facilities.—He is also entitled to medical facilities in terms of the Special Medical Attendance Rules, but in addition, he, his wife and family receive such facilities at the residence.

Pakistan (Salaries and Allowances of Members of Constituent Assembly).[1]—Under Rules adopted by the Constituent Assembly, January 3, members leaving their usual place of residence to attend the Assembly or transact any business as such a member, may draw allowances as follow:

Rail or Steamer Journeys.—At 1¾th the fares (steamers and without diet) by the shortest of 2 or more practicable routes, or the cheapest of such routes, subject to certain stipulations. When allowed free railage, he may draw ¾ths of the 1st-class fare, as well as the extra charge for air-conditioned compartment.

[1] *See* Index hereto for previous practice.—[ED.]

Road or Boat.—Mileage allowance of annas 8 p.m., subject to certain conditions.

Air.—Actual fare plus ⅓ths 1st-class rail.

Daily Allowance.—*Rs.* 45 p.d., of residence at place where Assembly meets or other business is transacted until close of either, including not more than 3 days before or after close, or 2 days before commencement of other business, subject to certain conditions in case of non-availability of accommodation.

Travelling Allowance for Intermediate Absences during Session.—Not exceeding 15 days, single 1st-class rail or actual air fare, and road mileage, or daily allowance, whichever the less.

Travelling Allowance during intervals between end of Session or Committee and beginning of another.—If not more than 1 week, daily allowance.

Allowance if resident where Assembly meets.—Except in the case of the President or a Minister of the Central Government, *Rs.* 45 p.d., for Session or business.

Allowances to non-members.—Elected or nominated to Committees set up by the Assembly, the same as for members thereof.

Certification.—Members are required to certify all expenses in the prescribed form.[1]

Pakistan (Composition of the Central and Provincial Houses).—It is hoped in the next issue, when a description of the new Constitution of Pakistan is given, to add information in regard to the composition of the New Pakistan Parliament and Provincal Legislatures.

Pakistan (Accession of States).—The following States have acceded to the Dominion of Pakistan in respect of 3 subjects, viz., Defence, External Affairs and Communications: (1) Bahawalpur, (2) Khairpur, (3) Kalat, (4) Mekran, (5) Las Bela, (6) Kharan, (7) Chitral, (8) Dir, (9) Swat, (10) Amb, (11) Junagadh, (12) Manawadar. The last 2 have, however, been forcibly occupied by the Government of India since October, 1947. Their case is in dispute between the 2 Dominions. No mergers have taken place and development of States as self-governing units is rapidly progressing. Information in regard to the remaining States is detailed below:

Bahawalpur.[2]—Area: 17,494 sq. miles; population: 1,691,209; revenue: *Rs.* 4½ crores; expenditure: *Rs.* 4,58,29,400. His Highness Sadiq Mohammad Khan Abbasi, the present Ruler of Bahawalpur, succeeded his father in February, 1907. He was educated at the Aitchison College, Lahore. The State acceded to Pakistan in October, 1947, and the Nawab has assumed the position of a Constitutional Ruler and has introduced Constitutional Reforms in the State. Under these reforms the State Assembly called the "Majlis" has been inaugurated with a majority of elected members. The

[1] Contributed by the Secretary of the Pakistan Constituent Asembly.—[ED.]
[2] *See also* JOURNAL, Vol. XVII, 53.

Government of the State is run with the help of a Cabinet (Kabina-i-Wazarat) consisting of the Prime Minister, 2 Executive Councillors and 2 Ministers elected by the Assembly. The capital of the State is Baghdad-ul-Jadid. The Ruler is entitled to a salute of 17 guns. Sahibzada Muhammad Abbas Ali Khan is the Heir-Apparent.

Khairpur.—Area: 6,060 sq. miles; population: 335,787; revenue: *Rs.* 51,44,700; expenditure: *Rs.* 50,38,460. His Highness Mir George Ali Murad Khan, the Ruler of the Khairpur State, is a minor, at present studying at the Aitchison College, Lahore. The Administration of the State is carried on by a Council of Regency on his behalf. The present elected Chairman of the Council is Sahibzada Mohd. Ali Khan Talpur. Constitutional reforms have recently been announced according to which there will be a State Assembly consisting of a majority of elected members. Elections under the new Constitution will be held shortly. This State acceded to Pakistan in 1947. Khairpur Mir's is the capital of the State. The Ruler is entitled to a salute of 15 guns.

Kalat.[1]—Area: 30,799 sq. miles; population: 166,654; revenue: *Rs.* 27,03,500; expenditure: *Rs.* 25,88,900. Kalat, the capital, is the most important of all the Baluchistan States. Major His Highness Beglar Begi Mir Sir Ahmad Yar Khan is the present Ruler of Kalat. The Khan is entitled to a salute of 19 guns. He introduced constitutional reforms before his accession to Pakistan. The State's administration is, however, conducted with the assistance of a Wazir-i-Azam. The Khan's winter headquarters are at Kachhi.

Mekran.—Area: 23,196 sq. miles; population: 86,651; revenue: *Rs.* 8,08,000; expenditure: Not known. Nawab Amir Bai Khan Baluch is the Ruler of the State and the administration is carried on with the assistance of a Wazir. Mekran is a maritime State. The question of introducing self-government institutions is being taken up. Turbat is the capital of the State.

Las Bela.—Area: 7,043 sq. miles; population: 69,067; revenue: *Rs.* 6,63,000; expenditure: *Rs.* 3,45,000. The ruling family of Las Bela claims descent from Abdul Manaf of the Kureshi tribe of Arabia. Jam Ghulam Qadir Khan, the present Jam of Las Bela, succeeded to the gaddi in 1937. The Administration of the State is carried on by the Jam Sahib with the assistance of a Wazir (Minister). This is the only other maritime State of Pakistan. The Jam Sahib represents the Baluchistan States in the Constituent Assembly of Pakistan. Bela is the capital of the State.

Kharan.—Area: 18,508 sq. miles; population: 33,832; revenue: *Rs.* 1,66,000; expenditure: *Rs.* 97,400. Khan Bahadur Nawab Amir Mohammad Habibullah Khan Nausherwani, is the present Chief of Kharan. This is an important frontier State in close proximity with Iran and Afghanistan.

[1] *See also* JOURNAL, Vol. XVII, 55.

Chitral.—Area: 4,000 sq. miles; population: 107,906; revenue: *Rs.* 3,40,000; expenditure: *Rs.* 3,40,000. His Highness Saif-ur-Rehman is the present Mehtar of Chitral who succeeded his late father only in January, 1949. The young Ruler is under training and the administration is carried on by a Board appointed for the purpose. The Ruler is entitled to a salute of 11 guns. Chitral is the capital of the State.

Dir.—Area: 3,000 sq. miles; population: 250,000; revenue: *Rs.* 5,75,000; expenditure: *Rs.* 5,75,000. Khan Bahadur Nawab Sir Mohammad Shah Jehan Khan is the present Nawab of Dir State. There are no Wazirs (Ministers) and the administration is carried on under the personal control of the Nawab. Dir is the capital of the State.

Swat.—Area: 1,800 sq. miles; population: 446,014; revenue: *Rs.* 30,00,000; expenditure: *Rs.* 25,00,000. On the abdication of Miangul Gul-Shahzada Sir Abdul Wadud, K.B.E., his son Miangul Abdul Haq Jehanzeb, was installed as the new Wali of the Swat State on December 11, 1949. Saidu-Sharif is the capital of the State.

Amb.—Area: 174 sq. miles; population: 47,910; revenue: *Rs.* 3,55,000; expenditure: *Rs.* 3,06,000. Nawab Sir Mohammad Farid Khan, the present Ruler, succeeded to the gaddi in February, 1936. There are no Wazirs (Ministers) and the administration is carried on by the Nawab with the help of Advisers. The winter capital of the State is Durband and the summer capital Shergarh.

Junagadh.—Area: 3,337 sq. miles; population: 141,761.

Manawadar.—Area: 101 sq. miles; population: 26,209.[1]

Pakistan: East Bengal (Newspaper Libel on Members).—During the passage of the East Bengal State Acquisition and Tenancy Bill, 1948, as reported by the Special Committee, it was found that the attendance of the members of the Government Party were not regular. In commenting upon this the *Daily Azad* (a local newspaper) published in its editorial of December 1, 1949, an article under the caption "Sadhu Shabdhan" (Beware, ye saints), which cast reflection on the members of the Party in power. This was referred to the Standing Committee of Privileges of the House constituted under the Rules of Procedure of the House by a Motion carried by the East Bengal Legislative Assembly on December 2, 1949. The Committee of Privileges was convened by the Deputy Speaker, who, under the Rules of the Assembly, is the *ex officio* Chairman of the Committee. This Committee met on December 6, and, after consideration of the said editorial, reported that the action of such newspaper constituted a breach of Privilege of the House and recommended that the representative of the *Daily Azad* be excluded from the Press Gallery of the Assembly, and that notice papers, bills, etc., ordinarily distributed to the Press, be withheld

[1] Contributed by the Secretary of the Pakistan Constituent Assembly.—[Ed.]

from such newspaper until it made full, frank and unqualified apology to the Speaker. The Report of the Committee of Privileges was presented to the Assembly by the Chairman, December 13, 1949, and adopted by the House.[1]

Southern Rhodesia ("Official" Speakerships).[2]—Although some of the information given below has already appeared in the JOURNAL, in view of "official" Speakerships being introduced under some of the new Constitutions, the following is the practice in Southern Rhodesia, up to date, and shows that there has only been one member as Speaker for 3 out of 26 years:

Speakers of the Legislative Assembly.

I	Parliament	1924-1928	Hon. L. Cripps
II		1929-1933	Hon. L. Cripps
III		1934	Hon. L. Cripps, C.M.G.
IV		1935-1938	Hon. A. R. Welsh, M.P.
V		1939-1945	Hon. A. R. Welsh
VI		1946-1948	Hon. Sir Allan Welsh
VII		1948 *to date*	Hon. Sir Allan Welsh[3]

Southern Rhodesia (Salary of Speaker).[4]—By the Speaker's Salary Amendment Act, 1949,[5] the annual rate of salary of the Speaker was raised from £1,250 to £1,500. The same Act provides for the payment of a Subsistence Allowance of £100 p.a. (free of income tax) to any Speaker who "ordinarily resides" more than 25 miles from the Legislative Assembly.[6]

Southern Rhodesia (Members' Remuneration & Free Facilities).[7]—The Payment of Members of Parliament Amendment Act, 1949,[8] introduced as the result of a recommendation by the Committee on Standing Rules and Orders[9] raised the annual salary of the Deputy Speaker and Chairman of Committees from £150 to £250;[10] granted an allowance of £500 p.a. to the Leader of the Opposition[10] and raised the annual allowance paid to members from £600 to £750.[11] It also reduced the penalty for absence from £3[12] to £2 *p.d.*

On the recommendation of the Committee on Standing Rules and Orders[9] it was agreed that motor mileage allowance should be paid to any member "for whom it is not reasonably possible to utilise existing air or rail services". Prior to this decision the motor mileage allowance was not paid to members who resided within reach of these services.[12]

[1] Contributed by the Secretary of the East Bengal Legislative Assembly.—[ED.] [2] *See also* JOURNAL, Vols. III, 49-50; VI, 62; VII, 153; XI-XII, 54; XVI, 69; XVII, 63, 280. [3] Contributed by the Clerk of the Legislative Assembly.—[ED.] [4] *See also* JOURNAL, Vols. XV, 88; XVII, 59. [5] Act No. 48 of 1949. [6] Contributed by the Clerk of the Legislative Assembly.—[ED.] [7] *See also* JOURNAL, Vols. IV, 39; VI, 66; IX, 49; XIV, 70; XV, 88. [8] Act No. 30 of 1949. [9] 1949 VOTES 347, 418. [10] Paid in addition to the allowance of £750 p.a. as M.P. [11] *See also* JOURNAL, Vol. XV, 88. [12] Contributed by the Clerk of the Legislative Assembly.—[ED.]

Bermuda (Constitutional Inquiry).—In 1947 a C.O. Paper[1] was issued containing correspondence relating to a Petition from the Bermuda Workers' Association to the Secretary of State for the Colonies, praying for the appointment of a Royal Commission to consider certain political, economic and social problems. In regard to constitutional matters the petitioners recite that the First General Assembly of the Government of the Island (according to instructions sent out by the Bermuda Company) consisted of the Governor, Council, Bailiffs, Burgesses, Secretary and a Clerk; that the Company's Charter ceased in 1684; and that ever since, the English Secretaries of State have been supreme rulers of the Colony.

In 1687 writs were issued for the election of an Assembly of 4 persons from each of the 9 parishes, in the same manner as to-day. The qualifications of a member are possession of real estate assessed at £240 or more and, if not a native of the island, such person must be a British subject of 5 years' residence. The qualification of an elector is real estate assessed at £60. It used to be £30, but was doubled in 1834 to prevent a too sudden acquisition of power by the Coloured population at their emancipation. The only other franchise change was the extension of the franchise to women in 1944.

The petitioners assert that the Government has undergone no material change since its first establishment on Constitutional principles.[2]

The memorandum by the Governor discountenanced the Petition as purporting to be "from the people of Bermuda" when it was only backed by 2,572 certified voters out of a population of 34,000.[3]

The Secretary of State for the Colonies, however, in a Despatch dated March 20, 1947, favoured certain aspects of the Petition to which he invited consideration by the Colonial Parliament. In 1947 a Joint Committee of the Legislative Council and the House of Assembly on Command Paper 7093 was appointed to consider the Governor's message No. 125 with the Command Paper attached thereto.

In dealing with the constitutional issues in their Report, which was issued in 1948, the Joint Committee say that during the long period throughout which Bermuda has exercised a large measure of self-government there had been little interference by the Colonial Office.[4]

The Committee remark that in recent years the number of Coloured members has increased from 1 in 1911 to 5 in 1933.

In regard to the extension of the franchise, a subject which of late had been discussed in the House of Assembly, the Committee are of opinion that an early adoption of universal adult suffrage would be prejudicial to the best interests of Bermuda. Objections to such extension are that in larger countries universal adult suffrage was disciplined and controlled by the Party system, which they consider

[1] *Cmd.* 7093. [2] *Ib.* 5, 6. [3] *Ib.* 22. [4] Rep. 7.

unsuitable for such a small Colony as Bermuda, and that it would deteriorate the calibre of representation in the elective House.

The Committee, however, report in favour of a gradual extension of the franchise[1] and recommend that when the new basis for determining the franchise is introduced, the qualification for such should also be the qualification for candidates for the House of Assembly.[2]

The Committee examined conditions attached to the franchise in other countries, but also recommend that while, voters now on the register should retain their rights to plural voting, such should cease on changes of ownership during the lifetime or on the death of present holders. In addition the Committee recommend the setting up of a Tribunal to determine current property values and that a Joint Committee of Parliament be appointed to decide upon a suitable minimum value of property to which the right of franchise should be attached, thus ensuring a limited increase in the electorate.

Franchise qualifications in Bermuda are based on the capital, not rental, values of properties.[3]

In regard to the development of responsible government the Joint Committee say that:[4]

> In our opinion, consideration should be given to an extension of responsible self-government in Bermuda. The ability of any territory to govern itself should not be based upon its size, but upon the intelligence and historical record of its inhabitants. Because of the high degree of literacy in this Colony, the strong financial position, the high standard of living which prevails, and the harmonious relationships, which in fact exist between its two races, we believe that the time has come when a larger measure of self-government might be accorded to Bermuda.

and that:

> We recommend that a Joint Committee of the two Houses be formed to prepare a scheme which would provide a greater measure of responsible government, including an increase in the membership of the Executive Council. A system of responsibility on the part of Executive Council members to the Legislature for the conduct of their respective Government departments might be devised. Such a scheme would require serious study, and we make no attempt to submit detailed recommendations.

The Falkland Islands and its Dependencies (Constitutional).—Under the Falkland Islands (Legislative Council) Order in Council, 1948,[5] which came into operation on January 1, 1949, as also did the Legislative Council (Elections) Ordinance, 1948,[6] provision is made under the British Settlements Acts of 1887 and 1945 for the reconstitution of the Legislative Council of the Colony, which is to consist of the 3 *ex officio* Executive Council members (the Colonial Secretary, the Senior Medical Officer and the Agricultural Officer), and in addition 6 Official and 6 Unofficial Members, the latter being elected by popular vote. These 2 documents contain the usual pro-

[1] *Ib.* 19, 21, 99. [2] *Ib.* 101. [3] *Ib.* 100 [4] *Ib.* 102. [5] S.I. 1948, No. 2573, British Settlements, published in *The Falkland Islands Gazette Extraordinary*, Feb. 25, 1949. [6] No. 16 of 1948.

visions in regard to such subjects, special mention being made of the following:

Office of Emolument under the Crown.—This does not include receipt of pension or other like allowance in respect of service under the Crown, and while, of course, the *ex officio* Members abovementioned and Nominated Official Members must necessarily be holders of such offices, Nominated or elected, Unofficial Members may not.

Government Contracts.—Special provision is made by S. 15 (1) (*e*) of the Order disqualifying anyone for election as an M.L.C. who, at the time of election is:

> A party 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 Colony for or on account of the public service and has not published within one month before the day of election 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 contract and of his interest or of the interest of such firm or company therein;

Dissolution of the Council.—Unless sooner dissolved the Legislative Council must be dissolved by the Governor at the end of 4 years "from the date of the report to him of the return of the first successful candidate at the last General Election."[1]

Residence.—This is specially defined in the Schedule to the Order which reads:

> 1. Subject to the provisions of Rules 2, 3, 4 and 5 of this Schedule, the question of whether a person is or was ordinarily resident at any material time or during any material period shall be determined by reference to all the facts of the case.
>
> 2. The place of ordinary residence of a person is, generally, that place which is the place of his habitation or home, whereto, when away therefrom, he intends to return. In particular, when a person usually sleeps in one place and has his meals or is employed in another place, the place of his ordinary residence is where he sleeps.
>
> 3. Generally, a person's place of ordinary residence is where his family is, if he is living apart from his family, with the intent to remain so apart from it in another place, the place of ordinary residence of such person is such other place. Temporary absence from a place of ordinary residence does not cause a loss or change of place of ordinary residence.
>
> 4. Any person who has more than one place of ordinary residence may elect in respect of which place he desires to be registered.
>
> 5. Any person, who at any time is serving in the armed forces of the Crown, shall be deemed to be ordinarily resident during the period of such service in the place in which he so resided immediately before he entered on such service, unless he has thereafter established some other ordinary residence elsewhere.

Governor's Letters Patent.—The same issue of the *Gazette* abovequoted contains Letters Patent dated December 14, 1948, to the Governor and Commander-in-Chief revoking those of 1892 and 1914, and making provision for the Government of the Colony, the constitution of an Executive Council as abovementioned and other

[1] S. 26.

matters, including powers to the Governor to make laws for the Dependencies as defined in the Letters Patent of 1917.

These Dependencies range over a wide expanse of the Atlantic Ocean, with South Georgia about S. Lat. 54° and South Shetlands, South Orkney and South Sandwich, insular groups, S. Lat. 58°, right down to Graham's Land in the Antarctic.[1]

The Gold Coast (The "Coussey" Report[2] on Constitutional Reform).—This is an important Report to the Governor by an all-African Committee under the Chairmanship of an African Judge—the Hon. Mr. Justice J. Henley Coussey—and deals with Legislative and local Government, Regional Administration, etc. It is a most interesting and informative document, and when the question of constitutional reform in the Gold Coast has become an accomplished fact, it will be duly dealt with in the JOURNAL. Moreover, there are so many new side-lights on the subject in this Report that, should any affecting the Legislature not be taken over in the Constitution to be adopted, we shall be pleased to include them in the Article on this subject.

Kenya Colony and Protectorate (Constitutional).[3]—The additional Royal Instructions to the Governor of April 27 and December 13, 1948, amend those of 1934, 1935, 1938 and 1939 in regard to the Executive and Legislative Council are as follow, and except where otherwise stated, the footnotes refer to Clauses in the additional Royal Instructions of April 27, 1948:

1. *Executive Council.*—This Council is to consist of: (1) Member for Development, Law and Order, for Finance, for African Affairs, for Agriculture and Natural Resources, for Education, and for Health and Local Government, who are respectively the persons for the time being lawfully discharging the functions of: Chief Secretary, Attorney-General, Financial Secretary, Chief Native Commissioner, the person for the time being responsible for the Departments concerned with Agriculture and Natural Resources, Deputy Chief Secretary and the person for the time being responsible for the Departments concerned with Health and Local Government, who are styled as *ex officio* Members of the Executive Council.

2. Such other persons (styled "Appointed Members"), whether holding public office or not, appointed as members or temporary Members, the period of tenure of office being stated on the instrument of appointment.

The Governor may fill vacancies thereon, or suspend any member thereof and Provisions are made for the appointment of temporary Members and the order of precedence of the Members of such Council is laid down.

Extraordinary Members may also be appointed by the Governor whenever he may desire to obtain advice on any special occasion.

[1] From information kindly contributed by the Colonial Secretary.—[ED.]
[2] Colonial No. 248, H.M.S.O., 2s. [3] *See also* JOURNAL, Vols. VIII, 96; XIV, 93.

Legislative Council.—This Council consists of the Governor, who is President; a Vice-President and Speaker; 7 *ex officio* Members; 9 Nominated Official Members; not more than 17 elected Members; 4 Nominated Unofficial Members and either a Nominated Official or Unofficial Member to represent the interests of the Arab[1] community.

Official Speaker.—The Governor is empowered to appoint a Speaker (who holds office during pleasure) to preside over the Legislative Council[2] in the absence of the Governor and in case of the absence of both, the Governor appoints the Member of the Legislative Council standing first in the order of precedence. The Speaker only has a casting vote, but any such Member so appointed only has a deliberative vote and should there be an equality of votes the Motion is declared lost.

Nominated Official Members holding public office are appointed by the Governor and hold office during pleasure.[3]

Nominated Unofficial Members may be appointed by the Governor to represent the interests of the African community.[4]

The Governor may also summon any other person to the Council whenever he may consider the presence of such person desirable to take part in the proceedings thereof relating to the matters in respect of which he has been summoned.[5]

Clause XX lays down the precedence of Members of the Council.

The seat of any Member of the Council is vacated by death; absence from its Sessions or from Kenya for a continuous period of more than 9 months, or from the sittings of the Council for more than one month during a Session; taking oath of allegiance to a foreign State; bankruptcy; imprisonment exceeding 6 months; a disqualified lawyer or doctor; of unsound mind; disqualified by electoral offence; resignation; an Elected Member appointed to any public office; a Nominated Member ceasing to hold office; an Elected or Nominated Unofficial Member ceasing to hold qualifications therefor, or if declared by the Governor incapable of discharging his functions as a Member.[6]

Decisions on questions as to Membership of the Legislative Council rest with the Governor in Council,[7] and the Governor has power to appoint Temporary Members of the Council.[8]

Government Contracts.—The seat of an Elected or Nominated Member of the Legislative Council becomes vacant should he, without the prior consent of the Governor in Council, become party to any contract with the Government of Kenya in relation to the public service.[9]

Procedure.—Six, excluding the Governor, Speaker or Presiding Member is a quorum. Except with the signification of the recommendation or consent of the Governor thereto, the Council may not —(i) proceed upon any Bill, amendment, Motion or petition, which,

[1] Clause XVIII of A.R.I. of 13.12.1948. [2] *Ib.* XV, A; XXV; XXVI. [3] XVII. [4] XIX. [5] XIX A. [6] XXI. [7] XXI A. [8] XXI B. [9] XXI (*g*).

in the opinion of the Presiding Member, would dispose of or charge any public revenue or public funds of Kenya or revoke or alter any disposition thereof or charge thereon, or impose, alter or repeal any rate, tax or duty; (ii) except with the leave of the Presiding Member the Council may not proceed upon any Bill, amendment, Motion or petition which in the opinion of such Presiding Member, would suspend the Standing Orders of the Council.[1]

Office of Emolument.—A person is not deemed to hold public office under these Royal Instruments by reason only of being in receipt of a pension or other like allowance in respect of service under the Crown in Kenya; or if an M.L.C.[2]

Clause XVIII deals with electoral law.[3]

(*It is regretted that the above information had to be held over from appearance in the last issue of the* JOURNAL.)

Mauritius (Legislative Council).—Under the Constitution, already described in the last issue of the JOURNAL, women being eligible to serve as M.L.C.s, there are 2 lady members, one elected and the other nominated.

Payment of Members.—The payment of allowances to members is authorised under Ordinance No. 49 of 1948 as follows:

The Vice-President of the Council	...	*Rs.* 7,200 p.a.
Every elected or nominated member	...	*Rs.* 6,000 p.a.

payable in monthly amounts. The allowance of the Vice-President dates from the day on which he is elected to the day he ceases to hold such office. That of the elected or nominated members dates from the day they take the oath to the day membership ceases. The Vice-President does not receive allowance as M.L.C.[4]

Office of Emolument.—The payment of an elected or nominated M.L.C. does not constitute the holding of an office of emolument under the Crown or of a public office.[5]

Mauritius (Legislative Council Standing Orders).—These were made by the Governor on September 1, 1948, under S. 31 (2) of the Mauritius (Legislative Council) Order in Council, 1947, and they number 101, including 11 on Private Bills. These Standing Orders contain the following provisions:

The Vice-President is elected[6] by secret ballot paper containing the name of the candidate chosen, the paper being collected by the Clerk of the Legislative Council at the Table thereof in the presence of 2 *ex officio* members, the Clerk declaring the result.

Should there be more than 2 candidates and at the first ballot no candidate obtains more than the aggregate, the candidate with the smallest number of votes is excluded and so on at each ballot until

[1] XXVIII, A.R.I. of 13.12.1948. [2] XLV. [3] From information kindly contributed by the Clerk of the Legislative Assembly.—[ED.] [4] Contributed by the Clerk of the Legislative Council.—[ED.] [5] *See* JOURNAL, Vol. XVII, 287. [6] S.O. 7.

one candidate obtains more votes than the remaining candidate or the aggregate as the case may be.

Whenever at any ballot among 3 or more candidates, 2 or more obtain an equal number of votes, one candidate is excluded as above, and the determination as between the candidates where the votes are equal, is by lot, drawn in such manner as the President may decide. Where at any ballot between 2 candidates the votes are equal another ballot is held.

Standing Committees.—For this purpose the Council is, directly after the Governor's Speech, divided by the Governor into 4 such Committees for the consideration of Bills or financial matters, namely: (i) Revision or amendment of laws (Law Committee); (ii) Agriculture and Lands, Labour, Industry, Commerce and Communications (Economic Committee); (iii) Health, Education, Police and Prisons, Local Government and Welfare Services (Social Services Committee) and (iv) Finance.[1]

Standing Committees may take evidence on any matter referred to them. Their Chairmen are nominated by the Governor, each Chairman having both a deliberate and casting vote. The procedure at the meetings of such Committees follows that of a *C.W.H.* and a quorum (5) is required for moving the Closure (S.O. 35). Standing Committees may sit during an adjournment of the Council, and in order to ensure that a Standing Committee is fully representative the Council may, by Resolution, make a temporary addition to the Committee of not more than 3 M.L.C.s having special interest in or knowledge of, the subject-matter of any inquiry. Such additional members have all the rights of a member of the Committee.[2]

Closure.—Provision is made for the contingent Closure[3] with a support of not less than 12 members in the Legislative Council.

North Borneo (Cession of Territory & Temporary Government).—As a prelude to new Instruments to follow in a subsequent issue of the JOURNAL in regard to the new Constitution establishing Executive and Legislative Councils in what has now become the Colony of North Borneo, the following information is an outline of what has transpired in connection with the transfer of government.

On July 10, 1946, the following Instruments were issued:

The North Borneo Cession Order in Council.—This provides for the Cession of the Territories of the British North Borneo Company (incorporated by Royal Charter of November 1, 1881) to the Crown by agreement of June 26, 1946, which now has full sovereign rights and title to the State of North Borneo, which, from July 15 of that year, is annexed to and forms part of H.M.s Dominions, and, together with the Settlement of Labuan and its Dependencies, is called the Colony of North Borneo.

The Labuan Order in Council.—Under the Straits Settlements

[1] S.O. 10. [2] S.O.s 89-95. [3] S.O. 35.

(Repeal) Act, 1946,[1] such Settlements, including the Settlement of Labuan and its Dependencies, ceased to be a Colony and were divided as appointed by Order in Council. By the Labuan Order in Council of 1946 Labuan is to be governed in conjunction with what is now the Colony of North Borneo.

The North Borneo Letters Patent.—This Instrument provides for the temporary government of the new Colony under a Governor and an Advisory Council, consisting of the Chief Secretary, Attorney-General and Financial Secretary respectively as the *ex officio* members thereof, as well as of such other persons styled "Appointed Members" as the Governor may appoint and who hold office during the Governor's pleasure.

Provision is made for the transaction of business by such Council over which the Governor presides and who alone may submit questions to the Council. Should, however, the Governor act in opposition to the advice given to him by the members of the Council, it is competent for any member thereof to require that his advice be recorded on the Minutes.

Laws are made by the Governor in consultation with the Advisory Council.

Provision is also made for the administration of justice and other matters.

Royal Instructions.—These contain the usual provisions in regard to this particular type of Constitution.

The same issue of the *Colony of North Borneo Government Gazette*, in which the abovementioned Instruments are published, includes the Transfer of Powers and Interpretation Ordinance[2] under which the Governor may delegate his powers.[3]

Sarawak (Cession of Territory & Constitutional).—Since the announcement[4] of constitutional reforms in Sarawak, instituted in 1941 by His Highness the Rajah (Sir Charles Vyner Brooke, G.C.M.G.), considerable changes have taken place in this Territory following its occupation by the enemy in World War II.

War Period.—On May 15-17, 1946,[5] an Order was passed by the Council Negri and signed by H.H. the Rajah on May 18 *idem*, providing for the continuance of certain Proclamations issued during the period of British Military Administration dealing with such subjects as Currency, Morotarium, Prices, Banks, Import and Export control, &c.

On the same date Order No. 1-3 (Indemnity and Validation), 1946, was issued under the same authority in order to restrict the taking of legal proceedings in respect of acts done and payments made as well as to validate certain Proclamations, etc., issued and sentences, etc., of courts and offices during the War period.

[1] 9 & 10 Geo. VI, c. 37; *see also* JOURNALS, Vols. XV, 102, 108; XVI, 76.
[2] No. 1 of 1946. [3] We are indebted to the Colonial Secretary for this information.—[ED.] [4] *See also* JOURNAL, Vol. X, 164. [5] *The Sarawak Government Gazette*, 25.5.1946: No. P—14 (Proclamations Continuance), 1946.

Cession of Sarawak.—On May 18, 1946, an Order[1] signed by H.H. the Rajah was issued, ceding the Territory and full sovereignty and dominion thereover to H.M. the King, the Rajah in Council being authorised to do all things necessary to give full effect to such Cession.

In a similar manner and also on the same day a further Order[2] was issued making provision out of the revenues of Sarawak to pay annually during their lifetime the amounts specified in the Schedules to the Order to H.H. the Rajah, H.H. the Tuan Muda, certain dependants and other persons.

In the same *Gazette* and by the same authority was published the Instrument of Cession of the State by H.H. Sir Charles Vyner Brooke, G.C.M.G., Rajah of Sarawak, to H.M. the King, His heirs and successors, such being received by C. W. Dawson, Esq., on His Majesty's behalf.

Letters Patent and Royal Instructions.—On June 26, 1946, Letters Patent were issued under the Great Seal of the Realm constituting the office of Governor and Commander-in-Chief of the Colony and making provisions for the Government thereof.

In addition to other provisions usual to such Instruments the Supreme Council[3] is re-constituted and existing laws continued.

Royal Instructions were also issued to the Governor.

Constitution.—The Constitution Ordinance of 1941[4] is amended in the following respects:

"Native of Sarawak" is defined as a British subject who is a member of any race now considered indigenous to Sarawak.[5] Governor in Council means the Governor acting with the advice of the Supreme Council, but not necessarily in that Council assembled. The Supreme Council, which is equivalent to an Executive Council, is presided over by the Governor or in his absence the Chief Secretary, or in their absence by the Financial Secretary.

The powers of the Rajah and Rajah in Council are transferred to the Governor and Governor in Council. The Council Negri[6] also continues, otherwise the Letters Patent of 1946 is a consequentially amended Instrument to the Order No. C-21 (Constitution), 1941.[7]

Tanganyika (Constitutional).[8]—The Tanganyika (Legislative Council) Amendment Order in Council of November 25, 1949,[9] was laid before the Imperial Parliament on 28th *idem* and came into operation on January 1, 1950. It provides for the appointment by the Crown of Official Members of the Legislative Council consisting of *ex officio* members and such other persons holding office of emolument under the Crown in the Territory as the Governor may appoint

[1] No. C-24 (Cession of Sarawak), 1946. [2] No. R-17 (Rajah's Dependants), 1946. [3] *See* JOURNAL, Vol. X, 168. [4] *See* Handbook of Sarawak, 25.39.44. [5] *See* JOURNAL, Vol. X, 169. [6] *See* JOURNAL, Vol. X, 169. [7] We are indebted to the Crown Agents for the Colonies for this information.—[ED.] [8] *See also* JOURNAL, Vols, VIII, 97; XVI, 77.
[9] S.I. 1949, No. 2191, Foreign jurisdiction: Tanganyika.

as Nominated Official Members styled as such. Consequently it was notified by General Notice (No. 46) in the *Gazette* that the persons for the time being discharging the functions of the undermentioned offices are *ex officio* members of the Legislative Council—Chief Secretary and the members respectively for Law and Order, Finance, Trade and Economics, Lands and Mines, Social Services, Local Government and Agriculture and Natural Resources and also the Deputy Chief Secretary and member for Development and Works, making 8 persons in all.

The post of Co-ordinating Secretary was thus abolished and the new post of Deputy Chief Secretary and member for Development and Works created.[1]

Tanganyika (Provincial Councils).—On November 23, in the course of his Budget address to the Legislative Council, the Governor of the Territory discussed certain constitutional proposals for the Territory in consequence of which the Government has established the Lake Province Provincial Council, the first of 8 it is hoped to establish by the end of 1950. This Council, however, is not a legislative body and has, as yet, no statutory powers or even official existence. It consists of 9 official and 9 unofficial members under the Chairmanship of the Provincial Commissioner. Of the unofficials, 5 are African, 2 European and 2 Asian. Its functions to date have been merely deliberative, but a certain amount of financial autonomy has been granted to it. Its estimates of expenditure for 1950 total £80,000, but it has no revenue-collecting powers.

These Provincial Councils are, however, very much in the experimental stage, but there is little doubt that their functions will increase rapidly in the next few years and a Select Committee of the Legislative Council has just been appointed to consider the whole question of constitutional change, both at territorial and provincial levels.[2]

Trinidad & Tobago (Remuneration & Free Facilities to M.L.C.s).[3] —The remuneration of non-official members of the Legislative Council has been increased from £375 to £800 p.a., w.e.f. January 1, 1949. All other conditions remain (*vide n.* 3 below).[4]

Zanzibar Protectorate (Constitutional).[5]—By the Councils (Amendment) Decree of 1946[6] enacted by His Highness the Sultan of Zanzibar by and with the advice and consent of the Legislative Council thereof and a similar Decree[7] of 1947, the number of unofficial members of such Council has been increased, in the first case from 6 to 7 to enable the appointment of an African member and later from 7 to 8 for a second African member.[8]

September 30, 1950. O. C.

[1] Contributed by the Clerk of the Legislative Council.—[ED.] [2] Contributed by the Acting Clerk of the Legislative Council.—[ED.] [3] *See also* JOURNAL, Vol. XVI, 80. [4] Contributed by the Clerk of the Legislative Council.—[ED.] [5] *See also* JOURNAL, Vols. XIII, 99; XIV, 107. [6] No. 4. [7] No. 15. [8] Contributed by the Chief Secretary to the Government.—[ED.]

II. PROCEDURE AT A COMMISSION FOR GIVING THE ROYAL ASSENT TO BILLS

By R. P. Cave

of the Judicial Office of the House of Lords.

When Bills have been finally agreed to by both Houses of Parliament, they only await the Royal Assent to give them "the complement and perfection of a law" (Lord Hale), and from that sanction they cannot constitutionally be withheld. The Royal Assent is generally given by Commission, and not by the Sovereign in person; the validity of this method is certified by the Statute of 33 Henry VIII, c. 21, which requires the Commission to be issued under the Great Seal and the Sign Manual.[1] In compliance with the words of this Statute the Commission is always "by the King himself, signed with his own hand", and attested by the Clerk of the Crown in Chancery. The Royal Assent has not been given in person since Queen Victoria did so to several Bills in 1854, and, in fact, in the present century, even Bills for settling the Civil Lists, which formerly were generally assented to by the Sovereign in person, have received the Royal Assent by Commission. The Royal Assent can be given by Commission even when the Sovereign is absent from the realm; the doctrine governing this practice is based upon the Act of 2 William & Mary which made provision for the exercise of government by the King during his absence in Ireland, and is supported by a statement of Lord Chancellor Lyndhurst in 1845 to the effect that any act which Queen Victoria could do as Sovereign would have as much validity and effect if done on the continent of Europe as if it were done in her own dominions.

Previous to the issue of a Commission for passing Bills, a list of all such Bills, public or private, and of Measures passed under the Church of England Assembly (Powers) Act, 1919, as have passed both Houses, but have not received the Royal Assent, is made out in duplicate.

Supply Bills are placed first in this list; then Public Bills; then Public Bills affecting specific private interests; then Bills confirming Provisional Orders; then Private Bills; then Private Bills of a personal character, and lastly Church of England Measures.

One copy of this list is checked by the Clerk of the Parliaments, signed by him, and sent to the Crown Office where the Commission is made out.

The other copy is given to the officers of the Lord Chancellor, and the Lord Chancellor sends it through the Home Office with a letter to His Majesty, together with the Commission for His Signature.

[1] For a description of how the practice grew up of the Royal Assent being given by Commission, *see* Parliamentary Affairs (the Journal of the Hansard Society), Vol. III, No. 2, Spring, 1950: "Henry VIII and the Origin of Royal Assent by Commission," by R. W. Perceval.

When the Commission is returned to the Lord Chancellor, it is sealed with the Great Seal and placed on the Table of the House.

At the time appointed for the Commission the Lord Chancellor and two or more others of the Lords Commissioners take their seats on a bench placed between the Throne and the Woolsack, in their robes and covered. The Lord Chancellor sits in the middle with the Lords Commissioners on either side, the highest in precedence sitting on his right. The Lord Chancellor commands Black Rod to summon the Commons, who come accordingly with their Speaker and stand at the Bar of the House.[1] The Lord Chancellor, remaining seated and covered, then says,

My Lords, and Gentlemen of the House of Commons,

His Majesty, not thinking fit to be personally present here at this time, has been pleased to cause a Commission to be issued under the Great Seal, and thereby given His Royal Assent to certain Acts [and Measures] which have been agreed upon by both Houses of Parliament, the Titles whereof are particularly mentioned, and by the said Commission has commanded us to declare and notify His Royal Assent to the said Acts [and Measures] in the presence of you the Lords and Commons assembled for that purpose, which Commission you will now hear read.

The Commission is accordingly read by the Reading Clerk.

Which done, the Lord Chancellor says,

In obedience to His Majesty's Commands, and by virtue of the Commission which has been now read, we do declare and notify to you, the Lords Spiritual and Temporal, and Commons, in Parliament assembled, that His Majesty hath given His Royal Assent to the Acts [and Measures] in the Commission mentioned, and the Clerks are required to pass the same in the usual form and words.

The Clerk of the Crown then reads successively the short titles of the Bills.

The Clerk of the Parliaments signifies the Royal Assent to each Bill in Norman French as follows, bowing to the Lords Commissioners when the title of each Bill has been read, and turning towards the Bar as he signifies the Royal Assent:

To each Money Bill,

"*Le Roi remercie ses bons sujets, accepte leur benevolence, et ainsi le veult.*"

To each other Public or Local Bill and Measure,

"*Le Roi le veult.*"

To each Personal Bill,

"*Soit fait comme il est désiré.*"

The form in which the non-assent of His Majesty would be expressed is "*Le Roi s'avisera.*" The last occasion on which this took place was in 1707, when Queen Anne refused her assent to a

[1] If there be a money Bill, it is brought up by the Speaker, to whom it has been previously sent. The Clerk of the Parliaments receives it from him at the Bar, and brings it to the Table bowing to the Lords Commissioners.

Bill for settling the Militia in Scotland. No such occasion is likely to arise in modern times on account of the strict observance of the constitutional principle that the Crown has no will but that of its ministers, who continue to serve as such only while they retain the confidence of Parliament.

When all the Bills have been disposed of, the Commons, with their Speaker, retire bowing, the salute being returned as before, and the Lords Commissioners then retire.

When the Commons have returned from the House of Lords to their own Chamber, the Speaker reports that the Royal Assent has been given to certain Acts and this is recorded in the Votes and Proceedings and Journal.

III. TRIAL OF PEERS

By R. W. Perceval

of the Printed Paper Office of the House of Lords.

Section 30 of Act No. 11 & 12 Geo. VI, c. 58, reads:

Abolition of privilege of peerage in criminal proceedings.—30 (1) Privileges of peerage in relation to criminal proceedings is hereby abolished.

(2) In any criminal proceedings the jurisdiction to be 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, whatever 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.

This brief section, which was inserted by the Opposition peers without debate or fuss, in the Criminal Justice Bill of 1948 abolishes an institution whose history is older than that of Parliament itself.

When William the Conqueror set up the feudal system in England he had, like any other feudal lord, his Court. It was at one and the same time a royal court for the government of the kingdom and a feudal court for the settlement of all matters relating to the holdings of those who held their land direct from the King. Any offences which such tenants-in-chief may have committed, therefore, would have repercussions in this feudal Court if they resulted in forfeitures of land or any other adjustment of the feudal relation between the tenant and the King, his Lord. It is obvious that treason, which always involved forfeiture, is such an offence, since it is a direct rejection of the feudal tie of allegiance; but originally a felony, too, seems to have been an offence of this sort involving forfeiture of land, and it is for this reason that treason and felony when committed by a member of the King's Court (that is, one who holds land im-

mediately from the King) is triable only in that Court. This is the origin of the trial of peers by the House of Lords.

I think the earliest trial of this sort of which we have a satisfactory report is that of Thomas à Becket in 1162; from the account given in Volume I of the State Trials (1816) it is clear that the bishops, earls and barons both of England and Normandy who sat in the Court on that occasion were present as the King's tenants-in-chief.

In the second half of the thirteenth century, and especially under Edward I, the King's Court began to hold discussions or "parleys" with representatives of the Commons and Clergy of England who were summoned to negotiate with the Court on matters affecting the State, and particularly, of course, on taxation. It was out of these parleys that Parliament developed; but the King's Court continued to carry out its old function of trying its members or "Peers" for treason or felony. Between 1300 and 1450 there was a Parliament nearly every year and therefore the full sessions of the King's Court, at which such trials took place, tended to occur only during Parliaments; and this led even as early as 1330 to the assumption that the Court was in some way to be identified with Parliament. Occasionally sessions of the Court outside Parliament, however (of which the last was as late as 1640), kept alive the old notion that the King's Court could have a separate existence apart from Parliament.

During the difficult time of the Wars of the Roses and the reigns of the first two Tudors, Parliament was summoned much less often, but the necessity for beheading noblemen accused for high treason was not similarly intermittent and it therefore became necessary to arrange for the King's Court to sit for that purpose out of Parliament. It was in this way that the Court of the Lord High Steward came into being.

The court of any feudal lord was, of course, presided over by his steward (and still is, in the case of those few which survive) and the Court of Our Sovereign Lord the King was from the earliest times presided over by the Lord High Steward of England or occasionally by the Steward of the King's Household. Whether, therefore, the Court is sitting in Parliament (as the House of Lords) or out of Parliament (as the Court of the Lord High Steward) its presiding officer is the same and this has given rise to a certain amount of confusion among historians. The truth is that when the House of Lords tries a peer it is the King's Court in Parliament-time. Since Parliament is sitting all the peers have received summonses and, since in judicial matters the Court was originally presided over by the Lord High Steward, a temporary Lord High Steward (generally the Lord Chancellor) is appointed for the occasion and breaks his wand of office at the end of the trial. When Parliament is not sitting, however, all the peers have no current summons to sit and a special summons to attend the Court of the Lord High Steward is sent out to a number of peers which varies between nineteen and thirty. A temporary

Lord High Steward is appointed as before to preside and the proceedings in either case are much of the same, except that the Clerk of the Crown (instead of the Clerk of the Parliaments) is seated at the Table in the middle and that the lords triers withdraw to consider their verdict, not to the House of Lords, but to some other room specially prepared for them.

It is normally said that the Court of the Lord High Steward first sat as such in the year 1400 for the trial of the Earl of Huntingdon; but some historians allege that the record of this trial is a forgery and that the Court was first summoned by Henry VII to 1499 to execute the Earl of Warwick, almost the sole surviving Plantagenet. Be that as it may, the Court was kept busy by Henry VIII, who was accustomed to have Acts of Attainder passed to ratify its decisions, and it was by no means unemployed in the seventeenth century. After the Restoration, however, the peers, especially in view of their experience of James II, decided that it was extremely dangerous to their order for the King to be able to condemn one of them on the verdict of fewer than 30 of their number selected, and no doubt hand-picked by the Clerk of the Crown. For many years, therefore, in the eighties and nineties of the seventeenth century they send down Bill after Bill to the Commons providing that in capital cases all the peers should be summoned to the Court of the Lord High Steward. The Commons, however, were disinclined to increase the privileges of the peerage, but in the end a bargain was made and this provision was included in the Treason Act, 1695. But in practice, it proved a dead letter, as the last trial ever held in the Court of the Lord High Steward was that of Lord Delamere in 1686 for participation in Monmouth's rebellion.

Parliaments, of course, have been annual from the time of the Glorious Revolution, and trials of peers have always taken place in the King's Court in Parliament, that is the House of Lords. Since 1700 the incidence of justice in these trials has, however, often been capricious. In the first place the definition of "felony" had by that time become extremely arbitrary; it no longer had the remotest connection with feudalism and has at various times included such comparatively minor crimes as petty larceny and shop-lifting. In the second place peers (and peeresses, too, who since the time of Henry VI have shared the judicial privileges of peers) were frequently able by claiming benefit of clergy or privilege of peerage to avoid punishment for their crimes. Lord Morley, for example, who was adjudged guilty of manslaughter by the Court of the Lord High Steward in 1666 for killing one, Hastings, pleaded his clergy at the end of the proceedings and walked out of Westminster Hall scot-free. Again, in the case of the celebrated trial of the Duchess of Kingston for bigamy in the middle of the eighteenth century, it was obvious even before the trial took place that Her Grace would escape on a technicality and for this reason attempts were made to avoid holding

the trial, but the solemn farce was gone through and at the end of it all the Duchess merely snapped her fingers at the Lord High Steward and walked out of the hall without penalty. The affair, however, had at least provided an agreeable and entertaining spectacle for the citizenry, and this in the eyes of many continued to be its chief attraction throughout the eighteenth and nineteenth centuries. In our more utilitarian age, however, doubts were continually being expressed as to the propriety of expending so much money and so much of the energies and time of exalted officials upon elaborate performances, and this feeling came to a head after the trial of Lord de Clifford, who was acquitted of manslaughter in 1935, after being involved in a road accident in which a man was killed.[1]

A small Bill was introduced in the Lords by Lord Sankey (an ex-Lord Chancellor) in 1936, but it did not survive the parliamentary course, and it was therefore not until 1948 that the judicial privilege of peerage was abolished.

Against the egalitarian objection to the privilege no one, of course, in this democratic age can say anything; but against the objections which were grounded upon the elaboration and expense of the preparations required for the trials and the employment about them of so many noble and distinguished persons, together with the extreme formality and length of the proceedings, it might very reasonably have been alleged that all these were simply survivals from the old solemn procedure of the House of Lords which was employed in every form of business and was not peculiar to trials. Such matters as the wearing of robes by the peers and individual voting beginning with the junior baron, for example, were in early times normal and everyday features of procedure in the House. If trials had been more frequent, procedure in them would have been streamlined as it has been in Appeals and political business; it was the rarity of trials that preserved the ancient forms.

Upon the whole, however, the retention of the trial of peers by their peers, though guaranteed by Magna Carta and made venerable by the passage of eight centuries, could not in modern times be justified, however much one may regret the breaking of another link with the past and the departure of another occasion of pomp and pageantry.

IV. THE JUDICIAL BUSINESS OF THE HOUSE OF LORDS

By Victor Goodman, O.B.E., M.C.
Reading Clerk and Clerk of Outdoor Committees, House of Lords.

When the House of Lords sits for judicial business it is often, in parliamentary and legal circles, referred to as "the Court". Behind this colloquialism lies a deeper significance.

[1] H.L. (12) 1936.

In Great Britain law is, and has been, made either by Parliament writing it anew or by the judges declaring what it is of old or has become in the light of Parliament's decisions and of modern conditions, but an Act of Parliament or a judicial decision does not arise automatically. They arise to meet particular needs—for the benefit of the community or the adjustment of the interests of sections of the community or of individuals. It was in the balancing of these adjustments that most of our early law arose. Petitions were laid before the King by his subjects either individually or in groups and the petitions were referred at His Majesty's will either to his greater council, the ancestor of our Parliament or to a smaller group of his council, the origin of our courts of law. Through the centuries these bodies became separated. Their respective functions became defined. To-day the Legislature and the Judiciary stand apart except for one link—the House of Lords. This link therefore rests not only on history and tradition but on a practical base buried in the essence of the constitution. The Upper Chamber is the Second Chamber in the Legislature and at the same time the Supreme Court of the courts of law.

To this day the hearing and consideration of Appeals by the House is a Parliamentary proceeding, similar to the consideration of Bills and political matters, and the proceedings of the House with regard to Appeals are included in the daily Minutes, together with the proceedings on general parliamentary or "public" business. The peculiar characteristic of "judicial business" is that, whereas in the legislative field applicants to Parliament for a private Bill personally address their Lordships' committees, parties to Appeals (or their representatives) personally appear before the House itself. This, in fact, was the invariable practice until 1948, when the necessity to free the present Chamber of the House of Lords (the Robing Room) as much as possible for structural repairs caused the House to pass a resolution referring the hearing of Appeals to an Appellate Committee which could sit elsewhere. This Committee, however, reports its conclusions to the House and final decisions on Appeals are always arrived at by a sitting of the House, the final conclusion in both parliamentary and judicial business being declared by the same procedure. The presiding Lord on the Woolsack puts the "Question" in the common form "As many as are of that opinion will say Content, the contrary Not Content".

This short article cannot follow the development—or perhaps one should say the reduction—of the judicial business to its present form. This is an interesting subject for research and is already described in several well-known constitutional works. On the other hand, the picture of the everyday working of the House on Appeals is known to comparatively few, even in the home country, and a short description might be of interest to readers of this JOURNAL.

Who can bring an Appeal to the House of Lords and how can they

bring it? Any party concerned in a legal action in England, Scotland or Northern Ireland and who is aggrieved with a decision of the supreme judicial court of their country may appeal, or at least ask for leave to appeal, to the House.

The Appeal is brought by a formal petition addressed to the House praying that the Order of the Court may be "reviewed before His Majesty the King in His Court of Parliament", and the acceptance of this petition by the House is entered formally in their Minutes.

The limitation on the bringing of Appeals is particularly stringent in England. As a general rule more freedom is granted to litigants in Scotland and Northern Ireland, but all Appeals which come to the House involve questions of public importance or intricate questions of law. Though considerable concessions in regard to fees and other expenses are granted to parties without financial means, an Appeal to the House of Lords is an expensive undertaking, mainly on account of the high fees which litigants are often ready to pay Counsel in the final court. This factor by itself limits the number of cases which come to the House, but the courts themselves are unwilling to allow, or to encourage, parties to appeal where the legal issue seems tolerably clear.

The House of Lords has therefore become not merely an additional court where the litigant may have another and final "shot", but a tribunal for expounding and clarifying the law as well as co-ordinating it between the three countries as far as it may be consistent with the existing law of each. The modern increase in complicated delegated legislation frequently necessitates the reference to the House by means of appeal of questions of the interpretation of recent statutes and orders.

When hearing Appeals, the House does not rely solely on the verbal arguments put before them. Since the earlier years of last century, when it became usual to print parliamentary documents, the House has directed that parties to an Appeal do "lodge a printed case" with (as applying to an Appellant) an "Appendix" thereto. This Standing Order provides the House (before the hearing) with a number of copies of a printed book which contains the arguments for each side together with a record of the proceedings and of the documentary evidence in the courts below or such part of the record as the parties wish the House to consider. In lengthy and complicated matters the book or "bound case" may extend to more than one volume, but nowadays the House accepts much of the material in typescript in order to relieve the burden of expense laid on the litigants. Custom has decreed that the books be bound in dark blue cloth.

With the "bound cases" before them, their Lordships are addressed from the Bar. Litigants are allowed to appear in person but few would have the ability to propound the fine points of law or even the courage to do so, though their Lordships are known to treat with

sympathy and kindness those who plead without professional assistance. There was a well-known case some 20 years ago when a young lady succeeded, without the help of barrister or solicitor, in persuading the House that the courts below had wrongly decided against her. The usual procedure, however, is for the House to hear a leading and junior counsel for each side.

Counsel are dressed in the wig and gown in which they appear in the High Court of Justice, but particular respect is shown to the House by King's Counsel, who, in this court alone, wear their full-bottomed ceremonial wigs. Their Lordships, attending, as they are, a sitting of the House or of a Committee, wear no distinguishing uniform or robe of office, and an unexpected scene often meets the puzzled gaze of a visitor to this the highest court of law in the land.

In particular this might appear so when the House is delivering judgment. A row of dignified and bewigged gentlemen sit behind a wooden barrier while one of their Lordships stands before them reading from a document. Two or three other Lords are sitting on otherwise empty benches while some 15 paces away in the centre sits the Lord who presides. The atmosphere is informal, but the paucity of members present is no evidence of disinterestedness or of absenteeism. It is deliberate, for rigid custom decrees that no member of the House who is not legally qualified shall (except as a silent spectator on a back bench) attend the hearing or consideration of Appeals. The meeting is, however, a full sitting of the House. The mace lies on the woolsack. A bishop or lord spiritual has read prayers. Each Law Lord's judgment is a speech made to the House. It is his own personal opinion which may, and not infrequently does, differ from those of his fellow peers, the final decision of the House following from the opinions and votes of the majority, which are counted without recourse to the division lobbies.

Though all but 19 of the 822 members of the House are debarred from taking part, the law declares that an Appeal cannot be heard unless at least 3 of the 19 qualified Peers (or Lords of Appeal) are present. This condition dates from the year 1876 when Parliament cleaned up the scandalous neglect of justice that had developed by the middle of last century. Old pictures of the House of Lords portray barristers addressing a remotely seated Lord Chancellor and two sleeping lay colleagues, who, incidentally, had been chosen by ballot and ordered to attend. To-day litigants can be assured that their pleas are examined in the House by the best legal intellects that can be found in the three countries.

Except for cases of unusual importance or difficulty—such as for "Lord Haw Haw's" criminal appeal, when 7 Lords of Appeal attended—the usual number of Law Lords (as they are colloquially called) to hear an Appeal is 5. Any Lord of Appeal may attend to hear any Appeal, but it is tacitly left to the Lord Chancellor to invite particular Lords to sit for specific cases. His choice would in general

fall first on the Lords of Appeal in Ordinary. The Crown is empowered to appoint 9 (there are 8 at the present day) of these full-time paid legal members of the House, and on them falls the bulk of the appellate work. A Lord of Appeal in Ordinary is a peer and member of the House of Lords in every respect, with the exception that his barony is for life only and does not descend to his heirs. They are men who have served with distinction as judges, law officers of the Crown or barristers of exceptional repute. The present Lords of Appeal in Ordinary are Lords Porter, Simonds, Normand, Oaksey, Morton of Henryton, Reid and Radcliffe.

In addition to the above specialised group, the Lord Chancellor could call on the services of one of his predecessors in office, Viscount Maugham (L.C. 1938-39) or Viscount Simon (L.C. 1940-1945) or again on one of the retired Lords of Appeal in Ordinary, Lords Macmillan, Wright, Roche and Greene, or on Lord Alness, one time Lord President of the Court of Session in Scotland, though most of these gentlemen have retired from active work and can justly claim that their age entitles them to relief from further public service.

Two other members of the House may sit on Appeals by virtue of their "high judicial office". They are the present Lord Chief Justice of England, Lord Goddard, and the President of the Probate, Divorce and Admiralty Division of the High Court of Justice, Lord Merriman. However, since they cannot be in two judicial places at once, their attendance on Appeals to the House must of necessity be infrequent.

The senior Lord of Appeal is the Lord Chancellor himself. The link which his office forms between the judiciary and the executive is again a reminder of the historical foundation of our system of law. The Lord Chancellor is the senior judge, a senior legislator and a senior member of His Majesty's Government. When he speaks from the woolsack at either a legislative or judicial sitting he is the Lord Speaker of the House. When he steps aside from the woolsack and addresses their Lordships during "public" business he speaks as a member of the Government. When he leaves the woolsack for the "box" or for a chair, placed during the hearing of Appeals at more convenient distance from the Bar, he speaks as a member of the judiciary.

All Lords of Appeal, be it noted, are at once judges and legislators. By common consent Lords of Appeal in Ordinary do not take part in political debates, but all the Law Lords take their share in discussions on measures of a purely legal or administrative character.

One further link exists in the persons of the Lords of Appeal which stretches beyond the House of Lords, and which, while not directly touching the business of the House, nevertheless affects that business in the cause of Commonwealth and Empire unity. It is His Majesty's practice to make all Lords of Appeal members of his Privy Council. As members therefore of the Judicial Committee of the Council the

Law Lords from the backbone of its judicial man-power, and, whereas one day their lordships will be listening in the Palace of Westminster to an Appeal from England, Scotland or Northern Ireland, on the next day the House will suspend its judicial sittings so that their lordships may cross Parliament Street to hear an Appeal about, it may be, a banking dispute in Australia or a murder case in West Africa.

V. HOUSE OF COMMONS:

LIBEL ACTION—BRADDOCK (M.P.) *v.* TILLOTSON

By E. A. Fellowes, C.B., M.C.

Clerk-Assistant of the House of Commons.

The Facts.—This was an action for libel brought by Mrs. E. M. Braddock, member of Parliament for the Exchange division of Liverpool, against the proprietors and publishers of the *Bolton Evening News*.

The passage complained of in the *Bolton Evening News* was a description of the scene in the House of Commons on the night of April 30-May 1, 1947[1] (when the Report Stage of the Transport Bill was being concluded under the guillotine) and represented that Mrs. Braddock danced a jig on the Floor of the House.

Mrs. Braddock, who was unaware of the passage referred to until her attention was called to it at a meeting of her constituents, says she attempted to raise it as a matter of privilege and was not allowed to do so by the Speaker, no doubt because the matter was not raised at the earliest possible moment, a rule which is very strictly applied at Westminster. Mrs. Braddock, without further consultation with the Officers of the House, and without taking other steps to bring the matter before the House, subsequently sought her remedy in the Courts.

On October 20, 1948, the solicitors for the plaintiff wrote to the Speaker asking, *inter alia*, if there was any privilege of the House which would make improper the subpœnaing of the Speaker or Clerk of the House.

On November 4, 1948,[2] petitions were read from the solicitors of defendants and from Mrs. Braddock asking the House to grant leave to certain members and to certain other persons to attend and give evidence, and to an Officer of the House to attend, produce its Journal and give evidence. Leave was given to all the persons without debate.

The case was tried on Wednesday and Thursday, November 10 and 11, 1948, and judgment was given for the defendants, a judgment subsequently upheld on appeal on June 20, 21 and 22, 1949.[3]

[1] 436 *Com. Hans.* 5. s. 2071-2126. [2] 457 *Ib.* 909. [3] *The Times*, November 11 and 12, 1948, and June 21, 22 and 23, 1949.

Comments.—It is at least arguable that when Mrs. Braddock, without the sanction of the House, began an action in the Courts which related to the proceedings of the House and in which no evidence could have been given without the leave of the House, she was herself guilty of a contempt; it is certain that she put the House in the difficulty either of allowing its proceedings to be canvassed before the High Court or, by refusing its leave to witnesses, of appearing to do an injustice to a member.

The following points are remarkable as showing the unusual demands on the House made by both parties:

(*a*) That no member had previously ever brought an action in the Courts for a reflection on his action as a member.

(*b*) That only one precedent existed for giving leave to a member of the House to give evidence in the Courts on proceedings in the House.

(*c*) That no precedent existed for giving permission to strangers to give evidence about proceedings of the House.

The Court decided that the passage complained of was no libel on Mrs. Braddock; whether it was a reflection on the House was not in question and the House itself took no further steps in the matter.

Obviously it would have been more satisfactory to have settled the matter according to *lex parlementi* and not *lex terrae*. From this point of view the case emphasises the importance of making sure that a member who has sought to raise a matter of privilege and is unable to do so for some technical reason such as being out of time, understands that while no precedence can be given to the Motion there is nothing to prevent a Motion being put on the Paper either declaring the matter complained of to be a breach of privilege or referring the matter to the Committee of Privileges. Had Mrs. Braddock followed this course the subsequent action in the Courts might never have occurred.

VI. PARLIAMENT AND THE NATIONALISED INDUSTRIES: BRITISH PARLIAMENTARY PRACTICE

By K. A. Bradshaw

An Assistant Clerk to the House of Commons.

The existence of public corporations in the British machinery of government is no new thing; nor is the British House of Commons without experience in controlling them. Since the end of the war of 1939-45, however, a number of nationalised bodies have been created by Statute which differ in important respects from earlier public bodies; and although past parliamentary experience has been useful in approaching the problem of developing a satisfactory medium for controlling these new bodies, it has proved deficient at

precisely the point where their control becomes controversial. Nor can it be pretended that any wide satisfaction exists with the extent of parliamentary control which has so far been achieved.

Some categorisation of public bodies in Great Britain is first required in order to set this problem in perspective. Apart from Government Departments and non-Ministerial Departments (that is to say, bodies such as the Central Office of Information and Civil Service Commission which differ from Government Departments only in being insufficiently important to warrant having their own Minister), 3 main groups may be discerned: miscellaneous administrative commissions, councils or agencies; enterprises managed directly by the Government; and nationalised industries under the control of a public board. In the first group are over 100 bodies, ranging from administrative agencies such as the Ecclesiastical Commission to such institutions as the National Gallery and the British Museum. In the second group are the Royal Ordnance Factories, the Royal Naval Dockyards, the Royal Mint and H.M. Stationery Office, all controlled directly by a government department. The Post Office, which perhaps more for historical than practical reasons is headed by a Minister responsible to Parliament, properly belongs to this group. Finally, there is a number of nationalised corporations or industries[1] which are national in scope and of which the ownership and operation of all assets are vested by Statute in a controlling Board.

This categorisation is convenient though it gives no indication of complex web of authority which is presented by public corporations in Great Britain. This complexity derives from the fact that few of them enjoy precisely the same gradation of autonomy, since that was decided by Parliament at the moment when a public body was being created, entirely in terms of the role which it was designed to play. Thus, some public bodies submit estimates of expenditure to Parliament every year, experiencing a measure of control by the Treasury almost as complete as that of a government department. The Royal Naval Dockyards and the Royal Ordnance Factories, which must be firmly under the grasp of the Government, are in this position. Other bodies receive a grant in aid from the Treasury. Among these are educational bodies such as the Universities and the Arts Council where the case for financial assistance from the state is as strong as that for the control by the state is weak. The device of a grant in aid permits of such assistance without any detailed account of expenditure being required; though in practice varying degrees of financial control are exercised upon grant-aided bodies. Still other bodies are financially independent since they pay for their expenses

[1] The most important are the British Electricity Authority, the two (formerly three) Airways Corporations, the British Transport Commission, the Gas Council, the National Coal Board, and the Iron and Steel Corporation. The Colonial Development Corporation and the Overseas Food Corporation, though extra-national in scope, are comparable bodies, and the Raw Cotton Commission, the British Broadcasting Corporation, the Bank of England, and Cable and Wireless may be placed in the same category.

out of the proceeds of their own enterprise. The Racecourse Betting Control Board, set up to operate the totalisators and to invest the net proceeds in horse-breeding and veterinary science, is one of these.

These few examples show that there is no simplicity or uniformity about public bodies. A nice balance of power and responsibility, in proportions of infinite variety has dictated the degree of autonomy granted to each public body. The problem to which the existence of a public body gives rise is, therefore, to combine the greatest efficiency with adequate public control within its field of operation. Ultimate Parliamentary sovereignty is not in doubt; powers granted to a public body by Statute or Royal Charter can always be revoked. But Parliament is unlikely to rest content with the role of ultimate sovereign if it is to have no effective control over the degree of efficiency achieved by a public body.

This problem is best illustrated in relation to the third group of public bodies mentioned above, namely, the nationalised industries. These bodies are differentiated by the novelty that they are controlled by a public board and yet are subject in important respects to direction by a Minister of the Crown. The nature of these powers and the crucial importance, for the national economy, of the efficient operation of the industries themselves explains why the Ministers concerned have attracted so much attention and criticism in Parliament.

The Minister's powers[1] in relation to the Board are laid down in a section which appears in substantially the same form in all the chief nationalisation statutes. The powers of the Minister of Transport in relation to the Transport Commission, detailed in S. 4 of the Transport Act, 1947,[2] may therefore be set out as typical:

> 4.—(1) The Minister may, after consultation with the Commission, give to the Commission directions of a general character as to the exercise and performance by the Commission of their functions in relation to matters which appear to him to affect the national interest, and the Commission shall give effect to any such directions.
>
> (2) In framing programmes of reorganisation or development involving substantial outlay on capital account, the Commission shall act on lines settled from time to time with the approval of the Minister.
>
> (3) In the exercise and performance of their functions as to training, education and research, the Commission shall act on lines settled as aforesaid.
>
> (4) The Commission shall not, without the consent of the Minister, acquire by agreement (whether absolutely or for any period) the whole or any part of any undertaking if the activities of that undertaking or that part thereof, as the case may be, consist wholly or mainly in constructing, owning, operating or conserving any railway, harbour or inland waterway, or in operating tramcars or trolley vehicles.
>
> (5) Without prejudice to the preceding provisions of this section, the Minister may, after consultation with the Commission direct the Commission to discontinue any of their activities, dispose of any part of their undertaking, dispose of any securities held by them, call in any loan made by them or exercise

[1] Minister also has other powers under the Statute, such as the power to appoint members of the Commission.

[2] 10 & 11 Geo. VI, 49.

any power they may possess to revoke any guarantee given by them, and the Commission shall give effect to any such directions:

Provided that the Minister shall not give any such direction unless he is satisfied that the carrying on of the activities or the retention of the part of the undertaking or the securities or the continuance of the loan or guarantee, as the case may be, is unnecessary for the proper discharge of the duties of the Commission under this Act.

(6) The Commission shall furnish the Minister with such returns, accounts and other information with respect to their property and activities as he may from time to time require.

(7) Without prejudice to the provisions of the last preceding subsection, the Commission shall, as soon as possible after the end of each financial year of the Commission, make to the Minister a report on the exercise and performance by them of their functions during that year and on their policy and programme, and the Minister shall lay a copy of every such report before each House of Parliament.

The report for any year shall set out any direction given by the Minister to the Commission during that year unless the Minister has notified to the Commission his opinion that it is against the interests of national security to do so and shall include a statement of the salaries or fees and of the emoluments of each of the members of the Commission during that year.

Broadly speaking these powers can be summarised as giving the Minister powers of general control over the Commission, while leaving the day-to-day administration of the whole enterprise in the hands of its controlling board. But, however excellent or desirable this distinction might be in theory, it has proved difficult to give it reality in practice. To use a well-worn example, if a train from London to Bristol runs 2 hours late on 1 or 2 occasions that would clearly be a matter for the appropriate authorities within the Transport Commission. If a number of trains ran consistently 2 hours late, that might well bring the matter within the responsibility of the Minister under subsections (1) (as to the national interest) or even subsection (2) (as to capital re-equipment). In other words, there existed an area of authority which clearly belonged to the Commission and another area of authority which no less certainly belonged to the Minister: but no clear dividing line was—or indeed could be—drawn between them.

Two constitutional problems were posed. First, since nobody could define the limits of ministerial control of a corporation, it was impossible to be certain that such control was commensurate with the responsibility for its exercise which the Minister owed to Parliament. Secondly, granting that the Minister was only responsible for general policy (however far that might be construed as extending), how could Parliament criticise detailed administration for which, by common consent, he had not responsibility?

Questions to Ministers in the House of Commons set these difficulties in clear relief. Questions to Ministers must "relate to the public affairs with which they are officially connected . . . or to matters of administration for which they are responsible".[1] A Question which

[1] May, XIV, 334.

complies with this and other rules governing admissibility is placed on the order paper, and in due course is answered by the Minister, who is solely responsible for the content of his answer, and may, if he thinks the public interest requires, refuse to give an answer at all.

Thorny questions about the nationalised industries have been of two kinds. The first is the Question seeking information of a factual or statistical nature, information which the Minister clearly has power, under subsection (6) of the section quoted above, to obtain from the Board. Members considered these Questions important, for detailed information about the activities of the nationalised industries not readily available elsewhere could thereby be furnished publicly and assist Members, by piecing together the evidence, to make an informed judgment upon the industry's progress. Ministers have, however, refused to answer such questions—as they were entitled to do—on the grounds that the national interest would be seriously impaired if the administrations of these nationalised industries were deluged, especially in their formative stages, with questions of this nature. This refusal was not made more palatable to Members by the fact that it brought into operation another rule governing the admissibility of a Question, that it must not repeat in substance Questions already answered, or to which an answer has been refused. Such Questions could not, therefore, be accepted by the Clerks at the Table and did not even achieve the publicity attaching to their appearance on the Order Paper.

The second type of Question, involved the time-honoured use of this procedure to ventilate a grievance and call for remedial action by the Minister. It was perhaps even more important than the first type, in that it raised the problem of ministerial responsibility for the policy of the nationalised industries. Members attempted to raise in a Question to the Minister of Transport the closing down of a railway station by the Transport Commission, or, to the Minister of Fuel and Power, the closing down of a coal mine. But again, notwithstanding the argument that these were matters on which the Minister had power (under subsection (1) of the section quoted above) to give a direction to the Corporation, the Minister refused to answer such questions, on the ground that to do so would be to admit responsibility for actions of the Corporation which were, properly, part of its administrative duties. Again the rule relating to repetition came into play and similar questions were held to be inadmissible by the Clerks at the Table.

A debate on this matter in March, 1948, allowed discontents to be ventilated. Two broad propositions emerged. First, it was widely agreed that interference in the day-to-day affairs of the Corporations through the procedure of Parliamentary Questions could only have a deleterious effect upon the administration of these bodies; though difficulties in any particular case about the extent of a Minister's responsibilities, and therefore of a proper subject for a parliamentary

question, were fully recognised. At the same time, it was felt desirable that if a statement in the House was not forthcoming from a Minister in an emergency—such as the breakdown of electricity supplies over a wide area, or a serious accident on the railways—a member should be able to put a Question to the Minister, even where that Minister had already refused to give an answer to a substantially similar Question. These two conclusions provided the background to a Ruling given by the Speaker in June, 1948,[1] which summarises the position as it exists at present. The Speaker ruled that he was prepared to direct the Clerks to accept Questions asking Ministers for a statement on matters to which an answer had already been refused, if, "in my opinion, the matters are of sufficient public importance to justify this concession". The Speaker added that "public importance" was one of the tests which he applied in deciding whether to accept Motions for the Adjournment of the House under S.O. 8,[2] and, "in my experience it is not an unduly difficult test to apply".

This ruling was at first received with some misgiving in that it placed upon the Chair the politically invidious task of deciding which Questions about nationalised industries should, because of their public importance, be allowed. Moreover, the Speaker concluded his ruling by pointing out that his discretion in allowing a Question of "public importance" did not and could not bind Ministers to give an answer: a Minister's entitlement to refuse an answer to any Question was based on considerations of which the Speaker could have no knowledge. To that extent the ruling was no further guarantee that answers to Questions on the activities of nationalised corporations would be forthcoming. It has merely provided a temporary solution to the difficulty of deciding what Questions may be asked.

Apart from any Questions which may be authorised by the Speaker under this Ruling there remains, of course, a wide range of matters, in addition to matters of general policy, on which Questions can be asked. They include "the responsibilities of Ministers in connection with the appointment, salaries and conditions of service of board members; programmes of research and development; programmes of education and training; borrowing by the boards; form of audits and accounts; annual reports; pension schemes and compensation for displacement; the appointment of consumers' councils and other matters connected with their organisation and operation".[3] All these are matters for which the Minister is given specific responsibility by the statute. The procedure of Questions to Ministers, even

[1] 451 *Com. Hans.* 5, s. 1635 ff. [2] Under this Standing Order, since renumbered No. 9, a member may, under certain conditions, ask leave to move the adjournment of the House to debate "a definite matter of urgent public importance", and, if granted, such a debate takes precedence, at seven o'clock the same evening, interrupting any business set down for that day. [3] 473 *Com. Hans.* 5, 1188.

though fortified, in relation to the nationalised industries, by the Speaker's Ruling, does not, however, solve the problem of how Parliament is to examine the administration of these industries. Indeed, it could not do so, for the right of the House to put Questions to a Minister can never be wider than that Minister's responsibility; and, as has been shown, he has no responsibility for administration.

What other procedures, then, can the House of Commons at present employ to discuss the administration of the nationalised industries? There is the ½ hour adjournment at the end of each day's business, when a member can raise any matter for which a Minister of the Crown is responsible—here the rule of responsibility is interpreted freely enough to include matters relating to the nationalised industries—and that Minister may reply. But time is short, and, as the hour is usually late, both interest and opportunity are small. There have been Ministerial promises of debates in the House on, at any rate, some of the annual Reports and Accounts of the nationalised industries. Plainly it would be impossible to debate them all, but even the best will in this matter is likely to be subject to the exigencies of the Parliamentary time-table. In the Session 1948-49, for example, 3 days were allotted to debates on the Reports of the Coal Board, the Transport Commission and the Overseas Food Corporation; but even this allowance was endangered at one time by the prospect of an Autumn budget, consequent upon devaluation. The nationalised industries have also been discussed during the Debate on the Address, though here again they have had to jostle for place with a variety of other topics. Other opportunities occur when Statutory Instruments, made by the Minister under one of the nationalisation Statutes, are laid before Parliament; and ingenious members have discovered that matters connected with the administration of the nationalised industries can be debated on the Second Reading of a Private Bill promoted by one of the nationalised boards.[1] Both occasions, however, are somewhat limited in time and scope.

There are, finally, the 26 "supply" days in each Session, when the Opposition have by convention the right to select for discussion any of the estimates presented to Parliament. The whole of a Minister's responsibility can then be surveyed, including his responsibility for a nationalised industry; and some of the most fruitful debates on the nationalised industries have in fact taken place on a supply day. But for many reasons, supply days are unsuitable for such debates. They are already grossly over-subscribed. Leaving aside the non-Ministerial Departments and public bodies which receive grants in aid, all of which qualify to be discussed on a supply day, there are 25 Government Departments whose affairs require periodic survey. The Opposition naturally select the key departments more than once in a Session; and they also use this time for wide debates on foreign

[1] Speaker's Ruling on British Transport Commission Bill, 1949, 461 *Com. Hans.* 5, 1765-66.

policy or the economic state of the nation. Discussion of the nationalised industries can therefore only be at the expense of an examination of Departmental expenditure. Secondly, this procedure does not satisfy the demand for an inquiry into the administration, as distinct from the policy of the nationalised industries. The House has long since realised the absurdity of attempting a detailed survey of expenditure in a Committee of Supply of 600 odd members, and has delegated the task to small committees armed with powers necessary to conduct a full inquiry.

This role is discharged jointly by the Public Accounts Committee and the Select Committee on Estimates. These two Committees have provided the House of Commons with effective machinery for controlling, by periodic survey, the activities of the first two groups of public bodies already described, namely, miscellaneous commissions, councils or agencies, and enterprises run more or less directly by the State. It is not widely realised, moreover, to what extent these committees have already made inquiries into the third group, namely, the nationalised industries.

To consider first the Public Accounts Committee, S.O. 90 empowers the Committee to examine, in addition to the accounts of national expenditure rendered by Government Departments, "such other accounts laid before Parliament as the Committee may think fit". As has already been seen Acts of Parliament creating public corporations normally provide that their accounts, together with the reports of the auditors upon them, shall be presented to Parliament. Consequently they fall within the purview of the Public Accounts Committee; and during the Session 1948-49 the Committee examined the accounts of the 3 Civil Airways Corporations, 5 new Town Development Corporations, and the National Coal Board.[1] In December, 1949, a Special Report from the Committee revealed that they had begun to examine the accounts of the Overseas Food Corporation,[2] and the Report itself was eventually published in June, 1950.[3]

It cannot be pretended, however, that this development of the Committee's activities satisfies in its present form either the Committee or the House. Even without examining the accounts of public corporations, the Committee is weighed down by the number and variety of the accounts which come before it. Departmental Accounts, together with the Reports of the Comptroller and Auditor-General, are not made available to the Committee until January in a normal Session so that the Committee have in effect 6 months in which to examine the accounts of 25 Government Departments and a host of non-Ministerial Departments or grant-aided bodies. It is an impossible task; and it is certain that without the detailed examination of the Departmental Accounts, conducted by the Comptroller and

[1] H.C. 233 (1949): Third Report from the Committee on Public Accounts.
[2] H.C. 304 (1949): Special Report.
[3] H.C. 70 (1950): Second Report.

Auditor-General, and the continuous assistance which he gives the Committee during their scrutiny of the accounts, the achievement of the Committee would be less effective than at present.

But it is precisely this detailed examination and this continuous assistance which are effectively denied to the Committee when the accounts of the nationalised industries are considered. As a passage printed in the minutes of proceedings of the Public Accounts Committee testifies: "The Comptroller and Auditor-General has no access to the books of the Public Corporations and makes no report on their accounts; and the assistance he can give the Committee in the examination of these accounts is, therefore, necessarily restricted."[1] The accounts of public corporations are, in fact, audited by professional accountants in private practice. Thus a clear anomaly exists: Parliament, through the Statutes creating the nationalised corporations, has directed that their accounts should be presented to both Houses, yet the Committee charged on behalf of the Commons with the examination of those accounts does not possess the power to make this examination effective.

The Estimates Committee has been appointed at the beginning of every session since 1912 except during the 2 world wars when no detailed Estimates for war services were presented to Parliament, and its place was taken by a Select Committee on National Expenditure. Its terms of reference are "to . . . report what, if any, economies, consistent with the policy implied in the Estimates, may be effected therein"; or, as it was put by a witness to the Select Committee on Procedure in 1946,[2] its Members have a duty "to satisfy themselves, within the limits laid down by Government policy, that the nation is getting value for its money".[3] Its 36 members are grouped into 5 sub-committees, under the direction of a steering sub-committee. The steering sub-committee consists of the chairmen of 5 investigating sub-committees and the chairman of the committee itself, and is responsible for composing sub-committees and allocating subjects for inquiry. The investigating sub-committees operate by summoning departmental and other witnesses to give evidence, by visiting, where desirable, the scene of departmental activities: they have travelled as far afield as Germany, Austria, and Nigeria. Their conclusions and recommendations are reported by the Committee to the House.

The intrustion of the Estimates Committee into the affairs of these National Corporations has been less systematic, though hardly less specific, than that of the Public Accounts Committee. In Session 1945-46 the Committee made an inquiry into the British Broadcasting Corporation; in Session 1946-47, during a study of civil aviation, into the administration of the three Airways Corporations; and in Session 1947-48 they touched on the work of the Colonial Develop-

[1] H.C. 233 (1949), 30.
[2] *See* JOURNAL, Vol. XVI, 118.
[3] Sir John Wardlaw-Milne, H.C. 189-1 (1946).

ment Corporation and the Overseas Food Corporation. On each occasion recommendations or suggestions were made by the Committee, and in accordance with usual practice, a reply was made by the appropriate Department.

The reasons why the Estimates Committees were able to make these inquiries was that the Corporations in questions were receiving a subsidy from the Treasury. That subsidy appeared in the published Estimates of the appropriate Government Department, and thus it fell within the ambit of the Estimates Committee's activities. At first sight there appears to be a certain logic in this proceeding. If a corporation is receiving direct support from the taxpayer in the form of a Treasury subvention, it seems proper that the Parliamentary watchdog for the taxpayer, in the shape of the Estimates Committee, should see to it that such a Corporation is operating without extravagance or waste. If a Corporation proclaims by its solvency that no assistance is required from the Treasury, then the Estimates Committe would seem to have no *locus standi*: the watchdog can safely sleep. In a word the subsidised Corporations should be investigated: the solvent should not.

Unfortunately this distinction is more illusory than real. A public corporation can make good its losses in one of 3 ways: by obtaining a loan from the Exchequer (as the Coal Board and the Raw Cotton Commission have done) which would be repaid out of profits when these are made; by accepting a subsidy from the Exchequer (as the Airways Corporations have done and the Transport Commission may do[1]); or by increasing its charges. If a loan is granted, it appears on the capital or " below the line " account of the Exchequer and is in any case outside the purview of the Estimates Committee. If, however, the Corporation accepts a subsidy, it becomes a burden on the taxpayer: if it increases charges, it transfers that burden to the consumer—who is not essentially a different person, since the consumption of the products of public monopolies such as gas, electricity, coal, and transport is universal. If there is a subsidy, it must appear in the Estimates and the Estimates Committee has a *locus*; but if the Corporation raises prices, it may avoid the necessity of coming to Parliament for assistance, and there will be no Estimates for the Estimates Committee to examine. Nor is it beyond the bounds of possibility that a hitherto unsubsidised corporation, facing a financial loss, may decide to raise its charges rather than accept a subvention from the Exchequer, one of the advantages of such a course being that it will escape the probings of the Estimates Committee. Clearly it is undesirable that such a consideration, however trivial it may appear, should influence a decision of that kind.

This is not to argue that the Estimates Committee should be em-

[1] The grant of a subsidy to such corporations as the Coal Board and the Transport Commission might necessitate special legislation, since they are enjoined by statute to make such charges as will enable them to balance their accounts taking one year with another.

powered to inquire into the nationalised industries in all cases. It is merely to point out the anomalies which do exist. In its present form the relationship of the Committee to the nationalised industries is unsatisfactory as a basis for instituting the kind of inquiry which would be useful to Parliament and the public in judging the efficiency of a particular corporation. As with the Public Accounts Committee, in fact, there are constitutional objections to its utilisation in this role. As with that Committee, too, its energies are already fully deployed upon inquiries into ordinary departmental expenditure and grants in aid.

It is thus evident from this survey of British Parliamentary practice and procedure in regard to the nationalised industries that no satisfactory solution has yet been reached. All the procedures used at present are deficient in some degree. Questions, though valuable as a means of compelling a Minister to defend or explain his own directives to nationalised bodies on policy matters, cannot touch administration because he has no responsibility for it. Other procedures on the floor of the House have serious shortcomings from this standpoint, above all because the pressure of business is apt to make haphazard and cursory the House's examination of these bodies. Lastly, the two financial committees of the House, which effectively scrutinise the administration of other kinds of public bodies, are in an anomalous position when an inquiry into nationalised bodies is projected. It seems clear, therefore, that the development of procedures will not long remain arrested at its present stage. The next step may well be the appointment of sub-committees of the existing financial committees, with a reference to make inquiries only into nationalised bodies, and it seems probable that any further extension of parliamentary control will be made by adapting the traditional committee procedure of the House of Commons, rather than by devising fresh expedients.

VII. SCOTTISH AFFAIRS IN THE HOUSE OF COMMONS: A SMALL EXPERIMENT IN DEVOLUTION

By K. A. Bradshaw

An Assistant Clerk to the House of Commons

The extensions of the powers conferred on the Scottish Standing Committee which were agreed to in 1948 are worthy of note, not only on their merits but also because the change appears to indicate a departure from the traditional jealousy with which the House had hitherto regarded the delegation of its legislative functions to committees smaller than that of the Whole House, while the short-lived experiment of 1919 has been the only previous attempt to delegate any financial functions to a Standing Committee.

It will be remembered that the Scottish Standing Committee was constituted under a standing Order passed in 1907 (now numbered 59) which reads as follows:

Scottish Standing Committee.—One of the Standing Committees shall be appointed for the consideration of all public bills relating exclusively to Scotland and committed to a Standing Committee, and shall consist of all the members representing Scottish constituencies, together with not less than ten nor more than fifteen other members to be nominated in respect of any bill by the committee of selection, who shall have regard in such nomination to the approximation of the balance of parties in the committee to that in the Whole House, and shall have power from time to time to discharge the members so nominated by them, and to appoint others in substitution for those discharged.

As the political State of Scotland has usually differed in greater or less degree from that of the United Kingdom as a whole, the addition of some non-Scottish members was necessary to ensure that this Standing Committee (in common with all others) accurately reflected the state of parties in the House.

Thus for over 40 years the details of Bills relating exclusively to Scotland have been considered by a committee on which Scotsmen were in a large majority. Nevertheless the Second Reading of these Bills, the stage at which the main principle of a measure is approved, and the revisory stages of Report and Third Reading were still taken in the House of which the Scotsmen formed but a small minority.

On April 28, 1948, this procedure was extended by the adoption of S.O.s 60 and 61 set out in the Appendix to this Article and by the amendment of S.O. 59 to enable business other than Bills to be referred to the committee. Briefly the new procedure enabled the Scottish Committee to debate the Second Readings of Bills relating exclusively to Scotland and to consider the Government's estimates of expenditure on Scottish services.

The removal of a Second Reading debate from the Floor of the House involved a substantial departure from constitutional practice, and S.O. 60 therefore contains certain provisions safeguarding the traditional rights of private members to make their opposition effective at this stage if they so wish. When a Motion is moved by a Minister of the Crown that a Bill be considered by the Committee in this way, an objection by 10 members is sufficient to prevent that Motion going forward. Again, when the Bill comes back to the House, and a Motion is made to commit it to the Scottish Standing Committee, this time for its committee stage, objection raised by 6 members requires the Bill to be given another Second Reading on the Floor of the House, before being committed. The right of all members to debate the measure and divide the House against it, if they so wish, is thus protected.

In fact, the safeguards are so effective that no Bill likely to arouse controversy would be sent to the Scottish Standing Committee for Second Reading under this procedure. Up to April, 1950, 2 Bills

have been so treated and neither has been contentious. Nevertheless, S.O. 60 provides a convenient piece of procedural machinery which both permits a more extensive discussion of the principle of the Bill and, by clearing these discussions from the Floor of the House, saves an appreciable amount of time, which the House can devote to other business. In particular, where Scottish law requires the passage of an Act corresponding substantially to an Act already passed for the rest of the United Kingdom, the House can save itself the duplications involved in discussing the principle of both Bills. The general principle can be debated on the Floor, and its particular application to Scotland in the Scottish Standing Committee. It is to be noted, however, that the House reserves to itself the last word by means of the revisory stages of Report and Third Reading.

Standing Order 61 provides that, on a Motion by a Minister of the Crown, the annual estimates for which the Secretary of State for Scotland is responsible may be referred to the Scottish Standing Committee for consideration on not more than 6 days in a Session. Having regard to the experience of 1919 the delegated power was strictly limited. The Committee may make no alteration in the Estimates and may only report that they have considered them. Nor does this consideration deprive the Committee of Supply of their duty of passing these Estimates. The new procedure does, however, allow Scottish members more opportunities of criticising the Scottish policy of the Government and impressing the needs of Scotland upon the Government. The additional publicity given to such criticism is in itself of considerable value. When the Estimates return to the House they are again referred to the Committee of Supply in which, for many years, 2 allotted days have been given to consideration of the Scottish Estimates. The prior consideration in the Scottish Standing Committee now enables debate in the Committee of the Whole House to be focused on points of most interest to Scotland, or on those which offer the most favourable opportunities of criticism to the Opposition.

APPENDIX

Standing Order No. 60.

Public Bills relating exclusively to Scotland.—(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 Scottish Standing Committee ", and if, on the question thereupon being put, not less than 10 members rise in their places and signify their objection thereto, Mr. Speaker shall declare that the Noes have it.

(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 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 the Scottish Standing Committee ": 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 6 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 Scottish Standing Committee, and shall proceed through its remaining stages according to the ordinary practice of the House.

Standing Order No. 61.

Special Procedure for Scottish Estimates.—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 Scottish Standing Committee for consideration on not more than 6 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.

VIII. HOUSE OF COMMONS: GUILLOTINE AND BUSINESS COMMITTEES

By the Editor

In the Articles on House of Commons Procedure in Volumes XVI[1] and XVII[2] of the JOURNAL, giving an outline of the Select Committees' inquiries of 1945-1948, reference was made[3] to the setting up of Business Committees and Business Sub-committees of Standing Committees, in the application of the Allocation of Time Order, commonly known as " the Guillotine ".

In the 1948-49 Session a Bill to nationalise the iron and steel industry—the Iron and Steel Bill—was presented[4] (on October 27), its long title being:

to provide for the establishment of an Iron and Steel Corporation of Great Britain and for defining their functions, and for the transfer to that Corporation of certain companies engaged in the working, getting and smelting of iron ore, the production of steel by rolling, and of certain property and rights held by a Minister of the Crown or Government department; for the licensing of persons engaged in any such activities; for co-ordinating the activities of the Corporation, the National Coal Board and the Area Gas Boards relating to carbonisation; and for the purposes connected with the matters aforesaid.

The purpose of this Article is to give an outline of the application of both the Guillotine and the Business Committees' procedure to this measure, which was highly contentious and steadfastly contested

[1] Pp. 104-142. [2] Pp. 181-187. [3] *See* JOURNAL, Vols. XVI, 111, 113, 114, 119, 138, 140; XVII, 185. [4] 457 *Com. Hans.* 5, s. 85; *see aso* H C. 9-1 of 1944-45 and 189-1 of 1945-46.

throughout its passage by the Opposition in both Houses of Parliament.

After the Bill had passed 2 *R.*,[1] following a defeated amendment to read the Bill 6 months hence, and the Motion: "That the Bill be committed to a Committee of the Whole House" had been negatived, the Bill, under S.O. 38 (Committal of Bills) stood committed to a Standing Committee.[2]

Standing Orders 41 and 64.—The following are texts of S.O. 41 (Business Committee) and S.O. 64 (Business Sub-committees):

Business Committee.—41. There shall be a Committee, to be designated the Business Committee, consisting of the members of the Chairmen's panel together with not more than 5 other members to be nominated by Mr. Speaker. The quorum of the Committee shall be 7. The Committee—

(1) shall, in the case of any Bill in respect of which an order has been made by the House, allotting a specified number of days or portions of days to the consideration of the Bill in Committee of the whole House or on report, divide the Bill into such parts as they may see fit and allot to each part so many days or portions of a day so allotted as they may consider appropriate;

(2) may, if they think fit, do the like in respect of any Bill to the consideration of which in Committee of the Whole House or on report a specified number of days or portions of days has been allotted by general agreement notified orally to the House by a minister of the Crown; and

(3) shall report their recommendations to the House and on consideration of any such report the question "That this House doth agree with the Committee in the said report" shall be put forthwith, and, if agreed to, shall have effect as if it were an order of the House.

Business Sub-committee.—64. (1) An allocation of time order relating, or so much thereof as relates, to the Committee stage of a Bill committed or to be committed to a Standing Committee shall, as soon as the Bill has been allotted to a Standing Committee, stand referred without any question being put to a Sub-committee of that Standing Committee appointed under paragraph (2) of this order.

(2) (*a*) There shall be a Sub-committee of every Standing Committee, to be designated the Business Sub-committee, for the consideration of any allocation of time order or part thereof relating to any Bill allocated to that Committee, and to report to that committee upon—

(i) the number of sittings to be allotted to the consideration of the Bill;
(ii) the allocation of the proceedings to be taken at each sitting; and
(iii) the time at which proceedings, if not previously brought to a conclusion, shall be concluded.

(*b*) As soon as may be after an allocation of time order relating to a Bill committed to a Standing Committee has been made, Mr. Speaker shall nominate the Chairman of the Standing Committee in respect of that Bill and 7 members of the Standing Committee as constituted in respect of that Bill to be members of the Business Sub-committee to consider that order, and those members shall be deemed to have been discharged from the Sub-committee as soon as that Bill has been reported to the House by the Standing Committee; the Chairman of the Committee shall be the Chairman of the Sub-committee; the quorum of the Sub-committee shall be four; and the Sub-Committee shall have power to report from time to time to the Standing Committee.

(*c*) All resolutions of a Business Sub-committee shall be reported to the Standing Committee at the commencement of the proceedings at the next

[1] 458 *Ib.* 53-163; 215-326; 373-494. [2] *Ib.* 499.

sitting of that Committee and shall be printed and circulated with the minutes of the proceedings of the Committee.

(*d*) Whenever a Business Sub-committee has reported to the Standing Committee the member in charge of the Bill may forthwith move " That this Committee doth agree with the Business Sub-committee in the said resolution (or resolutions) ". Such a motion shall not require notice and the question thereon shall be decided without amendment or debate.

(*e*) If the question is resolved in the affirmative, the resolution (or resolutions) shall operate as though included in the allocation of time order made by the House, but if passed in the negative the resolution (or resolutions) shall stand recommitted to the Business Sub-committee.

Allocation of Time Order.—On November 25, 1948,[1] the following Allocation of Time Order (the Guillotine) was agreed to on division. Ayes, 319; Noes, 195, after debate lasting over 6 hours:

That the proceedings on the Committee stage, Report stage, and Third Reading of the Iron and Steel Bill shall be proceeded with as follows:

(1) *Committee stage.*

(*a*) The Standing Committee to which the Bill is referred shall report the Bill to the House on or before the seventeenth day of March next.

(*b*) At a Sitting at which any proceedings are to be brought to a conclusion under a Resolution of the Business Sub-committee as agreed to by the Standing Committee, the Chairman shall not adjourn the Committee under any order relating to the Sittings of the Committee until the proceedings have been brought to a conclusion.

(*c*) At a Sitting at which any proceedings are to be brought to a conclusion under such a Resolution, no Motion relating to the Sittings of the Committee, no dilatory Motion with respect to proceedings on the Bill or the adjournment of the Committee, nor Motion to postpone a Clause, shall be moved except by the Government, and the Question on any such Motion (other than a Motion relating to the Sittings of the Committee), if moved by the Government, shall be put forthwith without any debate.

(*d*) on the conclusion of the Committee stage of the Bill the Chairman shall report the Bill to the House without Question put.

(2) *Report stage and Third Reading.*

(*a*) Four allotted days shall be given to the Report stage (including any proceedings on the re-committal of the Bill).

(*b*) One allotted day shall be given to the Third Reading, and the proceedings thereon shall, if not previously brought to a conclusion, be brought to a conclusion at 9.30 p.m. on that day.

(*c*) Any day other than a Friday on which the Bill is put down as the First Order of the Day shall be considered an allotted day for the purposes of this order.

(*d*) Any Private Business which has been set down for consideration at 7 p.m., and any Motion for Adjournment under Standing Order No. 9 on an allotted day shall on that day, instead of being taken as provided by the Standing Orders, be taken at the conclusion of the proceedings on the Bill or under this order for that day, and any private Business or Motion for Adjournment so taken may be proceeded with, though opposed, notwithstanding any Standing Order relating to the Sittings of the House.

(*e*) On a day on which any proceedings are to be brought to a conclusion under any Resolution of the Business Committee as agreed to by the House or under this order, those proceedings shall not be interrupted under the provisions of any Standing Order relating to the Sittings of the House.

[1] *Ib.* 1424-1543.

(*f*) on a day on which any proceedings are to be brought to a conclusion under any Resolution of the Business Committee as agreed to by the House or under this order, no dilatory Motion with respect to proceedings on the Bill or under this order, nor Motion to recommit the Bill, shall be moved unless moved by the Government, and the question on any such Motion, if moved by the Government, shall be put forthwith without any debate.

(3) *General.*

(*a*) For the purpose of bringing to a conclusion any proceedings which are to be brought to a conclusion at a time appointed by a Resolution of the Business Sub-committee, as agreed to by the Standing Committee, or by a Resolution of the Business Committee, as agreed to by the House, or by this order, and which have not previously been brought to a conclusion, the Chairman or Mr. Speaker shall, at the time so appointed, put forthwith the question on any Amendment or Motion already proposed from the Chair, and, in the case of a new clause which has been read a Second time, also the question that the Clause be added to the Bill, and shall next proceed to put forthwith the questions on any Amendments, new clauses or new schedules moved by the Government of which notice has been given (but no other Amendments, new clauses or new schedules), and any question necessary for the disposal of the Business to be concluded, and, in the case of Government Amendments or Government new clauses or Government new schedules, he shall put only the questions that the Amendments be made or that the clauses or schedules be added to the Bill, as the case may be.

(*b*) Nothing in this order or in a Resolution of the Business Sub-committee or Business Committee shall—

(i) prevent any proceedings which thereunder are to be concluded on any particular day or at any particular Sitting being concluded on an earlier day or at an earlier Sitting, or necessitate any particular day or Sitting or part of a particular day or Sitting being given to any such proceedings if those proceedings have been otherwise disposed of; or

(ii) prevent any other Business being proceeded with on a particular day, or part of a particular day, in accordance with the Standing Orders of the House, if any proceedings to be concluded on that particular day, or part of a particular day, have been disposed of.

(*c*) In this order the expression Business Committee and Business Sub-committee respectively mean the Committee appointed under Standing Order No. 41, and the Sub-committee appointed under Standing Order No. 64 of the Standing Committee to which the Bill is referred.

Debate.—In moving this Guillotine Motion[1] the Lord President of the Council (Rt. Hon. Herbert Morrison) said, that, so far as the proceedings in Standing Committee were concerned, March 17, 1949, was the prescribed time limit of the proceedings and it would be possible to provide for 35 sittings of such Committee. To the proceedings on Report 4 days were allotted with 1 day for Third Reading, and the Business Sub-committee to be appointed by Mr. Speaker would examine the total time available and try to agree as to the best use to be made of that time.

So far as the Report stage was concerned, a Business Committee had not hitherto been used for the purpose of the Allocation of Time Order on the Floor of the House and the Government would take a favourable view of the demands of the Opposition. They were on

[1] *Ib.* 1425.

the threshold of a considerable experiment in this field of procedure.[1] It was far better, continued the Minister, that these matters should, as far as possible, be settled by agreement with a bias in favour of the view of the minority as to the use of the time, rather than that the majority should clamp down on the minority.

This was also the first time that an Allocation of Time Order was being imposed from the beginning of the Committee stage and not after the Committee stage had been operating for some time. There had often been a difficulty on the Report stage in the allocation of time in relation to different parts of a Bill. It had been difficult to allocate time in advance on the Report stage, but now, under S.O. 41, they could amicably divide up the time within the overall limit and thus effect a great improvement in their procedure.[2]

Mr. Morrison remarked that he did not like the Guillotine procedure. He would have preferred to an agreed-upon time-table such as worked with great success on the Government of India Bill[3] and the Education Bill of 1944,[4] but that being impossible they were left with no alternative.[5]

(*Mr. Morrison then quoted a number of Bills in respect of which the Guillotine had been imposed by former Governments.*)[6]

Amendment was then moved to the Motion by the hon. member for Warwick and Leamington (Rt. Hon. Anthony Eden) to leave out all words after "That" and to add:

This House declines to consent to the arbitrary curtailment of debate upon a measure vitally important to the economic life of the nation.

In moving this amendment, Mr. Eden asked, which was the better, that the House should only half examine a Bill, or examine it a third by this procedure, or examine it fully even if it involved late sittings?[7] He submitted that the Committee stage of a Bill of such magnitude ought to be taken on the Floor of the House. Never, until this Parliament, had major Bills of the Session been sent upstairs[8] and never until this Parliament had a Bill been guillotined in Committee upstairs. How could the Minister tell which parts of a Bill, when they came to the Committee stage, would require more discussion than other parts. All sorts of topics emerged that were not apparent when the Bill was first discussed.[9] The right routine was that every Bill which deeply affected the life of the nation as a whole should be taken on the Floor of the House. Sending a Bill upstairs made it all the more important that the scrutiny which it received in Committee should be thorough and complete.[10]

They had the experience of 2 major Measures which had already been guillotined in Committee upstairs during the life of this Parliament—the Transport Bill and the Town and Country Planning Bill—

[1] *Ib.* 1427. [2] *Ib.* 1428, 9. [3] *See* JOURNAL, Vol. IV, 13. [4] 397 *Com. Hans.* 5, s. 1583. [5] 458 *Com. Hans.* 5, s. 1436. [6] *Ib.* 1437, 8. [7] *Ib.* 1438, 1440. [8] *i.e.*, to Standing Committee. [9] 458 *Com. Hans.* 5, s. 1441. [10] *Ib.* 1443.

but each was given more discussion before the Guillotine fell. This time there were no free days. The position in regard to the Transport Bill was that 37 out of 127 Clauses and 7 out of 13 schedules had not been considered at all. On Report the Guillotine fell at Clause 38 out of 127 Clauses. The Government themselves introduced 200 amendments in Committee of which 94 had not been reached when the Guillotine fell.

To take the Town and Country Planning Bill: on that there were 25 sittings in Committee and 52 of the 108 Clauses and 6 of the 9 schedules were not discussed. The Report stage ended when 14 of the 108 Clauses had been debated and there were 200 Government amendments, 50 of which had not been dealt with at all.

What happened in "another place"? On the Transport Bill the Government moved 139 amendments of their own and accepted 91 of those of the Opposition, which there had not been time to examine in the House. Also, in "another place" on the Town and Country Planning Bill, the Government moved 289 amendments and accepted 47 Opposition amendments.[1]

The mere fact that these Bills now normally go upstairs increased the importance of the Report stage. In the old days it would be remembered that when Bills were discussed on the Floor of the House the Report stage was, to a large extent, a formality. Now if these Measures went upstairs, they were not, except on Report, discussed by $\frac{5}{6}$ of the House.[2]

In conclusion, Mr. Eden said that it was important that the House should understand the fundamental change in its procedure, brought about by sending these major Bills upstairs while getting no corresponding increase of time on Report in the House.[3]

The debate on the Guillotine Motion covered almost 6 hours.

When the amendment was put, the voting on the Question—"that the words proposed to be left out stand part of the Question"—was, Ayes, 319; Noes, 195, after which the Main Question was put and agreed to.

Business Committee Report.—The Report from the Business Committee (dated April 7), which was considered by the House on April 13,[4] read as follows:

Allocation of Time.—Recommendation reported from the Business Committee:

That,

(*a*) the Proceedings on the Report Stage of the Iron and Steel Bill shall be divided into the parts specified in the second column of the table set out below:

(*b*) the four days which, under the Order [25th November], are given to the Report Stage of the said Bill, and portions of those days, shall be allotted in the manner shown in that table; and

(*c*) each part of the Proceedings shall, if not previously brought to a con-

[1] *Ib.* 1444-5. [2] *Ib.* 1446. [3] *Ib.* 1447. [4] 463 *Ib.* 2850.

clusion, be brought to a conclusion at the time specified in the third column of that table.

TABLE

Allotted day.	Proceedings.	Time for conclusion of Proceedings.
		p.m.
First day	New Clauses and Clause 1	8.0
	Clauses 2, 3 and 4	10.0
Second day	Clauses 5 to 10	5.30
	Clauses 11 to 19	10.0
Third day	Clauses 20 to 28	5.30
	Clauses 29 to 32	10.0
Fourth day	Clauses 33 to 42	6.0
	Clauses 43 to 60, New Schedules, Schedules 1 to 8 and any other Proceedings necessary to bring the Report Stage to a conclusion.	10.0

However, before the Report was considered, a point of Order was raised by the hon. member for Leeds North (Rt. Hon. Osbert Peake), who said that before Mr. Speaker put the question "That this House doth agree with the Committee in the said Report", which under S.O. 41 (3) was not debatable, he wished to raise a point of Order to the effect that the Business Committee had acted *ultra vires* in reporting to the House that the Guillotine Motion for the report stage of the Bill should sub-divide the 4 allotted days and that the Guillotine should fall twice daily and not merely at the end of each day's proceedings.

The point Mr. Peake raised turned upon the construction of S.O. 41 (1), quoting the opening paragraph thereof (*see above*), which provided, of course, that supporters of the Government were bound to be in a permanent majority upon the Business Committee, as was the case with all Select Committees.

Mr. Peake submitted that when, under the Standing Order, a specified number of days or portions of days have been allotted to the consideration of a Bill on Report, it is the duty of the Business Committee to divide the Bill into a number of parts not greater than the number of days or portions of days allotted for the Report Stage, so that not more than one part should be considered on each of the allotted days. The example he gave was that 4 days were given to the Report Stage of the Iron and Steel Bill. The Business Committee proposed to divide those days into several parts and allocate a part of the Bill into each such portion of the day. Mr. Peake contended that they had no business to divide the Bill into more than 4 parts as the House, not having allotted a portion of a day to the Report Stage,

the Business Committee could not allocate any part of the Bill to a portion of a day.[1]

Mr. Speaker's Ruling.—Mr. Speaker then said that after having given the matter careful consideration he had come to the conclusion that he could not accept the rt. hon. Gentleman's interpretation of the Standing Orders. Mr. Speaker continued:

We must apply our minds to the obvious intention of this Order. In my opinion, Standing Order No. 41 lays it down that if the House has passed an Allocation of Time Order in respect of the proceedings on consideration of a Bill, it is the duty of the Business Committee (1) to divide the Bill into parts of such number and size as they may think fit, and (2) to decide, as they may consider appropriate, at what hour and on which of the days allotted to the proceedings each of the parts is to be concluded. This appears to me to be the quite clear intention of the Standing Order, and the time-table of the Business Committee's Report is, therefore, in accord with that intention.

Motion was then made and Question put: "That this House doth agree with the Committee in the said Report", which was agreed to, Ayes, 304; Noes, 133.[2]

Report Stage of Bill.—The Bill as amended in Standing Committee was considered by the House on Report on April 27,[3]—the First Allotted Day—when debate opened at 3.7 p.m., and the Guillotine fell at 8 and 10 p.m.

On April 28[4]—the Second Allotted Day—debate opened at 3.43 p.m., and the Guillotine fell at 5.30 and 10 p.m.

On May 3[5]—the Third Allotted Day—debate opened at 3.30 p.m., and the Guillotine fell at 5.30 and 10 p.m.

On May 3[6]—the Fourth Allotted Day—debate opened at 3.32 p.m., and the Guillotine fell at 6 and 10 p.m., after which the Bill was reported as amended.

The Bill was thereupon recommitted in respect of certain amendments to the Bill in Clause 15,[7] but reported without amendment.

Mr. Speaker's Ruling.—An amusing incident occurred upon the Order of the Day being read for the Third Reading of the Bill on May 9[8]—the Allotted Day. An hon. member asked Mr. Speaker's guidance as to whether, before they came to the Third Reading of the Bill (which had only got to that stage by a strict use of the Guillotine), Mr. Speaker could do anything to stop the country going another step down the totalitarian road and anything in defence of freedom, quoting the following words under a picture in St. Stephen's Hall:

> Sir Thomas More, as Speaker of the House of Commons, in spite of Cardinal Wolsey's imperious demands, refuses to grant King Henry VIII a subsidy without due debate.

The hon. member then asked Mr. Speaker whether he could be

[1] *Ib.* 2850-4. [2] *Ib.* 2854, 5. [3] 464 *Ib.* 187-334. [4] *Ib.* 376-507.
[5] *Ib.* 655-783. [6] *Ib.* 837-948. [7] *Ib.* 949-960. [8] *Ib.* 1501-1616.

another Sir Thomas More and find in the Rules of the House means by which Mr. Speaker could say that there had been an abuse of the powers of the Government? "I should like to know what would happen if you said that you would leave the Chair and take away the Mace?"—to which Mr. Speaker replied that he was a servant of the House, and the House had decided by Guillotine Motion that the debate must close at a certain hour. Mr. Speaker concluded by saying:

> It would be very wrong if I disobeyed an order of the House, because my first duty is to see that the Orders of the House are obeyed: I should be open to a vote of censure if I did anything to prevent the House doing anything otherwise. I was just a little alarmed when the hon. member asked me to be another Sir Thomas More. I can assure him that I have no desire to lose my head.

Third Reading of Bill.—The Third Reading of the Bill was then[1] taken; debate opened at 3.38 p.m., and the Guillotine fell at 9.30 p.m., when the Bill passed 3 *R.* and was sent to the Lords, where it was very considerably amended, which amendments being the subject of much interchange of messages passing between the 2 Houses, some being disagreed to, others proposed in lieu, and some insisted upon. The Bill, however, as amended, was eventually agreed to, received *R.A.* and became 12 & 13 Geo. VI, c. 72.

IX. CONSTITUTIONAL REFORM IN THE CHANNEL ISLANDS

BY THE EDITOR

REFERENCES have been made in the JOURNAL[2] to constitutional changes in the Channel Islands and on December 2, 1947,[3] Question was asked in the House of Commons as to the publication of certain Reports of the Privy Council in regard to such changes. On February 12, 1948,[4] Question was again asked as to the visit of the Secretary of State for the Home Department of the U.K. Government to the Islands.

Owing, however, to the earlier publication of Volume XVII last year, it was not possible to include reference to the subject in that Volume.

The recent constitutional reform in these Islands arose during 1946 in "the States", as their Legislatures are called, of Jersey and Guernsey, with their dependencies, and as an outcome of the visit to London on March 21, 1945, of a deputation of the leading expatriated citizens of Alderney.

Early in the summer of 1940 when France was overrun by the Germans and as food stocks were very limited and further supplies

[1] *Ib.* 1502. [2] Vols. XVI, 45; XVII, 27. [3] 445 *Com. Hans.* 5, s. 545.
[4] 447 *Ib.* 544.

would be unobtainable, the inhabitants of Alderney at a mass meeting resolved to remove to Great Britain rather than await the arrival of the enemy. All but a handful were therefore evacuated on June 23, 1940, in ships of the Merchant Navy, and the circumstances of the evacuation were such that they had to leave most of their possessions behind, their cattle being taken to Guernsey.[1]

Shortly afterwards Alderney was occupied by the Germans, who constructed many defence works and converted the Island into a fortress. A great number of houses were severely damaged or destroyed or otherwise made uninhabitable and the land, except for an area which was worked as a farm, ceased to be cultivated.

The Island was reoccupied by British military forces in May, 1945, and on August 11 of the same year, a Committee, under the chairmanship of the Lieutenant-Governor of Guernsey, was appointed by the Secretary of State for the Home Department for this purpose.

The first party of repatriates returned to Alderney on November 30, 1945, and by July, 1946, when the last group repatriation took place, a total of 685 inhabitants had returned, out of a pre-war population of 1,442.[2]

Committees of the Privy Council were then appointed by the King in Council to go into the matter of the constitutional changes in the 3 Islands, and, after they had reported, legislation was passed by the States of Jersey, Guernsey and Alderney respectively, giving effect to the accepted recommendations of such Committees.

It speaks well for these gallant Channel Islanders, who sent their own regiments to the War in 1914-18 and who, in 1939-45, when many of the officers and men serving in the Royal Jersey and Royal Guernsey Militias, together with a great number of men and women from the Islands, joined units of H.M. Forces and served in theatres of war all over the world, that, notwithstanding all they had gone through during 1939-45 under the German thraldom, and their populations being so busy in re-establishing internal prosperity, they could at the same time devote attention to constitutional reform.

Both Jersey and Guernsey have a Lieutenant-Governor and Commander-in-Chief as personnel representing the Sovereign, who are the respective channels of communication between H.M. Government in the United Kingdom and the Island Governments. The Lieutenants-Governor are entitled to sit and speak in the Assemblies of the respective States, but not to vote. Only the Lieutenant-Governor of Jersey, however, has the power of veto on certain forms of legislation.[3]

The Island of Alderney (which is in the Bailiwick of Guernsey) is governed by its own States, under a President, the constitution of which will be described later.

These Constitutions, with their Judges, Jurats, Deans, Rectors, Douzeniers, Viscomte, Greffiers, Sheriffs and Constables and the

[1] *Cmd.* 7805, 7. [2] *Cmd.* 7805. 8. [3] *The Statesman's Year Book*, 1949.

union in the same persons of legislative and judicial functions, constitute a form of government which is quite unique, even in the British Commonwealth and Empire. Nevertheless, the Islanders have always most successfully withstood any attempts at interference from the British Isles, with their freedom and ancient privileges.

The acreage and population of Jersey, Guernsey and its dependency of Alderney, Great and Little Sark, with its dependencies Brechou, Herm, Jethou and Lihou are as follows:

	Acreage.	*Population.*
Alderney	1,962	1,459
Brechou	74	12
Guernsey	15,654	44,704
Herm	320	15
Jersey	28,717	57,110
Jethou	44	9
Lihou	38	nil
Great Sark	1,035	527
Little Sark	293	

The Islands lie off the North-West Coast of France. Alderney, the most northern of the Islands is situate about 55 miles South of Portland Bill in England, 10 miles west of Cap de la Hague in Normandy.

History.—However, before going into the two Reports from the Privy Council Committees some reference will be made to the history of constitutional development in the Islands, so as to provide a background for the information to follow.

The Channel Islands are the only remaining portion of the Duchy of Normandy belonging to the Crown of England to which they have been attached since its conquest in 1066.

The Constitutions in the Channel Islands are unique, even in the British Commonwealth and Empire, which can offer practically any type of constitution, almost at call.

Unlike constitutions in our Overseas Realm, which are almost all embodied in the rigid letter of the law, those of the Channel Islands have, like that of the United Kingdom, come about gradually by a process of evolution, with rights and liberties confirmed from time to time in Charters granted by English and British Sovereigns. In fact, the Constitutions of the Channel Islands are perhaps based even more on the unwritten law than that of England.

When England finally withdrew from France in 1558, the only parts of the former Dukedom of Normandy remaining to the English Crown were the Channel Islands. It is to the lasting credit of their inhabitants that they succeeded, through the centuries, in conserving so much of the ancient Norman customs, rights and privileges.

From absolute rule these Constitutions have developed into the

popular representation of to-day and by the recent Orders in Council, dealt with in this Article, even taken further on the democratic path.

Away back in history the smaller islands were scarcely inhabited and some Royal Charters were granted to persons on the condition that "not less than 40 tenants, our subjects" would be settled therein. Even to-day, the almost feudal Island of Sark is divided into 40 tenements.

Since 1275 there have been 2 distinct units of government in the Channel Islands, known as the Bailiwicks of Jersey and Guernsey, the latter including Alderney and Sark. These Bailiwicks are part of the British Islands[1] but not of the United Kingdom. Largely as the result of their own efforts the Channel Islands have achieved a degree of self-government greater than that of the British Colonies, yet not quite that of Dominion status. Their Constitutions have developed in quietly progressive movements or phases, 4 of which are especially significant: Norman origins; separation from Normandy; seventeenth century Parliamentary influence; and nineteenth-century popular representation.

In the eleventh and twelfth centuries the Channel Islands were predominantly Norman; their law was Norman and was administered in part by visiting Justices from the Ducal Court of Normandy. Most of the land was held in fiefs by the Duke as part of his domain or by lay or Ecclesiastical Seigneurs whose main property was on the mainland.

From 1066 to 1204 England and Normandy had a common ruler—King and Duke—but each land had its own administration. Thus when John Lackland lost his continental dominions in 1204, the Islands were treated as a possession of the King, distinct from his Kingdom of England, and because Norman law was an obstacle to incorporation, they retained a separate administration. Various inquisitions and extents about that time show that the English Kings respected "the services, customs and liberties of the Island of Guernsey and the laws established in the Islands by the Lord King John", but the Lord King had nothing in the Islands save the status of Duke.

This statement worked out to be true in practice as in theory until the Parliament of England asserted its authority.

When the separation from Normandy came in 1204, the gap was filled partly by institutions arising in the Islands and partly by direct appointments of the King and Government at Westminster. The Ducal, now Royal, authority was exercised by a Warden, later termed "Governor".

During a lengthy period in the fifteenth century the Islands were granted in fief to Royal Princes or noble or prominent commoner families. The Warden, being a person of rank and substance, was

[1] The expression "British Islands" is defined by Statute as including the Channel Islands, but the expression "British Isles", a much more common one, appears never to have been so defined.

obliged to depute his functions to "Bailiffs of the King" residents of the Islands, which became offices, distinct from that of Lieutenant-Governor. Other officials were Constables to keep the Royal Castles, and King's Receivers to collect the King's rents and dues. The medieval administration also looked after the King's mills, etc., provided justice, maintained peace and declared war.

The strategic importance of the Islands, especially in the operations against France, had a bearing upon the attitude of the English sovereign, who granted Charters confirming the ancient customs, franchises, etc., of the Islands and freedom from tolls in the ports and towns of the Kingdom of England, a full enumeration of which was not made until the reign of Elizabeth in 1569. A long struggle for insular privileges enjoyed "from time immemorial" was fought for by the Islanders, especially during 1309-1341. The Precepte d'Assize of 1441 embodying the findings of the Courts, which also developed into law-making bodies—that is to say, the Constitution, was of such importance as to be ratified by the Privy Council in 1583. The Islanders were allowed to preserve and develop their own Norman law with their own Courts from which there was only appeal to the King. In the early Norman history no clear distinction was made between judicial and legislative functions.

It is still somewhat obscure how the States arose. To the body of Jurats was added the Rectors, and for centuries the Parish Constables not only presided over their Douzaines but were also delegates to the States, as the representative assemblies are still called, the President of which was not the Lieutenant-Governor, but the Bailiff.

Since the constitutional struggle in Jersey in the seventeenth century, the Bailiff has been appointed by and is directly responsible to the King, the functions of the Governor being confined to military affairs. In the Jersey Legislative Chamber to-day the seat of the Lieutenant-Governor is 3 inches below that of the Bailiff.

After the death of Mary there was a wave of Protestantism which made its mark on the legislation of Jersey, though Guernsey was strongly Catholic. In medieval days secular troubles broke out from time to time.

In the reign of James I, the Islanders urged the restoring of the ancient use of the Provincial States-General, since the Islands of Jersey and Guernsey were remnants of the King's Duchy of Normandy, the ecclesiastical Synods influencing the political ideas of the people.

The native Islanders were free from serfdom and forced labour. Their militias were not subject to service outside the Islands, save to redeem their Duke.

Throughout all these periods the general tendency was to restrict the power of the Governor and to increase the power of the Royal Courts and the States.

In 1771 the Royal Court of Jersey was deprived of its legislative

functions, the States becoming the sole law-making body, but the same step was not taken in regard to Guernsey until the Reform of Guernsey Law, 1948, was passed, which is one of the subjects of this Article.

During the nineteenth century in the Channel Islands as elsewhere, there were profound changes in the conception and theory of government, embodied in various Orders in Council.

When the German occupation took place in World War II, the Bailiff was appointed Civil Lieutenant-Governor and legislation was passed, which formerly required an Order in Council, such being valid on approval by the German Commandant.

Since 1854 in the case of Jersey and 1835 in Guernsey there have been no Governors. The Lieutenants-Governor have no civil or executive powers, their functions are mediatory and military; *i.e.* they are in charge of troops and establishments and they act as a channel of communication between the Island authorities and Whitehall.

The constitution of Sark, although it did not come within the Committee's inquiries, will be dealt with separately.

Cmds. 7074 and 7805.—It is now proposed to go into the subject somewhat fully and put on record how the Committees of the Privy Council came to be appointed, their deliberations and recommendations, as well as the Constitutional Instruments issued by the Governments of the 3 chief Islands in order to put into force those recommendations of the Committee which met with the approval of the respective States.

The Order of the King in Council of June 4, 1946, recites,[1] that the States of Jersey by an Act of March 14, of the same year, charged their President to transmit to the Lieutenant-Governor an Act and the Report of the States relating to reform of the States of Jersey and that the States of Guernsey by Resolution of January 23, of that year, adopted proposals in regard to reform in such States, which Resolutions were transmitted, in the case of both Islands "in order that the pleasure of His Majesty might be ascertained on the reforms envisaged therein".

This Order in Council further appoints certain persons to form a Committee of the Privy Council for the purpose of the inquiry, with power to take evidence, to call for information in writing and to call for and have access to and examine all books, etc., "and to use all other such lawful ways and means whatsoever as may afford them the fullest information on the subject of the inquiry". The Committee or any 2 members thereof were also empowered to take evidence on oath and to visit and inspect such places as they may deem expedient for the more effectual carrying out of their duties.

The Order in Council in respect of Alderney, which is dated July 3, 1947, appoints certain persons a Committee of the Privy Council

[1] *Cmd. 7074.*

with similar powers in regard to that Island, the Report[1] from whom will be dealt with later.

The Introduction to the Reports refers to the historic nature of these Constitutions under which the Royal Courts of these Islands and their dependencies have existed in their present form since the thirteenth century, when continental Normandy was lost to King John (of Lackland fame) and the Channel Islands remained to the English Crown; the present legislative machinery having developed some centuries later. Out of this process, the "States" of Jersey, Guernsey and Alderney, as we know them to-day, have emerged as new assemblies.

The first-named Committee stayed in Jersey from September 15 to 21, 1947, and in Guernsey from the 21st to 29th *idem*, but before their information in regard to representation had been invited, the Committee sat in public session at the Royal Court Houses throughout the day, when 39 witnesses were heard in Jersey and 29 in Guernsey.

In regard to Alderney, however, the respective Committee visited the Island from September 21 to 25, 1947, when they heard evidence in public. Six representatives had been nominated by the States of Alderney to represent their views and, in addition, various persons and officials were examined. On the Committee's return to England they heard evidence from officials of the Home Office, Ministry of Civil Aviation, Post Office, and that of the Commisioners of Crown lands; a further visit was made to the Island in January, 1948.[2]

The Reports of these Committees in regard to these Islands will be taken as respectively dealt with by them and as in the case of the treatment of other constitutional movements in the JOURNAL, we shall confine ourselves to those provisions which closely affect the law-making body, its members and privileges and other matter in close relation thereto. Therefore, those parts of these Reports, and subsequent legislation thereupon which deal with other matters, will not be noticed.

A. Proposals affecting the States of Jersey.

The Bailiff who is appointed by the Crown and holds office during H.M.'s pleasure, is both the President of the States and of the Royal Court, combining both legislative and judicial functions. He has the right of speech on any matter, with a casting vote in case of an equality of votes and a power of dissent in matters concerning the Royal Interest or Prerogative on occasions when, by established practice, certain changes affecting the constitution and laws of the Island must be tendered in the first instance as propositions for Royal Assent before any alteration is effected. Certain of his functions resemble those of the Speaker of the House of Commons. He is also the channel of communication between the Lieutenant-Governor and

[1] *Cmd.* 7805. [2] *Ib.* 8.

the administrative departments of the States. The conduct of business between H.M.'s Government through the Lieutenant-Governor not infrequently results in deliberations in the States, whether or not legislation is involved; on these the Bailiff is expected to comment and make suggestions before the ultimate decision of the States. The Bailiff, as President of the States, also advises the assembly on constitutional procedure.

The Committee recommended that no change be made in the present functions of the Bailiff.[1]

The Jurats.—These number 12 and are elected by the whole electorate of the Island on a basis of universal suffrage and hold office for life. They sit in the States like other members and also have responsibilities in the administrative departments of the States. They must be natives of the Island, but brewers, butchers or innkeepers are not eligible. Only adult men are eligible, and they must possess a property qualification of not less than £30 p.a. A law of 1771 requiries that candidates for the office of Jurat must be persons conforming with the reformed religion and this has been interpreted as excluding Roman Catholics, Jews and Freethinkers, but not Nonconformists.

The office of Jurat is primarily judicial; they declare the law in the Courts but there is no separation between their judicial, legislative and administrative functions.

The States proposed that the Jurats should hold office for only 6 years and be eligible for re-election, 2 to be elected each year. The Royal Court, however, decided that this was not compatible with the functions which it was proposed they should in future perform in the Royal Court.

The Jurats (Jurés Justiciers) have normally been recruited from retired persons and the Island has come increasingly to rely upon them for arduous unpaid work in the Legislative Assembly and in the administrative departments of the States, while, at the same time, they exercise judicial functions in the Royal Court. The Committee felt that importance attaches to the right of any person who has a grievance to take to a Court, independent of the Legislature or Administration.[2]

The Committee also considered that the functions performed by the Jurats in the States and those performed by them as Jurés Justiciers in the Royal Court should be separated; so that there would be 12 Jurés Justiciers and 12 State Jurats and that the existing property and trade disqualifications should be discontinued as regards these, as well as the requirement that they should be natives of the Island.

The States proposals were that the States Jurats should serve for 6 years with 2 retiring each year in addition to the triennial election of Deputies and the periodic election of Constables, thus maintaining the stabilising influence of continuity of the Jurats in the Assembly.

[1] *Cmd.* 7074, 6, 7. [2] *Ib.* 8.

The Committee recommended that the States proposal for 12 States Jurats elected on an island basis, in time for the Jurats to take their seats in the reformed States, be approved.

The Dean and Rectors.—These were appointed to their ecclesiastical offices by the Crown, sat in the States *ex officio* with both speech and vote on all matters. The States proposed that the Dean should still sit with the right of speech only but that the Rectors should also submit themselves to the electorate.

These proposals were endorsed by the Committee.[1]

The Constables.—Twelve Constables, who sit as full members of the States, are elected, as vacancies arise, by each Parish electorate for 3 years on a basis of universal adult suffrage. Candidates must be British subjects resident in the Parish.

The Constable administers the affairs of the Parish, presides at the Assemblée Paroissiale, summoned from time to time to deal with parish matters such as the passing of accounts and determination of rates. This Assembly consists of Principals and Officers, namely, persons with certain rating qualifications and those holding civil or ecclesiastical parochial office. The Constable presides at the parish electoral assemblies held for the election of parish officers, as well as at the Road and other Committees. He is also the Parish Chief of Police and with the assistance of Centeniers, Vingteniers and Constables' Officers, is responsible for the law and order and the arrest and presentation of wrongdoers to the Police Magistrate. The Parish is his jurisdiction and he prepares the jurors' and electoral lists.

By an Order in Council of 1771, Resolutions coming before the States must be laid on the Table of the House for at least 14 days so that Constables may consult their constituents. In 1945 the urban and Rural population were respectively 24,464 and 18,655. The proposed representation in the States (with the exclusion of the Rectors) in future, therefore, would be as follows:

	Urban.	*Rural.*
Deputies	15	13
Constables	2	10
Jurats	6	6
	23	29

The States proposals were that the position of the Constables be unchanged. The Committee endorsed these proposals but suggested that consideration should be given to Constables retiring simultaneously, the vacant offices being filled by a general election at the same time as the elections for other offices.[2]

[1] *Ib.* 10.

[2] *Ib.* 11, 12.

The Committee endorsed these proposals.

The Deputies.—Seventeen Deputies were elected simultaneously for 3 years by the electorates of their constituencies on a basis of universal adult suffrage. Only British subjects are eligible and they must not be younger than 20 years for men and 30 years for women. The States proposals were to bring the number up to 28 by increasing the representation of certain districts.

The Committee recommended that these proposals be endorsed.[1]

The Crown Law Officers.—The Attorney-General and Solicitor-General are appointed by the Crown and hold office during pleasure. In the case of difference between the States and the Crown their allegiance is to the latter. Their salaries are paid partly by the Crown and the States respectively. The Attorney-General only is debarred by statute from private practice. They both sit *ex officio* in the States and have voteless right of speech in the Assembly. It is a tradition, however, that they should not take part in the deliberations of the Assembly, except in the case of legal or constitutional matters, or touching the interests of the Crown, or when they propose at a later stage to tender adverse advice to the Crown.

The Committee did not recommend any change in these offices.

The Viscount.—This officer, who is the Chief Executive Officer of the Courts of the Island, is appointed by the Crown and holds office during pleasure. He has, from time immemorial, been entitled to sit *ex officio* in the States where he has neither voice nor vote. The summoning of the States on the order of the Bailiff is the responsibility of the Viscount and his department. He accompanies the States on ceremonial occasions, a member of his staff carrying the Mace, and in event of disorder or members obstructing the course of business in the States, he can be called in by the President to secure their expulsion.

The Committee felt there was no necessity for the Viscount to continue to be a member of the States, but considered that he should still attend to perform the duties above-mentioned.

The Committee stated that should the States petition the Crown in this sense they would recommend it.[2]

Electoral.—The Report then goes on to deal with elections and the preparation of the voters' rolls. At present candidates at the States elections provide refreshments for their supporters at an election and pay the cost of transporting voters to the poll, which make the cost of elections unduly high.

The Committee recommended that the States should consider legislation for the limitation and definition of election expenses and that for all public elections to States offices there should be a published electoral roll, officially compiled and the present discrimination between ratepayers and non-ratepayers abolished.[3]

The French Language.—The French and English languages have

[1] *Ib.* 13, 14. [2] *Ib.* 14. [3] *Ib.* 15.

equal rights in the States debates and for drafting legislation. French is used predominantly for ceremonial or formal occasions. The right to address the States in English was conceded 50 years ago but it is unsual to-day for a member to use the French language. No member of the States was at a disadvantage in following debates in English but some would find a difficulty in following a debate in French. It is now the practice to submit new legislation in English. There are, however, certain laws in French, such as those relating to property, which it would be impracticable to amend in English. It has recently been the practice to submit for the assent of the King in Council an English translation of any law in French, but in case of doubt, where the law is in French, the Court is bound by that version.

The Committee recommended that the French language be retained for traditional and ceremonial purposes in the States, the deliberations of which should be in English, unless for special reason on any occasion, by agreement of the House, it is desired to use French and that, wherever practicable, legislation be drafted in English.[1]

B. Action by the States of Jersey.

On February 17, 1948, the States of Jersey passed the Assembly of the States (Jersey) Law, 1948,[2] which was confirmed by Order of the King in Council on June 2, of that year and *Enregistré le 18 Juin, 1948*.

The Assembly of the States is now to consist of 12 Senators, the Constables of the 12 Parishes *ex officio* and 28 Deputies. The Bailiff continues as President of the Assembly and both the Jurats and the Rectors cease to be members of the States by virtue of their office, but the Dean remains a member of the States *ex officio* with the right of speech only.[3]

Senators.—For the purpose of electing the Senators the whole Island of Jersey is one electorate and Senators are elected for 9 years, 4 retiring every third year.[4] Where the election is contested, the 4 persons elected by the smallest number of votes hold office for 3 years, the 4 elected by the next smallest number of votes for 6 years, and the 4 elected by the largest number of votes for 9 years. Should there be an equality of votes making it impossible to determine their respective terms of office, the question is decided by lot. Where the election is not contested the terms of office are determined in the same manner. Lots are drawn at the sitting of the Royal Court convened under the Public Elections Law.[5] An ordinary election of Senators is held in the second week of November every third year.

Deputies.—For the election of Deputies,[6] the Island is divided into 3 four-membered, 3 two-membered and 10 single-membered con-

[1] *Ib*. 16. [2] No. X of 1948. [3] Art. 2. [4] Art. 4 (1). [5] "Loi sur les Elections Publiques" confirmed by Order in Council of May 18, 1897 (at p. 347, Vol. IV, *Receuil des Lois Jersy*). [6] Art. 3 (2) & Sched. I.

stituencies. The Deputies are elected for 3 years and retire simultaneously.[1]

Oath.—Both Senators and Deputies take the following Oath:

> You swear and promise before God that you will well and faithfully discharge the duties of (Senator) (Deputy); that you will bear true allegiance to His Majesty the King, his heirs and successors, according to law; that you will uphold and maintain the laws, privileges, liberties and franchises of the Island, opposing whomsoever may wish to infringe the same; that you will attend the meetings of the States whenever you are called upon to do so; and generally that you will fulfil all the duties imposed upon you by virtue of the said office All of which you promise to do on your conscience.[2]

—and if they are elected at ordinary elections in the same year, the Oath is taken on the same day before the holding of the elections.

Qualifications.—Both Senators and Deputies must be of full age, of Island birth or ordinarily resident there during the 12 months preceding election. Although Jurats and Rectors are no longer to be elected as such, they are not disqualified from becoming Senators or Deputies.[3]

Disqualifications.[4]—Both Senators and Deputies are disqualified if they hold any office or place of profit under the Crown or the States or any administration thereof, or are paid officers of any parochial authority; or have, within 12 months immediately preceding the day of election or thereafter, received poor relief; or have, within 5 years immediately preceding election, or since, been convicted anywhere in the British Commonwealth of any offence and ordered imprisonment for not less than 6 months without the option of a fine.

There are also certain disqualifications in regard to property and bankruptcy.[5]

Resignations.—A Senator or a Deputy resigns by written notice over his signature, delivered to the Bailiff, who informs the States thereof at its next sitting whereupon the resignation takes effect.[6]

Casual vacancies.—In the case of both Senators and Deputies, these are filled on information thereof given by the Bailiff to the Attorney-General who brings the matter to the notice of the Royal Court by which the office is declared vacant and an order is made for an election to fill the vacancy within 30 days of such declaration, provided than when the vacancy occurs within 6 months immediately preceding the ordinary day of retirement from the office in which the vacancy occurs, the vacancy shall be filled at the next ordinary election.[7]

Casual vacancies: Senators.—Sub-Articles (3), (4) and (5) of

[1] Art. 4 (2). [2] Arts. 5, 10; Sched. II. [3] Art. 7. [4] We are advised that there are no stationary disqualifications affecting Constables in Jersey nor does there appear to be any case deciding the matter. By analogy with other decided cases, it would seem, however, that it is highly likely that the Royal Court of Jersey would hold that the office of Constable, being the chief position in a parish and carrying *ex officio* membership of the Jersey States, it is incompatible with the holding of any office of profit under the Crown or the States.
[5] Art. 8. [6] Art. 11. [7] Art. 12.

Article 12 provide that where there is more than one casual vacancy among Senators, the person with the smallest number of votes takes the place of the Senator who would regularly have retired first, and the person with the next smallest number, takes the place of the Senator who would have regularly next retired and so on, and should there be a non-contested election, or in case of doubt, the order of retirement is by lot.

When the election for a casual vacancy is combined with an ordinary Senators election, and the election is contested, the person with the smallest number of votes is deemed elected. Should there, in such case, be an equality of votes, the decision is by lot, and should the persons elected hold office for different periods, the one with the smallest number of votes, or if the votes are equal, the person whose election is determined by lot, shall be deemed elected for the shorter period.

When the election is not contested, the decision is by lot and in all cases the lots have to be drawn at a sitting of the Royal Court convened under Art. 3 of the Public Elections Law.

A person elected to fill a casual vacancy as Senator or Deputy holds his office for the unexpired term of his predecessor.

Miscellaneous.—Article 15 provides for the saving of the powers of Crown Appointees; Article 16 for the amendment of the Public Elections Law (*see above*) as provided in the Third Schedule to the Assembly of the States (Jersey) Law, 1948, and Article 17 for the repeal of the Laws cited in the Fourth Schedule.[1]

Jurats.—A Law was passed in 1924 modifying the constitution of the Royal Court, but as the Jurats no longer have membership in the Legislature, a description of the Royal Courts (Jersey) Law, 1948,[2] need not be given. Jurats have, however, one connection with the Legislature, namely, the Electoral College which now elects the Jurats also includes the Bailiff and elected members of the States.

Article 3 of this Law, which deals with the qualifications of Jurats, provides that in the 10 years next following the coming into force of the law, both the Royal Court and the States, shall, from amongst their respective members, appoint delegates who, in joint consultation, shall consider whether it is then possible to ensure a complete separation of the Royal Court and the States. Another connection with the States is that their Greffier under this Law attends the meetings of the Electoral College as its Clerk and records its proceedings.[3]

C. Proposals affecting the States of Guernsey.

Bailiff.—The powers and duties of the Bailiff are similar to those already described in regard to the office of Bailiff of Jersey except that the Bailiff of Guernsey, unlike the Bailiff of Jersey, has no power

[1] Tomes II, 81; IV, 113; V, 139; VI, 323.
[2] No. XXIII of 1948.
[3] Art. 5 (27).

of dissent in certain matters. In the absence of the Bailiff a Lieutenant-Bailiff is selected from among the Jurats. The States recommended that, in the Bailiff's absence, his functions be performed by a nominee chosen from members of the States. In Guernsey the Bailiff has been relieved of some of his administrative responsibilities by the appointment of an Advisory Council of the States which is in the nature of a co-ordinating Committee with advisory powers, but the Bailiff of Guernsey may, in his own discretion, lay before the States any matter which he has previously referred to the Advisory Council, provided he gives the Council an opportunity to acquaint the States with their views.[1]

The Bailiff may not, however, refuse to place before the States any question or business if so requested by members or Committees of the States.

The Committee recommended that the States proposal in regard to the office of Bailiff be endorsed.[2]

Jurats.—The Jurats are of the same number as in Jersey but are elected by an Electoral College, consisting of the Bailiff, 2 Law officers, the Jurats, 10 Rectors, 20 Constables, 180 Douzeniers and 18 Deputies. As in Jersey, they hold office for life, and their duties and qualifications are the same, except that there is no property qualification. Also, as in Jersey, the Jurats were primarily judicial in origin and declared the law in the Courts, but in course of time they assumed, in addition, their legislative and administrative functions.

The proposal of the States is that the Jurats, as such, should no longer sit in the States and that they be replaced by 16 Senators elected by a new Electoral College, called "The States Electoral Assembly (Senators)".[3] The Committee remarked that, as in the case of Jersey, it was a sound principle of government that functions such as those of States Jurats and Jurés Justiciers should be separated.[4]

The States proposed the abolition of the combination of dual legislative and judicial functions of Jurats.[5]

Senators.—Nominations for Senators are to be accepted from anyone in the States Electoral Assembly (Senators). The office would be open to anyone on the Electoral Roll[6] and the election take place soon after the coming into operation of the legislation in reform of the States and before the nomination of Deputies under the new constitution.

A Deputy, elected Senator, would be required to vacate his seat as a Deputy, but a Juré Justicier or a Douzenier, on being elected Senator or Deputy, would not be required to vacate office.

The Committee further observed that the proposed States Elec-

[1] *Cmd.* 7074, 16. [2] *Ib.* 17. [3] *Ib.* 17. [4] *Ib.* 18. [5] *Ib.* 17, 18.
[6] The Electoral Roll for the election of Deputies consisted broadly of all persons of full age who were British subjects and not under legal disability.

toral Assembly (Senators) would consist of: the Bailiff; 2 Law Officers; 12 Jurés Justiciers; 10 Rectors; the Senators; 39 Deputies; 10 Douzenier representatives exercising a free vote and 15 representatives of the Douzaines taking instructions from their Douzaine. This Assembly would elect 8 Senators triennially, or in event of a vacancy, one Senator.[1] In the case, however, of casual vacancies among Senators, occurring in the 6 months preceding a triennial election thereof, the vacancy need not be filled.

The Committee recommended that the States proposals as regards the method of election of Senators, their tenure of office, and numbers, be endorsed.

The Dean & Rectors.—The proposals as to these offices are similar to those in respect of Jersey, except that neither should continue to sit *ex officio* in the States of Deliberation although they would continue to sit in the Electoral Colleges for the appointment of Jurés Justiciers and Senators.[2]

The Committee therefore endorsed the proposals of the States as regards the Rectors in the States of Deliberation.[3]

The Douzeniers and the Constables.—Guernsey is divided into 10 Parishes. St. Peter Port elects 2 Constables, a Central Douzaine and 4 Cantonal Douzaines. Each of the other Parishes elects 2 Constables and a Parochial Douzaine. The total number of Douzeniers and Constables is 180 and 20 respectively.

The Douzaines correspond with the Assemblée Paroissiale referred to under Jersey. The Douzenier, however, is elected to office by the ratepayers of the Parish or Canton, namely, the occupiers of premises of assessed rental value for rateable purposes of not less than £14 p.a., the proprietor of premises assessed below that amount; and the proprietors and tenants who let or sub-let premises furnished or in apartments. Married women are not eligible. Each Douzenier serves for 6 years, and their retirement in each Douzaine is arranged in groups so that Douzaine is renewed by election every 6 years. The qualification for this office is: residence in the Parish or Canton and a ratepayer therein on an assessed rental value of £30, as regards St. Peter Port, and £20 elsewhere.[4] The electorates and qualifications for the Constables are similar to those of Douzeniers.

The office of Constable is an annual one, and, should the ratepayers so require, a new election must be held each year. Constables may not serve for more than 3 years unless re-elected. The parochial nature of the office is similar to that in Jersey, but, in Guernsey, Constables no longer have any duties in regard to the maintenance of public order and enforcement of the law. One of the Constables acts as Parish Clerk and the senior Constable usually presides at meetings of the Douzaine. The Douzaines send 15 Delegates to the States of Deliberation and the delegate, who may either be a Constable or a Douzenier, is appointed by the Douzaine for the particular

[1] *Ib.* 19. [2] *Ib.* 20. [3] *Ib.* 21. [4] *Ib.* 22.

sitting of the States and is free to state his own views. Each Douzenier normally expects to attend the States as a delegate once a year. At least 8 days before each meeting of the States advance notice is given to all members and to each Douzenier and Constable, in the form of a Billet d'État, which includes such matters as reports of Committees or proposals on draft Resolutions to be put before the States. In each Parish the Constables and Douzeniers of each Douzaine meet as a body to discuss the Billet d'État.

The proposals of the States were that the Douzaines be represented in the new States of Deliberation by only 10 Douzeniers, and that they hold office in the States for one year, but be eligible for re-election and also that they voice the views of their own Douzaines.[1]

The Committee observed that there had been considerable difference of opinion in Guernsey on the question of retention of the Douzeniers.[2] The States met in January, 1946, to discuss the proposals where, by a special resolution, the Deputies were allowed to vote first in order that the other members of the House might be aware of their views.

The Committee expressed the opinion that Douzaine representatives would bring a useful practical knowledge and experience of parochial administration to the States, which was as much in the nature of a municipal body as a central legislature, and that they would exercise a stabilising influence in the new Assembly.[3]

The Committee did not consider that any substantial advantage would be derived from the proposal that a Douzenier should serve in the States for one year and recommended that the 10 representatives of the Douzaine should sit in the States for the full 3 years, or until they ceased to be members of the Douzaine, and that the other members of this body be free to seek election to the States in other capacities.[4]

The proposed representation in the States as between urban and rural areas were:

	Urban.	*Rural.*
Deputies	20	19
Senators	8	8
Douzeniers	2	8
	30	35

The Committee remarked that, in view of the importance of the horticultural life of the Island, slight rural predominance was desirable.

The Committee recommended that 10 representatives of the Douzaines be appointed to the States of Deliberation to sit for the duration of the States or until they ceased to be members of the Dou-

[1] *Ib.* 22. [2] *Ib.* 23. [3] *Ib.* 25. [4] *Ib.* 26.

zaine; that the other members of the Douzaine be free to seek election to the States in any other capacity; that the franchise for election of Douzeniers be extended to all adults, irrespective of rating, or property qualifications; and that representatives of the Douzaines be left free to vote in the Assembly at their own discretion.

The Deputies.—It was proposed by the States that the number of Deputies be increased from 18 to 39. These Deputies are to be elected for the same period and on the same suffrage as in Jersey. In Guernsey the Deputies are elected simultaneously, and by-elections are held to fill vacancies. Deputies must be British subjects, of 3 years' residence immediately preceding election on the Island and qualified electors. A Douzenier need no longer resign as such on becoming a Deputy.[1]

The Committee also remarked that opinions were offered in favour of a reduction in the number of Deputies, but the arguments advanced were that there were insufficient candidates for office. If, due to apathy, and despite changes in the Constitution, a sufficient number of persons could not be found to carry on the business of the Government, the Committee felt that reductions might be considered in every other section of the States rather than only among the Deputies.

The Committee endorsed the States proposals in regard to the distribution of the increased number of Deputies.

The Law Officers of the Crown.—As in Jersey, the Attorney-General and Solicitor-General are Crown appointments during pleasure, are paid on the same basis and sit *ex officio* in the States. Unlike Jersey, however, they have both voice and vote on all subjects in the Assembly, but both are debarred from private practice. The States now propose that these officers should no longer have vote therein.

The Committee accordingly recommended that the above officers should continue to sit in the Assembly with voice only.[2]

The French Language.—The same observations and recommendations were made in regard to the use of the French language as in respect of Jersey.[3]

Electoral.—The recommendations of the Committee were that the States should consider legislation prescribing effective penalties for plural voting and the definition and limitation of election expenses.[4]

Quasi-legislative Functions of the Royal Court of Guernsey.—The Committee observed that in their origin the Royal Courts in both Islands exercised both judicial and legislative powers, but with the emergence of the States as separate legislative assemblies, the legislative power of the Court diminished. In Jersey the legislative power of the Royal Court was removed in 1771. In Guernsey, however, the process had not yet been completed and the Royal Court, sitting as a Court of Chief Pleas, had power to pass Ordinances.

[1] *Ib.* 26. [2] *Ib.* 27, 28. [3] *Ib.* 29. [4] *Ib.* 28.

These, however, were of a provisional nature and could not, in the absence of States approval, operate for longer than 12 months. In practice, new Ordinances were operative until the next Chief Pleas after Christmas and were then, with the Ordinances previously enacted, renewed for a further period of 12 months. Provisional Ordinances, after submission to and approved by the States, are made permanent by the Royal Court.

The scope of such Ordinances is not clearly definied but appeared to be regulated by custom and tradition. Such Ordinances could not, however, impose taxation or alter existing written and customary law, and an Ordinance in conflict with such law is inoperative.[1]

When the Resolutions of the States have to be implemented by legislation, the States request the Royal Court to prepare the necessary measure. If substantive legislation is necessary the Royal Court prepares a Projet de Loi, which is transmitted to the States for their consideration and then submitted for the Royal Assent. If substantive legislation is not necessary the Royal Court makes the requisite Ordinance. The drafts of both Projet de Lois and Ordinances are prepared by or under the supervision of the Law Officers of the Crown and then presented to the Royal Court for detailed consideration, which takes place in public. Any member of the public has the right to be heard either in person or by counsel as regards any Ordinance affecting his interests, but not as regards a Projet de Loi, in which the Royal Court is bound by Resolution of the States. The texts of the drafts of the more important Ordinances are published in the *Gazette Officielle* and public notice is given of the date on which the Royal Court will consider them. It was suggested to the Committee that the Court of Chief Pleas, was, as regards Projets de Lois, more in the nature of a drafting Committee than a judicial body and that the public had, in regard to Ordinances, adequate opportunity to have objections made while the Ordinance was being considered.[2]

The States, which met on an average every three weeks, and whose members had insufficient time to devote to intensive work in the States, did not generally concern themselves with the details of measures before them, being content to lay down the principles on which legislation should be passed, leaving to the Court the task of ensuring that their wishes were carried out.

The obvious objection to the present and proposed arrangement, remarked the Committee, was that the Court of Chief Pleas consisted of the same persons as the Royal Court and therefore exercised both judicial and legislative functions. The Committee found that while it was unusual for the Court of Chief Pleas itself to initiate Ordinances, there was nothing to prevent it from doing so. In any particular case the Jurats would decide whether or not they were

[1] *Ib.* 29. [2] *Ib.* 30.

competent to proceed, having heard the views of the Bailiff and the Law Officers.[1] The scope of Ordinances was ill-defined, but the Bailiff considered that the Court could, without the authority of any Statute, issue a command or prohibition to be enforced by penalties. Anyone wishing to challenge an Ordinance has to plead before the Royal Court, which was in effect the same body which passed the Ordinance. It was not, therefore, surprising that a person contesting the *vires* of legislation and unable to appeal, might consider that justice was not being done.

The Committee felt that the existing and proposed system was open to too much risk of abuse to be satisfactory according to modern standards of good government and that all matters of legislation should be placed squarely on the States as the body representing and responsible to the people. The Committee saw no reason why a person should be required to appear before the Court of Chief Pleas in person or by counsel.

The Committee also saw objection to the present practice whereby Ordinances may be renewed from year to year by the Royal Court without the approval of the States. The Committee also considered that no legislation should be effective without the approval of the States or some representative Committee thereof.

The Committee therefore recommended[2] that the responsibility for the preparation of all legislation should be transferred from the Royal Court to the States; and suggested that the States should examine the possibility of adopting a scheme on the following lines. If it be found impracticable for the States to undertake detailed examination of Projets de Lois and other forms of legislation at present examined by the Royal Court, those functions might be delegated by the States to a Committee of the States. All legislation should be drafted under the supervision of the Law Officers of the Crown, for presentation to such Committee.

It was also suggested that the (States) Committee should be given powers by the States to decide when circumstances justify the issue of immediate legislation, such as is at present provided for by Ordinance, and to make the necessary order or regulation to be operative immediately. In general, all Projets de Lois and, when there is no urgency, subordinate legislation, should, after examination and adoption by the Committee, be presented to the States, and should not be operative unless approved by the States or, in the case of Projets, by the States and His Majesty in Council. Legislation passed by the States Committee and designed to have immediate effect should be subject to a negative resolution of the States at its next meeting without prejudice to anything done thereunder before the passing of the negative resolution. In such cases also, the States might think it desirable to empower such Committee to hear, if it thought necessary, objections from interested persons in the manner

[1] *Ib.* 30. [2] *Ib.* 31, 32.

now provided for in the Royal Court; but generally, if the duty of legislation is confined, as suggested, to the States or its Committee, there was no reason why the views of members of the public should not be made known through their elected representatives when the measure came before the States.

D. Action by the States of Guernsey.

In 1948 the States of Guernsey passed a Projet de Loi[1] providing for the constitution of the States of Deliberation, consisting of the Bailiff; 12 Conseillers; H. M. Procureur; H. M. Comptroller; 33 People's Deputies and 10 Douzaine Representatives, with the Bailiff as *ex officio* President of the States of Deliberation, who has power, in his absence, to appoint an Acting President, both of whom have only a casting vote; H.M. Procureur and H.M. Comptroller having no vote.[2]

A People's Deputy, on being elected to the office of Conseiller or Douzaine Representative and a Douzaine representative elected a Conseiller or People's Deputy, must vacate his office as People's Deputy or Douzaine Representative, as the case may be, but a Jurat or Douzenier is not required to vacate his office on election as Conseiller or People's Deputy, nor is a Conseiller or People's Deputy required to vacate his office on election as Jurat or Douzenier.[3]

The quorum of the States of Deliberation is 20, but when the number of voting members, not counting the President, or acting President, is 30 or less, a Resolution or amendment cannot be carried or lost unless at least 20 members vote and the majority vote is, at least, twice as great as the minority vote. A Resolution or amendment in respect of which the vote has been thus ineffective must, so soon as possible, be brought before the States by the President on a subsequent day, and such Resolution or amendment must be declared carried or lost by a simple majority.[4]

States of Election.—From January 1, 1949, the States of Election consist of: the Bailiff; 12 Jurats (Jurés-Justiciers); 12 Conseillers; 10 Rectors; H.M. Procureur; H.M. Comptroller; 33 People's Deputies; and 34 Douzaine Representatives, of which body the Bailiff is *ex officio* President, with a casting vote only. The other members having each a vote.[5] The function of the States of Election, with a quorum of 60, is to elect by secret ballot the Jurats, Conseillers and H.M. Sheriff. Should a quorum not be present the President, or Acting President, may convene, after newspaper notice, a fresh meeting.[6]

The States of Deliberation and of Election.—The procedure at the meetings of these two bodies is laid down by the States of Deliberation.[7]

Qualifications for Conseiller or People's Deputy.—In both cases

[1] No. XI of 1948. [2] Art. 1. [3] Art. 2. [4] Art. 3. [5] Art. 4. [6] Art. 6. [7] Art. 7.

he must be a British subject and have no legal disability (i.e. insanity, minor; hospital mental inmate; or undergoing imprisonment for felony).

In the case of Conseiller he must also have been 12 months ordinarily resident immediately prior to the date of his nomination as candidate; such period in the case of People's Deputy is 3 years.

Provision is also made for the nomination of Jurats, Conseillers or H.M. Sheriff.[1]

Elections for Conseillers are held every 6 years, but of those elected at the first election under this Law, 6 hold office for 3 years, the 3 with the smallest number of votes retiring on December 3, 1951, subject to decision by lot in case of impossibility to determine. Should the number of candidates not be greater than the number of seats vacant, the respective terms of the office of Conseillers declared elected are determined by lot.

If the number of candidates at any election for Conseiller are not greater than the number of seats vacant, the President, after the lapse of nomination time, declares the candidates elected, duly notifying the fact in the *Gazette Officielle*. A Conseiller is eligible for re-election[2] and a member of the States of Election may vote for himself.[3]

Conseillers elected by casual vacancy hold their seats for the unexpired term of the Conseiller whose place they take,[4] and in case a casual vacancy occurs after June 1 in the year of a triennial election, it is in the discretion of the President whether such vacancy shall be filled or not.[5]

Election of Douzaine Representatives to the States of Deliberation.—In December of every year one Douzaine Representative is elected by the Douzaine of each Parish (by secret ballot if there is more than one candidate) who sits throughout the following calendar year. He is eligible for re-election and the Constables of each Parish have to inform the President of the States in writing of the result of each such election in their Parish.[6]

The 10 Douzaine Representatives to the States of Deliberation and the 24 additional ones elected for each meeting of the States of Election are elected by their respective Douzaines as provided in Article 14.[7]

Article 16 provides that it is the duty of a Douzaine Representative to voice in the States of Deliberation the views of the Douzaine he represents but he is not bound in either States to vote in accordance with any direction given him by that Douzaine being free on all occasions to vote in accordance with his conscience.[8]

A Conseiller, People's Deputy or Douzaine Representative resigns in writing to the President of the States, but his resignation must be accepted by the States of Deliberation. Should it appear to

[1] Art. 9. [2] Art. 10. [3] Art. 11. [4] Art. 12.
[5] Arts. 12, 13. [6] Art. 14. [7] Art. 15 (1). [8] Art. 16.

the Royal Court on petition by a Law Officer of the Crown that a Conseiller or People's Deputy was not duly qualified when elected or has since become disqualified, or has not, whether by reason of illness, absence or otherwise, for 12 consecutive months, fulfilled the duties of his office, the Court then declares his office vacant. A copy of such petition is served at the residence in the Island of such Conseiller or People's Deputy with a written notice of the date of hearing, or a Law Officer of the Crown may, in lieu of such service, have notification thereof published in the *Gazette Officielle* in the week preceding the hearing, giving the particulars thereof and reasons therefor.[1]

Oaths.—Every member of the States of Deliberation is required to take both the Oath of Allegiance and the Oath of Office.[2] In regard to the Alderney Representatives, however, they, having already taken an Oath of office as members of the States of Alderney, which embodies the Oath of Allegiance, are exempted by the States of Guernsey (Representative of Alderney) Law, 1949, from having to take a further oath of office as members of the Guernsey States of Deliberation.

Review of Constitution.—It is provided by Article 21 of the Law that within 10 years from January 1, 1949, the States of Deliberation must determine whether it is possible to provide that a Jurat shall not be a member of such States, without unduly depriving the States or the Royal Court of the services of experienced persons.

H.M. Greffier.—Article 22 provides that H.M. Greffier shall be the Clerk and Registrar to the States of Deliberation and of Election and that he shall, when so directed by the States of Deliberation, act in like capacity to any Committee of that Assembly.

H.M. Sheriff & H.M. Sergeant.—It is also provided that these 2 shall be officers of both the States and obey the directions of the President of either Assembly in fulfilment of any ministerial functions required of them, for and on behalf of either Assembly.[3]

Electoral—Part IV of the Law deals with electoral rolls, electoral delimitation and the holding of elections, etc.

Franchise.—Any adult is entitled to enrolment as a voter if a British subject and ordinarily resident in the Island since January 1 in that calendar year, provided he is not subject to any "legal disability"[4] (*see above*).

Part V provides for the election of Constables and Douzeniers.

Transfer of the States of Deliberation of Functions of a Legislative Nature hitherto exercised by the Royal Court.—This subject is dealt with in Part VI of the Law.

Date and extent of Transfer.—The date and transfer of the powers and functions of a legislative nature hitherto exercised by the Royal Court, when sitting as a Court of Chief Pleas, or otherwise, to the States of Deliberation, or the States Legislation Committee, is laid

[1] Art. 17. [2] Art. 19. [3] Art. 22. [4] Arts. 27, 49.

down in Article 63 as "on and after the day following the date of the holding of the Chief Pleas after Christmas 1948".

But the powers of the Royal Court as regards defence regulations within the Bailiwick of Guernsey and the making of rules of procedure of the Royal Court, and functions of such nature, continue by Article 64 to be vested in such Court by means of Orders thereof.

The States Legislation Committee.—Article 65 empowers the States, "as soon as may be after January 1, 1949", to set up a States Legislation Committee consisting of the Bailiff as President and 7 other members of the States elected by it, with provision for a Vice-President elected by the Committee from among its members to preside thereat in the absence of the Bailiff or when such office is vacant. The quorum of such Committee is 3 members, plus the Presiding Member, who has only a casting vote. The members of this Committee, except the Bailiff, retire at such times as the States may by Resolution determine, but are eligible for re-appointment. Vacancies on the Committee are filled by the States and the new member holds the seat for the unexpired term of his predecessor.

Functions of the Committee.—Article 66 provides that the functions of the Committee shall be as follows:

(1) To review and revise every Projet de Loi presented to the Committee by a Law Officer of the Crown for the purpose of ensuring that the same is in accordance with and will effectually carry into effect any Resolution of the States designed to be implemented thereby and to transmit the same to the States for the consideration and for the decision (subject to the Sanction of His Most Excellent Majesty in Council) of the States.

(2) To review and revise every draft Ordinance presented to the Committee by a Law Officer of the Crown at the instance of the States or of some Authority, Board, Committee or Council of the States and, subject to the provisions of the next succeeding paragraph, to transmit the same to the States for the consideration and decision of the States.

(3) Where, in the case of any draft Ordinance so presented, the Committee is of opinion that the immediate or early enactment thereof is necessary or expedient in the public interest, the Committee shall have power to order that the same shall be operative either immediately or upon such then future date as the Committee shall prescribe and thereupon the Ordinance shall have effect accordingly: PROVIDED that every Ordinance coming into effect by virtue of this paragraph shall be laid before the States as soon as may be after the making thereof in such manner as the States may, by general resolution, from time to time direct and if, at the Meeting of the States in the course of which any Ordinance made by the Committee is laid before them or at the next subsequent Meeting, the States resolve that the Ordinance be annulled, the Ordinance shall cease to have effect but without prejudice to anything previously done thereunder or to the making by the Committee of any new Ordinance.

(4) For the purpose of removing doubts, it is hereby declared that on an Ordinance ceasing to have effect by virtue of a Resolution of the States under the proviso to paragraph (3) of this Article, any other Ordinance which was modified or extended or repealed in whole or in part by the first-mentioned Ordinance shall thenceforth have effect, notwithstanding such modification, extension or repeal, as though such modification, extension or repeal had not been effected.

Approval of Subordinate legislation by Committee and States.—It is provided by Articles 67 and 68 that any rules, regulations or other subordinate legislation prepared by any Authority, Board, Committee or Council of the States shall, after Christmas, 1948, only come into operation after review by the Committee and approval of the States by "Ordinance of the States" and unless the period of operation of such rules, etc., is limited by express words or operation of the law, such Ordinance shall not lapse merely by effluxion of time.

Making of Orders under Defence Regulations.—Article 69, however, lays down that, after Christmas, 1948, the powers and functions hitherto exercised by the Royal Court shall be vested in the Committee. Ordinances made permanent by the Royal Court, or which, by virtue of any Order in Council, are permanent Ordinances in force at the Chief Pleas after Christmas, 1948, are to continue in force, until repealed by the States.

Permanent and Provisional Ordinances at Chief Pleas after Christmas, 1948.—Provisional Ordinances still in force on that date, shall, unless previously repealed, continue in force until January 1, 1950, and thereafter shall be Permanent Ordinances of the States; provided that the Committee review such Provisional Ordinances, reporting to the States thereon with power of annulment in the States.[1]

Power of Committee to repeal or vary Ordinances.—Under Article 71 the Committee may, within the limits of its authority and subject to paragraph (4) of Article 66 (above-quoted), as well as the States, have power to repeal, suspend, vary, or modify any Ordinance by the Royal Court (except in relation to defence or Rules of Court procedure, *vide* Article 64) or by the States or the Committee.

Part VII. Miscellaneous and Repeals.—Among the Articles in this Part (VII) is the provision that no one shall vote at any election for a greater number of candidates than there are seats vacant.[2]

Schedule I (Art. 47 (1)) gives the allocation of Deputies between the Electoral districts, and Schedule II the extent of the Laws repealed.

The Law is signed by James E. le Page, H.M. Greffier (an office equivalent to the "Clerk of the House").

In the Royal Court of the Island of Guernsey on August 28, 1948, before the Lieutenant-Bailiff and Jurats, the former placed before the Court an Order of His Majesty in Council dated the fifth of that month ratifying "The Reform (Guernsey) Law, 1948", and the Court, after the reading of the said Order in Council and after having heard His Majesty's Comptroller, ordered that the said Order in Council be registered on the Records of this Island.

E. Proposals affecting the States of Alderney.

In regard to the constitutional development of the Island of Alder-

[1] Art. 70. [2] Art. 74.

ney the Committee reported[1] that it may have developed by a process similar to that which took place in Guernsey and Jersey, where the Royal Court (like the *Curia Regia*), originally judicial in character, came to perform certain legislative functions which led in the course of time to the emergence of a separate legislative body. In Alderney, however, it appeared to be not until 1916 that the States had a clearly defined and separate existence and it is in the Orders in Council of January 12, 1916, November 28, 1923, and July 25, 1934, that many of the details of the Constitution are to be found.[2]

At the time of the Committee's visit, the chief organs of government were: the States, the Court, the Court of Chief Pleas and the Douzaine, with subsidiary functions exercised by the Poor Law Board and the Parish Meeting. The chief legislative body was "the States", but the Court of Alderney and the Court of Chief Pleas also had legislative powers. The members of the various bodies, however, were not distinct from one another, for the Judge was President of the States and the 2 Courts; the Jurats sat in all 3 bodies and certain members of the Douzaine sat in the States as well as attending the Court of Chief Pleas in a consultative capacity. The qualifications for election to public office were very similar to those already given in regard to Guernsey and an Islander could not refuse to stand for election. At the age of 70 retirement from an elective office was compulsory.

It was not permissible to hold 2 elective offices at the same time and frequently an Islander graduated to the office of Jurat after service as a Douzenier or a People's Deputy, or both.[3]

The Jurats.—The Jurats were elected from the ratepayers in the Island, the qualifying age being not less than 20 years for males and 21 years for females, with property assessed at more than 20 quarters of wheat rent, the value of a quarter having been fixed by the Order in Council of November 29, 1923, at £20. Licensed victuallers were ineligible. There was no religious disability, but, in practice, the Roman Catholics were debarred on account of the oath of office, which included the following words:

> That you will be a true and loyal subject of His said Majesty in all matters ecclesiastical and temporal, renouncing all acts and ordinances of the Pope and all foreign power and jurisdiction.

Under the law of the Island married women were not permitted to hold property or be ratepayers, but single women and widows could.

The Douzaine and Douzeniers.—The Douzaine consisted of 12 Douzeniers elected by the ratepayers from persons of real estate in the Island assessed at not less than 10 quarters (£200) and held office for 6 years. Elections were held annually, the 2 senior Douzeniers retiring each year and seniority being determined by date of election or re-election. If a Douzenier neglected his duty or was absent from the Island for a year, a new election was ordered.

[1] *Cmd.* 7805. [2] *Ib.* 16. [3] *Ib.* 16, 17.

Meetings of the Douzaine were held in private, presided over by H.M. Procureur. In addition to their administrative duties, five members of the Douzaine sat in the States, one as a delegate representing the Douzaine and all attended the Court of Chief Pleas in an advisory capacity.[1]

The 4 directly-elected Douzeniers were free to vote as they wished at States meetings, but the Douzaine delegate received his instructions from the Douzaine at a meeting of that body which preceded the States meeting and, unless they specifically directed him to exercise his discretion, it was considered binding on him to vote in accordance with their decision.

The People's Deputies.—These were elected from ratepayers with assessed property at not less than 10 quarters (£200) for 3 years and were eligible for re-election. If a Deputy neglected his duty or was absent from the Island for 6 months a new election was ordered. The office of Deputy was only created in 1923 and the Deputies were elected on adult suffrage, *i.e.* the electorate being all males and females of not less than 20 and 21 years respectively, who were British subjects and of 3 years' residence in the Island. The Deputies had to convene meetings of the electorate prior to meetings of the States, so that the electorate might express their views on matters to be discussed in the States.[2]

The Deputies were, however, not bound to vote in accordance with the views expressed at the public meeting, but in practice it was customary for them to do so.

The Judge.—The Judge was much in the same position as the Bailiff in Jersey and Guernsey. He convened the States by issuing to members a Billet d'État informing them of the date, time and place of meeting, and the subjects to be discussed. He could convene the States at will and include in the Billet d'État such matters as he thought fit, subject to the right of 5 members of the States on presentation of a petition to him to have any matter discussed. In practice the subject-matter of a Billet d'État was derived, in part, from matters arising from the various committees of the States and suggested to the Judge by the Presidents of those Committees, as well as in part from other matters which occurred to the Judge. The Billet d'État had to be circulated to members of the States at least 8 days prior to their meeting, in order that the Douzaine could meet, elect and instruct the Douzaine delegate and the Deputies could convene the meeting of the electorate required by law, unless in a case of urgency, when the Lieutenant-Governor of Guernsey gave permission for a meeting to be called at shorter notice.

The Judge controlled debate in the States and had the power of adjourning or terminating the sitting.[3]

The States.—The States consisted of the Judge, as President, 6 Jurats, 4 Douzeniers elected from the Douzaine by the ratepayers for

[1] *Ib.* 21. [2] *Ib.* 17. [3] *Ib.* 18.

12 months, 1 Douzenier elected by the Douzaine for each separate meeting of the States, 3 People's Deputies and H.M. Procureur. The Judge and the Procureur were appointed by the Crown and the remaining members elected. The Judge had a casting vote and the other members a deliberative vote, except in the case of the Procureur, who had voteless voice.

H.M. Greffier, in his capacity as Clerk to the States, H.M. Sheriff and H.M. Sergeant were required to be in attendance, but the 2 latter offices had not been filled since the German occupation.

The States met in the presence of the Lieutenant-Governor of Guernsey, or his authorised representative, who had right of voice but not of vote.[1]

Any member could suggest an amendment to a Motion before the States, although in theory amendments and in writing, had to be in the hands of the Judge at least 48 hours before a sitting.

Divisions were taken by roll call and legislation consisted of Projets de Lois, which were ultimately embodied in Orders of the King in Council, and registered on the records of Guernsey and Alderney. The procedure in regard to Projets de Lois was for a statement of policy to be included in a Billet d'État debated in the States and if the policy was approved, the Projet was drafted by the Procureur and the full text contained in a Billet for submission to the States. When passed, it was sent to the Royal Court of Guernsey for examination and observations. Thereafter it was sent to the Lieutenant-Governor thereof for transmission to the King in Council. Such Royal Court could refer the Projet back to Alderney for consideration but if returned unaltered by the States of Alderney, the Royal Court had to pass it on although representations might be submitted to the King in Council. After embodiment in Orders in Council, Projets de Lois were returned to Alderney, *via* Guernsey, and registered on the record of both Islands.[2]

When it was desired to apply a law about to be made in Guernsey, also to Alderney, a separate Projet de Loi and Order in Council was not necessary as the Guernsey Projet could be made applicable to both Islands, and the Bailiff of Guernsey, as representing the Bailiwick, in sending it to the King in Council, could state the acquiescence of Alderney.

In addition to the States, much of the time of members was taken up with the various Committees thereof, responsible for the public services of the Island.[3]

French Language.—Members could address the States in either French or English, but in practice debate was conducted in English, though the proceedings were opened with the Lords Prayer in French, read by the Greffier. Projets de Lois were usually drafted in French, but it was customary to give an English translation.[4]

The Court.—The Court of Alderney consisted of the Judge, who

[1] *Ib.* 16, 17. [2] *Ib.* 18. [3] *Ib.* 19. [4] *Ib.* 18.

was President, with a casting vote, and 6 elected Jurats, H.M. Procureur, as prosecutor and legal adviser, H.M. Greffier, as Clerk, as well as H.M. Sheriff and H.M. Sergeant.

The Court had judicial and legislative functions and the latter consisted of making provisional Ordinances, a secondary form of legislation, which remained in force until their confirmation or rejection by the Court of Chief Pleas at its next sitting.[1] There was no clear distinction between the subject-matter of the Projets passed by the States and Ordinances of the Court of Alderney and that of Chief Pleas, though to a limited extent it was regulated by Statute. The Order in Council of February 1, 1926, which ratified an Ordinance of the Royal Court of Guernsey, requires that the penalties prescribed must not, without the consent of the Royal Court, exceed those coming within the jurisdiction of the Court of Alderney and the application of an Ordinance is territorial to Alderney.

Financial legislation also took the form of a Projet, but the Royal Court of Guernsey could annul, amend or suspend any Alderney Ordinance which was *ultra vires*.

The Court of Chief Pleas.—This Court had the same membership as the Court of Alderney, with the addition of the Douzaine, present in an advisory capacity, and the Constables, who attended to be sworn in or released from duty. The Douzenier and the Constables had no vote.[2] The Court of Chief Pleas could renew, modify, confirm or reject the provisional Ordinances of the Court or originate fresh Ordinances, but in practice this was not done.

H.M. Procureur.—The relation between this officer and the Legislature was that of legal adviser to the Court and the States.

H.M. Greffier.—In his capacity as Clerk, this officer attended all meetings of the States and the 2 Courts, and registered on the Island records the Resolutions of the States and the decisions of the Courts. He was also Chaplain to the States, opening the proceedings with prayer and closing them with a benediction.

H.M. Sergeant & H.M. Sheriff.—Had these 2 offices been filled, such officials' duties would have included attendance at sittings of the States and the Court.[3]

Alderney & Guernsey.—In view of the help and guidance which the people of Alderney felt they would in future require from the larger community, while not being willing that their Island should become a parish of Guernsey, yet Alderney, valuing highly their ancient institutions of self-government, felt that, by reason alone of the distance between the Islands, there was likely always to be a need in Alderney for a legislative body exercising more than the powers and functions of a parochial Council.

The Secretary of State for the Home Department therefore, in January, 1948, visited Alderney to discuss, at an informal meeting of the States, whether they were willing to make an approach to

[1] *Ib.* 19. [2] *Ib.* 20. [3] *Ib.* 22.

Guernsey, with the result that a Special Committee, consisting of the Judge and 4 other members of the States, with the Greffier, was set up to consider the practical implications. It was then decided to ask Guernsey to take over the major services on the basis that Alderney would be taxed on the Guernsey scale. Discussions then took place between Special Committees from both Islands, whose proposals were duly submitted to both the States of Guernsey and Alderney, and on July 16 and 21, 1948, respectively, the proposals were approved in principle, the details being left to a Joint Committee.

Many of the ancient practices and customs of Alderney were out of harmony with modern democratic conceptions, particularly the necesssity for a broader franchise, the removal of property and other qualifications for office and the reduction of the States to a membership-number commensurate with the man-power resources of the community, as well as a separation, in so far as possible, of the judiciary from the legislature. It was also considered inadvisable for the Jurats to submit themselves to popular election.

The use of the French language in the drafting of Projets de Lois, etc., had become an obstacle to efficiency, French being no longer a spoken language in the Island.

The duties of a number of insular officials were also to be vested in a full-time Clerk.[1]

Following a Conference between the British Government, Guernsey and Alderney, the proposals were put before the States of Alderney on October 27, 1948, preceded by an enthusiastic People's meeting convened by the People's Deputies, where the proposals were carried by 138 votes to 6 and subsequently passed unanimously by the States, the States of Guernsey approving of them on November 5.

The necessary legislation was then drafted for the transfer of functions to take place on January 1, 1949.

Transfer of Functions.—The States of Guernsey to assume financial and administrative responsibility for the following services in Alderney: airfield, education, health services, immigration, police, major roads and main sewerage, social services and water supply. Alderney retains responsibility for public assistance agriculture, minor roads, planning and control of land and all other matters. Guernsey to be responsible for food subsidies.

F. Action by the States of Alderney.

In regard to legislation, Guernsey laws and Ordinances relating to the transferred services apply in Alderney, with such modification as may be agreed between the Islands, and Alderney legislation in so far as it is inconsistent has been repealed. Guernsey will in future legislate for Alderney in regard to the transferred services without the necessity for obtaining the concurrence of the States of Alderney. The States of Alderney retain their exisitng powers to make laws and Ordinances on others matters subject to the following conditions:

[1] *Ib.* 29, 30.

(i) No Projet de Loi involving additional expenditure will be submitted to the Privy Council unless it has the approval of the States of Guernsey;
(ii) No new Ordinance involving the expenditure of public funds will be enacted in Alderney without the consent of Guernsey;
(iii) No Projet de Loi impinging on the services for which Guernsey are responsible will be submitted to the Privy Council unless it has the approval of the States of Guernsey.

The purpose of these conditions is to ensure that Guernsey, which will be subsidising Alderney, will have some check on the power of the States of Alderney to pass legislation involving expenditure.

Representation of Alderney in the States of Guernsey.—The States of Guernsey (Representation of Alderney) Law, 1949, provides in S. 3, that:

The Alderney Representatives shall be appointed by the States of Alderney and the qualifications for appointment, the period of office and the qualifications for continuing to hold office, of the Alderney Representatives shall be such as are provided by or in pursuance of the Government of Alderney Law, 1948.

The latter Law provides in S. 47 that the States of Alderney, for so long as representatives of Alderney have seats in the States of Guernsey by virtue of legislation in force in Guernsey shall appoint two members of the States of Alderney who shall sit in the States of Deliberation (of Guernsey), and four persons who shall sit in the States of Election as representatives of Alderney, or such other number as shall be requisite to conform to any such legislation from time to time in force in Guernsey. The normal period of office of such Alderney representatives is 12 months and the States of Alderney have power to fill casual vacancies and to vary the period of the term of office of the Alderney representatives.

Inter-Island Advisory Council.—An Inter-Island Advisory Council consisting of representatives of Alderney and Guernsey has been set up.

The States of Alderney.—The States of Alderney consist of an elected President and 9 members of equal status. The President is elected at a separate Presidential election and holds office for 3 years. Members also serve for 3 years, but in order to preserve continuity one-third retire annually. The sex and property qualifications have been abolished and all men and women who are British subjects and who have attained the age of 20 years are, subject to a residence qualification of one year, eligible to vote and, if willing, to stand for office. The President and members of the States are not *ex-officio* members of the Court, though they may be appointed as Jurats[1] and a person who is a Jurat can stand for election to the States. The States appoint a Clerk of the States.

There are, however, certain other provisions in the Government of Alderney Law, 1948, in regard to procedure, which are of Parliamentary interest. For instance, the President of the States, who presides at its sittings, is elected by secret ballot by persons qualified to vote at the elections of members for the States and holds office for 3 years. Both for the election of the President and members of the States, the Island is one electorate and the election of the President

[1] *See Cmd.* 7805, para. 109.

takes place not less than 7 days before the election of the members of the States, which is a continuous body, ⅓ retiring every year, the elections therefor taking place in December. Of the members elected at the first election, the 3 who retire are those with the smallest number of votes and so on. The President may take part in debate and has only a casting vote in case of an equality of votes, but the Vice-President or anyone acting for the President has both a deliberative and a casting vote. Neither the President nor Vice-President may preside at a meeting of a Committee of the States. Special provision is made for the precedence of the President.

A member of the States is not bound to vote in accordance with views expressed at a People's Meeting.

The Clerk of the States has many other duties to perform under the Act.

The public have a right to address the States on at least two occasions a year, as they used previously to be able to address the Court of Chief Pleas, and States meetings are, as in the past, preceded by a People's meeting. The People's meeting is conducted by a member of the States designated by the President, and the Clerk of the States is in attendance. The designated member must report to the States the views expressed at the People's meeting, but is not bound to vote in accordance with their decisions.

The right of the public to address the States of Alderney on at least two occasions each year is conferred by Part VIII of the Alderney Law and Property, etc., Law, 1949 (No. XV. of 1949). This Law deals with a variety of matter, *i.e.*

Part I. Interpretation;
Part II. Rebounding of Land;
Part III. The Alderney Land Register;
Part IV. Rehabilitation of Damaged Property;
Part V. Compulsory Purchase: Damaged Buildings;
Part VI. Compensation for Airfield Land;
Part VII. Provisions supplementary to Parts II to VI;
Part VIII. Right of Access to the States;
Part IX. Law Reform: Married women, Wills and Intestate Succession;
Part X. Compulsory Purchase: General;

and it would seem that the right of access of the public to the States was omitted inadvertently from the Government of Alderney Law and, on that account, inserted in the Land and Property, etc., Law.

The States have the power, previously possessed by the Court of Chief Pleas, of making Ordinances, and a Committee of the States is responsible for public assistance in succession to the Poor Law Board.

French Language.—The French language will be discontinued as soon as convenient.

Abolition of Offices and Bodies.—These offices include: the Judge,

H.M. Procureur, Greffier, Sergeant, Sheriff and Constables, and the bodies of the Court of Chief Pleas, the Douzaine and Poor Law Board.

Legislation is also to be passed in regard to many other administrative matters.[1]

Constitutional matters.[2]—The following legislation was passed to carry out the constitutional transfer proposals: The Alderney (Application of Legislation) Law, 1948;[3] The Government of Alderney Law, 1948;[4] The Alderney (Forms of Oath) Order, 1948;[5] and the States of Guernsey (Representation of Alderney) Law, 1949.[6]

The transfer of functions took place on January 1, 1949, as contemplated, and elections were held for the office of President and members of the States. Great public interest was shown in the election of members, 32 candidates being nominated for the 9 vacancies. A 72 p.c. poll was recorded. The new States met for the first time on February 18 and the new Court has also been appointed.

Sark.

Although Sark, as one of the Channel Islands, only incidentally came into the above mentioned Privy Council Committee inquiries, its Constitution will also be dealt with, particularly as it is even more unique than those of Jersey, Guernsey or Alderney.

History.—Sark first figures in insular history and tradition as the sanctuary to which St. Magloire retired in A.D. 50, where he built a monastery with chapel and school. Traces of Scandinavian entrenchments are the oldest indications of the Island being used as a *point d'appui* for raids and piratical exploits.

Sark, and Alderney, were given by William Longwood, Duke of Normandy, to the Abbey of Mont St. Michel in 1040, but the gift was revoked and both Islands were transferred to Geoffrey, Bishop of Coutances, in 1066.

In later centuries Sark passed into the possession of the Vernon family until, in 1203, one of the family, having taken the part of Philip Augustus against John Lackland, Sark became forfeit to the King of England.

The Island then fell into other hands and shared, at first, a Bailiff with Alderney, the administration being vested in a Prévôt, who collected both the revenues, etc., of the King and the Lord of the Manor.

The Prévôt, a bedel, and 6 Jurats formed the King's Court in Sark.

The Prévôt had no military duties, the Island being considered impregnable. Yet in 1338 it was taken by the French, and during much of the fourteenth century Sark was the haunt of pirates and adventurers. In 1356 the Island was retaken from the French by the merchants of Rye and Winchelsea. In 1549 the French again

[1] *Ib.* 34. [2] *Ib.* 35. [3] XXVI of 1948. [4] XXV of 1948.
[5] VI of 1948. [6] XVI of 1949.

took Sark, but many of her soldiers deserted and in 1553 some Flemish vessels had no difficulty in retaking the Island. Subsequently, it twice changed hands, only to be left derelict once more.

In 1565, however, Helier de Carteret, Seigneur of St. Ouen in Jersey, by permission of Guernsey, took possession of Sark and colonised it, when Elizabeth created the Island into a fief and presented it to this Seigneur and his heirs in perpetuity on payments to the Crown, with the condition that Sark was to be "inhabited by 40 men at least, our subjects". The holders of these 40 tenements still hold their land by tenure different from that in the other Islands; ownership of a tenement carrying with it a seat in the Chief Pleas (*see below*).

The Seigneurie afterwards passed into various families from time to time both by heredity and purchase. The Seigneur of Sark still pays homage to the Sovereign, which was last done to George V in 1921.

Sark's earliest Court was modelled on that of the Royal Court of Jersey and in 1579 consisted of a Bailiff, 12 Jurats, Procureur, etc., elected from among the Islanders and presided over by the Seigneur, but in 1582 this step was disputed By Guernsey, Sark being considered a member of the Bailiwick of Guernsey dependant upon their jurisdiction. The essential points of difference were embodied in an Order in Council of 1583.

An Act of the Royal Court of Guernsey in 1594 authorized the holding of Chief Pleas in the presence of the Seigneur and Seneschal or their deputies. In 1827 and 1832 this Royal Court passed Ordinances regulating the constitution of the Chief Pleas of Sark. A description of the Constitution carried out and working in Sark, with but few modifications for some 275 years, is given in the Second Report of the Royal Commissioners published in 1848.

Present Working of the Constitution.—The Legislative Assembly of the Island of Sark is called "Les Chefs Plaids" or the Chief Pleas.

It is composed of the following: the Seigneur of Sark, or his Deputy; the Seneschal of Sark, or his Deputy; the Tenants of Sark; and 12 Deputies elected for a term of 3 years by the inhabitants other than the Tenants.

The Seneschal, or his Deputy, presides, has an original vote and, in case of an equal division of votes, a casting vote. The Seneschal is appointed for a term of 3 years by the Seigneur, with the approval of the Lieutenant-Governor of Guernsey and takes an oath of office before the Royal Court of Guernsey. He is not removable during his term of office except by direction of the Crown.

The Seigneurie is an hereditary office and is only transferable *inter vivos* with the assent of the Crown. The Seigneur may veto any Ordinance of the Chief Pleas, subject to an appeal to the Royal Court of Guernsey.

The following are qualified to vote for and to be elected Deputies:

Inhabitants of Sark (other than Tenants), who are: if male, not under 20 years of age, or if female, not under 30, or liable to tax and aged 20; and British subjects, with residence in Sark for 12 months, and not subject to any legal disability.

The Chief Pleas meet regularly 3 times a year, i.e. on the first Wednesday after January 15, the first Wednesday after Easter and the first Wednesday after Michaelmas. They also meet when summoned by the Seneschal with the consent of the Seigneur or when directed to meet by the Lieutenant-Governor of Guernsey.

They have power to make Ordinances. The Royal Court of Guernsey may annul any such Ordinance on the ground that it is unreasonable or *ultra vires*, subject to an appeal by the Chief Pleas to the Privy Council.

They fix the amount of the "direct tax" annually at the Michaelmas sitting to approve the Island budget, and at their sittings deal with Island matters generally.

As regards the imposition of taxation other than the "direct tax", the consent of His Majesty in Council is necessary.

The annual budget has to be approved by the Lieutenant-Governor and expenditure not included in the budget can only be incurred with his consent. The Island accounts have to be submitted to him quarterly.

The Island Officers are: the Seneschal, Prévôt, Greffier, Treasurer, Constables and Vingtenier.

The Seneschal, besides being President of the Chief Pleas, is the only Judge in the Seneschal's Court, with limited jurisdiction in criminal matters and unlimited jurisdiction in civil matters. An appeal lies from the Seneschal's Court to the Royal Court of Guernsey.

The Prévôt and the Greffier are officers of the Chief Pleas and of the Senescal's Court, the former as process server and the executive officer and the latter as Clerk.

The Prévôt, the Greffier and the Treasurer are appointed by the Seigneur with the approval of the Lieutenant-Governor. They are removable only with the consent of the latter or by direction of the Crown.

The Constable and Vingtenier (honorary police officials) are appointed yearly by the Chief Pleas.

The Island Constitution is governed by Orders in Council of July 15, 1922, and June 26, 1923.

Conclusion.—Before concluding this Article, we ask to be allowed gratefully to pay tribute to Sir Ambrose J. Sherwill, C.B.E., M.C., the Bailiff of Guernsey, for so kindly "vetting" that part of the Article dealing with the investigations of the Committee of the Privy Council as contained in *Cmd.* Papers 7074 and 7805, as well as for the information in regard to the constitutional position of Sark, which did not come within the terms of reference in respect of the other Islands.

We also equally and gratefully acknowledge the great help rendered us by Mr. J. P. Warren, of Guernsey, for allowing us to make extracts from his most valuable and interesting Article, so modestly entitled "Some Notes on the Development of the Constitutions of the Channel Islands (with special reference to the Bailiwick of Guernsey)". Moreover, this generous Gentleman allowed his valuable MS. to travel the 6,000 miles by air from Guernsey to Cape Town.

It is fervently hoped that Mr. Warren will publish his Article in book form and embrace all the Islands in respect of which his references are so rich. It would be a fascinating study to any constitutional student and we would gladly bring such a book to the notice of our readers by review in the Journal.

We paid a visit to Guernsey in 1934 and had the privilege of seeing the Royal Court of that Island in Session. Ever since that time we have been seeking to acquaint our members and readers with this subject. Now, thanks to these two gentlemen, we have been able to take advantage of the recent constitutional developments to probe further into a subject on which no readily up-to-date accessible authority has been published. Perhaps Mr. Warren may be induced to accede to our suggestion.

X. NEWFOUNDLAND—CANADA FEDERAL UNION: THE FINAL STEPS[1]

By the Editor

It is now proposed to carry on from the account given in Volume XVII, with an outline of the proceedings at St. John's, at Ottawa and at Westminster in connection with the consummation of Newfoundland's entry into the Canadian Confederation, but the reader is recommended first to acquaint himself with references to this subject in previous volumes of the JOURNAL in order the better to follow those of 1949.

"The ancient Colony" now becomes the 10th Province of the Canadian Confederation.

Newfoundland's constitutional path since 1933 has been a thorny one. In that year, circumstances compelled the Newfoundlanders to appeal to the Imperial Government for aid and a Commission of Government was set up to administer the Colony and restore her financial status. It is a sad day when a Colony has to take such a step, but the people of Newfoundland faced the situation resolutely and with the assistance of a National Convention made a thorough investigation into the affairs of the Island and, through popular vote, decided at last to join issue with their great neighbour.

We shall now proceed to give the reader a brief sketch of what took

[1] *See also* JOURNAL, Vols. II, 8; IV, 35; V, 61; VII, 106; XI-XII, 77; XIII, 208; XIV, 97; XV, 106; XVI, 70; XVII, 221-232.

place in regard to this matter between the signing of the Terms of Union at Ottawa on December 11, 1948, and the passing of the last of the British North America Acts at Westminster.

It is regretted that space does not admit the inclusion of a précis of the most interesting debates which took place both in the Parliaments at Ottawa and Westminster, but a record will be given of each of these final steps, and for those desiring fuller research the footnotes of the various pages will be the guide. It is a great constitutional story and a remarkable steps to achieve in so short a time.

AT ST. JOHN'S.

The Terms of Union of Newfoundland with Canada which were also signed by the Commission of Government, after having been confirmed by the Parliament of Canada, did not, however, pass without a discordant note, for on December 11 the Governor of the Island received a message from, and saw the representative of, a meeting of Newfoundlanders which had taken place at St. John's on the previous evening, when the following Resolution was adopted:

This vast gathering of citizens of Newfoundland meeting at St. John's in the Dominion of Newfoundland the 10th day of December, 1948, places on record its strong objection and protests most emphatically against the manner in which Newfoundland is being forced into Confederation with Canada.

It affirms that the only manner in which terms of Confederation can be negotiated with Canada is by a duly representative Legislature of Newfoundland.

It consequently objects to the appointment of any Delegation of citizens to negotiate terms with Canada.

It most strongly protests against the recognition of the present Delegation of citizens appointed by the Governor in which the people of Newfoundland had neither choice nor voice.

It demands that instructions be given immediately by the Governor or the Commission of Government to the said Delegation to refrain from signing any terms on the ground that it has no power to do so and that, moreover, such an act of signing would prejudice the constitutional position of Newfoundland in England.

It moves that a copy of this Memorial be sent immediately to the Governor, the members of the Commission of Government and the members of the said delegation and the Prime Minister of Canada.

His Excellency promised to bring the Resolution before the Commission of Government that morning.

Appeal to the Full Bench.—As reported in our last issue, this appeal by the Responsible Government League to a Full Bench of the Newfoundland Supreme Court against the judgment of Mr. Justice Dunfield was duly made. On January 14, the appeal was heard before a Full Bench of the Supreme Court of Newfoundland, when it was dismissed, and on February 8 leave was given to appeal to the Privy Council, but the writ against the Chairman and members of the Commission of Government was not proceeded with in the Privy Council.

AT OTTAWA.

The Newfoundland—Canada Union Bill.—On January 28[1] the Prime Minister (Rt. Hon. L. S. St. Laurent) moved: "That the House do go into Committee of the Whole at the next sitting of the House to consider the following proposed Resolution:

That it is expedient to present a Bill for the approval by Parliament of the Terms of Union of Newfoundland with Canada. The implementation of these terms will involve a charge upon and payment out of moneys in the Consolidated Revenue Fund of Canada.

After the announcement by the Prime Minister of the Governor-General's Recommendation, it was:

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

In moving on February 7[2] "That Mr. Speaker do now leave the Chair" the Prime Minister said that this Fifth Session of the XX Parliament had the historic task of considering the addition to Canada of the last segment in the original plan of the Fathers of Confederation. The Bill to follow the Resolution would ask Parliament to give approval to the Terms of Union which were signed on December 11, 1948. Mr. St. Laurent then outlined the movement which had led up to the signing of these Terms, of which account has already been given in the JOURNAL.

The Leader of the Opposition (Mr. G. A. Drew), in speaking to the Motion, referred to the criticsm which had been made, not only in Newfoundland but in Canada, against the way in which this matter had been carried out. Many Newfoundlanders who were in favour of confederation had insisted that legislative authority should be restored to the people of Newfoundland and that elected representatives of such a legislative body should negotiate any terms which would bring Newfoundland within confederation. They contended that the Commission of Government appointed by the Government of the United Kingdom had no right to negotiate such terms either directly or through appointed representatives.

Newfoundland was not a Colony. She was accorded the full status of a Dominion in the Statute of Westminster. Mr. Drew, continuing, said they in Canada might well regret that appropriate steps had not been taken to assure that there would be no cause for any widespread feeling of bitterness or dissatisfaction. It was not for Canada to tell the people of their sister Dominion what course they should follow, whether in their own dealings or in their dealings with the Government of the United Kingdom.[3]

After further debate[4] the Motion was agreed to and the House went into Committee, when the Resolution was considered, reported, read a Second time and concurred in.

[1] XC. C.J. 26. [2] CCLXVI *Com. Hans.* 283-310. [3] *Ib.* 294. [4] *Ib.* 295-310.

Thereupon the Prime Minister moved for leave to introduce the Bill (No. 11), which was agreed to and passed 1 *R.*

On February 8[1] the Prime Minister formally moved the Second Reading, on which there was considerable debate. The Bill then passed 2 *R.* and thereupon the House went into Committee, and progress was reported.[2]

Committee was resumed on February 9,[3] and again on February 10,[4] when the Bill was reported without amendment, passed 3 *R.* on February 11,[5] and sent to the Senate.

The Senate.—The Motion for the Address was introduced on February 17,[6] and, after a short debate, agreed to, whereupon honourable Senators rose and sang "God Save the King". The Senate returned the Bill agreed to on the same date (February 17), and Royal Assent was announced on February 18, the Bill duly becoming 13 Geo. VI. c. 1.

(*As already mentioned, space does not admit of a full account of this long and interesting debate being given, but to those requiring fuller information, the accompanying footnotes will be of assistance.*)

The Statute Law Amendment Bill.—On February 4[7] the Minister of Justice (Hon. Stuart S. Garson) moved that the House go into Committee at the next sitting to consider the following Resolution:

That it is expedient to present a Bill to amend several Statutes to make them applicable to or otherwise conform with the Canadian Confederation as and when Newfoundland becomes a Province of Canada.

when, after the Governor-General's Recommendation had been signified, the Motion was agreed to.

On February 7[8] Mr. Garson, in moving the Motion, said that, as hon. members knew, there was on the Federal Statute Books of Canada a number of Statutes which referred to the various Provinces of Canada by name, dealing with a variety of subjects. The only purpose of the Bill, to which this Resolution was the introduction, was to amend those various Statutes by inserting the word "Newfoundland in the appropriate places in order to make all those Statutes apply to Newfoundland in the same way as they did to every other Province.

When the Bill was in Committee members would be able to follow it section by section, the explanations being given opposite and tie them in, but all these provisions were what lawyers termed consequential amendments arising out of Newfoundland joining the Confederation.

The Prime Minister then said that it was not intended to ask the House to proceed with this Bill until substantial progress had been made with the Newfoundland-Canada Union Bill. The last section of the Bill now before them provided that it should come into force on March 31, 1949, and it would not be sanctioned unless and until Bill No. 11 had been passed.

[1] *Ib.* 326-339. [2] *Ib.* 339-369. [3] *Ib.* 394-413. [4] *Ib.* 418-465. [5] *Ib.* 471.
[6] 1949 *Sen. Hans.* 108. [7] *Ib.* 231. [8] *Ib.* 310.

The Question was then put and agreed to and the Bill passed 1 *R.*

Address to His Majesty.—On February 14[1] the Prime Minister moved:

That, whereas by a Memorandum of Agreement entered into on the eleventh day of December, 1948, between Canada and Newfoundland, the Terms of Union of Newfoundland with Canada were agreed to, subject to approval by the Parliament of Canada and the Government of Newfoundland;

And whereas the Terms of Union provide that they 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 Parliament of the United Kingdom of Great Britain and Northern Ireland confirming the same;

And whereas the Terms of Union have been approved by the Parliament of Canada;

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

To the King's Most Excellent Majesty:

MOST GRACIOUS SOVEREIGN,

We, Your Majesty's most dutiful and loyal subjects, the Commons (Senate) of Canada in Parliament assembled, humbly approach Your Majesty, praying that You may graciously be pleased to cause to be laid before the Parliament of the United Kingdom a measure containing the recitals and clauses hereinafter set forth to confirm and give effect to the Terms of Union agreed between Canada and Newfoundland;

An Act to confirm and give effect to the Terms of Union agreed between Canada and Newfoundland.

Whereas by means of a referendum the people of Newfoundland have by a majority signified their wish to enter into Confederation with Canada;

And whereas the Agreement containing Terms of Union between Canada and Newfoundland set out in the Schedule to this Act has been duly approved by the Parliament of Canada and by the Government of Newfoundland;

And whereas Canada has requested and consented to the enactment of an Act of the Parliament of the United Kingdom to confirm and give effect to the said Agreement and the Senate and House of Commons of Canada in Parliament assembled have submitted an Address to His Majesty praying that His Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose;

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

1. The Agreement containing Terms of Union between Canada and Newfoundland set out in the Schedule to this Act is hereby confirmed and shall have the force of law notwithstanding anything in the British Norh America Acs, 1867 to 1946.

2. This Act may be cited as the British North America Act, 1949, and the British North America Acts, 1867 to 1946, and this Act may be cited together as the British North America Acts, 1867 to 1949.

(*Here follows the Schedule giving the full text of the Terms of Union, the gist of which has already been given.*)[2]

During the first day's debate on that Motion, the Leader of the Opposition moved, seconded by Mr. Graydon, the following amendment,[3] namely, to delete: "A Humble Address be presented to His Majesty the King in the following words" and the substitution of:

And whereas it is desirable that the Government of Canada should consult with the Governments of the several Provinces in respect to the matter.

[1] *Ib.* 493-534; XC. C.J. 68; XC. S.J. 95.
[2] CCLXVI *Com. Hans.* 501.
[3] *See* JOURNAL, Vol. XVII, 227.

Now therefore be it resolved, that the Government of Canada be required to consult at once the Governments of the several Provinces and that upon a satisfactory conclusion of such consultations " a humble Address be presented to His Majesty in the following words ":

Debate on the Motion was resumed on February 15,[1] when an amendment (appropriately called in Canada a "sub-amendment"), was proposed by Mr. La Croix, seconded by Mr. Ponilot: That the words "after they will have given their consent" be substituted for the words "upon a satisfactory conclusion of such consultations" and upon the House dividing the sub-amendment was negatived: Yeas, 12; Nays, 191. Mr. Drew's amendment was then put and the House divided: Yeas, 66; Nays, 137.

The debate on the main Question was resumed on February 16,[2] when, after a short debate, the House divided: Yeas, 140; Nays, 74: and the Question was agreed to.

The *Hansard* here records that:

" Whereupon the members rose and sang:

O Canada

and

God Save the King."

Further proceedings on the Bill.—On February 16[3] the Bill passed 2 *R.*, was committed and progress reported. The Committee was resumed on February 17,[4] when amendments were made (Mr. Gibson) in S. 46 (The Canadian Citizenship Act) in regard to "Newfoundland domicile",[5] and in S. 37 (The Penitentiary Act)[6], after which the Bill was reported with amendments, which were considered and agreed to. The Bill passed 3*R.*, was sent to the Senate and concurred on March 17.[7] The Royal Assent was announced on March 25,[8] the Bill duly becoming 13 Geo. VI, c. 6.

AT WESTMINSTER.

King's Speech on Opening of Parliament.—In His Speech to both Houses of Parliament on October 26, 1948,[9] His Majesty said:

Legislation will be laid before you to give effect to whatever decisions may result from the negotiations for admitting Newfoundland to the Canadian Confederation.

In the Commons.

The following proceedings preceded the introduction of the British North America Bill in the House of Commons.

Questions.—On November 4, 1948,[10] an oral was asked the Prime Minister, namely, if the request by the Responsible Government

[1] *Ib.* 538-579. [2] *Ib.* 598-606. [3] *Ib.* 607-614. [4] *Ib.* 619. [5] *Ib.* 658. [6] *Ib.* 667. [7] XC. C.J. 213. [8] *Ib.* 259. [9] 457 *Com. Hans.* 5, s. 6. [10] *Ib.* 1026.

League of Newfoundland that their memorial should be submitted to the Prime Ministers' Conference had been granted and what reply had he sent to the League. The Prime Minister (Rt. Hon. C. R. Attlee) replied that the Governor of Newfoundland had been required to inform the League that their Memorandum had been received but that it had not been possible for it to be considered by the Meeting of Commonwealth Prime Ministers.

In reply to a Supplementary Mr. Attlee said it would not have been appropriate for this question to have been discussed at such Meeting. Under the general practice of Commonwealth Conferences, matters put on the Agenda were those of common interest and direct concern to all. He did not think that the majority of the members were interested in this question.

In reply to a written Q. on the same day[1] the Secretary of State for Commonwealth Relations (Rt. Hon. P. Noel-Baker) said that the Newfoundland Broadcasting Corporation had decided that political broadcasting should not at present be resumed. The Newfoundland Government had learned only on the day of Major Marshall's proposed talk that the Corporation had granted permission for special exception to be made for him and the Government felt that an exception could not be made for one political organisation only. Also, that since the general resumption of political broadcasting was now inadvisable, the Corporation should be asked to adhere to their decision. The Minister therefore could see no reason to question the Government's decision and the Governor had informed the League accordingly.

Petition.—On November 23, 1948,[2] the junior Burgess for Oxford University (Sir Alan Herbert) begged permission to present a Humble Petition, signed by 50,000 citizens of Newfoundland's most loyal subjects of the Crown, the Prayer being:

Your Petitioners therefore humbly pray:

(*a*) That immediate provision may be made for the restoration to Newfoundland of Responsible Government as under Letters Patent 1876 and 1905, and in accordance with Letters Patent 1934;

(*b*) That no negotiations be undertaken or concluded for Union of Newfoundland with Canada, other than by representatives of a duly elected Government of the people of Newfoundland;

And as in duty bound your Petitioners will ever pray.

The hon. member then begged Mr. Speaker to instruct the Clerk of the House to read the Petition to the House.

Whereupon Mr. Speaker said that he was in some doubt as to the interpretation to be placed on the words "if required" in the Standing Order.[3] Did it mean "if required by the House" or "if re-

[1] *Ib.* 107. [2] 458 *Ib.* 1049. [3] S.O. 92 reads: *No debate on presentation of Petition.*—Every such petition not containing matter in breach of the privileges of this House, and which, according to the rules or usual practice of this House, can be received, shall be brought to the Table by the direction of Mr. Speaker, who shall not allow any debate, or any member to speak upon, or in relation to such petition; but it may be read by the Clerk if required.

quired by the member in charge of the Petition"? He would therefore look into the question but in the meantime he proposed to allow the Petition to be read, although he could foresee that if long Petitions could be read out when required by the member, there would be little time for Questions.

The Clerk (Mr. F. W. Metcalfe) *read the Petition to the House as follows*:

The Petition contained 6 Clauses and, excluding the Prayer (*above quoted*) stated that: The Letters Patent of January 30, 1934, provided for the administration of the Island until it again became self-supporting; that arrangements for the administration of Newfoundland during the suspension of the Letters Patent 1876 and 1905 clearly stated that:

it would be understood that as soon as the Island's difficulties are overcome and the country is again self-supporting Responsible Government, on request from the people of Newfoundland, would be restored.

Contrary to the recommendation of the Newfoundland National Convention in 1948 that the people of Newfoundland be given the opportunity of requesting the restoration of Responsible Government or the retention of the Commission of Government, plebiscites were held in 1948 in which an issue was made of the question of confederation with Canada.

That as less than 43 per cent. of the total electorate voted for confederation with Canada at the Referendum of July 22, 1948, such was insufficient to justify any change in the Newfoundland Constitution.

The Petition protested against the official recognition of the said confederation on the grounds that it was (*a*) contrary to the spirit of the Letters Patent of 1934; (*b*) a denial of the majority vote of the Convention; (*c*) it did not take into account S. 146[1] of the B.N.A. Act, 1867; (*d*) it asked the electorate to commit their country to Confederation with Canada without any negotiation of terms; and that it circumvented the pledge given Newfoundland in 1933, relating to the restoration of Responsible Government.

(*Then followed the Prayer as above.*)

The Petition was Ordered to lie on the Table.

Speaker's Ruling.—On November 30, 1949,[2] Mr. Speaker ruled in regard to the abovementioned Petition as follows:

[1] S. 146.—*Admission of Other Colonies.*—It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Address from the Houses of Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of Parliament of Canada to admit Rupert's Land and the North-Western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order-in-Council in that behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

[2] 458 *Com. Hans.* 5, s. 1814.

The precedents show clearly that the concluding words of Standing Order No. 92 — " it may be read by the Clerk if required " — mean " if required by the hon. member presenting the Petition ". These words convey an absolute right to have a Petition read, and other hon. members could not prevent it by expressing objection.

But to require one or more Petitions to be read must so curtail Question Time as to impose a considerable hardship on hon. members who desire to obtain oral answers to their Questions. I express the hope, therefore, that hon. members presenting petitions will refrain, so far as possible, from requiring them to be read.

Questions.—On December 16,[1] the Secretary of State for Commonwealth Relations was asked whether he would publish the proposals for Union between Canada and Newfoundland as a White Paper,[2] to which he replied in the affirmative and that, in the meantime, a copy of the Terms of Union would be placed in the Library of the House.

Another Q. was asked on the same day[3] as to the number of votes at the Referendum on July 22, 1948, which figures were given.[4]

The British North America Bill.—On February 22[5] this Bill to confirm and give effect to Terms of Union agreed between Canada and Newfoundland was presented, passed 1*R*. and Ordered to be read 2 *R*. tomorrow and to be printed.

Second Reading.—On March 2[6] the Order for the Second Reading having been read, the Secretary of State for Commonwealth Relations stated:

I have it in Command from His Majesty to acquaint the House that he places his prerogative and interests so far as concerns the matters dealt with by this Bill at the disposal of Parliament.

The Minister thereupon, in moving 2 *R*. of the Bill, recited the Terms of Union[7] now forming the Schedule to this 3-clause Bill and said that the purpose of the Bill was to give the force of law to the Terms of Union agreed upon by the representatives of Canada and Newfoundland, which had now been approved by the Parliament of Canada and the Government of Newfoundland.

Mr. Noel-Baker said that he knew some hon. members had doubts about the Bill and viewed with misgiving the method by which the policy of Confederation with Canada had been carried through. His task was to present to the House the agreement which Newfoundland and Canada had made.[8]

The Minister then outlined the history of the Bill, particulars in regard to which appeared in the last volume of the JOURNAL. Continuing, he said that last month the Canadian Parliament passed the necessary legislation and now they and the Government of Newfoundland had asked that the Parliament at Westminster should do the same. It was the U.K. Government and not the National Conven-

[1] 459 *Ib. 192.* [2] *Cmd.* 7605 (*see* JOURNAL, Vol. XVII, 227). [3] 459 *Com. Hans.* 5, s. 193. [4] *See* JOURNAL, Vol. XVII, 225. [5] 461 *Com. Hans.* 5, s. 1700. [6] 462 *Ib.* 371. [7] *See* JOURNAL, Vol. XVII, 227; *Cmd.* 7605. [8] 462 *Com. Hans.* 5, s. 372.

tion which inserted the third alternative—Confederation with Canada.[1] It was thought that the Government of the United Kingdom ought not to bring in legislation while a further appeal on this matter was before the Privy Council, but it was understood that it could not be heard until after March 31, when, if the Bill was passed, Union with Canada would take place. He was, however, advised that where the public interest demanded, Parliament should proceed. If they waited until the appeal was heard, Union could not be carried through on the appointed day, confusion would result and public interest, above all, in Newfoundland, would greatly suffer.[2]

The advice of the Privy Council could not affect the right of the Imperial Parliament to legislate as it thought fit. Moreover, the Legislature of Newfoundland had never adopted the optional provisions of the Statute of Westminster.

Continuing, Mr. Noel-Baker said that even if the Privy Council were to advise that this judgment itself was nonsense, even if it decided that, on the existing law, the Newfoundland Courts were wrong and the claimants right on every point, that ought not to deter Parliament from doing what is right for Newfoundland on new legislation. The Government had sought by a fair and democratic process to ascertain the views of the Newfoundland people and the Government was now asking Parliament to give effect to their wishes. Another ground of objection arose from S. 146 (*above-quoted*) of the B.N.A. Act, that provided machinery by which, on Address from the Legislatures of Newfoundland and Canada, Newfoundland might enter the Confederation. It had been agreed that Union could only be effected by that means, but that Act could not exclude Newfoundland's entry by other lawful measures. That procedure, however, was not applicable to the present factual situation in Newfoundland.

The Prime Minister of Canada had argued in their House of Commons that it was not appropriate to present the constitutional position of his country, because the King, in respect of Canada, now exercised his prerogative, not on the advice of his Ministers in the United Kingdom, but on the advice of His Ministers in Canada alone.

The extract from the Royal Commission's report appearing in the Newfoundland Act of 1933[3] contained a paragraph (*a*) which read:

> The existing form of Government would be suspended until such time as the Island may become self-supporting again.

But paragraph (*g*) read:

> It would be understood that, as soon as the Island's difficulties are overcome and the country is again self-supporting, responsible government on request from the people of Newfoundland would be restored.

Said the Minister, the words "on request" were vital. There had been 2 Referenda, 2 chances for the people of Newfoundland to request that the old form of Responsible Government should be re-

[1] *Ib.* 375. [2] *Ib.* 376. [3] 24 Geo. V, c. 2.

stored. On both occasions only a minority of the poeple answered "Yes"; in other words, the people had made no request for Responsible Government.[1] There was before the Referendum no shadow of doubt about the method by which confederation, if accepted, would be carried through. It was after all this preparation that the people of Newfoundland gave a majority for Confederation. Mr. Noel-Baker hoped the House would endorse the view which the Government held, that the method, like the result and like the future form of Government in Newfoundland, was wholly democratic in every way.[2]

The junior Burgess for Oxford University (Sir Alan Herbert) then moved the following amendment to the Question—"That the Bill be now read a Second Time", namely, by leaving out all words after the word "That" to the end of the Question and adding:

this House without prejudice to the merits of the proposed union of the Dominions of Canada and Newfoundland, is not satisfied that the procedure preliminary to the introduction of this Bill has been constitutionally correct and just, is not persuaded that the will of Newfoundland has been established as clearly and unmistakably as is necessary for a surrender of sovereignty and a lasting change of status, and, observing that the Terms of Union have been debated in the Canadian Parliament for a fortnight but have not been debated in Newfoundland at all, declines to approve the Agreement until it has been considered and approved in the Legislature of Newfoundland and an Address presented to His Majesty in accordance with S. 146 of the British North America Act, 1867.[3]

This appeal, said the hon. member, was the Newfoundlanders' very last hope. It was quite by accident that the appeal arrived in London at the same time as the Government introduced this Bill.[4] The hon. member then put forward the points for the appeal, of which the following is a summary:

(*a*) Confederation could be brought about only by a law binding upon the people of Newfoundland;

(*b*) Confederation is not to take place under S. 146 of the B.N.A. Act, namely, upon an Address from the Houses of the Newfoundland Parliament, which could not be presented while the old Letters Patent were suspended;

(*c*) Therefore Confederation was to be established under a new Imperial Act (which in effect repealed the said S. 146) providing that the Agreement shall have the force of law notwithstanding anything in the B.N.A. Acts, 1867-1946.

(*d*) That the Imperial Act would not be binding on Newfoundland because: (*a*) the Imperial Parliament has no power to make a law binding the people of Newfoundland except at the request and with the consent of the Parliament of that Dominion and there has been

[1] 462 *Com. Hans.* 5, s. 379. [2] *Ib.* 381. [3] *Ib.* 389. [4] *Ib.* 390.

no such request and consent, alternatively (*b*) if such request and consent could be given by the people on a referendum, such must be held under a valid law and the Referendum Act was invalid.[1]

Newfoundland has never had a chance of adopting S. 4 of the Statute of Westminster because the Act came into force in 1931, almost immediately after which Newfoundland found herself in a difficulty and has never had a Government since. There was not even a majority of Newfoundlanders in the Government of Newfoundland which approved of the Terms by which that Dominion lost its sovereignty. Was that democracy?[2]

After protracted debate,[3] Question: "That the words proposed to be left out stand part of the Question" was then put and the House divided: Ayes, 217; Noes, 15. The Bill was therefore then read a Second Time.

In C.W.H.—On March 9[4] the Bill was considered in Committee when 2 new clauses and 2 amendments by Sir Alan Herbert, one in line 19 and the other in line 21 had been put down. At the Chairman's suggestion these were all discussed together. Sir Alan, in moving the amendment on p. 1, l. 19, to insert at the beginning: "Subject as hereinbefore provided", said that these amendments and new clauses together proposed a different solution of this difficult problem from that which was put forward in the reasoned amendment on 2 *R.*

Briefly, the suggestion was that the House having accepted the principle and terms of the Bill as appearing in the Schedule, but because they did not know enough about them and because they had not been discussed with Newfoundland, they should be sent to that Government according to the B.N.A. Acts and when approved by the Newfoundland Parliament they should have the force of law, in which case there would be no more recourse to the U.K. Parliament.[5]

The Attorney-General (Rt. Hon. Sir Hartley Shawcross) in reply to these arguments said that what they now sought to do was no more than the culmination and completion of a policy which had been openly and consistently pursued ever since 1943. The policy, propriety, expediency and legality of it was never questioned until it had become manifest that the result of its adoption would be that the people of Newfoundland would join with the people of Canada in that great Confederation.

However strong the case for the Bill might be, nothing should induce them in these important matters affecting the relationship between the different countries in the Commonwealth—a relationship not resting upon the iron framework of any rigid constitution but founded largely on unwritten laws, in conventions, in practice and even less tangible ties of association—to depart from the law, the practice or the spirit of their constitutional doctrines.

There were said to be 4 ways in which they might be departing

[1] *Ib.* 391. [2] *Ib.* 395. [3] *Ib.* 396-472. [4] *Ib.* 1259. [5] *Ib.* 1259.

from the law or the spirit of the Constitution in these matters. First, that Confederation with Canada could only be effected under S. 146 of the B.N.A. Act, 1867; secondly, that what it now sought to do involved an infringement of the Statute of Westminster, 1931; thirdly, that in view of the terms on which Responsible Government was suspended in Newfoundland in 1933, what was now being done should only be done on a request from a Legislative Assembly in Newfoundland; and finally, it was said that the present legislation should await the advice which might be tendered to His Majesty by the Judicial Committee of the Privy Council in an appeal from the Supreme Court of Newfoundland which was at present pending.[1]

It could not really be suggested that the only means by which union between Newfoundland and Canada could have been effected was by Order in Council under S. 146 of the Act of 1867. At that time the doctrine of the sovereign independence of the different Commonwealth countries had not arisen as the U.K. Parliament enjoyed a completely unfettered sovereignty over all the Dominions and the U.K. Parliament could then, without any question, have passed another Statute immediately afterwards effecting a complete union between Canada and Newfoundland, totally disregarding the 1867 Act. Indeed, in 1915, Parliament did pass another Statute, which, notwithstanding the 1867 Act, materially altered the representation which Newfoundland would have had in the Senate of Canada, if union had been brought about.[2]

It was also said that the position had been radically altered by the Statute of Westminster, but so far as Newfoundland was concerned it had not been altered at all by that Statute which was in the main what was called an adoptive Act, namely, that it was brought into operation in Commonwealth countries if and when the Legislatures of those countries chose to adopt it.

Newfoundland never did adopt it. In consequence, the operative part of the Statute of Westminster—Ss. 2, 3, 4, 5 and 6—never at any time applied to Newfoundland. In any event S. 7 of such Statute expressly excluded the alteration or amendment of the B.N.A. Act, 1867, from the scope of the Statute of Westminster.

Even if the Act had been adopted by Newfoundland, there would still have been the exclusion by S. 7 of the effect of the Act on the old 1867 Statute. There is, therefore, nothing contrary to the Statute of Westminster in what was now being done.[3]

Continuing, the Attorney-General said that the British Constitution—and this was one of its greatest merits—consisted in part of written laws enforceable in the Courts and in part of doctrines or conventions, which, although not directly enforceable in the Courts, did in fact effectively control the machinery of government. Although when dealing with those conventions they had no written rules which they could go to Court and immediately enforce, he would certainly

[1] *Ib.* 1261. [2] *Ib.* 1262. [3] *Ib.* 1263.

not rank them any lower in importance than the ordinary rules of law immediately enforceable in the Courts.

The relationship between the different Commonwealth countries within the Commonwealth was very largely founded upon conventional doctrines of that kind, which the Executives and the Legislatures rightly regarded as fettering their own position and their own power and as being binding upon them. For this reason, that although Newfoundland did not adopt the Statute of Westminster, it had for some years prior to 1931 undoubtedly been the constitutional position and the accepted constitutional convention that no law should be passed by the U.K. Parliament to extend to any Dominion except at the request and with the consent of that Dominion, and that doctrine was embodied and enshrined in the recitals set out in the Preamble to the Statute of Westminster. Setting them out in the Preamble gave them no greater legal effect. They were not part of the substantive enactment itself, but the conventions were in fact set out in the Preamble in a way which left no doubt at all as to their existence as constitutional conventions. Those conventions before the Statute of Westminster and in its Preamble did undoubtedly apply to Newfoundland although she did not so adopt the body of the Statute itself.[1]

The Attorney-General agreed that unless something had subsequently happened to alter the constitutional status of Newfoundland and do away with the conventional doctrines which otherwise would apply to her, the doctrine he had just mentioned about the legislative powers of the U.K. Parliament would no doubt have been conventionally applicable to the present legislation. But, of course, something did happen after the Statute of Westminster and after that conventional doctrine had been firmly embodied in the Preamble of the Statute. What happened was that Newfoundland temporarily abdicated her position of equal sovereignty as a member of the Commonwealth and it was only to those countries in the Commonwealth which enjoyed equal sovereignty with each other that the convention ever applied as a constitutional doctrine or was ever intended to apply by the Preamble to the Statute of Westminster.

The recital to the Newfoundland Act, 1933, indicated that it was passed, not under the Statute of Westminster machinery at all, but in accordance with the previous and still existing conventional practice in regard to the matter—the conventional practice and doctrine of complete sovereign equality. The effect of the 1933 Act, both as a matter of law and as a matter of the less tangible conventional doctrine, was that sovereign equality was at least suspended for the time being, and for the time being—that is to say, during the period in which the 1933 Statute was in operation—neither the Statute of Westminster nor the conventional doctrine of sovereign equality had any possible application to Newfoundland.[2]

[1] *Ib.* 1264. [2] *Ib.* 1265.

The position after the 1933 Act had been passed was that the U.K. Parliament enjoyed complete sovereignty, unfettered sovereignty over Newfoundland and that Newfoundland, although in name a Dominion, was in fact a Colony. During that time the U.K. Parliament passed a number of Statutes applicable to Newfoundland and it was significant that not only did no one doubt the capacity of the U.K. Parliament to pass Statutes binding on Newfoundland, but in the Statutes passed, Newfoundland was always ranked with Colonies and not with Dominions, as they were called then. The Attorney-General quoted 3 such measures—the Prize Act, 1939,[1] the Ships and Aircraft Act, 1939,[2] and the Merchant Shipping Act, 1948.[3] That, in effect, was the constitutional position which Newfoundland had occupied during this intervening period, the position of a Colony having a special form of government, one of the many varieties of government one finds in the different Colonies within the British Commonwealth. Had it been otherwise, the present obviously temporary form of government in Newfoundland might have had to continue indefinitely and might have been incapable of alteration even, since the conditions for the restoration of Responsible Government, namely, solvency, plus a request from the Dominion, might never have arisen.[4]

During this period of suspension or temporary abdication, continued the Attorney-General, a request to the U.K. Parliament for legislation, even if it had been, which manifestly it was not, a condition precedent to legislation by the U.K. Parliament, could *ex hypothesi* not have been a request from the Legislature of Newfoundland, for such Legislature had gone. It could only have been made by some other method of popular expression. No such request was made by any such method for the restoration of self-government, but there had been a request for union with Canada. Even, therefore, if the constitutional convention had applied to Newfoundland and even if contrary to the view, the U.K. Parliament had no right conventionally, as opposed to legally, to legislate for Newfoundland the people had made the request in the only way open to them to make it in existing circumstances.

In regard to the point raised in the pending appeal to the Privy Council and that United Kingdom action in Parliament should await the decision of the Privy Council, that, he confessed, was an attractive argument and one, if it were possible, they would wish to defer, even if only out of the high respect they held for the Judicial Committee of the Privy Council. But it was not always possible for a sovereign Parliament to delay its legislative programme in case the supreme appellate tribunal should take a different view of the law from that which was for the time being laid down by decisions of the Courts, which are binding statements of the law. The U.K. Parlia-

[1] 2 & 3 Geo. VI, c. 65 [2] 2 & 3 Geo. VI, c. 70. [3] 11 & 12 Geo. VI, c. 44.
[4] 462 *Com. Hans.* 5, s. 1266.

ment, in proceeding with this Bill, was in fact proceeding on the basis of the law as at present ascertained and as laid down by the Courts.[1]

There were certainly cases in which Parliament had proceeded with legislation whilst appeals had been pending to the Court of Appeal or to the House of Lords in this country, and in which Parliament had dealt with the law and made the law what it thought it ought to be, disregarding any view which the Court of Appeal or the House of Lords might have had as to the existing state of the law. That was obviously the right of a sovereign Parliament. It was not concerned as to the view which the highest court might ultimately take about the existing law. It had proceeded to enact what it wished the law to be. It was entitled to do so and that had often been done.[2]

It would be most unfortunate if, after their legislation had been carried through and received Royal Assent, the Privy Council should take a view of the law different from that which had so far been laid down in the Courts, including the Supreme Court of Newfoundland.

One of the manifest misfortunes which would result from their delaying legislation now would be that Canada would have to pass a new Statute, and there would be, at best, a prolonged delay in bringing about confederation. The rules under which appeals are brought to the Privy Council do not enable the matter to be expedited so that it could be disposed of in the limited time which remained available, because, unless this Bill is passed into law before the end of March, the Canadian Statute would cease to be operative.[3]

The proper time for the appellants to have taken this action was before the Convention and before the Referendum. They should have sought an injunction to declare those things illegal but they did not do so. They waited to see the result and it was only when the result was not to their liking that they questioned the legality of what had been done.

Although the view of the Privy Council about these matters, if the Privy Council came to pass its judgment upon them, would be of interest and importance, Parliament was clearly entitled to act as it thought right in regard to them because they were not matters which affected Parliament's legal powers. The legal position did not really overcome the facts of the case.[4]

No Government and no Parliament in the United Kingdom would dream for a moment of seeking to over-ride the provisions of the Statute of Westminster in any independent Commonwealth country to which that Statute applied.

H.M. Government accepted the very clear, closely reasoned and very strong judgment of the Newfoundland Courts, including the Supreme Court of Newfoundland, as to the legal position as applied to the present case. In face of that statement of the law contained in such judgment and taking the view that the U.K. Parliament was competent to legislate for Newfoundland and that it had

[1] *Ib.* 1267. [2] *Ib.* 1268. [3] *Ib.* 1269. [4] *Ib.* 1270.

been requested to legislate by Canada, the U.K. Government did not feel justified in wrecking the present proposals rendering abortive the Statute passed by the Canadian Parliament and ignoring the request of the Canadian Legislature that the United Kingdom should pass the Bill. They did not feel justified in delaying the aspirations of the recorded majority of Newfoundland because of the risk that the Privy Council might possibly take a different view from that of the Supreme Court of Newfoundland [1]

Should the Privy Council take that view, the U.K. Government would have to accept it and that Government and Canada and Newfoundland would have to start all over again. But so they would, in any event. If the U.K. Government now delayed the present Bill the Canadian Statute ceased to be operative and this Bill would fall to the ground because it would no longer be in accordance with the request of the Canadian Legislature. All 3 countries would then have to go through the whole process again. The U.K. Government did not think it right that the action of a sovereign Parliament should be delayed or impeded by an action defined by the Supreme Court of Newfoundland as of a frivolous or vexatious nature.[2]

The Attorney-General further remarked that under the Newfoundland Act of 1933 it was not open to the Legislature here to restore the Legislature in Newfoundland unless and until her people had made a request. The scheme under that Act was that Responsible Government—*i.e.* a Legislature—would not be restored to Newfoundland until 2 conditions had been fulfilled—solvency plus a request. That request had to come from someone. It could not have come from the Legislature because it was only after the request had been made that the Legislature was to be restored. Therefore, the only way by which provision could be advanced for enabling such a request to be made was by the National Convention and the Referendum.[3]

Question was then put on Sir A. Herbert's first amendment on p. 1, line 16—"That those words be there inserted"—upon which the Committee divided: Ayes, 12; Noes, 241.

The Clauses, Schedule and Preamble were then put and agreed to and the Bill was reported, without amendment, to the House.[4]

Third Reading.—This stage was taken forthwith and after a short debate the Bill passed 3 *R.* and was sent up to the Lords.[5]

In the Lords.

Second Reading.—The speech of the Captain of the Gentlemen-at-Arms (Rt. Hon. Lord Ammon), after giving the consent of the Crown to the Bill on March 15, was very much on the lines of the mover of the Second Reading in the Commons[6] (*which see above*).

During the course of the debate Lord Sempill moved a reasoned

[1] *Ib.* 1271. [2] *Ib.* 1272. [3] *Ib.* 1279. [4] *Ib.* 1287.
[5] *Ib.* 1287-95. [6] 161 *Lords Hans.* 5, s. 309-349.

amendment, namely, to leave out all words after "that" and to insert:

this House without prejudice to the merits of the proposed Union of the Dominion of Canada and Newfoundland, declines to give a Second Reading to a Bill for which the electors of Newfoundland have not expressed such a democratic demand as would warrant an irrevocable change in their constitutional status, which arises from the unilateral action of His Majesty's Government in including in the referenda held in Newfoundland in 1948 the question of union with Canada after its decisive rejection by the elected representatives of the people of the Island sitting in National Convention, which is based on terms of union which have not been discussed and agreed by the people of Newfoundland or their democratic representatives, which violates the solemn pledge of H.M. Government that self-government should be restored to Newfoundland as soon as it was economically self-supporting and the constitutional legality of which is at present the subject of appeal to the Judicial Committee of the Privy Council.[1]

Second & Third Readings.—After further debate the amendment was withdrawn, the Bill passed 2 *R.*, committed to *C.W.H.* and on March 22[2] reported without amendment. Then, S.O. XXXIX having been dispensed with, the Bill passed 3 *R.* with good wishes to Canada and Newfoundland.

R.A. was announced in the Lords on March 23,[3] and the Bill became 12 & 13 Geo. VI, c. 22.

Newfoundland Liberation Bill.—Following a Q. asked H.M. Government by Lord Sempill on February 9,[4] as to what was their policy with regard to the present constitutional status of the Dominion of Newfoundland and to move for papers, which after debate was by leave withdrawn, the noble Lord on February 17,[5] asked leave to present a Bill (No. 47) entitled "Newfoundland (Liberation) Bill" to restore self-government to Newfoundland and moved its 1 *R.*

This Bill, after reciting in its Preamble the constitutional events in Newfoundland since 1934, proposed by Letters Patent to terminate the suspension of the Letters Patent of March 28, 1876, to revoke those of January 30, 1934, repeal the Newfoundland Act of 1933 and make provision for the administration of the Island as provided for in the Letters Patent of 1876, so that the Governor may summon the House of Assembly of Newfoundland to resume their Parliamentary duties.[6]

On July 27,[7] however, Lord Sempill, with leave, withdrew the Bill.

King's Speech on Prorogation.—In His Speech to both Houses of Parliament on December 16, 1949,[8] His Majesty said:

On 31st March, Newfoundland became a Province of Canada. My

[1] *Ib.* 337. [2] *Ib.* 586. [3] *Ib.* 668. [4] 160 *Ib.* 627-653. [5] *Ib.* 937.
[6] From a constitutional point of view the explanatory Memorandum to this Bill is particularly interesting.—[ED.] [7] 165 *Lords Hans.* 5, s. 623. [8] *Ib.* 1672.

good wishes attend this Union of the two countries which I pray may bring them lasting prosperity and well-being.

AT ST. JOHN'S

At midnight, March 31, 1949, Newfoundland, including Labrador on the mainland, became the 10th Province of Canada, represented in the Canadian Parliament by 6 members in the Senate and 7 in the House of Commons.

The Provincial Constitution of Newfoundland as it existed prior to 1934 was revived and provides for interim administration and the first Provincial election. Before the suspension of the Constitution in 1934 the Legislative Council consisted of 24 members and the House of Assembly of 40 members. But under the Terms of Union the Legislative Council does not continue, its re-establishment resting with the Newfoundland Provincial Legislature.

On April 1, 1949, the Hon. Colin Gibson, Secretary of State for Canada, presented the Commission as Lieutenant-Governor of the new Province of Newfoundland to Sir Albert J. Walsh, Kt., and also a Certificate of Canadian Citizenship to the new Lieutenant-Governor on behalf of all the citizens of the new Province. This was part of a double ceremony held both at St. John's and Ottawa on the above date. On the same day, the Lieutenant-Governor called on Mr. Joseph R. Smallwood, who had led the campaign for Union with Canada, to form a Cabinet, which he did. Towards the end of April the Lieutenant-Governor issued a Proclamation calling for an election for May 27, 1949. In the election, the Liberal Party led by Mr. Smallwood was returned.

Opening of the XXIX Assembly.—The Lieutenant-Governor issued a Proclamation calling together the members of the House of Assembly on July 11, 1949. The House met and all members were sworn in by 2 Justices of the Supreme Court of Newfoundland. The member elected as Speaker was the Hon. R. F. Sparkes, L.C.P., M.A., and the formal opening of the First Session of the 29th Assembly of Newfoundland took place on July 13, by His Honour the Lieutenant-Governor, in the presense of a distinguished gathering 'midst the traditional ceremonial of guards of honour, etc., the Newfoundland Government members being seated on the right and the Opposition members on the left of the Chair.

At 2.55 p.m. the Serjeant-at-Arms entered the Chamber, formally attired, carrying the Mace, followed by the Speaker, who took his Chair and awaited the arrival of the Lieutenant-Governor.

At 3 p.m. the Serjeant-at-Arms informed the Speaker: "I have the honour to inform you that the Lieutenant-Governor is here to open the House of Assembly." The Speaker and the 2 Clerks of the House thereupon met the Lieutenant-Governor and accompanied him to the Speaker's Chair.

The Premier (Hon. J. R. Smallwood) then rose to inform His

Honour that the House had selected Mr. Reginald Sparkes, member for St. Barbe District, as its Speaker, and presented him to the Lieutenant-Governor, who accepted the new Speaker and congratulated him on his high appointment. In accordance with ancient tradition, the Speaker, in thanking His Honour for the acceptance of him as Speaker, requested of the Crown, through the Lieutenant-Governor, the ancient rights and privileges historically granted to members of the House—freedom of speech during debate, freedom from arrest while carrying out their duties and the right of free access to the Crown. His Honour then replied: "Mr. Speaker, I am pleased to grant you your request."

Then followed the Speech from the Throne outlining the proposed legislation for the Session, after which His Honour and Party left the Chamber, escorted by Mr. Speaker, the Clerk of the House of Assembly (Mr. Henry H. Cummings), the Clerk-Assistant (Mr. W. H. Hayward), and the Serjeant-at-Arms.

Mr. Speaker then returned to the Chair and the business of the First Session of the First Provincial Legislature of Newfoundland was begun with a formal first reading of a Bill before the consideration of the Speech.

The Speaker thereupon formally informed the House of His Honour's visit and acknowledged the high honour done to him personally in being accepted as Speaker of the House. The Clerk of the House then read the Speech from the Throne, after which a Motion was made to appoint a Committee to draft the Address in Reply to the Speech.

The Premier congratulated Mr. Speaker on his joining the long line of distinguished Speakers. He also congratulated the Leader of the Opposition (Mr. J. G. Higgins, K.C.) on his appointment as the Parliamentary Chief of his Party.

The Motion to appoint a Committee with its personnel to draft a Reply to the Address was then put and carried.

Notices of Motions to introduce Bills and ask Questions were then given and the Premier moved the Adjournment of the House at 5.25 p.m., at the same time announcing that the debate on the Speech from the Throne would be opened when the Reply had been drafted and presented to the House.

The Motion for the Address in Reply was moved by Mr. A. B. Morgan, the youngest member of the House, and the business of the Session was begun.

The Session was closed on December 7, 1949, by the Lieutenant-Governor, Sir Leonard Outerbridge, Kt., who succeeded Sir Albert Walsh in that office.

Conclusion.—Newfoundland has had a long constitutional record since its discovery by John Cabot in 1497, first under Star Chamber Government from 1633 to 1660, then, until 1832, when it was ruled, first by what were called the Fishing Admirals and thereafter by

Admirals R.N., who, however, did not reside on the Island until 1816. Representative Government was established in 1832 and after single-Chamber failure a bicameral system was restored in 1848. This was followed by Responsible Government in 1854, which continued until 1933 when, financially and constitutionally, political government broke down, thus compelling the Newfoundlanders to appeal to the United Kingdom, and Commission Government was established upon the recommendation of the Amulree Commission, which form of Government carried on successfully until the election of a National Convention and the entry of Newfoundland into the Canadian Confederation.

The recent move to join issue with Canada was not, however, the first occasion when Confederation with Canada had been mooted, for when the 4 original Provinces of Canada were setting up, Confederation attemps were made to join up with Canada, but these were turned down by the Newfoundlanders at the General Election of 1869. The Question also again came to the fore in 1887 and later in 1894.

Under her own Government the Island has had a long line of Prime Ministers from the Hon. P. F. Little in 1855 to the nineteenth holder of the office (Hon. F. C. Allerdice (1932-33)), after which Responsible Government was suspended.

We are deeply indebted to our new member, Mr. Henry H. Cummings, the Clerk of the House of Assembly, for much of the information contained in this Article, and we wish him and the Clerk-Assistant, Mr. W. H. Hayward, every success in setting the Parliamentary machinery in motion again after its long period of immobility.

Acknowledgments are also made both to *The Daily News* and *The Evening Telegram* of St. John's for much of the foregoing historical data. *The Evening Telegram*, in its leader of April 1, 1949, on the occasion of the opening day of Confederation, rather aptly sped the 10th Province on its new constitutional path in the following words:

> The future beckons. What it may hold in store will depend, with God's blessing, upon the good spirit and honest effort displayed in serving the interests both of our Province and our Dominion. In division is weakness; in unity and true fellowship is strength.

XI. THE BRITISH NORTH AMERICA (No. 2) ACT, 1949[1]

BY THE EDITOR

THIS Article records an outline of the proceedings, both at Ottawa and at Westminster, in connection with the most important con-

[1] *See also* JOURNAL, Vols. V, 91; VI, 191; VII, 49; VIII, 30, 39, 40; IX, 97; XI-XII, 40; XV, 49, 51, 158; XVI, 45; XVII, 221.

stitutional step taken by the Parliament of Canada since the passing of the B.N.A. Act (using the abbreviated form favoured by Canadians) of 1867. Henceforward all Acts amending the Constitution of Canada will be passed in Canada by Canadians, without even what has come to be the formality of an Imperial Act passed by the Parliament at Westminster upon an Address to His Majesty from the Senate and Commons of Canada. Thus Canada, the senior of what were called the Dominions, now falls into line with her younger sisters, Australia, New Zealand, the Union of South Africa, Ceylon, India and Pakistan.

It is regretted that, in the outline of the proceedings in connection with the passage of this important measure, a précis cannot be given of the debates, both in the Senate and Commons of Canada, on the Motion for the Joint Address to His Majesty seeking authority for this legislation, but the footnotes hereto will assist those who desire to go deeper into the subject.[1]

AT OTTAWA

Address to His Majesty.

House of Commons.—On October 17, 1949,[2] the Prime Minister (Rt. Hon. L. S. St. Laurent) moved the following Motion for an Address to the Crown, which was necessary in regard to any amendment of the B.N.A. Acts:

That an humble Address be presented to His Majesty the King in the following words:

To the King's Most Excellent Majesty:

MOST GRACIOUS SOVEREIGN,

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

An Act to amend the British North America Act, 1867, as respects the amendment of the Constitution of Canada.

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

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

Amendment as to legislative authority of Parliament of Canada 30 & 31 *Vict. c.* 3. 1.—Section ninety-one of the British North America Act, 1867, is hereby amended by renumbering Class 1 thereof as Class 1A and by inserting therein immediately before that Class the following as Class 1:

1.—The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privi-

[1] CCLXIX *Com Hans.* (Sess. II), Vol. I, 828-869; 881-901; 952-971; 982-996; Vol II *Ib.*, 1182-1218.

[2] CCLXIX (Sess. II), 827.

leges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language.

Short title and citation.—2. This Act may be cited as the British North America (No. 2) Act, 1949, and shall be included among the Acts which may be cited as the British North America Acts, 1867 to 1949.

And he said that if the federation, the basis of which was a distribution of powers between a central and several States or provincial legislative and government bodies, was to preserve its character, that distribution must not only be clear and precise, but protected from encroachment by any of the legislative bodies.

In one aspect the Motion dealt with the capacity of Canada to adapt itself to the demands of the future within the framework of the Act of 1867. Up to the present time, Canada has had the unique, but perhaps not enviable, distinction among the nations of the world, of being the only sovereign State without power to amend its own Constitution.[1] The reason for the omission of an amending clause was that Canada led the parade in achieving Dominion, as distinct from Colonial, status. Canada had had several constitutional Statutes before and none contained any provision for amendment. It was quite the normal thing to have anything of such importance dealt with by the Parliament at Westminster. There were no provisions for amending the Quebec Act of 1774,[2] the Constitutional Act of 1791[3] or the Union Act of 1840.[4] Each time Canadians had to go to the British Parliament, but in 1871 Canada took exception to any action being taken by her Government to make amendment to the B.N.A. Act without previous authority from her Parliament, and the Canadian House of Commons unanimously adopted a Resolution that no change in the B.N.A. Act be sought by the executive government without the previous assent of the Canadian Parliament.

In 1875 an amendment was passed without Joint Addresses having been adopted, but exception was again taken to this and a Motion similar to that of 1871 was introduced, the Canadian Government recognising the principal Motion, and after debate the Motion was withdrawn. Since then no Canadian Government has ever ventured to suggest an amendment to the Constitution without the formality of such Addresses, in most cases with no prior consultation or consent of the Provincial Governments. This had been the case in 7 out of the 11 amendments.

There had been one case of amendment, after consultation with certain Provinces to be affected thereby, namely, in 1930. In 2 cases amendments had been sought after consultation with all the Provinces, namely, in 1907, when 8 of the 9 Provinces agreed, British Columbia opposing the proposal both at Ottawa and Westminster, but, in spite of this, the amendment was adopted. The

[1] *Ib.* 829. [2] 14 Geo. III, c. 83. [3] 31 Geo. III, 31. [4] 3 & 4 Vict., c. 35.

amendment of 1940[1] was sought only after the consent of all the Provincial Governments had been obtained, in some Provinces after consultation with the legislative body, in others by the Provincial Executive alone.

The proposal of 1920, after joint Addresses, had been adopted, but after correspondence with Colonial Office, not proceeded with.[2]

To analyse the 12 cases, said Mr. St. Laurent, in 9 of them the Provinces were not consulted at all; in one only those Provinces immediately affected, and in 2 cases all Provinces were consulted. In one case some Provinces were consulted. In 2 cases all the Provinces, in one 8 of the 9 agreed and one disagreed, and in the other case all 9 Provinces agreed. In 1915, the Provinces were not consulted, but Prince Edward Island objected, and it was after litigation arising out of that position that a dictum of the Privy Council was issued, which brought about the situation dealt with by the amendment of 1946.[3] In 1943 Quebec objected, contending that they should have been consulted. In 1946 a Motion was moved in the Canadian Commons to the effect that the matter should not be proceeded with until the Provincial Governments had been consulted.

Continuing, Mr. St. Laurent observed that it was not clear what consultation meant—merely bringing the matter to the notice of Provincial Governments or that they should give their consent? There was a Resolution calling for consultation and an amendment was moved suggesting that the matter should not be proceeded with unless the consultation resulted in the consent of the Provinces, but many of those who favoured the theory of consultation voted against the amendment.[4]

The United Kingdom authorities, he would not say resented, but did not like the position in which they were placed of having to rubber-stamp decisions for Canadians, made by the representatives of Canadians, and having to do so because no other procedure had yet been devised in Canada for implementing those decisions.

It was Canada's own responsibility to see that the fundamentals of the Canadian Constitution were protected and preserved. How that should be done was a matter for discussion between the federal and provincial authorities.

Not going back beyond 1920, Mr. MacKenzie King, as Leader of the Opposition, referred to this question in the Canadian Commons. In 1924 Mr. Wordsworth, and in 1925 Mr. W. F. MacLean moved Motions in that House on the subject. Then there were: the Lapointe Debate in 1927; the correspondence between Mr. Bennett and Mr. Ferguson in 1930, arising out of the Statute of Westminster; Mr. Wordsworth's Motion of 1931; the Commons Resolution of 1935; the Committee set up in that year and the Dominion Provincial Conference in the same year. The Report of the Sub-Committee of 1936

[1] *See* JOURNAL, Vol. IX, 97.
[2] CCLXIX (Sess. II), *Com. Hans.* 830.
[3] 9 & 10 Geo. VI, c. 63.
[4] CCLXIX *Com. Hans* (Sess. II), 831.

recommended: that in respect of matters concerning the central government only, amendments might be made by passing an Act of Parliament; that in respect of matters concerning the central Government and one or more, but not all, the Provinces, the amendments might be made by an Act of Parliament and the assent of the Legislative Assemblies of each of the Provinces affected; that in respect of a large number of matters concerning the central authority and all the Provinces, the amendment might be made by an Act of Parliament and the assent of the Legislative Assemblies in $\frac{2}{3}$ of the Provinces representing at least 55 per cent. of the population of Canada; but that there be a certain number of "entrenched clauses" which could not be dealt with except by an Act of Parliament and the assent of the Legislative Assemblies of all the Provinces. General agreement could, however, not be obtained and the matter dropped.

Then the question was again discussed in 1940, 1943, 1946 and 1949, but also without any definite result.

Mr. St. Laurent then quoted from his national broadcast on May 19:

> . . . We do not want the Canadian Constitution to be too rigid, but we do want to make sure it contains the fullest safeguards of provincial rights, of the use of the two official languages and of those other historic rights which are the sacred trusts of our national partnership. It is our intention, after the election, to consult the provincial governments with a view to working out a method which will be satisfactory to all Canadians, of amending the Constitution of Canada.[1]

In suggesting a procedure as to amendments, the subjects fall into 3 classes. There are those concerning the Provinces alone and not the Federal authorities, such as the Constitutions of the Provinces themselves in respect of everything within their control, but excluding the office of Lieutenant-Governor. Several Provinces had therefore brought their Constitutions more into harmony with the conditions then prevailing. Likewise, there were matters which concerned the Federal authorities alone. It was with 8 of the 11 occasions on which amendments were enacted by the Parliament at Westminster, that Parliament had to deal. In 1907 it was a matter of the Provincial subsidies, which were of concern to all the Provinces. In 1940 the proposed amendment dealt with the transfer of jurisdiction in certain matters from the Provincial to the Federal authorities. In those 2 cases the Provinces were concerned and, though in one case one of the Provinces did not agree, the amendments were made.

In 1930 the amendment concerned the Western Provinces only. In the other cases the amendments were made at the request of the Houses of the Canadian Parliament, because it was felt that they were matters which dealt with subjects assigned to the jurisdiction of the Federal Parliament.[2]

[1] *Ib.* 832. [2] *Ib.* 833.

The Motion now before them dealt only with matters exclusively connected with the Federal authorities. It requested that there be inserted in S. 91 of the B.N.A. Act a provision similar to that in S. 92 with respect to Provincial Constitutions, and that the Canadian Parliament might itself implement the decision it arrived at in regard to amendments without the aid of the Parliament at Westminster.

Great care had been taken to avoid any possibility of impinging upon the rights of Provincial Legislatures or governments and to avoid making any declaration as to where the dividing line might strike matters of Provincial jurisdiction, those of Federal jurisdiction and those of just concern both to Federal and Provincial authorities.

Under the proposals outlined in the Motion, the Parliament of Canada would be in the same position in regard to its Constitution as the Legislatures had been for the last 82 years in respect of their Provincial Constitutions.

It would be noticed that the Motion did not contain, as in S. 91, the words "notwithstanding anything in this Act". These words were in the first portion of that section which reads:

> It shall be lawful for the Queen, by and with the advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say—
>
> (*Here follow the* 29 *enumerated subjects*).

New Class 1 would therefore read: (*see Address to His Majesty above*).

When the Speech from the Throne was prepared, letters[1] were despatched to the Premiers of the 10 Provinces informing them of the intention of the Government to seek immediately a declaration that the Parliament of Canada would deal with all the matters which did not touch upon the jurisdiction of the Provincial Legislatures, or upon the rights guaranteed to them, or upon educational or language rights, and that the Government would immediately after the Session seek a conference with them to determine a proper procedure to make all such amendments as could not be made by a Provincial Legislature under Class 1 of S. 92 or, by a Federal Parliament under the new Class 1 of S. 91, in order to establish a procedure to determine, for the future, how necessary amendments would be effected.[2]

In conclusion, Mr. St. Laurent said that this method of proceeding did clash with the effect sought to be given by many of the compact theory of confederation. According to them, there was not a word, not a comma in the B.N.A. Act that was not of a contractual

[1] *Ib.* 870-7. [2] *Ib.* 834.

nature among at least the 4 so-called original Provinces,[1] and that nothing therein could be changed without obtaining their prior consent, unless one wished to incur the charge of committing a breach of contract.

Here they were seeking a declaration whereby only such amendments as dealt with matters within the exclusive concern of the Federal authorities could be made in the future, as they had been made in the past, without consulting the Provinces, but that they could be made in Canada. To that extent only did such create a new situation. It did not change anything at all, except the venue where the amendments could be made. They had always been decided in the Canadian Parliament, without recognising the necessity or the obligation of consulting the Provinces or getting their consent; and in the future, with this in the Act, they would continue to be made without consulting them or getting their consent. But, instead of having them decided in one place and registered in another, they would be registered and made effective in the place where they were decided and registered for the Canadian people by representatives of the Canadian people in a Canadian form.[2]

On October 18,[3] Mr. Knowles moved: That the Resolution be amended by inserting therein, immediately after the word "language" in the fourth last line thereof, the following words:

or as regards the requirement of S. 20 of this Act that there shall be a Session of the Parliament of Canada at least once each year or as regards the requirement of S. 50 of this Act that no House of Commons shall continue for more than five years.

On October 20,[4] the following amendment was moved by Mr. Garson to Mr. Knowles' amendment by striking out the words, "requirement of S. 20 of this Act" and substituting therefor the word "requirements" and by striking out the words "or as regards the requirement of S. 50 of this Act" and substituting therefor the word "and"; and by adding at the end of the proposed amendment after the words "five years" the following words:

from the day of the return of the writs for choosing the House; provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.

On October 27, Mr. Garson's amendment to the amendment was agreed to and the House divided on Mr. Knowles' amendment, as amended, which was agreed to: Yeas, 147; Nays, 27.

Mr. Donald M. Fleming then moved the following amendment:[5] That the said proposed Resolution be amended by striking out all words after the first word "that" and substituting therefor:

[1] Ontario, Quebec, Nova Scotia and New Brunswick. [2] CCLXIX *Com. Hans.* (Sess.) 835. [3] *Ib.* 892. [4] *Ib.* 959. [5] *Ib.* 1210.

This House is of the opinion:

1. That an humble address should be presented to His Majesty the King praying that His Majesty may graciously be pleased to cause a measure to be laid before the Parliament of the United Kingdom providing for an amendment to the British North America Act, 1867, relating to the amendment of the Constitution of Canada by the Parliament of Canada.

2. That as a condition precedent to the presentation of such address the scope and form of the amendment prayed for should be made the subject matter of a conference of the Dominion and Provincial Governments and the subsequent approval of the Parliament of Canada.

The House divided on the amendment: Yeas, 38; Nays, 137, which was negatived.

The House then divided on the Motion as above amended, which was agreed to: Yeas, 133; Nays, 38.

The Motion as amended therefore reads:

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House; provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.

The Senate.—The Motion for the Address as amended in the Commons was, on Notice, introduced on November 1, 1949,[1] and discussed on the 3rd,[2] 8th,[3] and 9th *idem*,[4] on which last-mentioned date it was agreed to, on division.

The original Motion as amended at Ottawa therefore became the Joint Address presented by the Senate and House of Commons of Canada to His Majesty by His Canadian Ministers.

AT WESTMINSTER

The British North America (No. 2) Bill.

Lords.—On November 16, 1949,[5] the Bill for the British North America (No. 2) Act, in accordance with custom, originated in the Lords by Motion for leave and passed 1 *R.*

In moving 2 *R.* on November 22,[6] the Lord Privy Seal (Viscount Addison) said that they had been asked by the Government of Canada to accord them some powers which are possessed by all the other members of the Commonwealth, but not, strangely enough, by Canada. It so happened that, when the Statute of Westminster was passed, at the express wish of the Canadian Government, an excep-

[1] *Sen. Hans.* 188-205. [2] *Ib.* 214, 219-223. [3] *Ib.* 231-238.
[4] *Ib.* 239-245. [5] 165 *Lords Hans.* 5, s. 710. [6] *Ib.* 809.

tion was made with regard to the B.N.A. Act, with special reference to the division of powers between the Federal and Provincial authorities.

As the result of that decision, their Lordships had been asked at different times to agree to certain legislation. But now the Canadian Houses of Parliament had submitted a Petition to His Majesty, of which the Bill now before their Lordships was the consequence, and which would authorise the Canadian Parliament to amend the Canadian Constitution in relation to matters which were solely within the jurisdiction of that Parliament.

Early in the New Year there would be a conference between the Federal and Provincial authorities in Canada to consider matters which were semi-federal or semi-provincial in their character. The noble Viscount observed that he was sure Their Lordships' House would be only too glad to fall in with the wishes of the Canadian Parliament and he hoped that Their Lordships would be willing to pass through all its stages this short measure. This occasion afforded Their Lordships an opportunity to express to this oldest member of the Commonwealth Overseas their gratitude and recognition of Canada's splendid and loyal friendship and her increasingly powerful help.[1]

After a few words by the Leader of the 2 Opposition Parties, the Committee stage having been dispensed with by the suspension of S.O. XXXIX, pursuant to the Resolution of November 17, the noble Viscount then formally moved 3 *R.* which was agreed to,[2] and the Bill was sent to the Commons for concurrence.

Commons.—The Bill was agreed to by the Commons and returned to the Lords on December 2, agreed to,[3] and received *R.A.* on December 16.[4]

The Act duly became 12, 13 and 14 Geo. VI, c. 81.

[1] *Ib.* 809, 810. [2] *Ib.* 811-813. [3] *Ib.* 1258. [4] *Ib.* 1668.

XII. AUSTRALIAN GENERAL ELECTION, 1949

By A. A. Tregear, B.Com., A.I.C.A.,
Clerk-Assistant to the House of Representatives.

On December 10, 1949, the people of Australia selected their Parliamentary representatives for the XIXth Federal Parliament.

At this general election, important changes in the number of parliamentary representatives were effected. By legislation[1] the number of Senators for each of the 6 Australian States had been increased from 6 to 10, and the Members of the House of Representatives from 75 to 123. Senators are chosen for a term of 6 years,[2] but by a system of rotation[3] half the number of Senators seek endorsement at each triennial election. On this occasion, 7 Senators had to be chosen for each State, each State having 3 sitting Senators not yet due to face the electors.

In the XVIIIth Parliament, party grouping in both Houses was as follows:

	Senate.	*House of Representatives.*	
Labour	33	43	
Liberal	2	17	
Country	1	12	
Independent Labour	—	2	
Independent ...	—	1	(Northern Territory)
	36	75	

In the House of Representatives party representation of the several States was:

	Labour.	*Liberal.*	*Country.*	*Independent.*	*Total.*
New South Wales	19	5	3	1	28
Victoria	8	7	4	1	20
Queensland ...	5	1	4	—	10
South Australia ...	4	2	—	—	6
Western Australia	4	—	1	—	5
Tasmania ...	3	2	—	—	5
Northern Territory	—	—	—	1	1
	43	17	12	3	75

Enrolment for voting, which is compulsory, is required of British

[1] Representation Act No. 16 of 1948. [2] Commonwealth of Australia Constitution Act, s. 7. [3] Constitution, s. 13. Representation Act, s. 5.

subjects of 21 years of age or over who have lived in Australia for 6 months continuously.

The enrolled voters totalled 4,924,853, distributed as follows:

New South Wales	1,915,997
Victoria	1,368,740
Queensland	709,824
South Australia	435,155
Western Australia	315,369
Tasmania	161,357
	4,906,442
Australian Capital Territory	11,815
Northern Territory	6,596
	4,924,853

Voters in the two territories[1] did not vote for the Senate.

This enrolment shows an increase of nearly 200,000 since the 1946 election.

A candidate for election must be 21 years of age, a British subject, a Commonwealth resident for 3 years and a qualified voter.[2]

Nominations received constituted a record. For the 7 Senate seats in each State, the candidates numbered:

New South Wales ...	23
Victoria	21
Queensland	17
South Australia ...	25
Western Australia ...	17
Tasmania	12
Total ...	115

The heavy Senate list of aspirants was due to the first use of the proportional representation system of voting[3] which is expected to ensure the return of some members of minority parties.

For the 123 seats in the House of Representatives 355 candidates nominated and all seats were contested.

Every medium of propaganda was called into use in the campaign; broadcasting, newspaper advertising, pamphlet distribution and personal addresses with speech amplifiers were used to the full.

On the national broadcasting stations, time was allotted to each recognised political party. The commercial broadcasting stations, of course, made time available to any candidate or party prepared to

[1] Australian Capital Territory and Northern Territory.—A. A. T.
[2] Commonwealth Electoral Act, 1918-1949, s. 69.
[3] *See* JOURNAL, Vol. XVII, 242

pay for it. In accordance with the law,[1] election broadcasts ceased 2 days before polling.

Intense public interest prevailed throughout the campaign. The party leaders visited all States and addressed numerous meetings, which were well attended and, generally, well behaved, although a few eggs and tomatoes, thrown with mischievous rather than evil intent, managed to make contact with some candidates.

Electoral posters are restricted in size to 60 square inches,[2] so the largest space advertising appeared in the newspapers.

The electoral expenses of candidates are limited to £500 each in the case of the Senate and £250 for the House of Representatives.[3] Political organisations must make a return of all electoral expenses incurred and newspapers are required to submit prices and details of electoral matter inserted.[4]

Polling took place on Saturday, December 10, betwen the hours of 8 a.m. and 8 p.m. Voting was compulsory.[5] An elector who was not within his State or 5 miles of a polling booth, or was ill, could avail himself of postal voting facilities, while an elector outside his electorate could vote as an absentee at a convenient polling place.

In a country the size of Australia, which, by the way, possesses one of the largest electorates in the world, Kalgoorlie, with an area of about 900,000 square miles, the distribution of ballot papers is a task of some magnitude, and all forms of carriage from aeroplanes to camels have to be employed. Even the Australian troops with the British Commonwealth Occupation Force in Japan had to be supplied with ballot papers.

Votes cast in the several States were:

	Liberal and Country Party.	*Labour.*	*Other.*	*Informal.*	*Total.*
New South Wales ...	841,367	713,122	71,507	222,576	1,848,572
Victoria	574,623	533,380	65,250	140,541	1,313,794
Queensland ...	322,490	267,686	21,570	46,861	658,607
South Australia ...	169,654	176,795	25,105	48,883	420,437
Western Australia ...	133,369	125,067	12,835	30,058	301,329
Tasmania	71,944	63,524	3,237	16,356	155,061
	2,113,447	1,879,574	199,504	505,275	4,697,800

In the Australian Capital Territory 11,242 voted and in the Northern Territory the number was 5,321.

On the Senate ballot-papers, political parties had taken advantage of the provision for grouping their candidates (although no party labels are indicated on the papers); the order in which the various groups appeared on the ballot-paper being determined by lot.[6] The

[1] Australian Broadcasting Act, 1942-1948, s. 89. [2] Electoral Act, s. 164 B.
[3] *Ib.* s. 145. [4] *Ib.* ss. 152, 153. [5] *Ib.* s. 128 A. [6] *Ib.* s. 105 A.

ballot-papers used for the House of Representatives showed the candidates for the particular electoral division in alphabetical order.[1]

The preferential system of voting is followed in Federal elections and voters were required to record their preferences for all candidates by numbering their first choice "1" and so on.

Those Senate candidates who did not secure $\frac{1}{10}$ the average number of first preferences polled by successful candidates lost their deposit of £A.25, and similar contribution to the revenue was made by candidates for the House who polled fewer than $\frac{1}{3}$ the number of votes received by successful candidates.

A feature of the Senate polling was the heavy informal voting, amounting to over 7 p.c. of the votes cast. Most of this would be due to incorrect numbering of preferences by the voter.

Other features were the failure of candidates standing as Independents or representing the Communist Party to poll well and the return to Parliament of every member of the Liberal or Country Party standing for re-election. The number of women Senators has been increased from 2 to 4, but only 1 woman is now left in the House.

Counting of votes commenced immediately polling had ceased, and it was soon evident that there was a swing from the Labour Government to the Liberal and Country Parties. Four Ministers in the House of Representatives were defeated.

The new House of Representatives will be constituted as follows:

	Liberal.	*Country.*	*Labour.*	*Total.*
New South Wales	16	8	23	47
Victoria	17	3	13	33
Queensland ...	9	6	3	18
South Australia ...	6	—	4	10
Western Australia	3	2	3	8
Tasmania ...	4	—	1	5
	55	19	47	121

In addition, the Australian Capital Territory will be represented by an Independent and the Northern Territory by a member of the Labour Party.

Fifteen former Members of the House unsuccessfully sought re-election, and they, along with defeated Senators, will be examining their eligibility for the pension of £8 a week for life made available under the Parliamentary Retiring Allowances Act (No. 89 of 1948).[2]

Sixty-nine new Members will appear in the House, and to them will accrue the privileges of a parliamentary allowance of £1,500 a

[1] *Ib.* s. 106.

[2] *See* JOURNAL, Vol. XVII, 30.

year, free services of a secretary-typist, a living allowance of 22s. 6d. a day when in Canberra attending Parliament, a monthly stamp allowance of £8, an all-lines railway pass and free travel by air to Canberra during Sessions.

The Liberal and the Country Parties joined forces for the purposes of the election, and, having been returned with a majority in the lower House, a new Ministry has been chosen from their ranks, under the Rt. Hon. R. G. Menzies, the Liberal Leader, who was Prime Minister in 1939-41. The previous allocation of 5 Ministers to the Senate and 14 to the House has been retained and, for the first time, a woman, Dame Enid Lyons (widow of a former Prime Minister), has been included in the Ministry.

In the Senate the party representation will be:

	Liberal and Country.	*Labour.*	*Total.*
New South Wales	4	6	10
Victoria	4	6	10
Queensland ...	7	3	10
South Australia ...	3	7	10
Western Australia	4	6	10
Tasmania ...	4	6	10
	26	34	60

It will be interesting to see how far the Labour majority in the Senate will co-operate with the non-Labour Government in passing legislation. Should the Senate prove hostile, a constitutional position of real importance could arise resulting in a deadlock between the two Houses calling for a test of strength rather than a division on tactics.

The XIXth Parliament is expecting to be summoned in February, 1950, and its proceedings will be watched with interest.

XIII. PRECEDENTS AND UNUSUAL POINTS OF PROCEDURE IN THE UNION HOUSE OF ASSEMBLY, 1949

By Ralph Kilpin, J.P.,
Clerk of the House of Assembly.

The following unusual points of procedure arose during 1949:

Delegated Legislation: Parliamentary Control.[1]—Reference was made in Volume XVII of the JOURNAL to the Select Committee on

[1] *See also* JOURNAL, Vols. XIV, 67; XVI, 60; XVII, 48.

Delegated Legislation, originally appointed in 1947,[1] which reported that it was unable to complete its enquiry. A Select Committee on Delegated Legislation was again set up during this Session, to which the reports of the previous Select Committees on the same subject were referred. After taking further evidence, the Committee arrived at the conclusion that the constitutional principles of the sovereignty of Parliament and the supremacy of the law would be safeguarded by the appointment of an official responsible to Parliament who would be charged with the duty of scrutinizing all statutory instruments framed under powers conferred by statute and to report whether, in his opinion, any of the said instruments merit the special attention of the House on any of the following grounds:

(*a*) that they appear to make any unusual or unexpected use of the powers conferred by the Statute under which they are framed;
(*b*) that they tend to usurp the control of the House over expenditure and taxation;
(*c*) that they tend to exclude the jurisdiction of the Courts of Law without explicit enactment;
(*d*) that for any reason their form or purport calls for elucidation or special attention.

To make the proposed safeguards effective the Committee further recommended that a Select Committee should be appointed at the commencement of each Session to which should be referred for consideration the reports of the scrutineer mentioned above. Owing to the advanced stage of the Session the Committee's Report[2] was not considered by the House.

Members' qualifications not a matter for Speaker's decision.—S. 44 of the South Africa Act[3] provides that a member of the House of Assembly must be qualified to be registered as a voter and must be a Union National. On the opening day Mr. Speaker announced that Mrs. Ballinger, a Native Representative,[4] had been elected during the recess. Before she took the oath a member asked whether, in view of the fact that the electoral officer of Johannesburg had recently decided that she was not qualified to be registered as a voter on the ground that she was not a Union National, it would be in order for her to be sworn in and take her seat. Mr. Speaker said that he had been officially informed that Mrs. Ballinger had been duly elected; that S. 141 of the Electoral Act,[5] which was applicable in this case, provided what steps should be taken to have a member unseated by reason of want of qualification; and that, unless he received notification through the proper channels that the seat had been declared vacant, the member was entitled to take her seat.[6]

[1] *Ib.* XVII, 48. [2] S.C. 8-'49. [3] 9 Edw. VII, c. 9. [4] *See* JOURNAL, Vols. V, 35; XI-XII, 56; XIV, 64; XV, 80; XVI, 58. [5] Act 46 of 1946.
[6] 1949 VOTES, 2.

Mr. Speaker's control over the buildings of the House of Assembly.[1]—On two occasions during the Session Mr. Speaker referred to the control which he exercises over the buildings of the House of Assembly. On the first occasion, owing to allegations made in a newspaper, he dealt with provisions made for Coloured and Native visitors to the House. On the second he dealt with a personal explanation made by a Minister on the absence of certain members from a division owing to faulty working of division bells.[2]

Appointment of temporary Chairman of Committees.—Owing to the absence of both the Chairman of Committees and the Deputy-Chairman of Committees when the House went into Committee on a Bill, Mr. Speaker resumed the Chair, and on the Motion of the Minister of Justice, Mr. Trollip was appointed to act for the Chairman. This followed the precedent established in 1921,[3] the only difference being that in this case Mr. Trollip, formerly Chairman of Committees, was a member of the Opposition.[4]

Members' conduct.—The distinction between charges made against members under the Powers and Privileges of Parliament Act and charges of a personal character unconnected with the proceedings of Parliament, which was emphasized in 1947 (case of Mr. Goldberg),[5] was again emphasized on a Motion for the appointment of a Select Committee to enquire into the conduct of Mr. Boltman. After the member had been heard in his place and he had withdrawn from the House, the Motion was withdrawn.[6]

Statements made by Ministers.[7]—Before the commencement of business on February 24, 3 statements were made by different Ministers. At the conclusion of the third statement Mr. Speaker observed that he would not like to criticize the procedure which had been followed, but hoped that Ministers would only resort to this procedure in exceptional cases and in exceptional circumstances, when there was no other opportunity of bringing a matter under discussion.[8]

Subpœna for production of papers laid on Table of the House.—At the commencement of the Session the House decided to adjourn from Friday, February 25 to Tuesday, March 8. On the morning of February 25, the Clerk of the House of Assembly received a subpœna[9] to produce certain documents before the Transvaal Division of the Supreme Court sitting in Pretoria on Monday, February 28, in the case of an Election Petition against Senator W. G. Ballinger. Under S. 7 of the Powers and Privileges of Parliament Act, 1911,[10] "No member or officer of Parliament shall be required . . . *while in attendance on Parliament* to attend as a witness in any civil pro-

[1] Mr. President exercises similar control over the Senate part of the Houses of Parliament, and, with Mr. Speaker, joins in the exercise of control over the Joint parts—the Library and Dining Rooms of Parliament, Queen's Hall, etc.—[ED.]
[2] 1949 VOTES, 77; 475. [3] 1921 VOTES, 119. [4] *Ib.* 99. [5] *See* JOURNAL, Vol. XVI, 177 [6] 1949 VOTES, 112. [7] *See* JOURNAL, Vol. XVI, 176.
[8] 1949 VOTES, 175; 66 *Assem. Hans.* 1669. [9] Although the member concerned was a Senator.—[ED.] [10] No. 19 of 1911.

ceedings in any court unless that court holds its sittings at the seat of Parliament", but as the House would not be in Session during the trial no objection was taken on that point and under S.O. 277 application was made to the House for leave to produce the documents. The application was granted and leave given to a parliamentary official to produce the documents. The leave for an official, other than the Clerk of the House, to produce the documents was considered necessary as under S. 24 of the Powers and Privileges of Parliament Act "No officer of Parliament . . . shall give evidence elsewhere in respect of . . . the contents of any manuscript or document laid before Parliament . . . without the special leave of the House of which he is . . . an officer . . . first had and obtained".

The subpœna, however, was not complied with, as the expenses to be incurred were not tendered with it, as required by S. 8 of Act No. 27 of 1912, and on this being pointed out to Senator Ballinger's attorneys the following telegram from them was received on February 26: "Your presence at Ballinger's case not required. Clerk Senate [on whom a similar subpœna had been served] sufficient."[1]

Committee of Supply: Railway Estimates.—Adopting the experiment in 1947[2] provision was made by a Sessional Order separating the Committee of Supply on the Main Estimates from Committee of Supply on the Railway Estimates.[3] The Railway Budget Speech was made by the Minister of Transport on March 24, the ordinary Budget Speech on the Main Estimates having been made on March 16. When in Committee of Supply on the Railway Estimates considerable difficulty was experienced in maintaining the rule of relevancy on the Heads falling under the Estimates of Expenditure from Revenue. As the Chairman pointed out, the Heads of these Estimates could broadly be divided into Railways (Heads 1-17); Harbours (Heads 18-25); Steamships (Heads 26-27); and Airways (Heads 28-33). For the convenience of the Committee the Chairman stated that he would allow as much latitude as possible within these broad divisions.[4]

Committee of Supply: Main Estimates.—In allotting a fixed period (116 hours) for Committee of Supply on the Main Estimates an important innovation based on procedure in the House of Commons was made. Under S.O. 104 of the Union House of Assembly the Chairman is bound to put the Votes contained in the Estimates in the order in which they are printed and under S.O. 109 the only way of altering the order in which the Votes are printed is to postpone a Vote until all the other Votes have been disposed of. In the House of Commons it has been found more convenient to allow the Opposition, by arrangement with the Government, to select the order in which Votes shall be put,[5] and to this end the Sessional order allotting the

[1] 1949 VOTES, 180. [2] *See* JOURNAL, Vol. XVI, 172. [3] 1949 VOTES, 225.
[4] 1949 VOTES, 349. [5] May, XIV, 288.

time for the Committee of Supply contained the following new provision—

"Notwithstanding the provisions of S.O. 109 the Committee may, on the Motion of a Minister, to be decided without amendment or debate, give precedence to the Votes falling under any Ministerial portfolio or portfolios."

This Sessional order was applied for the first time on April 26, 1949, and greatly facilitated proceedings in Committee of Supply.[1]

Protection of Officers of House against statements in the Press.—On March 23, Mr. Speaker drew attention to statements made in the Press to the effect that "Broederbonders" held all the important positions in the Senate and the House of Assembly and that he himself was a member of the Broederbond. In doing so, Mr. Speaker said, "I feel it my duty as Speaker, under whom the officials of the House of Assembly serve, to take strong exception to the allegation that Broederbonders hold all the important positions in the House of Assembly because this is not the case and hon. members know that the officials are not in a position to protect themselves against false allegations made against them." He added that he was not a Broederbonder himself and not acquainted with its principles.[2]

Notices of Questions to Ministers.—On April 27, Mr. Speaker drew attention to the fact that on the previous day no fewer than 13 Questions to Ministers had appeared on the Notice Paper on that day for the first time. S.O. 47 (3), he pointed out, provided that "no question shall be asked . . . on the same day on which the notice thereof is given" and bearing in mind that Ministers had to obtain the necessary information he thought that it was they who should be given at least a day's notice. "I have therefore given instructions", he said, "that in future Questions which are delivered to the Clerks on the day preceding Question Day must be put on the O.P. for the next following Question Day. Questions of sufficient urgency will, however, always be allowed to be asked after due notice and with leave."[3]

Manner of putting amendments to Second and Third Readings of Bills.—Under S.O. 33 of the House of Commons (adopted in 1919), if on the Question that a Bill be now read a Second or Third time the House decides that the word "now" or any other words proposed to be omitted stand part of that Question, it is assumed that the House has decided that the Bill shall be read a Second or Third time and the "original" question is not put for decision, thus saving a possible division of the House on that question.[4] On May 25, Mr. Speaker informed the House that he proposed to follow this practice in future and that after the House had determined to retain such words he would call upon the Clerk to read the Bill a Second or Third time, as the case may be.[5]

[1] 1949 VOTES, 380. [2] *Ib.* 248. [3] *Ib.* 393. [4] May, XIV, 501, 1006.
[5] 1949 VOTES, 493.

Longest "all-night" sitting.—The sitting commenced on June 14, at 11 o'clock a.m., and lasted until 9 minutes to midnight on June 15 (36 hours and 51 minutes), when the House agreed after divisions to the Second Reading of the South African Citizenship Bill.[1] The longest previous sitting was in 1940, when, on the Second Reading of the War Measures Bill, the House sat from 2.15 p.m. on February 12, to 6.58 on February 13 (28 hours and 53 minutes).

Suspension of business for conference between Parties on Guillotine Motion.—On June 17, when a "Guillotine" Motion for the South African Citizenship Bill had been under discussion from 11.15 a.m., the House took the unusual course of suspending business at 5.15 p.m. to allow a conference to take place on the subject. The House resumed an hour later when it was announced that the conference had not been able to arrive at a compromise.[2]

Interruption during debate.—Owing to numerous interruptions during debate Mr. Speaker constantly reminded the House of the provisions of S.O. 63, under which "no member shall interrupt another member during debate" unless for the specific purpose of drawing attention to points of order or privilege, or calling attention to the want of a quorum or the presence of strangers or moving the closure. On April 7, Mr. Speaker informed the House that "if a member wishes to put a question he must rise to do so and it depends upon the member making his speech whether he wishes to give him the opportunity of doing so".[3]

Members called upon by name instead of by their constituencies.—The House of Commons' practice of calling upon members by name instead of by their constituencies was adopted by Mr. Speaker as from April 19. This had previously been the practice in the Union House of Assembly in calling upon members to ask Questions on the Notice Paper to Ministers. Following the practice of the House of Commons indirect references to members by their constituencies have been continued.

Evidence of Public Department called for by Select Committees on Private Bill.—Although witnesses may only be called to give evidence before a Select Committee on a Private Bill by the Parliamentary Agents for the promoters or opponents of the Bill, an exception is made in the case of officers of a public department whom the Committee may wish to hear on the grounds of public interest.[4] Under this principle a precedent was established by the Select Committee on the Rand Water Board Statutes 1903-1945 Amendment (Private) Bill. The Bill was *unopposed*, but as it was felt that the proposed extension of the limits of supply of the Rand Water Board to the whole Union might affect public interests, the Committee decided to take the evidence of the Director of Irrigation after the evidence in proof of the Preamble had been heard. As every witness before a

[1] *Ib.* 576. [2] *Ib.* 596. [3] 67 *Assem. Hans.* 3640. [4] May, XI, 815.

Private Bill Committee is liable to cross-examination[1] the Parliamentary Agent, counsel and witnesses were recalled while the Director of Irrigation was examined. After they had withdrawn, the Committee again deliberated and agreed to the Question "That the Preamble has been proved".[2]

Select Committees.

On Private Bills (local interest).[3]—In terms of S.O. 56 (2) (Private Bills), no member of a Select Committee on an *unopposed* Private Bill who is locally interested in such Bill shall vote on any question that may arise, but may attend and take part in the proceedings of the Committee. After the names of the members appointed to serve on 2 *unopposed* Private Bill Select Committees had been announced in the House it was found that one of the personnel of each Committee was locally interested in the Bill referred to the particular Committee to which he had been appointed. On the attention of the members concerned being drawn to the provisions of the Standing Order, they intimated that they wished to be discharged from service on the Committees. Arrangements were accordingly made to have them discharged before the Committees met.

On Irrigation Matters (Consent of Parliament).—Section 26 (3) of the Irrigation Act[4] provides that the owner of a farm shall not be entitled without the consent of Parliament to sell, give or otherwise dispose of subterranean water extracted from a dolomite area. During the Session a petition from the registered owners of a farm situated within a dolomite formation, praying for permission to sell water extracted by artificial means on their property, was referred to the Committee. Since Parliament consists of the King, the Senate and the House of Assembly, the Committee in its Report pointed out that it would be necessary to proceed by means of legislation (not by Resolution of one or both Houses) to obtain the consent of Parliament, and that no good purpose would be served by continuing with the enquiry. Its recommendation that the House should discharge the order referring the petition to the Committee for consideration and report[5] was adopted.[6]

On War Measures (Chairman's guidance on terms of reference).—In implementation of a promise made by the Minister of Finance during the Second Reading of the War Measures Further Continuation Bill in the Second Session of 1948, a Select Committee was appointed at an early stage of this Session with a view to ascertaining which of the War Measures retained in force by the War Measures Further Continuation Act, 1948,[7] might be dispensed with and the form in which the remaining measures should be continued. It was

[1] *Ib.* last par. *n.* 815. [2] S.C. 3-'49, p. viii. [3] *See also* JOURNAL, Vol. XI-XII, 216. [4] No. 8 of 1912. [5] S.C. 15-'49. [6] 1949 VOTES, 352.
[7] *See* JOURNAL, Vol. XVII, 258.

soon apparent that an exhaustive investigation into the detailed application of each War Measure would be a task which the Committee would not be able to complete within the time at its disposal and in a considered statement the Chairman laid down for the guidance of the Committee what he felt should be the extent to which the Committee should pursue its enquiry. By following his guidance, the Committee was able to complete its work within a comparatively short space of time. In its Report the Committee recommended that the Government should introduce legislation at an early date embodying the provisions contained in those War Measures which must of necessity remain in force for a considerable number of years. Before the termination of the Session legislation[1] was passed which implemented certain of the Committee's recommendations.

On Rents Bill (*Representation of interested parties*).—This Committee which was instructed to report within a certain period found, owing to the contentious provisions of the Bill referred to it, that it would not be able to complete its enquiry within the time specified and had to request the House on 3 occasions in Special Reports to extend the date for the submission of its Report. The Committee also considered it necessary to request the House for leave to extend the scope of the Bill.

During the sittings of the Committee 3 petitions were presented to the House requesting leave to be represented by counsel before the Committee. The petitions were not considered, but one of the petitioners was examined by the Committee in his capacity as National Chairman of the Tenants' Protection Association of South Africa.

Mechanised reporting[2] (*before Select Committee*).—The Clerk of the House of Assembly reported that when faced, in 1946, with the position of being unable to secure the services of a shorthand-writer to report the summing-up addresses by Counsel and the Parliamentary Agent before the Select Committee on the Dongola Wild Life Sanctuary (Hybrid) Bill, he was fortunate in being able to make arrangements whereby the addresses, which occupied practically 2 full days, were recorded by means of a special dictaphone. Although the employment of this mechanical recording machine for the recording of the addresses proved highly satisfactory, it was not considered that it had been sufficiently perfected to record satisfactorily the examination of witnesses before Select Committees. As all efforts made since 1947 to obtain the services of competent verbatim shorthand-writers to fill a vacancy in the Committee section of the staff had proved unsuccessful, mechanical means of recording the evidence given before Select Committees were further investigated. Since writing the remarks referred to above, improved types of recording machines have become available, and during the year 3 wire recording machines were purchased for reporting Select Committee evi-

[1] No. 48 of 1948.

[2] *See also* JOURNAL, Vols. XV, 171; XVI, 53.

dence. If regard is had to the fact that the volume of evidence taken before Select Committees, particularly during the latter part of the Session, was extremely heavy, and that no expenditure was incurred on the item "Extra reporting", it was apparent that the machines proved highly successful from a recording point of view.

The introduction of recording machines had undoubtedly proved that it was no longer essential to have fully qualified verbatim shorthand-writers in attendance to perform the arduous task of reporting the evidence given before Select Committees, and it was reported that as machines incorporating further improvements would shortly be available it was felt that future appointments to the Committee section of the Staff need not be limited to individuals possessing high-speed shorthand-writing potentialities.

XIV. THE CONSTITUTION OF INDIA, 1949[1]

By the Editor

THREE important steps were taken during the year under review in this issue of the JOURNAL, in connection with the passing of the Constitution for India (or Bharat), the subject of this Article, namely: (1), New India's relationship with the British Commonwealth of Nations and the King; (2), the legislative action taken by the Parliament at Westminster before India's new Constitution came into force; and (3), the framing of the actual Constitution itself.

This Article will therefore consist of those 3 parts, taken in chronological order.

A difficulty naturally arose in connection with a Nation of the British Commonwealth desiring to remain a member thereof and yet adopting a republic constitution, but a Conference of the Prime Ministers of the Commonwealth, namely, the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon, held in London in April, 1949, declared that they remain united as free and equal members of the Commonwealth "freely co-operating in the pursuit of peace, liberty and progress". The Government of India, in informing the other Commonwealth Governments of the intention of the Indian people to become a sovereign independent republic, "declared and affirmed India's desire to continue her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of its independent member nations and as such the Head of the Commonwealth".

[1] For previous references in the JOURNAL to constitutional matters in India, *see* Vols. III, 23; IV, 33, 76; V, 52; VI, 67, 70, 71; VII, 80-93; VIII, 61-83; IX, 51-61, 138; X, 70, 75; XI-XII, 62-74, 219; XIII, 87-93; XIV, 71-89; XV, 89-99; XVI, 63-64, 187; XVII, 51-56.

Pandit Nehru also, when addressing the two House of the Canada Parliament at Ottawa on October 24, 1949, said:

India would soon become a Republic but she would remain a member of the Commonwealth. Her past co-operation would not cease or alter with her change of status. On the contrary it would have the greater strength of common endeavour, derived from a sense that it was inspired and sustained by the free will of peoples. . . .[1]

AT WESTMINSTER

India (Commonwealth Relations).—On April 28,[2] the Lord President of the Council (Rt. Hon. Herbert Morrison) asked Mr. Speaker's permission to make a statement on behalf of the Prime Minister about the Conference of Commonwealth Prime Ministers just concluded, as follows:

MEETING OF PRIME MINISTERS.

During the past week the Prime Ministers of the United Kingdom, Australia, New Zealand, South Africa, India, Pakistan and Ceylon, and the Canadian Secretary of State for External Affairs have met in London to exchange views upon the important constitutional issues arising from India's decision to adopt a republican form of constitution and her desire to continue her membership of the Commonwealth.

The discussions have been concerned with the effects of such a development upon the existing structure of the Commonwealth and the constitutional relations between its members. They have been conducted in an atmosphere of good will and mutual understanding, and have had as their historical background the traditional capacity of the Commonwealth to strengthen its unity of purpose, while adapting its organisation and procedures to changing circumstances.

After full discussion the representatives of the Governments of all the Commonwealth countries have agreed that the conclusions reached should be placed on record in the following declaration:

The Governments of the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan, and Ceylon, whose countries are united as Members of the British Commonwealth of Nations and owe a common allegiance to the Crown, which is also the symbol of their free association, have considered the impending constitutional changes in India.

The Government of India have informed the other Governments of the Commonwealth of the intention of the Indian people that under the new constitution which is about to be adopted India shall become a sovereign independent republic. The Government of India have however declared and affirmed India's desire to continue her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of its independent member nations and as such the Head of the Commonwealth.

The Governments of the other countries of the Commonwealth, the basis of whose membership of the Commonwealth is not hereby changed, accept and recognise India's continuing membership in accordance with the terms of this declaration.

Accordingly, the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon hereby declare that they remain united as free and equal members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty, and progress.

These constitutional questions have been the sole subject of discussion at the full meetings of Prime Ministers.

[1] *The Times*, October 24, 1949.

[2] 464 *Com. Hans.* 5, s. 369-375.

During the remarks made by the Leader of the Opposition (Rt. Hon. Winston Churchill) in support of the Statement, an hon. member rose on a Point of Order to ask the guidance of Mr. Speaker as to whether they were to have a series of extensive comments on this statement and, if so, on what Motion those comments were to be made.

Mr. Speaker replied as follows:

> One knows perfectly well that on these formal occasions it is the right of Leaders of political parties to state their party's point of view. Rather than have an Adjournment, I gave my consent to this, and I take full responsibility for it. Realising that the Guillotine has to fall at 5.30 and that, therefore, there is little time for discussion on the Steel Bill, I thought this was the quickest way out: that statements should be made by the responsible Leaders of the Opposition parties. It is not for me to tell them how long or how short they should be.

The Leader of the Liberal Party (Rt. Hon. Clement Davies) also expressed himself as supporting the Statement.

The India (Consequential Provision) Act, 1949.—On November 30,[1] a Bill was presented to the House of Commons by the Secretary of State for Commonwealth Relations (the Rt. Hon. Philip Noel-Baker):

> to make provision as to the operation of the law in relation to India, and persons and things in any way belonging to, or connected with India, in view of India's becoming a Republic while remaining a member of the Commonwealth.

Mr. Noel-Baker, in moving 2 *R.* of the Bill, referred to the individual part taken by the Dominions and India as separate members of the League of Nations in Paris in 1919 and to the Balfour Declaration of 1926. To-day, India, like Pakistan and Ceylon, spoke with her own voice in the councils of mankind.

In accordance with the established right of a Commonwealth Nation to determine the form of constitution under which a Commonwealth country should live, India's leaders, with the support of their elected Parliament, had decided that India should become a Republic with a President of its own, and on January 26, 1950, the establishment of the Republic would be declared.

After lengthy preparatory consideration, the Prime Ministers met to deal with the question in April last (*see above*). They recognised that India had the right to decide her own constitution for herself; they warmly welcomed her desire to remain within the Commonwealth; they felt that this was no time to weaken the links between the peace-loving and freedom-loving nations of the world; they realised that the genius of the Commonwealth, the secret of its growth, had been, and still lay, in its power to adapt its law and institutions to the changing relations of the world. They remembered too, that the strength of the Commonwealth had never come from

[1] 470 *Com. Hans.* 5, s. 1540.

written constitutions, rules or elaborate institutional machinery, but had grown with the growth of freedom throughout its lands.[1]

It was implicit in the historic decision that the other links between India and the Commonwealth should not be weakened, that the friendship should be undiminished, that our practical co-operation should continue in the future as in the past, and that India and Indian citizens would continue to enjoy the rights and privileges which they had hitherto enjoyed.

But for this to happen in the United Kingdom there must be legislation by its Parliament. When India ceased to be in law part of His Majesty's Dominions, innumerable provisions in the Statute Book of the United Kingdom would forthwith cease to apply to India and Indians, unless something new was done.

The Government therefore had laid this Bill before the House and had sought to make the Bill sufficiently comprehensive to cover the many questions which might arise.

Clause 1 provided that, when India became a Republic, the whole of the law of the United Kingdom would continue to apply to India, to Indians and to their property as it would have applied had India not become a Republic. This meant that the trade preferences between India and the United Kingdom would be carried on and that, in general, all the provisions of its law would, in respect of Indians and Indian property, remain in force as at present.[2]

In Clause 1 (2) the same applied to Indians and Indian property in Colonies, Protectorates and United Kingdom Trust Territories,[3] and that what was said in subsection (2) was subject to the phrase in subsection (1):

> until provision to the contrary is made by the authority having power to alter that law. . . .

This meant that where the Colonial Legislatures now had the right to do so, they would still retain the right to amend their law as it applied to India, to Indians and their property, but Colonial Legislatures had not the right to legislation in regard to citizenship.

Subsection (2) avoided the need to set out in the Bill the various parts of ss. 30 to 33 of the British Nationality Act, 1948,[4] and the provisions of an Order in Council made in pursuance of that Act.

Clause 1 (3) gave to H.M. Government in the United Kingdom the power to modify, by Order in Council, the existing law to which this Bill extends. It was desirable to take this power because, after the new Indian Constitution had come into force the Indian Parliament might require to pass a good deal of new legislation. That, in turn, might require substantive or formal amendment of United Kingdom law as well.

[1] *Ib.* 1542. [2] *Ib.* 1543. [3] The Clause continues to read: "and also, but so far only as concerns law which cannot be amended by a law of the Legislature thereof, to law of Southern Rhodesia or of any part thereof."—[ED.]

[4] 11 & 12 Geo. VI, c. 56.

Every Order in Council would of course be subject, as subsection (3) made plain, to annulment by negative resolution in either House. There were precedents for subsection (3) in other Acts which dealt with constitutional change. There were also similar provisions in the Ceylon Independence Act, 1947, in the Mandated Territories Act, 1947, and in the Palestine Act of 1948.[1]

Clause 4 laid down that if an Order in Council should lead to an increase in public expenditure out of moneys provided by Parliament, or out of Consolidated Funds, it should be defrayed out of such moneys.[2]

After debate[3] the Bill passed 2 *R.* and was committed to a Committee of the Whole House.

The requisite Financial Resolution was thereupon considered in Committee under S.O. 84 (Money Committees), the King's Recommendation being signified,[4] and the Resolution agreed to.

The House then went into Committee[5] on the Bill when, upon Clause 1 (Operation of existing law in relation to India in view of India's becoming a Republic), an hon. member, referred to the assurance the Minister had made on 2 *R.* about the type of Order in Council which he would introduce and urged that he (the Minister) would not use the Order in Council method for matters which involved vital alteration of the law. As there might be various points in the law needing alteration in a very important manner, the hon. member asked the Minister to give the House a further assurance on the matter, with an illustration of the type of alteration of the law which might follow but which would depend upon the Indian Legislature itself altering its own law. That would particularly be the case in the matter of citizenship.

The hon. member further observed that under subsection 3 (*b*) they read that:

> An Order in Council under this section . . . shall be subject to annulment in pursuance of a Resolution of either House of Parliament.

and asked if the type of Order in Council would be by affirmative or negative Resolution?

Mr. Noel-Baker replied that the Bill only made provision for annulment by a negative Resolution of either House of any Order which might be presented under the Bill.

They had adopted the negative form because it had been used in similar Acts passed in 1947 and 1948; partly because the object they had in view was really quite different from that envisaged when, in the Government of India Act, 1935,[6] provision for affirmative resolution was made. It was then anticipated that changes might be made in the Provincial boundaries and it was only right that such a

[1] *Ib.* 1544; the Acts respectively are: 10 & 11 Geo. VI, c. 7 & 8; and 11 & 12 Geo. VI, c. 27. [2] 470 *Com. Hans.* 5, s. 15. [3] *Ib.* 1545-1570.
[4] *Ib.* 1570. [5] *Ib.* 1907-10. [6] 25 & 26 Geo. V, c. 2.

matter of major importance should be subject to affirmative Resolution.

A considerable number of small matters of detail might arise in which the House would not desire to be troubled with new legislation which would be effected by Order in Council, but if objection was taken then, the Order could, of course, be annulled.

In reply to a further Q., the Minister gave a pledge that the affirmative Resolution would be used for any major matter.

The Bill was then reported without amendment, passed 3 *R.*, was sent to the Lords, agreed to, received the Royal Assent and duly became 12, 13 and 14 Geo. VI, c. 92.

AT NEW DELHI

The Constitution of India, 1949.—It is 15 years ago since the Government of India Act, 1935, which embraced the whole of geographical India and her Princely States, was passed by the Imperial Parliament and as the list of investigating authorities[1] whose extensive activities preceded that Act show, neither labour nor pains were spared in the drafting of the 321 sections and 10 Schedules of that important measure designed for the government of an Empire of 450 million people.

The new Constitution of India, upon which the Fathers of Indian Union have been working so devotedly the last 3 years, is based largely on the 1935 Act, including its federal provisions which never actually came into operation. Constitutions in other parts of the world, both within and without the British Commonwealth, have been referred to in the thorough search and check-up which has been made in order that India may benefit as fully as possible by the practical experience of other countries in the working of their particular constitutions.

The forerunner of the new Constitution was the India Independence Act, 1947,[2] by which, in consequence of the India National Congress and the All-India Moslem League finding no arrangement acceptable to them both, each set up their own Constituent Assembly, sitting in the dual capacity of a Legislature and a body for drawing up their respective Constitutions, the one for the new India containing a population of about 320 million and the other for Pakistan, with a population of about 160 million respectively.

The new Constitution for Pakistan, however, is not yet operative, but it is hoped that a survey thereof will appear in the next issue of the JOURNAL.

It will be seen, therefore, that the framers of the new Constitution for India, aided by the various investigating committees appointed by the India Constituent Assembly, have been faced with a gigantic task.

[1] *See* JOURNAL, Vol. IV, 79, *n.* 1. [2] 10 & 11 Geo. VI, c. 30; *see also* JOURNAL, Vol. XVI, 190.

The new Constitution of India, which was passed by her Constituent Assembly on November 26, 1949, and came into operation on January 26, 1950, consists of 395 Articles, as its sections are called, and 10 Schedules. It is not a short and concise document like that of the U.S.A., but perhaps, as the new Constitution of India is also to be subject to the interpretation of the Courts, the embodiment of so many provisions in *lex scripta* may help reduce the huge record of case law which is such a feature of the United States Constitution.

The most striking principle in the new Constitution of India is, of course, the discontinuance of the Crown as a constituent part of the Constitution and the Legislature and, in its place, the creation of the office of President as head of the State. Although he is not given the powers of the President of the U.S.A., the office of President of the Indian Republic figures prominently throughout its Constitution, but this subject will be referred to below, when dealing with such office.

The fundamental principle of this constitution is government by a President, a Council of Ministers and a Parliament on a federal model consisting, at the centre, of a Council of States, with the features which its name implies, and a House of the People (House of Commons) to which the Council of Ministers is responsible.

What were called the Governor's Provinces now become, as do also the old Princely States, States of the Federation, all, either within their original boundaries or merged with other Princely States or Territories, classified as will be shown, their form of government being more or less, replica in subsidiary form of that of the Union, each State having its Executive, Legislature and, as Head of the State, a Governor or Rajpramukh, as the case may be, with somewhat similar powers to those of the President in respect of the Union of India.

The declaration of the fundamental rights and the directive principles of State policy recalls the American Bill of Rights. Another provision taken from the United States is that the Vice-President of the Republic is *ex officio* Chairman (Speaker) of the Council of States, the Upper House of the Union.

The distribution of the legislative power will be dealt with later, but the residuary power rests with the Federal government, as in Canada.

Strict care has been taken to secure the independence of the Judiciary. An official Attorney-General for the Union and an Advocate-General for each State are provided for, each having voteless voice in the respective Legislatures. All these high officials, together with the Comptroller and Auditor-General, Advocate-General, the Chief Electoral Commissioner are, like the Judges, only removable from office by the respective legislatures, for which detailed procedure is laid down.

With these few prefatory remarks we shall now take the reader through India's new Constitution—as seen from the Parliamentary angle.

In surveying this Constitution we shall, therefore, in accordance with our usual custom, confine ourselves to those provisions which deal with the Legislature, its powers, privileges, members, procedure and other subjects more closely relating to the working of the legislative machine and in doing so we propose to show our references to the Constitution as nearly as possible in their original language, the relevant authorities being given in the footnotes for those desiring further research.

A very interesting publication of the India Constituent Assembly is the draft of the Constitution (showing in the footnotes the origin of many of its provisions), prepared by the Drafting Committee, which consisted of: Dr. B. R. Ambedkar, Chairman; Shri N. Gopalswami Ayyangar; Shri Alladi Krishnaswami Ayyar; Shri K. M. Munshi; Saiyid Mohd. Saadulla; Shri N. Madhava Rau and Shri D. P. Khaitan.[1]

Preamble.—The Constitution opens with the following Preamble:

> We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens:
> Justice, social, economic and political;
> Liberty of thought, expression, belief, faith and worship;
> Equality of status and of opportunity;
> and to promote among them all
> Fraternity assuring the dignity of the individual and the unity of the Nation:
> In our Constituent Assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this Constitution.[2]

The Territory of India.—The first 3 Articles of the Constitution describe India as a Union of States, which latter are classified as shown below.

Citizenship.—A person qualifies for citizenship of India by domicile and birth therein, or either of whose parents were so born; or persons who have been ordinarily resident in India for not less than 5 years. The other rights of citizenship are migration to India from Pakistan and *vice versa*, with Parliamentary power to legislate thereon.[3]

Fundamental Rights.—Part III of the Constitution lays down the Fundamental Rights, as: equality before the law; no discrimination on grounds of religion, race, caste, sex or place of birth; equality of opportunity for public employment; abolition of untouchability and the abolition of titles, which latter may not be conferred by the State, accepted from a foreign State by Indian citizens, or, by a non-citizen holding an office of profit or trust under the State, without the consent of the President.[4]

[1] Published by the Manager, Government of India Press, New Delhi, 1948.
[2] The Constitution of India, p. 1. [3] Arts. 5-11. [4] Arts. 12-18.

All citizens have the right to: freedom of speech; assembly without arms; form associations or unions; free movement; residence, property and practise any profession or calling.

Protection is provided in respect of conviction for offences, of life and personal liberty, against arrest and detention in certain cases. Traffic in human beings, forced labour, and the employment of children below 14 years of age in factories, mines or other hazardous employment are prohibited.[1]

Religion.—Article 25 entitles the citizen to freedom of religion which in "explanations" I and II includes the wearing and carrying of kirpans[2] by those of the Sikh religion, and reference to the Hindu religion includes those professing the Sikh, Jaina or Buddhist religion. Articles 26 and 27 deal with the management of religions affairs and under Art. 28 no religious instruction is provided in any educational institution entirely maintained out of State funds.

Minorities retain their cultural, educational and religious rights.[3] The citizen also possesses right to property and constitutional remedies with special powers to Parliament in regard to members of the Armed Forces and martial law.[4]

Part IV of the Act deals with the directive principles of State policy, social welfare, employment, local government, education, wages, etc., including the separation of the Judiciary from the Executive.[5]

The President.—The executive power is vested in the President of India, exercised by him, either directly or through those subordinate to him, under the Constitution, including the supreme command of the Defence Forces.[6]

The President is elected for 5 years by an electoral college consisting of the elected members of both Houses of Parliament and of the Legislative Assemblies of the States.

In this election every such member: (1) has as many votes as there are multiples of 1,000 in the quotient obtained by dividing the population at the last preceding published census of the State by the total number of elected members of the Assembly and should the remainder be not less than 500, then the vote of each such member is further increased by one; and (2) has the number of votes obtained by dividing the total number of votes assigned to the State Assembly members as above, by the total number of elected mem- of both Houses of Parliament, fractions exceeding $\frac{1}{2}$ being counted as one and other fractions disregarded. The election is conducted according to P.R. with the single transferable vote.[7]

The President can be removed from office for violation of the Constitution. The procedure is by impeachment preferred by either House of Parliament in a Resolution of which at least 14 days' written notice must be given by $\frac{1}{4}$ of the total number of members of

[1] Arts. 19-24. [2] An iron knife kept by Sikhs in their turbans.—[ED.]
[3] Arts. 29, 30. [4] Arts. 31-35. [5] Arts. 36-51. [6] Arts. 52, 53. [7] Arts. 55, 56.

the House, and the Resolution passed by not less than $\frac{2}{3}$ of the total membership of the House. The other House then investigates the charge, or causes it to be investigated, and the President has the right to appear and be represented thereat. Should a Resolution, as a result of the investigation, be passed by not less than $\frac{2}{3}$ of the membership of the investigating House sustaining the charge, the office becomes vacant as from the date of such Resolution. Provision is also made for filling vacancies by election to be held, not later than 6 months from the date of such vacancy, the successor being elected for the full term of 5 years.

The President is, subject to the Constitution, eligible for re-election.[1]

A candidate for the Presidency must be a citizen of India, not less than 35 years of age and qualified for election to the House of the People. He cannot hold an office of profit under any government in India or be subject to their control, but the office of President or Vice-President of the Union, Governor or Rajpramukh or Uparajpramukh of a State or a Union or State Minister is not considered such an office.[2]

Should a candidate be a member of any House of Parliament or of any State, his seat therein becomes vacant on his election as President. He may not hold any other office than President and provision is made for his residence, emoluments, etc.[3] Before taking office he must take the prescribed oath or affirmation before the Chief Justice of India or, in his absence, the seniormost Judge of the Supreme Court. Subsequent Presidential elections must be held before the expiration of the term of office of his predecessor.[4]

Powers of the President.—Throughout the Constitution the President occupies very much the position of the King or, in the Overseas Commonwealth Nations and the responsible Government Colonies, His Deputy, as expressing the Head of the State acting on the advice of his Ministers and executive action is taken in his name.[5]

The President is a constituent part of Parliament and his assent is required for Union legislation;[6] he summons Parliament, prorogues both or either House thereof and dissolves the House of the People;[7] he has the right to address either or both Houses and to send messages to them;[8] he addresses both Houses together at the Opening of every Session;[9] he summons Joint Sittings of the 2 Houses;[10] and except in regard to the States, he holds the prerogative of mercy.[11]

The President is vested with certain other duties. For instance: he has the nomination of 12 members of the Council of States;[12] he may recommend to Parliament amendments to Bills presented for his

[1] Arts. 56, 57, 61. [2] Art. 58. [3] Art. 59. [4] Art. 62. [5] Art. 77.
[6] Arts. 79, 111. [7] Art. 85. [8] Art. 86 [9] Art. 87. [10] Arts. 108, 118.
[11] Art. 72 [12] Art. 80.

assent;[1] he has power to obtain the opinion of the Supreme Court should a question of law or fact of public importance arise and refer to such Court certain disputes between the Union and the States or between the States themselves;[2] acting through a Chief Commissioner, he administers the Class C States;[3] he may nominate not more than 2 persons to represent Anglo-Indians in event of inadequate representation;[4] he exercises certain powers in regard to the official languages of the Union;[5] he may also establish an Inter-State Council to deal with Inter-State disputes;[6] he may issue orders in regard to preventive detention;[7] and he is also vested with special power to issue Proclamations in case of grave national, financial or constitutional emergency.[8]

Legislation by Ordinance.—The President also has power, during Parliamentary Recess, if satisfied that urgency exists, to promulgate Ordinances as the circumstances appear to him to require and such Ordinances have the power of an Act. But every such Ordinance must be laid before both Houses of Parliament and ceases to operate at the expiration of 6 weeks from its re-assembly, or, if before the expiration of that period, Resolutions of disapproval are passed by both Houses and upon the passing of such Resolutions in the Second House.

The President may, however, at any time withdraw such an Ordinance and should the Houses of Parliament assemble on different dates the 6 weeks' period is reckoned from the later of those dates, but any such Ordinance is void should it make any provision which Parliament would not, under the Constitution, be competent to enact.[9]

Emergency Powers.—Part XVIII of the Constitution makes special provision in event of the existence of a state of grave emergency arising which threatens any part of India, whether by war, external aggression or internal disturbance, and the President is vested with power to issue a Proclamation which has to be Tabled in each House of Parliament but which ceases to operate longer than 2 months unless approved by resolution of both Houses.[10]

During such state of emergency the Union Executive is given directive power over the executive power of the States and Parliament is given legislative power on subjects not included in the Union List (I). Any orders by the President must be laid before each House of Parliament.[11]

The President may also issue such Proclamations in case of the failure of constitutional machinery in any State and assume authority over the State, except its Legislature, or declare that the powers of such Legislature shall be exercised by Parliament, even to the extent of suspending in whole or in part any provision of the

[1] Art. 111. [2] Art. 143. [3] Art. 239. [4] Art. 331. [5] Arts. 343-7.
[6] Art. 263. [7] Art. 373. [8] Arts. 354-360. [9] Art. 123. [10] Art. 352.
[11] Art. 354.

Constitution relating to any body or authority in the State, other than its High Court. Similar provision is also made as to the Tabling, etc., of such Proclamations in each House of Parliament.[1]

In the exercise of such powers by the President in respect of any State Legislature, Parliament may confer on the President the legislative powers of a State Legislature. Such emergency legislation, however, ceases to be operative upon the expiration of one year after the issue of the Proclamation by the President unless sooner repealed or re-enacted by the State Legislature.[2]

Where an Emergency Proclamation is in operation, the President may, in regard to the whole or any part of India, by order, suspend the rights of the Courts in regard to the fundamental rights contained in Part III of the Constitution, such orders being Tabled in each House of Parliament.[3] The issue by the President of such Emergency Proclamation may also be applied to a state of financial emergency being threatened to any part of India.[4]

The President is not answerable to the Courts for the exercise of the powers and duties of his office.[5] He is also vested with certain powers in regard to the temporary and transitional provisions of the Constitution as given in Part XXI (Arts. 369-392).

In some instances, as given above, the office of President is associated with executive action taken independently of Parliament. Therefore, notwithstanding the provisions of Article 74 which reads:

> 74.—(1) There shall be a Council of Ministers with the Prime Minister at the head *to aid and advise*[6] the President in the exercise of his functions.
>
> (2) The question whether any, and, if so, what advice was tendered by Ministers to the President shall not be inquired into in any Court—

the President is still left in his mediatory capacity in very intimate relationship with the actual government of the country.

It will be interesting to see, in the course of time, as the new Constitution operates in its various aspects, in how much, or how less, the facility of the President's mediatory influence may detract from the executive power of the Prime Minister and his Cabinet, so fully exercised under the British and our Commonwealth Constitutions, with hereditary Kingship, in person or by Deputy, quite divorced from any form of popular election as well as from the political life of the Nation.

Vice-President.—Provision is made for a Vice-President of India, who is also, *ex officio*, Chairman of the Council of States, except during any period when he is acting as President. The Vice-President acts in the absence or vacancy in the office of President. The Vice-President may not hold any other office of profit, but when acting as President he is entitled to the emoluments, etc., of that office.[7]

[1] Art. 356. [2] Arts. 357, 358. [3] Art. 359. [4] Art. 360. [5] Arts. 361-3.
[6] The italics are mine.—[ED.] [7] Arts. 63-65.

The Vice-President is elected according to P.R. with the single transferable vote, by the members of both Houses of Parliament in Joint Sitting, the ballot being secret. Should the candidate be a member of either House of Parliament, his seat therein becomes vacant on his election as Vice-President. His qualifications for office are the same as those for President,[1] including the term of office, but he resigns office to the President.

The Vice-President is only removable from office by a Resolution of the Council of States passed by a majority of all the then members of the Council of States, of which 15 days' notice is required.[2] Provision is made for vacancy in office, oath and discharging the duties of President.[3] Doubts in regard to the election of Vice-President are decided by the Supreme Court.[4]

Council of Ministers.—This is the Union Executive, with a Prime Minister at the head to aid and advise the President in the exercise of his functions.[5] The Courts are prohibited from inquiring into the advice tendered by Minsiters to the President.

The Prime Minister is appointed by the President, and other Ministers by the President on the advice of the Prime Minister. It is his duty to communicate to the President all decisions of the Council of Ministers, furnish information relating to administrative affairs and proposals for legislation, and submit to the President for the Council any matter decided on by a Minister, which has not been considered by the Council. Ministers hold office during the pleasure of the President, and the Council of Ministers collectively, are responsible to the House of the People. Ministers have to take the prescribed oaths of office and secrecy. A Minister may only continue as such for 6 months without a seat in either House. The salaries and allowances of Ministers are at present as specified in Schedule II.[6]

The Executive Power.—Subject to the Constitution, this power extends to all matters upon which Parliament may legislate and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by any treaty or agreement, but such power to legislate does not, save as expressly provided, extend to any Class A or B States on which their Legislatures have also power to make laws.[7]

Attorney-General of India.—This official, who must be qualified for appointment as Judge of the Supreme Court, is appointed by the President and his duties are those of Legal Adviser, etc., to the Government of India. He has right of audience in all Courts and holds office during the pleasure of the President. The Attorney-General may address or take part in the proceedings of either House or Joint Sitting but he has no vote.[8]

Council of States.—The Second or Upper Chamber consists of

[1] Art. 66. [2] Art. 67. [3] Arts. 68-70. [4] Art. 71. [5] Art. 74.
[6] Arts. 75, 78. [7] Art. 73. [8] Arts. 76, 88.

not more than 238 representatives of the States, distributed as follows:

Class A States: Asam (comprising the Provinces of Assam, the Khan States, and the Assam Tribal Areas) (6); Bihar (21); Bombay (17); Madhya Pradesh (the old Central Provinces & Berar) (12); Madras (27); Orissa (9); Punjab (East Punjab) (8); The United Provinces (31); West Bengal (14).

Class B States: Hyderabad (11); Jammu & Kashmir[1] (4); Madhya Bharat (6); Mysore (6); Patiala and East Punjab States Union (3); Rajasthan (9); Saurashtra (4); Travancore-Cochin (6) and Vindhya Pradesh (4); elected in both cases by the members of the Legislative Assembly of each State by P.R.

Class C States consist of the States and Groups of States Ajmer and Coorg (1); Bhopal (1); Bilaspur and Himachal Pradesh (1); Cooch-Behar (1); Delhi (1); Kutch (1); and Mampur and Tripura (1), chosen in such manner as Parliament may by law prescribe.

The total representation of all States is 205.

Twelve members are nominated by the President on account of their special knowledge in respect of literature, science, art and social service.[2]

Provision is made for the admission of new States and the boundaries and names of existing States may be changed.[3]

The Council of States is not subject to dissolution, about $\frac{1}{3}$ retiring every second year.

House of the People.—This House consists of 500 members directly elected by the people on the basis of one member for every 750,000 of the population and not more than one member for every 500,000 of such population, from the States above-mentioned, divided into territorial constituencies.[4]

In addition, the Anglo-Indian community[5] may, if the President is of opinion that they are not adequately represented in the House of the People, nominate not more than 2 members from such community to that House.[6]

Seats are reserved in the House of the People also for the Scheduled Castes, the Scheduled Tribes (except those in the tribal areas of Assam) and the Scheduled Tribes in the autonomous districts of Assam on a population basis.[7]

Unless sooner dissolved this House continues for 5 years from the date appointed for its first meeting, provided that such period may be extended while a Proclamation of Emergency is in operation, for not exceeding one year at a time and not extending in

[1] The Accession of this State is still in dispute.—[ED.] [2] Arts. 80, 83, Sched. IV. [3] Arts. 1-4, 391, Sched. I. [4] Arts. 81, 82, 331.
[5] *See* p. 255 hereof. [6] Art. 331. [7] Art. 330.

any case beyond 6 months after such Proclamation has ceased to operate.[1]

Sessions.—Parliament is summoned to meet at least twice every year and 6 months must not intervene between Sessions.[2] Either one or both Houses may be summoned to meet and the President may then address either or both Houses. He may also send messages to either or both Houses, whether in respect of a Bill then pending or otherwise, which the House must consider with all despatch.[3]

At the opening of every Session the President addresses both Houses together and informs them of the causes of their summons and discussion on such address has precedence.[4]

Franchise.—There is one general electoral roll for every territorial constituency to either House of Parliament or of a State and no person is ineligible for inclusion on grounds only of religion, race, caste, sex or any of them.[5]

The franchise for the House of the People and the States Legislative Assemblies is based on adult suffrage and Indian citizenship, disqualifications being non-residence, insanity, crime or corruption or illegal practice.[6]

Members of both Houses.—The qualification for membership is: citizenship of India, and a minimum age limit of 30 years for the Council of States and 25 years for the House of the People, together with such other qualifications as may be prescribed by law.[7]

Disqualifications for membership are: holding an office of profit (except as Minister) whether under the Government of India or of any State; unsound mind; undischarged insolvent; citizenship of any Foreign State; or, disqualified under any law made by Parliament.[8]

Questions as to disqualifications are referred to the President, whose decision shall be final, but before doing so he must obtain the opinion of the Election Commission,[9] upon which he must act.

A member's seat in Parliament becomes vacant: should he remain or become a member of the other House, or of any House of a State Legislature except a member of a State coming under Class C of Schedule I; should he become disqualified as above; or, resign his seat to the Chairman or Speaker, as the case may be. His seat may be declared vacant by his House should he be absent from sittings of his House for 60 days without leave, excluding prorogation or adjournment for more than 4 consecutive days.[10]

Oath.—Before taking their seats, members are required to take and subscribe to the prescribed Oath, or make affirmation, before the President, or someone appointed on his behalf.[11]

The penalty for a member of either House sitting or voting when

[1] Art. 83. [2] Art. 85. [3] Art. 86. [4] Art. 87. [5] Art. 325.
[6] Art. 326. [7] Art. 84. [8] Arts. 101, 202. [9] Art. 103.
[10] Art. 101. [11] Art. 99.

disqualified is Rs. 500 for each day on which he so sits or votes, such sum being recoverable as a debt to the Union.

The salaries and allowances of members are determined by Parliament, but in the meantime those in force in the Constituent Assembly apply.[1]

Presiding Members.

Chairman and Deputy-Chairman of the Council of States.—The Presiding Member of the Council of States is the Vice-President of India, *ex officio*. The Deputy-Chairman is chosen by the Council.

The office of Deputy-Chairman becomes vacant should he cease to be a member or resign his office, or be removed thereupon by Resolution, of which 14 days' notice must be given. In the event of vacancy in the office of the Chairman, or should he be acting as President, his duties are performed by the Deputy-Chairman, or should that office be vacant, by a member of the Council of States appointed by the President.

During the absence of the Chairman from the Council, the Deputy-Chairman, or if he is also absent, such person as the Council may determine, acts as Chairman.

Neither the Chairman nor the Deputy-Chairman may preside while a Resolution for his removal from office is under consideration.

The Chairman has the right of speech and to take part in the proceedings of the Council while any Resolution for the removal of the Vice-President from his office is under consideration in the Council, but he may not vote either on such Resolution or on any other matter during such proceedings.[2]

Speaker and Deputy-Speaker.—These Presiding Members of the House of the People are chosen by the House, and the procedure in event of resignation or removal from office and the powers of the Deputy-Speaker are as already described in connection with the office of Chairman and Deputy-Chairman of the Council of States. On dissolution of the House of the People, the Speaker does not vacate office until immediately before the first meeting of the House after its dissolution.[3]

Article 97 makes provision for the salaries of these officers and their Deputies.

Parliamentary Secretarial Staff.—Provision is made for a Secretariat of Parliament (including the equivalent of the "Clerks at the Table"), both in regard to the posts common to both Houses or either House. Each House has a separate secretarial staff. Provisionally, appointment to these posts is in the hands of the President after consultation with the Presiding Members of the two Houses.[4]

Parliamentary Procedure.

Right of Ministers and Attorney-General to speak in both Houses.—Every Minister and the Attorney-General has the right to speak

[1] Arts. 104, 106. [2] Arts. 89-92. [3] Arts. 93-96. [4] Art. 98.

and take part in the proceedings of either House, at any Joint Sitting of the two Houses and at any committee of Parliament of which he may be named as a member, but is not under this Article entitled to vote.[1]

Rules.—Each House of Parliament may, subject to the Constitution, make rules for its procedure and conduct of business. Until such rules are made, those of the Legislature of the Dominion of India apply subject to such modifications and adaptations as may be made by the Chairman and the Speaker.

The President, after consultation with the Chairman and the Speaker, may make rules in regard to Joint Sittings and inter-House communications.[2]

Voting.—Save as is otherwise provided in the Constitution, all questions at any sitting of either House, are determined by majority of votes of the members present and voting other than the Speaker or the person acting as Chairman or Speaker, each of whom or those acting for them, however, have only a casting vote in case of an equality of votes. At a Joint Sitting the question is decided by a majority of the total number of members of both Houses present and voting.[3]

Quorum.—Until Parliament otherwise provides the quorum of either House is $\frac{1}{10}$ its total membership and the respective Presiding Members are vested with certain powers in case of want of a quorum.[4]

Financial Procedure.—Notwithstanding the rules made as above, Parliament may, for the timely completion of financial business, regulate by law the procedure of, and conduct of business in, each House of Parliament in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of India.[5]

Article 112 provides that the President shall cause to be laid before both Houses the annual financial state of receipts and expenditure, but the following are charged upon the Consolidated Fund of India: emoluments, etc., of the President; salaries of the Chairman, Speaker and their Deputies; debt charges, etc., judges' salaries and pensions; salary, etc., and pension of the Comptroller and Auditor-General of India; sums in satisfaction of any judgment of a Court, decree or award of any Court or arbitral tribunal; or any other expenditure declared by the Constitution or law thereunder, to be so charged.[6] The expenditure charged as above, however, although not submitted to the vote of Parliament may be discussed therein. Other expenditure is submitted in the form of demand for grants, to the House of the People who have power of assent, refusal or reduction thereof.

No demand for a grant may be made except on the recommendation of the President.[7]

[1] Art. 88. [2] Art. 118. [3] Arts. 100, 108. [4] Art. 100.
[5] Art. 119. [6] Art. 112. [7] Art. 113.

Provision is made for Appropriation Bills, but no amendment may be made thereto which will have the effect of varying the amount or altering the destination of any grant or varying the amount of any expenditure charged on the Consolidated Fund of India and the decision of the Presiding Member as to whether an amendment is admissible under this Article (114 (2)) is final. No money may be withdrawn from such Fund except under appropriation made by law under such Article.[1]

Provision is also made for supplementary, additional or excess grants, and for votes on account and of credit and exceptional grants.[2]

Bills.—Subject to the procedure in respect of Money Bills, a Bill may originate in either House but must be agreed to by both. A Bill does not lapse on prorogation of the Houses and a Bill pending in the Council of States which has not been passed by the House of the People does not lapse on dissolution, but a Bill pending in the House of the People or which has been passed by such House and is pending in the Council of States, subject to the provisions in regard to Joint Sittings, lapses on a dissolution of the House of the People.[3]

Money Bills.—A Bill is defined as a Money Bill if it contains only provisions dealing with taxation; Government loans; the Consolidated or Contingency Funds of India, appropriations therefrom; expenditure or increased expenditure charged on such Consolidated Fund; the receipt of money on account of such Fund or of the public account of India or the custody or issue of such money; or the audit of the accounts of the Union or of a State; or any matters incidental to the above.

No "Money Bill" or amendment providing for any matter specified in Article 110 (1), (*a*) to (*f*) may be introduced or moved without the President's recommendation and no such Bill or amendment may be introduced or moved in the Council of States.

No President's recommendation, however, is required for the moving of an amendment for the reduction or abolition of any tax.

No Bill involving expenditure from the Consolidated Fund of India may be passed by either House unless the President has recommended to that House the consideration of the Bill.[4]

However, provisions in a Bill imposing fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes, do not constitute the Bill a Money Bill. Should any question arise as to whether or not a Bill is a Money Bill, the decision of the Speaker is final.

Every Money Bill on transmission from the House of the People to the Council of States under Article 109 (*see below*) must be en-

[1] Art. 114. [2] Arts. 115, 116. [3] Art. 107. [4] Art. 117.

dorsed by a certificate signed by the Speaker that it is a Money Bill, and so presented to the President for assent.[1]

A Money Bill may not originate in the Council of States.

If a Money Bill passed by the House and transmitted to the Council for its recommendations is not returned to the House within 14 days it is deemed to have been passed by both Houses at the expiration of such period in the form in which it was passed by the House.[2]

Requests by Council of States on Money Bills.—After a Money Bill has passed the House of the People it is transmitted to the Council of States for its recommendations and such Council must, within 14 days from its receipt of the Bill, return it to the House of the People with its recommendations and such House may thereupon either accept or reject all or any of the recommendations of the Council of States.

If the House of the People accepts the recommendations of the Council of States, the Money Bill is deemed to have been passed by both Houses, with the amendments recommended by the Council of States and accepted by the House of the People.

Should such House not accept any of the recommendations of the Council, the Money Bill is deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.[3]

Joint Sittings: Disagreement between the two Houses on Non-Money Bills.—If, after a Bill, not being a Money Bill, has been passed by one House and transmitted to the other, it is rejected by the other House, or, should the Houses have finally disagreed on the amendments to the Bill; or more than 6 months have elapsed from the receipt of the Bill by the other House without the Bill being passed by it, the President may, unless the Bill has lapsed on dissolution of the House of the People, notify both Houses by message, should they be sitting, or by public notification if they are not sitting, his intention to summon them to meet in Joint Sitting, to deliberate and vote on the Bill. The Joint Sitting is presided over by the Speaker or, in his absence, such person as may be laid down by rules made by the President after consultation with the Chairman and the Speaker. In reckoning the 6 months no account is taken of prorogation or adjournment over 4 consecutive days.

When the President has notified his intention of summoning a Joint Sitting, neither House may proceed further with the Bill, but the President may at any time after such notification summon the 2 Houses to meet in Joint Sitting for the purpose specified in the notification.

If at the Joint Sitting the Bill, with such amendments, if any, as are agreed to in Joint Sitting is passed by a majority of the total number of members of both Houses present and voting it shall be

[1] Art. 110. [2] Art. 109. [3] Art. 109.

deemed to have been passed by both Houses; provided that at a Joint Sitting:

(*a*) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(*b*) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed; and the decision of the person presiding as to the amendments which are admissible under this Clause shall be final.

A Joint Sitting may be held under this Article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.[1]

Privilege, etc.—The powers, privileges and immunities of Parliament and its members are such as defined by Parliament by law and until so defined are those of the House of Commons of the Parliament of the United Kingdom and of its members and committees, at the commencement of the India Constitution.

Subject to the Constitution and to the Standing Orders regulating the procedure of Parliament, there is freedom of speech in Parliament and no member thereof is liable for anything said or done by him in Parliament or any committee thereof or in respect of any parliamentary publication. The above provisions apply also to persons who, under the Constitution, have the right of speech but not of vote in Parliament or any Committee thereof.[2]

No officer or member of Parliament in whom powers are vested under the Constitution for regulating the proceedings or the conduct of business, or of maintaining order in Parliament, shall be subject to the jurisdiction of any Court in the exercise of such powers.[3]

The validity of any proceedings in Parliament may not be called into question on the ground of any alleged irregularity of procedure.

Assent to Bills and President's Recommendation.—When a Bill has been passed by both Houses it is presented to the President, who declares or withholds his assent thereto, but he may, as soon as possible after such presentation, return the Bill (if it is not a Money Bill) to the Houses with a message requesting reconsideration of the Bill or any specified provisions thereof and "in particular will consider the desirability of introducing any such amendments as he may recommend in his message". When the Bill is returned, the Houses must reconsider it accordingly, and if it is passed again by the Houses with or without amendment and presented to the President for assent, "the President shall not withhold assent therefrom".[4]

Judges in relation to Parliament.—No discussion may take place in Parliament with respect to the conduct of any Judge of the Supreme or High Courts in the discharge of his duties except upon a

[1] Arts. 108, 118 (4). [2] Art. 105. [3] Art. 122. [4] Art. 111.

Motion for presenting an address to the President for the removal of a Judge, which can only be effected by an order of the President, passed after an address by each House of Parliament, supported by the total membership of that House and by a majority of not less than ⅔ of the members of that House present and voting, has been presented to the President in the same Session for such removal on the ground of proved misbehaviour or incapacity.

Parliament may, by law, regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity above-mentioned.[1]

Languages.

Union.—Several Articles are devoted to this subject. India is a country of many languages, but the Constitution declares the official language of the Union to be Hindi in Devanagari script, with the international form of Indian numerals. For 15 years from the commencement of the Constitution, however, English will continue to be the official language, but the President may, during that period, by order, authorise the use of Hindi in addition to English and of Devanagari numerals, for official purposes. After the expiration of that period, Parliament may by law provide for the use of English or the Devanagari numerals for such purposes as may be specified by law.[2]

After 5 years (as above) and thereafter after 10 years, the President may, by order, appoint a Commission, to represent the following languages: Assamese; Bengali; Gujarati; Hindi; Kannada; Kashmiri; Malayalam; Marathi; Oriya; Punjabi; Sanskrit; Tamil; Telegu; and Urdu; to make recommendations to the President in regard to the official language, with due regard to the industrial, cultural and scientific advancement of India and the just claims and interests of those belonging to the non-Hindi-speaking areas in regard to the Public Services.

A Committee of 20 members of the House of the People and 10 of the Council of States elected by the members of the respective Houses and according to P.R., will examine the recommendations of the Commission and report to the President thereon, who may issue directions in regard thereto.[3]

Subject to Articles 346 and 347, a State Legislature may by law adopt any one or more of the languages in use in the State, or Hindi, as the official language or languages, but until such Legislature otherwise by law provides, English will continue to be used.[4]

The official language for the Union is also the official language both inter-State and between a State and the Union, but 2 or more States may decide upon Hindi as their inter-State language.[5]

On demand the President may, if satisfied that a substantial pro-

[1] Arts. 121, 124 (4), (5). [2] Art. 343. [3] Art. 344, Sched. VIII.
[4] Art. 345. [5] Art. 346.

portion of a State population desires the use of any language spoken by them to be recognised by that State, direct it to be there officially recognised.[1]

Notwithstanding anything said above, until Parliament otherwise provides, English is to be used (*a*) in the higher Courts; (*b*) for the authoritative texts of all Bills, whether in Union or State Houses; (*c*) of all Acts passed by either House or promulgated by the President, Governor or Rajpramukh of a State; and (*d*) of all orders, etc., issued under the Constitution or any law made by Parliament or State Legislature, subject to special reservations as to the use of Hindi in the High Courts and the use of English in State Legislatures.[2]

Within 15 years from Union, no Bill or amendment providing for the language to be used under Article 348 (1) may be introduced in either House without the sanction of the President after his consideration of the recommendations of the Language Commission.[3]

However, notwithstanding anything in Part XVII of the Constitution as given above but subject to the provisions of Article 348, business in Parliament must be transacted in Hindi or English, provided that the Presiding Member in either House of Parliament may permit any member who cannot adequately express himself in Hindi or English to address the House in his mother tongue, but unless Parliament otherwise provides by law, Article 120 will, after 15 years from Union, have the effect as if "or in English" were omitted therefrom.[4]

Comptroller and Auditor-General of India.—This officer is appointed by warrant under the President's hand and seal and is only removable on like grounds to a Judge of the Supreme Court (*see above*). The Comptroller and Auditor-General is required on appointment to take the same oath as Judges. His salary is fixed by law and his leave, pension, age of retirement, etc., may not be varied to his disadvantage. After holding office he is not eligible for further service under the Union or any State. Conditions of service in his Department are laid down by rules made by the President after consultation with the Comptroller and Auditor-General, and the cost of this Department is a direct charge on the Consolidated Fund of India.[5]

Parliament prescribes the duties of this officer, both in regard to the Union and the States.[6]

The accounts of the Union and the States are to be kept as the Comptroller and Auditor-General may, with the approval of the President, provide and his reports thereon are submitted to the President, who causes them to be laid before each House of Parliament. Those in regard to the States are to be similarly dealt with by the respective Governor or Rajpramukh.[7]

[1] Art. 347. [2] Art. 348. [3] Art. 349. [4] Art. 120. [5] Art. 148.
[6] Art. 149. [7] Arts. 150, 151 (2).

The Legislative Power.—Subject to the Constitution, Parliament may legislate for the whole or any part of India and in the same way a State Legislature for the State Laws made by Parliament may be extra-territorial.[1]

Distribution of the Legislative Power between the Union and the States.—This is dealt with in Part XI of the Constitution and the subjects of Legislation are contained in Schedule VII to the Constitution, of which the following is a brief summary:

List I—"The Union List"—contains 97 items, including such subjects as: Defence; Intelligence; Foreign Affairs; Diplomatic Corps; U.N.O.; Treaties; War and Peace; Foreign Jurisdiction; Citizenship and Nationalisation; Extradition; Emigration and Immigration; Pilgrimages outside India; Piracy, etc.; Railways; National Highways; Shipping; Lighthouses; Ports; Airways; Transport; Posts and Telegraphs; Public Debt; Currency; Foreign Loans; Reserve Bank; Commerce and Inter-State trade; Banking; Insurance; Stock Exchanges; Patents; Weights and Measures; Standard of qualities of goods; Oilfields; Mines; Inter-State Rivers; Fisheries; Salt; Opium; Films; Industrial Disputes; National Institutions; Scientific and Technical Training; Historical Monuments; Surveys; Census; the Public Service; Elections (both Union and States); Union Parliament Salaries and Parliamentary Privileges; Presidents' and Governors' Salaries, etc., Audit (both Union and States); Supreme and High Courts; Police; Inter-State Immigration; Taxes on Income (other than that on Agriculture); Customs and Excise Duties; and taxes on Corporations, Assets (other than Agriculture), Estates, Succession; Transport; Stamps; Newspapers and advertisements therein, and any matters not enumerated in Lists II or III.[2]

Parliament has exclusive power to legislature on any of the abovementioned subjects.[3]

List II—"The State List"—contains 66 items, including such subjects as: Public Order (excluding Defence); Police; Administration of Justice; Prisons, etc.; Local Government; Public Health; Pilgrimages in India; Intoxicating Liquor; Poor Relief; Burials, etc.; Education (subject to Lists I and III); Libraries, etc.; Communications (subject to Lists I and III); Agriculture and Stock; Pounds; Water; Land and Forests; Protection of Wild Life; Fisheries; Courts of Wards (subject to List I); Mines (subject to List I); Industries (subject to List I); Gas; Trade and Commerce and Production, etc., of Goods (subject to List III); Markets; Weights and Measures (except Standard); Money Lending; Inns; Incorporation of Societies, etc. (subject to List I); Theatres, etc.; Betting and Gambling; State Works; Acquisition of Property (subject to List I); State Elections subject to Laws made by Parliament); State Legislature Salaries and Privileges; State Ministers' Salaries, etc.; State Public Services and Pensions; State Public Debt;

[1] Arts. 245, 246. [2] Sched. VII. [3] Art. 246 (1).

Treasure Trove; Land Revenues; Taxes on agricultural income; Lands and Buildings; Minerals; Goods entries into Local Areas; Electricity, Purchase; Advertisements (other than in Newspapers); Roads and Waterways; Vehicles; Animals and Boats; Tolls; Properties, etc.; Capitation and Luxuries and Entertainments; Succession and Estate Duties on Agricultural Land and Excise and Stamp Duties.

Subject to Article 246 (1) and (2) the Legislature of any Class A or B State has exclusive power to legislate for such State or any part thereof in regard to any subject given in List II.[1]

List III—Concurrent List—contains 47 items, including such subjects as: Criminal Law (subject to Lists I or II) and Procedure; State Bureaucratic Detention, etc., and Inter-State Removal of Prisoners; Marriage, etc.; Transfer of Property other than Agricultural Land; Contracts; Citizenship; Wrongs; Bankruptcy; Trusts and Official Trustees; Evidence and Oaths; Civil Procedure and Contempt of Court; Vagrancy and Nomadic Tribes; Lunacy; Prevention of Cruelty to Animals; Adulterations; Drugs and Poisons (subject to List I with respect to opium); Economic and Social Planning; Industrial Monopolies; Trade Unions; Social Security; Welfare; Vocational and Technical training of Labour; Professions; Relief and Rehabilitation of Displaced Persons by reason of the setting up of the Dominions of India and Pakistan; Charities; Interstate Contagious Diseases; Vital Statistics; Minor Ports; Shipping on Inland Waterways (subject to List I); Trade and Commerce; Price Control; Mechanical Vehicles; Factories; Electricity; Newspapers; Archæological Sites; Custody of Evacuee Property; State Compensation for Property; Recovery of State Claims; Certain Stamp Duties; Statistics, etc., under Lists I or II; and the Courts, other than the Supreme Court.

Subject to Article 246 (3) Parliament, and subject to Article 246 (1) the Legislature of any Class A or B State may legislate in regard to any matter mentioned in List III.[2]

Parliament has power to legislate with regard to any matter for any part of India except in Class A or B States notwithstanding that such matter is enumerated in List II.[3]

Parliament also has power to legislate with regard to any matter, including taxation, not enumerated in Lists II or III.[4]

Parliament may also legislate with respect to any matter in List II, should such matter have been declared by the Council of States by Resolution supported by not less than $\frac{2}{3}$ of its members present and voting to be in the national interest, and such a Resolution remains in force for one year unless extended in the same manner for another year, but such a law ceases to be in force 6 months after the Resolution expires.[5]

[1] Sched. VII and Art. 246 (3). [2] Sched. VII and Art. 246 (2). [3] Art. 246 (4).
[4] Art. 248. [5] Art. 249.

Parliament has also power to legislate on any matter in List II should an emergency Proclamation be in operation.[1]

Parliament may also legislate for 2 or more States by consent and adoption of such legislation by any other State, subject to the passing of Resolutions of all the Houses of such States.[2]

Parliament also has power to legislate in regard to international agreements.[3]

Part XI deals with the relations between the Union and States: For Legislation Lists (*see above*).

Inter-State Council.—Provision is made for the setting up of an Inter-State Council and its Procedure, should it appear to the President that it would be in the public interest: to inquire into any dispute between States, to investigate any Union-State or Inter-State matter; and to make recommendations.[4]

Part XII of the Constitution deals with Finance, Property, Contracts and Suits;[5] Part XIII with Trade, Commerce and Intercourse within India;[6] and Part XIV with the Public Services under the Union and the States.[7]

Electoral.—Part XV deals with elections to Parliament and the Legislatures of all the States, as well as elections to the office of President and Vice-President, the composition and powers of the Election Commission and the Chief Election Commissioner. It also covers the appointment, before each general election to the House of the People and the Legislative Assembly of each State and before the biennial election to the State Legislative Councils, of Regional Commissioners to assist the Election Commission. The office of Chief Election Commissioner is entrenched in the same manner as that of a Judge of the Supreme Court.[8]

Where such provision has not been made by Parliament, State Legislatures may legislate in connection with elections to either House thereof.[9]

The validity of any electoral law may not be questioned in any Court and no election to either House of Parliament or to any House of a State Legislature may be called in question, except by election petition presented to such authority and in such manner as provided by law made by the appropriate Legislature.[10]

The States:

Class A States.

Part VI of the Constitution deals with the Class A States,[11] the government of which is very much a counterpart of that of the Union Government in regard to India and may briefly be described as follows:

[1] Art. 250. [2] Art. 252. [3] Art. 253. [4] Art. 263. [5] Arts. 264-300. [6] Arts. 301-7. [7] Arts. 308-323. [8] Arts. 324, 5. [9] Art. 328. [10] Art. 329. [11] Art. 152.

Governor.—In each such State the executive power is vested in a Governor appointed by warrant of the President and holds office during his pleasure for 5 years. A Governor must be an Indian citizen and not less than 35 years of age. His conditions of office are similar to those of the President under Articles 56, 59 and 77, in respect of India. He is required to take the prescribed oath, or affirmation of office, and is vested with the Prerogative of Mercy.[1]

In any contingency not provided for in Chapter II of Part VI, however, the President may make such provision as he may think fit for the discharge of the functions of Governor.[2]

The Governor has the same rights in regard to addressing and sending messages to the Houses of the Legislature, as already described in connection with the President and Parliament.[3]

Executive Power.—The Executive Power of a Class A State extends to all matters on which a State Legislature thereof has power to make laws, subject to the powers conferred by the Constitution on Parliament and the Union or its authorities.[4]

Council of Ministers.—In each Class A State there is a Council of Ministers (its Head being designated "Chief Minister") with similar powers, safeguards and duties in connection with the State, as those of the Union Council of Ministers in regard to the Union.[5]

The Chief Minister, whose duties in respect of his State are very similar to those of the Prime Minister under Article 78, is appointed by the Governor, and the other Ministers are appointed by him on the advice of the Chief Minister, all holding office during pleasure. In the Class A States of Bihar, Madhya Pradesh and Orissa there is a Minister in charge of tribal welfare, who may also be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

Otherwise, the provisions applicable to Class A State Ministers are very similar to those of Union Ministers under Article 74.[6]

Advocate-General.—In each State there is an Advocate-General with similar powers and duties in the State to those of the Attorney-General in respect of India under Article 76, except that the Advocate-General does not have, in the performance of his duties, the right of audience in the Courts.[7]

Legislatures.—These consist, in the Class A States of Bihar, Bombay, Madras, Punjab, the United Provinces and West Bengal, of 2 Houses, a Legislative Council and a Legislative Assembly and in the Class A States of Assam, Madhya Pradesh and Orissa, of only a Legislative Assembly.[8] Parliament, however, may abolish or create a State Legislative Council, should the Legislative Assembly thereof so decide by Resolution of the Legislative Assembly passed by a majority of its total membership and by majority of not

[1] Arts. 153-159, 161, 166. [2] Art. 160. [3] Arts. 175, 176. [4] Art. 162.
[5] Art. 163. [6] Art. 164. [7] Art. 165. [8] Art. 168.

less than $\frac{2}{3}$ of the members thereof present and voting. No such law shall be an amendment of the Constitution under Article 368.[1]

Legislative Councils.—In the bicameral Class A States, membership of the Legislative Council must not exceed $\frac{1}{4}$ that of its Legislative Assembly, with a minimum of 40 and until Parliament otherwise provides, the Legislative Council is elected by electorates, in the following proportions:

(*a*) $\frac{1}{3}$ consisting of members of municipalities, district boards and such other local authorities as Parliament may specify;

(*b*) $\frac{1}{12}$ consisting of persons residing in the State who have been for at least 3 years graduates of an Indian University, or for 3 years in possession of qualifications prescribed by law of Parliament as the equivalent.

(*c*) $\frac{1}{12}$ consisting of persons who have been for at least 3 years teaching in not lower than secondary educational institutions in the State, as prescribed by law of Parliament.

(*d*) $\frac{1}{3}$ by members of the Legislative Assembly of the State from among non-members thereof

—all chosen by Territorial Constituencies as prescribed by law of Parliament and by P.R.

The remaining members of the Legislative Council are nominated by the Governor and consist of persons with a special knowledge, or practical experience in: literature, science, art, co-operative movement and social service.[2]

A Legislative Council is not dissoluble but as nearly as possible $\frac{1}{3}$ of its members retires, as soon as may be, at the end of every second year, as Parliament may by law prescribe.[3]

Legislative Assemblies.—The representation of each territorial constituency is based on its population at the last preceding published census, and, save in the autonomous districts of Assam and in the constituency of the Shillong cantonment and municipality, it is on a scale of not more than one member for every 75,000 of the population, with a minimum of 60 and maximum of 500. The ratio between the members allotted to, and the population of, each constituency as at the last such census must be the same throughout the State.

Upon the completion of each census, the constituency representation is readjusted as Parliament may determine but does not operate until the dissolution of the existing Assembly.[4]

Notwithstanding the provisions of Article 170, the Governor, or Rajpramukh, of any State, may, if he is of opinion that the Anglo-Indian Community needs representation in any State Legislative Assmbly and is not adequately represented therein, nominate such number of members of the Community to the Assembly as he considers appropriate.[5]

[1] Art. 169. [2] Art. 171. [3] Art. 172. [4] Art. 170. [5] Art. 333.

Seats are reserved for the Scheduled Castes and Scheduled Tribes (except in regard to the Scheduled Tribes in the Tribal Areas of Assam) in the Legislative Assembly of every Class A and B State.

Seats are also reserved for the autonomous districts in the Legislative Assembly of Assam.

The number of seats reserved for the Scheduled Castes or Scheduled Tribes in any State Legislative Assembly must bear as nearly as may be, the same proportion to the total number of seats in the Assembly, as the population of such Castes or Tribes bears to the population of the State, with special provision in regard to Assam.[1]

Members of both Houses.—Similar provisions are made as in respect of the qualification, disqualification and vacation of seats, salaries and the taking of oaths by members, as well as the penalties for sitting or voting when disqualified, as are provided in Articles 84, 99, 101, 102, 104 and 106 in respect of members of Parliament.[2]

Sessions.—Like provision is made to that already described in respect of Parliament under Article 85.[3]

The Presiding Members.—The Chairman and Deputy-Chairman of each Legislative Council and the Speaker and Deputy-Speaker of each Legislative Assembly are chosen by their respective Houses and the same provisions in regard to their offices apply as in the case of the Speaker of the House of the People under Articles 93-97.[4]

State Legislative Secretariat.—Similar provision is made, as for the Secretariat of Parliament under Article 98.[5]

Parliamentary Procedure.

Right of Ministers and Advocate-General to speak in both Houses.—These persons enjoy the same rights as the Ministers and Attorney-General for India under Article 88.[6]

Rules, Quorum, Voting, Freedom of Speech, Powers and Privileges, Judges, Language in relation to Parliamentary Procedure.—Similar provision is made in regard to these subjects as provided in respect of Parliament under Articles 105, 118-122.[7]

Financial Procedure.—This is similar, with the substitution of Governor for President, to the provisions made in regard to Parliament under Articles 119, 112-117.[8]

Bills and Money Bills and Council Requests on Money Bills.—These are dealt with on practically the same lines as those already described in regard to the 2 Houses of Parliament under Articles 107 and 110.[9]

Joint Sittings: Disagreement between the two Houses on Bills.—*Non-Money Bills.*—If, after such a Bill has been passed by a State Legislative Assembly and sent to the Legislative Council, it rejects the Bill; or more than 3 months elapse from the date on which the

[1] Art. 332. [2] Arts. 173, 188, 193, 208. [3] Art. 174. [4] Arts. 178-186.
[5] Art. 187. [6] Art. 177. [7] Arts. 189, 194, 208-212. [8] Arts. 202-7, 209.
[9] Arts. 196, 199.

Bill is laid before the Council without the Bill being passed by it; or the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, such Assembly may pass the Bill again in the same or in any subsequent Session, with or without such amendments, if any, made, suggested or agreed to by the Council and then send the Bill as so passed to the Council. Then, if a Bill has been passed for the second time by the Assembly and sent to the Council the Bill is (*a*) rejected by the Council; or (*b*) more than one month elapses from the date on which the Bill is laid before the Council without the Council passing it; or the Bill is passed by the Council to which the Assembly will not agree—the Bill is deemed to have been passed by the Legislature in the form in which it passed the Assembly for the Second Time with such amendments, if any, as have been made or suggested by the Council and agreed to by the Assembly.[1]

On Money Bills.—The procedure is the same as that provided by Article 109 in respect of Parliament,[2] and "Money Bill" is defined in Article 199.

Assents to Bills and Governor's Recommendations.—When a Bill has passed the Legislative Assembly, or, in the case of the bicameral Legislatures, has also passed the Legislative Council, it is presented to the Governor, who assents thereto, withholds his assent or reserves it for the consideration of the President. But the Governor may return a non-Money Bill by message requesting the House, or Houses, as the case may be, to reconsider the Bill or any specified provisions thereof and, in particular, to consider the desirability of introducing any such amendments as he may recommend in his message, and the House, or Houses, must reconsider the Bill accordingly. Then, when the Bill is again passed by the House, or Houses, with or without amendment, it is presented to the Governor for assent, which he may not withhold.

The Governor, however, may not assent to, but must reserve for the consideration of the President, any Bill, which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is, by the Constitution, designed to fill.[3]

Reserved Bills.—When a Bill is reserved by a Governor for the consideration of the President, he must declare, either that he assents thereto or withholds his assent, provided that, in the case of a non-Money Bill, the President may direct the Governor to return the Bill to the House, or Houses, of the State Legislature together with such message as mentioned above. Then, when the Bill is so returned, the House, or Houses, must, within 6 months, reconsider it, and if it is again passed by the House or Houses, with or without amendment, it is again presented to the President for his consideration.[4]

[1] Art. 197. [2] Art. 198. [3] Art. 200. [4] Art. 201.

Legislative Power of the Governor.—The same provision is made in regard to the power of the Governor to legislate by Ordinance, as that vested in the President in respect of the Union, as already described in respect of Article 123.

In regard to the exercise of this power in the Class A States, however, it is provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if:

(*a*) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature; or

(*b*) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President; or

(*c*) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President;

and—

Provided that for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this Article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.[1]

Class B States.

The above provisions in regard to Class A States, are, by Part VII of the Constitution, applied to Class B States, subject to the following modifications:[2]

(*a*) The Rajpramukh is substituted for the Governor.

(*b*) The Provisions of the Constitution covering appointment, term of office and qualifications do not apply to the Rajpramukh, and the conditions of his office are the same as those of the Governor of Class A States, except that the Rajpramukh "becomes" and is not "appointed" to the office.

(*c*) In regard to his salary, unless a Rajpramukh has his own residence at the principal seat of Government of the State, he is entitled to a rent-free official residence and such allowances and privileges as the President may determine; he is not, however, entitled to emoluments, but only allowances.

(*d*) The seniormost Judge administers the prescribed oath or affirmation.

(*e*) In the State of Madhya Bharat there must be a Minister in charge of Tribal Welfare and of Scheduled Castes, etc.

(*f*) Article 168 of the Constitution applies, except that in a Class B State the legislature consists of a Rajpramukh and in the State of Mysore 2 Houses, but in the other Class B States, only one.

[1] Art. 213. [2] Art. 238.

(*g*) The Rajpramukh determines his own salary and allowances and those of the members of the Legislative Assembly.

(*h*) The allowances of the Rajpramukh and other expenses relating to his office are determined by general or special order of the President.

(*i*) In the case of the State of Travancore-Cochin, *Rs.* 51 lakhs paid to the Devaswom Fund under the covenant previously entered into by the Rulers of those States for the formation of the United State of Travancore-Cochin, as well as any other expenditure, is charged to the Consolidated Fund of such State.

(*j*) As to Rules of Procedure of the Legislature.

(*k*) As to the High Court and Judge of the State.

The same provision is made in respect of the special representation of Anglo-Indian and Scheduled Castes and Tribes as already described in connection with Class A States.[1]

Class C States.

These States are administered by the President acting through a Chief Commissioner, or a Lieutenant-Governor, appointed by him or through the Government of a neighbouring State, subject to certain conditions.

Parliament may, by law, create or continue for any such State a Legislature whether wholly or partly nominated or elected or a Council of Advisers or Ministers, or both, with such Constitution, powers and functions as may be specified by law, such laws not being an amendment of the Constitution of India.

Parliament may, by law, constitute a High Court of such a State or declare any existing Court in such a State to be a High Court for the purposes of the Constitution and its jurisdiction.

Until Parliament otherwise provides by law, the Constitution, powers and functions of the Coorg Legislative Council as existing before the commencement of the Constitution of India and the arrangements in regard to revenues, etc., continue unchanged until the President makes other provision.[2]

The same provision is made in regard to the special representation of Anglo-Indians as already described for Class A States.[3]

The D Territories.

Any such Territory and any other Territory in India is administered by the President who, acting as he thinks fit, through a Chief Commissioner or other authority, may make regulations for the peace, order and good government of any such Territory and any such regulations may repeal or amend any law made by Parliament, or any existing law applicable to such Territory. Any such Regulation, on promulgation, has the same force and effect as an Act of Parliament.[4]

[1] Arts. 332, 333. [2] Arts. 239-241. [3] Art. 242. [4] Art. 243.

The Scheduled and Tribal Areas.

The Fifth Schedule to the Constitution applies to the administration and control of the Scheduled Areas and Scheduled Tribes in any Class A or B State other than those of the State of Assam, provisions for which are contained in Schedule V to the Constitution.[1]

Part XIII of the Constitution deals with the trade, commerce and intercourse throughout India, which is subject to Parliament, but neither Parliament nor a State Legislature may grant preference to one State over another by virtue of Legislative Lists I, II or III, although Parliament has full power so to legislate in the event of a situation arising from scarcity of goods in any part of India.[2]

However, notwithstanding the above, a State Legislature may by legislation, with the sanction of the President, restrict trade, commerce and intercourse among States, subject to certain conditions and agreements, but the President may, after the expiration of 5 years from Union, terminate or modify any such agreement after consideration of the Report of the Finance Commission constituted under Article 280.[3]

Parliament may by law appoint an authority for carrying out the above-mentioned powers.[4]

Part XIV of the Constitution deals with the Services under the Union and the States, Part XII with finance, property, contracts and suits, and Part XV with elections.[5]

Part XIX—Miscellaneous—deals with the protection of the President, Governors and Rajpramukhs; the personal rights and privileges of Rulers of Indian States; the bar to Court interference in disputes arising out of treaties, agreements, etc.; major ports and aerodromes and failure of any State to comply with, or give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of the Constitution of India; in which case the President may hold that a situation has arisen in which the government of such State cannot therefore be carried on.

Among the definitions in Part XIX are:

"An Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only;[6]

"Indian State" means any territory which the Government of the Dominion of India recognised as such a State;[7]

"Rajpramukh" means—

(*a*) in relation to the State of Hyderabad, the person who for the time being is recognised by the President as the Nizam of Hyderabad;

(*b*) in relation to the State of Jammu and Kashmir or the State of Mysore, the person who for the time being is recognised by the President as the Maharaja of that State; and

[1] Art. 244. [2] Arts. 301-303. [3] Arts. 304-306. [4] Art. 307.
[5] Arts. 264-300, 308-323, 324-329. [6] Art. 366. [7] Art. 366 (15).

(*c*) in relation to any other State specified in Part B of the First Schedule, the person who for the time being is recognised by the President as the Rajpramukh of that State,

and includes in relation to any of the said States any person for the time being recognised by the President, as competent to exercise the powers of the Rajpramukh in relation to that State;[1]

" Ruler " in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in Clause (1) of Article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler;

" Uparajpramukh " in relation to any State specified in Part B of the First Schedule means the person who for the time being is recognised by the President as the Uparajapramukh of that State.[2]

Interpretation and Amendment of the Constitution.

Interpretation.—Article 367 reads:

(1) Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

(2) Any reference in this Constitution to Acts or laws of, or made by, Parliament, or to Acts or laws of, or made by, the Legislature of a State specified in Part A or Part B of the First Schedule, shall be construed as including a reference to an Ordinance made by the President or, to an Ordinance made by a Governor or Rajpramukh, as the case may be.

(3) For the purposes of this Constitution " foreign State " means any State other than India;

Provided that, subject to the provisions of any law made by Parliament, the President may by order declare any State not to be a foreign State for such purposes as may be specified in the order.

Amendment.—Article 368 reads:

An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

(*a*) Article 54, Article 55, Article 73, Article 162 or Article 241, or
(*b*) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
(*c*) Any of the Lists in the Seventh Schedule, or
(*d*) the representation of States in Parliament, or
(*e*) the provisions of this Article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States specified in Parts A and B of the First Schedule by Resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

Part XXI deals with Temporary and Transitional Provisions.[3]

[1] *I.e.*, the old Ruler as Chief of the State and corresponding to the Governor.—[ED.] [2] Literally the Vice-Chief of the State.—[ED.] [3] Arts. 369-392.

Repeals.—Article 395 reads:

The Indian Independence Act, 1947, and the Government of India Act, 1935, together with all enactments amending or supplementing the latter Act, but not including the Abolition of Privy Council Jurisdiction Act, 1949, are hereby repealed.

The Schedules.

Schedule I deals with the Class A, B and C States and Territories of India; II, with salaries of the President, etc.; III, Oaths; IV, Seats in Council of States (*see above*); V & VI, with administration, etc., of Scheduled Tribes and Tribal Areas in Assam; VII, Legislation Lists (*see above*); and VIII, with languages (*see above*).

The Constitution of India, 1949, is undoubtedly the biggest attempt at constitution-building which has ever been made. We therefore make no apology for the length of this Article, for it was felt that such an important instrument deserved the fullest treatment from the Parliamentary angle which our JOURNAL could afford.

When one considers the magnitude of the task of the framers of this Constitution designed for the government of over 320 million people made up of many races, languages, creeds and ideologies, one cannot help but admire the achievement of the Fathers of this great federation in the establishment of democratic Parliamentary government. In fact, this constitutional step may well blaze the constitutional trail in the Orient. It will therefore be interesting to see how the new Constitution of India will meet the test of time, progress and development.

XV. THE IRELAND BILL, 1949[1]

BY THE EDITOR

IT is unnecessary to reiterate the introductory paragraphs to the Article in our last issue on the Republic of Ireland Bill passed by the Parliament at Dublin in 1948.

The Ireland Bill passed by the Parliament of the United Kingdom in 1949 is a consequential measure, but as an enactment it merits careful consideration.

In view of its importance it deserves a fuller account of its passage through the Commons and Lords than space permits, but as full an outline as possible will be given together with comprehensive footnote references to those desiring further research.

This Bill was presented in the House of Commons by the Prime Minister on May 3,[2] and its long title reads:

[1] *See also* JOURNAL Indices to Vols. VIII and XVI and V, 139; VII, 64; XVII, 317.

[2] 464 *Com. Hans.* 5, s. 836.

to recognise and declare the constitutional position as to the part of Ireland heretofore known as Eire, and to make provision as to the name by which it may be known and the manner in which the law is to apply in relation to it; to declare and affirm the constitutional position and the territorial integrity of Northern Ireland and to amend, as respects the Parliament of the United Kingdom, thel aw relating to the qualifications of electors in constituencies in Northern Ireland; and for purposes connected with the matters aforesaid. –

After the Order for 2 *R.* was read on May 11[1] Mr. Attlee announced that he had it in command from the King to acquaint the House that His Majesty placed his Prerogative and Interests so far as concerns the matters dealt with by the Bill at the disposal of Parliament.

In moving: "That the Bill be now read a Second Time" the Prime Minister said that the Bill arose from the decision of the Government of Eire to leave the British Commonwealth, which had now been carried into effect. It was a decision they all regretted but which Eire had a perfect right to make under the Statute of Westminster.

The position had therefore to be regularised. As the House was aware, the announcement was made by the Prime Minister of Eire in the course of a visit to Canada and came without any particular notice to the U.K. Government; but as it concerned the Commonwealth countries, Mr. Attlee had taken the opportunity of the presence here of representatives of Canada, Australia and New Zealand to discuss the position with them and with representatives of the Eire Government, as those 3 overseas countries had considerable populations of Irish descent.

The British Government had to take into account, among other difficulties, their propinquity to Eire, the long-standing relations with the British people and the practical difficulties that flowed from any attempt to treat Eire as altogether a foreign country.[2]

There were in Britain large numbers of Irish people, some born in Eire and some born in Britain, and there was continual passage to and fro for work, study or pleasure. It would be difficult to decide, in any case, the exact status of a person with an Irish name and involve a great expenditure of men and money as well as a great extension of the control of aliens. There were also the difficulties of the land frontier between Northern Ireland, which is part of the United Kingdom and the Commonwealth, and Eire. They had therefore reciprocally to decide that the peoples of Eire and of Britain should not be foreign to one another. Indeed the solution might not be truly logical but it was practical.

Clause 1 of the Bill recognises that the part of Ireland known as Eire has ceased to be part of H.M. Dominions and Clause 1 (2) provides that this part of Ireland shall be known officially as the Republic of Ireland. But the Bill makes it clear that this does not

[1] *Ib.* 1854. [2] *Ib.* 1854.

cover the whole of Ireland.[1] One could not, in international relations, habitually refer to a country by some other name than that by which it claimed to be known.

Mr. Attlee, continuing, said that Clause 1 (1) (*b*) declares the existing position of Northern Ireland which is consistent with the statement made by him in the House of Commons on October 28, 1948:

> The view of His Majesty's Government in the United Kingdom had always been that no change should be made in the constitutional status of Northern Ireland without Northern Ireland's free agreement.[2]

The initiative did not come from the U.K. Government, it was the action of the Eire Government itself in deciding to leave the Commonwealth that had made it quite inevitable that a declaration as to the position of that part of Ireland which was continuing in the Commonwealth, should be made.[3]

It was a natural corollary to declare that Northern Ireland remains part of the Commonwealth and of the United Kingdom and could not cease to be so without the consent of the Parliament of Northern Ireland. Equally recognised was the right of Parliament to decide on behalf of the people of Northern Ireland to stay in or leave the United Kingdom and the Commonwealth. It was of course quite obvious that the action of the Government of Eire in deciding to leave the Commonwealth would increase the difficulty of coming to any agreement on the partition question.[4] He had pointed out to the Eire Government that their action would make more difficulties in arriving at their other objective, the unification of Ireland, and he had to conclude that such Government considers that the cutting of this last tie uniting Eire to the British Commonwealth was a more important objective of policy than ending partiton.

It was quite impossible to exclude Northern Ireland from the Commonwealth and the United Kingdom against its will. "I repeat, therefore, that this paragraph in the clause has been rendered necessary by the action of the Eire Government."

Clause 2 (1) declares the Republic of Ireland not to be a foreign country.[5]

Clause 3 deals with the position under the British Nationality Act, 1948,[6] which embodies an agreement reached by Commonwealth countries at a Conference in 1947, the effect of which is that the principle hitherto accepted—that a person is a British subject first, and, in addition, could be a citizen of a particular Commonwealth country—is replaced by a scheme under which citizenship in a particular Commonwealth country is the qualification for being a British subject. Thus if a person is a citizen of Australia, he is by virtue of this a British subject. But Eire is not willing that all Eire citizens

[1] *Ib.* 1855. [2] 457 *Ib.* 239. [3] 464 *Ib.* 1856. [4] *Ib.* 1857.
[5] *Ib.* 1858. [6] 11 & 12 Geo. VI, c. 56.

should automatically be British subjects and the Act therefore made special provision for Eire citizens.

Section 3 (2) of that Act ensures that any law in force on January 1, 1949, applies to Eire citizens as to British subjects. In other words, an Eire citizen in the United Kingdom gets automatically the same treatment under existing laws as if he were a British subject; if resident in Britain he could vote and is liable to military service.

Section 2 (1) enables an Eire citizen who, for reasons of sentiment wishes to remain a British subject, to do so by written claim to the Home Secretary.

Section 6 enables an Eire citizen resident in Britain or in the Crown Service who wants to become a citizen of the United Kingdom and Colonies to apply to be registered as such.[1]

Mr. Attlee further remarked that, broadly speaking, a person was a citizen of Eire (i) if he was born in Eire after 1922, or if born outside Eire, was the son of an Eire citizen and born after that year, or (ii) if he was born in one of the 26 countries before 1922 and domiciled there in that year; and (iii) if he was registered as an Eire citizen.

Section 3 (2) of that Act which provides that laws in force on January 1, 1949, applies to citizens of Eire as to British subjects, made citizens of Eire who were resident in the United Kingdom for at least 2 years liable for military service, unless they were resident for a course of education or some other temporary purpose.

The Eire Prime Minister had stated that his Government wished to continue the exchange with Commonwealth countries of comparable rights and privileges in respect of citizenship. In the past British subjects had received certain privileges by virtue of an order made under the Eire Aliens Act exempting them from certain requirements imposed on aliens, but since January 1, in pursuance of the policy agreed at Paris, the Eire Government had granted these rights positively to the United Kingdom by an order under the Eire Nationality and Citizenship Act, 1935, and the Eire Prime Minister stated in November that it was his Government's intention to review their whole nationality law in the future to bring before the Dail a new Bill in which provision would be made to ensure that Commonwealth citizens were afforded by statute rights comparable (not identical) with those afforded to Eire citizens in Commonwealth countries.

Clause 3 (2) provides that where the United Kingdom or Colonial legislation contains expressions such as "His Majesty's Dominions" or "British ships", which would have covered Eire had the Republic of Ireland Act not been passed, those expressions would continue to cover Eire until Parliament made contrary provision. By Clause 4 (2) such provision is continued to cover any legislation passed up to December 31, 1949, but after January 1, 1950,

[1] 464 *Com. Hans.* 5, s. 1859.

any United Kingdom legislation applicable to Eire would have to say so specifically.

Under Clause 5, the Representation of the People Act, 1948,[1] is amended so that the qualifying period of residence would be 3 months, in view of contiguity of Eire and Northern Ireland.[2]

In conclusion, the Prime Minister said it had been suggested that under this Bill Eire, although outside the Commonwealth, was obtaining all the advantages of membership. This was not so. While the U.K. Government had the utmost goodwill to Eire her position must, and would, remain different from those who actually belonged to the Commonwealth.

The Bill would be retrospective to April 18, 1949, the date of the corresponding legislation in Dublin.

The position as between Northern Ireland and the Republic of Ireland must remain until altered by mutual agreement.[3]

Considerable debate took place on the Bill, which it is regretted does not admit of being dealt with here,[4] and an amendment to the Question: "That the Bill be now read a Second time" was moved by the hon. member for Belfast West (Mr. J. Beattie), seconded by the hon. member for Fermanagh and Tyrone (Mr. Malory)—namely, to omit "now" and add at the end of the Question "this day 6 months". On the Question being put—"That the word 'now' stand part of the Question"—the House divided: Ayes, 317; Noes, 12.

On May 16,[5] the House went into Committee, when the Bill had a long and stormy passage. Several amendments were proposed, some being withdrawn and others negatived, divisions showing, for and against, such figures as: 345 to 21; 324 to 48; 312 to 54; 227 to 79.

The following amendments were made in Clause 3: (Other provisions as to operation of United Kingdom and Colonial laws in relation to the Republic of Ireland) the omissions being shown in heavy square brackets and the insertions in heavy underlines:

By the Minister:

3.—(1) It is hereby declared that—

(*a*) the operation of the following statutory provisions, that is to say—

[(*a*)] (i) the British Nationality Act, 1948 (and in particular, and without prejudice to the generality of the preceding words, sections two, three and six thereof);

[(*b*)] [so much of any Act as gives effect, or enables effect to be given, to agreements described as being between the Government of the United Kingdom and the Government of Eire or as being between the Government of the United Kingdom and the Government of the Irish Free State] and

(ii) so much of any Act, or of any Act of the Parliament of Northern Ireland as gives effect, or enables effect to be given, to agreements or arrangements made at any time after the coming into operation of the original constitution of the Irish Free State, being agreements or

[1] 11 & 12 Geo. VI, c. 65. [2] 464 *Com. Hans.* 5, s. 1861. [3] *Ib.* 1862.
[4] *Ib.* 1863-1962. [5] 465 *Ib.* 33-220.

arrangements made with the Government of, or otherwise affecting, the part of Ireland which now forms the Republic of Ireland, including agreements or arrangements made after the commencement of this Act;

(iii) the Orders in Council made under [section] sections five and six of the Irish Free State (Consequential Provisions) Act, 1922 (Session 2),

is not affected by the fact that the Republic of Ireland is not part of His Majesty's dominions and

(*b*) that in the said provisions, and in any Act of Parliament or other enactment or instrument whatsoever, so far as it operates as part of the law of, or of any part of, the United Kingdom or any Colony, protectorate or United Kingdom trust territory, references to citizens of Eire include, on their true construction, references to citizens of the Republic of Ireland.

Question was then put and agreed to: "That the Clause as amended stand part of the Bill".

(*Here follow remaining Clauses of Bill but see proceedings in Lords below.*)

In Clause 4 (*Transitional provisions as to references in Acts, etc.*)

By Mr. Strauss:

(4) The preceding provisions of this section have effect in relation to any Act, enactment or instrument only in so far as a contrary intention does not appear in that Act, enactment or instrument:

Provided that the fact that an Act, enactment or instrument refers to a British subject, or to, or to any part of, His Majesty's dominions, or to a British or British-built ship or aircraft, without referring to a citizen of the Republic of Ireland, to the Republic of Ireland or to a ship or aircraft of or built in the Republic of Ireland shall not of itself be taken as indicating a contrary intention for the purposes of this subsection [and so as respects other expressions], and the same principle of construction shall be applied to other similar expressions.

Question was then put and agreed to, "That the Clause as amended stand part of the Bill".

The Bill was then reported with amendments as amended.

On May 17,[1] the Bill as amended was considered and the Attorney-General (Sir Hartley Shawcross) moved in Clause 1 (Constitutional Provisions) that the opening words of: (i) "Parliament hereby" be left out and the following be inserted: "(i) It is hereby enacted and declared"; in paragraph (*b*) to leave out "declares" and substitute: "It is hereby declared" and in 1.12 to leave out "affirms" and substitute "it is hereby affirmed"—all of which were put and agreed to.

The Secretary of State for Commonwealth Relations (Rt. Hon. P. Noel-Baker) then moved 3 *R.*[2] which, after considerable debate, was put and agreed to and the Bill sent to the Lords.

In the Lords, the King's Consent was also announced by the Minister on the Order of the Day being read and the Bill passed 2 *R.* on May 23,[3] but not without considerable debate.

The Committee stage was taken on 26th *idem*[4] when amendments

[1] *Ib.* 346. [2] *Ib.* 348. [3] 162 *Lords Hans.* 5, s. 907-969. [4] *Ib.* 1151-78.

were moved to Clause 3 (*Other provisions as to operation of United Kingdom and colonial laws in relation to the Republic in Ireland*) by Viscount Simon after which it was moved: " That the House do now resume " which was agreed to.

On May 30,[1] the House again resolved into Committee, when Lord Simon withdrew his amendment and proposed another and the House was again resumed in order to consider a new draft of the amendment.

On May 31,[2] the House was again in Committee when Lord Simon's amendment was again considered but withdrawn. Other amendments were also moved but withdrawn, and a new Clause (Amendment of Section 2 of British Nationality Act, 1948, was proposed by Lord Simon and later withdrawn.

The following new Clause (*Provisions as to operation of British Nationality Act*, 1948) to follow Claues 4 was then proposed by the Lord Chancellor and agreed to:

(1) A person who—

(*a*) was born before the sixth day of December, nineteen hundred and twenty-two, in the part of Ireland which now forms the Republic of Ireland; and

(*b*) was a British subject immediately before the date of the commencement of the British Nationality Act, 1948,

shall not be deemed to have ceased to be a British subject on the coming into force of that Act unless either—

(i) he was, on the said sixth day of December, domiciled in the part of Ireland which now forms the Republic of Ireland; or

(ii) he was, on or after the tenth day of April, nineteen hundred and thirty-five, and before the date of the commencement of that Act, permanently resident in that part of Ireland; or

(iii) he had, before the date of the commencement of that Act, been registered as a citizen of Eire under the laws of that part of Ireland relating to citizenship.

(2) In relation to persons born before the said sixth day of December in the part of Ireland which now forms the Republic of Ireland, being persons who do not satisfy any of the conditions specified in paragraphs (i), (ii) and (iii) of subsection (1) of this section, sections twelve and thirteen of the said Act (which relate to citizenship of the United Kingdom and Colonies and to British subjects without citizenship) shall have effect and be deemed always to have had effect as if, in paragraph (*a*) of subsection (4) of the said section twelve, the words " or a citizen of Eire " and in subsection (1) of the said section thirteen, the words " or of Eire " were omitted.

(3) So much of the said Act as has the effect of providing that a person is, in specified circumstances, to be treated for the purposes of that Act as having been a British subject immediately before the commencement thereof shall apply also for the purposes of this section.

(4) Nothing in this section affects the position of any person who, on the coming into force of the British Nationality Act, 1948, became a citizen of the United Kingdom and Colonies or a British subject without citizenship apart from the provisions of this section.

[1] *Ib.* 1233-47. [2] *Ib.* 1262-78.

Standing Order XXXIX having been suspended (pursuant to the Resolution of May 25),[1] the Bill was reported with an amendment, after which it passed 3 *R.* and was returned to the Commons. On June 2,[2] it was received by the Lords with the amendment agreed to. After *R.A.* had been announced in both Houses, the Bill became 12 & 13 Geo. VI. c. 41.

XVI. THE JUDICIARY IN RELATION TO THE LEGISLATURE

By the Editor

As the complete divorcement of the Judiciary from the Executive is not only a fundamental principle of British Justice but one of the pillars of the British Constitution, an incident which occurred during 1949 in the Supreme Court of the Seychelles and the references to the subject in both Houses of Parliament at Westminster are of particular interest.

The matter arose in the Imperial Parliament, both by Question and answer in both Houses as well as in the House of Commons under the Motion for the Whitsuntide Adjournment.

Questions in the Commons.—Orals were asked in the Commons both on March 9[3] and 23[4] in connection with an accusation against the Acting Attorney-General (a Mr. Collet, who was also a member of the Legislative Council) by the Chief Justice of the Colony, of making a false statement in Court.

Motion for Adjournment in the Commons.—On June 3,[5] the hon. member for Hornsey (Mr. L. D. Gammans), when raising the Question of the affairs of the Island, on the Whitsuntide Adjournment, said that he could not recall a more shocking case of political jobbery and maladministration. The hon. member then recounted fact in support of his statement, quoting the following accusations made in Court against Mr. Collet by the Chief Justice of the Colony:

The Chief Justice said:

> This man is revealed in his true colours—spiteful, malicious, vindictive to anyone who opposes his will, full of venom; and so unscrupulous that he is clearly the kind of person who, without compunction, would resort to blackmail.

He added:

> Mr. Collet has brought disgrace on our profession.

Later the Chief Justice observed:

[1] This Resolution read: That Standing Orders Nos. XXI and XXXIX be considered in order to their being suspended until the House adjourns for the Recess at Whitsuntide and that Government business has, except with the consent of the Government, precedence over other Notices and Orders of the Day.

[2] 162 *Lords Hans.* 5, s. 1368. [3] 462 *Com. Hans.* 5, s. 1174.

[4] 463 *Ib.* 349. [5] 465 *Ib.* 2456.

No doubt the fullest inquiry will be made in England as to how it came about that this man was appointed even temporarily to a responsible post in British territory in the Colonial Legal Service.

And the Chief Justice concluded:

O.G.P.U. methods are not yet recognised in any British Colony. The methods adopted to extort money from the Plaintiff are absolutely appalling. . . . British administration of a colony overseas has been brought into grave disrepute.

In fact, continued the hon. member, "never before in the history of the British Colonies has there been a more scathing indictment of a law officer of the Crown by a Chief Justice".

The Under-Secretary of State for the Colonies (Mr. D. R. Rees-Williams) in the course of his reply on the debate, in reference to what was said by the Chief Justice, observed:

I do not agree that that language was justified. I think it was extreme and flamboyant language for a Judge to use, particularly as no personal matter was involved.[1] . . . I think that the language was extreme in view of the fact that there was no personal benefit to Mr. Collet. Therefore to talk about a man as a blackmailer and the like when he was rather over zealous as a public servant is not language which one would expect to be used.[2]

On July 7, the Chief Justice (Mr. Justice M. D. Lyon) made the following statement in the Supreme Court of the Seychelles:

I want to trespass for a few moments upon public time in order to refer to certain criticisms of this Court made by a spokesman of the Executive as reported in *Hansard* of 3rd June, 1949,[3] pages 2471 and 2472.

In a recent case it was the duty of this Court to estimate the reliability or otherwise of the evidence of a witness and also to come to a conclusion as to his character as established by the sworn testimony of three witnesses, including the evidence of that witness himself.

For the reasons given in that Judgment, the conclusions reached and pronounced were entirely adverse to that witness on both points. And both points were material to the main contest in that case.

An appeal was filed to three Judges of the Mauritius Supreme Court. This has been withdrawn after it had been left lying in the Registry of that Court for about three months. It was only on 21st June that this Court was notified that the appeal had been withdrawn, although it had apparently been withdrawn before 3rd June.

The conclusions which this Court reached relating to that witness's evidence and character were the findings of fact of a Superior Court of Record, which in that case exercised Jurisdiction similar to that of the King's Bench.[4] In my

[1] *Ib.* 2471. [2] *Ib.* 2472. [3] 465 *Com. Hans.* 5, 4. [4] *Article* 6 *of the Seychelles Judicature Order-in-Council*, 1903, *is as follows:* "The Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes and matters under all laws for the time being in force in the Colony relating to Wills and execution of Wills, Lunacy and Guardianship of Infants, Insolvency, Bankruptcy, Divorce or Separation *a mensa et thoro* (Separation de corps), and generally to hear and determine all civil suits, actions, causes and matters that may be brought and may be pending before it, whatever may be the nature of such suits, actions, causes or matters; and, in exercising such jurisdiction, the Court and the Judge thereof shall have, and are hereby invested with, all the powers, privileges, authority, and jurisdiction which are vested in, or capable of being exercised by, His Majesty's High Court in England, as created under 'The Supreme Court of Judicature Acts, 1873 to 1884', or any Judge thereof."

considered opinion, the only proper method by which the findings of such a Court can be reversed or criticised is recourse to the Appellate Courts: in this instance the Supreme Court of Mauritius and then, if need be, in a suitable case to the Judicial Committee of the Privy Council.

I do not recognise the right of any political spokesman of the Executive to question the findings of this or any other Court.

The complete divorce of the Judiciary from the Executive is a fundamental principle of British Justice.

The terrible and terrifying state of affairs in this Court and in this Colony during most of 1948, of which I have learned by a careful perusal of Court records, could not have arisen if at that time the Court had felt itself to be divorced from and entirely independent of the Executive.

Whenever even a faint shadow of executive pressure falls upon the Judiciary, the door is opened to tyranny.

Here we are concerned with a vital question of principle. And it is for that reason that I have taken up a few moments of public time. The question directly concerns not only every member of the Bar and Solicitor practising in the Colonies and every Colonial Magistrate and Judge, but also the public throughout the Empire.

So that my position in the matter may be quite clear, I am asking His Excellency the Administrator to transmit a copy of these observations to the Secretary of State for the Colonies.

(*sd.*) M. D. LYON,
C.J.

7. 7. '49.
R.O. in Court.

Questions in the Lords.—On July 30,[1] the Earl of Mansfield asked whether H.M. Government's attention had been drawn to the recent utterance of the Under-Secretary of State for the Colonies reflecting upon the conduct of the Chief Justice of the Seychelles Islands.

The Minister of State for Colonial Affairs (the Earl of Listowel) replied that he assumed the Question related to a passage amounting to disagreement with and criticism of language used by the Chief Justice of the Seychelles; but it contained no reflection upon his conduct. The Parliamentary Under-Secretary was asked whether the Secretary of State considered that a man who had been described in a certain way by the Chief Justice was a fit person to sit on a legislative body. A negative answer would have implied that a Minister is bound to accept a mere expression of opinion by a Judge of a man's character and that was not the case. The Secretary of State is advised that any suggestion that a Judge is immune from criticism would be erroneous. A Judge is not therefore entitled to assume that criticism, whether by a Minister of the Crown or anyone else, is an attempt by an Executive to exert pressure on the Judiciary. The Question made it necessary for the Parliamentary Under-Secretary of State to say whether the Chief Justice's description of the man was justified and he took a different view.

On November 1,[2] Viscount Simon asked whether it was correct that Judges in British Colones, in discharging their judicial duties and in reaching conclusions of fact on the issues before them, were

[1] 164 *Lords Hans.* 5, s. 705. [2] 165 *Ib.* 19-20.

just as independent of the Executive as Judges in the United Kingdom.

The noble Viscount then referred to proceedings before the Chief Justice of the Seychelles by certain citizens there to recover from the Crown substantial sums which they alleged had been extracted from them as arrears of income tax by means of improper pressure put upon them by the Acting Attorney-General of the Colony. Such proceedings succeeded and the plaintiffs recovered what they had paid, as in the opinion of the Chief Justice, after hearing the evidence, it was established by the evidence that this official had employed methods and menaces which amounted to duress. This was the fact upon which the litigation turned and though notice of appeal was filed it had been withdrawn and the Chief Justice's conclusion therefore stood. Newspaper comments had appeared in certain Journals which raised the general question of the relation of Colonial judges to the local Executive and suggested that in the Colonies a judge is less independent of the Executive than he is in the United Kingdom.

Lord Simon believed this to be wrong and communications which he had received went to show that in other Colonies also judges would appreciate an assurance from the highest authority. Would the Lord Chancellor therefore state for the information of Parliament and the public, in order to put the matter beyond all doubt, whether it was not correct to say that judges in British Colonies, in discharging their judicial duties and in reaching conclusions of fact on the issues before them, were just as independent of the Executive as is the case with judges in the United Kingdom.

The Lord Chancellor replied that he could give an answer without any qualification—" Yes ".

In view of the above, the Colonial Regulations will be of interest to the reader. No. 63 of such Regulations, under " (*b*) Disciplinary Procedure " reads:

> 63. Holders of patent offices may be removed from such offices by the Governor-in-Chief under S. 2 of the Act 22 Geo. III, c. 75, or they may be suspended or dismissed by the Governor under the powers in that respect conferred by the Letters Patent or other instrument of Government.
>
> In either case the procedure prescribed under Regulation 68 should be adopted.
>
> In the case of a Motion an appeal lies as of right to His Majesty in Council.
>
> In the case of suspension the Secretary of State will as a general rule, refer to His Majesty in Council the question whether the dismissal of the officer should be authorised.

This Regulation No. 63 has been amended by the addition of the following paragraphs:

> If the Governor considers that a Judge of the Supreme Court (or High Court) should be removed from his office on the ground of general inefficiency, he must submit a full report upon the case to the Secretary of State with the evidence in support and the Judge's reply thereto.
>
> If, after considering the Governor's report, the evidence in support and the

Judge's reply, it appears to the Secretary of State that it is necessary in the public interest that the Judge should be removed from his office on the ground of general inefficiency, he shall refer the same with all the necessary documents to the Judicial Committee of the Privy Council.

Regulation 68 empowers the Governor to dismiss an officer whose pensionable emoluments exceed £200 a year in accordance with the rules laid down in paragraph (XIV) of such Regulation, unless the method of dismissal is provided for in the C.O. Regulations or by local law. Such paragraphs provide (i) that the officer shall be notified of the grounds on which it is proposed to dismiss him and shall state in writing any grounds upon which he relies to exculpate himself. Failing that (ii) the Governor appoints a committee of inquiry consisting of the Attorney-General and 2 other members of the Executive Council. Before this Committee the officer is to appear to defend himself. Paragraph (iv) lays down the procedure as to evidence. The Committee may, in its discretion, allow the officer to be assisted by a brother officer or, in exceptional circumstances, by counsel, and the Committee have the power at any time to withdraw such representation (v). In the event of further grounds being disclosed during the course of the inquiry the Governor is empowered to proceed against such officer thereon (vi).

The Committee reports in its inquiry to the Governor, who considers the same in Executive Council, which may refer any matter back for further inquiry, and, in exceptional circumstances, the Council may itself hear witnesses (vii). Upon consideration of the report of the Committee, the Governor may suspend such officer, reporting thereon to the Secretary of State (viii), who may dismiss such officer and without salary (ix), or he may reinstate him (x), or may direct the Governor to impose some lesser punishment than dismissal (xi). The Governor has like powers (xii), but reporting to the Secretary of State. If, upon considering the Committee's Report the Governor is of opinion that the officer does not deserve dismissal, he may remove him on the grounds of inefficiency (xiii) and (xiv) empowers the Governor to allow a suspended officer an alimentary allowance.

Colonial Judges are appointed and promoted by His Majesty on the recommendation of a Colonial Office Committee composed of 3 Heads of Administrative departments of that Office, the Secretary of State (who has 2 votes), and the legal adviser to the Secretary of State, and it would be open for this Committee to fail to promote or shelve in a junior post any Colonial Judge called upon in his judicial duties to find against a Colonial Government or pass strictures on it.

It would appear that the initial correspondence relating to the question of the appointment or promotion of a Colonial Judge would emanate from the office of the legal adviser to the Secretary of State, and the salary and terms of service of a Colonial Judge be within the jurisdiction of the Secretary of State.

In relation to this subject May lays down that the conduct of judges of the superior courts of the United Kingdom, including persons holding the position of a judge, such as a judge in a court of bankruptcy and of a county court, cannot be debated save upon a substantive Motion which admits of a distinct vote of the House.[1]

Neither can the conduct of such a judge be questioned by way of amendment or upon a Motion for Adjournment. For the same reason no charge of a personal character can be raised save upon a direct and substantive Motion to that effect. No statement of that kind can therefore be embodied in any notice proposing to call the attention of the House to a stated matter.[2]

Unless the discussion is based upon a substantive Motion drawn up in proper terms, reflections must not be cast in debate upon the conduct of a judge, as defined.[3]

Owing to the then-growing conviction in England that the administration of justice ought to be removed from the influences of controversy, it is provided by the Act of Settlement, 1707, S. 3, that the judges should receive fixed salaries and hold their offices during good behaviour, subject to their removal by an address of both Houses of Parliament.[4]

Indeed, a similar provision is made in the Constitution or by Statute in all the Dominions.

In the new Constitution for India, very full provision is made in respect of the relation of the Judiciary to the Executive by the following provisions:

S. 124.—(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

S. 121.—No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

XVII. "A BUSMAN'S HOLIDAY"

By Owen Clough

As Parliamentary Procedure is so rich in precedent even to the extent of departure from it from time to time to suit particular occasions and circumstances, perhaps my fellow-members will not be unwilling to allow me the privilege of freedom from the Editorial leash to give

[1] May, XIV, 375. [2] *Ib.* 375. [3] *Ib.* 430. [4] *Ib.* 205.

some personal impressions of a visit to the Isles of Erin and Man during the summer of 1949; provided, of course, that shadows political are not allowed to fall on the impartial pages of the JOURNAL.

It may not altogether be surprising that this opportunity of making more intimate contact with our members should thus be sought as it is now many years since I had the pleasure of meeting, at least those in Canada and Australia, on their home ground. However, time marches on, senior members retire from office, new ones succeed to their responsibilities "who know not Joseph", and others, alas, are no more. It is extraordinary, however, how well we have come to know and understand one another by means of the humble postage stamp.

I would have enjoyed repetitions of those pleasant visits, and even extended them to fresh fields, had not World War II intervened and interrupted transport during that long period; although, indeed, I did have the pleasure 2 years ago of meeting our members in Tanganyika, Kenya and Southern Rhodesia, from whom I received a warm welcome and moreover had the benefit of the interchange of views on various subjects.

There have also been occasions when our members have themselves visited South Africa, notably that of Sir Gilbert (now Lord) Campion from Westminster, and Mr. R. W. Jakeman from Kuala Kangsar, Malaya, not to speak of those belonging to territories in Southern Africa, whom one naturally sees more frequently.

When, however, a visit to the United Kingdom with my wife and daughters was planned for 1949 I decided to cross over to Ireland and, if possible, be present at the ancient Tynwald in Manxland after, of course, making contact with our busy members at Westminster where Parliament was in Session. How much the Overseas Clerks owe to them, and their ever-present courtesy, fortified by their veritable treasury of precedent.

Therefore, early in the morning of June 28, after seeing my family off from London on a motor trip to old haunts in the West of England, I left by train for Liverpool and from Speke Aerodrome by Aer Lingus to Dublin where I arrived at 6.15 p.m.

After the austerity of the United Kingdom, it was pleasant to enjoy the food freedom of Eire. Therefore great restraint had to be exercised or my dinner that night would have been a veritable banquet.

Next morning, therefore, when I saw bacon blazoned on the breakfast menu I ventured to ask the waiter to bring me some and, almost apologetically, also to give me an egg. Judge then of my surprise when he brought, not only several large rashers of the bacon for which Ireland is so famous, but 2 eggs, calling from me the remark, "but you know I only asked for *one* egg", to be met promptly by his typically Irish rejoinder, "'n sure the hens in Oireland lay two at a toime".

After attending to some private affairs in connection with my visit to Dublin, I wended my way in the afternoon to Leinster House, formerly a residence of one of the Dukes of Leinster and puchased from him by the Royal Dublin Society as the House of Parliament on the foundation of the Irish Free State in 1922.[1] Constitutional developments in that part of Ireland have already appeared in the JOURNAL,[2] and Article XV in this issue deals with the Ireland Bill of 1949.

It was long since I was last in Dublin but I missed the Statue of Queen Victoria which formerly stood in front of the building. As in Government offices at Whitehall these days, one is not allowed to go alone but only under the escort of a uniformed messenger, and a typical son of Erin chatted to me on the way to the main entrance, where he handed me over to his chief, and Mr. Michael Christie, the Clerk of the Senate (or Cleirach an t Seanaid), who knew of my projected visit, was soon on the spot to give me a hearty Irish greeting.

When our Society was founded, the Clerks of the two Houses in Dublin were for a short time members, but as the Constitution changed they fell away, though they have always been most willing and welcome co-operators.

Mr. Christie then showed me through the building, first introducing me to his "opposite number", Mr. Mortimer O Connaill, the Clerk of the Chamber of Deputies (or Cleirach na Dala), when, after an interesting talk with both of them, they presented me to their respective Chairmen (the title of "Speaker" not being used). The Irish title of the Chairman of the Senate is Cathaoirleach an t Seanaid, and that of the Chairman of the Chamber of Deputies, Cathaoirleach Dhail Eireann. In general, however, the latter is called "Ceann Comhairlie", roughly equivalent to "Head of the Assembly".

Leinster House is an imposing building and its interior a beautiful example of the Adams style, which has been faithfully preserved in adapting it to the purposes of a Houses of Parliament. The emblem of the Irish Harp (Brian Boru) appears here and there, in solitary simplicity.

I was invited to meet the Prime Minister (Taoiseach, the equivalent of "Chief" or "Leader"), Mr. John Costello, S.C. (Senior Counsel, which corresponds to K.C.), who received me very warmly. I also had a most interesting talk on Parliamentary Privilege with the Leader of the Opposition, Mr. Eamon de Valera. I did not, however, suggest these interviews but it was distinctly kind of them to see me, especially on a sitting day.

On June 30, at the invitation of the two Clerks, I had lunch with them and other officials in the Parliamentary Dining Room, preceded by hospitality at the hands of some of the Members. Greater

[1] *See* JOURNAL, Vol. VIII (Index). [2] *Ib.* V, 139; VII, 64; XVI (Index); XVII, 317.

courtesy could not have been shown me all round. My wife being of Irish descent I am naturally drawn to Irishmen whether of the South or the North.

After lunch I listened to debate in both Chambers, being supplied with the Order Paper and (bilingual) copies of the Bills under discussion, but I did not hear one speech delivered in Irish.

The Senate Chamber is small and in neither Chamber are the seats arranged as at Westminster on either side of the House with the traditional wide floor-space between. In the Chamber of Deputies they are placed in circular fashion, and in tiers, with the Chairman's place, as it were, on the edge of the circle. This arrangement rather reminded me of the Legislative Assembly at Winnipeg, where the acoustics were so bad that the Chamber had to be wired overhead. The acoustics in the Dail, however, are not as bad as I had expected. Perhaps the tiers formation and the small size of the Chamber may have accounted for this. Irish is taught in the schools but as most parents are unable to speak it, its use is rather restricted. Having lived for many years in the Union of South Africa, a bilingual country, and also, in the early days of South African Union, investigated the working of French and Flemish in the Belgian Parliament, I was naturally interested in the subject. Irish is, however, much in use in Bills, Order Papers, etc. I was especially interested in the different spelling of the Irish titles of Parliamentary Officers from that used when I last saw their Parliamentary Papers, which brought to mind the many changes that have been made in Afrikaans (South African Dutch) since it was first officially introduced as a written language in place of the Dutch of Holland.

At 5.30 p.m. my happy visit had unfortunately to be brought to a close, as I was scheduled to leave by the 6.15 p.m. train for Belfast, but the many kindnesses I received were not yet at an end, for I was accompanied by my hosts down to the entrance gates, where a taxi was waiting to take me to the station and I was soon on the way to the North. To me, coming from S. Lat. 35°, the long twilight seemed strange, but it gave me a good view of the country, that being my purpose in going by train.

After passing the Customs at the border between Eire and Northern Ireland I heard a typically Irish story. An Irishwoman, travelling from Eire to Ulster, had with her, at the border, a brown paper parcel, and upon being questioned by the Customs Officer with, "Mither, what a ye got theer?" she replied, "'n sure it's a bottle of holy wather". The official thereupon removed the brown paper from a large glass jar with a screw top, revealing the rich amber fluid content. Then, having unscrewed the lid he took a sniff and exclaimed with both promptitude and astonishment: "Begorra, 'n it's whisky!" Whereupon the woman retorted equally promptly, "Then sure the Lord must have performed another of His wonderful miracles!"

After many interesting talks with several people on the train we arrived at Belfast at 9.30 p.m., where the Clerk of the Parliaments (Major George Thomson), one of our members, with Miss M. M. Macauley, his Personal Assistant and Private Secretary to the Speaker of their House of Commons, were most thoughtfully waiting to take me to the hotel, where a formidable programme was produced.

On Friday July 1, Major Thomson was up betimes and we were soon on the 5-mile run to Stormont, the Northern Ireland Houses of Parliament. This truly magnificent building is approached from majestic gates up a long avenue and stands in a commanding position in an estate of 300 acres. On the way we passed a huge statue of Lord Carson, who did so much to secure for the people of Ulster the right to govern themselves and remain part of the United Kingdom and the Commonwealth.

From the main entrance to the building we proceeded to Major Thomson's office, where I was introduced to the various Parliamentary officials and then taken very thoroughly through the building. Having seen many types of Parliament buildings, both in our Commonwealth and in foreign countries, I was naturally keen to examine closely its lay-out from a Parliamentary working point of view, as, in such buildings, the interior is so often sacrificed by the ambitious architect, at the expense of the exterior, but not so here.

Although the site was only acquired in 1921, it was not until 1928 that the foundation stone was laid, as considerable excavations had to be made. The building was not finished until 1932, when it was opened by H.R.H. the Prince of Wales and formally presented by the Imperial Government to the Government of Northern Ireland.

The avenue by which Stormont is approached ends in a flight of granite steps 90 feet wide, flanked by terraced grass banks, at the top of which is a stone balustrade running the whole length of the frontage. The avenue is bordered on either side by a double row of lime trees, for neither thought nor labour has been spared. The architecture is of the Greek classical tradition, the only elaboration being in the central feature of the main façade, which is surmounted by a pediment representing Ulster carrying the Golden Flame of Loyalty to Great Britain and the Empire. Immediately over the entrance is the Royal Arms and a noteworthy feature round the building is the repetition of the traditional head of the Irish Elk. The whole structure is 365 feet long, 164 feet deep and 70 feet high, rising to a height of 92 feet at the centre of the main façade. Stormont consists of 4 main floors and is planned to accommodate the Upper and Lower Houses along the lines of those at Westminster. The main entrance to the legislative portion is in the centre and separate doors at the east and west ends communicate with lifts, staircases providing direct access to the Departmental offices. The main entrance opens into a large vestibule giving access to the Great

Hall, 100 feet long, 48 feet wide and 2 storeys high, with a gallery on either side reached by an imposing staircase.

The principal electrolier suspended from the ceiling is from Windsor Castle and was presented by King George V.

The Senate Chamber leads from the east side of the Great Hall and that of the House of Commons from the West, both being 2 storeys high and provided with galleries for the public and the Press. The interior of the 2 Houses is simplicity itself. There are no ugly desks or microphones and the Speaker's Chairs and those of the Clerks at the Table, as well as the Tables themselves, occupy their traditional places. The Benches on both sides of the House leave a wide floor space and there are no alcoves in either Chamber to interfere with acoustics. On the remainder of the ground floor are a Members' Library, Writing, Smoke and Committee Rooms and the Parliamentary Post Office, together with rooms for the Governor, Speakers, Ministers, Members and officials. The first floor contains the Members' and Stangers' Dining Rooms, Conference Rooms and Departmental offices, and the second and third floors are devoted with characteristic Ulster foresight to administrative offices, while further offices with a Staff Dining Room and kitchen are on the fourth floor. I was shown the excellent luncheon menu served officials at a ridiculously low price.

The exterior of this stately pile is faced with Portland stone on a plinth of grey unpolished granite from Slieve Donard "where the Mountains of Mourne sweep down to the sea". The only elaborate decoration in the interior of Stormont are Travertine and Botticeno marbles, and the walnut panelling. The decorative character of the ceiling and lighting of the Great Hall is most attractive.

In the spacious grounds, placed at sufficient distance not to detract from the solitary prominence of the Houses of Parliament themselves, are Stormont Castle the official residence of the Prime Minister, and the Speaker's House.

A rather detailed description of the building has been given as it affords a good example of a modern Houses of Parliament conducted under the British system. The Report from the Select Committee of the House of Commons on its rebuilding gives valuable information as to the dimensions of the debating chamber, acoustics, etc., also invaluable to any part of the Commonwealth contemplating the building of a Houses of Parliament.[1]

Perhaps a slight digression may be made here to give a brief outline of the Constitution of Northern Ireland, as such has not yet had occasion to appear in the JOURNAL.

The area assigned to Northern Ireland comprises the 6 Parliamentary counties of Antrim, Armagh, Down, Fermanagh, Londonderry and Tyrone and the 2 Parliamentary boroughs of Belfast and Londonderry.

[1] *See* JOURNAL, Vols. XIII, 103; XIV, 141.

The Constitution of Northern Ireland is federal, the legislative power being vested in a Parliament consisting of the Governor as the King's Deputy, a Senate and House of Commons. Parliament has power to legislate for the peace, order and good government of the country in regard to all matters, excepting: The Crown or succession thereto; peace or war; the armed forces; treaties and relations between the other parts of the Commonwealth and foreign States; titles of honour, treason, etc., trade outside Northern Ireland; submarine cables, wireless, lighthouses, etc., aerial navigation; trade marks, judiciary, health, transport, etc.

Reserved matters are defence, currency, foreign affairs, postal services, customs and excise duties and income taxes.

It was found in practice, however, that certain of the restrictions and reservations of the 1920 Act hampered administration and legislation in respect of various matters which the Parliament of Northern Ireland had power to deal with. Accordingly, in the Northern Ireland (Miscellaneous Provisions) Acts of 1928,[1] 1932[2] and 1945[3] and the Northern Ireland Act of 1947[4] passed by the United Kingdom, provision was made for meeting minor points of difficulty in the working of the Act of 1920 and for enabling the Parliament of Ireland to exercise more freely and fully its legislative powers.[5]

Twelve members are returned to Westminster.

The Senate is composed of 2 *ex-officio* Senators (the Lord Mayor of Belfast and the Mayor of Londonderry) and 24 Senators elected by the Commons according to P.R. for 8 years, half retiring at the end of every fourth year. The Senate elects its Speaker, who also acts as Chairman of Committees. Normally no salary attaches to the office of Senator, but the Leader of the House has an expenses allowance of £300 p.a. and the others who have taken the oath of allegiance and their seats and are not in receipt of official salaries, receive a like allowance of 45s. p.d., for attendance at sittings of the Senate or Parliamentary Committees. Appropriate travelling expenses may be claimed by Senators not resident in Belfast and supplemental allowances not exceeding £200 p.a. are paid to certain Senators in special circumstances.

The House of Commons consists of 52 members elected for 5 years, and has a Speaker and Chairman of Ways and Means, the procedure being modelled on that of the Commons at Westminster, a notable exception being that the Clerk of the Parliaments officiates as Clerk in both Houses, as circumstances require. Members who have taken the Oath and their seats are entitled to an expenses allowance of £300 p.a. and if not in receipt of emolument as members of the Government or as Speaker, etc., also have a salary of £200 p.a., with travelling expenses between their residences and Belfast in the case of country members.

[1] 18 & 19 Geo. V, c. 24. [2] 22 & 23 Geo. V, c. 11. [3] 8 & 9 Geo. VI, c. 12.
[4] *See* JOURNAL, Vol. XVI, 42. [5] Ulster Year Book, 1947.

Subject to certain details, the Parliamentary franchise is: male adult suffrage, birth in Northern Ireland or resident therein during the whole of the period of 3 months ending on the qualifying date for that election. Members of the Forces, merchant seamen and certified workers are also qualified as Parliamentary voters.

I was then taken by Major Thomson to be presented to the Speaker of the House of Commons, Captain the Rt. Hon. Sir Norman Stronge, Bart., M.C., H.M.L.—to give him his full title—when, after welcoming me to Stormont, we proceeded to the Parliamentary Dining Room, where a luncheon had been arranged in my honour. Over cocktails I had the privilege of meeting those invited to the luncheon, namely, Senator Kennedy Stewart, Mr. Alex. Clarke, the Clerk-Assistant and Mr. J. Sholto F. Cooke, the Second Clerk-Assistant, Mr. W. S. Gibson, the Librarian of Parliament and his Assistant, Miss Dinsmore, as also Miss M. M. Macauley.

Sir Norman Stronge was a most charming host, who also gave me opportunity of talking with those sitting opposite me as well as afterwards with the others present. There were no speeches and altogether the whole proceeding was delightfully pleasant and informal. Afterwards, when out on the portico, photographs were taken, one of which, that of the Speaker and myself, by the courtesy of the *Belfast Telegraph*, faces the title-page of this Volume.

Upon the conclusion of this very pleasant experience, Major Thomson and Miss Macauley soon whisked me off on a motor run south through beautiful Co. Down, first via Killyleagh and Downpatrick. Continuing on our way we called at the small village of Clough, where we climbed the hill on which stood the ruins of Clough Castle, one of the forts erected in bygone days, standing in a commanding position from which a panoramic view was obtained to almost every point of the compass. We stopped for tea at Dundrum Bay, after which we proceeded further south, via Newcastle and Kilkeel, to Rostrevor on Carlingford Lough, the southernmost part of Ulster, where we had dinner.

Our way back was through Hilltown, Rathfriland, Dromara and Ballynahinch, amidst scenery just as beautiful, and still in the Northern twilight. I was returned to my hotel at Belfast, where, after a nightcap, my kind friends left me at the end of "parting day".

Saturday morning, July 2, was spent with the Parliamentary officials at Stormont, where I was invited to meet Major the Rt. Hon. J. M. Sinclair, Minister of Finance and acting Prime Minister, with whom I had a most interesting talk.

After a quick lunch, my kind colleagues soon had me on the road again, this time northward through Co. Antrim on the lovely coast road to Carrickfergus, Larne, Ballygally, Glenarm, Carnlough Cushendall to Ballycastle, where we had tea, with Rathlin Island in view. It was on this Island, after his escape from Scotland to which

he returned and met with such signal success, that King Bruce in 1307 had his most fruitful lesson from the equally determined spider.

Thereafter our route was through Armoy and Coleraine in Co. Derry to Aghadowey.

In going through the counties of Ulster, the most striking feature was the development of agriculture in all its branches. The great industries, I had seen on a previous visit.

In view of the heavy programme it was not possible to visit the Giant's Causeway, but I did see the Mountains of Mourne with Slieve Donard in stately splendour.

The next item on our programme was an Orange Order Flag Unfurling and Ceremony at the small village of Aghadowey in Co. Derry, where we arrived in the evening. This was a most impressive ceremony, which took place in an adjoining field and was attended by a large number of members of the Orange Order and the Royal Black Constitution assembled from all parts. The occasion marked the unfurling of the third new banner in that district within the past 8 days. The field was decorated with flags and bunting while a handsome arch spanned the road. About 20 pipe and flute bands were present.

The proceedings opened with the singing of "O God, our help in ages past", followed by a scripture lesson and prayer, after which certain presentations were made. One of the banners was unfurled by Miss Daphne Stronge, a daughter of the Speaker, who made a charming little speech. Lady Stronge was fulfilling a similar appointment in another part of Ulster.

Sir Norman Stronge and others then addressed the enthusiastic gathering from a gaily beflagged lorry and the proceedings concluded with the singing of the National Anthem, accompanied by the Garvagh Silver Band. Kilts worn by both men and women were very much in evidence, as well as each Lodge's banners, members wearing sashes of the Order. It was past 7 o'clock by the time the music of the last band had died away in the distance, after which we adjourned to the Glenkeen Orange Hall for tea and sandwiches, etc. Some of the pretty kilted lassie pipers were with us as we sat at the various tables, providing hospitality. Speeches were then delivered, in which I was invited to join. This I did with great pleasure.

The earnestness with which the people of Ulster stand by their Constitution, the Government of Ireland Act, 1920, to which only that part of Ireland now adheres, was certainly proof that they are not only satisfied with their government and happy under its administration and control, but determined to remain part of the United Kingdom and the Commonwealth and Empire.

By the time the supper party was over it was long after 10 p.m., but still quite light. It was here that my kit was planned for transfer to Mr. Speaker's car and we turned south through Co. Derry and Co.

Tyrone, under a new moon, to Tynan Abbey, his home in far-off Co. Armagh, calling in to see some friends on our way.

We now passed through a more wooded and well-watered country. We did not reach our journey's end until after 2 a.m., exchanging, on the way, views on many subjects, in which I soon found we had strong mutual interest.

Tynan Abbey is truly a stately home. Sir Norman showed me to my room and 'midst the calm stillness of the night, with the curtains drawn to see the light glistening on the waters of the lake, I soon passed into the arms of that great consoler of life's problems, the Son of Sleep and the God of Dreams—good Morpheus.

July 3 was a Sunday and I awoke from a sleep so sound that for a moment I was quite unaware of my whereabouts. However, I was soon up and down to breakfast, where I met my hostess, Lady Stronge, who received me with that true Irish charm. We lingered long at the breakfast table, talking on various matters, after which I went for a walk through the glorious woods, admiring the beauty of this lovely countryside. My host, however, was soon on my trail, to take me over his beautiful estate, which it was so pleasant to see intact when so many of the country homes in England are falling away from their old associations. I don't know the history of the house, but it is truly framed in most attractive surroundings.

However, I had to stick to schedule, so after luncheon I bade farewell to Lady Stronge, thanking her for the pleasant but all too short visit.

Mr. Speaker then again took me in hand and, his Factor at the wheel, we were soon on our way to the aerodrome at Belfast, first looking in at the beautiful Armagh Cathedral. We were held up so long at a railway level crossing that I feared I might miss the plane, but we arrived in good time. When saying farewell to my host, I really did not feel that I had at hand words adequate to express all I felt for such a sincere and hearty welcome to Northern Ireland. As the plane started up its engines and soared into the sky I looked down upon Ulster and could not help feeling as if I had left my native land, so great and warm had been my welcome throughout the visit.

We were soon over the sea and not long afterwards the outline of the Isle of Man came into view. We touched down at the Ronaldsway aerodrome at 5.45 p.m., where the Speaker of the House of Keys (the Hon. J. D. Qualtrough, C.B.E., M.H.K.) had sent a car to take me to my hotel in Douglas, he being busy with the preparations for Tynwald. I was, however, soon to be inducted into the observance of ancient customs in the lively prevalent folklore of the Island, for, as we were about to cross the Santon burn by the Ballalona Bridge on our way to Douglas, the chauffeur said: "Don't forget to salute the fairies as we go over the bridge", which I promptly did, following his example by lifting my hat. After my long and busy day I was ready to retire early, and on gazing from my bed,

though only for a few fleeting moments, on the glistening twilight on St. George's Channel or, shall we say, the Irish Sea, my thoughts soon faded into oblivion.

I had not long had my breakfast on July 4, when Mr. Speaker looked in for a quick call and arranged for me to be at the House of Keys at 11 o'clock, where I was introduced to Major Frank B. Johnson, M.A., the Clerk of Tynwald and Secretary of the House of Keys, who holds many other public offices in the Island and is also an advocate at the Manx Bar. I was then given the pleasure of meeting some members of the House of Keys, who had just finished business at a sitting of their Finance Committee. Many questions were asked about South Africa, and when they inquired if I knew Mr. P. A. Moore, M.P., lately returned as a member of the Union House of Assembly, whose family had long and distinguished connection with the Isle of Man, I surprised them by saying that he was one of my greatest friends.

We then adjourned to the House of Keys, a small Chamber where there is, in place of a Mace, a mounted Ram's Head, set with what looked like 2 large Cairngorms. This Chamber and its woodwork rather reminded me of the interior of the Legislature of Prince Edward Island, one of the Provinces of Canada in which Canadian Federation was given birth.

Mr. Speaker then took me up to the Lieutenant-Governor's office, where I met the Government Secretary, Mr. J. N. Panes, who is also Clerk of the Legislative Council, after which I had a pleasant talk with His Excellency Air Vice-Marshal Sir Godfrey Rhodes Bromet, K.B.E., C.B., D.S.O., etc., who I found was a brother Yorkshireman. From here I returned to the hotel, where Mr. Speaker gave me the pleasure of his company at luncheon. In the afternoon arrangements had been made for me to see the very interesting museum, returning to the hotel for dinner and early to bed in preparation for to-morrow's great day.

July 5 was Tynwald Day, the ancient outdoor Parliament of the Norsemen, in the Thing Vollr, or Parliament Field, which had met for over 1,000 years to declare the laws of Manxland. In the beginning the laws were handed down by word of mouth, and the Deemsters administered what were known as "breast laws" in allusion to their being locked up in the breasts of the Deemsters.[1] Mr. Speaker and Mrs. Qualtrough called for me early for our motor run to St. John's Church, erected for the purpose of the religious service preliminary to the Opening of Tynwald and specially designed for its subsequent legislative proceedings. Therefore, when again crossing Ballalona Bridge I was quite prepared for paying the traditional respects.

The Manx Parliament claims to be the "Grandmother of Parliaments" although I believe that the Speaker of the Iceland Althing

[1] *In Praise of Manxland*, 255.

on a recent visit to England claimed that honour, for at the celebration of Iceland's millenary at Reykjavik a few years ago, which was attended by representatives from many countries, the U.S.A. delegate asked who it was sitting in the seat of honour on the right of the Chairman at the official banquet, only to be told that he was the representative of the next oldest Parliament to that of Iceland's Althing, the Manx Tynwald, whose little Island had to be pointed out to him on the map. How great and valued an inheritance is tradition!

As the Speaker of the House of Keys kindly contributed an Article to the JOURNAL some time ago[1] and our readers are fully informed as to the working of the various branches of the Legislature of the Isle of Man, the powers of the Lieutenant-Governor and of "Tynwald", it will only be necessary to describe the spectacle.

I had long wished to be present at Tynwald, therefore when the opportunity came to me actually to witness this striking and impressive ceremony at the invitation of the Speaker, it was gladly accepted and my itinerary altered accordingly.

First, in regard to the actual ceremony of Tynwald, I should like to say that in my official Parliamentary career I have been responsible for the arrangements in connection with 38 Openings of Parliament in Southern Africa. I have also had a close-up view of an Opening of the Imperial Parliament at Westminster as well as having been present at the Delhi Durbar of 1902, in the days of the Empire of India, the Mecca of ceremony, but the ceremonial surrounding that of the Manx Tynwald stands on a plane of its own and the entire arrangements in connection with it were as perfect as they could be. Some people take a delight in sneering at ceremonial, place no value on tradition and scorn what has been handed down to them—often hard-won—by their forefathers, but it gave me a real heart-throb to see the ancient Norse Sword of State borne at the head of the Lieutenant-Governor's procession at Tynwald.

Regulations for Tynwald were printed for the information of all. The typed circular issued from the office of the Government Secretary was a model of exactitude, even to the extent of details in connection with the unveiling and dedication of the National War Memorial, which this year preceded Tynwald.

Upon conclusion of this ceremony, His Excellency the Lieutenant-Governor, preceded by the Sword of State and accompanied by the officers in personal attendance, entered the Church at the West Door, and advancing up the Chancel, took his seat on the right, together with the First Deemster, the Attorney-General and members of the Legislative Council. On the left of the Chancel sat the Lord Bishop of Sodor and Man, the Second Deemster and other members of the Legislative Council, while in the body of the Church were the Secre-

[1] *See* JOURNAL, XI-XII, 137. There is also further information on the subject to follow in our next issue.

tary, the Chaplain, the High Bailiff, the Mayor, Sword Bearer, A.D.C., Chief Constable, Surgeon, Mayors, Coroners, other Church Dignitaries and the guests. Every seat was numbered and coloured tickets were issued for the various parts of the Church. Sitting next Mrs. Qualtrough, who pointed out everything for me, I had a splendid impression of the ceremony.

Miss Maxwell Fraser, an authority on the history of the Island,[1] says that the title of Deemster, which is peculiar to the Isle of Man, is said to be derived from the Scandinavian "Doom-steerers" and corresponds in many ways to the position of an English High Court Judge, but that there is no single occupant of the English Bench who exercises such an extensive jurisdiction, or whose duties are so varied.

On taking office they are sworn to the following ancient oath:

By this book and by the holy contents thereof, and by the wonderful works that God hath miraculously wrought in heaven above and in the earth beneath in six days and seven nights, I do swear that I will without respect of favour or friendship, love or gain, consanguinity or affinity, envy or malice, execute the laws of this Isle justly betwixt our Sovereign Lord the King and his subjects within this Isle, and betwixt party and party, as indifferently as the herring backbone doeth lie in the midst of the fish. So help me God and by the contents of this book.

The Service opened at 11.15 a.m. with the singing of the first verse of the National Anthem, followed by "All People that on Earth do dwell", the *Te Deum*, the Apostles' Creed and among the prayers the following:

O LORD our God, who upholdest and governest all things by the word of Thy power: Receive our humble prayers for our Sovereign Lord, King George, the Lord of Mann; and together with him bless, we beseech Thee, our gracious Queen Elizabeth, Mary the Queen Mother, the Princess Elizabeth, and all the Royal Family. Grant to them strength equal to their tasks, and the constant assurance of their peoples' love. We ask this in the name of Jesus Christ our Lord. Amen.

MOST gracious God, we humbly beseech Thee, as for this Island in general, so especially for its Governor and Legislature here in Tynwald assembled: That Thou wouldest be pleased to direct and prosper all their consultations to the advancement of Thy glory, and the welfare of Thy Church and people; that all things may be so ordered and settled by their endeavours, upon the best and surest foundations, that peace and happiness, truth and justice, religion and piety, may be established among us for all generations; through Jesus Christ our Lord. Amen.

O LORD of all good life, we thank Thee for our heritage in this fair island home. Help us so to order our common life with grace and dignity, and to put away from town and sheading[2] all that is unwholesome, mean and sordid, that our children may grow up in health and godliness. Prosper our native industries, that with honest labour and due reward we may gather the harvest of land and sea. Teach us to care with Christian charity for the aged, the sick and all who fall beside the way. And may those who visit our shores find here

[1] *In Praise of Manxland*, 256 (Methuen). [2] The Island is divided into sheadings, each one in the Norse days having to supply a manned Viking Ship to the King.

true hospitality, and refreshment of mind and spirit, that they with us may glorify Thee, the giver of all good things; through Jesus Christ our Lord. Amen.

And the Hymn "O God, our help in ages past", after which the Lord Bishop pronouncing the Blessing.

After the conclusion of the Service, the Procession to Tynwald Hill was marshalled in the following order, and proceeded along the road of turf, 366 feet in length, separating the Church from the Mound:

(1) Four Sergeants of the Isle of Man Constabulary
(2) The Coroners[1]
(3) The Captains of the Parishes
(4) Two Ministers of the Free Churches
(5) The Beneficed Clergy
(6) The Officiating Minister
(7) The Chairman of the Isle of Man Education Authority
(8) The Chairman of the Peel Town Commissioners
(9) The Chairman of the Ramsey Town Commissioners
(10) The Chairman of the Castletown Town Commissioners
(11) The Mayor of Douglas
(12) The Vicar-General
(13) The Archdeacon
(14) The High-Bailiff
(15) The Chaplain of the House of Keys
(16) The Secretary of the House of Keys
(17) The Members of the House of Keys
(18) The Speaker of the House of Keys
(19) The two Messengers of the House of Keys
(20) The Government Secretary
(21) The Members of the Legislative Council
(22) The Attorney-General
(23) The Second Deemster
(24) The First Deemster and the Clerk of the Rolls
(25) The Lord Bishop
(26) The Sword of State
(27) His Excellency the Lieutenant-Governor
(28) The Officers in personal attendance on His Excellency
(29) The Chief Constable
(30) The Surgeon to the Household, and
(31) A detachment of the Isle of Man Constabulary

When the procession had left the Church it halted to take up an alignment on either side of the path, facing inwards, so as to enable His Excellency to pass through and be the first to step on to the Hill. The processsion re-formed behind His Excellency in reverse order to that in which it left the Church. On the approach of His Excellency the Guard of Honour "presented arms".

Tynwald Mound of gravel earth rises to a height of 12 feet at 4

[1] Manx Coroners are not officials who conduct inquests, as in England, but officers of the Courts who enforce summonses, executions and writs issued by the Courts. They remain in office for one year at a time, and each Tynwald day, when the new laws are promulgated, the retiring Coroners yield up their wands to the Governor and their successors come up one by one to be sworn and receive their staves of office on bended knee (*In Praise of Manxland*, 257).

stages of circular platforms, the circumference at the foot being 256 feet and at the top 60 feet. The approach to the top is by a flight of 21 steps cut in the turf directly facing the Church. The proportions are said by those interested in numerology to be symbolical of the weeks, months and years, and that "as the sun in its course governs the order of nature, so the promulgation of laws on this mound ensures good government of society".[1] Flagstaffs stood at regular intervals on either side of this pathway, which, as well as in the Church and approaches thereto and the steps to the summit of the Mound, are strewn with rushes on Tynwald Day, supplied in lieu of rent-charge from the small estate of Cronk-y-Keillown in the neighbourhood.

The pathway was lined by members of the armed forces and behind the grass border on either side were the public. As the procession, now headed by the Sword Bearer holding upward, with the hilt at chin-point, the Great Sword of State, reached the Mound His Excellency, preceded by the Sword of State, was the first to mount to the summit of the Mound.

On the top of the Mound is a large, high-domed, sideless, bell-shaped tent the top of which only comes down far enough not to hide from view those assembled therein, the central figure being His Excellency the Lieutenant-Governor in the sky-blue uniform of the Royal Air Force, his breast a blaze of stars and medals. Placed on a table before him is the Sword of State, unsheathed.

The following were then the order of the proceedings:

10. On Tynwald Hill only His Excellency the Lieutenant-Governor, the members of the Legislative Council, the Government Secretary, the Sword Bearer and the officers in personal attendance on His Excellency will occupy the top: The Speaker, Members, and Secretary of the House of Keys, together with their Chaplain, will be accommodated on the next step; while the High-Bailiff, the Vicar-General, the Mayor of Douglas, the Chairmen of the Castletown, Peel and Ramsey Town Commissioners, the Chairman of the Isle of Man Education Authoritiy, the Clergy (including the Officiating Minister), and the Free Church Ministers will occupy the step below.

The Captains of the Parishes will occupy the lowest step and they will stand on either side of the approach.

The Coroners will stand at the foot of the Hill.

11. When His Excellency is seated on the Hill, the various officials have taken up their positions, and those persons with official tickets have taken up their places in the Enclosures, the Guard of Honour will give the Royal Salute and the Band will play the National Anthem and the Manx National Anthem,[2] everybody standing.

(1) His Excellency will resume his seat on the Hill and will say:

[1] *In Praise of Manxland*, 254.

[2] The popular song Ellan Vannin (Mannan's Isle) is however a most tuneful air.—[O. C.]

"LEARNED DEEMSTER, DIRECT THE COURT TO BE FENCED."

(2) The First Deemster will then say:

"CORONER OF GLENFABA SHEADING, FENCE THE COURT."

(3) The Coroner of Glenfaba Sheading will fence the Court with the following form of words:

"I FENCE THIS COURT OF TYNWALD IN THE NAME OF OUR MOST GRACIOUS SOVEREIGN LORD THE KING. I CHARGE THAT NO PERSON DO QUARREL, BRAWL OR MAKE ANY DISTURBANCE AND ANSWER THEIR NAMES WHEN CALLED. I CHARGE THIS AUDIENCE TO WITNESS THIS COURT IS FENCED. I CHARGE THIS AUDIENCE TO WITNESS THIS COURT IS FENCED. I CHARGE THIS WHOLE AUDIENCE TO BEAR WITNESS THIS COURT IS NOW FENCED."

(4) The First Deemster will then say:

OUT-GOING CORONERS, SURRENDER YOUR STAVES OF OFFICE TO HIS EXCELLENCY THE LIEUTENANT-GOVERNOR."

(5) The Coroners will ascend the Hill in the following order:

Glenfaba,
Michael,
Ayre,
Garff,
Middle,
Rushen:

hand in their staves of office and return to their places.

(6) The First Deemster will then say:

"IN-COMING CORONERS, TAKE THE OATH IN ANCIENT FORM TO EXECUTE YOUR OFFICES FOR THE ENSUING YEAR, AND RECEIVE YOUR STAVES OF OFFICE FROM THE HANDS OF HIS EXCELLENCY THE LIEUTENANT-GOVERNOR."

(7) The Coroners-elect of Glenfaba, Michael, and Ayre will then proceed up the Hill together, kneel before His Excellency and take the following oath to be administered by the First Deemster:

"BY THAT BOOK AND BY THE HOLY CONTENTS THEREOF AND BY THE WONDERFUL WORKS THAT GOD HATH MIRACULOUSLY WROUGHT IN HEAVEN ABOVE AND IN THE EARTH BENEATH IN SIX DAYS AND SEVEN NIGHTS, YOU SHALL WITHOUT RESPECT OF FAVOUR OR FRIENDSHIP, LOVE OR GAIN, CONSANGUINITY OR AFFINITY, ENVY OR MALICE, WELL AND TRULY EXECUTE THE OFFICE OF CORONER OF THE RESPECTIVE SHEADINGS OF GLENFABA, MICHAEL AND AYRE FOR THE ENSUING YEAR. SO HELP YOU GOD."

These Coroners, on bended knee, will receive their staves of office from His Excellency and then return to their places at the foot of the Hill.

(8) The Coroners-elect of Garff, Middle, and Rushen will then proceed up the Hill together and take the oath and receive their staves as in (7).

(9) His Excellency will then say:

"LEARNED DEEMSTER AND REVEREND LHAIHDER, I EXHORT YOU TO PROCLAIM TO THE PEOPLE IN ANCIENT FORM, SUCH LAWS AS HAVE BEEN ENACTED DURING THE PAST YEAR, AND WHICH HAVE RECEIVED HIS GRACIOUS MAJESTY'S ROYAL ASSENT."

The abstracts of 32 Acts were then proclaimed, first in English and then in Manx, of which the following is an example:

1. Statutory Time Act, 1948, which enables Tynwald to be held on the following Monday if the 5th day of July be a Sunday or a Saturday.

1. Slattys Traa Leighoil, Nuy cheead yeig hoght as daeed, to jannoo kiarail son Tinvaal dy ve cummit er Jelhein er-giyn my huittys yn Wheigoo laa jeh'n Chiaghtoo vee er Jedoonee ny Jysarn.

(10) After the Laws have been read, the First Deemster will say:

"FREEMEN OF MANN, IN YOUR ANCIENT TYNWALD ASSEMBLED, I CALL UPON YOU, AS AN EXPRESSION OF YOUR LOYALTY, TO GIVE THREE CHEERS FOR HIS MAJESTY THE KING."

(11) The First Deemster will then say:

"HAS YOUR EXCELLENCY ANY FURTHER COMMANDS?"

(12) His Excellency, in the event of his having no further commands to give, will say:

"THE TYNWALD WILL ADJOURN TO THE CHURCH AND COMPLETE SUCH BUSINESS AS REMAINS TO BE TRANSACTED."

12. After the business on the Hill has been transacted, the procession will leave the Hill in the same order, and with the same procedure in which it left the Church. On clearing the Guard of Honour, it will halt and align itself on either side of the path as before, to enable His Excellency to enter the Church first.

The ceremony ended with three cheers for the Lord of Mann (H.M. the King).

The procession then re-formed and returned to the Chapel which had been arranged for a short Session of Tynwald.

The Legislature is now assembled in the Church. At a table near the Altar sat His Excellency, the Deemsters and the members of the Legislative Council, with their Clerk, and seated on either side of the main aisle in the Chancel were the members of the House of Keys, with their Speaker and their Clerk, who, with the Deemsters, are bewigged and gowned.

The proceedings opened with the laying of Papers "before the Court", followed by Motions for expenditure for certain purposes, approval of Regulations and the appointment of the Standing Orders (Public Petitions) Committee.

Petitions were then presented and action taken upon them either for reference to the Local Government Board "for Report" or "That the prayer of the Foregoing Petition be and the same is hereby granted".

The Acts promulgated on the Hill were then signed by Mr. Speaker and all the members of the House of Keys which brought the proceedings to a close. A truly impressive ceremony throughout, both in the Church and on the Hill.

One could readily imagine the hardy Norsemen in the days of old in their armour, winged helmets, with their swords and spears, assembled there in support of their King and the recognition of their ancient rights and privileges. It is no doubt that from respect for these traditions the spirit of constitutional government in the British Isles has sprung, their one great principle being the right of justice for all.

The Session over, Mr. Speaker joined us and very courteously presented me with the quill pen he had just used in signing the Acts promulgated from Tynwald. Then, with Mrs. Qualtrough, I met at the car Miss Maxwell Fraser, the authoress, and a prominent authority on the history of the Island, from whose *In Praise of Manxland* as well as from her conversation I have so freely quoted. Our run was now to the Castletown Country Club where, at Mr. Speaker's invitation, we had luncheon, after which we visited his home at Castletown.

However, the hospitality of Mr. Speaker did not end there, for he had arranged for Miss Maxwell Fraser to take me round the Island first by Island Railway to Peel, and then on the top of a two-decker motor bus from which I had a splendid view of the scenery, returning to Douglas, where my most interesting and charming travelling companion gave me the pleasure of her company at dinner—a most enjoyable close to my visit. I then saw her to the station on return to Mr. Speaker's house in Castletown where she was staying.

On July 6 I was up early to catch the 7 a.m. plane for Speke, so as to be in good time for the 9.25 train from Liverpool to Bath, where my wife and daughters were waiting to welcome me and hear all the news. The train journey to Bath enabled me again, and this time after 15 years' absence, to glory in the beauties of the English

countryside. Our stay in Bath was the means of happy reunion with old friends of long ago, thus bringing the 9 days' wonderfully interesting holiday of the Busman to a pleasant close.

*XVIII. EXPRESSIONS IN PARLIAMENT, 1949[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.

"an irresponsible member". (67 *Union Assem. Hans.* 2543.)
"carry on a policy of economic sabotage". (66 *Union Assem. Hans.* 1738.)
"clown". (448 *Com. Hans.* 5, s. 275.)
"crypto-communist" no more out of order than a crypto-member of any other political party. (450 *Com. Hans.* 5, s. 1383.)
following a policy "that he knows to be false". (66 *Union Assem. Hans.* 346.)
"fool". (449 *Com. Hans.* 5, s. 1196.)
"foxed" or "faked" figures, expression difficult to interpret. (454 *Com. Hans.* 423.)[2]
Government "wasted money". (66 *Union Assem. Hans.* 1097.)
"high-handed" in reference to the action of the Government. (XX *Madras Hans.* 428.)
"making statements not according to fact", member accused of. (463 *Com. Hans.* 5, s. 35.)
member "is living in a location". (68 *Union Assem. Hans.* 5958.)
member was asked whether a certain foreign diplomat was speaking "as the representative of marauding and rapacious capitalists". (457 *Com. Hans.* 5, s. 1007.)
members acting as tools of an outside body. (456 *Com. Hans.* 5, s. 1024.)
"member spoke like an advocate who was paid to speak". (69 *Union Assem. Hans.* 8934.)
Minister, no personal charge against a, when a member says the Minister is dealing wrongly or double-dealing. (456 *Com. Hans.* 5, s. 650.)
Minister was "impertinent". (68 *Union Assem. Hans.* 6909.)
"official stooges" description of member as. (460 *Com. Hans.* 5, s. 61.)

[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; XVII, 323. [2] Mr. Churchill in this connection used a well-known quotation: "There are lies, there are damned lies and there are statistics."

"Quisling", when not applied to individual members. (469 *Com. Hans.* 5, s. 405.)
"show-boy" the Mayor of . . . is a mere. (XXI. *Madras Hans.* 208.)

Disallowed.

"declared traitor". (456 *Com. Hans.* 5, s. 969.)
"disgraceful performance". (CCLXVIII. *Can. Com. Hans.* 2394.)
"dishonest argument". (453 *Com. Hans.* 5, s. 1450.)
"Fascist" as applied to a foreign government. (465 *Com. Hans.* 5, s. 2094.)
"fools of themselves". (CCLXVII. *Can. Com. Hans.* 1663.)
"Free lance demagogue". (463 *Com. Hans.* 5, s. 554.)
"he was nothing but a tool for the Nazis". (1949 *Union Sen. Hans.* 3741.)
"His brains could revolve inside a peanut shell for a thousand years without touching the sides". (285 *N.Z. Hans.* 429.)
House indifferent to human life. (454 *Com. Hans.* 5, s. 1297.)
"I say that name will go down as our South African Quisling." (1949 *Union Sen. Hans.* 5857.)
"I wish you had that sense of honour and you would be a better man." (1949 *Union Sen. Hans.* 3960.)
"in a scandalous way he mis-stated the facts". (1949 *Union Sen. Hans.* 2643.)
"'murdered' or 'killed' people, that British authorities have". (454 *Com. Hans.* 5, s. 1311, 3.)
"now the hon. Minister of Justice comes along and he abuses his powers". (1949 *Union Sen. Hans.* 724.)
"Parliament is a farce". (1949 *S. Rhod. Hans.* 1046.)
"their (Government's) unholy hands". (1949 *S. Rhod. Hans.* 785.)
"whose policy he now so warmly and for so many golden reasons supports". (1949 *Union Sen. Hans.* 1400.)

Borderland.

"political nepotism" unless corruption inferred. (443 *Com. Hans.* 5, s. 2000.)
"undignified for the hon. Senator to accuse another hon. Senator of telling an untruth". (1949 *Union Sen. Hans.* II. 2503.)

XIX. SOME RULINGS BY THE SPEAKER AND HIS DEPUTY AT WESTMINSTER, 1947-1948

COMPILED BY THE EDITOR

THE following Index to some points of Parliamentary procedure, as well as Rulings by the Speaker and Deputy Speaker of the House of Commons given during the Third Session of the XXXVIIIth Parliament of the United Kingdom of Great Britain and Northern Ireland (11 Geo. VI), are taken from the General Index to Volumes 443 to 456 of the Commons *Hansard*, 5th series, covering the period October 21, 1947, to September 13, 1948, and in the Fourth Session of such Parliament (12 Geo. VI) from September 14 to October 25, 1948. The Rulings, etc., given during the remainder of 1948 (which fall in the 1948-49 Session, the Fifth Session of the XXXVIIIth Parliament) will be treated in Vol. XIX of the JOURNAL.

The respective volume and column reference number is given against each item, the first group of figures representing the number of the volume, thus—"413–945" or "456–607, 608, 1160". The references marked with an asterisk are indexed in the Commons *Hansard* only under the heading "Parliamentary Procedure" and include some decisions of the Chairman of Committees.

Minor points of Parliamentary procedure are not included in this Index, neither are Rulings in the nature of remarks by Mr. Speaker. Rulings in cases of irrelevance are only given when the point is clear without reference to the text of the Bill, or other document, itself. It must be remembered that this is an index, and, although its items generally are self-contained, in other cases a full reference to the *Hansard* text itself is advisable.

Adjournment.
—*of House*
—debate, *see* that Heading.
—half hour, *see* Debate.
—*of House (Urgency), Motion for*
—*refused*
—picking of plum crop in danger of destruction, 454–926.
—reduction in strength of Home Fleet, as other opportunity to debate in near future, 443–247.
Amendment(s).
—Bills, Public, *see* that Heading.
—Bills, Public, *see* Debate.
—Lords, *see* Lords, House of
—selection of, *see* Chair.
Anticipation.
—must not anticipate in Motion to go into Supply (Army) something to be discussed in Com. of Privileges, 448–1077.
—not allowed on Bill down for discussion on the following day, 456–403.
—on going into Supply (Army) must not anticipate subject set down for to-morrow, 448–1079.
Bills, Private Members', *see* Bills, Public; Debate & Members.

Bills, Public.
—debate, *see* that Heading.
—Finance, *see* Money, Public.
—Lords, *Amdt(s).*, *see* Lords, House of
—*Rep.*
—*amdt.* not necessary as already in Bill, 451 – 252.
—new clause falls for want of seconder, 449 – 1104.
—title of, only amended when *amdt(s).* make it necessary, 454 – 829.
Broadcasts.
—comment on *re* Government, 447 – 836.
Chair.
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XX. APPLICATIONS OF PRIVILEGE, 1949

BY THE EDITOR

At Westminster.

Press insinuations against a Member.—On March 16,[1] the hon. member for Crewe (Mr. S. Scholefield Allen, who was also Recorder for Blackburn) asked Mr. Speaker's advice on a question of Privilege, but Mr. Speaker said that, since he had not had time to peruse any of the statements in the paper, would the hon. member raise the matter to-morrow. There would be no prejudice, continued Mr. Speaker, because the hon. member had raised the matter at the first available opportunity and he (Mr. Speaker) asked for time to consider the case.

On March 17,[2] the hon. member complained of a newspaper report, under the heading "Recorder Criticized", of how the Chairman of a Juvenile Court had criticised him for "highly improper conduct" in securing the release of a 12-year-old boy from an approved school. The member explained that he had in fact forwarded a letter asking for the child's release to the Home Office, but that the request had been refused; and that in any case he was only doing his duty as a member of Parliament. He suggested that an unjustifiable attack had been made upon him, which was particularly damaging owing to the reference to his Recordership and its implications.

Mr. Speaker, at one point, intervened to say that he did not want to judge the case but only to know whether there was a *prima facie* case.

At the conclusion of the hon. member's statement Mr. Speaker said:

> I have carefully considered whether or not I should rule that the hon. and learned member has established a *prima facie* case of breach of Privilege. My conclusion is that, whether or not, the words are technically defamatory, the implication cast upon the hon. and learned member is not sufficiently grave to warrant giving to this matter precedence over the business of the day. It is clear that the Chairman of the Juvenile Court was not fully informed of the true facts of the case, and the action in releasing the boy was taken by the Home Secretary. No criticism can possibly be attached to the hon. and learned member for Crewe (Mr. S. Scholefield Allen) for his part in the matter.

In reply to another hon. member, who submitted that this magistrate had accused the hon. and learned member of misusing his holding of judicial office in order to secure a result as a member of this House that he would not otherwise have been able to do, Mr. Speaker remarked that a member of Parliament was not exempt from criticism. The question was: "Is it going to interfere with the execution of his proper duties?" Mr. Speaker could not think that the mere statement by a magistrate in Court, which was misinformed, would

[1] 462 *Com. Hans.* 5, s. 2119. [2] *Ib.* 2299.

really deter the hon. and learned member from performing his duties as a member of Parliament.

Another hon. member called attention especially to the fact that he thought it had been held by Mr. Speaker's predecessors that it would be very embarrassing to the Committee of Privileges for Mr. Speaker to be asked to give his reasons, beyond his original statement that he ruled that there was no *prima facie* case.

"The Nenni Telegram".—Two instances of the use of members' names were brought up in 1948, namely, "the Nenni Telegram" and the *General News Service*, but, as neither was declared by Mr. Speaker to be *prima facie* cases of Privilege, they had to give place to other matter in our last Volume of the JOURNAL. Nevertheless, they disclose certain facts and principles which it is useful here to record.

On April 19, 1948,[1] an hon. member said: "With your permission, Mr. Speaker, I beg to move":

That a Committee of Privileges be appointed to investigate into and report on the circumstances in which a number of names of members of this House were illegally appended, without their approval, to a telegram sent on 16th April.

Mr. Speaker, however, immediately interrupted the hon. member to say that he had already informed the hon. member, when the matter was submitted, that his permission had not been granted because there was no *prima facie* case. The hon. member then said that he was only rising with Mr. Speaker's permission and that a number of names of members were allegedly appended without their approval to a telegram sent on April 16 to Signor Nenni wishing him outstanding success in the forthcoming Italian elections.

The facts were stated in that day's *Daily Herald*, which said that on Friday last a telegram was sent purporting to be in the names of 37 members of this House, such newspaper stating that certain 4 members (*naming them*) disclaimed either having any knowledge of the telegram or of having signed it. Also, that as there were other members who had made similar statements, that they did not sign the telegram, then some of the signatures on it were forged and other signatures concerned were obtained by fraud. The hon. member then asked that he might move the Motion.

Mr. Speaker said that, in the first place, the Committee of Privileges already existed and this was a question affecting certain individuals and was not a matter of Privilege. He therefore Ruled that there was no *prima facie* case.

The mover then asked the Leader of the House to find time for the Motion on the O.P. in the names of 10 members for a Select Committee to investigate into and report on the circumstances, and Mr. Morrison said he would consider it.

Another hon. member then interjected as one who adhered to the telegram sent to the Official Italian Socialist Party, but Mr. Speaker

[1] 449 *Com. Hans.* 5, s. 1447.

remarked that a personal statement must not bring in provocative matters. He also stated that hon. members had no redress in this House because the matter was published in the newspapers and that a member had redress in the Courts.

The subject was again referred to in the House on April 22,[1] on the question of the Business of the House, but its Leader did not consider that matters could be advanced by the appointment of a Select Committee.

On May 27,[2] another hon. member moved:

That a Select Committee be appointed to inquire into, and report upon, the circumstances in which the names of members of this House are alleged to have been added without their consent to a telegram sent on the 16th of April to Signor Nenni,

which was negatived: Ayes, 106; Noes, 221.

News Service: Members' Names.—On April 26,[3] 1948, an hon. member raised a question concerned with a news service known as the *Democratic and General News Service*, incorporating the *General News Service*, of which the proprietor was Mr. Eric Cook. This news service specialised in serving the European and Empire Press and was a news agency which distributed information throughout the world, copies of which were mailed to members of the editorial board in this country (*naming them*).

The hon. member said that for the second time in a week, allegations had been made that hon. members' signatures had been forged, or obtained under false pretences, or used for subversive purposes without the knowledge of the persons concerned, at the same time submitting that these facts constituted a breach of Privilege.

Mr. Speaker then stated that this was also a case between a gentleman and certain members of Parliament. It was not a reflection on Parliament as a whole and it was not really a matter which affected Privilege, but was between some individual members who apparently had had their signatures put down by mistake and by a Mr. Cook. Mr. Speaker could not rule that there was a *prima facie* case of Privilege, although he confessed that when names of members were put down recklessly by all kinds of papers, on all kinds of occasions, it was a serious matter. The remedy, however, lay between each of the hon. members and the paper concerned.

Newspaper misrepresentation of a member's speech in House.—On July 25,[4] the hon. member for King's Norton (Captain A. R. Blackburn), as a point of Privilege, submitted a Motion—

That the Report in the *Daily Worker* of July 22 of the speech of the hon. member for King's Norton is a gross misrepresentation of his speech and a breach of the Privileges of the House.

The matters referred to were contained in 2 sentences. The first read:

[1] *Ib.* 2014. [2] 451 *Ib.* 435. [3] 450 *Com. Hans.* 5, s. 31.
[4] 467 *Com. Hans.* 5, s. 1821.

Mr. Blackburn . . . went so far as to accuse the Communists of retaining Buchenwald as a concentration camp,

but what the hon. member did say (as reported in column 1677 of *Hansard*) was to ask the Minister of State:

Is it not a fact that Buchenwald to-day is being used as a concentration camp by the Communists?

To which the Minister replied: "Yes, it is".

It was on the newspaper's second sentence, continued Mr. Blackburn, that his complaint arose, and it read as follows:

He (*that was himself*) demanded that the Greek Fascists be given the right to invade Albania.

Later on Mr. Blackburn said—and this was the passage which was misrepresented:

I think we should recognise, in view of the continual aggression against Greece, the right of Greece, with ourselves, in collective self-defence, to go into Albania. If the Greeks desire to counter-attack any rebels who attack from Albania, we should recognise their right to track the rebels down to their lair.[1]

Mr. Speaker then asked the hon. member to bring the newspaper to the Table.

Copy of newspaper delivered in.

THE CLERK (Sir Frederic Metcalfe) read the passage complained of.

Mr. Speaker then said:

The Ruling that a matter of Privilege, to secure precedence, must be raised at the earliest opportunity, is well known. The newspaper . . . was published on Friday last. On that day the House rose at 3.16 p.m. There was therefore very little time for the hon. member to raise the case before the House rose on Friday. As he did bring his complaint to my office shortly after the rising of the House, I propose in this case to allow him to raise it as a matter of Privilege. But I have had very little time to consider the matter and I will ask the hon. member, therefore, if he so chooses, to raise it to-morrow, having given notice to-day of his desire to do so.[2]

On July 26,[3] the hon. member was not at first disposed to raise the matter as one of Privilege, but, on pressure by other members, later did do so. Whereupon the same procedure was followed in regard to the delivery in of the newspaper in question, Mr. Speaker concluding with the statement that there was a *prima facie* case.

The hon. member then moved his original Motion (*as above*), but the noble member for Sussex, Horsham Division (Earl Winterton), interposed by saying that it was long ago agreed in this House that questions of Privilege should be remitted to the Committee of Privileges for their decision. In all other instances in his recollection the Motion was moved by the Leader of the House that the matter should

[1] *Ib.* 1677. [2] *Ib.* 1822. [3] *Ib.* 2250.

go to the Committee of Privileges. He objected most strongly and hoped that other hon. members would go into the Lobby with him against the whole proceeding.[1]

The hon. member for Warwick and Leamington (Rt. Hon. Anthony Eden) considered it an error to pronounce upon the matter before it had been before the Committee of Privileges, and suggested that the normal procedure should be followed by the Leader of the House, since Mr. Speaker had ruled that, as there was a *prima facie* case, the Committee of Privileges should be asked to pronounce upon it.

The Lord President of the Council (Rt. Hon. Herbert Morrison) observed that it did not follow because the Leader of the House had to move a Motion that a matter of this kind should go to the Committee of Privileges. Sometimes it was inconvenient. With great respect, assuming that it was taken notice of at all, he believed this a clear case. In order to shorten the proceedings, the House was competent—it had done so before—to express itself forthwith.

Mr. Eden submitted that this was not a Party matter. As the position was set out in Erskine May[2] he thought the rt. hon. Gentleman was wrong. Whenever a case of Privilege had been raised since 1909 it had been the usual practice in the Commons to refer the matter of the complaint to the Committee of Privileges, and the House had suspended its judgment until their report had been presented. Mr. Eden therefore suggested that it would be wiser to accept that practice rather than suddenly leap into debate on a matter which had not been before the Committee at all.

Mr. Speaker, in reply to the Leader of the House, said that the House was undoubtedly competent to deal with the Motion moved by the hon. member for King's Norton.[3]

The hon. member for Nelson and Colne (Mr. S. S. Silverman) considered that as there was evidently a difference of opinion as to this being a clear case, it was surely proof conclusive that the House ought not to come to a decision about it without inquiry, evidence, and giving everybody concerned a right to be heard.

Amendment.—Mr. Eden then moved an amendment to the Motion, by leaving out all words after "That" to the end of the Question and adding: "the matter of the complaint he referred to the Committee of Privileges", which, after a short debate, was agreed to, as well as the Main Question as amended.[4]

Report.—The Committee did not consider the matter until October 20, and then, without hearing evidence, produced a short report,[5] to the effect that although by virtue of a Resolution of the House of March 3, 1762, *any* publication of reports of speeches of honourable members is technically a breach of Privilege, they had compared the

[1] *Ib.* 2252. [2] XIV, 134. [3] 467 *Com. Hans.* 5, s. 2254. [4] *Ib.* 2255.
[5] H.C. 261 (1949).

two versions of the speech in question and did not consider that any action by the House was called for.

In reply to a Question the Leader of the House later stated that he believed the House would not wish to debate this report, and the matter then dropped.[1]

At Hobart.

Libel on Mr. Speaker.—In the House of Assembly on November, 1, 1949,[2] Mr. Speaker said:

Before calling on Orders of the Day, I wish to bring a matter of Privilege before the House.

For some time past the Honourable Member for Bass (Mr. Orchard) has been attacking me over a Radio Station in Launceston. On Thursday night last, on the Question " That the House do now adjourn ", he referred to an incident involving himself, a Member of the Legislative Council, and myself, which forced me to take the unusual course of defending myself from the Chair. Immediately the House rose on that night I was handed a letter from the Honourable Member, enclosing an extract from a recent radio broadcast made by him, which I now read to Honourable Members:

The following is an abstract of the letter referred to, omitting references to politics:

Mr. W. G. Wedd, M.H.A., Speaker, Parliament House, Hobart.

DEAR MR. WEDD,

I have been very concerned at, and have given much thought to, the unfortunate incident of your personal attack upon me in the Dining Room of the House on Tuesday evening, in the presence of Mr. D. G. Lonergan, and, in the latter stage, the Honourable Neil Campbell. My concern is due entirely to the fact that you occupy the high and responsible position of Speaker.

You stated that the reason for your attack was my reference to you in my various broadcasts, in particular my latest one on Monday, 24th instant, of which I understand you had no copy, but a secondhand verbal report. To correct this situation I attach herewith the text. I wish to point out that your broadcasts have many times most destructively condemned the Parties and Party control of the House, and argued for co-operation and friendliness. But because you, the only supporter of your 10.30 adjournment motion, were opposed by the House—which was prepared to give that very co-operation to the Premier that you ever demand—you became a law unto yourself last Thursday, when after two post-midnight sessions, you aided the Premier in forcing your fellow-Independents and Opposition Members to endure a situation that can only be described as a disgrace to those who sponsored it. In my opinion your part in it was a supreme example of petty pique, unworthy of your ideals. We have a right to act as we please—but the public who listen to your broadcasts and mine also are entitled to an understanding of our political actions.

* * * * *

I leave this long letter with you for any opinion you may form. My criticism of you has at all times been strictly political. You must admit that your remarks to me were bitterly personal, and that I refused to be a party to reprisals in any way. If you desire to discuss the matter further, I am at your service. If my assumption that you will hold the Government in office regardless of its actions is proved to be unjust, I shall be happy to tender you a sincere apology and to tell the public that I have done so. I shall correct the

[1] 468 *Com. Hans.* 5, s. 1520. [2] 1949 VOTES, 217-9.

Speaker's salary figure which I firmly believed was fixed at £1,400. I understand in your case it is £1,250.

* * * * *

Yours sincerely,
(*sgd.*) J. R. ORCHARD, M.H.A.

Text of References to Mr. W. G. Wedd, in John Orchard's Commentary Broadcast over 7LA-7BU-7DY on Monday, 24th October, 1949.

In these simple statements you see why the Labour Government can buy its way back into office—and in doing so every year adds to the burden that will face the generations ahead—your children and mine.

* * * * *

So, ladies and gentlemen, we refused to consent blindly to sign away your future on a blank cheque. We repeatedly moved that the House adjourn—each time the move was defeated by Mr. Wedd, who has become the acknowledged saviour of the Government. Last year Mr. Wedd moved that the House should adjourn every night at 10.30. In fairness to the Premier's need at times to get urgent business completed, we did not agree to this, but it was understood that common sense would be used. This week presented a scandalous example of bad faith on the part of the Premier and petty spite by Mr. Wedd. I asked him would he assist us to adjourn at midnight, when we were not half-way through the items—and he refused, saying that we had not supported his last year's proposal and we would therefore put up with the consequences. When we asked for an adjournment, he voted with the Government. Here you have a perfect example how insincere Mr. Wedd is in his everlasting plea for give and take between the Parties. By such use of his new dictatorship, achieved by his deal with Mr. Cosgrove to get the Speakership at £1,400 a year, he has not only fallen to the lowest ebb in the eyes of his erstwhile supporters, but has surely deserted and destroyed the very Independent movement which he has used so long for his personal propaganda.

Now fallen in prestige so far that it is doubtful if he would save his deposit in another election, he has declared his intention not to stand again, and only a miracle can prevent his keeping this Government in office until 1953, despite such injustices[1] as this and other broadcasts reveal.

Mr. Speaker then said:

It will be seen that the Honourable Member has not addressed this letter to me in my personal capacity, but to the Honourable W. G. Wedd, Speaker of the House of Assembly. He has seen fit not only to defame me, but has committed the grave offence of attacking the office of Speaker. The charges against my personal honour are matters that I shall deal with as W. G. Wedd, but at the moment I am concerned with the prestige and authority of the Chair.

I am sure Honourable Members agree with me when I say that the whole foundation and structure of this House depend on the impartiality, dignity, and authority of the Speaker's Chair, which it is the bounden duty of every Member to uphold. Not satisfied with his action in this House last Thursday night and the ridiculous and unbalanced charges contained in his letter to the Speaker, he has continued his attack by again broadcasting defamatory statements about me in a radio session last night, in which he said—

> Mr. Wedd, as Speaker, sat idly by and saw defeated a proposal that would have gone far to prevent those very strikes he so spectacularly condemned in

[1] The injustices were the refusal to reimburse the £700 strike pay lost by Railwaymen, and the unfair procedure *re* Police Deputy Commissioner.

large public meetings, and for which he received over £100 in donations for his promise to pursue the matter further. This promise he has conveniently shelved by taking the Speakship.

I ask you why did Mr. Wedd not leave the Speaker's Chair, and by his vote compel the Government to accept in strike decisions that affect every section of the people in the same democratic principle of compulsory secret ballot that the Labour Party so largely demand in their constitutional reform.

It will be seen that the Honourable Member not only adds to the defamation of my character by his inference regarding the donations of £100 referred to by him, but shows a complete lack of understanding of the duties and functions of the Speaker when he asks why I did not leave the Speaker's Chair and vote on the floor of the House.

I would remind Honourable Members that I was elected as Speaker of the House by them, and that if there was any opposition to my election it was open to any two Members to propose and second another Member for the position. The fact, however, is that the proposal of the Honourable the Premier that I be elected as Speaker was seconded by the Honourable the Leader of the Opposition, and carried unanimously.

It is at this stage that I wish to make my position clear. The Honourable Member for Bass (Mr. Orchard) has in my opinion committed a gross libel against the Speaker, and a grave breach of the privileges of this House. His only correct course, if he wishes to make charges against the Speaker (or for that matter any other Member of the House) is to do so by means of a Substantive Motion. I therefore offer him two alternatives—when the House meets to-morrow afternoon—he will either make an unreserved and unqualified withdrawal of his charges against the Speaker, together with a proper and complete apology, both to the Speaker and to the House, or give notice to move a motion charging the Speaker with the offences he has mentioned. If he fails to accept either of these two alternatives, I shall have no option but to ask the House to support me in taking drastic action to deal with the Honourable Member.

Although perhaps the wiser course would be to leave any further discussion regarding this matter until to-morrow, to give Members time to consider the implications of the grave offence committed by the Honourable Member, if any Member has any comment to make at this stage I am prepared to allow it.

And Mr. Orchard having proceeded to speak from his place, on the suggestion of the Leader of the Opposition the matter was held over until to-morrow.

On November 2,[1] Mr. Speaker said:

Before the matter of Privilege which I raised last night is discussed any further, I desire to correct a wrong impression I may have given last night.

It will be remembered that I said that the Honourable Member for Bass (Mr. Orchard) would be given an opportunity to speak first when this matter was resumed to-day.

On looking into the correct procedure to be followed in such cases I now find that before the matter can be discussed any further some question must be before the Chair. This means that some Honourable Member must move a Motion.

Has any Honourable Member a Motion to move?

Whereupon Mr. Attorney-General addressed the House as follows:

In order to put the matter properly before the House, I will move that the statements made in recent radio broadcasts at Launceston by the Honourable

[1] 1949 VOTES, 225-7.

Member for Bass (Mr. Orchard) and statements contained in a letter signed by the same Honourable Member and handed to the Honourable the Speaker on the night of 27th October last after the House rose, in which he imputed bribery against the Speaker, and attacked the Chair, constituted a gross libel on Mr. Speaker and a grave breach of the Privileges of this House.

Mr. Speaker, in moving the Motion, I propose to have very little to say. I think we are all agreed that this is a most lamentable incident, and I have no desire to be censorious or to labour the matter unnecessarily. I would, however, draw the attention of Honourable Members to the very grave accusations made in the matters read to the House by yourself last night. For example, I understand that portion of the broadcast referred to in the statement read by yourself, Mr. Speaker, and supplied by the Honourable Member himself, is headed: " Text of references to Mr. W. G. Wedd in John Orchard's commentary broadcast over 7LA, 7BU, 7DY, on Monday, 24th October, 1949 ", and that somewhere in that portion of the broadcast there appears this simple statement: " You see why the Labour Government can buy its way back into office ". I don't know what preceded these remarks, but I draw the House's attention to the fact that this is headed " Text of references to Mr. Wedd ", and I assume that as the Honourable Member himself has supplied it in this form you yourself are involved in the statement that the Labour Government can buy its way back into office. That is a very clear statement, and of course so far as you are concerned, Mr. Speaker, and so far as the Government is concerned, the Government is not involved in this because it would be out of order to refer to anything but your own matter here—but if the Honourable Member was referring to you, there is a clear-cut accusation that in some way or other you have been bought.

Secondly, there is a reference in the broadcast which I will read: " By such use of his new dictatorship, achieved by his deal with Mr. Cosgrove to get the Speakership at £1,400 a year ". There again there is the clear and most emphatic statement that you have attained your office by a deal, and if one turns back to the opening words " buy its way back into office " and then refers to " a deal " to get the Speakership at £1,400 a year, there is the clearest-cut accusation of conduct calculated to bring the office of Speakership into grave disrepute, not only in this House but throughout the whole of the country.

Even after realising as a result of the incident which occurred in the precincts of this House last week what you personally have felt about this matter, the Honourable Member makes a broadcast in which he says that " Mr. Wedd as Speaker sat idly by and saw defeated a proposal that would have gone far to prevent those very strikes he so spectacularly condemned in large public meetings, and for which he received over £100 in donations for his promise to pursue the matter further. This promise he has conveniently shelved by taking the Speakership. I ask you why did Mr. Wedd not leave the Chair, and compel the Government by his vote . . ."

Well, Mr. Speaker, it is impossible to imagine what was in the Honourable Member's mind when he made that statement. He must fully realise that it is not possible for you as Speaker to be bobbing up and down from the Chair just when it suits you, that you could not in this instance possibly have left the Chair, and to be suggesting to the public, who are not as familiar as we are with the Rules of the House, that it would have been possible to have done that, is calculated only to deceive the public, and when we couple that with the remark about the £100 in donations, there is an attack upon your probity which is unfair and untrue, and which offends against all proper concepts of decency.

I have no desire in all the regrettable circumstances of this incident to be censorious, as I mentioned before. It will be for the Honourable Member himself to say what steps he proposes to take in this matter, but if the Speakership of this House is to be attacked in this way then the prestige of Parlia-

ment will suffer greatly. I have been at some pains to see what attitude has been taken in the House of Commons in matters such as this, and there are precedents which show that, while there is no case on all fours with this one, even the slightest attacks on the prestige of the Chair are dealt with in that House with the greatest severity.

I conclude by saying I feel that in public life we are bound to be subject to criticism, but surely having regard to the fact that we are supposed to be the leaders of political thought in this State there is ample room for debate and vigorous debate, on questions of policy, even on questions as to whether or not a hospital should be built here or four miles away. There is ample room for debate and argument upon all the things that really matter, but if we are to descend to this sort of thing in the conduct of public affairs then we belittle the whole institution of Parliament, and we deserve nothing but censure from the public which elects us.

Mr. Orchard was then heard in his place, when he made the following Statement:

Mr. Speaker and Honourable Members of the House of Assembly.—I have a statement, but I would like to preface that statement by saying that the remark with regard to the Labour Government buying its way back into office has no reference in it to you in any way.

I do not propose to keep the House long on this matter now before it, nor to recount incidents that have occurred.

With regard to the letter written by me to Mr. Wedd, I wish to assure the House most sincerely that I regarded it as an entirely private communication, and, in substantiation of this statement, would remind Honourable Members of the very nature of its contents, which are essentially matters of private opinion.

The inclusion of the term "Speaker" in the address, under Mr. Wedd's name, was in no way intended to make it official in that respect. However, a serious though unintentional mistake has been made by me in the form of the letter, and when a mistake is made there is only one honourable and satisfactory course to be followed, namely to admit it and set it right.

I therefore desire to withdraw without reservation any reflection upon the honour and integrity of the Speaker of this House, or upon the dignity of the Chair, contained in either my letter to him or in statements made on the radio, and I wish the Speaker and the House to accept this as an unqualified apology.

Mr. Speaker then addressed the House, as follows:

I appreciate very much the fact that the Honourable Member has felt it right that he should tender his apology, and I am prepared to accept it in the manner in which it has been submitted. I felt that the position with regard to the Chair was one that must be brought to a head, and I am very thankful that all Honourable Members have approached the matter in the manner they have, and that includes the Honourable Member for Bass (Mr. Orchard). I trust that whilst I am the occupant of this Chair an occasion will not arise similar to the one at this time.

After accepting the apology I am simply forgetting the matter, and I hope all Honourable Members will do the same.

I ask the Honourable the Attorney-General to withdraw the Motion.

The Attorney-General said:

"After listening to what you have said, Mr. Speaker, I ask leave of the House to withdraw the Motion, and can only join with you in hoping that similar embarrassing situations such as this will not arise again."

The Motion was withdrawn.

XXI. REVIEWS

IT is no use expecting that the Second Volume[1] of Dr. Williams' researches will provide as entertaining reading as his first; but this arises from its nature, and does not in any way detract from its value. Indeed, the second Volume will probably be more useful to those concerned with the purely practical aspect of Private Bill procedure, although for the historian Volume I is of greater interest as giving a discursive view of practice from its origins until 1945.

Volume II assembles the material upon which the earlier parts of the work were based. It consists of notes upon each of the individual Standing Orders of the House of Commons arranged in the sequence in which they stood in the 1942 edition. The notes give a concise history of each order, showing in particular the dates upon which they have been amended over the past century. The process of amendment and revision of the Standing Orders described in this Volume culminates with the important revision of 1945 in which Dr. Williams himself took a prominent part. Since the notes follow the 1942 edition of the Private Business Standing Orders, Dr. Williams does not specifically deal with orders which were repealed before that date. Incidental reference is, however, made to the more important of these repeals and there is an excellent table at the end of the Volume (pp. 276-280) which gives a list of all the orders repealed between 1837 and 1944, together with the date of their origin and date of repeal.

Readers with practical experience of "searching the Journals" will readily appreciate the immense task which the author set himself to perform, and they will be the more able to congratulate him upon the successful manner in which he has arranged his work. In his preface Dr. Williams expresses the hope that his example might prompt a similar annotation of the Public Business Standing Orders in the Commons, and a parallel history of the Standing Orders in the Lords. It is only to be hoped that it may be so; but a study of the present two volumes may serve as a warning that the example cannot be followed without considerable industry and patience.

It is to be hoped that in any event arrangements will be made to publish further editions of Volume II and thus enable a periodic revision, incorporating later amendments. As Dr. Williams himself says, the historian must stop somewhere; and he has stopped at the 1945 revision of the Standing Orders. If any proof, however, were required of the continuous process of development in Parliamentary Procedure it is here. For already in the few years that have passed since 1945 there have been considerable amendments to the Standing

[1] *The Historical Development of Private Bill Procedure and Standing Orders in the House of Commons*, by O. Cyprian Williams, C.B., M.C., D.C.L. Vol. II. (London, H.M.S.O., 17s. 6d.)

Orders. In particular the passing of the Statutory Orders (Special Procedure) Act, 1945,[1] resulted in a complete new chapter dealing with the code of practice to be adopted for this new form of legislation. It is a matter of great regret that so few of the standard works of interest to the historian of Parliamentary procedure are regularly revised. There are, of course, successive editions of Erskine May; but since these purport to deal only with current practice, the historical review must of necessity be restricted to the minimum necessary to illustrate the theme. Redlich and Clifford, however, both standard works in their own sphere, are now sadly out of date, so much so that it would be difficult to attempt to revise them without rewriting the major portion of the text. It is thus of greater importance that Dr. Williams' book should be regularly revised, or at the least that it should be the charge of some energetic colleague to maintain a manuscript list of amendments to which reference might be made by those interested, both in the United Kingdom and Commonwealth Parliaments.

One inconvenience that will be immediately apparent in the present edition, if there are further extensive amendments of the Standing Orders involving an alteration in the present system of numbering, is that the absence of an index will make quick reference rather difficult. At present, since the sequence is based upon the 1942 edition of the Standing Orders, those who wish to discover the early history of a current order must first consult the index to the current edition of the Standing Orders relative to Private Bills and then, having noted the number of the order, must consult the table on pp. 7-10 of Volume II in order to discover its previous number in the 1942 edition which is followed in Dr. Williams' notes. Although in many cases, as Dr. Williams says, it may be enough to consult the Table of Contents, it is not always sufficient to do this; and a further change in sequence of the current orders will undoubtedly make matters more complicated. It must also be admitted that even now an index would be most helpful to Clerks of Commonwealth Legislatures who have not that same detailed acquaintance with the Commons Private Business Standing Orders as is possessed by their United Kingdom colleagues; indeed, they cannot always be sure that they even possess the latest edition of the Standing Orders themselves. We may perhaps, therefore, suggest that an index would be a valuable addition to the second edition when this is brought out.

Such details are, however, minutæ compared with the service that Dr. Williams has done to the history of Procedure. It is certain that both Volumes of his work should find a place in the library of every Commonwealth Clerk. It is, of course, unnecessary to say that Volume I cannot be fully understood without frequent reference to Volume II as the footnotes in the former Volume have already indicated. But Volume II has an intrinsic interest which should be of

[1] 8, 9 & 10 Geo VI, c. 18; *see also* JOURNAL, Vol. XV, 31.

value even to those who have no particular concern with Private Legislation; for it illustrates the growth of a code. In the nature of things Commonwealth Parliaments, with their relatively short history, must rely in the main upon the written law of procedure rather than on unwritten practice. All who are concerned with the codification of procedure in general will, then, have much to learn from Dr. Williams' second Volume. The experience of the United Kingdom House of Commons is here made available; and it may be thought that it would prove not the least sure guide to those who are developing their own codes.

Parliamentary Procedure in South Africa.[1]—A review of the first Edition of this book appeared in Volume XIV[2] of the JOURNAL. This, the 2nd Edition, was published in January, 1950, and brings the precedents up to the end of the 1949 Session of the Union Parliament.

Although the practice of the Parliament of the old Colony of the Cape of Good Hope, now one of the maritime Provinces of the Union of South Africa, was largely the basis on which the practice of the Union Parliament is built, both are mainly founded on that at Westminster. However, as also in the case of the other principal Overseas Parliaments in the Commonwealth, it is only natural that, under different constitutions and local conditions, each country should develop to some extent a practice of its own.

Present-day practice at Westminster is so governed by the huge volume of work and the large membership, with Sessions extending over the greater part of the year, that it has become almost a timetable of devices to cope with the business which it has to do. Therefore the situation in most of the chief Overseas Parliaments is more comparable to that which prevailed at Westminster some time ago and in the days before delegated legislation had become such a problem. It is for these reasons, therefore, that Mr. Kilpin's book is of special interest to Overseas Parliamentarians.

Among these differences in practice between Westminster and Cape Town is the procedure at Joint Sittings of the two Houses, for certain purposes under the Union Constitution,[3] indeed, in this respect the Union Parliament may well be looked to for precedents. Some of the other differences were touched upon in our review of the First Edition of Mr. Kilpin's book.

Mr. Kilpin has well supported his facts by the authoritative footnote, in which almost every page abounds, but unfortunately those which refer to the Minutes or Votes and Proceedings of the two Houses at Cape Town, their *Hansards* and Statutes, are not available in all Overseas Parliaments and Legislatures. It would therefore be a wider contribution to the subject of Union Parliamentary practice, were the wealth of information embodied in the text of an "Erskine

[1] *Parliamentary Procedure in South Africa.*—A short guide to the Rules and Practice of the Union House of Assembly. 180 pp. Med. 8vo. By Ralph Kilpin, J.P., Clerk of the House of Assembly. 2nd ed., 1950. (Juta & Co., Ltd., Cape Town, 21s.) [2] P. 271. [3] 9 Edw. VII, c. 9.

May" to be produced for South Africa. Perhaps Mr. Kilpin, who has now retired from a post which he has held with such distinction for so many years, may find time to produce such a work, when his projected book on "Speakers' Decisions" has been published.

The Second Edition of "Parliamentary Procedure in South Africa" is an enlargement on the first, and moreover contains: an Appendix, Forms of Order Paper, Bills and the method of showing amendments thereto.

The Union Statutes (*Classified and Annotated Reprint*) 1910-1947.[1]—This publication, of which 3 Volumes (Accountants to Courts) of the 12 have been published, owes its existence to a proposal made by the Publishers to the Department of Justice of the Government of the Union of South Africa and follows what the house of Butterworth has done in regard to legislation in other countries of the British Commonwealth. There has been the Edition of the Consolidated Statutes 1911-1929 revised up to 1933, since when only the annual Volumes have been issued. The work now under review will supply a long-felt want, therefore its completion is looked forward to, but in the meantime these 3 Volumes are available.

The Editorial Board appointed by the then Union Minister of Justice (the Hon. H. G. Lawrence, K.C.), with the Hon. Mr. Justice J. M. Murray, of the Supreme Court of South Africa, as Chairman, consists of a number of distinguished legal authorities representing: the Union Department of Justice; the General Bar Council and the Association of the Law Societies of South Africa. The Consulting Editor, Mr. L. C. Steyn, K.C., LL.D., is Law Adviser to the Union Government and there are also General and Managing Editors.

The work, which is a valuable addition to the practical legal literature of the Union, is arranged on the same principles as Halsbury's "Statutes of England".

Moreover, as the Constitution of the Union—the South Africa Act, 1909[2]—with its many amendments, under the alphabetical subject system adopted in this publication, comes under "Constitutional", reference to this oft-debated subject falls in the third of these 3 published Volumes.

All other Statutes are printed with amendments incorporated down to the end of 1947, so that this work constitutes a complete statement of Union Statute Law as at that date.

As the amendments in the principal Acts are included therein it is therefore unnecessary to print them in full.

Each title is prefaced by a Preliminary Note summarising and explaining the main provisions of the Acts included in the title, and, where necessary, the historical development of legislation is traced and its relation to other legislation indicated.

[1] Butterworth & Co. (Africa), Ltd., 1, Lincoln's Court, Masonic Avenue, Durban. 12 Vols. £30 Br. sterling.

[2] 9 Edw. VII, c. 9.

Cross references to other titles are appended to the Preliminary Notes.

The writer, who has to work specially with constitutional matters, has taken the 277 pp. of Volume 3 dealing with the Constitutional Law of the Union as a test and finds it to be a most complete and well-arranged statement on the subject which in the Union is certainly complicated in many directions.

It is known that the principal Parliaments of our Commonwealth and Empire have a system of exchange of Statutes and Parliamentary proceedings, but it is doubtful whether this would extend to a work the cost of which would be so great upon the Vote of the Parliament of the country of origin. It is therefore strongly recommended that such Librarians, together with those of the Legal Departments of other Commonwealth Governments, obtain a set of this most useful and authoritative work.

XXII. 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] XVI,[17] and XVII[18] 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 1949.

[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. [18] 343

Burns, Sir A., G.C.M.G.—Colonial Civil Servant. (Allen and Unwin.) 18*s*.

Commonwealth and Empire Review (July, 1950, p. 46).—Second Chamber Article on Reform of the House of Lords. (47, Prince's Gate, London, S.W.7.) 2*s*. 6*d*.

Crocker, W. R.—Self-Government for the Colonies. (Allen and Unwin.) 12*s*. 6*d*.

Curtis, Lionel.—World Revolution in the Cause of Peace. (Oxford: Blackwell.) 7*s*. 6*d*.

Evatt, H. V.—The United Nations. (O.U.P. London: Cumberlage.) 10*s*. 6*d*.

Hall, Duncan H.—Mandates, Dependencies and Trusteeships. (Stevens for Carnegie Endowment for International Peace.) 25*s*.

Haskings, George L.—The Growth of English Representative Government. (O.U.P.: Cumberlage.) 10*s*. 6*d*.

Hollis, Christopher, M.P.—Can Parliament Survive? (Hollis and Carter.) 9*s*.

Journal of Comparative Legislation and International Law.—Vol. XXXI.—Parts I and II May, 1949, and Parts III and IV November, 1949. (Royal Empire Society, Northumberland Avenue, London, W.C.2.) 10*s*. each.

Kenneth, J. K.—Dictionary of Scientific Terms. (Henderson and Henderson.) 4th Ed. Olion and Boyd. 32*s*.

Kilpin, R.—Parliamentary Procedure in South Africa: A short guide to the Rules and Practice of the Union House of Assembly. 2nd. Ed. (Juta, Cape Town.) 21*s*.

Latham, R. T. E.—The Law and the Commonwealth. Edited by Geoffrey Cumberledge. (O.U.P.) 7*s*. 6*d*.

Mansergh, Nicholas.—The Commonwealth and the Nations. (R.I.I.A.) 8*s*. 6*d*.

Neale, J. E.—The Elizabethan House of Commons. (Cape.) 18*s*.

Sayers, W. C. Berwick.—Manual of Library Economy. 6th Ed. (Grafton.) 35*s*.

Shakespeare, Sir Geoffrey.—Let Candles be brought in. (Macdonald.) 21*s*.

Slater, Montagu.—Englishmen with swords. (Bodley Head.) 10*s*. 6*d*.

The Union Statutes (Classified and Annotated Reprint), 1910-1947. Butterworth and Co. (Africa), Ltd., 1, Lincoln's Court, Masonic Avenue, Durban. 12 Vols. £30 Br. *stg*.

Thompson, Faith.—Magna Carta: its Role in the making of the English Constitution, 1300-1629. (University of Minnesota Press, London: Cumberlage.) 36*s*.

Watkins, Frederick.—The Political Tradition of the West. (London: Cumberlage.) 27*s*. 6*d*.

Wheare, Joan.—The Nigerian Legislative Council. (Faber and Faber.) 18*s.*

Wilkinson, B.—The Constitutional History of England, 1216-1399. Vol. I. Politics and the Constitution, 1216-1307. (Longmans.) 16*s.*

Williams, Dr. Orlo.—Historical Development of Private Bill Procedure and Standing Orders in the House of Commons. 2 Vols. (H.M.S.O.) 17*s.* 6*d.*

Wingfield-Stratford, Esme.—Charles, King of England—King Charles and King Pym. (Hollis and Carter.) 18*s.* each.

XXIII. LIST OF MEMBERS

JOINT PRESIDENTS

H. H. Dunwoody, Esq. E. K. de Beck, Esq.

MEMBERS

United Kingdom.

Sir Robert L. Overbury, K.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.

Alex. Clarke, Esq., Clerk-Assistant of the House of Commons, Stormont, Belfast.

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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.

Léon J. Raymond, Esq., B.A., O.B.E., Clerk of the House of Commons, Ottawa, Ont.

* Barrister-at-Law or Advocate.

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E. K. de Beck, Esq., Clerk of the Legislative Assembly, Victoria, B.C.

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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.

A. G. Turner, 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.

E. R. Redman, Esq., Clerk of the Legislative Council, Adelaide, South Australia.

G. D. Combe, Esq., A.F.I.A, A.C.I.S., Clerk-Assistant and Serjeant-at-Arms of the Legislative Council, South Australia.

Captain F. L. Parker, F.R.G.S.A., Clerk of the House of Assembly, and Clerk of the Parliaments, Adelaide, South Australia.

I. J. Ball, Esq., A.F.I.A., A.C.I.S., Clerk-Assistant and Serjeant-at-Arms of the House of Assembly, Adelaide, South Australia.

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C. K. Murphy, Esq., Clerk of the House of Assembly, Hobart, Tasmania.

R. S. Sarah, Esq., Clerk of the Legislative Council, Melbourne, Victoria.

* Barrister-at-Law or Advocate.

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J. J. P. Tierney, 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.
E. A. Roussell, Esq.,* LL.B., Clerk-Assistant of the House of Representatives, Wellington.

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J. J. H. Victor, Esq., B.A., Second Clerk-Assistant of the House of Assembly, Cape Town.
K. W. Schreve, Esq., Clerk of the Cape Provincial Council, Cape Town.
L. G. T. Smit, Esq., B.A., Clerk of the Natal Provincial Council, Maritzburg.
C. M. Ingwersen, Esq., Clerk of the Transvaal Provincial Council, Pretoria.

South-West Africa.

T. P. Coetzer, Esq., Clerk of the Legislative Assembly, Windhoek.

* Barrister-at-Law or Advocate.

D. J. Greyling, Esq., Clerk-Assistant of the Legislative Assembly, Windhoek.

India.

M. N. Kaul, Esq., M.A. (Cantab), Secretary of the Parliament of India, 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, Uttar Pradesh.

Shri K. C. Bhatnagar, M.A., Secretary of the Legislative Assembly, Lucknow, Uttar Pradesh.

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.

A. R. Mukherjea, Esq., M.Sc., B.L., Secretary of the West Bengal Legislative Assembly, Calcutta, W. Bengal.

C. C. Chowdhuri, Special Officer 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, Madhya Pradesh.

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.

Baroda States.

Mysore. G. S. Venkataramana Dyer, Esq.,* B.Sc., M.L., Secretary of the Representative Assembly and Legislative Council, Bangalore.

Travancore. V. Krishnamoorhi Aigar, Secretary of the Representative Body and Legislative Assembly, Trivandrum.

Suarashtra. Secretary of the Constituent Assembly, Rajkot.

[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.]

* Barrister-at-Law or Advocate.

Pakistan.

M. B. Ahmad, Esq., M.A. (Aligarh), LL.M. (Cantab),* 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.
M. N. Ameen, Esq., First Assistant Secretary of the East Bengal Legislative Assembly, Dacca.
S. N. Azfar, Esq., Second 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.

States Acceded to Pakistan.

Junagadh; Manavadar; Bahawalpur; Khairpur; Kalat; Las Bela; Kharan; Mekran; 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.

Colonel G. E. Wells, Clerk of the Legislative Assembly, Salisbury.
J. R. Franks, Esq., B.A., LL.B., Clerk-Assistant of the Legislative Assembly, Salisbury.
E. Grant-Dalton, Esq., M.A. (Oxon), 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.

I. Crum Ewing, Esq., Clerk of the Legislative Council, Georgetown.

Cyprus.

Clerk of the Executive and Legislative Council, Nicosia.

East Africa High Commission.

D. W. B. Baron, Esq., M.A. (Oxon), Clerk of the Central Legislative Assembly, Nairobi, Kenya Colony.

* Barrister-at-Law or Advocate.

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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.

Malta, G.C.

V. A. Dillon, Esq., M.B.E., Clerk of the Legislative Assembly and Clerk of the Executive Council, Valletta.

Mauritius.

L. J. Lincoln, Esq., B.A. (Cantab), Clerk of the Legislative Council, Council Office, Government House, Port Louis.

Nigeria.

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

Colony of Singapore.

The Clerk of the Councils, Singapore.

Anglo-Egyptian Sudan.

M. F. A. Keen, Esq., Clerk of the Legislative Assembly, Khartoum.

Tanganyika.

T. Griffith-Jones, Esq., Clerk of the Legislative Council, The Secretariat, Dar-es-Salaam.

Trinidad and Tobago, B.W.I.

Winston Fung, Esq., Clerk of the Legislative Council, Port of Spain.

Ex Clerks-at-the-Table.

W. R. Alexander, Esq., C.B.E., J.P. (Victoria, Australia).
Lord Campion, G.C.B. (United Kingdom) (*Clerk of the Consultative Assembly of the Council of Europe*).
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Ralph Kilpin, Esq., J.P. (South Africa).
P. T. Pook, Esq., B.A., LL.M., J.P. (Victoria, Australia).

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.

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Honorary Secretary-Treasurer and Editor: Owen Clough.

XXIV. 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.*

Ahmad, M. B., M.A.(Aligarh), LL.M.(Cantab.).—Secretary and Constitutional Adviser, Pakistan Constituent Assembly since its establishment 1947; s. of Mohd. Yaqub Ahmad Osmani; *b.* Meerut, United Provinces; *ed.* Allahabad University (B.A. 1925); Aligarh University (M.A. 1927); and Cambridge University (LL.M.); Judge, Constitutionalist, Author Historian, Government Secretary; joined Indian Civil Service 1928; District and Session Judge, 1934; Member of Meerut Riot Enquiry Commission, 1940; joined Pakistan Administrative Service (PAS) July, 1947; Member and Secretary, Pakistan Parliamentary Delegation to Inter-Parliamentary Union Conference, Rome; Secretary, Pakistan Parliamentary Delegation to the Commonwealth Parliamentary Conference, London, 1948; author of "The Problem of Rural Uplift in India"; "Meaning and Scope of Law among Muslim Peoples"; "The Influence of Muslim Culture in India"; "The Administration of Justice in Medieval India" (Aligarh Muslim University Publication); "Select Constitutions of the World in 4 Volumes" (Pakistan Constituent Assembly Publication; lectured on Muslim India History at Aligarh, Allahabad and Cambridge Universities; has travelled extensively abroad, especially Central Europe and Middle East in connection with historical, constitutional and cultural studies; hobbies: tennis, golf, cricket; F. R. Hist. Society (London); founded the Aligarh

Historical Research Institute, 1940; founder and President of the Rotary Club, Fyzabad.

Address: Constituent Assembly of Pakistan, Karachi, phone 5656; Residence: 6-A, Clifton Road, Karachi, Sind, Pakistan, phone 5308.

Ameen, M. A., M.Sc., B.L.—First Assistant Secretary to the East Bengal Legislative Assembly, Pakistan; joined Bengal Civil Service (Judicial) May 8, 1942; after partition of Bengal, August 15, 1947, served in East Pakistan Civil Service (Judicial); appointed to present office September 27, 1949.

Azfar, S. N., B.Sc.—Second Assistant Secretary to the East Bengal Legislative Assembly, Pakistan; held non-gazetted position under Provincial Government from June 15, 1931, to November 5, 1949; appointed present office November 6, 1949.

Ball, I. J. A.F.I.A., A.C.I.S.—Clerk Assistant and Serjeant-at-Arms, House of Assembly, South Australia; *b.* February 26, 1912; appointed to South Australia (Government) Railways, 1927; State Bank of South Australia, 1928; Legislature as Office Clerk, House of Assembly, 1937, and also as Secretary Joint House Committee from 1941; present appointment from March 11, 1946. Associate of Federal Institute of Accountants, 1940; Associate of the Chartered Institute of Secretaries, 1946; served with Australian Military Forces, 1942-45, in New Guinea, 1942-44; mentioned in despatches; commissioned rank, July 2, 1945.

Baron, D. W. B., M.A.(Oxon).—Clerk of the East Africa Central Legislative Assembly; *b.* April 11, 1915; *ed.* Winchester and Hertford College, Oxford (Scholar); Colonial Administration Service: Ceylon, 1937-1947; East Africa High Commission, 1948.

Chitnvis, K. M., B.A., LL.B.—Secretary to the Saurashtra Constituent Assembly; previously Additional Assistant Legal Remembrancer to Bombay Government; joined Bombay Government Service, July 21, 1913, as Junior Assistant; promoted Junior Superintendent, Senior Superintendent, Personal Assistant to Remembrancer of Legal Affairs to Bombay Government; Assistant Secretary to Bombay Government in Legal Department, and Additional Assistant Legal Remembrancer, from which post he retired December 2, 1947, after service of over 34 years.

Chowdhuri, Charu C.*—Special Officer, West Bengal Legislative Assembly; Advocate, High Court, Calcutta; joined West Bengal Legislative Assembly as Special Officer, January, 1949.

Clark, C. I.—Clerk of the Legislative Council of Tasmania; *b.* 1888; acted as Clerk-Assistant of the House of Assembly, 1915-1919; Clerk-Assistant and Usher of the Black Rod, Legislative Council, 1919; appointed to present office 1946.[1]

Clough, E. M. O., C.M.G.—Formerly Clerk of the Senate of the Union of South Africa; *s.* of the late W. O. Clough, D.L., J.P.,

* Barrister-at-Law or Advocate.

[1] *See also* JOURNAL, Vol. I, 132.

M.P. (House of Commons); *b.* 1873; *ed.* Huddersfield College, Mercer's School and in Germany; *m.* 1908, Stella Irene, *d.* of the late B. T. Bourke, of Vierfontein, O.F.S.; 3 daus.; Private Secretary to the late Hon. Sir Richard Solomon, G.C.M.C., etc., when Legal Adviser to Lord Kitchener, C.-in-C. South Africa, and to the Transvaal Administration, 1901-03; Clerk of the Executive and Legislative Councils (Transvaal), 1903-07, under Crown Colony Government; Clerk of the Legislative Council (Transvaal), 1907-10, under Responsible Government; Clerk of the Union Senate under Dominion Government, 1910-29; Hon. Chairman, Board of Control, S.A.T.S. "General Botha", 1921-30; President of the Union of English-speaking South Africans; Hon. Secretary, Empire Parliamentary Association (S.A.), 1911-29; accompanied S.A. representative to the Delhi Durbar, 1902, and Empire Parliamentary Delegations to England, 1916, South Africa, 1924, Australia, 1926, and Canada, 1928; Editor, African Affairs Report, 1929-33; founder of Society of Clerks at the Table in Empire Parliaments, 1932, and since then Hon. Editor of its JOURNAL; contested Claremont Division, Union Parliament, 1938. Served in South Africar War with H.A.C. Battery, 1900-01; with C.G.A. in German South-West Africa, 1914-15; with R.H. & F.A. in France and Italy, 1917-18, and as Staff Officer (Maj.) G.H.Q., Pretoria, 1941-44; Secretary of the Speaker's Conference on the reconstitution of the Union Senate, 1920. Author of the S.A. Parliamentary Manual, 1909, and of many articles on constitutional law and Parliamentary procedure. Cr. C.M.G., 1920. Tennant Rise, Kenilworth, Cape, South Africa.

Combe, G. D., M.C., A.F.I.A., A.C.I.S.—Clerk-Assistant and Serjeant-at-Arms, Legislative Council, South Australia, since 1948; Officer of State Bank of South Australia, 1934-39; House of Assembly clerical staff, 1940-48; Secretary, Joint House Committee, 1946-48; On Active Service, 2/43rd Australian Infantry Battalion, 1940-45, Tobruk, El Alamein, New Guinea and Borneo Campaigns; commissioned Lieutenant, 1941, Captain, 1944; twice wounded, awarded Military Cross, 1944. Diploma of Federal Institute of Accountants, 1938, and Chartered Institute of Secretaries, 1939.

de Beck, E. K.—Clerk of the Legislative Assembly of British Columbia. With the Government Service in 1937, prior to which in practice as Barrister and Solicitor in Vancouver for 25 years; Superintendent of Brokers, 1937, a title generally spoken of as "Securities Commissioner" throughout the United States of America and in other jurisdictions in Canada; appointed also Inspector of Credit Unions, 1938; in 1948, having attained retirement age (65), was retired from both postitions but reappointed to perform duties of Superintendent of Brokers; became Clerk of the Legislative Assembly, January, 1949.

Dillon, V. A., M.B.E.(Civil).—Clerk of the Executive Council

and of the Legislative Assembly of Malta, G.C.; *b.* 1902, Postal Clerk, 1923; Higher Division of the Clerical Establishment, 1925; Secretary Æsthetics Board, the Board of Works, and the Building Control Board during the first year of World War I; Secretary to the Minister of Public Works under Self-Government, 1932-33; Assistant Controller of Engineering and Building Materials, 1940-42; District Commissioner, Cottonera (Dockyard Area), and subsequently Regional Protection Officer, Eastern District, 1942-43; Secretary Reconstruction Department, 1943-45; Administrative Secretary, Public Works Department, 1945-46: Clerk of Councils, 1946-47. Awarded M.B.E. for services during Siege of Malta, New Year's Honours, January 1, 1946.

Fung, Winston.—Clerk of the Legislative Council, British Guiana, and Assistant Secretary to the Secretariat; *b.* June 25, 1909; Ward Officer, La Brea, 1929; 3rd-Class Clerk, Treasury, 1934; 2nd-Class Clerk, Accountant General's Department, 1939; appointed 1st-Class Clerk, Account General's Department, 1942; Senior Clerk, Accountant General's Department, 1943; Principal Officer, Class II, 1945; Acted Principal Officer, Class I, 1946; appointed Principal Officer, Class I, Secretariat, 1947; appointed Assistant Secretary, Secretariat, 1949.

Grant-Dalton, E. M.A.(Oxon).—Second Clerk-Assistant, Legislative Assembly, Salisbury, Southern Rhodesia, August, 1949; *b.* June 3, 1914; *ed.* St. Andrews Preparatory School, Grahamstown, Diocesan College, Rondebosch and Worcester College, Oxford; appointed to Native Affairs Department, Southern Rhodesia, 1938; served Southern Rhodesia Anti-Tank Battery, 102 (Northumberland Hussars) R.H.A., Intelligence Corps (F.S.W.), 1940-45; appointed Serjeant-at-Arms to the Legislative Assembly of Southern Rhodesia, May, 1946.

Greyling, D. J.—Clerk-Assistant, Legislative Assembly, South-West Africa; *b.* Bloemfontein, January 5, 1915; joined Public Service, South-West Africa, July 18, 1938; in Department of Native Affairs, Ondangua, Ovamboland, until March 30, 1939; Secretary for Native Labourers' Commission of South-West Africa at Windhoek; Clerk-Assistant of the Legislative Assembly, March 10, 1947; promoted from 2nd to 1st Grade Clerk, June 1, 1947 .

Hopkins, E. R., B.A., LL.B.*—Deputy Clerk of the House of Commons, Canada; *b.* May 29, 1908, Moose Jaw, Sask.; *s.* of Edward N. Hopkins and Minnie Latham, both Canadian; Father formerly M.P. for Moose Jaw; *ed.* Moose Jaw, Universities Sask. Toronto, Harvard and Oxford; degrees: B.A. (Toronto Pol. Science); B.A. (Oxon); LL.B. (Sask.); *m.* June 12, 1937, Josephine, *d.* of Herbert Ditchburn, Esq., Gravenhurst, Ont.; 4 sons; served 5 years in R.C.A.F., leaving with rank of Wing Commander; Legal Adviser to Department of External Affairs, 1946-49; Rhodes

* Barrister-at-Law or Advocate.

Scholar, 1932-34; Lecturer in Law, University of Toronto, 1935; and Professor of Public Law, University of Sask., 1936-40; also Legal Adviser (External Affairs) to Canadian Delegations to General Assembly of United Nations and alternate delegate (Canada) on Security Council; appointed Deputy Clerk of the House of Commons, Canada, August 10, 1949; religion, United Church. Address: 328, Fairmont, Ottawa, Ont.

Hussain, S. A. E., B.A., B.L.*—Secretary of the East Bengal Legislative Assembly (Pakistan); recruited direct from the Bar as Special Officer in the Legislative Department of the Government of Bengal and also acted as Assistant Secretary to Bengal Legislative Council, 1937; Acting Secretary to Bengal Legislative Council, November 4, 1937, to November 15, 1937; appointed Assistant Secretary to Bengal Legislative Council, 1938; acted as Secretary to Bengal Legislative Council, November 7, 1938, to January 2, 1939; deputed to Government of Bihar as Secretary to Bihar Legislature, 1945-46; and again acted as Secretary to Bengal Legislative Council, 1946-47; appointed to present office, August 15, 1947; also Hon. Secretary, Commonwealth Parliamentary Association (East Bengal Branch).

Lincoln, L. J., B.A.(Cantab.).*—Clerk of the Legislative Council of Mauritius since 1947; *b.* June 30, 1906; *ed.* Royal College, Mauritius, and St. John's College, Cambridge; B.A. (Law Tripos, 1928); Barrister-at-Law, Middle Temple, 1930; Ag. District Magistrate, Mauritius, 1934-36; Law and Assizes Clerk, Legal Department, 1937-39; Second Additional Substitute Procureur and Advocate General, Legal Department, 1939-47.

Metcalfe, Frederic W., Sir, K.C.B.—Joined House of Commons, 1919; Second Clerk-Assistant, 1930; Clerk-Assistant, 1937; C.B., 1939; Clerk of the House, 1948; K.C.B., 1949.

Mukherjea, Ajita Ranjan, M.Sc., B.L.—Secretary of the West Bengal Legislative Assembly; entered Bengal Provincial Judicial Service, 1933; joined Bengal Legislative Assembly as First Assistant Secretary, 1942; appointed Secretary, West Bengal Legislative Assembly after partition of Bengal, August 15, 1947.

Murphy, C. K., J.P.—Clerk of the House of Assembly, Tasmanian, and Librarian of Parliament; *b.* 1904; Clerk-Assistant and Serjeant-at-Arms, 1925; appointed to present office, 1941.

Raymond, Léon J., B.A., O.B.E.—*B.* July 30, 1901. First elected to House of Commons of Canada at the General Election of 1945 and re-elected at the General Election, June 27, 1949. Resigned his seat August 5, 1949, to accept the position as the Clerk of the House of Commons of Canada in succession to Dr. Arthur Beauchesne, C.M.G., etc., retired.

Redman, E. C.—Clerk of the Legislative Council, South Australia, since 1948; Office Clerk, House of Assembly, and Secre-

* Barrister-at-Law or Advocate.

tary, Joint House Committee, 1925-37; Clerk-Assistant and Serjeant-at-Arms, Legislative Council, 1937-48; on Active Service, 48th Battalion, 1st A.I.F., 1915-19.

Saksena, K. B., B.A.—Assistant Secretary to the United Provinces Legislative Assembly; appointed Superintendent of Proceedings, 1938, on introduction of Provincial Autonomy; during Section 93 régime, when Legislature ceased to function, worked as Officer-in-Charge of duties of Secretary to Assembly for 1 year; thereafter transferred to Medical Department of United Provinces Government and held post of Superintendent in addition to that of Assistant Secretary; again reverted to Assembly as Superintendent of Proceedings, 1947; appointed to present position, January 26, 1948.

Sarah, R. S.—Clerk of the Legislative Council, Victoria, Australia; *b.* Gisborne, 1899; appointed Public Service, Clerk, Official Accountant's Branch, Department of Law, 1916; Assistant Clerk of Courts, 1916-17; Clerk, Office of Crown Solicitor, 1917; Clerk in Records and Clerk assisting at the Table, Legislative Council, 1931; Secretary to House Committee, 1933; Usher and Clerk of Records, Legislative Council, 1935; Clerk-Assistant of the Legislative Council, 1947; appointed to present position October 5, 1949.

Stephen, George.—Clerk of the Legislative Assembly of Saskatchewan since May 1, 1949. After serving for one full Session in London as a political reporter, became a member of the Parliamentary Press Gallery, Manitoba Legislative Assembly, during 1913-14; 1921-27; followed by service in the same capacity with the House of Commons at Ottawa, 1920-21, and later in Saskatchewan Legislative Assembly, 1932-34. Assistant Clerk, Clerk of Committees and Chief *Hansard* Reporter, Legislative Assembly of Saskatchewan, 1928-32 and 1934-35; Assistant Clerk, Clerk of Committees and Editor of Debates Legislative Assembly of Saskatchewan, 1945-49.

Venkataramana Iyer, G. S., B.Sc., M.L.*—Secretary to the Mysore Legislature; *b.* March, 1907; practised law as Advocate, High Court of Mysore, 1931-38; entered Mysore Government Service, September, 1938; appointed Assistant Secretary, Mysore Legislature, July, 1941; Assistant Secretary, Legislation Department, March, 1944; Secretary, Hindu Law Reforms Committee, 1945-49; Assistant Secretary, Constituent Assembly, Mysore, March, 1948; Secretary, Constituent Assembly, Mysore, May, 1949; appointed present office, February, 1950.

* Barrister-at-Law or Advocate.

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(Art.)=Article in Journal. Amdts.=Amendments.
C.W.H.=Committee of the Whole House. (Com.)=House of Commons.
Q=Questions. O.P.=Order Paper. Sel. Com.=Select Committee.

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[1] *See* Provisional List in "List of Members."—[ED.]

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[1] *See* "South Africa, Union of"—"precedents and unusual points of procedure."—[ED.]

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